



AUSTRALIAN INSTITUTE OF CRIMINOLOGY

**Organised Crime and
The Business of Migrant Trafficking**

AN ECONOMIC ANALYSIS

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AIC Occasional Seminar
Canberra

10 November 1999

ORGANISED CRIME AND THE BUSINESS OF MIGRANT TRAFFICKING

An Economic Analysis

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Introduction

The trafficking of migrants to Australia, throughout the Asia-Pacific region and around the world has become a multi-billion-dollar business for criminal organisations. Over the last ten years, thousands of migrants have been moved illegally across international borders with the assistance of professional trafficking organisations.

The increasing number of people forced or willing to move abroad as well as the restrictions placed on legitimate migration systems have translated into organised crime. Around the world, trafficking organisations have learned to take advantage of this structural inequality, creating sophisticated channels of illegal migration while exploiting those forced or willing to migrate.

This paper seeks to examine trafficking organisations in light of the most recent theories and interpretations of organised crime, that is the economic analysis of transnational criminal organisations. With respect to the elaboration of future countermeasures on national, regional and international levels, the aim of this paper is to identify more precisely the major organisational and operational features of the migrant trafficking business.

The paper begins with an introductory discussion of the economic approach to organised crime in part 1. Part 2 analyses the illegal market in which criminal organisations, in particular traffickers, operate. This provides the working basis for the examination of the migrant trafficking organisation in part 3 of the paper.

* The author is a PhD student at The University of Adelaide School of Law. The author would like to thank Mr Ian D. Leader-Elliott of The University of Adelaide School of Law, Ms Fiona David of the Australian Institute of Criminology, Mr Benjamin J. Daughtry and Ms Elisabeth J. Muir for their great support, enthusiasm and encouragement.

1. Economic analysis of organised crime

Organised crime is a phenomenon that has emerged in different cultures, societies and countries all over the world. It has become global in scale and is no longer exclusive to certain geographical areas, to singular ethnic groups or to particular social systems. Organised crime is ubiquitous.

For a better understanding of organised crime and for the elaboration of appropriate measures to fight it, it is necessary to explore the context of organised crime and analyse the legal, social and political conditions which make the existence and emergence of organised crime possible. While early approaches to organised crime such as, for example, 'milieu studies' or the 'alien conspiracy theory' seem to have been widely discredited, the most recent — and probably most successful — attempt to examine organised crime can be found in the economic analysis of criminal organisations, their environment, structure and operations.

1.1. Background

1.1.1. *The economics of crime*

The recognition of economic features in criminal behaviour began in the United States in the late 1960s. Gary S. Becker's article "Crime and Punishment: An Economic Approach", published in 1968,¹ is generally considered the earliest study of crime from an economic standpoint. Becker seeks to examine criminal behaviour in the light of purely economic factors as he perceives crime as the result of rational calculations of the offender:

The individual calculates (1) all his practical opportunities of earning legitimate income, (2) the amounts of income offered by these opportunities, (3) the amounts of income offered by various illegal methods, (4) the probability of being arrested if he acts illegally and (5) the probable punishment should he be caught. After making these calculations, he chooses the act or occupation with the highest discounted return.²

A wide range of economic studies of crime have been undertaken since Becker's initial work.³ The underlying principle of economic analyses of crime has been the assumption that crime can be considered as illegal economic activity and that the perpetrators are "rationally and normally calculating people maximising their preferences subject to given constraints ... like the rest of us."⁴

An example of the changing attitude towards crime and criminals is the studies on crime and entrepreneurship conducted by Dwight C. Smith Jr. in the late 1970s. After investigating criminal activity in the United States, Smith suggested that crime and its various manifestations be positioned in the following taxonomy:

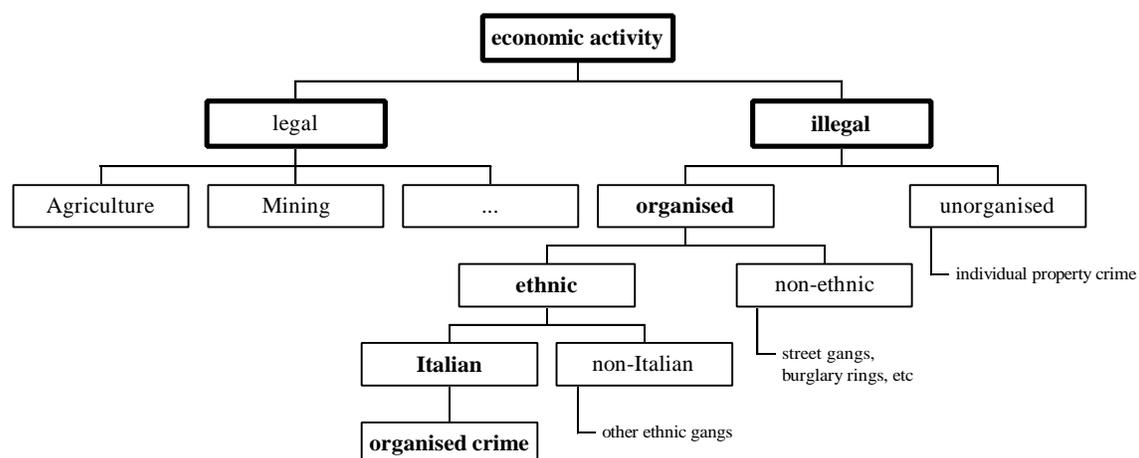
¹ Becker, "Crime and Punishment: An Economic Approach" (1968) 3 *Journal of Political Economy* 169-217.

² Becker as cited in Sullivan, "The Economics of Crime" (1973) 19 *Crim&Del* 138 at 141.

³ For an overview of the early literature on the economics of crime see Sullivan, "The Economics of Crime: An Introduction to the Literature" (1973) 19 *Crim&Del* 138-149. For more recent studies see, for example, Adreano, Siegfried (eds), *The Economics of Crime* (Wiley & Sons, New York, 1980); Findlay, *The Globalisation of Crime* (Cambridge University Press, 1999) pp138-166; Hellmann, *The Economics of Crime* (St. Martin's Press, New York, 1980); Rottenberg (ed), *The Economics of Crime and Punishment* (American Enterprise Institute for Public Policy Research, Washington (DC), 1973).

⁴ Sullivan, "The Economics of Crime" (1973) 19 *Crim&Del* 138 at 140.

Chart 1: A taxonomy of all economic activity⁵



Although Smith's taxonomy of economic activity classifies organised crime as an ethnic organised illegal economic activity exclusive to Italians in the US, his major achievement is to consider crime as the illegal expression of economic activity. The spectrum of economic activity ranges from legal to criminal activities, from legitimate to illegitimate businesses. Crime and economy are no longer viewed as totally distinct and crime is no longer perceived as the evil, irrational conduct of criminals external to society. Furthermore, Smith states that organised crime will be a reality as long as society considers personal gain to be more important than equity. Some groups of people will always take advantage of economic opportunities in pursuit of their own wealth and power, regardless of whether or not they pursue these goals through criminal means.

1.1.2. Early economic approaches to organised crime

With the increasing crime levels and growing concern about organised crime in the United States in the late 1960s, criminologists and US Government authorities started to look for new explanations for organised crime. On the basis of the economic analysis of crime as described previously, first assumptions were made about crime as a business. The early studies were very cautious about drawing links between criminal and business activities, stating that

- (1) business and crime are distinct, and totally separate, categories of behaviour;
- (2) business is most appropriately understood in terms that encompass legitimate and legal products and services;
- (3) beyond such point of classification, size and ownership are the major distinctions within business (which is to suggest by their omission that shades of legality and legitimacy are not);
- (4) the professionally managed corporation is the predominant model of business;
- (5) if any managed area of criminal activity is to be seen as the equivalent of business, the structure of the professionally managed corporation will provide the most useful parallels.⁶

Following a number of inquiries into organised crime, the US Government's Task Force on Organised Crime published its report in 1967. This report was the first to state explicitly that "the core of organised crime activity is the supplying of illegal goods and services ... to countless number of citizen customers."⁷ Four years later, Harvard economist Thomas C. Schelling wrote "It is becoming widely accepted that the business of organised crime is to provide the public with illicit goods and services" and, quoting a report by

⁵ Smith, "Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise" (1980) 26 *Crim&Del* 358 at 369; cf Smith, "Organized Crime and Entrepreneurship" (1978) 6 *IJCP* 161 at 169.

⁶ Smith, "Paragons, Pariahs, and Pirates; A Spectrum-Based Theory of Enterprise" (1980) 26 *Crim&Del* 358 at 361.

⁷ US President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Organised Crime* (US Government Printing Office, Washington (DC), 1967) p1.

Mark Furstenberg, that “it is well known that organised crime exists and thrives because it provides services the public demands. Organised crime depends not on victims, but on customers”.⁸

The number of economic studies of organised crime has increased rapidly from the 1970s and 1980s until today.⁹ In the field of criminology there is widespread agreement that economic analyses of organised crime have been very successful in providing an understanding of the objectives and the organisational and operational features of criminal organisations. The following section seeks to illustrate the fundamental principles of (legal and illegal) business activity in order to develop a theoretical framework for the subsequent examination of migrant trafficking organisations.

1.2. Principles and objectives of economic activity

The principal characteristic that renders organised crime distinct from other forms of criminal behaviour is the underlying objective of this illicit activity.

The objective of what can be considered as ‘ordinary crime’ is typically some sort of unlawful distribution of resources, money in particular. The proceeds deriving from ordinary crime are usually appropriative, i.e. they remain with and are used by the perpetrator(s) of the criminal act. Unlike organised crime, ordinary crime includes affective criminal conduct which does not serve economic purposes.¹⁰

The major goal of organised crime, for instance, is to maximise economic gain. It responds to a particular demand and the profits of the activities go to people who stand back and are not directly involved in committing the crime. In this respect, organised crime’s objective does not differ from that of commercial organisations. “Crimes are to criminal organisation as legal activities are to legal enterprise.”¹¹ Like any other economic activity, crime may be carried out through various enterprises and market structures. In trying to understand criminal organisations, the starting point of economic theories is to view them as organisations in the illegal market and consider in particular the similarities and differences between legal and illegal economic activities.

Financial gain and the pursuit of profit are the primary objectives of any economic activity, be it legal and conducted by legitimate enterprises or illegal and conducted by criminal organisations. Attaining power, influence and status might be considered as additional goals, however, in the first place they serve to protect the wealth already won and to allow the accumulation of even greater profit by all means.

