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A Follow-up Study of Canadian Policy on Human Trafficking: Impacts of the Immigration and Refugee Protection Act

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ABSTRACT

This paper summarises an Immigration and Metropolis-funded follow-up study on Canadian policy on human trafficking since the adoption of the UN Protocol on Trafficking in 2000 and the implementation of the 2001 Immigration and Refugee Act. This paper describes the research project, its results, the policy implications and the dissemination of findings. The paper offers an overview of the UN Protocol and critically analyses Canada's efforts in the three key areas of the Protocol: prevention of human trafficking, protection of trafficking victims and the prosecution of traffickers. Since the beginning of our research, progress has been made in Canadian policy responses. The government began by developing and implementing its tools for the prosecution of traffickers, thereby satisfying most of the prosecution requirements of the UN Protocol. Different government agencies are also coordinating their efforts to implement prevention projects, both in source countries and at home, including awareness-raising campaigns, education campaigns and policy development collaborations. However, the more structural elements of prevention have yet to be adequately addressed. Finally, Canadian government agencies are in the process of improving their frameworks for the treatment and protection of trafficking victims who are intercepted in law enforcement operations or who come forward for help. These protection measures would be strengthened further if migrants' rights were explicitly protected by law. Finally the authors discuss the remaining challenges that face Canadian policymakers, particularly in terms of the actualization of the human rights of trafficking victims.

Introduction

On November 15th, 2000, the United Nations General Assembly adopted the UN Convention against Transnational Organized Crime, also known as the Palermo Convention, along with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which both entered into force in December 2003.ⁱ In line with these concerns, governments have been adopting anti-trafficking policies and developing domestic laws harsh penalties for perpetrators of trafficking.

The objective of this Immigration and Metropolis funded project has been to critically analyze Canada's implementation of the UN Protocol against Trafficking from the perspective of migrants' human rights.ⁱⁱ Data is drawn from interviews with Canadian government officials and policy makers (between 2000 and 2004), observation of meetings between policy-makers as well as governmental documentary sources. The first section of this paper describes the policies and programs adopted by the Canadian government in fulfilment of its commitments as a signatory of the Protocol, examining the specific measures taken by the Canadian government as a means to prevent trafficking, protect victims, and prosecute perpetrators. The argument will be made that, although Canada is making significant efforts to comply with the international standards set by the Protocol, future legislative and policy changes are necessary if the human rights of migrants are to be respected. Of particular concern is the protection of trafficking victims who are likely to be criminalized by current legislation. The paper then suggests some policy recommendations for Canada to address its responsibility to protect victims as required by the UN Protocol before concluding with a summary of efforts to disseminate the results of this project.

The research project

In November 2003, our team received Immigration and Metropolis funding to undertake a follow-up to the research undertaken in 1999-2000 by Jacqueline Oxman-Martinez and Andrea Martinez on the policies and mandates of federal government agencies with regards to human trafficking. Since the first study had been completed, several important new pieces of legislation had come into effect. First, Canada signed and ratified the UN Protocol Against Human Trafficking and, second, the Immigration and Refugee Protection Act (IRPA) was adopted and implemented. The goal of this follow-up study was to explore the changes that had taken place in Canada's addressing of human trafficking in terms of law, policy and practice.

Towards this end, several types of data were gathered. First, government legal and policy documents were studied for changes related to human trafficking. Second, seven key federal-level policymakers were interviewed for information on their department's current approach to dealing with human trafficking and their personal opinions about the direction of human trafficking response in Canada. Third, the researchers were able to attend and observe three separate meetings that brought together policymakers and NGOs who work on the issue. Finally, relevant scientific literature was also consulted.

