



TRAFFICKING IN DESTINATION COUNTRIES: THE FORCED LABOUR DIMENSIONS

**Presentation to ILO Symposium on Trafficking in Human Beings, Tokyo, Japan, 23
September 2003**

By Roger Plant
Head, Special Action Programme to Combat Forced Labour
ILO, Geneva

Distinguished participants,

It is a very great honour to be with you today, on my first visit to Japan. I have long wanted to come to this great country, having worked with so many distinguished colleagues during my professional life.

Today's meeting is of immense importance, certainly for the ILO and our Special Action Programme against Forced Labour, and I hope also for all participants. We are dealing with a very complex and also difficult issue, that of trafficking of human beings in a destination country. How can we better understand the problems? How can awareness of the problems be increased in all parts of society, whether Government agencies, parliamentarians, the media, business and workers organizations, NGOs, and many others? What can be done, and by whom? And for this particular symposium, organized by the International Organization, there is one final question. What can an organization like the ILO contribute to the problem of trafficking in destination countries,

together with Ministries of Labour, other Government agencies, and its principal social partners?

So I would like to congratulate ILO Director Mitsuko Horiuchi for organizing such an event, and for inviting Helga Konrad and myself to join such a distinguished group of Japanese officials, experts, scholars, analysts and activists. As I hope to show, it is extremely useful to compare European and Asian perspectives on one of the most disturbing human rights and security issues of our times. There is a great deal happening in Europe, in terms of declarations, conferences, action plans, and also media attention. More and more donor funds are being put into anti-trafficking activities, in particular trying to stem the flow of trafficking from Central and Eastern Europe, or Africa and parts of Asia, to Western Europe. Just like week in Strasbourg, I attended the first session of an expert working group set up by the Council of Europe to draft a new European Convention against trafficking. As the United Nations Convention against Transnational Organized Crime is about to come into force – hopefully to be followed in the not too distant future by the entry into force of the Palermo Trafficking Protocol – the momentum is certainly strong.

But the problems are also huge, and arguably growing. We cannot delude ourselves that a plethora of ministerial meetings, declarations and action plans is in itself the answer to the gruesome problem of trafficking in Europe as in the rest of the world. There are huge structural problems, in European labour markets, migration policies, welfare systems, and monitoring and law enforcement mechanisms. There is an urgent need to reach consensus as to how to deal with the growing problem of the sex trade

and sex slavery which has so far caught most of the media attention. Different European countries have different attitudes to such questions as prostitution. But every government recognizes the urgent need to tackle, as a matter of urgency, the trafficking in young women and children from Central and Eastern Europe, and the criminal networks which reap massive profits from this sexual exploitation.

Today, however, I shall say little about trafficking for sexual exploitation. The previous speaker will have already covered the ground, explaining European policies and programmes, their successes and shortcomings. To complement this, I wish to focus on three things, all of them of much relevance to future work against trafficking in Japan and other Asian countries.

First, I wish to explain what we mean by the “forced labour dimensions of trafficking”, and why this subject is receiving more and more attention in law and policy reform, research and analysis, and action plans against trafficking in Europe and other industrialized countries. The latest *Trafficking in Persons* report of the US State Department, issued in June this year, gave almost equal weight to the forced labour and sexual dimensions of human trafficking. In its opening words, “As unimaginable as it seems, slavery and debt-bondage still persist in the early twenty-first century. Millions of people around the world still suffer in silence in slave-like situations of forced labour and commercial sexual exploitation from which they cannot extricate themselves. Trafficking in persons is one of the great challenges of our time. It is, as the International Labour Organization (ILO) points out, the “underside of globalization””. A similar approach is emphasized in the recent action plan to combat trafficking of the Organization for

Security and Co-operation in Europe (OSCE) , issued the following month in July 2003. The OSCE action plan stresses the need to address the problem of unprotected and informal labour, and to tackle those underground economic activities which undermine economies and enhance trafficking.

Second, I wish to dwell on the basic principles, approaches and mechanisms needed for effective action against trafficking, whether for the purposes of sexual or labour exploitation. There are very many international organizations involved in anti-trafficking activities. Some are concerned mainly with criminal law and its enforcement; others primarily with border control, security issues and repatriation of trafficked persons. Yet others place the main emphasis on prevention, or also on rehabilitation of returned trafficked victims to their places of origin. Broadly speaking, distinctions are usually drawn between actors who place the main emphasis on border and security concerns, and those who place most emphasis on human rights and the protection of victims. I would argue that it is also important to see trafficking as in large part a labour market failure, a failure of labour migration and social welfare systems. And in any event, it is vital to involve labour institutions and authorities more closely in the global action against trafficking, in destination countries in particular.

