

CERC Annual International Conference 2006

**Sex 'n' Drugs 'n' Shifty Roles: European and
International Perspectives on Trafficking and
Illegal Migration**

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ABSTRACT & BIO

Contemporary Europe Research Centre

Jean Monnet European Centre of Excellence

The University of Melbourne

Level 2, 234 Queensberry St, Carlton

Professor Andrew Dawson (University of Melbourne)

Title:

Identity, Home and Movement

Abstract:

Based on an analysis of Bosnian narratives of displacement, trafficking, resettlement and return, this paper deconstructs the sedentarist biases within conventional identity theory and in the study of migration. It posits home, “where one knows oneself best”, as an analytical category more apposite for conceptualizing identities in an increasingly mobile world. Moreover, it argues that the ubiquity of mobility renders increasingly problematic the sociological and inter-disciplinary field of migration studies. In their place the paper argues for the development of “movement studies”. At one level this would involve a reconfiguration of the investigation of migration, from a focus on processes of departure and resettlement to processes of mobility. At another level it would involve a broadening of the object of study to investigation of the structural and experiential similarities and differences between the myriad forms of mobility, of which migration is only one.

Biographical notes:

Andrew Dawson is Professor of Anthropology and Director of Development Studies at the University of Melbourne. His publications include, 'After Writing Culture' (with A. James & J. Hockey), 'Migrants of Identity' (with N. Rapport) and 'Local Impacts of International Migration' (with G. Craig).

Professor Leslie Holmes (University of Melbourne)

Title:

Human and Drug Trafficking from and through Central and Eastern Europe

Abstract:

The fall of the Berlin Wall in November 1989 led many to believe that a wonderful new era was dawning, one in which people throughout Europe would be freer and more prosperous than ever. The subsequent reality has been rather different. A large number of factors have resulted in a rise of transnational crime in Europe since the beginning of the 1990s, and what amounts to slavery for thousands, mostly women and children. Among these factors are softer national boundaries in many parts of Europe; economic crisis and high rates of unemployment in many post-communist states (at least in the 1990s); the disintegration of three post-communist states, accompanied by wars in one of them and desperate attempts by many citizens to flee their war-torn regions; growing technological sophistication among criminal gangs; and increased corruption among state officials (especially customs and police officers). One of the most visible aspects of the rise of organised crime and corruption is the growth in human trafficking, people smuggling and drug smuggling. This has serious negative implications for the people directly involved (other than the criminals themselves), and for the populations more generally in virtually every European country. This paper will provide information on human and drug trafficking, primarily from and through Central and Eastern Europe; analysis of the reasons for this; an overview of what measures are being taken to counter

this phenomenon; and speculation on likely future scenarios. It will also include some survey results from four European states on attitudes towards trafficking – data that will be presented for the first time at this conference!

Biographical note:

Leslie Holmes is Professor of Political Science and Deputy Director of the Contemporary Europe Research Centre at the University of Melbourne. He specialises in communist and post-communist politics, with particular reference to corruption and organised crime. In connection with this, he is currently engaged in a project on people-smuggling and human trafficking in Europe, funded by the Australian Research Council. He was President of the International Council for Central and East European Studies (ICCEES) 2000-2005, and is currently President of the Australasian Association of Communist and Post-Communist Studies (AACPCS). Among his publications are *Post-Communism* (1997), *Post-Communist Democratization* (co-authored with John Dryzek, 2002), and *Rotten States?* (2006). His latest book is an edited one, due to be published in January 2007 – *Terrorism, Organised Crime and Corruption: Networks and Linkages*; that book is the result of an earlier CERC Annual International Conference.

Ms Marta Iniguez de Heredia (Deakin University)

Title:

Conceptual Issues around the Crime of People Trafficking

Abstract:

The crime of people trafficking is an assault on human rights and is tied to overt inequalities of current economic systems that have intensified in the last 30 years. Responses by the international community go back to nineteenth century attempts to abolish slavery. Unfortunately, such endeavours lacked a comprehensive framework and thus effectiveness. The most recent instrument to combat people trafficking, the “United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Organised Crime (Trafficking Protocol)” is an important step forward. It has provided for the first time a definition of trafficking and introduced references to poverty and inequality as the root of the problem. However, the conceptualisation of trafficking remains inadequate and has itself been one of the most significant obstacles to monitoring the issue. The paper therefore critically assess this new instrument and concludes that institutional efforts must be accompanied by the daily struggles of women and men to overcome underlying oppressive circumstances.

