

HUMAN TRAFFICKING AND ORGANISED CRIME

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ABSTRACT

Human trafficking or the illicit transnational movement of people through organised criminal networks may take several forms. These include a) the trafficking of migrants in search for work, b) the trafficking of asylum seekers in search for a safe refuge, c) the trafficking of women and children for the purpose of prostitution, d) the trafficking of human materials for medical purposes. The emergence of these forms of human trafficking in the last decades cutting across issues of migration, political persecution as well as exploitation of the body in the sex trade or health care raise questions about the effectiveness of crime control as well as threat to human dignity and security. The situation calls for a new research agenda and forms of analysis that can relate the problem of human trafficking with major changes in the global economy, of which the emergence of organised crime as an economic actor constitutes an important feature.

1. INTRODUCTION

International human trafficking is not entirely a new phenomenon. Earlier forms are known as the slave trade, the formal abolition of which was achieved through anti-trafficking legislation introduced since early last century. Anti-slavery struggles saw the destruction of slavery as a progressive purification of capitalism, i.e., slavery was considered as a residue of history which capitalism might tolerate at its initial stage but which must and can be eliminated since it is incompatible with the principle of 'free labor' (Beigelman, 1978). However, studies on migration and labor regimes in modern industrial and agribusiness areas (Cohen, 1987; Ruggiero, 1997), as well as in the production of sexual services (Barry, 1981; Truong, 1990) show a historical continuity of slavery and indentureship in local, regional and international forms rather than a total rupture. Thus, whereas the normative category of slave as private property may have disappeared, aspects of slavery and slave-like conditions still persist¹.

It is now accepted by official sources that yearly interlinked criminal gangs worldwide traffic an estimated 4 million people per year, earning from 5 to 7 billion US dollars annually (United Nations, 2000). Of these 4 million people, a significant number are victims of sex trafficking. Official estimates suggest that about 500 000 women and girls are be trafficked yearly for sexual exploitation to Western Europe alone (UNDP, 1999). Preliminary estimates of global trends range between 700,000 and two millions (O'Neill Richard, 1999). Although there is no disaggregated data on earnings from the sex industry, country reports reveal significant signs. For example, an analysis of the Thai illegal economy shows that the value of trafficking women from Thailand to Japan, Germany and Taiwan could reach to US\$ 3 billion. In 1994 alone, Thai women in the sex trade could generate as much as US\$ 4.7 billion for this trade in Japan². For the US, based on evidence provided by traffickers who have been arrested, O'Neill Richard (1999) suggested that yearly a trafficker could earn between 1.5 million to 110.000 US\$, depending on their spe-

¹ Compulsory labor, the use of violence to locate human beings, transfer them from one geographical area to another, and discipline them into subjugation for the purpose of economic gains.

² <http://www.comlimk.apc.org/fic/newsletter/eng/n127/traeuas.htm>. The figure for earnings from trafficking includes only the recruitment and job placement. The figure for income generated by trafficked persons includes profits from the sex industry generated by trafficked persons, while on their jobs.

cialisation of attractive or less attractive women and the total number of persons trafficked through his/her network.

In so far as the market for human materials and body parts is concerned lack of information does not permit an adequate estimate of its magnitude. Using data on transplants, it is possible to provide a rough picture on the demand side. Between 1978 and 1994 nearly 300 000 transplants of all types had been conducted throughout the world with the US taking a leading position (Harrison, 1999: 23). Baxter Healthcare Corporation estimates the demand for transplant operations world wide is increasing about 15 per cent a year, while the number of donated organs has remained unchanged³. The shortage of organs is expected to increase among a certain group of people who are wealthy and can afford to fulfil their desire to live longer than their natural bodies allow. For the US alone, the demand for organs has increased by 45 per cent over a four-year period (Harrison, 1999: 25). A tentative assessment of the value of the international trade in organs based on the current prices and total number of transplant operations suggests about one billion US dollars per year⁴. The real figure may be higher due to the fact that the market for human body parts does not involve organ transplant only, but also human tissues, fetus, cornea and heart valves and so forth, for research and development in healthcare and medicine. More inquiry is needed to be able to understand how supply matches demand, and what types of human materials come from donation and what types the market supplies.

Ironically, human trafficking (HT) has never been part of the agenda of international trade. The World Trade Organisation (WTO) rules include many clauses dealing with social and environmental standards, but no standards are mentioned on the treatment of the human body. Thus, whereas parts of an elephant may be protected under the clause of endangered species, human beings and their parts are not protected under current rules. Making the issues concerning human trafficking visible from the standpoint of international trade requires a major research agenda beyond the scope of this paper. For the current purpose, an analysis of HT from the standpoint of criminal capital strategies is offered.

³ <http://www.baxter.com/investors/r-d/nextran/need.html>.

⁴ A kidney costs about \$20, 000 US dollars if sold in the Internet (Associated Press, Rome, 10-8-98). The total cost for a kidney transplant in Israel and India ranges between \$US 10 000 and US\$ 30 000. The total number of transplants of all types worldwide in 1997 is about 50 000 (Harrison, 1999)

It is hoped that this analysis can contribute to a research agenda on the place of the human body in illicit international trade.

2. GLOBALISATION AND ORGANISED CRIME

The debate on the relationship between crime and the state has a long history dominated by the twin concern of locating the causes of crime and enhancing the effectiveness of the criminal justice system (Fitzgerald, McLennan and Pawson, 1981). More concerned with the relationship between the nature of crime and the nature of state and society, social scientists tend to be sceptical to the discernible attributes of organised crime (OC) in view of the complexity and scope of its activities. These cut through the state, civil society and production systems and are not so easily discernible. The challenge of defining OC is a case in point.

From the standpoint of criminal justice and crime prevention, the definition of OC has undergone several changes. The first definition, adopted in 1988 at Interlopes first symposium on OC in France, reads as follows (Bresler, 1992):

Any Enterprise (or groups of persons) engaged in a continuing illegal activity which has as its primary purpose the generation of profits, irrespective of national boundaries.

Since this definition left out the requirement of an organised structure, Germany proposed an alternative definition:

Any group of people who have consciously and deliberately decided to co-operate in illegal activities over a certain period of time, apportioning tasks among themselves and often using modern infrastructure systems, with the principal aim of amassing substantial profits as quickly as possible.