The Protocol against Trafficking and its Implementation in Canada

As was documented in our previous research report, Canada was heavily involved in the negotiations leading to the adoption of the UN Trafficking and Smuggling Protocols, with the participation of representatives from the Department of Foreign Affairs and International Trade (DFAIT), Status of Women Canada (SWC) (Department of Justice Canada, 2000). Canada was also among the first nations to sign (December 2000) and ratify (May 2002) the Protocols, thereby formalizing its commitment to fight organized crime and cooperate with other countries in combating human trafficking and smuggling. The UN Protocol against Trafficking suggests a three-pronged approach: prevention of trafficking, protection of the victims, and prosecution of traffickers. In Article 2, the overall purposes of the protocol are stated as being (a) the prevention and combat of trafficking in persons, (b) protection and assistance to the victims and (c) the promotion of cooperation among State Parties.

The Canadian government accepts this three-pronged approach, although there has been uneven progress in addressing the three policy areas of prevention, protection and prosecution. During the negotiations of the UN Protocol and up until early 2004, the federal government's efforts regarding trafficking were coordinated by an *ad hoc* Interdepartmental Working Group on Trafficking in Persons (IWGTIP), which brought

together representatives from different departments who shared an interest in furthering the anti-trafficking agenda. In particular with the adoption of the UN Protocol in 2000, different federal departments began independent initiatives to address trafficking. The IWGTIP was the forum where these efforts were shared and aims to coordinate them undertaken.

Our interviews with members of the IWGTIP revealed that the individuals working on this issue were highly motivated and played a very important role in slowly moving the federal government from inaction on human trafficking before the late 1990s to making it an area of high concern by 2004. While members of the IWGTIP do not have a homogenous perspective on human trafficking, most agree that a security lens was helpful in getting human trafficking onto the public agenda, especially post-September 11th. Today, however, many feel that it is time to begin raising human rights as an area of concern. In the spring of 2004, the federal Minister of Justice formalized the role of the IWGTIP for the first time. The IWGTIP was given an official mandate to develop a comprehensive anti-trafficking strategy for the government of Canada, a move welcomed by members of the IWGTIP after their years of ‘*ad hoc*’ efforts. The following sections analyses the evolution of Canadian anti-trafficking initiatives since the year 2000.

1. Prevention of trafficking

The Protocol requires Member States to take measures to prevent human trafficking from occurring and, for those who have already fallen victim, to prevent their re-victimization once they are intercepted or come forward to authorities for help (Article 9.1a). This re-victimization can occur through criminalization of victims, their poor treatment at the hands of authorities or through being returned to the context in which they were initially victimized, only to be trafficked again. To prevent such scenarios, the Protocol proposes continued research, information, and media campaigns (Article 9.2) along with legislative, educational, social, and cultural reforms.

Canada has acted on the area of the prevention of trafficking in three principal ways: precluding trafficking from occurring in the first place in source countries; stopping traffickers from entering with their victims through border controls; and through cooperating with other countries.

➤ Prevention in source countries

In terms of source country prevention, Canada’s efforts are concentrated in lobbying, education, project funding, and other related activities. For example, the Canadian International Development Agency (CIDA), Citizenship and Immigration Canada (CIC) and DFAIT collaborate on educational programs in countries ‘at risk’ of being source countries for victims of trafficking.ⁱⁱⁱ Specific initiatives include: awareness campaigns and professional training aimed at stemming the trafficking of women in Eastern and Central Europe; educational campaigns aimed at halting the trans-border trafficking of children in the Sahel Region of Africa; the development of legislation and policy frameworks to combat human trafficking in Vietnam and Pakistan (DFAIT 2003b); and the deterrence of potential Chinese and other irregular migrants through

advertisement in China of their likelihood of being detained upon arrival in Canada. Another example is that Status of Women Canada (SWC), with its mandate to promote sexual equality and ensure the full participation of women in the economic, social, cultural, and political life of Canada, supports research and knowledge exchange on trafficking.

Current efforts are being coordinated by the Interdepartmental Working Group on Human Trafficking, composed of representatives from 15 federal agencies, oriented mainly towards information-sharing and concrete anti-trafficking actions. An information pamphlet to prevent trafficking in source countries has been prepared, culturally tested and translated into 14 languages after having received feedback from the source countries. It is being distributed in Canadian missions abroad and to regional and local NGOs working directly with potential or real victims of trafficking, especially women and street children. CIDA and International Organization for Migration (IOM) missions will also collaborate in the distribution process.

