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## 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?

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PROSECUTING CHILD SEX TOURISTS AT HOME: DO  
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INTRODUCTION

Rosario Baluyot was twelve years old when she died in 1987 in her native Philippines.<sup>1</sup> She was a street child.<sup>2</sup> Dr. Heinrich Stefan Ritter is an Austrian medical doctor.<sup>3</sup> He forcibly inserted an electric vibrator into Rosario's vagina during a night of sex spent with her and a fourteen year-old boy.<sup>4</sup> The device broke and lodged inside of her.<sup>5</sup> She carried the fragments dur-

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\* J.D. Candidate, 1996, Fordham University. This Note is dedicated to child advocacy organizations around the globe who have accomplished so much in so little time. I would like to particularly acknowledge Ellis Shenk, Coordinator of ECPAT-USA; Lisa Rana, Esq.; Bernadette McMenamin, ECPAT Australia; Helena Karlén, Rädda Barnen, Sweden; Deen Kaplan of the National Coalition for the Protection of Children and Families; Andrew Vachss, Esq.; Paul Bravender-Coyle, Anti-Slavery Society; and Professor Roger Levesque of the University of Nebraska for their invaluable assistance.

1. RON O'GRADY, ECPAT, *THE CHILD AND THE TOURIST* 24 (1992). Rosario could possibly have been only eleven years old. *Id.* Her exact age is uncertain. *Id.*

2. *Id.* at 20-22. Rosario was the youngest of eight children. *Id.* at 20. When she was about six years old, her mother died of a brain tumor and her father abandoned her. *Id.* at 21. At the age of eight or nine, she made her way to Olongapo City and the U.S. naval base at Subic Bay and "joined the army of homeless Philippine street children who now number an incredible 1.2 million children under the age of 16 years." *Id.*; see UNITED NATIONS CENTRE FOR HUMAN RIGHTS, UNICEF, *STREET CHILDREN 1* (Convention on the Rights of the Child document) (estimating number of street children worldwide at 100 million). The United Nations Children's Fund ("UNICEF") defines street children as: 1) children living on the streets; 2) children detached from their families and living in temporary shelters such as abandoned buildings or migrating from place to place with friends; 3) children who are in contact with their families but, because of poverty or adverse family conditions, spend some days and most nights on the street; or 4) children who are in institutional care as a result of homelessness and are at risk of becoming homeless again. *Id.*

3. O'GRADY, *supra* note 1, at 25.

4. *Id.* at 23. The 14 year-old witness, Joe, reported that on October 10, 1986, a tourist stopped to talk to him and Rosario and invited them to his room. *Id.* at 23, 26. After bathing with the two children, the man concentrated on Rosario. *Id.* at 23. Joe reported that the man was poking "something grey like a Vick's Inhaler" into Rosario's vagina and that she cried out in pain several times. *Id.*

5. *Id.* The following day Rosario told Joe that the man had left something in her "private parts." *Id.* She tried unsuccessfully to remove it a few times with the help of friends. *Id.* Finally, the pain became so intense that she went to a doctor who told her

ing seven months of agonizing pain.<sup>6</sup> When she finally collapsed on the street, nothing could be done to save her.<sup>7</sup> In 1989, Heinrich Ritter was sentenced to life imprisonment by a Philippine court for the rape and death of Rosario.<sup>8</sup> In 1991, the Philippine Supreme Court reversed the sentence and acquitted Dr. Ritter on evidentiary grounds.<sup>9</sup> He remains at liberty.<sup>10</sup>

Heinrich Ritter is a sex tourist.<sup>11</sup> He is one of scores of sex

that it must be removed at once. *Id.* She fled from the doctor's office perhaps fearing that she would be sent to prison after the object was removed. *Id.* at 24.

6. *Id.* at 23-24. The pain intensified after Rosario was raped by another man, lodging the fragments of the vibrator in her cervix. *Id.* at 24. The anguish became so intolerable that she could only walk bowlegged. *Id.* She used drugs and sniffed glue to reduce the agony. *Id.* The smell from the wound became so powerful that she was forced to leave her shelter and began to sleep in vacant lots. *Id.*

7. *Id.* at 24. Rosario was found on the street on May 14, 1987, writhing in agony with green bile coming out of her mouth. *Id.* Her abdomen was distended and the pain so intense that the doctors could not touch her. *Id.* During surgery the next day, doctors removed the broken vibrator and a rusty screw hanging from its side. *Id.* It measured approximately nine centimeters. *Id.* Rosario never recovered. *Id.* She died at 2:15 p.m. on May 19, 1987. *Id.*

8. *Id.* at 26. Dr. Ritter was charged with statutory rape which, under Philippine law, applies to sexual acts with children under the age of 12. *Id.* The prosecutor in the case asserted that Rosario was 11 years of age. *Id.*

9. See *Sale of Children: Report Submitted by Mr. Vitit Muntarbhorn, Special Rapporteur Appointed in Accordance with Commission on Human Rights Resolution 1992/76*, U.N. Commission on Human Rights, 49th Sess., Prov. Agenda Item 24, at 30, ¶ 170, U.N. Doc. E/CN.4/1993/67 (1993) [hereinafter *Special Rapporteur Third Report*] (referring to *Philippines v. Ritter*, Case No. 88582 (Phil.)). The court found that he had lured Filipino children with money and abused them. *Id.* The court therefore recommended Ritter's deportation. *Id.* Nevertheless, the court acquitted Ritter "on grounds of reasonable doubt concerning the evidence." *Id.*; see O'GRADY, *supra* note 1, at 28. The crucial evidentiary issue was Rosario's age, as the crime of statutory rape is only applicable to the rape of females under the age of twelve. *Id.*; see REV. PENAL CODE art. 335(3) (Phil.) (Central Book Supply, Manila, 18th ed. 1990) (setting age for statutory rape at 12 years old). There was also some discrepancy in the testimony as to Ritter's identity even though Ritter had admitted being with Rosario on the night the vibrator was inserted. O'GRADY, *supra* note 1, at 25, 28. He had also offered to pay Rosario's grandmother US\$800 if she would forego any legal action. *Id.* at 25.

10. O'GRADY, *supra* note 1, at 27-28; see Concetta Taliercio, *International Law and Legal Aspects of Child Sex Tourism in Asia: A Contemporary Form of Slavery?* 3 (1993) (on file with *Fordham International Law Journal*) (relating story of Rosario Baluyot's death and Dr. Ritter's trial).

11. *Id.* at 19-20; see Julia O'Connell Davidson, *British Sex Tourists in Thailand* (1994) (paper presented to the Women's Studies Network (UK), July 9-10, 1994) (defining sex tourism as "consisting of people from economically developed nations traveling to underdeveloped countries" to purchase sexual services). The term sex tourist also includes business travellers and members of the military who travel in search of sex. O'GRADY, *supra* note 1, at 82, 95. This Note deals only with child sex tourism and tourists who engage in sex with minors. The phenomenon of sex tourism with adults is a distinct topic that is not addressed herein except as it relates to child sex tourism.

tourists who travel from the industrialized or developed nations<sup>12</sup> to a growing number of developing countries<sup>13</sup> to engage in illicit sexual activity with underage victims forbidden to them under their home countries' laws.<sup>14</sup> Sex tourism is closely connected with the growing multi-million dollar a year<sup>15</sup> industry of child prostitution<sup>16</sup> throughout the world.<sup>17</sup>

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12. See Paul Ehrlich, *Asia's Shocking Secret*, READER'S DIG., Oct. 1993, at 70 (estimating that there are "tens of thousands" of child sex tourists from the United States, Canada, United Kingdom, Germany, Sweden, Japan, Australia, and New Zealand who travel to Asia for child sex). Developed countries are those countries that have industrialized market economies. THE INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES, NORTH-SOUTH: A PROGRAM FOR SURVIVAL 31-32 (1980) [hereinafter PROGRAM FOR SURVIVAL]. Developed countries have a quarter of the world's population but control four-fifths of the world's income. *Id.* at 32.

13. See Ehrlich, *supra* note 12, at 69-70 (identifying southern Asia as primary target for child sex tourists); see also KEVIN IRELAND, SAVE THE CHILDREN OVERSEAS DEP'T, WISH YOU WEREN'T HERE: THE SEXUAL EXPLOITATION OF CHILDREN AND THE CONNECTION WITH TOURISM AND INTERNATIONAL TRAVEL pref. (Sept. 1993) (noting that phenomenon is spreading to other parts of globe, notably Latin America, Africa, and Eastern Europe). Developing countries are those that are in the early stages of development and provide low standards of living for their people. L.K. JHA, NORTH SOUTH DEBATE 22 (1982). Developing countries are characterized by high levels of illiteracy, malnutrition, and child mortality, as well as low life expectancies. PROGRAM FOR SURVIVAL, *supra* note 12, at 31-32. Developing countries account for three-quarters of the world's population but only one-fifth of the world's income. *Id.* at 32. There are at least four groups of developing countries: OPEC nations with large financial surpluses; newly industrializing countries that are expanding rapidly; middle income countries whose economies are expanding but still depend on export of primary products; and low income countries with per capita income of less than US\$350 per year. Robert Cassen et al., *Overview*, in RICH COUNTRY INTERESTS AND THIRD WORLD DEVELOPMENT 1, 5 (Robert Cassen et al. eds., 1982).

14. See Ehrlich, *supra* note 12, at 70 (asserting that sex tourists fly to Asia for sex with children because there is small risk of being caught and, at most, light penalties).

15. See *Child Prostitution*, UNICEF SPEAKERS' NOTES, Mar. 4, 1994, at 1 [hereinafter UNICEF SPEAKERS' NOTES] (describing child prostitution as multi-million dollar global industry "driven by poverty, greed and a callous demand for sex"). Compare Aaron Sachs, *The Last Commodity: Child Prostitution in the Developing World*, WORLD WATCH, Jul./Aug. 1994, at 26 (stating that child prostitution has become multi-billion dollar industry where children "are being bought, sold, and traded like any other mass-produced good"); *Child Sexual Exploitation in Developing Countries*, THE REVIEW (INTERNATIONAL COMMISSION OF JURISTS), June 1990, at 42 [hereinafter *Int'l Comm'n of Jurists Report*] (asserting that sex market for minors under 16 is five billion dollar industry for agents, madams, pimps, and criminal organizations).

16. See UNICEF SPEAKERS' NOTES, *supra* note 15, at 1 (asserting that child prostitution has become "perverted tourist attraction" in numerous countries, particularly Asia). Child prostitution is defined as "the sexual exploitation of a child for remuneration in cash or in kind, usually, but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)." *Special Rapporteur Third Report*, *supra* note 9, at 26, ¶ 148. Sexual exploitation of children is defined as the "use of children (under 18 years) for the sexual satisfaction of adults." IRELAND, *supra* note 13, at 3. The child's

The international community has paid increasing attention to the problem of child sexual exploitation.<sup>18</sup> The United Nations Convention on the Rights of the Child<sup>19</sup> ("UNCRC" or "Convention"), adopted in 1989, explicitly prohibits the exploitation of children in prostitution and in illegal sexual practices.<sup>20</sup> The more recent Draft Optional Protocol to the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children<sup>21</sup>

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youth and sexuality is the object of the exploitation and "[t]he basis of the exploitation is the unequal power and economic relationship between the child and the adult." *Id.* "Child prostitution is an extreme form of sexual abuse of children and an especially intense form of exploitative child labor." George Kent, Little Foreign Bodies: International Dimensions of Child Prostitution 1 (1993) (abstract on file with *Fordham International Law Journal*). The use of the term "child prostitution" has become controversial since prostitution is illegal in many countries and the term could potentially stigmatize the child as a criminal. O'GRADY, *supra* note 1, at 143. The term "prostituted child" may be more accurate since it identifies the child as the victim. *Id.* The term "child prostitution," however, "has the advantage of stressing the systemic nature of the exploitation of the child." *Id.* The terms will be used interchangeably in this Note.

17. Kent, *supra* note 16, at 1. Child prostitution is also intimately related to the serious phenomena of child trafficking and child pornography. *Id.* Child trafficking is the movement of children from one region to another for the purposes of prostitution. *Id.* Intermediaries in child trafficking include theatrical, matrimonial, and adoption agencies. COUNCIL OF EUROPE, SEXUAL EXPLOITATION, PORNOGRAPHY AND PROSTITUTION OF, AND TRAFFICKING IN, CHILDREN AND YOUNG ADULTS: RECOMMENDATION NO. R(91)11 AND REPORT OF THE EUROPEAN COMMITTEE ON CRIME PROBLEMS 39 (1993) [hereinafter EUROPEAN COMMITTEE REPORT]. Child pornography is "any audiovisual material which uses children in a sexual context" and includes films, videos, photos, records, and comics. *Id.* at 33. Child pornography can also be distributed through international computer networks. Ehrlich, *supra* note 12, at 71. In this Note, child trafficking and child pornography will be considered only as these issues relate to child sex tourism.

18. Douglas Hodgson, *Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies*, 19 MELB. U. L. REV. 512, 512 (1994).

19. Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/44/736 (1989), 28 I.L.M. 1448 (1989) [hereinafter UNCRC].

20. *Id.* art. 34, at 11, 28 I.L.M. at 1469. Article 34(a) and (b) states:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices; . . . .

*Id.*

21. Draft Optional Protocol to the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children [hereinafter Draft Optional Protocol] (on file with *Fordham International Law Journal*). The Draft Optional Protocol was drafted by the Human Rights Commissioner,

("Draft Optional Protocol") designates crimes of child sexual exploitation as crimes against humanity.<sup>22</sup> A further significant international development in the battle against child prostitution came with the institution of the international campaign End Child Prostitution in Asian Tourism ("ECPAT") in 1990 in Thailand.<sup>23</sup> ECPAT, the international non-governmental organization<sup>24</sup> ("NGO") most closely identified with the issue of child sex tourism, works to influence governments to eliminate tourist-related prostitution and to comply with international conventions.<sup>25</sup> ECPAT has established national educational and legisla-

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Mr. Brian Burdekin. HOUSE COMM. ON LEGAL AND CONSTITUTIONAL AFFAIRS [AUSTL.], ADVISORY REPT.: CRIMES (CHILD SEX TOURISM) AMENDMENT BILL 1994 1, § 1.2.3 (May 1994) [hereinafter AUSTRALIAN PARLIAMENT ADVISORY REPORT]. The Draft Optional Protocol is an Australian and French sponsored proposal for a possible protocol designed to increase international commitment to the protection of children. *Id.*

22. Draft Optional Protocol, *supra* note 21, art. 1(1), at 1. Article 1(1) states: "States Parties recognise that crimes of sexual exploitation of or trafficking in children represent crimes against humanity." *Id.*; see Hodgson, *supra* note 18, at 526 (hailing this provision as "significant breakthrough").

23. See O'GRADY, *supra* note 1, at 132-33. The campaign aimed specifically at tourists and visitors from overseas who were sexually exploiting children in Sri Lanka, Thailand, the Philippines, and Taiwan. *Id.* ECPAT is supported by an international coalition of community and church groups, child advocacy organizations, and local and international non-governmental organizations. *Id.*; Hodgson, *supra* note 18, at 543 (detailing ECPAT objectives).

24. See Paula Rhodes & Eileen McCarthy-Arnolds, *Expanding NGO Participation in International Decision-Making*, in *WORLD DEBT AND THE HUMAN CONDITION* 153, 158 (Ved P. Nanda et al., eds. 1993). An NGO is any actor in the international system that is not a government. *Id.* NGOs can exist for humanitarian, commercial, or political purposes. *Id.* NGOs can be multinational corporations, banks, churches, and even terrorist groups. *Id.* Humanitarian or development NGOs are private organizations that seek to relieve suffering, alleviate poverty, protect the environment, provide basic social services, or promote community development. *Id.* For an example of the role of NGOs in relations between developed and developing countries, see Antonio Piccirillo, Note, *The Metamorphosis: Expected Changes in the Brazilian Debt-for-Nature Swap Process and Policy Implications*, 17 FORDHAM INT'L L.J. 547 (1994).

25. Hodgson, *supra* note 18, at 543. "The aim of the campaign is to persuade the governments concerned to take action against the problem of tourist-related prostitution and to uphold the international conventions that they have signed." *Child Prostitution in Asian Tourism*, ANTI-SLAVERY INT'L BRIEFING NOTES, Nov. 1994, at 2. The specific aims of the campaign include: 1) passage of new laws and the enforcement of existing legislation against child sexual exploitation in developing countries; 2) assurance that the laws in such countries treat exploited children as victims rather than criminals and provide support for their rehabilitation; 3) passage of legislation in industrialized nations that allows nationals from these countries who abuse children overseas to be prosecuted after they return home; and 4) education campaigns in both developing and developed nations regarding the widespread nature of tourist related child prostitution. *Id.*

tive campaigns for the prevention of child sex tourism in both receiving<sup>26</sup> and sending countries.<sup>27</sup>

Recently, several industrialized countries have promulgated legal measures to prevent child sex tourism and to make child sex tourists, as well as those who operate sex tours,<sup>28</sup> liable on their home soil.<sup>29</sup> Sweden is currently investigating a Swedish sex tourist under a law that allows for the prosecution of Swedish citizens who engage in illegal activities abroad.<sup>30</sup> Australia recently passed legislation directed at child sex tourists.<sup>31</sup> The United States did the same on September 13, 1994, when U.S. President Bill Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994 ("Crime Bill").<sup>32</sup> The Crime Bill included the Child Sexual Abuse Prevention Act of 1994,<sup>33</sup> which criminalizes travel to another country for the purpose of engaging in sexual intercourse with a minor.<sup>34</sup>

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26. *Id.* at 543 n.215 (referring to ECPAT campaigns in Thailand, Sri Lanka, Philippines, Vietnam, and India). "Receiving countries" refers to the developing nations where the child victims reside. *Id.* at 527; see IRELAND, *supra* note 13, preface (using same terminology).

