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The Prosecution of Persons Who Sexually Exploit Children In Countries Other than Their Own: A Model For Amending Existing Legislation

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The Prosecution of Persons Who Sexually Exploit Children In Countries Other than Their Own: A Model For Amending Existing Legislation

Daniel Edelson

Abstract

Part I of this Note describes child sex tourism, focusing on both the tourists and their victims. Additionally, Part I discusses extraterritorial legislation as a means to combat child sex tourism. Part II presents country specific examples of extraterritorial legislation against the sexual exploitation of children. Part III sets forth a model of extraterritorial legislation against child sex tourism as well as non-legislative steps that countries should take in response to child sex tourism. Finally, Part III recommends changes that the United States should adopt to more effectively address child sex tourism.

NOTE

THE PROSECUTION OF PERSONS WHO SEXUALLY EXPLOIT CHILDREN IN COUNTRIES OTHER THAN THEIR OWN: A MODEL FOR AMENDING EXISTING LEGISLATION

*Daniel Edelson**

*Tabi no haji wa kakisute.*¹
Tourists have no shame.

—Japanese Saying

On this trip, I've had sex with a 14 year-old girl in Mexico and a 15 year-old in Colombia. I'm helping them financially. If they don't have sex with me, they may not have enough food. If someone has a problem with me doing this, let UNICEF feed them. I've never paid more than \$20 to these young women, and that allows them to eat for a week.²

—Retired U.S. Schoolteacher

INTRODUCTION

Every year, a number of tourists from the world's wealthiest countries travel overseas and sexually exploit children in poorer countries.³ Many of these tourists are Americans, and they es-

* J.D. Candidate 2002. There is a legend that God would destroy the world but for the sake of seventy righteous people. In researching this Note, I was fortunate enough to meet some of them. They include members of children's rights organizations, police officers, and prosecutors. They work very hard with little recognition on behalf of the world's youngest victims. I dedicate this Note to all of them.

1. See Japanese Proverbs, <http://edtech.suhsd.k12.ca.us/inprogress/act/dfickett/japan/proverbs.htm>. Literally, "On a trip, collect and throw away shame."

2. Jose Lambiet, *A Sexual Marketplace in Florida's Backyard: Young Victims Traded for Cash, Trinkets*, SUN SENTINEL, May 17, 1998, at 1A.

3. See Eric Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, B.C. INT'L & COMP. L. REV. 397, 397 (1996) (describing tourists from wealthier countries who travel to countries other than their own and engage in sexual activity with children); see also Laura Lederer, *Poor Children Targets of Sex Exploitation*, NAT'L CATH. REP., Nov. 22, 1996, at 1 (discussing death of 12 year-old Philippine child, Rosario Baluyot, in 1987, following sexual exploitation by Austrian tourist). Philippine courts did not convict the tourist nor did he face prosecution at home. *Id.*; see Joshua Kurlantzick, *Child Sex Tourism in Asia Rising Sharply*, AGENCE FRANCE-PRESSE, Aug. 22, 2000 (page unavailable) (discussing rise in number of tourists, including tourists from Britain, who purchase sex from poor children in Thailand and Cambodia).

cape punishment both abroad and in the United States.⁴ The United States should take legislative and enforcement measures to hold Americans accountable for their mistreatment of children overseas.

Part I of this Note describes child sex tourism, focusing on both the tourists and their victims. Additionally, Part I discusses extraterritorial legislation as a means to combat child sex tourism. Part II presents country specific examples of extraterritorial legislation against the sexual exploitation of children. Part III sets forth a model of extraterritorial legislation against child sex tourism as well as non-legislative steps that countries should take in response to child sex tourism. Finally, Part III recommends changes that the United States should adopt to more effectively address child sex tourism.

I. *THE PROBLEM, THE VICTIMS, AND THE LAW*

Child sex tourists travel to countries other than their own and engage in sexual activity with children.⁵ Prostituted children in these countries earn money for themselves or for others by engaging in sexual activity with child sex tourists.⁶ Some countries extraterritorially extend their domestic laws against the sexual exploitation of children, thereby holding nationals liable for offenses committed in countries other than their own.⁷

A. *Child Sex Tourism*

Commentators note that child sex tourism⁸ is a global prob-

4. See *Poverty, Aids Fear Promote Sex Trade*, SEATTLE-POST INTELLIGENCER, Nov. 27, 1995, at A7 (asserting that many child sex tourists are from United States).

5. See Mukdawan Sakboon, *Call for Code to Monitor Paedophiles*, NATION (Thailand) July 3, 2001, available at 2001 WL 23492479 (describing conclusion by Tourism Authority of Thailand and World Trade Organization ("WTO") that Thailand should adopt leading role against child sex tourism because Thailand is major country visited by child sex tourists).

6. See Keith Suter, *Abuse Abroad*, WORLD TODAY, May 1, 2000 at 23 (discussing children trafficked for sexual purposes, children sold by parents into brothels, and children seeking to escape poverty by turning to sex trade).

7. Mahesh Uniyal, *"Sex Tourists" Face Prosecution at Home*, INTER PRESS SERV., Aug. 23, 2000, available at 2000 WL 4092479 (describing legislation enacted by countries to criminalize sexual activity with children beyond countries' territorial jurisdiction).

8. See Margaret Healy, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law*, 18 *FORDHAM INT'L L.J.* 1852, 1853 n.11 (1995) (defining sex tourism as people from economically more developed countries traveling to economically less developed

lem.⁹ Child sex tourists are comprised of numerous nationalities and generally come from nations (“sending countries”) that enjoy a higher standard of living than the countries to which they travel (“destination countries”).¹⁰ Sending countries include the United States,¹¹ Japan, Australia, and many European countries.¹² Destination countries include Cambodia, Fiji, the Philippines, Sri Lanka, Thailand, Vietnam, several African countries, and countries in Central and South America.¹³ When some des-

countries to purchase sexual services) (citing Julia O’Connell Davidson, *British Sex Tourists in Thailand* (paper presented to the Women’s Studies Network (UK), July 9-10, 1994)). Child sex tourists travel to countries other than their own and engage in sexual activity with children. *Id.*

9. See Ofelia Calcetas-Santos, Report of the Special Rapporteur on the Sale of Children, Prostitution and Child Pornography, ¶ 1.4, U.N. Doc. E/CN.4/1999/71 (1999) (noting global escalation of involvement of children in field of commercial sex); see also *World Doing Little to Save Children from Sexual Exploitation: Report*, AGENCE FRANCE-PRESSE, Nov. 20, 2000, available at 2000 WL 24763405 (discussing global spread of child sex tourism).

10. See Healy, *supra* note 8, at 1853 n.11 (defining sex tourism as tourists from wealthier countries visiting other countries for sexual purposes); see, e.g., Viti Muntarhorn, Special Rapporteur of the Commission on Human Rights on the Sale of Children, Provisional Report on Child Prostitution and Child Pornography, Sale of Children, Child Prostitution and Child Pornography ¶ 149, U.N. Doc. A/49/478 (1994) [hereinafter Provisional Report] (citing spread of child sex tourism and noting case of Australian child sex tourist exploit in Thailand). Japanese sex tourists often travel to other countries in East Asia. See *id.* ¶ 161 (explaining that Japanese sex tourists usually travel to nearby Asian countries).

11. See Laurie Nicole Robinson, *The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures via Article 39 of the United Nations Convention on the Rights of the Child*, 5 *IND. J. GLOBAL LEGAL STUD.* 239, 242 (1997) (identifying United States as one country from which child sex tourists travel).

12. See Defense for Children International, *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children, End Child Prostitution, Pornography and Trafficking for Sexual Purposes (“ECPAT”) Europe Law Enforcement Group* (1999) [hereinafter DCI Report] (detailing efforts to prosecute child sex tourists from Australia, Belgium, France, Germany, Japan, Netherlands, Sweden, and Switzerland); see also Douglas McArthur, *Crackdown*, *GLOBE & MAIL*, Oct. 27, 1999, at T1 (citing ECPAT sources regarding number of child sex tourists charged in Asia for sexually abusing children, broken down by country of residency, between 1992 and 1995: United States—forty; Germany—twenty-eight; Australia—twenty-two; England—nineteen; France—ten; Japan—seven; Canada—seven; Switzerland—five; Sweden—four; Denmark—four; Austria—three; Belgium—three; The Netherlands—three; Norway—two; Spain—one; Saudi Arabia—one; South Africa—one); Nicholas D. Kristof, *Children For Sale—A Special Report: Asian Childhoods Sacrificed to Prosperity’s Lust*, *N.Y. TIMES*, Apr. 14, 1996, at 1 (describing Cambodian, Philippine, and Vietnamese children forced to have sex with child sex tourists from Australia, Britain, Japan, Singapore, South Korea, Taiwan, and United States).

13. See Healy, *supra* note 8, at 1854 (identifying Asian, African, and Central and South American destination countries). Child sex tourists also travel to Eastern Eu-

tinuation countries more stringently enforce their laws against child sexual exploitation, child sex tourists shift their focuses to countries that protect children less rigorously.¹⁴

Experts distinguish between two types of tourists who sexually interfere in children's lives.¹⁵ Situational or circumstantial child sex tourists will sexually exploit children, given an opportunity to do so, but do not necessarily seek out children for sexual purposes.¹⁶ The second type of offender, a preferential child

rope. See, e.g., Mike Scollon & Vojtech Saman, *Adventures in the Sex Trade*, PRAGUE POST, Aug. 9, 2000, at 1 (discussing child prostitutes in Czech border cities). The German newspaper, *Der Spiegel*, noted that German pedophiles do not need to travel as far as Thailand to have sex with children because of the convenience of nearby Czech towns. See *id.* (citing report from *Der Spiegel*); see also Neil Connor, *Child-Sex Tourism Warning as Former Teacher is Jailed in Romania*, BIRMINGHAM POST, Sept. 16, 2000, at 3 (describing case of British teacher convicted for sexual acts with underage boys in Romania).

14. See, e.g., Serge Kovaleski, *Sexual Exploitation in Latin America Soars as Tourism Does*, COM. APPEAL, Jan. 4, 2000, at A10 (describing rise in child sex tourism in Central America as result of greater public awareness and stricter law enforcement in traditional destination countries such as Thailand and Philippines); Tom Hilditch, *The Price of Innocence*, SCOTSMAN, June 23, 2001, at 10 (describing rise in child sex tourism in Cambodia following crackdown on child sex tourism in Thailand); Uttara Choudhury, *India to Compile Foreign Paedophile Blacklist*, AGENCE FRANCE-PRESSE, June 20, 2001, available at 2001 WL 2432878 (describing rise in child sex tourism in Goa, India following crackdown in Sri Lanka on child sex tourists).

15. See K.V. LANNING, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS FOR LAW ENFORCEMENT OFFICERS INVESTIGATING CASES OF CHILD SEXUAL EXPLOITATION 6-9 (3d ed. 1992) (distinguishing between situational and preferential child molesters); JEREMY SEABROOK, NO HIDING PLACE: CHILD SEX TOURISM AND THE ROLE OF EXTRATERRITORIAL LEGISLATION x (2000) (distinguishing sex tourists who have sex with children because of preference for sex with children, from those who have sex with children for other reasons).

16. See Tim Carmody (Queensland Crime Commissioner), Project Axis, Paper Presented at Children and Crime: Victims and Offenders Conference convened by the Australia Institute of Criminology, Brisbane, Australia, June 17-18, 1999 (defining situational offenders as adults who engage in sex with children, not because of sexual preference for them, but usually because children are available sexual substitute); Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography Appointed in Accordance with Commission on Human Rights Resolution 1996/85, *Interim Report Prepared by the Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography*, ¶ 19, U.N. Doc. A/51/456 (1996) [hereinafter "Interim Report"] (defining situational child sex tourists as adult men or women who sexually exploit children not because of focused sexual interest in children, but desire to experiment with child sex). People who sexually molest children may do so for numerous reasons, not just a preference for sex with children. David M. De La Paz, *Sacrificing the Whole Truth: Florida's Deteriorating Admissibility of Similar Fact Evidence in Cases of Child Sexual Abuse*, 15 N.Y.L. SCH. J. HUM. RTS. 449, 473 (1999). Some commentators believe that there are sex tourists who have sex with children in the mistaken belief that children are less likely to carry the AIDS virus. See *'Sex Tourists' Seek Child Prostitutes to Avoid AIDS*, AT-

sex tourist, exclusively seeks sexual activity with children close to or below the age of puberty.¹⁷

Modern technology makes child sex tourism easier.¹⁸ The Internet facilitates sex tourists who wish to find children in other countries with whom they can engage in sexual activities, and also enables child sex tourists to provide each other with advice and encouragement.¹⁹ Additionally, relatively inexpensive

LANTA J. & CONST., Feb. 19, 1992, at A6 (describing sex tourists who target children because they incorrectly assume that children do not have AIDS).

17. See Frankie Chissim, *An Exploratory and Descriptive Research on Child Prostitution and Tourism in Kenya 28-29* (1996) (unpublished manuscript) (on file with author) (dividing preferential child sex tourists into two groups (1) pedophiles, who travel overseas because sex tourism is only chance for relationship with prepubescent children without feeling guilt or fear of being recognized or caught and punished, and (2) sex tourists, who want to have sex with post-pubescent children younger than 18); see also Healy, *supra* note 8, at 1854 nn.13-14 (explaining that preferential child molesters prefer to have sex with pre- and post-pubescent children). Laws often do not deter preferential child molesters because of their compulsion to have sex with children. *Id.*; see also *Thailand Losing the Battle Against Child Prostitution*, ASIAN POL. NEWS, May 24, 1999, available at 1999 WL 8893788 (citing Sanphasit Koompraphant, director of Non-Governmental Organization ("NGO") Centre for the Protection of Children's Rights, who opines that pedophiles suffer from sickness, and that laws do not frighten them from engaging in sexual activity with children).

18. See SEABROOK, *supra* note 15, at 122 (asserting that Internet and global air transportation facilitate child sex tourists' illegal sexual activity with children).

19. See Joshua Kurlantzick, *Harm's Way: Child Sex Tourism Feeds Thailand's Economy*, IN THESE TIMES, Aug. 7, 2000, at 6 (citing Thai Prosecutor Wanchai Roujanavong, who describes use of Internet by pedophiles to access child pornography, and to recommend places in southwest Asia for tourists to have sex with children); SEABROOK, *supra* note 15, at 122 (noting use of Internet as means of facilitating international sexual exploitation of children); Madeleine Mercedes Plasencia, *Internet Sexual Predators: Protecting Children in the Global Community*, 4 J. GENDER RACE & JUST. 15, 19-20 (2000) (discussing Michael Rostoker, company executive from California, who allegedly found "broker" via Internet who introduced him to 13 year-old Vietnamese girl; Rostoker purchased the girl from her parents and planned to bring her to United States); Rod Norland & Jeffrey Bartholet, *The Web's Dark Secret*, NEWSWEEK, Mar. 19, 2001, at 44 (describing like-minded men who form virtual Internet communities devoted to pedophilia, and use Internet to seduce older children). Pedophiles find like-minded people on the Internet and provide each other with advice. See Peter Cordingley & Alison Dakota Gee, *The Lost Children: Is There Any Hope for the Hundreds of Thousands of Asian Youngsters Trapped in the Sex Trade?*, ASIAWEEK, Feb. 7, 1997, at 36 (quoting posting on Internet newsgroup for pedophiles). In one Internet newsgroup, the writer of a post identifies himself as Mouse Potato. *Id.* Mouse Potato says that he no longer wishes only to fantasize about having sex with children, but wants to act on his fantasies. *Id.* He says that for over a year and a half he has downloaded stories and pictures from the newsgroup for pedophiles, and praises the newsgroup because it is place where he can share ideas with like-minded people. *Id.* Mouse Potato also says that he is pleased that others believe that adult-child sexual relationships are not all bad. *Id.* He requests advice about whether he should initiate sexual relationships with children. *Id.*

global air transportation provides child sex tourists with greater access to overseas victims.²⁰

Experts conclude that child sex tourists are typically male and come from all income brackets.²¹ Though relatively few compared with men, there are also women who are sex tourists²² and women who are child sex tourists.²³ Women involved in child sex tourism generally help procure children for child sex tourists.²⁴

B. *The Children*

The legal definition of a child varies among countries, therefore, a universal definition of a child does not exist.²⁵ Ex-

20. See SEABROOK, *supra* note 15, at 121-22 (explaining that lower cost air transportation benefits sex tourists by making travel to destination countries easier and cheaper). Compare the ease with which child sex tourists can travel to other countries with the difficulties encountered by police and courts in arresting and prosecuting child sex tourists. See DCI Report, *supra* note 12, at 109 (describing case of German suspect, identified as A.L., who, taking advantage of modern travel opportunities, moved between different countries and continents without difficulty). In contrast, authorities encounter many administrative barriers when confronted with cases that involve different countries. *Id.* It can take weeks or months to determine which parties should be responsible for dealing with criminal acts committed by people in countries other than their own. *Id.* Authorities then lose valuable time to recover evidence. *Id.*

21. See Healy, *supra* note 8, at 1867 n.93 (explaining that most child abusers are men); Cameron Barr, *Getting Adults to Think in New Ways: The Child Sex Trade: Battling a Scourge*, CHRISTIAN SCI. MONITOR, Sept. 16, 1996, at 9 (stating that adults involved in sexual exploitation of children are almost always men). Child sex tourists include men of different ages. See DCI Report, *supra* note 12, at 257 (explaining that child sex offenders can be any age). Suspects in the DCI report were men between ages 19 and 70. *Id.* Suspects also came from all income brackets, including low, middle, and upper classes. *Id.*

22. See Chissim, *supra* note 17, at 33-35 (describing female sex tourists who travel to Africa).

23. See Greg Torode, *Child-Sex Tourism Spreads its Wings 'Strong Evidence' Foreign Women Abusing Boys*, S. CHINA MORNING POST, June 16, 1999, at 12 (citing Christine Beddoe, Tourism Program Director of ECPAT (Australia), stating that growing number of child sex tourists visiting Vietnam include women who exploit Vietnamese boys in port city of Hoi An); Provisional Report, *supra* note 10, at ¶ 162 (noting female child sex tourists who travel to Gambia).

24. See, e.g., 20/20 (ABC television broadcast, Dec. 8, 2000) (interviewing female brothel operator in Costa Rica); SEABROOK, *supra* note 15, at 125 (citing cases where women provide relatives to child sex tourists in exchange for money); Interview with Sudarat Sereewat, Chairperson of Coalition to Fight against Child Exploitation ("FACE"), June 28, 2000 (discussing case of Japanese man who procured niece of Thai woman in exchange for money).

25. See Margaret Healy, *Child Pornography: An International Perspective*, Paper presented to the World Congress Against Commercial Sexual Exploitation of Children,

perts believe that child sex tourists target both male and female children who are usually poor and often homeless.²⁶ Commentators do not agree on the number of children involved in the global sex trade,²⁷ or on the amount of money involved in child sex tourism.²⁸

1. Legal Definition of a Child

An internationally accepted definition of a child does not exist.²⁹ The United Nations Convention on the Rights of the Child ("U.N. Convention") defines eighteen as the age of majority, but does not preclude countries from establishing a lower threshold.³⁰ Legislation in many countries establishes an age of

Aug. 27-31, 1996, at 3 (explaining that age at which person becomes legal adult is defined differently by different countries).

26. See, e.g., DCI Report, *supra* note 12, at 257 (discussing male and female victims of child sex tourism in several prominent cases); Ofelia Calcetas-Santos, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Addendum, Report on the Mission of the Special Rapporteur to the Republic of Fiji on the Issue of Commercial Sexual Exploitation of Children*, ¶¶ 23-41, U.N. Doc. E/CN.4/2000/73/Add.3 (1999) [hereinafter Special Rapporteur—Santos] (describing economically disadvantaged backgrounds of child prostitutes in Fiji).

