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The Initiatives against Trafficking in Human Cargo
Trafficking in Women and Children

A perspective from the bottom of the world

*by MARIE DYHRBERG **

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Introduction

Over the past decade there has been an increasing global awareness and concern of the growing phenomenon of trafficking in persons, particularly women and children, across international borders for the purposes of prostitution, other sexual exploitation or forced labour. This concern has resulted in the United Nations of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ('the Protocol'). This document was adopted by the General Assembly in November 1999 as one of three optional protocols supplementing the United Nations Convention against Transnational Organized Crime ('UNTOC').¹

¹ As of mid-2001 UNTOC had 126 signatories and 1 contracting party and the Protocol had 86 signatories and 1 contracting party. Both provide that the document will enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification.

This paper addresses the impact of this regrettable phenomenon in the Asia-Pacific region with particular regard to Australia and New Zealand and discusses the legislative measures in place to combat trafficking in persons. Due to scale of the region it is impossible in a paper of this length to fully detail the scope of the problem in Asia. For this reason, insofar as this paper examines trafficking in persons in Asia, I have chosen to concentrate on the countries in Southeast Asia which have the most impact on the situation in Australia and New Zealand.

The International Legal Framework

(i) UNCTOC and the Protocol:

Both Australia and New Zealand are signatories to UNCTOC and / or the Protocol as are a number of other countries in the region, including nations in which trafficking in persons poses a significant problem, namely the Philippines, Indonesia, Sri Lanka and Thailand.

The Protocol in Article 3(a) defines trafficking in persons as:

- the recruitment, transportation, transfer, 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 person having control over another person, for the purpose of exploitation.

Exploitation is defined as including, 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.

Article 3(b) deems irrelevant the consent of a victim of trafficking to the intended exploitation if that consent has been brought about by the methods detailed in paragraph (a).

Child is defined as any person under eighteen years of age and subparagraph (c) states:

- The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not include any of the means set forth in subparagraph (a) of this article.

Accession to the Protocol requires each State Party to establish trafficking in persons as a criminal offence where those offences are transnational and involve organised criminal groups². This latter phrase is defined in article 2(a) of UNCTOC as:

- “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.”

Serious crime is defined as an offence punishable by at least four years imprisonment³. The offences established in accordance with the Protocol are to be regarded as offences established in accordance with UNCTOC⁴.

(ii) Other Relevant International Instruments:

Australia and New Zealand are signatories or parties to several other treaties relevant to this issue including:

- United Nations Convention on the Rights of the Child⁵. New Zealand has signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and will ratify this document once complying legislation is enacted.
- Convention to End all Discrimination Against Women - Article 6 requires all parties to aim to eliminate all forms of trafficking of women and exploitation of prostitution of women.
- International Labour Organization (ILO) Conventions including the Forced Labour Convention of 1930, the Abolition of Forced Labour Convention of 1957 and the Worst Forms of Child Labour Convention 1999 which has been ratified by New Zealand.

Trafficking in Women and Children in Asia-Pacific - A Brief Overview:

Within Southeast Asia, as no doubt elsewhere in the world, the causes of trafficking include socio-economic disparities between and within countries, poverty and indebtedness. The ILO notes that globalization, the opening of borders and improvements in transport infrastructure facilitates migration including that of a coercive nature⁶. Political instability and civil strife, such as in Myanmar (Burma) and Sri Lanka also contribute to illegal migration.

2 Articles 4 & 5 of the Protocol

3 Article 2(b) of UNCTOC

4 Article 1(3) of the Protocol

5 For the impact this Convention has had on domestic law in both countries see Minister of Immigration & Ethnic Affairs v Teoh (1995) 183 CLR 273 and Tavita v Minister of Immigration [1994] 2 NZLR 257

6 'Stopping Forced Labour' - ILO - Declaration on Fundamental Principles and Rights at Work - Report June 2001. This document can be accessed online at www.ilo.org/public/english/standards/decl/reports

Trafficking in women and children within and from Southeast Asia encompasses all forms of trafficking, from children being removed from their families as bonded labour for exploitation in manufacturing, the sex industry and as domestic labour through to voluntary migration for employment in which the actual employment that eventuates differs significantly from that which was offered. For instance it appears to be relatively common that women pay an agent to organise domestic or restaurant work (including obtaining visas and the costs of air travel) to discover upon arrival in the destination country that the only work available through which they can repay what they owe is in the sex industry. Almost invariably these women suffer some degree of restriction of movement until the transport debt (the value of which is set by the trafficker and generally is vastly inflated compared to the actual outlay) is repaid. This form of debt-bondage occurs even when the woman involved are aware of the true nature of the proposed work and voluntarily accept prostitution.