27. See Hodgson, *supra* note 18, at 543 n.216 (referring to ECPAT campaigns in Australia, Germany, United States, Canada, United Kingdom, France, Sweden, Netherlands, Norway, Japan, Switzerland, Belgium, and New Zealand). The term "sending countries" denotes industrialized nations from which sex tourists originate. *Id.* at 529; see *Child Prostitution in Asian Tourism*, *supra* note 25, at 2 (using same terminology).

28. See, e.g., *American Arrested in Thailand for Organizing Sex Tours*, UPI, June 2, 1992, available in LEXIS, News Library, Wires File (describing arrest in Thailand of Gunther Frenz, German born U.S. citizen, for operation of sex tours). Nine other men, all U.S. citizens, each of whom had paid Frenz US\$2000 for the tour, were arrested with him and allowed to go free. *Id.* Frenz, the owner of a Miami-based company, called "G and F Tours," had advertised in a U.S. sex magazine using a picture of himself with a naked young Thai girl. *Id.* The ad read, "if you come to Thailand you can have sex with a girl like this and have a different one every day." *Id.* Thai authorities reported that this was the third sex tour to Thailand that Frenz had organized for U.S. citizens. *Id.*

29. Hodgson, *supra* note 18, at 529-30 (describing legal initiatives taken by Germany, Sweden, France, and Australia).

30. PENAL CODE ch. 2, § 2 (Swed.) (Allmanna Forget 1990); see Taliercio, *supra* note 10 at 39 (describing activities of Swedish sex tourist); IRELAND, *supra* note 13, at 71 (noting that Sweden enacted law over 30 years ago, but is only now implementing it against sex tourists).

31. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes Act 1914 (Austl.)).

32. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (to be codified at scattered sections of 18 U.S.C.).

33. Child Sexual Abuse Prevention Act, Pub. L. No. 103-322, § 160001(g), 108 Stat. 2097 (1994) (to be codified at 18 U.S.C. § 2423(b)).

34. *Id.*

This Note evaluates the Swedish,<sup>35</sup> Australian,<sup>36</sup> and U.S.<sup>37</sup> child sex tourism laws in relation to the protections for children required by international law. This Note maintains that, although these individual laws are significant, they cannot, by themselves, adequately address the problem of sex tourism nor protect child victims. Part I presents the nature and scope of child sex tourism and surveys the relevant international law prohibiting the sexual exploitation of children. It introduces national laws directed at sex tourism promulgated by both sending and receiving countries. Part II focuses on the Swedish, Australian, and U.S. laws as distinct national strategies for the elimination of child sex tourism. Part III compares the three approaches and argues that the laws, alone, fail to adequately provide children with protection from sexual exploitation as mandated by international law. This Note concludes that the problem of child sex tourism will not be solved until individual nations develop comprehensive strategies that include the vigorous enforcement of legislation, a strong commitment to international cooperation, and firm support of local and global child advocacy NGOs.

### I. CHILD SEX TOURISM AND THE INTERNATIONAL AND NATIONAL LEGAL REGIMES THAT PROTECT MINORS FROM SEXUAL EXPLOITATION

Child sex tourism<sup>38</sup> is a phenomenon that is intimately connected to the longstanding problem of child prostitution.<sup>39</sup>

35. PENAL CODE ch. 2, § 2, ch. 6, §§ 6-7, 10 (Swed.) (Allmanna Forget 1990). Chapter 2 includes the extraterritorial provision of the Penal Code. *Id.* ch. 2. Chapter 6, Sections 6, 7, and 10 of the Penal Code define relevant sexual offenses against children. *Id.* ch. 6, §§ 6-7, 10.

36. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes Act 1914 (Austl.)).

37. 18 U.S.C § 2423(b).

38. *See supra* notes 11-17 (defining sex tourist and describing travel to developing world for illicit sexual conduct with children).

39. *See Sachs, supra* note 15, at 26, 28 (affirming that child prostitution is not new but that recent boom in child prostitution is fueled by tourism); *supra* note 16 and accompanying text (defining child prostitution); *see also* Kent, *supra* note 16, at 5-12 (describing long history of child trafficking for purposes of prostitution beginning in mid-19th century and more recent linkage of child sexual exploitation with tourism); IRELAND, *supra* note 13, at 12. Sexual exploitation of children dates back to the Roman Empire. *Id.* The expansion of international tourism and the ease of travel have been contributory factors in the growth of child sexual exploitation in Sri Lanka, the Philippines, and Thailand. *Id.* at 73. *See generally* Thanh-Dam Truong, *Virtue, Order, Health*



Since the early twentieth century, the international community has outlawed the prostitution of minors through the promulgation of covenants and conventions designed to protect children from sexual exploitation.<sup>40</sup> More recently, under pressure from child advocacy NGOs,<sup>41</sup> several industrialized nations have taken specific legal measures to prevent such exploitation.<sup>42</sup> In addition, a number of developing countries have responded to international pressure by tightening restrictions on child prostitution.<sup>43</sup>

#### A. Nature and Scope of Child Sex Tourism

Perhaps the most difficult challenge to any investigation of child sex tourism is the absence of accurate statistical data regarding the incidence of child prostitution in the developing world and the scarcity of data establishing the precise identity of those who exploit children.<sup>44</sup> Official sources underestimate the problem and some child advocacy organizations tend to inflate the figures.<sup>45</sup> One of the most significant problems is the fact

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*and Money: Towards a Comprehensive Perspective on Female Prostitution in Asia*, U.N. Economic and Social Commission for Asia and the Pacific, at 22-29, U.N. Doc. ST/ESCAP/388 (1985) [hereinafter *Truong ESCAP Report*] (offering comprehensive analysis of connection of female prostitution and tourism in Southeast Asia).

40. See Hodgson, *supra* note 18, at 523-27 (discussing series of international agreements aimed at child prostitution and sex tourism, including UNCRC and Draft Optional Protocol).

41. See *id.* at 542-43 (detailing important role of NGOs and their success in lobbying domestically and internationally).

42. See, e.g., IRELAND, *supra* note 13, at 57-58 (citing legislation in Germany, Australia, and Sweden and illustrating role of NGO, Rädde Barnen (Swedish Save the Children), in implementation of Swedish law).

43. See Hodgson, *supra* note 18, at 527-28 (citing child prostitution laws from Thailand, the Philippines, Sri Lanka, and Taiwan); see *Australian Jailed on Thai Sex Count*, SUNDAY AGE (Austl.), Jan. 11, 1995, reprinted in ECPAT AUSTRALIA BULL., Feb. 1995, at 5-6 (noting that pressure on Thai government is resulting in stiffer penalties for sex tourists).

44. IRELAND, *supra* note 13, at 5-8 (detailing difficulty in obtaining accurate statistical data regarding child victims or exploiters); see Hodgson, *supra* note 18, at 513 (attesting to difficulty in obtaining accurate statistical data on incidence of child prostitution in Asia); OVE NARVESEN, THE SEXUAL EXPLOITATION OF CHILDREN IN DEVELOPING COUNTRIES 10 (1989) (noting paucity of systematically gathered data). Plans to obtain reliable data in Thailand are underway. See ECPAT BULL., no. 4, at 2 (June 1994) (announcing that Prime Minister's Office and Bangkok area office of UNICEF have agreed to carry out nationwide survey of prostitutes to determine exact number of prostitutes under age 18).

45. Kenneth J. Herrmann, Jr. & Michael Jupp, *International Sex Trade*, in DANIEL S.

that there is little agreement on the definition of "child."<sup>46</sup> Despite these drawbacks, a large body of primary source material, which illustrates the magnitude of the problem, is available from NGOs and local and international agencies within sending and receiving countries.<sup>47</sup>

In 1989, the United Nations Working Group on Contemporary Forms of Slavery<sup>48</sup> reported that worldwide child prostitution may involve millions of children.<sup>49</sup> The United Nations

CAMPAGNA & DONALD L. POFFENBERGER, *THE SEXUAL TRAFFICKING IN CHILDREN: AN INVESTIGATION OF THE CHILD SEX TRADE* 140, 146 (1988).

46. Hodgson, *supra* note 18, at 513, 523. The definition varies widely between cultures and legal systems. *Id.* at 523, 523 n.95. The definition of "child", as defined in the UNCRC, is that of a person under the age of 18. *See* UNCRC, *supra* note 19, art. 1, at 1, 28 I.L.M. at 1448 (defining child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is obtained earlier"). The Draft Optional Protocol, however, contains no definition of the term "child." Hodgson, *supra* note 18, at 523; *see* Draft Optional Protocol, *supra* note 21, pmbi. (calling on nations to "harmonize . . . their national legislation on sexual exploitation of children" but providing no specific age definition). Different sources and commentators define the term differently. *See, e.g.*, EUROPEAN COMMITTEE REPORT, *supra* note 17, at 22 (defining "child" as minor under the age of 16 and "young adult" as person between 16 and 21); NARVESEN, *supra* note 44, at 10 (defining child as "persons of both sexes under 15 years of age" for purposes of investigation).

47. *See* IRELAND, *supra* note 13, at 5-6.

Quite simply, there have been no research studies which provide reliable information about the extent or nature of the problem, either globally or within a specific country. There is, however, a large body of information and source material from the work of agencies within countries like the Philippines, Sri Lanka, and Thailand that demonstrates that there is a very serious problem in relation to the sexual exploitation of children and that tourists are involved in this in no small number.

*Id.*; *see* Hodgson, *supra* note 18, at 513 (asserting that "statistics which are available, even if considered rough estimates, tend to underline the magnitude of the problem"); Herrmann & Jupp, *supra* note 45, at 147-48 (advocating intervention by world governments based on available information); NARVESEN, *supra* note 44, at 15-20 (utilizing data on child sexual exploitation collected by local organizations in the Philippines, Thailand, Kenya, Peru, Thailand, and Sri Lanka).

48. *See* Taliерcio, *supra* note 10, at 29 (explaining that Working Group on Contemporary Forms of Slavery is under auspices of Sub-Commission on Prevention of Discrimination and Protection of Minorities, that in turn is subordinated to U.N. Commission on Human Rights).

49. *Question of Slavery and the Slave Trade in all Their Practices and Manifestations, Including the Slavery-like Practice of Apartheid and Colonialism: Report of the Working Group on Contemporary Forms of Slavery on its Fourteenth Session*, U.N. Commission on Human Rights, 41st Sess., Agenda Item 14, at 9, ¶ 33, U.N. Doc. E/CN.4/Sub.2/1989/39 (1989) [hereinafter *Slavery Working Group Report*]. The U.N. Slavery Working Group reports that child prostitution "involves a tragically high number of children throughout the world, perhaps extending well into the millions." *Id.* at 8-9, ¶ 29; Hodgson, *supra* note 18, at 513.

Children's Fund ("UNICEF") estimated in 1994 that at least one million children were involved in child prostitution in Asia alone.<sup>50</sup> The problem, however, is not confined to Asia and is a growing phenomenon in Latin America, Africa, and Eastern Europe.<sup>51</sup>

### 1. Child Prostitution

Thailand, the Philippines, Sri Lanka, and Taiwan are the countries traditionally connected with child sex tourism, and all have serious child prostitution problems.<sup>52</sup> It would be misleading to represent the problem of child prostitution in these countries as a phenomenon related principally to sex tourists.<sup>53</sup> Nevertheless, the demand from sex tourists<sup>54</sup> and the financial rewards<sup>55</sup> connected to providing sexual services to them have been a significant stimulus to prostitution in general and to child sexual exploitation in particular.<sup>56</sup>

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50. *One Million Child Prostitutes in Asia*, in UNICEF, *THE PROGRESS OF NATIONS* 39 (1994) [hereinafter UNICEF] (relying on data published by ECPAT). The *Progress of Nations* is published annually by UNICEF and "brings together the latest available statistics to record national achievements in child survival." *Id.* at tbl. cont.

51. IRELAND, *supra* note 13, at pref. Of significance is that ECPAT, which was founded to confront Asian child sex tourism, is now extending itself to Latin America, Southern and West Africa, the Middle East, and Eastern Europe. See *ECPAT Goes International in 1995*, ECPAT NEWSL., Sept. 1994, at 3 (discussing expansion of ECPAT to other countries affected by child sex tourism).

52. See O'GRADY, *supra* note 1, at 91-93, 94-106 (detailing history of child prostitution and growth of child sex tourism in Sri Lanka, Taiwan, Thailand, and Philippines); *supra* note 23 (explaining that original ECPAT international campaign against child sex tourism was focused on these four countries).

53. IRELAND, *supra* note 13, at 68. "Without doubt, local men comprise the great majority of customers in the sex market in Thailand and probably half or more in the Philippines." *Id.*; see NARVESEN, *supra* note 44, at 26 (noting that local people comprise more than half of the customers near U.S. military bases in the Philippines).

54. See Ehrlich *supra* note 12, at 70 (estimating "tens of thousands" of sex tourists from industrialized countries).

55. See *supra* note 15 and accompanying text (noting that child prostitution is multi-million or billion dollar industry). "Because of the profit realized from the booming sex-tourism business in Thailand, competition has become fierce among procurers. As a result, younger and younger children are being procured." *Int'l Comm'n of Jurists Report*, *supra* note 15, at 43.

56. See IRELAND, *supra* note 13, at 66 (asserting that this is true in Philippines, Sri Lanka, and Thailand); NARVESEN, *supra* note 44, at 46-47 (maintaining that investigation documented definite connection between child prostitution and tourism especially in countries like Thailand and Philippines where tourism is important source of income); Patricia D. Levan, Note and Comment, *Curtailing Thailand's Child Prostitution Through an International Conscience*, 9 AM. U. J. INT'L. L. & POL'Y 869, 882-84 (1994) (asserting that Thailand merged tourism and prostitution to create tourist industry);

In Thailand, estimates of the number of prostituted children range anywhere from 25,000<sup>57</sup> to 800,000.<sup>58</sup> ECPAT<sup>59</sup> approximates the figure to be 200,000 to 250,000 children below the age of eighteen, including children who have been purchased or abducted from Burma, Laos, and China to meet the growing demand for child prostitutes in Thailand.<sup>60</sup> The Philippine government calculated the number of child prostitutes in the Philippines at 50,000.<sup>61</sup> Non-governmental sources place the figure at 60,000.<sup>62</sup> Taiwan's child prostitute popula-

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*Int'l Comm'n of Jurists Report*, *supra* note 15, at 45. "There is a definite connection between tourism and prostitution especially when prostitution is intentionally used as part of a package tourist attraction." *Id.*

57. O'GRADY, *supra* note 1, at 140. In 1987, the Thai police department estimated that there were 500,000 prostitutes in Thailand, 25,000 of whom were under age 15. *Id.* Since that time, the number of child prostitutes has grown dramatically. *Id.* In 1990, the Thai Ministry of Health, Division of Venereal Diseases Control reported that prostituted children numbered 86,000. *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 81st Sess. at 139 (1994) [hereinafter *ILO Committee of Experts Report*]. Thai Police Department figures indicate that 40% (160,000) of the estimated 400,000 Thai prostitutes are under the age of 16. *Id.*

58. O'GRADY, *supra* note 1, at 139 (noting considerable controversy over number of child prostitutes under 18 in Thailand). In 1989, the Children's Rights Protection Center ("CRPC") and the Foundation for Children, NGOs operating in Thailand, publicized this figure representing child prostitutes between the ages of 12 and 16. *Id.* The figure was based on a random survey of brothels, tourist centers, and VD clinics across Thailand. *Id.* *But see* NARVESEN, *supra* note 44, at 24 (noting that "informed sources" put the figure at 15,000-20,000 children in 1989). It is not clear, however, if this includes children under 18 or under 16 years of age. *Id.* It is estimated that 90% of child prostitutes in Thailand are girls. *Int'l Comm'n of Jurists Report*, *supra* note 15, at 42; *see* Levan, *supra* note 56, at 869 (comparing widely divergent statistics regarding number of child prostitutes in Thailand).

59. *See supra* notes 23-27 and accompanying text (detailing history of ECPAT and its campaigns).

60. RON O'GRADY, *THE RAPE OF THE INNOCENT* 31, 134-35 (1994) [hereinafter *RAPE OF INNOCENT*]. Conservative estimates account for 8000 children per year being trafficked across the Thai border. *Id.*; *see, e.g., 23 Underage Prostitutes Rescued in Khon Kaen*, *NATION* (Thail.), Feb. 21, 1995, *reprinted in* ECPAT AUSTRALIA BULL., Mar. 1995, at 5-6 (noting that 10 of 23 rescued underage prostitutes in police raid in Thailand were Burmese and Chinese). The trafficking of children across borders is a subject that would require a separate Note. *See generally* *RAPE OF INNOCENT*, *supra*, at 23-31 (documenting trafficking of Asian children); HUMAN RIGHTS WATCH, *THE WOMEN'S RIGHTS PROJECT, A MODERN FORM OF SLAVERY: TRAFFICKING OF BURMESE WOMEN AND GIRLS INTO BROTHELS IN THAILAND* (1993) (focusing on trafficking between Burma and Thailand); Kent, *supra* note 16, at 1-5 (detailing history of global trafficking of children).

61. *RAPE OF INNOCENT*, *supra* note 60, at 135.