27. See Healy, *supra* note 8, at 1860 (explaining that different estimates of number of child prostitutes exist, with some estimates low while other estimates appear inflated).

28. See *id.* at 1854 n.15 (noting that estimates of income derived from child prostitution range from millions to billions of U.S. dollars per year).

29. See Healy, *supra* note 25, at 3 (discussing different legal definitions of children). The U.N. Convention on the Rights of the Child ("U.N. Convention") defines "child" as person under 18 years of age, but this definition has not been universally adopted. *Id.* The difficulty in establishing the definition of "child" asserted itself when the U.N. General Assembly ratified by consensus the two Protocols to the Convention on the Rights of the Child: The Protocol on the Involvement of Children in Armed Conflict ("Children in Armed Conflict Protocol") and The Protocol on the Sale of Children, Child Pornography and Child Prostitution ("Sale of Children Protocol"). See Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 AM. J. INT'L L. 789 (2000) (explaining that definition of child varies between different countries). Developing countries, as well as Canada, Italy, and the United States, argued that age of protection should be 18, and that the Sale of Children Protocol should protect children under 18, because children under 18 cannot consent to child prostitution, child pornography, and trafficking. *Id.* at 794. The final text of the Sale of Children Protocol requires countries to criminalize activities relating to child prostitution and child pornography, without reference to country law or the age of consent. *Id.*

30. See Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 14/25, U.N. G.A.O.R. 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/44/736 (1989), 28 I.L.M. 1448 [hereinafter Convention] (Article 1 states that "child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.").

consent lower than eighteen.³¹ Varying ages of consent can frustrate the prosecution of a person for sexual crimes committed against a child in another country, if the defendant raises the defense that the alleged victim legally consented under the laws of the country where the incident occurred.³²

2. Profile of the Victims

Victims of child sex tourism are both male and female, usually poor, and often are homeless or come from abusive families.³³ For many children, prostitution offers a way to earn money for food and shelter.³⁴ Contrary to media reports describing child prostitutes held in brothels,³⁵ experts maintain

31. See SEABROOK, *supra* note 15, at 103 (discussing different ages of majority in different countries, and Philippines' establishment of 18 as age of majority). The age of consent is 13 in Japan, 15 in Sweden, and 16 in Australia, the Netherlands, and Switzerland. *Id.* Under federal law, the age of consent is 16 in the United States. See Healy, *supra* note 8, at 1907 (explaining that under Chapter 109A of 18 U.S.C., sexual acts with children of 16 or 17 years of age are legal unless the offender uses force, serious threats, or otherwise impairs the victim).

32. See DCI Report, *supra* note 12, at 257 (explaining how different ages of majority provide possible legal defense for child sex tourist because defendant could argue that according to laws of his own country, or child's country, defendant's actions did not constitute offense).

33. See *id.* at 258 (explaining that children in study were both male and female, and usually poor or homeless). Most children turned to prostitution because of desperate situations at home. *Id.*; see Special Rapporteur—Santos, *supra* note 26, ¶¶ 23-41 (noting that poverty and unstable homes play significant roles in driving Fijian children, both male and female, into prostitution). Reportedly, some parents in Fiji prostitute their children to merchant sailors. *Id.* ¶ 39. Some Fijian boys live as "house boys" and sexual servants to tourists in private homes. *Id.* ¶ 36. In other destination countries as well, parents sell their children to brothels, or pimp their children themselves. See Vandana Rastogi, *Preserving Children's Rights: The Challenges of Eradicating Child Sexual Exploitation in Thailand and India*, 22 *SUFFOLK TRANSNAT'L L. REV.* 259, 261-62 (1998) (discussing parents in India and Thailand who sell children out of desperation, to pay off debts, or to purchase consumer goods); *but see* DCI Report, *supra* note 12, at 241 (discussing case of Japanese child sex tourist, Hisao Natsume, who sexually abused Thai child from relatively stable home).

34. See Glenn Garvin Knight, *Costa Rica Struggling with Child Prostitution*, *TIMES-PICAYUNE*, Mar. 26, 2000, at 20A (explaining that throughout Central America, prostituted children sell sex to escape extreme poverty and dysfunctional families).

35. See RYAN BISHOP & LILLIAN S. ROBINSON, *NIGHT MARKET: SEXUAL CULTURES AND THE THAI ECONOMIC MIRACLE* 55 (1998) (criticizing *Time*, *N.Y. Times*, *60 Minutes*, and *Spin* for reports using identical formats, typically focusing on one Thai child's story of being sold to, and then rescued from, brothel). Reports refer to alleged fire that killed several Thai child prostitutes in brothel, because children were chained to their beds and could not escape. See, e.g., Philip Pennington, *Paying a High Price for Sex: Harsh Toll of Thai Child Prostitution*, *EVENING POST (WELLINGTON)*, July 5, 1995, at 23. Facts in these stories contradict each other unless several of these fires occurred. See *id.* (claiming

that child sex tourists often do not find their victims in brothels.³⁶

Commentators do not agree on the number of child prostitutes in the world.³⁷ End Child Prostitution, Pornography and

that four women in Phuket brothel were burned to death in 1987 in fire after being chained to basement); Patrick Quilligan, *International Community Acts to Combat Child Sex Exploitation Through Legislation*, IRISH TIMES, June 1, 1995, at 10 (interviewing one person who says she knows of child who was chained to bed in brothel, and who died in fire); Johanna Son, *Asia Children Changing Attitudes Key to Ending Sex Trade*, INTER PRESS SERVICE, Jan. 23, 1995, available at 1995 WL 10135524 (referring to Thai children's book that tells story of several Thai children killed in fire at brothel in Pattaya).

36. Email from Bruce Harris, Director of Casa Alianza, Costa Rican-based NGO that advocates for children's rights (July 29, 2000) (explaining that in Central America, not many child sex tourists find victims in brothels and that fewer families in Central America now sell their children into brothels—many foreigners find victims in bars, where girls have been tricked into working as prostitutes, as well as among hungry street children and teenagers who want money to buy consumer goods). Child sex tourists often engage in sexual activity with children, especially boys, who congregate at beaches, department stores, and Western restaurants frequented by foreigners. See Shirley Peiris, *The Sexual Exploitation of Children in Sri Lanka* (paper presented to the Millennium Conference of Chiefs of Police on Protection of Children at Risk (India) June 10-11, 2000) (explaining that child sex tourists in Sri Lanka typically (1) find their child victims at beaches and "other places of tourist concentration," (2) invite unsuspecting children to their hotel rooms, (3) procure victims through victims' own families and "friends" who force children to prostitute themselves, or (4) seduce children through promise of adoption or gifts); see also SEABROOK, *supra* note 15, at 127 (explaining that many child sex tourism cases involve men sexually exploiting boys, because men who target boys can more easily find victims in public place, such as malls, and that many societies consider relationships between foreign men and boys as less suspicious; some societies view wealthy men who support male children as philanthropists and benefactors). A particularly notorious case of child sexual exploiter masked as community benefactor involves a Swiss national named Viktor Baumann. See DCI Report, *supra* note 12, at 77 (detailing Baumann's charitable activities). Baumann, who owned manor in Etukala, Sri Lanka, earned the trust and gratitude of many Sri Lankans because of his charitable work in churches and schools. *Id.* Baumann invited numerous boys to his villa and to swim in his pool. *Id.* He showed the boys pornographic movies and sexually abused them. *Id.*

37. See ECPAT INTERNATIONAL, *A STEP FORWARD: THE THIRD REPORT ON THE IMPLEMENTATION OF THE AGENDA FOR ACTION ADOPTED AT THE WORLD CONGRESS AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN 7* (1999) [hereinafter *A STEP FORWARD*] (stating that ECPAT does not know number of child prostitutes in world); Carol Smolenski, Speech at the Weekly Lecture Series Sponsored by the Joseph Crowley Program in International Human Rights at Fordham Law School (Nov. 20, 2000) (noting that UNICEF quoted ECPAT's estimates of number of child prostitutes in world, but she is not sure whether original figures given by ECPAT are accurate); compare Rosalind Prober, *Global Justice for Children: ECPAT Unites to Fight the Global Rise in the Sexual Exploitation of Children* (Nov. 1999), at <http://www.beyondborders.org/ecpat.html> (stating that ECPAT estimates that there are 3,000,000 child prostitutes in India), with *A STEP FORWARD*, *supra*, at 8 (estimating that of 900,000 prostitutes working in India, some 30%, or 270,000, are children).

Trafficking in Children for Sexual Purposes (“ECPAT”), estimated in 1994 that Asia alone has one million child prostitutes.³⁸ The United Nations Educational, Scientific and Cultural Organization (“UNESCO”) estimates that the number of child prostitutes worldwide is between one and three million.³⁹

The difficulty in estimating the number of child prostitutes in a single country, such as Thailand, underscores the complexity in assessing the number of children involved in the global sex trade. Ten years ago, a Thai non-governmental organization (“NGO”), claimed that Thailand had 800,000 child prostitutes.⁴⁰ A few years later, one newspaper article, citing unnamed sources, stated that there were 400,000 child prostitutes in Thailand.⁴¹ The Thai Ministry of Public Health, in 1995, reported that there were 16,276 child prostitutes in Thailand.⁴² One commentator recently estimated that there are currently 35,000 child

38. See Healy, *supra* note 8, at 1861 n.50 (citing *One Million Child Prostitutes in Asia*, in UNICEF, *THE PROGRESS OF NATIONS* 39 (1994)—relying on data published by ECPAT).

39. See UNESCO *WebWorld Innocence in Danger*, at http://www.unesco.org/webworld/innocence/faq_other.html#31 (citing estimates of number of child prostitutes but conceding that exact number is not known). Commentators also offer widely disparate estimates of the money involved in the global sex trade in minors, ranging from millions to billions of U.S. dollars per year. See Healy, *supra* note 8, at 1854 n.15 (citing Child Prostitution, UNICEF Speakers’ Notes, Mar. 4, 1994, that describes child prostitution as multi-million dollar global industry); Aaron Sachs, *The Last Commodity: Child Prostitution in the Developing World*, *WORLD WATCH*, Jul./Aug. 1994, at 26 (stating that child prostitution is multi-billion dollar industry); *Child Sexual Exploitation in Developing Countries*, *REVIEW* (International Commission of Jurists), June 1990, at 42 (asserting that sex market for minors under 16 is U.S.\$5,000,000,000 dollar industry).

40. See The International Centre for Criminal Law Reform and Criminal Justice Policy, Study Tour to Thailand (Feb. 1-10, 1997), at <http://137.82.153.100/Reports/thairpt2.txt> (citing NGO Centre for Protection of Children’s Rights claim that 800,000 Thai children are involved in prostitution); see also *Sex Between Books*, *BANGKOK POST*, May 6, 2001, available at 2001 WL 17379359 (reporting that in 1993, Centre for the Protection of Children’s Rights stated that Thailand has 800,000 child prostitutes). This implausibly large figure still appears in articles and journals. See, e.g., Joe Chidley Wilhelmina & Paras Chu Showeii, *Fighting the Child Sex Trade: New Focus on an Ancient Evil*, *WORLD PRESS REVIEW*, Nov. 1, 1996, at 6; Rastogi, *supra* note 33, at 264 (claiming that Thailand might have 800,000 child prostitutes).

41. See Cordingley & Dakota, *supra* note 19 (claiming that Thailand has 40,000 child prostitutes).

42. See Kritaya Archavantikul, Institute for Population and Social Research, Mahidol University, Bangkok, Thailand, *Draft Report of Combating the Trafficking in Children and their Exploitation in Prostitution and Other Intolerable Forms of Child Labour in Maekong Basin Countries: The Case of Thailand, Myanmar, and Laos*, July 1998, ch. 3, p. 2 (citing Public Health Ministry’s count of 16,276 child prostitutes in Thailand).

prostitutes in Thailand.⁴³

C. *Combating Child Sexual Exploitation Through Extraterritorial Legislation*

Extraterritorial ("ET") legislation is legislation that a sovereign country applies to activity by its nationals that takes place beyond its territorial borders.⁴⁴ Commentators argue that to combat child sex tourism, countries should extend legislation extraterritorially prohibiting sexual crimes against children.⁴⁵ More than twenty countries legislate extraterritorially against the sexual exploitation of children.⁴⁶

1. An Overview

ET legislation⁴⁷ enables sending countries to prosecute citizens who travel to destination countries and violate the sending

43. See KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 43 (1998) (estimating 35,000 child prostitutes in Thailand based on his study). Professor Vitit Muntarbhorn considers this estimate plausible. Interview with Professor Vitit Muntarbhorn, Professor of the Faculty of Law, Chulalongkorn University, Bangkok, June 18, 2000. From 1990-94, Professor Muntarbhorn was U.N. Special Rapporteur on the Sale of Children. *Id.* He was also Chairman of the Drafting Committee and Rapporteur-General of the 1996 World Congress against Commercial Sexual Exploitation of Children. *Id.*

44. See Mark Weisburd, *Due Process Limitations of Federal Extraterritorial Legislation?*, 35 COLUM. J. TRANSNAT'L L. 379, 383 (1997) (discussing right of sovereign countries to enact extraterritorial ("ET") legislation).

45. See SEABROOK, *supra* note 15, at 9 (explaining that ET legislation helps combat child sex tourism); Provisional Report, *supra* note 10, ¶ 167 (discussing importance of ET legislation in combating international sexual exploitation of children); *Canadian Judge Draws Dark Picture of Child Abuses Worldwide*, ASSOCIATED PRESS, Apr. 20, 2000 (page unavailable) (citing Andree Ruffo, president of the International Bureau for Children's Rights, who describes dire circumstances of children worldwide, and notes the 1997 Paris meeting of the International Tribunal for Children's Justice which called for ET legislation to curb sexual exploitation of children).

46. See DCI Report, *supra* note 12, at 10 (discussing countries with legislation against sexual crimes against children that extend beyond countries' territorial borders).

47. See Geoffrey R. Watson, *Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction*, 17 YALE J. INT'L L. 41, 43 (1992) (explaining that under international law, five bases exist for extraterritorial criminal jurisdiction: nationality principle, territorial effects principle, protective principle, universal principle, and passive personality principle). The nationality principle, the most internationally accepted extraterritorial prosecution principle, enables a country to prosecute a person for crimes committed overseas because of his nationality. *Id.* at 42. The territorial effects principle permits a country to prosecute a person for crimes that affect the country's territory. *Id.* The protective principle pertains to treason, espionage, and other crimes that jeopardize country security. *Id.* The universal principle applies to crimes against humanity and

countries' laws against sexual exploitation of children.⁴⁸ Experts explain that ET legislation establishes that countries consider the sexual exploitation of children by their citizens unacceptable, no matter where the crimes take place.⁴⁹ Additionally, ET laws increase the likelihood of successfully prosecuting child sex tourists, because the legislation denies the tourists a safe haven in their home countries.⁵⁰ Experts believe that ET legislation is crucial to prosecuting child sex tourists because destination countries are often unable⁵¹ or unwilling⁵² to prosecute defendants for crimes committed within their jurisdictions. Since the

war crimes. *Id.* at 43. The passive personality principle asserts that a country may prosecute a crime because the victim was a national of that country. *Id.* at 44.

48. See Healy, *supra* note 8, at 1888-89 (discussing examples of ET legislation from Sweden, Australia, and United States against sexual exploitation of children).

49. See, e.g., Charles P. Wallace, *Widening the War on Child Sex*, L.A. TIMES, July 13, 1994, at A1 (citing Mark Lever, aide to Australian Atty. Gen. Michael Lavarch, who explained that Australia's ET legislation against child sex tourism sends message that Australia will not tolerate Australians who abuse children of other countries).

50. See Heather C. Giordanella, *Status of § 2423(B): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 TEMP. INT'L & COMP. L.J. 133, 155 (1998) (explaining that many child sex tourists escape prosecution in countries where they committed offenses by fleeing country or by bribing law enforcement officials, and that ET legislation provides another filter that child sex tourists must pass upon returning to their home countries); Provisional Report, *supra* note 10, ¶ 167 (describing ET legislation as welcome step towards promoting accountability and responsibility for transnational sexual exploitation of children); SEABROOK, *supra* note 15, at 9.

51. See Watson, *supra* note 47, at 55 (discussing need for United States to extend laws extraterritorially because, while destination country might wish to prosecute U.S. citizen, defendant might escape back to United States). Additionally, a diplomat might commit a crime and escape prosecution in the destination country because of diplomatic immunity. *Id.* at 56. Also, a destination country might choose not to prosecute a defendant from a sending country because the defendant's actions did not constitute a crime according to the destination country's laws. *Id.* at 57.

52. Interview with Thai Police Captain (July 18, 2000) (noting that foreign defendants often bribe police officers and judges who would rather accept bribes than punish child sex tourists); Harris Email, *supra* note 36 (explaining that police forces in Central America are poorly trained to deal with social issues affecting children). Additionally, in many cases, the police are also perpetrators of sexual violence against street children. *Id.*; see Healy, *supra* note 8, at 1871 (noting that poor pay and training leaves police in many destination countries susceptible to bribery). In June 2000, Thai police arrested successful American pianist, Eric Rosser, who lived and worked in Thailand, for sexually molesting his piano students and for possession of child pornography. See Greg Barrett, *Where Pedophiles Come To Play . . . And Walk Free?*, GANNETT NEWS SERVICE, June 28, 2000 (page unavailable) (detailing Eric Rosser case). Thai police had Rosser in custody but returned his passport to him, after which Rosser evaded prosecution by fleeing the country. *Id.* One year later, in a joint operation between the FBI and Thailand, Thai police recaptured Rosser in Thailand, following a tip off. Marc Lerner, *U.S. Pedophile Jailed in Bangkok Facing Extradition*, WASH. TIMES, Aug. 24, 2001, at A13.

World Congress Against Commercial Sexual Exploitation of Children in 1996,⁵³ NGOs have persuaded many sending countries to establish and to enforce ET legislation against child sex tourists.⁵⁴

2. Current ET Legislation

Not every country applies its laws against the sexual exploitation of children extraterritorially, and among those countries that do legislate extraterritorially, the ET legislation varies.⁵⁵ Some countries require double criminality in ET prosecutions, while others do not.⁵⁶ Some countries reserve the right to prosecute a child sex tourist regardless of whether the person

53. See Stephanie Farior, *International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential*, 10 HARV. HUM. RTS. J. 213, 253-54 (1997) (discussing convening of World Congress in 1996 in Stockholm in response to worldwide sexual exploitation of children). The Congress brought together NGOs and governmental organizations that met to create plan to address child prostitution. *Id.* at 254.

54. See International Tribunal for Children's Rights, Public Hearings, "Extraterritorial Legislation in Response to the International Dimension of Child Sexual Exploitation," Sept. 30-Oct. 2, 1997, at 3.1 [hereinafter International Tribunal] (identifying World Congress as watershed event in development of ET laws against sexual exploitation of children); see also DCI Report, *supra* note 12, at 11 (noting development of ET legislation against child sex tourism following World Congress); Farior, *supra* note 53, 254 (describing efforts to change legislation in different countries following World Congress). In addition to ET legislation, sending countries can also promote greater awareness of the problem of child sexual exploitation, and take steps to discourage it. See *SwissAir to Show Video Against Sex Tourism*, AVIATION DAILY, Mar. 15, 2000, Vol. 339, No. 51, at 5 (reporting that SwissAir joined other European airlines in broadcasting public service message produced by ECPAT(UK) during long-haul flights). U.S. airlines refuse to carry public service advertisements against child sex tourism. See Gerry Volgenau, *You Can Fight Child Abuse by Travelers*, DETROIT FREE PRESS, July 4, 2000 (page unavailable) (explaining that U.S. airlines rejected appeal to carry ECPAT's public service messages against child sex tourism); see also *EU Commission Implements Measures to Combat Child Sex Tourism*, 15 INT'L ENFORCEMENT L. REP., No. 9 (Sept. 1999) (explaining that European Union ("EU") approved 500,000 ECU in 1998, to promote public awareness of child sex tourism, and Joint Programme called for cooperation with tourist agencies and destination countries to reduce supply and demand for child sex tourism); SEABROOK, *supra* note 15, at xiv (arguing that reducing social and economic inequality between sending and destination countries would remove major factor enabling persons to travel overseas and to exploit children).

