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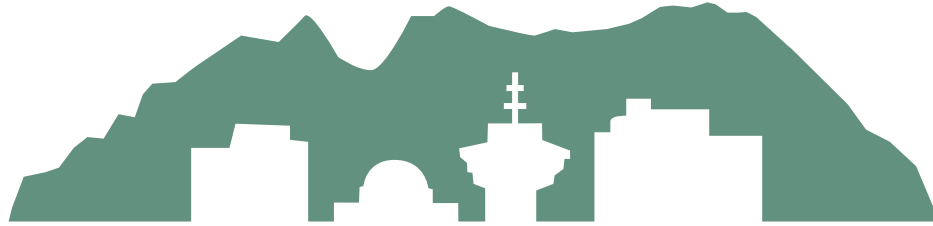
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Centre of Excellence for Research on Immigration and Diversity

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Trafficking in Persons & Transit Countries:

***A Canada-U.S. Case Study in Global
Perspective***

Benjamin Perrin

Series editor: Linda Sheldon, SFU;
Krishna Pendakur, SFU and Daniel Hiebert, UBC, Co-directors

Metropolis British Columbia

Centre of Excellence for Research on Immigration and Diversity

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	6
1.0 INTRODUCTION	8
2.0 CHARACTERISTICS OF TRANSIT COUNTRIES	13
3.0 TRAFFICKING IN PERSONS VS. MIGRANT SMUGGLING IN TRANSIT SCENARIOS	20
4.0 CASE STUDY: CANADA AS A TRANSIT COUNTRY TO THE UNITED STATES	24
• 4.1 Government and Law Enforcement Reports	26
• 4.2 Trends in Major Transit Cases	30
• 4.3 Origin Region: South Korea	32
• 4.4 Origin Region: Southeast Asia	36
• 4.5 Origin Region: China	38
• 4.6 Origin Region: South and Central America	41
• 4.7 Canada’s Response to Transit Trafficking to Date	43
• 4.8 U.S. Visa Policy and Transit Trafficking	46
5.0 LEGAL OBLIGATIONS OF TRANSIT COUNTRIES	48
• 5.1 Transit Countries Preventing Trafficking in Persons	50
• 5.2 Transit Countries Protecting Trafficked Persons	51
• 5.3 Transit Countries Prosecuting Traffickers	53
• 5.4 Managing the Trafficking/Smuggling Distinction	53
6.0 ENGAGING TRANSIT COUNTRIES IN A COMPREHENSIVE APPROACH	56
• 6.1 Cooperation between Origin and Transit Countries	58
• 6.2 Cooperation between Transit and Destination Countries	59
• 6.3 Protection and Assistance for Suspected Trafficked Persons in Transit	61
• 6.4 Unaccompanied Minors and Suspected Child Trafficking	62
• 6.5 Border Controls and Identification of Trafficked Persons in Transit	64
7.0 CONCLUSION & RECOMMENDATIONS	66
BIBLIOGRAPHY	72
APPENDIX A: GLOBAL TRANSIT POINTS FOR TRAFFICKING IN PERSONS	88
APPENDIX B: SUMMARY OF MAJOR REPORTED TRANSIT CASES (CANADA/ UNITED STATES.)	90
APPENDIX C: CANADIAN LEGISLATION PROHIBITING TRAFFICKING IN PERSONS	106
APPENDIX D: U.S. VISA WAIVER PROGRAM & TIP REPORT TIER RANKINGS	108
APPENDIX E: BIOGRAPHY	109

ACRONYMS

CBCF	CANADA-UNITED STATES CROSS-BORDER CRIME FORUM
CBSA	CANADA BORDER SERVICES AGENCY
CIC	CITIZENSHIP AND IMMIGRATION CANADA
CISC	CRIMINAL INTELLIGENCE SERVICE CANADA
DHS	UNITED STATES DEPARTMENT OF HOMELAND SECURITY
HHS	UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
HSTC	HUMAN SMUGGLING AND TRAFFICKING CENTER (UNITED STATES)
HTNCC	HUMAN TRAFFICKING NATIONAL COORDINATION CENTRE (CANADA)
IBETs	INTEGRATED BORDER ENFORCEMENT TEAMS
IBITs	INTEGRATED BORDER INTELLIGENCE TEAMS
ICE	UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
ICITAP	INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING AND ASSISTANCE PROGRAM
IRPA	IMMIGRATION AND REFUGEE PROTECTION ACT (CANADA)
IWGTIP	INTERDEPARTMENTAL WORKING GROUP ON TRAFFICKING IN PERSONS (CANADA)
RCMP	ROYAL CANADIAN MOUNTED POLICE
SBA	CANADA-UNITED STATES ACCORD ON OUR SHARED BORDER
SPP	SECURITY AND PROSPERITY PARTNERSHIP
TIP	TRAFFICKING IN PERSONS
TVPA	TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (UNITED STATES)
TVPRA	TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT (UNITED STATES)
VWP	VISA WAIVER PROGRAM (UNITED STATES)



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TRAFFICKING IN PERSONS & TRANSIT COUNTRIES: A CANADA-U.S. CASE STUDY IN GLOBAL PERSPECTIVE

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Key internationally relevant findings in this working paper are being published as: "Just passing through? International legal obligations and policies of transit countries in combating trafficking in persons" in *European Journal of Criminology* 7(1): 11-27.

EXECUTIVE SUMMARY

International trafficking in persons is often facilitated by the movement of victims through one or more transit countries in order to reach a destination country where the victim will ultimately be subjected to sexual exploitation or forced labour. Despite this recognized pattern, there has been a relative lack of attention paid to the response of transit countries in addressing their role in this transnational criminal activity and systematic human rights abuse.

This working paper begins by identifying several characteristics common to transit countries, including: (1) geographic proximity by land, sea, or air to attractive destination countries; (2) insufficient legislation and weak enforcement against trafficking in persons and migrant smuggling; (3) liberal immigration policies; and (4) an operational criminal infrastructure to facilitate illegal entry to, and exit from, a country. The case study of Canada as a transit country to the United States is presented, both to better understand the nature of the problem between these two jurisdictions and to explore the responses that officials have provided to date.

Transit countries face heightened challenges compared to origin and destination countries, particularly with respect to distinguishing between trafficked persons and smuggled migrants. By synthesizing the legal obligations in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* into terms that are relevant to transit countries, a comprehensive set of standards emerge to enhance their ability to prevent trafficking, prosecute traffickers and protect victims. Policies and programs that have been adopted by some transit countries are then highlighted, demonstrating

how these standards can be implemented to engage transit countries in a more comprehensive response to trafficking in persons.

While Canada and the United States have undertaken important bilateral efforts to combat trafficking in persons, the following recommendations are proposed to improve their joint response, including:

1. Increase training and capacity of border officials to identify potential trafficking victims in transit;
2. Continue to cooperate in joint enforcement activities to disrupt illegal movement across the shared border;
3. Enhance mutual legal assistance and engage in cross-border human trafficking investigations and prosecutions to dismantle the entire network involved in identified cases;
4. Ensure victims of human trafficking in transit are afforded assistance and protection, including support made increasingly available through enhanced cross-border cooperation between governmental and non-governmental victim support organizations;
5. Build public awareness in border areas about human trafficking, the needs of victims, and information on where to report suspicious activity; and
6. Cooperate with major source countries as well as enhance trilateral cooperation between Canada, the United States, and Mexico to prevent human trafficking.

1.0 INTRODUCTION



International trafficking in persons is a serious transnational crime and human rights violation that is often facilitated by the movement of victims through one or more transit countries to a destination country, where they will be subject to exploitation. However, there has been a general lack of attention paid to the obligations and good practices of transit countries in addressing trafficking in persons.

Of the 154 jurisdictions ranked in the U.S. Department of State *Trafficking in Persons Report 2008*, two-thirds (103 jurisdictions) were identified as being involved as transit points for trafficking in persons (U.S. Department of State 2008a; see Appendix A). The United Nations Office on Drugs and Crime (UNODC 2006) also identified 98 jurisdictions as transit countries for traf-

ficking in persons, with Albania, Bulgaria, Hungary, Poland, Italy, and Thailand ranking “very high” as transit countries. Fourteen jurisdictions ranked “high” as transit countries: Bosnia and Herzegovina, Czech Republic, Kosovo, the former Yugoslav Republic of Macedonia, Romania, Serbia and Montenegro, Slovakia, Ukraine, Myanmar, Turkey, Belgium, France, Germany, and Greece. While the U.S. Department of State routinely ranks jurisdictions on their overall efforts to combat trafficking in persons, there has been little reference to specific obligations or good practices required of transit countries to effectively combat trafficking in persons. In fact, it made only one transit-specific recommendation in the *2008 TIP report*, encouraging Croatia to “continue efforts to enhance proactive identification of women in prostitution and of migrants who transit the country” (U.S. Department of State 2008a, 101). International bodies, such as the International Organization for Migration (IOM), have similarly offered only limited guidance for transit countries on performance indicators for counter-trafficking projects (IOM 2008a).

Over the last decade, Canada has been consistently characterized as a transit country to the United States in international and national reports. However, there has been very little discussion of the nature and extent of this problem. In 2004, the RCMP Criminal Intelligence Directorate estimated that 800 individuals are trafficked into Canada every year, 600 of whom are subject to sexual exploitation. A further 1,500 to 2,200 persons are believed to be trafficked through Canada annually into the United States (LPRB 2006). However, beyond these broad estimates, which are no longer cited by the RCMP, the phenomenon remains poorly understood. This paper examines Canada’s role as a transit country for trafficking in persons to the United States, specifically to explore the nature of the problem and efficacy of efforts that have been adopted to confront it.

This working paper examines the role of transit countries in international trafficking in persons and seeks to identify legal and policy approaches to improve the abilities of these transit countries to confront this problem. This paper is part of a larger research project investigating Canada's involvement in human trafficking, which commenced in September 2007 and concluded in December 2009. The focus is primarily on human trafficking cases and responses involving Canada since 2000, when Canada signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Supplementing the United Nations Convention Against Transnational Organized Crime* (or "Trafficking in Persons Protocol"). Several cases between 1996 and 2000 were also included to provide further context and facilitate a consideration of longer-term trends. A literature review was conducted as well as a detailed review of other open source data, including decisions of courts and tribunals in cases involving the criminal prosecution of alleged human traffickers or proceedings related to victims; reports by international governments, governmental organizations, and non-governmental organizations; and media accounts. This data was examined to identify potential cases, issues, and trends in the specific case study of Canada as a transit country to the United States for both sex trafficking and forced labour trafficking. Appendix B summarizes the main cases that were analyzed for this working paper and identifies a scale that was used to assess the strength of indicators that the case likely involved human trafficking versus migrant smuggling alone.

Interviews with key informants were also conducted between May 2008 and July 2009, in accordance with protocols and procedures approved by the University of British Columbia's Behavioural Research Ethics Board (certificate of approval H08-00332) as part of the broader study on Canada's role as a destination, source, and transit country. While these interview subjects pro-

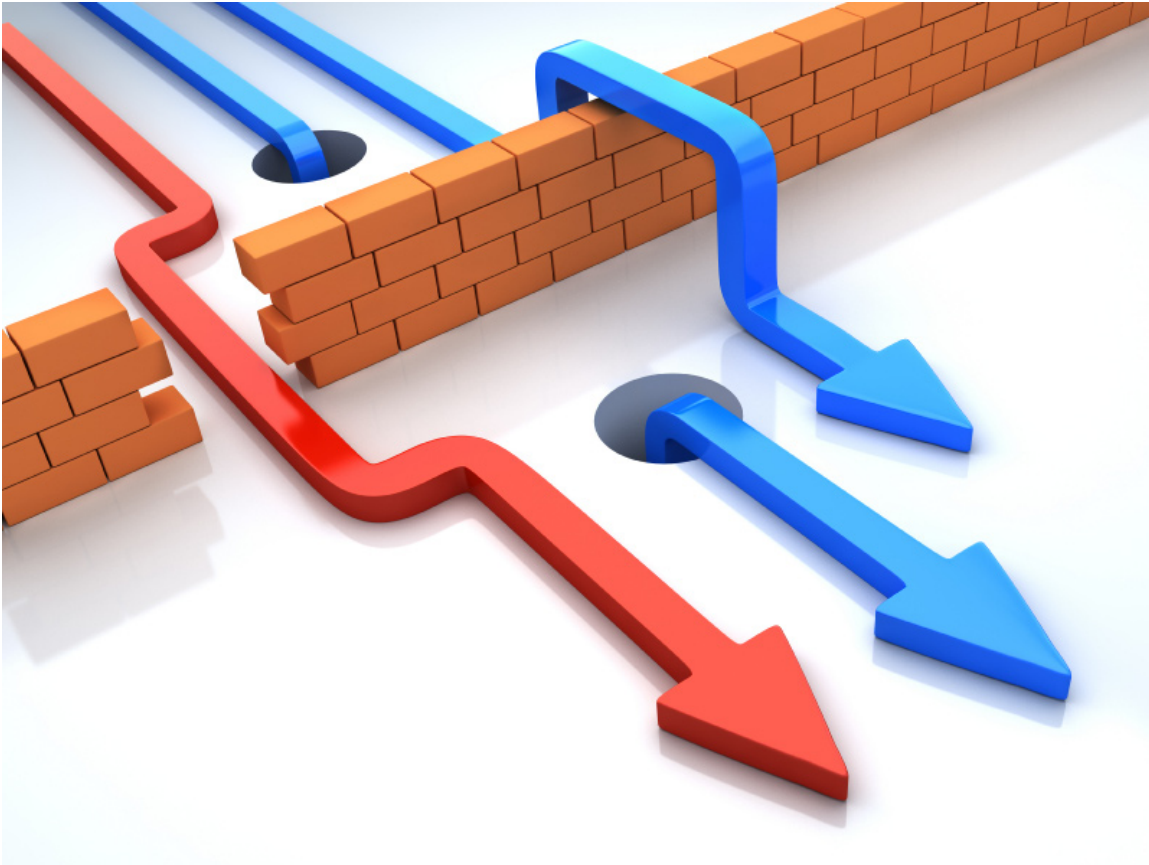
vided extensive information on cases where Canada was a destination and source country for human trafficking, very few were willing to discuss cases involving Canada as a transit country due to concerns related to national security. As a result, interview data is not relied upon in this working paper for case information but informed the author's broader views of the subject. The national security issues raised by transit trafficking and smuggling represent an impediment to more thorough research into this area. Nevertheless, the open source information obtained offers a more complete picture than presently exists to understand the problem of Canada as a transit country for human trafficking to the United States.

In addition to qualitative empirical analysis of occurrences of suspected human trafficking cases, legal research was conducted into relevant international treaties to identify the obligations of transit countries to address human trafficking. These base-line obligations were supplemented with a review of promising practices employed by transit countries to satisfy, and in some cases, exceed these commitments.

In terms of the structure of this working paper, Part 2 begins with identifying factors that may contribute towards a given jurisdiction becoming a transit country for trafficking in persons. Part 3 explores the significant challenge of differentiating between international trafficking in persons and migrant smuggling at the transit stage. Part 4 provides an analysis of Canada and the United States as an example of a transit trafficking scenario to more fully explore the extent of this problem within a particular geographic context. Part 5 analyzes international legal instruments related to trafficking in persons and migrant smuggling to provide a framework of relevant obligations for transit countries. While these treaties establish a baseline for appropriate conduct of transit countries, complex policy issues arise in attempting to formu-

late a transit point strategy to combat international trafficking in persons. Part 6 provides the results of a literature review of policies and programs that have been adopted by transit countries to engage in a comprehensive approach to combat trafficking in persons. Through this analysis, a clearer understanding of the roles and responsibilities of transit countries emerges, allowing us to evaluate their progress and encourage greater efforts to combat trafficking in persons by these jurisdictions. Finally, Part 7 concludes with recommendations for transit countries generally and for Canada and the United States more specifically.

