

**AN ASSESSMENT ON THE EXPLOITATION OF CHINESE MIGRANTS
IN THE WESTERN HEMISPHERE:
A MODERN FORM OF TRAFFICKING IN PERSONS**



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Purpose of this study

This assessment aims to stimulate discussion and reflection on the situation of exploited Chinese migrants—particularly those in the Western Hemisphere—who often trade their uneasy life at home for even greater suffering abroad. The author hopes this research presents a more comprehensive picture of undocumented Chinese migrants’ modern-day slavery, and will offer those dedicated to fighting human trafficking a new understanding of the crime.

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Presentation on the OAS - Anti-Trafficking In Persons Section

The Anti-Trafficking in Persons Section (TIP) is part of the Department for the Prevention of Threats Against Public Security within OAS. The mission of TIP is to facilitate the exchange of information, provide training, and promote anti-trafficking policies in a way that assists the efforts of member states to prevent and combat trafficking in persons, especially women, adolescents, and children. TIP strives to implement a broad anti-trafficking strategy that addresses the human rights, social policy, and transnational crime aspects of this international challenge.

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EXECUTIVE SUMMARY

This OAS assessment documents the human trafficking and exploitation of Chinese illegal migrants throughout the Americas. This exploitation occurs across the OAS region: in kitchens and garment factories, on isolated farms and worksites, in brothels and massage parlors. The quiet abuse of Chinese migrants takes place largely within the Chinese migratory community, and it is built upon a complex and secretive system of debt repayment through forced labor and commercial sexual exploitation that amounts to trafficking in persons.

This OAS assessment first puts in context the magnitude of Chinese migration into the Americas. Chinese migrants take extraordinary risks and undergo great hardships to reach the West. They migrate through a variety of routes—air, sea, and land—to enter the OAS region. The migrants’ handlers use organized crime tactics to ensure their illicit profits in the multi-million dollar business of clandestinely transporting people. While statistics on Chinese communities and migration into the Americas are very incomplete, estimates suggest that 30,000 Chinese illegal migrants enter the United States per year, often using Canada, Latin America, or the Caribbean region as a point of transit.

Once in the destination country, Chinese illegal migrants are physically and psychologically coerced to pay their smuggling fees, which are typically as much as US \$55,000. Chinese illegal migrants are often confined in clandestine “safe houses” until their debt is paid. Illegal migrants normally raise these huge amounts of money by borrowing from family and/or loan sharks in China. If the debt is not repaid upon arrival, traffickers then force the illegal migrants to work in diverse businesses such as restaurants, kitchens, isolated farms, garment factories, construction sites, and brothels. If they manage to be freed from safe houses, the repayment of the smuggling debt, to whoever is due, becomes the Chinese illegal migrants’ sole *raison d’être*. Failure to do so can entail several deadly risks, especially if the money is owed to loan sharks or criminal organizations, which is often the case. The result is that Chinese illegal migrants take any job offered, normally within the Chinese community, and are forced—because of their illegal migration status and debt—to work under the most egregious conditions.

Their employers may take advantage of their desperate situation and impose years of harsh working conditions beneath normal, legal labor standards. This work often consists of a regimen of unreasonably long hours, a denial of breaks, a lack of adequate safety and health standards, and a withholding or reduction of pay. In the most extreme cases, migrants can be locked up in the work compound and physically threatened or abused.

Although this pattern of abuse has been mostly documented in the context of North America, similar stories also exist in Central and South America. Local traffickers, typically of Chinese heritage, in countries such as Mexico, Suriname, Panama, and Uruguay take advantage of the vulnerability and indebtedness of migrants by forcing repayment of travel expenses through laboring on farms, in factories, and at local Chinese businesses.

This complicated scheme of clandestine migration, debt, and exploitative labor is a prime example of human trafficking as defined internationally by the U.N. Trafficking in Persons Protocol (2000). Force, fraud and coercion are present in countless cases of Chinese illegal migrants in the Americas. Many argue that Chinese illegal migrants consent to a life of suffering and hardship in order to establish themselves in the New World. But as in many human trafficking cases, the validity of consent is suspect because it is vitiated by elements of isolation, fear of deportation, false expectations, and, above all, crushing indebtedness that constantly weights on the illegal migrants and color their decision making. The fact that the trafficking of Chinese migrants is, in some cases, a loose association of diverse actors—the transporter, the financier, and the employer—does not alter the basic nature of the enterprise: it remains a process of human trafficking, comparable to illicit narcotics rings that also involve diverse and unconnected conspirators. In Chinese trafficking, the handlers still act in concert in order to impose a debt bondage that leads to the severe exploitation of many thousands of migrants in the OAS region.

This OAS assessment hopes to contribute to the beginning of a dialogue between government officials and policymakers throughout the Americas, and to the recognition that the widespread exploitation faced by Chinese migrants is a serious problem and a form of human trafficking. This is a situation that impacts not only the human rights of the migrants but also the internal security of institutions in the countries involved. This

assessment also strives to stimulate a discussion among different levels of civil society to spark more study and debate of this issue. Indeed, there is a great need for a broader understanding of the crime of human trafficking, and this is particularly so in the closed world of Chinese migration in the Americas.

An Assessment on the Exploitation of Chinese Migrants in the Western Hemisphere: A Modern Form of Trafficking in Persons

“America is no paradise. It was the same routine every day for six or seven years. Get up. Work for 16 hours. Go to bed. Get up again. I was a fool. A machine.”¹

Introduction

Chinese people have been migrating to most parts of the world for centuries. Indeed, it is no exaggeration to say that Chinese can be found literally everywhere, in small communities or larger groups.² Their emigration to the Western Hemisphere can be dated back to the 18th century, when Chinese were hired or sold as coolies to work in the tropical plantations of the Caribbean or in the gold mines of the western United States.³ In the modern era, North America has become a prized destination for many Chinese pursuing the dream of a better life—a process closely linked with their desire to improve their economic circumstances. The number of persons involved in this migration to the Americas is not known with exactitude, but it is considerable, and for that reason merits a well-considered policy response. The best data appear in studies of Chinese migration to the United States, but even that information is very incomplete. It is estimated that roughly 20,000 to 30,000 Chinese enter the United States illegally every year.⁴ In 1999 alone, some 33,000 Chinese were estimated to have entered illegally the United States.⁵

The presence of Chinese nationals in developed countries has been discussed mainly as a question of immigration, labor, and organized crime. Still, the topic of

¹ Zheng from the Shengmei village in Changle, Fujian, interviewed by David D W. Chen, *For Many Chinese, America's Allure Is Fading*, THE NEW YORK TIMES, September 7, 2003.

² The present study will only assess the situation of Chinese migrants from the People's Republic of China. Also, the use of the word “Chinese” without any particular precision will refer only to Chinese nationals from the People's Republic of China. However, as some data are collected or presented without regard to this dissociation, the strict reference to PRC Chinese cannot be totally guaranteed.

³ For more information, see David Kyle and Zai Liang, *Migration Merchants: Human Smuggling from Ecuador and China* (Center for Comparative Immigration Studies, Working Paper No.43, 2001). See also Ronald Skeldon, *Myths and Realities of Chinese Irregular Migration*, IOM MIGRATION RESEARCH SERIES, No.1, p 15 (2000).

⁴ See Sheldon Zhang and Ko-lin Chin, *Enter the Dragon: Inside Chinese Smuggling Organizations*, NATIONAL INSTITUTE OF JUSTICE JOURNAL No. 248, 35-36 (2002).

⁵ See the map 1, *infra* at 21, US Department of State, *The illicit Chinese migrant flow to the United States* (2000), International Information Programs website, http://usinfo.state.gov/eap/east_asia_pacific/chinese_human_smuggling/smuggling_maps/migration_map.html

Chinese moving to the New World has only caught sporadic attention, reaching an apex most recently through a series of human dramas covered extensively in the media, like the *Golden Venture* incident. But this short-term attention falls short of providing either context or understanding about the broader migratory mechanisms and the constant abuse of migrants that fuels the clandestine movement of Chinese illegal migrants. Indeed, once they have arrived in their destination country, Chinese illegal migrants are silently poured into a pool of candidates for cheap and unprotected labor, often subject to highly exploitative working conditions. This situation continues to renew itself because they have to repay, as quickly as possible, their substantial smuggling debt in order to avoid violent reprisals. **This report will present compelling evidence that many of these migrants pass through a process of debt-based exploitation that, in fact, makes them the victims of human trafficking.**

The purpose of this study is to present a new perspective and understanding of the situation of Chinese illegal migrants in the Americas. This report will advocate the idea that many Chinese illegal migrants are in fact victims of human trafficking because of the nature of the exploitation and abuses that they have to endure in their desperate struggle to survive and to pay off their enormous smuggling debts. Indeed, most often, illegal migration from China is treated by law enforcement officials and academic scholars as a problem solely of immigration law violations. This narrow approach treats these cases only as human smuggling matters, orchestrated by criminal organizations. But one has to see the bigger picture involved in this human movement and the human exploitation that results: many Chinese illegal migrants end up working in egregious conditions in backroom kitchens, sweatshops, restaurants, and construction sites, living isolated and indecent lives, suffering from the destructive pressure of their smuggling debt. This broad view urges the observation of an excruciating reality: the lives of thousands of illegal Chinese immigrants in the Western Hemisphere are an illustration of the crime of human trafficking. This report will demonstrate that Chinese illegal migrants' model can actually constitute an example of human trafficking by sustaining the following claim:

Many Chinese immigrants are recruited, transported, transferred, harbored or received, by means of the threat or use of force or other forms of coercion, fraud, deception, abuse of power, or a position of

*vulnerability, for the purpose of exploitation, which includes the exploitation of prostitution of others, forced labor, slavery, or practices similar to slavery such as debt bondage, servitude, or the removal of organs.*⁶

Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime defines the crime of trafficking in persons as follows:⁷

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring 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 ;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) 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 subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

Complexity is added to this analysis because Chinese immigrants moving in the Americas pass through a migratory and exploitative enterprise that has many different

⁶ There were accounts of Chinese illegal migrants asked to sell a kidney for \$15,000 in order to pay their smuggling debt. See CRAIG MCGILL, HUMAN TRAFFIC, SEX, SLAVES & IMMIGRATION 10 (Vision Paperbacks) (2003).

⁷ See the Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art. 3, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001), reprinted in 40 I.L.M. 335 (2001). [Hereinafter, U.N. Trafficking Protocol]

forms, characteristics, and scenarios. Although broad and similar patterns can be identified that define much of this phenomenon (as to the type and conditions of transportation from China, or about the type of jobs found in the Americas), it would be shortsighted to assert that all Chinese migrants are automatically being exploited and trafficked once on the continent. Each case should be assessed individually, although many of them are caught in a spiral that often leads to being deprived of many basic human rights. This report will delve extensively into the different situations of Chinese immigration into the Western Hemisphere and its attendant exploitation.

The present study will first strive to describe the phenomenon of Chinese clandestine migration to the Americas and its magnitude. It will draw attention to the significant presence of ethnic Chinese and the flows of Chinese migration in the Western Hemisphere through estimates of their legal and illegal presence, and the number of visas distributed, but also through the existence of corruption among government officials. Some explanation will be provided to present the organizational structure behind the illicit billion dollar human movement business.

In a second part, the report will examine the experience of Chinese illegal migrants holistically: from the reasons that push them to leave, to the details of travel to the final destination country, to the isolation created by the debt and exploitation in which they are imprisoned. Indeed, if the travel from China to the final country can take several forms and have different *modus operandi*, it is safe to say that the migrants are always at risk of being caught, of perishing because of unsafe transportation practices, or of being abused by handlers demanding the immediate payment of the enormous transportation fees. The ensuing exploitation justified by the need to repay the incurred transportation debt reaches no limit as the vulnerable migrants have to accept any job they find. This leads to the trivialization of extremely abusive working standards among the community of Chinese illegal migrants that are often so insidious that it destroys real decision-making power.

Finally, the report will thoroughly explain why the Chinese migrants' exploitation paradigm fulfils the legal criteria of the crime of trafficking in persons. From the means of coercion exercised upon their vulnerable situation, to the nature of the exploitation they suffer, linked to the concept of debt-bondage, Chinese exploited migrants fit the

criteria for trafficking victims and should be considered as such. This last part will also discuss elements in the Chinese migrants paradigm related to the continuance of the control operated on Chinese migrants, which is unusual in the human trafficking context but still strongly establishes the existence of modern-day slavery.

Sources, Methodology, and Exclusion

This research presents a range of qualitative and quantitative information based on interviews, existing reports, and specialized literature. The interviews were carried out with an array of persons who live and observe this phenomenon on a daily basis—human rights advocates, lawyers, social workers, law enforcement officials, journalists, academics and illegal Chinese migrants themselves. Their primary accounts have proved to be highly descriptive and informative. Secondary sources of information such as law review articles, sociology, labor and criminology literature, and newspaper articles from the whole Hemisphere have provided many of the scenarios and examples presented here and helped to set the background of this project. The report also presents complicated analyses on an array of legal concepts regarding the international standards on trafficking in persons, human smuggling, forced labor, organized crime, and others topics in the context of Chinese migration; however, it is not meant to be an exhaustive treatment of these abstract legal issues. Although the U.S. trafficking legal framework will be touched upon, this study does not provide a treatment of domestic laws on trafficking in China, or transit and destination countries in the OAS region.

I. Magnitude and Nature of Chinese Migration into the Americas

The migratory movement of Chinese into the Western world began many centuries ago. It developed as a complex response to a wide range of factors such as technological progress, and political, economical and social changes both in and outside China. Destination countries' willingness to accept such migration is also another crucial component. The data on the Chinese population in the OAS region are very incomplete. This difficulty is further enhanced when it comes to disaggregating the data of Chinese who are documented (and legally present) versus those who are not documented (and hence illegally present) in the Western Hemisphere. We will see that this migration eventually fuels the ranks of Chinese exploited workers in the Americas.

In the following sections, we will first present information on the estimated numbers of legal and illegal Chinese migrants in the Western Hemisphere. That will be followed by research that highlights the principal patterns of the migratory phenomenon.

1. Legal Presence: Chinese Migrants and Ethnic Chinese Communities in the Americas

Historically, significant Chinese emigration started during the 19th century colonial period, when Chinese laborers traveled overseas to undertake dangerous jobs such as gold mining or railway construction.⁸ That period of Chinese emigration did much to populate the overseas Chinese communities around the world and in the Americas. Presently, overseas Chinese (or ethnic Chinese, either born in China or not, but currently not living in China) number about 34 million; they live mostly in Southeast Asia. However, more recent waves of Chinese migrants have sought privileged destination countries in Europe or in the Americas – usually North America. This study will focus on their presence in the Western Hemisphere since the last part of the 20th century.⁹

⁸ See David Kyle and Zai Liang, *supra* note 3. See also Skeldon, *supra* note 3, at 15.

⁹ See PAN, LYNN, *THE ENCYCLOPEDIA OF THE CHINESE OVERSEAS* (1998) (Landmark Books, Singapore). See also, CHIN, UNG HO, *THE CHINESE OF SOUTH EAST ASIA* (2000) (London: Minority Rights Group). For further presentation on the Chinese population in the United States, see PETER KWONG & DUŠANKA MIŠČEVIĆ, *CHINESE AMERICA*, 315-318 (2005).

Table 1: Estimates of Chinese and Taiwanese populations living in the Western Hemisphere.¹⁰

Americas : 3,570,750			
Antilles (Dutch)	700	Grenada	10
Argentina	40,000	Guyana	14000
Aruba (Dutch)	600	Haiti	2
Bahamas	300	Honduras	2000
Barbados	250	Jamaica	20,000
Belize	7000	Mexico	20,000
Bolivia	1023	Nicaragua	1,000
Brazil	100,000	Panama	150,000
Canada	910,000	Paraguay	6,000
Chile	5,000	Peru	30,000
Columbia	4200	Suriname	20,000
Costa Rica	55000	Saint Christopher & Nevis	43
Cuba	7,000	Saint Lucia	30
Curacao (Dutch)	600	Saint Vincent & Grenadines	10
Commonwealth of Dominica	40	Trinidad & Tobago	12,000
Dominican Republic	14500	Venezuela	20,000
Ecuador	12500	United States	2,000,000
Salvador	1,000	Uruguay	250
Guatemala	15,000		

In 2004, ethnic Chinese in the Americas were believed to total over 3 million.¹¹ This population reflects the growing importance of the Chinese community in the OAS region. The established Chinese community throughout the Americas also provides a support base to draw new, would-be migrants from China by providing networks and support systems, which, as we will see, both genuinely assist migrants but also set in place an informal system of migrant labor that can be highly exploitative.

In Table 1 above, two notable figures are the proportion of Chinese in Panama and Canada. The Chinese community composes 5% and 3.69% of the population of these countries respectively. The Chinese ethnic minority is present on most of the continent, often concentrated within neighborhoods of a city, forming clusters called “Chinatowns”

¹⁰ This table has been drawn by the Ohio University, who mostly used data from the Oversea Chinese Committee of the Republic of China (Taiwan). Thus, these diverse estimates also take into account the numbers Chinese-Taiwanese overseas. *Available at:* http://overseaschineseconfederation.org/CH_databases_popdis.html

¹¹ See the Table 1

or *barrios chinos* in Latin America. Although these urban ethnic districts vary greatly, they share some common characteristics, one of the most notable being the strong presence of small businesses run by ethnic Chinese.¹²

Chinese Legal Migratory Trends into the Americas

There is no easily accessible or comprehensive data on legal Chinese immigration into the OAS region, although estimates on immigration for Western Hemispheric countries are relatively well-reported when compared to other continents. These kinds of immigration statistics generally rely on the authorities in the destination countries who often face technical challenges in measuring this elusive information. Political sensitivity can also be an impediment to the publication of accurate data on Chinese populations. Details on the types of immigrant visas and residency permits granted to Chinese migrants are even more difficult to find.

The following analysis draws on recent migratory trends and some available data on legal Chinese migrant nationals into the OAS region. A country can generally accept the legal entrance of foreigners as immigrants (legal permanent residents) or as nonimmigrant (foreigners admitted in a country and who does not plan to live there for a consequent period). It should be noted that there is no uniform data collection system in this process. This analysis is an amalgam of different information from credible sources.

Immigrants Admissions

In 2004, 51,156 Chinese immigrants were admitted into the United States.¹³ The influx in the last few years has fluctuated depending on U.S. immigration policy at the time. Total numbers of legal entries have ranged from around 32,000 Chinese immigrants admitted in 1999 to 61,000 in 2002. In a five-year period, 1991 to 1996,

¹² For more information on Chinatowns around the world, see LYNN PAN, *SONS OF THE YELLOW EMPEROR: A HISTORY OF THE CHINESE DIASPORA* (1994). See also K. Scott Wong, *Chinatown: Conflicting Images, Contested Terrain*, MELUS, 1995 (Vol. 20, Issue 1).

¹³ See UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Immigrants admitted by region and country of birth: fiscal years 1989-2004, in *YEARBOOK OF IMMIGRATION STATISTICS: 2004*, available at <http://uscis.gov/graphics/shared/statistics/yearbook/2004/table3.xls>

Canada admitted 87,900 Chinese immigrants.¹⁴ Canada received a larger flow of Chinese immigrants, mostly from Hong Kong, before 1997, the year Hong Kong was returned to China, although the migratory increase had already begun in the wake of the Tiananmen Square massacre of 1989.¹⁵

In Latin America, the patterns of legal admission and the issuance of immigrant visas are quite different. Most countries do not publish data on these migratory flows. The partial figures found for Costa Rica are worth mentioning. In 2000, 205 persons were granted residencies in Costa Rica; in 2004, the number was 657—an increase of 220% between 2000 and 2004.¹⁶

Nonimmigrant Admissions

Many countries in the OAS region do not publish their statistics on nonimmigrant visas granted and denied. According to Table 2 below, in 2004, the United States granted a total of 687,148 visas to Chinese and Taiwanese nationals. Most of those temporary visa recipients entered the United States with a tourist visa (341,863) and a business visa (208,664). Students account for 63,940 visas. Only 17,034 temporary workers and trainees visas were issued to Chinese. One notable statistic is the number of T visas granted by U.S. federal authorities to victims of a severe form of trafficking: 17 Chinese and Taiwanese victims of trafficking have been granted this visa.

¹⁴ See CITIZENSHIP AND IMMIGRATION CANADA, CANADA'S RECENT IMMIGRANTS: A COMPARATIVE PORTRAIT BASED ON THE 1996 CENSUS 8 (January 2001), available at <http://www.cic.gc.ca/english/research/papers/menu-recent.html>.

¹⁵ See Peter S. Li, *The Rise and Fall of Chinese Immigration to Canada: Newcomers from Hong Kong Special Administrative Region Of China and Mainland China, 1980-2002*, INTERNATIONAL MIGRATION, VOL. 43 (3) 2005 (IOM).