55. See generally Berkman, *supra* note 3, at 409-16 (comparing ET legislation in Australia, Germany, Sweden, and United States).

56. See SEABROOK, *supra* note 15, at 5 (noting that certain countries' ET legislation requires double criminality, meaning that sexual act with child must constitute crime in both sending and destination countries for sending country to prosecute child sex tourist).

was already tried in the country where the crime took place.⁵⁷

Currently, there are over twenty countries with ET legislation prohibiting the sexual exploitation of children.⁵⁸ Some countries' penal codes inherently extend extraterritorially to citizens traveling abroad.⁵⁹ Some of these countries also enacted ET legislation against the sexual exploitation of children in response to child sex tourism.⁶⁰ Countries such as the United States, that do not inherently extend jurisdiction extraterritorially,⁶¹ must specify whether legislation against the sexual exploitation of children includes an ET component.⁶²

57. *See id.* (distinguishing countries that require double criminality from countries that do not require double criminality).

58. *See* DCI Report, *supra* note 12, at 10 (identifying Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Mexico, New Zealand, Norway, Spain, Sweden, Switzerland, Netherlands, Taiwan, Thailand, United Kingdom, and United States as countries that implemented ET legislation against child sex tourism); Angeline Oyog, *European Child Protection Groups Demand State Action*, INTER PRESS SERVICE, Aug. 25, 1996, available at 1996 WL 11625028 (identifying Iceland as country that legislates extraterritorially against child sex tourism); Dominic Kennedy, *Sex Tourists to be Tried by Courts in Britain*, TIMES, Aug. 27, 1996, available at 1996 WL 651526 (including Taiwan as country legislating extraterritorially against child sex crimes); Douglas McArthur, *Crackdown*, GLOBE & MAIL, Oct. 27, 1999, at D1 (identifying Mexico as country that legislates extraterritorially against child sex crimes).

59. *See* SEABROOK, *supra* note 15, at 5 (explaining that certain countries' legislation extraterritorially extend their national laws). Countries that extraterritorially extend their national laws include Japan, the Netherlands, Norway, Sweden, and Switzerland. *Id.*

60. *See id.* at 6 (explaining that certain countries enacted specific legislation against child sex tourism, although these countries' laws already extend extraterritorially). Those countries include Belgium, France, and Germany. *Id.*

61. *See* E.E.O.C. v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991) ("It is a long-standing principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" (quoting *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949))); Watson, *supra* note 47, at 42 (describing United States as one of world's least aggressive proponents of most widely accepted forms of extraterritorial jurisdiction: nationality-based criminal jurisdiction). When a U.S. national commits a violent crime in a country that does not prosecute him, he often avoids prosecution altogether because the United States lacks jurisdiction. *Id.*

62. *See* Gary B. Born, *A Reappraisal of the Extraterritorial Reach of U.S. Law*, 24 L. & POL'Y INT'L BUS. 1, 8 (1992) (explaining that U.S. Supreme Court finds that U.S. criminal law does not extend beyond U.S. territory unless affirmative intent appears in legislation). Congress does have the power to include extraterritorial components in its legislation. *See* E.E.O.C., 499 U.S. at 248 ("Congress has the authority to enforce its laws beyond the territorial boundaries of the United States."); *see also* United States v. Reeh, 780 F.2d 1541, 1543 n.2 (11th Cir. 1986) (dismissing argument by suspected American drug trafficker that U.S. law had no jurisdiction over him in international waters, because that claim "borders on the frivolous. The defendants are all United States citizens

a. Double Criminality

A double criminality requirement dictates that a country will only extradite or prosecute a citizen for a crime committed in another country, if the person's actions violated the laws of both countries.⁶³ Some countries do not require double criminality.⁶⁴ Removing a double criminality requirement facilitates prosecuting a child sex tourist in his own country, because the defendant cannot raise the defense that his actions were legal in the country in which he allegedly committed his crime.⁶⁵ Commentators note that the double criminality requirement hinders ET prosecution of child sex tourists if the destination country has a lower age of consent, or defines child sexual exploitation differently from the sending country.⁶⁶

... and a state may punish the wrongful conduct of its citizens no matter where it takes place.”).

63. See Watson, *supra* note 47, at 77 (defining double criminality as requirement that activity constitutes crime in defendant's home country and in country where act occurred).

64. See SEABROOK, *supra* note 15, at 5 (discussing differences between countries that require and countries that do not require double criminality). Australia does not have a double criminality requirement. Healy, *supra* note 8, at 1915. The United States also does not require double criminality. See Giordanella, *supra* note 50, at 148 n.117 (explaining that double criminality is not required for prosecution of U.S. citizens for crimes committed in countries other than United States).

65. See Jennifer Stewart, *If This is the Global Community We Must be on the Bad Side of Town: International Policing of Child Pornography on the Internet*, 10 HOUSTON J. INT'L L. 205, 241 (1997) (explaining that double criminality requirement prevents country from prosecuting citizen if defendant sexually mistreated child in country with age of consent lower than that of defendant's home country); DCI Report, *supra* note 12, at 256-57.

66. See DCI Report, *supra* note 12, at 256-57 (explaining role of double criminality in hindering prosecution of child sex tourists). The United Kingdom, which has strict double criminality requirement, could not prosecute a citizen for sexually exploiting a child in Nepal, because Nepal has yet to enact legislation against sexual acts with children. See SEABROOK, *supra* note 15, at 95 (citing Helen Veitch, campaign coordinator of ECPAT UK); see United Kingdom Sex Offenders Act 1997 [hereinafter UK Sex Offenders Act]. Ch. 51, Part II 7.1(a)(b) states:

Subject to subsection (2) below, any act done by a person in a country or territory outside the United Kingdom which: (a) constituted an offence under the law in that country or territory; and (b) would constitute an offence to which this section applies if it had been done in England and Wales, or in Northern Ireland, shall constitute that sexual offence under the law of that part of the United Kingdom.

Id. Defendants could argue that prosecuting a person in his home country for activities that are legal in the destination country is unfair. See Watson, *supra* note 47, at 79 (explaining possible objections to removing double criminality requirements). Nevertheless, criminal law in one country generally does not compel an individual to act in a

b. Double Jeopardy

In certain sending countries, conviction or acquittal in a destination country for a sexual crime against a child bars prosecution of the defendant in his own country for the same crime.⁶⁷ Other sending countries reserve the right to prosecute a defendant regardless of whether a court in another country tried the defendant for the same crime.⁶⁸ In the absence of a treaty, countries are generally not bound to recognize the decision of another country's court.⁶⁹

2. Enforcement of ET Legislation Against the Sexual Exploitation of Children

While over twenty nations have ET laws against child sexual exploitation, some countries prosecute significantly more extra-

specific way, while another country's criminal law demands opposite behavior. *See id.* Opponents of double criminality argue that if a country imposes high standards of conduct on a citizen and the individual is aware of those standards, then it is reasonable to require the individual to abide by the same standards when abroad, even if the standards in a foreign country are lower. *Id.*

67. *See, e.g.*, Crimes (Child Sex Tourism) Amendment Act, No. 105, 1994 (Austl.) (amending Crimes Act 1914 (Austl.)) at 50FC ("If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this part in respect of that conduct."). This provision does not address whether Australia would prosecute a person convicted of sexual crime against child overseas, but who did not serve his sentence. *Id.*

68. *See, e.g.*, JAPAN CRIM. CODE, art. 5 (Law No. 45) (1907). Japan reduces the punishment for the crime, based on the sentence already served by the Japanese citizen if convicted in foreign court. *Id.* The United States reserves the right to prosecute citizen for crime for which he has already been convicted overseas, under the principle of "dual sovereignty". *See* Lara A. Ballard, *The Recognition and Enforcement of International Criminal Court Judgments in U.S. Courts*, 29 COLUM. HUM. RTS. L. REV. 143, 173 (1997) (discussing U.S. treatment of overseas conviction as not barring conviction in United States for same crime). A number of U.S. Supreme Court decisions found that double jeopardy does not bar prosecution of citizen by different courts within the United States. *See, e.g.*, *Heath v. Alabama*, 474 U.S. 82, 88 (1985) (allowing Alabama to execute defendant after Georgia sentenced defendant to life imprisonment); *United States v. Wheeler*, 435 U.S. 313, 323-24 (1978) (permitting federal court to indict defendant after conviction by Navajo court); *Abbate v. United States*, 359 U.S. 187, 195 (1959) (finding that federal courts could indict persons after conviction by county courts); *Bartkus v. Illinois*, 359 U.S. 121, 121 (1959) (holding that Illinois could convict person after acquittal in federal court).

69. *See* Ballard, *supra* note 68, at 173 (explaining that court decisions in one country cannot bind court in second country, unless two countries obligate their courts to do so through treaty).

territorial cases than other countries.⁷⁰ The United Kingdom convicted only one UK citizen under its ET law, a citizen who operated a holiday camp in France frequented by English tourists.⁷¹ Japan has not prosecuted anyone for traveling overseas and sexually exploiting a child.⁷² In contrast, both Australia and Germany initiated numerous prosecutions under their ET laws, resulting in several convictions.⁷³

70. See A STEP FORWARD, *supra* note 37, at 12 (explaining that number of convictions of child sex tourists varies between nations).

71. See Jason Bennetto, *Camp Site Owner Jailed for Sex Assaults on Girls*, INDEP. (London), Jan. 22, 2000, at 4 (discussing case of Kenneth Biden, who sexually molested young girls at vacation campsite, and threatened them with violence if they told their parents). Biden advertised to British families with children so he could target the families' daughters. *Id.* The youngest victim was five years old, and the oldest was 12. *Id.* Biden pled guilty to three counts of violating the UK's ET law, and received a three-year sentence. *Id.*

72. See SEABROOK, *supra* note 15, at 91 (noting that Japan has yet to convict child sex tourist). At least two cases could eventually go to trial in Japan. *Id.* The first case is Hisao Natsume (identified under a pseudonym by Seabrook), whose case began prior to passage of Japan's new ET legislation against the sexual exploitation of children. *Id.* at 88-92. Natsume, a 52 year-old Japanese man, allegedly molested 13 year-old Thai boy in September 1996, in Pattaya, Thailand. See *Aichi Man Sued for Molesting Thai Boy During Trip Abroad*, MAINICHI DAILY NEWS, Dec. 17, 1999, at 14 (recounting allegation that Natsume engaged in sexual activity with Thai boy during one of Natsume's trips to Thailand). Natsume apparently bribed his way to freedom, but NGOs brought the alleged victim to Japan in 1999, and submitted a complaint to the police. See SEABROOK, *supra* note 15, at 91 (discussing Natsume's return to Japan and efforts by NGOs to bring charges against Natsume for his activity in Thailand); Interview with Setsuko Tsuboi, Lawyers for Victims of Child Prostitution, July 10, 2000. The second case could provide the first test for Japan's new ET law against sexually exploiting children. See *President Turned Child-Porn Peddler Arrested*, MAINICHI DAILY NEWS, Nov. 8, 2000, at 12 [hereinafter *Child Pornographer Arrested*] (discussing case of Japanese citizen accused of producing child pornography in Thailand).

73. See Stuart Walsh, *Sex Offender Jailed for Sex Crimes in Fiji*, AAP NEWSFEED, May 31, 2000 (page unavailable) (explaining that to date, Australia convicted eight child sex tourists and describing eighth conviction of Australian under Australia's child sex tourism law since 1995). Another Australian, aged 70, was recently arrested for encouraging child sex tourism. *Australian Man Set for Court Over Thai Child-Sex Tourism*, AGENCE FRANCE PRESSE, Jan. 25, 2001, available at 2001 WL 2329217. Australia recently closed its child sex tourism investigation unit. See *Williams Confirms Child Sex Tourism Unit Closed*, AAP NEWSFEED, Nov. 7, 2000 (page unavailable) (citing Labor Party justice spokesperson Mr. Duncan Kerr, who criticizes Australian government's decision, on the grounds that child sex laws are worthless without special police units to enforce them). Australian government explained that other police units will carry out child sex tourism investigations. *Labor Claims Child Sex Files Removed From Storage*, AAP NEWSFEED, Nov. 28, 2000 (page unavailable). By 1997, Germany began prosecuting almost forty cases that resulted in six convictions. See Professor Vitit Muntarbhorn, *Protection Against the Commercial Exploitation of Children: A Key Chance for the Asia-Europe Meetings (ASEM)*, (Paper prepared for ASEM Child Welfare Conference, London, 6-8 Oct. 1998) (ex-

II. INTERNATIONAL EFFORTS AND COUNTRY SPECIFIC LEGISLATION

International agreements, some specifically addressing child sex tourism, exist to safeguard children from sexual exploitation.⁷⁴ Additionally, there are ET laws that should enable sending countries to prosecute child sex tourists, but these laws vary in their comprehensiveness and in their enforcement.⁷⁵ Commentators evaluate legislation and other measures that sending countries adopt to curb the international sexual exploitation of children.⁷⁶

A. International Conventions

International conventions, some dating as far back as 1904, include provisions against child sexual exploitation.⁷⁷ In 1989, the United Nations adopted the seminal U.N. Convention on the Rights of the Child.⁷⁸ In 1996, the World Congress Against Commercial Sexual Exploitation of Children, promulgated an Agenda for Action against the sexual exploitation of children.⁷⁹ One year later, the European Union ("EU") adopted a Join Ac-

plaining that Germany initiated proceedings against numerous child sex tourists resulting in six convictions).

74. See Robinson, *supra* note 11, at 253-54 (discussing international conventions that address child sexual exploitation); Rebeca Rios-Kohn, *The Convention of the Rights of the Child: Progress and Challenges*, 5 GEO. J. FIGHTING POVERTY 139, 153 (1998) (discussing countries' agreement after World Congress against Commercial Sexual Exploitation of Children to enact measures against child sex tourism).

75. See Danie Lovering, *International Paedophiles Flock to Asia Despite High-Profile Arrest*, AGENCE FRANCE-PRESSE, Aug. 27, 2001 available at 2001 WL 24998493 (citing ECPAT source that many sending countries adopted ET legislation but do not actively enforce legislation).

76. See generally Healy, *supra* note 8 at 1891-11 (discussing Swedish, Australian, and U.S. ET legislation).

77. See Giordanella, *supra* note 50, at 137 (discussing international conventions including 1904 International Agreement on Suppression of White Slave Traffic). See also Patricia D. Levan, *Curtailing Thailand's Child Prostitution through an International Conscience*, 9 AM. U.J. INT'L L. & POL'Y 869, 872 (1994) (explaining that international conventions exist against child prostitution, but countries do not necessarily enforce these conventions).

78. Convention, *supra* note 30. See Robinson, *supra* note 11, at 240 (explaining U.N. Convention's particular importance as first legally binding document protecting children from exploitation).

79. See Rebecca Rios-Kohn, *UNICEF's Mission to Protect the Rights of the Child*, 4 LOY. POV. L.J. 185, 194 (1998) (crediting Agenda for Action with providing international framework for abolishing global child sexual exploitation).

tion Programme to combat child sexual exploitation.⁸⁰

In 1989, 191 countries ratified the U.N. Convention.⁸¹ The United States signed the U.N. Convention, but Congress has yet to ratify it.⁸² Articles 19, 34, and 35 of the U.N. Convention address the sexual exploitation of children, and require ratifying States to ensure that adequate legislative and enforcement measures exist to protect and to treat child victims of sexual abuse.⁸³

In 1996, delegates from 122 countries, as well as representatives from ECPAT, convened the World Congress against Commercial Sexual Exploitation of Children in Stockholm.⁸⁴ The Congress culminated in the Agenda for Action, a non-binding resolution signed by 122 nations including the United States.⁸⁵ Signatory countries obliged themselves to develop legislative measures against the sexual exploitation of children, including ET legislation.⁸⁶ Additionally, countries pledged themselves to

80. Joint Action of 24 February 1997, Council on the Basis of Article K.3 of the Treaty on European Union Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, O.J. (L 63), 04/03/1997.

81. United Nations Treaty Collection website (last updated Oct. 31, 2001), at <http://www.untreaty.un.org/ENGLISH/bible/englishInternetbible/partI/chapterIV/treaty15.asp>.

82. See Susan O'Rourke Von Struensee, *Violence, Exploitation and Children: Highlights of the United Nations Children's Convention and International Response to Children's Human Rights*, 18 SUFFOLK TRANSNAT'L L. REV. 589, 593 n.20 (1998) (explaining that although former Secretary of State Madeleine Albright signed U.N. Convention, United States has yet to ratify U.N. Convention). Some U.S. opponents to the U.N. Convention fear the effect that the U.N. Convention would have on U.S. law regarding capital punishment and abortion. *Id.*

83. Convention, *supra* note 30, art. 19 (protection of children from mistreatment by parents and other care providers), 34(a) and (b) (protection of children from prostitution and pornography), 35 (protection of children from abduction and trafficking). See Stewart, *supra* note 65, at 209 (explaining that Convention is first legally binding international agreement protecting children from sexual exploitation).

84. A STEP FORWARD, *supra* note 37, at 5.

85. *Id.*

86. See World Congress Against Commercial Sexual Exploitation of Children Agenda for Action, Aug. 28, 1996 [hereinafter Agenda for Action]. Article 4(d) provides that signatory countries will:

develop or strengthen and implement laws to criminalize the acts of the nationals of the countries of origin when committed against children in the countries of destination ('extra-territorial criminal laws'); promote extradition and other arrangements to ensure that person who exploits child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country; strengthen laws and law enforcement . . . against those who commit sexual crimes against children in destination countries.

Id.

develop National Plans for implementing the Agenda for Action by the year 2001.⁸⁷

In 1997, the Council of the EU adopted the Joint Action Programme ("Programme").⁸⁸ Citing previous EU resolutions, the U.N. Convention, and the World Congress against Commercial Sexual Exploitation of Children,⁸⁹ the Programme called for Member States to review their laws and judicial procedures concerning child sexual exploitation, and to enact and enforce ET legislation against child sex tourism.⁹⁰ The Programme is consistent with the 1996 General Assembly of Interpol's call for national laws to address the sexual exploitation of children.⁹¹

87. ECPAT International website, Implementing Agenda for Action, at <http://www.ecpat.net/projects/AforA.html>. Neither the United States nor Japan has developed a National Plan. *Id.* One country that developed particularly a comprehensive National Plan is Cambodia, which adopted its National Plan of Action in July 1999. A STEP FORWARD, *supra* note 37, at 22.

88. Joint Action of 24 February 1997, Council on the Basis of Article K.3 of the Treaty on European Union concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, O.J. (L 63), 04/03/1997.

89. The EU resolutions cited were: Resolution on Trafficking in Human Beings adopted by the European Parliament on Jan. 18 1996, O.J. (C 32), 5.2.1996; Resolution on Victims of Violence who are Minors, adopted on Sept. 19, 1996, O.J. (C 320), 28.10.1996.