Biographical note:

Marta Iniguez de Heredia Sunye is a political scientist specialising in International Relations and Human Rights. She is presently teaching at Deakin University, Melbourne. Her main research areas are human trafficking, weapons availability, and the conflict in the Democratic Republic of Congo.

Associate Professor Susan Kneebone (Monash University)

Title:

Trafficking, Crime and Migration: A Proportionate Response? - Australia, Canada and the UK Compared

Abstract:

The ‘criminalisation’ of forced migration is a global phenomenon and a manifestation of state policy to ‘manage’ the issue, as current European responses in the Mediterranean demonstrate. In fact, evidence suggests that the underlying problem is one of inequality, which has serious implications for global security. In practice, forced migrant flows are made up of ‘legal’ and ‘illegal’ immigrants, but states respond primarily to the ‘illegals’. The conflation of the categories of smuggling and trafficking is one example of how forced migration is perceived as involving ‘illegal’ persons. Because both smuggling and trafficking are perceived as an aspect of transnational organised crime associated with ‘irregular’ international migration, states tend to respond to their victims with anti-immigration policies. Although the practice of smuggling is illegal, victims of smugglers may be ‘legal’ forced migrants entitled to international refugee protection. However victims of trafficking need to prove exploitation to receive protection. Because in practice, the distinction between smuggling and trafficking is blurred, trafficked victims may not be given the protection to which they are entitled.

In this paper I focus upon trafficking and sit the discussion in the context of global forced migration. I demonstrate through a comparison of state policy responses and the stories from three jurisdictions, namely Australia, Canada and the UK (including some discussion of European policy), that an anti-migration response has the inverse effect of increasing the opportunities for corruption and criminality activities. I argue that state policies need to focus on the victims of trafficking to combat corruption.

Biographical notes:

Susan Kneebone is an Associate Professor at the Faculty of Law, Monash University, where she teaches Forced Migration and Human Rights, International Refugee Law and Practice, and Citizenship and Migration Law. She is the author of several articles on forced migration and refugee issues. She has organised several international workshops on refugee issues, which have led to edited collections including *The Refugees Convention 50 Years On: Globalisation and International Law* (Ashgate, 2003) and *New Regionalism and Asylum Seekers: Challenges Ahead* (Berghahn, 2006, forthcoming). The forthcoming issue of the *International Journal of Refugee Law* (18/3) will be devoted to publication of papers from a workshop that she organised in Prato, Italy in September 2005, which involved leading international scholars and the UNHCR. Susan is the holder of an ARC Discovery Grant for a project entitled ‘The Asylum Seeker in the Legal System’. Together with 2 colleagues, she is working on a Linkage Grant entitled ‘Australia’s Response to Trafficking in Women: Towards a Model for the Regulation of Forced Migration in the Asia-Pacific Region’. A/Prof. Kneebone is currently on study leave as a Senior Visiting Research Fellow at the Refugee Studies Centre, Oxford University, after a period spent at the Université de Montréal.

Further information about her publications can be obtained from: <http://www.law.monash.edu.au/staff/skneebone.html>

Professor Zbigniew Lasocik (University of Warsaw)

Title:

Human Trafficking: A Challenge for the European Union and its Member States

Abstract:

Human trafficking is much closer to us in Europe than we thought, not only in the form of forced prostitution. It appears in many different ways: our colleague might be forced to work overtime with no salary; the nanny serving our friends' children might not have control over her passport; kids from our neighborhood might pose nude for nice clothes or lollies; our students might work as slaves picking tomatoes in Italy.

It is relatively easy to deal with human trafficking at the level of the state and the European Union when it comes to forced prostitution, slavery or child prostitution. It is more complicated when the true nature of slavery is hidden behind sophisticated forms of dependence, such as those mentioned above.

We know that human trafficking is modern day slavery and a crime, but above all it is a violation of human rights. If we look at the problem from this perspective, we see not only the problem itself, but the obligations of the state. Is the state aware of this? Not necessarily. Is it ready to address the issue? Not necessarily. What should we do? There should be external pressure on the state by the international community and organisations such as the European Union and the Council of Europe, and from inside by civil society.

