

**Trafficking In Human Beings and Organized Crime:  
A Literature Review**

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## **Introduction**

The issue of the “trade” or “trafficking” in human beings that started to be raised during the latter part of the 1980s did not really enter into the mainstream until the 1990s. Most of the publications on this subject did not appear until the latter part of that decade. It is therefore not overly surprising that the available material has been found to be limited since its first appearance in the literature, and analysis of it has largely been based on research reports (both published and unpublished) and coverage by the media. In light of the scarcity and lack of substance of the scientific production in this area, it seemed neither realistic nor appropriate for us to endeavour to present a comprehensive review. Instead, we will try to identify herein the main parameters of this issue and suggest some areas in which future research is needed. To that end, we are relying primarily on academic works (books, peer-reviewed periodicals) and research reports and publications of various organizations available on the Internet.

We will begin by focussing on the theoretical perspectives behind the analysis that has been done to date and the controversy surrounding the definition of the concept of “trading” or “trafficking” in human beings. Once those parameters are in place, we will turn to the role that organized crime seems to be playing in the development of this phenomenon and the extent of its involvement. We will then provide a brief overview of the legislation that exists to combat the trade in human beings and some other options to be explored. We will conclude by proposing some avenues for further research.

## The Matter of Definitions

It should be noted at the outset that the issue of the trade in human beings received attention first and foremost in relation to the trade in women (Bertone, 2000, Chuang, 1998, Derks, 2000), being associated with the phenomenon of the “white slave trade” that had been vigorously condemned by moral reformers and feminists in the late nineteenth century. Subsequent historical research revealed that there was little material basis for this crusade of purity (Corbin, 1990; Doezema, 2000; Rosen, 1982; Walkowitz, 1982), although Doezema (2000) refers to this question as the “myth of white slavery.” This campaign in fact coincided with an increase in the number of migrant prostitutes in Europe during that period (Guy, 1992 in Doezema, 2000: 4).

According to some analysts, the spectre of the sexual exploitation of women reappeared in the late twentieth century, but this time in an industrialized and internationalized form (Barry, 1995; Jeffreys, 1999; Raymond, D’Cunha, Dzuhayatin, Hynes, Rodriguez, Santos, 2002; Richard, 2000). In short, the “white slave trade” was transformed into “trafficking in women”, with the focus this time being on third world and non-western women.<sup>1</sup> The stereotypical victim is still the innocent young girl who is seduced or kidnapped and forced into sexual slavery. Those analysts, for whom the sex trade is in itself a form of bondage, of violence against women, advocate a vigorous struggle against this new form of victimization of women.

However, as Chuang notes (1998: 66), “trafficking in human beings” cannot be unilaterally deemed a modern form of slavery or confined to the phenomenon of prostitution:

The narrow portrayal of trafficking as necessarily involving forced recruitment for the purposes of forced prostitution thus belies the complexity of the current trafficking problem, and overlooks numerous victims whose experiences diverge from more traditionally recognized forms of trafficking (Chuang, 1998: 66).

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<sup>1</sup>For analyses that reveal the role that race plays in the problem of the trade in human beings, see, for example, Kempadoo (1998, 2001), Truong (2001) and the United Nations (2001).

First, this conception of trafficking rules out any form of autonomy on the part of the women concerned; the testimony from them that has emerged from various parts of the globe is simply interpreted as coming out of fear and/or misperception. At the same time, work in the sex industry is rejected out of hand as a way to earn a living and the difference between sex workers and other women is raised once again,<sup>2</sup> while other forms of trafficking in women in the domestic,<sup>3</sup> agricultural and textile sectors or with respect to mail-order brides<sup>4</sup> and human organs<sup>5</sup> (Richard, 2000, Ruggiero, 1997, Truong, 2001) are completely ignored. This conception emphasizes the sexual exploitation of women but does not take into account the much broader question of the migration of workers, both male and female.<sup>6</sup>

We thus decided to consider the question of trafficking in women as part of the broader issue involving migrant male and female workers.<sup>7</sup> To clarify the parameters, we began by turning to questions of terminology and definition.

From the time this issue first appeared in the literature, the reader has been thrown into the debate surrounding the concepts of trafficking and smuggling and, as we will see later, organized

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<sup>2</sup>On this subject, see Parent (1994), Parent and Coderre (2000), Coderre and Parent (2001), Parent (2001).

<sup>3</sup>On this subject, see the Canadian study by the Philippine Women's Centre of B.C. (2000).

<sup>4</sup>On this subject, see the Canadian study by Langevin and Belleau (2000).

<sup>5</sup>On this subject, see, for example, Harrison (1999) and Truong (2001).

<sup>6</sup>We note that we will not be dealing specifically here with trafficking in children. In our view, a specific theoretical analysis is needed here and should be based on sources that obviously intersect but must not be confused.