90. See *EU Commission Implements Measures*, *supra* note 54 (discussing EU efforts to combat child sex tourism including Programme that encouraged member States to develop and to enforce ET laws against child sex tourism). On February 24, 1997, the Council of the EU issued the Joint Action to combat trafficking in human beings and sexual abuse of children, stating that each EU Member State undertakes to review its national laws on measures relating to the sexual exploitation of children. *Id.* Each EU Member State is obligated to review its existing law and practices to ensure that sexual exploitation of children is classified as a criminal offense punishable by effective, proportionate, and dissuasive criminal penalties. *Id.* The Joint Action affirms the principle of extraterritorial jurisdiction over a national or habitual resident of an EU Member State. *Id.*

91. SEABROOK, *supra* note 15, at 2. Several destination countries, including the Philippines and Thailand, enacted stricter legislation against the sexual exploitation of children. Kovaleski, *supra* note 14. The Philippines passed the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (Republic Act 7610, 1992) ("Special Protection Law") (Philippines). Under the Special Protection Law, a person caught alone with a child, other than a relative, inside a closed room, such as in a hotel, has committed attempted prostitution. Special Protection Law at 3.6. Verbally offering a child to another person for the purposes of prostitution constitutes sexual abuse. *Id.* at 5a. In 1996, Thailand passed the Prostitution Prevention and Suppression Act. Prostitution Prevention and Suppression Act of B.E. 2539 ("Suppression Act") (Thailand 1996). The Suppression Act strengthens penalties against persons who procure prostitutes who are under the age of 18, or who act as pimps for prostitutes who are under the age of 18. Suppression Act, § 9; see *Sex Between Books*, *supra* note 40 (explaining that § 9 increases penalties for person who engages in sexual activity with child

B. Country Specific Examples of Legislation and Enforcement

Countries that extraterritorially extend legislation against child sexual exploitation include Sweden, Australia, the United Kingdom, Canada, Japan, and the United States.⁹² Commentators provide criticisms regarding each country's ET legislation.⁹³ Commentators also provide suggestions concerning non-legislative measures.⁹⁴

1. Sweden

In 1962, Sweden extended its penal code extraterritorially.⁹⁵ Sweden's ET legislation applies to both citizens and residents of Sweden.⁹⁶ Commentators note that the Swedish judicial system includes provisions to protect child victims and witnesses.⁹⁷ Experts criticized Sweden's embassy in Thailand for a 1993 incident in which the embassy allegedly enabled a child sex tourist

below 18, and increases penalties more if child is below 15). The Suppression Act reduces penalties for all prostitutes, Suppression Act § 5, and authorizes the country to appoint a guardian for a child prostitute whose parents coerced him or her into prostitution. Suppression Act § 6. Some experts believe that the number of child prostitutes in Bangkok decreased in the years following the passage of Thailand's Prostitution Prevention and Suppression Act. Sereewat Interview, *supra* note 24. In conversations with staff at ECPAT International's Headquarters in Bangkok, Thailand, several administrators agreed that the Thai police, by holding police officers responsible for failing to shut down child brothels, made the cost of bribing the police sufficiently high, and that combined with the stiffer penalties of the 1996 law, child prostitution became less lucrative. *See also* Kovalski, *supra* note 14 (discussing efforts in Asia to reduce child prostitution through domestic legislation).

92. *See* DCI Report, *supra* note 12, at 10 (including Australia, Canada, Japan, Sweden, United Kingdom, and United States as countries that extend child sex crime laws extraterritorially).

93. *See, e.g.*, Giordanella, *supra* note 50, at 147-50 (analyzing U.S. legislation against child sex tourism).

94. *See, e.g.*, International Tribunal, *supra* note 54, at 3.4.2 (discussing child-friendly judicial procedures that protect child witnesses and victims from further trauma during sexual abuse trials).

95. *See* Healy, *supra* note 8, at 1890 (explaining that in 1962, Sweden extended extraterritorially Swedish Penal Code).

96. *See* Berkman, *supra* note 3, at 415 (distinguishing Sweden's ET legislation from Germany's ET legislation because Germany's ET legislation does not apply to resident aliens of Germany).

97. Interview with Wanchai Roujanavong, Thai Prosecutor and co-founder of FACE, July 6, 2000 (praising Swedish system as particularly child-friendly, because Swedish judicial system will accept testimony from child victim without child victim's physical presence in court); International Tribunal, *supra* note 54, at 3.4.2.

from Sweden to evade prosecution in Thailand.⁹⁸

a. History and Application of Swedish Law

In 1962, Sweden extended the Swedish penal code extraterritorially to Swedish citizens and resident aliens who travel overseas.⁹⁹ While Sweden did not enact this law in response to child sex tourism,¹⁰⁰ the law holds Swedish citizens and Swedish residents who travel outside of Sweden liable for sexual activity with children that would constitute a crime within Sweden.¹⁰¹ The law applies to both Swedish citizens and resident aliens who normally reside in Sweden.¹⁰² Commentators point out that ET legislation should apply to citizens as well as permanent residents of a country to ensure that residents do not evade prosecution.¹⁰³

98. See DCI Report, *supra* note 12, at 213 (arguing that Swedish embassy provided extraordinary assistance to child sex tourist and enabled him to escape from Thailand).

99. Swed. Penal Code ch. 2, § 2 (Swed.) (Law 1972:812). The code reads:

Section 2:

Crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court where the crime has been committed:

1. by a Swedish citizen or an alien domiciled in Sweden,
2. by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present in the Realm, or
3. by any other alien, who is present in the Realm, and the crime under Swedish Law can result in imprisonment for more than six months. The first paragraph shall not apply if the act is not subject to criminal responsibility under the law of the place where it was committed or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine. In cases mentioned in this Section, a sanction may not be imposed which is more severe than the severest punishment provided for the crime under the law in the place where it was committed.

Id.

100. See Healy, *supra* note 8, at 1889 (explaining that extraterritorial extension of Sweden's law was not response to child sex tourism).

101. Swed. Penal Code ch. 6, § 6 (Swed.). Swedish law criminalizes sexual intercourse with a child below 15 years of age. *Id.*

102. *Id.* §§ 1-2.

103. See DCI Report, *supra* note 12, at 265 (noting one case in which Switzerland could have prosecuted German national who was resident of Switzerland, if Switzerland's ET legislation had permitted prosecution of residents, not just citizens); see also Joint Action, *supra* note 88, at Title II (f) (2) (requiring Member States to apply legislation against sexual exploitation of children to both nationals and "habitual residents"). In Germany, only the presiding judge may question child victims of sexual abuse. Protection of Victims Act (1987) (Ger.).

b. Aspects of Swedish Legislation

Sweden's penal code contains a double criminality requirement, therefore, a child sex tourist's activities must constitute a crime in the destination country as well as in Sweden for Sweden to prosecute the child sex tourist.¹⁰⁴ Additionally, Sweden does not impose a penalty greater than the maximum penalty allowable under the laws of the country in which the crime occurred.¹⁰⁵ Sweden does not prosecute a defendant in cases where the destination country already tried the defendant and determined his guilt or innocence.¹⁰⁶

c. Child-Friendly Aspects of Swedish Legal System

Experts consider Swedish courts particularly child-friendly because the courts will admit videotaped statements to substitute for the physical presence of child victims in court.¹⁰⁷ Additionally, Sweden will assign judicial counsel to child victims of sexual abuse to assist the children in navigating the court system.¹⁰⁸ Swedish law also permits victims of sexual abuse to recover damages from the defendant and defendants found guilty must contribute to a fund for victims of sexual abuse.¹⁰⁹

d. Criticism of the Swedish Embassy in Thailand Following the Bengt Bolin Case

In 1993, Bengt Bolin, a Swedish citizen arrested in Thailand for sexually abusing a boy, successfully fled Thailand and returned to Sweden, with assistance from the Swedish Embassy.¹¹⁰ The Swedish Embassy not only provided Bolin with a replace-

104. Swed. Penal Code, *supra* note 99, ch.2, § 2.

105. *Id.* at § 3; see Healy, *supra* note 8, at 1892 (discussing Sweden's penal code and explaining that Sweden does not impose punishment greater than punishment imposed in country where act occurred).

106. Swed. Penal Code, *supra* note 99, § 5a.

107. See International Tribunal, *supra* note 54, at 3.4.2 (explaining need for child-friendly judicial procedures in general and praising Swedish courts as particularly child-friendly because child victims do not need to testify in person).

108. Sweden's National Plan of Action against the Commercial Sexual Exploitation of Children, Ministry of Health and Social Affairs, (1998) at 4.3.4.

109. See Justice F.B. William Kelly, *The Unfinished Triangle: The Criminal Justice System, the Victim, and the Offender* (A Comparative Review of Victim Treatment in Some Criminal Justice Systems) (1995) (paper Presented at The International Centre for Criminal Law Reform and Criminal Justice Policy 1995 Annual Conference: Public Perceptions Of The Administration Of Justice) (Oct. 11-15, 1995).

110. See Paul Robinson, *Exposed—The Ugliest Australians*, SUNDAY AGE, Apr. 18,

ment passport, but also provided him with transportation to the Thai airport and advice on dealing with Thai airport authorities.¹¹¹ In Sweden's first ET application of its laws against child sexual exploitation, a Swedish court sentenced Bolin to three months incarceration following his return to Sweden.¹¹²

Critics agree that embassies, by cooperating with police in destination and sending countries, can facilitate a suspected child sex tourist's prosecution at home or abroad.¹¹³ Often, a child sex tourist who is arrested in a destination country, posts bail,¹¹⁴ receives his confiscated passport back from the police,¹¹⁵ or receives a replacement passport from his embassy, and flees the destination country.¹¹⁶ Experts explain that if a sending country's embassy, by its own national law, must provide a suspect with a replacement passport,¹¹⁷ the embassy should advise

1993, at 4 (discussing Swedish suspect Bengt Bolin and his escape from Thailand, as well as other cases where alleged child sex tourists evaded prosecution in Thailand).

111. *Id.*; see also DCI Report, *supra* note 12, at 213 (detailing assistance Swedish Embassy gave Bolin, despite its knowledge of on-going Thai investigation concerning Bolin's activity in Thailand).

112. See Wallace, *supra* note 49 (discussing Sweden's arrest of Bolin).

113. See Levan, *supra* note 77, at 894 n.136 (noting that embassies from sending countries often return passports to child sex tourists who have been arrested, enabling tourists to flee country; by addressing this issue, embassies will no longer help child sex tourists to escape trial); see also DCI Report, *supra* note 12, at 269 (explaining that embassies can facilitate prosecution of child sex tourists in tourists' home countries).

114. See Roujanavong *supra* note 97 (noting that bail is often bribe); Thai Police Captain Interview, *supra* note 52 (explaining that with low salaries, Thai police officers have tremendous incentives to accept bribes); see *Thailand: Sun, Sea, Sand and . . . ?*, *ECONOMIST*, May 3, 1997, at 32 (discussing so-called bail, actually bribes, imposed by Pattaya police on child sex tourists).

115. See Barrett, *supra* note 52 (detailing case of Eric Rosser, American accused of abusing several young children in Thailand, who received his passport back from police and fled country). Wanchai Roujanavong criticized the Thai judiciary's decision to return to Rosser his passport as maddening and demonstrating that Thailand cannot keep child sex tourists from fleeing Thailand. See *id.* (citing Wanchai Roujanavong's reaction to the Rosser case). Roujanavong pleaded with the judge not to grant Rosser bail. Roujanavong Interview, *supra* note 97. United States issued warrant for Rosser's arrest because of alleged child pornography found in Rosser's home in United States. Barrett, *supra* note 52.

116. See Levan, *supra* note 77, at 894 n.136 (discussing child sex tourists who receive replacement passports and flee destination countries). Bolin gave false information to Immigration Department of Thailand and fled Thailand. *Id.* Assistance given by the Swedish embassy left Thai officials angry and humiliated. *Id.*

117. See Telephone Interview with Paul Mayer, Consul in Chief of American Citizen Services at the U.S. Embassy in Bangkok, Thailand (Aug. 1, 2000) (explaining that U.S. citizens have right to passports, and embassy cannot deny request). The U.S. embassy in Thailand does not have any formal guidelines, however, in cases where Thai

the destination country's police that the suspect will receive a replacement passport.¹¹⁸ Authors note that when a sending country's embassy in a destination country learns that a citizen is suspected of child sex tourism, the embassy should inform relevant law enforcement personnel in the suspect's home country.¹¹⁹

2. Australia

In 1994 Australia passed the Child Sex Tourism Act.¹²⁰ Commentators praise the act's comprehensiveness¹²¹ and its measures to protect child victims and witnesses.¹²² Australia also conducts programs to train law enforcement personnel in destination countries to better handle cases of child sexual exploitation.¹²³ However, in one prominent Australian case, an Australian court cleared an Australian diplomat of charges of child sex tourism, raising questions regarding the sensitivity of courts to child victims and witnesses.¹²⁴

police confiscate a U.S. citizen's original passport, the embassy advises police in Thailand 48-72 hours before issuing the person a new passport. *Id.* Mayer asserts that the U.S. embassy cannot do the Thai police's "job for them," meaning that if Thai police will not prevent American suspects from leaving Thailand, the United States does not assume responsibility. *Id.*

118. *Id.*; see Levan, *supra* note 77, at 894 n.136 (noting that other countries should not unwittingly thwart Thailand's enforcement of its laws by enabling arrested persons to flee Thailand through use of replacement passports); see also SEABROOK, *supra* note 15, at 130 (explaining that replacement passports enable child sex tourists to flee destination countries).

119. See SEABROOK, *supra* note 15, at 130 (discussing need for international cooperation to prosecute child sex tourists). In 1999, Sweden circulated a letter to embassy and consulate personnel advising the staff of the child sex tourism problem, and providing guidelines to ensure prosecution of Swedish suspects either in the destination country or Sweden. Circular Letter No. 41 of Swedish Ministry of Foreign Affairs, International Law and Human Rights Department to all Swedish Embassies and Consulates (July 16, 1999) (on file with author).

120. See Berkman, *supra* note 3, at 414 (discussing Australia's passage of Child Sex Tourism Act in 1994, and noting that Child Sex Tourism Act is one of Australia's few ET laws).

121. *Id.* at 415.

122. See Healy, *supra* note 8, at 1915 (detailing extensive provisions in Australia's ET law prohibiting child sex tourism).

123. See Thai Police Captain Interview, *supra* note 52 (discussing training she and several officers undertook in program funded by Australia).

124. See International Tribunal, *supra* note 54, at 5.2.1 (discussing measures to prevent traumatizing child witnesses and victims in sex abuse cases, in light of treatment of two Cambodian street children by Australian court in trial of Australian diplomat).

a. History and Application of Australian Law

Citing an international obligation to protect children from Australia's child sex tourists,¹²⁵ Australia passed the Child Sex Tourism Act of 1994.¹²⁶ The legislation mandates that an Australian citizen or resident¹²⁷ may not engage in sexual intercourse¹²⁸ or other sexual activity¹²⁹ with any person under the age of sixteen, anywhere in the world.¹³⁰ The law also prohibits inducing,¹³¹ benefiting from,¹³² or encouraging sexual acts between an Australian and a child under sixteen.¹³³

Australia's Child Sex Tourism Act applies to citizens and residents.¹³⁴ The law also applies to corporations.¹³⁵ Australia does not require double criminality to prosecute a defendant under the Child Sex Tourism Act.¹³⁶ The Child Sex Tourism Act bars Australia from prosecuting a defendant already convicted in a country other than Australia for the same act.¹³⁷

b. Aspects of Australian Law

Australia's ET legislation permits children to testify by video-link under certain circumstances.¹³⁸ These circumstances

125. See Heather Fairbairn, *Australia Passes Legislation on Asian (sic) Child Sex Tourism*, DAILY YOMIURI, July 2, 1994, at 4 (citing Australian Justice Minister who notes Australia's international obligation to defend children from Australians who travel outside of Australia's borders and commit sexual crimes).

126. Crimes Amendment Act [hereinafter Child Sex Tourism Act], No. 105, 1994 (Austl.).

127. *Id.* at Division 1, 50 AD(a)(b).

128. *Id.* at Division 2, 50BA.

129. *Id.* at 50BC.

130. *Id.*; see Plasencia, *supra* note 19, at 28 (explaining that Child Sex Tourism Act prohibits Australians and Australian residents from sexual activity with children under age of 16 while outside Australia).

131. Child Sex Tourism Act, *supra* note 126, at 50BD.

132. *Id.* at Division 4, 50DA.

133. *Id.* at 50DB.

134. *Id.* at Division 2, 50AD(b); see Healy, *supra* note 8, at 1915 (identifying Australia's Child Sex Tourism Act as superior to U.S. and Swedish legislation, because it is most comprehensive ET legislation against child sexual exploitation).

135. *Id.* at 50AD; see Healy, *supra* note 8, at 1898 (explaining that this provision enables Australia to prosecute businesses that promote child sex tours).

136. See SEABROOK, *supra* note 15, at 5 (stating that Australia does not impose double criminality requirement).

137. See Child Sex Tourism Act, *supra* note 126, at 50FC (prohibiting prosecution of Australian citizen or resident by Australian court if citizen or resident already convicted by another country's court for same crime).

138. Child Sex Tourism Act, *supra* note 126, at Division 5.

include cases where personal appearance in court would involve unreasonable expense or inconvenience, psychological harm, or sufficient stress to prevent the children from testifying reliably.¹³⁹ Experts argue that in some child sexual abuse cases, courts should permit video-link testimony from children.¹⁴⁰

c. Training Programs for Police in Destination Countries

Australia conducts training programs for police officers from destination countries.¹⁴¹ Experts praise training programs for police in destination countries because the programs ensure

139. *Id.* See Giordanella, *supra* note 50, at 152 (explaining that Australia permits video-link testimony to facilitate testimony when impractical to bring child victims to Australia). In *Maryland v. Craig*, 497 U.S. 836, 850 (1990), the Supreme Court upheld a Maryland statute permitting child victims in sex abuse cases to testify via closed circuit television when "necessary to further an important public policy," but only "where the reliability of the testimony is otherwise assured."

140. See International Tribunal, *supra* note 54, at 5.2.1(c)(ii) (explaining that courts should permit video-link testimony from children and not force children to testify in person); see Vitit Muntarbhorn, *Paradoxes And Paradigms Of Child-Sex Tourism*, NATION, Jan. 8, 2000 available at 2000 WL 6313284 (asserting that video-link testimony can help protect children in extraterritorial cases from further trauma); Graham Davies, *Concluding Comments*, in THE SUGGESTIBILITY OF CHILDREN'S RECOLLECTIONS 183 (John Doris ed., 1991) (arguing that face-to-face confrontation does not produce more accurate testimony from children, and that children can testify better via video-link); but see Jean Montoya, *Lessons from Akiki and Michaels on Shielding Child Witnesses*, 1 PSYCHOL. PUB. POL'Y & L. 340, 343-45 (1995) (explaining that jurors and judges can benefit from viewing how child behaves in physical presence of alleged sex abuser in order to better evaluate assertions by often over-zealous child abuse investigators); see also International Tribunal, *supra* note 54, at 3.4.2 (citing ECPAT (Australia) and noting that courtroom appearance could benefit child victim of sexual abuse). The Australian government expressed concern that video-link testimony could be more expensive and could yield testimony with less perceived credibility than in-person testimony. See International Tribunal, *supra* note 54, at 3.4.2 (calling for video-link testimony to protect children during testimony, but noting potential problems with video-link testimony).

