International Legal Perspectives on Human Trafficking

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Snapshot of the crisis...

The US State Department estimates as many as 27 million men, women, and children are living in conditions of forced labor, bonded labor, forced child labor, and sexual servitude in 2012.
Snapshot of the crisis...

It is estimated that about 800,000 of these persons were moved across an international border – known as transnational trafficking.

Of these, 80% were women; 50% were children.
Agreeing on an international legal definition of trafficking
Trafficking has been a “legal” problem for a long time...

- International Convention for the Suppression of the Traffic in Women of Full Age (1933)
- Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (1926)
- International Convention for the Suppression of the Traffic in Women and Children (1921)
- International Convention for the Suppression of the “White Slave Traffic” (1910)
- International Agreement for the Suppression of the “White Slave Traffic” (1904)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000

- Protocol to the UN Convention against Transnational Organized Crime.
- Also known as the Palermo Protocol 1 or the Anti-Trafficking Protocol.
- As of March 2013 it has been ratified by 117 countries and has 154 parties, including Canada.
“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”
Thus human trafficking can be identified by the confluence of three factors:

(1) **The act** (the recruitment, transportation, transfer, harbouring or receipt of persons);

(2) **The means** (by threat or use of force or other forms of coercion);

and

(3) **The purpose** (for the purpose of exploitation).

In addition, Article 3(c) of the Protocol provides a separate definition for trafficking in children which requires elements (1) and (3) above, but does not require the use or threat of force or coercion in achieving them.
(3) **the purpose** (for the purpose of exploitation).

**Can include:**

- Forced labour and bonded labour;
- Sexual slavery and forced prostitution;
  - Forced marriages;
  - Domestic servitude;
- Child labour, child soldiers, child brides.
Trafficking vs. Smuggling
Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

- Protocol to the UN Convention against Transnational Organized Crime.
- Also known as the Palermo Protocol II or the Anti-Smuggling Protocol.
- By 2012 it had been signed by 112 states, and ratified by 130 states, including Canada.
“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.
Trafficking vs. Smuggling

• **The act:** Smuggling must occur across national boundaries; trafficking can occur within or across national boundaries.

• **The means:** Smuggling can occur with the consent of the person; trafficking necessarily involves the coercion of the person.

• **The purpose:** Smuggling requires a monetary or other material gain for the smuggler; trafficking requires an exploitative purpose for the trafficker.

• **The ‘victims’:** Smuggling is gendered male; trafficking, especially transnational trafficking, is gendered female.
Complementary protection against trafficking in international law
TRAFFICKING OF CHILDREN:


TRAFFICKING IN WAR ZONES:

TRAFFICKING OF LABOUR:

• International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

• ILO Convention No. 182: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)

• ILO Convention No. 138: Convention Concerning Minimum Age for Admission to Employment (1973)

• ILO Convention No. 105: Convention concerning the Abolition of Forced Labour (1957)
Canada’s *domestic* implementation of *international* norms
Criminal Code, 2005 amendment

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...

279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they 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.
Offence in relation to trafficking in persons

7 (4.11) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.01, 279.011, 279.02 or 279.03 shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act.
Organizing entry into Canada

117. (1) No person shall organize, induce, aid or abet the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act.

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.
British Columbia Supreme Court strikes down s.117(1) of the *Immigration and Refugee Protection Act* as **unconstitutional** because it fails to include a requirement that the smuggling take place for financial or other material gain.