Although this definition takes into account planning as an important dimension of OC, requiring co-operation, division of labour, and use of modern technology, it leaves out the use of violence and corruption as methods of operation. The new working definition of Interpol's Organised Crime Unit reads:

Any group having corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption.

The 1999 Draft Convention against Transnational Organised Crime defines organised criminal group as '*a structured group of (three) or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit*'. The grounds that may be taken into account

in deciding the nature of the crime are referred to in other Conventions covering issues such as trafficking in persons, in narcotic drugs and psychotropic substances, in cultural objects, nuclear material and so forth.

Taking into account the complexity of OC networks and the scope of its activities, which take place between the nebulously distinguished legal and illegal, formal and informal, social scientists point to three aspects of organised crime that are relevant for the purpose of analysing HT. These include:

- A. OC as project crime or crime with planning, skills, information and technology, executed as a project (e.g. bank burglary, production of false currency, production of false identity documents). Project crime may be considered as ‘artisan’ work, where skills are slowly learned through apprenticeship often transmitted within the same social group (Ruggeiro, 1995).
- B. OC as crime in organisations such as bribery, corruption, and fraud. Crime in organisations may be considered as occupational crime, i.e., the violation of the ethical standards of an occupation for economic gains (van Duyne, 1996; Passas and Nelken, 1993).
- C. OC as collective crime organised in the form of crime-enterprises that may acquire a corporate structure, or a family structure, or loosely connected networks of crime gangs (Kelly, 1986). OC as collective crime may use other forms of crime [(a) and (b)] as business tools, in addition to threats and violence. Crime-enterprises supply a wide range of forbidden goods and services, or handle legal goods and services in an illegal way (van Duyne, 1996). The frequent use of violence by OC means that crime-enterprises also supply protection as the main service, in addition to illegal goods (Gambetta, 1998).

The emergence of OC in a transnational context is closely linked with the changing nature of the state and economic configurations. Several authors have suggested new avenues for research on globalisation that are relevant to the understanding of the spread of OC in the last decade. Two positions may be identified. One follows the hollowing out of the state thesis, which stress the significance of structural reforms of economies and states, and the loss of state regulatory functions to global and supra-regional bodies. Today, economic processes can no longer be controlled at national level, with obvious implications

for the control over transnational crime enterprises (Lea, 1997, Mittelman and Johnson, 1999). The other position hints at a counter point to the hollowing out thesis. Palan (1998) suggests that the state system is not disappearing, but is replaced by the emergence of an offshore economy as a secondary, relatively unregulated space in which economic transactions take place with minimum intervention by the state. Palan regards the offshore economy as a purposeful creation by states to facilitate the integration of the global market.

Both of these positions are relevant for the analysis of HT. Transnational OC has emerged from the actions of a minimalist as well as a strong state. For example, some states take a minimalist position when it comes to the relevant international conventions dealing with the protection of the rights of migrants and orderly movements of people across national borders. At same time these states may be forceful in creating an offshore economy without acknowledging its dark side, i.e. the provision of sanctuary for earnings from illegal activities, of which HT is a new market niche. The issue is not whether the state has a minimalist or commanding role. Rather, attention should be given to the contradictions between the different interests vested in various dimensions of the state (e.g. juridical-legislative, capitalist, prerogative and capitalist), and the outcome of these contradictions on the regulations of transnational movements of human beings and body parts.⁵

Just as OC could not have occurred without the passivity of a minimalist state, so too OC as global enterprises could not function without the offshore economy where their illegal earnings are laundered. In a similar vein, HT as a social phenomenon could not have reached the size and scope it has today without a certain degree of socio-economic and political destabilisation that spur specific forms of transnational population movements other than for reasons of leisure, education, profession and family reunion. Their lack of protection could not have been so blatant if existing regulatory regimes for international migration such as the Refugee Convention, the Migrant Convention and other state-regulated schemes regulating Guest Workers had not been eroded. Hence, the diversification of ir-

⁵ For example, when the US decided to strike Iraq with Operation Desert Storm, it exercised its prerogative power. This exercise caused the destabilisation of the population, among them the migrant workers who were caught in a twilight-light zone without juridical-legislative protection, except when they were aided by their embassies to return to their home countries. Many sought alternatives and became prey to crime networks. Similarly, when NATO bombed former Yugoslavia, the exercise of this prerogative power is insufficiently matched by the protection needed by the people affected. Online reports show that refugees became victims of human trafficking (*Trafficking In-Migrants*, N. 22, autumn 2000).

regular and semi-regular forms of population movement controlled by new actors may be seen as a result of the erosion of these structures combined with the increasing pressure on people to migrate in search for a secure life space. In the absence of an effective regulatory framework, the scope for traditional crime networks widens. From previously localised networks of brokers involved in the location and recruitment of young women into the sex industry in a limited numbers of countries, these networks have broadened into the trafficking of migrant labour and refugees. Thus, they widen specific forms of violence against women to more generalised forms of social violence, using methods that are becoming more and more uniform despite the diverse context of activities.

Two central concepts are useful in the analysis of the operative mechanisms and surplus extraction in HT by OC, notably social technology and space. The **social technology** used by OC consists of two types. One is an institution-related method involving fraud and corruption of authorities handling transport and migration across borders. The other is a people-related method, which may involve the manipulation of consent, the application of captivity as a principle of operation, and the application of a penalty-incentive system of labour control at the work place. The **space** used by OC consists of five types, which can be regulated or unregulated, and used sequentially as well as simultaneously. A *territorial enclave* is a form of space unregulated by the state and regulated by OC through the use of violence. Examples of such enclaves included guarded brothels or sweatshops, or private health clinics⁶. A juridical *enclave* is a form of space obtained through manipulative use of regulated social space. Juridical enclaves may be understood along the same lines as the concept of impunity in human rights violation. It is a by-product of ineffective law, failure of law enforcement, defects in the juridical systems or juridical process, and social practices such as erasure of evidence as well as cultural and psychological factors that act as an impediment for victims, witnesses and society to come forward and prosecute perpetrators. A *virtual enclave* is the use of the cyberspace for the trafficking of women and human or-

⁶ Research findings show that the predominant purpose of trafficking women and children from Thailand is no longer restricted to the sex industry. In August 1995 the police rescued 68 women from a sweatshop in Los Angeles. The sweatshop was a closed compound under armed guard. (<http://www.comlink.apc.org/fic/newsletter/eng/n127/w-traffic.htm>)

gans through nearly untraceable networks.⁷ A *social enclave* is created through social networks and links with regulated social space, e.g. the use of identities of convenience such as owner of records and other forms of representation such as impostor passports. It can be obtained through corruption, and bribery as well as purchase of protection services. A *symbolic enclave* is the use of cultural markers for legitimacy, for example the conflation between cultural markers of sexual freedom and those of commercial sex. Another example is the erasure of cultural markers of the body as a sanctuary of life and its replacement with new markers of body parts as objects that can be harvested for the sake of the prolongation of life, as in the case of organ transplants.