Generally it appears that the more nefarious activities such as practices akin to slavery, and the sale of children as agricultural labourers, prostitutes and for exploitation in manufacturing are more common within Southeast Asia. Particular examples include bonded labour in agriculture and fishing in Indonesia, the abduction of women and girls from Myanmar, Laos and Cambodia to work in Thai brothels and the forced conscription of children by militant groups in Sri Lanka and in the Philippines.

Another noted incidence of activities akin to trafficking in women is the exploitation of overseas workers from, in particular Indonesia, Sri Lanka and the Philippines, deployed to Persian Gulf countries as domestic labour or entertainers but often either maltreated or sexually abused in the recipient country. The embassies of these countries in Saudi Arabia and its neighbours are frequently called upon to provide safe haven for abused women until they can be repatriated.

Incidences of trafficking in women within Southeast and East Asia that have been the subject of reports by various individuals and non-governmental organisations include:

(i) Thai Women Trafficked to Japan ⁷

Human Rights Watch, in co-operation with local organisations, conducted research into the phenomenon of Thai women trafficked into Japan for the provision of sexual services and held in debt bondage over the period 1994-1999. Their findings, summarized, included:

- initial decisions to migrate were almost always voluntary
- of the women were deceived about the nature of the work and had been promised jobs as waitresses or in factories. They were in fact almost all delivered to 'snack bars' and employed as 'hostesses' whose

⁷ See 'Owed Justice: Thai Women Trafficked into Debt Bondage in Japan' Human Rights Watch, September 2000. This report can be accessed online at www.hrw.org/reports/2000/japan/

- duties included accompanying men to nearby hotels in order to provide sexual services
- most of the women were deceived both by agents in Thailand and brokers in Japan about the extent of their debt and the conditions under which they would have to repay it
- while in debt women worked under highly abusive labour conditions including not receiving any payments for their services
- women were commonly kept under constant surveillance and as a result very few escaped
- strong evidence existed that the networks trafficking in Thai women were controlled by organised crime groups, including the Japanese Yazuka
- despite awareness of the scale of the problem neither the Thai nor Japanese government have taken any effective steps to provide protection for the women involved. As undocumented migrants, the response from the Japanese authorities usually consisted of deportation

(i) Filipina Female Migrants⁸

Due to a number of factors, including poverty, overcrowding and strife in their home nation and relatively widespread knowledge of English, the Philippines has amongst the highest number of overseas workers worldwide. It is estimated over 7 million Filipinos work overseas of which over 2 million are thought to be undocumented. An increasingly large percentage of these migrants are women. In 1994 the Philippine Department of Labour found that the majority of new contracts for overseas work were classified as 'vulnerable occupation' of either domestic labour or in the entertainment industry⁹. Common destinations within Asia include Singapore, Malaysia, Hong Kong and Japan and rates of abuse either violence or of a sexual nature are, anecdotally, thought to be high. In particular it has been documented that a significant proportion of women travelling on entertainer visas end up working in the sex industry, often in situations of strong exploitation. A study conducted by the International Organization for Migration of Filipina women trafficked to Japan found that 77% of women had worked in the sex industry in Japan and of that percentage only 11% had been aware of the proposed nature of employment on their departure from the Philippines. The majority of the women involved thought that organised criminal groups and stated that fraudulent travel documentation had been used.

(ii) Trafficking of Women for Prostitution in Hong Kong¹⁰

8 See 'Human Smuggling and Trafficking: a desk review on trafficking of woman from the Philippines' United Nations Interregional Crime and Justice Institute, April 2000. This report can be accessed online at www.unicri.it/projects/thb/default.htm.

9 Cited in 'Stopping Forced Labour' op cit n. 6 at 57

10 Emerton, R. 'Trafficking of Women into Hong Kong for the Purpose of Prostitution: Preliminary Research Findings' February 2001. This paper is accessible online at <http://www.hku.hk/ccpl> 10

