THE RUMOR OF TRAFFICKING:
BORDER CONTROLS, ILLEGAL
MIGRATION AND THE SOVEREIGNTY OF
THE NATION-STATE

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Abstract

Since the 1990s, the issue of "human" trafficking has loomed large on the international research agenda. In this paper, the genealogy of this trafficking discourse is traced, from its emergence as a feminist "Third World" discourse in the 1980s, to its transmutation into a conservative, abolitionist cause, and finally, its hijacking as a rhetoric of legitimacy for the anti-immigration platform which has come to dominate the politics of the west since the Fall of the Berlin Wall. In demystifying the discourse on traficking, the paper introduces a distinction between smuggling and trafficking based on the perspective of the migrant and the relative control over the migration project. The paper draws on empirical evidence from Malaysia to show that smuggling far outweighs trafficking in the economy of illicit migration.

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It is in a sense about the way objects move, but it is more decisively about the way in which moving objects and people are identified, assimilated, marginalized or rejected.

Friedman 1994: 1

I.   Introduction

Furtive flows of human cargo slipped through the border controls of otherwise sovereign nation-states - this dramatic image has emerged in the last decade as the visible embodiment of a menacing "dark side of globalization".[1] Illicit movements of other flows - of drugs, weapons, and money - bloating that underbelly of globalization which "threatens to damage our societies and our economies"[2], do not lend themselves as easily to arresting media images as do multitudes of huddled masses left stranded at lonely border outposts. Spectacular scenes of rickety boats filled to the brim with swarming men, women and children hovering off the shores of Europe, the United States and Australia have imprinted themselves on the public imagination. No less spectacular has been the public policy response. From a poorly funded, NGO women's issue in the early 1980s, "human trafficking" has entered the global agenda of high politics, eliciting in recent years significant legislative and other action from the US Congress, the European Union and the United Nations.

This paper is about the power of the trafficking discourse and its deployment in the politics of migration control in the western industrialized states of the post-Berlin Wall era. In his magisterial study of the conditions of possibility for the establishment of the free market in the

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[1]   Invoked in the Communique of the Ministerial Conference of the G-8 Countries on Combating Transnational Organized Crime, Moscow, 19-20 October 1999. The G8 countries comprise Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. the European Union also participates and is represented by the President of the European Council and the President of the European Commission

nation-states of nineteenth-century Europe, Karl Polanyi famously referred to the necessary intervention of the state: "The road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism. To make Adam Smith's 'simple and natural liberty' compatible with the needs of human society was a most complicated affair" (Polanyi 1944). I shall argue that a century later, with the creation of a global free market at stake, the corollary is just as true: an enormous amount of transnational state interventionism has been necessary to *hinder* the emergence of the free mobility of labor, that 'simple and natural liberty' compatible, if not with the needs, then with the dynamics, of a global economic order predicated on the free mobility of capital and goods.

I should note at the outset that the use of the term "rumor" in the title of this paper is not in the least intended to suggest the absence of trafficking as a criminal practice. Drawing on Mukhopadhyay, from whom the term is taken, 'rumor' here is meant to refer to its use as "a rhetoric, a project, a contested topos" (Mukhopadyay 2002). The *project*, as suggested above, is one of political and social boundary-maintenance; the language of trafficking derives its power to moralize and criminalize from its semantic proximity to terms such as prostitution, smuggling and slavery, and its present currency is reminiscent of another instance of "moral panic", ie. the "White Slave Trade", in the early years of the twentieth century (see below).

The *reality* which the rhetoric purports to describe is more difficult to ascertain. Empirical evidence from Malaysia, where undocumented migration has been an issue since the early 1970s, will be adduced to indicate the relatively minor role of *trafficking* by transnational organized crime in the actual cross-border movement of migrants, as against the *smuggling* and over-staying measures undertaken by the migrants themselves. In making this point, I shall be introducing a distinction between trafficking and smuggling which departs from the definitions established by the United Nations Vienna Convention, and indeed, I shall be arguing for a necessary distinction between sociological (analytical) conceptualizations of empirical processes on the one hand, and administrative and juridical categories on the other. In migration research, there is the unfortunate tendency to unthinkingly adopt the latter as conceptual and categorical givens (Wong 1989).

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[2]   ibid

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Based on the Malaysian data, it would appear that the deployment of the trafficking discourse - in the rhetorical production of the boundaries of the nation-state as sites of transgression - rests on an empirical fiction, and bears only partial resemblance to the actual contours of the economy of illicitness in contemporary mass migrations. The trope deployed therein of illegal crossings subverting endangered boundaries and eroding state sovereignty, rests, I would argue, on a questionable conceptual identity between national boundaries, territoriality and sovereignty.[3] Undocumented, 'illicit' border crossings of people have actually been much more common in the history of the nation-state than has been generally assumed. Borders have been important to the modern nation-state in *real* terms as much for the establishment of internal sovereignty and for the control of movement of goods, as for the control of people movements. The current obsession with immigration and border control as the basis of a state's sovereignty and as intrinsic to its logic of being - for which the discourse on trafficking is a chiffre - is specific, I suggest, to a historical era which acquired a consciousness of itself with the Fall of the Berlin Wall in 1989.

One final issue will be raised in this paper, namely, the conceptualization of *illicitness* itself. The trafficking discourse works in a double register of the moral and the legal, criminalizing, in both senses of the word, practices of cross-border irregularities. These practices, as research on contemporary migrations indicate, are extremely far-flung and widespread, as well as deeply embedded in various formal state and market structures. Indeed, individual migrant lives constantly weave their way in and out of intersecting spheres of legality and illegality (see the paper by Kylie, this volume). The criminalization of these practices through the moral power and legal force of the trafficking discourse, occludes their quotidien and 'normal' occurrence.

Illicitness, I suggest, should be used to draw attention to the broad range of practices located in that space which is beyond the formal data-collecting gaze of the state. This space of the *undocumented* or the illicit, is not so much *il*legal as *extra*-legal. It is in, and from, this space of the undocumented, and hence illicit, that the "new forms of territoriality and unexpected forms

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[3]   See Mbembe's critique of this "simplistic" notion of boundaries constituting territoriality and sovereignty in the history of the African state. (Mbembe and Rendall 2000).

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of locality" (Mdembe and Randall 2000) which are reconfiguring the nineteenth century landscape of bounded and contiguous nation-states are arising. Casting this space into the shadow of the criminal dark forces of globalization keeps the fecundity of its everyday practices from view.

The paper falls into three parts. The first centers on an account of the elaborate discursive and institutional machinery at the international level which has been developed around the question of trafficking and smuggling. It attempts to historicize the power of this contemporary trafficking discourse by looking at earlier antecedents (the White Slavery campaign), as well as by locating its emergence in the historical conjuncture marked by the 1989 Fall of the Berlin Wall. Underlying the account is the conceptual premise that in this discursive economy, trafficking works as a master metaphor for the illicit as/and the criminal, assigning prostitution, asylum, and migration in equal measure to the undesirable underside of globalization.

The next section looks at the empirical contours of the economy of trafficking and smuggling in Malaysia, a country which has experienced extraordinarily high levels of illegal migration since the mid-1970s.[4] Exemplified by two case-studies, but based on a larger study of illegal migrants in Malaysia conducted in 2000, this account of the economy of illicit migration deploys a conceptual distinction between trafficking and smuggling which departs from the definitions, now widely accepted in the literature, established by the UN Convention Against Transnational Organized Crime. The distinction introduced here is based on the agency (which is, it should be noted, never absolute) of the migrant and the conditions under which the migration project is undertaken. The findings on the Malaysian experience presented here qualify easy assumptions ("rumors") about illicit migration as an imported crime of subversive border trespass by innocent victims coerced by transnational organized crime.

In the final part of the paper, the conceptual homology between sovereignty, territoriality and border policing, constituting the political logic which underpins the rhetorical power of the

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[4]   It has been estimated that in 1997, on the eve of the Asian financial crisis, the estimated number (3.5 - 4 mil) of foreign workers in Malaysia and Thailand, two mid-sized countries in Southeast Asia, was close to the estimated number (3 mil) of all foreign workers in Europe (Manning and Bhatnagar 2003).

trafficking discourse, will be questioned. Notwithstanding a state discourse in which all three are seen to be ontologically merged, the politics of sovereignty in post-colonial states has generally been agnostic with respect to the border, and negligent with practices of border control. At the borderlands of these states, a societal, rather than a border, logic of ethnic affinity or historical consociationality governs the traffic of goods and people, a flow to which the notion of border trespass is immaterial. The trafficking discourse, with its metaphor of the materiality of the border, and the criminality of border trespass, misrepresents not merely the reality of such borderlands, but the nature of such post-colonial nation-states as well.