Accumulation and reproduction of criminal capital from HT can take various forms. Primitive accumulation is of a predatory nature and can take place through kidnapping using physical violence and direct assault on persons. Regulated accumulation takes place through formally recognised institutions but using illegal means. The reproduction of criminal capital takes place through the transfer of gains from illegal activities to other legal activities such as the investment from sex clubs to real estates and leisure enterprises and other services. Although insufficient data only permits a speculative suggestion on the process of reproduction of criminal capital, it is important to note that where research has been conducted, findings show that criminal earnings from the sex industry have been re-invested in other activities in the service sector (Phongpaichit et al; 1998; O'Neill Richard, 1999).

3. INTERNATIONAL HUMAN TRAFFICKING AS TRADE IN HUMAN BODIES AND BODY PARTS:

Since the legal abolition of slavery, international human trafficking as the trade in human beings has been addressed primarily in the context of the trafficking of persons for the purpose of exploitation and prostitution. The moral issue raised evolves around the use of force and sex for monetary gains. More recent evidence suggest that the trafficking in human bodies have extended from the use of sex to the use of other features of the body for

⁷ The recent discovery of a U.S. based network selling human organs with an operation ring that stretches to India, China, Cambodia and Latin America was triggered by a call from someone who saw the web site (Associated Press, Rome, 10-8-98).

gains. New evidence of the trafficking of children has been found, showing a diversity of motives. These may involve the disabled destined for beggars' networks and the networks of street vendors, or for the forceful removal of organs to supply the deficit in this trade on a local and international scale (ILO, 1998; IOM, 1996). This shows that the valuation of the human body in human trafficking as a trade is changing. The incremental link between body and money has extended from labor to sex, from sex to disability⁸, and from disability to body parts.

At the level of cultural markers of human bodies and sex, a link may be established between relations of cognition and relations of force. In so far as sex is concerned, the use of the sexual elements of the body for economic ends requires an ideological structure that defines the human body of the provider, usually female, as a passive instrument without an intrinsic value, which then provides legitimacy for its commercial use. This ideological structure resides in the symbiotic relationship between relations of cognition (knowledge) of the body and relations of force (power) that discipline and control it, permitting a differentiated treatment of the male and female bodies (Truong, 1990: 131-191). Exchange relations in sexual labour involve the person who resides in the body that is put to function sexually, the mediator who controls this person, and the buyer of sexual services. The social identity of the person who resides in that body is constructed through relations of cognition in such a way that denies her personhood. She is socially recognised as scabs, dirt, contamination, or social vice. As medium of cognition and re-cognition, these labels serve to enhance the power and control of the mediator who benefits from both ends, i.e., the commercial transaction as well as the ease with which they can dispose of the 'scabs' or 'dirty' bodies. Here, the denial of the notion of personhood plays a dominant role in the desensitisation of public consciousness.

Research has shown how forms of direct violence experienced by women and children in prostitution are very closely related to the social construction of their sexual identities. In the 1980s many incidences of sexual slavery have emerged to public consciousness, but these were localised (Rozario, 1988). The most notorious evidence concerns the burned bodies of young girls chained to their beds in brothels in Phu Khet Thailand. They could

⁸ A child's body may be purposely maimed by criminal gangs for the purpose of begging (ILO, 1998).

not escape and were carbonized in the fire that took place in 1985. State reaction to this evidence was directed at silencing activists based on the fear of national shame (Truong, 1990). Also in 1985, 28 women from the Dominican Republic bound for the sex industry in Europe died of suffocation in a closed container that was seized in Saint Martinique due to irregular registration. The container was left for three days in the sun at the harbour (Truong and Del Rosario, 1995). In 1995, five Ukrainian women and their employers were found hacked to pieces in a suburb of Frankfurt in what the police speculate to be a dispute between rival trafficking networks (IOM, 1996a: 16). These pieces of evidence show that the trade in human bodies may involve both the transport of humans as chattels, as well as the treatment of their bodies as commodities, bought, sold, and even destroyed if considered necessary.

The fact that it took about two decades for governments and human rights organizations to respond to this problem may be seen as a broader effect of the combination between male-defined relations of cognition and male-controlled relations of force. Whereas capital punishment of criminals has been raised as an issue of human rights abuse, the arbitrary execution of women in prostitution has been treated, until recently, as a routine dispute among criminal gangs over turf. In that regard, analysis of the links between violence against the human body and organised crime must take into account the discursive practices over the body, which constitute a symbolic space that provide legitimacy for its commodification. Social valuation of the human body may change in accordance with technological change (such as health technology in the case of organ transplant, and transport technology in the case of sex tourism). Changing social valuation of the human body under commercial relations can take a different direction, although the end objective remains the same, i.e. instrumentalisation for gains.

For example, in sex tourism and related prostitution, the instrumental construction of the body around notions of race, ethnicity and culture is used to activate the desire of potential buyers. By contrast, the trafficking of the disabled persons for networks of street vendors and beggars reflects a different valuation. Here, the symbolic manipulation of the body is not based on its desirability. It takes place through the display of disabled body elements to activate pity and charity as moral virtue to enhance the chance for donation as earnings, collected by the procurer of the child at the end of the day. Labour, as the expen-

diture of physical energy and time, while present is not a primary element, rather, the disabled elements of the body acquire a utility in the manipulation of moral consciousness.