<sup>7</sup>The reader will note that, according to Salt (2000: 33), almost half of IOM (International Organization for Migration) publications in 2000 dealt specifically with trafficking in women.

crime (Salt and Hogarth, 2000).<sup>8</sup> Moreover, authors use various terms such as alien smuggling, trafficking of aliens, illegal immigrant smuggling, human trafficking, trade of human beings,<sup>9</sup> and commodification of human beings, thus adding to the confusion. However, Salt and Hogarth (2000: 20) indicate that various government agencies now tend to make a very clear distinction between trafficking and smuggling, citing as examples the *United Nations Convention against Transnational Organized Crime*, also called the Palermo Convention (2000), and certain European conventions. In the Palermo Convention, “smuggling of migrants” refers specifically to procuring the illegal entry of a person into a state of which the person is not a national or a permanent resident in return for a financial or other material benefit; “trafficking in persons” sets itself apart through the presence of fraud, coercion, physical or psychological abuse and, according to Salt (2000: 21), often involves organized crime networks or syndicates. However, despite the observed tendency to distinguish between the two terms with regard to policies and the adoption of legal measures, a number of researchers have noted in the field that it may be difficult to differentiate between the trafficker and the person who assists in or carries out a commercial transaction, no matter how unlawful (Morrison, 1998 in Salt and Hogarth, 2000:21; Skeldon, 2000). We note finally that, although certain definitions emphasize the crossing of borders in connection with trading activities, others consider that individuals may be victims of trafficking even within their national boundaries.

Analysts agree on the fact that there is no consensual definition of trafficking in human beings (Chew, 1999; Derks, 2000; Okolski, 2000b; Oxman-Martinez, Martinez, Hanley, 2001; Salt and Hogarth, 2000; Toupin, 2002). Salt and Hogarth (2000) have identified 22 definitions of the concept of trafficking and present them as an attachment to their study. From the midst of this

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<sup>8</sup>Many authors refer to a degree of terminological confusion. See, for example, Skeldon (2000).

<sup>9</sup>Salt and Hogarth (2000: 19) use these terms. Other authors use the term *commodification of human beings*.

confusion we have adopted the definition of Wijers and Lap-Chew (1997)<sup>10</sup> and that of the *United Nations Convention against Transnational Organized Crime* (United Nations, 2000a). Wijers and Lap-Chew's definition (1997) deals specifically with trafficking in women and emphasizes coercion as a key element in any trafficking situation. Based on an analysis of trading in women, it could essentially apply to both men and women. Moreover, it distinguishes between two points in time, that of recruitment and that of the work itself, of which either could involve violence and coercion. For Wijers and Lap-Chew (1997), trafficking in women relates to:

all acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion (Wijers and Lap-Chew, 1997: 36 ).

Forced labour and slavery-like practices relate to:

the extraction of work or services from any woman or the appropriation of the legal identity and/or physical person of any woman by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion (Wijers and Lap-Chew, 1997: 36).

The definition of the *United Nations Convention against Transnational Organized Crime*, also referred to as the Palermo Convention (2000), refers to a context of a UN-sponsored international struggle against the various activities of organized crime. The wording is contained in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer,

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<sup>10</sup>For an historical review of the definitions of trafficking in women in international conventions and their changes in content, see Wijers and Lap-Chew (1997).

harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) (The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used) (United Nations, 2000).

## **Theoretical Framework**

Aside from the lack of consensus on a definition, a number of authors have noted that there is no consistent theoretical framework that structures analysis and empirical research on this question (Okolski, 2000b; Salt and Hogarth, 2000). Motivated by the stark lack of knowledge on their particular research subject and by indignation, many have confined themselves to the basics in describing the phenomenon, indicating the players involved, the routes, the practices, the consequences and the mechanisms for combatting it (IOM, 2000b, IOM, 2001c). Others have listed the approaches used to address the problem and have made a point of indicating that they are not mutually exclusive. Derks (2000), for example, has identified six approaches: trafficking for the purposes of prostitution, in a context of migration, as a labour issue, as a criminal problem, as a human rights problem, and trafficking in children. Wijers and Lap-Chew (1997) and Wijers (1998) note that the approaches that are chosen determine the strategies to be used in dealing with the problem. They identify approaches that lead to repressive strategies and those that lead to strategies of empowerment. When the problem of trafficking is defined as a moral, criminal, migration or public order problem, there is a tendency to opt for solutions that involve control or punishment. When the problem is defined as a labour or human rights issue, positive

measures can be taken in response.<sup>11</sup>

In any event, when authors refer to a specific approach, they make little effort to develop the parameters and very few endeavour to situate their analysis within the broader context of globalization and its impact on populations.<sup>12</sup> Moreover, authors rarely refer to the scientific literature on population migration. Few authors actually document the migratory pressures of recent decades in their countries with respect to such questions as who wants to migrate, where and with what kinds of employment prospects; the structural and situational factors that shed light on such trends; the relationship between legal and illegal migration; and the impact of government policies on the avenues taken. Although there appears to be a stronger desire to combat the problem than to develop an overall understanding of it, we will examine the parameters that nonetheless emerge from the literature.

First, many authors introduce their comments by stating that globalization<sup>13</sup> is the backdrop against which the trafficking in human beings has developed over the past 30 years (Beare, 1999; Bertone, 2000; De Dios, 1999; Kempadoo, 1998; Oxman-Martinez, Martinez, Hanley, 2001; Skrobanek and Sanghera, 1996; Toupin, 2002, Williams, 1999). Some, including Kempadoo (1998: 14-19), whom we will be turning to later, present a more thoroughly developed analytical framework. That author quite rightly points out that capitalist production has experienced a global restructuring during this period, with capital moving towards regions where labour is cheap, unions having little or no influence and employment policies favour the employer. There has been a marked increase in part-time employment and unemployment in both post-industrial

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<sup>11</sup>We note that the authors propose an analysis that deals with trafficking in women but it also lends itself to trafficking in human beings in general. They caution that drawing on more than one approach at the same time can have undesirable consequences for anyone who is a victim of trafficking.

<sup>12</sup>There are nonetheless a number of analyses that set the problem squarely in the context of migration. See, for example, Van Impe (2000) and Skeldon (2000).