II.   The Power of the Trafficking Discourse

1.   The New Migration and the 'White Slavery' Scare, 1910 - 1913

The trafficking discourse is not new. It has an eminent precursor in the "white slavery scare' which raged in Britain and the United States at the turn of the last century, peaking between 1910 and 1913, and vanishing by 1917 (see Doezema 1999 and Keire 2001, from which the following account is largely derived). The white slavery discourse centred around prostitution and came to mean "the procurement, by force, deceit, or drugs, of a white woman or girl against her will, for prostitution" (Doezema 1999: 3). As against earlier pre-Victorian depictions of the prostitute as a "fallen woman", the white slavery narratives constructed the prostitute as a youthful, innocent victim, trapped into the trade through force or deceit, and unable to escape from the subsequent depths of moral depravity on account of debt peonage. The youth of the victim was often stressed, and the white slavery issue became closely linked to that of child prostitution.

The counterfoil to the figure of the victim was that of the villain - trafficker. In the United States in particular as Keire's study points out, "urban reformers intertwined the story of the sexually coerced maiden with a heated condemnation of the business of vice" (Keire 2001). Indeed, in the course of the campaign, as the abolitionists gained the upper hand over the regulationists, it was the White Slave *Traffic* which came to hold centre-stage over the White Slave *Victim*, both on the legislative agenda as well as in the media representations. Silent movie titles such as "Traffic

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in Souls", "Inside the White Slave Traffic" and "Smashing the Vice Trust" testify to the focus on the criminal and commercial critique.

The success of the campaign was extraordinary. The theme of innocent victim/evil trafficker was played out in numerous novels, plays and silent movies of the period, besides receiving extensive coverage in the world's press. With public opinion galvanized and several organizations devoted to its cause, the campaign culminated in the passage of new national laws (the Criminal Law Amendment Bill of 1921 in Great Britain and the Mann Act of 1910 in the United States) as well as a series of international agreements.

Notwithstanding all that sound and fury, contemporary historical research has since debunked the material basis to that campaign. The historical evidence is that "the actual number of cases of white slavery, as defined above, are very few" (Doezema 1999). Of note is the fact that the 'scare' arose at the time of the 'new' transatlantic migrations, which drew into its vortex migrants from 'non-traditional' Eastern and Southern European countries of origin, as well as larger numbers of women migrants, and faded away as this wave of migration came to an end with the outbreak of the First World War. As Doezema points out, it is also striking that the "evil traffickers" were frequently represented as blacks, foreigners, immigrants and Jews. Drawing on Grittner's interpretation of the white slavery scare as an instance of 'moral panic' generated by the large-scale migrations then in train, Doezema traces the parallel to the discourse on trafficking in women and children then current in certain women NGO circles.

It would appear, from Doezema's account of this feminist discourse of the 1980s, that relatively little attention was being given to the figure of the trafficker. It is "Western development policies and western 'sex tourism' [that] are blamed for being at least partially responsible for trafficking in women...The other 'villains' to whom the finger is repeatedly pointed as the cause of 'white slavery' are third world villagers who reportedly sell their daughters to 'traffickers' (Doezema 1999). The traffickers themselves are often referred to as "foreigners ... usually portrayed as mafia-like 'foreign criminal gangs' often working in collusion with 'corrupt' third world/post-communist governments" (Doezema 1999).

What the two discourses do share, according to Doezema, is the motif of innocent victimhood, as well as a similar absence of material basis to the dramatic claims of the virulence and magnitude of the issue. It is instructive to quote her at length on this point:

> Firstly, evidence of 'trafficking' is often based on unrevealed or unverifiable sources. The Global Alliance Against Trafficking in Women (GAATW), who undertook a year-and-a-half-long investigation into 'trafficking in women' internationally at the request of the UN Special Rapporteur On Violence Against Women, stated that finding reliable statistics on the extent of trafficking in women was virtually impossible, due to a lack of systematic research, the lack of a 'precise, consistent and unambiguous definition of the phenomena [of trafficking in women]' and the illegality or criminal nature of prostitution and 'trafficking' (Weijers and Lap-Chew 1997: 15). However, this does not stop 'experts' and journalists from quoting huge numbers. For example, a recent working paper prepared for the UN Working Group on Contemporary Forms of Slavery quotes an estimate of one to two million women and children trafficked each year, but the figure is not referenced, nor is any research cited (IMADR 1998:1).
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> Secondly, as the writers of the GAATW report note, when statistics are available, they usually refer to the number of migrant or domestic sex workers, rather than cases of 'trafficking' (Weijers and Lap-Chew 1997: 15). Statistics on 'white slavery' to Buenos Aires were based on the numbers and nationalities of registered prostitutes (Guy 1991: 7). In a striking parallel, a Global Survival Network (GSN) report (1997) uses the rise in numbers of Russian, Eastern European and NIS women in the sex industry in western Europe and the US as evidence of 'trafficking' (p. 5,7). But even these figures are not to be trusted: Kempadoo notes the extreme variations in estimates of numbers of prostitutes in Asia -- estimates for the city of Bombay alone range from 100,000 to 600,000 (1998a: 15).
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> Thirdly and most significantly, there are emerging indications that it is sex workers, rather than 'coerced innocents' that form the majority of this 'traffic'. GAATW, whose report is based for a large part on responses of organisations that work directly with 'trafficking victims', found that the majority of 'trafficking' cases involve women who know they are going to work in the sex industry, but are lied to about the conditions they will work under, such as the amount of money they will receive (Weijers and Lap-Chew 1997: 99). They also conclude that abduction for purposes of 'trafficking' into the sex industry is very rare (p.99). GSN (1997) also relates the testimonies of a number of 'trafficked' sex workers in their report. Research by the foundation for Women in Thailand found that by far the majority of women migrating from northern Thailand to Japan were aware that they would be working in the sex industry (Skrobanek 1997).[5]

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[5]   From Doezema 2000, http://www.walnet.org/csis/papers/doezema-loose.html. Accessed 28 March 2003.

Doezema's account of this "anti-trafficking" discourse is centered, much like the earlier White Slavery Scare, around the issue of prostitution and female migration. Abolitionist positions on the feminist activist spectrum, she argues, magnified and dramatized the "sex slavery" issue, with increasing success as increasing female migration in the 1980s generated male anxieties and "boundary crises". Other voices, which had in fact been responsible for first drawing public attention in the early 1980s to the protection needs of women migrants, foreign sex workers and trafficked victims in the metropolises and provincial towns of the West, but which continued to respect their right to work and to champion their right to protection, and whose careful research forms the basis of the evidence to which Doezema refers above, found themselves increasingly on the margins of this discourse. By the end of the 1990s, it was clear to feminists on this end of the spectrum that the trafficking discourse was one capable of raising public attention and funding (now going mostly to the 'other' camp[6]), but also "the spectre of regressive approaches to sexuality, race and gender" (David 1999).

2. Illegal Immigration and European Asylum Policy, 1989 - 1993

The trafficking discourse, which had originated in the early 1980s from the social activism of progressive feminists on behalf of trafficked and stranded Third World women in the West, Doezema argues, has been taken over by a conservative abolitionist agenda. In the following, I shall suggest that the career - and power - of the trafficking discourse took another remarkable turn in the late 1990s when it was hijacked and re-framed, from its initial context of imported Third World prostitution, into the larger one of illegal immigration and European asylum policy. Indeed, it is striking how central the issue of illegal migration has become to migration research in Europe and the United States (see Samers 2000, Kyle and Koslowski 2001).

According to Morrison and Crosland (2001), the conjunction of *trafficking* and *illegal immigration* materialized into the political consciousness of Europe at the 11th International Organization for Migration (IOM) Seminar, devoted to the theme of "Global Human

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6   See Gallagher for an account of the bruising debates between these two 'camps' in the negotiations around the Vienna Process (Gallagher 2000).

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Trafficking", in 1994. In an influential paper presented to that conference by a leading European scholar on international migration, the emergent model of the new unholy trinity threatening the borders of Europe - trafficking, illegal immigration, and organized crime - was introduced, and authoritatively quantified.

> Trafficking brings annual incomes to gangster syndicates in the magnitude of at least US$5 to US$7 billion a year. Other official data on illegal immigration to various countries is by definition not available. However, various estimates can be made. Thus, the number of aliens who in 1993 managed to illegally trespass the borders of Western European states, for the sake of illegal employment or residence, could be estimated to have been in the magnitude of 250,000 to 350,000. This estimate is established on the basis of extrapolations on how many illegals finally reached their intended goal, as a reflection of the known number of migrants who were apprehended when seeking to transit through the green [i.e. land] borders of intermediate countries on their way to the stated final goal (Widgren 1994).