In the case of trade in human body parts, their utility as spare parts is more emphasised. This function has gained emphasis from progress made in transplant technology that posits a mechanical view of the body as a machine with spare parts that can be replaced. Initially, this utility was legitimised by the goal of saving human lives through an appeal to social solidarity as a virtue in secular ideology. However, this appeal has met with cultural and religious barriers governing notions of body, life and death as belonging to supernatural forces. In many cultures, the body is treated as a temple of God or as belonging to ancestors who have provided life through the body as a gift. As such, resistance to donation is not considered as a manifestation of selfishness. Rather, it manifests the fear for unwholesomeness in death. Yet, transplant technology requires a supply of body parts, insufficiently delivered through voluntary donation. As secular ideology on life and death gains momentum in selected circles, moral standards regulating the treatment of the human body also become eroded.

This erosion facilitates a process of organs acquisition through other means than donation. With the acquisition from cadavric donors becoming a common practice, a utility value is being placed on dead bodies to the extent of altering the definition of 'death' itself. From a definition of death as the extinction of life manifested by the absence of heartbeat and respiration, many countries now adopt a new definition of death as brain death, and as a result organs are allowed to be removed as early as possible. The changing criteria of death to protect the viability and suitability of human body parts for transplant has led to new practices that deny others their chance to life or to rest in peace. In many countries the changing criteria of death represents a real threat to the security of many people. In hospitals, patients can come under threat where ethical standards are not observed properly and can be manipulated. According to Dr. A.K. Tharien, of the Christian Fellowship Hospital in Tamil Nadu, the commercialisation of organs in India has been taking place through an organised network involving hospitals, doctors, touts and agents. This network procures organs through commercial means from slum dwellers and rural people without proper information and consent of the concerned persons. Some commercial donors do not even survive to receive the monetary remuneration. Legal regulation of organ donation that

permits it only within kinship relations has been circumvented through dubious arrangements such as 'kidney marriage'. In such instances, a rich person can marry a girl for her kidney, divorce her soon after surgery, hence ridding himself of the responsibility of care (Tharien, 1996: 168-9). In August 1999, the government of the Philippines has discovered a kidney transplant syndicate that involves some doctors and middlemen who match demand and supply (*Philippine Daily Inquirer*, August 28, 1999). The lack of ethical standards in hospitals may be present not only in Third World countries, but also in industrialised countries⁹.

In everyday life socially vulnerable human beings face the threat of having their bodies subject to arbitrary execution. Parts of their cadavers may fetch a higher price than their living body. The arrest of two Chinese nationals in New York by US justice officials for attempting to sell organs from executed prisoners for transplant operations is a case in point (*BBC News*, Tuesday February 24, 1998). Despite the denial of the Chinese government, this issue raises a general concern over arbitrary violence against inmates, due to the intrusion of market forces in prisons as disciplining institutions. Current trends in privatisation of prisons and prison management may bring a higher risk for inmates.

Arbitrary execution can also occur in commercial institutions such as hotels. An Uzbek court has sentenced two men to death for murdering an eight-year old girl in a hotel to remove her organs for sale to an unidentified person. The two men bought the girl for five hundred dollars from her mother, described as unemployed. The mother got a twenty-year sentence (*BBC News*, Tuesday, January 5, 1999). An Egyptian charity trusted with the welfare of homeless children has been accused of trading their body parts. At least 32 children, all under 13, were taken to privately run local hospitals which would pay for up to 20 000 Egyptian pounds for each organ. The sudden increase of death rates among children in these homes has led a group of Egyptian parliamentarians to raise the alarm (*The Express*, Thursday March 18, 1999). These cases reflect the tragic and rapid erosion of moral standards regulating the social treatment of the human body by market forces, and how public

⁹ In 1998, the University of Miami was ordered to pay a Haitian couple US \$ 300 000 for harvesting their seven-year old son's organs after a car accident. The parents said they did not consent to the harvest of their son's heart and other organs. They believe that their son can never rest in peace as his body was not whole-some when buried (*Associated Press*, 25 July, 98).

spaces can be penetrated and used by criminals to procure body parts.

The aggressive extension of market values on the bodies of the vulnerable must be understood in terms of the creation and sustenance of various cultural forms, including conspicuous desire, manipulated charity and a 'cyborgetic' health. These elements did not exist or were not pronounced in previous cultures of slavery. These new cultural forms may be best understood through Haraway's definition of a cyborg (1991). To her a cyborg is a hybrid creature, composed of organism and machine. Cyborgs are Second-World War hybrid entities made of first us and other organic creatures in our unchosen 'high-technological' guise as information systems, texts, ergonomically controlled systems of labour, desire and reproduction. In the new cultural expression of conspicuous desire, the child body is treated as a machine, which can be altered to adapt to adult needs. Similarly, in the manipulation of charity, the child's body may also be altered to suit the perception of misery. As public discussion of child labour is moving more and more towards legislation and regulation, the perception of children as economic agents leaves less room for charity. In this regard, the use of disability may be seen as a more effective force to manipulate charity.

With regards to health, cyborgetic health here may be understood as a new health system capable of creating a hybrid human, which may include intra-species hybridity or inter-species hybridity. Intra-species hybridity is created through the crafting parts of the organism of one human onto another, an inter-species hybridity is the crafting of the organs of another species onto a human body (e.g. a pig's liver in a human body). Violence against the human body may not necessarily be part of a cyborgetic health culture. In fact, alien elements in the human body such as tooth filling or artificial hips are a great contribution to human functioning and to the alleviation of human suffering. Cyborgetic health culture can become violent when it probes into the realm of life, either in the form of prolongation or immature termination. To prolong the life of some beyond natural means necessitates the procurement of living organs from others. The goal to save the lives of some can lead to practices that deny others of their chance to life or to rest in peace. Notions of life and death are deeply seated in the symbolic order governing people's existence on earth. And they are not uniform across cultures. The secular ideology in cyborgetic culture

that alters this order by a universal codification of the human body as a machine cannot see how the symbolic meanings of death matter in the lives of those who are left behind.