➤ **Border control**

Article 11 of the protocol establishes that State Parties shall strengthen border controls in order to prevent and detect trafficking in persons. The international measures taken against trafficking are linked with the general response of Western countries to the “new migration order” (Apap *et al.* 2002). Thus, in the early ‘90s, the issue of trafficking was included as part of the migration policy approach of intensifying control and repressing illegal migration. Moreover, in the aftermath of the terrorist attacks of September 11th, 2001, western countries have focused on border controls as being central to national security.

Since September 11th, 2001, Canada has faced significant criticism of its immigration policies. Several countries - the most vocal being the United States - have accused Canada of being a ‘jumping-off point’ for terrorists and of being too lax in its acceptance of immigrants and refugees (Crépeau & Jimenez 2002). In this context, the U.S. government has stated that due to Canada’s “lax immigration laws”, the country was “a destination and a transit point to the United States for women, children, and men trafficked for purposes of sexual exploitation, labour and the drug trade” (U.S. State Department 2003). In partial response to such criticism, Canada announced the creation of its Anti-Terrorist Plan, which includes a terrorism-fighting strategy that focuses on reinforcing immigration controls, on October 12th, 2001.

This border-control approach to fight terrorism raises questions about international migrants’ human and labour rights (Vedsted-Hansen 1999; Van Impe 2000). While some countries are actively trying to eliminate the legal, social, and labour-related hurdles that trafficked people must endure, Canada, in part due to its emphasis on border-control, has fallen behind.

Within the context of anti-terrorism, Canada has negotiated with the United States a number of new and restrictive measures regarding border crossing, particularly for refugees and individuals from countries that the United States has identified as linked to

threats of terrorism. Some examples of these measures are the 2001 Canada-USA Smart Border Declaration, the 2001 Joint Statement of Cooperation on Border Security and Regional Migration Issues (DFAIT 2003a) and the 2002 Safe Third Country Agreement on Refugees between Canada and the United States. The 2001 Federal budget built on these initiatives through a comprehensive set of measures designed to keep Canada safe, terrorists out, and the Canadian border open, especially to trade (CIC 2001).

The 2001 Immigration and Refugee Protection Act (IRPA) tightens access to immigration channels through a number of means: increased security checks at the beginning of the refugee determination process; increased detention of migrants unable to satisfactorily prove their identities; refusal to consider a refugee claim if there are reasons to believe the claimant is a terrorist (the definition of which is considered too wide by many observers – Aiken 2001a); intensification of the use of deportation; and more severe punishments for those arranging illegal entry via smuggling or trafficking (Jimenez 2002).

One of the most important positive changes introduced by the IRPA is the incorporation of the following sections that explicitly criminalize trafficking for the first time:

Article 118: (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use of threat, of force or coercion. (2) "organize", with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

While Member States have focused primarily on preventing trafficking through stepped-up border control, there is also some recognition of the importance of stopping trafficking in the victims' home countries.

➤ **Cooperation between State Parties**

The Protocols and the Palermo Convention encourage cooperation between UN Member States to prevent and punish smuggling, trafficking, and transnational organized crime through sharing of information, resources and training. On these fronts, Canada has been working closely with the United States and participating actively in the efforts of the broader international community, most notably through the G8. So far, CIC has negotiated bilateral agreements that allow sharing of information on illegal migration with the United States, Great Britain, Australia, and the Netherlands.

CIC has also made efforts to increase information sharing between the different law enforcement jurisdictions within Canada (municipal, provincial, federal as well as between criminal and immigration law enforcement). Cooperation on this issue between the CIC, the Royal Canadian Mounted Police (RCMP – the federal police force) and Canada Border Agency (CBA) is currently being developed and implemented. Our interviews suggest that competition between the different law enforcement agencies

made this task challenging but individuals we spoke with found it rewarding to be working through the process and felt that it was improving the work on trafficking issues.