In this comprehensive study of women working in prostitution in Hong Kong details four different categories of work within the sex industry. The first, independent street workers were found to be almost entirely Mainland Chinese women the majority of whom had entered Hong Kong legally. The second category involved sex workers in 'villas' or brothels the majority of whom had been recruited for work in the sex industry, some knowingly and some by deceit. A large degree of organised crime or triad involvement in the operation of the villas was reported. Women commonly suffered restrictions on their movements and were obliged to service their first 100 - 150 customers without pay in order to repay their travel costs. This category involved Mainland Chinese women and other nationalities. The third category, women forced into prostitution, disclosed only 39 women involved in 16 cases but this was thought to be the tip of the iceberg. Of the 39 women 25 were Filipino, 7 Columbian, 6 from Mainland China and 1 was Thai. All were lured to Hong Kong by the promise of legitimate work and forced into prostitution upon their arrival, generally at the hands organised crime groups. All were confined to their premises of employment, most reported having travel documentation and earnings withheld. Several reported being drugged and / or raped upon arrival in Hong Kong. The final category identified is women working as 'entertainers' in nightclubs in Wanchai. 75% of these women are estimated to be Filipino and the remainder Thai. Recruitment was usually through agents in their home country and the women were frequently debt-bonded to the nightclub to repay their travel costs. The work involves 'entertaining' male visitor in the nightclubs and optional escort work which does not necessarily involve sex. The provisional conclusion of the author of this study was that the first three categories of work breached Hong Kong domestic law which expressly prohibits trafficking for the purposes of prostitution. Despite a number of prosecutions being brought very few convictions were entered.

New Zealand and Australia, having no land borders, enjoy a degree of protection from movements of people within Asia (although as the Tampa boat crisis of late-August this year demonstrated they are by no means immune from such developments) and as a result the impact of trafficking in persons is primarily in the sex industry. As the profits to be gained by such forced or coerced labour are more significant, the cost of air travel is not such a barrier. The primary source country for sexually exploited women trafficked to Australasia is Thailand, itself is a destination country for its poorer immediate neighbours. Although there have been incidences in both countries of 'sweatshops' staffed by Asian women anecdotal evidence, especially in New Zealand, suggests that the majority of women trafficked are (knowingly or not) for the benefit of the sex industry. While such trafficking does not always involve organised crime in the traditional sense, the manner in which women are recruited by an agent in one country for the benefit of operators of businesses in another probably satisfies the definition of 'organised criminal group' in Article 2(a) of UNCTOC. The elements of deception regarding the nature of the work or the costs involved would seem to *prima facie* make such activity fit within the jurisdiction of the Protocol. As there is very little evidence, anecdotal or empirical of

trafficking in children, the following sections of this paper relate primarily to trafficking in women.

Trafficking of Women to Australia

Anecdotal evidence concerning trafficking in women into Australia suggests that the situation is generally similar to that in New Zealand (as detailed below) although proportionately larger. The majority of foreign women working in the sex industry in Australia are thought to be there voluntarily albeit often in a form of debt-bondage until the costs of arranging their work and travel are repaid¹¹. Although Thai nationals also figure heavily in the Australian sex industry, women also appear to be trafficked from a number of other countries including Malaysia, China and the Philippines. In recent years there has also been an increase of publicity concerning the involvement of Russian-based organised crime syndicates bringing in women from the former Soviet Union and Eastern Europe. In statistics showing visitor visa refusals by nationality for 1997-1998 Thailand rates 13th after such countries as China, Russia, Vietnam, Philippines, Indonesia and Poland¹².

While the extent of the problem within Australia is unclear as there is as statistics often do not distinguish between of unlawful arrivals (which includes the thousands estimate to be smuggled into Australia each year) and people working unlawfully (which would include women working in sweatshops and the sex industry on visitor permits). The sex industry does however rate in second place in the top five business sectors identified as employing illegal workers in 1998-2000, below restaurants and above factories.

The Australian government, while involved in initiatives such as the Bangkok Declaration and ARIAT (see below) generally appears more concerned with the ever-increasing numbers of people smuggled to Australia than with the smaller number of women and children exploited by traffickers¹³. It has however recently developed co-operative arrangements with the governments of Thailand and China whereby victims of trafficking are assisted on their return to those countries. Australia has also partly funded the Greater Mekong project which aims to combat the trafficking in the Mekong region of Southeast Asia. The Australian Department of Immigration and Multicultural Affairs (DIMA) had airport liaison officers stationed at a number of airports in Southeast Asia but these personnel are usually focused on prevent people smuggling rather than targeting the trafficking of women and children.

11 See Graycar, A. 'Trafficking in Human Beings' Paper presented at the International Conference on Migration, Culture and Crime, Israel, July 1999.