2.0 CHARACTERISTICS OF TRANSIT COUNTRIES



Transit-migration has been defined by the IOM as “migratory movements to one or more countries with the intention to migrate to yet another country of final destination” (Siron and Van Baeveghem 1999, 5). Transit-migrants may enter a transit country (a) on their own initiative (legally or illegally); (b) with the assistance of a smuggler who they have agreed will facilitate their movement and then terminate the relationship on arrival in the destination country; or (c) with the assistance of a trafficker, or their associates, who intend to exploit the individual in the destination country. In the case of international trafficking in persons, the individual being moved may or may not be aware of the final destination. Likewise, the individual who is facilitating movement through a transit country may or may not know that the ultimate

purpose of the movement is exploitation at the final destination. Victims may enter transit and destination countries either legally or illegally.

Nathalie Siron and Piet Van Baeveghem completed one of the earlier international studies on the phenomenon of transit countries for trafficking in persons (1999, 39–40). They identified four basic transit scenarios, from the perspective of the national laws of the transit country and destination country:

- Fully-legal: enters and leaves the transit country legally, by following the regulations in the transit country;
- Semi-legal (type 1): enters the transit country legally, but travels further to the destination country in an illegal way;
- Semi-legal (type 2): enters the transit country illegally, but travels further to the destination country in a legal way; and
- Fully illegal: enters and leaves the transit country illegally.

This legal typology is notable because it recognizes that trafficking in persons may be facilitated by both legal and illegal entry, whereas migrant smuggling requires illegal entry as one of its essential elements. The main reason traffickers resort to one of these transit scenarios is because the transit countries provide a relative advantage in routing victims to the destination country. As Trevor Pearce of the United Kingdom National Criminal Intelligence Department recognized, “organized criminals will try to push people over any border that is easiest for them to cross” (Nikolić-Ristanović et al. 2004, 161). Although trends may be identified, routes used to move international victims of trafficking in persons are regularly changed to avoid detection (United States–Canada 2006).

During the last decade, several regional and local studies have been completed on transit countries for international trafficking in persons. Taken together, they provide a set of characteristics that begin to explain why a trafficker may choose to move their victims through a transit country, or multiple transit countries, in order to reach the destination country rather than simply transporting the victims directly from their country of origin to the destination country. These characteristics of transit countries may be summarized as follows: (1) geographic proximity by land, sea, or air to attractive destination countries; (2) insufficient legislation and weak enforcement to deal with trafficking in persons and migrant smuggling; (3) liberal immigration policies; and (4) an operational criminal infrastructure to facilitate illegal entry to, and exit from, a country.

First, geography plays an important role in a country becoming a transit point for trafficking in persons. Transit countries are frequently in close proximity by way of land, sea, and air to countries that are attractive destinations for traffickers to exploit victims. The destination country is viewed as a greater source of potential profit from the exploitation of victims, in comparison to the transit country (Nikolić-Ristanović et al. 2004, 61n8). Large stretches of uncontrolled land or water boundaries with the destination country and other attractive geographic features may encourage traffickers to take advantage of a given transit country.

For example, Derluyn and Broekaert attributed Belgium's use as a principal transit zone for trafficking into the United Kingdom to the important sea connection that Belgium provided for Continental Europe to the UK (2005, 34). Likewise, Içduygu found that Turkey became a transit zone for migrants destined for western and northern countries owing to its central location between South and North, and East and West (2004, 90). In an earlier study, Içduygu

and Toktas found that many migrants considered Turkey a transit area because it was en route from the Middle East, Asia, and Africa to Western developed countries (2002, 31). However, the transit status of Turkey that Içduygu referred to was specific to migrant smuggling since, according to Içduygu, no overt link to transit-trafficking through Turkey had been discovered (2004, 91). Narli agreed that geography had preconditioned Turkey's transformation into a transit zone since the early 1980s, given its porous borders to the East and proximity to Western Europe (2002, 152, 167). Geographic location also explained Serbia's transformation into a transit centre for Eastern European citizens en route to Western Europe (Nikolić-Ristanović 2004, 40). In terms of geographic linkages by air travel, Mattar found that the numerous flight connections with many destinations available in Almaty made Kazakhstan a popular Central Asian transit point in trafficking between southern Asian regions and the West (2005, 151). Inexpensive airfares to Eastern Europe from Asia and Africa have also been found to encourage transit through these countries (Twomey 2000, 11).

Second, the existence of insufficient legislation and relatively weak enforcement practices to detect trafficking in persons and migrant smuggling may contribute to a country becoming an attractive transit route. With respect to trafficked persons, Clark argued that weak (or non-existent) legislative protection measures for trafficked persons, especially women, allow traffickers to continue to operate unchallenged because victims fear seeking help from law enforcement authorities (2003, 253). With respect to perpetrators, Schloenhardt hypothesized that the absence of legislation criminalizing the transportation of illegal migrants enhances the likelihood of a country being used as a transit point (2001, 724).

In addition to insufficient legislation, relative differences between the enforcement capabilities of given jurisdictions to detect illegal entry may make one jurisdiction more attractive than another as a transit country. Martin and Straubhaar's comparison of the stringency of controls at the Hungarian-Romanian border crossing of Nagylak-Nadlac illustrates this point (Martin and Straubhaar 2002, 82). At the time, while Hungary had obtained European Union (EU) support for digital passport readability and enhanced surveillance technology, including heat-detection devices to scan vehicles, Romania had no such technology. Illegal migrants from the Middle East and Asia were found transiting through Romania to reach Western Europe.

On the other hand, an example of strong legislative measures and rigorous enforcement in preventing a transit point from developing is demonstrated in the North American context. While Cuba is a geographically ideal transit point for the Caribbean and Latin America to the United States, perceived stringent controls over illegal migration from Cuba to the United States have likely prevented it from serving such a function (Brown 2003, 280).

Research has also found that isolated legal action in one jurisdiction to address trafficking in persons and migrant smuggling may result in the shifting of routes utilized. For example, Siron and Van Baeveghem's study of Poland, which at the time was an EU candidate and a recognized transit point for human smuggling and trafficking, found that the stringent 1997 *Act on Aliens* decreased transit trafficking through Poland (1999, 24). However, Twomey found that the transit movement did not completely disappear; rather, it shifted in part to the Czech Republic (2000, 12). This suggests that to effectively address illegal migration, coordination of the legal response is necessary.

Third, relatively liberal immigration policies make it easier for traffickers to transport victims through a country (Kandathil 2005–06, 93). In the EU, the establishment of the Schengen Agreement that was intended to ease legal movement between EU Member States has reportedly facilitated illegal movement from transit to destination countries (Lindo 2006, 138–39; Amiel 2006, 11). High volumes of legitimate commercial and traveler movement across an international border may be exploited by traffickers and smugglers (United States–Canada 2006, 9–10). The lack of a visa requirement for entry into a transit country is considered to be a particular “pull factor” (Wieschhoff 2001, 42). For example, for almost a decade Canada was identified as a transit country for women from South Korea who were being subjected to sexual exploitation in the United States (U.S. Department of State 2008a). While South Korean nationals did not require a visa to enter Canada, they did to enter the United States. Cases in which South Korean women entered Canada visa-free and were then smuggled across the land border with the United States were identified by border officials (see further discussion below in Section 4.0) (United States–Canada 2006, 21). As of January 12, 2009, citizens of South Korea no longer require a visa to enter the United States but must register their intention to travel in advance through the online Electronic System for Travel Authorization and have a “tamper-proof” biometric passport (The White House 2008). It remains to be seen what effect this harmonization of policy will have on Canada’s use as a transit country to the United States for trafficked persons from South Korea.

Finally, an operational criminal infrastructure to facilitate entry into, and exit from, a country will encourage its use as a transit point for human trafficking and migrant smuggling. The ability to provide official-looking fraudulent identity documents is a “growing industry” used by international traffickers

(United States–Canada 2006, 4–5). For example, readily available fraudulent passports in Kyrgyzstan encouraged the illegal transit of individuals from Uzbekistan and Tajikistan through Kyrgyzstan (Kelly 2005, 49). In some instances, criminal groups in the transit country have ethnic affiliations with origin countries. For example, Nikolić-Ristanović et al. found that Chinese criminal groups in Hungary were facilitating the illegal entry of Chinese nationals who were destined for Western European countries (2004, 162). Terrorist groups have also utilized the services of human smugglers to facilitate clandestine terrorist travel, such as “Ansar al-Islam, an al Qaeda–affiliated group linked to the [Madrid terror] attack, [which] has been running a human smuggling and document fraud operation to fund terrorist actions as well as to smuggle its own members into countries like Spain and Iraq” (IOM 2008b).

3.0 TRAFFICKING IN PERSONS VS. MIGRANT SMUGGLING IN TRANSIT SCENARIOS



Transit countries face unique challenges in combating international trafficking in persons because they are situated in the middle of the trafficking chain. One of the most significant difficulties is distinguishing between trafficked persons and smuggled migrants in individual transit cases. Clarifying this distinction is important because trafficking and smuggling cases give rise to different international legal obligations. For example, in transit countries, trafficked persons mistaken for smuggled migrants may be deported and denied protection; this deportation exposes them to the risk of being re-trafficked and essentially enables governments to shun their duties to trafficked individuals (Nagle 2008, 135–36).

While legally and theoretically the distinctions between trafficking and smuggling are precise, complexities arise when transit countries are required

to assess individuals who are being illegally moved across the border but have not yet been subject to exploitation. Trafficking in persons is primarily about the exploitation of an individual. While trafficking may be facilitated by legal or illegal movement of an individual across an international border, movement of any kind is not a required element. Conversely, migrant smuggling always involves illegal entry, defined as “crossing borders without complying with the necessary requirements for legal entry into the receiving State” in the *Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime* (or “*Migrant Smuggling Protocol*”). Therefore, wherever illegal movement of an individual is detected, further inquiry is needed to ascertain whether the individual is being smuggled or trafficked.

An exploitative purpose is the key distinguishing factor in the international legal definition of trafficking versus smuggling, usually to occur in the destination country. Article 3(a) of the *Trafficking in Persons Protocol* defines exploitation 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.” With migrant smuggling, the purpose is to obtain a financial or other material benefit from procuring illegal entry itself. In other words, “[s]mugglers generate profit from fees to move people,” whereas “[t]raffickers acquire additional profits through the exploitation of victims” (UNODC 2008, 5).

In detecting trafficking, as opposed to smuggling, the United Nations Office of the High Commissioner for Human Rights (OHCHR) states that a critical factor is “the presence of force, coercion and/or deception” (OHCHR 2002, Guideline 2). However, while in transit, a trafficked person may be actively and willingly seeking to travel to the destination country but unaware

that their ultimate fate is to be subject to exploitation—deception is likely to be exceedingly difficult to detect while in transit. In addition to the transported individual being unaware of their own impending exploitation, the individuals facilitating such transportation may intentionally be kept from knowing the ultimate aim in the destination country as well. That is, these facilitators may be “mules” hired by the individual who will be exploiting the migrant at the destination. In general, where there is no evidence of the likelihood of future exploitation, the individual will simply be categorized as being smuggled (United States–Canada 2006, 7). Though not all smuggled migrants are destined for exploitation as trafficked persons, this approach runs the very real risk of under-reporting trafficking-in-persons cases and heightens the risk of re-trafficking.

Due to these inherent informational deficiencies at the transit stage, the precise distinctions between trafficking in persons and migrant smuggling that are frequently cited to assist destination countries in identifying trafficked persons at this stage are often ambiguous and unhelpful. To begin to address these limitations, certain indicators may be used to flag individuals as being at high risk of exploitation at their final destination and should be investigated more fully as potential cases of international trafficking in persons. For example, outstanding debt owed by the individuals can be a cause for concern but may not be determinative of their status as a victim. The U.S. Human Smuggling and Trafficking Center describes the complexity of assessing such debt obligations:

[P]ersons being smuggled may sometimes willingly enter into “contracts” with the smugglers to work off a smuggling debt. Unless the aliens’ labor or services are enforced through the forms of coercion set forth in the trafficking statutes, such deferred repayment does not make these people trafficking victims. However, a work-based debt can be an “indicator” of traf-

ficking, and such a situation could trigger further examination to determine whether the aliens are victims of trafficking or extortion. (HSTC 2006, 2)

Due to the difficulties of accurately assessing individuals who enter a transit country illegally, it is important to consider the legal obligations of transit countries related to both trafficking in persons and migrant smuggling. Indeed, a 2008 study published by the IOM found that

most UN member states have also come to recognize that they could not collectively combat human trafficking in which individuals are coerced into forced prostitution and forced labour, if they did not also address human smuggling in which individuals simply pay smugglers to illegally cross international borders. (IOM 2008b, 118)

4.0 CASE STUDY: CANADA AS A TRANSIT COUNTRY TO THE UNITED STATES



Canada's role as a transit country for human trafficking has been noted by various government agencies and media outlets over the last decade. Despite this general observation, however, case-based data to elaborate on this trend has not been provided in the literature.

This section discusses government and law enforcement agencies' recognition of the Canada-U.S. transit trafficking problem, followed by identification of trends derived from thirty-five cases, each involving multiple victims, between 1996 and 2009. The data is then used to explore the primary source regions in order to identify trends among cases with victims from each origin region. A summary of individual cases can be found in Appendix B.

Asia remains the most common source region of victims transited through Canada to the United States. South Korea has been the most common source country since 2001, with 1,336 potential South Korean victims transited through Canada to the United States since 1996. China was the most significant source country from 1996 to 2001, with up to 4,200 potential trafficking victims transited through to the United States during that period. These findings are consistent with U.S. government TIP reports indicating a prevalence of Asian victims in transit trafficking from 2001 to 2003 and then emphasizing South Koreans being transited via Canada to the United States in 2004. However, these reports do not provide a methodology for their estimates on the number of victims (United States–Canada, 7).

Victims are mostly women who are destined for sexual exploitation. Though victim ages can vary greatly, the majority are in their twenties or thirties. In all cases where ethnic identity of victims and perpetrators was available, common ethnicity was observed between at least one of the perpetrators and their victims.

Destinations in the United States typically include major urban areas in all parts of the country, with the most common cities being Los Angeles, New York, and San Francisco. Other less common destinations include Denver, Minneapolis, Philadelphia, Dallas, Houston, Detroit, and Seattle. In contrast, the Canada-U.S. Bi-national Assessment on Trafficking in Persons only mentions Los Angeles and New York, while further noting that other urban centres may also be destinations (United States–Canada 2006, 7).

Tactics employed by traffickers include coaching victims to act as tourists, using safe-houses and independent smugglers, using false documents, and confiscating personal identification or travel documents. High smuggling debts

or fees are a common feature in the majority of cases. Violence is rarely seen during transit but may occur at the outset or destination.

An increase in smuggling across rural areas has also been observed. First Nations reservations at or near the border that were previously used for the smuggling of goods have also been used to smuggle people. Though the use of remote areas is noted in the Bi-national Assessment, no mention of an increase in such use is made (United States–Canada 2006, 7).

4.1 *Government and Law Enforcement Reports*

The issue of Canada as a transit country for trafficking in persons to the United States appears to have first surfaced in the late 1990s. Analyst Amy O'Neill of the U.S. State Department issued an intelligence report in 2000 identifying several specific trends of the phenomenon:

Traffickers also transit Canada en route to the United States. Organized smuggling rings have capitalized on Canada's visa waiver for Koreans to bring Korean women through Canada to the U.S. where they enter without inspection. Asian traffickers may also use alien smuggling routes to bring their victims into the U.S. . . . Other traffickers have flown into Toronto and Vancouver and transported the women overland into the U.S. Toronto is a popular transit point with the Russians as there are well over 150,000 Russians living there (CIA 2000, 9, 11).¹

Subsequent to the O'Neill report, every *Trafficking in Persons Report* published by the U.S. State Department between 2001 and 2009 has highlighted Canada's role as a transit country for trafficking in persons to the United States. The *TIP Reports* from 2001 to 2003 noted the main sources of victims transiting through Canada as China, South Korea, Southeast Asia, and

¹ Intelligence sources cited: Cable from the American Embassy in Seoul, 001173, February 23, 1999; Interview with INS, Bangkok, Thailand, February 1999; Interview with the Director of Operation Odessa, May 1999.