2. Protection of trafficking victims

In cases where prevention fails, Member States are expected to offer protection to human trafficking victims. The Protocol assigns the status of ‘victim’ to persons who are or were the subject of trafficking (Articles 6-8). Consequently, each State Party is required to provide protection and assistance to victims of trafficking in persons. Women are among the prime targets of traffickers, frequently intended for sexual exploitation. It is in this area of the protection of victims that the Canadian government has made the least progress, facing important legislation gaps, lack of data and inadequate policies and programs for assisting the victims. Members of the IWGTIP discussed this policy weakness on the part of the Canadian government and reported this to be their next area of focus for action. At the moment, protection efforts are concentrated in four main areas: the legislative framework; the refugee determination process; access to health and social services; and the right of safe return.

➤ Legislative framework

Review of the IRPA and interviews with the members of the IWGTIP make clear that there is as yet no legal guidance for the protection of trafficking victims. If victims of trafficking are intercepted, it is largely a matter of police discretion in deciding how to deal with them. While the act of trafficking has been made specifically illegal, there is no parallel mention of the legal or immigration status to be conferred upon those who fall victim to this practice.

In practice, trafficking victims are often detained as illegal migrants^{iv}, an issue brought to the fore with the adoption of the IRPA. Section 55(2)b provides that “An officer may, without a warrant, arrest and detain a foreign national other than a protected person (...) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.” This additional restriction places a heavy burden on the asylum-seeker or trafficking victim since his/her lack of documents is presumed to indicate a lack of credibility. This type of detention is against the explicit recommendation that “trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses (guideline 6.1)” (UNHCHR 2002).

Women trafficked into Canada’s sex trade are often treated as illegal migrants and charged under the Criminal Code as prostitutes, without necessarily being provided protection or assistance measures (McDonald *et al.* 2000). The Canadian Council for Refugees points out that the IRPA also includes punitive measures which can easily be applied to trafficked individuals, while the Protocol’s guidelines are intended to protect migrants and victims of trafficking from criminalization due to activities related to their trafficking (CCR 2001). Only those migrants recognized as refugees are exempt from prosecution for clandestine entry or false documents, leading to a tendency to invite them to apply for refugee status as a solution to the criminalization conundrum. As we will see in the next section, reliance on the refugee determination system is also problematic.

➤ **Refugee determination process**

The United Nations High Commissioner for Refugees (UNHCR) has increasingly been supporting the idea of a case-by-case refugee determination process for trafficking victims. In the document entitled ‘Guidelines on International Protection: Gender-Related Persecution’ issued in 2002, the UNHCR considered that trafficking survivors are entitled to refugee status when their country of origin is unable or unwilling to provide the protection needed. In this context and concerning women and girls specifically, Canada has extended its interpretation of the Geneva Convention to women making claims on the basis of gender-related persecution (Shearer 2003). The government of Canada can therefore grant refugee status to trafficked women with well-founded fear of persecution. The Immigration and Refugee Board (IRB) of the Canadian Convention Refugee Determination Division has, in fact, already granted refugee status to victims of trafficking on the basis ‘of their membership to a particular social group’.^y This approach is problematic, however, since any involvement in criminal activity (sex trade and false documents) lessens trafficking victims’ credibility and their personal situations may not correspond to the Geneva Convention definition of ‘refugee’ (Aiken 2001b).

Within the field of the protection of trafficked persons and in coherence with our proposal for policy changes, the CCR has recommended the inclusion of the category of “trafficked person” in the IRPA’s definition of “person in need of protection”, the creation of a temporary visa for trafficked persons and the adoption of a regulatory class allowing trafficked persons to apply for permanent residence in Canada (UN CSW 2003: paragraph 367). Even though the issue of linking trafficking victims to the refugee protection system remains highly controversial, we consider that the government should recognize trafficking victims as an independent category on which refugee status could be conferred, considering issues like the aforementioned repudiation and possible persecution of the victims on returning to their country of origin.