<sup>13</sup>For an enlightening critical analysis of the impact of globalization on populations, see Bauman (1999), for example.

and “developing” countries. The power of national governments has been eroding in favour of international organizations like the World Bank, the World Trade Organization and the International Monetary Fund. Kempadoo (1998:16) notes that the new international arrangements have had a detrimental effect on many national economies and have resulted in the displacement of rural populations, lower wages and heightened poverty. As a result, social programs have decreased while incentives to consumption have increased, a phenomenon from which the sex trade has not been exempt.

If we add to this the elements of political restructuring,<sup>14</sup> wars and even terrorism, it is no surprise that there have been significant repercussions among certain population groups, particularly in the third world. Women,<sup>15</sup> notes Kempadoo (1998: 17), are most strongly affected, to the extent that the International Labour Organization estimated in 1996 that the feminization of international migration has been one of the most pronounced social and economic phenomena in recent years.

On the basis of this general context, it seems entirely appropriate to consider the issue of trafficking in light of the parameters associated with worker migration. This entails examining both the pressures exerted by socio-economic conditions and policies in third world countries and those associated with the lure of wealthy countries and their demand for foreign labour. Here there are different analyses that clearly show how countries of origin can encourage emigration and subsequently trafficking and how host countries in turn play a major role in this phenomenon.

Phongpaichit (1997) demonstrates how Thailand encouraged the emigration of sex trade workers to Japan and reaped the benefits of the resulting influx of currency. The *Philippine Women's*

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<sup>14</sup>For an analysis of the impact of the collapse of the Soviet bloc on the flood of migration to those regions, see Okolski (2000a), for example.

<sup>15</sup>For an analysis of the specific impact of globalization on women as a group, see Doezema (2000), Kempadoo (1998), Skrobanek and Sanghera (1996) and Toupin (2002).

*Centre of B.C.* (2000) and Van Impe (2000) report on a similar situation in the Philippines. During the 70s and 80s, the Philippine government established a policy of exporting labour, viewing employment abroad as a way of stimulating the economy. With the enactment of the 1995 *Migrant Workers and Filipinos Act*, however, the government affirmed its intention of no longer promoting employment abroad. Nonetheless, as Van Impe notes (2000: 16), the policies and directives that followed as well as the data on the number of Philippine workers abroad and the amount of foreign currency entering the country indicate that the situation has persisted. Also, in his view, despite political statements to the contrary, the Philippine government is still encouraging worker migration. As a result of those policies, for many Filipinos overseas employment has come to represent a way of gaining social status and improving their financial position, and some of them have become vulnerable to offers from traffickers. And it seems clear that, despite the existence of legal migration channels, the number of intermediaries who offer illegal services is continuing to increase.

If we consider the manner in which such migration is organized, which involves many social players, it is difficult to clearly distinguish between legal migration and trafficking, at least in Asia, according to Skeldon (2000). In that region, for example, it seems to be more economical and quicker to proceed through informal and often illegal channels to obtain regular labour than to pass through legitimate official channels. It is known that each step in the migration process involves costs (transportation, passports and visas, medical examinations, security checks) but added to this is the need to pay fees to intermediaries to ensure that the process takes place smoothly, through both regular and illegal networks. Skeldon (2000: 10) indicates that there is an imperceptible transition between fully transparent and documented recruitment and the movement of people recruited entirely through criminal networks.<sup>16</sup> This depends on a series of conditions in the domestic and external markets. Ruggiero (1997) reports on a similar set-up in Europe for obtaining the services of foreign workers.

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<sup>16</sup>Skeldon (2000: 11) notes that the boundaries between trafficking and lawful avenues can also become blurry in the case of adoptions of children and mail-order brides.

In the host countries, populations are strongly influenced by consumerism and there was a substantial increase in demand for goods and services during the latter part of the twentieth century (Skrobanek and Sanghera, 1996; Taylor and Jamieson, 1999). This applied initially to domestic services (Taylor and Jamieson, 1999: 261), the need for which rose in response to the requirements of dual-career households. Europe also witnessed an increase in black market labour in the agricultural, textile, fashion and construction industries, not to mention the sex trade (Ruggiero, 1997). In the United States there has been a resurgence in sweat shop conditions in the garment industry, agriculture, food production, residential and commercial construction, tourism, light industry, transport, the retail trade, domestic services and so forth (Taylor and Jamieson, 1999: 262). Labour is recruited from immigrants, especially those who do not have papers, thereby assuring highly competitive production from a cost standpoint. The profits are shared by official or quasi-official organizations, criminal groups or all three. Trafficking is thus profitable for important sectors of first world economies (Phongpaichit, 1997).

Furthermore, host country governments maintain immigration policies that strictly control permanent access to their territories.<sup>17</sup> What is more, as Beare indicates (1999), the authorities can define trafficking as a political issue relating to border protection and national security.<sup>18</sup> Some analysts question the potential ties between the effectiveness of policies governing refugees and asylum seekers and trafficking in host countries (Koser, 2000).

It is thus possible to develop a global understanding of the factors that promote emigration, the factors that attract population groups to wealthy foreign countries and the restrictions with regard to legal emigration and immigration networks. Those parameters foster the organization and adoption of parallel practices and, from there, exploitation and trafficking.

To clarify the issue of trafficking in the field, most research efforts have focussed on

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<sup>17</sup>On that subject, for Canada, see Thobani (2001).

<sup>18</sup>For an analysis of border security issues within the European Union as they relate to the issue of trafficking in women, see Turnbull (1999).