Eastern Europe (U.S. Department of State 2001, 2002, 2003).² In 2004, the emphasis shifted to South Korea with no mention of other source countries or regions, a focus that has remained in each subsequent report up to 2009 (U.S. Department of State 2004, 2005, 2006, 2007, 2008).

Similar to the O'Neill report, the 2004 to 2006 *TIP reports* mention that Canada's visa waiver for South Koreans may be facilitating their entry into the United States (U.S. Department of State 2004, 2005, 2006). The United States has since added South Korea to its own Visa Waiver Program (VWP). As of January 2009, pre-approval via the Electronic System for Travel Authorization (ESTA) is required for VWP users.

Canada's role as a transit country into the United States has also been confirmed by its own law enforcement and criminal intelligence agencies. The latest public assessment by Canadian authorities of human smuggling and trafficking activity across the Canada-U.S. border was provided by the Criminal Intelligence Service Canada (CISC) in 2008 as part of the organization's annual *Report on organized crime*:

Most human smuggling activity takes place at border crossings in B.C. and Quebec, and to a lesser extent, Ontario. Despite activity in both north- and south-bound directions, there is a significant increase in illegal north-bound migration from the U.S. into Canada. A small number of organized crime groups, mostly based in B.C. and Quebec, are involved in the facilitation of international TIP. (CISC 2008, 30)

Despite repeated concerns about Canada's role as a transit country for foreign victims, the problem was noticeably absent in the most recent Parliamentary Committee report on trafficking in persons, released in February 2007 by the

² Canada was downgraded to Tier 2 in the 2003 TIP Report.

Standing Committee on the Status of Women (HOC 2007). The report instead focused on Canada's role as an origin and destination for trafficking victims.

In 2006, officials from Canada and the United States jointly presented the Bi-national Assessment of Trafficking in Persons at the U.S.-Canada Cross Border Crime Forum (CBCF). The aim was to identify key cross-border aspects of the problem and improve upon a coordinated response (United States-Canada 2006, 2). Concerns about Canada's role as a transit country for trafficking in persons to the United States were mentioned throughout the report:

. . . there have been several cases of interceptions of small groups crossing into the United States from sites in B.C., Alberta, Quebec and Ontario. It is often difficult to establish whether these people are smuggled migrants or victims of trafficking.

Foreign victims transiting Canada are often bound for final destinations in the United States. In particular, Asians brought illegally to Canada's west coast have moved on to New York, Los Angeles and other U.S. urban centers to work in illegal brothels, sweatshops or as part of a criminal network.

(CISC 2008, 10)

The Bi-national Assessment outlines that traffickers can be members of organized crime, small independent groups, and lone individuals. It adds that perpetrators are often of the same nationality as the victims and that former victims appear to be increasingly involved in trafficking themselves. The Bi-national Assessment further notes that transit victims are typically from Asia and in particular from South Korea (United States-Canada 2006, 10).

In addition, the Bi-national Assessment discusses various tactics employed by traffickers. These include the creation and use of fraudulent documents, the varying of routes, and the utilization of different methods to cross the border,

including the use of legitimate entry points by air or land, or crossing via remote areas to avoid detection. Additional tactics highlighted were the use of safe-houses, the hiding of victims in vehicles, and the coaching of potential victims on how to answer questions of border agents (United States–Canada 2006, 10).

The Bi-national Assessment notes several impediments to proper anti-trafficking enforcement efforts during transit. It cites indeterminable exploitation during the transit process, at which point the victims may believe that their traffickers are actually assisting them, and the larger related confusion between smuggling and trafficking as the main obstacles faced.

According to the Bi-national Assessment, trafficking often involves an element of smuggling. Smuggling debts can be an indicator of trafficking but are not determinative on their own. These debts or fees vary from C\$800 to C\$6000 to be smuggled into the United States from Canada, and from C\$30,000 to C\$60,000 to be smuggled from Asia into Canada. These figures match those found in the cases analyzed in this report.

Unfortunately, the Bi-national Assessment only provides detailed information on *one* specific case involving Canada as a transit country to the United States:

In June of 2006, the RCMP Okanagan IBET, together with the U.S. Border Patrol, intercepted 10 Korean nationals (8 females and 2 males) attempting to walk across the Canada-U.S. border near the city of Osoyoos. During their preliminary interviews, many of the female migrants advised that they had not yet paid to be transported into the U.S., but knew that there would be a debt they would have to pay once in their final destination. Some of the women believed they were going to work in jobs such as waitressing; however, other evidence indicated that they would likely have been forced into

providing sexual services at massage parlours in various major cities in the U.S. (United States–Canada 2006, 21)

The modest recommendations from the Bi-national Assessment for Canada and the United States were to:

- improve information sharing between both countries;
- undertake additional joint targeting initiatives; and
- continue working together to gain a better understanding of the cross-border problem.

(United States–Canada 2006, 23)

While both Canadian and American officials recognize transit trafficking as a problem in general terms, there has been very little specified analysis or information about the types of cases in which this has taken place, source countries, tactics employed by traffickers, and approaches Canada and the United States can take to improve their response to this problem.

4.2 Trends in Major Transit Cases

From 1997 to 2009, thirty-five cases of individuals transiting through Canada were identified in open source documents, containing indicators of known or potential exploitation at the destination. In addition, nine further cases have been collected where evidence is too slim to make any ultimate determination but where the possibility of trafficking exists.

The majority of cases after 2001 continue to involve South Korean nationals as potential victims, while earlier cases were dominated by Chinese nationals. Significant numbers of individuals were also identified as coming from India and Pakistan, followed by Southeast Asia. Only a few potential transit victims came from Europe or South America. Finally, repeated attempts by

one group to smuggle a small number of Guyanese migrants into the United States through Canada were also reported.

Where known, border crossings are most often via BC, followed by Ontario and Quebec; a small number have occurred via New Brunswick and Alberta. Destinations in the United States have most often been New York, Los Angeles, and San Francisco. Other notable destinations have included major cities such as Denver, Minneapolis, Philadelphia, Dallas, Houston, Detroit, and Seattle. Though large urban areas dominate, more rural communities have also been destinations for human trafficking victims.

In all the cases where the ethnicity of victims and perpetrator was identified, at least one perpetrator shared the same ethnicity as the victims. This is in line with the findings of the Bi-national Assessment (United States–Canada 2006, 23). Perpetrators range in age from their twenties to seventies and include both males and females. In some cases, former victims became perpetrators themselves—their roles were primarily as managers and operators of brothels, again in line with the findings of the Bi-national Assessment.

Unless discovered at the destination, probable transit cases are usually prosecuted as smuggling cases. Transit cases prosecuted in Canada may require testimony from a U.S. expert on U.S. immigration law in order to give substance to a charge in Canada of conspiracy to violate U.S. immigration law (see *Byron Murray* case).

Cases discovered at the destination are more likely to contain evidence of a clear instance of trafficking but often provide very few details about the transit process itself and the role Canada played before the victims' entry into the United States.

Common characteristics of the collected transit cases include the prevalence of high debts or fees, the coaching of potential victims, the use of safe-houses and independent smugglers, the production or use of false documents, and the confiscation of travel documents or identification. Violence is rarely seen during transit but may occur at the destination.

The remainder of this section highlights the trends particular to transit cases from each of the four important source regions that have been discovered.

4.3 Origin Region: South Korea

(Based on these cases: Operation Relay, Byong Suk Kim, Yuen Ling Poon, Lisbon Falls, Jarvis and Park, Denver, Sum Bum Chang, Ricky Choi, Sang Yoon Kim, Gilded Cage, Jung Organization, Jeong Ho Kim, Kenny Suk, Northeast NY, Malcolm/Dallas, Jang Organization, Danville, and Junk Won Hwang)

Numbers

Six of the nineteen cases were identified as highly probable trafficking cases. These involved a least 242 suspected female victims. In addition, eleven cases were identified as probable trafficking, involving upwards of 1,094 suspected victims. In total, it was found that more than 1,336 potential South Korean trafficking victims may have transited through Canada since 1996.

Victim characteristics

Most victims identified have been women, with all victims in the highly probable cases being women. In the remaining cases, 119 potential victims were identified as female while only one was identified as male. The gender of the remaining 900 suspected victims was not disclosed. Out of all the suspected victims, only 2 were identified as minors (Morlin 2007). In general,

the age of the women has been described as being in their twenties and early thirties.

Mode of entry

Entry into Canada is most often via regular travel routes with the migrants posing as tourists (*Operation Relay, Osoyoos, BC, Jang Organization*).³ Koreans are exempt from normal visa requirements, making legal entry into Canada relatively simple. Where entry from Canada following initial entry into the United States was known, it was typically via remote border crossings on foot or by vehicle (*Byong Suk Kim, Lisbon Falls, Ricky Choi, Sang Yoon Kim, Jeong Ho Kim, Kenny Suk, Osoyoos, Jang Organization, Danville*).⁴ Only one case involved the use of false documents to enter the United States (*Northeast NY*) (Goldstein 2006). Of the seven cases where the location of crossing was known, five cases involved migrants crossing or attempting to cross the BC border near western Washington (*Ricky Choi, Sang Yoon Kim, Jeong Ho Kim, Kenny Suk, Osoyoos, BC*),⁵ one case involved entry at the borders between Vermont or NY and Ontario or Quebec (*Northeast NY*), and finally, one case involved the Idaho-BC border (*Sang Yoon Kim*) (Russell 2005). A recent study by Timothy C. Lim and Karam Yoo found that increased enforcement on the Canada-U.S. border resulted in more remote border regions being used by traffickers/smugglers as well as Mexico being used more frequently as a transit country for South Korean nationals illegally entering the United States as trafficking victims and/or smuggled migrants (Lim and Yoo, undated). This suggests the need for a coordinated response involving Canada, the United

³ See Bourette (2001), Bolan (2006), and Cherry (2007).

⁴ See Wiley (2006), Associated Press (2004), *U.S. Fed News* (2005a), Russell (2005), Bolan (2006), Cherry (2007), and Morlin (2007).

⁵ See *U.S. Fed News* (2005a), Russell (2005), Wiley (2006), and Bolan (2006).

States, and Mexico to ensure that increased localized enforcement in one region does not simply displace this criminal activity to another area.

Exploitation

Where the form of exploitation was known, all of the larger cases (twenty-plus potential victims) and all of the highly probable cases involved sexual exploitation in the form of prostitution (*Operation Relay, Sum Bum Chang, Ricky Choi, Gilded Cage, Jung Organization, Malcolm/Dallas, Northeast NY, Junk Won Hwang*).⁶ The prostitution occurred in brothels often posing as massage parlours, chiropractic clinics, or other “wellness service providers” (*Gilded Cage*) (Chea 2005).

Victims and authorities reported surveillance or control measures being used (*Denver, Sum Bum Chang, Gilded Cage, Malcolm/Dallas*),⁷ the confiscation of personal travel documents or identification (*Sum Bum Chang, Malcolm/Dallas, Northeast NY*),⁸ and threats made to the victim or their family (*Northeast NY*) (Vasquez 2006).

Only one case, *Operation Relay*, involved forced labour in restaurants and sweatshops (Bourette 2001). But even in this case, sexual exploitation occurred in addition to the forced labour.

Debt bondage

In most cases, the debts incurred by South Korean victims were in the tens of thousands of dollars. In the highly probable cases, debts ranged from \$12,000 (*Malcolm/Dallas*) (Meyer 2006) to \$40,000 (*Yuen Ling Poon*) (Wallace and Zamora 2004), whereas in the probable cases, the range was from \$1,500

⁶ See Bourette (2001), United States of America v. Sum Bum Chang (2007), U.S. Fed News (2005b), Chea (2005), Seper (2005), Meyer (2006), Neumeister (2006), and Carter (2008).

⁷ See Herdy (2005), United States of America v. Sum Bum Chang (2007), and Meyer (2006).

⁸ See *United States of America v. Sum Bum Chang* (2007), Meyer (2006), and Vasquez (2006).

(*Lisbon Falls*, Schweitzer 2004) to \$50,000 (*Operation Relay*) (Bradley 2001). In the *Lisbon Falls* case, 75 to 100 percent of fees paid for sexual services were retained by the brothel operators (Schweitzer 2004). In total, thirteen of the nineteen cases showed indications of some form of debt bondage.

Outcomes

Seven of the known cases have resulted in convictions. However, only two of these were for a human trafficking offence (*Sum Bum Chang, Northeast NY*),⁹ while the remainder were convictions subsequent to smuggling-related charges. *Sum Bum Chang* was sentenced to ten years in the eponymous case, while the sentence handed down in the *Northeast NY* was not available. The sentences for smuggling-related convictions in the five other cases were of four years or less.

Operation Relay, which involved an estimated 400 migrants resulted in a three-year sentence for Kamruddin Damani (*R. v. Damani* 2003) and a four-year sentence for Kyeong Hwan Min (*R. v. Min* 2005). The *Ricky Choi* case resulted in a three-year sentence for Choi, six months for his accomplice, Kong Sun Hernandez, and ninety days of probation for Tae Hyu Shin (U.S. Attorney's Office for District of Western Washington 2005). Choi was suspected of having overseen the movement of over 100 migrants. Junk Won Hwang was sentenced to two years in prison in a case involving more than 20 migrants (Carter 2008).

The details regarding what became of the victims were only described clearly in the *Malcolm/Dallas* case. In that case, 34 of 42 women were deported. It is not clear what happened to the remaining 8 (Carter 2008).

⁹ See *United States of America v. Sum Bum Chang* (2007), U.S. Attorney's Office (2007), and *U.S. v. Daneman* (2008).

4.4 *Origin Region: Southeast Asia*

(Based on five cases: Project Orphan, Thui Ly, Yuen Ling Poon, Keith Martin, and Kang/Seattle)

Numbers

The number of victims was not available in the one high probability case from this region, *Project Orphan*. Among the probable cases, the only numbers available specific to a single country were for potential victims from Malaysia in the *Yuen Ling Poon* case. The breakdown for each case follows.

The *Yuen Ling Poon* case involved 1 Malaysian woman, 4 South Koreans, 1 Chinese woman, and an undisclosed number from Thailand (Wallace 2004). The *Keith Martin* case involved 2 Malaysian women and 1 Chinese man (Harrison 2006). The last two cases had no country specific numbers. The *Thui Ly* case involved 27 victims from Malaysia, Thailand, China, and South Korea (Mintz 2001b). Finally, *Kang/Seattle* involved over 200 potential victims from Thailand, Malaysia, Singapore, Laos, Japan, Taiwan, China, and South Korea (Ho 2007). The proportion of victims from each individual country is unknown.

Victim Characterization

The only potential victims described in detail were those in the *Keith Martin* case. It involved three women, two aged nineteen and one aged seventeen (Harrison 2006). Characteristics of potential victims were not described in any of the other cases.

Mode of Entry

In the only high probability case, *Project Orphan*, the women entered Canada on tourist visas via Vancouver and Toronto. This was also the case

in *Thui Ly* (Mintz 2001b). Entry into the United States was not described in most cases except the *Keith Martin* case, where Martin attempted to cross the border into Maine (Harrison 2006). No details about the methods of entry were given in the remaining cases.

Exploitation

In cases where the form of exploitation was known, all involved prostitution (*Project Orphan, Yuen Ling Poon, Thui Ly, Kang/Seattle*).¹⁰ In addition, there was evidence of confinement or control used in the *Thui Ly* case (Mintz 2001a). No other details were available in the other cases.

Debt Bondage

Four of the five cases described debts as owed by victims. In three cases, debts or fees were stated to be \$40,000 (*Project Orphan, Yuen Ling Poon, Thui Ly*).¹¹ In the remaining case, *Kang/Seattle*, the amount was \$50,000 (*U.S. Fed News* 2006a). Such high amounts are suggestive of debt bondage.