62. *Id.* at 135. The Salinlahi Foundation in the Philippines estimates that there are 1.2 million street children under the age of 16 in the Philippines, many of whom engage in casual prostitution. O'GRADY, *supra* note 1, at 138.

tion is estimated at 70,000.<sup>63</sup> In Sri Lanka, the numbers range from 10,000 prostituted children to 15,000, most of whom are boys.<sup>64</sup>

The child sex trade is spreading to other parts of Asia, principally China, Cambodia, Laos, and Vietnam.<sup>65</sup> ECPAT approximates that there are 200,000 to 500,000 prostituted children in China, 2000 in Cambodia, and 6000 in Vietnam, 4000 of whom are under the age of sixteen.<sup>66</sup> Cross-border trafficking exists between Vietnam and China.<sup>67</sup> In Bangladesh, the Ministry of Social Welfare admitted the existence of 10,000 child prostitutes between the ages of twelve and sixteen in 1985.<sup>68</sup> In India, some 400,000 to 500,000 prostituted children operate in the sex trade.<sup>69</sup> In addition, trafficking of children between borders is rampant between Nepal and India, Bangladesh and India, Bangladesh and Pakistan, and Pakistan and India.<sup>70</sup> An estimated 40,000 child prostitutes from Bangladesh are found in Pakistan.<sup>71</sup>

Child sexual exploitation is also of grave concern in Latin America and Africa.<sup>72</sup> Some 500,000 child prostitutes exist in Brazil alone, many of whom are street children.<sup>73</sup> Children in the Dominican Republic, Mexico, and Bolivia are also at risk of

63. RAPE OF INNOCENT, *supra* note 60, at 135.

64. *Id.*; see Sachs, *supra* note 15, at 26 (estimating figure at 20,000 to 30,000); *Int'l Comm'n of Jurists Report*, *supra* note 15, at 43 (estimating 8000 prostituted boys in the coastal section of Sri Lanka between Negombo and Hikkaduwa alone).

65. See *Sale of Children, Child Prostitution and Child Pornography: Report Submitted by Mr. Viti Muntarhorn, Special Rapporteur, in Accordance with Commission on Human Rights Resolution 1993/82*, U.N. Commission on Human Rights, 50th Sess., Prov. Agenda Item 22, at 36, ¶¶ 157-59, U.N. Doc. E/CN.4/1994/84 (Jan. 1994) [hereinafter *Special Rapporteur Fourth Report*] (discussing increase in child prostitution in Thailand, Cambodia, Vietnam, China, and Malaysia).

66. RAPE OF INNOCENT, *supra* note 60, at 134-35.

67. *Special Rapporteur Fourth Report*, *supra* note 65, at 36, ¶ 158.

68. RAPE OF INNOCENT, *supra* note 60, at 134. International tourism is still a minor activity in Bangladesh and Pakistan and child prostitution is aimed at the local population. O'GRADY, *supra* note 1, at 90.

69. RAPE OF INNOCENT, *supra* note 60, at 134. Earlier studies put the number at 300,000-400,000 children in prostitution. NARVESEN, *supra* note 44, at 25.

70. *Special Rapporteur Fourth Report*, *supra* note 65, at 37, ¶ 161.

71. RAPE OF INNOCENT, *supra* note 60, at 134.

72. *Special Rapporteur Fourth Report*, *supra* note 65, at 38, ¶¶ 164-65.

73. UNICEF, *supra* note 50, at 39. This same figure was advanced by the Brazilian Centre for Children and Adolescents, "an agency depending on the Brazilian Ministry of Social Affairs." *Brazil: 500,000 Young Girls in Prostitution*, CHILDREN WORLDWIDE, no. 2, at 15 (1992) (citing 1992 APIC press release); see *supra* note 2 (defining street child).

being sexually exploited.<sup>74</sup> Approximately 100,000 prostitutes operate in Peru, a large number of which are probably minors.<sup>75</sup> In Africa, Kenya possesses a significant population of "street girls"<sup>76</sup> and for some time has been an attraction for sex tourists.<sup>77</sup> Zaire has more recently become a center for child prostitution, and young girls and boys are trafficked from Mozambique to South Africa for sexual purposes.<sup>78</sup> In addition, Eastern Europe is the center of an increasingly visible sex trade industry, especially in the Baltic countries, Russia, Romania, Poland, and Hungary.<sup>79</sup>

## 2. Sex Tourists and the Demand for Child Prostitution

Prostitution of a massive nature, involving both women and children, originated in Thailand, the Philippines, and Taiwan in the late 1960's during the Vietnam War.<sup>80</sup> Thousands of U.S. servicemen were either stationed in these countries or sent there

74. UNICEF, *supra* note 50 at 39; see *Special Rapporteur Fourth Report*, *supra* note 65, at 38, ¶ 164 (referring to Bolivia and Mexico).

75. NARVESEN, *supra* note 44, at 25 (citing figures from local Peruvian organization).

76. See Lynette Ochola, *Street Girls of Nairobi: The Impact of the Undugu Programme*, *CHILDREN WORLDWIDE*, no. 2, at 12 (1992) (estimating that 37% of 50,000 street children living in Nairobi are girls between ages of 8-18 who are frequently sexually exploited).

77. See NARVESEN, *supra* note 44, at 14, 22, 25, 26-27 (connecting child prostitution to tourist trade in large towns and tourist areas). An investigation in Kenya prior to 1990 revealed that the numbers of child prostitutes in Kenya were significantly lower than Asia but researchers asserted that their limited findings could well be "the tip of the iceberg." *Id.* at 25.

78. *Special Rapporteur Fourth Report*, *supra* note 65, at 38, ¶ 165.

79. See Presentation by ECPAT (The International Campaign to End Child Prostitution in Asian Tourism) at the 4th Meeting of the Interpol Standing Working Party on Offences Against Minors, Lyons, Nov. 2-4, 1994, at 2 (identifying Baltic countries, Russia, Romania, and Poland as focal points for sex trade). In Estonia, "[d]aily newspapers advertise 'children for sale' " and sex tourists are finding their way there through advertisements in European men's magazines labelling Estonia "the new sex center of Europe where sex can be bought very cheaply" and where AIDS has spread very little. *Id.*; see INTERNATIONAL CRIMINAL POLICE ORGANIZATION [INTERPOL], MINUTES OF THE 3D MEETING OF THE STANDING WORKING PARTY ON OFFENCES AGAINST MINORS 4 (Apr. 1994) (quoting Hungarian representative's statement that Hungary is slowly becoming "Bangkok of Europe").

80. O'GRADY, *supra* note 1, at 92, 94-95, 101 (asserting that prostitution previously existed in these countries but not on scale comparable to that which sprung up during Vietnam war); see NARVESEN, *supra* note 44, at 48 (noting that surge in Thailand began during Vietnam War); Levan, *supra* note 56, at 879-80 (identifying Vietnam War as principle factor in surge of prostitution).

for rest and recreation during the war.<sup>81</sup> Brothels, bars, and massage parlors, often serviced by underage prostitutes, emerged in areas surrounding the bases or ports of call.<sup>82</sup>

After the war, the governments of both Thailand and the Philippines initiated campaigns to promote international tourism utilizing the sex trade infrastructure as part of the promotion.<sup>83</sup> The governments made no attempt to limit the prostitution trade and often promoted the sex entertainment industry.<sup>84</sup>

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81. O'GRADY, *supra* note 1, at 92, 95, 101. "During 1962-1976 there were tens of thousands of U.S. military personnel stationed at seven air bases in different parts of Thailand supporting operations in the Indochina War." Kent, *supra* note 16, at 11. Rest and recreation centers were developed by the U.S. military as "a type of government-subsidized tourist trade provided for U.S. servicemen in various parts of East Asia." Herrmann & Jupp, *supra* note 45, at 151. U.S. military spending on rest and recreation in Thailand "quadrupled between 1967 and 1970, from about [US]\$5 billion to about [US]\$20 billion." Sachs, *supra* note 15, at 28. In the Philippines, the naval base at Subic Bay and its town of Olongapo became a major destination for rest and recreation, and in 1966 an average of 193 ships berthed at Subic Bay every month, carrying some 9000 persons a day. See O'GRADY, *supra* note 1, at 101 (referring to 1979 figures from Asian Social Institute). In Taiwan, an estimated 3000 servicemen arrived each month. *Id.* at 92.

82. O'GRADY, *supra* note 1, at 92, 95, 101-02. Less than ten years after U.S. servicemen began arriving in large numbers in Thailand in 1967, more than 20,000 brothels and other sex trade establishments were functioning. Sachs, *supra* note 15, at 28; see Herrmann & Jupp, *supra* note 45, at 151 (noting higher incidence of child prostitution in Philippines around U.S. military bases and that establishment of U.S. military bases in Honduras "appears to have given rise to an increase in the incidence of child prostitution in that country").

83. O'GRADY, *supra* note 1, at 97, 102; see Levan, *supra* note 56, at 881-83 (describing tourist campaign in Thailand). Some commentators assert that the World Bank encouraged development of the tourism sector aware of its connection to the sex industry. See James Petras & Tienchai Wongchaisuwan, *Thailand: Free Markets, AIDs, and Child Prostitution*, ZEE MAGAZINE, Sept. 1993, at 36 (stating that World Bank developed tourism plan "with full knowledge of its links to child prostitution"); Sachs, *supra* note 15, at 28. In 1971, Robert McNamara, then President of the World Bank and former Secretary of Defense in the Lyndon Johnson administration, "urged Thailand to supplement its export activities with an all out effort to attract rich foreigners to the country's various tourist facilities." *Id.* McNamara must have been aware of the use of Thailand for rest and recreation by U.S. servicemen and the sex industry that was connected with it. *Id.* World Bank economists, cognizant of Thailand's association with the sex trade, assisted Thailand in the institution of a National Plan of Tourist Development. *Id.* The end of the war also signified the growth of a large indigenous sex trade, especially in Thailand, where local men became the most frequent clients of Thai women and child prostitutes. O'GRADY, *supra* note 1, at 96; see *supra* notes 53-56 and accompanying text (asserting that local men significantly outnumber Western sex tourists in Thailand but that sex tourism is stimulus to child prostitution).

84. See Sudarat S. Srisang, *Tourism and Child Prostitution in Thailand*, in THE ECUMENICAL COALITION ON THIRD WORLD TOURISM, CAUGHT IN MODERN SLAVERY: TOURISM AND CHILD PROSTITUTION IN ASIA 37, 39-41 (Koson Srisang et al. eds., 1991) (quoting

Japanese tourists replaced U.S. servicemen and constituted the next wave of sex tourists.<sup>85</sup>

During the 1970's and 1980's, pedophiles<sup>86</sup> from Europe

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Deputy Minister of Thailand, Boonchoo Rojanasathian, in 1980, urging provincial governors to contribute to national tourism effort by developing scenic spots while encouraging "certain entertainment which some of you may find disgusting or embarrassing because they are related to sexual pleasures"; O'GRADY, *supra* note 1, at 97, 102 (citing same); Herrmann & Jupp, *supra* note 45, at 151 (asserting same); THANH-DAM TRUONG, *SEX, MONEY AND MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA* 178-80 (1990) (describing official governmental support for sex tourism in Thailand); Levan, *supra* note 56, at 882-83 (asserting that sex tourism is officially sanctioned in Thailand).

85. See O'GRADY, note 1, at 97, 102 (asserting that "free spending Japanese" replaced U.S. servicemen in Thailand and also in Philippines where providing young girls for Japanese became major industry). "Five-star hotels in central Manila block off whole floors for the exclusive use of Japanese sex tourists." *Id.* at 102; see Herrmann & Jupp, *supra* note 45, at 151 (naming Japan as major source of sex tourism with separate subsection of Japanese travel industry devoted to such). Recently, large numbers of Japanese tourists have begun to visit Taiwan in search of prostitutes. O'GRADY, *supra*, at 92. In Taiwan, prostitution is largely confined to girls. *Id.* One author purports racist overtones to this trade because many of the children are from the aboriginal villages of the mountain provinces. *Id.* at 93. Of the 700,000 annual arrivals of Japanese tourists in Taiwan, more than 80% are male. *Id.* at 92; see *Special Rapporteur Fourth Report*, *supra* note 65, at 37, ¶ 163 (asserting that it is well known fact "that many Japanese visit South-East Asian countries as sex tourists").

86. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV* 527-28 (1994) (classifying pedophilia as sexual and gender identity disorder). Pedophilia is characterized by "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children." *Id.* at 528. Pedophiles may be either male or female and often have a preference for either male or female children. *Id.* at 527-28. They may be of the exclusive type (attracted only to children) or the nonexclusive type (sometimes attracted to adults). *Id.* at 527; see Hodgson, *supra* note 18, at 519 n.59 (defining pedophile as "an adult with a sexual preference for children"); O'GRADY, *supra* note 1, at 56 (defining pedophilia as "an abnormal sexual attraction to young children"). For the purposes of this Note, which concerns illegal sexual activity with children, it is important to distinguish pedophiles who simply fantasize about sexual relations with children, from those who act on their impulses. See Andrew Vachss, *How Can We Fight Child Abuse?*, *PARADE MAG.*, Aug. 20, 1989, at 15-16 (distinguishing pedophile who acts on impulses, "predatory pedophile," from one who simply fantasizes). Predatory pedophiles are described as "clever, calculating criminals" who "stalk their victims with great care, working themselves into positions of great trust" and who show no remorse. *Id.* at 15. For a complete discussion of the different classifications of pedophile sex tourists, see IRELAND, *supra* note 13, at 13-14 (distinguishing between "preferential" and "situational" child molesters). Preferential molesters have a clear preference for children, including pre- and post-pubertal children. *Id.* at 13. They demonstrate four significant characteristics: "1) long term and persistent pattern of behavior; 2) children as preferred sexual objects; 3) well developed techniques in obtaining victims, and 4) sexual fantasies focusing on children, often involving the use of child pornography." *Id.* Preferential molesters often abuse large numbers of children and can be involved with many children at once. *Id.* Often, even when there are strict laws against child abuse, the preferential molester will still seek out children for



and North America found a haven for their sexual activities in Thailand and the Philippines.<sup>87</sup> During the late 1970's and early 1980's, in the Philippine town of Pagsanjan alone, a local development agency estimated that there were up to 3000 young boys providing sex to tourists, some 500 to 600 on weekdays and up to 2000 on weekends and holidays.<sup>88</sup> The same agency approximated that more than half of those tourists were pedophiles, two thirds of them Australian, and the rest North American or European, along with some Japanese and Chinese.<sup>89</sup> Sri Lanka became a center for sex tourism in the late seventies when the government initiated a tourism campaign that coincided with the arrival of Western pedophiles attracted to the country because of the availability of boys for sex.<sup>90</sup> Currently, organized pedophile tour groups are also beginning to move into the Indian sub-continent.<sup>91</sup>

Drawing an accurate profile of today's sex tourists is a difficult task.<sup>92</sup> Most are men from the industrialized nations.<sup>93</sup>

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sex. *Id.* at 13-14. Therefore, tourist locations with relatively easy access to children hold a special attraction. *Id.* at 14; see O'GRADY, *supra* note 1, at 62-76 (describing typical pedophile as middle-aged professional male, often active in community, who is obsessively driven, predatory towards children, and self-interested). Any further reference to pedophiles in this Note refers only to pedophiles who actively engage or attempt to engage in sexual activity with children.

87. See O'GRADY, *supra* note 1, at 98-99, 103-04 (describing secret pedophile beach resort in Thailand and pedophile tourist centers in Philippines). Exact names of several places are not listed in this source so that the documentation does not serve as a guide for sex tourists. *Id.* at 104-05.

88. IRELAND, *supra* note 13, at 21 (citing EMILIO AQUINO, RURAL ORGANISATION FOR ASSISTANCE AND DEVELOPMENT, TOURISM AND CHILD PROSTITUTION IN PAGSANJAN (PHILIPPINES) (1987)); see O'GRADY, *supra* note 1, at 103-04 (identifying Pagsanjan as center for pedophile activity).

89. IRELAND, *supra* note 13, at 21.

90. *Id.* at 27; see O'GRADY, *supra* note 1, at 91 (maintaining that child prostitution was virtually unknown in Sri Lanka until arrival of Western pedophiles).

91. O'GRADY, *supra* note 1, at 89.

92. See O'Connell Davidson, *supra* note 11, at 2-3 (presenting typology of British sex tourists who travel to Asia for sex with women and children).

93. See IRELAND, *supra* note 13, at 15 (citing various studies from different countries that indicate that large majority of domestic and international child abusers are men). There are, however, a growing number of women pedophiles who travel in search of young boys, particularly in the Caribbean. O'GRADY, *supra* note 1, at 77-78. Female customers, middle-aged white European women, have also been reported in the tourist coastal areas of Kenya. NARVESEN, *supra* note 44, at 26-27. From 1991 to 1994, ECPAT documented newspaper accounts of the arrests of 160 expatriate men by Asian authorities for "sexually abusing children." RAPE OF THE INNOCENT, *supra* note 60, at 136-37. The breakdown by country of origin of those arrested is the following:

Some travel as part of an organized sex tour.<sup>94</sup> Others are individual tourists or businessmen involved in a casual experimental experience.<sup>95</sup> Pedophiles represent a significant sector of the trade.<sup>96</sup> There is also a considerable incidence of sex tourism

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United States	25%
Germany	18%
Australia	14%
United Kingdom	12%
France	6%

*Id.* The large majority of the rest are from Japan and Western Europe. *Id.* This is a random sampling only of those incidents reported in the newspapers. *Id.* at 136. In the Philippines, "a large percentage of customers are white males from industrialized nations." Adul de Leon et al., *Tourism and Child Prostitution in the Philippines* in THE ECUMENICAL COALITION ON THIRD WORLD TOURISM, CAUGHT IN MODERN SLAVERY: TOURISM AND CHILD PROSTITUTION IN ASIA 53, 56 (Koson Srisang et al. eds., 1991).