“trafficking” as a commercial activity (Salt and Hogarth, 2000). We note that this approach is conducive to an analysis that focusses on problems of migration, public order, organized crime, or immoral conduct. Salt and Stein (1997) have proposed an analytical model based on that approach. They view international migration (lawful and unlawful) as a big business that procures thousands of jobs throughout the world and that is managed by individuals and institutions who have every interest in seeing that it advances. The trafficking that relates to the unlawful portion of the business involves a system of intermediaries that facilitates movement between countries of origin and host countries. The authors then focus on the process of trafficking in individuals and identify three stages: mobilization, in which immigrants are recruited in their countries of origin; implementation, which applies to the process of transporting individuals; and the insertion and integration of the individuals concerned in the host country. This model inspired studies by Juhasz (2000), Okolski (2000b) and Klinchenko (2000). It fails to take into account, at least in its initial version, the difficulty of establishing a line of demarcation between unlawful and lawful activities and thus does not shed any light on an aspect of the phenomenon that many researchers consider highly important.

In the literature there is also a generalized and vigorous denunciation of the inhumane treatment of many immigrants who are victims of trafficking; some authors moreover define the problem of trafficking first and foremost as a problem associated with labour and respect for human rights. They document the vulnerability of immigrants in relation to those responsible for trafficking, obviously, but also before the various social players (enforcement agencies, employers, etc.) in the host countries and condemn the treatment they receive (Caldwell, Galster, Kanics, Steinzor, 1999; Human Rights Watch, 2001a). For some, the practices that are condemned are like modern forms of slavery (Ruggiero, 1997; Truong, 2001; Williams, 1999).

By presenting the question in terms of the fate of those targeted by trafficking, some authors fall into the trap of depicting them as total victims who have been the pawns of profit-seeking and unscrupulous individuals. This simplistic approach gives the victims no voice to explain the meaning of their actions and greatly reduces the scope of the problem of trafficking in humans. This issue is particularly crucial with regard to the sexual services industry, where a polemic is

raging on the meaning to be ascribed to trafficking in women (Bindman, 1997; Brock, Gillies, Oliver, Mook, 2000; Doezema, 2000; Jeffreys, 1999; Kempadoo, 1998; Toupin, 2002).<sup>19</sup> For some, the very practice of sexual services is a form of exploitation and gives meaning to the women's experience. Others, such as Bindman (1997), Brock, Gillies, Oliver and Mook (2000), do not view sex trade workers<sup>20</sup> as victims of slavery but see them in the same light as other workers who hold unstable employment and who must struggle against various forms of abuse. The legislation against practices in the sex industry only increases their stigmatization and their vulnerability. Furthermore, according to Brock, Gillies, Oliver and Mook (2000: 87), the issue of trafficking in women is presented by the police and the media in the context of sexual slavery and is tied to another fear that is on the rise in the post-Cold War era-- the fear of international organized crime. We will be addressing that aspect of the problem in the next section.

### **Organized Crime as an Element of the Problem**

#### a) Definition and scope of the problem

“Human trafficking is, without a doubt, a major branch of organized crime.” (Stoecker, 2000).

This sentence taken from an interview with a German investigator summarizes the enforcement agencies' perspective but also indicates the sources on which many analyses of the issue have been based thus far in light of the lack of research findings and statistical data. The difficulty of accurately assessing the scope of organized crime's involvement in human trafficking thus becomes clear.

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<sup>19</sup>The reader will note that a number of authors who do not comment explicitly on the status of work in the sex industry nonetheless present it separately from other work activities, such as domestic and farm work. Some place trafficking in women (for the purposes of prostitution) and children in the same category.

<sup>20</sup>Vock and Nijboer (2000) propose an empirical study on trafficking in women from eastern Europe to Holland on the basis of the theory of rational choices. For those authors, such women are social players who make choices from among the options available to them.

Let us begin by recalling the problems associated with defining the concepts referred to earlier. The distinction between trafficking and smuggling is not always easy to make, especially in the field. While in some cases this is patently obvious, in others it is more difficult to differentiate between certain difficulties associated with migration (unlawful) and trafficking. Added to this is the difficulty of defining what is meant by “organized crime”. The United Nations took many years of concerted effort to produce the following definition in the *United Nations Convention against Transnational Organized Crime*:

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (Article 2).

In 2001, Canada amended the provisions of the Criminal Code on organized crime and harmonized its own definition of “criminal organization” with that of the Palermo Convention. Subsection 467.1(1) of the Criminal Code offers the following definition:

“criminal organization” means a group, however organized, that  
(a) is composed of three or more persons in or outside Canada; and  
(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

This definition does not apply to a group of individuals formed by chance for the immediate commission of a single offence.

However, the harmonization of the legal definitions of organized crime stands in contrast with the definitions adopted in the research. The latter vary from one researcher to the next and can include a very broad range of unlawful activities. Truong (2001: 4), for example, notes three

aspects of organized crime that she considers useful in analyzing human trafficking. The extension of the concept should be noted here:

- organized crime as project crime: this refers to projects involving the production of false identity documents, false currency, etc. Such projects require the development of specific skills and can be referred to as ‘artisan’ work performed within a specific social group.
- organized crime as crime in organizations: here we are referring to bribery, corruption and fraud. This type of crime is work-related or occupational crime.
- organized crime as collective crime: here we find organizations that take the form of corporations, family businesses or networks linked with criminal groups to varying extents. This type of organized crime may involve unlawful activities in the first two categories and provide both lawful and unlawful goods and services. Threats and violence may be used and protection services may also be offered.