Outcome

Project Orphan resulted in 750 charges being laid in Canada and the United States and 30 arrests (*San Jose [CA] Mercury News* 1997). However, information was not available regarding any resulting convictions. In the *Yuen Ling Poon* case, Poon was charged, but again, whether this resulted in any convictions is unknown (Wallace 2004). In the *Keith Martin* case, Martin was sentenced to six months in jail and two years of probation for his role in smuggling two women (Harrison 2006). In the *Thui Ly* case, 19 people were charged, but there were no details regarding any convictions (Mintz 2001a). Finally, in the *Kang/Seattle* case, 9 people were charged and 1 brothel operator was given

10 See Mowatt, Legon and Kaplan (1997a), Wallace (2004), Mintz (2001a), and Ho (2007).

11 See Mowatt, Legon, and Kaplan (1997a), Wallace (2001), and Mintz (2001a).

a prison sentence of two and a half years, while a brothel doorman received a sentence of one year (Ho 2007).

4.5 *Origin Region: China*

(Based on ten cases: Kang/Seattle, Over the Rainbow I & II, T.Z.U., Wei Zheng, Re G.J.C., Re P.E.F., Re P.G.L., Re T.H.K., and Xia Ling Zheng)

Numbers

In the two *Over the Rainbow* (OtR) cases, up to 4,200 potential victims were smuggled from 1994 to 1998. Authorities confirm 125 victims were smuggled in the first OtR case (Ibbitson 1996) and allege between 240 and 600 migrants were smuggled over a sixty-day period in the second, with estimates that up to 3,600 migrants were smuggled over two years (MacCharles 1998). No numbers were available for the remaining seven cases, but at least 1 potential victim was known to be involved in each case.

Victim characteristics

According to authorities, in both OtR cases the majority of victims were males from the Fujian province in China. The men targeted were usually young farm labourers. In *T.Z.U.*, the potential victims were female, ages fourteen to eighteen (*T.Z.U.* [Re] 2000). The ages of victims in the remaining cases are unknown, though two cases (*Re G.J.C. Xia Ling Zheng*)¹² involved female minors and three cases (*Re P.E.F., Re P.G.L., Re T.H.K.*)¹³ involved male minors. No age or sex was detailed in the *Wei Zheng* case (*Canada v. Zheng* 2001).

¹² See *G.J.C. (Re)* (2001) and *Zheng v. Canada* (2000).

¹³ See *P.E.F. (Re)* (2000), *P.G.L. (Re)* (2001), and *T.H.K. (Re)* (2001).

Mode of entry

In the OtR cases, entry into Canada occurred by airplane to Toronto and Vancouver using false documents (MacCharles 1998). These documents would be destroyed or given back to smugglers soon after arrival. In the first OtR case, authorities were alerted when the migrants had made refugee claims at the airport and then failed to show up to their hearings; they had often used the same story (Gordy 1996). Once in Canada, the individuals would be kept in safe-houses in Toronto (Associated Press 1998). They would then be driven to Cornwall, Ontario, and from there, they would be taken across the river into the United States by residents of the Mohawk reservation who were hired by the smugglers and paid at a rate of \$500 per migrant (Chen 1998).

Similarly, the claimant in *T.Z.U.* was described as arriving by airplane in Vancouver and then being flown to Toronto and placed in a van before her eventual discovery by authorities while attempting to cross the U.S. border. She described using a passport given to her by her smugglers in order to enter Canada (*T.Z.U. [Re]* 2000). This pattern is similar to the statements made in refugee claims by smuggled migrants headed to the United States (*Re B.G.A., Xia Ling Zheng*).¹⁴ Other potential victims were found soon after their arrival by boat on or near Canadian shores (*Wei Zheng, Re P.G.L.*).¹⁵

Exploitation

The authorities in both OtR cases suggested that the migrants would end up in restaurants, sweatshops (garment industry), or prostitution to pay off debts approaching \$47,000 (Bruno 1998). The size of these debts are suggestive of an individual being destined for exploitation, though it is unclear whether authorities had any evidence of this or were simply extrapolating

¹⁴ See *B.G.A (Re)* (2000) and *Zheng v. Canada* (2000).

¹⁵ See *Canada v. Zheng* (2001) and *P.G.L. (Re)* (2001).

from the circumstances. The refugee claimant cases provide no explicit link to eventual exploitation, a noted problem with those discovered in transit.

Debt bondage

In both OtR cases, authorities claim the fees for smuggling were between \$45,000 and \$47,000 (Ibbitson 1996). Such large sums suggest the existence debt bondage. Amounts paid in the *T.Z.U.* case were not available. Three transit cases described in immigration proceedings involving individuals smuggled by “snakeheads” (i.e., Chinese criminals or gangs involved in the smuggling of Chinese citizens to other countries) describe amounts in the \$30,000–\$40,000 range (*Xia Ling Zheng, Re P.G.L., Wei Zheng*).¹⁶

Outcome

In the first OtR case, five accused were committed for trial on various charges including conspiracy. The outcome of those proceedings was not determined at the time of this study. According to a 2008 deportation appeal decision, one of the accused, Chen Zhong Hua, was convicted on May 30, 2000 of conspiring to commit an indictable offence, contrary to section 465(1) (c) of the Canadian Criminal Code, as well as of conspiracy to commit the offence of organizing, inducing, aiding, or abetting the coming into Canada of a group of ten or more persons who were not in possession of valid and subsisting visas, passports, or travel documents, contrary to section 94(2) of the former *Immigration Act*. In the 2008 decision, Chen Zhong Hua’s deportation was stayed for three years. Hua was charged with three counts of conspiracy, while Chen Gui Qiang faced twenty-three counts. The case that the Crown sought to prove against Chen Gui Qiang was far more comprehensive than the

¹⁶ See *Canada v. Zheng* (2001), para. 2; *P.G.L. (Re)* (2001), and *Canada v. Zheng* (2001), respectively.

one involving Chen Zhong Hua (*R. v. Chen* 2001). Unfortunately, the details regarding the outcome of the charges against Qiang are unknown.

In the second OtR case, thirty-five people were charged with smuggling (Bruno 1998). The outcome of those cases was not determined at the time of this study.

T.Z.U. resulted in the refusal of the refugee claims made by the migrants (*T.Z.U. (Re)* 2000). Of the refugee claims made in the other cases reviewed in this section, only those where there was evidence of coercion, abduction, or domestic abuse in the home country were successful (*Re P.E.F., Re G.J.C., Re T.H.K.*).¹⁷

4.6 *Origin Region: South and Central America*

(Based on four cases: *Galdamez Organization, Savita Singh I, Byron Murray, and Savita Singh II*)

Numbers

In our survey from 1996 to 2009, four cases indicated Central and South America as source regions. The largest documented occurrence, the *Galdamez Organization* case, involved a smuggling ring based out of Montreal and is alleged to have smuggled upwards of 100 migrants into the United States (Cherry 2007). Central and South America were noted as the origin of these migrants, but no specific countries were identified. The other three cases all involved attempts to smuggle Guyanese nationals into the United States. The 2005 *Savita Singh I* case involved three Guyanese women (Farwell 2005), the 2007 *Byron Murray* case, two intended victims (Canadian Press 2007), and the 2009 *Savita Singh II* case, “two migrants from Guyana” (Gowan 2009).

¹⁷ See *P.E.F. (Re)* (2000), *G.J.C. (Re)* (2001), and *T.H.K. (Re)* (2001).

Victim Characterization

The migrants in the *Galdamez Organization* case are alleged to have been from Central and South America, India, and Pakistan. The details of the proportion of victims from each particular region as well as any details as to the age or sex of the victims are unknown. According to officials quoted in the press, the ring did not concern itself with the particulars of the migrants and would smuggle anyone (Cherry 2007).

The intended victims in the *Savita Singh I* case were two young adult women and one sixteen-year-old girl. The *Byron Murray* case involved a teenage male and an adult woman, while the victims in the *Savita Singh II* case were only characterized by their Guyanese nationality.

Mode of Entry

The *Galdamez* ring is alleged to have been based out of Montreal. From there, the ring is alleged to have smuggled the migrants across the border through unmanned and wooded areas along the Quebec border with Vermont and New York (Cherry 2007).

In the *Savita Singh I* case, the migrants claimed they had entered into Canada using false passports (Farwell 2005). They then attempted to cross into the United States from New Brunswick by claiming a family relationship with Savita Singh-Murray. In the *Byron Murray* case, the details of entry into Canada were not disclosed. Entry to the United States was attempted via a train trestle in order to avoid border officials (Canadian Press 2007). In the 2009 *Savita Singh II* case, the migrants entered Canada on visitors' visas. The two migrants were apprehended at a border crossing in New Brunswick.

Exploitation

There were no details of any potential exploitation faced by the victims in either the *Galdamez Organization* case or the Guyanese cases. However, when sentencing Savita Singh in 2005, U.S. District Judge John Woodcock did harbor suspicions that the purpose of the smuggling was indeed trafficking, even though he was unable to conclusively find this as a fact (Harrison 2005).

Debt bondage

The fees charged were not known for any of these cases; consequently, the potential for debt bondage cannot be determined.

Outcome

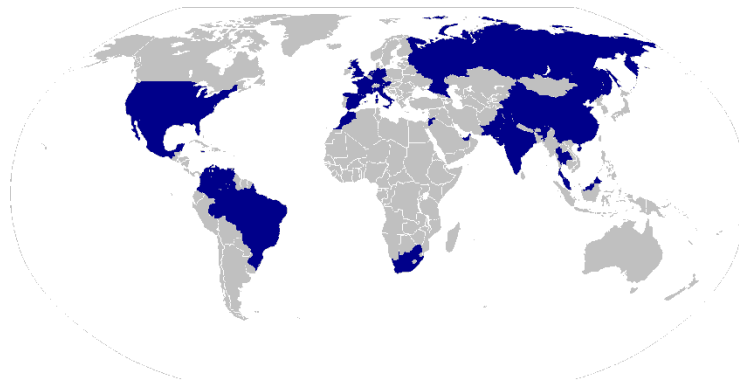
In the *Galdamez Organization* case, four accused still face charges of conspiracy and smuggling in the United States. At the time of writing, they were in Canada appealing an extradition order.¹⁸ In 2005, Savita Singh was convicted of smuggling and sentenced to 132 days in prison (amounting to time served) by a U.S. District court (Harrison 2005). In the 2007 *Byron Murray* case, the charges were dismissed against three individuals due to lack of testimony by an expert on American immigration law (Graettinger 2008). In the most recent Savita Singh case, four individuals including Savita Singh were arrested for conspiracy to violate immigration laws (*Saint-John (NB) Telegraph-Journal* 2009).

4.7 *Canada's Response to Transit Trafficking to Date*

Canada and the United States have engaged for several years in bilateral cooperation in order to respond to transit trafficking and the smuggling of migrants across their shared border. The two primary operational approaches

¹⁸ See *United States of America v. Galdamez* (2008) and *Damas-Hernandez v. Canada (Procureur général)* (2009).

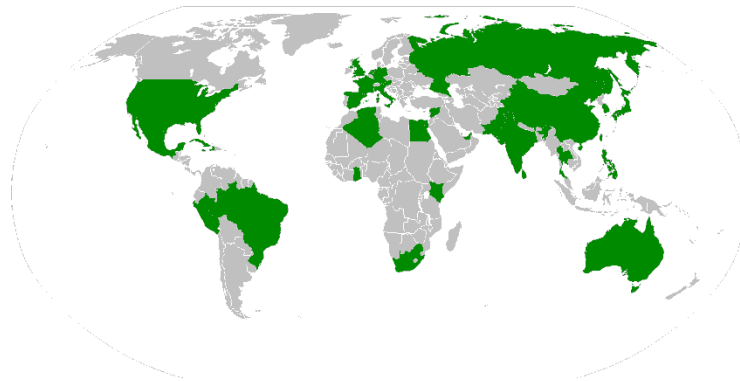
are conducted by the Integrated Border Enforcement Teams (IBETs) and the Integrated Border Intelligence Teams (IBITs). IBETs are joint Canada-U.S. multi-agency law enforcement teams that “are designed to enhance border integrity and security along the shared Canadian-U.S. border by identifying, investigating and interdicting persons and organizations that pose a threat to national security, or are engaged in organized criminal activity, such as TIP, illegal migration, smuggling of drugs or other goods, and terrorism” (United States–Canada 2006, 19). Complementing their activities, IBITs “support IBETs and partner agencies by collecting, analyzing and disseminating tactical, investigative and strategic intelligence information pertaining to cross border crime between the United States and Canada” (United States–Canada 2006, 19). Additionally, the RCMP Human Trafficking National Coordination Centre (HTNCC) has as part of its mandate to “facilitat[e] the central processing of requests from international law enforcement agencies” (RCMP 2008b).



Global Locations of CBSA Migration Integrity Officers (2007)

At the international level, the CBSA Migration Integrity Officer Program has deployed border officials at major airports around the world (CBSA 2007). In cooperation with U.S. Immigration and Customs Enforcement Officers, the CBSA officers “work closely overseas to identify irregular migration trends, which contribute to pushing the borders out and dissuade the trafficking of persons” (United States–Canada 2006, 20).

An additional tool that is available on an international level to address the problem of transit trafficking is the RCMP Liaison Officer Program, which is responsible for addressing several internationally related criminal activities, in addition to international human trafficking and migrant smuggling (U.S. Department of State 2008a). The countries in which these officers are deployed appear in the map opposite (RCMP 2008a).



Global Locations of RCMP Liaison Officers (2008)

While Canada has made some progress in disrupting trafficking operations that seek to transport victims into the United States, its ability to protect victims in transit and prosecute traffickers for such activities has been comparatively disappointing:

- Prevention of trafficking in persons: Canada has had some success at disrupting suspected trafficking in persons cases where victims were being transited through Canada destined to the United States with the involvement of IBET teams.
- Protecting and assisting victims: While a handful of trafficked persons in transit to the United States have been offered protection and assistance by federal authorities in Canada, as of late 2008, all had reportedly opted for voluntary repatriation to their countries of origin. In other words, *none* of the temporary residence permits (TRPs) issued by

Citizenship and Immigration Canada (CIC) for trafficked persons from 2006 to 2008 were in relation to individuals being transited through Canada to the United States.¹⁹

- Prosecution of traffickers: Canada has yet to secure any convictions for trafficking in persons, under Section 279.01 of the *Criminal Code*, related to the transit of victims through Canada. The need to establish that the movement of the victim is for the “purpose of exploitation,” as defined in Section 279.04 of the *Criminal Code*, is likely to be an impediment to doing so.

4.8 U.S. Visa Policy and Transit Trafficking

One of the characteristics of transit countries for trafficking in persons, identified earlier, relates to a disparity between immigration laws and policies between the transit and destination country. In the case of South Korea, Canada’s visa waiver was cited for years as a key factor in the use of Canada as a transit country for human trafficking and migrant smuggling of South Korean nationals into the United States. Consequently, a recent shift in U.S. visa policy for South Korean nationals could have an impact in lessening the relative attractiveness of transit trafficking through Canada involving such individuals.

¹⁹ Documentation provided by Citizenship and Immigration Canada on 4 December 2008 (obtained in accordance with protocols and procedures approved by the University of British Columbia’s Behavioural Research Ethics Board [certificate of approval H08-00332]).