¹⁶ See *Residencias a chinos subió un 220% en cuatro años*, LA NACION, June, 7 2005.

Table 2: NONIMMIGRANTS ADMITTED BY SELECTED CLASS OF ADMISSION AND REGION AND COUNTRY OF CITIZENSHIP: FISCAL YEAR 2004¹⁷

Region/country of citizenship	All classes classes	Foreign government officials ¹	Temporary visitors for business	Temporary visitors for pleasure	Transit aliens ²	Treaty traders and investors ¹	Students	Spouses and children of students	Temporary workers and trainees ³	Spouses and children of temporary workers and trainees ³
All countries	#####	152,649	4,593,124	#####	338,175	182,934	620,210	36,163	618,162	142,873
China ⁶	687,148	2,505	208,664	341,863	7,498	4,668	63,940	4,536	17,034	5,491
Hong Kong	81,237	16	24,562	44,744	381	38	7,238	52	2,193	170
Mexico	4,454,061	3,474	432,588	3,763,882	7,477	6,176	20,575	1,480	110,922	7,077

International representatives ¹	Representatives of foreign information media ¹	Exchange visitors	Spouses and children of exchange visitors	Fiances (ees) of U.S. citizens ⁸	Intracompany transferees	Spouses and children of intracompany transferees	NATO officials ¹	Free-Trade Agreement workers	Spouses and children of Free-Trade Agreement workers	Spouse and/or child of US citizen, immigrant visa pending
109,355	37,108	321,975	38,802	33,061	314,484	142,099	14,813	66,219	12,635	22,117
1,992	975	10,464	2,854	2,058	4,775	2,532	51	-	65	1,384
109	94	726	40	75	357	134	4	-	D	30
D	1,032	7,137	1,279	1,372	16,336	8,838	307	2,123	736	2,997

Spouse of legal permanent resident, immigrant visa pending	Child of legal permanent resident, immigrant visa pending	Dependent child of spouse or accompanying child, immigrant visa pending	Victims of severe form of trafficking	Spouses, children, and parents of victims of severe form of trafficking	Victim of criminal activity	Spouses, children, and parents of victim of criminal activity	Other and unknown	
17,866	15,239	15,556	612	467	140	158	131,427	D Disclosure standards not met.
1,193	821	63	17	13	10	5	1,677	- Represents zero.
26	10	3	D	-	-	-	232	¹ Includes spouses and unmarried minor (or dependent) children.
9,132	8,100	12,628	19	44	D	56	25,732	² Includes foreign government officials and their spouses and unmarried minor (or dependent) children in transit.

³ Free-Trade Agreement workers (and their spouses and children) are shown separately.
⁶ Includes People's Republic of China and Taiwan.
⁸ Includes minor children of fiances(ees).

¹⁷ See UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Non-immigrants admitted to the United States by selected class of admission and region and country of citizenship: fiscal year 2004, in YEARBOOK OF IMMIGRATION STATISTICS: 2004, available at <http://www.uscis.gov/graphics/shared/statistics/yearbook/2004/Table23.xls>

In 2001, Argentina allowed the entrance of 4,184 PRC Chinese.¹⁸ In 2000, there were 906 official entries of Chinese nationals in Ecuador, and 809 exits. In 2003, there were 4,306 entries and 3,398 exits of Chinese citizens.¹⁹ The Ministry of Foreign Affairs of the Bahamas said that the number of non-immigrant visas issued to Chinese nationals has quadrupled between 2002 and 2005.²⁰ The Costa Rican *Dirección General de Migración* issued 300 visas in 2002 to Chinese nationals, 778 in 2003, and 657 in 2004.²¹ Peru issued visas to 5,376 Chinese nationals in 2004 and only 4,828 officially left the country.²²

These few examples support the idea that the Latin America and the Caribbean region is increasingly a popular transit area for Chinese migrants, but, as it will be discussed later, this movement may also indicate improper cooperation between some immigration officers and “snakeheads”²³ in providing genuine documents to unqualified Chinese migrants.

2. Illegal Presence: Chinese Illegal Migrants in the OAS Region and Particularly in the United States

Establishing an estimate of the phenomenon of illegal migration from China into the Americas is a daunting task which is further complicated given the clandestine and varied nature of this migration. Human smuggling has been defined as “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

¹⁸ See “Población extranjera empadronada en el país por lugar de nacimiento, según sexo y grupos de edad” 2001, at the INDEC, Censo Nacional de Poblacion. Hogares y Viviendas website.

¹⁹ See Orden de prisión por visas a chinos fue revocada, LA HORA, December 8, 2005.

²⁰ See Jimenita Swain, *Non-immigrant visa claims*, THE NASSAU GUARDIAN, November 22, 2005.

²¹ See *Fiscalía analiza autorizaciones de visas otorgadas a chinos*, LA NACION, April 27, 2005.

²² See Dirección General de Migraciones y Naturalización website, Statistics page, available at http://www.digemin.gob.pe/estadistica/Per2005_archivos/04.htm

²³ The term ‘snakeheads’ (or in Chinese, the head of the snake) refers to a person who is involved in the smuggling of a Chinese illegal migrant. The activities of snakeheads can go from organizing the journey and financing the freighter that will transport the illegal migrant from one place to the destination country to the reception of Chinese undocumented migrants in the destination country, the guides and crew members facilitating the journey and all the persons acting in between. Some tasks along this smuggling phenomenon can be sub-contracted to some Chinese gang members. The latter have proven to actively engage in debt collection for instance. For more details, see Richard Estes and Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico* (2001) (Philadelphia: University of Pennsylvania School of Social Work).

resident.”²⁴ As the following discussion and examples will show, Chinese migrants have done just this to reach Western countries in response to the fact that legal immigration has often been barred and the privilege of a few.²⁵

Illegal immigration of Chinese nationals has been ongoing throughout the whole world, being well established in Russia²⁶ and in Southeast Asia.²⁷ Official global data are currently not available for the number of detected Chinese illegal immigrants in the Western Hemisphere nor are there any reliable estimates at the regional level. But given the fact that most of the Chinese migrants want to reach the “Golden Mountain”—the United States—it can be instructive to focus on the data concerning this highly prized final destination.

Estimates of the Chinese Illegal Presence

Estimates about the flow and presence of Chinese illegal migrants in the United States have varied greatly according to the author or the organization providing the data. In 1994, then CIA Director, James Woosley, estimated that at least 100,000 Chinese were smuggled in the United States every year.²⁸ However, recent estimates have proven to be more conservative. Indeed, a 2000 estimate from the U.S. Department of State claimed that around 12,000 illicit Chinese migrants entered the United States in 2000 (see Map 1). This estimate was a decrease from the State Department’s 1999 approximation of 30,000 to 40,000 Chinese migrants entering the United States

²⁴ See the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, UN Doc. A/55/383 at 62 (2000).

²⁵ At this point of the report, it is important to assert that the difference between the two legal concepts of human smuggling and human trafficking is fully taken into account. As it will be described in the following sections, the crime of human smuggling can be part of the more extensive crime of trafficking in persons. Indeed, a trafficked person can be smuggled across international borders in order to be exploited. This is the case for Chinese migrants.

²⁶ See *Mafias chinas en Rusia dominan negocio de inmigración ilegal hacia Europa*, LA NACION, August 13, 2001, see also Louise I. Shelley, *Post-Communist Transitions And The Illegal Movement Of People: Chinese Smuggling And Russian Trafficking In Women*, VOL. 14 NO. 2, ANNALS OF SCHOLARSHIP 71-85 (Fall 2000).

²⁷ See FEDERAL RESEARCH DIVISION, TRANSNATIONAL ACTIVITIES OF CHINESE CRIME ORGANIZATIONS (Library of Congress) (April 2003).

²⁸ See Woosley, CIA Director, in his 1994 Congress testimony cited in Paul J. Smith, *Illegal Chinese Immigrations Everywhere, and No Letup in Sight*, INTERNATIONAL HERALD TRIBUNE, June 28, 1996. Gao Yun and Jennifer Bolz cited the same number from the U.S. authorities. See Gao Yun *Chinese Migrants and Forced Labour in Europe* (International Labour Organization Working Paper, July 2004), see also Jennifer Bolz, *Chinese Organized Crime and Illegal Alien Trafficking: Human as Commodities*, 22:3 ASIAN AFFAIRS 147-158 (Fall 1995).

Authors Sheldon Zhang and Ko-Lin Chin put the number of Chinese smuggled into the United States every year between 20,000 and 30,000.²⁹ According to the International Organization for Migration (IOM), 15,000 Chinese migrants illegally entered Canada from 1995 to 2005.³⁰ Estimates have dropped in the recent years as experts and organizations applied a more restrictive construction of the presence and flow of Chinese illegal migrants. This may be explained by the apparent slow down in the smuggling organizations' activities. Where, in the 1990s, transportation by sea freighters was more used and more visible, the current organizations may have adopted other *modus operandi*.³¹

Even if no accurate official estimates of the illegal presence of Chinese in the Latin American region and the Caribbean exist,³² some studies have reported that Chinese citizens form one of the most important undocumented population groups in places like Suriname,³³ the Netherlands Antilles,³⁴ or Paraguay.³⁵ Some believe that in the 1990s, Bolivia and Panama each harbored as many as 4,000 Chinese illegal migrants, waiting for the right time to go north.³⁶

It seems that the United States is the only country in the Americas to publish the numbers of detected cases of Chinese illegal aliens. In 2004, out of the 1,241,089 deportable aliens found in the United States, 1,560 were from the People's Republic of China.³⁷ However, only 700 of them were actually deported that year.³⁸

²⁹ See Zhang and Chin, *supra* note 4.

³⁰ See OAS/IOM, ASSESSMENT ON TRAFFICKING IN THE CARIBBEAN REGION 89 (International Organization for Migration ed. (2005)).

³¹ See *infra* page 37.

³² IOM recognizes Chinese as the leading group of irregular migrants to enter the region of the Americas through the Caribbean and Central America to reach North America, see OAS/IOM, *supra* note 30 at 97.

³³ See *id* at 138.

³⁴ See *id*, at 104.

³⁵ Ciudad del Este, in southeastern Paraguay, is believed to be the center of the Tri-Border Area between Argentina, Brazil and Paraguay. This region is known for the concentration of Chinese criminal groups in South America. Indeed, in this city, legal Chinese Cantonese migrant population would only count for 9,000 out of the 30,000 Chinese in the city counts, see *supra* note 7, at 21.

³⁶ See KO-LIN CHIN, SMUGGLED CHINESE: CLANDESTINE IMMIGRATION TO THE UNITED STATES 170 (Temple University Press) (1999), citing Al Kamen, A Dark Road From China to Chinatown; Smugglers Bring Increasing Flow of Illegal Immigrants to U.S., *The Washington Post*, June 17, 1991.

³⁷ See UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Deportable aliens located by region and country of nationality, in YEARBOOK OF IMMIGRATION STATISTICS: 2004, available at <http://uscis.gov/graphics/shared/statistics/yearbook/2004/Table36.xls>.

³⁸ See UNITED STATES DEPARTMENT OF HOMELAND SECURITY, Aliens removed by criminal status and region and country of nationality, in YEARBOOK OF IMMIGRATION STATISTICS: 2004, available at <http://uscis.gov/graphics/shared/statistics/yearbook/2004/Table36.xls>.

Map 1: Migrant Flow into the United States³⁹



Press Reports of Clandestine Movement of Chinese

There are regular press reports about Chinese illegal aliens found throughout the region: El Salvador, Colombia, Ecuador, Panama, Dominica, Costa Rica, Nicaragua,⁴⁰

³⁹ See US Department of State, Chinese Human Smuggling, map of Migrant Flow into the United States, available at http://usinfo.state.gov/eap/east_asia_pacific/chinese_human_smuggling/smuggling_maps/migration_map.html

⁴⁰ See José Adán Silva y Nidia Ruiz, *EE.UU. preocupado por tráfico de ilegales*, LA PRENSA, January 30, 2001.

Honduras, Guatemala, Belize,⁴¹ Venezuela, Cuba, Uruguay, the Bahamas, Argentina, Bolivia, Peru,⁴² the Dominican Republic, Brazil, Mexico, Canada, and the United States (including Guam, the Northern Mariana Islands, Puerto Rico,⁴³ and the Virgin Islands⁴⁴). Illegal immigrants from China are found regularly on American coastal areas or borders.⁴⁵ The following are just a few noticeable incidents involving undocumented Chinese migrants.

In May 2002, ten naked men paddled ashore and were found on Laguna Beach, in the Orange County, California, after the crew of the boat on which they were transported ordered them to jump into the sea.⁴⁶ From 1999 to August 2002, the San Diego Border Patrol apprehended 143 Chinese trying to enter the United States from Mexico.⁴⁷ It seems that Chinese illegal migrants also travel to the U.S. Northern Mariana territories of Guam for job opportunities: 70 Chinese were found in June 1998 trying to enter the territory by boat.⁴⁸

Numerous other stories document the widespread clandestine movement of Chinese migrants throughout the OAS region. Canada discovered 36 undocumented Chinese immigrants (6 women and 30 men) in a cargo ship container in 2001.⁴⁹ In 2004, the Ecuadorian Coast Guard interdicted a boat with nine Chinese aboard presumably bound for the United States.⁵⁰ In 2004, the Salvadorian police captured four illegal

⁴¹ See *supra* note 27, at 20, where it is believed that Taiwanese triads are moving people to the United States, thanks to the bridge created by Belize.

⁴² See Ko-lin Chin, *The Social Organization of Chinese Human Smuggling* in GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES 187 (Kyle, David, and Rey Koslowski, eds.) (2001).

⁴³ Four Chinese, two men and two women, were found laboring in a fishing company in Puerto Rico, without any documentation. See Marga Parés Arroyo, *Operativo federal en finca de Dorado*, EL NUEVO DÍA (Puerto Rico), January 31, 2006. See also OAS, Alejandro Salicrup, *Uncharted Migration: OAS Rapid Assessment Report of Trafficking in Persons from the Dominican Republic into Puerto Rico at 25*, (OAS) (2006).

⁴⁴ See *36 illegal Chinese immigrants arrested*, ANTIGUA SUN MONDAY, October 22, 2001.

⁴⁵ See Eric Slater, *Human Smuggling Operation Probed*, LOS ANGELES TIMES, January 17, 2005.

⁴⁶ See Jack Leonard and Christine Hanley, *Ship Carrying Chinese Was Hijacked, Crew Says; Immigration: Captain says he was fishing off Hawaii when the men boarded and took the vessel to the O.C. coast. Prosecutors have doubts*, LOS ANGELES TIMES, May 29, 2002.

⁴⁷ See Daniel Yi, *Brazilians Turning to Mexican Smugglers, U.S. Officials Say; Security: Authorities believe many are enticed by groups in their native country that collaborate with traffickers south of the U.S. border*, LOS ANGELES TIMES, August 23, 2002.

⁴⁸ See *Tráfico de chinos a EEUU en barco venezolano*, EL UNIVERSAL (Venezuela), June 13, 1998.

⁴⁹ See Diana Anabell Mendoza G, *Detienen ilegales chinos que se dirigen a EU*, EL UNIVERSAL, April 13, 2001.

⁵⁰ See *Armada detuvo a 108 indocumentados*, CRE SATELITAL, January 23, 2004.

Chinese migrants, possibly from Taiwan or China.⁵¹ In June 2004, the Costa Rican police detained seven Chinese illegal migrants.⁵² The Argentine National Gendarmerie reported in 2004 that some 700 Chinese nationals were detained just in the northeastern part of the country.⁵³ In Argentina, the number of deported Chinese doubled from 189 in 2003 to 383 in 2004.⁵⁴ In January 2005, 15 Chinese migrants were discovered in two trucks bound for Buenos Aires from Bolivia.⁵⁵ In Uruguay, 15 Chinese nationals were found locked in a private residence without food in the town of Solymar: this report points to the use of pre-determined safe houses⁵⁶ which will be discussed later.

In the Bahamas, 10 illegal Chinese nationals were arrested in 2003 on suspicion of trying to enter the United States illegally.⁵⁷ The police in Dominica detained eight Chinese migrants in October 2003, when they were arrested at the airport with false documents.⁵⁸ In Panama, four Ecuadorians have been charged with clandestinely transporting 15 Chinese individuals into Panama in 2002: a case illustrating that Chinese networks also rely on locals to move their human cargo.⁵⁹ That same year, a group of nine Chinese were discovered stranded in Panamanian waters and were detained by authorities.⁶⁰ In July 2003, Panamanian authorities apprehended six Chinese who entered the country illegally.⁶¹

The National Institute of Migration of Mexico detained 14 undocumented Chinese migrants found in Cancun, who entered the country with a Venezuelan aircraft in May

⁵¹ See *Policía detuvo cuatro asiáticos pretendían ingresar ilegalmente*, LA NACIÓN, October 20, 2004.

⁵² See *Mafia oriental cobra más de \$50.000 a ilegales*, LA NACIÓN, June 30, 2004.

⁵³ Kelly Hearn, *Chinese use back door into America*, THE WASHINGTON TIMES, January 24, 2005.

⁵⁴ See *Tres detenidos en Jujuy por ingresar ilegalmente al país a 15 chinos*, CLARÍN, DYN Y TÉLAM (Argentina), January 7, 2005.

⁵⁵ See *id.*

⁵⁶ See Hearn, *supra* note 53.

⁵⁷ See Vanessa C Rolle, *Illegal immigrant crackdown continues*, THE NASSAU GUARDIAN, October 01, 2003.

⁵⁸ See *Police detain eight Chinese nationals*, ANTIGUA SUN, October 1, 2003.

⁵⁹ See *Investigan a ecuatorianos vinculados a tráfico de chinos a Panamá*, AGENCIA AP, October, 2002, available at http://www.nacion.com/ln_ee/2002/octubre/01/ultima8.html.

⁶⁰ See *Repatriarán a chinos ilegales que naufragaron en aguas panameñas*, LA PRENSA (Panamá), September 27, 2002, available at http://mensual.prensa.com/mensual/contenido/2002/09/27/uhora/uhora_nacional.shtml.

⁶¹ See *Detienen a seis chinos que entraron ilegalmente a Panamá*, LA NACIÓN, July 10, 2003, available at http://www.nacion.com/ln_ee/2003/julio/10/ultima-ce4.html.

2003.⁶² In November 2005, nine undocumented Chinese workers were identified in diverse businesses in Mexico City.⁶³ In July 2004, 10 Chinese illegal migrants and others with different nationalities were found in the Dominican Republic. They had been transported clandestinely from Haiti, into the Dominican Republic with the objective of moving on to Puerto Rico. Dominican authorities found seven others in November that same year.⁶⁴

In March 2005, 13 individuals, likely of Chinese origin, were deported from Nicaragua after trying to enter the country illegally by using false Filipino and Indonesian documents.⁶⁵ In January 2000, U.S. authorities repatriated 249 Chinese found on a fishing vessel called Wing Fung Lung, coming from Guatemala.⁶⁶ After Guatemala decided to deny Chinese citizens entry without visas in August 2005, 15 Chinese citizens were discovered arriving in an aircraft from Venezuela with false British passports and were detained.⁶⁷ In September 2005, a representative of the Guatemalan Minister of Interior stated that around 150 Chinese nationals were arriving every week in order to go to the United States.⁶⁸

In 2001, the Colombian government deported 35 Chinese nationals illegally in that country.⁶⁹ In December 2005, a Colombian judge sentenced three Chinese who had been found guilty of participating in a smuggling ring.⁷⁰ In December 2003, a group of Chinese was arrested in Honduras that was believed to have been using about 1500

⁶² See *Detienen en México avioneta venezolana con 14 chinos ilegales*, EL UNIVERSAL (Venezuela), May 3, 2003.

⁶³ See Rubelio Fernández y Ella Grajeda, *Migración detiene a 24 asiáticos en redada*, EL UNIVERSAL (Venezuela), November 4, 2005.

⁶⁴ *Arrestan a 54 personas que pretendían viajar ilegalmente a Puerto Rico*, EL UNIVERSAL (Venezuela), November 26, 2004.

⁶⁵ See Leslie Ruiz Baldelomar, *Deportan a chinos con pasaportes falsos*, LA PRENSA (Nicaragua), March 24, 2005, available at <http://www.laprensa.com.ni/cronologico/2005/marzo/25/nacionales/nacionales-20050324-16.html>.

⁶⁶ See *INS returns Chinese nationals from Guatemala*, HONDURAS THIS WEEK, January 24, 2000, available at <http://www.marrder.com/htw/jan2000/central.htm>.

⁶⁷ See Olga López, *Detienen a 15 ciudadanos chinos*, PRENSA LIBRE (Guatemala), August 30, 2005, available at <http://www.prensalibre.com/pl/2005/agosto/30/122247.html>.