Bertone (2000: 7) presents three types of networks responsible for trafficking in women: large-scale networks with political and financial contacts that enable them to establish links between countries of origin and destination countries; medium-sized networks that concentrate on trafficking in women from one country only; and small networks that place one or two women at a time as required. Other authors, such as Finckenauer (in Salt and Hogarth, 2000: 53), point to the need to distinguish between criminal activities and organized crime. Criminal activities can entail good organization and last for a certain period of time but once the work has been completed the group dissolves. Organized crime on the other hand entails an organization that is stable and that is involved in various criminal activities.

As we can see, there is a great deal of variety in the definitions, which means that they may give rise to very different assessments of the magnitude of the problem. However, it is not the definitions alone that affect such assessments; the sources on which researchers rely greatly colour their understanding. Salt (2000: 37-41) comments on the lack of statistics for the entire field of trafficking/smuggling. In many countries there is no attempt to compile statistics specifically on trafficking, either because its importance has not yet been recognized or because there is no legislation that specifically addresses this phenomenon. If such statistics are

compiled, this takes place on an ad hoc basis and not systematically and/or this role is taken on not by a single organization but by many. Furthermore, there is no systematic exchange of information between countries. As well, the statistical data currently available is largely based on border arrests and police records; Salt (2000:38) stresses the point that we do not know whether the fluctuations that have been recorded reflect changes in the number of illegal immigrants, the manner in which data is compiled or simply tighter controls. In Canada, Porteous (1998) has produced an estimate of the number of people entering the country with the help of smugglers based on the following reasoning. According to that author, experts have indicated that most of the people coming into the country illegally make refugee claims since such claims are often successful (70% of claims receive favourable responses). If we assume that the claims that are rejected are made by undeserving people who have used the services of a smuggler, it can be determined that the number of people who crossed the border illegally in 1996 was 8,000 (30% of the 26,000 claims). He further asserts that, if we can trust the experts who estimate that most of those without identity documents used smugglers, the figure climbs to 16,000. We can see here that the premises on which such estimates are based are rather approximate and variable, which can give rise to significant variations in the results. Some estimates are also based on confidential government sources, and in such cases we do not even know how the calculations were made. It should not be surprising, therefore, to find widely diverging and unreliable estimates of the scale of human trafficking and the involvement of organized crime in such activities.<sup>21</sup>

There are those who consider human trafficking and organized crime to be closely related; according to Salt (2000: 43), this idea is fairly widespread despite the lack of valid information to support it. This alleged connection is based on the fact that people of different nationalities are part of the same group of illegal immigrants; that trips over long distances require a well-oiled organization; that travelling in a group requires good organization; that substantial amounts of money are involved in such undertakings; that itineraries change quickly as necessary; that legal

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<sup>21</sup>For a recent estimate of the scope of trafficking in women and children for the purposes of prostitution, see the IOM (International Organization for Migration) (2001a).

services are available very quickly; and that there is a strong reaction to counter-offensives by enforcement agencies (Salt, 2000: 43). These arguments developed by Europol (in Salt, 2000) are also shared by Taibly (2001). She considers it entirely plausible that organized crime would be involved in many of the smuggling initiatives in Australia for such reasons as the means of transportation involved (by ship or air plane) and the presence of persons of different nationalities in the same group of illegal immigrants. Moreover, according to Juhasz (2000: 195), border control authorities in Hungary consider that most smuggling organizations are well organized, interconnected from country to country, professionally structured and highly disciplined. What is more, according to the Hungarian experts, this new organized crime activity is extremely lucrative and the profits it generates are surpassed only by those produced through drug trafficking. It would appear that the same routes are used for the drug trade and for trafficking in humans. Researchers indicate that organized crime can involve a number of small organizations that are highly flexible and that can thus be modified as required.

Some of the research dealing specifically with the connection between trafficking in women for the purposes of prostitution and organized crime points to a very close association. Shannon (1999) addresses this topic, which she acknowledges from the outset has not received much attention. She notes that organized crime is one of the major players in the sex industry (Shannon, 1999: 126), although she recognizes that the nature and scope of its activities have not yet been well documented (Shannon, 1999: 129). She then endeavours to give us a geographic overview of organized crime's involvement in this area using newspaper and magazine articles. She draws two conclusions: the magnitude and geographic scope of the sex industry are phenomenal and organized crime is involved at various levels (Shannon, 1999: 140). She further acknowledges that the nature and even the scale of this involvement is not always easy to determine and that further knowledge in this area is needed. Then, between 1995 and 1997, Caldwell, Galster, Kanics and Steinzor (1999), mandated by the *Global Survival Network*,<sup>22</sup>

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<sup>22</sup>U.S.-based organization that works to promote environmental protection and respect for human rights. In addition to the chapter published by the authors, the report can be found at the following address: <http://www.globalsurvival.net/femaletrade/9711russia.html>

investigated the role of the Russian Mafia in trafficking in women for the purposes of prostitution. They indicate that, since the fall of the Soviet bloc, trafficking in women from that part of the world towards Asia, Europe and the United States has been continually increasing. On the basis of interviews with Russian pimps, law enforcement officials, traffickers and others (?), they note that this type of commercial activity is essentially under the direct control of organized crime groups or under their protection; international operations are under the control of small criminal groups that are less visible to enforcement officials and competitors (Caldwell, Galster, Kanics, Steinzor, 1999: 43). Richard (2000), whose research is largely based on interviews and news reported in the media, comments on the impossibility of evaluating the extent of organized crime's involvement in trafficking in women in the United States. However, she reports that such activity is not in the hands of the major crime syndicates but rather small groups, crime networks that are interconnected to varying degrees, and corrupt individuals. She cites as evidence of this the fact that Interpol's files have no reference to any of the people arrested.