U.S. President George W. Bush announces extension of Visa Waiver Program (October 17, 2008; The White House)

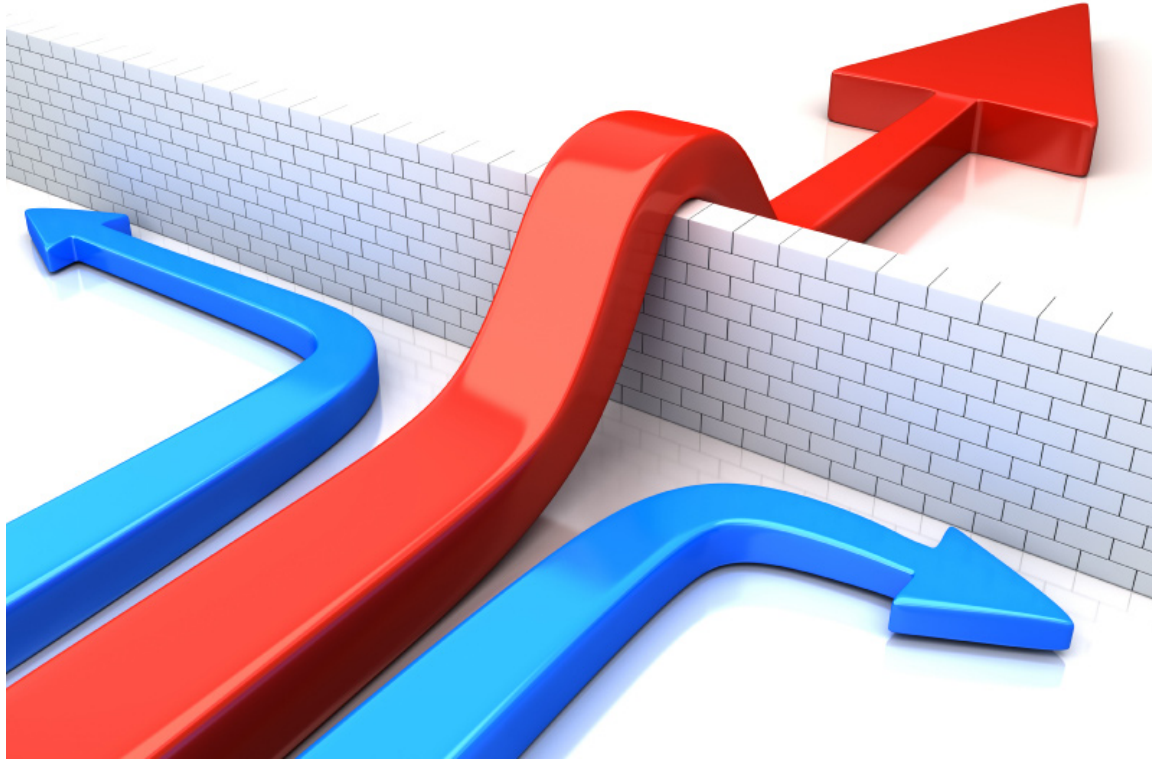
On October 17, 2008, President George W. Bush announced that the Republic of Korea, together with the Czech Republic, Estonia, Hungary, Latvia, Lithuania, and Slovakia had met the requirements to be admitted to the U.S. Visa Waiver Program (VWP). As mentioned, since January 12, 2009, citizens of these countries no longer require a visa to enter the United States.²⁰

There is a relationship between countries that have qualified, or are on track to qualify, for the U.S. VWP and their overall progress in combating trafficking in persons. Appendix D compares the status of VWP countries with their ranking in the U.S. Department of State's *Trafficking in Persons* (TIP) Report for 2008. The majority of countries that have qualified for the VWP received a Tier 1 TIP ranking, meaning that they satisfied the minimum standards to combat trafficking in persons. While a minority received Tier 2 TIP rankings, none received a Tier 2 Watch List or Tier 3 ranking.²¹ Concerns about human trafficking and migrant smuggling should be considered in any joint consultations related to visa policy disparities involving source, transit, and destination countries.

²⁰ See The White House (2008) and U.S. Department of State (2008b).

²¹ In 2008, only four of the twenty-five U.S. VWP countries that were ranked in the *2008 TIP report* fell below a Tier 1 TIP ranking: Ireland, Japan, Portugal and Singapore were each ranked as Tier 2 TIP countries. However, the seven new VWP countries effective in 2009 are split between four Tier 1 TIP countries (Czech Republic, Hungary, Lithuania and Republic of Korea) and three Tier 2 TIP countries (Estonia, Latvia and Slovakia). Of the "roadmap" countries that are seeking to qualify for the VWP, only Poland is ranked as a Tier 1 TIP country. Bulgaria, Greece, Malta and Romania are all ranked as Tier 2 TIP countries, with Cyprus on the Tier 2 TIP Watch List.

5.0 LEGAL OBLIGATIONS OF TRANSIT COUNTRIES



Lack of certainty on the legal responsibilities of origin, transit, and destination countries facilitate the ability of traffickers to operate with impunity (Clark 2003, 253). Transit countries “feel exploited as a ‘springboard’ towards ‘eldorado’ and do not see themselves as being in a position to deal with the growing numbers of irregular migrants” (IOM 2008b, 96). However, transit countries bear their own responsibility to combat trafficking in persons, as do origin and destination countries (Içduygu 2004, 99).

In his analysis of international obligations regarding trafficking in persons, Gekht acknowledged that the responsibilities of various countries along the human trafficking chain vary, as each stage of movement involves unique international, labour, immigration, criminal, and human rights law. Gekht further

asserted that transit countries, along with origin and destination countries, should each assume their own part of a shared responsibility. These countries should also recognize their duties to deter traffickers, prevent trafficking, and remedy trafficked individuals (Gekht 2007, 1–2). This idea is reflected in the preamble to the *Trafficking in Persons Protocol*, which calls for “a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”

Since trafficking involves a series of steps, Mary Robinson, the U.N. High Commissioner for Human Rights, urged policymakers to implement human rights responses at the transit stage, among the origin and destination stages (Caraway 2005–2006, 310). In the 2002 *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Commissioner Robinson called for all parts of the system to fulfill their obligation to protect trafficked individuals and focus on the rights of each trafficked individual (Caraway 2005–06, 310). Edwards agreed that transit countries should be concerned about the human rights of trafficked persons (Edwards 2007, 47). The *Trafficking in Persons Protocol* recognizes the need to grant full respect to the human rights of trafficked victims in the course of affording them protection and assistance (*Trafficking in Persons Protocol* 2004, Article 2[b]). The need to consider human rights is also required in the training that countries are obliged to provide on the issue (*Trafficking in Persons Protocol*, 2004, Article 10[2]).

5.1 *Transit Countries Preventing Trafficking in Persons*

While the *Trafficking in Persons Protocol* is applicable to origin, transit and destination countries in its entirety, several provisions are particularly relevant for State Parties that operate as transit countries. First, transit countries have a responsibility to prevent trafficking in persons by exercising due diligence in regulating the entry of foreign nationals into their territory to ascertain if they are at risk of being trafficked persons. Specifically, Article 10(1) of the *Trafficking in Persons Protocol* mandates the exchange of information among law enforcement, immigration, and other relevant authorities of States Parties to allow them to determine:

- (a) whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) the types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

Furthermore, Article 11(1) of the *Trafficking in Persons Protocol* obliges States Parties, including transit countries, to strengthen measures to prevent and detect trafficking in persons at their borders, while Article 11(6) provides that States Parties “shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.” Measures to prevent trafficking in persons on commercial carriers are elaborated in Articles 11(2)-(3).

In response to the obligations outlined in Article 9 of the *Trafficking in Persons Protocol*, transit countries are to establish policies, programmes, and other measures, such as socio-economic initiatives, research, information, and mass media campaigns, in collaboration with non-governmental organizations (NGOs) to prevent trafficking in persons. In addition, Articles 9(4)-(5) specifically require countries combating human trafficking to cooperate multilaterally to alleviate factors that make victims vulnerable, including “poverty, underdevelopment and lack of equal opportunity” as well as to diminish demand.

Finally, since falsification of documents can facilitate trafficking, countries are obligated under Article 12 of the *Trafficking in Persons Protocol* to ensure the security and control of documents they issue.

5.2 *Transit Countries Protecting Trafficked Persons*

The necessity of providing protection and assistance to trafficked persons is recognized in Articles 6-8 of the *Trafficking in Persons Protocol* as important aspects of the governmental response to this problem. The interpretative notes on these provisions specify that these “various obligations apply equally to any State party in which the victims are located, whether a country of origin, transit or destination” (UNODC 2004, 283). Clark (2003, 257) argues that transit countries should develop anti-trafficking legislation that decriminalizes its treatment of trafficked individuals, and in particular, should enact legislation extending basic services to trafficked individuals, rather than pass the burden on to NGOs who may have limited resources to provide adequate protection. However, the extent to which transit countries protect and assist trafficked persons identified in transit has not been extensively studied.

Since the definition of a trafficked person in Article 3(a) includes the transportation, transfer, harbouring, or receipt of persons by listed means for the

purpose of exploitation, an individual does not have to experience the intended exploitation to be recognized as a trafficked person. Instead, their victimization begins at the recruitment stage and carries on through to the transit stage. While victims that are exploited will likely have greater rehabilitation needs, individuals who are threatened, forced, or coerced into being transported through a transit country, for example, have nevertheless had their fundamental human rights violated. Konrad (2002, 268) also contends that granting trafficked persons residence in the transit country would help break the vicious cycle of re-trafficking that is at risk of occurring, while also helping trafficked individuals to recover, reorient, and support themselves. Taking a human rights perspective, the UNODC has recognized several particular violations that are routine against many trafficked persons in transit:

The person experiences initial trauma, becoming aware of the deception and danger he or she is now in. The person is often exposed to dangerous modes of transportation, high-risk border crossings and arrest, threats, intimidation and violence, including rape and other forms of sexual abuse. (UNODC 2008, 368)

Article 8(2) of the *Trafficking in Persons Protocol* obliges a state that is returning a trafficking victim to his or her home country or a country in which he or she is a permanent resident to do so "with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and [that this return] shall preferably be voluntary."

5.3 *Transit Countries Prosecuting Traffickers*

With respect to the prosecution of traffickers, Article 5(2) of the *Trafficking in Persons Protocol* obliges States Parties to extend criminal liability for trafficking in persons to attempts, participating as an accomplice, and organizing or directing others in trafficking individuals. This would encompass perpetrators in transit countries who receive, transport, transfer, or harbour trafficked persons, but only if they had a requisite level of knowledge.

However, there are concerns that domestic legislation in some jurisdictions does not clearly criminalize trafficking in persons at the transit stage, in cases where exploitation has not taken place in the transit country, or at all (in the case of interdiction in transit). Where the victim and trafficker enter the transit country legally, immigration and criminal offences related to migrant smuggling are unlikely to be available (Twomey 2000, 23). The UNODC is of the view that traffickers

are often less concerned to conceal and protect themselves from investigation in the States of origin or transit because they feel safer. Joint operations mean that investigators in the origin or transit States can exploit these evidential opportunities and gather valuable corroborative evidence of the recruitment and transportation phases of the crime. (UNODC 2008, 197)

Therefore, domestic legislation should be reviewed to ensure that it extends liability to trafficking in persons at the transit stage.

5.4 *Managing the Trafficking/Smuggling Distinction*

While transit-related obligations in the *Trafficking in Persons Protocol* are applicable to States Parties generally, as stated previously, difficulties are likely to arise in individual cases where the distinction between smuggling and trafficking is unclear. At the transit stage, it would be prudent to err on

the side of caution and further investigate the circumstances of the individual cases. At any rate, minimum standards for the treatment of individuals who are smuggled migrants are applicable to the case of any foreign national being illegally moved across an international border, whether or not they are trafficking victims.

The *Migrant Smuggling Protocol* establishes some minimum standards for the protection of the rights of individuals who have been smuggled across an international border by “an organized criminal group” (*Migrant Smuggling Protocol* 2004, Article 4). The preamble of the *Migrant Smuggling Protocol* recognizes that “the smuggling of migrants can endanger the lives or security of the migrants involved” and that there is a “need to provide migrants with humane treatment and full protection of their rights.”

While the *Trafficking in Persons Protocol* elaborates on a wide range of protection and assistance measures for trafficked persons, the *Migrant Smuggling Protocol* only specifically provides that “[m]igrants shall not become liable to criminal prosecution” (*Migrant Smuggling Protocol* 2004, Article 5) on account of their being smuggled and that their return to their home State should proceed without undue or unreasonable delay (*Migrant Smuggling Protocol* 2004, Article 18). Additional protections for smuggled migrants include the general obligation of States Parties taking measures against vessels suspected of smuggling migrants to “[e]nsure the safety and humane treatment of the persons on board” (*Migrant Smuggling Protocol* 2004, Article 9 [1]) [a])

The *Migrant Smuggling Protocol* affirms that general human rights obligations owed by States to individuals apply to smuggled migrants, including, under Article 16:

the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; . . . protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of [migrant smuggling]; . . . appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of [migrant smuggling].

The *Vienna Convention on Consular Relations* also contains obligations in the case of detention of smuggled persons, and the *Migrant Smuggling Protocol* further requires States Parties to “take into account the special needs of women and children” (*Migrant Smuggling Protocol* 2004, Article 16 [4]).

While the legal requirements imposed on States Parties by the *Trafficking in Persons Protocol* and *Migrant Smuggling Protocol* reflect different policy decisions on how to address these problems, it is necessary to consider both sets of obligations in formulating a transit country response, given their inter-related nature.

6.0 ENGAGING TRANSIT COUNTRIES IN A COMPREHENSIVE APPROACH



Calls for origin, transit, and destination countries to work collaboratively to address the transnational nature of international trafficking in persons have been taking place for almost a decade (CIA 2000, 2). While focussing exclusively on the transit country itself can result in a myopic policy outlook, ignoring the role of transit countries is similarly limiting. Challenges related to international migration should be addressed as “a shared responsibility” (IOM 2008b, 36).

The IOM’s *Handbook on performance indicators for counter-trafficking projects* identifies several high-level objectives and performance measures

specifically involving transit countries in a coordinated response to international trafficking in persons (IOM 2008a, 30, 36, 43).

TABLE 1: IOM PERFORMANCE INDICATORS FOR TRANSIT COUNTRY PROJECTS

	PROJECT PURPOSE	PERFORMANCE INDICATOR
PREVENTION	Coordinated efforts between origin, transit and destination areas	<ul style="list-style-type: none"> • Joint agreements to promote regular migration flows established/improved (i.e. bilateral agreements for facilitating labour migration) • Number of coordinated information and awareness raising activities transnationally/between areas
PROTECTION	Bilateral/multilateral mechanisms established/strengthened between origin, transit and destination areas to provide protection and assistance to victims of trafficking	<ul style="list-style-type: none"> • Regular bilateral and multilateral meetings held • Number of victims of trafficking identified, referred and assisted through bilateral mechanisms
PROSECUTION	Cooperative and enforcement mechanisms between origin, transit, and destination areas to convict traffickers and protect victims of trafficking are put in place or enhanced	<ul style="list-style-type: none"> • X percent of mutual legal assistance requests completed • Average response time of mutual legal assistance requests • Formal agreements established on cooperation between agencies in origin, transit and destination areas • Regular meetings between criminal justice agencies in origin, transit, and destination areas are held

6.1 *Cooperation between Origin and Transit Countries*

Several scholars have recognized the need for transit countries to make greater efforts to address the root causes of trafficking in countries of origin. While tightening border control may help transit countries combat trafficking, Narli believes this is insufficient, instead, calling for the contextualization of the global problem of smuggling and trafficking within the social and economic conditions giving rise to trafficking (2002, 165).

Likewise, Edwards suggests that international instruments such as the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) can be invoked to prevent trafficking as it provides the framework for the elimination of poverty, a root cause of trafficking (Edwards 2007, 27). Hence, transit and origin countries should cooperate in improving their respective social and economic conditions.

Van Impe endorsed the notion of transit countries cooperating with countries of origin in developing common policies for preventing trafficking in persons, especially women and children (2000, 114). Specifically, policies would focus on developing information campaigns to inform migrants of legal immigration routes (121). In the case of the EU, transit countries partnering with countries of origin in adopting a comprehensive approach that canvasses development, human rights, and political issues is particularly key. Implementation requires, at an institutional level, that existing and candidate EU Member States forge functional ties (122). Finally, transit countries need assistance to promote the voluntary return of individuals (126).