⁶⁸ See *Ordenan liberar a ilegales*, LA HORA (Guatemala), September 8, 2005, available at <http://www.lahora.com.gt/05/09/08/paginas/nacional1.php>

⁶⁹ See *Das deporta a 35 chinos que pretendían llegar EEUU*, CARACOL, October 13, 2001.

⁷⁰ See *Un juez condenó a tres chinos por tráfico ilegal de migrantes*, Redaccion Justicia, EL TIEMPO (Colombia), December 7, 2005.

Honduran passports stolen in 2001 to clandestinely transport people.⁷¹ Venezuela is believed to be a major transit country in the clandestine movement of Chinese immigrants to the OAS region. In January 2005, officials of the Venezuelan Ministry of Foreign Affairs reported to the OAS that commercial flights arrived regularly from Europe carrying unauthorized Chinese passengers. It serves as a transit point to Panama, Colombia, Trinidad and Tobago, and the wider Caribbean.⁷²

The Powerful Role of Corruption

Corruption plays an important part in the clandestine movement of Chinese into the OAS region. As a result, many cases involving the improper issuance of entry, work or residence visas to Chinese nationals hit the front pages of the local press. For instance, Ecuador charged embassy officials and the former *Director Nacional de Extranjería* with procuring more than 3000 tourist visas for Chinese nationals in August 2005. Because of lack of evidence, the director was released.⁷³ In one press report, Uruguayan immigration civil servants were suspected of being involved in smuggling Chinese migrants into the country.⁷⁴ The Colombian government uncovered the involvement of the *Fiscalía General* in the improper issuance of Colombian passports to 23 Chinese in 2002.⁷⁵ The former head of the Honduran Immigration Direction, Ramón Romero was accused, in May 2005, of alleged links with Chinese mafia for the trafficking of passports.⁷⁶

Guatemalan diplomats in Panama and Luxembourg were suspected of being linked to a ring that transported 15 Chinese, six men and nine women, to Guatemala in August 2005.⁷⁷ In a noteworthy case, a Dominican official was charged in March 2003 with improperly granting visas to 36 Chinese citizens when he was consul in Haiti.⁷⁸ In

⁷¹ See *Desarticulan banda china de traficantes de personas*, LA PRENSA (Nicaragua), December 13, 2003, available at <http://www.laprensa.com.ni/cronologico/2003/diciembre/13/el mundo/el mundo-20031213-02.html>

⁷² See *Ilegales asiáticos buscan llegar a Canadá*, EL UNIVERSAL (Venezuela), April 27, 2001.

⁷³ See *Velástegui consiguió su boleta de libertad*, EL COMERCIO, August 14, 2005.

⁷⁴ See *Indigan a funcionarios Uruguayos por tráfico de personas*, ANSA, January 16, 2005.

⁷⁵ See *Detenida familia que presuntamente traficaba chinos hacia EEUU*, CARACOL, October 19, 2002.

⁷⁶ See Margherita Stancati, *Passport swindler gets his ticket out*, HONDURAS THIS WEEK, August 29, 2005, available at

<http://www.marrder.com/htw/2005aug/national.htm>

⁷⁷ See *Vinculan consulados en Panamá y Luxemburgo en tráfico de chinos*, LA NACION, August 31, 2005, available at http://www.nacion.com/ln_ee/2005/agosto/31/ultima-ce19.html

⁷⁸ He later was elected to the Dominican Congress and openly admitted his role in the illegal migration ring. The prosecution of the case was complicated by his Congressional immunity which allowed him to

Mexico in 2005, a politician was prosecuted and sentenced to seven years in prison for his logistical assistance to clandestine rings moving Salvadorians, Ecuadorians and Chinese migrants.⁷⁹ In Brazil, governmental officials stationed in China delivered false travel documents to Chinese migrants. Once in Brazil, illegal migrants usually head to Paraguay to continue their journey towards the north.⁸⁰

Chinese criminal organizations also take advantage of loopholes and imperfections in national immigration laws in the OAS region in order to facilitate the movement of their clients. Indeed, Chinese criminal snakeheads have been using the different types of visas available to them to increase their chances of success. The media reported that in Ecuador, Chinese snakeheads and corrupt Ecuadorian immigration officers have improperly used investor, tourist, and residence visas for Chinese clandestine migrants. According to reports, for each visa granted \$4,000 was deposited in a bank account in Quito. Within a period of 2 years, based on an average of 500 visas sold a year, about \$4 million of corrupt profits were generated in this massive visa scam.⁸¹ Ecuadorian officials in embassies in Beijing, Buenos Aires, and San José have been implicated in a fraud ring that moved hundreds of Chinese migrants into the OAS region.⁸²

Many have interpreted the sudden increase in the issuance of visas to Chinese nationals as a sign of widespread corruption of immigration officers. Press reports from Costa Rica,⁸³ Panama,⁸⁴ and Ecuador⁸⁵ provide concrete examples of the ongoing illicit

be released a first time in 2003. He was then arrested again in February 2005. *See* Socorro Arias, *Procurador dispone libertad de diputado Ramos García*, DIARIO LIBRE (Panama), February 1, 2005, available at <http://www.diariolibre.com/app/article.aspx?id=26233>.

⁷⁹ *See* Juan de Dios García, *Lo condenan por tráfico de ilegales*, EL DIARIO DE HOY, August 15, 2005.

⁸⁰ *See* Adriana Souza E Silva, *A Mafia Pirata*, ISTOÉ INDEPENDENTE (Brazil), October 10, 2001.

⁸¹ *See* *Visas, un cuento chino*, HOY ONLINE, July 1, 2005.

⁸² *See id.*

⁸³ Individuals from the People's Republic of China are amongst the category of restricted nationalities in Costa Rica. But as the report shows, they are nonetheless increasingly provided visas to enter the country. *See* *Fiscalía analiza autorizaciones de visas otorgadas a chinos*, LA NACION, April 27, 2005; *see also* *Residencias a chinos subió un 220% en cuatro años*, LA NACION, June 7, 2005. From 1998 to August 2001, some 16 legislators have openly pressured the 'Dirección General de Migración' for the issuance of 110 visas, *see* *Masiva gestión de diputados para visas*, LA NACION, August 13, 2001; *see also* *Presiones por ingreso de chinos*, LA NACION, March 15, 1999.

⁸⁴ From January to the end of March 2005, the Panamanian Immigration Direction issued 962 visas to individuals of restricted nationalities, i.e., whose visa application should be carefully studied. 299 visas were given to Chinese nationals in this 3-month period. That is to say almost 100 a day, which is a lot for a small country like Panama, when compared to previous quotas. *See* José Somarriba Hernández, *Incremento*

movement of Chinese migrants in the region. One investigative report said that criminals approached officials in Costa Rica and offered \$5,000 for each visa issued.⁸⁶

The Role of Chinese Organized Crime in Moving Chinese Migrants

At this point, a parallel discussion on the identity of Chinese smugglers or snakeheads should be inspected briefly. Alien smuggling has been the object of extensive research and is often treated by scholars and law enforcement officials as a typical activity of organized crime syndicates.⁸⁷ Much scholarly work has been enthusiastic about the link between existing Chinese criminal gangs, also called “triads” or “tongs,”⁸⁸ and the business of Chinese human smuggling,⁸⁹ though there is no consensus as to the degree of involvement of those Chinese criminal groups in the human smuggling business.

By international definition, organized crime⁹⁰ is generally based on the organized criminal group, or a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”⁹¹ Chinese organized crime syndicates

en entrega de visas, LA PRENSA (Panama), May 13, 2005, available at <http://mensual.prensa.com/mensual/contenido/2005/05/13/hoy/portada/217385.html>.

⁸⁵ Many members of the government of former Ecuadorian President Lucio Gutiérrez were believed to have helped issuing visas to Chinese smugglers, *see Gobierno de Gutiérrez habría entregado más de 3.000 visas ilegales a ciudadanos chinos*, CRE SATELITAL, June 17, 2005.

⁸⁶ *See Masiva gestión de diputados para visas*, LA NACION, August 27, 2001.

⁸⁷ It appears in many academic criminology articles that alien smuggling is treated a part of the usual activities of organized criminals. The best evidence is that the Protocol against the smuggling of migrants by land, sea and air is supplementing the U.N. Convention on Transnational Organized Crime. Also, most law enforcement agencies interviewed for the specific case of Chinese illegal aliens smuggling were part of departments dedicated to fight organized crime.

⁸⁸ For more information on Chinese triads, *see Bolz, supra* note 28. *See also Chin, supra* note 37. *See also* Federal Research Division, *supra* note 27.

⁸⁹ *See Bolz, supra* note 28.

⁹⁰ The United Nations Convention against Transnational Organized Crime and its Protocols will serve as a legal reference for the analysis of what is commonly called organized crime. The U.N. framework legislation on organized criminality is composed of one main convention, the United Nations Convention against Transnational Organized Crime (2000), which aims at promoting “cooperation to prevent and combat transnational organized crime more effectively”, *see* United Nations Convention against Transnational Organized Crime, art 1, GA Res. 55/25, Annex I (Nov. 15, 2000), available at <http://www.un.org/documents>. Three Protocols are supplementing the Convention, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), the Protocol against the Smuggling of Migrants by Land, Air and Sea (2000), and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (2000).

⁹¹ *See id.*, art 2 (a).

are believed to possess the international networks to pursue serious crimes⁹² such as “extortion, drug trafficking, prostitution, gambling. They are also thought to be in many sideline businesses that include the distribution of Chinese videos, books, newspapers and entertainment services” all around the world.⁹³ They engage in arms trafficking, trafficking in endangered animals and plants, financial fraud, software piracy, and loan sharking.⁹⁴ They have ties and operations in all the major cities in the world with high concentration in Chinese communities.

Most experts agree that they participate in the organized smuggling of illegal aliens from China to regions outside of Asia.⁹⁵ One school holds that Chinese criminal syndicates are sophisticated organizations with well established smuggling networks in different countries of the world (from North America to Australia)⁹⁶ and strong financial support. This perspective on Chinese organized crime is supported by law enforcement and intelligence agencies such as Interpol⁹⁷ and many academics.⁹⁸ One example of this support is the 1996 United Nations meeting on organized criminality, which asserted that up to 50 Hong Kong triads controlled the smuggling of 100,000 migrants to the United States.⁹⁹ Chinese criminal groups are believed to be among the most active Asian organized criminal groups in orchestrating human smuggling towards the United

⁹² Serious criminal activities are defined as ‘conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty’, *id* at art 2 (b).

⁹³ See EMIL W. PLYWACZEWSKI, CHINESE ORGANIZED CRIME IN WESTERN AND EASTERN EUROPE, paper delivered at the 3rd Annual Symposium "Crime and Its Control in Greater China," June 21-22, 2002, the University of Hong Kong, PRC. According to the Panamanian National Council on Security, the Chinese/Taiwanese mafia ‘Fa Yen’ has presence in countries of Latin America, and do take part in criminal activities ranging from drug trafficking, kidnappings, extortions, to illegal gambling. They operate from supermarkets, laundry stores, restaurants and identify themselves with tattoos. See Juan Manuel Díaz C., *Indagan a presunto cabecilla de mafia china*, EL PANAMA AMERICA, October 29, 2002, available at <http://www.elpanamaamerica.com.pa/archive/10292002/nation04.shtml>.

⁹⁴ See Federal Research Division, *supra* note 27 at 2.

⁹⁵ See Bolz, *supra* note 28 and Plywaczewski, *supra* note 93.

⁹⁶ See Federal Research Division, *supra* note 27.

⁹⁷ See Louise Shelley, *Trafficking in Women: The Business Model Approach*, 10 THE BROWN JOURNAL OF WORLD AFFAIRS 119 (2003), where Interpol observes that the local smaller Chinese smuggling groups in some European countries are in fact cells of a larger network based in China.

⁹⁸ See Louise Shelley, *Trafficking and Smuggling of Human Beings*, a speech at the 'Corruption Within Security Forces: A Threat to National Security' conference, Garmisch-Partenkirchen, Germany, on May 14-18, 2001, available at <http://www.american.edu/traccc/resources/publications.html>; see also, Shelley, *supra* note 97 at 132. See also, Jennifer Bolz, Paul George (see PAUL GEORGE, IMMIGRATION BY SEA TO NORTH AMERICA: MORE GOLDEN VENTURES? (CSIS Ed., Canadian Security Intelligence Service) (April 1994). He believes that the Chinese triads have been involved in smuggling people since the 19th century gold rush to California.) and Peter Kwong (See Peter Kwong, *Impact of Chinese Human Smuggling on the American Labor Market*, in GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES, *supra* note 42.)

⁹⁹ See Skeldon, *supra* note 3.

States.¹⁰⁰ Chinese criminal groups are deemed more sophisticated than other smuggling groups in preparing the migrants they smuggle to avoid detection.¹⁰¹ The illicit business of human smuggling is highly profitable. These Chinese criminal groups are believed to make between \$2.4 and \$3.5 billion a year in the smuggling business.¹⁰² One boat of illegal immigrants to the United States can yield a financial return of about \$6 million.¹⁰³

However, another academic school of thought inveighs that Chinese clandestine smuggling is not controlled by Chinese triads organizations. Chin and Zhang carried out one prominent study from this perspective. Their work is based on interviews with 129 Chinese smugglers.¹⁰⁴ Chin and Zhang assert that, contrary to the myth of Chinese organized crime's involvement in the migrants' trade, snakeheads are, on the whole, ordinary Chinese citizens—businessmen, waiters, taxi drivers—who freelance in the smuggling business by using their connections to arrange the clandestine transportation of people into the Americas. Chin and Zhang argue that the organizers are generally not more than five associates working together who do not appear to be part of any large and sophisticated organized criminal groups.¹⁰⁵ Chin and Zhang conclude that if criminal organizations are connected to this activity, they only play a secondary role (usually as enforcers, such as debt collectors in local safe houses).

However, the Chin-Zhang perspective perhaps does not fully recognize the degree of organization and discipline involved in the clandestine movement of Chinese migrants to countries in the Americas; especially countries where the presence of Chinese community is very weak (like Suriname).¹⁰⁶ It is generally accepted that Chinese

¹⁰⁰ See AMY O'NEILL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 23 (Center for the Study of Intelligence) (November 1999); see also Julia Preston, *U.S. Charges 51 With Chinatown Smuggling*, THE NEW YORK TIMES, November 13, 2004.

¹⁰¹ See telephone interview with FBI Program Coordinator for Trafficking (December 2005).

¹⁰² See PBS, *Dying to leave, Handbook: The business of human trafficking*, in *Wide angle*, available at <http://www.pbs.org/wnet/wideangle/shows/dying/handbook2.html>.

¹⁰³ See Skeldon, *supra* note 3 at 21.

¹⁰⁴ SHELDON ZHANG AND KO-LIN CHIN, CHARACTERISTICS OF CHINESE HUMAN SMUGGLERS (Research in Brief, USDOJ) (August 2004).

¹⁰⁵ These informal alliances to move clandestine migrants are temporary and usually dissolve once the operation is over. These "ephemeral snakeheads" are mostly looking for fast profits and do not see themselves as criminals or potentially part of a human trafficking chain. They see themselves as providing an unofficial "service" to Chinese who are looking to go abroad to improve their lives. See *id.*

¹⁰⁶ See Ivan Cairo, *Chinese mafia active in Suriname*, CARIBBEAN NET NEWS, February 9, 2006, where the Prosecuting Attorney Garcia Paragsingh said that "Snake Heads" from Chinese crime organizations, involved in trafficking in persons, are conducting illegal business in Suriname.

criminal organizations—in activities such as gambling—already have an established presence in several countries in the OAS region such as Costa Rica,¹⁰⁷ Argentina,¹⁰⁸ and Panama.¹⁰⁹ Interpol and the Panamanian National Organism for Security (*Consejo Nacional de Seguridad*) concluded that at least 18 Chinese mafia groups were operating in Central America.¹¹⁰ The “Tri-Border area” connecting Brazil, Paraguay and Argentina is reported to be a hub for the Chinese mafia in South America.¹¹¹ In 2004 in Honduras, the Chinese mafia’s power to project violence was illustrated dramatically when two armed intruders attacked an office of the country’s immigration service (*Dirección de Migración y Extranjería*) in Tegucigalpa. In the raid, the bandits orchestrated the breakout of 20 detained persons, 12 of whom were illegal Chinese migrants.¹¹² The financial means of these groups are also significant.¹¹³ In Uruguay and Argentina, smugglers hired expensive lawyers to ensure the liberation of some detained Chinese undocumented clients.¹¹⁴ In conclusion, it is very difficult to believe that the Chinese organized crime networks do not take major part in the smuggling of Chinese illegal migrants.

Many observers view the human smuggling to be a victimless crime where nobody is really harmed (i.e. when passage for a Chinese migrant is “arranged” through a small transit country). As this paper will document, however, the reality is that most of the Chinese migrants clandestinely moved into the Americas arrive as part of a complicated human trafficking enterprise in which they will be compelled to work years in exploitative labor to pay the costs of their clandestine journey. Each of these cases involves thousands of dollars in exorbitant fees charged by the criminal snakehead organizations and corrupt government officials.

¹⁰⁷ See *Cerca de la mafia*, LA NACIÓN, October 15, 1998.

¹⁰⁸ See Miguel Durán, *Preocupa el aumento de inmigrantes ilegales*, LA VOZ DEL INTERIOR ONLINE, April 18, 2005.

¹⁰⁹ Panama has been the scene of 32 kidnappings by the Chinese mafia since 2000, see José Somarriba Hernández, *El auge de la mafia china*, LA PRENSA (Panama), January 22, 2006.

¹¹⁰ See Federal Research Division, *supra* note 27. See also Díaz C., *supra* note 93.

¹¹¹ For more details, see Federal Research Division, *supra* note 27 at 20.

¹¹² See *Pistoleros liberan a detenidos en Honduras*, LA NACIÓN, June 15, 2004, available at http://www.nacion.com/ln_ee/2004/junio/15/mundo3.html

¹¹³ Shelley considering that the Chinese smuggling/trafficking model was one of high profit and with very significant capital for development, based on underground banking system, investment in land, homes, infrastructure, hotels and businesses, see Shelley, *supra* note 97. See also YE RONG QUN, INVESTIGATION REPORT ON HUMAN SMUGGLING IN FUJIAN (Fujian Academy of Social Science) (September 11, 2004).

¹¹⁴ See Hearn, *supra* note 53.

II. The Experience of Chinese Migrants in the Americas: The Hard Reality of Life on the “Golden Mountain”

1. From China to the Americas: The Reasons to Leave

Migration from China to the West is generally motivated by the search for better labor opportunities. Like migrants everywhere in the world, Chinese would-be migrants assess the economic factors that govern their lives and determine that the prospects, for themselves and their families, are more promising abroad. Political, cultural, family, and societal considerations no doubt also play a role in what ultimately is a very personal decision. However, it is important to keep in mind that for most Chinese migrants, the emigration calculus, as we will see, is often based on faulty and incomplete information about what their real options are in the destination countries. Many do not know what obstacles they will actually encounter and the pressure they will face as they reimburse their debt.

Putting China’s Economic Boom in Context

China’s recent emergence as an economic powerhouse, on the surface, would suggest that most Chinese could likely find ample job opportunities at home. While China’s growing economic strength is indeed a new force to reckon with, making it one of the top economic power in the world,¹¹⁵ this extraordinary growth has not uniformly lifted the standard of living of all Chinese. Glaring inequalities of wealth remain, particularly between urban and rural areas.

One unintended outcome of China’s rapid economic modernization is the emergence of a so-called “floating population”: 40 to 100 million persons who are constantly moving within China, most of the time in the search of a job. This floating population is mainly composed of peasant workers and reflects fundamental labor market dislocations sparked by a booming economy that has exacerbated the growing internal

¹¹⁵ See *La Chine deviendrait la quatrième puissance économique mondiale* (China could become the fourth world economic power), LE MONDE, January 25, 2006, where according to Chinese official statistics on its GDP, it now surpassed France and England’s economies.

disparities in wealth and job opportunities.¹¹⁶ Many of these internal Chinese migrants are obviously seeking work in the “new” economy, but labor markets in sought-after urban areas, mostly in coastal regions, are saturated. One consequence is that peasant workers are forced to look for other economic options, including finding a job abroad.