At the present time, trafficking survivors are not eligible for refugee status on the basis of their specific victims’ condition but rather they must meet the general criteria for applying or essay to obtain it based on humanitarian and compassionate grounds. Applying for discretionary humanitarian visas is another option open to them as a way to secure status in Canada.

➤ **Access to health and social services**

Status of Women Canada has been taking a leadership role in increasing Canadian understanding of the social dynamics of trafficking and how victims are affected by it. It has brought to the forefront the social issues that usually are not considered in depth when security is the main focus. In interviews, representatives of other departments expressed that it was sometimes difficult for them to get support for this perspective within their hierarchies so that SWC’s role in doing so was important. In 2004, Justice Canada and SWC are currently funding the Canadian Council on Refugees to undertake a broad national consultation on trafficking and the social service organizations that serve victims. Currently, while there are no laws specifying the way in which trafficking victims should be treated by law or immigration enforcement agencies, the criminal justice system sometimes assists by referring intercepted victims to NGOs

Additionally, and as part of the critiques addressed to the Canadian Government in the area of the protection of trafficking victims, the UN Committee on the Elimination of Discrimination against Women (CEDAW) stated that the federal government's January 2003 report to CEDAW did not provide sufficient information on programs to assist victims of trafficking (UN CSW 2003: paragraph 368). Furthermore, CEDAW encouraged Canada "to assist victims of trafficking through counselling and reintegration" and to "take further measures to improve the current live-in caregiver program by reconsidering the live-in requirement, ensuring adequate social security protection and accelerating the process by which such domestic workers may receive permanent residency" (UN CSW 2003: paragraph 366).

Canadian law lacks formal provisions for the protection and assistance of trafficking victims, ignoring the Protocol's requirement to provide for the physical, psychological, and social recovery of victims of trafficking (i.e. appropriate housing; counselling and information; medical, psychological and material assistance; employment, educational and training opportunities). Although many state actors are working to put such measures in place on an *ad hoc* basis (see IOM/RCMP/CIC collaboration mentioned below), formal laws or regulations to this effect are key to ensuring migrants' rights.

➤ **Right of safe return**

Sometimes, victims who have been abused and exploited by traffickers wish to return to their countries of origin. These individuals may face obstacles to their return, particularly if they migrated without legal documents or if their traffickers have confiscated their identification documents. Some victims are immediately deported, while others serve criminal sentences prior to deportation (IOM 1997; Mountz 2003).

As mentioned earlier in this paper, when trafficked persons are sent back to their country of origin, there is a need to provide a mechanism to oversee the protection of their rights in the home country, if possible through an international organization. This mechanism, an important aspect of protection regimes, would avoid the so called "revolving door" potential, ensuring that once people are back home they do not find themselves once again in the hands of the traffickers (CCR 2000).

Overall, the protection accorded to victims is usually arranged in collaboration with non-governmental organizations. Health Canada has supported clinics accessible to undocumented migrants. In cooperation with SWC, Health Canada has funded local projects providing services to trafficked women, particularly those involved in the sex trade. Overseas, Health Canada collaborates with members of the South Asia Association for Regional Cooperation on policy formulation, addressing the links between health issues and human trafficking.

3. Prosecution of traffickers

The Convention obliges Member States to harmonize and strengthen their domestic laws, establish efficient networks of information, and encourage international

co-operation for the purposes of prosecution of human traffickers. In theory, Member States must aim to eliminate organized crime through a variety of measures, including the criminalization of trafficking. Canada's prosecution initiatives have focused in two main areas: the legal framework addressing organized crime and human trafficking as well as the coordination of the efforts of different law enforcement jurisdictions.