6.2 *Cooperation between Transit and Destination Countries*

Joint enforcement initiatives by transit and destination countries have been utilized to disrupt trafficking in persons and migrant smuggling networks at both sea and land borders. For example, Belgium and the United Kingdom entered into an agreement to reduce the flow of illegal transit migrants seeking to enter the United Kingdom from Belgian sea ports, such as Zeebrugge. While Belgium stepped up its efforts at major ports to detect illegal migration, the United Kingdom initiated its own controls at key Belgian ports and imposed high fines for shipping companies bringing illegal migrants into its jurisdiction. This resulted in shipping companies exercising greater diligence, and the collective efforts of the two countries resulted in an increase in interceptions of illegal migrants (Derluyn and Broekaert 2005, 34). However, Derluyn and Broekaert caution that the increased number of interceptions may also be attributable to a growing number of individuals seeking illegal entry into the United Kingdom through Belgium due to changes in Belgian asylum policy that reduced the number of refugees accepted (44).

Canada and the United States have combined joint border enforcement initiatives to disrupt illegal migration with systematic intelligence sharing. Integrated Border Enforcement Teams (IBETs) are comprised of multi-agency officers from both Canada and the United States, operating along their extensive shared land border to identify, investigate, and interdict the illegal movement of people and goods. The IBETs are assisted by Integrated Border Intelligence Teams (IBITs) that provide “tactical, investigative and strategic intelligence information pertaining to cross border crime between the [United States] and Canada” (United States–Canada 2006, 19).

Capacity-building activities in transit countries have been implemented by destination countries where the capabilities of transit countries were insufficient to disrupt illegal migration flows. For example, Albania is a known transit country for illegal migration to Italy and the rest of Western Europe (approximately 80 percent of migrants attempting to reach Italy through Albania are third-country nationals) (Martin, Martin, and Pastore 2002, 103, 110). Albanian police training as well as Italian-Albanian marine patrols seemed to have reduced illegal entry facilitated by fast-boats. However, the Albanian government's commitment to the joint action was questioned when it reassigned some of its marine interception experts to act as land border patrols instead (111–12). The U.K. Foreign & Commonwealth Office has also funded capacity-building projects in transit countries such as Albania, including an anti-trafficking witness protection and support program (UKHO 2009).

Konrad (2002, 270) observed that while cooperation among Western countries, which tend to be destination countries, is high, their cooperation with transit countries in the East and South East countries of origin is "sporadic" at best. This suggests that while cooperation exists, it should be encouraged more specifically among countries as they're situated along the trafficking chain, rather than between clusters of countries that share traits as transit, origin, or destination countries.

The idea of closer cooperation between transit and destination countries in combating smuggling and trafficking is not without criticism. Coming from a refugee protection perspective, Brolan warns that actions to intercept illegal migrants may risk violating international refugee protection guarantees (2002, 575). The EU has faced criticism for pressing transit countries for migration, such as Libya and the Ukraine, to take on greater responsibility. Concerns were raised by the IOM about the "ability [of countries] to fulfill basic obliga-

tions, such as proper access to asylum, adequate conditions of detention and protection from return to torture or persecution” (IOM 2008b, 67–68).

6.3 Protection and Assistance for Suspected Trafficked Persons in Transit

While joint prevention and enforcement operations between transit and destination countries are prevalent, there is limited evidence of systematic programs to protect and assist trafficked persons in transit. This may owe largely to the difficulties of distinguishing between trafficking in persons and migrant smuggling, as discussed above. Nevertheless, the IOM’s counter-trafficking interventions have involved directly assisting trafficked individuals to obtain protection, shelter, health assistance, and legal counselling in transit countries (IOM 2006a, 3).

For example, in the former Yugoslav Republic of Macedonia, suspected victims of human trafficking were being detained in police stations prior to deportation until the IOM helped the government establish an “urgent reception and transit shelter for trafficked women and stranded immigrants in distress” (UNODC 2008, 382). Physical security and shelter is provided by police, while the IOM Skopje offers medical and counselling support to victims prior to repatriation.

In Belgium, illegal migrants first have their identities determined by local police who then contact the Belgian Aliens Office, which determines what documentation the individual will receive and whether they may remain in Belgium or must be transferred to a closed facility (Derluyn and Broekhaert 2005, 34–35).

6.4 *Unaccompanied Minors and Suspected Child Trafficking*

Children who are illegal migrants, particularly unaccompanied minors, have typically been afforded greater protection due to their vulnerability and international standards for their treatment. Several jurisdictions have adopted specific programs and policies directed at identifying minors in transit who are at high-risk of being trafficked.

In Belgium, the Belgian Aliens Office will issue an unaccompanied minor a document stating the minor's identity and order one of three possible outcomes: require the minor to immediately leave the country, to leave within five days, or not to leave the country. The Belgian police are also obliged to contact a child protection officer at the Guardianship Office, which will decide between transferring the minor to a child protection institution or allowing the minor to leave the police station (Derluyn and Broekart 2005, 34–35).

In Southeast Asia, there have been several programs implemented to identify children in transit who are at risk of becoming trafficked. In 2001, at the Cambodian-Thai border, a transit shelter in Poipet reportedly reunited 52 out of 96 children (54 percent) with their families (Kurbiel 2004, 79). In 2007, twenty-one trafficking victim transit centres in Burkina Faso, funded by the United Nations Children's Fund (UNICEF), provided care to 312 trafficked children before returning them home within the country, or in the case of 34 internationally trafficked children, repatriating them to their originating countries (U.S. Department of State 2008a, 79).

Indicators of a "probable trafficked child" at the port of entry have been developed by the British Columbia Office to Combat Trafficking in Persons. Where a child is involved, one or more of the following are considered to be "significant indicators of trafficking":

- traveling with an unrelated person posing as a family member;
- possessing neither personal identification nor travel documents;
- arriving with contact information for persons unknown;
- holding expectations of an unattainable job or education;
- traveling in unsafe and hazardous conditions;
- fearing for the safety of family or self; and
- owing significant amounts of money to a person or group who may have arranged transportation (debt bondage).

(Pike 2008)

The IOM has also proposed indicators to inform migration officers of potential trafficking of children, including: children traveling with non-family members, false documents being presented, children appearing “frightened, anxious or disoriented” with an indifferent person, persons seeking to cross the border appearing on INTERPOL as wanted for trafficking and related offences, documents not corresponding to children being transported, underage persons being hidden, and child pornography being detected (IOM 2006b, 1).

Derluyn and Broekaert recommended that transit countries sufficiently guarantee the safeguarding of the rights of minors during their interception (2005, 48–49). Specifically, the transit country should ensure that the police treat the minors with respect, that the minors have facilities to meet their basic needs, and that all involved authorities are equipped with appropriate training on dealing with intercepted unaccompanied minors. Derluyn and Broekaert also recommended that social workers actively play a role in the interception process in order to provide minors with independent and important informa-

tion regarding legal procedures, care possibilities, and the realities in the destination country (2005, 49).

6.5 Border Controls and Identification of Trafficked Persons in Transit

The IOM recommends that transit countries can prevent trafficking in countries by “strengthening border control and providing training to officials to enable them to identify sub-groups of trafficked persons within larger migrant groups moving through their country, legally or illegally” (IOM 2008a, 5). As the OHCHR has stressed in its *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, since failure to correctly identify trafficked persons will likely exacerbate the denial of their rights, States have an obligation to ensure such identification occurs (UNOHCHR 2002, 4).

In carrying out entry and exit point detection, the U.K. Home Office *Crime reduction toolkit* appears to support a strategy anchored in using “multi-agency agreed profiles,” which include profiles of traffickers’ *modus operandi*, traffickers, and (potential) victims (UKHO 2009, 224). The *Toolkit* highlights that these profiles are especially critical given the likelihood that at entry, numerous potential victims are not yet aware of the risk of exploitation they are subject to (UKHO 2009, 224). However, the success of such an approach demands up-to-date and accurate criminal intelligence data involving both origin and destination countries.

Corruption is a potentially serious impediment to identifying trafficking persons at ports of entry. As such, anti-corruption efforts should be a priority for transit countries; in particular, initiatives aimed to combat corruption should target border guards and other law enforcement officials. Ensuring corruption-free law enforcement is a foundation for other initiatives (Clark 2003, 258).

The 2008 TIP Report has found specific problems in transit countries such as Indonesia, where several immigration officials at key transit points faced prosecutions for corruption (U.S. Department of State 2008a, 143).

Engaging the public in transit countries to identify suspected cases of human trafficking is an approach recommended by the UNODC. Well-publicized telephone hotlines can “act as an independent source of advice and guidance to potential victims who may be considering job opportunities or other offers to go abroad; . . . act as a first point of contact providing access to a referral mechanism for victims of trafficking in human beings; and . . . facilitate the anonymous reporting of cases or suspected cases of trafficking in human beings” (UNODC 2008, 438).

7.0 CONCLUSION & RECOMMENDATIONS



The *Trafficking in Persons Protocol* and the *Migrant Smuggling Protocol* together with international human rights law principles provide a comprehensive legal framework for transit countries to address the complex issues raised by international transit trafficking. These agreements also provide standards against which transit countries can be evaluated in a more systematic manner.

First and foremost, transit countries must exercise due diligence in assessing whether illegal migrants are potential victims of human trafficking. Transit countries must enhance border detection and intelligence-sharing capabilities with origin and destination countries to disrupt trafficking networks. While such enforcement-related activities are necessary in this regard, transit countries must also contribute towards international efforts to address the root causes of trafficking in persons and ensure that suspected trafficked persons are afforded protection and assistance. Where there are one or more

indicators that an individual identified in transit may be destined for exploitation, they must be carefully assessed. Their human rights must be respected and an investigation into the probability of their being a trafficked person is necessary to prevent the serious risk of re-trafficking. During this process, States must comply with at least the minimum standards applicable under the *Migrant Smuggling Protocol*, as outlined above. In the case of child victims, even greater caution must be exercised.

Transit countries must also ensure that their criminal legislation is sufficient to prosecute individuals involved in facilitating the movement of trafficked persons in transit scenarios, including both legal and illegal entry/exit. In particular, the mental element of such criminal offences must be suited to the nature of some trafficking networks that rely on willfully blind intermediaries. Transit countries must be active participants in mutual legal assistance and intelligence sharing with origin and destination countries in every international trafficking case that is discovered in order to extend accountability to all players in the criminal enterprise. Without taking these important steps, trafficking networks can simply continue to facilitate the movement of victims to preferred destination countries.

Transit countries have been largely ignored in global efforts to combat international trafficking in persons to date. However, their function is essential to traffickers who seek efficient and profitable routes to move victims. It is unacceptable for transit countries to absolve themselves of any responsibility by claiming that trafficked persons are “just passing through.” The active involvement of transit countries in international efforts to fight trafficking in persons is vital to achieving a comprehensive international response to the problem.

While Canada and the United States have undertaken important bilateral efforts to combat trafficking in persons, the response can be improved through a more determined effort based on a more complete understanding of the transit country role played by Canada. The following recommendations are, therefore, made to improve the response to Canada as a transit country for human trafficking to the United States:

1. Increase training and capacity of border officials to identify

potential trafficking victims in transit: The protection and identification of trafficking victims should be a priority for both countries. Because victims are often well coached by the traffickers, border guards need to be particularly adept in identifying potential trafficking cases. Additional training should be provided by the CBSA on how to spot specific characteristics of trafficking victims as well as suspicious-looking activities. The difficulties identified in this paper in distinguishing between human trafficking and migrant smuggling necessitate enhanced training for border officials and the creation of more sophisticated protocols to identify and investigate suspected cases.

2. Continue to cooperate in joint enforcement activities to disrupt

illegal movement across the shared border: The coordinated efforts of the IBETs and IBITs have been successful in disrupting traffickers attempting to cross the Canada-U.S. border and should continue to adapt to changing routes and methods employed by human traffickers and migrant smugglers. Given concerns that illegal movement shifts in response to increased enforcement, the IBETs and IBITs should be active across the entire shared border, while responding more specifically to areas of particular concern. This is increasingly important in the post-

9/11 world, where tightened airport security has made entry and exit via land increasingly attractive to traffickers and smugglers.

3. Enhance mutual legal assistance and engage in cross-border human trafficking investigations and prosecutions to dismantle the entire network involved in identified cases:

Both countries should work more closely to coordinate investigations with a potential cross-border component, from the investigation stage right through to the criminal prosecution. In every instance where a human trafficking case is identified in the United States and there is information to suggest the victim came through Canada, a full and complete joint investigation between Canadian and American officials should be pursued to uncover and dismantle the network and associates involved in the trafficking chain, and in turn, facilitate individual and organized crime prosecutions as well as the seizure of any assets accumulated through this unlawful activity. In addition to ongoing information and intelligence sharing, mutual legal assistance needs to be enhanced and expedited in order to successfully prosecute those involved in all aspects of human trafficking.

4. Ensure victims of human trafficking in transit are afforded assistance and protection, including that attained through enhanced cross-border cooperation between governmental and non-governmental victim support organizations:

Suspected victims of human trafficking identified in transit should be informed of services and programs available in Canada and the United States that can provide them with assistance and reduce their chances of being re-trafficked. Additionally, governmental and non-governmental organizations that assist victims in both countries should develop

closer relationships so that they can better liaise with each other in order to meet the needs of victims of human trafficking and enhance understanding of shared issues.

5. *Raise public awareness in border areas about human trafficking, the needs of victims, and information on where to report suspicious activity:*

In cities and towns along the shared border, Canada and the United States should increase public awareness about human trafficking and migrant smuggling. Specific recommendations include engaging with the public on trafficking issues in the community and providing hotlines for people to call and report suspicious activity.

6. *Cooperate with major source countries as well as enhance trilateral cooperation between Canada, the United States, and Mexico to prevent human trafficking:*

Canada and the United States should work collaboratively with their major source countries to prevent human trafficking. Ongoing efforts to educate migrants about legitimate employment opportunities in Canada and the United States, their legal rights and how to obtain assistance if they are infringed, and information about common tactics employed by traffickers should be part of a pro-active prevention response. Furthermore, officials from the CBSA Migration Integrity Officer program, RCMP liaison officers, and U.S. Immigrations and Customs Enforcement should focus on detecting and disrupting human trafficking from high-risk source countries. Additionally, due to the ability of traffickers to adapt to increased localized enforcement, an enhanced collaborative effort to prevent human trafficking in North America should involve Canada, the United States, and Mexico.

Working together, Canada and the United States can achieve greater success in protecting vulnerable individuals from being exploited by human traffickers and enhance the integrity of their shared border in a way that respects human rights and responds to the adaptive capacity of these criminal networks. From rescuing women, men, and children from a life of exploitation and misery to dismantling the high-level criminal organizations that profit from their abuse, implementing these recommendations would make a meaningful contribution to North American efforts to combat modern-day slavery.