141. See *Asia: Aust. Police Help Thai Sex Assault Investigation Team*, AAP NEWSFEED, Apr. 21, 2000 (page unavailable) (recounting training provided by Australian police to Thai police); *British, Thai Police to Jointly Fight Child Abuse*, AGENCE FRANCE-PRESSE, Mar. 9, 2000 (page unavailable) (explaining that British police conduct programs to train Thai police and to enable Thai police and British police to jointly investigate child sex tourism cases); Thai Police Captain Interview, *supra* note 52 (discussing training she and several officers undertook in program funded by Australia); Telephone Interview with Kevin McTavish, Australian Federal Agent and Police Liaison at Australian Embassy in Bangkok, Thailand (July 15, 2000) (discussing training programs that take place in Thailand and Philippines); but see Andrew Drummond, *Abusing Other People's Children*, BANGKOK POST, Feb. 20, 2000, at 1 (explaining that training programs in Pattaya, Thailand did not lead to greater convictions of child sex tourists because of entrenched corruption among police officers, lawyers, and courts).

that police officers know their own countries' laws regarding child sexual exploitation.¹⁴² Additionally, the programs train police officers in non-threatening methods of questioning child victims.¹⁴³ Commentators believe that destination countries' police officers require training to properly investigate child sexual exploitation cases.¹⁴⁴ Additionally, training is vital because law enforcement personnel in destination countries are in the best position to combat child sexual exploitation within their jurisdictions.¹⁴⁵

142. See McTavish Interview, *supra* note 141 (noting that many Thai police officers do not know their own country's laws, because of poor training). When destination countries impose stricter penalties on child sexual exploitation, training programs can ensure that police officers in the destination countries are familiar with the new laws. *Id.*

143. *Id.*; Thai Police Captain Interview, *supra* note 52; see International Tribunal, *supra* note 54, at 5.2(h) (calling for special training for police and legal professionals).

144. See DCI Report, *supra* note 12, at 269 (discussing need for training to ensure that police in destination countries appropriately respond to child sexual abuse cases); see also Elizabeth Bevilacqua, *Child Sex Tourism and Child Prostitution in Asia: What Can Be Done to Protect the Rights of Children Abroad Under International Law?*, 5 INT'L LAW STUDENT'S ASSOC. J. INT'L & COMP. L. 171, 174 (1998) (recommending exchange programs between destination and sending countries' law enforcement personnel); SEABROOK, *supra* note 15, at 96; see *FBI Joins Fight Against Child Prostitution in Costa Rica*, AGENCE FRANCE-PRESSE, May 4, 2000 (page unavailable) (discussing three-day program conducted by FBI in Costa Rica to train law enforcement personnel and prosecutors to combat sexual predators of children on Internet). Additionally, the United States has conducted training programs in Europe, and recently completed a course in El Salvador, for regional law enforcement personnel. Telephone Interview with Department of Justice Attorney, Child Exploitation and Obscenity Section [hereinafter DOJ Attorney Interview] (Nov. 18, 2000). See Harris Email, *supra* note 36 (explaining that Casa Alianza requested additional training for police in Central America from United States and Interpol). In terms of drug enforcement, the United States plays a prominent role in training overseas police officers. See Ethan A. Nadelmann, *The Role of the United States in International Enforcement of Criminal Law*, 31 HARV. INT'L L.J., 37, 50 (1990) (discussing U.S. Drug Enforcement Agency ("DEA") agents operating overseas who promoted creation of special police units, trained the special units' members, and served as role models for proper enforcement of drug laws); Jonathan W. Leeds, *United States International Law Enforcement Cooperation: A Case Study In Thailand*, 7 J. INT'L L. & PRAC. 1, 14 (1998) (noting that U.S. DEA agents trained Thai police, and that high level of cooperation exists between Thai and U.S. police in narcotics cases). The United States is providing Colombia with U.S.\$1.3 billion worth of training and equipment to combat drug production. See Juan Forero, *U.S. Training Readies New Colombian Antidrug Warriors*, N.Y. TIMES, Dec. 10, 2000, § 1 (describing U.S.\$1.3 billion worth of equipment and training United States providing to Colombia in support of anti-drug efforts).

145. See Giordanella, *supra* note 50, at 154 (citing advantages of prosecution in destination country as (1) availability of evidence and (2) that destination country would want to prosecute offender because offense took place in destination country and violated that country's laws); McTavish Interview, *supra* note 141 (explaining that

d. Australian Liaison Officers and International Cooperation
in Extraterritorial Cases

Extraterritorial prosecution often requires cooperation between police and prosecutors in the destination and sending countries.¹⁴⁶ Routinely, nations post legal attachés¹⁴⁷ and law enforcement personnel who liaison with police in destination countries.¹⁴⁸ Experts note that overseas liaison officers promote communication and assistance between sending and destination countries' police forces.¹⁴⁹ Australia's liaison officers monitor known pedophiles,¹⁵⁰ and assist in collecting evidence that will meet Australia's evidentiary standards.¹⁵¹

training programs, if properly implemented, will enable destination countries to arrest and to prosecute child sex tourists).

146. See Watson, *supra* note 47, at 73-74 (noting difficulties in obtaining evidence and finding witnesses in foreign countries, especially when overseas police do not respond to requests for assistance). In the *Natsume* case, Japanese police requested copies of the victim's statement to Thai police, but the request went unanswered for months, and the statement that did arrive would not meet Japanese evidentiary standards. Tsuboi Interview, *supra* note 72. Tsuboi says that, ideally, police in destination countries would cooperate with police in sending countries. *Id.*

147. Mayer Interview *supra* note 117. The Federal Bureau of Investigation and Drug Enforcement Agency often employ U.S. legal attachés. *Id.* "The FBI's LEGATs [Legal Attachés] are in place to facilitate the international battle against crime and terrorism." Hearing Before the House Comm. on International Relations [hereinafter FBI Hearings], 105th Cong. (1997) (prepared statement of Louis J. Freeh, Director of the Federal Bureau of Investigation), in FED. NEWS SERV., Oct. 1, 1997. In cases where sending countries do not have police presence in destination country, dispatching police representatives to destination country can facilitate investigations. Roujanavong Interview, *supra* note 97.

148. See, e.g., Vickie F. Li, *Child Sex Tourism To Thailand: The Role Of The United States As Consumer Country*, 4 PAC. RIM L. & POL'Y J. 505, 524 n.142 (1995) (explaining that Sweden posted police liaison in Thai embassy to monitor evidence collection in cases of Swedish extraterritorial crimes).

149. Muntarbhorn Interview, *supra* note 43; McTavish Interview, *supra* note 141. FBI director Louis Freeh terms this "building the cop-to-cop bridges." FBI Hearings, *supra* note 147.

150. See McTavish Interview, *supra* note 141 (explaining that Australia has database of pedophiles, and will advise liaison officers if pedophile travels outside of Australia).

151. See *id.* (noting that evidence collection by destination countries' police forces will often not meet evidentiary standards of Australian courts); SEABROOK, *supra* note 15, at 118-19 (explaining that evidentiary standards between different countries require greater cooperation between police departments, so that evidence collected will meet sending countries' admissibility standards); Nadelmann, *supra* note 144 (explaining that resourceful overseas legal attaché can play crucial role by cutting through red tape and facilitating requests for information, evidence, interrogations, searches, arrests, and extraditions); Li, *supra* note 148, at 534.

e. Criticism of Australian Courts Following the
John Holloway Case

In 1996, an Australian court rejected the testimony of two Cambodian boys who alleged that John Holloway, an Australian diplomat, sexually abused them.¹⁵² The children did not appear credible to the Australian court.¹⁵³ Some commentators argue that the Cambodian children were ill prepared to testify in the Australian court and that cultural differences accounted for the children's difficulties in replying to questions under cross-examination.¹⁵⁴

Experts support child-friendly judicial systems that recognize and accommodate cultural and language differences between the country in which the trial takes place and the child victim's background.¹⁵⁵ Commentators explain that recognizing the particular circumstances and cultural backgrounds of child victims can help ensure that judicial systems do not re-traumatize children.¹⁵⁶ Additionally, commentators point out the need for child-friendly judicial systems, particularly within an adversarial court system.¹⁵⁷

152. See Nick Rufford, *Child Sex Trade Booms in Cambodia*, SUNDAY TIMES, May 26, 1996 (page unavailable) (discussing former ambassador Holloway's trial, and increase in child sex tourism to Cambodia). An NGO brought the two Cambodian street children to Australia to testify in Holloway's trial. *Id.*

153. See *Lawyers Win on Costs*, CANBERRA TIMES, Aug. 5, 1998, at A4 (explaining that Australian judge found complainants lacked credibility because children could not accurately testify with regard to their birth dates and dates that sexual exploitation allegedly took place).

154. See DCI Report, *supra* note 12, at 232-33 (citing commentators who noted that in Holloway trial, two impoverished Cambodian street children unsurprisingly had difficulty pinpointing exact dates of abuse, as well as birth dates, and that children were psychologically unprepared to testify in foreign country two days after arrival).

155. International Tribunal, *supra* note 54, at 3.4.4 (citing Australian government's testimony that investigation and prosecution team must understand cultural background of victim). Child witnesses and victims of sexual assault must develop a relationship of trust with questioner, or they cannot give evidence. *Id.* A trusting relationship is not possible without an appreciation of the child's cultural background. *Id.* The Australian government also pointed out that interpreters in investigative and legal proceedings should receive training to enable them to deal sensitively with sexually exploited children, and that interpreters should be fluent both in children's dialect and in language of court. *Id.* at 5.2.1(g).

156. Muntarhorn, *supra* note 140 (explaining need for child-friendly courts to avoid re-traumatizing children).

157. See Andrew Nette, *Australia Pedophiles Still Get Away with Overseas Crimes*, INTER PRESS SERV., Sept. 4, 1998 (page unavailable) (discussing Australian adversarial court system and its affect on children brought from Cambodia to testify). Experts contend

Commentators note that in cases of extraterritorial prosecution, like the Holloway case, a Mutual Legal Assistance Treaty ("MLAT") could enable a sending country to obtain the evidence necessary to convict a child sex tourist.¹⁵⁸ MLATs formalize cooperation between jurisdictions of signatory countries, and bind the countries to provide legal assistance upon request.¹⁵⁹ MLATs have proven effective in international criminal cases,¹⁶⁰ and experts believe that MLATs would help combat child sexual exploitation.¹⁶¹

3. United Kingdom

In 1997, the United Kingdom extraterritorially extended legislation prohibiting sexual crimes against children.¹⁶² The United Kingdom trains overseas police officers to responsibly handle child sex abuse cases.¹⁶³ Experts criticize the United Kingdom's strict double criminality requirement.¹⁶⁴ Commentators also note that the United Kingdom only convicted one citizen under its ET legislation.¹⁶⁵

that courts should balance rights of accused with special requirements of children, especially children who are involved in cases that involve extraterritorial prosecution. See International Tribunal, *supra* note 54, at 5.2.1 (noting that priority of judicial system should be that no harm is done to child without prejudicing rights of accused).

158. See DCI Report, *supra* note 12, at 222 (explaining that in Holloway case Australian police could not operate in Cambodia and obtain evidence for trial).

159. See Watson, *supra* note 47, at 74 (noting that Mutual Legal Assistance Treaties ("MLATs") impose obligations, and without them, countries can ignore requests for assistance). The United States and Thailand signed an Mutual Legal Assistance Treaty ("MLAT") in 1994. Mutual Legal Assistance Treaty, Feb. 1994, U.S.-Thailand, art. VII, 247 U.S.T. MLATs call for signatory countries to provide evidence that satisfies evidentiary and constitutional requirements of both signatory countries. See Bevilacqua, *supra* note 144, at 177 (explaining that MLATs require signatory countries to provide evidence that satisfies constitutional requirements of other signatory countries).

160. See 135 Cong. Rec. S13,880 (daily ed. Oct. 24, 1989) (remarks of Sen. Kerrey) (noting effectiveness of MLATs in obtaining bank records, depositions, recordings of telephone conversations, and appearance of witnesses from other countries).

161. Muntarhorn, *supra* note 140; DCI Report, *supra* note 12, at 269.

162. See UK Government: *UK Steps Up Action to Combat Child Sexual Exploitation*, M2 PRESSWIRE, Oct. 6, 1998 (page unavailable) (discussing 1997 UK legislation that extraterritorially extends UK jurisdiction against rape and indecent assault of children).

163. See Bruce Cheeseman, *British Police Lead Thai Clampdown on Paedophiles*, EVENING STANDARD, Mar. 17, 1999, at 20 (discussing UK police officers who trained Thai police officers to better investigate cases involving child sexual exploitation).

164. See SEABROOK, *supra* note 15, at 65 (discussing double criminality requirement as impediment to prosecution of child sex tourists).

165. See Bennetto, *supra* note 65 (recounting UK's conviction of British camp site owner who sexually exploited vacationing children in France).

a. History and Application of UK Extraterritorial Law

In response to national and international pressure against British child sex tourism,¹⁶⁶ the United Kingdom extended extraterritorially certain legislation to cover sexual crimes against children.¹⁶⁷ The Sex Offenders Act of 1997 applies to both British citizens and residents of the United Kingdom.¹⁶⁸ The legislation passed despite hesitation regarding the efficacy of ET legislation¹⁶⁹ and the feasibility of meeting evidentiary requirements.¹⁷⁰

166. See Review of Extra-Territorial Jurisdiction, Steering Committee Report [hereinafter Steering Committee Report], British Home Office, (1996) at 1.14 (discussing pressure to prosecute British child sex tourists); see also Toni Turner, *Paedophile Tourists Face Crackdown; Britons Who Sexually Abuse Children Overseas May Soon be Unable to Evade Prosecution*, INDEPENDENT, July 2, 1995, at 5 (citing Detective Inspector Bob McLachlan of Scotland Yard, member of Interpol's standing working party on offences against minors, who supported passage of ET legislation because without such legislation, UK citizens traveled abroad and committed sexual crimes against children without facing prosecution upon their return). Similar frustration over an inability to prosecute child sex tourists existed in other countries, including New Zealand. See *Child Sex Tours Law Hailed*, DOMINION, Apr. 4, 1995, at 17 (explaining that seizure of child pornography from New Zealanders returning from overseas indicated that New Zealanders sexually abused children in other countries, but without ET legislation, police could not interfere).

167. United Kingdom Sex Offenders Act 1997 [hereinafter UK Sex Offenders Act], ch. 51, part II, at 7.1(a)(b). The law states:

Subject to subsection (2) below, any act done by a person in a country or territory outside the United Kingdom which

- (a) constituted an offence under the law in that country or territory; and
- (b) would constitute a sexual offence to which this section applies if it had been done in England and Wales, or in Northern Ireland, shall constitute that sexual offence under the law of that part of the United Kingdom.

Id. Provisions extended extraterritorially include the crime of "indecent behavior" with a female child and homosexual acts between an adult and a child under the age of 16. *Id.* at 8(i)-(h). The age of consent in United Kingdom is 16 for heterosexuals and 18 for homosexuals. See Paul Knobel, *In the Fight for Gay Rights, We're Still in a Country of Darkness*, SYDNEY MORNING HERALD, Mar. 2, 2001, at 14 (criticizing UK laws for different ages of consent for homosexuals and heterosexuals).

168. UK Sex Offenders Act, *supra* note 167, at 7(2).

169. See Healy, *supra* note 8, at 1888 (noting that British Parliament wished to observe how ET legislation fared in other countries before passing legislation in UK); Steering Committee Report, *supra* note 166, at 1.15 (noting successful prosecution of Swedish child sex tourist Bengt Bolin as indication of enforceability of ET legislation).

170. See Steering Committee Report, *supra* note 166, at 3.12-3.13 (discussing evidentiary challenges of extraterritorial prosecutions).

b. Criticism of the Double Criminality Requirement

The United Kingdom requires double criminality.¹⁷¹ Commentators argue that double criminality undermines the universal norm against child sexual exploitation, established by the U.N. Convention¹⁷² and hinders the prosecution of child sex tourists.¹⁷³ Double criminality encourages a child sex tourist to choose a country where he can victimize children and escape prosecution at home, because his actions overseas did not constitute a crime in the country where the activity took place.¹⁷⁴ Commentators suggest that to prosecute child sex tourists effectively and to satisfy international commitments, countries should remove double criminality requirements in their ET legislation against the sexual exploitation of children.¹⁷⁵ ECPAT (UK) has called upon the United Kingdom to remove the double criminality requirement.¹⁷⁶

c. Training Programs in Destination Countries

In Thailand, the United Kingdom trained select Thai police officers in questioning techniques that do not further traumatize child victims of sexual abuse and also trained the officers to better investigate child sexual abuse cases.¹⁷⁷ The UK provided

171. UK Sex Offenders Act, *supra* note 167, at 7(a), 7(b); see Steering Committee Report, *supra* note 166, at 2.4 (supporting retention of double criminality because double criminality prevents nations from imposing laws on other countries, and noting that double criminality is generally accepted principle in international law).

172. DCI Report, *supra* note 12, at 266. Under the Convention, ratifying countries must protect all of the world's children, therefore, prosecution of child sex tourists is an international obligation of all countries. *Id.*

173. See Joint Action, *supra* note 88, at Title II (C) (recognizing that double criminality requirements can prevent prosecution of child sex tourists, and calling on Member States that require double criminality to ensure that double criminality requirement is not obstacle to effective measures against citizens or residents who are suspected of child sex tourism); see Watson, *supra* note 47, at 81 (explaining that United States, in cases of extraterritorial prosecution, should not allow American who has committed serious crime, such as rape, to escape prosecution in United States, simply because American's actions overseas did not satisfy destination country's definition of rape).

174. DCI Report, *supra* note 12, at 266.

175. See Muntarhorn, *supra* note 140 (arguing that double-criminality rule should be abolished, as it is too restrictive and enables a child sex tourist to escape prosecution under his own country's laws by traveling to another country to sexually exploit children).

176. See SEABROOK, *supra* note 15, at 95 (noting ECPAT(UK)'s criticism of double criminality requirement).

177. See *British, Thai Police*, *supra* note 141 (discussing joint efforts by UK and Aus-

Thailand with child-friendly rooms in which to question children, so that child victims do not have to answer questions in standard police interrogation rooms.¹⁷⁸ Despite these efforts, Thai police require additional child-friendly questioning rooms as well as more police officers trained to properly investigate cases of child sexual abuse.¹⁷⁹

4. Canada

Canada imposed ET legislation against the sexual exploitation of children in 1997.¹⁸⁰ Prosecuting a person for violating Canada's ET legislation requires that the government of the country in which the crime took place request that Canada initiate prosecution.¹⁸¹ Commentators criticize this requirement as an impediment to successful enforcement of Canada's ET legislation.¹⁸²

a. History and Application

In 1997 Canada passed ET legislation¹⁸³ that extraterritorially extended Canada's legislation against sexual crimes against

tralian police to train Thai police); Anjira Assavanonda, *Child Abuse: UK to Help Fight Child Prostitution*, BANGKOK POST, Dec. 9, 1997, at 4 (describing plan for UK police officers to train Thai police officers).

178. See Thai Police Captain Interview, *supra* note 52 (crediting child-friendly room, constructed courtesy of UK, with helping her to elicit from children details of sexual abuse). The author saw this room at the police station, one of several police stations in Thailand that now have child-friendly questioning rooms. *Id.* The room was air-conditioned and carpeted and had numerous toys, stuffed animals, seats, and couches. *Id.* A video-camera, located high in one corner by the entrance, could unobtrusively record activity in the room. *Id.*

179. See *Reports Fall As Police Shy Away from Crimes Involving Children: New Law Makes Cases Complicated*, BANGKOK POST, Nov. 18, 2000 (page unavailable) (noting that many Thai police stations are unprepared to comply with new Thai law that requires police to video-tape statements from child sex abuse victims in presence of trained officers and social workers, because shortage of trained officers and social workers exists).