➤ **Legal reforms**

In the 2001 reforms of the Criminal Code, Canada responded to many of the requirements of the Palermo Convention, harmonizing its legal definition of organized crime with the Convention's. The Criminal Code already authorizes prosecution of specific forms of abuse, such as extortion, forcible confinement, kidnapping, intimidation, pornography, prostitution, forced sexual labour, sexual harassment, and sex tourism, especially as these offences relate to children. This whole range of illegal activities may apply to human trafficking and are concrete elements for prosecution, but the Criminal Code itself does not contain specific provisions dealing with trafficking in persons. It is instead the new IRPA regulations that declare smuggling and trafficking illegal, with serious penalties (Articles 117-121). Penalties rise dramatically with this new law, up to a liability to pay fines up to \$1,000,000, and/or life imprisonment.

➤ **Inter-jurisdictional cooperation**

The RCMP investigates violations of the IRPA, the Citizenship Act and the Criminal Code, especially those relating to citizenship offences, Canadian passport offences, frauds, forgeries and conspiracies. Among the RCMP's immigration enforcement priorities are: to combat criminal organizations involved in smuggling illegal migrants into Canada; to deter unscrupulous or illegal activity on the part of professional immigration facilitators; to undertake identity investigations on refugee claimants arriving in Canada; to identify organized crime groups and modern war criminals; and to arrest persons with serious criminal history who are subject of an Immigration Act warrant.

By criminalizing all forms of clandestine migration instead of concentrating on prevention and prosecution of migration arranged by organized crime networks, Canada's prosecution measures go beyond those required under the Convention and the Protocols. Rather than having the protection of migrants at the core of its policy, Canada has made the dissuasion of potential irregular migrants and those who facilitate their entry one of the principal goals of its policies. It must be mentioned, however, that law enforcement agencies have begun to recognize this weakness and have initiated discussions with the International Organization on Migration regarding potential measures for the proper treatment of victims intercepted in the course of police and RCMP investigations.

Remaining challenges and recommendations

Most Canadian anti-trafficking efforts have, to date, been concentrated more heavily on the prosecution of traffickers and the interception of 'irregular migrants' than on the prevention of trafficking or the protection and assistance of its victims. The Canadian response to trafficking has been to increase the policing of borders and to adopt

legislation criminalizing the acts of trafficking. Current immigration and criminal laws could technically be interpreted to exclude victims of trafficking from governmental protection and assistance, denying these victims the civil rights accorded to citizens and legal residents. Lack of adequate legislation on protection allows traffickers to have a greater control over their victims due to victims' fears of incarceration or deportation.

The focus of IRPA is criminal penalties for offenders who engage in trafficking and/or smuggling of persons as well as for migrants who possess and/or use false documents. The government's increased power to detain foreign nationals without clear proof of identity is meant as a deterrent. Taken together, these are a strong indication of the Canadian government's will to restrict irregular movement across its borders. But there are several provisions that endanger the rights of refugees and the victims of trafficking (Aiken 2001b; Oxman Martinez *et al.* 2001a).

Non-governmental organizations (NGOs), the International Organization for Migration, the United Nations, and some states offer examples of moving from rhetoric to action in the struggle to protect trafficked individuals' dignity and rights. Some of the most compelling suggestions for improving anti-trafficking measures in a way that protect victims' rights include: creating immigration policies that allow opportunities for economic migration and eliminating immigration programs which require dependency on third parties (ex. sponsoring spouse or employer); regularizing undocumented migrants; NGO increased participation in providing social and health services to victims; providing independent legal counsel for victims; and giving legal immigration status to victims who participate in social integration programs (Côté *et al.* 2001; Langevin & Belleau 2000; Oxman Martinez *et al.* 2001b).

In order to fully implement the Palermo Convention and the Protocols, Canada should move beyond prosecution and develop clear legislative and policy priorities related to the protection of the victims human trafficking. Those priorities should include the development of clear guidelines on how to proceed when authorities intercept trafficking victims or they come forward for help. Specifically, rather than wait until trafficked people achieve refugee or immigrant status, Canada should be proactive and begin incorporating them into Canadian society as soon as they are discovered. In each trafficked person's case, Canada should act to immediately determine the full spectrum of her rights. In addition, the Government should act to remove the aspects of IRPA that systematically criminalize irregular migrants. Beyond these measures, the Canadian government should act to join other countries in ensuring that Labour Codes and protective regulations apply to trafficked people and other undocumented workers. Also, as there is a dearth of empirical research on the federal government's implementation of the Convention and Protocols, it should actively promote research on both the problem of human trafficking and the implementation of its own commitments under international law.