For the purpose of maximising the financial gain of the business, both criminal organisations and legal businesses

- seek to earn money by selling the goods and services which they provide;
- use profits to pay employees and to invest in new technology and human resources in order to increase the financial return of the operations;

⁸ Schelling, “What is the Business of Organised Crime?” (1971) 20 *J Pub L* 71 at 71; cf Schelling, “Economic Analysis and Organised Crime”, in US President’s Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Organised Crime* (US Government Printing Office, Washington (DC), 1967) pp114-115; Dick, “When Does Organised Crime Pay? A Transaction Cost Analysis” (1995) 15 (1) *IRLE* 25 at 25.

⁹ See, for example (in order of publication), Cressey, *Criminal Organisation: Its Elementary Forms* (Heinemann, London, 1972); Cohen, “The Concept of Criminal Organisation” (1977) 17 (2) *BJ Crim* 97-111; Anderson, *The Business of Organized Crime* (Hoover, Stanford (CA), 1979); Reuter, *Disorganized Crime* (MIT, Cambridge (MA), 1983); Alexander, Caiden (eds), *The Politics and Economics of Organized Crime* (Heath, Lexington (MA), 1985); O’Malley, “The Illegal Sector of Capital: A Theoretical Examination of “Organizing Crime”” (1985) 9 *Contemporary Crises* 81-92; Moore, “Organized Crime as a Business Enterprise” in Edelhertz (ed), *Major Issues in Organized Crime Control* (US Department of Justice, Washington (DC), 1987) pp51-64; Martin, Romano, *Multinational Crime* (Sage, Newbury Park (CA), 1992); Sieber, Bögel, *Logistik der Organisierten Kriminalität* (Bundeskriminalamt, Wiesbaden, 1993); Fiorentini, Peltzman (eds), *The Economics of Organized Crime* (Cambridge University Press, 1995); Iasco, *Conflitto Criminale e Attivita’ Economiche* (TRANSCRIME, Trent, 1996); Bessozi, *Organisierte Kriminalität und Empirische Forschung* (Rüeggger, Zurich, 1997); Arlacchi, “Some Observations on Illegal Markets”, in Ruggiero et al (eds), *The New European Criminology* (Routledge, London, 1998) pp203-215.

¹⁰ Cf Fiorentini, Peltzman in Fiorentini, Peltzman (eds), *The Economics of Organized Crime* (Cambridge University Press, Cambridge, 1995) p3; G.E. Fitzgerald (1989) in Dickie, Wilson, “Defining Organised Crime: An Operational Perspective” (1995) 4 (3) *CIIC* 215 at 217; Vold, *Theoretical Criminology* (Oxford University Press, 2nd ed, 1979) p343.

¹¹ Savona et al, *Globalisation of Crime* (TRANSCRIME, Trent, 1997) p2.

- diversify investments among different fields to increase profits;
- seek to expand into new geographical areas and/or new product markets.¹²

With respect to these underlying objectives of organised crime, it has been assumed — and is now widely recognised — that the theories and models which are used for the analysis of legitimate businesses and the legal market can also be applied to criminal organisations and the illegal market.¹³

1.3. Positioning organised crime

Following a rational pattern, all organisations, legal and illegal, seek to maximise their profits within their environment. Legal enterprises exist for the purpose of profit-making from the provision of legal goods and services in the legal market. Conversely, criminal organisations seek to make their profits by providing illegal goods and services in illegal markets (often described as the ‘underground economy’).

Considering the activities of organised crime in the light of economic, organisational and operational functions presents criminal organisations as rationally calculating providers of illegal goods and services. From the economic perspective looking at trade opportunities, the surrounding economic landscape and geographical circumstances of organised crime it is much more relevant than focusing on ethnicity and social background of the participants engaged in the ‘crime industry’, as have earlier theorists.

It becomes clear that the activities of criminal organisations must not be seen in isolation from legitimate economic activity. Organised crime can be regarded as entrepreneurial operations in an area normally proscribed. The spectrum of economic activity goes beyond the point of legitimacy into illicit fields. Prohibition may affect the size, scale and operations of activities in the illicit spectrum, but it does not necessarily prevent the exploitation of economic opportunities in illegal markets.

Criminal organisations can be considered as illegal counterparts to legitimate enterprises. For example, the drug trafficker can be described as a wholesaler in the illegal market, the fence as a retailer and the migrant trafficker as the illegal counterpart of a migration agent.¹⁴ But unlike their legal counterparts, to achieve their goals criminal organisations favour criminal means which for them are more effective and more lucrative relative to licit opportunities.

In applying economic theories to organised crime in order to analyse and eventually combat criminal organisations it is essential to focus on the fundamental economic conditions that govern every commercial business, be it legal or illegal. These conditions include market opportunities and regulations which, in the case of criminal organisations, can be summarised as the *illegal market*.

¹² Cf Adamoli et al, *Organised Crime around the World* (HEUNI, Helsinki, 1998) pp17, 18; Hermann, “Organised Crime and White Collar Crime: Prosecution of Organised Crime Infiltration of Legitimate Business” (1985) 16 *Rut LJ* 589 at 591; Maltz, “On Defining “Organised Crime” ” (1976) 22 *Crim&Del* 338 at 342; Meagher, *Organised Crime* (AGPS, Canberra, 1983) p21; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p6; Smith, “Organised Crime and Entrepreneurship” (1978) 6 *IJCP* 161 at 164; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p1.

¹³ Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) p17; Dick, “When Does Organised Crime Pay? A Transaction Cost Analysis” (1995) 15 (1) *IRLE* 25-45; Sieber, “The Strategic Structures of Organised Crime” (1995) 28 (2) *Comp LR* 61 at 66; Southerland, Potter, “Applying Organisation Theory to Organised Crime” (1993) 9 (3) *J Cont Crim J* 251-267; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p6.

¹⁴ Cf Bersten, “Defining Organised Crime in Australia and the USA” (1990) 23 *ANZJ Crim* 39 at 51; Smith, “Organised Crime and Entrepreneurship” (1978) 6 *IJCP* 161 at 164.

2. The illegal market

Illegal markets constitute the source of income for criminal organisations. Crime — like any other economic activity — can be carried out through various market structures. Those structures are illegal if they are used for the production, provision or distribution of illegal goods and services.

2.1. Conditions and objectives of the illegal market

2.1.1. *The emergence of illegal markets*

Dealing, producing and offering illegal goods and services are criminal offences because society has chosen to legislate against these activities. The products and services which are on offer in the illegal market have been singled out as ‘harmful’ or ‘sinful’ because they are perceived and labelled as a threat to human dignity or the general public.

The determination of which goods and services are available in the illegal market strictly depends on the relevant laws. Hence, it can be stated that it is the decisions of the legislative authorities that create illegal markets with economic opportunities for criminal organisations. The larger the markets in which transactions are proscribed by the government, the greater are the incentives for organised crime. The way in which the provision of certain goods and services is proscribed has a significant impact on the organisational schemes of the criminal enterprises that engage in illegal markets and also on the way the operational elements such as supply, production and distribution are carried out. As in the legal market, the extent of regulation is an important factor in how the goods and services are provided and, especially on the transnational level, of the location of the business.¹⁵

A common and early example of the creation of illegal markets through legislative measures is the prohibition of the manufacture, transport and sale of “intoxicating drinks” for common consumption in the United States between 1920 and 1933.¹⁶ The forbidding of liquor by Federal law created an illegal market and thereby an economic opportunity for criminal organisations to produce, import and sell alcohol illegally since the public’s demand for alcohol was not significantly affected by the introduction of prohibition.¹⁷ Interestingly, the phenomenon of organised criminal activity emerging in times of prohibition of certain goods and services in some cases appears to apply conversely to circumstances in which formerly illegal goods and services are legalised. It has been found that criminal organisations withdraw from criminal activities if they are no longer illegal. For example, after the prohibition of liquor was repealed in the US in 1933, criminal organisations suspended their alcohol producing and retailing activities. Following the diminution of soliciting and procuring offences in New York City in 1967, organised crime widely withdrew from the protection of brothels.¹⁸ But examples of that kind are somewhat limited and in many other cases, the legalisation of a formerly criminal activity has led to an emergence of organised crime.¹⁹ With respect to the impact of legal conditions on organised crime and the economic opportunities that illegal markets offer for criminal organisations, the role of the legislating government shifts into an ambiguous, conflicting position. On the one hand it is the regulation created by the legislative authority which creates illegal markets and therefore a source of income for criminal organisations. On the other hand, it is the duty of the same authority to implement measures to fight any activity that occurs in the illegal markets which have been created.

¹⁵ Cf Bersten, “Defining Organised Crime in Australia and the USA” (1990) 23 *ANZJ Crim* 39 at 50; Dick, “When Does Organised Crime Pay? A Transaction Cost Analysis” (1995) 15 (1) *IRLE* 25 at 25; Reuter, *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) pp113, 123.

¹⁶ US *National Prohibition Act* of 28 October 1919, ch.85. The Act defined all beverages containing more than 0.5% alcohol as intoxicating and s12 of the Act provided that no person manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor.

¹⁷ Cf Abadinsky, *Organised Crime*, (Nelson-Hall, Chicago, 4th ed, 1994) pp88-96; Hellmann, *The Economics of Crime* (St. Martin’s Press, New York, 1980) p168; Reuter, *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) p1; Schelling, “What is the Business of Organised Crime?” (1971) 20 *J Pub L* 71 at 71.

¹⁸ Cf Dick, “When Does Organised Crime Pay? A Transaction Cost Analysis” (1995) 15 (1) *IRLE* 25 at 36.

¹⁹ The legalisation of brothels and some forms of prostitution in Victoria, Australia starting in 1985, for instance, was followed by a significant rise in organised crime. Also, the legalisation of gambling did not reduce the opportunities for organised crime; it only increased competition.

In summary, it can be stated that the economic opportunities of illegal markets are the incentives for organised crime. Criminal organisations come into existence and flourish simply because of the dynamics of the illegal markets in which they operate. Organised crime can therefore be considered as the rational response to substantial economic opportunities in areas which are proscribed by government regulation.