180. See McArthur, *supra* note 58 (discussing passage of Canada's 1997 law).

181. See CAN. PRESS NEWSWIRE, *Alberta Teacher Suspended for Kissing and Fondling Student on Costa Rica Trip*, Oct. 8, 2000 available at 2000 WL 28210933 (discussing requirement that Costa Rica request that Canada's attorney general prosecute Canadian teacher before Canada's attorney general can initiate proceedings).

182. Mark MacKinnon, *Web Cleanup Law Targets Child Porn*, GLOBE & MAIL, Mar. 15, 2001 at A1.

183. Bill C-27: An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation), Apr. 14, 1997 [hereinafter Bill C-27].

children.¹⁸⁴ The legislation applies to citizens and permanent residents of Canada.¹⁸⁵ In debating passage of the ET legislation, Canada's Parliament noted that successful prosecution depended upon cooperation by destination countries.¹⁸⁶

b. Requirement of Request by Destination Country Before Prosecution

Canada's ET legislation requires that a destination country's government, or that an overseas Canadian consular officer, request that Canada's attorney general initiate proceedings against a Canadian child sex tourist.¹⁸⁷ Commentators note that this requirement defeats enforcement of Canada's ET law, in cases where the foreign government will not file such a request.¹⁸⁸ Ex-

184. *Id.* § 1. Section 7 of the Criminal Code is amended by the following after subsection (4):

4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 173 or subsection 212(4) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

Id.; Section 151 of the Canadian Criminal Code prohibits sexually touching a child under the age of 14. It states:

Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 14 years is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

CAN. CRIM. CODE, Section 151; see Healy, *supra* note 8, at 1910 n.416 (noting that age of consent in Canada is 14).

185. Bill C-27 § 1.

186. See Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue 59—Evidence (Apr. 17, 1997) (Can.) (including one politician's observation that certain destination countries demonstrate unwillingness to prosecute child sex tourists—suggesting that these countries would not cooperate in extraterritorial prosecution by Canada).

187. Bill C-27, *supra* note 183, § 4.2(a)(b); see Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, *supra* note 186 (explaining that requirement for request from overseas government would ensure cooperation by destination country).

188. See Charlie Gillis, *Canada Cited for Child-Sex Hypocrisy*, NAT'L POST, Nov. 20, 2000, at A01 (noting that Canada could not prosecute teacher under Bill C-27, because Costa Rica did not request prosecution). Some destination countries do not aggressively prosecute child sex tourists, and are unlikely to file complaint with the Canadian government. See McArthur, *supra* note 48 (citing Irwin Koziobrocki, vice-president of Criminal Lawyers Association of Ontario, who notes that child sex crimes often occur in

perts argue that countries should remove requirements for complaints from victims or requests for prosecution from foreign governments.¹⁸⁹ As of March 2001, Canada's Parliament began considering legislation that would remove the requirement.¹⁹⁰

5. Japan

Japan's Penal Code extends extraterritorial jurisdiction over certain criminal acts, including rape, indecent assault, and statutory rape.¹⁹¹ Japanese law requires a complaint from alleged victims of rape, indecent assault, and statutory rape,¹⁹² and Japan's Penal Code does not provide for the crime of rape when committed against boys.¹⁹³ Additionally, Japan's age of consent, thirteen, is one of the youngest in the world.¹⁹⁴ Japan's new ET legislation, passed in 1999, addresses several of these concerns.

a. ET Legislation under Japan's 1907 Penal Code

Japan's 1907 Penal Code prohibits sexual offenses such as rape or sexual assault.¹⁹⁵ Although Japanese law recognizes sexual assault as a crime against males and females, Japan's rape law

countries where governments condone or ignore sexual interference in lives of children, because child sex tourism is component of tourist trade).

189. See DCI Report, *supra* note 12, at 266 (criticizing any requirement for complaint in case of child sexual exploitation as obstacle to efficient prosecution).

190. See MacKinnon, *supra* note 182 (explaining that legislation introduced to Canadian Parliament would eliminate complaint requirement).

191. See JAPAN CRIM. CODE, Law No. 45 (1907), art. 3 ("This Code shall apply to a Japanese national who commits any of the following crimes outside the territory of Japan."). Article 3 extraterritorial component includes articles 176 and 177, which pertain to certain sexual crimes. *Id.* art. 3.5.

192. See SHIGEMITSU DANDO, JAPANESE CRIMINAL PROCEDURE 324 (1965) (explaining that victim must complain to police within six months).

193. See JAPAN CRIM. CODE, *supra* note 191, art. 177 (defining rape as unlawful carnal knowledge of female).

194. See SEABROOK, *supra* note 15, at 103 (comparing ages of consent in different countries).

195. JAPAN CRIM. CODE, *supra* note 191. The penal code provides that a person who by violence or threat commits an indecent act with a male or female person of not less than 13 years of age shall be punished with penal servitude for not less than six months nor more than seven years. The same shall apply to a person who commits an indecent act with a male or female person under 13 years.

Id. art. 176. Japanese law defines rape as "obtaining carnal knowledge" of a female, 13 years or older, through violence or the threat of violence or engaging in sexual intercourse with a female under 13 years with or without violence. *Id.* art. 177. Rape carries a minimum prison sentence of two years. *Id.* The Japanese government extends jurisdiction over these offenses extraterritorially. *Id.* art. 3.5.

only provides for crimes committed against females.¹⁹⁶ At least one expert argues that Japan should amend its legislation, so that sexual crimes against male and female children are treated equally.¹⁹⁷

Japan's Penal Code requires that victims of sexual crimes file a complaint within six months of the crime.¹⁹⁸ This requirement frustrated attempts to persuade Japanese police and prosecutors to investigate crimes by Japanese child sex tourists.¹⁹⁹ Commentators consider complaint requirements inappropriate obstacles to prosecuting child sex tourists.²⁰⁰

Japan's age of consent under the 1907 Penal Code is thirteen years old.²⁰¹ The Japanese age of consent falls well below the age of consent of other countries,²⁰² and the age of consent in the U.N. Convention.²⁰³ Experts argue that lower ages of consent enable offenders to avoid extraterritorial prosecution in

196. See Milton Diamond & Ayako Uchiyama, *Pornography, Rape and Sex Crimes in Japan*, 22 INT'L J.L. & PSYCHIATRY 1, 22 (1999) (explaining that under art. 177, Japanese courts recognize rape as crime only against females).

197. Tsuboi Interview, *supra* note 72; see A STEP FORWARD, *supra* note 37, at 11 (explaining that countries should treat sexual crimes against boys and girls equally).

198. JAPAN CRIM. CODE, *supra* note 191, art. 180 (specifying that crimes in article 175 (distribution of obscene literature, etc.), art. 176 (Indecency through Compulsion), art. 177 (Rape), and art. 178 (Constructive Compulsory Indecency and Rape) require complaint from victim). The complaint period is six months. DANDO, *supra* note 192, at 323.

199. See Tsuboi Interview, *supra* note 72 (describing difficulties in locating and obtaining statements from victims of Japanese nationals who travel overseas and sexually exploit children); DCI Report, *supra* note 12, at 243 (discussing Thai NGO FACE obtaining permission from child victim to file complaint on his behalf with Japanese police).

200. DCI Report, *supra* note 12, at 266.

201. See JAPAN CRIM. CODE, *supra* note 191, art. 176-77 (prohibiting "indecent act with a male or female person not less than 13 years of age" and "carnal knowledge of a female person under 13 years of age").

202. See SEABROOK, *supra* note 15, at 103 (explaining that Japan's age of consent, 13, is lower than that of most other countries). One of the few countries with an age of consent lower than that of Japan is Spain, where the age of consent is 12. See Jenny Booth, *Child Prostitution 'The New Kind of Economic Slavery'*, SCOTSMAN, Jan. 12, 2000 (page unavailable) (citing ECPAT's explanation that different ages of consent and definitions of children hamper intentional efforts against child sex tourism). The age of consent in Europe varies from 16 in Scotland to 12 in Spain, producing a confused legal message. *Id.*

203. See Convention, *supra* note 30, art. 1 (calling for age of majority of 18); see also Ofelia Calcetas-Santos, *Rights of the Child*, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, ¶ 42, U.N. Doc. E/CN.4/1997/95/Add.1 (1997) (criticizing Czechoslovakia for age of consent of 15, three years below age of 18 established by Convention).

countries that require double criminality.²⁰⁴

Japan does not have a double criminality requirement.²⁰⁵ In an interview at the Japanese National Police Agency, law enforcement personnel maintained that they would only conduct investigations in cases where a Japanese national's actions overseas also constituted a crime in the destination country.²⁰⁶ If Japanese police only investigate extraterritorial crimes that constitute offenses both in Japan and the destination country, this suggests that a *de facto* double criminality requirement exists.²⁰⁷

In 1999, Japan passed ET legislation against child prostitution and child pornography ("Japan's ET Law").²⁰⁸ The law defines a child, for purposes of child prostitution and child pornography, as a person under eighteen years old.²⁰⁹ The law does not require complaints from victims of these crimes.²¹⁰

b. History and Application of Japan's New ET Legislation Against Child Pornography and Prostitution

In 1999, Japan passed ET legislation addressing child prostitution and child pornography.²¹¹ Article 2 of Japan's ET law de-

204. See SEABROOK, *supra* note 15, at 114-15 (explaining that lower age of consent in some countries attracts child sex tourists, who can raise double criminality requirement as defense against prosecution in sending countries). Experts believe that nations should establish a uniform age of consent, preferably 18. See Muntarhorn, *supra* note 140 (noting that several nations, including Belgium, Italy, Finland, and Thailand, define any person under age of 18 as child).

205. DCI Report, *supra* note 12, at 243.

206. See Interview with Keishichou Funamoto, Section Chief, Youth Safety Division, Japan National Police Agency (Aug. 20, 2000) (explaining that Japan's police can only play limited role when outside of Japan, and if double criminality does not exist, investigation would be impractical and contrary to interests of country where act took place).

207. See Watson, *supra* note 47, at 77 (explaining that double criminality requirement restricts prosecution of crime to cases where crime violated laws of defendant's country and laws of country where crime allegedly occurred).

208. See Doug Struck, *Image-Conscious Japan Targets Child Sex Trade: Law Seeks Change in Public's Actions, Attitude*, WASH. POST, Jan. 27, 2000, at 24 (discussing Japan's embarrassing association with child pornography and prostitution and legislation enacted in response).

209. Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children [hereinafter Japan's ET Law], Temporarily Translated Version Provided by Japan's Ministry of Justice (1999), art. 2.

210. See Tsuboi Interview, *supra* note 72 (praising absence of complaint requirement as improvement that will facilitate prosecution of Japanese citizens who sexually exploit children).

211. See Suvendrini Kakuchi, *Japan: Tougher Action Sought on Child Pornography on the Web*, INTER-PRESS SERVICE, June 15, 2000 (page unavailable) (detailing passage of Japan's ET law specifically against child pornography and prostitution). In 1999, the

finer a child, for purposes of child prostitution and child pornography, as anyone under eighteen years old.²¹² Japan's ET law prohibits Japanese nationals from providing remuneration, or promising remuneration, to a child, a pimp, or a child's legal guardian or parent, in exchange for sexual contact with a child under eighteen years of age.²¹³ Article 10 of the law specifies that the Japanese government deems these offenses as extraterritorially prosecutable.²¹⁴

Japan's requirement that child victims file a complaint within six months of the crime²¹⁵ made extraterritorial prosecutions difficult.²¹⁶ Japan's ET law does not require a complaint by the child against the perpetrator in cases of child prostitution and pornography.²¹⁷ This removes an obstacle that NGOs faced when requesting that Japanese police investigate crimes committed by Japanese child sex tourists.²¹⁸

International Criminal Police Organization, or Interpol, estimated that 80% of the world's child pornography was produced or distributed in Japan. William Graham, Jr., *Uncovering and Eliminating Child Pornography Rings on the Internet: Issues Regarding and Avenues Facilitating Law Enforcement's Access to 'Wonderland'*, 2000 DET. C.L. REV. 457, 472 (2000). Japan's new ET legislation does not criminalize possession of child pornography and does not specifically address non-commercial distribution of child pornography over the Internet. *Id.*; see Taro Karasaki, *Global Network Urged in Battle Against Child Cyber Porn*, ASAHI SHIMBUN/ASAHI EVENING NEWS, Oct. 16, 1999 (page unavailable) (explaining that law does not apply to non-commercial child pornography or comic book illustrations).

212. Japan's ET law, *supra* note 209, art. 2.1; see *Japan to Join Int'l Investigation into Internet Child Porn*, JAPAN ECON. NEWSWIRE, Feb. 29, 2000 (page unavailable) (explaining that for purposes of law, child is person under age of 18).

213. Japan's ET law, *supra* note 209, art. 2.2.

214. *Id.* art. 10 ("The crimes specified in Articles 4 to 6, paragraphs 1 and 2 of Article 7, and paragraphs 1 and 3 (limited to the part thereof which relates to paragraph 1) of Article 8 shall be dealt with according to the provision of Article 3 of the Penal Code (Law No. 45 of 1907)."); see JAPAN CRIM. CODE, Law No. 45 (1907) art. 3 ("This Code shall apply to a Japanese national who commits any of the following crimes outside the territory of Japan."); Struck, *supra* note 208 (noting that passage of new law and its extraterritorial component led to drop in advertisement for sex tours).

215. See JAPAN CRIM. CODE, *supra* note 191, art. 180 (specifying that crimes detailed in art. 176 (sexual assault), art. 177 (rape), and art. 178 (constructive sexual assault and rape) require complaint).

216. See Tsuboi Interview, *supra* note 72 (describing difficulties in locating and obtaining statements from victims of Japanese nationals who travel overseas and sexually exploit children); DCI Report, *supra* note 12, at 243 (discussing role of Thai NGO FACE in obtaining consent from child victim in time to file complaint with Japanese police).

217. Tsuboi Interview, *supra* note 72.

218. *Id.*; see DCI Report, *supra* note 12, at 266 (explaining difficulties in prosecuting child sex tourists when countries require complaints from victims).

c. Prosecuting Japanese Child Sex Tourists for Offenses
Under the 1907 Penal Code

NGOs in Japan pressured Japanese police to investigate cases of Japanese sexual exploitation of children overseas under Japanese law for several years prior to the passage of Japan's 1999 ET law.²¹⁹ Attorneys for the Japanese NGO, Lawyers for Victims of Child Prostitution ("LVCP"), argued that Japan's 1907 extraterritorial component extends jurisdiction in cases where Japanese citizens sexually exploit children in countries other than Japan.²²⁰ Since 1996, LVCP has requested that the Japanese police investigate Japanese nationals who traveled overseas and sexually exploited children;²²¹ however, no charges have been brought against the men.²²²

d. An Example of Prosecution of a Japanese Child Sex Tourist
Under Japan's 1907 Penal Code

In 1996, the Japanese NGO, LVCP, filed a complaint with the Japanese police against Mr. Hisao Natsume, a Japanese citizen arrested in Pattaya, Thailand for sexually molesting a Thai

219. See DCI Report, *supra* note 12, at 243 (describing efforts by Japanese NGOs to persuade Japanese police and courts to arrest and prosecute child sex tourists from Japan).

220. Tsuboi Interview, *supra* note 72; see also DCI Report, *supra* note 12, at 243 (explaining that Japan could prosecute persons who sexually exploited children overseas under art. 3.5 of Criminal Code, which provides that arts. 176 and 177 are prosecutable extraterritorially).

221. See Kaoruko Sanazawa, *Conference Aims to Battle Child Abuse*, *ASAHI SHIMBUN*, May 28, 1997 (page unavailable) (discussing efforts by Lawyers for Victims of Child Prostitution ("LVCP") to bring charges against three Japanese nationals for sex crimes committed against children in Philippines and Thailand). In 1996, the Philippine police arrested a Japanese citizen named Mr. Hisashi Maruyama, for sexually abusing children in the Philippines. *Court Reaffirms Conviction of Japanese Pathologist (sic)*, *ASIAN ECON. NEWS*, May 31, 1999 (page unavailable). Maruyama, pretending to be a doctor, had previously been arrested in the Philippines for creating pornographic video tapes of children between the ages of nine and thirteen. Suvendrini Kakuchi, *Children-Japan: Okinawa Case Boosts Fight for Law vs. Pedophiles*, *INTER PRESS SERVICE*, Sept. 25, 1995 (page unavailable). Following pressure from Lawyers for Victims of Child Prostitution ("LVCP"), the Japanese police agreed to begin an investigation into Maruyama's activities in the Philippines and to prosecute Maruyama if he returned to Japan. Tsuboi Interview, *supra* note 72. The Japanese police played a key role in assisting the Philippine courts to prosecute Maruyama. *Id.* Maruyama, by using a fake passport, tried to prove that he was never in the Philippines when the sexual abuse took place. *Id.* Japanese police searched through records at Tokyo's Narita airport, and sent Philippine court departure records to disprove Maruyama's claim. *Id.*

222. DCI Report, *supra* note 12, at 243; Tsuboi Interview, *supra* note 72.

boy.²²³ Mr. Natsume returned to Japan and never faced trial in Thailand.²²⁴ Without LVCP filing a complaint on behalf of the boy, Japanese police would not have begun an investigation, because Japanese law required a complaint from the victim within six months of the incident.²²⁵

At the onset, cooperation between Japanese police investigating the *Natsume* case and the Thai police was poor.²²⁶ It took months for Japanese police to receive the initial statement taken from the victim at the Thai police station.²²⁷ The statement the Japanese police received was brief, vague, and would not meet the admissibility standards of Japanese courts.²²⁸

The Japanese police insisted that the boy come to Japan and give a statement, however, neither the Japanese government nor the police would fund the boy's travel expenses to Japan.²²⁹ Japanese NGOs and attorneys raised the funds themselves.²³⁰ NGO representatives and a Thai prosecutor accompanied the boy to

223. *Aichi Man Sued for Molesting Thai Boy During Trip Abroad*, MAINICHI DAILY NEWS, Dec. 17, 1999, at 14. By coincidence, at the time of the arrest, several Japanese MPs were in Thailand at the time. Sereewat Interview, *supra* note 24. Thai NGO FACE contacted MPs, and advised them of the Natsume incident. *Id.* These MPs would later press for passage of Japan's new ET law. Tsuboi Interview, *supra* note 72.

224. *See The Ones that Got Away*, BANGKOK POST, Feb. 20, 2000, at 3 (discussing child sex tourists, including Natsume, who fled Thailand following their arrests, and escaped prosecution in Thailand and abroad). Natsume, a Japanese citizen, allegedly sexually molested a 13 year-old Thai boy whom he procured through a pimp. SEABROOK, *supra* note 15, at 88. Natsume's victim was not a child prostitute and came from a relatively stable family. Sereewat Interview, *supra* note 24. Sereewat cites this as an example of child sex tourism creating the problem of child prostitution. *Id.* Thai police arrested Natsume, who apparently bribed his way to freedom and returned to Japan. Thai Police Captain Interview, *supra* note 52; *see* SEABROOK, *supra* note 15, at 89 (discussing how Natsume paid Thai police 600,000 baht [about U.S.\$24,000] in return for assistance leaving country). Child sex tourists arrested in countries other than their own often bribe their way to freedom. *See* Kate Connolly, *All Played Out*, GUARDIAN, May 4, 1999, at 2 (explaining that Prague attracts sex tourists for several reasons, including authorities' susceptibility to bribes.); Cheeseman, *supra* note 163 (noting that some Thai police officers accept bribes from child sex tourists and allow the child sex tourists to go free). If a child sex tourist cannot successfully bribe police, he can bribe a judge or the victim's parents. *See* Thai Police Captain Interview, *supra* note 52 (discussing Thai lawyer who specializes in defending child sex tourists and routinely arranges for clients to bribe police, judges, and victims' parents to secure clients' freedom).