The political consciousness of Europe in the early 1990s was haunted by the new migration frontier on its eastern flank created by the Fall of the Berlin Wall in 1989. Following the 1974 recession, European countries such as Germany and the Netherlands had scrapped their "guestworker" policy of recruitment of foreign workers into their post-war labor-scarce economies. All subsequent legal entry into these countries had to fall under restrictive conditions for residence and employment (such as student visas and temporary employment passes) or family reunion provisions for foreigners already granted rights of residence. Virtually the only other channel (aside from that of marriage to a citizen or permanent resident) for acquiring a legal status was through the procedures established for the asylum regime. It is not coincidental that following the halt to the labor importation program in 1974, a steady increase in the number of asylum applications from Turkey, an important source country for earlier labor migrants to Germany, was observed.

This steady trickle, initiated in the mid-1970s and augmented in the 1980s by Third World migrants fleeing from a variety of conflicts fuelled by the closing convulsions of the Cold War, such as the wars in Afghanistan, Iran, and the Horn of Africa, grew into a tide with the end of the Cold War and the ignominious collapse of the Soviet Union. Military conflicts, and the flights of

population they are wont to generate, previously contained in distant peripheries, now flared up in direct proximity to Europe's own frontier. The brutal break-up of Yugoslavia was particularly damaging. For the European Union as a whole, this resulted in a tenfold jump in the number of asylum applications - from 66,900 in 1983 to 675,460 in 1992, with Germany alone receiving 438,190 applications (UNHCR 2003). This was the situation in which the IOM Seminar referred to above, at which the trafficking discourse was introduced to the "European political consciousness", was held.

1992 was the year in which asylum applications peaked (the statistics of course are only released in the following year). By 1994, the number of asylum claims filed however, had halved - to 309,710. It fell further to 233,460 - its lowest in the decade - in 1996. Thereafter, a slower but steady increase was again registered till 2000, when its rise was capped at 391,460. In 2001, the figure fell again to 384,530. A similar curve, though somewhat delayed in time, can be observed for asylum claims in the United States. There, the figures rose from 150,740 in 1992 to peak at 216,150 in 1996, before falling to a low of 46,020 in 1999. In 2001, the figure had again risen, to 86,170 (UNHCR 2003).

These statistics lend themselves to a simple interpretation: actions undertaken by the European Union, and somewhat later, by the United States, have been successful, although not entirely so, in reducing the number of asylum seekers in their territories. Indeed, the decade of the 1990s can be seen as one marked by the massive rise, and subsequent containment, of the phenomenon of 'asylum migration' in the West. The containment policy has been largely based on techniques developed to 'export' migration and border controls (Morris 1997), underpinned by legislative and administrative amendments (for an account of the measures undertaken, seen as signaling the "endgame" of the asylum system in Europe, see Morrison 2001).

It is primarily within the context of the asylum system that the issue of *illegal immigration* has gained its critical edge. A foreigner who has managed to file a claim to asylum discards the status of an illegal immigrant and acquires that of an asylum applicant. However, given the formidable obstacles to legal entry for foreigners seeking protection or employment in the European Union in place since 1993, access to the asylum system is often impossible without the

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assistance of "traffickers and smugglers". Asylum seekers generally have to enter the country illegally. Hence it is that *asylum, illegal immigration* and *trafficking* has assumed its functional, and rhetorical, unity.

With this new asylum and immigration context came a re-configuration of the motifs familiar from the earlier discourse. The importance of numbers suggesting magnitude remains, as in the paper cited above, such as the figure of US$5 to US$7 billion a year in commercial profit. There is however a notable shift in focus from the victim to the trafficker, and more specifically to the involvement of criminal "gangster syndicates". Similarly highlighted is the physical transgression of the border or the metaphor of illegal trespass. And clearly, "trafficking" has become a metaphor under which the smuggling of illegal migrants "for the sake of illegal employment or residence" is subsumed, and indeed, mainly understood.

3. The Great Trafficking Consensus, post-1994

Framed by this "dominant paradigm" (Morrison 2001), which, to a lesser degree would also hold in the United States, the international career of the trafficking discourse has been nothing short of phenomenal. Following upon that influential 11th IOM Seminar in 1994, the IOM, which had been established in 1951 as the ICEM (Intergovernmental Committee for European Migration) to handle resettlement problems posed by the widespread presence of Internally Displaced Peoples in Europe (as against the refugee mandate of the UNHCR), found a new raison d'etre. Renamed the IOM in 1989, as the impending end of the Indochinese refugee crisis appeared to signal the end of the necessity for resettlement activity in the international system (and the possibility of institutional obsolescence), the IOM Council endorsed in 1994 the adoption of a new IOM objective: "to curtail migrant traffic and to protect the rights of migrants caught up in its practice" (IOM 2003). Since then, as the lead international agency on migration and trafficking, it has, through its research funding, publications and counter-trafficking programs, succeeded in putting the issue of migrant trafficking at the centre and forefront of today's international migration research agenda.

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The IOM today is only one of over 30 intergovernmental fora, in Europe alone, addressing the issue of trafficking (see Morrison).[7] NGOs devoted to this issue also mushroomed, and formed anti-trafficking coalitions at around the same time, including the Coalition of Trafficking Against Women (CATW) in 1993 and the Global Alliance Against Traffic in Women (GAATW) in 1994. Their growth has also been impressive; from one secretariat in 1993, the CATW for example, grew to six in 1996. Various UN agencies are also devoting resources to anti-trafficking programs. They include the UNHCR, OHCHR, UNICEF, UNIFEM, UNESCO and the ILO. An ESCAP document recorded, as of March 2001, the existence of sixty projects in the ESCAP region devoted to the trafficking of women and children, involving the following UN agencies: ESCAP, ILO, IOM, UNDCP, UNIAP, UNESCO, UNHCR, UNICEF and UNIFEM and their respective NGO, national government and university research partners.[8] Major research programs on "human trafficking" are located in several universities and research institutes, such as UNICRI, Johns Hopkins and the University of Hawaii.

Media attention has also not been wanting and it is in the media reporting that the new rhetorical figure of trafficking as a master metaphor for prostitution, illegal immigration, and organised crime is most clearly crystallized. "The way the traffic in human beings is reported nearly always obscures the international aspects of the trade, evades criticism of European laws which victimize whole communities and conflates 'ethnic' gangs with 'ethnic' victims. Such stereotyping invariably serves a political purpose. As 100,000 Albanians attempted to flee to Italy across the Adriatic, on fishing boats and old ferries, the Italian press focused almost entirely on Albanian criminality, thereby justifying the state of emergency brought in by the government and the refusal to take in any more refugees. As Portugal began preparations to handover the Macau colony to China in 1999, the press reports focused on the Macaunese criminal triads involved in human smuggling and the trade in fake identity papers (Fekete 1997). Similarly, in conjunction with the trafficking of women, "we continue to see "trafficking" used interchangeably with talk about the sex industry, prostitution, and sex slavery in the media" (David 1999). This criminalizing tendency has remained the predominant thrust in the media coverage,

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[7]   These include the Budapest Process, the Council of Europe, the European Parliament and Commission etc (see Morrison).
[8]   http://www.unescap.org/wid/04widresources/03traffick/trafficking-directory-updated.pdf.

notwithstanding the enrichment of the trafficking discourse with the issues of human rights and safe migration by other civil society, and international, organizations, in particular the OHCHR, from where the attempt to contest its repressive power from the "inside" has been undertaken.[9]

Indeed, much of the subsequent institutionalization of the trafficking discourse through the passage of two key pieces of legislation in the year 2000 has occurred under the rubric of transnational crime. In December 1998, the United Nations General Assembly established an intergovernmental, ad-hoc committee charged with developing a new international legal regime to fight transnational organized crime. The result is the UN Convention Against Transnational Organized Crime, supplemented by three additional treaties (protocols), dealing respectively with Smuggling of Migrants, Trafficking in Persons - Especially Women and Children, and Trafficking in Firearms, adopted by the General Assembly in November 2000. In her incisive analysis of the background to this Convention, Gallagher notes: "The significance of these developments should not be underestimated. The Vienna process, as it has come to be known, represents the first serious attempt by the international community to invoke the weapon of international law in its battle against transnational organized crime. Perhaps even more notable is the selection of trafficking and migrant smuggling as the subjects of additional agreements. Both issues are now high on the international political agenda. While human rights concerns may have provided some impetus (or cover) for collective action, it is the sovereignty/security issues surrounding trafficking and migrant smuggling which are the true driving force behind such efforts" (Gallagher 2001: 975).

In the same year, the Victims of Trafficking and Violence Prevention Act of 2000 was signed into law in the United States. The Act sets minimum standards for the elimination of trafficking which are applicable to "the government of a country of origin, transit or destination."[10] Effective 2003, non-compliant states shall lose access to non-humanitarian, non trade-related US

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9   "I do not know if it is possible to use the discourse of trafficking to the benefit of workers in the sex industry, migrant or otherwise. But I do know that extensive negotiations are going ahead on this issue in the UN at the moment and that it may be more productive to be on the inside of these discussions, rather than altogether on the outside (David 1999).