12 Visitor Health and Policy Section, DIMA, 1999

13 For instance it is estimated that 6,000 boat people (predominantly Afghani, Iraqi and Sri Lankan) will be smuggled into Australia this year. Sydney Morning Herald, 30 August 2001 'Our refugee 'crisis' is a drop in the ocean'

Trafficking of Women to New Zealand:

Incidences of trafficked women in New Zealand almost always involve Thai nationals both as victims and commonly as the operators of massage parlours / brothels and 'sweatshops'. Police intelligence indicates that of sex workers in Auckland approximately 60% are foreign and that 60% is thought to be overwhelmingly Thai. Until 1 January 2001 Thai nationals enjoyed visa-free entrance to New Zealand. Immigration statistics concerning the number of people refused entrance to New Zealand at airports (generally for being suspected of entering on visitor or student permits with the intention of working) indicate the scale of the problem:

Three countries with the highest number of nationals refused entry and turned around upon arrival at a New Zealand airport in the financial years from 1997/1998 to 1999/2000 ¹⁴.

Rank / Year	1	2	3
1997/1998	Thailand (910)	Indonesia (45)	United States (34)
1998/1999	Thailand (481)	Malaysia (89)	Indonesia (85)
1999/2000	Thailand (900)	Malaysia / Australia (42)	-

Estimates by the Immigration Service of the number of overstayers by nationality are also instructive. Thailand (estimated overstayers 1,800), not traditionally a significant source of immigrants to New Zealand, ranks third after Samoa (5,500) and Tonga (5,000), both of which have large communities in and historical links to New Zealand.

As noted above as of the beginning of this year Thai nationals have had to apply for a visitor permit from the New Zealand embassy in Bangkok rather than being granted a three-month visitor permit upon arrival. This change was implemented largely due to concerns regarding Thai women working in the sex and sewing industries on visitor's permits. The visa requirement has had a significant effect. In the first six months of this year just 68 Thai nationals were refused entry at a New Zealand airport compared to 689 between June and December 2000 ¹⁵. Police sources contacted believe that while the numbers of Thai women coming into New Zealand to work in the sex industry has slowed this year, organisers of trafficking in Thailand are getting around the visa requirement by arranging student visas for women coming to New Zealand.

¹⁴ These statistics are sourced from Ref NZ Statistics at www.refugee.org.nz/stats.htm

¹⁵ NZ Herald, 12 July 2001 'Visa clampdown cuts Thai influx'.

Sweatshops

The requirement of visas to limit trafficking in women is only as effective as the staff responsible for deciding applications. In a recent prosecution under employment legislation evidence was heard that of the 24 Thai women working in a clothing sweatshop in Auckland, the defendant was granted temporary work visas by an Immigration Service officer to import 6 of the women. The Employment Tribunal, after hearing evidence that the women were paid \$575 per month to work 13 hours a day, six days a week, ordered that the defendant and her company pay arrears of over \$250,000 to the workers and \$36,000 in fines for eighteen breaches of minimum wage and holidays legislation. The defendant's mother who had recruited the women in Thailand had promised wages of over \$2,000 per month for a forty-hour week. The workers did not receive any pay until the cost of their travel and visas were repaid and their passports were withheld by the defendant. Although the victims left New Zealand after the sweatshop was closed down by the Department of Labour eight women were flown back to New Zealand to give evidence at the hearing¹⁶.

Although the publicity surrounding the Sivoravong investigation led to a number of complaints regarding other sweatshops at the time of writing only one further prosecution has been successful. Again the proceedings were brought under employment related legislation in the absence of a general prohibition on trafficking in persons. The defendant, a Thai woman married to a New Zealander was found to have recruited sewing machinists from Thailand who were forced to work 14 hour days, six days a week for well below the minimum wage. Evidence was heard that the defendant had fabricated time and wage records, that workers were forbidden to leave premises while off-duty and were made to repay an exorbitant price for travel and living costs. The Tribunal fined the defendant personally the maximum fine of \$2,000 on each of the 12 breaches of the Minimum Wage Act and the Holidays Act. The Tribunal directed that the fines be paid to the six victims. Back pay of \$295,000 was not able to be awarded as the company had been declared bankrupt¹⁷.

Prosecutions have also been brought under s.142(f) of the Immigration Act 1987 for aiding people to remain in New Zealand unlawfully. One recent case resulted in a Thai male being fined \$10,000 in respect of ten charges involving labourers on a building site. Another resulted in fines of \$700 on each of three charges being ordered against a Thai female running a sweatshop-type sewing business.

Sex Industry

As noted above, it is estimated that over 50% of sex workers in Auckland, New Zealand's largest city are Thai. Other foreign nationals include Malaysians and Chinese and Police intelligence suggests Russian and Eastern European women may also be involved. It appears that women end up working in massage parlours or brothels through the following methods:

¹⁶ Elliott, *Labour Inspector v Sivoravong* (AT 88/00, 5 April 2001, Auckland). See also NZ Herald articles: 14 March 2001 'Lavish promises lured Thais to NZ sweatshop'; 15 March 2001 'Immigration told Thais looked after'; 8 April 2001 'Sweatshop operator gets hefty penalty'.