Those who decide to go abroad, especially to the United States, come primarily from two provinces of China: Guangdong and Fujian. Most Chinese who migrated to the United States and Canada in the 1980s and 1990s came from Guangdong province.¹¹⁷ Presently, Fujianese dominates the current stock of illegal migration to the Western Hemisphere.¹¹⁸ However, Fujian province is far from being the poorest province in China. On the contrary, Fujian is a mineral-rich province that is one of China’s most prosperous, thanks mainly to its fishing industry and its numerous farms. In fact, Fujian’s rural per capita income was listed eighth among the 30 Chinese provinces in 1992, which is a good indicator of its relative economic viability.¹¹⁹ But even this relative success can be deceiving. Economic benefits are not equally distributed, and for many Fujianese the proverbial grass is viewed as “greener” outside of China. One Fujianese said, “No matter what kind of work, you Americans can make more in one month than we could in a year.”¹²⁰ Indeed, the average annual income in Fujian province was just \$785 in 2001.¹²¹

Social and Cultural Pressures to Migrate Abroad – Particularly for Young Men

A long tradition of migration can be found in Fujianese history. Fujianese people have been emigrating regionally for centuries, especially into Southeast Asia.¹²² High population growth and difficult living conditions due to the mountainous region have

¹¹⁶ See Ling Li, *Mass migration within China and the implications for Chinese emigration*, in HUMAN SMUGGLING, CHINESE MIGRANT TRAFFICKING AND THE CHALLENGE TO AMERICA’S IMMIGRATION TRADITION (Paul J. Smith ed., CSIS Press 1997) (1997).

¹¹⁷ See Zai Liang and Wenzhen Ye, *From Fujian to New York: Understanding the New Chinese Immigration*, in GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES (David Kyle and Rey Koslowski ed., The John Hopkins University Press) (2001).

¹¹⁸ Jennifer Bolz estimated in 1999 that 85% of Chinese illegal migrants to the United States were coming from that region of China, see Bolz, *supra* note 28; see also Skeldon, *supra* note 3, at 19.

¹¹⁹ See Kyle and Liang, *supra* note 3, at 15.

¹²⁰ See Ching-Ching Ni, *Chinese ‘Dream’ Of Escape To West Turning To Nightmare, Asia: As Police Crack Down On Human Smuggling, Price Of Ticket Out Is Rising And Risks Are Growing*, LOS ANGELES TIMES, February 20, 2000.

¹²¹ See Susan Sachs, *Fujian, U.S.A.: A special report; Within Chinatown, a Slice of Another China*, THE NEW YORK TIMES, July 22, 2001.

¹²² See Kwong, *supra* note 9, at 329.

helped to drive this trend. The popular Fujianese sentiment is to compare their lot with those who are better off, an attitude that further encourages this migratory trend. Instead of basking in their relative material comfort, Fujianese provincials tend to compare their situation to that of more successful individuals from their own community, usually those who had been abroad to earn a living.¹²³

Almost all young, working-age male Fujianese dream of leaving their villages in order to pursue a romanticized “good life” in the West. Their ambition is not only to go abroad to make money, but the migration is a rite of passage to prove themselves and gain the respect that accompanies such a foreign adventure. It is often a personal objective that they are determined to pursue at any cost—financial or human. In their minds, failure will result in having to face the humiliation of disgracing their families.

This subtle family pressure, which is found throughout Fujianese society, coupled with the other economic factors mentioned previously, has led to widespread departure of young Fujianese men from cities like Fuzhou City, the province’s capital, or Changle City. It is worth mentioning that those young men who have relatives already established in the West find the decision to leave easier since the would-be migrants anticipate a support network upon their arrival.¹²⁴

The Impact of Migration Policies

To understand the background of migration from China into the Americas, it is useful also to note the importance of official migration policy. Chinese government policy has only allowed citizens to travel outside of the country since the diplomatic and migratory opening of China in the late 1970s with the introduction of President Deng Xiao Ping’s “Open Door Policy.”¹²⁵ However, people were still transported abroad by Chinese smugglers or snakeheads using illegal methods, though China has publicly

¹²³ See Liang, *supra* note 117.

¹²⁴ See Willard H. Myers, *Of Qinqing, Qinshu, Guanxi, and Shetou: The Dynamic elements of Chinese Irregular Population Movement*, in *HUMAN SMUGGLING, CHINESE MIGRANT TRAFFICKING AND THE CHALLENGE TO AMERICA’S IMMIGRATION TRADITION* (Paul J. Smith ed., CSIS Press 1997) (1997).

¹²⁵ See Peter Kwong, *supra* note 98, at 237.

committed itself to implementing strong measures to fight illegal immigration and stiffer penalties against snakeheads.¹²⁶

Obviously, official policies in destination countries, most notably the United States, affect the flow of Chinese migration into the Western Hemisphere. Migration policy in the United States over the last 20 years has been punctuated with migratory opportunities for Chinese nationals. In this context, a milestone was the U.S. Immigration Reform and Control Act of 1986, which allowed aliens who proved their continuous presence in the U.S. since 1982 to obtain legal residency. One unintended result of this policy was that it sparked a “mad rush” in the world of Chinese smuggling as illegal migrants scrambled to gain residency by presenting to U.S. authorities any documentation possible. Many undocumented Chinese migrants presented applications for residency backed up with falsified documents such as phony salary receipts and gas bills.¹²⁷

Two U.S. Presidential executive orders were issued for the benefit of Chinese citizens only. The first one came in response to the Chinese government’s crackdown in Tiananmen in 1989. Under this order, all potential victims of political persecution in China were offered refuge in the United States. This, too, led to an increase in the already large flow of Chinese illegal migrants into the Americas. The second executive order, issued a year later, recognized refugee status for Chinese citizens who feared persecution in the context of state-imposed mandatory abortions. These measures were instruments that offered legal presence in the United States but were misused by illegal migrants to justify their illegal presence. It also had the unintended consequence of fueling illegal immigration.¹²⁸

2. The Migrant’s Journey to the West

Once the decision to leave is made, Chinese migrants begin a long and complicated journey that will take them through a passage sometimes more perilous than they expected.

¹²⁶ See *Diversos países unen esfuerzos en la lucha contra la migración ilegal*, DIARIO DEL PUEBLO, June 13, 2001, available at http://spanish.people.com.cn/spanish/200106/13/sp20010613_47509.html. See also McGill, *supra* note 7.

¹²⁷ See PETER KWONG, FORBIDDEN WORKER 31-32 (The New Press ed.) (1997).

¹²⁸ See *id.*

The Beginning: Recruitment and Fees

Would-be Chinese migrants either seek out someone who can arrange the difficult journey to the West, usually a snakehead organization, or are recruited and persuaded to undertake the journey. If the initiative is taken by the migrants, they usually arrange contact with the snakeheads through family or friends. An agreement is usually negotiated as to the price of the travel and the method of payment.¹²⁹

As there are many types of service and travel contracts possible between the migrant and his handlers, there is no fixed price. Nevertheless, observers estimated today that the usual cost is around \$55,000,¹³⁰ with some cases involving fees that reach \$75,000.¹³¹ The total travel costs are usually not paid up front before the travel. The handlers may require a down payment, depending on the particular case, which is usually around 10% of the total fee.¹³²

In some cases, the payment of fees is divided as the migrant passes through different transit countries. Under this payment plan, the handlers collect fees from the migrant to pay travel and bribery costs incurred by smaller partner organizations in the snakehead network. For instance, the press has reported that for the journey from Venezuela to Colombia, a Chinese migrant may be asked to pay \$5,000;¹³³ the fee is \$3,500 from Bolivia to Argentina.¹³⁴

Many Chinese are fully aware that would-be migrants can be detained and turned back during their long journey either on the high seas or in airports. As a result, there is generally an understanding between the parties that the whole transportation fee is due only once the migrant safely arrives at his or her final destination. Other payment arrangement offers payment through different installments over a certain period of time after final arrival. Whatever the plan, once the passage is successfully completed, one

¹²⁹ For better description, see Mc Gill, *supra* note 7, p 10, 125. McGill also reveals that some snakeheads accept the sale of organs as part of the payment for the travel. For instance, a kidney would cost US\$15,000.

¹³⁰ Figure provided by Kwong, *supra* note 9, at 330. While in the late 1980s, the usual fee was \$18,000, it raised to \$30,000 by 1993, during the Golden Venture catastrophe.

¹³¹ See Joyce Purnick, *Snakeheads That Bite And Hang On*, THE NEW YORK TIMES, April 14, 2005.

¹³² See Skeldon, *supra* note 3, at 21; see also Kwong, *supra* note 127.

¹³³ See *Denuncian tráfico ilegal de inmigrantes asiáticos*, VANGUARDIA LIBERAL, May 9, 2004, available at <http://www.vanguardia.com/unidad/uni090504.asp>.

¹³⁴ See José Derewicki, *Tráfico de personas desde Bolivia hasta el Chaco*, LA NACION, August 17, 2004, available at <http://es.geocities.com/emigrararg/articulos/17ago.htm>.

way or another, a heavy burden falls on the shoulders of most clandestine Chinese migrants who arrive in the Americas: to pay the debt owed to the handlers who have arranged the costly trip, or face severe consequences.

Table 3: An example of payment plan to the transporters, Xie Li's case¹³⁵

Down payment to pay before departure	\$10,000
Payment at arrival in Canada	\$5,000
Payment at arrival USA	\$5,000
Payment in the USA within a year	\$5,000
Total of fees	\$25,000

Methods of Transportation and Routes

International travel from China into the Americas is, of course, not expected to be safe and risk free. The snakehead organizers normally resort to different methods of transportation, which often involve a waiting period in a transit country. In a transit country, there may be a need to wait for the next step in the travel plans (for instance, waiting for a boat or for fraudulent documents to be prepared).¹³⁶ Sometimes the migrant waits because financing is required before passage to the next country. To illustrate the latter case, one Chinese migrant stayed in Guatemala for 15 months trying to raise the money to pay her fees of \$40,000.¹³⁷

There are three main ways for migrants to be transported into the Americas: by air, sea, or land—though most often travel involves a combination of these forms of transportation. Travel routes change quickly to take advantage of new opportunities or to respond to counter measures taken by authorities. The most expensive travel option is by commercial airliner, normally involving forged travel documents or the recycling of stolen identification documents. Bribes to arrange this travel are also common. Observers have also noticed both the increase in, and the creativity of, improper use of

¹³⁵ See McGill, *supra* note 7, at 11, 13.

¹³⁶ For the latter case, see Agustín Lagos Nivarrez, *Arrestados dos orientales*, EL HERALDO, December 12, 2003, available at <http://www.elheraldo.hn/detalle.php?nid=5105&sec=7&fecha=2003-12-12>.

¹³⁷ *Alien Smuggling/Human Trafficking: Sending a Meaningful Message of Deterrence, Hearing before the United States Senate Committee on the Judiciary*, 106th Cong. (2003) (testimony of Mr. John Malcomb)

lawfully issued visas to facilitate air travel.¹³⁸ Indeed, tourist, investor, and temporary work visas are useful tools that are often abused by the snakeheads to help transport a client.¹³⁹ Official fraud in these cases is subtle. As mentioned earlier, these visas can be issued genuinely (and mistakenly) to a non-qualified traveler; these travelers usually then enter the host country and overstay after the expiration of the visas. Conversely, corrupt immigration officers and diplomats who are complicit in the abuse may improperly issue the visa.

Traveling by sea, on old freighters or fishing vessels, was common practice for clandestine Chinese migrants in the 1990s. This was, and remains, a very dangerous option for travel to the West. Chinese migrants by the hundreds were often confined to the decks of old and unseaworthy cargo vessels, insufficiently provisioned with food and completely lacking in sanitation facilities. Sea travel is used less frequently now partly because the journey is unsafe and takes as long as several months.¹⁴⁰ During sea travel, migrants are asked to perform work duties on the vessel—cleaning and cooking—in order to start paying back travel fees.¹⁴¹

In recent years, snakeheads have adopted a new form of transporting migrants on cargo ships. There are numerous reports of Canadian and American harbor and port officials discovering Chinese migrants hidden in cargo containers. In the small space of the cargo container, ten or more migrants may be concealed for the long sea journey, often with inadequate food and water supplies. Simple buckets are provided for sanitation. The cramped containers are crudely outfitted with flashlights, a small air hole

¹³⁸ See Sachs, *supra* note 121. Also, a Minister of Nicaragua warning in May 2005 his Central American colleagues of the increase in the use of forged documents by illegal immigrants, of whom many Chinese, see *Nicaragua alerta sobre red regional que trafica inmigrantes*, LA NACION, May 13, 2005, available at http://www.nacion.com/ln_ee/2005/mayo/13/ultima-ce12.html.

¹³⁹ In order to attract Chinese investments into Nicaragua, the government allows Chinese fishing companies settled in the country to import Chinese workforce under facilitated migratory conditions. But the employees are totally subjected to the rules of the company. The Chinese marine workers have their transportation, their lodging and food provided by their employer, putting them into a situation of dependence, as they are “immigrants in a relationship of dependence.” This kind of employer/employee relationship has led to abuses; for instance, in 1999, some Filipino workers were brought to Nicaragua to work in garment factories and were forced to work for 24 hours continuously. The Nicaraguan authorities were not able to offer any protection as the employers were using the stipulations of the work contract to justify their abuses, see *La nueva invasión china*, LA PRENSA, January 29, 2001, available at <http://www.laprensa.com.ni/cronologico/2001/enero/29/nacionales/nacionales-20010129-01.html>

¹⁴⁰ For instance, 54 Chinese were found in Long Beach, California in a freighter after having spent three months at sea, see Rene Sanchez, *For Stowaways, Perilous Passage as Human Cargo*, THE WASHINGTON POST, January 17, 2000.

¹⁴¹ See *Ilegales asiáticos buscan llegar a Canada*, EL UNIVERSAL (Venezuela), April 27, 2001.

is cut out, and electric fans installed to remove the bad air and diminish the fetid smell of human excrement.¹⁴² Migrants found after travel in such harsh conditions are often dehydrated and malnourished, if not dead.¹⁴³

Land travel involves a long series of short passages with migrants forced to walk long distances through plains, across mountains, or to ride in cars, trucks, or buses in order to reach a certain strategic place, a way station. Many migrants have reported crossing dangerous areas such as regions torn by armed conflict. Often there are many days of long journeys on foot, conducted by a guide familiar with the region. Sometimes migrants are abandoned by their guides in dangerous or unfamiliar regions, as was the case of three Chinese illegal migrants in Chiapas, Mexico in June 2004.¹⁴⁴

Case Study 1: One Woman's Route

A Chinese women paid \$75,000 to be smuggled to the United States. Here is her smuggling route:

She flew from China to Russia, then to Spain, and then to Guatemala. During two weeks, she crossed the mountains in the Guatemala region. Through diverse means of transportation (car, bus, etc) she managed to go into Mexico. Once there, in order to cross the frontier with the United States, she walked for two months to find the perfect location and time to cross the border. This whole time she slept in the open air.¹⁴⁵

Often these different methods of transportation are used in combination, and many different transit countries and continents are involved. Transit from China to North America may pass through Europe.¹⁴⁶ Sometimes, Chinese migrants with falsified passports using commercial air transportation have to travel through a transit country before being able to fly to their final destination. In an important research work, Professor Chin estimated the frequency of the use of the three basic transportation methods to reach

¹⁴² See Rene Sanchez, *For Stowaways, Perilous Passage as Human Cargo*, THE WASHINGTON POST, January 17, 2000.

¹⁴³ Sam Howe Verhovek, *Wretched Masses, Smuggled*, THE NEW YORK TIMES, January 16, 2000.

¹⁴⁴ See *Rescatan a tres ciudadanos chinos en Chiapas*, EL UNIVERSAL, June 27, 2004.

¹⁴⁵ See Interview with the Director of Chinese Staff and Workers' Association, CSWA (December 2005).

¹⁴⁶ See the transit of Chinese illegal migrants through Russia and through Switzerland, *Swiss Police smash international gang trafficking women to the United States*, CONNECTICUT LAW TRIBUNE, December 12, 2002.

the United States. Chin found that among the 298 Fujianese he interviewed 48% entered the U.S. by air, 40% entered by land, and only about 12% by sea.¹⁴⁷ Today, Chinese migrants tend to arrive to the destination country legally (thanks to the various visas available) and more and more by plane. They then become illegal migrants by overstaying their visa.¹⁴⁸

There are many complex routes for Chinese migrants to reach the OAS region, even if some routes are frequented more than other routes. As previously mentioned, the main destination for most Chinese migrants bound for the Western Hemisphere is the United States, and secondarily Canada. In the 1990s, U.S. officials identified about 60 possible routes from China to reach the United States.¹⁴⁹ The path selected by the migrant's handlers is contingent on the difficulty of passing through any given transit country at the time of the travel. For example, most observers believe that large cargo ships, capable of transporting more than 100 persons, are not used when there is likelihood that the vessel will be intercepted by U.S. Coast Guard patrols.

During the travel, it is not uncommon for some Chinese migrants to decide that the entry into the United States is too difficult or costly. They then choose to stay in a transit country.¹⁵⁰ For instance, some Chinese have decided to settle down in Colombia, in cities like Bucaramanga, Medellin or Pereira.¹⁵¹ Others have done the same in Panama, a Chinese migration destination for years and a country where the Chinese-Taiwanese community is particularly well established.¹⁵²

Hong Kong and Bangkok have been used extensively as departure cities for migratory travel to the West.¹⁵³ In the OAS region, transit through Latin America and the

¹⁴⁷ See Chin *supra* note 37, at 49.

¹⁴⁸ See Interview with Peter Kwong, author and former Director of Asian American Studies Program at Hunter College and Professor of Sociology at the Graduate Center of the City University of New York (November 2005).

¹⁴⁹ See Skeldon, *supra* note 3.

¹⁵⁰ Author Peter Kwong noticed this growing trend. Many 2nd choice countries are now becoming primary destination, like Eastern Europe, Chile, Peru, Argentina: there are opportunities in those countries and it is not as expensive and difficult to reach as the United States or Western Europe. See Kwong (interview), *supra* note 148.

¹⁵¹ See *Denuncian tráfico ilegal de inmigrantes asiáticos*, VANGUARDIA LIBERAL, May 9, 2004.

¹⁵² See *Investigan a ecuatorianos vinculados a tráfico de chinos a Panamá*, LA NACION, October 1, 2002, available at http://www.nacion.com/ln_ee/2002/octubre/01/ultima8.html.

¹⁵³ See Kyle and Liang, *supra* note 3, at 17.

Caribbean has always existed, most often bound for the United States,¹⁵⁴ especially via Guatemala, Suriname, and Belize, though complete information is often sketchy, and routes change constantly and quickly.¹⁵⁵ The widespread presence of Chinese migrants on the move in Central America and Mexico suggests that this particular land route to the United States is commonly used.

The following are other known routes (complete or partial) used by Chinese criminal organizations moving migrants in the OAS region:

- China, Uruguay, Argentina, Paraguay, Mexico, and the United States¹⁵⁶;
- Belize, Guatemala, Dominican Republic, Mexico, and the United States¹⁵⁷;
- China, Malaysia, Singapore, United Arab Emirates, Egypt, Italy, Venezuela, and Costa Rica¹⁵⁸
- China, Hong Kong, the Netherlands, Spain, Ecuador and North America¹⁵⁹

Many Chinese migrants enter the United States across its common border with Mexico. Mexican smugglers, “coyotes” or “polleros,” who arrange crossings of the U.S.-Mexico border, also move Chinese nationals, in addition to their usual clientele.¹⁶⁰ Some local Mexican Non-Governmental Organizations (NGO) report that Mexican detention centers are full of Chinese citizens.¹⁶¹ Mexico is good example of how Chinese criminals use local operatives to advance their illicit business activities. The linking of local operatives and Chinese criminals is becoming increasingly more common as media reports indicate that Chinese snakeheads often employ local enforcers or transporters.

¹⁵⁴ An example of intra-region illegal movements of Chinese: some Chinese undocumented migrants leave Colombia to reach Panama, *see Se intensifican operativos policiales en frontera con Panamá*, CARACOL, April 14, 2003; *see also* Anthony DeStefano, *supra* note 114.

¹⁵⁵ Myers calls them the western terminus, *see* Willard H. Myers, *Of Qinqing, Qinshu, Guanxi, and Shetou: The Dynamic elements of Chinese Irregular Population Movement*, *in supra* note 124.

¹⁵⁶ *See Indigaran a funcionarios uruguayos por trafico de personas*, EL PAIS (Uruguay), January 16, 2005.

¹⁵⁷ *See Smuggling figures*, INTERNATIONAL HERALD TRIBUNE, June 26, 1996.

¹⁵⁸ *See Mafia oriental cobra más de \$50.000 a ilegales*, LA NACION, June 30, 2004.

¹⁵⁹ *See* Mario Mairena Martinez, *Nuevo cisma en Migración*, EL NUEVO DIARIO, April 12, 1999.

¹⁶⁰ *See* James O. Finckenauer and Jennifer Schrock, *Human Trafficking: A Growing Criminal Market in the U.S.*, National Institute of Justice, *available at* <http://www.ojp.usdoj.gov/nij/international/ht.html>.

¹⁶¹ OAS field work show that as many as 900 Chinese illegal migrants are staying in Mexican immigration detention centers. In one immigration station along the US-Mexico border, there can be as much as 100 Chinese detainees, *see Migrants wait out fates in Mexican center*, WASHINGTON TIMES, June 1, 2005.

