

work as prostitutes over borders, nor does it address the questions of black market labour in other sectors of the European Union.

1.5 *Developments in other regions*

At the (inter)governmental level, most regional developments concerning 'traffic in women' seem to take place in Europe. In 1992, however, a South Asia Regional Workshop on Protecting the Rights of Women and Children with special reference to 'international trafficking and migration' is held in Dhaka.²⁸ 'Trafficking' is here defined as:

All acts involved in capture and acquisition of persons for trade and transport with the intent to sell, exchange or use for any illegal purpose.

1.6 *International Organization for Migration (IOM)*

In the 1990s, under the influence of increasingly restrictive immigration policies of the more affluent countries, 'trafficking in women' becomes more and more an issue of illegal or 'unorderly' migration. This development is particularly evident in definitions originating in Western Europe, the United States and Canada, which tend to equate 'trafficking in women' with the 'smuggling of aliens', also called 'aliens trafficking' or 'trafficking in migrants'.

This development is reflected in the IOM taking up the issue of 'trafficking'. In his statement for the Preparatory Meeting on Traffic in Women²⁸ in December 1995, Mr. Marco Gramigna addresses the definitional issue as follows, after having referred to the 1949 Convention:

Since the adoption of the Convention, migrant trafficking has not only grown in scale, but also taken a greater variety of forms, such as forced marriage and labour. [...] NGOs typically define trafficking in women in very broad terms and focus on abuses suffered by trafficked women, while immigration and police authorities generally focus more on trafficking as an organized crime problem involving sophisticated criminal networks (IOM 1995c, p. 1).

Whereas the IOM is in the process of refining their definition to 'adequately reflect the

28. Preparatory to the European Conference on Trafficking in Women in Vienna, June 1996.

reality of trafficking in women', Gramigna remarks that there first is a need for more clarity as to what constitutes migrant trafficking as such:

As it relates to international migration, we consider 'trafficking' to exist if:

- an intermediary - the trafficker - is involved
- money (or another form of payment) changes hands
- an international border is crossed
- entry and/or stay in the country of origin or destination is illegal.

However, we also realise that trafficking in women has some special characteristics that are not commonly found in other forms of migrant trafficking. For example, kidnapping of persons for purposes of trafficking them and selling or trading migrants into prostitution or forced marriage commonly occur within the context of trafficking in women. Therefore we tentatively define trafficking in women as any illicit transporting of migrant women and/or trade in them for economic or other personal gain. This may include the following elements:

- facilitating the illegal movement of migrant women to other countries, with or without their consent or knowledge
- deceiving migrant women about the purpose of the migration, legal or illegal
- physically or sexually abusing migrant women, or financially exploiting them en route and/or in the country of destination
- kidnapping or coercing migrant women for the purpose of trafficking them
- selling women into, or trading in women for the purpose of, employment, marriage, prostitution or other forms of profit-making abuse (IOM 1995c, p. 1 ff.).

The same trend is reflected in the already mentioned final conference in Vienna, June 1996, organised by the European Commission in collaboration with the IOM. An overwhelming number of documents prepared by governments and international organizations are headed 'trafficking in migrants' or 'trafficking in aliens' (although what is understood by these terms vary) and predominantly address questions of illegal migration.²⁹

1.7 *International Labour Organization (ILO)*

Until recently the International Labour Organization has not been very active in the field

29. For example, the pleading for a European Convention on Prevention and Suppression of Alien Smuggling (see: Austria 1994).

of 'traffic in women', in the narrow meaning of 'trafficking' for prostitution. However, over the last few years the ILO has taken some initial steps to include women's work in the informal labour sector as part of its mandate. An illustration can be taken from their studies on the situation of foreign domestic workers and entertainers (Weinert 1991; Colectivo Ioé 1991).³⁰

2 Developments and themes

A review of the various definitions and their historical development reveals a number of trends and themes. Some of them run parallel, others merge.

2.1 From 'recruitment' to exploitation

The traditional concept of 'traffic in women', as expressed in the earliest treaties at the turn of the century, limits 'trafficking' exclusively to the (forced) recruitment and transport of women for prostitution ('entices or leads away'). Underlying concern is the protection of 'innocent' women from being lured into brothels. Coercive conditions inside brothels ('the case of the retention, against her will, of a woman or girl') are explicitly not addressed, as this is a 'question of internal legislation'.

The 1949 Convention, for the first time, links 'trafficking as procurement' with 'prostitution as exploitation'. Whereas the first article addresses the enticing and leading away of women and girls – and in that sense only summarizes the previous treaties – the two following articles broaden the scope of the treaty to include the 'exploitation of prostitution', defined particularly by financial management or rental of premises for the purpose of prostitution. Although still addressed in separate articles, 'trafficking' and 'exploitation of prostitution' are mentioned in the same breath; the distinction between the two more or less disappears. Illustrative are the various national laws that are drafted pursuant to the 1949 Convention. For example, contrary to what its title suggests, the Indian *Immoral Traffic (Prevention) Act* targets the exploitation of prostitution rather than 'trafficking'.

This disappearance of the distinction between 'trafficking' and 'exploitation of prostitution' is also shown by other post-war international definitions. While some contemporary definitions address predominantly the procurement aspect similar to the traditional con-

30. This trend has continued, as exemplified by the recent publication of *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, Lin Lean Lim (ed.), International Labour Office, Geneva 1998

cept of 'trafficking' (e.g. the IOM definition, though the emphasis here is on illegal migration), other definitions include the situation in which women end up, be it by coercion or with their consent. In many definitions the merging of 'trafficking in women' and 'exploitation of prostitution' leads to confusion; it is not clear which situations are exactly being addressed and how these should be characterized.

2.2 From 'coercion' to 'even with her consent'

The first treaties are clearly restricted to compulsive forms of procurement and do not address situations in which no coercion, abuse or deceit is involved. In this sense the 1910 Convention can be considered a 'minimum agreement treaty': although individual States are allowed to penalize non-compulsive forms of procurement, international agreement obliges punishment only in cases of 'fraud or the use of violence, threats, abuse of authority, or any other means of constraint'. It is only in 1933 that the condition of restraint is abandoned, if initially only with regard to the international 'traffic in women': from then on procurement is a punishable offence 'even with her consent'. This trend continues after World War II. The 1949 Convention explicitly addresses all forms of procurement and exploitation for the purpose of prostitution, with or without the consent of the woman involved. The distinction between national and international 'traffic in women', which was made previously, disappears.

In the 1980s, the question of consent resurfaces on the political agenda. A number of the more recent definitions re-introduce coercion or force as a crucial element in the definition of 'trafficking', such as the 1996 resolution of the European Parliament. However, to what 'force' or 'consent' exactly refer is another permanent source of confusion. Relatively clear is the view in which 'force' refers to both the conditions of recruitment and the conditions of work. In this view the central question is under what conditions one may speak of forced recruitment or forced working conditions, as distinguished from conditions of recruitment and work based on mutual agreement. 'Forced prostitution' in this view is the equivalent of forced labour in prostitution.

A more traditional – but still very common – interpretation of the free/forced dichotomy is the one in which 'free' and 'forced' is understood as referring to the recruitment process only. Forced in this interpretation does not address working conditions, but merely the way a woman came to be a prostitute: as a result of her own decision or forced by others. 'Force' here refers to forcing 'innocent' women into prostitution. 'Forced prostitution' in this view is the equivalent of forced recruitment. From this perspective, once a woman works as a prostitute, the conditions under which she is working are of no importance.