2.1.2. Globalisation

Increasing mobility and declining international restrictions on movements of goods, money and services have created new global markets with transnational business opportunities. The globalisation of trade facilitated access to foreign markets and the advantages offered by technological innovations have made many enterprises expand their activities across borders and seek to develop their activities on a global scale. The economic opportunities offered by globalisation are not exclusive to legitimate organisations. Although many criminal organisations appear to operate predominantly at the national level, there is growing evidence that organised crime systematically creates international structures and violates the legislation of more than one country to benefit from the changes in world markets and their regulations. Organised crime has quickly responded to the emergence of global trading and international financial networks by adapting organisational and operational structures to the challenges of global activities. In order to exploit illegal market opportunities in other countries, criminal organisations have learned to use the discrepancies that occur between different national legal and financial systems to their best advantage.²⁰

2.2. Special features of the illegal market

The purpose of this section is to examine the impact of the illegal status of commodities in the illegal market and identify the major features of illegal market activity. Unlike in the legal market, some functional problems may arise with the prohibition of goods and services. The illegal status of a product or service has significant organisational and operational consequences for the provider. For example, access to capital, banking facilities and modes of transportation is not available to criminal organisations in the same way it is to enterprises in the legal market.

The major features of activities in illegal markets are:

- *Contracts and ownership are not protected by law and participants cannot seek protection from courts and law enforcement authorities.*

Government authorities are not available to assist participants in illegal markets. The regulations that cover activities in legal markets do not apply to illegal markets. Ownership and contracts in illegal markets are not legally recognised and therefore cannot be legally transferred and enforced. Consequently, criminal organisations have to develop alternative ways to ensure their contracts are upheld and to persuade employees, customers and business partners to meet their obligations.²¹ This enforcement often involves the use of threats and violence.

- *Use of threats, intimidation and violence*

Criminal organisations cannot rely on legal protection of their activities and must find alternative ways to maintain order among their employees, to settle disputes within the organisation and between competing organisations, and also to control customers who pose a serious risk of detection of the criminal activities. A major issue related to organised crime is the use of threats, intimidation and violence as enforcement tools.

The creation of fear through threats is used to maintain order and discipline, to prevent disputes and disobedience and also to facilitate the conduct of the organisation's criminal activities. Intimidation and

²⁰ Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) pVIII; Myers, "The Emerging Threat of Transnational Organised Crime from the East" (1996) 24 *CL&SC* 181 at 183; Australia, Parliamentary Joint Committee on the NCA, *Asian Organised Crime in Australia* (AGPS, Canberra, 1995) p56; Savona et al, *Processi di Globalizzazione e Criminalità Organizzata Transnazionale* (TRANSCRIME, Trent, 1998) pp2-4, 6-9; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p5.

²¹ Anderson, *The Business of Organised Crime* (Hoover, Stanford (CA), 1979) p44; Block, Chambliss, *Organizing Crime* (Elsevier, New York, 1981) p92; Smith, "Organised Crime and Entrepreneurship" (1978) 6 *IJCP* 161 at 167

violence are crucial instruments for resolving conflicts, silencing potential witnesses, and eliminating business rivals or even government and law enforcement agents who interfere with the criminal organisation's operations.²²

- *Defence mechanisms*

Participants in organised crime face a permanent risk of detection and arrest. Also, assets related to the criminal activities may be seized at any time by law enforcement agencies or, in some cases, by competing criminal organisations. Because organised crime activities are the subject of law enforcement investigations and prosecution, criminal organisations need to find mechanisms to disguise their offences, their members and the proceeds of their crimes.²³

For example, it has been found that a key tool to protect the criminal organisation from penetration by law enforcement is ethnicity of the members. By relying on networks of ethnic participants, the criminal organisation as a whole becomes more difficult to penetrate as the barriers of language and culture make investigations by domestic authorities more difficult. Moreover, criminal organisations protect themselves by using modern telecommunications and computing technologies for transnational financial transactions and electronic data and information exchange within and among organisations. Further defence mechanisms include the use of threats and violence as mentioned above and the corruption of government officials.

- *Corruption and bribery*

Systematic corruption and bribery have become essential features of contemporary organised crime. As organised crime involves activities across international borders, the corruption and bribery of government officials are important tools to facilitate the conduct of the criminal activity and to enable the criminal organisation to operate with impunity.²⁴ In the case of migrant trafficking, corruption and bribery particularly involves immigration control and customs officers in departure, transit and destination countries.²⁵

The ways in which government officials are corrupted by criminal organisations vary widely and depend on the 'service' required from the corruptee. One common method, for instance, appears to be the 'selling' of information on competitors by criminal organisations to law enforcement agencies in return for information about eventual investigations against themselves.²⁶ Furthermore, in many countries the central government has lost control over lower levels of government employees and corruption has emerged as a systematic and normal part of the local authorities' operations. But corruption is not exclusive to the lower levels of government officials who ignore or facilitate singular violations of the law for money. It also involves the highest levels of government, from which information is obtained about future law enforcement and legislative activities.²⁷

²² Martin, Romano, *Multinational Crime* (Sage, Newbury Park (CA), 1992) p115; Moore, "Organised Crime as a Business Enterprise", in Edelhertz (ed), *Major Issues in Organised Crime Control* (US Department of Justice, Washington (DC), 1987) p56; Reuter, *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) pp132-150; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p6; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p7.

²³ Cf Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) p19; Reuter, *The Organisation of Illegal Markets: An Economic Analysis* (US National Institute of Justice, Washington (DC), 1985) p7; Tobias, "The Crime Industry" (1968) 8 *BJ Crim* 247 at 249.

²⁴ Bessozi, *Organisierte Kriminalität und Empirische Forschung* (Rüegger, Zurich, 2nd ed, 1997) pp9-10; Maltz, "Toward Defining Organised Crime", in Alexander, Caiden (eds): *The Politics and Economics of Organised Crime* (Heath, Lexington (MA), 1985) pp24-26; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p6.

²⁵ Beare, "Illegal Migration", in Hernandez, Pattugalan (eds), *Transnational Crime and Regional Security in the Asia-Pacific* (CSCAP, Quezon City, 1999) pp277-279; Bolz, "Chinese Organised Crime and Illegal Alien Trafficking" (1995) 22 (3) *Asian Affairs* 147 at 152; Graycar, "Trafficking in Human Beings", paper presented at the *International Conference on 'Migration, Crime & Culture'*, Jerusalem, 7 July 1999, p4.

²⁶ Dwyne, "Organised Crime, Corruption and Power" (1997) 26 *CL&SC* 201 at 205-210.

²⁷ Bersten, "Defining Organised Crime in Australia and the USA" (1990) 23 *ANZJ Crim* 39 at 51; Sieber, Bögel, *Logistik der Organisierten Kriminalität* (Bundeskriminalamt, Wiesbaden, 1993) p7; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p7.

- *Monopolisation and extortion*

As in the legal economy, crime also depends on market conditions such as competition. The most commonly used tools to carry out activities in the illegal market are monopolisation by destroying competition, and extortion by using threats and violence and taking part of the profits of somebody else's business as the price for allowing it to continue.

The question of whether or not criminal organisations seek to obtain monopolistic control over their part of the illegal market has caused extensive discussions among criminologists and economists. For the purposes of this paper it shall be sufficient to point out that criminal organisations — like their legal counterparts — attempt to gain maximum control over their environment including their competitors. Furthermore, especially in the prostitution industry and among drug traffickers, it has been found that extortion is a widespread practice to intimidate and eliminate business rivals.²⁸

2.3. Customers of the criminal enterprise

Essential to the existence and survival of criminal organisations is a consumer population that provides a continuous demand for the goods and services that are on offer. The activities of organised crime increase or decrease in response to growing or declining consumer demand for the commodities which organised crime provides. Members of the public may generally be considered victims of criminal organisations, but they are also their customers.²⁹

Organised crime provides certain goods and services that some members of the community desire, regardless of whether or not these goods and services are illegal. As a consequence, if certain goods and services are prohibited some consumers become obliged to criminal organisations to obtain these commodities in illegal transactions.

For example, the drug dealer exists because the legal market does not satisfy the public's desire for certain narcotics. The 'loan shark' exists because the existing banking regulations in many countries leave potential customers unserved. The migrant trafficker exists where legal ways of cross-border migration are denied to people willing or forced to move abroad.³⁰

The fact that organised crime emerges in response to growing consumer demand highlights the difference between organised crime and other forms of criminal behaviour. As mentioned earlier, isolated, 'ordinary' criminal acts committed by individual offenders usually do not consider the victim's need and are designed to meet the immediate desire of the perpetrators. Organised crime instead is designed to make long-term profit by serving potential customers and satisfying a public demand for certain illegal goods and services.

2.4. The market for migrant trafficking

By definition, illegal migration depends on laws regulating who may and may not cross international borders. The combination of stricter border controls and the restrictions placed on migration systems constitute the legal conditions that have created an illegal market and economic opportunities for criminal organisations.

A significant economic or political differential between countries provides trafficking organisations with a consumer population which seeks to migrate to another country. For example, where there is a disparity in income levels between two economies, or significant unemployment in one country, but not the other, 'economic migration' will occur despite migration laws which criminalise it.³¹

²⁸ Abadinsky, *Organised Crime*, (Nelson-Hall, Chicago, 4th ed, 1994) pp7-8; Dick, "When Does Organised Crime Pay? A Transaction Cost Analysis" (1995) 15 (1) *IRLE* 25 at 26; Schelling, "Economics and Criminal Enterprise", in Adreano, Siegfried (eds), *The Economics of Crime* (John Wiley, New York, 1980) p379; Schelling, "What is the Business of Organised Crime?" (1971) 20 *J Pub L* 71 at 73-74.

²⁹ Cf Cressey, "Methodological Problems in the Study of Organised Crime as a Social Problem", in Passas (ed), *Organised Crime* (Dartmouth, Aldershot, 1995) p9; Southerland, Potter, "Applying Organisation Theory to Organised Crime" (1993) 9 (3) *J Cont Crim J* 251 at 252.

³⁰ Cf Hellmann, *The Economics of Crime* (St. Martin's Press, New York, 1980) p173; Schelling "Economics and Criminal Enterprise", in Adreano, Siegfried (eds), *The Economics of Crime* (John Wiley, New York, 1980) p393; Schelling, "What is the Business of Organised Crime?" (1971) 20 *J Pub L* 71 at 72; Smith, "Organised Crime and Entrepreneurship" (1978) 6 *IJCP* 161 at 171.

³¹ Beare, "Illegal Migration", in Hernandez, Pattugalan (eds), *Transnational Crime and Regional Security in the Asia-Pacific* (CSCAP, Quezon City, 1999) p263; Vagg, "The Borders of Crime" (1992) 32 (3)

Trafficking in migrants has become a growing business and a lucrative source of income for criminal organisations for three major reasons:

- (a) the growing demand for international migration, mostly in sending countries but to some extent also in receiving countries,
- (b) the restrictions on legal immigration imposed by industrialised countries, which have created the demand for alternative, illegal avenues of migration, and
- (c) the relatively low risks of detection, prosecution and arrest attached to trafficking compared to other activities of organised crime.