Solid empirical research commissioned by the IOM (International Organization for Migration)<sup>23</sup> on human trafficking and not exclusively trafficking in women for the purposes of prostitution has nonetheless led specialists to draw somewhat different conclusions. Skeldon (2000: 12), for example, asserts that in Asia there are many amateurs, either individuals or small groups in a particular region or small groups of criminals, participating in this trade and not only organized crime. For that author, trafficking in human beings thus involves various groups of which the composition and the connections vary as needed. He also states that some women enter the sex trade not by coercion but voluntarily and that few women have ties with criminal organizations; frequently referred by friends, they are motivated by the desire to help their families escape from poverty (Skeldon, 2000: 18-19). Okolski (2000a: 74), who studied the question in Poland, considers that, while organized crime is indeed present, human trafficking is not one of the major activities of such criminal networks. According to his analysis, this area of activity in Poland is very informal, flexible and complex. A substantial amount of well organized smuggling has

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<sup>23</sup>Other research also concludes that organized crime is not necessarily involved. On this subject, see Bruinsma and Meershoek (1999), for example.

taken place but there are few cases that involve human trafficking. Furthermore, his study leads to the conclusion that the alleged control of the Russian Mafia over smuggling and human trafficking throughout Europe has been greatly exaggerated (Okolski, 2000a: 75).<sup>24</sup>

On the whole, therefore, the association between trafficking and organized crime is neither self-evident nor always very substantial. It can be found at all phases of the activity, i.e. at the time of recruitment, transport or work in the host country, or during one or two phases of the activity only. Organized crime may be in complete or partial control of one step of the activity. Truong (2001: 18) presents a picture of the structure of organized crime as it relates to human trafficking that sheds light on the various levels of the possible involvement of organized crime. It should be stated that Truong's work is based on a compilation of research conducted under the IOM's auspices and the Richard report (2000). Thus, during the recruitment phase, those responsible at the local level may utilize a centralized means of recruitment (media, Internet, employment agency, etc.) or a decentralized one (recruiters in towns and villages). They may also use various means of smuggling in the destination country: uncontrolled smuggling through corruption and bribery; smuggling with trafficked travel documents (false job offers, etc.), false passports and false husbands, fiancés and family members. With respect to travel, organized crime relies on the complicity of travel agencies (to assist in obtaining visas) and individuals such as ships' captains, truck drivers and border control officials. Once the destination has been reached, persons in charge of procuring employment can receive the smuggled individuals, take them to the workplace, receive a sum of money for each recruit, pay the intermediaries involved in transporting them and those responsible at the local level, and keep a portion of the profits. Employers can then determine the amount of debt the recruit will need to pay back and maintain control over the person until the debt is paid. This typical scenario is subject to so many variations that the association between organized crime and human trafficking becomes a complex and dynamic issue that changes in relation to political, social and economic

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<sup>24</sup>He further notes that human trafficking in central and eastern Europe has largely been associated with trafficking in women for the purposes of prostitution. His study on Poland does not corroborate that belief: the human trafficking that has taken place has involved mostly men and not women (Okolski, 2000a: 76).

circumstances, the locations concerned and the period in question.

#### b) The Situation in Canada

There is little data on the involvement of organized crime in the trafficking of human beings in Canada. To obtain at least an idea of the information on the presence of organized crime, we reviewed the English-language press between 1994 and 2002. The sources of data consulted included magazines such as *Maclean's*, *Chatelaine* and *Toronto Life*; two daily newspapers, the *Globe and Mail* and the *National Post*; and 10 English-language dailies with more regional circulation, namely the *Toronto Star*, the *Toronto Sun*, the *Ottawa Citizen*, the *Montreal Gazette*, the *Edmonton Journal*, the *Vancouver Province*, the *Vancouver Sun*, the *Calgary Herald*, the *Halifax Daily News* and the *Hamilton Spectator*. On the whole, media coverage of the issue is rather limited with widely-used wire stories but few locally written articles.

During 1994, '95, '96 and '97, a few articles each year reported on the problem as it arose in other regions of the world, particularly Europe and Asia. Human trafficking is not presented as a modern form of slavery or explicitly linked with organized crime. At most, the presence of criminal groups was reported on occasion and, in 1996, the presence of criminal networks. In 1998 the problem came closer to home and became a North American issue. A number of articles refer to the experiences of Asian women working in the sex trade in Canada. The issue is beginning to be linked with organized crime, both in Canada and elsewhere. The profits from trafficking are thought to be higher than those from the drug trade and traffickers use the same networks to carry out their transactions. Police officers who are part of a special unit set up to combat organized crime serve as special sources of information. Indignation rises at the same time as demands for harsher sentences. Starting in 1999 and 2000, the involvement of organized crime in trafficking in women (no reference is made to other forms of trafficking) becomes apparent. Canada is identified as the entry point for access to the United States. In 2000, several national and international reports on this issue are released and Canada signs the *United Nations Convention against Transnational Organized Crime* (United Nations, 2000). As well, almost as

many articles are published that year as in all previous years combined. Most of them make reference to organized crime and several note that sophisticated organizations are involved. Human trafficking is condemned as a growing problem, linked with other activities of organized crime (money laundering, drugs, gambling). It is noted that this is perceived to be a highly lucrative and risk-free activity that yields fabulous profits. Paradoxically, at the same time there are reports of new criminal groups that are all the more dangerous in that little is known about them along with reports on the consolidation of criminal networks already in place. In 2001 there are fewer articles but the subject matter remains the same.

