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Ordine internazionale e diritti umani

International Legal Order and Human Rights
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HUMANITARIAN SMUGGLING: SETTING BORDERS BETWEEN ACTS OF CRIMINALITY AND ACTS OF SOLIDARITY WITH PEOPLE ON THE MOVE

Today, demonstrations of solidarity with migrants and refugees crossing international borders are often the only viable way for them to access basic needs and primary human rights. It is undeniable, however, that humanitarians assisting people on the move facilitate their irregular entry, transit and/or stay in a given foreign State. Accordingly, this paper aims to determine whether – pursuant to the Smuggling Protocol – this humanitarian practice should be criminalised or, on the contrary, sharply distinguished from the transnational crime of migrant smuggling. To do so, following a preliminary overview of the modalities and the reasons why ordinary individuals and volunteers assist migrants, the author focuses her analysis on the relevant provisions of the Smuggling Protocol, acknowledges the ambiguity of the Facilitation Directive and other national implementing measures, and, ultimately, looks at recent jurisprudential developments in domestic supreme courts (Supreme Court of Canada 2015, French Constitutional Council 2018, and Italian Supreme Court of Cassation 2020), recalling both international commitments and historical constitutional values inspired by solidarity.