¹⁷ NZ Herald, 10 September 2001 '\$24,000 fine for owner of sweatshop'.

(i) travelling to New Zealand for that purpose - it is estimated that the majority of Thai women coming to New Zealand realise the nature of the work proposed. In this situation however there are often still elements of coercion as the women are frequently 'debt-bonded' to repay the cost of their travel. Passports and travel documents may be retained to ensure payment of these costs, although one Police source contacted believes this practice has lessened as a result of Police raids and publicity. Often the women face restrictions on their movements and activities. This ranges from being effectively locked at their work premises to being pressured to only go to certain places such as certain restaurants and the casino. Estimates of the amounts of money women have paid to come to New Zealand range from \$6,000 to \$25,000. Often they are required to pay a further fee of up to \$10,000 to the operator of the massage parlour / brothel in New Zealand.

(ii) travelling to New Zealand believing the work they have arranged is in restaurants or sewing businesses - a number of cases of this nature have received substantial publicity in recent years¹⁸. Commonly these women will have paid large fees to agents in Thailand to organise work, travel and visas. Upon arrival in New Zealand they are told that the proposed work does not exist and are either given the option or forced to work in the sex industry to repay these costs. As a result of the publicity surrounding one recent case of this nature efforts were made to assist such women, including distribution of flyers in Thai script detailing help available to them. One woman who fled from a brothel in these circumstances was subsequently refunded the money she had paid after the Human Rights Commission initiated proceedings on her behalf. Police stated that no criminal proceedings were taken against the people involved in New Zealand due to insufficient evidence¹⁹.

(iii) the third scenario through which women end up working in the sex industry is similar to (ii) above but the actual work promised is available but at a far lower rate of remuneration promised. Often the wages are so low that it is not enough to cover their travel costs and women are instead offered (usually for a further fee) work in the sex industry as the only way in which they can repay their debts. They then end up debt-bonded as detailed above.

As a result of the considerable publicity regarding woman forced to work in the sex industry a number of raids were conducted by the Immigration Service and the Police. These raids, which only seem to occur in response to publicity usually result in Thai women being repatriated or served with removal orders. They seldom seem to result in prosecutions. Police sources point to a number of investigative difficulties including:

¹⁸ See for example NZ Herald, 1 June 1999 'City sex traders prey on Thais'; NZ Herald, 25 May 2000 'Sex traffickers get soft message'; NZ Herald 5 June 2000 'City weighs in to rescue sex workers'

¹⁹ NZ Herald, 7 April 2001 'Thai woman who fled Auckland couple gets reimbursed'

- language difficulties
- fear of retribution here and in Thailand
- an inherent distrust of Police
- fear of removal, deportation and / or criminal proceedings for working illegally
- incentive to remain (and continue earning money) may outweigh desire to report mistreatment

The focus of the Immigration Service to remove people found working illegally possibly contributes to the lack of prosecutions. Recent changes to the Immigration Act 1987 which provide for immediate removal of people found to be working while holding visitor or student permits may exacerbate this problem. Although the Immigration Service does co-operate with the Police for victims of trafficking to either remain in New Zealand or, more commonly return to New Zealand if they are needed as witnesses, these arrangements are made as needed rather than the result of a formalised policy. The problem with returning complainants / witnesses to Thailand however is that the women may be threatened by the organisers in Thailand and as a result do not return for the hearing. For instance in the Nguyen prosecution (see below) only two of seven complainants could be persuaded to return to New Zealand for the trial. A recent initiative undertaken by a New Zealand Police officer working in this area aims to minimise this problem by involving governmental and non-governmental agencies in Thailand to support and protect potential witnesses including investigating their complaints against agents in Thailand.

Consideration of three noted prosecutions may be illustrative of the scale of exploitation of Thai women working in the sex industry in New Zealand:

(i) *R v Decha-Iamsakun*²⁰ - The defendant, a Thai national, was convicted of two counts of dealing in slaves pursuant to s.98 Crimes Act 1961. He was sentenced to five years imprisonment and was subsequently deported. Evidence suggested that the defendant was in the business of bringing Thai girls to New Zealand for prostitution. The principal Crown witness stated that she had come to New Zealand pursuant to arrangements made by the defendant including travelling with an associate of his under the pretence that she was married to that man. The defendant had paid for her airfare and upon arrival in New Zealand her passport and ticket were held by the defendant. She was put to work in a massage parlour and housed in motels and houses rented or owned by the defendant or associates with at least five other Thai women. She had to pay the majority of her earnings to the defendant. After some antagonism arose between the complainant and the defendant the latter offered to sell her for \$3000 to an undercover Police officer. The defendant appealed his conviction and sentence, in part on the definition of 'slave' given by the Judge in summing up. The Court of Appeal dismissed the appeal.