For many people traffickers have become the only available avenue to escape persecution, poverty and unemployment. It is a sad reality that potential migrants have come to accept offers by criminal traffickers, even though the price they have to pay for the services can often include long-term debt, liberty or even their lives.

2.5. Summary

Economic studies of transnational organised crime and illegal markets have contributed substantial knowledge on the organisational and operational functions of criminal organisations. The analysis of criminal organisations by looking at the methods by which they provide illegal goods and services to a potential consumer population brings to light the fact that organised crime follows the same rational and economic principles in the illegal market that govern participants in the legal market. Economic theories and research techniques which have been developed to study legitimate enterprises also apply to criminal organisations, with some additional features the illegal market requires.

The objective of the following section is to apply the economic theory of organised crime to the migrant trafficking enterprise in order to identify the organisational and operational functions of the emerging business of illegal migration.

3. The concept of the migrant trafficking enterprise

Recent years have witnessed increasing organised crime activities, especially on the transnational level. Criminal organisations have learned to exploit the economic opportunities of global illegal markets. Trafficking in migrants now constitutes a major source of income for organised crime. The loopholes and legislative discrepancies present in some areas of the world make the business of illegal migration a relatively low-risk activity, especially compared to other activities of organised crime such as, for example, drug offences, which attract much more public attention and investigation. The significant inequality of economic wealth and the differences between political and legislative systems in many parts of the world provide organised crime with large numbers of potential customers and — unless efficient countermeasures are taken — secure the traffickers a stable source of income for the years to come.³²

It is the purpose of this paper to apply economic considerations of organised crime and the illegal market to the business of migrant trafficking and develop an organisational and operational scheme of the ‘trafficking enterprise’. This analysis aims to identify more precisely the elements and mechanisms of migrant trafficking in order to provide a working basis for future elaboration of successful legislation and law enforcement strategies.

Chart 2: The concept of the migrant trafficking enterprise

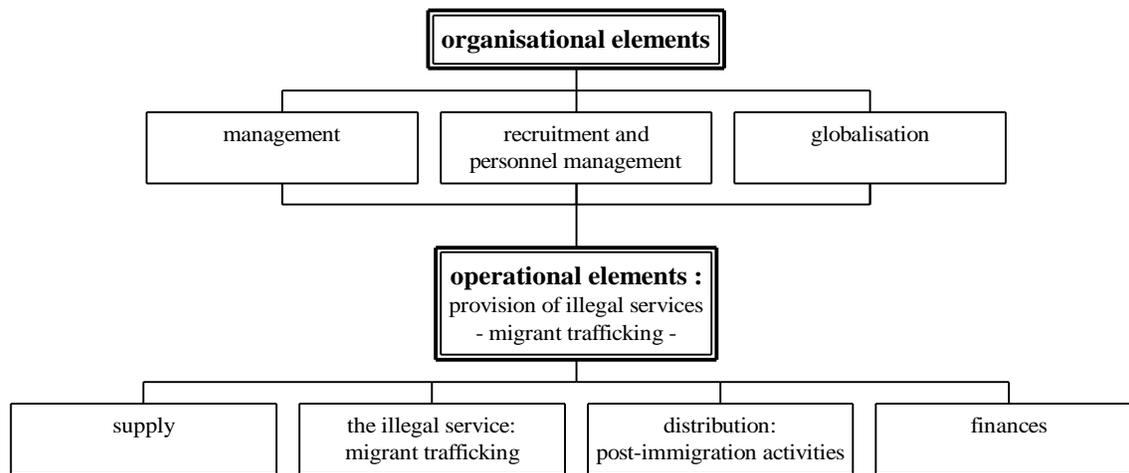


Chart 2 presents trafficking organisations as providers of illegal migration services between origin and destination countries.³³ The following sections will use this concept as a basis for examining the major organisational elements of migrant trafficking, such as management and human resources and the impact of globalisation on the criminal organisation, and analyse the operational functions of trafficking such as supply, production, distribution and finances.

3.1. Structure and management

Structure and management are the internal functions to control and administer the business and plan and organise its operations. In any organisation, sophisticated organisation schemes ensure that the enterprise — be it legal or criminal — operates in accordance with the objectives and goals set and that it reaches maximum stability, invincibility, profitability and growth.

³² For an analysis of migrant trafficking in Australia and the Asia-Pacific region see, for example, Schloenhardt, “The Business of Migration: Organised Crime and Illegal Migration in Australia and the Asia-Pacific Region” (1999) 21 (2) *Adel LR*.

³³ For other models of trafficking organisations see, for example, “Analyse der Funktionsbereiche krimineller Organisationen” in Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp86-188; “Trafficking constituted as a business” in Salt, Stein, “Migration as a Business: The Case of Trafficking” (1997) 35 (4) *Int Mig* 467 at 490; “Modus operandi of international migrant-trafficking criminal networks” in Savona, *Illicit Trafficking in Arms, Nuclear Material, People and Motor Vehicles* (TRANSCRIME, Trent, 1998) p10.

3.1.1. Control and organisation schemes

With respect to issues regarding the management, size and structure of criminal organisations the literature on organised crime is highly controversial. Some writers follow what can be called the ‘corporate model’ of organised crime, while others have described organised crime in a ‘network model’.

- *The corporate model*³⁴

Many studies by both criminologists and law enforcement agencies have described the internal organisation of organised crime groups as a hierarchical, centralised and bureaucratic structure similar to that of a corporation. According to this corporate model, criminal organisations are characterised by vertical relations between the members. Furthermore, it is assumed that criminal organisations with a centralised, pyramidal structure primarily engage in stable illegal markets and simple environments which require little or no sophisticated knowledge of the lower levels of participants which actively commit criminal offences. Examples for these markets are said to be extortion, distribution of narcotics, corruption and illegal gambling.³⁵ The advantages which arise from hierarchical centralisation are, for instance, a better ability to control members and operations of the organisation, easier exploitation of monopolies in illegal markets which are less open to competition and a more efficient management of resources.³⁶

- *The network model*³⁷

More recent studies of organised crime tend to describe the structure of criminal organisations as diverse, decentralised associations of criminals. The relations between the core members of the criminal group are designed horizontally. These studies suggest that the network model applies to criminal organisations which engage in complex and dynamic illegal markets with multiple competitors, such as prostitution and the sex industry, loan sharking and trafficking in prohibited goods. The advantages arising from the network model are, for example, independence from the decisions and knowledge of head managers, and flexibility which allows rapid reorganisation of criminal activities in response to changing consumer demand and law enforcement activities. Lower vulnerability is another advantage as only small units of the organisation are exposed if law enforcement agencies detect the criminal activities and arrest members of the organisation.³⁸

In summary, it can be said that there is no single model of criminal organisations. Their structure depends on multiple factors such as accessibility and barriers to illegal markets, the number of competitors, pricing and marketing strategies of different organisations and their attitude towards the use of threats and violence. Criminal organisations vary considerably in structure, size, geographical range and diversity of their operations and range from highly structured corporations to dynamic networks, which change constantly in order to adapt to the environment in which they operate.

³⁴ See, for example, Francis Ianni (1972) in Abadinsky, *Organised Crime* (Nelson-Hall, Chicago, 4th ed, 1994) p25; Bossard, *Transnational Crime and Criminal Law* (Office of International Criminal Justice, The University of Illinois at Chicago, 1990) pp110-111; Moore, “Organised Crime as a Business Enterprise” in Edelhertz (ed), *Major Issues in Organised Crime Control* (US Department of Justice, Washington (DC), 1987) pp52-53; US President’s Crime Commission (1967) in Smith, “Organised Crime and Entrepreneurship” (1978) 6 *IJCP* 161 at 161.

³⁵ Rubin, “The Economic Theory of the Criminal Firm”, in Rottenberg (ed), *The Economics of Crime and Punishment* (American Enterprise Institute for Public Policy Research, Washington (DC), 1973) pp156-162; Southerland, Potter, “Applying Organisation Theory to Organised Crime” (1993) 9 (3) *J Cont Crim J* 251 at 259.

³⁶ Cf Fiorentini, Peltzman in Fiorentini, Peltzman (eds), *The Economics of Organised Crime* (Cambridge University Press, 1995) pp5-6; Hellmann, *The Economics of Crime* (St. Martin’s Press, New York, 1980) p173; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p25.

³⁷ Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) ppVIII, 11-12; Joseph Albini (1971) in Abadinsky, *Organised Crime* (Nelson-Hall, Chicago, 4th ed, 1994) p26; Fiorentini, Peltzman in Fiorentini, Peltzman (eds), *The Economics of Organised Crime* (Cambridge University Press, 1995) p6; Hellmann, *The Economics of Crime* (St. Martin’s Press, New York, 1980) p174; Reuter, *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) p109; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p25.

³⁸ Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) ppVIII, 11-12; Fiorentini, Peltzman in Fiorentini, Peltzman (eds), *The Economics of Organised Crime* (Cambridge University Press, 1995) pp6, 10; Hellmann, *The Economics of Crime* (St. Martin’s Press, New York, 1980) p174; Moore, “Organised Crime as a Business Enterprise”, in Edelhertz (ed), *Major Issues in Organised Crime Control* (US Department of Justice, Washington (DC), 1987) p53; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p25.

The criminal organisations which engage in the business of migrant trafficking cover a spectrum that ranges from individual operators to large enterprises. Trafficking organisations operate in a very dynamic environment which is permanently changing due to altering demand for illegal migration, different law enforcement activities and unpredictable shifts in border surveillance. The organisations engaged in migrant trafficking have been categorised as amateur traffickers, small groups of criminals and international networks.³⁹

- *Amateur traffickers*

The category of amateur traffickers cover individuals who provide a single service to migrants such as, for instance, transport for crossing a border. Some of these small operators, especially in border areas, are only occasional traffickers who use their own boats, taxis or vans. For example, they take migrants on board their vessels against payment, depart from secluded coastal areas in one country and unload the people clandestinely in the territory of another country. Despite the individual and local character of amateur operations, many of these traffickers have been found to be working for large trafficking organisations which operate on the international level.⁴⁰

- *Small groups of organised criminals*

This category features small organised groups of traffickers which usually specialise in leading migrants from one country to another, using well-known routes. These groups show a higher level of specialisation and sophistication than amateur traffickers and operate on a more permanent basis, but their structure and organisation is less professional and complex than the internationally operating trafficking networks.