Domination through the new forms of cultural expression of desire, be it in sex or health reflects the cruel nature of human greed as well as the absurdity of moral systems in late capitalist-patriarchy. Data on the sex trade suggest that the majority of clients purchasing children's sexuality in the Third World are males from the West, East Asian countries, Australia and the Middle East. These countries have produced different kinds of economic miracles, known as the miracle of post-war reconstruction, miracle of catching-up, oil-driven miracle. Sinisterly, they also produce new forms of cultural expression of desire that are being 'socially dumped' on young people that may or may not be their fellow citizens. The mismatch between supply and demand of organs has existed for many years since transplanting technology and practices became institutionalised in health systems in the U.S.A. and Western Europe. While Xenotransplant research has yielded some results, its development and application is not quick enough to deal with the pressure of shortage. Within the health system, norms of allocation of organs for transplant are fraught with inequality whereby the majority of beneficiaries are middle-class adult men¹⁰. Fairness in organ allocation has become one of the most contentious public policy issues in addition to fairness in procurement. The health miracle may benefit a few people who can financially afford them. It also carries hidden social prices to be borne by others.

In many ways, the intensification of violence in the trade in human bodies and body parts may be considered as being worse than slavery. The slave was valued for his/her labouring capacity, which implied that his/her body must be maintained. Mutilation could occur, but only for the purpose of discipline and punishment. By contrast, modern marketing of human bodies and body parts is more based on rapid cash earnings. Earnings through the manipulation of adult sexual desire by way of eroticising innocence can lead to the injection of hormones and drugs in the child's body to transform appearance and behavior. These practices can become regular as long as earnings prevail. Earnings through the manipulation of pity and charity can lead to the mutilation of the child's body to enhance misery for purposes of gains from donation. Assault on the body in these cases goes

¹⁰ <http://www.unos.org/newroom/critdata-transplants-ustx.htm>

beyond discipline and punishment. It has economic purposes and hence its logic can shift from maintenance to disposal, as and when the commercial function of the human beings concerned no longer exists.

To sum up this section, a similarity may be noted between the trade in human bodies and body parts and previous forms of slavery. This lies in the connection with production systems, despite the changing ideological structures. The imaginary of slavery has expanded from labouring power to other utility roles of the human body. This expansion is facilitated by an ongoing cultural decomposition of the human being, through a gradual removal of its spirit, personhood, and vitality, down to bare body parts. The implication of this decomposition is the emergence of a culture of disposal, i.e. as some human beings reach a 'marginal' level of social utility they can be disposed of.

Seen through this angle, the issue of moral responsibility no longer rests exclusively on the negligent or greedy parents or guardians, the 'loose' woman who voluntarily opts for sex work as an alternative, or the unscrupulous criminal traders in human bodies and body parts. It also rests on those who socialise consumption in conspicuous ways, be it in the subjective field of sexual desire, or health. The ongoing cultural transformation that codifies the body in a causal manner and facilitates a proliferation of forms of domination must be recognized. The moral contradiction in this transformation emerges from the practices of different professional communities. When it comes to human bodies, the medical community can now make an organ of an animal compatible to a human body. When it comes to human social identity, the legal community must treat human migrants as alien entities. While different biological organisms can be made compatible, social organisms cannot, reflecting the lack of uniformity in the modes of cognition and re-cognition of what constitutes humanity today.

4. INTERNATIONAL HUMAN TRAFFICKING AS A TRADE IN SERVICES THROUGH THE MANIPULATION OF CONSENT

One main characteristic of findings in human trafficking whether male or female is indentureship or a process that brings a human being into bonded servitude. However, the concept of indentureship also poses a problem for the following reasons. Earlier forms of indentureship found in the international migration of workers to industrial and agribusiness

areas show that the costs for passage were borne by the recruiters and housing was sometimes provided. Relations of bonded servitude were formed at the work place due to low wages, poor health conditions and other factors (Cohen, 1987). By contrast, evidence of human trafficking through the manipulation of consent, whether in the context of labor contract or asylum seeking as found today, shows that indentureship occurs at the point of migration. The migrant either uses his/her own savings or borrows money to pay for passage, passport and visas fees, temporary accommodation, and employment contracts arranged by the intermediary who could be the travel agents or a labour recruiting agent. Often, the moneylender is the recruiting agent himself. The migrant is promised high wages, social protection, and the possibility to pay back the debt over time, as well as to remit earnings. The fees vary according to route and expected earnings. But once the migrant gives her/his consent, she/he may find him/herself in a system of criminal governance. If she/he manages to escape or be rescued, she/he finds her/himself trapped in a legal system that is alien to her/his situation.

Central to the criminal system of governance is the principle of captivity, applied upon arrival through the seizure of travel documents such as passports and tickets of the trafficked persons. Without identity, such persons then become subject to a series of transfers from one agent to another, beyond their control (Gulati, 1997, IOM, 1996; Caldwell, Galster and Steinzor, 1997), and their passports can be used and re-used by traffickers for new recruits. Captivity then becomes extended to a debt relationship, fixed arbitrarily by their intermediaries who place them into the work place. Wage payments are delayed until the employer recovers what are considered as advances. This can take several months before the migrants are allowed to keep a percentage from their earnings. Some are paid only when they are being sold to another agent. This method is used to prevent them from running away.

Captivity can also be applied as a management strategy, particularly in sex work. In sex work, labor management operates through two main systems, i.e. incentives and penalty. The incentives system is based on the principle of persuasion. In other words, a worker's earnings are determined by a fixed quota of customers she is able to bring to the club and of the drinks she is able to persuade the customers to buy. The penalty system is based on the failure to meet the quota of clients or sale of drinks, i.e. if the number of cus-

tomers per night does not exceed a certain quota, the worker will not receive a commission on alcohol sales for that day. Penalty can also be imposed on the basis of failing to ‘animate’ (talking, touching, flirting and drinking), showing up at work late, damaging utensils, or going out with clients (Truong, 1990, *The Migrant Women Workers’ Research and Action Committee*, 1995; Cadwell, Galster and Steinzor, 1997). By way of these two systems of labour discipline, the workers become captive in the use of their sex as work. Another principle of management in sex work is mobility i.e. the women are rotated among different brothels at fixed periods ranging from 15 days to a month. This principle has two objectives. One is to maintain a constant supply of ‘fresh faces’ to attract clients. The other is to disorient the women and prevent them from establishing long-lasting contacts with clients to seek help (O’Neill Richard, 1999).