10   In brief, these standards require governments to: (i) prohibit and appropriately punish severe forms of trafficking and; (ii) make serious and sustained efforts to eliminate such trafficking.

assistance. In addition, such countries will also face US opposition to their seeking and obtaining funds from multilateral financial institutions including the World Bank and the IMF. This extremely powerful Act (the only precedent is the Human Rights legislation passed under the Carter Administration) calls for the production of annual reports by the State Department on all UN countries. It is clear from the first two reports since presented that, notwithstanding the rhetoric of morality and the abolitionist thrust of the trafficking discourse in the United States Congress, they have been "heavily biased in favour of strong law enforcement responses" (Gallagher and Thatun: 2001) against transnational organized crime and its perceived threat to border controls.

An elaborate trafficking discourse, indeed, a moralising and criminalising anti-trafficking consensus, of global reach and institutional depth, encompassing states, international organizations and NGOs - and academic institutions - has been established in a relatively short span of time. In charting its breath-taking journey from a feminist-based Third World NGO issue to the agenda of global high politics, I have referred to its rhetorical and metaphorical functionality. It is time now to give the discourse its due, and to examine the claims it makes about the nature of illicit cross-border flows of people in the contemporary world.

III.   Trafficking and Smuggling in the Economy of Illegal Migration

1.   The Traffic in Figures

Three empirical claims are made by this trafficking discourse to justify the need for public funds and legislative action: claims related to the *scale*, the *victimization* and the *criminal organization* of contemporary "trafficking in human beings". Central to these claims should be the legal distinction between trafficking and smuggling established by the UN smuggling and trafficking protocols, under which:

> *Smuggling of migrants* shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Trafficking in persons shall mean the recruitment, transportation, transfer, habouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[11]

As figures are trafficked however, the distinctions established above are ignored. Much of the traffic in numbers depart, as did IOM itself earlier, from "definitions tendered [which] commonly include both a formulation that provides the basis for a criminal offence as well as a more descriptive, often non-exhaustive account of the types of situations and activities commonly understood by the term" (Twomey 2000: 7). As figures are trafficked between research and media reports however, "trafficking" is generally taken to refer to more inclusive definitions, allowing for numbers to be magnified and inflated.

The thicket of statistical confusion which prevails, even in serious research literature, and with the IOM as the source of reference, can be seen in the following. In a recent journal article on trafficking in people, the scale of the phenomenon was suggested by two sets of figures: "estimated current global figures for people held in various contemporary forms of slavery run as high as 200 million people" and "the IOM estimates the number of people trafficked globally today at some four million" (Twomey 2000: 1). The IOM Deputy Director was quoted in a 7 March 2003 press release with a figure of "2 million women and children [who] were trafficked across borders in 2001".[12] On its official home page however, IOM refers to the figure of "700,000 women and children trafficked yearly" out of an estimated total of 15 to 30 million irregular migrants worldwide, a figure it appears to have adopted from the US Department of Justice (see below).[13]

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[11] The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth (in the definition) have been used. Furthermore, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in the definition.

[12] UNIFEM press release, 7 March 2003, http://www.unifem.org/newsroom/press/pr_030307_IOM_MOU.html.

[13] http://www.iom.int/en/who/main_service_areas_counter.shtml#traffdef. Accessed 4 April 2003

As recent research has been cautioning, all these widely-invoked figures are highly dubious. UNICRI itself notes that "reliable data on smuggling in migrants and trafficking in persons ... are scarce"[14] and another recently completed Australian study notes that "in Australia, as in most countries of the world, limited evidence is available about the incidence and nature of human trafficking." (David 2000). The most authoritative study done thus far, commissioned by the CIA, comes to the conclusion that "an estimated 45,000 to 50,000 women and children are trafficked annually to the United States" (O'Neill Richard 2000). It is likely that the current US Department of Justice figure of 700,000 worldwide rests on methodological assumptions used in this study.

2.   *Trafficking vs Smuggling – The Economy of Illegal Migration in Malaysia*

Beyond the question of the scale or magnitude of trafficking and/or smuggling is that of its nature and its organization. As argued above, the trafficking discourse and the conflations and distinctions it has spawned has arisen largely out of the European and North American context of public debate over illegal immigration and the vice industry. Within that context, the issue of illegal migration has been reduced to one of migrant trafficking and smuggling, treated as conceptually identical, as under the rubric of "human smuggling", and this singular entity in turn reduced to the nefarious business of transnational crime.

I turn now to another regional context of extensive illegal migration to call these reductions into question. In Southeast Asian countries such as Malaysia and Thailand, the stock of illegal immigrants are estimated to equal if not exceed the large numbers of legal labour migrants circulating within the region (Battistella and Asis 2003). For the year 1997, the total stock of foreign migrants, legal and illegal, in these two mid-sized Southeast Asian nations, estimated at around 3 million, would have equaled if not exceeded the total number of illegal immigrants then found in the European Union (Manning and Bhatnagar 2003).

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[14]   http://www.unicri.it/project_document.htm

Malaysia, with an estimated 1.5 to 2 million foreign migrants in 1997, has been experiencing large scale illegal immigration, in particular from the neighboring islands of Indonesia, since time immemorial, and more recently, since the mid-1970s (Wong and T. Afrizal 2003). Foreign labor presently constitutes almost 20 per cent of the total labor force. Since 1989, there have been more or less concerted attempts by the state to crack down on illegal migration and to replace illegal migrant recruitment with a regulated 'guestworker' system of recruitment (Wong 2003).

Notable since the mid-1980s, and in tandem with state campaigns against illegal immigration, has been the emergence of a hostile anti-immigrant public discourse, prominently featured in the mass media, laced with derogatory terms such as "illegals" and "aliens" (Wong and T. Afrizal 2003; Healey 2000). Interestingly, this discourse is focused almost entirely on the migrants themselves, with scant though occasional attention paid to the traffickers or "syndicates" which bring them in. With the exception of NGO groups working against the trafficking of women into the vice industry in the country, this national anti-immigrant discourse has not linked up with, nor utilized, the prevailing international trafficking discourse.[15] The metaphor of border trespass, central to the trafficking discourse, is clearly not at issue in the local, national political context (as I shall argue below, border trespass is not necessarily synonymous with the undermining of state sovereignty), even where strong anti-migrant sentiments can be discerned. The national imaginary is troubled, it would appear, by the moral liminality of the migrants themselves, not of the traffickers.

Apart from the absence of political valence in the Malaysian context, the lack of resonance of the international trafficking discourse is also due, I would suggest, to the overwhelming preponderance of smuggling versus trafficking in the economy of illegal migration in Malaysia. In making this argument however, the distinction between smuggling and trafficking, so often smudged through the careless use of statistics as well as of terminology, is critical. A strict application of the definitions of the two provided in the UN Convention protocols (see above)

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[15] Notable among the few NGOs in the country working on behalf of foreign migrants in the country is Tenaganita. Tenaganita has drawn attention to the increasing number of women trafficked from countries such as Indonesia, the Philippines, China, Vietnam, as well as former states of the Soviet Union, such as Uzbekistan.

would already point to a clear preponderance of smuggling over trafficking in the practice of illegal immigration to Malaysia (see Nasution 1997; Spaan 1994). However, drawing on the empirical contours of the Malaysia's illegal migrant economy as described below, I would like to introduce a distinction between the two which *departs* from that of the UN Convention, a distinction namely, which departs from the perspective of the *migrant*, rather than from that of the *smuggler/trafficker* (as in the definition contained in the UN Convention). From this migrant perspective, the organization of the 'local' illicit migrant economy as described below, may be indeed more paradigmatic of "global human smuggling" than that suggested by the metaphor of trafficking. The key criterion would be the degree of relative autonomy and control over the migrant project, as will be explicated further below.

This account draws upon the findings of two recent studies of the organization of illegal immigration into Malaysia, one on the trafficking of Filipino women into the sex industry in Sabah, East Malaysia (Wong and Gusni Saat 2002), the other on illegal migrants (in the construction, plantation, domestic and petty trading sectors of the economy) in West Malaysia (Wong and Afrizal 2003). The relative magnitude of the phenomena is indicated by the following figures: Malaysian Police Department records show that 413 Filipinas were detained for vice activities in Sabah in the year 2000; in the year 2001, 158,420 illegal migrants were deported, of whom 120,770 were Indonesians (The Sun, 11 April 2002). Two case studies will be presented, followed by a further discussion on the distinction between trafficking and smuggling.