Third, I wish to reflect on the meaning of comprehensive and integrated programmes against trafficking. In present-day declarations, there is much reference to the need for such integrated approaches against trafficking, in origin, transit and destination countries. Yet the programmes are usually broken down into different components: awareness raising, data collection and research, prevention, victim

identification and protection, law enforcement, rehabilitation etc. The issue is that different agencies can assume different parts of an anti-trafficking programme, with different objectives. Moreover, practically no agency has been able to develop comprehensive and integrated programmes, across the board in both origin and destination countries. This, I believe, is something the ILO is rather well equipped to do. So I shall end my presentation by explaining our own approach, linking our normative work with our operational activities in the areas of labour inspection and monitoring, employment services, employment promotion and community development, and the involvement of employers and workers organizations as our principal social partners.

The meaning of forced labour: the ILO Conventions, the Palermo Trafficking Protocol, and new national approaches

The ILO has always had a basic definition of forced labour, which can be applied to the forced labour dimensions of trafficking. It was set out in the original Forced Labour Convention, No. 29 of 1930, as any work or service performed under the menace of any penalty, and for which the said person has not offered himself voluntarily. The definition of forced labour was in no way changed by the later Convention, No. 105 of 1957, which called for the immediate abolition of forced labour adopted for a range of purposes (including the treatment of political or ideological offenders).

For the ILO and its constituents, the Palermo protocols on trafficking and smuggling represent a particular responsibility. For in defining “trafficking in persons”

(Article 3 of the Trafficking Protocol), the drafters have drawn a basic distinction between trafficking for labour and forced labour exploitation on the one hand, and sexual exploitation and prostitution on the other. (I shall not concern myself here with trafficking in human organs, which is a very different issue). First, what sets *trafficking* apart from *smuggling* of persons is the existence of the threat or use of force or other forms of coercion, of fraud or deception or the abuse of power, *when* recruiting or transferring a person for the purpose of *exploitation*. And the concept of *exploitation* shall include, “as 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”.

In simple terms, it can be seen, Article 3 of the Protocol lends itself to distinguishing between trafficking for prostitution or other forms of sexual exploitation on the one hand; and forced labour or slavery-like practices on the other. As many analysts are finding, however, the definitions are leaving a number of things unsolved. Even the concept of exploitation in the case of prostitution can be a difficult thing to determine, when different countries have different approaches to its legalization or criminalization. Much greater difficulties can arise with regard to such terms as exploitation, coercion and servitude. These terms are not defined as such in international law. There is a definition of debt bondage in one international legal instrument, the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. But as one analyst has argued, the Protocol’s attempts to define trafficking through reference to concepts such as exploitation, deception and consent also present more general problems in distinguishing trafficking from legally

tolerated employment contracts. There are open questions about how exploitative an employment relationship needs to be before one can say that a person has been recruited and transported for the purposes of labour exploitation.

Member States are nevertheless having to grapple with these issues, for the purposes of reforming their Criminal Law and other legislation, as they prepare for the eventual entry into force of the UN Convention and the Palermo Protocols. Slowly but surely, the broader dimensions of trafficking are being appreciated by legislators, as well as policy-makers. The first generation of national anti-trafficking laws (in places like Belgium and Italy in Europe for example, and further afield in China) covered only sexual exploitation of women and children. By contrast the United States Victims of Trafficking Protection Act, adopted in 2000, has a much broader focus. In the United States, awareness of the broader forced labour dimensions of human trafficking appears to be strong. Its new anti-trafficking law, signed into law in October 2000, can be considered a pioneering legal instrument of its kind. It created new crimes and enhanced penalties for existing crimes including forced labour, trafficking with respect to peonage, slavery and involuntary servitude, and it criminalized attempts to engage in these activities. This has paved the way for intensified activity by the executive branch of government. In March 2003 for example, the number of 128 open trafficking investigations was more than double that of early 2001. But the TVPA has done more than affect approaches in the United States alone. It provides for assistance to foreign countries in order to, *inter alia*, draft laws to prohibit and punish acts of trafficking, and strengthen investigation and prosecution of traffickers. A particularly high profile case, investigated by the Department of Labour and the Criminal Section of the Civil Rights Division, involved some 200

Chinese and Vietnamese nationals, mainly young women, who had been forced to work in a garment factory of American Samoa. The leader of the operation was convicted earlier this year, and now faces a substantial prison sentence.

Russia's new draft law on trafficking, which had its first reading in the Russian *Duma* earlier this year, also addresses forced labour concerns . Basic definitions of trafficking cover debt bondage, serfdom, forced or compulsory labour, and slavery. Labour exploitation in agriculture, construction, home servitude and catering are listed among the economic activities where the victims of trafficking can be subject to criminal exploitation. Of particular importance in the Russian draft (still to be approved by the Duma at the time of writing), are both the diversity of Government agencies involved in the drafting process, and the broad scope of the activities that can be covered by the criminal offence of trafficking. The very comprehensive Russian draft distinguishes between the various kinds of coercion involved in the trafficking process (physical coercion with the use of force, economic coercion in the form of debt bondage or serfdom, psychological coercion through the threat of force, legal dependence, or slavery or conditions similar to slavery).