94. See, e.g., Letter from Hon. Joseph P. Kennedy II to Hon. Charles E. Schumer 1-2 (Mar. 10, 1994). "Dozens of agencies in the U.S. organize sex tours, serving thousands of customers a year. Many offer package deals including airline, hotel, food, and transportation. . . . I have met with investigative reporters who taped a tour operator making promises of sex with girls fifteen years old or younger." *Id.*; see *supra* note 28 (detailing sex tour organized by U.S. citizen). A National Broadcasting Company ("NBC") investigation in 1985 revealed child sex tour operators working out of one travel agency in West Germany and another in London. Herrmann & Jupp, *supra* note 45, at 143. One NBC correspondent purchased a child sex tour to Thailand from the London agency. *Id.* Upon his arrival, a representative from the Bangkok office of the travel agency delivered a thirteen year old girl to his hotel room. *Id.* Journalists were also instrumental in uncovering a Swiss travel agency, member of the Swiss Association of Travel Agents, which organized child sex tours on request. IRELAND, *supra* note 13, at 53. In their in-flight magazine, Lauda Air, a private Austrian airline, published a cartoon of a very young Thai girl, naked from the waist up, and the caption "From Thailand With Love." *Id.* The text described non-stop sexual services in Thailand and made reference to a fictional place called the Baby Club. *Id.* A Dutch tour company, Kanita Karmha, circulated a travel brochure that described Thai prostitutes as "little slaves who give real Thai warmth." Sachs, *supra* note 15, at 28.

95. See IRELAND, *supra* note 13, at 47 (distinguishing premeditated sex tourists (pedophile and non-pedophile) who travel for purpose of sex with children, from general tourist or business traveller who engages in sex with locals).

96. See O'GRADY, *supra* note 1, at 56 (identifying pedophiles as group that have created more demand for child prostitutes than any other in Asia); see *supra* notes 86-91 and accompanying text (defining pedophilia and describing activities of pedophile sex tourists). Many pedophile organizations are clandestine and provide networks of information that will allow pedophiles to evade the law. *Id.* at 57-61 (identifying several U.S. and European pedophile organizations); Fay Burstin, *Probe to Focus on Child Sex Network*, HERALD SUN (Austl.), Jan. 12, 1995, reprinted in ECPAT AUSTRALIA BULL., Feb. 1995, at 2 (noting that Australian government is investigating pedophile networks and their use of computer bulletin boards in illegal activities including child sex tourism); Ehrlich, *supra* note 12, at 71-72 (citing California law enforcement agents familiar with pedophile networks, some of which operate via international computer links). In a raid in Paganjan in 1988, Philippine authorities arrested 23 pedophiles: seven Americans, five Germans, three Australians, two Belgians, and one each from United Kingdom,

among Asian men, who travel to other Asian countries to engage in sex with children.<sup>97</sup>

### 3. Root Causes of Child Prostitution

#### a. Poverty

Commentators maintain that the grinding poverty and social injustice of the underdeveloped world, especially in rural areas, is primary among the causes of child prostitution.<sup>98</sup> Poverty results in illiteracy, desperate need, and limited employment opportunities, leaving parents easy prey to procurement agents who scour the villages in search of young children.<sup>99</sup> Parents are often not appraised of the nature of the work for which their

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Canada, Holland, Japan, Switzerland, and Spain. *Id.* at 74. They were deported. *Id.* One U.S. pedophile, Andrew Harvey, a 52 year-old retired engineer from Pittsburgh, returned home and was later arrested on child pornography charges in the U.S. *Id.* He is currently serving a four-year prison term. *Id.*

97. See *supra* note 53 and accompanying text (noting that Asian locals greatly outnumber Westerners); *supra* note 85 and accompanying text (detailing Japanese involvement in sex tourism). Taiwanese men often travel to Vietnam for sex. See O'GRADY, *supra* note 1, at 93-94. In addition, "tourists from the Middle East are particularly enthusiastic about 'deflowering' virgin girls." Kent, *supra* note 16, at 7 (citing Nanya Pancharoen, *Prostitution is a Lucrative Booming Industry in Thailand*, NATION (Thail.), Feb. 27, 1989). Malaysian tourists are a significant part of the sex trade in Thailand. IRELAND, *supra* note 13 at 68.

98. See UNICEF SPEAKERS' NOTES, *supra* note 15, at 3-4 (indicating that "[c]hildren of the urban and rural poor in developing countries are the vast majority of the victims").

They bear the brunt of economic pressures and cuts in basic services such as education and health resulting from skewed domestic priorities and foreign debt. Poor children on the streets in developing countries, already victims of poverty and family disintegration, are forced to trade bodies and souls for money for survival . . . .

*Id.* at 3. In the Philippines, per capita annual GNP is US\$730 and a study of "girls on the street" in Manila cites poverty as a significant pressure forcing girls into prostitution, sometimes to help their families. *Id.* at 4; see *Sale of Children: Report Submitted by Mr. Vitiit Muntarhorn, Special Rapporteur Appointed in Accordance with Resolution 1990/68 of the Commission of Human Rights*, U.N. Commission on Human Rights, 47th Sess., Agenda Item 12, at 10, ¶ 34, U.N. Doc. E/CN.4/1991/51 (1991) [hereinafter *Special Rapporteur First Report*] (identifying poverty as common thread); Hodgson, *supra* note 18, at 516 (recognizing poverty as root cause); IRELAND, *supra* note 13, at 22 (quoting Church sources who note that "[c]hildren are seen as extra wage earners for struggling families").

99. Hodgson, *supra* note 18, at 517; *Force and Deceit Used to Procure Children for Prostitution*, NATION (Thail.), Feb. 2, 1995, reprinted in ECPAT AUSTRALIA BULL., Mar. 1995, at 6-7 (detailing use of false job offers and fake ads by recruiters who "roam" through northern provinces of Thailand searching for underage prostitutes).

children are being "hired."<sup>100</sup>

### b. Materialism and Consumerism

Poverty is not the only force that impels parents to sell their own children.<sup>101</sup> Some parents sell their children into prostitution with full knowledge of what they are doing.<sup>102</sup> Large financial rewards, available on a scale previously unknown to villagers, and the introduction of consumer goods have undermined traditional values.<sup>103</sup> While most parents sell their children as the result of desperate need, there are a significant number who do so for modern comforts and luxury items.<sup>104</sup>

### c. Poor Law Enforcement in Receiving Countries

Although many of the developing countries have passed legislation that ostensibly protects children from sexual exploitation, the laws are often not enforced against tourists.<sup>105</sup> Deportation is the most severe penalty facing most expatriate sex abusers who, until recently, were free to return home where they could not be prosecuted for the crimes committed overseas.<sup>106</sup> Few sex

100. Hodgson, *supra* note 18 at 517, 519; see Charles P. Wallace, *Slavery, 20th Century Style*, L.A. TIMES, Aug. 6, 1991, at 1 (asserting that agents would tell parents that children would be employed as maids or waitresses); *ILO Committee of Experts Report*, *supra* note 57, at 139 (stating that child sexual exploitation is often connected to false recruitment and deception).

101. See O'GRADY, *supra* note 1, at 127 (identifying erosion of human values as frequent cause of such behavior).

102. Hodgson, *supra* note 18, at 517.

103. See Marlise Simons, *The Littlest Prostitutes*, N.Y. TIMES MAG., Jan. 16, 1994, at 34-35 (describing how rural villagers desire luxury goods and how young girls were sold by parents for the equivalent of a full year's salary). The parents are given an "advance" that must be paid off by the child's labor. *Id.*; see Wallace, *supra* note 100, at 1 (asserting that parents have become so "emboldened by greed" that they bring children to brothels for sale). According to the Center for the Protection of Children's Rights in Thailand, there is an active market in the slums of Bangkok for newborn female babies, who are sold from US\$20 to US\$100. *Id.*

104. See Hodgson, *supra* note 18, at 517 (relying on research study by law enforcement agent, revealing that parents will sell children for modern conveniences); NARVESEN, *supra* note 44, at 45 (implicating mass media in increasing commercialization and desire for consumer goods, which is important catalyst for selling children).

105. Hodgson, *supra* note 18, at 518; see *ILO Committee of Experts Report*, *supra* note 57, at 140 (noting that in Thailand, despite existence of laws protecting children from sexual exploitation, there is need to improve law enforcement).

106. Ehrlich, *supra* note 12, at 73 (noting that Sri Lanka has not deported tourists for this crime since 1986); see *supra* note 96 (discussing case of pedophiles deported from Philippines).

tourists are convicted, and those that are often pay bail and flee.<sup>107</sup> The reasons for weak enforcement are many, but chief among them is that the tourism industry, which is intimately connected with the sex trade, is a financial windfall for some developing countries.<sup>108</sup> Low-paid law enforcement officials are prime targets for bribery.<sup>109</sup> Police and investigators are poorly trained and children are often afraid to cooperate, fearing prosecution themselves.<sup>110</sup>

#### d. Fear of HIV and AIDS

One of the factors fueling the recent explosion in the demand for children is the mistaken belief that children are less likely to have contracted AIDS and therefore are safe sex partners.<sup>111</sup> In fact, the opposite is true.<sup>112</sup> The mucosal lining of the child's vagina, anus, and rectum are thin and disposed to rupture,<sup>113</sup> especially because sex acts upon the immature body

107. Ehrlich, *supra* note 12 at 73 ("In the Philippines, fewer than 100 child abusers were convicted from 1986 through 1992—a tiny fraction of the total number of abusers. In nearly all cases they were simply deported."). A Japanese pediatrician charged with molesting nine children in Manila jumped bail and fled the country. *Id.* at 72.

108. *Id.* at 72. "The importance of tourism to recent Thai economic development cannot be underestimated." IRELAND, *supra* note 13, at 45. In 1979, revenue from tourism was the third largest source of foreign exchange for the Royal Thai Government. *Id.* From 1982 to 1990 it was number one, while in 1991 it was second only to textile products. *Id.*

109. Ehrlich, *supra* note 12, at 72 (reporting that some police work as guards or bouncers at child sex establishments); see *ILO Committee of Experts Report*, *supra* note 57, at 140 (noting need in Thailand to counter corruption, especially within police force); NARVESEN, *supra* note 44, at 54 (asserting that in Philippines, Thailand, and India, police often collaborate actively with brothel owners). In a Philippine study of 100 child prostitutes, approximately 10% had a policeman as a pimp. *Id.*

110. Hodgson, *supra* note 18, at 518; see NARVESEN, *supra* note 44, at 54 (maintaining that child prostitution cases are seldom reported since child is usually tried and convicted as criminal).

111. O'GRADY, *supra* note 1, at 112; Kent, *supra* note 16, at 18; see *Sale of Children: Report Submitted by Mr. Vitit Muntarbhorn, Special Rapporteur Appointed in Accordance with Commission Resolution 1990/68*, U.N. Commission on Human Rights, 48th Sess., Prov. Agenda Item 22, at 27-28, ¶ 138, U.N. Doc. E/CN.4/1992/55 (1992) [hereinafter *Special Rapporteur Second Report*] (describing how market is spiraling towards virgins and very young); *ILO Committee of Experts Report*, *supra* note 57, at 139 (noting that "clients prefer young children to prevent AIDS transmission"); see also Taliercio, *supra* note 10, at 13 (noting various sources supporting existence of mistaken belief).

112. Taliercio, *supra* note 10, at 13.

113. O'GRADY, *supra* note 1, at 112; Taliercio, *supra* note 10, at 13; see William Branigin, *Children for Sale in Thailand: Poverty, Greed Force Girls Into Prostitution*, WASH. POST, Dec. 28, 1993, at 12 (noting that young girls "may be more susceptible to vaginal wounds that help transmit the infection").

of a child often involve some tearing of the tissue.<sup>114</sup> This, in turn, allows for the introduction of the HIV virus into the bloodstream.<sup>115</sup> This virus may be spreading faster in Thailand than in any other part of the world.<sup>116</sup>

#### e. Gender Discrimination

Gender discrimination is a significant factor underlying the utilization of young girls in child prostitution.<sup>117</sup> Cultural and even religious practices foster the image of girls as sexual objects.<sup>118</sup> Female children are often given fewer opportunities for education and for substantial employment.<sup>119</sup> In addition, traditional taboos and stigmas often accompany the girl prostitute into adulthood, hampering the possibilities for rehabilitation.<sup>120</sup>

### 4. The Consequences of Child Prostitution

#### The U.N. Working Group on Contemporary Forms of Slav-

114. O'GRADY, *supra* note 1, at 112; see NARVESEN, *supra* note 44 at 35 (reporting that records from centers and hospitals indicate that it is common for sexually abused children to bleed from the sexual organs and anus); see also Taliercio, *supra* note 10, at 13 (indicating same).

115. O'GRADY, *supra* note 1 at 112; see THE MERCK MANUAL OF DIAGNOSIS AND THERAPY 288-89 (Robert Berkow, M.D. & Andrew J. Fletcher, M.B., B. Chir. eds., 15th ed. 1987) (asserting that transmission of HIV virus requires exchange of body fluids containing infected cells such as blood or plasma). The infection can pass through simple exposure to mucous membranes but is much more likely to pass if tissue is traumatized. *Id.* at 289.

116. O'GRADY, *supra* note 1 at 141. The World Health Organization claims that there are about 200 new cases reported every day in Thailand and that in five to ten years between one and two million Thais will carry the HIV virus. *Id.* at 141-42.

117. See *Special Rapporteur Second Report*, *supra* note 111, at 29. While girls are especially at risk, it should be noted that there is an increasing number of male children who are also exploited as prostituted children. *Id.*

118. *Id.*; see O'GRADY, *supra* note 1, at 89 (describing use of young girls as "temple prostitutes" in India). Although this practice is officially banned, it is still widely practiced in some parts of India. See *Int'l Comm'n of Jurists Report*, *supra* note 15, at 45 (describing the treatment of temple prostitutes); UNICEF SPEAKERS' NOTES, *supra* note 15, at 2 (noting "nearly universal acceptance of women's role as sexual objects for men").

119. UNITED NATIONS CENTRE FOR HUMAN RIGHTS, UNICEF, THE GIRL CHILD 1 (Convention on the Rights of the Child document) (asserting that "[i]n almost every society, rich and poor, social attitudes favor the healthy development of sons over daughters"). In developing countries inequality is found in "unequal access to education and technologies" and "unfair divisions of labor." *Id.*

120. *Special Rapporteur Second Report*, *supra* note 111, at 29, ¶ 144.

ery<sup>121</sup> has expressed its concern at the indelible psychological and emotional trauma sustained by children who are the victims of child prostitution.<sup>122</sup> Prostituted children are not only treated as sexual objects, resulting in a complete loss of dignity, self-esteem, and confidence,<sup>123</sup> but they are often subjected to physical harm, illness, and inhumane treatment, including beatings, torture, and enslavement.<sup>124</sup> These children are at high risk of becoming adult prostitutes, drug addicts, and delinquents.<sup>125</sup> Rehabilitation programs<sup>126</sup> are often unsuccessful.<sup>127</sup> One of the most frightening consequences is the children's exposure to the HIV virus and AIDS.<sup>128</sup> In Thailand, among children rescued from child prostitution, often one out of every two tests positive for the virus.<sup>129</sup>

### B. *International Law Relating to the Sexual Exploitation of Children*

International efforts to prevent the sexual exploitation of

121. See *supra* note 48 (describing U.N. Working Group on Contemporary Forms of Slavery).

122. *Slavery Working Group Report, supra* note 49, at 10, ¶ 34; Hodgson, *supra* note 18, at 521.

123. O'GRADY, *supra* note 1, at 119.

124. *Id.*; see *Int'l Comm'n of Jurists Report, supra* note 15, at 45 (asserting that child prostitutes live in constant fear of violence and sadism of clients and beatings by pimps); *ILO Committee of Experts Report, supra* note 57, at 139 (noting that ever younger children in Thailand are "lured from their villages, locked up, physically and psychologically scarred"); Branigin, *supra* note 113, at 12 (noting that child prostitutes "end up ruthlessly exploited in cheap brothels where they are forced to have sex with several, sometimes more than a dozen, men a night"); ANTI-SLAVERY BULL., Briefing Note no. 1, at 1-5 (1995) (entire issue devoted to detailing the horrendous treatment of prostituted children in Southeast Asia including forced labor, torture, beatings, and gang rape); Sachs, *supra* note 15, at 26 (purporting Saturday night ritual in Rio de Janeiro where wealthy ranchers gang rape girls to death).

125. *Slavery Working Group Report, supra* note 49, at 10, ¶ 34; see Hodgson, *supra* note 18, at 521 (asserting that dehumanization of child prostitution "frequently leads to alcohol and drug abuse, criminal activity, and even suicide"); *Int'l Comm'n of Jurists Report, supra* note 15, at 46 (maintaining that child prostitutes "fall prey to the use of hard drugs or intoxicants . . . in order to make their lives tolerable").

126. See O'GRADY, *supra* note 1 at 115-21 (describing challenges of rehabilitation and listing centers in Philippines, Taiwan, and Thailand). Some centers concentrate on education, and others on drug rehabilitation or employment training. *Id.*

127. *Id.* at 117. This fact has convinced many child advocates that the only solution is to utilize resources to stop the child sex trade. *Id.* at 120.

128. Hodgson, *supra* note 18, at 521; see *supra* notes 111-16 and accompanying text (describing how child prostitutes are at high risk for HIV infection).

129. RAPE OF INNOCENT, *supra* note 60, at 80. The disease is being disseminated internationally. *Id.* at 82. Sixty percent of all Japanese men who contracted AIDS through sex with women were infected during their travel overseas. *Id.*

children were initiated in the first half of the twentieth century and consisted primarily of anti-trafficking and anti-slavery conventions concerning forced labor and minimum age.<sup>130</sup> The most widely recognized development in international law regarding the protection of children is contained in the United Nations Convention on the Rights of the Child.<sup>131</sup> The proposal for a Draft Optional Protocol,<sup>132</sup> which directly addresses the issue of child sex tourism, constitutes a more recent development.<sup>133</sup>

### 1. Preliminary International Agreements

One of the first conventions adopted by the international community, designed to protect both women and children from sexual exploitation, was the International Agreement on Suppression of White Slave Traffic ("1904 Convention").<sup>134</sup> The 1904 Convention was amended in 1910 by the International Convention for the Suppression of the White Slave Traffic<sup>135</sup> ("1910 Convention"), which prohibited the hiring or seducing of a minor, even with her consent, for immoral purposes.<sup>136</sup> In 1957 and 1973, the International Labor Organization<sup>137</sup> ("ILO")

130. Hodgson, *supra* note 18, at 523-24.

131. See UNCRC, *supra* note 19; see *Int'l Comm'n of Jurists Report*, *supra* note 15, at 47 (calling UNCRC "the most promising instrument" of those designed to protect children from slavery, discrimination, and prostitution); Roger J.R. Levesque, *International Children's Rights Grow Up: Implications for American Jurisprudence and Domestic Policy*, 24 CAL. W. INT'L L.J. 194, 213 (1994) (characterizing UNCRC as giving priority to children with respect to "adoption of State measures" and allocation of resources).