From a legal standpoint, tracing fraud is a difficult task due to the nature of organised crime in HT, consisting of a network of actors that collaborate and protect each other. The main feature of this network is an efficient coordination of what appears to be a fragmented process. Those who operate at the recruiting end may not know the people or activities on the receiving end. Each actor concentrates on his/her responsibilities in a chain of activities involving recruitment, passage, paper, and placement in work places. Furthermore, due to the fact that fraud in the form of ‘manufactured’ consent to migration is so far not fully recognized by national legal systems, trafficked migrants tend to be considered as violators of the law, or collaborators with criminals. In recent years, legal reforms in several countries have allowed for the consideration of victims of trafficking as witness. However, in the absence of adequate protection from retaliation by criminal, the effectiveness of this instrument may be queried.

The challenge to fraud is further compounded by the complex structure of organised crime. The illegal behaviour of intermediaries who provide false information and manipulate the decision-making of potential migrants and their families can be veiled by layers and layers of networks between different institutions within and across countries. They use different kinds of tactics to evade the law such as ownership of records, fake registration and other shady maneuvers to circumvent the law. This makes the process of manipulation of consent less and less transparent to the migrants as well as to the law. Yet, this manipulation leads people to abandon their original position (as citizen of country X) to

become, with or without their knowledge, an object of control by criminal rackets. It is through this control that the formation of 'voluntary' servitude becomes possible.

TABLE 1

Structure of Organised crime in HT¹¹

Recruitment Process

Actors: local traffickers in supplying countries

<p>Mode of Recruitment</p> <ul style="list-style-type: none"> -centralised: advertisement through media, internet, employment, matchmaking agencies (waitress, nanny, models, factory worker, exotic dancer, brides) -decentralised: dispersed individual recruiters to villages and towns (may included previous victims of sex trafficking turned female pimps) 	<p>Modes of entry</p> <ul style="list-style-type: none"> -Entry without inspection (through bribery and corruption): undocumented human cargo over sea and land documented as merchandise. -illegal use of legitimate travel documents: provision of fraudulent job letters, employment records, bank statements to obtain visas (as student, fiancée, entertainers) -Impostor passport: recycled passports for new recruits -Use of ‘Jockey’: impostor husband, fiancée, cousin
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Travel

Actors: Travel agencies (TA), individual employees of sea and land transport companies, and border controllers

<p>Collective overcoming entry barriers</p> <p>TA: OC uses the TA referral program that allows TA to refer visa applicants to assist overburdened embassies. OC groups can pose themselves as TA to benefit from this programme. Regular TA can also be used unwittingly by OC. Some TA actively participate in OC by expanding their services and manufacture fake supporting documents for visa applications.</p>	<p>Own account</p> <p>Individual case of co-operation with OC</p> <ul style="list-style-type: none"> -ship captain -truck driver -border controller
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Job Placement

Actors: Job placement agents in recipient countries, employers

<p>Trafficker as job placement agents:</p> <ul style="list-style-type: none"> -receives the trafficked persons from jockey or other intermediaries -brings the trafficked persons to work place -receives an amount fixed per person (price is fixed according to age and physical attraction), -uses the amount to pay commission to jockey or other intermediaries, to refund local recruiter for advanced payment of costs (passport, visas, tickets and other costs), and keeps a percentage as own earning. 	<p>Employer</p> <ul style="list-style-type: none"> -fixes amount paid to trafficker and additional fees for lodging, means, and incidentals as debt owed by the trafficked person. -holds trafficked person in bondage until debt is paid off through sex work, or other types of work.
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¹¹ compiled from various IOM reports and O’Neill Richard (1999)

Given the complex structure of OC in HT, beyond the immediate conditions of economic captivity trafficked migrants are also kept captive by international and national legal systems that do not contain instruments to deal with new forms of human trafficking. As has been pointed out (IOM, 1995: 13), legislation in many European countries makes human trafficking a much less risky activity for the criminals than other crimes such as smuggling drugs or stolen cars. The maximum penalty for human trafficking, defined as ‘alien smuggling’, in the Netherlands and Belgium is only one year, and in Switzerland, three years. In Poland, there are no specific laws governing the smuggling of alien subjects, whilst in the Czech Republic, this activity is considered a misdemeanour (a crime less serious than felony). By contrast, the penalty against forced prostitution is high, up to ten years, but the crime is very difficult to prove. One case in the Netherlands shows that it took 8 years for a woman from the Philippines, trafficked into the Netherlands, to succeed to escape and prosecute her trafficker, who got a 2 year-sentence (Truong and Del Rosario, 1994). After serving his two years sentence, the same trafficker went back to the same business and is now being prosecuted for murdering several women in prostitution (*Trouw*, 4 September, 1999). It is obvious that in this case, the lenience of the legal system not only works in the disfavour of the women concerned but also fail to recognise the profit involved in sex trafficking which ultimately redirects the trafficker back to the same business.

At the international level, the protection of trafficked persons is legally regulated by the 1949 International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Convention has two main provisions, namely the punishment of any person who exploits another person, even with the consent of that person, and the abolition of laws and regulations by which prostitutes are subject to registration or exceptional requirements for supervision. The convention is both anti-traffic and anti-prostitution. Both parties are subject to penalty: the former for coercion and exploitation, the latter for engaging in prostitution. The Convention aims to abolish trafficking through the abolition of prostitution, thus treating the two activities as mutually reinforcing. However, not all member states of the United Nations have signed the Convention due to divergent national approaches to the regulation of prostitution. For this reason, the application of the Convention at the national level is very problematic. In countries that adopt a regulatory approach to prostitution, women are not penalised for engaging in

commercial sex work. However, illegal migrant women in commercial sex work are penalised for violating immigration law. In countries where anti-prostitution law prevails, women are penalised for both crimes.