Human trafficking and human smuggling are both closely related to immigration policy. The European Union and its Member States should be aware of this; unfortunately, they often appear not to be.

Biographical note:

Zbigniew Lasocik is a graduate of Warsaw University Law School, with and LL.M., doctoral and post doctoral degrees in law and criminology, and has an MA in Sociology from Warsaw University's Institute of Crime Prevention and Rehabilitation. He is an assistant professor at Warsaw University's Department of Criminology and Criminal Policy and head of the Human Trafficking Studies Center at Warsaw University. He is also professor of criminology and corrections. He conducts numerous research projects and studies in criminology (violent crimes, policing, prison systems) and human rights (HR education, human trafficking). He has published several books and numerous articles on all of these topics. He was a visiting fellow at the Human Rights Program at Harvard Law School, John Jay College of Criminal Justice in New York, the Center for the Study of Human Rights at Columbia University, the Swedish National Council for Crime Prevention, and the Criminology Department of the London School of Economics. Prof. Lasocik is President of the Polish Section of the International Commission of Jurists; a Member of the Board of Directors of the International Seniors Lawyers Project; and a former regional director of the European Human Rights Foundation in Warsaw.

Mr Kevin Leong (The Australian National University)

Title:

Trafficking in human beings for sexual purposes – Sweden's anti-trafficking regime, its effectiveness, and the lessons for Australia

Abstract:

This essay will firstly introduce some contextual background relating to anti-trafficking measures that have occurred at the international level. It will then examine Sweden's "anti-trafficking regime," that is, Sweden's legislative and governmental initiatives to combat trafficking. An analysis of this regime will then examine various commentators' thoughts and opinions on the successes and limitations of Sweden's efforts. The third part of the essay will compare Sweden's regime to human rights based anti-trafficking models to determine if the model can be improved. Finally this essay will consider what applications the "Swedish model" has for Australian anti-trafficking efforts.

Biographical note:

Kevin Leong is currently an ANU Summer Scholar attached to Professor Simon Bronitt at the School of Law. He has recently graduated with an undergraduate law degree from the University of Sydney where he was working on a paper concerning Sweden's responses to trafficking in human beings for sexual purposes.

Professor Bernadette McSherry (Monash University)

Title:

Australia's Criminal Justice Response to Trafficking and Slavery: Putting the Law into Practice

Abstract:

In order to ratify the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Australian government recently amended the Criminal Code (Cth) to include new trafficking offences. This paper analyses these offences and argues that while they are certainly a step in the right direction, there are anomalies in the provisions when seen in the context of the Criminal Code as a whole which may lead to problems of proof for prosecution authorities. It will be argued that it may in fact be easier to prosecute under the sex slavery provisions that were introduced into the Criminal Code in 1999. For example, in *R v Wei Tang* [2006] VCC 637, Judge McInerney of the County Court of Victoria took a very broad approach to the definition of slavery in sentencing brothel owner Wei Tang to 10 years' imprisonment after she had been found guilty of five counts of possessing a slave and five counts of exercising a power of ownership over a slave pursuant to s 270.3 of the Criminal Code (Cth). This paper will compare the offences of trafficking and slavery within a broader framework suggesting that the criminal justice response must be supplemented by human rights and migration perspectives in order to fully combat the problem.

Biographical note:

Bernadette McSherry holds the Louis Waller Chair of Law at Monash University and is the Associate Dean (Research) for the Monash Law Faculty. In 2006, she was appointed an Honorary Research Fellow at Osgoode Hall Law School, Canada. She is also a legal member of the Mental Health Review Board of Victoria and the Psychosurgery Review Board of Victoria. Professor McSherry has honours degrees in Arts and Law and a Masters of Law from the University of Melbourne, a PhD from York University, Canada