132. Draft Optional Protocol, *supra* note 21.

133. See *supra* notes 21-22 and accompanying text (discussing Draft Optional Protocol and its designation of child sexual exploitation as "crimes against humanity").

134. International Agreement on the Suppression of White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83 (entered into force 1905).

135. International Convention for the Suppression of the White Slave Traffic, May 4, 1910, art. 1, 211 Consol. T.S. 45, 1912 Gr. Brit. T.S. No. 20, at 267, *amended by* the Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, Signed at Paris on 18 May, 1904, and the International Convention for the Suppression of White Slave Traffic, signed at Paris on 4 May, 1910, May 4, 1949, 2 U.S.T. 1997, 30 U.N.T.S. 23 [hereinafter 1910 Convention].

136. *Id.* art. 1, 211 Consol. T.S. at 46, 1912 Gr. Brit. T.S. No. 20, at 269-70.

137. See THE INTERNATIONAL LABOR ORGANIZATION: FACTS FOR AMERICANS 1, 3 (1991). The ILO was founded in 1919 to unify governments, employers and trade unions in the service of social justice. *Id.* at 3. "[I]t establishes and supervises the implementation of international labor standards." *Id.* at 1. "In 1946 the ILO became the first specialized agency associated with the United Nations." *Id.* at 3.



adopted conventions concerning coerced labor<sup>138</sup> and the minimum age for employment.<sup>139</sup>

In 1957, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery entered into force.<sup>140</sup> States that are parties to this treaty assume the obligation to take all practicable and necessary steps to prevent the exploitation of the labor of a child under eighteen by a parent or guardian.<sup>141</sup> This includes the obligation to promulgate appropriate legislation.<sup>142</sup> In 1976, the International Covenant on Civil and Political Rights<sup>143</sup> also proscribed forced labor<sup>144</sup> and slavery.<sup>145</sup>

## 2. The United Nations Convention on the Rights of the Child

In 1989, the General Assembly of the United Nations adopted the United Nations Convention on the Rights of the Child ("UNCRC" or "Convention"), which entered into force in

138. International Convention on Compulsory Labor, June 28, 1930, 39 U.N.T.S. 55; International Convention (No. 105) for the Abolition of Forced Labor, June 25, 1957, 320 U.N.T.S. 291.

139. International Convention (No. 138) Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297.

140. International Convention on Slavery, Sept. 25 1926, 60 L.N.T.S. 253 (entered into force 1927); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7 1956, 266 U.N.T.S. 3 (entered into force 1957). The Supplementary Convention has been ratified by 112 countries as of June 30, 1994. See *Comments on Guidelines for a Possible Draft Optional Protocol: Report of the Secretary General*, Commission on Human Rights, U.N. Doc. E/CN.4/1994/WG.14/2, at 17, ¶ 80 [hereinafter *U.N. Report on the Draft Optional Protocol*] (comments of Defence for Children International and International Catholic Child Bureau).

141. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *supra* note 140, art. 1(d), 266 U.N.T.S. at 41. Article 1 obliges States Parties to take all necessary legislative and other steps to oppose "[a]ny institution or practice whereby a child . . . under the age of 18 years is delivered by either of both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child . . . or of his labour." *Id.* Child prostitution is described as "one of the worst contemporary forms of slavery." *Slavery Working Group Report*, *supra* note 49, at 9, ¶ 33. "[C]hild prostitutes of Asia . . . are mostly in brothels or massage parlors where many are kept in a state that is indistinguishable from slavery." UNICEF, *supra* note 50, at 39.

142. International Convention on Slavery, *supra* note 140, art. 5, 60 L.N.T.S. at 265.

143. International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1967), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

144. *Id.* art. 8(3), at 50, 999 U.N.T.S. at 175.

145. *Id.* art. 8(1), at 50, 999 U.N.T.S. at 175.

1990.<sup>146</sup> The purpose of the UNCRC was to codify the provisions of the 1959 United Nations Declaration on the Rights of the Child<sup>147</sup> in a treaty.<sup>148</sup> NGOs actively participated in the drafting of the UNCRC.<sup>149</sup> The Convention offers a more comprehensive program for the protection of children's rights than previous international agreements, particularly in regard to the exploitation of children.<sup>150</sup>

The UNCRC defines a child as anyone under eighteen years of age.<sup>151</sup> Two provisions relate to the issue of sexual exploitation and directly to the phenomenon of child sex tourism.<sup>152</sup> Article 34 (a) and (b) require signatories to take all appropriate

146. UNCRC, *supra* note 19. The UNCRC entered into force on September 2, 1990. *Id.* As of that date, the UNCRC is binding on all nations that ratify it. *Id.* art. 49(2), at 17, 28 I.L.M. at 1475.

147. G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 19, U.N.Doc. A/4354 (1959).

148. See Elizabeth M. Calciano, Note, *United Nations Convention on the Rights of the Child: Will It Help Children in the United States?*, 15 HASTINGS INT'L & COMP. L. REV. 515 (1992) (identifying Declaration on Rights of Child as forerunner of UNCRC). The Polish government presented the U.N. Declaration on the Rights of the Child for adoption as a treaty in 1978 but it was rejected largely because it had no implementing legislation. See Levesque, *supra* note 131, at 210 n.106. In 1979, however, the General Assembly, instead of accepting the Declaration, directed the United Nations Commission on Human Rights to draft a Convention on the Rights of the Child, a task which it completed ten years later. *Id.*; see Cynthia Price Cohen, *United Nations Convention on the Rights of the Child*, REVIEW (INTERNATIONAL COMMISSION OF JURISTS), June 1990, at 36-37 (detailing history of UNCRC).

149. Cohen, *supra* note 148, at 37 (describing formation of the NGO Ad Hoc Group on Drafting of Convention on Rights of Child ("NGO Group")). The NGO group "was an informal association of approximately thirty international non-governmental organizations having consultative status with the United Nations Economic and Social Council." *Id.* The NGO Group "analyzed the proposed text of various articles of the Convention, critiqued previously adopted articles and drafted models of articles protecting rights which the NGO group felt had been wrongly omitted from the draft Convention." *Id.* at 38. Several specific rights contained in the UNCRC, including the right to protection from sexual exploitation, can be traced directly to the NGO Group. *Id.* Such collaboration during the drafting of the Convention "provides a unique model of legislative drafting." *Id.* at 37.

150. Walter H. Bennett, Jr., *A Critique of the Emerging Convention on the Rights of the Child*, 20 CORNELL INT'L L.J. 1, 30 n.191 (1987); see Calciano, *supra* note 148, at 522 (asserting that UNCRC "leaves no room for ambiguity" regarding protection of children from exploitation); see also Cohen, *supra* note 148, at 36 (noting that UNCRC protects not only civil and political rights but also economic, humanitarian, social, and cultural rights).

151. UNCRC, *supra* note 19, art. 1, at 2, 28 I.L.M. at 1459 (defining child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier").

152. *Id.* arts. 34(a)-(b), 35, at 11, 28 I.L.M. at 1469.

national, bilateral, and multilateral measures to prevent the exploitation of children in unlawful sexual activities and prostitution.<sup>153</sup> Article 35 compels states to take measures to prevent the sale, abduction, or trafficking of children.<sup>154</sup>

The UNCRC establishes a Committee on the Rights of the Child<sup>155</sup> for the purpose of monitoring the progress made by parties, each of whom must make periodic reports to that body.<sup>156</sup> No mechanism exists for state-to-state confrontation<sup>157</sup> or for children's individual complaints.<sup>158</sup> Furthermore, the Convention offers no remedies.<sup>159</sup> It focuses on education and cooperation as opposed to confrontation.<sup>160</sup>

As of December 31, 1994, 163 nations had ratified the

153. *Id.* Article 34(a) and (b) states:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices; . . . .

*Id.*

154. *Id.* art 35, at 11, 28 I.L.M. at 1469. Article 35 states that "State Parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." *Id.*

155. *Id.* art. 43(1), at 14, 28 I.L.M. at 1472. Article 43(1) states in relevant part that "[f]or the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child." *Id.*

156. *Id.* art. 44(1), at 15, 28 I.L.M. at 1473. Article 44(1) states in relevant part that "States Parties undertake to submit to the Committee . . . reports on the measures they have adopted which give effect to the rights recognized herein." *Id.*

157. See Levesque, *supra* note 131, at 218-19. "[T]he Convention does not contain State-to-State complaint and individual petition systems which are characteristic of other international human rights instruments." *Id.*

158. *Id.* at 219.

159. *Id.*

160. See *id.* at 218-20 (offering critical analysis of UNCRC as compared to other similar human rights treaties). The author describes the UNCRC as a "weak document which places focus on individual Nation States enforcing the Convention themselves, rather than using the more traditional approach of having Nation States guard each other." *Id.* at 219. The author also argues, however, that the UNCRC espouses the radical notion that children are "fully endowed persons possessing basic human rights", a concept that could have a profound transforming effect on the way society views children, families, and the law. *Id.* at 197; see *Int'l Comm'n of Jurists Report, supra* note 15, at 48 (noting limitations of implementation mechanisms of UNCRC but asserting, nevertheless, that UNCRC "promises to be a milestone in a global strategy aimed at changing attitudes towards the need of children in the combat against child sexual exploitation").

UNCRC.<sup>161</sup> A large majority of both sending and receiving countries involved in the sex tourism trade, with some notable exceptions,<sup>162</sup> have assumed the obligations of Articles 34 and 35 and have submitted to the scrutiny of the Committee on the Rights of the Child.<sup>163</sup>

Articles 34 and 35 of the Convention permit the parties a considerable degree of flexibility in determining the measures they will take in order to meet their obligations under the Convention.<sup>164</sup> These provisions do not specifically require parties to enact legislation extending criminal jurisdiction over their citizens abroad.<sup>165</sup> The Convention may be interpreted, however, as giving a state the latitude to enact such legislation if this action would fulfill the objectives of the Convention.<sup>166</sup>

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161. MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY GENERAL, STATUS AS AT 31 DECEMBER 1993, at 193-94, U.N. Doc. ST/LEG/SERE/12 and Supp. (1994) [hereinafter *MULTILATERAL TREATIES*].

162. ECPAT-USA, INFORMATION UPDATE (Sept. 1994). Until February 1995, only the United States, Malaysia, Saudi Arabia, Somalia, and several smaller nations had neither ratified nor signed the Convention. *Id.* It was not until February 16, 1995 that the United States signed the UNCRC. *United States Signs the Convention on the Rights of the Child*, ECPAT-USA NEWS, Mar. 1995, at 3. In order to become law, it must be ratified by the Senate, where prospects for ratification remain uncertain. *Id.*

163. *See supra* notes 155-56 and accompanying text (defining role of Committee on Rights of Child). It is arguable that even those countries that have neither signed nor ratified the Convention would be bound to it under customary international law. *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987) (locating source of customary international law as deriving from "a general and consistent practice of states followed by them from a sense of legal obligation"). "[T]here is no precise formula to indicate how widespread a practice must be, but it should reflect wide acceptance among the states particularly involved in the relevant activity." *Id.* § 102 cmt. b; *see* IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 5 (3d ed. 1979) (defining elements of "custom" as regards international law). The practice must be substantially uniform and universal among nations and must be followed out of legal obligation rather than courtesy, fairness, or morality. *Id.* at 4. Any claim that the UNCRC represents customary international law is fortified by the fact that the Convention has been signed by the overwhelming majority of nations. *See* Calciano, *supra* note 148, at 522 (noting rapid ratification of Convention and stating that "[t]he UNCRC represents the strengthening of international customary law regarding children"); *see, e.g.,* Martin Flaherty, *Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland*, 7 *HARVARD HUM. RTS. J.* 87, 89-92 (1994) (discussing customary international law relative to human rights violations in Ireland).

164. UNCRC, *supra* note 19, arts. 34-35, at 11, 28 I.L.M. at 1469; Andrew Byrnes, *Extraterritorial Criminal Legislation Against the Sexual Exploitation of Children by Australians Abroad*, Address to the First World Congress on Family Law and Children's Rights, Sydney, Australia 8 (July 1993) (on file with *Fordham International Law Journal*).

165. Byrnes, *supra* note 164, at 8.

166. *Id.*

### 3. The Draft Optional Protocol

An international debate has arisen over the advisability of the development of an optional protocol to the UNCRC that would deal specifically with the sexual exploitation of children.<sup>167</sup> A draft of one such protocol, the Draft Optional Protocol,<sup>168</sup> has been circulated as an Australian and French initiative.<sup>169</sup> It was adopted in late 1993 at the Second International Workshop on National Institutions for the Promotion of Human Rights in Tunis.<sup>170</sup>

Under the Draft Optional Protocol, parties would assume a substantial obligation to cooperate with other states to further the prevention, detection, prosecution, and punishment for crimes of sexual exploitation of or trafficking in children.<sup>171</sup> The burden on parties would be greater than that imposed by the UNCRC,<sup>172</sup> which generally obliges States Parties to take national, bilateral, and multilateral action to prevent child prostitution and exploitation, but does not require extraterritorial legislation nor any other specific measure.<sup>173</sup> In addition, Article 1 of the Draft Optional Protocol asserts that the sexual exploitation of and trafficking in children constitute "crimes against humanity,"<sup>174</sup> placing them in the same category as war crimes such as willful killing, torture, genocide, and unlawful mass deportations.<sup>175</sup>

Article 2(a) of the Draft Optional Protocol provides that

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167. See *U.N. Report on the Draft Optional Protocol*, *supra* note 140 and add. 1 (containing opposing views on possible optional protocol).

168. Draft Optional Protocol, *supra* note 21.

169. See AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, at 1.

170. *Id.*

171. Draft Optional Protocol, *supra* note 21, arts. 2(b), 2(c), 3(a)-(e). Article 2(c) obligates parties to the enactment of extraterritorial jurisdiction "to ensure that their national legislation extends to crimes of sexual exploitation of or trafficking in children involving their own nationals, persons resident or domiciled within their territory, or corporations or associations operating within their territory, occurring within the territory of other States." *Id.* art. 2(c).

172. UNCRC, *supra* note 19, arts. 34-35, at 11-12, 28 I.L.M. at 1469.

173. See *supra* notes 146-66 and accompanying text (detailing relevant provisions of UNCRC); see also Hodgson, *supra* note 18, at 524-27 (comparing UNCRC with Draft Optional Protocol).

174. Draft Optional Protocol, *supra* note 21, art. 1(1).

175. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 147, 6 U.S.T. 3516, 3618, 75 U.N.T.S. 287, 388 (enumerating war crimes); Hodgson, *supra* note 18, at 526 n.114 (asserting same and citing Geneva Convention).

states will agree to pass national legislation that makes the sexual exploitation of children a crime subject to universal criminal jurisdiction.<sup>176</sup> In other words, all states, regardless of the nationality of the alleged criminal or the location of the offense, would have jurisdiction over the crime.<sup>177</sup> Because sexual exploitation of a child is a crime that offends the entire international community, it is categorized as *delict jure gentium* (crime by the law of nations), empowering every state with the right to arrest, convict, and punish offenders in its own courts.<sup>178</sup> Sexual crimes against children would be "internationalized"<sup>179</sup> to ensure that none would go unpunished.<sup>180</sup>

Some commentators assert that the Draft Optional Protocol represents an important advance in the protection of children.<sup>181</sup> One commentator describes the Draft Optional Protocol as innovative but largely symbolic and diminished by some important omissions.<sup>182</sup> The U.N. Human Rights Commission

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176. Draft Optional Protocol, *supra* note 21, art. 2(a), at 1; see Hodgson, *supra* note 18, at 526 (referring to this provision as especially innovative).

177. J. G. STARKE, INTRODUCTION TO INTERNATIONAL LAW 226 (8th ed. 1984).

178. *Id.*

179. See Hodgson, *supra* note 18, at 526 (explaining principle and rationale of universal criminal jurisdiction).

180. STARKE, *supra* note 177, at 226. "There are probably today only two clear-cut cases of universal jurisdiction, namely the crime of piracy *jure gentium*, and war crimes." *Id.* Crimes such as drug trafficking, trafficking in women and children, and counterfeiting have been brought within international conventions, and have been traditionally been dealt with as *aut punire, aut dedire*. *Id.* at 227. Offenders are either punished by the state in which they are found or extradited to the competent state. *Id.* But see BROWNLIE, *supra* note 163, at 305 (asserting that war crimes do not involve application of principle of universal jurisdiction even though breaches of laws of war may be punished by any nation having custody over alleged offender). War crimes are breaches of international law. *Id.* As such they differ from the punishment of crimes under national laws to which the principle of universal jurisdiction might be applied. *Id.* Anglo-American jurisprudence is hostile to the general principle of universal jurisdiction except in the instance of piracy. *Id.* Crimes like the slave trade, narcotics traffic, and counterfeiting, however, which have provoked the existence of multilateral treaties, can be, by custom, assimilated to piracy. *Id.*

181. See, e.g., U.N. Report on the Draft Optional Protocol, *supra* note 140, at 5 (comments of Australia) (characterizing Draft Optional Protocol as good starting point for discussion of possible protocol).