225. DCI Report, *supra* note 12, at 243.

226. *See* Tsuboi Interview, *supra* note 72 (explaining that Japanese police were frustrated by lack of cooperation by Thai police).

227. *Id.*

228. *Id.*; DCI Report, *supra* note 12, at 242.

229. SEABROOK, *supra* note 15, at 91.

230. *Id.*; Tsuboi Interview, *supra* note 72.

Japan on August 15, 1999.²³¹

Japanese NGOs, as well as the Thai representatives who accompanied the boy to Japan, praise the Japanese police's professionalism and dedication once the boy arrived in Japan.²³² The police provided a female translator who spoke fluent Thai and also provided a model of the hotel room in which the abuse allegedly took place.²³³ These measures provided a secure environment in which the boy delivered a statement to the Japanese police.²³⁴ To date, Japanese police have not charged Natsume, however, NGOs remain hopeful that proceedings will eventually begin.²³⁵

d. An Example of Enforcement of Japan's New ET Legislation

In November 2000, Japanese police arrested Akihisa Kuga and six other Japanese nationals for producing child pornography in Thailand, the first arrests under Japan's new ET legislation.²³⁶ The Thai police arrested Kuga in Thailand, and the Japanese embassy in Thailand alerted the Japanese police in Tokyo that Kuga received a replacement passport from the embassy.²³⁷ Following notification from the embassy, Japanese police commenced their investigation of the case, and questioned Kuga and other suspects upon their return to Japan.²³⁸

231. SEABROOK, *supra* note 15, at 94.

232. Tsuboi Interview, *supra* note 72; Sereewat Interview, *supra* note 24; Roujanavong Interview, *supra* note 97; *but see* SEABROOK, *supra* note 15, at 94 (citing witnesses to the questioning who claim that some aspects were child-friendly but other aspects were not).

233. Tsuboi Interview, *supra* note 72; Sereewat Interview *supra* note 24.

234. Tsuboi Interview, *supra* note 72; Sereewat Interview *supra* note 24; *see* SEABROOK, *supra* note 15, at 96 (stating that although discrepancies exist between initial report to Thai police and deposition made in Japan, victim's story was consistent).

235. Tsuboi Interview, *supra* note 72 (explaining that previous prosecutor for Natsume's prefecture in Japan was overly tentative, and new prosecutor seems more willing to initiate proceedings against Natsume).

236. *Seven Japanese Arrested in Japan for Child Pornography in Thailand*, AGENCE FRANCE-PRESSE, Nov. 7, 2000 (page unavailable) [hereinafter *Seven Japanese Arrested*]. Kanagawa prefecture police arrested Akihisa Kuga, 51 year-old owner of a Japanese pornographic film company, and two of his employees, for producing child pornography in Thailand. *Id.* Police later arrested four other persons in Japan for their roles in producing the child pornography. *Id.* Kuga produced pornographic films in Thailand in December 1999, and marketed films over Internet and through direct mail campaigns. *Child Pornographer Arrested*, *supra* note 72, at 12. He sold each copy of film for 10,000 yen (almost U.S.\$100). *Id.*

237. Funamoto Interview, *supra* note 206.

238. *Id.*

Commentators note that embassies can play a vital role in extraterritorial prosecution.²³⁹ The Japanese embassy in Thailand provided Kuga with a replacement passport following his arrest, however, the embassy notified the Japanese police of Kuga's arrest.²⁴⁰ Japanese police praise the Japanese embassy in Thailand for its assistance, which enabled the police to initiate an investigation.²⁴¹

In cases of extraterritorial prosecution, critics stress the importance of international cooperation between police forces to uncover evidence that will satisfy the sending country's judicial standards.²⁴² The Japanese police traveled to Thailand, where Kuga's crimes allegedly took place, and cooperated with the International Criminal Police Organization.²⁴³ By traveling overseas, the Japanese police were also able to impress upon Thai officials the importance of speedily processing requests for evidence and documents.²⁴⁴

6. The United States

In 1994, President Clinton signed the Child Sexual Abuse Prevention Act ("Act").²⁴⁵ The Act criminalizes travelling overseas with the intention of committing a sexual act with a child that would constitute a crime within the United States.²⁴⁶ The

239. See Giordanella, *supra* note 50 at 156 (arguing that authorities in destination countries should inform U.S. embassies when releasing U.S. child sex tourists on bail and that U.S. embassies should refuse requests for replacement passports from child sex tourists released on bail to facilitate prosecution in destination countries); see also Levan, *supra* note 77, at 894 n.136 (explaining that embassies facilitate child sex tourists' escape from destination countries by providing child sex tourists with replacement passports after authorities in destination country confiscate original passports).

240. Funamoto Interview, *supra* note 206.

241. *Id.*

242. See Tsuboi Interview, *supra* note 72 (explaining that in cases of extraterritorial prosecution police, destination and sending countries must cooperate); Li, *supra* note 148 (discussing Sweden's decision to post police liaison in Thailand to supervise evidence collection in cases of extraterritorial prosecution of Swedish child sex tourists).

243. *Seven Japanese Arrested*, *supra* note 236.

244. Funamoto Interview, *supra* note 206. Officer Funamoto stresses that Japanese police do not conduct police activity outside of Japan, but can only request that the destination country's police conduct activity on Japan's behalf. *Id.*

245. See Bevilacqua, *supra* note 144, at 175 (discussing United States passage of 18 U.S.C. § 2423 (b) (1994), the Child Sexual Abuse Prevention Act of 1994).

246. 18 U.S.C. 2423(b). The statute provides that:

A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the

United States convicted one U.S. citizen of violating the Act by conspiring to travel to Honduras to engage in sexual activity with an underage boy.²⁴⁷

a. The United States' ET Legislation Against the Sexual Exploitation of Children

In 1994, the United States extended the Mann Act²⁴⁸ with the Child Sexual Abuse Prevention Act ("Act").²⁴⁹ The Act criminalizes traveling in foreign commerce with the purpose²⁵⁰ of committing any sexual act with a person under the age of eighteen that would violate federal laws of Chapter 109A of 18 U.S.C.²⁵¹ The Act criminalizes traveling overseas, or through an

purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 15 years, or both.

Id. See Healy, *supra* note 8, at 1906 n.391 (discussing provisions of the Act).

247. See Dennis Coday, *Trial Draws Attention to Child Sex Tourism*, NAT'L CATH. REP., Nov. 3, 2000 at 10 (describing conviction of Marvin Hersh, professor, for traveling to Honduras with intention to engage in sexual activity with Honduran children); see also Tim Collie, *Worldwide Pedophile Underground Clandestine, High-Tech*, SUN-SENTINEL, Apr. 24, 1997, at 1a (describing Hersh's arrest for bringing Honduran boy to United States under forged passport and forcing child to engage in sex with him).

248. White Slave Traffic (Mann) Act, amended and codified at 18 U.S.C. § 2421-2424 (1988).

249. 18 U.S.C. 2423 (b).

250. *Id.* The Fifth Circuit found that engaging in sex with minor must be a purpose, but not necessarily the dominant purpose, of defendant's travel to a foreign country. See *United States v. Garcia-Lopez*, 234 F.3d 217, 219 (5th Cir. 2000).

251. See Healy, *supra* note 8, at 1905. Chapter 109A criminalizes engaging, or attempting to engage in a sexual act with children under the age of 16. 18 U.S.C. § 2241 (2000) states:

Whoever crosses a state line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both. If the defendant has previously been convicted of another Federal offense under this subsection, or of a Country offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement. In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew

overt act, conspiring to travel overseas,²⁵² with the purpose of engaging in illegal sexual activity with a child.²⁵³ The Act could enable the United States to prosecute a child sex tourist before the child sex tourist harmed a child.²⁵⁴

At least one expert notes that the Act does not fully protect

that the other person engaging in the sexual act had not attained the age of 12 years.

Id. In certain cases, a child sex tourist, through electronic mail correspondences or discussions with friends, reveals his intention to commit an illegal sexual act with a child in another country. *See, e.g.,* Bill Wallace, *San Jose Man Charged in Sex Prisoner Scheme; Plan to Bring Viet Girl to U.S.*, SAN FRAN. CHRON., Sept. 24, 1999, at A24 (discussing case of Michael Rostoker, arrested in 1999, at San Francisco International airport, for planning to bring 13 year-old Vietnamese girl into United States under false documents). Rostoker allegedly bought the girl from her parents, and traveled to Vietnam 11 times previously to have sex with her. *Id.* Rostoker told associates about his plans, and at least one associate contacted the San Jose police. *Id.* Investigators confiscated email messages sent by Rostoker to the girl instructing her, among other things, to never try to use her age as an excuse to refuse to have sex with him. *See* Erin McCormick & Jim Zamora, *Slave Trade Still Alive in U.S.*, SAN FRAN. EXAMINER, Feb. 13, 2000 at A1 (citing email from Rostoker to Vietnamese girl reprimanding her for saying she is too young for sex because in Saigon there are many prostitutes who are as young as 12).

252. *See* *United States v. Acuna*, 9 F.3d 1442, 1447 (9th Cir. 1993) (providing definition of overt act that demonstrates attempt to commit crime). The act must extend beyond preparation to commit a crime, and demonstrate defendant's firm intention to commit the crime. *Id.* The act must be necessary to completing the crime, and a rational observer should be able to conclude beyond a reasonable doubt that the defendant carried out the act with the intention of violating a criminal statute. *Id.* The Ninth Circuit also provides a helpful definition of conspiracy to commit a crime. *United States v. Litteral*, 910 F.2d 547, 550 (9th Cir. 1990) ("The essential elements of a conspiracy are (1) an agreement to engage in criminal activity, (2) one or more overt acts taken to implement the agreement, and (3) the requisite intent to commit the substantive crime.") (citing *United States v. Meyers*, 847 F.2d 1408, 1412-13 (9th Cir. 1988)).

253. *See* Report and Recommendations, *United States v. Hersh*, Case No. 97-8051-CR-GOLD (S.D. Fla. issued Oct. 27, 1998) (explaining that conspiring to travel in foreign commerce is activity that occurs in United States). In rejecting defense's motion to dismiss U.S. jurisdiction over acts committed by defendant Marvin Hersh in violation of 18 U.S.C. 2423(b), the magistrate noted that Hersh's crimes took place within the United States. *Id.* The court found that:

as appropriately pointed out by the government in its response, Hersh is not charged with having committed extraterritorial acts made criminal by virtue of his U.S. citizenship. In the indictment at bar, Hersh is charged with conspiring within the United States for the purpose of traveling to commit sex acts with a minor. The conspiracy is alleged to have occurred in the United States and his intent to travel for the purpose of committing sex acts is alleged to have been committed in the United States.

Id.

254. *See* Healy, *supra* note 8, at 1906 n.391 (noting that 18 U.S.C. 2423(b), which criminalizes traveling in foreign commerce with intent to engage in sexual activity with minor, or conspiring to do same, would enable United States to prosecute child sex

children ages sixteen and seventeen because 18 U.S.C. § 2241 does not criminalize sexual activity with persons who are sixteen and over, unless the conduct involves force, the serious threat of force, or other means to incapacitate the victim.²⁵⁵ The Act does not contain a double criminality requirement;²⁵⁶ scholars find that double criminality requirements hinder extraterritorial prosecutions.²⁵⁷ The law applies to U.S. citizens and aliens admitted into the United States for permanent residence;²⁵⁸ commentators note that applying ET laws to resident aliens closes a loophole that a child sex tourist would use to evade prosecution.²⁵⁹

The Department of Justice interprets the purpose requirement of the Act²⁶⁰ to mean that the defendant must form the intention to engage in sexual activity with the child prior to meeting the child.²⁶¹ Under this interpretation, a U.S. citizen, or resident alien, can be prosecuted, regardless of whether the defendant formed the intention while in the United States or while he was in the destination country.²⁶² The Act does not require proof that a sexual act with a child²⁶³ or any other criminal

tourist who contracts with sex tour operator to have sex with child overseas, before child sex tourist actually harmed child).

255. *See id.* at 1907 (explaining that 18 U.S.C. § 2241 only legislates against sexual activity with a 16 or 17 year-old child if the sexual activity includes force or the threat of force).

256. *See* Giordanella, *supra* note 50, at 148 n.117 (noting that the Child Sexual Abuse Prevention Act ("Act") does not require double criminality).

257. *See* Stewart, *supra* note 65, at 241 (criticizing double criminality as hindrance to prosecution of child sex tourists); DCI Report, *supra* note 12, at 256.

258. 18 U.S.C. § 2423(b), *supra* note 249.

259. *See* DCI Report, *supra* note 12, at 265 (discussing how one child sex tourist escaped prosecution in his country of residence because that country's ET law did not apply to non-citizens).

260. *See* 18 U.S.C. § 2423(b), *supra* note 249 (prohibiting U.S. citizens and residents from traveling across state lines or to countries other than the United States with the purpose of engaging in sexual activity with a child).

261. DOJ Attorney Interview, *supra* note 144.

262. *Id.* The United States can prosecute a citizen or resident alien who forms an intention in the United States, or the destination country, to engage in sexual activity that violates 18 U.S.C. § 2421. *Id.*

263. *Id.*; *see* Healy, *supra* note 8, at 1915 (explaining that 18 U.S.C. § 2423(b) criminalizes intent to travel overseas to engage in sexual activity with child and that proving that sexual act took place in another country is difficult). Proving intent is also difficult and without such evidence, 18 U.S.C. § 2423(b) is unenforceable. *Id.*; Roujanavong Interview, *supra* note 97 (criticizing 18 U.S.C. § 2423(b) as almost useless because it does not criminalize behavior overseas, and proving that a person traveled with intention of engaging in sexual activity with child is overly burdensome).

activity actually occurred.²⁶⁴ Courts interpret the purpose requirement to mean that the government must prove that engaging in an illegal sexual act with a minor was a significant purpose, but not necessarily the sole purpose, of the defendant's travel.²⁶⁵

b. United States Enforcement of 18 U.S.C. § 2423(b):
An Example

The United States' only conviction of a U.S. citizen²⁶⁶ under the Act is Professor Marvin Hersh,²⁶⁷ who was also convicted of nine other charges.²⁶⁸ Hersh traveled to Honduras²⁶⁹ numerous times²⁷⁰ prior to 1996, to sexually exploit underage boys.²⁷¹ By

264. See *United States v. Han*, 230 F.3d 560, 563 (2d Cir. 2000) (explaining that prosecution does not have to prove that defendant engaged in sexual activity with child or committed any other crime than traveling with intention to have sex with child); compare 18 U.S.C. § 2423(b) with 18 U.S.C. § 2261 (criminalizing crossing country lines with intention of intimidating or harassing spouse or intimate partner, if defendant also intentionally causes bodily harm to partner or spouse during course of, or as result of, travel). The Tenth Circuit found that juries may consider action by the defendant prior to and also shortly after traveling, to determine the defendant's purpose for traveling across country lines. *Brooks v. United States*, 309 F.2d 580, 581 (10th Cir. 1962) ("The conduct of the parties within a reasonable time before and after the trip are circumstances which a jury may consider in determining such intent, motive or purpose.").

265. *United States v. Miller*, 148 F.3d 207, 211-13 (2d Cir. 1998) (finding that illegal sexual acts with minor must be dominant purpose of traveling in interstate commerce, but not sole, or most important reason). The Miller court notes that "the government emphasizes that every other circuit that has considered this issue has rejected the interpretation suggested by Miller [that illegal sexual acts with a minor be the most important or sole purpose of travelling in interstate commerce]." *Id.* (citing *United States v. Vang*, 128 F.3d 1065, 1072 (7th Cir.1997); *United States v. Meacham*, 115 F.3d 1488, 1495 (10th Cir. 1997); *United States v. Campbell*, 49 F.3d 1079, 1082-83 (5th Cir. 1995); *United States v. Ellis*, 935 F.2d 385, 389-90 (1st Cir.1991)); *United States v. Garcia-Lopez*, 234 F.3d 217, 220 (5th Cir. 2000) (finding that "the district court's instruction that it was sufficient for the Government to prove that one of Garcia-Lopez's motives in traveling was to engage in a sexual act with a minor substantially covered the requisite intent that the Government was required to prove.").

266. *Garcia-Lopez*, 234 F.3d at 218 (convicting and sentencing resident alien for violating 18 U.S.C. § 2423(b) in November 2000). *Id.* Andres Garcia-Lopez moved in with a woman in Texas, and took her 13 year-old daughter to Mexico. *Id.* at 219. He raped the 13 year-old twice in Mexico. *Id.* Eventually, victim's grandmother and sister brought her back to Houston. *Id.*

267. *United States v. Hersh*, No. CR97-08051-001 (S.D. Fla. May 31, 2000). Marvin Hersh was a professor at Florida Atlantic University. Collie, *supra* note 247.

268. Judgment in a Criminal Case, *Hersh* (No. CR08051-001) May 31, 2000.

269. Gerry Volgenau, *Travel Industry is Shamefully Silent About Child-Sex Tourism*, DETROIT FREE PRESS, Oct. 4, 1999 (page unavailable).

270. See Lambiet, *supra* note 2 (reporting that Hersh apparently also traveled to Mexico, Dominican Republic, and Nepal). In an April 1997 search of Hersh's house,

1994, Hersh developed a sexual relationship with several Honduran brothers, ages eight to sixteen.²⁷²

In 1995, Hersh brought one of the brothers, "J.R.,"²⁷³ then fifteen years-old, to the United States under a falsely acquired passport.²⁷⁴ Hersh claimed that the boy was his adopted son, and enrolled him in a Florida public school.²⁷⁵ Hersh's former wife alerted the Florida Department of Children & Families that Hersh was living with a boy whom he had illegally brought into the country, which led to Hersh's arrest in 1997.²⁷⁶

police seized five hand-drawn maps of Katmandu, Nepal. *Id.* The maps detailed personal notes, including "friendly boys here" written near a drawing of a lake, or "boys swim naked here." *Id.* The notes included Nepali words for "hello" and "penis." *Id.* Hersh traveled to Honduras 15 times between 1994 and 1996. *Id.* Police suspect that Hersh had sexual contact with as many as a dozen children. *Id.*

271. See Noreen Marcus, *Ex-Professor Convicted on 10 Child-Sex Charges*, *SUN SENTINEL*, Mar. 3, 1999, at 1B (describing testimony of Jay Buhler, who claimed that he and Hersh traveled to Honduras because in Honduras it was easy for men to find young boys with whom to have sex). According to Buhler, Hersh told him that one of the brothers of the boys with whom Hersh had begun a sexual relationship also wanted a sexual partner. *Id.*

272. See Timothy Roche, *Tourists Who Prey on Kids: Central America is the New Hunting Ground for Pedophiles. Can a U.S. Law Stop Them?*, *TIME*, Feb. 15, 1999, at 58 (detailing how Hersh befriended family by providing boys with Gameboys and toy helicopter, and by paying family's rent); Harris Email, *supra* note 36 (describing Hersh as very smart and sly man who avoided suspicion by providing the boys' family with gifts); see also Lambiet, *supra* note 2 (interviewing young man who testified at Hersh's trial that at age 14 he would accompany Hersh on trips after Hersh provided family members with watches, electronic goods, and clothes). Other child sex tourists also earned victims' families' trust by providing families with gifts. See DCI Report, *supra* note 12, at 77 (recounting activities of Viktor Baumann who received admiration and respect for his charitable work). In Thailand, a British man named John Priall went on trial in July 2000 for sexually abusing two underage sisters. Thai Police Captain Interview, *supra* note 52. He paid the girls' mother's rent and bought the family gifts. *Id.*

273. Newspaper articles have published his name, but the author chooses to identify him only by initials. The media and the police should avoid unnecessarily publicizing victims' names. See DCI Report, *supra* note 12, at 189 (cautioning against publication of victims' names). See also SEABROOK, *supra* note 15, at 89 (noting that Natsume's 11 year-old victim and victim's family suffered ridicule and shame when media released boy's identity); Sereewat Interview, *supra* note 24 (explaining that ridicule became sufficiently severe for family to have to move).