Indeed, Bolivian and Argentinean citizens are mostly responsible for the logistical planning needed to transport Chinese migrants from Peru to Bolivia to Argentina.¹⁶²

Abuses during the Journey

As mentioned earlier, the journey from China to the United States can last up to several months. During this long period, illegal migrants are at the mercy of their handlers who take control of all aspects of their travel and decide the routes taken. Migrants traveling by land or sea are more susceptible to being abused or victimized in the journey. This is the case, in part, because the traveling conditions are often very dangerous or unhealthy, and the journey takes much longer than commercial air flights.¹⁶³

Abuse or victimization is especially rampant for clandestine travelers in old sea freighters. Incidents like the *Golden Venture* are the best examples of the extreme conditions on board these vessels. Often the criminal organizers, or the enforcers, use members of organized crime gangs to travel with the migrants to maintain control. The ships are poorly provisioned and there is often a lack of food and especially water. Migrants found on cargo containers are often pale and fragile because of the harsh conditions on board. Chinese migrants who travel by land are no safer as competition among different groups of smugglers has developed: knowing that each migrant has a debt of thousands of dollars, smugglers rob each others' clients, in order to collect the fruits of the future transaction.

Certainly, other serious incidents happen during these travels, though it is nearly impossible to get an exact idea of the frequency of these incidents. Beatings, rape, other acts of cruelty, by fellow migrants, enforcers, or crewmembers¹⁶⁴ seems to be recurrent and common means to ensure obedience from the travelers (this is largely a risk for women migrants who make up at least 10% of Chinese smuggled migrants¹⁶⁵). This harsh

¹⁶² See *Tres detenidos en Jujuy por ingresar ilegalmente al país a 15 chinos*, CLARÍN, DYN Y TÉLAM (Argentina), January 7, 2005.

¹⁶³ Peter Kwong notes that sea travels are today less dangerous than in the 1990s, see Kwong (interview), *supra* note 148.

¹⁶⁴ Instances of rapes of female migrants on boats were documented by Chin, see Chin, *supra* note 37, at 73-75.

¹⁶⁵ See Shelley, *supra* note 97.

treatment helps to demonstrate that the smugglers are remorseless,¹⁶⁶ which will prove to be very helpful later, when the time comes to pay the debt owed by the migrants.

Case Study 2: The *Golden Venture* and the Dover Tragedy

In June 6, 1993, the rusty cargo freighter, the *Golden Venture*, transporting 289 tired and famished illegal Chinese migrants, ran aground off the coast of New York's Long Island, forcing them to swim ashore in cold waters resulting in the drowning deaths of ten of them.¹⁶⁷

In June 2000, in the harbor of Dover (England), 54 illegal Chinese migrants were found dead after having suffocated in a sealed refrigerated lorry. They were discovered by customs officers after 5 hours of brutal suffocation. Only two migrants were alive.¹⁶⁸

3. Arrival in the Destination Country: Not the End of the Nightmare

While the journey may have been abusive, dangerous, and, in some cases, lethal for the migrants, the most crucial moment in the passage is the ability to cross the border "safely" (i.e., without being detected) into the final destination country. Indeed, if immigration or border security officers detain the migrants, their dream of having a good life in the West instantly shatters.

For the criminal organizers, the chances of their illicit profit also disappear if the migrant is arrested. The handlers see the migrant as a source of profit, and detained migrants are less profitable than those who reach their final destination and fully pay their debt. In cases of detention, the smuggling organization may attempt to intervene and provide some kind of help. The handlers may send an immigration lawyer, for example, to post bond for the migrant who *should* then go before an immigration judge.¹⁶⁹ In most of these cases however, the migrants rarely goes before an immigration judge as they

¹⁶⁶ See Chin, *supra* note 37, at 72-75.

¹⁶⁷ For more details on the tragedy of the *Golden Venture*, see Julia Preston, *Prosecutors say defendant in smuggling case ran an underground empire*, NEW YORK TIMES, May 23, 2005.

¹⁶⁸ See *U.K. cases linked to people smuggling*, BBC NEWS, April 25, 2006.

¹⁶⁹ On the role of the lawyer in assisting in the visa procedure or filling asylum application, see Susan Sachs, *Immigrant Smugglers, Too, Can Need a Lawyer's Help*, THE NEW YORK TIMES, September 23, 2000; see also Robert Gearty, *Snakehead Lawyer, Wife Plead Guilty*, NEW YORK DAILY NEWS, February 12, 2002.

never go to court. Loopholes in most countries' migration laws, accompanied with the skillful use of bribery, means that few of these cases are treated as serious matters.

If the Chinese migrants are not apprehended upon arrival, they may then pass through one or more of the following experiences. Each experience slowly sets up the background for pending exploitation created by the burden of the debt.

The So-Called "Safe House" and Debt Collection

Chinese migrants view their arrival in the destination country as the beginning of their unique opportunity in the New World. For their handlers it means the return on their investment. Collection of the travel debt may take place in any of several combinations. Until the beginning of the 1990s, it was often possible for the indebted migrant to repay the transportation costs over a couple of years, directly to the handlers, with wages earned in clandestine work.¹⁷⁰ But during the 1990s, governmental labor officials, particularly in the United States and Canada, began to be more aggressive about investigating clandestine work activities. The result was that snakeheads became less patient and more unwilling to wait until migrants could work off their debts through installment payments.

To ensure debt collection, more and more snakeheads set up a sophisticated control mechanism through the use of so-called safe houses. Migrants are now routinely placed in safe houses upon arrival, which are usually private apartments or hotels, sometimes with armed guards, where migrants are kept prisoner until their debt is fully liquidated.¹⁷¹ Those few migrants who carry the money with them are released upon payment, but usually migrants do not travel carrying large sums of cash with them. Instead, the debt is paid back in China or in the destination country by the migrants' families, which are in touch with the criminal organization's local representatives.

¹⁷⁰ See CSWA (interview), *supra* note 145. This practice was less favored after 1993. Indeed, the turning point was the attention that Chinese illegal migration caught in the United States, mainly because of the Golden Venture event. The multiplication of investigations and operations against illegal migration and unlawful workers also deter smugglers from taking the risk of waiting a couple of years before being entirely repaid. But recent migrants' stories evidence that this option is still used by smugglers today: Chinese newly arrived can still pay the smuggler back through monthly installments with work salaries coming from employment with associated business or any regular business. See McGill, *supra* note 7, at 11.

¹⁷¹ See Brooke A. Masters, *Va. Man Details Immigrant Smuggling Ring*, THE WASHINGTON POST, November 4, 2001.

As explained earlier, migrants usually borrow this money from family and friends, or from outside moneylenders who charge exorbitant interest rates. Only with great difficulty does a typical rural Chinese family manage to gather the thousands of dollars required to pay the snakeheads. More often than not, the migrant or their families are forced to turn to loan sharks. These are underground loan associations often connected with organized crime, which unlike traditional banks are willing to lend large sums of money without collateral or conventional security. However, these unsecured loans carry enormously high interest, at least 10% (so if a migrant incurs a \$50,000 debt, the migrant will have to repay \$55,000).¹⁷² Repayment is guaranteed through illegal enforcement means such as the use of threats or force against their person.

Back at the so-called safe house in the Americas, the local enforcers who control the migrants wait to receive a phone call from their Chinese associates confirming that they received payment. Only after receipt of the payment is confirmed is the migrant allowed to leave. If for some reason the payment is not promptly forthcoming, the enforcers may use violence against the migrant to ensure the fastest payment possible. Professor Chin has documented accounts of beatings, torture, and rape against male and female migrants to ensure payment.¹⁷³ Several media accounts have likewise reported brutal torture cases in which ruthless criminals abused migrants who shouted their pleas for fast payment over the phone to relatives in China.

Those who are not able to pay the entire debt may be forced to work for the enforcers carrying out some activity in the safe house to support the criminal organization. Women migrants who cannot pay their debts may be sold to brothels. Others may be coerced into collecting debt for the gang members, becoming enforcers themselves.¹⁷⁴ Migrants who cannot pay are also sometimes pushed into other criminal activities (such as drug trafficking and illicit gambling activities) operated by the Chinese criminal organization to which the enforcers are connected.¹⁷⁵

Professor Chin's research documents that, on average, a migrant waits one week in a safe house before being able to arrange his or her payment and leave. How many

¹⁷² See CSWA (interview), *supra* note 145. Some have reported that it could exceed 10%, up to 30%, and others like Chin reported that the loan shark take 3-4% interests per month. See Chin, *supra* note 37, at 118.

¹⁷³ See Ko-lin Chin, *Safe house or Hell House? Experiences of Newly Arrived Undocumented Chinese*, in *supra* note 88.

¹⁷⁴ See Chin, *supra* note 37, at 127.

¹⁷⁵ See *id.*, at 126.

Chinese are currently waiting in safe houses in the Americas is unknown. However, in 1992, a U.S. official stated that on any typical day about 30,000 Chinese migrants were being held in safe houses around the world.¹⁷⁶

In 1994, the Chinese Public Security Bureau estimated that around 500,000 Chinese were in way stations around the world at any given time.¹⁷⁷ At that time, some 50,000 Chinese were estimated to be in Russia (mainly Moscow); 25,000 in Africa; 15,000 in Vietnam (mainly Ho Chi Minh City); 10,000 in Brazil; 25,000 in Thailand (mainly Bangkok), and several thousand in the Dominican Republic, Mexico and Bulgaria. Finally, as mentioned previously, there may be as many as 4,000 Chinese migrants in Bolivia and 4,000 in Panama waiting to be smuggled into the United States.¹⁷⁸

Entering the Ruthless Local Labor Markets

Once freed from the claws of their handlers, the typical Chinese migrants make their way to the nearest Chinatown, Chinese community, or large city where they may have a contact or some address. In the United States, generally, migrants arriving on the West Coast will make their way to Los Angeles or San Francisco. Many also want to reach New York City, which is considered to have the largest Chinese community in North America, and offers migrants the best opportunities for clandestine work.

At this point, the typical, freshly-arrived migrant is facing the repayment of thousand of dollars of debt to family, friends, or loan sharks in China. Debt re-payment becomes his motivation. There are serious consequences for not retiring the debt – everything from a humiliating loss of face with his family and friends, to physical violence against the same family or friends in China who have, in effect, co-signed on the debt to the loan sharks.

Chinese undocumented migrants, like all other illegal migrants, generally accept any work offered, since finding employment is competitive and any paying job is seen as an incredible chance; but there are more workers in Chinatown than jobs. This fierce competition results in lowered wages. Within Chinatowns in large urban areas,

¹⁷⁶ See Chin, *supra* note 173, citing Gwen Kinkead, *Chinatown: A Portrait of a closed society* (NY: Harper Collins, 1992).

¹⁷⁷ See Marlowe Hood, *The Taiwan Connection*, L. A. TIMES, October 9, 1994.

¹⁷⁸ See Chin, *supra* note 173, at 170.

particularly in the United States and Canada, available jobs flourish in unskilled labor sectors: garment factories, restaurant work, and construction. Employment agencies, catering to the Chinese migrant community, offer short-term work constantly, as employers nationwide advertise positions on a daily basis. Some employment agencies even specialize in the recruitment of illegal Chinese immigrants, knowing well that the unscrupulous employers who hire them will pay below minimum wage levels (or sometimes will not pay them at all for several months) and who avoid paying benefits or taxes. These jobs often come with terrible labor conditions, usually located in premises that do not respect safety or fire codes, or hygiene regulations. Employers take advantage of migrants' illegal status by exerting excessive pressure on them and abusing them. Indeed, some Chinese undocumented migrants are regularly unpaid for their work because the employers know that the migrants have no recourse. Stories of workers who were fired because they asked for a day off are not uncommon. Workers cannot complain as there are no alternatives: they must find and keep a job.¹⁷⁹ Entering this work climate is the reality for many illegal Chinese migrants.

The Reality of Sweatshop Labor

The following is the description of the general conditions found in about 250 garment factories, or sweatshops, inspected by a U.S. Department of Labor investigative taskforce over five year period across New York State:

Workers are sewing and operating on machines in very crowded premises, also full of trash. The whole place is generally dirty and dusty. Bathrooms are not flushing and fecal matter is spread all over the floor. Usually, there are no fire exits or they are being blocked by different detritus. Some doors are being kept locked. Cameras can be installed to monitor the performance of workers.¹⁸⁰ The ventilation system does not work well, the fans are not functioning and can catch fire. It is often very hot and damp inside. There is steam coming out from the machines and there is no protection available for the

¹⁷⁹ The CSWA is an association dedicated to fight the inhumane conditions of work proliferating in Chinatown and the abusive and discriminatory treatment of undocumented laborers. For more information, see CSWA's website (<http://www.cswa.org/www/index.asp>).

¹⁸⁰ See Pei Yao Chen, *The "Isolation" of New York City Chinatown: A Geo-historical Approach to a Chinese Community in the U.S.* (Chen, 2003), in CHINESE STAFF AND WORKERS' ASSOCIATION, A COMMUNITY-BASED WORKERS' CENTER MODEL, AN ALTERNATIVE TO TRADITIONAL TRADE UNIONISM TO BUILD A NEW LABOR MOVEMENT, available at <http://www.cswa.org/www/index.asp>.

workers to avoid being burned. Employees are to share sewing devices which can sometimes injure them and can carry the risk of passing diseases.

Workers are often restricted from taking breaks and pressured to work faster, and more. They usually do not leave the factory for lunch as food deliveries services come to sell food in the morning. Since they are paid piece-rate, employees often take work home, which is prohibited by the New York State law, except if you have an authorization.

The garment owners officially say that they make the workers work for 8 hours a day, but it was observed that their actual hours of operation are from 5am to 2am, probably with seamstress working inside. The employees would work 6 or 7 days a week. All of the garment factories visited have been violating wages regulations. Eighty percent of those factories have hired illegal workers.

In some cases, when the workers, 99% of whom were female, did not have enough work to do, they would be asked, or forced, to sleep with men to earn more money. Four shops were believed to have women sleeping with men, three women interviewed admitted to have been forced to do so.¹⁸¹

Seamstresses who are paid by piece sewn can make \$2-\$4 an hour and work 70 to 100 hours a week.¹⁸² Remuneration for a garment worker can range from \$560 to \$1120 a month, in accordance with the hours worked.

A salient example of these harsh work conditions in the garment factory is the story of two female Chinese factory workers in Mexico.¹⁸³ In this case, a Mexican NGO reported that two Chinese women were enslaved after having been promised jobs as seamstresses in a local factory. Interestingly, the two women were in fact legal migrants in Mexico, holding proper immigration documents that included residency with authorization to work. When the two Chinese women arrived in the country, however, their employer took control of their identification documents and forced them to live on the factory site where they were compelled to work 16 hours a day, with no days off. The

¹⁸¹ See telephone interview with an investigator at the Long Island Taskforce of the Department Of Labor, also labor law professor at Long Island Stoney Rook University and Dowling College (December 14, 2005).

¹⁸² See THE CHINESE STAFF AND WORKERS ASSOCIATION, LIVING CONDITIONS FOR CHINESE IMMIGRANT WORKERS IN NEW YORK, available at http://www.cswa.org/www/archive/miscellaneous/definitions/Conditions_For_Chinese_Immigrants.pdf.

¹⁸³ See Sandra Chaher, *La trampa antes que la ley*, ARTEMISIA NOTICIAS, January 24, 2006, available at <http://artemisanoticias.com.ar/site/notas.asp?id=30&idnota=1277>

women were fined when caught talking on the job; they were forbidden from talking with other Mexican employees and were under a constant deportation threat. They were not permitted to leave the factory without being escorted, but one day they managed to escape. The employer reported their departure to the immigration authorities, who searched for, found, and detained the women. At the last report, the Chinese women continue to await an adjudication of their situation by Mexican authorities who apparently have categorized the matter as an employee-employer labor dispute. If they are deported to China, they may be sent to prison for breach of work contract.¹⁸⁴

Restaurant Work

In the restaurant sector, many reports have documented the long hours worked by employees. There are stories of Chinese migrants working 12 to 16 hours a day, 60 to 80 hours a week, 6 days a week,¹⁸⁵ sometimes with no day off in primitive, unsanitary conditions that often constitute serious violations of the local labor code.

In North America, salaries in Chinese restaurant businesses vary according to the job, the city, and the period. However, it is difficult to estimate the average wage in the restaurant domain. It has been reported that some waiters earn no wages, but can keep the tips.¹⁸⁶ In some extreme cases, undocumented restaurant workers do not receive salary for months. In other situations, they were asked to pay to work, for instance, \$18 per day in order to keep their job.¹⁸⁷

As mentioned earlier, an unofficial Chinese labor network exists throughout the entire United States. Chinese migrant labor is sought by Chinese-owned businesses in the Americas but these are not traditional careers that offer benefits or long-term prospects. Employees are normally offered short-term assignments for a special occasion or limited period. As the economies in Chinatowns reach their absorption limits, clandestine workers, particularly in the United States, workers have gone out to the

¹⁸⁴ *See id.*

¹⁸⁵ Interview of Mr. Lu, undocumented migrant currently in the U.S., NY (December 2005). Back in China, he was working 8 hours a day, 5 days a week in a farm, once in the US, he worked 12 to 16 hours a day, 6 days a week, for 8 years. *See also* Jennifer Lee, *Waiters, Cooks to Go*, THE NEW YORK TIMES, October 2, 2005.

¹⁸⁶ U.S. law requires the restaurant employers to make sure that the waiters earn the minimum wages by paying the difference with the amount collected through restaurant tips, if the latter do not amount to the minimum wage. Currently, in June 2006, the federal minimum wage is \$5.15 per hour of work.

¹⁸⁷ *See* CSWA (interview), *supra* note 145.

suburban areas. Chinese buffets are present in all major U.S. cities, in almost all of the states.¹⁸⁸

This geographical expansion into the suburbs has led to the development of a new form of work package for clandestine Chinese migrants.¹⁸⁹ Under this plan, the migrant worker agrees to (usually) a one-year contract, and the Chinese employer pays, an often very low, salary—but provides lodging. Too often, the employer fulfills the lodging obligation by providing a filthy one or two bedrooms apartment, with one bathroom, that is shared by ten to thirty workers, who sometimes have the cost of their lodging deducted from their salaries.

A labor distribution system exists by way of private “Chinatown buses,” which connect the suburbs with Chinese communities concentrated in larger cities. On the rare occasions when migrants have free time, workers sometimes go on back and forth between the suburbs and the Chinatowns. However, it would be wrong to believe that the working conditions in the suburbs are better than in the cities.

A recent case in Michigan brought to light the exploitation of Chinese undocumented workers in 17 restaurants in the suburbs. The state prosecutor, investigating charges of illegal alien harboring and tax evasion, compared the situation of the Chinese workers with that of “indentured servants.”¹⁹⁰ In a similar case in Chicago, an undocumented Hispanic worker filed a complaint against a city employment agency that sent him to a Chinese buffet in Michigan where working and living conditions were, in his words, “sub-human.” He was paid \$150 for 70 hours of work and shared an apartment with 30 other workers – mostly Chinese migrants.¹⁹¹

Construction Site Work

Working conditions for Chinese illegal migrants on construction sites are no better than other places of employment. As in other areas, construction laborers are paid low wages, receive no benefits, and have to work in situations that often ignore safety

¹⁸⁸ See *id.*, the director mentioned the existence of undocumented migrants shuttled to Vermont, Albany, Connecticut, Massachusetts, Chicago, Minnesota, Missouri, Florida, Mississippi, Texas, Chicago, Long Island, New Jersey, Staten Island, Queens, Long Island... See also Kwong, *supra* note 9, at 335; see also Jennifer Lee, *Waiters, Cooks to Go*, THE NEW YORK TIMES, October 2, 2005.

¹⁸⁹ See *id.*

¹⁹⁰ See John Flesher, *17 Chinese restaurants raided in Michigan*, NEWS DAYS, June 8, 2005.

¹⁹¹ See *Chinatown protest targets labor abuses*, CHICAGO TRIBUNE, January 28, 2006.

standards. Some employees may have had some experience with construction sites in previous jobs in China, but many have no experience and simply agree to work in construction because they are willing to take any temporary job.¹⁹² The recent death of an undocumented construction worker from Shanghai, killed by a collapsing eight foot-tall cement wall, is a tragic example of the precariousness that many Chinese (and other migrant) construction workers face.¹⁹³

Deplorable Living Conditions

As mentioned in an earlier example, the living conditions of illegal Chinese migrants are not any better than their working conditions. Burdened by the huge debts that they are under pressure to repay as quickly as possible, many migrants are forced to accept deplorable living conditions. Most migrants, from the beginning of their clandestine labor cycle, send remittances to family or friends in China. As a result, migrants are often willing to accept any living situation that saves them money, no matter how dehumanizing it might be. Migrants save on food by adopting a diet of rice and mantou (Chinese steamed buns, very popular in the north of the country). They also save on their housing expenses: New York's Chinatown provides many building apartments, called "ya zilou" (or "duck buildings") where migrants rent bunk beds and live in barrack-like facilities. Those cheap accommodation options usually cost \$90 per month for a bed.¹⁹⁴ These living conditions are often squalid.