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APPENDIX A: GLOBAL TRANSIT POINTS FOR TRAFFICKING IN PERSONS

The following jurisdictions were explicitly identified in the 2008 TIP Report as being transit points for trafficking in persons:

- | | | |
|------------------------------|--|----------------------|
| 1. Afghanistan | 33. Georgia | 65. Netherlands, The |
| 2. Algeria | 34. Germany | 66. Niger |
| 3. Argentina | 35. Ghana | 67. Nigeria |
| 4. Austria | 36. Greece | 68. Oman |
| 5. Azerbaijan | 37. Guatemala | 69. Pakistan |
| 6. Bangladesh | 38. Guinea | 70. Panama |
| 7. Belarus | 39. Guyana | 71. Paraguay |
| 8. Belgium | 40. Honduras | 72. Poland |
| 9. Belize | 41. Hong Kong Special
Administrative Region | 73. Portugal |
| 10. Benin | 42. Hungary | 74. Romania |
| 11. Bosnia and Herzegovina | 43. India | 75. Russia |
| 12. Bulgaria | 44. Indonesia | 76. Senegal |
| 13. Burkina Faso | 45. Iran | 77. Serbia |
| 14. Cameroon | 46. Italy | 78. Sierra Leone |
| 15. Canada | 47. Jamaica | 79. Slovak Republic |
| 16. Central African Republic | 48. Japan | 80. Slovenia |
| 17. Chad | 49. Jordan | 81. South Africa |
| 18. Chile | 50. Kazakhstan | 82. Spain |
| 19. China | 51. Kenya | 83. Suriname |
| 20. Costa Rica | 52. Kuwait | 84. Sweden |
| 21. Cote d'Ivoire | 53. Kyrgyz Republic | 85. Switzerland |
| 22. Croatia | 54. Liberia | 86. Syria |
| 23. Czech Republic | 55. Libya | 87. Tanzania |
| 24. Denmark | 56. Lithuania | 88. Thailand |
| 25. Djibouti | 57. Macedonia | 89. Togo |
| 26. Dominican Republic | 58. Malawi | 90. Turkey |
| 27. Ecuador | 59. Malaysia | 91. Ukraine |
| 28. Egypt | 60. Mali | 92. United Kingdom |
| 29. El Salvador | 61. Mexico | 93. Uruguay |
| 30. Estonia | 62. Moldova | 94. Venezuela |
| 31. Finland | 63. Montenegro | 95. Zambia |
| 32. Gambia, The | 64. Morocco | 96. Zimbabwe |

Additional jurisdictions identified in the 2008 TIP Report as having “transit functions” include:

JURISDICTION	TRANSIT FUNCTION
97. Bolivia	“Undocumented migrants from Asia reportedly transit Bolivia.” ²²
98. Burma	“Some trafficking victims transit Burma from Bangladesh to Malaysia and from P.R.C. to Thailand” (80).
99. Colombia	“Migrants from South America and China transit Colombia en route to Europe and the United States; some are reported to be trafficking victims” (94).
100. Cuba	“Cuba also is a transit point for the smuggling of migrants from China, Sri Lanka, Bangladesh, Lebanon, and other nations to the United States and Canada. Some of these migrants may be trafficking victims, who are subject to forced labor, sexual exploitation, and abuse” (102).
101. Laos	“To a lesser extent Laos is a country of transit for Vietnamese, Chinese and Burmese women destined for Thailand. Laos’ potential as a transit country is on the rise with the construction of new highways linking the People’s Republic of China, Vietnam, Thailand, and Cambodia through Laos” (160).
102. Sudan	“Sudan is also a transit and destination country for Ethiopian women trafficked abroad for domestic servitude” (232).
103. United Arab Emirates	“The U.A.E. may also serve as a transit country for women trafficked into forced labor in Oman, and men deceived into working involuntarily in Iraq” (253).

Of seventeen “special case” jurisdictions in the 2008 TIP Report, nine are believed to be transit points for trafficking in persons: four (Haiti, Kosovo, Swaziland and Tunisia) are explicitly identified as transit points, while the five jurisdictions below are believed to have “functions as transit points.”

JURISDICTION	TRANSIT FUNCTION
Bahamas, The	“The Bahamas may be a destination and transit country for men, women, and children trafficked for the purposes of forced labor and commercial sexual exploitation” (267).
Barbados	“Anecdotal information suggests that Barbados may be a destination and transit country for men, women, and children trafficked for the purposes of commercial sexual exploitation and forced labor” (267).
Botswana	“Botswana may be a source, transit, and destination country for men, women, and children trafficked for forced labor and sexual exploitation” (268).
Lesotho	“Anecdotal but uncorroborated reports indicate that Lesotho may be a source and transit country for small numbers of women and children trafficked for forced labor and commercial sexual exploitation” (273).
Somalia	“Information regarding trafficking in Somalia remains extremely difficult to obtain or verify; however, the Somali territory is believed to be a source, transit, and destination country for trafficked men, women, and children” (276).

²² U.S. Department of State 2008a, 73. All further quotations in this table are taken from this source, with page numbers cited parenthetically.

APPENDIX B: SUMMARY OF MAJOR REPORTED TRANSIT CASES (CANADA/UNITED STATES.)

Each case was evaluated in relation to the strength of evidence of human trafficking. The ratings are outlined below.

Assessments of available case information was made to determine the strength of evidence that a case involved human trafficking or not, based on the following three criteria, as informed by the Palermo Protocol definition:

- a) Force, fraud or coercion (commonly indicated by evidence of debt bondage)
- b) Exploitation (sexual exploitation, forced labour)
- c) Control over the victim (limited movements, confiscation of documents)

STRENGTH OF EVIDENCE	REQUIREMENTS	EXAMPLES
1 – Human Trafficking	Conviction for human trafficking	Court decision, findings of fact.
2 – Highly Probable Human Trafficking	Evidence of all three elements of Human Trafficking	High debts, prostitution, surveillance, and restriction of movements.
3 – Probable Human Trafficking	Strong evidence of one element or some evidence of multiple elements of human trafficking	High debts, young women.
4 – Unlikely Human Trafficking, Likely Only Smuggling	Some evidence of human trafficking; factors weak or outweighed by indicators of smuggling	Older migrants, low or moderate fees.
More information	Evidence is weak or insufficient to draw any conclusions	

OVER THE RAINBOW I / BIG TIME (1996)²³

Source Country: China (Fujian)

Transit Country: China (Shanghai); Hong Kong; Sri Lanka; South America; Canada (Toronto, Vancouver)

Destination Country: United States (New York)

Description: Began as smuggling; high debts (up to \$38,000/person); exploitation at destination ("balance paid in 'slave labour' such as prostitution, gambling or sweatshops.")

Strength of evidence: 3 – Probable Trafficking

PROJECT ORPHAN (1997)²⁴

Source Country: Malaysia; Thailand

Transit Country: Canada (Vancouver, Toronto)

Destination Country: United States (San Jose)

Description: Began as smuggling; high debts ("perform sex acts as a way to repay debts as high as \$40,000 a piece" (Mowat, Legon, and Kaplan 1997a); exploitation at destination ("the women were sold like a commodity . . . and were not allowed to leave the brothel without an escort") (Associated Press 1997); authority commentary: "an INS agent said she did not believe that some of the women were unwilling victims, but a San Jose police lieutenant continued to refer to them as 'exploited'" (Mowat, Legon, and Kaplan 1997b).

Strength of evidence: 2 – Highly Probable Trafficking

OVER THE RAINBOW II / PROJECT OTHELLO (1998)²⁵

Source Country: China (Fujian)

Transit Country: Taiwan (Taipei); Hong Kong; Germany; France; Morocco; Greenland; Cuba; Brazil; Canada (Vancouver, Toronto)

Destination Country: United States (New York; Philadelphia)

Description: Began as smuggling; high debts (\$47,000/person) (Vicini 1998); unknown whether exploitation at destination.

Strength of evidence: 3 – Probable Trafficking

23 See Gordy (1996) and Kaneira (1998).

24 Suthibhasilp, Petroff, and Nipp 2000.

25 Vicini 1998.

RE T.Z.U. (1999)²⁶

Source Country: China (Fujian)

Transit Country: Canada

Destination Country: United States

Description: Began as smuggling; unknown debt figures or whether exploited at destination; however, age and gender (young women aged 14–18) suggestive of trafficking; authority commentary—Professor Michael Szonyi on general fate of Fujian migrants: “In some cases, either because of the crushing debt burden they face or because of direct coercion by snakehead or local gangs, smuggled persons are forced to work in the sex trade, sometimes as virtual slaves (T.Z.U.)”

Strength of evidence: 3 – Probable Trafficking

RE P.G.L. (1999)²⁷

Source Country: China (Fujian)

Transit Country: Canada (Vancouver Island)

Destination Country: United States

Description: Began as smuggling; fifteen-year-old male part of a group that arrived in a boat off the shore of Vancouver Island while on route to the United States. The individual left China voluntarily but “was unable to explain how he could repay a (C)\$33,000 snakehead debt” (*P.G.L. [Re]* 2001, para. 2).

Strength of evidence: 3 – Probable Trafficking

WEI ZHENG (1999)²⁸

Source Country: China (Fujian)

Transit Country: Canada (British Columbia)

Destination Country: United States

Description: Zheng was a twenty-year-old male who was among 600 migrants found on the shores of British Columbia. According to the decision in his twenty-seventh detention review, he had “outstanding debt to [snakeheads] of approximately C\$33,000.00.”

Strength of Evidence: Not enough information

²⁶ *T.Z.U. (Re)* 2000.

²⁷ *P.G.L. (Re)* 2001.

²⁸ *Canada v. Zheng* 2001.

XIA LING ZHENG (1999)²⁹

Source Country: China (Fujian)

Transit Country: Canada (West Coast, Ontario)

Destination Country: United States

Description: Smuggling; group of six female minors apprehended near the Canada-U.S. border accompanied by alleged smugglers. According to the adjudicator at the detention review hearing, they used false documents to enter at various illegal points of entry into Canada. The adjudicator understood that “the families . . . have expended considerable moneys and incurred considerable debt arranging for the passage of the girls” (*Zheng v. Canada* 2000, para. 39).

Strength of Evidence: Not enough information.

RE P.E.F. (2000)³⁰

Source Country: China (Fujian)

Transit Country: Canada (Vancouver)

Destination Country: United States

Description: Abduction; seventeen-year-old male physically placed in a shipping container by snakeheads and confined there during transport by ship to Vancouver. His parents made arrangements with the snakeheads to transport him to New York. According to the refugee claim decision, “the claimant would be required to live a life of servitude first to pay off the debt to the ‘snakeheads’ and then provide on-going support for his family” (*P.E.F. [Re]* 2000, para. 15).

Strength of Evidence: 2 – Highly Probable Trafficking.

RE G.J.C. (2000)³¹

Source Country: China (Fujian)

Transit Country: Canada

Destination Country: United States

Coercive smuggling; fifteen-year-old female apprehended with other females attempting to cross the Canada-U.S. border. The Convention Refugee Determination panel found that the individual came from an abusive family and “that the parental purpose in sending a fifteen-year-old female child

²⁹ *Zheng v. Canada* 2000.

³⁰ *P.E.F. (Re)* 2000.

³¹ *G.J.C. (Re)* 2001.

halfway around the world was meant to . . . swell the family coffers in the process. The exile . . . from her family and her homeland without her prior knowledge or consent (as she testified to) is the ultimate abuse.”

Strength of Evidence: 3 – Probable Trafficking

CHU V. CANADA (2000)³²

Source Country: China (Fujian)

Transit Country: Canada

Destination Country: United States

Description: Attempted smuggling; unknown debt figures except applicant stated in affidavit the smuggler demanded payments from her family and made threats to harm the applicant if non-payment (para. 6); Justice Pinnard finds “no evidence that she has been curtailed in her movement in Canada . . . no evidence that she has been required . . . to work at any particular job . . . the evidence provided by the applicant in this case falls short of establishing that she was or is under the control of persons who engaged in trafficking to bring her to Canada.”

Strength of Evidence: 4 – Unlikely Trafficking, Likely Only Smuggling

RE T.H.K. (2000)³³

Source Country: China (Fujian)

Transit Countries: Canada (Vancouver)

Destination Country: United States

Description: According to the Immigration Board decision, the victim arrived as an unaccompanied minor. The victim suffered from violence in the home in China and was found to have been coerced by parents into attempting to reach the United States with the aid of snakeheads.

Strength of Evidence: 2 – Highly Probable Trafficking

THUI LY (2001)³⁴

Source Country: Thailand; Laos; Malaysia; China; Korea (among other Asian countries)

Transit Country: Canada

³² *Chu v. Canada (Minister of Citizenship & Immigration)* 2006.

³³ *T.H.K. (Re)* 2001.

³⁴ Mintz 2001a.

Destination Country: United States (San Jose; also, allegedly, Fremont, Milpitas, Daly City, San Leandro, Oakland)

Description: Began as smuggling; high debts (\$40,000/person for one woman) (Mintz 2001c); exploitation at destination (prostitution and “these [women] were then sequestered inside homes and apartments”) (Mintz 2001a).

Strength of Evidence: 3 – Probable Trafficking

OPERATION RELAY / FANTASY ISLAND (2001)³⁵

Source Country: Korea; China

Transit Country: Canada (Vancouver, Toronto, Sarnia, Walpole Island)

Destination Country: United States (New York, New Jersey, Detroit)

Description: Began as smuggling; high debts (up to \$50,000/person) (Maddux 2001); Exploitation at destination (Steve Martin: “forced to work in sweatshops, restaurants and as prostitutes”) (Bourette 2001); sheer number of migrants suggestive—confirmed four hundred migrants in four months (*R. v. Damani* [2003]).

Strength of Evidence: 3 – Probable Trafficking

R v. TEWANA (2001)³⁶

Source Country: India; Pakistan

Transit Country: Canada

Destination Country: United States

Description: Smuggling; low debts (\$2,500-\$3,000/person); no evidence of exploitation at destination (“there is no evidence of anyone being hurt or, indeed, being put at risk of physical harm”); some evidence suggests migrants were given options when complaining of having to hide in a trunk.

Strength of Evidence: 4 – Unlikely Trafficking, Likely Only Smuggling

R v. ESMAIL (2002)³⁷

Source Country: India; Pakistan

Transit Country: Canada (Vancouver, Calgary, Toronto)

Destination Country: United States (Houston)

³⁵ Related: *R. v. Damani* 2003.

³⁶ *R. v. Tewana* 2005.

³⁷ *R. v. Esmail* 2003 O.J. No. 6120 (case on file with author).

Description: Began as smuggling; unknown debt figures or whether exploitation at destination; however, one statement by accused suggestive of trafficking purpose: "He is also heard rejecting a possible illegal migrant because she was either too old or too fat" (Wiretap) (*R. v. Esmail* 2003).

Strength of evidence: 3 – Probable Trafficking

BYONG SUK KIM (2003)³⁸

Source Country: Korea

Transit Country: Canada (Vancouver)

Destination Country: United States (Los Angeles)

Description: Attempted smuggling; possible debt of \$6,000–\$10,000 (Associated Press 2003); unknown whether exploitation intended at destination; however, based on collected cases, South Korean women are often subject to trafficking.

Strength of evidence: 3 – Probable Trafficking

YUEN LING POON (2004)³⁹

Source Country: Thailand; China; Korea; Malaysia

Transit Country: Canada

Destination Country: United States (San Francisco; also Los Angeles, Houston, Chicago, New York)

Description: Began as smuggling; high debts (\$40,000/person) (Wallace 2004); exploitation at destination ("each woman was required to work as a prostitute"); authority commentary ("they are being treated as victims rather than criminals") (Wallace 2004, quoting Mark Wollman).

Strength of evidence: 2 – Highly Probable Trafficking

LISBON FALLS (2004)⁴⁰

Source Country: Korea

Transit Country: Canada; Mexico

Destination Country: United States (Lisbon Falls, Maine)

Description: Began as smuggling; high debts (one woman "reported that from the standard \$80 fee for a massage and sex, the manager received \$60 . . . which goes toward paying off her smuggling debt"); at desti-

38 Associated Press 2003.

39 Wallace 2004.

40 Hench and Weinstein 2004.

nation prostitution; despite this, “federal authorities say they do not yet have evidence of human trafficking . . . law enforcement officials say the Koreans were part of a syndicate that ensnares women who are desperate for residence in the United States and willing to prostitute themselves” (Schweitzer 2004). “A woman . . . told authorities her movements were restricted”; “a 34-year old woman, said that she paid a man \$1,500 in Korea . . . and that she was smuggled into the country from Canada through the border with Washington” (Peters 2004).

Strength of evidence: 3 – Probable Trafficking

JARVIS AND PARK (2004)

Source Country: South Korea

Transit Country: Canada (British Columbia)

Destination Country: United States

Description: Attempted smuggling; unknown debt figures or whether exploitation intended at destination; however, based on collected cases, South Korean women are often subject to trafficking.

Strength of evidence: 3 – Probable Trafficking

CHONG SU LONG (2004)⁴¹

Source Country: Asia

Transit Country: Canada

Destination Country: United States (San Francisco)

Description: Began as smuggling; high debts (“one of the managers allegedly paid \$32,000 to the [smuggler]”); exploitation at destination—“basically it’s a sweat shop—only it’s a sex shop” (Tim Hettrich); authority commentary (“none of the suspected prostitutes will face charges but instead will be used to help build a case against the human traffickers”) (Matier and Ross 2004).