(i)   Trafficking into the Vice Industry

The story of Laniah (see Appendix 1) provides clear evidence of the existence of trafficking into the vice industry in the frontier state of Sabah, which shares a porous maritime border with the Southern Philippines.[16] At the centre of this economy of vice are entertainment centers (used as a generic term here to refer to pubs, discotheques and karaoke lounges), which are serviced by the

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[16]   A fact often denied, even by immigration officers in the state (see Wong and Saat 2000). As the story above indicates, Laniah is a victim of trafficking as defined by the United Nations Protocol on Trafficking in Persons by

trafficked women. In the particular case studied here, the company runs two entertainment centers, a pub which opens from 2 pm to 12 am, and a discotheque which closes at 5.30 am. At any one time, the company has about thirty women in its employ.

The majority of the women are trafficked by the company itself. The company depends on agents in the source country, which in the case of the Philippines are invariably employment agencies operating in Metro Manila, as well as in provincial cities such as Cebu, Davao and Zamboanga. The women are channeled to the employment agencies directly, via media advertisements, or through neighbors, former employees of the company, and other "recruiters" who receive a commission from sending women to the agencies. Potential recruits are accosted in places such as supermarkets, shops, restaurants and entertainments premises. When an agency has collected a sufficient number of women, the company is notified and the boss will then fly to Manila to interview the women, not all of whom are selected.

The women are told that they were being interviewed for jobs in Malaysia as housemaids or as sales assistants. None of the women were informed that they were destined for vice activities, although some may have had their suspicions. No upfront payments were required as the employer advanced the cost of travel and job brokerage. In addition, the company used its contacts in the Philippines to arrange for the women to be provided with Filipino international passports (with false names) and Malaysian social visit passes valid for one month. This was arranged within 3 days of the confirmation of the contract. This mode of recruitment is highly attractive to the recruit as no initial outlays are required for the migration enterprise. Later however, the women discovered that the company imposed a fee of RM 4,500 (US$ 1 = RM 3.80) to cover these expenses, a clearly inflated sum.

The girls (in this case, it was a group of eight) are then flown, in the accompaniment of an employee of the employment agency, from Manila to Zamboanga, a town in the Southern Philippines which is a ferry ride away from the town of Sandakan, on the east coast of Sabah. In Zamboanga, they receive the ferry ticket from the agency, and have then to cross the border from

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virtue of the deception which her employer deployed in procuring her consent to her recruitment into the economy of vice.

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Zamboanga to Sandakan on their own, entering Sandakan as tourists. In Sandakan, they are met at the ferry terminal by an employee of the company, whose photograph had already been shown to them in Zamboanga. He provides them with the RM 450 in cash necessary to secure their entry as tourists at the immigration control counter. From Sandakan, the girls are flown to Kota Kinabalu, the capital of Sabah, and from there, again by air to Labuan. It is in Labuan that they are turned into illegal migrant workers in the vice trade, forced into the job in large part out of the necessity of having to pay off the debt of RM 4,500 incurred in making the legal entry into Sabah.

In Labuan, they are housed together in company quarters and are brought to and from the quarters to the place of work by the company driver. In addition, there is a security guard at the quarters, and another at the center. There is a manager at each center who further oversee the movements of the women. In principle however, the women are not subject to restrictions on their movements outside of their working hours. What in practice restricts their mobility is the fact that their passports are held by the company, as ransom for the debt (RM 4,500) owed to the company for expenses incurred for the passage to Sabah. This sum includes the cost of the passport as well as of transportation. As long as the women are in debt to the company, they have to work to pay off the debt and redeem their passport. And without the passport, they cannot move freely within Sabah for fear of police detention; nor can they return to the Philippines. The women are thus subject to three forms of control over their mobility: the physical control of the male supervisors, the economic control of debt, and the police control of unlawful presence.

Given the earnings potential of the women, it should be theoretically possible to clear the debt in 6 months. Once the debt is cleared, the contract can then be renewed on a voluntary basis. This however was very seldom effected. Most of the women remained in debt to the company for over a year. 18 women, for example, who were detained and deported after 11 months in Labuan, were found to be still owing RM 80,000 to the company. The cause is to be found less in a low level of income than in a high level of expenses, which forces the women to contract new debts with the company and thus to remain in a continual state of debt bondage.

Apart from regular expenses such as accommodation, food, transportation and medical expenses, as well as remittances to the families (usually once every three months), there were some other heavy items of expenditure which were peculiar to the trade. One important item was extortions by lower level police personnel, allegedly to the tune of RM 1,000 every other month or so. The other was the heavy consumption and high cost of drugs such as ecstasy pills, syabu (the local name for a popular drug), and amphetamines, encouraged by the company. Furthermore, the women were made to pay the company RM 350 every month for the renewal of their social visit passes (which the company never did). The net result is a constant postponement of debt redemption.

Notwithstanding all this, within 11 months, the company will lose the girls it had recruited. Some are caught by the authorities and are deported as illegal migrants; some leave after their debt has been covered and some run away or are taken (bought) over by men who keep them as mistresses. This means that there is a constant need for fresh recruitment, and indeed, the market demand for women in Labuan far exceeds the current supply. "Without the girls, no business". The key to the business is the supply and control over women.

It is noteworthy however that the bulk of the procurement is effected by the entertainment companies themselves. Apart from trafficking women for deployment in its own entertainment center, the company also "sells" the women it recruits in this fashion to other entertainment centers in Limbang and Kota Kinabalu. There are also small-time "retailer" recruiter/suppliers who specialize in the recruitment and smuggling of women into Sabah for supply to the vice businesses. On the whole however, direct recruitment by the vice industry itself appears to be the predominant trafficking practice. Apart from small "retailer" recruiters, there is no evidence of an independent trafficking industry in the bustling vice trade in Sabah.

(ii)   Smuggling into the Market of Casual Labor

Outside of the vice sector however, the recruitment of illegal migrant labour is organized along quite different lines. The story of Maimunah (see Appendix 2) exemplifies the nature of migrant

smuggling into the casual labor market in West Malaysia. For Maimunah, also a female illegal migrant, the experience of illegal immigration could not be more different to that of Laniah.

She entered the country 1 ½ years ago with no identity documents whatsoever, not even a forged passport from her country of origin, Indonesia. Maimunah comes from Flores, an island in the far east of Indonesia, thousands of kilometers away from Jakarta, the administrative capital. In those parts, documents of any kind are a prohibitive rarity, even forged ones. Her husband, himself an illegal migrant in Malaysia, had sent for her in a letter delivered by a fellow-villager back on a home visit. She was to follow this villager back to Malaysia.

Maimunah, who had been tending the small family farm in her husband's absence, raised the RM 1,000 necessary for the long journey in part from her own savings, in part from her in-laws. Together with her husband's friend and fellow-villager, who organized the entire journey, she first traveled westwards by ship to Surabaya in Java and from there to Dumai on the west coast of Sumatra. From Dumai, they paid a boatman for navigating the short, illegal entry across the Straits of Malacca onto the coast of Malaysia. Once dropped off by the boatman, they continued their journey by bus, reaching their final destination, a squatter settlement in Kuala Lumpur, in five hours. Her husband found her a job immediately as a street cleaner. She subsequently worked on a construction site for a while, before landing her present job as a helper in a small restaurant.

In Malaysia, she dodges the authorities with the assistance of forged Malaysian identity papers. She lives with her husband in rented accommodation and plans to return to Flores in a year's time in order to visit her children, who are still there.

Maimunah's entry into the illegal migrant economy in Malaysia is fairly typical, although it is only one mode of entry from a range of available options. 54 per cent of the migrants surveyed entered Malaysia without any documentation whatsoever, not even a passport. Another 41 percent entered the country legally on a tourist visa, nine by air, 30 by ferry. The remaining 5 per cent had entered the country via its official labour market - as legally recruited foreign workers - and had subsequently "migrated" from the legal to the illegal sector.

Which mode of entry is chosen, legal or illegal, direct into the underground economy or via the official one, depends on a number of other factors, one of the most important being the kinds of intermediaries available for the organization of the migration enterprise. Here again, the range of discernible options is striking. In 16 percent of the cases, resort was made to a taikong (broker) from the home village, who either on his own or in conjunction with larger syndicates arranged the entire journey from the village of origin to the work-site in Malaysia for the migrant. The payment made to the taikong in this case included the cost of job brokerage as well as the cost of safe passage. In 4 percent of the cases, the taikong did not take immediate payment from the migrant, "selling" the migrant to an employer who would deduct the cost of the loan from the future wages of the migrant.[17]

More often however, the taikong was the boatman who was necessary only for the boat passage across the straits, with the rest of the passage, and entry into the labour market in Malaysia, actually being organised or facilitated by the father (1 per cent), husband (4 per cent), friends (25 per cent) and relatives (22 per cent). The story of Maimunah, as narrated above, is typical in this regard. It is interesting to note that in 11 percent of the cases, the migration venture was an entirely individual enterprise, with the migrant himself organising his journey across the straits and finding a job in Malaysia on his own (3 per cent) or through information provided by fellow-travellers met along the way (8 per cent).[18]

It is in this context of irregularity in Malaysia itself that another "immigration industry" has developed to serve the needs of the migrants. *"Imigresen Chow Kit"* is the term used by Indonesians to refer to the trade in forged documents, run mostly by Indonesians in possession of permanent residence in the country, located in Chow Kit, a neighbourhood in Kuala Lumpur associated with the presence of Indonesian foreign workers. Various forged documents can be obtained, both (supposedly) of Malaysian and Indonesian provenience. Apart from major documents such as work permits, identity cards etc, other documents specific to the needs of

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[17] This would approximate most closely the definition of "trafficking" as introduced in this paper.
[18] It may be pertinent here to note the tremendous improvements in public transportation in Indonesia over the past decade which has simplified long-distance travel by bus and ferry considerably.

irregular migrants are also issued, such as forged Indonesian marriage certificates. The cost is relatively low; forged work permits can be acquired for between RM 600 – RM 800, a forged red Identity Card for RM 200 – 300, while a forged passport or social visit pass would only cost between RM 40 – 80.