In general, the media coverage in Canada to this point has been focussed on trafficking in women for the purposes of prostitution. In that regard it follows what the literature on human trafficking has revealed to be an international trend, at least at first glance . What is more, over the years an assumption has developed that trafficking in human beings is linked with the activities of organized crime.

In the following section we will see how the legislation has historically focussed on trafficking in women and how it continues to reflect concerns about organized crime.

### **International and Canadian Legislation Against Human Trafficking**

The very first statute on human trafficking, the *International Agreement for the Suppression of the White Slave Traffic*, was ratified in 1904 in the wake of the moral panic surrounding the white slave trade we referred to earlier. This was followed by the adoption of three other international agreements consolidated under the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, adopted in 1949 by the UN (Chuang, 1998; Toupin, 2002, Wijers and Lap-Chew, 1997). We note that his new agreement

applies only to trafficking in persons for the purposes of prostitution. It seems that the issue did not arouse much interest among the signatory countries until the 1980s. However, as a result of the discussions surrounding the question of pornography and sexual tourism (Toupin, 2002:15), criticism of the Convention started to be heard. The Convention was condemned for ignoring other forms of trafficking (domestic workers, mail-order brides, work in the textile industry and in agriculture) and for failing to consider domestic trafficking or mistreatment in the workplace (Toupin, 2002).

In November 2000, in response to the reported increase in organized crime's involvement in the international economy, the United Nations adopted the *United Nations Convention against Transnational Organized Crime* (United Nations, 2002a). We will be focussing here on those aspects of the Convention that touch on trafficking in persons and especially on the two complementary protocols, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (United Nations, 2000b) and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* (United Nations, 2000c).

The latter protocol is intended to prevent and combat unlawful migration by (1) penalizing smuggling, the production of fraudulent travel or identity documents, and the act of providing, procuring or possessing such a document; (2) strengthening border controls; and (3) facilitating international agreements with respect to the exchange of information and assistance at sea. Under the protocol on trafficking in persons, signatory countries must prevent and combat trafficking in persons by *undertaking* to criminalize the organization of, assistance with or participation in the trafficking of individuals as defined in Article 3(a) (see the wording of the definition in Section 1 of this report). They must also prevent and combat the problem by *endeavouring* to establish "measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons." (United Nations, 2000b: 5). We note here that the protocol identifies poverty, underdevelopment and unequal opportunity as factors that render people vulnerable to trafficking. It advocates information sharing between states and the training of experts involved in one capacity or another in the struggle against human trafficking. The protocol also contains a section (Articles

6, 7 and 8) on assistance and protection for victims; however, states are required to protect the privacy and identity of victims only to the extent that the country's own laws permit this and signatory states are simply asked to *consider* "implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons." (United Nations, 2000b: 4).

Canada combats trafficking in humans by relying on certain provisions of the *Criminal Code* and those of the *Immigration Act*.

The *Criminal Code* contains sections that target criminal organizations. Those provisions penalize participation in a criminal organization (s. 467.1) and money laundering (s. 462.31), provide for higher sentences for offences committed on behalf of criminal organizations (ss. 31.(6.1) and 718.2(a)(iv)) and provide for the seizure of the proceeds of crime (s. 462.32). The only section of the *Criminal Code* that specifically addresses trafficking pertains to prostitution. Section 212.1(g) criminalizes any individual who "procures a person to enter or leave Canada, for the purposes of prostitution". As well, the *Immigration Act* contains a series of provisions aimed at those responsible for smuggling. They include: organizing entry into Canada (ss. 94.1 and 94.2), disembarking persons at sea (s. 94.4) and counselling false statements (s. 94.5).

The Canadian provisions still reflect the traditional association between trafficking and work in the sex trade. Furthermore, although some of them target traffickers, when the legislation is enforced the victims are also charged, generally under section 210 of the *Criminal Code*<sup>25</sup> (Jimenez and Bell, 2000a, 2000b). We note finally that while victims may seek asylum based on humanitarian and compassionate considerations, this does not constitute a sufficient guarantee of protection to encourage them to testify against traffickers.

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<sup>25</sup> That section applies to bawdy houses.

On November 1, 2001, Bill C-11,<sup>26</sup> the *Immigration and Refugee Protection Act* received parliamentary assent. The Act came into force on June 28, 2002. It includes a section pertaining specifically to human smuggling and trafficking. Along with the provisions that existed in the former Act, namely, organizing entry into Canada (now s.117), disembarking persons at sea (now s.119) and counselling misrepresentation (now s.126), a section has been added that criminalizes trafficking in persons (s.118).

Reflecting the United Nations protocol, the new legislation on trafficking provides: “No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.” (s. 118). Any person found guilty under that section is liable to a fine of up to one million dollars or life in prison, or both. Furthermore, any person found guilty of possessing property or the proceeds of property obtained through human trafficking is liable to a fine of not more than \$500,000 or a ten-year prison sentence, or both (s.130(3)). The aggravating circumstances referred to in the statute include participating in a criminal organization and submitting a person to “humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence” (s. 121(1)(d)). Although Canada is a signatory to the *United Nations Convention against Transnational Organized Crime*, the Act does not include any specific measures for protecting the victims of trafficking. If victims are unable to meet the criteria for obtaining permanent resident status, they may appeal to the Minister on the basis of humanitarian and compassionate considerations in order to obtain such status (s. 25(1)).