Strength of evidence: 2 – Highly Probable Trafficking

WOODSTOCK (2005)⁴²

Source Country: Asia, Korea

Transit: Canada (Woodstock, NB; Sault St. Marie, ON)

Destination Country: United States (Maine, Michigan)

⁴¹ Matier and Ross 2004.

⁴² RCMP 2005.

Description: Smuggling; two offenders sentenced to seven and five years (RCMP 2005).

Strength of evidence: Need more information

Note: both offenders were previously convicted in the Operation Relay case.

DENVER (2005)

Source Country: Korea

Transit Country: Canada, Mexico

Destination Country: United States (Denver)

Description: Began as smuggling; high debts (\$15,000-\$30,000/person) (Marc Fleecs, Denver Post 2005); exploitation at destination ("A Denver police crackdown on prostitution reveals women held at Asian massage parlors until they repay debts"); under control ("if she wants to leave, she can't leave until the money is paid") (Herdy 2005).

Strength of evidence: 2 – Highly Probable Trafficking

U.S. v. SUM BUM CHANG (2005-2007)⁴³

Source Country: Korea

Transit Country: Canada

Destination Country: United States (Dallas)

Description: Began as smuggling; debt ("Chang purchased the debt from the smuggler and then put the two female victims to work as prostitutes to pay off the debt"); exploitation at destination ("Chang fined the women for violating his rules, adding the fines to their debts"); under control ("Chang held the women's passports; . . . the women needed Chang's permission to leave the house, which was equipped with a video surveillance system to monitor their entries and departures; one woman escaped from the house by leaping from a second story window and eventually contacted law enforcement") (*USA v. Sum Bum Chang* 2007).

Strength of evidence: 2 – Highly Probable Trafficking

RICKY CHOI (2005)⁴⁴

Source Country: Korea

Transit Country: Canada, Mexico

43 *USA v. Sum Bum Chang* 2007.

44 Davila 2004.

Destination Country: United States (Seattle, Los Angeles)

Description: Began as smuggling; high debts (\$20,000/person) (*U.S. Fed News* 2005a); exploitation at destination ("the women would pay off their debt to the smuggling organization by working at massage parlors and bars that were fronts for prostitution") (*U.S. Fed News* 2005b).

Strength of evidence: 3 – Probable Trafficking

SANG YOON KIM/IDAHO (2005)⁴⁵

Source Country: Korea

Transit Country: Canada

Destination Country: United States (Los Angeles)

Description: Attempted smuggling; debt figure unknown; exploitation intended at destination (at their release hearing, "[Justice] Lodge said, "there appeared to be strong evidence the women were to become prostitutes in California" [Associated Press 2005]; but later "federal prosecutor Nancy Cook said, 'This is not a trafficking case. . . . Human trafficking involves force and intimidation . . . the women voluntarily hid in the RV to illegally enter the United States" [Russell 2005]. However, Bruno Godin observed that even if the women knew they were going to work in the sex trade, it's unlikely that they would be aware of the conditions or consent to the actual circumstances faced by South Korean prostitutes in L.A. or their final destination.)

Strength of evidence: 3 – Probable Trafficking

SAVITA SINGH MURRAY (2005)

Source Country: Guyana

Transit Country: Canada (New Brunswick)

Destination Country: United States

Description: Attempted smuggling; debt figure unknown; exploitation intended at destination; authority commentary ("[Judge John Woodcock] sternly admonished Singh Murray for her involvement with what prosecutors suspect was a plot to bring young women into the country to be forced to work as prostitutes; 'I can tell you that the only reason I sentenced you the way I did is because of the problem of proof'" (Harrison 2005).

Strength of evidence: 3 – Probable Trafficking

45 Healey and O'Brian 2007.

GILDED CAGE (2005)

Source Country: Korea

Transit Country: Canada, Mexico

Destination Country: United States (San Francisco)

Description: Began as smuggling; debt figure unknown; exploitation at destination (“the women, in their 20’s, were held captive and forced to work as prostitutes”); under control (“employees at Kings Massage directed . . . female Korean nationals to work as prostitutes until their trafficking debts were paid in full. During that time period, co-conspirators allegedly collected and maintained control over the prostitution proceeds until their debts were paid in full”) (Marshall 2005); authority commentary (the charges included “conspiracy to transport female Korean nationals across state lines with intent to engage in prostitution”) (May 2006).

Strength of evidence: 2 – Highly Probable Trafficking

JUNG ORGANIZATION (2005)⁴⁶

Source Country: Korea

Transit Country: Canada, Mexico

Destination Country: United States (Los Angeles)

Description: Began as smuggling; high debts (\$16,000); exploitation at destination (authority commentary: “they exploited women, some of whom apparently suffered injuries as a result of their work”) (Debra Wong in Seper 2005); issue of volition/under control (while “the women allegedly promised to pay up to \$16,000 each to be smuggled into the country, [o]nce they arrived, the women were expected to work as prostitutes, with a portion of their earnings going to repay their smuggling debts”) (Seper 2005).

Strength of evidence: 2 – Highly Probable Trafficking

JEONG HO KIM (2005)⁴⁷

Source Country: Korea

Transit Country: Canada

Destination Country: United States (Los Angeles)

46 Seper 2005.

47 Wiley 2006.

Description: Attempted smuggling of seven women and five men from Korea; other details unknown

Strength of evidence: Need more information

KENNY SUK (DONG IN SEOK) (2006)⁴⁸

Source Country: Korea

Transit Country: Canada

Destination Country: United States (Los Angeles)

Description: Smuggling; other details unknown

Strength of evidence: Need more information

MULTANI (2006)

Source Country: India; Pakistan

Transit Country: Canada (Toronto, Vancouver)

Destination Country: United States

Description: Began as smuggling; high debts (\$35,000/person; up to \$41,000/person) (Hume 2006); unknown whether exploitation at destination.

Strength of evidence: 3 – Probable Trafficking

MALCOLM/DALLAS (2006)

Source Country: Korea

Transit Country: Canada, Mexico

Destination Country: United States (Dallas)

Description: Began as smuggling; high debts (approximately \$12,000–13,000/person in one case) (Meyer 2006); Exploitation at destination (“they’d work when sick, sore and bleeding. ‘Usually they didn’t give permission for treatment,’ one said”) (Meyer 2006); under control (“Malcolm took the women’s Korean passports and told them they could not leave her employment until they paid off the money she had given the traffickers, roughly \$10,000 for each of them . . . [Malcolm] kept the women under video surveillance, prosecutors allege, so she could track how much money they made”) (Rozen 2006); volition/consent (“some worked in the sex trade in Seoul and knew they would work as prostitutes here. Others said they thought they were coming to restaurants and bars, only to be

48 Shukovsky 2006.

thrown into bathhouses”) (CBSA 2007); authority commentary (“five have been identified as potential victims of trafficking”) (CBSA 2007).

Strength of evidence: 2 – Highly Probable Trafficking

HARCHAND SINGH (2006)

Source Country: India

Transit Country: Canada

Destination Country: United States

Description: Began as smuggling; high debts (\$15,000–\$40,000/person) (Johnson 2006); unknown whether exploitation at destination; however, Singh is alleged to have raped one of the women, and one of the women who was not found was believed to be seventeen years old.

Strength of evidence: 3 – Probable Trafficking

Osoyoos, BC (2006)

Source Country: Korea

Transit Country: Canada (Osoyoos, BC)

Destination Country: United States (Los Angeles)

Description: Attempted smuggling; debt figure unknown; exploitation intended at destination (RCMP determined 6 Korean women were victims of a scam and would have been forced into prostitution to pay off smuggling debts) (Bolan 2006).

Strength of evidence: 3 – Probable Trafficking

KEITH MARTIN (2006)

Source Country: Malaysia (women); Canada (man)

Transit Country: Canada (Toronto; Miramichi, N.B.)

Destination Country: United States

Description: Began as smuggling; debt figure unknown; unknown if exploitation at destination; however, “U.S. District Court Judge John Woodcock said that because the two females were still teenagers and were accompanied by a then 41-year-old man, he could not dismiss the possibility that they might be victims of human trafficking bound for prostitution” (Harrison 2006).

Strength of evidence: 3 – Probable Trafficking

NORTHEAST NY (2006)

Source Country: Korea

Transit Country: Canada

Destination Country: United States (Northeast: NY, RI, CT, MD, PA; North Carolina; California)

Description: Began as smuggling; debt figure alleged over \$10 000 (“[T]he women had incurred large financial debts, usually in the tens of thousands of dollars . . . [and] would be put to work at U.S. brothels”) (*U.S. Fed News* 2006b); exploitation at destination (“they were placed under the supervision and custody of the brothel owner or manager, who frequently took possession of the women’s identification and travel documents, including passports, to restrict the ability of the women to leave . . . the women were threatened or led to believe that if they left the prostitution business before paying off their debts, they would be turned over to the United States law enforcement or immigration authorities, or that their families in Korea would be harmed”) (*U.S. Fed News* 2006b).

Strength of evidence: 3 – Probable Trafficking

KANG/SEATTLE (2006)

Source Country: Mainland China; Korea; Thailand; Vietnam; Malaysia; Singapore; Japan; Taiwan; Laos

Transit Country: Canada

Destination Country: United States (Seattle)

Description: Began as smuggling; high debts (up to \$50,000) (*U.S. Fed News* 2006a); exploitation at destination; under control (“Kang and his competitor often kept two or three women at a house at one time, rotating them with women from brothels across the country every 10 days”) (Ho 2007).

Strength of evidence: 2 – Highly Probable Trafficking

NORTHERN BORDER/OBOY (2006)

Source Country: China; Korea; Albania; Eastern Europe

Transit Country: Canada (Ontario)

Destination Country: United States (Detroit)

Description: Smuggling; high debts (\$4,500–\$40,000) (*Canadian Press* 2006); destination details unknown; high numbers of migrants sugges-

tive of trafficking ("at least 74 were caught trying to cross into the United States") (Armstrong 2006).

Strength of evidence: 3 – Probable Trafficking

BYRON MURRAY (2007)

Source Country: Guyana

Transit Country: Canada (New Brunswick)

Destination Country: United States

Description: Attempted smuggling; other details unknown

Strength of evidence: Need more information

GALDAMEZ ORGANIZATION (2007)

Source Country: Central & South America; India; Pakistan

Transit Country: Canada (Montreal)

Destination Country: United States (Boston; New York)

Description: Smuggling; other details unknown

Strength of evidence: Need more information

JANG ORGANIZATION (2007)

Source Country: Korea

Transit Country: Canada (Toronto)

Destination Country: United States (New York)

Description: Began as smuggling; high debts (\$10,000/person) (Woolhouse 2007); destination details unknown; high numbers (twenty persons trafficked per month) suggestive of trafficking.

Strength of evidence: 3 – Probable Trafficking

MINNEAPOLIS (2007)

Source Country: China; Korea

Transit Country: Canada

Destination Country: United States (Minneapolis)

Description: Began as smuggling; high debts (\$15,000/person) (Chanen 2007); exploitation at destination ("Snyder said the women weren't allowed to leave the place of business. They would sleep on a couch or a massage table. They often spoke no English, and passports or other forms

of identification were taken away, he said. The ringleader kept them under video surveillance”) (Chanen 2007).

Strength of evidence: 3 – Probable Trafficking

DANVILLE (2007)

Source Country: Korea

Transit Country: Canada (Vancouver)

Destination Country: United States

Description: Attempted smuggling; debt figure or details of destination unknown; however, age (twelve-year-old girl and fourteen-year-old boy) (Morlin 2007) is suggestive.

Strength of evidence: 3 – Probable Trafficking

JUNK WON HWANG (2008)

Source Country: Korea

Transit Country: Canada

Destination Country: United States

Description: Smuggling; debt unknown; debt bondage (“[ring] forced some women into the sex trade to pay off their debts ... many of [Hwang’s] victims were women, who wound up in massage parlors and brothels, documents state”) (Carter 2008). High numbers suggestive of trafficking (“Hwang was responsible for smuggling as many as 20 Korean nationals a month into the United States. Most of those smuggled were women”) (U.S. Attorney’s Office 2008).

Strength of evidence: 3 – Probable trafficking

SAVITA SINGH II (2009)

Source Country: Guyana

Transit Country: Canada (N.B.)

Destination Country: United States

Description: Smuggling; debt unknown; attempt to smuggle two migrants across New Brunswick border (Canadian Press 2009); perpetrator linked to two previous cases.

Strength of evidence: Need more information

APPENDIX C: CANADIAN LEGISLATION PROHIBITING TRAFFICKING IN PERSONS

Criminal Code, R.S.C., 1985, c. C-46, ss. 279.01-279.04

Trafficking in persons

279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case.

Consent

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Material benefit

279.02 Every person who receives a financial or other material benefit, knowing that it results from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Withholding or destroying documents

279.03 Every person who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status is guilty of an indictable offence and liable to imprisonment for a term of not more than five years, whether or not the document is of Canadian origin or is authentic.

Exploitation

279.04 For the purposes of sections 279.01 to 279.03, a person exploits another person if they

(a) cause them to provide, or offer to provide, labour or a service by

engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or

(b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 118

Offence – trafficking in persons

118. (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.

Definition of “organize”

(2) For the purpose of subsection (1), “organize,” with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

APPENDIX D: U.S. VISA WAIVER PROGRAM & TIP REPORT TIER RANKINGS

U.S. Visa Waiver Program (VWP) countries and “roadmap” countries that are in the process of being admitted to this program are identified by their tier placement in the 2008 TIP Report in the table below. (The White House 2008; U.S. Department of State 2008b; U.S. Department of State 2008a).

VWP COUNTRIES – 2008 (2008 TIP TIER)	NEW VWP COUNTRIES – AS OF JANUARY 12, 2009 (2008 TIP TIER)	VWP “ROADMAP” COUNTRIES (2008 TIP TIER)
1. Austria (1) 2. Belgium (1) 3. Brunei (not ranked) 4. Denmark (1) 5. Finland (1) 6. France (1) 7. Germany (1) 8. Iceland (not ranked) 9. Ireland (2) 10. Italy (1) 11. Japan (2) 12. Liechtenstein (not ranked) 13. Luxembourg (1) 14. Monaco (not ranked) 15. The Netherlands (1) 16. New Zealand (1) 17. Norway (1) 18. Portugal (2) 19. San Marino (not ranked) 20. Singapore (2) 21. Slovenia (1) 22. Spain (1) 23. Sweden (1) 24. Switzerland (1) 25. United Kingdom (1)	26. Czech Republic (1) 27. Estonia (2) 28. Hungary (1) 29. Latvia (2) 30. Lithuania (1) 31. Slovakia (2) 32. Republic of Korea (1)	33. Bulgaria (2) 34. Cyprus (2 Watch List) 35. Greece (2) 36. Malta (2) 37. Poland (1) 38. Romania (2)

APPENDIX E: BIOGRAPHY

Benjamin Perrin is Assistant Professor at the UBC Faculty of Law and a Faculty Fellow at the Liu Institute for Global Issues. Professor Perrin serves on the UBC Senate and is the Justice, Policing and Security domain leader with Metropolis BC.

A member of the B.C. Law Society, Professor Perrin served as a law clerk to the Hon. Madam Justice Marie Deschamps of the Supreme Court of Canada and was senior policy advisor to the Minister of Citizenship and Immigration. He was the assistant director of the Special Court for Sierra Leone legal clinic, which assists the Trial and Appeals Chambers, and completed an internship in chambers at the International Criminal Tribunal for the former Yugoslavia in The Hague.

Professor Perrin is also the founder of The Future Group and served as Executive Director of this non-governmental organization that combats human trafficking from 2000 to 2006, including leading its inaugural project in Cambodia. The organization works with victims overseas, assists with the extraterritorial prosecution of offenders, and conducts public policy research on the issue.

Professor Perrin has been recognized with the Governor General's Queen's Golden Jubilee Medal, the YMCA International Peace Medal, and the "Graduate of the Last Decade" Award from the University of Calgary. He has also been described as one of Canada's "best and brightest" by Maclean's magazine and as a "Hero in the Fight Against Modern-Day Slavery" by the U.S. Department of State.