Only yesterday in Seoul, at an Expert Group Meeting on Trafficking organized by the Government of Korea together with the Asian members of the Bali process, I was able to appreciate the debates on these issues in Asia. The Government of Cambodia, Indonesia, Korea, the Philippines and others (several of these both origin and destination countries) were able to present their new anti-trafficking laws and drafting initiatives. Many are still concerned only with prostitution of sexual exploitation, though

the new anti-trafficking Philippines anti-trafficking law (clearly influenced by the Palermo Protocol) gives due attention to forced labour and slavery concerns. A representative of the Asian Development Bank, stressing the importance this institution now attaches to trafficking, was one person to stress the importance of the forced labour dimensions within the overall structure of certain Asian economies. But what impressed me was the realization that, whether we are talking of labour or sexual exploitation (and the two problems, I repeat, can often have overlapping elements), some governments are giving particular importance to employment and labour structures in the intensified fight against trafficking. This was the case of Korea, whose rapid progress against trafficking has recently been recognized. It has carried out rigorous monitoring of all its employment services, both public and private, carrying out prosecutions in cases where these have been linked with trafficking networks. And, without prejudicing future debates as to whether or not prostitution should be considered a legitimate economic activity, the labour authorities have taken action to ensure that abused entertainment workers receive the minimum wage, rather than lose their subsistence livelihood at the profits of their exploiters.

Many European States are now turning their attention to these concerns. and – not surprisingly – are in some cases requesting ILO guidance on the concept of forced labour for implementing Article 3 of the Palermo Trafficking Protocol. Germany for example has made such a request, indicating that the phrase *forced labour* will be included as an element in the Penal Code definition of trafficking in human beings (which hitherto was only termed *trafficking* if it was for sexual exploitation).

These are challenges that the ILO is now happy to take on in accordance with its competence. But they are of course not easy issues. Forms of coercion in recruitment and employment, which can be subsumed under the term *forced labour*, can be subtle and hard to detect. There may be outright physical restraint, for example locking individuals in a farm building or sweatshop. The restraint can be less overt, such as confiscation of papers, non payment of wages, induced indebtedness, or even threats to denounce irregular migrant workers to authorities if they do not accept arduous working conditions. And the victims of forced labour may be reluctant to report abuses to the authorities, if they are in an irregular work situation, and if the outcome may be deportation rather than any immediate remedy.

These are admittedly complex issues over which consensus still has to be built. To help build this consensus our Special Action Programme to Combat Forced Labour has launched a series of country studies on the forced labour outcomes of trafficking in destination countries, mainly in Europe but also in the United States. The research programme was initially sparked off by the interest of the Netherlands Government in addressing the demand dimensions of trafficking, as well as the economic aspects, in the context of its Presidency of the OSCE. The Netherlands is in the process of assuming the presidency of the OSCE, the Council of Europe and the European Union successively, and has expressed an interest in making action against human trafficking a cornerstone of these three presidencies. This in preparing for the May 2003 OSCE Economic Forum, it enabled us to commission an overall study on the economics of trafficking, and also the several studies on the forced labour dimensions in destination countries.

The first results of this research work are only now coming in, and only preliminary findings can be shared with you. To some extent the ability to detect forced labour outcomes of trafficking in these destination countries is affected by the legal framework, and also procedural mechanisms for investigating and prosecuting cases. The studies are sometimes focusing on specific economic and industrial sectors (such as construction, agriculture or domestic labour), and are sometimes more general. I can say however that, while this is difficult research, the first studies are detecting quite significant incidence of forced labour, together in some cases with considerable gaps in the legal framework and procedural mechanisms for investigation and prosecution. Very often, cases of forced labour can be attributed to exploitation of members of one ethnic group of irregular migrants by members of their own ethnic group. Exploitation of Chinese in Chinese-owned sweatshops in France, for example, was first documented in reports of France's National Assembly and Economic and Social Council. We are now following up with our own detailed research, coordinated by a Chinese lawyer, which tries to understand the perceptions of the Chinese victims themselves as well portraying the general trends of recruitment and conditions of employment. We are now thinking of extending this research to the situation of Chinese persons in UK agriculture, where abusive practices by Chinese "gangmasters" have already been documented quite extensively in the British press.