- *International trafficking networks*

The category of international trafficking networks includes large criminal organisations which have the ability to conduct the whole process of migrant trafficking, including the illegal passage, the provision of fraudulent documents, the arrangement of accommodation at transit points and the introduction of the migrants into the destination country. Given the wide range of origins of migrants, it is not surprising that complex international organisational networks have developed which can respond much faster to changing legislation and law enforcement activities, as members are located along the trafficking routes. It has been found that in many cases migrant trafficking is just one of these organisations' many criminal activities and that the trafficking routes are also used for other cross-border crimes.⁴¹

3.1.2. *Diversification of trafficking organisations*

The degree of integration and interdependence within and among organisations is a major issue for the structure and operations of legal and illegal enterprises and includes such factors as the range of clients, products and services and the geographic areas in which the organisations operate. Some markets are characterised by large, diversified organisations that cover a wide range of activities while other markets feature numerous small, specialised organisations.

³⁹ Cf Gunatilleke, "Seminar Report: International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights" (1994) 32 (4) *Int Mig* 593 at 594; IOM, "Trafficking in Migrants: Characteristics and Trends in Different Regions of the World", discussion paper for the *Eleventh IOM Seminar on Migration: International Response to Trafficking in Migrants and the Safeguarding of Human Rights*, Geneva, 26-28 Oct 1994 (IOM, Geneva, 1994) p3; Savona, *Illicit Trafficking in Arms, Nuclear Material, People and Motor Vehicles* (TRANSCRIME, Trent, 1998) p10. See also Schloenhardt as cited in Graycar, "Trafficking in Human Beings", paper presented at the *International Conference on "Migration Culture and Crime"*, Jerusalem, 7 July 1999, p9.

⁴⁰ Ghosh, *Huddled Masses and Uncertain Shores* (Kluwer, The Hague, 1998) p23; Ruggiero, "Trafficking in Human Beings: Slaves in Contemporary Europe" (1997) 25 *IJSL* 231 at 235; Savona et al, "Dynamics of Migration and Crime in Europe: New Patterns of an Old Nexus", in Schmid (ed), *Migration and Crime* (ISPAC, Milan, 1998) p73.

⁴¹ Beare, "Illegal Migration", in Hernandez, Pattugalan (eds), *Transnational Crime and Regional Security in the Asia-Pacific* (CSCAP, Quezon City, 1999) pp272-275; Ghosh, *Huddled Masses and Uncertain Shores* (Kluwer, The Hague, 1998) p23; Ruggiero, "Trafficking in Human Beings: Slaves in Contemporary Europe" (1997) 25 *IJSL* 231 at 235; Savona et al, "Dynamics of Migration and Crime in Europe: New Patterns of an Old Nexus", in Schmid (ed), *Migration and Crime* (ISPAC, Milan, 1998) p73.

Criminal organisations generally show a diversified rather than a specialised pattern. In the case of migrant trafficking strong connections have been found between drug and migrant trafficking activities. Not surprisingly, criminal organisations with well-tested trafficking routes and with personnel located in different countries along these routes use their knowledge and experience to take advantage of new opportunities. It appears that especially Asian organised crime groups use routes, means and methods of transportation for the simultaneous trafficking of people and narcotics. Furthermore, a number of recent studies have stated that criminal organisations which engage in migrant trafficking often additionally plan the systematic exploitation of migrants in the black labour market of the destination countries.⁴² These horizontal interdependencies between different criminal activities engaged in by the same criminal organisations must be distinguished from the vertical chains of individual crimes such as, for instance, corruption or the provision of fraudulent documents which are intermediary crimes committed in the process of trafficking. These vertical connections are examined further below.

3.2. Recruitment and personnel management

To improve operations and seek maximum profit any organisation — be it legitimate or criminal — attempts to reach the maximum division of labour and specialisation of its employees. Sophisticated organisations differentiate vertically by implementing different levels of employees and horizontally by separating tasks.

3.2.1. Vertical differentiation

The illegal status of organisations engaged in criminal activities generates particular problems which are also reflected in the management of staff. To the criminal organisation the employees present a major threat as they possess information about the structure and operations of the enterprise and about the participation of other members which they could divulge to law enforcement agencies. Secrecy, money and — as mentioned earlier — the creation of fear by threats and intimidation are the major tools to ensure loyal performance of employees and to prevent detection, arrest and seizure of assets. To protect the arrangers and investors of the criminal organisation it is essential to differentiate between different levels of employees and keep the information which is given to lower levels at a minimum. It has been found that criminal organisations restrict the number of people with detailed knowledge of the participation of high-ranking members and concerning future operations. To prevent treason, criminal organisations may also reward their employees by paying them higher wages or granting other benefits. Money is an important tool to ensure loyal performance and stop employees from informing against individual members, sub-units of the criminal organisation or against the organisation as a whole. Furthermore, threats and intimidation are used against employees who are suspected of informing law enforcement agencies or competing organisations.⁴³

3.2.2. Horizontal differentiation: division of labour

The division of labour is an essential feature of every enterprise. For criminal organisations clearly separating tasks and filling functional positions with qualified members protects the organisation as a whole: should there be an investigation by law enforcement agencies, only small units of the organisation are exposed.

It has been found that participants at lower levels of criminal organisations possess little, if any, particular skills or education. Their tasks and duties are usually interchangeable and do not require specific knowledge and abilities. Keeping the 'street level' of offenders separated from higher levels protects the strategic arrangers. However, to adequately react to sophisticated law enforcement strategies and technologies,

⁴² Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) ppVIII, 17; Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp110-115; Reuter, *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) pp117-118; Secretariat of the Budapest Group, *Draft Study on the Relationship between Organised Crime and Trafficking in Aliens* (ICMPD, Vienna, 1999) pp16-17.

⁴³ For additional information, see, for example the studies conducted by Peter Reuter: *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) pp115-116; and *The Organisation of Illegal Markets: An Economic Analysis* (US National Institute of Justice, Washington (DC), 1985) pp9-10. Also see Southerland, Potter, "Applying Organisation Theory to Organised Crime" (1993) 9 (3) *J Cont Crim J* 251 at 253, 257.

criminal organisations depend on employees who are able to perform very specialised tasks. In addition to the low-level actors, criminal organisations require participants with a high level of knowledge to find and exploit new opportunities for criminal activities and to modify modes, means and routes of trafficking in response to changing law enforcement and legislative measures.

The division of labour within the migrant trafficking enterprise can be categorised as follows:⁴⁴

Positioned at the top of the migrant trafficking enterprise is the category of *arrangers/investors* who are highly competent people who invest money in the trafficking operation and supervise the whole organisation and its activities. Persons in this category are rarely, if ever, known to the lower levels of employees or to the migrants who are trafficked. A hierarchical structure insulates the arrangers from being connected with the commission of specific criminal offences.⁴⁵

The category of *recruiters* includes people who work as middlemen between the arrangers and the customers of the trafficking organisation. Recruiters are responsible for finding and mobilising potential migrants in the sending country and collecting their payments at transit points and in destination countries. Usually they are not informed about the precise trafficking passage and they are paid for casual jobs only rather than on a permanent basis. Investigations have shown that in many cases the recruiters come from the same region as the migrants and are members of the same culture.⁴⁶

Transporters are the persons in charge of assisting the migrants in leaving the countries of origin. In destination countries they bring undocumented immigrants from an airport, seaport or coast to a big city. The transport-providers and operators have to be technically sophisticated to change their operations in reaction to law enforcement and coastal surveillance activities. Transporters usually do not possess inside information on the criminal organisations and their structures. They stay in contact with the organisation through intermediaries who contract them casually.⁴⁷

The next category is that of *corrupt public officials* and *protectors*. To obtain travel documents for their customers and facilitate illegal border-crossings the traffickers have to bribe government officials in immigration and law enforcement authorities. The larger international trafficking organisations have been found to have designated corruptees along common trafficking routes which in return for bribes turn a blind eye to the operations of the traffickers.⁴⁸ The corruptees individually or collectively protect the criminal organisation through abuses of their positions, status, privileges or through other violations of the law. In some departure countries corruption of low-paid government officials appears to be the only way to obtain genuine or forged travel documentation.⁴⁹

⁴⁴ Cf Chin, "Smuggling of Chinese Aliens and Organised Crime" in Schmid (ed), *Migration and Crime* (ISPAC, Milan, 1998) p139; Reuter, *The Organisation of Illegal Markets: An Economic Analysis* (US National Institute of Justice, Washington (DC), 1985) p8; Schloenhardt as cited in Graycar, "Trafficking in Human Beings", paper presented at the *International Conference on "Migration Culture and Crime"*, Jerusalem, 7 July 1999, pp11-13; Secretariat of the Budapest Group, *Draft Study on the Relationship between Organised Crime and Trafficking in Aliens* (ICMPD, Vienna, 1999) pp33-35; Vahlenkamp, Hauer, *Organisierte Kriminalität: Täterlogistik und Präventionsansätze* (Bundeskriminalamt, Wiesbaden, 1994) p15.

⁴⁵ Bersten, "Defining Organised Crime in Australia and the USA" (1990) 23 *ANZJ Crim* 39 at 53; Cressey, *Criminal Organisation: Its Elementary Forms* (Heinemann, London, 1972) pp53-58, 57; Southerland, Potter, "Applying Organisation Theory to Organised Crime" (1993) 9 (3) *J Cont Crim J* 251 at 253; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p30.

⁴⁶ Ruggiero, "Trafficking in Human Beings: Slaves in Contemporary Europe" (1997) 25 *IJSL* 231 at 236; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 477; Sieber, "The Strategic Structures of Organised Crime" (1995) 28 (2) *Comp LR* 61 at 75; Zhang, Gaylord, "Bound for the Golden Mountain: The Social Organisation of Chinese Alien Smuggling" (1996) 25 *CL&SC* 1 at 6.

⁴⁷ Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp153-158; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 480; Vahlenkamp, Hauer, *Organisierte Kriminalität: Täterlogistik und Präventionsansätze* (Bundeskriminalamt, Wiesbaden, 1994) pp15, 17.

⁴⁸ Bessozi, *Organisierte Kriminalität und empirische Forschung* (Rüegger, Zurich, 2nd ed, 1997) pp9-10; Cressey, *Criminal Organisation: Its Elementary Forms* (Heinemann, London, 1972) pp37, 50; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 482; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p6.