182. Hodgson, *supra* note 18, at 527. One such omission is that the Draft Optional Protocol fails to prescribe a uniform definition for "child" or "age of consent," ignoring variations between national laws and encouraging a kind of forum shopping. *Id.* A further omission is the absence of a provision concerning the financing of the extra costs that will be incurred by the law enforcement agencies of the economically poor receiving countries. *Id.* There is precedent, however, for the industrialized countries paying for enforcement costs in developing countries. See *Conservation Hotline: Tiger*

has established a working group that has requested comments from the international community regarding the establishment of guidelines for an optional protocol.<sup>183</sup> To date, less than a dozen countries and several U.N. organizations and NGOs have responded.<sup>184</sup> The consensus among many NGOs is that work on a new protocol would be counterproductive because: 1) the optional protocol refers only to one issue (sexual exploitation) addressed by the UNCRC; 2) it is unlikely that the optional protocol will be widely ratified since it would demand a fundamental modification of domestic law in many countries; and 3) energies should not be diverted from the efforts for universal ratification and implementation of the UNCRC.<sup>185</sup>

#### 4. Implementation Programs and Mechanisms

In 1989, the U.N. Working Group on Contemporary Forms of Slavery<sup>186</sup> began a three-year investigation into the sale of children, child prostitution, and child pornography.<sup>187</sup> A year later, the United Nations appointed Professor Vitit Muntarbhorn of Thailand as Special Rapporteur to investigate such matters.<sup>188</sup>

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*and Rhino Conservation*, WILDLIFE CONSERVATION, Feb. 1995, at 7 (describing U.S. Rhinoceros and Tiger Conservation Act, passed Fall 1994). Under this act, the United States has established a US\$10 million a year fund for the next five years that includes monies for enforcement of the law in countries where such animals are at risk. Rhinoceros and Tiger Conservation Act of 1994, Pub. L. No. 103-391, 108 Stat. 4094 (1994) (to be codified at scattered sections of 16 U.S.C.).

183. See *U.N. Report on the Draft Optional Protocol*, *supra* note 140, at 3. The Commission asked for comments on guidelines for a possible protocol. *Id.* They did not ask for comments on the current French and Australian initiative or any other specific proposal for a possible protocol. *Id.*

184. *Id.* at 1-2 (listing, among others, Argentina, Australia, Bahrain, Federal Republic of Yugoslavia, Philippines, Office of the United Nations High Commissioner for Refugees, Council of Europe, Defence for Children International, and International Catholic Child Bureau as those states and organizations that have responded).

185. *Id.* at 19-21 (comments of Defence for Children International and International Catholic Child Bureau). The emphasis is on implementing "existing standards before setting new ones." *Id.* at 20.

186. See *supra* note 48 and accompanying text (describing Working Group on Contemporary Forms of Slavery).

187. See *U.N. Slavery Working Group Report*, *supra* note 49, at 3, ¶ 1. The Working Group established specific yearly themes for the 1989-1991 period, namely: "prevention of the sale of children, of prostitution of children, and of the use of children in pornography (1989); eradication of the exploitation of child labour and of debt bondage (1990); and prevention of traffic in persons and of the exploitation of the prostitution of others." *Id.* ¶ 2. The Working Group meets every year in Geneva for one week immediately before the Sub-Commission session. *Id.* ¶ 3.

188. *Sale of Children: Report Submitted by Mr. Vitit Muntarbhorn, Special Rapporteur Ap-*

Mr. Muntarbhorn's first three reports cumulatively advocated a comprehensive international approach, much of which has been the basis for the Programme for the Prevention of the Sale of Children, Child Prostitution and Child Pornography<sup>189</sup> ("Programme"), which was adopted by the U.N. Commission on Human Rights in 1992.<sup>190</sup> In addition to advocating the necessity for education, social measures, development assistance, and international law enforcement measures, the Programme specifically calls for legislative measures to combat sex tourism.<sup>191</sup> The Special Rapporteur's most recent report, in 1994, offered recognition to the many NGOs that provided data and recommendations for his reports<sup>192</sup> and also noted examples of non-governmental actions that help combat sex tourism.<sup>193</sup>

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*pointed in Accordance with Resolution 1990/68 of the Commission on Human Rights*, U.N. Commission on Human Rights, 47th Sess., Agenda Item 12, at 1, U.N. Doc. E/CN.4/1991/51 (1991) [hereinafter *Special Rapporteur First Report*]. The U.N. Commission on Human Rights requested the Special Rapporteur to submit "a comprehensive report . . . on his activities relating to these matters, including the frequency and extent of such practices, as well as his conclusions and recommendations." *Id.*; see Talierto, *supra* note 10, at 31 (describing role of Special Rapporteur). The original period of the mandate of the Special Rapporteur was for one year but was extended to two years by the Economic and Social Council in its Decision 1990/240. *Id.* It was extended yet again for an additional three year period by the Economic and Social Council in its Decision 1992/244. *Id.*

189. *Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography: Report of the Working Group on Contemporary Forms of Slavery Pursuant to Paragraph 6 of Sub-Commission Resolution 1992/2*, U.N. Commission on Human Rights, 45th Sess., Prov. Agenda Item 15, U.N. Doc. E/CN.4/Sub.2/1993/31 (1993).

190. See *Special Rapporteur Fourth Report*, *supra*, note 65, at 1 (asserting that Programme was adopted by United Nations General Assembly Resolution 1992/74, Mar. 5, 1992). *Id.*

191. *Id.* at 31-32, ¶ 135.

Special attention should be paid to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through the enticement of sex with children should go penalized on the same level as procurement.

*Id.*

192. *Id.* at 8, ¶ 28.

193. *Id.* at 34, ¶¶ 147, 151 (citing activities of NGOs in United Kingdom and Norway). In addition, on September 6, 1994, Mr. Muntarbhorn sent a further questionnaire to governments and NGOs alike to collect data and recommendations for his next report on the same issues. See Letter from Vitit Muntarbhorn, Special Rapporteur, to Colleagues (Sept. 6, 1994) (on file with *Fordham International Law Journal*). In a surprising development, Mr. Muntarbhorn resigned from his post as Special Rapporteur in late October, 1994. Bertil Lindblad, Senior Advisor, UNICEF, Children in Especially Difficult Circumstances, Address at the ECPAT-USA Informational Meeting, United Nations Plaza (Nov. 17, 1994). He resigned because of the lack of support he received



The 1990 World Summit for Children<sup>194</sup> directly addressed the issue of child prostitution<sup>195</sup> and was an important catalyst for the widespread adoption of the UNCRC.<sup>196</sup> In 1993, the United Nations World Conference on Human Rights<sup>197</sup> directed member states to actively address the situation of children exploited in forced labor and child prostitution.<sup>198</sup> It also called for universal ratification of the UNCRC by 1995.<sup>199</sup>

The First World Congress on the Commercial Sexual Exploitation of Children<sup>200</sup> illustrates the importance of NGOs in the implementation of international measures to protect children.<sup>201</sup> The Congress is being sponsored and planned for 1996 by governments, UNICEF, ECPAT, and other NGOs that are concerned with this problem.<sup>202</sup> Sweden will host the event, which will attract representatives from governments of both the sending and receiving countries, law enforcement agents, the International Criminal Police Organization<sup>203</sup> ("Interpol"), the

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from the U.N. Center for Human Rights. *Id.* He remains personally committed to the task he was given and will continue to work as a consultant for UNICEF. *Id.*; see also ECPAT BULL., no. 8, at 2 (Oct.-Nov. 1994) (reporting resignation and recognizing Professor Vitit for splendid contribution).

194. *Ceremony for the Presentation of the Declaration and Plan of Action Adopted by World Leaders at the World Summit for Children: Note by the Secretary General*, U.N. GAOR, 45th Sess., Agenda Item 151, U.N. Doc. A/45/625 (1990). The World Summit for Children took place in New York in September, 1990. *Id.*

195. *See World Declaration on the Survival, Protection, and Development of Children and Plan of Action*, U.N. GAOR, 45th Sess., Agenda Item 151, annex, U.N. Doc. A/45/625 (1990) at 13, ¶ 22. The World Summit recognized that literally millions of children live in especially difficult circumstances, including those "trapped in the bondage of prostitution, sexual abuse, and other forms of exploitation." *Id.*

196. *See* Hodgson, *supra* note 18, at 525.

197. *Report of the World Conference on Human Rights*, World Conference on Human Rights, U.N. Doc. A/Conf.157/24 (pt. I) (1993), 32 I.L.M. at 1661. The U.N. convened the World Conference on Human Rights in Vienna from June 14-25, 1993. *Id.* Representatives of 171 nations attended. *Id.*

198. *Id.* at 39, 32 I.L.M. at 1680. "Effective measures are required against . . . harmful child labour, sale of children, . . . child prostitution, child pornography, as well as other forms of sexual abuse." *Id.*

199. *Id.* at 38, 32 I.L.M. at 1680; see AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 1.2.5, at 2.

200. *See World Congress Gets Go Ahead*, ECPAT NEWSL., Dec. 1994, at 1 (describing plans for First World Congress on Commercial Sexual Exploitation of Children).

201. *Id.*

202. *Id.*

203. *See* Bruce Zagaris, *Dollar Diplomacy: International Enforcement of Money Movement and Related Matters: A United States Perspective*, 22 GEO. WASH. J. INT'L L. & ECON. 465 (1989) (detailing history of Interpol).

ILO,<sup>204</sup> and other U.N. organizations, as well as NGOs from around the globe.<sup>205</sup>

### C. National Legal Responses

Sex tourism has its origins in the industrialized world.<sup>206</sup> Most commentators agree, however, that responsibility for the protection of children from sex crimes also rests with the states in which the children are exploited.<sup>207</sup> Legislative initiatives in both sending and receiving countries play an important role in addressing the issue of sex tourism.<sup>208</sup>

#### 1. The Receiving Countries

Prostitution in Thailand was legal until 1956<sup>209</sup> but is now prohibited under the Thai Penal Code.<sup>210</sup> Until 1987, the female age of consent in Thailand was thirteen.<sup>211</sup> Currently sex-

204. See *supra* note 137 (describing ILO).

205. See *World Congress Gets Go Ahead*, *supra* note 200, at 1 (listing expected participants of Congress).

206. See *supra* notes 92-97 and accompanying text (indicating that sex tourists originate primarily in industrialized countries).

207. See AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 1.3.2, at 4 (maintaining that primary responsibility lies with country where child is victimized); Levan, *supra* note 56, at 907-09 (asserting that many root causes of prostitution originate in Thailand and need to be addressed by Thailand in order to end child sexual exploitation). This is true for some Asian commentators as well. See *PM Vows to End Child Sex Trade*, ECPAT NEWSL., Sept. 1994, at 1 (Thai Prime Minister criticized sex tourists but also stated that child prostitution in Thailand "cannot be tolerated" and recognized need for increased law enforcement.); Letter from Abhisit Vejjajiva, Thai Government Spokesman, The Prime Minister's Office to Paul Bravender-Coyle, Honorary Secretary, The Anti-Slavery Society (Aug. 4, 1994) (characterizing child prostitution in Thailand as "a disease which weakens society and damages the national interest" and describing new Thai legislation targeted at "men who use services of child prostitutes").

208. See Hodgson, *supra* note 18, at 522-23 (noting that legislation has important place in strategies against sex tourism).

209. IRELAND, *supra* note 13, at 31.

210. See Hodgson, *supra* note 18, at 527 (citing Prostitution Control Act (Thail.); PENAL CODE 1956 (Thail.) (as amended 1982)). Both prostitutes and individuals or agents who procure, or coerce or fool children into prostitution are liable under the law. *Id.*

211. *Id.*; see SANFORD H. KADISH & STEPHEN J. SCHULHOFER, *CRIMINAL LAW AND ITS PROCESSES* 260 (5th ed. 1989) (explaining that sexual contact is one of several situations where criminal liability may turn on issue of consent); see, e.g., *Special Rapporteur Second Report*, *supra* note 111, at 28, ¶ 140. "If there is a problem with the content of national law itself, it is the question of the age of consent and its interrelationship with child prostitution." *Id.* Many countries set the age of consent lower than 18 as defined in the UNCRC, and "in some contexts this means that the customer is exempted from responsibility if the child prostitute consents" even though the child is less than 18. *Id.* This

ual intercourse with a minor of sixteen or less is punishable by a fine and a prison term of up to twelve years.<sup>212</sup> In addition, the Thai Cabinet recently approved a bill, still to be approved by the Parliament, targeting the clients and procurers of child prostitutes with penalties of up to ten years.<sup>213</sup>

In Taiwan, the government recently introduced the Child Prostitution Prevention Bill.<sup>214</sup> This bill includes both sanctions for the offenders and rehabilitation and counselling for the victims.<sup>215</sup> Attempts at Sri Lankan law reform have not been as successful despite the recommendations of its Ministry of Social Services.<sup>216</sup> The government, however, is now considering the enactment of laws punishing the sexual abuse of children by prison terms of up to ten years.<sup>217</sup>

In 1991, the Philippine legislature passed the Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act,<sup>218</sup> which allows heavy penalties to be applied against advertisers, clients, procurers, pimps, and houses of prostitution.<sup>219</sup> Previously, all forms of prostitution were criminalized.<sup>220</sup> Currently, however, children who engage in prostitution activities who are below the age of eighteen are not criminally liable.<sup>221</sup>

results in protection for a significantly smaller number of children as well as serious problems with law enforcement. *Id.* ¶¶ 140-41.

212. See Hodgson, *supra* note 18, at 527 (citing PENAL CODE 1956 § 277(2) (Thail.) (as amended 1982)).

213. THAILAND FOREIGN AFFAIRS NEWSLETTER, translated in ECPAT AUSTRALIA BULL., Mar. 1995, at 5. Harsher penalties are prescribed for those engaging in forced prostitution or torture of women or children with up to a life sentence if the child dies or suffers serious injury. *Id.*

214. Hodgson, *supra* note 18, at 527-28 (citing Taiwan's Child Prostitution Prevention Bill).

215. *Id.* at 528.

216. *Id.* at 527.

217. *Id.*

218. An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes, Republic Act No. 7610 (Phil.), 88 OFF'L GAZETTE, No. 30, July 27, 1993, at 4851. Article I states that the act shall be known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act." *Id.* art. I, at 4852.

219. *Id.* arts. III, VII.

220. Hodgson, *supra* note 18, at 528.

221. An Act Providing for Stronger Deterrence and Special Protection Against child Abuse, Exploitation and Discrimination Providing Penalties for Its Violation, and for Other Purposes, Republic Act No. 7610 art. III, § 5 (Phil.), 88 OFF'L GAZETTE, No. 30, July 27, 1992, at 4854.

Despite legal advances being made in some receiving countries due to international pressure, the legislation in most countries is punitive and no significant attempt has been made to address the underlying causes<sup>222</sup> of child prostitution.<sup>223</sup> In addition, advancing legal reform by itself is not sufficient and must be supported by other strategies.<sup>224</sup> Finally, in order to be effective, the laws must be enforced,<sup>225</sup> which will make increasing demands on already scarce resources.<sup>226</sup>

## 2. The Sending Countries

In 1988, the Council of Europe<sup>227</sup> recognized the problem of child prostitution and trafficking of children and made a recommendation that European countries consider establishing extraterritorial jurisdiction.<sup>228</sup> Sweden<sup>229</sup> and Norway<sup>230</sup> have long

222. See *supra* notes 98-120 and accompanying text (describing underlying causes of child prostitution as poverty, consumerism, gender discrimination, poor law enforcement, and fear of AIDS).

223. Hodgson, *supra* note 18, at 528. Other commentators, however, insist that child prostitution will not be eliminated either by simply eradicating poverty or gender discrimination. Telephone Interview with Andrew Vachss, an attorney whose practice is limited to the representation of children (Jan. 10, 1994). Because the sexual exploitation of children is a highly lucrative business, it will flourish as long as there is demand and an easy supply of children. *Id.* Its eradication will depend on the will of the local authorities to strictly enforce laws with serious penalties against those who sexually exploit children. *Id.*

224. *Id.* Some of these strategies might include enforcement of laws, national and international cooperation between governments and law enforcement authorities, the involvement of governmental social development agencies, and the strategic use of foreign aid. *Id.* at 522-23.

225. *Id.* at 528 (describing problems with enforcement in Southeast Asia); see *supra* notes 105-10 and accompanying text (describing poor law enforcement in receiving countries); Anglican General Synod Social Responsibilities Commission & International Affairs Commission, *Pleasure in Paradise?: Sex Tourism in Asia* 18 (June 1993) (on file with *Fordham International Law Journal*) (describing lax treatment of foreign offenders and failure to prohibit repeat offenders).

226. See *supra* note 182 and accompanying text (referring to increased law enforcement costs for underdeveloped nations).