274. Judgment in a Criminal Case, *Hersh* (No. CR08051-001), *supra* note 268. Hersh was convicted of a false statement in application and use of a passport under 18 U.S.C. § 1542. *Id.*

275. See Criminal Complaint, *United States v. Hersh*, Case No. 97-5097-AEV (S.D. Fla. submitted Apr. 17, 1997) at 4, 14-15, 16 (detailing Hersh's deceptions in bringing child to United States).

276. Lambiet, *supra* note 2.

The FBI cooperated with the Honduran police²⁷⁷ and the NGO Casa Alianza to locate and interview victims and witnesses.²⁷⁸ The United States flew several witnesses to the United States to testify, including J.R.'s mother and other relatives.²⁷⁹ At the trial, the victim, who had already turned eighteen, also testified.²⁸⁰ Additionally, Jay Buhler, Hersh's friend and co-conspirator, who accompanied Hersh to Honduras on several occasions to have sex with Honduran boys, testified against Hersh.²⁸¹ Buhler pled guilty to violating 18 U.S.C. § 2423(b),²⁸² and conceded during his testimony that he hoped that testifying against Hersh would bring him a lighter sentence.²⁸³

In 1999, the court sentenced Hersh to ten years for conspir-

277. See Harris Email, *supra* note 36 (noting strong cooperation between FBI and Honduran police in finding and interviewing victims and witnesses).

278. See *id.* (discussing how Casa Alianza helped locate victims and also worked with Honduran resident who was one of Hersh's victims). Local and international NGOs can help governments and police of sending countries and destination countries by assisting in evidence collection, locating witnesses, establishing education programs, and protecting vulnerable children. See SEABROOK, *supra* note 15, at 117-18 (explaining that functions NGOs can assume include: (1) representing child in cases where child does not have guardian or parent that can assume this role, (2) acting as liaison to media to insure that media report case accurately and do not further traumatize child, and (3) advising police within destination countries regarding child sexual exploitation). At least one commentator believes that the most important step to combating child sex tourism is strengthening NGOs. Healy, *supra* note 8, at 1923. NGO efforts not only promulgated ET legislation against the sexual exploitation of children, but within destination countries, NGOs are the primary source for education, rehabilitation, and awareness. *Id.* In Thailand, government agencies and NGOs agreed upon a memorandum of understanding to treat child victims of trafficking as victims to be placed in social-welfare facilities, pending return to their homes. Muntarhorn, *supra* note 140. Thai government agreed not to place child victims in immigration jail. *Id.* The NGO FACE, in Thailand, assists police and prosecutors from certain European countries by locating and taking statements from victims and witnesses in Thailand. See Sereewat Interview, *supra* note 24 (discussing FACE's expertise in locating witnesses and victims whom non-Thais would have trouble finding). Also, certain European countries alert FACE, when known pedophiles travel to Thailand, which enables the NGO to monitor pedophiles' activities in the country. *Id.*

279. *Id.*; see Order, United States v. Hersh, Case No. 97-8051-CR-GOLD (S.D. Fla. issued Oct. 26, 1998) (rejecting Hersh's motion titled "Supplemental Motion to Suppress Testimony Based on Illegal Inducements for Witness Testimony" and requiring United States to fly required witnesses to United States for Hersh trial).

280. See Marcus, *supra* note 271 (quoting prosecutor, John McMillan, after trial, who said case could not have succeeded without victim's willingness to testify). According to Buhler, Hersh was confident that J.R. would not testify against him. *Id.*

281. *Id.*

282. Jose Lambiet, *Traveler Pleads Guilty in Sex Case; Fort Lauderdale Man Now Helping Police*, SUN SENTINEL, Apr. 23, 1998, at 1B.

283. Marcus, *supra* note 271.

ing with Buhler to violate 18 U.S.C. § 2423(b),²⁸⁴ an additional ten years for violating 18 U.S.C. § 2423(a) by transporting a minor in foreign commerce with the intent to engage in illegal sexual activity,²⁸⁵ and a total of 105 years for all his offenses.²⁸⁶ Under the Act, Hersh could not be charged with committing any sexual acts against minors while overseas.²⁸⁷ The only extraterritorial component in Hersh's crime was his manifestation of intent to violate 18 U.S.C. § 2423(b), by traveling between the United States and Honduras.²⁸⁸

III. *COMBATING CHILD SEX TOURISM THROUGH ET LEGISLATION AND OTHER MEASURES*

Examples of country specific legislation against child sex tourism provide a basis for model ET legislation to which other countries should aspire. Additionally, non-legislative means exist to facilitate the prosecution of child sex tourists. The United States should amend its existing legislation to conform to the model ET legislation.

A. *Model ET Legislation*

Every country should extraterritorially extend legislation against the sexual exploitation of children.²⁸⁹ The legislation should apply to citizens and residents.²⁹⁰ ET legislation should also criminalize traveling with the intention of sexually exploiting a child or conspiring to do the same. Finally, countries should abolish double criminality requirements²⁹¹ and other impediments to extraterritorial prosecution.

284. Judgment in a Criminal Case, *Hersh* (No. CR08051-001), *supra* note 268.

285. *Id.*

286. *Id.*

287. See Report and Recommendations, *supra* note 253 (clarifying that U.S. government did not charge Hersh with criminal sexual activity against child in Honduras; Hersh's crime was conspiring to travel overseas to engage in sexual activity with child occurred in United States).

288. See Court Jury Instructions, *Hersh* (Case No. 97-8051-CR-GOLD(s)(s)(s), issued Mar. 1, 1999) (stating that requirement for finding defendant guilty of conspiracy was "[t]hat one of the conspirators during the existence of the conspiracy knowingly committed at least one of the following overt acts: (i) traveled from Dade County, Florida, to Honduras on or about December 27, 1995 and (ii) traveled from Honduras to Dade County, Florida, on or about January 1, 1996.").

289. See *supra* notes 48-54 and accompanying text.

290. See *supra* note 103 and accompanying text.

291. See *supra* notes 172-75 and accompanying text.

1. ET Legislation Should Criminalize Sexual Activity
with Children Overseas that Would Constitute
a Crime Within that Country's
Territorial Jurisdiction

ET legislation against the sexual exploitation of children should enable a sending country to prosecute a child sex tourist for activity in a destination country that would constitute a sexual crime against a child, if the activity occurred in the sending country.²⁹² Nations that do not enact, or enforce, ET legislation against the sexual exploitation of children, enable child sex tourists to avoid prosecution for their crimes.²⁹³ Consistent with the U.N. Convention²⁹⁴ and the World Congress Against Commercial Sexual Exploitation of Children's Agenda for Action,²⁹⁵ nations should ensure that their citizens are held accountable for sexual interference in children's lives anywhere in the world.

2. ET Legislation Should Apply to Citizens and Residents

ET legislation should apply to both citizens and permanent residents.²⁹⁶ By enforcing ET legislation against permanent residents, a sending country denies a child sex tourist a potential loophole to evade prosecution.²⁹⁷ Applying ET law to both citizens and residents further ensures that child sex tourists do not find a safe harbor at home after exploiting children in countries other than their own.

3. ET Laws Should Criminalize Traveling, or Conspiring to
Travel, Overseas with the Purpose of Sexually
Exploiting Children

ET legislation should criminalize traveling overseas with the intention of committing a sexual act that would constitute a

292. *See supra* notes 48-54 and accompanying text (explaining need for ET legislation that enables sending countries to prosecute persons who travel to countries other than their own and sexually exploit children).

293. *See supra* note 3 and accompanying text (discussing Austrian tourist who avoided prosecution for sexual exploitation of Philippine girl).

294. *See supra* notes 81-83 and accompanying text (detailing legally binding protection that U.N. Convention requires nations to provide to children around world).

295. *See supra* notes 86-87 and accompanying text (discussing countries' obligation to extraterritorially extend legislation against sexual exploitation of children).

296. *See supra* note 103 and accompanying text (identifying risk of not applying law to include activity of both citizens and residents).

297. *See supra* notes 103, 216 and accompanying text.

crime in the sending country.²⁹⁸ This legislation enables prosecuting a child sex tourist before he harms a child.²⁹⁹ Additionally, this allows for prosecution in cases where police cannot establish evidence of the actual sexual act between the tourist and the child.³⁰⁰

4. Uniform Age of Consent

Critics endorse an international uniform age of consent to safeguard children.³⁰¹ Different ages of consent complicate extraterritorial prosecution, especially in cases where countries require double criminality.³⁰² Countries should adopt a uniform age of consent, preferably of eighteen, to consistently enforce laws against sexually exploiting children.

5. Remove Double Criminality Requirements

ET legislation against the sexual exploitation of children should not include double criminality requirements. Double criminality requirements frustrate the purpose of ET legislation.³⁰³ Eliminating double criminality discourages child sex tourists from traveling to countries with legislation that inadequately protects children.³⁰⁴

6. Remove Requirements for Complaints from Victims or Requests for Prosecution from Destination Countries' Governments

ET legislation should not require that victims file complaints or that other governments file a request before a sending country will initiate prosecution of a child sex tourist. Requiring complaints from victims of sexual exploitation inappropriately

298. *See supra* note 249 and accompanying text (providing example of U.S. legislation that criminalizes traveling in foreign commerce with intention of engaging in sexual activity with minor that would violate federal law).

299. *See supra* note 254 and accompanying text (explaining that U.S. legislation enables prosecution before tourist engages in sexual activity with child).

300. *See supra* note 263 and accompanying text.

301. *See supra* notes 203-04 and accompanying text (explaining advantages of uniform age of consent).

302. *See supra* note 66 and accompanying text (explaining obstacles presented by double criminality requirement).

303. *See supra* notes 172-75 and accompanying text (discussing how double criminality requirement impedes prosecution of child sex tourists).

304. *Id.*

encumbers prosecution of child sex tourists.³⁰⁵ Additionally, not all destination countries will file requests for prosecution of child sex tourists.³⁰⁶ Insisting upon complaints or requests for prosecution deters enforcement of ET legislation.

B. *Non-Legislative Means to Fight Child Sex Tourism*

To safeguard children, courts should adopt child-friendly practices without depriving defendants of fair trials.³⁰⁷ Sending countries should also help train police officers in destination countries in best practices in response to child sex tourism.³⁰⁸ Additionally, countries should cooperate to ensure efficient investigations and prosecutions of child sex tourists.³⁰⁹

1. Child-Friendly Judicial Systems

Courts should recognize cultural differences between child victims and the country in which the trial takes place.³¹⁰ Sending countries should ensure that language and cultural differences do not prejudice the court against a child victim's testimony.³¹¹ Effective extraterritorial prosecution requires interpreters and persons familiar with the culture of the alleged victims. Countries should permit video-link testimony where in-court testimony by children would involve unreasonable expense or inconvenience, psychological harm, or sufficient stress to prevent the children from testifying reliably.³¹²

2. Effective Cooperation and Communication Between Sending and Destination Countries

To facilitate evidence collection and successful prosecutions

305. *See supra* note 216 and accompanying text (noting that requiring complaints from victims of child sex tourism impedes ET prosecution).

306. *See supra* note 188 and accompanying text (explaining that destination countries might not request prosecution of child sex tourists, providing loophole for child sex tourists to evade trial in their home countries).

307. *See supra* notes 154-57 and accompanying text.

308. *See supra* notes 142-45 and accompanying text.

309. *See supra* notes 158-61 and accompanying text.

310. *See supra* notes 154-57 and accompanying text (discussing challenge of eliciting testimony from child witnesses and victims in extraterritorial cases).

311. *Id.*

312. *See supra* note 139 and accompanying text.

in cases of child sex tourism, countries should adopt MLATs.³¹³ MLATs would formalize cooperation in cases of extraterritorial prosecution of child sex tourists. Without MLATs, countries must rely on individual efforts to persuade overseas courts and law enforcement personnel to cooperate.³¹⁴

3. Train Law Enforcement Personnel in Destination Countries

Sending countries should train law enforcement personnel in destination countries to properly investigate cases of child sexual exploitation. Sending countries often rely on cooperation from police in destination countries to prosecute child sex tourists and a well-trained police force can more capably provide this assistance.³¹⁵ Moreover, police in destination countries are better able to protect their countries' children when trained to enforce their countries' legislation against child sexual abuse.³¹⁶

4. Embassies

Embassies should cooperate with both their own countries and destination countries to prosecute child sex tourists. A sending country's embassy should advise the destination country's police if a suspected child sex tourist has requested, and will receive a replacement passport.³¹⁷ When an embassy learns that a person has become a suspect in a case of child sexual exploitation, the embassy should inform relevant law enforcement personnel in the embassy's home country.³¹⁸

C. Changes that the United States Should Implement

The United States should extraterritorially extend legislation against the sexual exploitation of children, regardless of

313. *See supra* notes 158-61 and accompanying text (discussing importance of MLATs to international cooperation and prosecution of extraterritorial crimes).

314. *See supra* notes 243-44 and accompanying text (discussing difficulties encountered by law enforcement in investigating crimes that occur outside country's territorial borders).

315. *See supra* note 146 and accompanying text.

316. *See supra* notes 142-45 and accompanying text (noting importance of training police in destination countries and prosecuting crimes in countries in which they occur).

317. *See supra* note 117 and accompanying text.

318. *See supra* note 239 and accompanying text (explaining that when embassies provide defendant with replacement passport, defendant often evades prosecution in destination and sending country).

whether a U.S. citizen or resident traveled in foreign commerce with the intention of engaging in sexual activity with a child. Legislating against sexual activity with children by U.S. citizens and residents outside of the United States's territorial jurisdiction is not only constitutional, but also critical to fighting child sex tourism. By extending U.S. legislation extraterritorially, the United States will more effectively combat child sex tourists from the United States.

1. The United States Should Extend 18 U.S.C. § 2423(b) to Criminalize Sexual Activity with Minors Beyond the Territorial Jurisdiction of the United States, Regardless of Whether the Defendant Traveled With the Purpose of Sexually Exploiting a Child

The Act does not criminalize extraterritorial sexual activity with children that would constitute a crime within the United States.³¹⁹ While the United States should continue to prohibit traveling overseas with the purpose of engaging in illegal sexual activities with a minor,³²⁰ criminalizing the intention alone limits the United States' ability to prosecute persons who sexually interfere in the lives of children.³²¹

Situational child sex tourists often do not travel with the purpose of sexually exploiting children, leaving an entire class of child sex tourists virtually immune from prosecution.³²² Also, while a few child sex tourists betray their intentions to sexually exploit children in other countries,³²³ the evidentiary requirement to establish that a person travels to another country with the purpose of sexually exploiting a child, bars effective prosecution of child sex tourists.³²⁴ By extending the Act to criminalize sexual activity with minors outside the United States' territorial jurisdiction, the United States will conform to international stan-

319. *See supra* notes 261-64 and accompanying text (discussing 18 U.S.C. 2423 (b)).

320. *See supra* note 253 and accompanying text.

321. *See supra* note 263 and accompanying text (providing challenges to enforcing 18 U.S.C. 2423(b)).

322. *See supra* note 16 and accompanying text (defining situational child sex tourists).

323. *See supra* notes 19, 251 (discussing U.S. citizen who allegedly purchased child in Vietnam for sexual purposes and told associates of his plan to bring her back to United States).

324. *See supra* note 263 and accompanying text.

dards³²⁵ and international obligations.³²⁶

2. Potential Arguments Against Extending 18 U.S.C. § 2423(b) to Criminalize Sexual Acts with Minors by U.S. Citizens or Residents Outside the Territorial Jurisdiction of the United States

There are two arguments against extending the Act to criminalize sexual activity by U.S. citizens or resident aliens that would constitute a crime within the United States. First, in an argument that Hersh advanced at his trial, opponents can claim that the United States does not have jurisdiction over sexual crimes committed by U.S. citizens against minors in other countries.³²⁷ This argument fails because Congress may apply criminal statutes extraterritorially.³²⁸

Opponents of extending the Act could also argue that proving that a U.S. citizen or resident violated U.S. law in a country other than the United States would be prohibitively difficult. However, the Hersh case demonstrates that the United States can successfully prosecute a child sex tourist. Through cooperation with local law enforcement agencies and NGOs, the FBI located witnesses and victims, leading to Hersh's successful conviction.³²⁹

3. Other Changes that the United States Should Implement

Courts in the United States should consider the use of video-link testimony in some cases of child sexual abuse by child sex tourists. The U.S. should continue to train law enforcement personnel in other countries to better investigate child sexual abuse cases. Additionally, the United States should ensure that overseas U.S. embassy and law enforcement personnel are trained to respond to cases of child sex tourism by U.S. citizens and residents.

325. *See supra* notes 77-86, 126-35 and accompanying text (discussing international commitment to enact and enforce ET legislation against sexual crimes with children).

326. *See supra* note 86 and accompanying text (explaining that as signatory country to Agenda for Action, United States has mandated itself to enact ET legislation).

327. *See supra* note 253 and accompanying text (discussing constitutionality of legislation that Congress deems enforceable against extraterritorially).

328. *See supra* note 62 and accompanying text (discussing power of Congress to create legislation with extraterritorial effect).

329. *See supra* notes 274-84 and accompanying text (discussing Hersh case).

a. Permit Video-Link Testimony

The United States should ensure that our court system does not traumatize child victims by allowing children to testify via video-link when: (1) physical presence in the court could cause severe psychological harm to the child or (2) bringing the child to the United States would be unduly burdensome.³³⁰ The Supreme Court upheld the constitutionality of video-link testimony under certain circumstances.³³¹ The question of reforming U.S. courts to safeguard the interests of child victims, while still protecting the rights of defendants, will require further consideration.

b. The United States Should Facilitate Prosecution of Child Sex Offenders by Training Law Enforcement Personnel in Other Countries

The United States should continue to train overseas police officers so that they are better able to investigate cases of child sexual exploitation and to care for child victims.³³² The United States should provide assistance to help destination countries enforce their domestic legislation against child sexual exploitation.³³³ Just as the United States seeks international cooperation against the international drug trade, the United States should seek international cooperation to defeat child sex tourism.³³⁴

CONCLUSION

In December 2001, the Second World Congress against Commercial Sexual Exploitation of Children will meet in Yokohama, Japan. Many countries, including the United States and Japan, will point to achievements since the last Congress in 1996.

330. See *supra* notes 139-40 and accompanying text (discussing example of Australian legislation permitting video-link testimony by children in certain situations).

331. See *supra* note 139 and accompanying text (providing example of U.S. case where Supreme Court upheld constitutionality of state statute permitting video-link testimony by children).

332. See *supra* notes 141-45 and accompanying text (discussing importance of training police in destination countries).

333. See *supra* notes 177-79 and accompanying text (discussing need for sending countries to assist in training destination countries' police forces, especially where destination countries lack resources to enforce legislation effectively).

334. See *supra* note 144 and accompanying text (noting international role of U.S. federal agents in enforcing U.S. drug laws).

Sending countries, by meeting the standards of the model legislation set forth in this Note, will demonstrate their commitment to eradicating child sex tourism.