The mishandling of their cases also undermines women's trust in the police as a state agent. Research on trafficked women from Central Europe shows that the discovery of police corruption as well as police suspicion towards migrants and victims of traffic has undermined women's trust in state agents to formalize their complaints (IOM, 1996b: 9). Such attitudes are not restricted to Central Europe. In March 1991, Amnesty International documented a case in which Thai Police tried to force three female Burmese detainees (as asylum seekers) to return to a club where they had been made to work as prostitutes. The brothel owner had come to pay fines for their release, but the women refused to go with him. To persuade the women, the police used violence against these women and another inmate who tried to intervene on the women's behalf (Amnesty International 1991). In 1993, a woman from Latin America who entered the Netherlands illegally was witness to an incidence of violence committed by a sex club owner on her Polish colleague. She went to the police to report the crime. She was not penalised for engaging in sex work, as prostitution has been decriminalised in the Netherlands. Instead, the police locked her up as an illegal migrant rather than treating her as a witness to a crime (Truong and Del Rosario, 1995: 43).¹²

In 1997, the Canadian police in co-operation with the US police raided brothels in San Jose, California and Toronto. They rescued more than 20 women aged 16 to 30 from Thailand and Malaysia who were smuggled into North America, forced to work in debt bondage, sold and resold to different sex-establishments that were connected to a ring of criminal gangs. Rather than protecting the women, Canadian officials charged them for doing sex work. During the arrest process, the women had no legal assistance, they did not know of their rights. On the advice of a Thai official from the Embassy in Ottawa, two women confessed in order to be able to go home. They were each issued a Certificate of

¹² Since this case, lobbying efforts by civic group have succeeded in introducing a special ruling to allow victims and their witnesses permit to stay until the whole juridical process is completed. However, this ruling did not have an effect on international law so far. It remains within the jurisdiction of the Netherlands, and some other countries such as Belgium. Many other countries have not yet recognized the value of this special ruling in helping the state to trace criminals

Identity by the Thai Embassy. Upon their arrival in Bangkok they were charged by Thai immigration because on their certificate of identity it was written that they had come to Canada on a false passport¹³.

These cases show that a conflict of interests exists in the process of implementation of immigration law and law against sex trafficking, with serious consequences for crime control. By penalising victims on immigration grounds rather than protecting them on the grounds of 'exploitation' with or without consent, the state indirectly insulates organised crime networks from the law. The combination of weak laws, the nature of law enforcement, and the subversive strategies of sex traffickers create a conspiracy of silence against the victims of human trafficking. In such instances, trafficked migrants are also captives of a mental framework and prejudices with its rules and norms in everyday life, which prevents understanding, empathy and supportive action.

Passivity of civil society as well as ineffective state control has been an additional factor that contributes to the rapid institutionalisation of human trafficking in the last few years and its transformation from a gender-specific to a more generalised phenomenon. The sentiment for self-protection in civil society towards the massive influx of migrants, combined with the general reduction of state budgets in many countries have affected law enforcement in the direction of penalising the victims rather than tracing criminals. In twenty years, criminal capital has metamorphosed from nationally based petty procurers of migrant labour into large-scale criminal capital with vertical and horizontal integration of activities.

Migrants who purchase services from criminal networks experience conditions that may be best described as being captive in the different types of enclaves described above, i.e. territorial, juridical, social, and symbolic/cultural. Captivity connotes meanings such as imprisonment, confinement, restraint and inability to escape or change a situation. The conditions of captivity can range from the physical, economic, social to psychological. The notion of captivity may be applicable to a system of governance. This can take the form of a penal system, an underground system of criminal networks, a mental framework and prejudices with its rules and norms in everyday life, a particular socio-economic system

¹³ <http://www.qweb.kvinnoforum.se/trafficking/solidarityaction/tx>

which confines, restrains and renders people powerless, or a combination of these (Truong and Del Rosario, 1994). The conditions of captivity at different stages of their migration process as well as the ability of criminal networks to use the four types of enclaves have, until recently, bypassed the eyes of policy-makers and society at large.

Social enclaves created through corruption and ineffective state control have been an additional factor that contributes to the rapid institutionalisation of human trafficking in the last few years and its transformation from a gender specific to a more generalised phenomenon. The sheer volume of transfer of goods, services and people across national boundaries due to massive changes in the global economy means that states are able to control at best about three percent of this transfer (National Defence University, 1994). The general reduction of state budget in many countries also affects police personnel and weakens law enforcement. For example, in Hungary reported crime had doubled in a four-year period while the police budget had dropped by one fifth in the same period (Economist, 11 March, 1995). An official from the Ukrainian Interior Ministry reported the following: ‘Gangsters make more money from these women in a week than what we have in our law-enforcement budget for the whole year’ (New York Times, Sunday, January 11, 1998). This had created conditions for bribery and corruption of the state from within.

The formation of criminal capital and its reproduction outside its place of origin may be seen as a logical outcome of this structural background. To some extent, the reproduction of criminal capital in human trafficking has been facilitated by the neglect of the role of the underground economy in the process of economic liberalisation. Patterns of economic liberalisation are characterised by a massive restructuring of the state and an aggregation of all non-state economic actors into what is called the private sector. Policy efforts are directed to the promotion of the private sector without discrimination, and with insufficient resources for standards control. Yet, the agency of local institutions and localised forms of criminal power can create new structures that bring segments of the private sector under its direct control, hence corrupting the private sector from within.

In the case of Russia, analysts have attributed the growth of organised crime to the inefficient, unregulated and non-egalitarian privatisation. Massive privatisation under unequal structures of power became a direct transfer of public assets to the private command of pre-existing networks that had control over the previous ‘shadow’ economy. ‘Shock

therapy' ignored the role of informal institutions and groups, and in that sense has indirectly contributed to *Mafiya's* rule (Handelman, 1994). The Russian *Mafiya's* involvement in sex trafficking from Russian to Western Europe and the Mediterranean countries first emerged to public consciousness in the West in 1993 (*Time*, June 21, 1993). Gradually, the former Soviet Union has been transformed into a major transit area for international migration. Localised criminal networks have been able to incorporate human trafficking from and to the region as part of their business. Since the early 1990s, migrants from Africa, South Asia, China, Afghanistan, Iraq began to arrive in the Commonwealth of Independent States (CIS), to stay temporarily in the hope to proceed to other secure destinations in Western Europe or North America. Evidence also suggests that sometimes the route can also take migrants from the Middle East through CIS, through Latin America on to North America. Studies conducted by IOM suggest that transit migrants are predominantly young (below 30 years of age), educated and of urban origins. The lack of accurate information plays a key role in migration decision-making. Those who fell into the hands of traffickers have been known to lose first their money and then their lives¹⁴.