²⁰ [1993] 1 NZLR 141 (CA)

(i) *R v Hastie*²¹ - The defendant pleaded guilty to four charges of brothel-keeping. He appeal the sentence imposed of nine months imprisonment. The operation against the defendant also resulted in 16 Thai women being charged with soliciting and some of the women involved deported for breaching the terms of their visitor permits. All women found to be working in the four separate establishments were Asian, the majority Thai and evidence suggested that the defendant was involved in their coming to New Zealand for that purpose. All women however were found to be adults and there was no evidence that they had been coerced into such activities. The defendant, who had a prominent role in the Auckland sex industry for many years had the support of the Prostitutes Collective. A representative of this publicly-funded organisation stated that the defendant's business were completely non-coercive and promoted safe-sex and alternate (legal) employment. As a result partly of these mitigating factors and the defendant's ill-health the sentence of imprisonment was replaced by fines totalling \$7,000.

(ii) *R v Nguyen*²² - three Vietnamese men were charged with slavery, brothel-keeping and living off the earnings of prostitution in respect of up to seven Thai women alleged to be coerced by the defendants into prostitution in New Zealand. Of the seven complainants / witnesses only two were persuaded to return to New Zealand to give evidence after protection and safe houses were arranged. A Police officer was required to remain with the women during the trial after the defendants had threatened them during the depositions hearing. The defendants were acquitted at trial of slavery but convicted of brothel-keeping and living off the earnings of prostitution. The principal offender was sentenced to eighteen months imprisonment, his accomplices convicted on lesser charges were sentenced to, respectively, to six months imprisonment and six months periodic detention. Evidence was heard at trial that one of the complainants had her passport and travel documents taken, could speak no English, was required to work seven days a week, did not keep any of the fees paid for her services and was threatened by the defendants against contacting the Police. On appeal the sentences of eighteen months imprisonment were reduced to twelve months and the sentence of six months imprisonment was quashed and replaced with a sentence of six months periodic detention.

Efforts to Combat Trafficking - Southeast Asia

(i) Regional Initiatives

A number of regional organisations have focused on this issue, holding conferences and issuing actions plans. These include:

²³ Unreported (HC Auckland Registry AP. 120/93, 2 September 1993, Tompkins J.)

²⁴ Unreported (CA. 315/95 & CA. 284/95, 28 September 1995)

A number of regional organisations have focused on this issue, holding conferences and issuing actions plans. These include:

- ASEAN - Member states of the Association of Southeast Asian Nations regularly hold Ministerial meetings on issues of regional importance. Trafficking of persons was considered at a June 1999 meeting which adopted the ASEAN Plan of Action to Combat Transnational Crime and urged the United Nations to adopt UNCTOC.
- The Asian Regional Initiative Against Trafficking in Women and Children (ARIAT), a joint initiative by the Governments of the Philippines and the United States, adopted a regional plan of action during a meeting in Manila in March 2000. Participants included all ASEAN nations, the U.S, Canada, Australia, New Zealand, P.N.G, Russia, South Korea and Hong Kong in addition to a large number of United Nations organisations and N.G.Os. The action plan included similar aims to those set out in the Protocol and parties pledged co-operation on information-sharing, support for victims, repatriation and education. Countries were invited to furnish reports detailing attempts to address the aims set out in the action plan.
- Bangkok Declaration on Irregular Migration - An International Symposium held in April 1999 in Bangkok involving Asian nations and Australia and New Zealand pledged regional co-operation on irregular / undocumented migration.
- In 1997 the International Programme on the Elimination of Child Labour (IPEC) launched the Greater Mekong Project involving representatives of Cambodia, China, Laos, Thailand and Vietnam to combat trafficking as a sub-regional issue through co-operation and capacity building.

(i) Southeast Asian Legislative Initiatives

A number of countries in Southeast Asia have recently taken steps to combat trafficking in women and/or children. Specific legislation has been enacted in China, Cambodia, Thailand and the Philippines. A 1997 amendment to the Thai Penal Code stipulates that those who procure, lure or traffic children for the gratification of another commit a sexual offence²³. Penalties for organising undocumented migration include lengthy terms of imprisonment.