Clearly, the assistance of the immigration industry (in this case, an immigration industry which services illegal migrants already in the country, to be distinguished from the one specialised in providing illegal entry into the country) is indispensable to the lives of illegal migrants. Often however, it is the employer whose help is sought, especially when there is trouble with the police, or for a place to stay. Housing needs were generally met by employers. This was provided on site in the form of rough sheds called "kongsi" houses, or, as in the case of the sampled migrants in Penang, in cheap appartment blocks. Those in the urban service and petty trading sectors however generally rented rooms in squatter settlements dominated by migrants with permanent resident status in the country.

Apart from professional intermediaries and the employer, it was above all friends and relatives who continued to play a key role in the provision of help and protection, in particular for finding a job and a place to stay. 58 per cent of the migrants had friends and relatives in Malaysia, 13 of whom were in possession of work permits. Of even greater significance is the fact that an even greater number, 16 per cent, were in posssession of permanent resident status in Malaysia. Many of them had become entrepreneurs – in the construction industry as sub-contractors, and in petty trading as owners of stalls and shops. Many had also established homes in squatter settlements throughout the city. These ethnic businesses and settlements were an important focal point for fresh migrants in search of work, residence and knowledge of survival skills. Brokers accounted for 26 per cent of the migrants' initial entry into the labour market in Malaysia. More than double that number of migrants however, found their first jobs in Malaysia via relatives (almost 50 percent) and friends from the same village (25 per cent).

3.   *The Victim, the Criminals and the Border-Crossing in the Illicit Economy*

Not all illicit traffic across Malaysian borders thus involved victims. Lahniah, who was trafficked into the vice industry, was clearly a victim of deception, and then subject to the coercion of debt peonage for the cost of the passage which had been organised and pre-financed by her future employer in Malaysia. Maimunah on the other hand, came to join her husband who was already in Malaysia. The cost of the journey, including payment for the boatman who took her across the Straits to Malaysia, was raised from her savings and that of her in-laws. Once in Malaysia, she sought employment in different sectors of the labour market. Her sense of victimization derives from her vulnerability to police raids ("rush") on illegal migrants in the area where she lives.

The key distinction to be made here, I would suggest, is one based on the agency of the migrant and the conditions under which the migration project is undertaken, a distinction, I suggest, which could serve as a more salient sociological distinction between smuggling and trafficking than the one established in the UN Convention. This is the distinction between the service of those intermediaries or taikong who are resorted to primarily to execute the border crossing (eg as boatmen for that one leg of the journey which involves evasion of border patrols, both into and out of the country) by migrants who are in active control of their own migration project[19] (either alone or with the help of friends and relatives), and those intermediaries who recruit the migrant, organise the transport and "sell" him to an employer in Malaysia, or indeed, are the employers themselves.

The vast majority of migrants in the illicit economy in Malaysia belong to the *first* category. Their tenuous subterrain existence would not be possible without the existence of an extensive "immigration industry". In the main however, this immigration industry appears to be much like that of any other service provider - in this case, it is primarily a transport and document delivery service.[20] Migrants outside of the official legal recruitment system[21] take advantage, and pay for these services, as and when the need arises. A number of migrants fall into the *second* category.

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[19] Obviously, given the constraints of illicit entry into the country as well as its labor market, this control can only be relative in nature.
[20] The industry also encompasses an extensive recruitment sector which is based in Indonesia (see Jones 2000).
[21] For an account of the parallel systems of foreign labour recruitment in Malaysia, see Wong (2003).

Here, recruitment, initial transaction cost, transport, and employment are all arranged by a single source. The level of self-control over the migration project is correspondingly low. The key factor here appears to be the nature of the labour market in which the migrant ends up working. Where the nature of the work itself is illicit, as in the vice sector, there appears to be a far greater likelihood for the second pattern to prevail.

While the entire immigration industry works beyond the pale of the law, the role of sinister 'transnational organised crime' groups in the organisation of the above regional cross-border movements is likely to be exaggerated.[22] The CIA study of the international trafficking of women to the United States found that trafficking was dominated by "mom and pop" type operations – "perpetrators tended to be smaller crime groups, smuggling rings, gangs, loosely linked criminal networks, and corrupt individuals who tend to victimize their own nationals. None of the traffickers' names were found in the International Police Organization's database indicating that these traffickers were not under investigation for trafficking or other illicit activities in other countries" (O'Neill Richard 2000: vii). Similarly, in the case of trafficking into the vice industry in Sabah, the trafficker involved was a licensed discotheque owner who acted as direct recruiter of his foreign staff. In the broader field of illicit services provided to those smuggled but not trafficked, as defined above, there appears to be a robust, decentralized retailer market with a fair amount of competition.

One final empirical note should be made at this point: all the women who were trafficked into the establishment in Sabah in the case study above crossed the border legally. Their illegal status was acquired in the country itself upon over-staying of the visa issued. Similarly, 46 per cent of the illegal migrants in the sample had entered the country legally and over-stayed. The fact of legal entry preceding illegal status is, it would appear, of significance to the phenomenon of illegal immigration in the European Union, the US and Australia (David 2001: 6) as well.

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[22] "Organized crime is generally defined by US law enforcement agencies as criminal acts committed by self-perpetuating, structured, and disciplined associations of individuals or groups combined together in a hierarchical or coordinated manner. These activities are generally conspiratorial and tend to insulate their leadership from direct involvement. Their primary goal is economic gain from illegal activities" (Richard 1999).

The illicit, at least as it takes human form, is hence not merely a commodity to be kept without; it becomes so from *within*. Neither is the world of the illicit one solely of victims terrorized by criminals. Yet the rhetorical production of the trope of the nation's borders as endangered by illegal immigration abetted by the machinations of organised crime has been highly successful. In Europe, as Gallagher notes, "illegal migration is now being construed as an imported crime, so that commercial assistance for refugees is accordingly categorised as "organised crime". In line with this scanario, risks to internal security are to be met by addressing 'criminal geography' and by identifying socially adjusted 'control filters'....ultimately, an 'overall European security zone' will be constructed based on the 'organised crime' scenario and on the criminalization of migration...using a criminological redefinition of offenders (smugglers and traffickers) and victims (penniless refugees, women forced into prostitution), police forces and public authorities are trying to use human rights to justify and legitimise their actions." (Gallagher 2001: 59).

IV.   Border Controls and Nation-State Sovereignty

The metaphor of the materiality of the border and of border trespass – and its identification with the territorial body and sovereignty of the nation-state - constitutes the unquestioned political logic underlying the power of the trafficking discourse. Another reduction is at work here: nation-state sovereignty is equated with border inviolability, the border in turn is conceived as a fencing mechanism for the control of population movements or flows. The work of the border of a sovereign nation-state - so the assumption - is that of keeping unwanted outsiders out, this function having been the immutable principle of its being since the emergence of the modern nation-state itself.

This assumption is based on the standard narrative of the development of the 19th century Westphalian state, as in the following account:

> But what happened in the 19th Century was new, although it was the almost inevitable outcome of the Westphalian state. The broad acceptance of the doctrine of national sovereignty implied a particular kind of frontier and border control. After the appearance of the modern nation state in its

mature form, from the time of the French Revolution, the coincidence of the military and security border, with the frontier of tax regimes, ecclesiastical boundaries, limits of provision of public assistance, public health services, licensed professions, education and economic regulatory regimes was completed. It became taken for granted that states had not only the right but the legitimate authority to control all activities on their territory and to do this they needed, in principle, absolute control of passage across their borders. (Anderson 2001).

In this standard narrative, "these ideas of state sovereignty and territoriality were diffused from Europe to the rest of the world" in the late nineteenth and early twentieth century and have since been in practice with the extension of the Westphalian nation-state system to the entire globe (Anderson 2001).