and a Graduate Diploma in Psychology from Monash University. Professor McSherry has written extensively in the areas of mental health law and criminal law and is the co-author of the books *Principles of Criminal Law* (Sydney: Thomson LBC, 2005, 2nd edition) with Simon Bronitt and *Australian Criminal Laws: Critical Perspectives* (Melbourne: OUP, 2004) with Bronwyn Naylor. Professor McSherry is currently involved in a number of research projects analysing mental health law and human rights, preventive detention regimes and people trafficking. With Dr Julie Debeljak and Associate Professor Susan Kneebone, she is a Chief Investigator in an Australian Research Council Linkage Project entitled 'Australia's Response to Trafficking in Women: Towards A Model for the Regulation of Forced Migration in the Asia Pacific Region'. Professor McSherry is a Past President of the Australian and New Zealand Association of Psychiatry, Psychology and Law (Victorian Branch), and a member of the International Association of Forensic Mental Health Services and the International Academy of Law and Mental Health. Professor McSherry is the co-editor of the Legal Issues Column for the *Journal of Law and Medicine* and is on the editorial boards of *Psychiatry, Psychology and Law* and *Monash Bioethics Review*.

Ms Valli Mendez (Project Respect, Melbourne)

Title:

Trafficking of Women into Australia for Prostitution, from an NGO's Perspective

Abstract:

Project Respect, a small grassroots NGO, spent many years lobbying for Federal Government recognition that trafficking of women for prostitution was indeed a problem in Australia. Project Respect spearheaded the campaign that preceded the Government's October 2003 announcement of a \$20m counter-trafficking program. Today's presentation will look at the work of Project Respect and the effectiveness of advocacy and support of trafficked women from a NGO perspective.

Biographical note:

Valli Mendez, acting co-ordinator of Project Respect, a Melbourne-based NGO, has been working in the community sector for eight years. She previously worked as a drama and dance teacher in secondary schools. Her strong interest in community arts led her to study community development. She worked for two years at the East Timor Human Rights Centre in Melbourne and has been a part of Project Respect since 2001. Currently, Valli is working with the Brunswick Women's Theatre to develop a two year theatre project as a means of community education on issues around prostitution and trafficking.

Ms Sanja Milivojevic (Monash University)

Title:

Women's Bodies, the Moral Panic, and the State: Anti-trafficking Initiatives and its Implications to Women's Lives – All too Familiar?

Abstract:

Estimates that thousands, even millions of women have been kept as sex slaves (Raymond et al. 2002) dominate the trafficking debate since the late 1990s. Although scarcely corroborated with data and empirical research, these estimates have been widely used by peculiar coalition of western governments, religious, international, and non-governmental organizations, and feminist abolitionist scholarship, united to protect innocent women from the Global South, and prevent organized crime networks to lure them into sex industry. As a result, the contemporary trafficking moral panic has emerged. In this paper I will argue that 'protective measures' imposed by nation states and international community to prevent "disastrous human right abuses" (Crouse 2006) of 'modern slavery' (Bales 1999, Bertone 2000, Doezema 2000, Hughes 2001, Jeffrey 2002, US Department of State 2006) have further limited women's already narrow options.

Biographical notes:

Sanja Milivojevic is a PhD candidate at Monash University in the Department of Criminal Justice and Criminology, School of Political and Social Inquiry. Her research is in the field of sex trafficking in Serbia and Australia, with a particular focus on how victims of trafficking have been constructed in Serbian and Australian culture, and what are its implications to women's status inside the criminal justice system and anti-trafficking initiatives in both countries. Sanja holds a BA and MA from Belgrade University Law School, and has worked as a researcher on various projects with the Institute for Criminological and Sociological Research in Belgrade. In 2000, as a part of an American Bar Association project, she conducted pilot-research and developed/tested a research/assessment tool for the implementation of CEDAW. Sanja has also been a member of several human rights and women's rights non-governmental organizations. She was also one of the founders of the Victimology Society of Serbia, and was instrumental in establishing the first Victim Support Service in the Balkan region. In 2001-2002, Sanja was a Public Interest Law Fellow at Columbia University Law School in New York City, USA, where she studied and worked on several projects and internships. In 2003, she completed a World Society of Victimology postgraduate course in Dubrovnik, Croatia. Finally, Sanja has participated in several international and domestic conferences and has published a number of articles in both Serbian and English. Her most recent publication is a book titled "Trafficking in People in Serbia" for which she was one of the co-authors.