Clandestine Prostitution

Although Chinese tradition and culture does not accept prostitution,¹⁹⁵ law enforcement officers and NGO groups have reported an increase in recent years of the number of undocumented Chinese women involved in prostitution in the United States.¹⁹⁶

¹⁹² See David W. Chen and Corey Kilgannon, *Chinese Builder's Death Reveals Anonymous Web of Risky Labor*, THE NEW YORK TIMES, June 9, 2004.

¹⁹³ See *id.*

¹⁹⁴ See Kwong, *supra* note 127.

¹⁹⁵ Contrary to the Southeastern part of Asia, prostitution has been abolished under the Communist era until the end of 1970s. Only then, did some internal sex workers appear in larger cities and special economic zones. Women traveling overseas for sex industry are a lot of them from Shantou and Xiamen, see Skeldon, *supra* note 3 at 26.

¹⁹⁶ See telephone interview with an investigator of the Vice Unit of the Suffolk County Police, Long Island (December 8, 2005); see also interview a special agent at the Immigration and Customs Enforcement,

Still, the presence of Chinese women in the prostitution industry is relatively uncommon. San Francisco officials report that in 2004, about 10% of all Asian prostitutes found during police raids were Chinese.¹⁹⁷ Most of them are found in Korean-run brothels, although it is known that Chinese run brothels also do exist. The circumstances that lure undocumented Chinese women into the sex trade in the Americas are not much different than with other migrants. Some Chinese women have “voluntarily” entered prostitution in order to escape brutal work conditions in garment factories or restaurants in order to pay off their crushing debts.¹⁹⁸ But it is believed that some Chinese women are forced into the sex trade, being sold, kidnapped, or promised false work in the Americas.¹⁹⁹

Almost no studies have examined Chinese migrant women forced into prostitution in the Western Hemisphere outside of the United States, and no formal investigations have been undertaken—but there are anecdotal reports. In the United States, there are a few official reports of Chinese women being exploited in the sex trade. Professor Chin reports that handlers and snakeheads force Chinese women into sex work in exchange for canceling or reducing their transportation fees.²⁰⁰ Others are deceived once they arrive in America. This was the case of two Chinese women, who – after 5 or 6 years in the United States – were lured into false jobs in an acupuncture clinic in Virginia that was in reality a prostitution front. Their traffickers kept them under constant surveillance, and the women were the victims of threats and physical abuse. They were discovered in a police raid after one year of confinement; both have since been approved for special U.S. visas for trafficking victims.²⁰¹ As mentioned before, some Chinese women and girls are coerced into prostitution as an ancillary exploitation in the context of servicing men in their sweatshops.

Anecdotal reports state that a well-organized network of brothels in major U.S. cities controls trafficked Chinese women, as part of larger prostitution rings “offering”

I.C.E., Department of San Francisco (November 2005). Also interview with a social worker at Cameron House in San Francisco (December 2005). *See also* Carolyn Lochhead, *Sex Trade Uses Bay Area to Bring in Women, Kids*, SAN FRANCISCO CHRONICLE, February 26, 2003.

¹⁹⁷ *See* San Francisco I.C.E. (interview), *supra* note 196.

¹⁹⁸ *See* Chin, *supra* note 37 at 125.

¹⁹⁹ *See* Lochhead, *supra* note 194.

²⁰⁰ *See* Chin, *supra* note 37 at 125. *See also* Chin, *Safe house or Hell House? Experiences of Newly Arrived Undocumented Chinese*, in *supra* note 173.

²⁰¹ *See* interview the President of Humanatis (October 28, 2005).

Asian women in general. These rings involve New York,²⁰² Boston,²⁰³ San Francisco,²⁰⁴ Indianapolis,²⁰⁵ Houston, and Atlanta. Reports indicate that the traffickers move Asian women from brothel to brothel every 10 days to three weeks to avoid detection and maintain control.²⁰⁶

The Asian women in these U.S. rings live and work under conditions of extreme exploitation and isolation.²⁰⁷ They are kept isolated from the general public and moved to different locations such as motels or private residential apartments. Some are as young as 15 and trapped in rooms furnished with mattresses. They may be forced to service up to 10 men a day and receive \$100. From that, they have to pay the brothel owner. Much of the rest is given to the broker of the woman's contract.²⁰⁸ Sometimes the women may not even be paid as they are considered as trainees.²⁰⁹ Rape and other sexual assaults are often used to frighten and control the women, and increase their vulnerability.

Exploitation in Latin America and the Caribbean

Most of the information available about Chinese migrants in exploitative labor in the OAS region is based on reports from Chinatowns in the United States and Canada. However, some local press reports and academic research provide insight on the fate of Chinese illegal migrants in irregular labor situations in Latin America and the Caribbean region. As in the United States and Canada, ethnic Chinese already established in these countries carry out much of the actual exploitation in sweatshops and farms. These situations of exploitation often occur while the migrants are in transit, waiting to finance the next segment of their clandestine journey. Chinese snakeheads sometimes inform the migrants that they cannot stay in a transit country, waiting for new documents or for the

²⁰² See Suffolk County Vice Unit (interview), *supra* note 196. See also Chin, *supra* note 37 at 124.

²⁰³ See Ralph Ranalli, *2 Peabody women accused of prostitution*, THE BOSTON GLOBE, August 13, 2005.

²⁰⁴ See Kate Williamson, *Police bust alleged international sex ring*, THE EXAMINER SAN FRANCISCO, October 27, 2005.

²⁰⁵ Paul Bird, *Possible sex ring investigated*, THE INDIANAPOLIS STAR, February 14, 2006.

²⁰⁶ See Maxine Bernstein, *FBI Arrests Suspect in International Prostitution Ring*, THE OREGONIAN, September 19, 2002.

²⁰⁷ For a good description of conditions of work in Asian brothels in general, see Bernice Yeung, *The Secret Life of the Avenues*, SAN FRANCISCO MAGAZINE, April 2005.

²⁰⁸ See R. Robin McDonald, *Human Contraband: Asian women expected jobs, not prostitution*, THE ATLANTA CONSTITUTION, August 31, 1999.

²⁰⁹ See Cameron House (interview), *supra* note 196.

next transportation phase, without paying expenses. Thus, the migrants are forced into what amounts to exploitative and clandestine work.

Details of such cases are difficult to obtain, but one documented Panamanian case dates back to April 1993. Authorities discovered Chinese immigrants living in merchandise warehouses; they slept on crates of beer and pieces of cardboard, and owed \$20,000 to their handlers for transportation expenses. The handlers retained the migrants' travel and identification documents and forced them to work for years in diverse ethnic Chinese-owned businesses in Panama in order to repay their transportation debt.

In Suriname, it was reported that a man from Thailand recruited some former Chinese prisoners to do forestry labor. Even though the method of entrance to the country is not known, those workers seem to have been forced to remain in their positions, as they were not allowed to go out of their camp nor to talk with persons from the outside. Harsh conditions of work and living were imposed upon them: they were to work seven days a week, until late in the evening, and were living in horrid barracks.²¹⁰ Surinamese officials have told the OAS they recognize that there is trafficking cases in Suriname involving Chinese victims, and that efforts are being made to prosecute those cases. These officials also say that they face difficulties in their prosecution work because of the language barrier and the reluctance of witness to come forward.

In August 2004, Argentinean authorities detained nine persons accused of participating in a Chinese smuggling ring. The criminals were apparently involved in human trafficking and charged with bringing undocumented immigrants to Buenos Aires in order to force them to work in clandestine factories and unauthorized agricultural activities.²¹¹

Venezuela is also a transit country for undocumented Chinese migrants moving in the region. The handlers of Chinese immigrants try to arrange resident visas (forged, or genuine but unlawfully issued) in Venezuela in order to facilitate later access to North America. While in Venezuela, or in other countries, Chinese migrants face the challenge of adapting quickly to a new culture in order to begin to work, often in slavery-like conditions in local supermarkets, restaurants or textile factories. Generally, these

²¹⁰ See OAS/IOM, *supra* note 30 at 138.

²¹¹ See José Derewicki, *Tráfico de personas desde Bolivia hasta el Chaco*, LA NACION (Argentina), August 17, 2004.

migrants have no identification document or legal status in the transit country and remain completely in the control of their handlers. Their handlers control their documents and the working conditions, ensuring that they have no option but to continue in the clandestine work.²¹² Similar reports come from Brazil, where Chinese illegal migrants have to repay their smuggling fees from China to Brazil, amounting to US \$10,000 through slave labor in local businesses.²¹³

The Colombian government believes that some of the illegal Chinese migrants passing through Colombia and bound for North America may be used to transport illegal drugs.²¹⁴ The closed, disciplined networks of Chinese snakehead organizations could, in fact, easily facilitate the movement of such contraband.

Local press reported on cases in Panama²¹⁵ and Uruguay, evidencing the severe exploitation of Chinese workers in Asian companies having factories in Latin America. The trend of contracting mainland Chinese workers for several years is increasing in Latin America and the Caribbean. Workers are totally obedient as their papers are taken away and their work conditions, often abusive, cannot be monitored by local authorities.

Case Study 3: The Story of an Abandoned Asian Fishing Boat Crew in Uruguay

After working as shrimp fishers for two years without receiving any wages, 44 crew members of Chinese, Indonesian and Korean nationalities were abandoned by their employer on a boat for two months with no food and water in the Southern Atlantic Ocean. The abandoned crew did not have any money and their identification documents were kept by their unscrupulous employer. The crew finally made their way to shore and managed to file complaints with the Uruguayan Ministry of Labor, claiming \$6000 to \$18,000 back wages.²¹⁶

²¹² See *Ilegales asiáticos buscan llegar a Canadá*, EL UNIVERSAL (Venezuela), April 27, 2001; see also *Once mil dólares por una cédula*, EL UNIVERSAL (Venezuela), June 23, 2003.

²¹³ See Adriana Souza E Silva, *A Mafia Pirata*, ISTOÉ INDEPENDENTE (Brazil), October 10, 2001.

²¹⁴ See *El DAS captura 8 ciudadanos chinos que estaban ilegalmente en Colombia*, CARACOL, August 30, 2001.

²¹⁵ See RAMON MON, *MECANISMOS DE ADAPTACION PSICOLOGICA Y PROCESOS DE INTEGRACION DE LOS INMIGRANTES CHINOS* (Escuela de Psicología, Universidad de Panama) (2002) at 28.

²¹⁶ See *Chinos a la deriva y abandonados*, EL PAIS (Uruguay), October 29, 2004.

Health Consequences for Chinese Migrants

The travel abuses and the exploitative work conditions wreak long-term damage on the health of many clandestine Chinese migrants. Stories exist of brutal physical and mental anguish caused by the difficult international journey from China to the Americas. As mentioned before, migrants' abuse often continues in the so-called safe house at the hands of their handlers.²¹⁷ Many undocumented restaurant workers and seamstresses, for example, suffer a variety of lingering illnesses, such as blackouts, permanent back and shoulder pain, chronic insomnia, and headaches.²¹⁸ Depression, alcoholism, and suicidal tendencies can often develop as a result.²¹⁹ Work accidents are frequent and can render the illegal migrant incapable of working, casting him into a dire situation in which he is prevented from earning a living and repaying his debt. Failure to repay the debt can have severe consequences. This was the fate of one undocumented Chinese immigrant, after he was struck by a car while working as a bicycle deliveryman. He was no longer able to work and was left with neither means to survive in the United States nor the ability to return to China.²²⁰ Psychological and physical traumas caused by commercial sexual activity are also unfortunately common among migrants in the sex trade.²²¹

Case Study 4: Mr. Lu's Story²²²

Mr. Lu is an illegal immigrant living in Manhattan's Chinatown in New York City. He is in his forties and comes from Fuzhou, China. He arrived in the United States in 1992 after a two-month travel on a freighter from Taiwan, which cost him \$30,000. He painfully reimbursed this sum to the snakeheads by borrowing from friends and family and through his labor. Half of his wages went to the snakeheads for the payment of his debt and the reimbursement took him 8 years. At some point, to be able to follow up with the reimbursement of the initial debt, he had to borrow money from loan sharks, thus incurring a new debt. The failure to reimburse his debts has important consequences as snakeheads based in China would constantly pressure his family and eventually

²¹⁷ See Mon, *supra* note 215.

²¹⁸ For further description of the consequences on health, see Kwong, *supra* note 127, at 105.

²¹⁹ See Chin, *supra* note 37, at 121-123.

²²⁰ See interview with Mr. Lu, *supra* note 185.

²²¹ See Chin, *supra* note 37, at 110.

²²² A transcription of some parts of Mr. Lu's testimony. See interview with Mr. Lu, *supra* note 185.

physically harm them. He worked 16 hours a day, 6 days a week in restaurants in New Jersey, New York, Ohio and California, doing dishes, cleaning the kitchen and other facilities, and delivering. He was often taken advantage of, as employers would not pay him and he had no recourse. He lived with the constant fear of being caught by the police and with the pressure of reimbursing the debt. He still lives in Chinatown but has been unable to work since he was hit by a care while delivering food a couple of years ago. Because the employer did not pay him compensation for his work accident, he lingers in the United States with just enough to buy food and rent a bunk bed but not enough to buy a plane ticket to fly home. However, if he returns China he will face serious consequences, possibly death, as he still owes a debt to loan sharks.

III. Clandestine Chinese Migration in Context: Understanding the Situation as a Form of Trafficking in Persons

Increasingly, there is a debate over how to characterize the phenomenon of illegal Chinese migration. Is it just a form of human smuggling, in which migrants from China reach the Americas, mostly clandestinely, and begin a long period of hard work that carries most of them ultimately to a better life? Or is it a more complicated and abusive process in which criminal networks move uncomprehending Chinese migrants into a foreign and isolated environment where they are forced to work years under inhuman conditions to pay off incredible debts in an underground world of exploitative work that makes a mockery of most national labor laws? Doubtless, in the vast phenomenon of clandestine Chinese migration into the Americas, there are situations that fit both perspectives.

These cases should be analyzed and placed across a continuum of abuses. On one side of the continuum, there are the reports of Chinese migrants in the Americas that involve no exploitation at all. And at the other side of the continuum there are documented cases that put migrants in the category of modern-day slavery. This study inveighs that many of the migrant cases are in fact on the exploitative side of the continuum, and that the basic clandestine organization of journey and work fits a human trafficking paradigm. The following part of the study presents a full legal and policy analysis of why many of the cases of Chinese migrants in the Americas should be considered as examples of trafficking in persons.

1. Current Scholarly Analysis: When does Sub-Standard Labor become Forced Labor?

For most scholars, law enforcement authorities, labor investigators, and social workers the difficulties experienced by Chinese migrants are not presented as a form of human trafficking. Instead, the conventional approach is to see the migratory Chinese as illegal immigrants at worse suffering labor violations in their work situation. The exception to this analysis is the “classic” trafficking situation where Chinese migrant women are forced into brothels.

This does not mean that many experts do not recognize that there is considerable exploitation in labor situations of Chinese migrants. Many experts in the field observe

that labor law violations are frequent. For example, author and researcher Peter Kwong points out that U.S. federal and state labor authorities bear an important responsibility in not aggressively addressing the egregious situation of Chinese laborers.²²³ Kwong's scholarship describes a human trafficking enterprise, although he rarely formally frames his analysis in the terms of the U.N. Trafficking Protocol.

Much of the literature sympathetic to the plight of the Chinese focuses on the extreme labor violations that Chinese migrants undergo, particularly in the United States, where these violations are better documented. Many observers readily concede that not enough is being done to enforce existing U.S. labor laws (such as the Fair Labor Standards Act). It has been pointed out that even though labor violations have been repeatedly proven in the New York City garment industry (where many illegal Chinese work), not much has been implemented to address this deplorable situation.²²⁴

However, there is a difference between recognizing the unfair treatment visited upon Chinese laborers and classifying them as victims human trafficking. Much of the analytical reluctance for some experts to categorize Chinese migrants as trafficking victims has to do with the migrants' supposed consent – their original consent to migrate, their consent to enter into difficult jobs, and their consent to continue in those same jobs. It is argued that this consent undercuts any claim that the migrants are victims of forced labor,²²⁵ which is a key component of the U.N. Trafficking Protocol.

Victimization

Many factors enter into the mindset of trafficking victims. They may go through a kind of “brainwashing” at the hands of their traffickers and abusers. Surviving day by

²²³ See Kwong, *supra* note 9 at 321-322. Peter Kwong believes that the Chinese migrants' exploitation is primarily a labor issue, rather than an immigration problem. Indeed, one reason for the perpetual renewal of labor force is the ongoing and growing demand in the destination country for cheap labor which usually constitutes a good ground for the proliferation of exploitation and abuses. The main hindrance to end migrants' exploitation is the ineffective enforcement of labor legislation, *see* Kwong, *supra* note 98.

²²⁴ In 1997, 63% of garment stores in New York were in violation of minimum wage or overtime provisions, according to the Department of Labor. By 2000, 65% of them were not respecting the law, *see id.*

²²⁵ According to the International Labour Organization Convention (No. 29) concerning Forced or Compulsory Labour, forced labor is: *all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.* See the International Labour Organization Convention (No. 29) concerning Forced or Compulsory Labour, art. 2, §1, adopted by the General Conference of the International Labour Organization on 28 June 1930 (entered into force on 1 May 1932), June 28, 1930, 39 U.N.T.S. 55. For further discussion and explanation on the concept, *see infra* page 73.

day, as best as they can, many victims do not have the perspective to see their situation as exploiting their basic human rights. For these reasons, trafficking victims often do not perceive themselves to be victims. Many Chinese migrants accept their servitude as a consequence of their bad decision to migrate or the high price that they have to pay to establish themselves in their new country. They see themselves as responsible for paying a debt.

Similarly, the societies of the many destination countries do not easily view illegal migrant workers as victims of labor exploitation. In the Americas, media reports and law enforcement authorities often consider undocumented immigrants as simply remarkably hard workers. With Chinese migrants, there is a widespread cultural stereotype of workers who are resilient individuals and incredibly dedicated laborers, rather than victims of exploitation. Chinese migrants are often portrayed as hearty individuals, capable of extraordinary perseverance to endure extreme labor conditions, not peoples suffering from abuse.

In North America, these same Chinese migrants are even romanticized as passing through a noble immigration tradition in which the first generation is expected to endure extreme sacrifice so that they can later enjoy the “American Dream”—or at least be able to pass that chance on to their children. In short, Chinese migrants are often seen as “voluntary lawbreakers,”²²⁶ fortunate to be in the destination country, who do not merit compassion or assistance to escape a fate of exploitation.

Although many experts recognize that Chinese migrants are working below acceptable labor standards, they do not agree that these workers are being forcibly held in these difficult jobs. They argue that the migrant is not compelled, in the literal sense, to continue to work in the same restaurant, garment factory or kitchen, or physically prevented from leaving. As will be discussed later, however, this analysis lacks an appreciation of the subtle use of coercion that is active in these situations and affects the mentality and decision-making power of migrants.

2. Legal Frameworks Relative to Trafficking in Persons

²²⁶ See Fang-Lian Liao, *Illegal Immigrants in Garment Sweatshops: The Universal Declaration of Human Rights and the Internacional Covenant on Civil and political Rights*, Southwestern Journal of Law and Trade in the Ameritas, Fall 1996, 3 SW. J.L. & TRADE AM. 487; 489.

State-supported slavery has been the focus of legal and policy discussion for centuries. Since the abolition of state-supported slavery, much of the modern prism of dealing with the abuses of slavery is presented in the context of “trafficking in persons.” This form of “modern-day slavery” has been outlawed in diverse international instruments like the International Agreement for the Suppression of the White Slave Traffic,²²⁷ the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,²²⁸ and more recently in the Statute of Rome under the concept of “enslavement,” which constitutes a crime against humanity.²²⁹

At the national level, different statutes can be applied against the numerous and varied manifestations of the complex crime of trafficking in persons, such as criminal laws (dealing with prostitution, sexual offense, minors in pornography, sex tourism, threats, and kidnappings) and immigration laws and labor laws (which address forced labor, and child labor). Most of the countries in the Americas have one or more statutes related to combating some form of human trafficking.²³⁰

In recent years, more and more countries are enacting comprehensive legislation to criminalize trafficking in persons. Indeed, the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, requires state parties to the Protocol to “adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol [i.e. all elements constituting trafficking in persons], when committed intentionally.”²³¹ The December 2000 U.N. Trafficking Protocol, signed by 120 states of the 148 present in Palermo, Italy provides a comprehensive legal definition of human trafficking.

The Crime of Trafficking in Persons Defined

As stated earlier, human trafficking is: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of

²²⁷ See the International Agreement for the Suppression of the White Slave Traffic, 1 L.N.T.S. 83 (1904), adopted in 1904 and ratified by 12 States.