227. See GEORGE BERMAN, ET. AL., *CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW* 3-5 (1993) (describing history of Council of Europe, which was founded in 1949). An interest in European unity led to the institution of the Council of Europe. *Id.* at 3. The Council possesses no legislative power but has issued significant recommendations. *Id.*

228. See EUROPEAN COMMITTEE REPORT, *supra* note 17, at 43. At their 1988 Lisbon conference, the European Ministers of Justice recommended that the Committee of Ministers consider establishing extraterritorial jurisdiction for trafficking in children and young adults. *Id.*

229. PENAL CODE ch. 2, § 2; *id.* ch. 6, §§ 6, 7, 10 (Swed.) (Allmänna Förget 1990).

had the potential to prosecute nationals extraterritorially<sup>231</sup> but only for acts that are crimes both under their respective domestic penal codes and in the places in which they were committed.<sup>232</sup> Only recently have these laws been applied to the area of sex tourism.<sup>233</sup> In 1990, in the first successful prosecution of sex tourists, three Norwegian nationals were sentenced for indecent intercourse with thirteen year-old boys in the Philippines and Thailand.<sup>234</sup> In addition, the Swedish government is currently in the process of prosecuting of a Swedish national who was found *in flagrante delicto*<sup>235</sup> with a thirteen year-old boy in Thailand.<sup>236</sup>

In 1993, the German Parliament extended the application of its penal code to certain acts committed extraterritorially by German nationals, including sexual practices with children under fourteen years of age.<sup>237</sup> The German law is independent of the law of the country in which the criminal act was committed,<sup>238</sup> thus eliminating the "double criminality" requirement.<sup>239</sup> In England, the government has refused to pass legislation that

230. PENAL CODE § 12.3(a) (as amended 1989) (Nor.).

231. Facsimile Transmission from Helena Karlén, Rådda Barnen (Swedish Save the Children) to Peggy Healy 1 (Sept. 30, 1994) [hereinafter Karlén Fax]. The Swedish extraterritorial provision, PENAL CODE ch. 2, § 2 (Swed.), was enacted on December 21, 1962. Telephone Interview with Ulrika Sundberg, Vice-Consul, Consulate General of Sweden (Mar. 9, 1995) [hereinafter Sundberg Interview]. The Norwegian provision, PENAL CODE § 12.3 (a) (Nor.), was enacted in 1902. Facsimile Transmission from Marianne Saetre, Redd Barna (Norwegian Save the Children) to Peggy Healy 1 (Mar. 10, 1995) (citing Norwegian Ministry of Justice) [hereinafter Saetre Fax].

232. See Hodgson, *supra* note 18, at 530 (referring to this condition as "double criminality" requirement).

233. See Karlén Fax, *supra* note 231, at 2 (noting that Sweden is utilizing its law for first time against Swedish sex tourist).

234. Case no. 99/1990 (Nor. S. Ct.) (Supreme Court publ. 1990, 760 (267-90), Consecutive no. 93B/1990). Cases in Norway are registered by number as opposed to name. Saetre Fax, *supra* note 231, at 2. These cases often receive nicknames and this case is known as "the professor case." *Id.*

235. See BLACK'S LAW DICTIONARY 639 (6th ed. 1990) (defining *in flagrante delicto* as "[i]n the very act of committing the crime.>").

236. Karlén Fax, *supra* note 231, at 2.

237. PENAL CODE § 5 (Ger.) (*translated in* ECPAT NEWSL., Spec. Ed. (1993)) (offenses against domestic law that are committed abroad); *id.* § 174 (criminal acts against sexual self-determination); *id.* § 176 (sexual abuse of children).

238. *Id.* § 5.

239. Facsimile Transmission from Ute Kreckel, ECPAT Germany, to Peggy Healy 1 (Oct. 3, 1994). ECPAT Germany does not feel hopeful that the law will be enforced. *Id.* They have pressured, thus far unsuccessfully, for bilateral treaties between Germany and the countries where the victims live in order to facilitate prosecution and sentencing. *Id.* They have been successful, however, in pressuring the German Ministry of Foreign affairs, which has recently ordered its embassies in the Philippines, Thailand,

allows for the prosecution of British nationals who commit offences against children overseas.<sup>240</sup> The British Parliament will reconsider such legislation, however, after they have the opportunity to observe how similar legislation is enforced in other countries.<sup>241</sup>

Japan, a major offender,<sup>242</sup> has neither introduced nor passed legislation targeted at sex tourism.<sup>243</sup> Australia, however, recently enacted the Crimes (Child Sex Tourism) Amendment Act 1994,<sup>244</sup> which expressly prohibits sexual acts overseas with children under the age of sixteen.<sup>245</sup> New Zealand is in the process of promulgating similar legislation.<sup>246</sup> The United States has recently joined its European and Pacific rim neighbors in confronting the issue of sex tourism with the passage of the Child Sexual Abuse Prevention Act of 1994,<sup>247</sup> which prohibits U.S. residents from travelling overseas for the purpose of engaging in sex with a minor.<sup>248</sup>

## II. *THE SWEDISH, AUSTRALIAN, AND U.S. CHILD SEX TOURISM LAWS*

Sweden, Australia, and the United States have each adopted a distinct approach to the escalating problem of child sex tourism.<sup>249</sup> As a common component of their strategies, each coun-

Sri Lanka, and Brazil to inform German prosecutors of incidents involving sex crimes by German nationals in those countries. *Id.*

240. Facsimile Transmission from David Ould, Anti-Slavery International, to Peggy Healy 1 (Sept. 23, 1994).

241. *Id.*

242. See *supra* note 85 (detailing significant Japanese role in sex tourism).

243. See *Inquiry Into The Crimes (Child Sex Tourism) Amendment Bill 1994: Transcript of Evidence Given at a Public Hearing before the House of Representatives [Austl. Parl.] Standing Committee on Legal and Constitutional Affairs* 4 (1994) [hereinafter *Australian Parliament Public Hearings*] (Testimony of Bernadette McMenamin). Bernadette McMenamin, the Campaign Coordinator of ECPAT Australia, made a trip to Japan in 1994 and spoke to 45 Parliamentarians on the need for legislation similar to Australia's. *Id.*

244. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes Act 1914 (Austl.)).

245. *Id.* arts. 50BA, 50BB, 50BC, 50BD.

246. ECPAT AUSTRALIA BULL., Feb. 1995, at 9. On November 31, 1994, New Zealand's Parliament passed an act similar to Australia's sex tourism law. *Id.* It is expected to become law in 1995. *Id.*

247. Child Sexual Abuse Prevention Act, Pub. L. No. 103-322, § 160001(g), 108 Stat. 2037 (1994) (to be codified at 18 U.S.C. § 2423(b)).

248. *Id.*

249. *Id.*; PENAL CODE ch. 2, § 2 (Swed.) (Allmanna Forget 1990); Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes Act 1914 (Austl.)).

try has either utilized<sup>250</sup> or significantly amended<sup>251</sup> existing legislation to allow for prosecution of its nationals pursuant to their conduct in foreign countries.<sup>252</sup> Differences among the three, however, become apparent within a comparative analysis that includes: a) each nation's commitment to international law, particularly the UNCRC;<sup>253</sup> b) the substantive provisions of each law;<sup>254</sup> c) the potential for enforcement of the law within each

250. See *supra* notes 30, 236 and accompanying text (noting that Sweden is preparing to prosecute Swedish sex tourist under already existing law, which will be used for first time in connection with this crime).

251. See *supra* note 31 (noting that Australian law is amendment to already existing law). The U.S. law is an extension of the Mann Act. White Slave Traffic (Mann) Act, ch. 395, 36 Stat 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (1988)).

252. 18 U.S.C. § 2421(b); PENAL CODE ch. 2, § 2 (Swed.) (Allmanna Forget 1990); Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes Act 1914 (Austl.)).

253. See *Special Rapporteur Second Report*, *supra* note 111, at 61, ¶¶ 288-89. The Special Rapporteur has exhorted all states to accede to the UNCRC in his recommendations regarding sex tourism and the sexual exploitation of children. *Id.*; see UNITED STATES COMMITTEE FOR UNICEF, UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1 (asserting that UNCRC contains minimum standards for rights of children). Ratification of the UNCRC or other international covenants is not a reliable indicator of an effective commitment to the protection of children. See, e.g., Roger J. R. Levesque, *The Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights*, 60 BROOK. L. REV. (forthcoming 1994) (manuscript at 32 n.160, on file with *Fordham International Law Journal*). The UNCRC and other U.N. implementation mechanisms, however, provide critical support in reaching international solutions to the problem of sex tourism. See O'GRADY, *supra* note 1, at 130 (characterizing UNCRC as powerful weapon in fight against child prostitution); see *supra* notes 146-66 and accompanying text (describing centrality of UNCRC in issue of sex tourism); Byrnes, *supra* note 164, at 7 (noting that UNCRC was primary basis for Australia's sex tourism law). Likewise, each individual country's ratification of the Convention strengthens its power as an instrument of customary international law, arguably making it binding on all nations of the world—even on those countries that have not yet signed or ratified. See *supra* note 163 (setting forth elements of customary international law and importance of generality and universality). While there may be some serious problems with the wording and enforcement mechanisms of the UNCRC, the UNCRC has played, and continues to play, a prominent role in the promotion of children's rights. See, Levesque, *supra*, at 29-33 (maintaining that Convention might be of limited use in battle against sex tourism, but recognizing it as "remarkable achievement" in clarification of "nature of sexual exploitation and international duties involved").

254. See *supra* note 153 (quoting wording of Article 34 of UNCRC). The UNCRC does not bind states to any specific measures for the protection of children from sexual exploitation or sexual abuse, but rather binds them to take "all appropriate national, bilateral and multilateral measures" to do so. See *supra* note 153 (quoting wording of Article 34 of UNCRC). Therefore each nation is left with the obligation to enact implementing legislation to prevent child sexual exploitation. See, e.g., Calciano, *supra* note 148, at 5-6 (applying UNCRC to U.S. law).

country;<sup>255</sup> and d) the degree of governmental collaboration with NGOs.<sup>256</sup>

### A. *Sweden*

More than three decades ago, the Swedish Penal Code was amended to allow for extraterritorial jurisdiction.<sup>257</sup> At least one commentator purports that the law was introduced to ensure that Swedish nationals be given fair trials and sentences reflecting a respect for human rights.<sup>258</sup> Its enactment was not in any way connected to the issue of sex tourism.<sup>259</sup> Due to the efforts of Rädde Barnen,<sup>260</sup> however, the Swedish government is currently in the process of prosecuting a Swedish sex tourist under this law.<sup>261</sup>

#### 1. International Obligations

Sweden was among the first of the nations of the world to

255. See *Australian Parliament Public Hearings*, *supra* note 243, at 4-5 (Testimony of Bernadette McMenamin) (claiming that laws will have questionable deterrent force if they are left unenforced).

256. See *Special Rapporteur First Report*, *supra* note 98 at 12, ¶ 46 (recognizing key role of NGOs in international efforts to eliminate sexual exploitation of children).

The untiring work of the non-governmental organizations at the international level should be recognized as a key counterpart in all the matters mentioned (referring to the elimination of child prostitution). It is often through their initiatives that the United Nations system and the States have taken up programmes and action, and it is through their monitoring that the pace for change is accelerated.

*Id.* The Committee on the Rights of the Child, which oversees the implementation of the UNCRC, also recognized the vital role of NGOs in creating awareness of the Convention and in the monitoring process. *Committee on the Rights of the Child: Report on the Third Session*, Convention on the Rights of the Child, 3d Sess., at 38, ¶ 182, U.N. Doc. CRC/C/16 (1993); see Taliercio, *supra* note 10, at 49 ("The important role played by NGO's in combatting sex tourism can not be too strongly emphasized."); Hodgson, *supra* note 18, at 542-44 (describing fundamental role of NGOs in elimination of child sex tourism).

257. PENAL CODE ch. 2, § 2 (Swed.) (Allmänna Forget 1990); see *supra* note 231 and accompanying text (noting that provision was enacted in 1962).

258. Karlén Fax, *supra* note 231, at 2. According to the Swedish Commentary to the Penal Code, its passage was also connected to the fact that Swedish women were going to Poland for abortions because abortion was illegal in Sweden at that time. Sundberg Interview, *supra* note 231.

259. Karlén Fax, *supra* note 231, at 2.

260. See Taliercio, *supra* note 10, at 37 (noting that Rädde Barnen [Swedish Save the Children] is a Swedish child advocacy NGO that is a part of ECPAT's campaign).

261. *Id.* at 38-42.



sign and ratify the UNCRC.<sup>262</sup> The Swedish government has taken a position against the adoption of the Draft Optional Protocol asserting that the UNCRC contains the necessary normative provisions regarding the sexual exploitation of children.<sup>263</sup> Sweden contends that priority at this time should be given to achieving universal ratification and adherence to the UNCRC as opposed to the introduction of a new protocol.<sup>264</sup>

Sweden is also a member of the Council of Europe,<sup>265</sup> which, relying on the norms set out in UNCRC, made specific recommendations regarding the sexual exploitation of and trafficking in children and young adults.<sup>266</sup> In addition, Sweden has appointed a law enforcement official to the post of Nordic<sup>267</sup> liaison officer in South East Asia.<sup>268</sup> This liaison officer is specially trained and assigned exclusively to confront the problem of sex crimes against children,<sup>269</sup> thereby fulfilling a recommendation

262. See MULTILATERAL TREATIES, *supra* note 161, at 193-94 (listing nations that have signed and ratified UNCRC and dates of such). Sweden signed the UNCRC on January 26, 1990 and ratified the convention on June 29, 1990. *Id.*

263. U.N. Report on the Draft Optional Protocol, *supra* note 140, add. 1, at 8, ¶¶ 29 (comments of Sweden). Sweden maintains that the UNCRC already contains clear obligations in regard to the protection of children from sexual exploitation and that there are adequate existing mechanisms for its implementation. *Id.* at 8, ¶¶ 29-30. "If children continue to suffer from exploitation, it is not because there are not norms to protect them, but that these norms are not being sufficiently implemented, nationally and internationally." *Id.* at 8, ¶ 31. This position is shared by the U.N. Committee on the Rights of the Child. *Id.* at 8-11, ¶¶ 33-45 (comments of Committee on Rights of Child); see *supra* note 185 and accompanying text (indicating that this position is also shared by other NGOs).

264. U.N. Report on the Draft Optional Protocol, *supra* note 140, at 8, ¶ 31.

265. See *supra* note 227 (describing Council of Europe).

266. EUROPEAN COMMITTEE REPORT, *supra* note 17, at 7-13, 42-43 (including introduction of extraterritorial jurisdiction).

267. Facsimile Transmission from Marianne Saetre, Redd Barna, (Norwegian Save the Children) to Peggy Healy (Oct. 3, 1994). The liaison officer, Perolov Forslund, was given a Nordic mandate, thus representing Sweden, Finland, Denmark, and Norway. *Id.*

268. Karlén Fax, *supra* note 231, at 4. He was appointed for a three year term, to begin in November 1993, to serve in Thailand, Sri Lanka, and the Philippines. *Id.* After considerable delay, in November 1994, he was finally granted accreditation in Thailand and Swedish government sources suggest that accreditation will soon be forthcoming in Sri Lanka and the Philippines. Facsimile Transmission from Helena Karlén, Rådda Barnen (Swedish Save the Children) to ECPAT Information Center Thailand 1 (Nov. 17, 1994) [hereinafter Karlén-ECPAT Fax].

269. Taliencio, *supra* note 10, at 37-38. This was accomplished only after enormous pressure was put on the Swedish government through a massive education and media campaign mounted by Swedish Save the Children. *Id.*; Karlén Fax, *supra* note 231, at 3-4.

made by the Special Rapporteur.<sup>270</sup>

## 2. Relevant Law and Legislative History

The second chapter of the Swedish Penal Code sets forth the applicability of Swedish law.<sup>271</sup> According to the law, a Swedish citizen who has committed a crime outside of Sweden is liable under Swedish law and in a Swedish court.<sup>272</sup> In order for the Swedish courts to have jurisdiction, the act must be criminal both in Sweden and in the country where it was perpetrated, thus requiring "double criminality" for prosecution.<sup>273</sup> In addition, according to Section 2 of the Penal Code, the sanction for such a crime may not exceed the maximum penalty prescribed for that crime under the law of the country where the crime was committed.<sup>274</sup>

Among the statutes in the Swedish Penal Code that protect children from adult sexual exploitation is one that defines sexual intercourse with a child under fifteen years of age as the equivalent of common law statutory rape.<sup>275</sup> A child under fifteen is a legal minor and is not considered capable of giving

270. See *Special Rapporteur Second Report*, *supra* note 111, at 62.

271. PENAL CODE ch. 2, § 1-8 (Swed.) (Allmanna Forget 1990).

272. *Id.* ch. 2, § 2. Chapter 2, § 2 states in relevant part: "A person who has committed a crime outside the Realm shall be tried according to Swedish law and in a Swedish court if the person is: 1. a Swedish citizen or an alien domiciled in Sweden . . . ." *Id.*

273. *Id.* Section 2 states in relevant part: "The first paragraph shall not apply if the act is not punishable under the law at the place it was committed." *Id.*; see *supra* note 232 and accompanying text (discussing concept of double criminality). Double criminality, however, is not required for the prosecution of grave crimes committed outside Sweden that are punishable under Swedish law by a minimum sentence of four years incarceration. PENAL CODE ch. 2, § 3 (Swed.). Section 3 states in relevant part: "[A] person who has committed a crime outside the Realm shall be tried according to Swedish law and in a Swedish court . . . if the mildest penalty prescribed for the offence in Swedish law is imprisonment for four years or more." *Id.* Under the Swedish Penal Code, aggravated rape would be one such crime which carries a sentence of four to ten years imprisonment. PENAL CODE ch. 6, § 1 (Swed.). The Swedish government uses the term "geo-criminality" to denote the concept of double criminality. Sundberg Interview, *supra* note 231.

274. PENAL CODE ch. 2, § 2, ¶ 3. "In cases mentioned in this Section a sanction may not be imposed which would be regarded as severer than the severest punishment prescribed for the crime under the law at the place where the crime was committed."