Dr Rebecca Pates (University of Leipzig)

Title:

'Sadly, we have no trafficking victims here.' German Officials' Discourses on Migrants and Sex Work

Abstract:

EU borders towards the East opened two years ago, increasing the number of legal migrants who can legally work in the sex trade. It is estimated that 60% of sex workers in Germany come from new EU states - and that they generally work with the correct papers. This has caused a hiatus in the detection of trafficked women: The usual police

practice of detecting a trafficked woman has consisted in determining whether a sex trade worker is an Eastern European illegal migrant. Now that they are legally working in the sex trade, they appear to be voluntarily working there. Within our two research projects, we have conducted about 80 interviews with local administrators in half a dozen East German cities and towns (from the municipal and criminal police, health and internal revenue offices, and social workers and members of NGOs). In this paper, I will present the classifications of sex workers our administrators have come up with, and the causal narratives concerning sex workers' lives they inevitably proffer. One important implication of the dominant classification is the non-implementation of trafficking laws: if being foreign and unknowing of the sex trade are necessary conditions for being classified as trafficked (rather than the labour exploitation stipulated by law), then "there are no trafficked women in East Germany" - which official statistics show. I will try to explain why this is the case.

Biographical note:

Rebecca Pates grew up in Germany and was then educated at Oxford (BA in Modern Languages and Philosophy), McGill (MA, PhD in political Philosophy), and is now a lecturer in Political Science at Leipzig University (Germany). Her currently funded research projects include the state bureaucracy on prostitution (Saxon Ministry of Science), cross-border cooperation on the Czech-German and Polish-German borders (EU project, AGIS), right-wing youth cultures in East Germany and Sweden (EU project, DAPHNE), and the administrative responses to it (funded by the German Green Party). Her unfunded projects include new types of proprietisation with regards to organ trafficking and First Nations' theories of justice.

Professor Marilyn Pittard (Monash University)

Title:

Avoiding Abuses? The Introduction of Guest Workers Concept and its Recent Operation in Australia

Abstract:

Emerging cases have indicated that labour, which is coming from overseas under Australia's expanded temporary skilled migrant visas permitting 'guest workers', may be subjected to sub-standard working conditions by employers and exploitation by agencies which promote their employment.

The paper will examine the Australian concept of guest workers, identifying its similarities with the European concept; the aim of the programme; and how it is working in Australia. It will assess the extent to which the workers in the programme are subject to abuse by agencies and employers; and critically examine what steps are being taken, and/or should be put in place, in order to prevent the abuse.

Biographical note:

Marilyn Pittard is professor and until recently Associate Dean (Postgraduate Studies) at the Faculty of Law, Monash University. Her teaching fields include undergraduate and postgraduate labour and employment law, administrative law and public sector employment law. Professor Pittard has published extensively in all aspects of labour and

employment law, co-authoring *Australian Labour Law: Cases and Materials* (LexisNexis, 4th edition, 2003 - and several previous editions) and *Industrial Relations in Australia: Development, Law and Operation* (Longman, 1995). Her book *Public Sector Employment in the Twenty-First Century*, co-authored with Prof Phillipa Weeks, is in press. She undertakes grant-funded research in employment and industrial relations law. A founding member of the Australian Labour Law Association ('ALLA'), she has served on its executive committee since its inception, and co-convenes ALLA's Victorian Chapter. For many years, she served on the Executive Committee of the Industrial Relations Society of Victoria. She was on the Victorian Law Reform Commission's workplace surveillance reference advisory board, and is a member of the Law Institute of Victoria's Workplace Advisory Group and the ethics research committee of the Cancer Council of Victoria. She is workplace relations law consultant to a national law firm. Professor Pittard is a founding member of the *Australian Journal of Labour Law* editorial board (and recent legislation section editor for 17 years); editor of the *Employment Law Bulletin*; and faculty adviser to the Monash University Law Review.

Ms Marie Segrave (Monash University)

Title:

Law & Order & the Border: Responses to Trafficking in Australia and Thailand

Abstract:

International engagement with the issue of trafficking in persons has compelled nation states across the globe to develop policy responses to address this issue. Within both Australia and Thailand, policy responses have been adopted that operate almost exclusively within a law and order framework - reflecting the broader framework provided at the international level. This paper will examine some of the similarities in the responses to trafficking in these two countries. While the patterns and the broader social, political and economic contexts differ markedly, what is consistent in both countries is the role the border plays in determining the limits and the operation of the response to people trafficking. Indeed, it will be argued that in both countries the adoption of law and order narratives within the policy rhetoric effectively silences alternative, more comprehensive narratives while maintaining the prominence of the border regime. Through drawing on a more complex analytical framework that locates trafficking in women at the nexus of a range of global factors, this paper seeks to disrupt the dominant narratives and to ask some critical questions regarding the current operation of policy responses to people trafficking.