²²⁸ See Convention for the Suppression of the Traffic of persons and of the Exploitation of the Prostitution of Others, opened for signature Mar. 21, 1950, 96 U.N.T.S. 271.

²²⁹ See Rome Statute of the International Criminal Court art 7 §1 (c) art. 1, July 17, 1998, U.N. Doc. A/CONF.183/9 (2002).

²³⁰ For more information, see the country and region pages on the OAS Anti-Trafficking in Persons Section’s website, at <http://www.oas.org/atip>.

²³¹ See the U.N. Trafficking Protocol, *supra* note 6 at art 5, §1.

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.”²³²

According to this definition, there are three main elements in the offense of trafficking:

- 1) The movement of the trafficked individual across international borders or within a same country;
- 2) The techniques used to ensure that the trafficked individual ends up in exploitative situations; and
- 3) The exploitation itself, constituting the ultimate reason why the trafficked individual was moved.

The U.N. Trafficking Protocol provides further details as to the nature of the 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.”²³³

Two additional important considerations from the U.N. Trafficking Protocol should be noted and highlighted. First, the consent of a trafficked person to accept the intended work is considered irrelevant in the assessment of the existence of trafficking.²³⁴ Second, in the case of a minor, none of the elements of force, fraud, or coercion are required in order to prove the existence of trafficking.²³⁵

In other words, consent on the part of an adult is immaterial when the trafficked person—because of his or her position of vulnerability—has been threatened, coerced by the use of force or any other means, abducted, deceived, or abused through the means of a power or control relationship. Indeed, scholars and activists argue that it is not possible to “consent to a lie”²³⁶ or to consent to a contract of abuse. By this provision, meaningless

²³² *Id.* Art 3, § a, first part.

²³³ *Id.* Art 3, § a, second part.

²³⁴ *See id.* Art 3, § b. *The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.*

²³⁵ *See id.* Art 3, § c. *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 subparagraph (a) of this article.*

²³⁶ ANN D. JORDAN, *THE ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL* (Global Rights Publications) (2002), annotation to art. 3 (b).

consent cannot act as absolution for the trafficker's responsibility. A rough parallel can be drawn between "consenting" Chinese migrants and the 19th century slave who was granted considerable autonomy by his slave master, but never escaped even though he had countless opportunities to do so. The slave's *de facto* "agreement" to continue in his situation did not change the basic character of the exploitative relationship.

Some criticism of the U.N. Trafficking Protocol's definition of human trafficking exists. Indeed, for many analysts, the U.N. human trafficking definition has some loopholes. It is said that the definition is "not appropriate for use in domestic criminal codes."²³⁷ The vagueness of certain terms like "exploitation of prostitution" or "other forms of sexual exploitation" does not help to provide an operational understanding of the crime. The notion of "sexual exploitation" is arguably vague, particularly in the context of adults, and it touches on a range of politically and morally sensitive issues.

Also, it is argued that the language in the U.N. Trafficking Protocol serves to help "genderize" the process of determining who the victim is in the crime of trafficking. A woman or a minor, for example, in the context of commercial sexual exploitation can more readily be deemed a victim. Other forms of exploitation, for instance involving labor, experienced by men are more difficult to recognize as clear-cut cases of trafficking.²³⁸ For many policy makers and members of the media, commercial sexual exploitation is the sole manifestation of human trafficking.²³⁹

3. Applying the Trafficking Definition to the Situation of Chinese Illegal Migrants

As conceded previously, it is not possible to claim that *all* Chinese illegal migrants are trafficking victims. Ideally, the experience of Chinese migrants would need to be examined on a case-by-case basis to fairly identify who is a human trafficking victim and who is not. There is of course the scenario of migrants smuggled into the United States, who easily pay off their debt with their own savings, and are free to start a new life in a Chinatown restaurant with an employer who treats his employees humanely and respects all labor laws.

²³⁷ *Id.*, annotation to art. 3.

²³⁸ See Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, HARVARD INTERNATIONAL LAW JOURNAL, Summer 2003, 44 Harv. Int'l L.J. 473., 478-480.

²³⁹ See *id.* at 479.

The facts, however, taken in the aggregate, indicate that this is not the normal Chinese migratory pattern. As this paper has documented, the more likely scenario is the case of exploited migrants imprisoned in an abusive work environment because of debt. Indeed, one can be promised a good job at, say, his Canadian relative's small business. The relative pays off the transportation debt and fees, and the migrant is left working for his relative to repay his debt, without being paid for 13 hours a day, 7 days a week. The migrant is illegal, with no identification papers and no options.

In the following paragraphs, the emphasis will be on how the Chinese migrants' model of exploitation fits the different elements of human trafficking. Indeed, the Chinese migrants' model includes some methods of coercion as dictated by the U.N. Trafficking Protocol. It also exists under different forms of exploitation as described by the international text. However, some elements that may remain unconventional to other instances of trafficking in persons will be given some attention, especially the issue of the chain of control over the migrant.

A. Means of Coercion Used In the Chinese Migration Model

As we have discussed, some experts assert the case of Chinese migrants does not seem to fit the traditional mold of trafficking in persons. Indeed, the elements of consent, coercion, and forms of exploitation, although they exist, do not manifest themselves under the conventional forms. According to the definition of trafficking in persons in the U.N. Trafficking Protocol, consent is void if there is coercion.²⁴⁰ The reality is that many practitioners do not follow this standard when looking at any human trafficking scenarios. The unfortunate tendency is that when many observers – government officials, policy makers, and law enforcement officers – first identify consent on the part of the victim in the human trafficking chain they close their eyes to later coercion. This tendency further overlooks the complicated reality that most “consent” given by trafficking victims is an uninformed consent.

The Lack of a Genuine and Enlightened Consent from Chinese Migrants

²⁴⁰ See U.N. Trafficking Protocol, *supra* note 6 at art. 3 (b).

As a practical matter, the issue of consent on the part of the victim plays an important role in how police and immigration officials deal with trafficking victims who have been detained. This is the case even with some of the scholarly works, despite the fact that the U.N. Trafficking Protocol officially addresses this subtle issue by asserting that the consent of a victim is immaterial.²⁴¹ Many factors other than physical coercion can be applied against a migrant to invalidate consent. These other factors include subtle threats of physical violence, psychological pressure, verbal abuse, cultural isolation, social humiliation, and debt manipulation. Chinese victims often worry about the safety of family in China. Traffickers skillfully prey upon an uninformed “consent” to make migrants think that their only way to survive is to continue with their current activity, whatever the conditions might be.

There are strong parallels with migrant women in prostitution. The reality in most countries is that, for example, in a police raid on a prostitution ring involving immigrant women, if they admit that they “consented” to work as prostitutes, they *de facto* lose their status as potential victims of trafficking.²⁴² There are also cases where women migrate understanding that they will undertake work as prostitutes as a way to earn money, but once they arrive, the reality of their situation puts them into grueling exploitative conditions.²⁴³

These scenarios reflect closely the Chinese migrants’ experience. Chinese migrants agree to undertake clandestine work, for example in a restaurant kitchen, but upon undertaking the job, they find that the conditions are much worse than those they expected or to which they agreed. They are in fact beneath any legal labor codes. In

²⁴¹ For more information on the discussions on the role of consent, see Abramson, *supra* note 238, at 473. See also Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 68 (1998).

²⁴² See the different interviews with police officers and government officials: telephone interview with U.S. District Attorney Office in San Francisco (December 2005), telephone interview with Suffolk County Police, Vice Unit (December 8, 2005); telephone interview with U.S. Attorney’s Office, Civil Rights Section (December 2005). See also Janine Zeitlin, *Slavery: Collier County’s connection*, NAPLES NEWS, January 29, 2006. See also, Paul Meyer, *Sex slaves or capitalists?*, THE DALLAS MORNING NEWS, May 7, 2006.

²⁴³ See Melanie Orhant, *Trafficking in persons: Myths, Methods, and Human Rights* (Dec. 2001), available at <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=5261#more> (last visited May 12, 2006).

such cases, the civilized standard is that such “consent” is null and void in both a legal and moral sense.²⁴⁴

Deception and false expectations play an important role in making the “consent” invalid. It is self-evident that the Chinese migrants fully expect that they will have to work long and hard hours when they arrive in the Americas. Many of the migrants are low-skilled workers, often peasants, and know only a life of hard work. Their integration in the destination country’s labor market will not be easy and they will very likely start from the bottom of the professional scale. This said, they could not fully expect the conditions in which they finally end up working: extremely long hours, no days off, withheld wages through intentional salary “miscalculations,” or some employers simple unwillingness to pay anything at all.

Of course, none of the recruiters in China advertises these harsh conditions when dealing with potential migrants.²⁴⁵ The recruiters instead present photos of happy and wealthy families in the Americas. Also, those few returnees from the “Golden Mountain” inevitably romanticize their time abroad and downplay the rough and desperate days of their work. The returnees tend to recount only the stories of their successes abroad, seeking to save face and enhance their sense of pride, a common Chinese cultural trait. The reality, however, is that most Chinese migrants have labored long years in the “3D jobs,” or jobs that are “dirty, dangerous, and difficult.”²⁴⁶

Existence of the Use of Force

Reports make clear that force and physical coercion are regular elements in clandestine Chinese labor. The exploitation that takes place in these cases goes to the core of the analysis about why many Chinese migrants are properly deemed to be human

²⁴⁴ The question has often been related to the possibility for one person to consent to exploitation, *see* Chuang, *supra* note 241. It has mainly been discussed under the paradigm of women trafficked for sexual exploitation. Some advocate a protective model rendering individuals unable to really consent to exploitation, especially prostitution, and others have adopted a more liberal model by admitting that women can agree to sell their bodies to earn a living, making consent a key notion when assessing the situation of a particular person.

²⁴⁵ A former recruiter, turned professional smuggling organizer, was supposed to “deliver a sales pitch about the glories of the United States to potential customers”, *see* Brooke A. Masters, *Va. Man Details Immigrant Smuggling Ring*, THE WASHINGTON POST, November 4, 2001.

²⁴⁶ *See* Yun, *supra* note 28 at 8.

trafficking victims under the U.N. Trafficking Protocol. These cases need to be viewed as part of an ongoing pattern that is found in the clandestine world of Chinese migration.

In the mid-1990s, a Chinese woman named Xie Mei Chen was offered a job as a housekeeper in the United States. While discussing the job with her recruiter while still in Fujian, China, he threatened her with a knife, forcing her to migrate or face death. Xie Mei Chen was transported to Mexico and forced to cross the land border into the United States by foot. She eventually arrived in New York City, where she was forced to work off her \$20,000 transportation by prostituting herself. Her traffickers controlled and abused her through beatings, torture, and rape. She was later taken to Los Angeles and put to work there. Xie Mei Chen became pregnant and was forced to have an abortion. By September 1995, when she finished reimbursing her \$20,000 debt, her traffickers arbitrarily increased the sum to \$60,000. In 1996, Xie Mei Chen managed to escape. She cooperated with U.S. authorities in the arrest and prosecution of her captors, who finally were convicted and received sentences ranging from 3 to 4 years of imprisonment.²⁴⁷

In Saipan, a part of the U.S. Commonwealth Northern Mariana Islands, criminals organized a sexual exploitation ring. The ring recruited not only Chinese, but also Korean, Filipina, and Russian women, who were lead to believe that they would have legitimate jobs as waitresses in Saipan but were actually intended to work as bar hostesses and in the sex trade by their traffickers. Upon arrival in Saipan, the traffickers confiscated their passports, and applied physical violence and threats to isolate the foreign women, forced them to work, and rendered them unable to leave the island.²⁴⁸

Traffickers have forced Chinese migrants into massage parlors after having deceived them through offers of legitimate work as waitresses, nannies, or acupuncturists.²⁴⁹ Often the traffickers force their victims into the sex trade in massage parlors or brothels as a result of the migrants' inability to pay their exorbitant transportation debt by the appointed deadline.²⁵⁰ As mentioned earlier, traffickers detain

²⁴⁷ See Seth Rosenfeld, *Women Suffer Brutal Captivity: Global Sex Slavery*, SAN FRANCISCO EXAMINER, June 4, 1997. See also *Slaves of Chicago, International sex trafficking is becoming big business*, IN THESE TIMES, January 8, 2001.

²⁴⁸ See GLOBAL SURVIVAL NETWORK, TRAPPED: HUMAN TRAFFICKING FOR FORCED LABOR IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (Global Survivor Network) (1999), p11-12.

²⁴⁹ See Paul Bird, *Possible sex ring investigated*, THE INDIANAPOLIS STAR, February 14, 2006.

²⁵⁰ See R. Robin McDonald, *Human Contraband: Asian women expected jobs, not prostitution*, THE ATLANTA CONSTITUTION, August 31, 1999; see also Maxine Bernstein, *FBI Arrests Suspect in International Prostitution Ring*, OREGONIAN, September 19, 2002.

Chinese migrant women (their travel documents confiscated and their movement controlled) in “safe” houses. While detained, these women may be raped and suffer other physical violence. Once forced into the brothel, Chinese women (often joined with other “exotic” Asian women from countries such as Thailand, Vietnam, Laos, Korea, and Malaysia) are continuously controlled by their traffickers. They live under the constant intimidation of the traffickers and are not allowed to go out alone.²⁵¹

Similar experiences have been documented in the context of labor exploitation in Latin America, involving Chinese migrants forced to work in farms or on fishing boats. In 2005 in Uruguay,²⁵² a group of Chinese illegal immigrants were required to pay back part of their transportation fees of around \$15,000. They were in Uruguay waiting to continue their journey to the United States. Their traffickers held them a few days in a safe house while waiting for payment. Those migrants who could not come up with the payment were taken to a farm in Los Cerillos, Canelones, and forced to work for 6 - 8 months under semi-slavery conditions. The migrants received food only after many hours of hard labor in the fields. The traffickers threatened to cut off one migrant’s finger if he did not comply with their orders. Finally, one of the captives managed to escape and call the police who intervened. The threatened migrant was protected by the Chinese embassy in Uruguay and an investigation was opened. The inquiry exposed a second Chinese smuggling ring established in Uruguay, which had transported 35 Chinese illegal migrants to Uruguay. The second ring brought Chinese migrants to work in a Montevideo restaurant owned by Chinese-Uruguayans.²⁵³

In a high-profile U.S. case, more than 250 women of Vietnamese and Chinese origins were trafficked for garment work. The women were threatened, beaten, starved, sexually assaulted, guarded, and forced to work long hours in a factory on an island of American Samoa, south of Honolulu. The owner of the factory was prosecuted for trafficking charges and sentenced to 40 years of prison in 2005.²⁵⁴

²⁵¹ See McDonald, *id.*, at 218.

²⁵² See Case study 3., story of Chinese fishing crew, *supra* page 55.

²⁵³ See *Investigan presunta red de tráfico de chinos*, EL PAIS (Uruguay), January 10, 2005. See also Eduardo Barreneche, *Cayó organización dedicada al tráfico ilegal de personas*, EL PAIS (Uruguay), January 13, 2005; *Continúa la investigación por red de tráfico de chinos*, OBSERVA, January 13, 2005; *Uruguay es puente a EE.UU. en el tráfico de personas*, EL PAIS (Uruguay), January 21, 2005.

²⁵⁴ See US Department Of Justice, *Garment Factory Owner Convicted In Largest Ever human trafficking case prosecuted by the Department of Justice*, 2003, available at http://www.usdoj.gov/opa/pr/2003/February/03_crt_108.htm.

Existence of a Coercive Environment Leading to the Abuse of a Position of Vulnerability

Most observers would agree that Chinese migrant workers who are physically locked up, are in fact the victims of forced labor and indeed trafficking victims. However, some observers argue that those are the minority of the cases and that most Chinese migrant workers who are restaurant employees, sweatshop seamstresses, and construction laborers are not physically restrained from leaving their abusive jobs. Since they are not physically locked up – according to this point of view – it is difficult to classify them as the victims of force, fraud, or coercion. This argument does not recognize the burdens, both real and perceived, that immigrants have to carry once they agree to illegal work. These burdens include the risk of being deported, the fear of being added to a “blacklist” that circulates among Chinese ethnic employers, the anxiety of separation from family and friends, the isolation brought on by the foreign culture and language, the worry of being physically hurt on the job, and, most importantly, the constant doubts about paying off the debt.

These are just a few things that make migrants vulnerable. Undocumented workers know—or fear—that if they are reported to immigration, they face arrest, jail, and deportation back to China where they could face imprisonment for illegally leaving the country.²⁵⁵ They are abused by employers who do not pay them, and subject them to mistreatment. These migrants just accept any treatment because they do not have the means to defend themselves. This psychological pressure is insidious enough to be considered mental coercion. Indeed, abuse of a position of vulnerability is stated in the U.N. Trafficking Protocol as vitiating the consent of an exploited individual. The interpretative note to the U.N. Trafficking Protocol states that “abuse of a position of vulnerability” refers to “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”²⁵⁶ The set of patterns

²⁵⁵ Supporting this idea is the fact that Fujianese migrants are preferred as workers as they accept almost any labor conditions in order to reimburse their huge debt. See Kwong, *supra* note 101.

²⁵⁶ See Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, interpretative note (63) to Art 3, §a, available at http://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf.

described above was considered by Gao Yun as an illustration of the notion of abuse of vulnerability.²⁵⁷

One may argue that the situation in question is not unique to the Chinese illegal migrant, that this is the experience of all illegal migrants: illegal migratory status for any migrants leaves them open to labor abuses, and most labor laws fail to protect them. This paper does not argue that Chinese migrants are the only community to suffer such abuses and exploitation. On the contrary, violations of this sort should be sanctioned and stopped regardless of the community involved. For instance, Mexican and Central American workers form a large part of the US illegal alien population²⁵⁸ and face many of the same problems as Chinese migrants. The only notable difference when these two cases are compared is the much larger debt burden carried by Chinese migrants. Where it can cost a Mexican migrant up to \$1,300 to be smuggled to the United States,²⁵⁹ a Chinese immigrant has to pay an average \$55,000. The financial pressure at stake is of a completely different scale. It usually takes a Chinese immigrant at least 5 years to repay such a monumental sum, while working very hard and in extremely exploitative conditions.²⁶⁰ The particularities of the Chinese model support the argument of employers taking advantage of a vulnerable position.

B. A Reasonable Definition of Exploitation Under the Human Trafficking Paradigm

As seen earlier, the international definitions leave some ambiguity as to what constitutes labor exploitation for the purposes of human trafficking. The exact definition of exploitation cannot be found in international legal instruments,²⁶¹ although the U.N.

²⁵⁷ See Gao, *supra* note 28, where Gao describes the situation of Chinese illegal migrants taking harsh jobs in Europe and facing the same hardship as America located Chinese migrants.

²⁵⁸ In 2004, Mexicans counted for 1,142,807 of the deportable aliens found by the US authorities. Central Americans counted for 62,506 of them. See the OFFICE OF IMMIGRATION STATISTICS, Table 36: Deportable aliens located by region and country of nationality: fiscal year 2004, in YEARBOOK OF IMMIGRATION STATISTICS: 2004, available at <http://uscis.gov/graphics/shared/statistics/yearbook/index.htm>.

²⁵⁹ See also *Mexico struggles to combat people smuggling*, THE ASSOCIATED PRESS, CNN.COM, April 20, 2006. The smuggling fees to cross the border have quadrupled since 1994.

²⁶⁰ See Purnick, *supra* note 131.

²⁶¹ Some dictionaries give a definition of exploitation or to exploit in the meaning of 'the use of someone or something in an unjust way for one's own advantage', see the CAMBRIDGE ADVANCED LEARNER'S DICTIONARY, OR THE ONLINE MERRIAM WEBSTER DICTIONARY. It also seems that 'exploitation' has a different scope other than 'forced labour', see the Human Smuggling and Trafficking Center, *Fact sheet: Distinctions between Human smuggling and Human trafficking*, Trafficking vs. Smuggling Chart, at 4 (April 2006), where distinction is made between forced labor and exploitation. It can be implied that a

Trafficking Protocol sets a few examples of what “exploitation” refers to at a minimum. *We would assert that for the purposes of human trafficking a reasonable definition of “exploitation” refers to the imposition of labor abuses and extreme conditions of work that would merit prosecution under criminal sanctions for the employers by the standards of most national labor laws or related statutes.* Although the idea to sanction serious labor law violations with criminal penalties does not exist in some countries (like in the United States), this standard would indeed cover most of the abuses that have been previously described regarding illegal Chinese migrant laborers in the Americas, without having to rely on legislation related to slavery or involuntary servitude.