The link between irregular migration and human trafficking will certainly remain a sensitive issue in Europe, as in other regions. In some quarters there is still some reluctance to see the exploitation of irregular migrants as an aspect of trafficking. It is

true, for example, that the Palermo Trafficking Protocol makes particular reference to women and children. However, as worker organizations become more involved in anti-trafficking work, it seems certain that these issues will attract a higher profile in Europe. In January this year, together with the ILO's worker activities branch and an international trade union, our programme sponsored a consultation on the Forced Labour Outcomes of Trafficking and Migration in Europe, the report of which I am happy to share with you. There seems to be some realization that serious headway cannot be made against such trafficking in persons, for as long as there is such strong demand for this irregular labour in destination countries, and in particular for as long as governments continue to allow the flourishing of an informal labour market in certain countries with clamping down on abusive practices.

As was also realized in Seoul yesterday, in our discussions on the economics of trafficking, successful work against human trafficking will require careful analysis of its economic aspects, of poverty factors among others on the supply side, but perhaps most particularly of the "pull" or demand factors in the destination countries. In Europe it is increasingly realized that there are demographic factors behind the rise in irregular migration and trafficking. There are ageing populations, and national populations are increasingly unwilling to do a range of poorly paid and dangerous jobs, many of them seasonal in nature with no prospect of long-term job security. Thus the wealthier industrialized countries now need – and will continue to need in growing countries – an increasing supply of workers willing to do jobs and tasks that many national are simply unwilling to carry out. Tourism, catering, domestic work, agriculture and construction are all creating pressures for seasonal and often informal labour markets. With growing cost

competition in some of these sectors, at a time of overall economic difficulty, a steady supply of vulnerable and unprotected workers can serve to drive wage levels down. All of this is raising difficult debates for European societies. Public opinion needs to be fully informed of the need for, and the contribution of, migrant labour in such circumstances, to defuse the anti-immigrant sentiments that appear to be growing in many parts of the world.

And clearly, if barriers are put up against legal migration in a context of demand for cheap migrant workers, this can create a dangerous breeding ground for traffickers. The trafficking agents, including organized crime, can be quick to move in when they smell the profits.

In this sense there is an urgent need to examine the linkage between standards and institutions for social and labour protection, and the incidence of trafficking. Labour institutions, such as employment and job placement services, labour inspection services and labour courts, are meant to protect workers. There can be a fine line between the legal and above-board employment services; and the job placement, visa and tourist agencies that are linked with the trafficking networks. There has been a difficult and often polemic debate over the past twenty years or so, as to the need to reduce state control over employment services, or to make labour markets less rigid and more flexible. Some European countries have since gone very far down the road of labour market flexibilisation, severely weakening inspection services, and permitting the proliferation of unregistered employment agencies.

The need for integrated programmes

I shall conclude with just a few words on the need for integrated programmes against trafficking, combining all the elements referred to above, and involving as many governmental and non-governmental actors as possible. Trafficking, I repeat, has so far been addressed too much from a security standpoint. The main official actors tend to be from ministries of interior and justice, from police departments and immigration officials, whose primary concern is to repatriate the victims of trafficking to their countries of origin. Much of the emphasis of international assistance programmes has been on repatriation, with repatriated persons receiving assistance in emergency shelters for only a limited period of time..

With national anti-trafficking plans and agencies, there is now a real chance to redress the balance. The existence of trafficking can be an entry point for new policies, seeking long term solutions of poverty reduction and development in its broadest sense. In the longer term, the ideal solution is that people should not wish to move away from their own countries. But migration for employment will be a reality for the foreseeable future, for as long as income disparities between the richer and poorer countries remain so great, and as long as the demand and supply factors remain as they are. So policies and programmes must aim at least in part to improve the situation of migrants in the destination countries

SAP-FL, building on its research, has now designed programmes with a more integrated approach, combining prevention through community empowerment and awareness-raising components, labour market analysis in both origin and destination areas, greater supervision of recruiting systems across the trafficking cycle, and regular monitoring of conditions in the destination areas. An underlying message is that trafficking must be seen in large part as a labour market failure. In consequence the main labour market actors – whether employment services and job placement agencies, labour inspectorates, labour courts, employers’ or workers’ organizations – can have a very significant role to play in sustainable action against trafficking. Working together, they are in a unique position to combine approaches of prevention, victim protection, law enforcement, institutional strengthening and rehabilitation. Programme interventions along these lines are now being pioneered in Europe.

Such programme may also be needed and relevant in Asia. But to begin with, as in Europe, a great deal of data gathering, research and consensus building will be necessary. These issues are new in many countries of the region. As for Japan itself, I have just arrived, I would not dare to make any value judgments, and I am here to learn. But we are also hoping to involve Japanese institutions in our global work against trafficking whether child trafficking, women trafficking, or the broader dimensions of forced labour and trafficking that I have aimed to examine today.

I look forward to a vigorous discussion, and thank you for your attention.