The new immigration statute appears to target human trafficking and organized crime in accordance with the *United Nations Convention against Transnational Organized Crime* (United Nations, 2000). Given that victims are not offered any protection, there is cause to wonder where the information on those activities will come from.

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<sup>26</sup> It replaced Bill C-31, which died on the Order Paper in fall 2000 because of the federal elections.

## Possible Solutions

Numerous initiatives aimed at consolidating the suppression of human trafficking have been put forth at an international as well as a national level. Those initiatives entail the enactment and amendment of legislation, the establishment of working groups or investigation units to counter human trafficking, police training programs, the intensification of legal proceedings and sanctions, co-operation agreements among the various police units in the countries concerned, and the collection of statistical data and information on the *modus operandi* of traffickers. It would be beyond the scope of this work to present those initiatives, but in consulting the various reports produced on human trafficking, in particular the IOM (International Organization for Migration) web site and the works published by that organization, the reader will be able to find information on the various initiatives that have been proposed.<sup>27</sup>

However, as we know, “desperate people will resort to desperate measures” (Human Rights Watch, 2001b) and repressive measures do not constitute genuine solutions to social problems. As well, it must be realized, as Wilhol Wenden comments, that “the real challenge for countries of destination lies not in an endless program to combat movement of persons but rather in learning to ‘live together’ and in the search for solutions offering all people the freedom to remain in their home countries.” (Oxman-Martinez, Martinez, Hanley, 2001: 21). It is thus necessary to attack both the roots of the problem and the immediate concrete difficulties it engenders. In publications on human trafficking there are often sections with recommendations for combatting the problem (Bertone, 2000; Bindman, Doezema, 1997; Derks, 2000; Human Rights Watch, 2001a; Kelly and Regan, 2000; McDonald, Moore, Timoshkina, 2000; Stoecker, 2000; United Nations, 1994, 1998; IOM, 2001b, 2001c, IOM, 2000; Oxman-Martinez, Martinez, Hanley, 2001; Philippine Women’s Centre of B.C., 2000; Richard, 2000; Salt and Hogarth, 2000; Stop Trafficking, 2000; Toupin, 2002). We have drawn on them to formulate some

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<sup>27</sup>On this subject, see, for example, the ICMPD (International Center for Migration Policy Development) (1999), Richard (2000), Widgren (1994) and the IOM (International Organization for Migration)’s quarterly bulletin, *Trafficking in Migrants*.

recommendations concerning measures that do not involve repression and that, given the current situation and the state of our knowledge on the problem, appear highly appropriate.

Many authors comment that the structural causes of human trafficking need to be addressed through monetary and international trade policies that support eliminating the debts of poor countries and redistributing wealth.

There is also a need to promote the protection of human rights, particularly workers' rights, around the world. This starts with the application of the *United Nations Convention against Transnational Organized Crime* in its entirety and not only its repressive component. It would entail integrating the provisions dealing with victim protection of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Those provisions overlap with the content of the *Human Rights Standards for the Treatment of Trafficked Persons* (GAATW, Global Alliance Against Trafficking in Women, 1999), which all countries should respect. Under those Standards, states shall not discriminate against trafficked persons, whether or not they are willing to testify against traffickers; must protect trafficked persons' rights notwithstanding their immigration status; must guarantee that legal proceedings are conducted in such a way as to safeguard victims' rights to privacy, dignity and safety; must ensure that victims have a right to seek reparations and assist them in bringing actions; and must provide them with residence visas while legal actions are taking place and grant them the right to seek asylum if returning to their country would bring a risk of retaliation. States shall also provide trafficked persons with adequate health and social services during their stay; ensure that they are able to return home safely if they so wish; and work co-operatively to ensure full implementation of the Standards. Obviously, trafficking victims would not be subject to legal proceedings or punitive measures, such as detention prior to deportation.

Finally, *Human Rights Watch* (2001) proposes that all countries adopt and ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Human Rights Watch, 2001).

At the national level, it is important to remove all criminal provisions from legislation relating to the trafficking of sexual services in order to decrease the vulnerability of sex trade workers to trafficking and to enable them to defend their rights like any other worker.

To promote these measures, it will be necessary to work with NGOs (non-governmental organizations) to develop information programs on Canadian legislation, the rights of trafficked persons, the protection of their health, the steps to be taken to obtain care or assistance, and so forth. Such programs should take into account the cultural characteristics of the populations concerned and rely on suitable implementation methods. Also needed are information and awareness sessions for professionals who may come in contact with trafficked persons, notably police and customs officers.

Lastly, research is needed in order to increase understanding of this issue and to be able to identify the measures most likely to address the needs that exist.

## **Research**

The reader has already seen that there is a lack of solid knowledge on the issue of human trafficking. There is a vast amount of research to be done. We suggest the following topics to foster a better understanding of the problem with respect to host countries and Canada in particular:

- research on the various types of human trafficking other than in the sex trade in the various host countries, particularly Australia, Canada, the European Community and the United States. In addition to data on the types and the scale of such practices, the research would cover existing measures to combat those abuses and to offer support to trafficked persons.
- research on the interfaces between national legislation on the sex trade, the definition

and assessment of the problem of human trafficking, and the means that have been proposed for combatting it. Once again, it would be necessary to target the host countries, notably Australia, Canada, the European Community and the United States.

- research on victims' needs at the various stages of their experience, without moral judgment on their behaviour, as well as on the means for combatting human trafficking as proposed by NGOs (non-governmental organizations) in various countries and by organizations that represent migrant workers and sex trade workers.

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