One author has argued that the main objective of trafficking in persons legislation should be to condemn the exploitative situation in which too many are lingering today. The crucial criterion determining the existence of a situation of trafficking in persons should be the “pattern of serious violations and abuses of labor law.”²⁶² Indeed, although it is not possible today to identify, in detail, the different degrees of labor abuse (the most serious of which would automatically reveal trafficking in persons), some situations constitute a clue for the existence of this pattern of serious abuses. For instance, the case of an undocumented worker sewing 14 hours a day, with little or no time off is one example of what *would* constitute a serious violation of labor law that may evidence the exploitation sanctioned in trafficking in persons. Trafficking in persons legislation would thus categorize a wider group of persons as human traffickers (criminalizing their actions) and protect a larger array of exploited workers. In this conception of trafficking, the possible confusion about the relevance of consent is cleared as the principal element would be the severe form of exploitation suffered.²⁶³

Human Rights as Basis for Outlawing Human Trafficking

certain situation can encompass both forced labor and exploitation, or only one of the two notions, as suggested in the fact sheet.

²⁶² See Abramson, *supra* note 238 at 498.

²⁶³ Indeed, Kara Abramson proposes an alternative to consent-based trafficking legislation and concept, by using a concept that focuses on the illicit transportation of the migrant for the purpose of exploitation in unregulated work. For a more complete discussion, *see id.* at 473.

The sanction of trafficking in persons finds basis and is justified in international human rights law and its philosophy.²⁶⁴ Slavery is a violation to human dignity prohibited in human rights law.²⁶⁵ It is defined as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”²⁶⁶ Some cases of the extreme exploitation Chinese workers face can be incorporated into the derived form of slavery. Having to work 12 to 16 hours a day, six- seven days a week under egregious conditions literally leads to the alienation of physical and mental health of a person.

Indeed, many examples have been previously provided as to the exploitative conditions Chinese migrants face in the Americas.²⁶⁷ Whether in the restaurant, garment shops, or construction industries, exploitation by withholding promised wages, imposing long working hours, and ignoring safety standards is widespread. Press reports and authors qualify the labor situation of Chinese migrants as “virtual indentured servitude,”²⁶⁸ “slave labor,”²⁶⁹ “slavery-like,”²⁷⁰ “semi-slavery,”²⁷¹ and “inhumane.”²⁷²

In the case of prostitution, exploitation can refer not only to the involuntary prostitution of oneself, but also to the egregious conditions inside the brothel: no use of furniture, only a crude mattress on the floor, the inability to require the use of condoms,

²⁶⁴ For a full discussion of human rights framework surrounding trafficking in persons, see Shelley Case Inglis, *Expanding International and National Protections against Trafficking For Forced Labor Using a Human Rights Framework*, Buffalo Human Rights Law Review, 7 BUFF. HUM. RTS. L. REV. 55. See also Liao, *supra* note 226, at 487.

²⁶⁵ See the Universal Declaration of Human Rights of 1948, Art 4, G.A.Res. 217 A, 3 GAOR, Resolutions (A/810), “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. This prohibition is also expressed in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 11, Dec. 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003): “No migrant worker or member of his or her family shall be held in slavery or servitude. Article 16.2 also states that Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.”

²⁶⁶ International Labour Organization, Slavery Convention, art.1, §1, Sept. 25, 1926, 60 L.N.T.S. 253.

²⁶⁷ Professor Ling-Chi Wang stated that “[Chinese undocumented workers] do work very, very hard and get exploited a lot”, see Michael Laris, *Raid Opens Door on a Crowded House; Loudoun Finds Zoning Problems at Home of Immigrant Restaurant Workers*, THE WASHINGTON POST, April 10, 2005.

²⁶⁸ See Kwong, *supra* note 98.

²⁶⁹ See Bolz, *supra* note 28. See also George, *supra* note 98.

²⁷⁰ See *Pedido de captura para un ciudadano chino responsable de tráfico humano*, OBSERVA, January 14, 2005.

²⁷¹ This is the direct translation of the expression ‘semi-esclavitud’ extensively used in Latin American press to describe the working conditions of Chinese, see *id.*

²⁷² See Ivan Cairo, *Chinese mafia active in Suriname*, CARIBBEAN NET NEWS, February 9, 2006.

the withholding of payments, and the requirement to service large number of clients.²⁷³ Undocumented migrants working in a sweatshop with no choice but to endure atrocious working conditions or face the specter of job loss and possible deportation, is seen by some as a model of enslavement for immigrants.²⁷⁴

Existence of forced labor

Forced labor is a central element of the exploitation phase of human trafficking,²⁷⁵ but reasonable minds may differ as to what precisely constitutes “forced labor.” The International Labour Organization Convention (No. 29) concerning Forced or Compulsory Labour describes the concept of forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”²⁷⁶

Nevertheless, as seen earlier, many authors and law enforcement officers have argued that the Chinese model does not constitute forced labor, as the workers are willing to take up the jobs that are offered to them and they can quit whenever they want. However, this is a superficial analysis the Chinese migrants’ situation that can be linked to the question about genuine consent in a context of a coercive environment exercised on vulnerable persons.

Researcher Yun has provided insights: “Forced labour has existed continuously; only its standards evolve and modify. Contemporary forms of forced labour reflect new forms of exploitation.”²⁷⁷ She adds, “[i]n studying forced labour as an outcome of human trafficking, emphasis should be placed not on the issue of consent but rather on the variety of circumstances and the particular vulnerability of the migrants.”²⁷⁸ According to this approach, a new and modern definition of forced labor is developing now in the context of clandestine migration that links the migrants’ vulnerability—more than their

²⁷³ The discussion on the existence of exploitation in the case of women who know that they are being moved to be prostitutes abroad is delicate since, for many, prostitution equals exploitation.

²⁷⁴ See Liao, *supra* note 226, at 502.

²⁷⁵ See the U.N. Trafficking Protocol, *supra* note 6 at Art 3, § a, second part.

²⁷⁶ See the International Labour Organization Convention (No. 29) concerning Forced or Compulsory Labour, art 2, §1, adopted by the General Conference of the International Labour Organization on 28 June 1930 (entered into force on 1 May 1932), June 28, 1930, 39 U.N.T.S. 55.

²⁷⁷ See Gao, *supra* note 28 at 3.

²⁷⁸ See *id.*

token consent—to the situation of exploitative labor. This insight connects closely to the reality of the Chinese migrants discussed in this study.

In another study, it was reported that the use of Chinese migrant labor in situations that are, or approach, forced labor is widespread. A September 2004 report from Free the Slaves and the Berkeley Human Rights Center shows that Chinese are the most numerous victims of forced labor in the United States, followed by Mexicans and Vietnamese. Chinese victims of forced labor were found in 11 cases studied and represent about 10,000 individuals.²⁷⁹

A Closer Examination of the Plight Created by the Debt

Debt bondage is one of the forms of trafficking in persons proscribed by the definition in U.N. Trafficking Protocol. Debt bondage is defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery²⁸⁰ as: “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”²⁸¹ In common parlance, the traditional concept of debt bondage dictates that the debtor is required to work for the creditor in order to repay a debt, but with the provision that the debtor generally receives little or no salary (it all is applied to the debt) and has little job choice freedom. While it is true that in most cases Chinese migrants do not normally render service directly to the creditor, the reality of the Chinese migrant is often a situation very close to debt bondage. Though the relationship is more complex and indirect, the result is actually very similar, and represents a contemporary form of “covered or hidden debt bondage.”²⁸²

The Chinese migrants perceive their situation as one dominated by the need to retire the debt and so they pay virtually all of their wages to the creditor. The debtors are

²⁷⁹ See FREE THE SLAVES AND HUMAN RIGHTS CENTER, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES (Free the Slaves and Human Rights Center) (September 2004). This estimate mostly come from press reports and telephone enquiries with social workers.

²⁸⁰ International Labour Organization, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art 1, § a, b, c, d, Sept. 7, 1956, 266 U.N.T.S. 3.

²⁸¹ *Id.*, Art 1, § a.

²⁸² See Yun, *supra* note 28.

maintained in a subordinate situation. When the debt is owed to family members, overseas migrants feel a “moral pressure.”²⁸³ When indebted to loan shark associations, it not only restricts the economic freedom of the workers, but also jeopardizes the workers’ safety and that of their families; families that are menaced by underground loan shark associations in China that often partner with organized crime groups. Threats of violence, kidnapping, or vandalism are directed to the family of migrants to force them to continue making payments.

In the United States, several Chinese human trafficking cases have in fact gone to court over the question of migrant workers performing exploitative labor to pay off high debt to loan sharks. An important element in these cases has been that the victims were minors. The Chinese parents of one 14-year-old Chinese girl sent her clandestinely to the United States where she was forced to work in restaurants to pay off her transportation debt. The girl was deemed to have been a victim of human trafficking. Ironically, the girl, now 18 years old, continues to work 12 to 13 hours a day, as a waitress, six days a week. All her money is sent back to her parents. She does not attend school, and has difficulty socializing with others. Similar cases involved Chinese migrant boys, who also were awarded status as victims of human trafficking.²⁸⁴

According to one of the lawyers involved in two of these cases, debt bondage was the legal concept used to illustrate the nature of the exploitation. It appears, nevertheless, that the main reason why these Chinese were recognized as trafficking victims was that they were underage and working in highly exploitative work. Under the U.N. Trafficking Protocol and the U.S. domestic federal human trafficking law,²⁸⁵ any type of movement or harboring of a child for the purpose of exploitation is trafficking in persons, with or without coercion, regardless of the consent of the victim. It is also important to note that in one of the American cases, the U.S. authorities determined that the traffickers were actually the parents who sent the child abroad and made him repay the debt through

²⁸³ See Yun, *supra* note 28.

²⁸⁴ There is a trend evidenced by social workers, trafficking experts and researchers in the sending of Chinese minors, either to the United States or to other Western countries. Indeed, they take up the same journeys as the adult migrants but the advantage resides in the more complex procedure that authorities have to launch to ensure their deportation. Playing on this loophole, Chinese parents put the burden of their misery on the shoulders of their children. See Cameron House (interview), *supra* note 196. See also interview with Wenchi Yu Perkins, Director of Anti-Trafficking and Human Rights Program at Vital Voices Global Partnership (September 2005).

²⁸⁵ See Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. 7101-7110 (2000).

exploitative labor.²⁸⁶ This case supports for the proposition that – at least in the case of minors – family members as well as the holders of the transportation debt can be deemed traffickers under the application of U.S. anti-trafficking law.

C. The Chain of Control Issue in the Chinese Model of Trafficking

Some scholars have maintained that the situation of the migratory Chinese does not fit the international standard for human trafficking because the “chain of control” is loose and often broken at several stages. There is also often a separation between those who organize the international travel and those who impose the brutal work conditions on the victims. First, in response, it must be noted that the U.N. Trafficking Protocol does not specify that there must be a continuation of abuse carried out *by the same traffickers* in the phenomenon of trafficking in persons.²⁸⁷ Many complex trafficking in persons scenarios involve external actors who contribute to the exploitation, but who do not act in scripted concert with traffickers. They instead play an important part in a process that maintains and furthers an oppressive or exploitative environment, often totally unaware that their efforts are in fact a link in a trafficking chain. In the context of sex trafficking in Costa Rica, for instance, taxi drivers who recruit clients for brothels are often thought of as part of the loose trafficking chain, although they do not act as conscious or premeditated allies of the traffickers. Nevertheless, they are fairly deemed as part of this trafficking chain. The same situation takes place with travel agents and hotels that especially cater to tourists who seek opportunities to sexually exploit minors. They, too, are clearly trafficking accessories.

Secondly, as this paper has explained, the Chinese migrants’ exploitation paradigm has a peculiar structure. As we have established with examples, there are cases in which Chinese traffickers directly force migrants to pay off transportation debts in

²⁸⁶ See telephone interview with a lawyer at the City Bar Justice Center (January 2006).

²⁸⁷ Indeed, the wording of the Protocol does not explicitly mention that the transporter should be the same person as the exploiter; or if they have to collaborate together, *see* Trafficking Protocol, *supra* note 6 Art. 3. However, some have mentioned the need of such a link for the recognition of a human trafficking case. *See* UN Office on Drugs and Crime, Case Study Four- Latin America and United States, page 4, Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons, Training Manual (UNODC) (March 2006), http://www.unodc.org/pdf/ecowas_training_manual_2006.pdf, where the agricultural exploitation of a Latin American migrant is a “separate crime and is not linked to the criminal network that smuggled” him to the United States, thus not making him a victim of human trafficking.

exploitative labor. This was the situation of the Chinese immigrants found laboring in slave like conditions in Uruguay or Suriname.²⁸⁸

Often, however, in the Chinese paradigm, the trafficking structure is totally split with a separation between the different traffickers and their agents – that is, the recruiters, the transportation handlers, the money-lenders, the enforcers, and ultimately, the employers. The alliance of traffickers is diffuse,²⁸⁹ but it still acts in concert. For each part of the definition of trafficking in persons, there are different actors who, most of the time, do not knowingly cooperate with each other. But each step in the process is necessary for the next one to happen: each agent's participation contributes to the final result. A similar criminal organizational pattern is present in narcotics trafficking as it involves diverse and unconnected conspirators.

In human trafficking, recruiters encourage migrants to travel. Transportation handlers move the migrant to the Americas. Loan sharks provide high-interest money to the migrant's family to finance the journey. Enforcers exercise control and if necessary apply force to ensure that payment is made once the migrant reaches the Americas. Finally, the employers take the migrants into exploitative labor for years so the migrant can repay the debt. This is a subtle and complex, but very much connected, trafficking in persons chain of activity. At first glance, it may appear as a loose collection of unstructured and unconnected events, but in fact this is a pattern of activity that repeats itself again and again as any participant or close observer can confirm.

A practical consequence of this superficially loose connection between the different actors involved in the trafficking enterprise is the difficult implementation of harsher labor laws and trafficking legislation. The action of justice can be impeded by different factors. Indeed, if the trafficker is abroad, international criminal cooperation should be strong enough to allow prosecution. But, safety measures for the victims and their families should not be overlooked as the workers are directly threatened by the loan shark in China, who has the means to harm the families of the migrants.

²⁸⁸ See *supra* page 55.

²⁸⁹ See Kwong (interview) *supra* note 148. See also CSWA (interview), *supra* note 145. The existence of Chinatown employment agencies shows that immigrants, after having been released into the city, go by themselves to an employment agency, without any advice from the smugglers. There is no proven collaboration between smugglers and the employment agencies, see interview with an officer of the Police of Emmet County, Michigan (October 2005).

Although the Chinese model of exploitation does not follow the conventional forms of trafficking in persons, the resulting outrageous exploitation is the same. Indeed, a Thai woman recruited by traffickers with promises of a good seamstress job but who winds up in an American sweatshop lives the same tragedy as the highly indebted Chinese immigrant coming voluntarily to embrace better work prospects but who finds himself working under grueling conditions in a restaurant. Both individuals have been deprived of their basic right to not be severely exploited.

IV. Conclusion

The present research endeavored to document the existence of Chinese trafficking into the Americas, without claiming that all Chinese immigrants are victims of trafficking in persons. Indeed, the Chinese migrants' paradigm is not a black and white reality, but rather, it is a reality of exploitation that exists across a continuum of abuse: some cases demonstrate extreme abuse and others less abuse.

It has been advanced that many Chinese migrants, vulnerable to labor and sexual exploitation, can fairly be seen as victims of trafficking in persons under the standards of the U.N. Trafficking Protocol. This report has strived to demonstrate that different elements—some specific to illegal Chinese migrants, others not—coalesce to establish and maintain a coercive environment that takes advantage of the migrants' vulnerability. Indeed, many traffickers take advantage of the substantial indebtedness of Chinese illegal migrants and restrict them to highly exploitative living and working conditions, all while profiting from the situation.

As seen previously, many experts think that Chinese workers are simply victims of a widespread climate of labor abuse, based mostly on the vulnerable immigration status of the workers. But it seems that in this debate the most important goal is the protection of the abused migrant. Influencing this community will require multiple, strong and long term enforcement efforts from labor authorities—efforts that may not immediately protect exploited immigrants. The protection of those currently being exploited falls upon politicians, but will also be affected by the practice of experts, lawyers, law enforcers, social workers and others who have power at the community level. Currently, labor law enforcement agencies in the United States seem to be overwhelmed by the magnitude of labor abuses suffered by Chinese migrants. Exploitation in Chinese ethnic business continues to flourish and does not seem to be likely to decrease soon. Openly including the Chinese model of exploitation into the net of protection cast by the concept of human trafficking will fairly remediate the current lack of protection.

However, one feared consequence, in the eyes of politicians and the public, of recognizing the current model of Chinese illegal workers as trafficking victims relates to the sensitive issue of immigration. In the United States, some already see trafficking as

an excuse to open the immigration floodgate.²⁹⁰ This scenario, however, is not likely to play out as illegal immigrants are generally too afraid and too psychologically restrained to report their abuses or to denounce their abusers to any authority. Even when the possibility to “break free” is presented (for instance, during a raid by a law enforcement taskforce), exploited workers do not automatically jump at the chance, partly because they do not recognize themselves as victims.²⁹¹ Also, it is needless to add that when assistance is offered to trafficking victims, the result is a long process through which not all victims are ready to go (for instance, confronting his or her abuser during the prosecution phase of a criminal proceeding as required by U.S. trafficking law). Finally, the potential migratory, social, and medical benefits that result from being classified as a victim of human trafficking would have to be known by illegal migrants before being misused as a tool to facilitate illegal immigration.

²⁹⁰ See Thomas Allen, *T Visas—The Refugee Industry's Latest Racket*, VDARE.COM, July 07, 2004, available at http://www.vdare.com/allen/t_visas.htm.

²⁹¹ See the case of Mexican women, found during a raid and asked if victims of sex trafficking in persons. Out of 10 women, only two claimed to have been forced into the work. The rest of them could have lied to be recognized as trafficking victims but did not, see Zeitlin, *supra* note 242. This actually underlines the excessive importance given to consent.

V. Recommendations

- A central recommendation of this study is to first raise and recognize the issue of trafficking of Chinese illegal migrants into the Americas. This serious problem, although evidenced as a massive and decades long phenomenon, has not received the attention it deserves. It is usually explained by the lower consideration of governments given towards migrants' related issues.²⁹²
- Another crucial recommendation is to encourage discussion among governments to devise a better-adapted response to the situation of Chinese smuggling and trafficking to the Americas. Common strategies should be discussed in the field of migration control, labor legislation enforcement, and trafficking in persons prevention and repression. Cooperation among source, transit and destination countries, and international and regional organizations should be at the heart of such strategies. China, in the past, has collaborated with many countries to fight illegal migration.²⁹³ The initiative of cooperation between Europe and China after the Dover tragedy in summer 2000 serves as a model of such collaboration.²⁹⁴
- Likewise, a domestic strategy has to be implemented. This paper calls for the creation of domestic trafficking legislation (and legislation on issues related to trafficking) as well as the strengthening of national and international action which encourages the implementation and execution of existing trafficking laws in both sending and receiving countries.

²⁹² An initiative of the Mexican National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*), an independent governmental body ensuring the respect of human rights in Mexico, should be applauded. It recently called the attention of the Secretary of Labor and Social Affairs and the National Institution for Migration on the situation mentioned above, of the 2 Chinese seamstresses trafficked to Mexico to work under inhuman conditions. To do so, it elaborated broader recommendations for more supervision of the situation lived by migrant workers in Mexico. For more details, see *Comisión Nacional de los Derechos Humanos, Recomendación 11/2006 sobre el caso de las señoras LF y CS, de nacionalidad china a la Secretaría del Trabajo y Previsión Social, Instituto Nacional de Migración, April 28, 2006, available at <http://www.cndh.org.mx/recomen/recomen.asp>.*

²⁹³ See *China ofrece colaboración a Uruguay en lucha contra tráfico de personas*, OBSERVA, March 2, 2005. See also *Diversos países unen esfuerzos en la lucha contra la migración ilegal*, DIARIO DEL PUEBLO, June 13, 2001, available at http://spanish.people.com.cn/spanish/200106/13/sp20010613_47509.html.

²⁹⁴ See *China backs anti-trafficking plan*, BBC NEWS, 11 October, 2000.

- Governments should also follow more transparent lines of conduct as to the procedures of visa issuance. The corruption that nourishes alien smuggling and trafficking in persons can be fought through clearer immigration practices by immigration and diplomatic authorities.

- This study also urges the diverse actors involved in the fight against human trafficking to reach a uniform understanding of trafficking in persons. Doctrinal conflicts and differences of interpretation should be clarified as quickly as possible in order to elucidate the qualitative scope of human trafficking. Intensifying advocacy and prevention work, as well as multiplying prosecutions, which would help to set legal precedents and standards, supports this trend towards greater understanding. Exchange of information is also key to a more explicit framework of trafficking in persons.

- Last but not the least, addressing the root causes of illegal immigration and trafficking is also essential. As it has been demonstrate, too often poverty and perceived lack of opportunities are the main elements fueling individuals' hopes in better life abroad. This leads people from poor countries to believe that leaving is the only solution, making them blind to the hidden risks and unseen cost of such a journey.