Legislation in the Philippines limits deployment of overseas Filipino workers to countries which protect the rights of migrant workers²⁴. The law also provides strong penalties for illegal recruitment and the recruitment of minors. Free legal assistance for victims of illegal recruitment is available through the Department of Labour and Employment.

23 Penal Code Amendment Act (No. 14) 1997

24 Migrant Workers and Overseas Filipino Act of 1995

Australian Legislation against Trafficking

The primary enactment prohibiting trafficking in women and children in Australia or involving Australians is the Criminal Code Amendment (Slavery and Servitude) Act 1999 which came into force on 21 September 1999. This legislation provides for substantial penalties for those involved in transnational slavery or sexual servitude. The relevant definitions are:

"**slavery** " is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person'²⁵

"**sexual servitude** " is the condition of a person who provides sexual services and who, because of the use of force or threats:

- (a) is not free to cease providing sexual services; or
- (b) is not free to leave the place or area where the person provides sexual services" ²⁶

"**threat** " means:

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
- (c) a threat of any other detrimental action unless there are reasonable grounds for the threat in connection with the provision of sexual services by a person ²⁷

The penalties for slavery offences under the Act are 25 years for intentional possessing or dealing in slaves and 17 years for slave dealing where the offender is reckless as to whether the transaction involves slavery or slave trading. ²⁸

Of perhaps more relevance to the problem of trafficking in women and children are the offences created by ss. 270.6 and 270.7 of the Act which proscribe sexual servitude and deceptive recruiting for sexual services. Section 270.5 limits the jurisdiction of ss. 270.6 and 270.7 by providing that an offence is committed only if one the following three factors are present:

- (i) involvement of an Australian citizen or resident in the provision sexual services outside Australia where the offending conduct (the threats and/or deception) also occurs outside Australia; or
- (ii) the offending conduct occurs outside Australia but the sexual services are to be provided in Australia; or

²⁵ Criminal Code Act 1995 s.270.1

²⁶ *ibid* s.270.4 (1)

²⁷ *ibid*, s.270.4 (2)

²⁸ *ibid*, s.270.3

(iii) the offending conduct occurs within Australia but the sexual services are to be provided outside Australia

Section 270.6 creates an offence punishable by 19 years imprisonment if it involves a person under 18 years of age or 15 years imprisonment in any other case for any person whose conduct, intentionally or with recklessness, causes another person to enter or remain in sexual servitude or for any person whose business involves the sexual servitude of other persons. The mens rea element for the latter offence is recklessness.

Section 270.7 creates an offence of inducing a person to enter into an arrangement to provide sexual services where that person is deceived about the fact that the engagement involves the provision of sexual services. The penalties for this offence are nine years imprisonment where a child is involved and seven years imprisonment in any other case.

The consent of the Attorney-General is required for any prosecutions brought under any of the sections inserted by the Act if conduct occurs outside Australia and the offender is not an Australian, citizen, resident or legal person incorporated in or involved in business principally in Australia.²⁹

While the Act clearly goes a long way toward compliance with Article 5 Australia has not yet ratified the Protocol. It is not apparent if any prosecutions have been successfully brought under this legislation.³⁰

New Zealand Legislation relevant to Trafficking

Unlike Australia, New Zealand has no legislation specifically directed against trafficking in women and children. The few prosecutions that have been brought for offences of this nature have been either under the Immigration Act 1987, by the Department of Labour for breaches of employment related legislation in the case of 'sweatshops' or under the slavery or brothel keeping provisions of the Crimes Act 1961.

(i) Immigration Act offences:

The relevant provision of the Immigration Act is section 142 in particular subparagraphs (f) and (fa) which provide:

Every person commits an offence against this Act who:

²⁹ *ibid*, s. 270.11

³⁰ Searches of the Australasian Legal Information Institute databases (www.austlii.edu.au/) by the author did not disclose any cases involving the Act. This may be however due to the fact that prosecutions, if in fact brought, may not yet have been concluded and / or reported.

(f) Aids, abets, incites, counsels, or procures any other person to be or remain in New Zealand unlawfully or to breach any condition of a permit granted to that other person;

(fa) Whether in New Zealand or otherwise, wilfully aids or assists any other person;

- i. To arrive in New Zealand in a manner that does not comply with [standard arrival procedures] ; or
- ii. To arrive in New Zealand without holding a visa, where the person requires a visa to travel to New Zealand; or
- iii. To complete an arrival card in a manner that the person aiding or assisting knows to be false or misleading in any particular

The maximum penalties for these offences are three months imprisonment or a \$5,000 fine ³¹ .