⁴⁹ One example is the PR China; cf Hood, "Sourcing the Problem: Why Fuzhou?", in Smith (ed), *Human Smuggling* (CSIS, Washington (DC), 1997) pp80-81; Smith, "Chinese Migrant Trafficking: A Global Challenge", in Smith (ed), *Human Smuggling* (CSIS, Washington (DC), 1997) p14.

Informers. For the trafficking operations it is necessary to have a system of information-gathering on border surveillance, immigration and transit procedures and regulations, asylum systems, law enforcement activities, etc. In some cases it has been found that information-gathering resides with a core group of informers who manage the information flow and have access to well-organised and centralised communication systems through sophisticated technology. The knowledge which informers accumulate is then used to the best advantage of the criminal organisation.⁵⁰

The category of *guides and crew members* includes people responsible for moving illegal migrants from one transit point to the other or helping the migrants to enter another country by sea or air. Crew members are people employed by the traffickers to charter trafficking vessels and accompany migrants throughout the illegal journey.

Further categories of personnel are: *enforcers*, who are often themselves illegal migrants and are primarily responsible for policing staff and migrants and for maintaining order, often using of violence; *debt-collectors*, who are the people in charge of collecting the fees from the migrants in transit and destination countries, often using threats, coercion and violence; and *money-launderers* who find ways of legalising the proceeds of their activities which are not reinvested in other operations. They are expert at laundering the proceeds of crime, disguising their origin through a string of transactions or investing them in legitimate businesses.

Supporting personnel and specialists is a category featuring mostly local people at transit points who support the organisation by providing accommodation and other assistance to illegal migrants. Traffickers also depend on skilled individuals who provide specialised services to the criminal organisation. These individuals are usually paid for casual duties only and do not share a continuing commitment to the group.

3.2.3. Human resources and recruitment

Little research has been undertaken with respect to the way in which criminal organisations recruit their members. The existing literature is highly anecdotal and often focuses on myths of initiation rituals of 'secret societies' rather than providing an analytical approach to the matter.

From the very limited information available, it appears that ethnic enclaves in transit and immigration countries are the main source for recruitment by transnational criminal organisations. The fact that many migrants meet with language difficulties in the host countries limits their employment opportunities and consequently makes them more vulnerable to recruitment by organised crime groups. Moreover, ethnic networks are difficult to penetrate for national authorities as barriers of language and culture provide mechanisms that make investigations more difficult.

3.3. Globalisation

The difference between national and transnational organised crime lies in the fact that the former violates the criminal law of one country while the latter is directed against the legislation of more than one country. As mentioned earlier, evidence is increasing that criminal organisations exploit the economic opportunities which have arisen from the globalisation of the world's markets. With the trade restrictions of international borders declining and the decreasing distinction between domestic and international markets, criminal organisations have opened themselves to transnational operations around the world.⁵¹

In the case of migrant trafficking, globalisation has opened the doors for criminal organisations which can easily access other countries and create transnational trafficking routes with multiple modes of transporting illegal migrants. The emergence of the economies in East and South-East Asia, Eastern Europe and Latin America and the rapid internationalisation of financial markets have given organised crime groups the opportunity to engage in criminal activities at the international level.

As a result of the increasing global trade, investment and communication, migrant trafficking now involves criminal activities in many different countries: those where the operations are planned, those from which

⁵⁰ Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 477-478; cf Vagg, "The Borders of Crime" (1992) 32 (3) *BJ Crim* 310 at 326.

⁵¹ Cf Martin, Romano, *Multinational Crime* (Sage, Newbury Park (CA), 1992) pp2-3; Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p5; Savona et al, *Processi di Globalizzazione e Criminalità Organizzata Transnazionale* (TRANSCRIME, Trent, 1998); UN Commission on Crime Prevention and Criminal Justice, *Implementation of the Naples Declaration and Global Action Plan against Organised Transnational Crime. Report of the Secretary-General*, E/CN.15/1996/2 paras10-11, 66; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p5.

trafficked migrants originate, the countries of embarkation and the transit and destination countries. Trafficking organisations systematically exploit the discrepancies that occur between different jurisdictions and legal systems. Their information schemes quickly find loopholes in law enforcement, border control and legislation of different countries. This enables the traffickers to adapt the trafficking routes to changing permeability of borders and migration systems.⁵² Moreover, the increasing engagement of criminal organisations in global activities has brought with it a higher degree of impunity and a reduced level of vulnerability to investigations and prosecution by national law enforcement agencies. While criminal organisations have become increasingly transnational, law enforcement has remained mostly local and national.

3.4. Supply

The promotion of their services is an essential feature for participants in legal markets as well as for criminal organisations. In the context of migrant trafficking this means that potential customers have to be found in the sending countries. Therefore trafficking organisations advertise and promote their services in the same way legitimate businesses do. The ways in which the traffickers find and attract people willing to leave their home countries covers a broad spectrum that ranges from advertising in local newspapers to contacting people on an individual basis.⁵³ To date, there is no information available on whether it is more common for recruiters to seek out migrants or whether the migrants customers initially contact the traffickers.

It has been found that in most cases the potential migrants are lured with the prospect of well-paid job opportunities abroad and by misleading information as to the dangers involved in the journey. With the promise of a stable income in the destination countries the migrants believe they will easily be able to recover the fare once they have secured work. Another method of attracting migrants that came to light recently is to circulate rumours in departing countries that illegal immigrants were allowed to stay in the destination countries under new amnesties.⁵⁴

Despite the false promises which are made, it has to be noted that primarily the traffickers respond to a strong demand for illegal migration by their customers. Many migrants need not be lured with prospects of opportunities in the destination countries. They are willing to emigrate at all costs and take any risk to leave poverty, unemployment or persecution in the sending country. Also, the existence of overseas communities is a strong incentive to migrate and it was found that in many cases illegal migrants have contact with relatives and friends in ethnic communities in the destination countries.⁵⁵

Little is known on the areas where recruitment occurs and who the potential clients of trafficking organisations are. While some studies suggest that traffickers find most of their customers in remote areas of the sending country, other investigations claim that migrants initially move to big cities where they contact trafficking agents.⁵⁶ Also, there is disagreement about the social and educational background of illegal migrants. Some studies have stated that traffickers generally recruit young males with an above-

⁵² Cf the statement by Senator Partizia Troja, Under-Secretary of State for Foreign Affairs, Italy, in Schmid (ed), *Migration and Crime* (ISPAC, Milan, 1998) p15; UN Economic and Social Council, *Criminal justice action to combat the organised smuggling of illegal migrants across national boundaries*, E/RES/1994/14, E/RES/1995/10.

⁵³ Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) p14; Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp153-158; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 477, 479-480, 490; Vahlenkamp, Hauer, *Organisierte Kriminalität: Täterlogistik und Präventionsansätze* (Bundeskriminalamt, Wiesbaden, 1994) p17.

⁵⁴ Tanner, Saunders, "Minister's Message to China", *The Australian*, 7 June 1999, p3.

⁵⁵ The impact of overseas communities has a strong impact on legal and illegal migratory movements, but this issue is beyond the scope of this paper. For more information see, for example, Beare, "Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?" (1997) 3 *Trans OrgC* 11 at 27; Ghosh, *Huddled Masses and Uncertain Shores* (Kluwer, The Hague, 1998) p62; Houd, "Sourcing the Problem: Why Fuzhou?", in Smith (ed), *Human Smuggling* (CSIS, Washington (DC), 1997) p90.

⁵⁶ Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp153-158; UN Commission on Crime Prevention and Criminal Justice, *Additional information on measures to combat alien-smuggling*, E/CN.15/1995/3 para6; Vahlenkamp, Hauer, *Organisierte Kriminalität: Täterlogistik und Präventionsansätze* (Bundeskriminalamt, Wiesbaden, 1994) p17.

average education level who are given the prospect of high ranking positions in the destination country. Furthermore, the same studies claimed that the trafficking services are usually unavailable to poor and unemployed people since the migrants and their families spend considerable amounts of money for the illegal passage.⁵⁷ Other studies have made the opposite suggestion, stating that the clients of trafficking organisations are generally members of the lower socioeconomic classes.⁵⁸ All in all, it appears that migrants — regardless of their legal status — are not a homogenous group. The people who take advantage of the services offered by trafficking organisations cover a wide spectrum of age, gender, education and socioeconomic status.

Obviously, the price that trafficking organisations charge for their services in most cases is impossible to pay for their customers. Consequently, the migrants and their families who sponsor the voyage usually sell their belongings and borrow money wherever they can. Generally, neither the migrants nor their relatives can offer any security to obtain loans from ordinary banks with reasonable interest rates. This forces them to enter 'contracts' with the traffickers, who allow loans or part payments on departure (ranging from approximately 5%-20%) and offer to defer payment of the full cost of the trip until several years after it is made. Hence, the migrants fall into debt by borrowing money at exorbitant interest rates.⁵⁹

3.5. The illegal services

The illegal services that trafficking organisations offer can be differentiated into four successive elements: (1) preparation of the migrants, (2) departure (emigration), (3) transit and (4) arrival (immigration). The services sought (including transportation, assistance in crossing borders, provision of travel documents, accommodation, employment and other support) change depending on the distance between the country of departure and the country of arrival and on the restrictions in force concerning immigration, emigration, asylum and transit.

3.5.1. Preparation of the migrants

Little information is available on how the migrants are prepared by the traffickers before they leave the country of departure. In some cases it has been found that they are given names and phone numbers of people at transit points and in destination countries. Furthermore, it has been stated that traffickers are coaching the migrants prior to departure in how to avoid border controls, how to answer immigration officers or law enforcement agencies if they are questioned or detained and how to claim asylum in the receiving countries.⁶⁰

Threats and intimidation are the major tools to control the migrants and prevent them from inhibiting the organisation's activities. Violence is used to control and maintain order among the migrants as well as employees. It is also used to silence potential witnesses to crimes or as a punishment and warning to others.

⁵⁷ Ghosh, *Huddled Masses and Uncertain Shores* (Kluwer, The Hague, 1998) p19; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 479.

⁵⁸ Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp153-158; UN Commission on Crime Prevention and Criminal Justice, *Additional information on measures to combat alien-smuggling*, E/CN.15/1995/3 para6; Vahlenkamp, Hauer, *Organisierte Kriminalität: Täterlogistik und Präventionsansätze* (Bundeskriminalamt, Wiesbaden, 1994) p17.