In the four years since the beginning of our research on the issue of human trafficking and the policy response of the Canadian government, progress has undoubtedly been made. Canada began by developing and implementing its tools for the

prosecution of traffickers and has now, for the most part, satisfied these requirements of the UN Protocol. Canada is also engaged in significant international cooperation towards this end. With regards to prevention, different government agencies are coordinating their efforts to implement projects both in source countries and at home. Awareness-raising campaigns, education campaigns and policy development collaborations have been at the forefront of these efforts towards prevention. The more structural elements of prevention are not adequately addressed through these efforts; wider political reforms on the international stage are argued to be a prerequisite. Finally, Canadian government agencies are currently in the process of improving their frameworks for the treatment and protection of trafficking victims who are intercepted in law enforcement operations or who come forward for help. This is an extremely positive development that would be strengthened even further if migrants' rights were protected by law.

Dissemination of Results

Publications:

Oxman-Martinez, Jacqueline, Jill Hanley and Fanny Gomez. (submitted). Canadian Policy on Human Trafficking: A Four-Year Analysis. *International Migration*.

Oxman-Martinez, Jacqueline, Jill Hanley and Fanny Gomez. 2004. Meeting the objectives of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: an international challenge. *Metropolis World Bulletin, Vol.4, No 1*

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Conference Presentations:

Oxman-Martinez, Jacqueline, Jill Hanley and Estibalitz Jimenez. March 2004. Protection of Trafficking Victims: Where Does Canada Stand? Paper presented at the *National Metropolis Conference*, Montreal.

Oxman-Martinez, Jacqueline, Jill Hanley and Fanny Gomez. April 2004. Est-ce que le Canada a atteint les objectifs du *Protocole additionnel a la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants*? Paper presented at *ACFAS*, Montreal.

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ⁱ The other two Protocols which accompany the Palermo Convention are: (a) *Protocol against the Smuggling of Migrants by Land, Sea and Air: Supplementing the United Nations Convention against Transnational Organized Crime* and the one that is more relevant for present purposes (b) the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*.

ⁱⁱ Article 3(a) of the UN Protocol defines trafficking as “the recruitment, transportation, transfer, harboring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, coercion or the abuse of power or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of [...] sexual exploitation, forced labor or services, slavery or practices similar to slavery [...]”. Subparagraph (b) establishes that the consent of a trafficking victim is irrelevant when any of the aforementioned means have been used (UN 2000). The Protocol distinguishes trafficking from smuggling, the act of arranging clandestine entry of individuals into a country for profit, but without controlling or exploiting them upon arrival.

ⁱⁱⁱ The States Parties to Protocol agree that poverty, underdevelopment and lack of equal opportunity are factors that make persons vulnerable to trafficking (Article 9.4).

^{iv} The lack of a framework for dealing with people who may have been trafficked, particularly in terms of governmental protection, generated enormous attention and considerable controversy in Canada following the July and September 1999 arrival on British Columbia's coast of several hundred Chinese migrants suspected of being trafficked for some form of slavery. Government agencies detained most of them for several months, implementing the first instance of mass detention of refugee claimants in Canadian history (Mountz 2003).

^v *E.g.* in a recent case involving a Ukrainian victim, the board of the Canadian Convention Refugee Determination Division stated that: “[the] recruitment and exploitation of young women for the international sex trade by force or threat of force is a fundamental and abhorrent violation of basic human rights. International refugee protection would be a hollow concept if it did not encompass protection of persons finding themselves in the claimants position.” (Shearer 2003).