¹⁴ Information gathered by a Dutch organisation, United for Intercultural Action, shows that since 1993 at least 1,574 people have died while trying to reach Europe (*Trafficking in Migrants*, N. 21, Summer 2000).

TABLE 2

**Major Migrant Trafficking routes Around the World
Cross-Continental routes and their prices in US\$ (1999)**

ROUTE	TRAVEL, VISA, PASSPORT COSTS US \$	TRAVEL LOGISTICS US\$	DOWN PAYMENT IN US\$
China to Japan	5 600 to 9 7000	25 000 to 30000	1,000 to 2000
China to USA		25 000 to 40 000 (1)	n.a.
Iran to Japan	600 (2)		
Pakistan, Iran, India to Japan	5 900		
China, Pakistan, India through Russia to USA		28 000	
Fiji to Australia		50, 000	
Asian countries to Taiwan		3 650	
Middle East through Latin America to USA		10 000 to 25 000	
South Asia through Middle East to Europe	1 000 to 1 600		
Africa via ECE and CIS to Ireland	3 000 to 5 000 (3)		

Notes:

- (1) Figures for the China-USA route range from 25 000, 30 000, 35 000 to 40 000 US\$
(2) The traffickers took a total US 266, 000 from 45 Iranians promising them to bring them into Japan, but ended up abandoning them in Malaysia after having collected US\$ 600 from each person.
(3) 3 000 US\$ if the migrant is in transit in ECE and CIS countries, 5 000 US\$ if arranged from country of origins.

This table is compiled using the data made available from the International Organisation for Migration. The information is collected from newspaper reports of cases of human trafficking that have surfaced to public consciousness (*Trafficking in Migrant, various issues*). The information cited above does not contain gender-specific elements. It is not always clear from the information what is included in each package. Some writers refer to package in terms of travel, passport and visas. Other refers to travel, passport, visas, work permit, employment, safe house. For this reason the data presented above must be treated as a first attempt to systematise the information.

As shown in table 2, available information on prices and routes suggests that migrants may not be members of the rural poor. Rather, in concordance with studies on transit migrants in CIS countries, they are more likely to be from urban-based families who might have borrowed money, or sold property to send them out of the country to find work and to remit. They face higher risk if they travel through less costly routes. They have paid the money but never arrived at the destination, as in the case of Iranians destined for Japan who are dropped in Malaysia. The less fortunate face life threatening risk dictated by circumstances as well as by the agency of the intermediary. This was the case of Iraqis on a Greek boat whose captain impelled his human cargo to jump overboard in the sea at the approach of the Greek patrol boat to destroy evidence, before he managed to flee. Three bodies of his victims were washed up the shore of Kos (*Le Nouveau Quotidien*, 12 January 1996). On high cost routes, migrants who reach their destinations are deployed in a wide range of activities shunned by local residents (e.g. sweatshops, farm work, and sex work).

To sum up, the dramatic increase of international human trafficking and its embedded violence may be viewed as being structurally linked with the global transformation of capitalism and the absence of adequate moral standards guiding this transformation. The role of criminal networks in the transfer of human beings from one country to another may be seen in terms of an allocation function, a role previously assumed by state organs. As such, it is no longer possible to see illegal and irregular migration as ad-hoc responses by those who try to seek to break the walls of immigration. The breakdown of the previous regime of international migration has also destroyed the ethos of this regime. A new ethos based on criminal activities slowly emerges in which the lack of security experienced by one person or group becomes a market opportunity for another.

5. CONCLUSION

This paper proposes to ground the proliferation of forms of transnational crime in the context of shifting global structures. Three key hypotheses regarding human trafficking have been explored. The first hypothesis proposes that human trafficking as the revival of the slave trade in new forms is caused by a dis-articulation of state structures and international norms, geared to regulate transnational population movements. The second hypothesis proposes that the effectiveness of existing legal instruments is greatly restricted due to

conflict of interests at national levels when it comes to the control of such movements and the control of crime. Unless this conflict is resolved criminal actors will continue to find their market niches in various forms of transnational population movements spurred by forces of globalisation which render the livelihood of particular segments of the world population insecure in a political as well as economic sense. The third hypothesis suggests that there is an ongoing intrusion of market values into the cultural realms regulating the treatment of the human body, i.e. body and spirit are being less respected as an integrated whole. There is more acceptance of the body as a commodity and in many instances, this lack of respect has provided a new source of legitimacy for various forms of abuse suffered by victims of human trafficking. In this regard, the challenge facing humankind goes beyond international law, and touches upon more fundamental questions regarding the ethics of the human body and its governance in the civilising process. So far, the boundaries of cognition and re-cognition limit the universe of international trade to goods and services only, leaving out the trade in human beings as part of the broader process of globalisation of trade, investment, production and services. Beyond and above the issue of human rights abuse, there is also a need to set the terms of the discussion on human trafficking as an aspect of international trade and to provide a new vision of international exchange that captures its real depth and scope.

From a practical point of view, there exist a number of strategic possibilities for reforms that could be constructed in ways that are more interlocking. At an international level, the ongoing courtship between the state and the market must be subject to ethical standards that protect the losers and make the winners more socially responsible. This process is already occurring through the activities of non-governmental agencies organising around WTO. The issue of human trafficking must find a place in this process. At the national level, some suggestions have been made for governments to conduct 'migration audits' before taking major decisions regarding foreign direct investment, trade and enterprise development (UNCTAD/IOM, 1996). Other proposals have included the prosecution of traffickers involved in the sale of women and children to take place in an international criminal court and a permanent agency to implement court decisions, which must also include seizure of the assets.

From the standpoint of crime prevention, ways must be found to undermine the social technologies of OC and restrict their effectiveness. This means tougher penalties on fraud and corruption and more effective control over the specific space used by OC in HT. Co-operation between human rights organisations in the last decade has helped bring the issue of human trafficking to public consciousness. This co-operation can benefit from a framework that allows for fuller accountability between different actors, including state and non-state actors. Finally, the cultural markers of the human body that are embedded in the culture of instrumentalism must be confronted and replaced by cultural markers that stress co-responsibility between individuals, genders and nation-states. This involves a long and sustained process, activated through inter-personal relationships as well as collective forms of human action.

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