Biographical note:

International engagement with the issue of trafficking in persons has compelled nation states across the globe to develop policy responses to address this issue. Within both Australia and Thailand, policy responses have been adopted that operate almost exclusively within a law and order framework - reflecting the broader framework provided at the international level. This paper will examine some of the similarities in the responses to trafficking in these two countries. While the patterns and the broader social, political and economic contexts differ markedly, what is consistent in both countries is the role the border plays in determining the limits and the operation of the

response to people trafficking. Indeed, it will be argued that in both countries the adoption of law and order narratives within the policy rhetoric effectively silences alternative, more comprehensive narratives while maintaining the prominence of the border regime. Through drawing on a more complex analytical framework that locates trafficking in women at the nexus of a range of global factors, this paper seeks to disrupt the dominant narratives and to ask some critical questions regarding the current operation of policy responses to people trafficking.

Ms Olivera Simic (University of Melbourne)

Title:

Peacekeepers or Lawbreakers? Accountability of UN Peacekeepers for Involvement in Trafficking in Women in Bosnia and Herzegovina'

Abstract:

The international crime of trafficking in women for forced prostitution in Bosnia and Herzegovina (hereinafter BiH) has been recognised as such since 1995. However, the first night-clubs with women 'dancers' from Eastern Europe were opened in the early 1990s. At that time, it was not clear whether women were trafficked or had arrived on their own to work voluntarily in prostitution. The trade in so called 'sex slaves' was relatively unknown in the region until the mid-1990s. The sex industry was further fuelled by the arrival of tens of thousands of predominantly male UN personnel, after the Peace Agreement was signed in 1995.

BiH has become one of the main destination countries for women mainly from Moldova, Ukraine and Romania. According to information provided by non-governmental organizations (hereafter NGOs) which specifically deal with the problem of trafficking in BiH, there were more than 900 brothels spread throughout the country just a few years ago. Although scandalised with involvement of peacekeepers in trafficking in women and wide sexual abuse, the UN Mission in BiH (UNMIBH) is still deemed in overwhelmingly positive terms as basically successful. After the mission was over, peacekeepers changed locations and countries, following a war torn society in need of peace. Still, the crimes perpetuated by peacekeepers against those in need, particularly women and children, are still ongoing. Indeed, evidence suggests that they have exacerbated.

In this paper I will explore what has been done so far within the UN system to address the alarming and growing problem of sexual abuse of women and exploitation of children by peacekeepers while on their missions. I will evaluate whether there have been any improvements since 1995, when the UNMIBH came into BiH and allegations on their involvement in sexual abuse and trafficking in women began to surface. How did UNMIBH respond to these allegations? What mechanisms for protection and prosecution were in effect at the time, and what mechanisms are now in place, if any? Have other missions learnt a lesson from UNMIBH? Or is the attitude still one of 'Boys will be Boys', no matter what steps are taken to prevent such occurrences.

Biographical note:

Olivera Simic, Bosnia and Herzegovina, LLM and MA, holds LLM degree in International Human Rights Law (Essex University, UK, 2003) and MA in Gender and Peacebuilding (UN University for Peace, Costa Rica, 2005). For more than a decade she

has been working as Gender and Law Consultant for different agencies (UNICEF, OSCE, ICMPD etc). Also, she has been actively engaged with projects related to women's and children's human rights in different capacities (activist, researcher, trainer, tutor). Her fields of interests are gender, sexual abuse, organized crime, militarism, war, peacekeeping, reconciliation. Currently she is at Law School, University of Melbourne, working on her PhD thesis entitled "Gender based violence and human rights violations committed by UN peacekeepers".



The organisers of the conference would like to thank the University of Melbourne, the Contemporary Europe Research Centre (CERC), and the Goethe Institut for their support of this event.