It should be borne in mind however, that although "these ideas of state soveriegnty and territoriality" found institutional expression in the European states in the 19th century, state *practices* of border control came to full maturity only in the following century. The two world wars of 1914 – 1918 and 1939 - 1945 were critical in this respect. Up until the outbreak of World War I in 1914, possession of an identity control document such as the passport was not necessary for the great transatlantic passage (see Torpey 2000), nor, need it be said, for the other vast population movements spawned by imperial expansion in Asia and Africa in the nineteenth and early twentieth centuries. World War II had, in its turn, a further profound effect on border control regimes in Europe. "The changes in border controls across Europe since the end of the Second World War are both radical and without genuine precedent. Roger Dion wrote, with some justification, in the immediate aftermath of the Second World War : "the war of 1939-45 conferred on political frontiers an efficacy, equalling or surpassing that of natural phenomena. A frontier as artificial as the Franco- Belgian separates economic regimes so different that we question a traveller coming from Belgium with as much curiosity as ten years ago one coming from Australia; and the line separating a democratic country from a totalitarian one can be in 1940 more difficult to cross than a formidable mountain barrier. Whether or not corresponding with natural frontiers, the linear frontiers of Europe have become terrible realities." (Anderson 2001).

The novelty of political borders was even more apparent for many of the new nation-states which were established in the aftermath of World War II. And yet, artificial as these borders were, the inherited colonial boundaries, as Mdembe astutely observes, have remained "essentially unaltered" and "the sacrosanct character of the boundaries inherited from colonization" have not been challenged by state action (Mdembe 2000: 271). In respecting the "sacrosanct" nature of state boundaries, what appears to have been of primary concern to states is the *internal* sovereignty - to discipline, command and extract - delimited by their territorial borders. It was the power of enforcement over the space enclosed within borders that occupied the energies of the new nation-states. "As soon as independence was won", Mdembe notes, "Africa began a vast enterprise of remodeling internal territorial entities even as it accepted the principle of the inviolability of boundaries among states. Almost everywhere, the redefinition of internal boundaries was carried out under cover of creating new administrative districts, provinces, and municipalities" (Mdembe 2000: 267).

This preoccupation with internal re-territorialization which Mdembe observes for Africa would also hold for state behaviour in Southeast Asia. To the degree however that the existing territorial boundaries were *accepted* by the new nation-states, I would argue that these external boundaries were also *neglected*. One could perhaps speak of state *indifference* to these often extensive and remote borders. Frontier borderlands remained largely peripheral to the interest of nation-state elites located in the centre, whose nation and state building projects often took no account of those more than a day's journey away. The social and economic life of these borderlands, straddling, in many cases artificial if not arbitrary borders, remained robust, even if out of view of the national governments, and in defiance of the overriding and ineluctable political logic that governed the border in post-World War II Europe (see van Schendel, this volume).

In the post-World War II world of new postcolonial states, borders thus retained their porosity without states relinquishing their sovereignty. Indeed, the large movements of population which continued to move across many of these territorial boundaries is striking. This became particularly visible in the course of the many refugee crises in Asia and Africa in the decade of

the eighties.[23] Such clear instances of dramatic 'distress migration' spilling across borders may however obscure the more mundane existence of substantial transgressive cross-border movements, often along pathways stretching back to pre-colonial times, occurring under conditions of covert state sanction. In Malaysia, Indonesians who entered the country illegally often managed to acquire permanent residence status within a few months of their arrival, this state practice ending only in 1989. Control of its extensive maritime and land border with Indonesia hardly existed until the outbreak of military hostility between the two countries in 1963. Cross-border ethnic and cultural affinities thus continued to impact on the evolving border control regimes of newly-established pluralistic nation-states. For such states, the very touchy question of sovereignty was not necessarily, or not yet, identical to that of immigration control at the border.

V.   Concluding Remarks

In "Seeing Like the State", Scott documents the state's drive to re-order society through improved techniques of surveillance and control such as the mapping of territory and the documentation of personal identity through the insistence on surnames (Scott 1998). Notwithstanding these "attempts at legibility and simplification", the high modernist state's social engineering projects ultimately failed, Scott argues, thanks in part to the hubris of the planners and the authoritarian state, but in no small measure thanks also to the very success of this enterprise of administrative ordering and documentation itself.

The success of this enterprise should not be over-estimated. As the various papers in the this volume show, large commodity chains - of labour, drugs, weapons, diamonds and ideas, among others - continue to circulate tirelessly - and undocumented - across the established and accepted

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[23]   The asylum seekers from exotic Third World countries from the Horn of Africa such as Ethiopia and Eritrea, or Central Asia, such as Afghanistan, who made their way into the asylum regime of countries in the European Union represented but the tip of the iceberg. Hundreds of thousands of Eritreans fleeing the fighting in the Horn fled - and settled - in the Sudan, as did similar numbers of Afghan refugees in Pakistan and Iran. By 1984, there were some 500,000 Ethiopians, most of whom were Eritreans, in Sudan, and 2,500,000 Afghans in Pakistan (UNHCR 2000). Although animosity and ill-feeling at the local level has not been absent, these large intakes of population streaming across the border - and remaining within – did not generate "boundary crises" and moral panics" of the sort which emerged in the final decade of the twentieth century in Western Europe and the United States.

borders of today's nation-states. The *economy of the illicit*, I would argue, is homologous with the *space of the undocumented*, that which continues to remain hidden from the administrative order of the modernist state, that which the state does not see. Much of this space is topographically located in the borderlands, at border intersections which, contrary to state discourse, has often been of little interest to the sovereign power of the new post-colonial state. Whether the space occupied is merely of a residual character, or whether more is at stake, such as "new forms of territoriality and unexpected forms of locality", as in the formulation by Mdembe, are questions beyond the scope of the paper. I have tried to show however, that in the continuing historical contestations over emerging forms of territoriality, the nation-state remains one of the most important actors.

Its power derives in part from its ability to set the terms and conditions of the national and international research agenda. Hence the institutionalization, and the seductive power, of the trafficking discourse. The state's power to define - and distort - remains central to its enterprise of adminstrative ordering and documentation, within and at the border. It is for the conceptual policing of the border that its administrative and juridical categories have been developed. Their unquestioning adoption as *sociological* tools of the trade by the research community lies behind much of the *conceptual* penury in the study of migration (Wong 1989), and of other borderline issues in the economy of the illicit.

The deflation of the trafficking discourse attempted here is not a denial of the existence of trafficking and the very real questions of human rights and human security which are at issue. Neither should a rejection of the imputed nexus between migrant smuggling and transnational organised crime imply the inefficacy or illegitimacy of state practices of border control. The recourse to the empirical in this paper has been deliberate. What the state does not see is also not available as processed data. Seeing like the state in research practice on border issues hence has often translated into *empirical* as well as conceptual penury. Even as we begin to pay attention to the transformative outcomes of illicit flows across borders, it is the careful and critical attention to detail with which research practice will have to begin.

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Appendix 1.   The Story of Laniah

After a long silence, she resumes talking, carefully, firmly. In Filipino English: *"I am from Santa Mesa, Metro Manila. It is a big city, many entertainment places there like Harrison's Club. But in Manila I am still a good girl. My family is also good…all my neighbors respect my family".*

She continues: *"I came here not for this kind of job. I came here for a good job. Boss Tong cheated my friends and me. During the interview, he said we would be working here in a supermarket".*

"In Manila I had worked in three supermarkets. The first and the second one not so long, about six months each. At the last one, I worked for about two years. My salary in that supermarket was about 5,000 pesos per months."

"I lived with my parents. …"although I lived in Metro Manila, I was not free to go any where…because my mother didn't like me to be involved in bad activities…. if I went shopping, my sister was always with me…". And she adds: *"I know in Manila many-many discos and Karaoke. Harrison Club in Mabini close to Makati City is one of the bigger entertainment place in Manila, there, there are many young girls from Bisaya…many of their customers are Americans, but I didn't like this kind of place…"*

That was her past. *"I already had a good job in Manila. But this company promised me a good salary here and many facilities would be provided free such as housing, medical expenses and transportation".*

Her life changed when *"…I was approached by an old woman while my friend and I were eating during happy hours. This woman asked me where I was working? I said, here at the supermarket. She ask me again, how much is your salary? I said 5,000 pesos. She said, oh! If you work in Malaysia, your salary would be double. I said where in Malaysia? She replied, in Kuala Lumpur! I said to her, yah it is good, but I have no money to go to Malaysia. In my mind it must need much money, because when my friend went to Japan to work she needed 75,000 peso. But this old woman said, no! If you really want to work in Malaysia, you need not have any money. I said, how can? She explained to me that I need not pay any money. All my expenses until in Malaysia will be advanced by the company. I only had to pay the credit through a monthly deduction from my salary, until the credit is finished. When your credit already finished, then all your monthly salary belongs to you ".*

The old woman left after saying to Laniah: *"…this is the best opportunity for you to go and work in Malaysia, without paying even one cent of money…if I were you, for sure I would not let it go…".* She told Laniah: *"think about it…. if you decide to accept it, then please contact me…".* The old woman gave her contact address and telephone number to Laniah.