⁵⁹ Bolz, "Chinese Organized Crime and Illegal Alien Trafficking" (1995) 22 (3) *Asian Affairs* 147 at 149; Ruggiero, "Trafficking in Human Beings: Slaves in Contemporary Europe" (1997) 25 *IJSL* 231 at 236; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 479; Savona, Nicola, Col, "Dynamics of Migration and Crime in Europe: New Patterns of an Old Nexus" in Schmid (ed), *Migration and Crime* (ISPAC, Milan, 1998) p75; Wang, "Ocean-Going Smuggling of Illegal Chinese Immigrants" (1996) 2 (1) *Trans OrgC* 49 at 53; Zhang, Gaylord, "Bound for the Golden Mountain: The Social Organisation of Chinese Alien Smuggling" (1996) 25 *CL&SC* 1 at 7.

⁶⁰ Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 483; Secretariat of the Budapest Group, *Draft Study on the Relationship between Organized Crime and Trafficking in Aliens* (ICMPD, Vienna, 1999) pp15-16; Smith, "Chinese Migrant Trafficking: A Global Challenge" in Smith (ed), *Human Smuggling* (CSIS, Washington (DC), 1997) p16; Zhang, Gaylord, "Bound for the Golden Mountain: The Social Organisation of Chinese Alien Smuggling" (1996) 25 *CL&SC* 1 at 9.

Travel documents

Illegal migrants, regardless of their nationality, need high-quality travel documentation to move from one country to another. Such documents are required, for instance, to apply for visas, to obtain an exit authorisation from certain countries of departure, for transportation by air, border controls and — in some cases — for deceiving social and migration authorities.

However, the circumstances which cause people to flee their home countries usually make it impossible for them to obtain authentic documents. Consequently, the services of transnational traffickers, particularly in the case of trafficking by air, frequently include the production and/or supply of false travel documents. This has become a growing criminal activity, as the ability to migrate largely depends on the possession of the necessary documentation. Although modern technology has facilitated the detection and seizure of forged passports and visas, at the same time the equipment to make more convincing fraudulent documents has improved.

Trafficking organisations show increasing sophistication and variety in the ways in which they obtain travel documents, for example, by photo-substitution, visa transposing and producing forged visas, residence permits and passports, etc. Investigations have also found that passports are stolen or corruptly obtained from passport-issuing authorities, tourists and travel agencies. In order to meet visa requirements traffickers also issue fraudulent business and student invitations from non-existing institutions in the destination countries.⁶¹

In addition to fraudulent documents, migrants are often given return tickets prior to departure in order to camouflage them as tourists and meet the entry and transit requirements of destination and transit countries. Where applicable, migrants are also given cash for countries in which immigration laws require evidence of sufficient funds for the duration of the stay in that country.⁶²

3.5.2. Transport, passage and routing

(1) General objectives

Routes of migrant trafficking generally originate in countries which are relatively poor with high unemployment and terminate in comparatively wealthier ones. This very simplified pattern seems to be valid not only for illegal labour migrants but also for people fleeing persecution and generalised violence. The destinations of trafficking are not necessarily the closest havens geographically. Changing methods of illegally moving people in response to legislative and law enforcement activities are essential for the survival of the trafficking organisation. Borders and other gateways to particular countries may temporarily be closed or heavily controlled, thus requiring a change of routes via different transit points. Trafficking organisations successfully exploit the loopholes in border surveillance and controls, or simply cross borders at times when control points are short-staffed. Consequently, the routes that traffickers use may sometimes be simple and direct and at other times circuitous. For that reason, the time between departure from the country of origin and arrival at the final destination may vary from several weeks to months or even years. The information that is available on trafficking routes is highly anecdotal and little is known on how criminal organisations establish their routes. As stated above, several studies have suggested that the large transnational networks often follow well-tested routes which are also used for drug trafficking and smuggling. The trafficking of migrants to some extent seems to follow certain trends depending upon information about transit and entry controls. It has also been found that routes often reflect the knowledge traffickers have of certain locations and reflect the positions of members operating abroad.⁶³

(2) Modes of transportation

Migrant trafficking is carried out by land, air and sea and often the means of transportation is changed several times en route.

⁶¹ Cf IOM, “Organised Crime moves into Migrant Trafficking” (1996) 11 *Trafficking in Migrants* pp1-2; McAllen, “Non-Immigration Visa Fraud” (1999) 32 *Vand JTL* 237 at 253-260; Sieber, “The Strategic Structures of Organised Crime” (1995) 28 (2) *Comp LR* 61 at 75; Ulrich, *Alien Smuggling and Uncontrolled Migration in Northern Europe and the Baltic Region*, (HEUNI, Helsinki, 1995) p4.

⁶² Sieber, “The Strategic Structures of Organised Crime” (1995) 28 (2) *Comp LR* 61 at 75-76; Vahlenkamp, Hauer, *Organisierte Kriminalität: Täterlogistik und Präventionsansätze* (Bundeskriminalamt, Wiesbaden, 1994) p17.

⁶³ Cf Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp91-99, 185; Salt, Stein, “Migration as a Business: The Case of Trafficking” (1997) 35 (4) *Int Mig* 467 at 474; Vagg, “The Borders of Crime” (1992) 32 (3) *BJ Crim* 310 at 326.

Trafficking by land is the easiest way to move from one country to another. The spectrum ranges from simply walking migrants across 'green' borders⁶⁴ to sophisticated methods of clandestine trafficking in trains and trucks. Trafficking by land offers the advantage that many people can be moved in a single venture if buses or trucks are used, which leads to higher profits. If people cross borders clandestinely, for example, at night-time or beyond control points, land trafficking also removes the need for bribery and fraudulent documents.

Trafficking by air is the fastest-growing method of organised illegal migration due to increasing international air traffic as well as insufficient transit and immigration controls in many countries. The number of migrants that can be trafficked at a time is limited and the illegal passengers have to be prepared as to how to deceive officials at control points. Trafficking by air requires sophisticated travel documents or alternatively the bribery of border and immigration officials or airline personnel. In many cases trafficking organisations facilitate the onward travel of their customers by switching documents, tickets and boarding passes in the transit lounges of international airports.⁶⁵

Trafficking by sea involves a much lower risk of detection and arrest compared to land and air trafficking. Also, it enables the trafficking organisation to transport many people at once. Beyond that, the logistics of trafficking by sea are much simpler. The need for travel documents is removed and there is no need to bribe border officials as the illegal migrants do not pass through immigration control points.⁶⁶

A major concern in the context of migrant trafficking is the issue of human rights. During the journey the migrants are completely in the hands of the traffickers and in many cases they have been subject to deprivation and indignities. The transportation of illegal migrants — especially in the case of trafficking by land and sea — takes place under inhumane conditions which result in a great number of accidents and growing numbers of casualties during the dangerous passages. Particularly the common methods of seaborne trafficking pose a serious danger for the migrants. In some cases they have been found being crammed into vessels which were not seaworthy or locked in freight containers without enough air, water or food. In many cases traffickers have simply abandoned the migrants en route or put them at risk because they feared being caught by the authorities.⁶⁷

3.6. Distribution: post-immigration activities

At the end of the chain of services that trafficking organisations provide stands the immigration of the clients into the destination country and, in some circumstances, their insertion into the labour market of this country. In market terms this can be described as distribution.

3.6.1. Arrival in the destination country

To make return to their home countries impossible and to protect the trafficking organisation, all identity documents must be removed from the trafficked migrants prior to their arrival in the destination country. The documents which were initially given to the migrants in order to meet transit and immigration requirements or make them appear as tourists are usually confiscated by the traffickers after check-in at overseas airports. In other cases these documents are destroyed en route or dumped upon landing in the destination country by the people being trafficked.⁶⁸ If possible, both genuine and fraudulent documents are

⁶⁴ An expression frequently used to describe international borders without barriers.

⁶⁵ Beare, "Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats?" (1997) 3 *Trans OrgC* 11 at 31; UN General Assembly, *Measures to combat alien smuggling. Report of the Secretary-General*, A/49/350 para8.

⁶⁶ Cf UN General Assembly, *Measures to combat alien smuggling. Report of the Secretary-General*, A/49/350 para9; Wang, "Ocean-Going Smuggling of Illegal Chinese Immigrants" (1996) 2 (1) *Trans OrgC* 49 at 49.

⁶⁷ For further examples see IOM, "Trafficking in Migrants: Characteristics and Trends in Different Regions of the World" discussion paper for the *Eleventh IOM Seminar on Migration: International Response to Trafficking in Migrants and the Safeguarding of Human Rights*, Geneva, 26-28 Oct 1994 (IOM, Geneva, 1994) p4; Peck, "Removing the Venom from the Snakehead: Japan's Newest Attempt to Control Chinese Human Smuggling" (1998) 31 (4) *Vand JTL* 1041 at 1047; Smith, "Chinese Migrant Trafficking: A Global Challenge" in Smith (ed), *Human Smuggling: Chinese Migrant Trafficking and the Challenge to America's Immigration Tradition* (CSIS, Washington (DC), 1997) p11.

⁶⁸ Beare, "Illegal Migration", in Hernandez, Pattugalan (eds), *Transnational Crime and Regional Security in the Asia-Pacific* (CSCAP, Quezon City, 1999) p275; Salt, Stein, "Migration as a Business: The Case of Trafficking" (1997) 35 (4) *Int Mig* 467 at 483.

returned to the trafficking organisation and recirculated through the organisation for further use or resale. The lack of adequate documentation and identification automatically makes the people trafficked ‘unlawful non-citizens’ in the host country, and consequently puts them completely at the mercy of the traffickers.

3.6.2. Post-immigration situation

After arrival in the destination country the contact with the trafficking organisation does not necessarily cease. For using the illegal services, most migrants owe vast amounts of money to the traffickers. The accumulation of large debts and the powerless position resulting from their illegal status causes a ‘debt-bondage’ situation for the migrants once they have reached the destination country.