(ii) Employment Legislation:

Several prosecutions have recently been brought by the Department of Labour against individuals and companies as a result of raids by the Immigration Service, which uncovered 'sweatshops', staffed by workers recruited from Thailand. Charges were brought under the Employments Contract Act 1991, the Holidays Act 1981 and the Minimum Wage Act 1983.

(iii) Crimes Act 1961

The provisions of the Crimes Act relevant to trafficking in women and children include the following sections and their respective maximum penalties:

s.98 - Dealing in Slaves - 14 years imprisonment

s.147 - Brothel-keeping - 5 years imprisonment

s.148 - Living on Earnings of Prostitution □ 5 years imprisonment

s.149 - Procuring sexual intercourse □ 5 years imprisonment

s.208 - Abduction of woman or girl □ 14 years imprisonment

s.209 - Kidnapping □ 14 years imprisonment

Of these provisions only s.98 allows for extra-territorial jurisdiction, in that it is an offence to deal in slaves, as defined, inside or outside of New Zealand.

(iii) Prostitution Reform Bill

This proposed legislation aims to decriminalise prostitution. It is currently an offence to solicit sex in New Zealand, in addition to the Crimes Act offences referred to above. This bill if enacted in its current form will repeal ss. 147 □ 148 of the Crimes Act 1961. Clause 7 of the bill will make it an offence punishable by 7 years imprisonment to coerce any person into

³¹ s. 144(1) & (1A) Immigration Act 1987

either providing sexual services or to surrendering the proceeds of commercial services.

The proposed definition of coerce as set out in clause 2 of the bill, is:

“coerce” means knowingly to act to prevent another person from exercising freedom of choice or action, or to induce or compel another person to undertake any action against his or her will, including actual or implied or explicit threats of:

- (a) physical harm;
- (b) sexual or psychological abuse;
- (c) intimidation; including:
 - (i) the improper use of any power or authority arising out of any occupational or vocational position held by any person; or
 - (ii) the making of an accusation or disclosure (whether true or false) about the misconduct of any person that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made
- (d) harassment;
- (e) damage to that person's property;
- (f) supplying a controlled drug within the meaning of the Misuse of Drugs Act 1975;
- (g) withholding supply of a controlled drug within the meaning of the Misuse of Drugs Act 1975;
- (h) withholding money or property owed to that person;
- (i) imposing any pecuniary or other penalty, or taking disciplinary action, otherwise than in accordance with a person's agreed conditions of employment or service

Clause 7 of the bill will make it an offence, punishable by up to seven years imprisonment, to be involved in the provision of or to profit from sexual services of a child under eighteen years of age.

The prostitution reform bill is currently being evaluated by the select committee which is expected to report to Parliament in early November 2001.

(iv) Legislation to Comply with UNCTOC and Article 5 of the Protocol

The enactment of legislation in accordance with UNCTOC and the accompanying protocols is at the time of writing still at the policy development stage within the Ministry of Justice. The legislation will create an offence of trafficking in persons in accordance with Article 5 of the Protocol. The maximum penalty is likely to be more than ten years imprisonment. It is estimated that a bill will be drafted later this year and should come into force in 2002 at which time New Zealand will ratify UNCTOC and the Protocol.

(v) Legislation to Comply with the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Legislation to comply with this document is also at the policy stage. Due to existing enactments New Zealand already largely complies with the requirement to criminalize the sale of children and child prostitution and pornography. Legislative changes needed to provide extra-territorial jurisdiction for offences are likely to be completed during 2002.

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Conclusion:

The past few years have seen real steps taken in the Asia-Pacific region to increase awareness and co-operation in the fight against trafficking of women and children. In particular the initiatives taken by the governments of Australia and the Philippines to, respectively, legislate against and promote regional strategies to combat this practice are commendable.

While the New Zealand experience seems to be that the problem is decreasing in the light of Immigration changes, Police tactics and publicity; it is hoped that the government follows the Australian example of enacting significant penalties to punish and deter the individuals and organisations that commit these crimes.

In addition to legislative efforts, more energies need to be brought to bear in the region as a whole to improve the position of women and children in poorer countries to prevent prostitution and sweatshop labour being a seemingly attractive escape from poverty and to educate and publicise the illegality of trafficking to assist those seeking to escape from exploitation.

****I gratefully acknowledge the research assistance of Annabel Ives B.A. M.Sc. LLB,
Barrister and Solicitor of the High Court of New Zealand. - mjd***