After thinking it over for about three weeks, Laniah contacted the old woman. They met at a Jollibee restaurant close to her place of work. The old woman said she would arrange an interview with the representative of the company in Malaysia and would get back to Laniah as soon as possible to tell her the date and the place of the interview. Three days later, the interview was arranged.

On that day, at about 2pm, Laniah took a taxi with the old woman from her place of work to the place where the interview was to be held. While waiting for her interview, she was thinking about the questions which the interviewer would raise. Hardly any were raised. She was asked what her

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present work was, and whether she really wanted to follow the company to work in Malaysia. That was all. But, to Laniah's big surprise, the Chinese man requested her to take off her dress, down to her underwear. Laniah strongly objected to the request and asked for an explanation. The man said it was necessary because there was a lot of competition among the supermarkets in Malaysia and they had to attract customers with attractive workers, which is why he came to Manila to recruit suitable workers. Laniah still refused and finally, the interviewer agreed to drop his demand and the session ended. Laniah was still not satisfied with this matter of undressing for the interview and outside the hotel, she continuously questioned the old woman, who gave her a similar reply.

A week later, Laniah got the news that only eight girls out of the 15 had been successful in the interview. She thought to herself that she was one of the unsuccessful ones, as she had refused to undress during the interview. But she was not very regretful as her parents were against her working in Malaysia. She had told her mother about her encounter with the old woman in the restaurant, and her mother had expressed strong objections to the idea. She had gone for the interview without the knowledge of the mother.

But soon after, the old woman came to see her at her place of work and told her that she was among the fortunate few who were selected. The old woman encouraged her to grab the opportunity as, she said, it was not easy for girls like her to get good jobs in Malaysia without having to pay even a single cent. The old woman left by saying she hoped Laniah would accept the offer.

It took Laniah three months to finally decide to accept the offer. Once again she tried to get her mother's blessings to work in Malaysia. But her mother's stand remained unchangeable *"...I don't want...I don't want...I don't want...".* Laniah finally decided to disregard her mother's objection to her decision and notifed the old woman of her decision.

The next day Laniah met with the man from the company. She was told by him that all the passport matters would be arranged by the company. Laniah only needed to provide the passport photos, and duplications of her birth certificate and identity card. A week later, the passport was ready. She was then told that the journey to Malaysia would be via Samboanga City. Eight girls had been collected, and she should prepare herself for departure very soon.

Given her mother's objections, Laniah had to run away from home and stayed with a friend for three nights before meeting up with the group that was to leave for Malaysia. Transport had been arranged for them to be taken to Manila airport, and they were accompanied to Samboanga by Madam Lh. They stayed in a hotel, four to a room, in Samboanga City for five days while waiting for the ferry to Sandakan, Sabah.

That first night in the hotel room, Laniah thought of her mother and cried. She said: *"when I left my home that evening, I felt very sad at separating from my parents, my sisters and brothers. When I stepped out of the house, I prayed to God..."Oh my God! Please don't be angry with me...please forgive me...I did not tell the truth to my mother"* When her friends asked her why she cried, *"I replied to them that I remember my mother. I come here to go to Malaysia without the knowledge of parents. My mother had not allowed me but I cheated her. I had run away from home."*

On January 18, 2001 the girls boarded the ferry to Sandakan. Madam Lh. sent them to the ferry and explained to the girls that a man would pick up them at the Sandakan ferry terminal. She gave the photo of the man to Laniah. The man, she told Laniah, had long hair and a small body. *"When you arrive, look up at the right side of the terminal, the man will be there."*

When they arrived, Laniah saw the man immediately. *"I looked at the photo again and recognized the man. He also guessed who we were. He gave a signal with his right hand. I approached him. He said, how many of you? Eight persons. Where are they? There! Call them here."* The man gave

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each of them RM500.00 to show to the immigration officer. If asked how many were traveling together, they were to say only one.

The man who met them in Sandakan was K, the manager of the disco in Labuan where she was to work. He brought them from Sandakan to Labuan. There she met again the man who had interviewed her in Manila. He was the boss of the company, Boss LT. She was also introduced to Mami O, Guest Relations Officer of the disco and a senior worker in the company. Mami O was about 50 years old. She was a Filipina from Samboanga. As a Mami, she controlled all the women workers of the disco. She organized the bookings of all the girls.

When Laniah was briefed by K and Mami O on the work she was to do, she felt her heart would explode and she would die. Her heart said, please what I hear is just a dream, not the truth.. When she heard the truth, her mind returned to the hometown. She remembered her mother, father, sisters and brothers. She kept thinking of escape. She kept thinking of the future she had wanted with a husband and children.

Four days after arriving in Labuan she called her mother. *"she was crying.... angry with me. Why are you so thick-headed, she said. .... I knew the job here; I am crying...my mother said, you talk to your boss that you want to go back to Manila. But I said to my mother, no lah ma I got job here"*. Laniah said, *"until now my parents don't know my job here. My mother asked me what my job is and I only say that my job is good."*

For more than two weeks Laniah locked herself in the quarters. Although the boss pressed her everyday to start working, she refused. Many women also approached Laniah to offer advice. Most told her to start work as soon as possible. Among the advice given by the friends:..." *keep in mind that here nothing is free. Everything must be paid for. Quarters rental has to paid each month. Credit due to the company must be paid. Passport's cost must be paid to the company every month. The everyday necessities like food and cosmetics must be bought with your own money. So if you don't work, how can you get the money to cover all the fixed expenses? And then how can you talk about going back to Philippines?"*

But she was also told: ..."*why you come here if you have never done this work! The people here knew well the work they had to do before follow the company here!...we had husband before and divorced...we had children at home who are growing and need education...we are here because we want money! You have never had a relationship...? No husband and not yet married... still no baby! So why you come here?"*

Laniah had brought Pesos 7,000 from Manila, the savings from three months of work in Manila. Every week she exchanged Peso 1,500.00 with the moneychanger. After three weeks, when she ran out of pesos, Laniah agreed to commence work.

(My thanks to Gusni Saat for permission to use this story)

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Appendix 2. The Story of Maimunah

Maimunah is a married woman of 37 from a rural district in Flores who lives in a rented house in a squatter settlement in Subang Jaya.[24] She has completed elementary school and was engaged in farming before coming to Malaysia 1½ years ago.

In Subang, she lives with her husband, who came to Malaysia several years ago, and is now in possession of a forged red identity card.[25] Their eldest son is also in Malysia, but works in another state, while their 3 younger children, who are still schooling, are still in Flores.

She entered Malaysia together with her husband's friend, who is from the same village of origin and who works in Malaysia as a lorry driver and also lives in the same residential area as they do now in Malaysia.. On a visit home to the village, this friend had brought a letter from her husband asking her to join him in Malaysia. They entered without any travel documents, travelling from Ende in Flores to Surabaya by ship (a 3 day/2 night journey, with 3 days transit stay in Surabaya), from Surabaya to Dumai by bus (5 days/5 nights with 2 days of transit in Dumai).

From Dumai on the Sumatran coast, they used the services of a taikong (a boatman broker) to cross over to Tg. Sepat on the Malaysian coast by boat, an 8-hour crossing. From Tg. Sepat, they made their way to their destination in Kuala Lumpur by bus, a journey of another 5 hours. The entire journey, including finding the services of the taikong for the Dumai-Tg Sepat crossing, was organised by the husband's friend. The cost of RM 1,000 came in part from her own savings, in part from her in-laws.

When she first arrived, she found a job as a street cleaner with a Chinese contractor, and was paid RM 20 per day. After 3 months she left, as the pay was low and always slow in coming. Two weeks thereafter, she found a job as a kongsikong (general labourer) for a Chinese contractor at a construction site for which she was paid RM 30 a day, but left after 4 months because the work was too tough. After a week, she found her present job, at which she has been working for 8 months now, as a restaurant helper. She earns RM 700 monthly.

Illegal status is troublesome. She is fearful of roadblocks, and in particular of "rush" (police raids) on the housing area. If there is news of an impending "rush", the migrants don't sleep and prepare to run away if necessary. The other disadvantage of not having a permit is difficulty in getting work, and the lower wages.

She hopes to return to Flores in a year, as the children are still there. She will use the services of a taikong to return, at a cost of RM 400.

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[24]   This is a middle-class neighbourhood in the capital city of Malaysia.
[25]   A red identity card is a personal identity document issued to foreigners with permanent resident status in the country.

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