Consequently, many migrants remain in the hands of the traffickers who often respond to the inability to repay debts with forced labour, threats, violence and, in some cases, rape. According to recent studies, there is evidence that illegal immigrants who have fallen behind in their payment to the trafficking organisation have been kidnapped for extortion and murders.⁶⁹

Furthermore, their illegal status prevents the migrants from entering the legal labour market of the host country. Instead, they have no choice but to work illegally to earn a living and to pay off their debts. In more extreme cases they become engaged or are forced to engage in criminal activities such as prostitution, property offences or drug-related crime, often organised by the same criminal group that operated throughout the trafficking passage.⁷⁰

Their illegal status in the destination country also makes the migrants ineligible for social welfare, health insurance and education from that country. Moreover, a foreign culture and language often set the illegal immigrants apart from the broader society and discourage them from obtaining social services. The migrants find themselves in a position of social marginality which in some cases conceals illegal conduct. In this context it must be mentioned that as a consequence of their inferior status and the continuing exploitation by the traffickers illegal immigrants (according to official crime statistics) commit more crimes in destination countries than the native population. In some countries this has led to xenophobia and the call for further immigration restrictions. Moreover, it lends plausibility to the assumption that migrant trafficking is not just the business of transporting people into another country, but also of exploiting the same people once they are there.⁷¹

However, it must be stated very clearly that although a comparatively high number of illegal immigrants have been found involved in the black labour market and criminal activities in the host countries, there can be no doubt that most undocumented migrants are law-abiding people. For them the price of breaking the law of the host country — even for a minor offence — is much higher than for the native population as illegal migrants constantly have to fear detection, arrest and deportation. Also, many of them are supported by relatives and friends before, during and after the journey, and only a minority is engaged in illegal activities.

3.7. Finances

Financing its activities and managing the profits deriving from operations is an essential feature for any organisation, legal or illegal. With the vast amounts of money made in the business of illegal migration, trafficking organisations accumulate enormous profits, which are the subject of this final section.

⁶⁹ McFarlane, *Transnational Crime and Illegal Immigration in the Asia-Pacific Region* (Strategic and Defence Studies Centre, Canberra, 1999) p14; Peck, “Removing the Venom from the Snakehead: Japan’s Newest Attempt to Control Chinese Human Smuggling” (1998) 31 (4) *Vand JTL* 1041 at 1048; Ruggiero, “Trafficking in Human Beings: Slaves in Contemporary Europe” (1997) 25 *IJSL* 231 at 235; Salt, Stein, “Migration as a Business: The Case of Trafficking” (1997) 35 (4) *Int Mig* 467 at 483.

⁷⁰ Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) p79; Savona et al, *Globalisation of Crime* (TRANSCRIME, Trent, 1997) p9.

⁷¹ Adamoli et al, *Organised Crime Around the World* (HEUNI, Helsinki, 1998) p14; Peck, “Removing the Venom from the Snakehead: Japan’s Newest Attempt to Control Chinese Human Smuggling” (1998) 31 (4) *Vand JTL* 1041 at 1048; Ruggiero, “Trafficking in Human Beings: Slaves in Contemporary Europe” (1997) 25 *IJSL* 231 at 236; Skeldon, “East Asian Migration and the Changing World Order”, in Gould, Findlay (eds), *Population Migration and the Changing World Order* (Wiley & Sons, Chichester, 1994) pp189-191; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p22.

3.7.1. Financing organised crime

Any operation of legal and criminal organisations requires substantial investments in order to buy the necessary equipment, arrange transportation, pay employees, etc. Due to their illicit status, criminal organisations face substantial problems if they try to obtain capital for their operations, as access to legitimate banking and investment facilities is not available to them. Basically, criminal organisations have two different ways to finance their illegal activities:

- *Using the proceeds of crime to finance other criminal activities*

Investments can be made internally by using the profits of previous activities, i.e. reinvesting cash generated from trafficking migrants or channelling money deriving from other criminal activities. For example, Chinese criminal organisations have been found to operate transnational underground banking systems that collect money from customers of the organisation in one country and then put it together in bank-like institutions abroad.⁷²

- *Investment of external legally acquired capital*

The second option criminal organisations have to obtain money to finance their operations is the external legitimate capital market. For instance, it has been determined that criminal organisations have been able to borrow money from legitimate banks and open accounts in countries where the monitoring of money and banking regulations are not stringent or almost non-existent.⁷³ Recent investigations by various law enforcement agencies have suggested that the external acquisition of capital plays only a minor role for the finances of trafficking organisations. The fact that criminal organisations can neither present audited books for borrowing money nor offer any security for the lending institution appears to have so far prevented access of criminal organisations from acquiring money legally.⁷⁴

3.7.2. Profit estimates

Estimates and calculations of the price trafficking organisations charge for their services and the profit they make vary widely depending, for example, on the type and range of activities that are covered by the payment, the distances travelled, the nature of the related risks and the countries involved. Broadly speaking, it appears that the further the distance between departing and destination countries and the more sophisticated the trafficking operation, the higher is the trafficking fee. The fact that the payment, as discussed above, does not always take place in a single initial transaction adds to the difficulty in calculating fees and profits. The following paragraphs summarise the profit estimates that have been made in recent studies.

Investigations that tried to estimate the profit made in the migrant trafficking business placed the worldwide profits between US\$3 billion and US\$10 billion per annum, making it one of the fastest-growing and most profitable illegal businesses.⁷⁵ With respect to the Asia-Pacific region, one of the 'busiest' trafficking regions in the world, a study conducted by the University of Bangkok in 1995-96 reported that in Thailand migrant trafficking generates US\$3.2 billion annually.⁷⁶ The global profits of Chinese trafficking organisations are estimated to exceed US\$2.4 to 3.5 billion (1994), making trafficking a priority activity of

⁷² Valentin, "Present Issues for Organised Crime Control: The Australian Perspective" (1993) 4 *UNAFEI Resource Materials Series* 92 at 95.

⁷³ See, for example, Savona et al, *Organised Crime Across the Borders* (HEUNI, Helsinki, 1995) p7; UN General Assembly, *Report of the World Ministerial Conference on Organised Transnational Crime. Note by the Secretary-General, A/49/748 Annex para32.*

⁷⁴ Cf Bögel, *Strukturen und Systemanalyse der Organisierten Kriminalität in Deutschland* (Duncker & Humblot, Berlin, 1994) pp128-136; Reuter, *Disorganised Crime* (MIT Press, Cambridge (MA), 1983) pp120-121; Reuter, *The Organisation of Illegal Markets: An Economic Analysis* (US National Institute of Justice, Washington (DC), 1985) pp13-14.

⁷⁵ For world-wide profit estimates see, for example, Ghosh, *Huddled Masses and Uncertain Shores* (Kluwer, The Hague, 1998) p32; Peck, "Removing the Venom from the Snakehead: Japan's Newest Attempt to Control Chinese Human Smuggling" (1998) 31 (4) *Vand JTL* 1041 at 1044; Savona et al, "Dynamics of Migration and Crime in Europe: New Patterns of an Old Nexus" in Schmid (ed), *Migration and Crime* (ISPAC, Milan, 1998) p75; Smith, "Chinese Migrant Trafficking: A Global Challenge" in Smith (ed), *Human Smuggling* (CSIS, Washington (DC), 1997) p9; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p22.

⁷⁶ IOM (1996) 10 *Trafficking in Migrants* 3.

many Chinese criminal organisations.⁷⁷ It should be noted that as trafficking in migrants becomes more closely intertwined with the trafficking of drugs and arms as well as other transnational criminal activities, its financial attractiveness will increase.

3.7.3. Money laundering

Although the laundering of the proceeds of crime is beyond the scope of this paper, it must be pointed out that money laundering, the way of legalising the 'dirty' money deriving from crime which is not reinvested in other criminal activities, plays a major role in the finances of criminal organisations.

Only a little research has been undertaken to date that pays particular attention to the profits deriving from trafficking in migrants. From the very limited information that is available it appears that money is mostly transferred to countries which have less stringent banking regulations or which completely lack monitoring and control mechanisms for banking. In many countries of the world the financial market is beyond the control of national law enforcement and monetary agencies. Consequently, countries that have no legislation or only marginal legislation to sanction money laundering and related offences are particularly attractive for the investment of illegally earned money.⁷⁸

Furthermore, it has been found that some criminal organisations transfer their money to countries which have privacy laws that protect citizens, and as a side-effect illegal entrepreneurs from investigations by foreign and international law enforcement agencies.⁷⁹ Moreover, many countries still have few reporting requirements, if any, for large-scale cash transactions. In the countries that do, transfers are made through a large number of small transactions or by physically smuggling the money into countries where the requirements are less stringent.

⁷⁷ Adamoli et al, *Organised Crime around the World* (HEUNI, Helsinki, 1998) p78; Bolz, "Chinese Organised Crime and Illegal Alien Trafficking" (1995) 22 (3) *Asian Affairs* 147 at 148.

⁷⁸ Cf UN Commission on Crime Prevention and Criminal Justice, *Implementation of the Naples Declaration and Global Action Plan against Organized Transnational Crime. Report of the Secretary-General*, E/CN.15/1996/2 paras17 ff; Williams, Savona, *The United Nations and Transnational Organised Crime* (Frank Cass, London, 1996) p5.

⁷⁹ Eg Japan, Parliamentary Joint Committee on the NCA, *Asian Organised Crime in Australia* (AGPS, Canberra, 1995) pp42, 48.

4. Summary and conclusion

The economic analysis of organised crime demonstrates that criminal organisations seek to maximise their profits within their environments the same way legal organisations do. Criminal organisations make profits from activities in illegal markets by providing illegal goods and services. They exist because of a demand for illegal commodities.

Organised crime — and particularly migrant trafficking — exists in dynamic environments, both as a function of the illegal market and as a result of the changing nature of law enforcement activities and policies. In summary, the main reasons for the emergence of the market for migrant trafficking are: (1) the restrictions on legal immigration imposed by industrialised countries, (2) the increasing demand for entry into these countries, and (3) the comparatively low risks and high profits involved in migrant trafficking. The organisational and operational pattern of the migrant trafficking enterprise are similar to that of a provider of legitimate services with some additional features the illegal market requires. In order to maximise the economic return of their activities, traffickers imitate the structures of legal businesses through organisation, globalisation, human resources, supply, production, distribution and finance. This paper suggests that for the purpose of the examination and elaboration of existing and future countermeasures on national, regional and international levels it is necessary to recognise the economic dimension of organised crime and consider trafficking in migrants as a business conducted by transnational criminal organisations. In the fight against criminal organisations, legislation and law enforcement should be directed against the profitable market conditions of organised crime. As stated by Mittie D. Southerland and Gary D. Potter (1993)

Law enforcement policy should be aimed at disrupting the organisational environment of the enterprise rather than at jailing mythical corporate masterminds believed to be manipulating a criminal syndicate. The market and its environment are the most appropriate points of intervention to combat and control criminal enterprise.⁸⁰

It must always be remembered that criminal organisations are as capable of failure as those in the legitimate business community.

⁸⁰ Southerland/Potter, “Applying Organization Theory to Organized Crime” (1993) 9 (3) *J Cont Crim J* 251 at 258-259.