275. PENAL CODE ch. 6, § 6 (Swed.). The law, in relevant part, states: "If a person . . . has sexual intercourse with a child under fifteen years of age, a sentence of imprisonment for at most four years shall be imposed for *sexual intercourse with a child*." *Id.* As in common law statutory rape, no coercion is required and any apparent "consent" has no mitigating effect. Taliercio, *supra* note 10, at 35.

consent to sexual intercourse with an adult.<sup>276</sup> The crime carries a maximum penalty of four years.<sup>277</sup> Seduction of youth, a considerably lesser crime, can be charged against persons who, by giving compensation or promising such, obtain or try to obtain sexual intercourse with minors under eighteen years of age.<sup>278</sup> This statute is applied in Sweden to the sexual exploitation of youths in street prostitution or in other similar circumstances.<sup>279</sup>

A literal reading of the law indicates that the Swedish courts have the competence to prosecute a Swedish national for sexual crimes against children committed in Thailand, Sri Lanka, the Philippines, and in any other country where child prostitution is a crime.<sup>280</sup> They would, however, have no competence to prosecute a Swedish national in a country where child prostitution is legal or where the age of consent is lower than Sweden's.<sup>281</sup> In addition, even if the foreign law were the same as Sweden's, sexual intercourse with a child between the years of fifteen and eighteen would be punishable by a mere fine or a by a maximum of six months imprisonment only if it could be proven that the Swedish national promised or extended payment for the sexual act.<sup>282</sup>

### 3. Enforcement

The Swedish government is currently preparing to prosecute a Swedish sex tourist under the Penal Code.<sup>283</sup> This is the first attempt in Sweden to prosecute a Swedish national for an

276. Taliercio, *supra* note 10, at 35. "This crime applies regardless of whether obvious coercion has taken place in the course of the act. *Id.*

277. PENAL CODE ch. 6, § 6 (Swed.). A lesser crime of *sexual molestation* is set forth in Section 7 which states: "A person who . . . sexually touches a child under fifteen years of age or induces the child to undertake or participate in an act with sexual implication shall be sentenced to a fine or imprisonment for at most one year for *sexual molestation*." PENAL CODE ch. 6, § 7 (Swed.).

278. PENAL CODE ch. 6, § 10 (Swed.). "A person who, by promising or giving compensation, obtains, or tries to obtain casual sexual intercourse with someone under eighteen years of age, shall be sentenced for *seduction of youth* to pay a fine or to imprisonment for at most six months." *Id.*

279. *See* Taliercio, *supra* note 10, at 36.

280. PENAL CODE ch. 2, § 2 (Swed.); *see supra* notes 209-12, 218-21 and accompanying text (noting that child prostitution is crime in Thailand and Philippines).

281. PENAL CODE ch. 2, § 2 (Swed.); *see supra* notes 272-73 and accompanying text (describing Sweden's double criminality requirement).

282. PENAL CODE ch. 6, §§ 6, 7, 10 (Swed.); *see supra* notes 271-79 and accompanying text (detailing provisions of Swedish Penal Code).

283. Karlén Fax, *supra* note 231, at 2. Under Swedish law, only the government, or

extraterritorial sexual offense committed against a child.<sup>284</sup> The case concerns a sixty-six year-old Swedish male national, Bengt Bolin, whom the Thai police took into custody in February 1993, for sexual crimes against children.<sup>285</sup> He was caught naked in bed with a fourteen year-old Thai boy in Pattaya, Thailand.<sup>286</sup> Bolin was charged with statutory rape and held in custody for two weeks.<sup>287</sup> The Thai authorities released him on bail of thirty thousand crowns<sup>288</sup> after they confiscated his passport and ordered him not to leave the country.<sup>289</sup> He immediately went to the Swedish embassy, which was well aware of his arrest and the charges against him.<sup>290</sup> He received a new passport from the Swedish embassy,<sup>291</sup> an exit visa from the Thai authorities,<sup>292</sup> and returned to Sweden.<sup>293</sup>

His case is currently under investigation by the Swedish Prosecutor.<sup>294</sup> There are evidentiary and procedural problems, some of which have been solved.<sup>295</sup> Only in mid-September 1994 did the questioning of the Thai boy begin at the offices of

a "person authorized by the Government" may prosecute Swedish nationals who commit such crimes in a foreign state. PENAL CODE ch. 2, § 5a (Swed.).

284. Karlén Fax, *supra* note 231, at 2.

285. Taliercio *supra* note 10, at 39; *Hands Across the Legal Waters*, BANGKOK POST, Sept. 25, 1994.

286. Taliercio, *supra* note 10, at 38-39. The raid was made possible because Rådda Barnen had sponsored the presence of two Swedish detectives (who were on leave from their ordinary duties) in Thailand to promote Thai police investigations of child sexual abuse by Swedish nationals. *Id.* They identified Bolin as a suspect and informed the Thai police who arrested him in the act. *Id.*; see *Hands Across the Legal Waters*, *supra* note 285, at 2 (relating similar facts).

287. Taliercio, *supra* note 10, at 40.

288. *Id.* Thirty thousand crowns is the equivalent of approximately US\$4800. *Id.*

289. *Id.*

290. *Hands Across the Legal Waters*, *supra* note 285, at 2.

291. See Taliercio, *supra* note 10, at 40-41 (noting that as Swedish citizen, Bolin has constitutional right to receive replacement passport even if he is accused of crime in another country).

292. *Hands Across the Legal Waters*, *supra* note 285, at 2. Thai authorities claimed "that there had been a breakdown in communication between the police and the immigration who were not aware that Bolin was on bail at the time they gave him a new visa." *Id.*

293. *Id.*; see *supra* note 107 and accompanying text (maintaining that it is not unusual for sex tourists to pay bail and flee country).

294. Taliercio, *supra* note 10, at 41.

295. *Id.* There is some question whether the Thai police investigation will meet the standards of evidence that are required by Swedish law. *Id.* There was also a question of the boy's age. *Hands Across the Legal Waters*, *supra* note 285, at 2. With the assistance of ECPAT, however, the boy's birth certificate was recovered in November 1993. Karlén Fax, *supra* note 231, at 2.

the Swedish embassy in Bangkok by both Swedish and Thai prosecutors and in the presence of Bolin's lawyer.<sup>296</sup>

#### 4. Government Collaboration with NGOs

Rädda Barnen, which is a member of ECPAT's international campaign,<sup>297</sup> has been the catalyst for much of the legal reform regarding the issue of sex tourism in Sweden.<sup>298</sup> Furthermore, enforcement of Sweden's penal code was facilitated by the creative cooperation of Rädda Barnen's sponsorship of the law enforcement agents in Thailand who identified Bolin.<sup>299</sup> Utilizing the media, Rädda Barnen has undertaken massive education programs that have educated and mobilized the Swedish nation.<sup>300</sup> In addition, Rädda Barnen sponsored a campaign with Swedish travel agencies that yielded brochures and ticket slips informing the public about the problem of child sex tourism.<sup>301</sup> The brochures and ticket slips were distributed by travel agencies and government vaccination centers.<sup>302</sup>

A Rädda Barnen representative was invited to attend the Interpol Standing Working Party on Offences Against Minors<sup>303</sup> in November 1994 as an observer.<sup>304</sup> The head of the national Swedish police was recently appointed as the new president of Interpol and Rädda Barnen expects that this will be a further opportunity for collaboration in the campaign against child sexual exploitation.<sup>305</sup> Finally, Sweden's acceptance to host the 1996 First World Congress on the Commercial Sexual Exploita-

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296. Karlén Fax, *supra* note 231, at 2. It is not clear why Bolin's lawyer was present at the questioning; this case is considered a test case. See *Hands Across the Legal Waters*, *supra* note 285, at 2. The Swedish Office of the Attorney General commented "[i]n many ways we are breaking new ground with this procedure and taking some chances in doing so." *Id.*

297. See *supra* notes 23-27 and accompanying text (describing ECPAT).

298. See Taliercio, *supra* note 10, at 37-38 (detailing Rädda Barnen's activities).

299. See *supra* note 286 and accompanying text (describing participation of Rädda Barnen in arrest of Bolin).

300. See Taliercio, *supra* note 10, at 37 (noting that Rädda Barnen has generated "hundreds of newspaper articles, radio discussions and television presentations").

301. Taliercio, *supra* note 10, at 37-38.

302. *Id.*

303. See *supra* note 203 and accompanying text (offering history of Interpol).

304. See Letter from Helena Karlén, Rädda Barnen, to ECPAT Executive and Network (Nov. 15, 1994) [hereinafter Report on Interpol] (discussing ECPAT and INTERPOL Standing Working Party on Offences Against Minors). This is the third meeting to which ECPAT was invited. *Id.*

305. *Id.* at 2.

tion of Children<sup>306</sup> demonstrates Sweden's commitment to collaboration, providing an opportunity for cooperation with NGOs from around the globe that will be participating in the preparation and execution of the Congress.<sup>307</sup>

### B. *Australia*

The frustration of Australian prosecutors, aware that Australians were engaging in sex tourism but unable to prosecute under existing Australian law, led to the drafting of the new legislation.<sup>308</sup> In response to this situation, the Minister of Justice announced the Federal Government's proposed amendments to the Crimes Act 1914.<sup>309</sup> The amendments were prompted by international criticism of what was perceived to be an escalation of the activities of Australian child sex tourists<sup>310</sup> and by the government's intent to put sex tourists on notice that they could no longer engage in such practices.<sup>311</sup>

#### 1. International Obligations

Australia ratified the UNCRC on December 17, 1990.<sup>312</sup> The UNCRC entered into force in Australia on January 16,

306. See *supra* notes 200-05 and accompanying text (describing 1996 Congress, its organizers, and participants).

307. See *World Congress Gets Go Ahead*, *supra* note 200, at 1, 3 (noting that Congress is unique because "it will be a joint exercise of governments, UN-related organizations, commercial bodies and NGOs"). The Ministry of Civil Affairs has been appointed as the Swedish government's coordinating ministry for the Congress. *Id.*; see also Karlén-ECPAT Fax, *supra* note 268, at 1. The Swedish government has appropriated one million Swedish crowns for the event. Victor Hsu, Address to ECPAT-USA, Informational Meeting, U.N. Plaza (Nov. 17, 1994).

308. Hodgson, *supra* note 18, at 530.

309. *Commonwealth, State and Territory Governments Take a United Stand Towards Eradicating Child Sex Tourists*, Minister of Justice Press Release, June 24, 1993, at 1 [hereinafter Minister of Justice June '93 Press Release]. Kerr took this action after obtaining the support of the Standing Committee of the Attorneys-General. See AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 1.2.8, at 2-3. In February, 1994, the Attorneys-General approved the draft bill and also agreed to enact supplementary State and Territory legislation to deal with any remaining jurisdictional gaps. *Id.*

310. *Amendments to the Crimes Act 1914: Child Sex Tourism Offences*, Minister of Justice Press Release, Nov. 4, 1993, at 2 [hereinafter Minister of Justice Nov. '93 Press Release].

311. See *id.* (stating that Australians who sexually exploit children overseas will face prosecution in Australia); Hodgson, *supra* note 18, at 530 (describing identical press release).

312. Byrnes, *supra* note 164, at 7.

1991.<sup>313</sup> Although they have specific criticisms of the current Draft Optional Protocol,<sup>314</sup> Australia is a strong supporter of the concept of an optional protocol on the sale of children, child prostitution, and child pornography.<sup>315</sup>

The Special Rapporteur visited Australia in 1992 and prepared a report in which he proposed that Australia consider the possibility of criminalizing the acts of Australians involved in sexual exploitation overseas.<sup>316</sup> The new Australian law fulfills that recommendation.<sup>317</sup> Part of the express rationale for the law is that it constitutes a realization of Australia's international obligation under the UNCRC.<sup>318</sup>

## 2. Relevant Law and Legislative History

The Crimes (Child Sex Tourism) Amendment Act of 1994<sup>319</sup> is an amendment to the Crimes Act 1914.<sup>320</sup> Prior to its passage, public hearings on the issue were held by the Standing Committee on Legal and Constitutional Affairs in Sydney and in the capitol, Canberra.<sup>321</sup> After making several recommendations, some of them requiring significant changes in the proposed bill,<sup>322</sup> the Committee recommended passage in the full

313. AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 1.2.2, at 1.

314. See *U.N. Report on the Draft Optional Protocol*, *supra* note 140, at 5-6 (comments of Australia). For example, Australia objects to the use of the term "crimes against humanity" to include crimes of sexual exploitation of children since that term is defined in international law specifically as "crimes of persecution or extermination on the grounds of race or ethnic origin" and should be reserved for such. *Id.* at 5; see BROWN-LIE, *supra* note 163, at 561 (offering similar definition of "crimes against humanity").

315. *U.N. Report on the Draft Optional Protocol*, *supra* note 140, at 5.

316. *Sale of Children: Report Submitted by Mr. Vitiit Muntarhorn, Special Rapporteur Appointed in Accordance with Commission on Human Rights Resolution 1992/76, Addendum: Visit by the Special Rapporteur to Australia*, U. N. Commission on Human Rights, 49th Sess., Agenda Item 24, at 23, ¶ 106; AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 1.2.5, at 2.

317. See AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 1.2.5, at 2 (noting the Special Rapporteur's recommendation as background to new law).

318. *Id.* 1.2.2, at 1; BYTNES, *supra* note 164, at 7 (noting that UNCRC offers primary basis for external affairs power of new law).

319. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes Act 1914 (Austl.)).

320. *Id.*

321. *Australian Parliament Public Hearings*, *supra* note 243. The 350-page testimony fills three volumes. *Id.*

322. AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, at 62-67. The Committee made 37 recommendations. *Id.*

Parliament.<sup>323</sup> The bill became law on July 5, 1994.<sup>324</sup>

The law criminalizes sexual intercourse<sup>325</sup> with a person under sixteen years of age while outside of Australia,<sup>326</sup> and carries with it a maximum sentence of seventeen years imprisonment.<sup>327</sup> Inducing a child under sixteen years of age to engage in sexual intercourse is also a crime under the law.<sup>328</sup> Furthermore, there are two sections of the law that make it an offense to encourage, advertise, benefit from, or assist a person to travel in order to sexually exploit minors under sixteen years of age.<sup>329</sup> These sections are directed at travel agents and tour operators, pedophile networks, advertisers, and expatriate Australian bar and brothel owners who participate in sex tourism.<sup>330</sup> The maximum penalty for these offenses is also seventeen years imprisonment.<sup>331</sup> Those who can be charged with an offense include Australian citizens or residents of Australia, Australian corporations, or any other corporate body whose principle activities are carried out in Australia.<sup>332</sup>

Because the offenses are indictable, they are subject to the confiscation and forfeiture provisions of the Proceeds Crime Act

323. *Id.* at 61 (Recommendation 37).

324. Crimes (Child Sex Tourism) Amendment Act 1994.

325. *Id.* § 50AC. Section 50AC defines sexual intercourse to include: the penetration of the vagina or anus by another person or with an object; fellatio; and cunnilingus. *Id.*

326. *Id.* § 50BA. Section 50BA states in relevant part that "[a] person must not, while outside Australia, engage in sexual intercourse with a person who is under 16." *Id.* Originally, the proposed bill proscribed two different offenses: aggravated sexual offense of intercourse with a child of under 12, and another lesser charge for intercourse with a child between ages of 12 and 16. See AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, §§ 3.5-3.6, at 26-28. The Standing Committee on Legal and Constitutional Affairs recommended that this be changed to one single charge for sexual intercourse with any child under 16. *Id.* at 28.

327. Crimes (Child Sex Tourism) Amendment Act 1994 § 50BA.

328. *Id.* § 50BB. ("A person must not induce a person who is under 16 to engage in sexual intercourse with a third person outside Australia and in the presence of the first mentioned person."). The penalty is imprisonment for 17 years. *Id.* There are also lesser penalties for engaging in or inducing a child under 16 to engage in an "act of indecency," which is defined as an act of a sexual nature involving the human body and which "is so unbecoming or offensive that it amounts to a gross breach of ordinary contemporary standards of decency and propriety in the Australian community." *Id.* §§ 50AB, 50BC, 50BD. The penalty is imprisonment for 12 years. *Id.* §§ 50BC, 50BD.

329. *Id.* §§ 50DA, 50DB.

330. Hodgson, *supra* note 18, at 531.

331. Crimes (Child Sex Tourism) Amendment Act 1994 §§ 50DA, 50DB.

332. *Id.* § 50AD.



of 1987.<sup>333</sup> Therefore, a tour company could potentially have any of its property used in the commission of a crime against this act forfeited to the Australian government.<sup>334</sup> This provision conforms to the proposals of the Draft Optional Protocol.<sup>335</sup>

There are several sections of the Australian child sex tourism law dedicated to procedures regarding video link evidence<sup>336</sup> that would allow Australian courts to hear direct evidence from witnesses in an overseas location.<sup>337</sup> The law recognizes that bringing witnesses to Australia could be unreasonably expensive and inconvenient or could cause intimidation and psychological harm, and provides for the use of video link evidence in such cases.<sup>338</sup> The legislation is also specific about the kind of evidence that can be used to determine the age of the victim.<sup>339</sup> It allows for a defense based upon belief about age<sup>340</sup> in which the jury must determine that the belief was reasonable under the circumstances.<sup>341</sup>

333. Proceeds of Crime Act 1987 § 14 (Austl.); see Minister of Justice Nov. '93 Press Release, *supra* note 310, at 1 (stating that "any tainted property (property used in the commission of the offence or proceeds of the offence) of a natural person or a commercial enterprise convicted of the offence will be forfeited to the Commonwealth").

334. Hodgson, *supra* note 18, at 532.

335. Draft Optional Protocol, *supra* note 21, art. 3(c), at 2. Article 3(c) states in relevant part that "States Parties undertake to co-operate by all appropriate means . . . including . . . seizure and confiscation of proceeds from, or property used in, the commission of such offences. *Id.*; see Hodgson, *supra* note 18, at 532 (asserting that new Australian law substantially complies not only with UNCRC but also with more demanding Draft Optional Protocol).

336. Crimes (Child Sex Tourism) Amendment Act 1994 § 50EC. The law requires that the Australian court and the "overseas point" must be equipped with video facilities that (1) enable appropriate persons in the Australian court to see and hear the witness give evidence and (2) "enable appropriate persons at the overseas point to see and hear appropriate persons at the Australian point." *Id.* § 50EC(1)(c)-(d).

337. *Id.* §§ 50EA, 50EB, 50EC, 50ED, 50EE, 50EF 50EG. Video link evidence has been used in the U.K. for several years. ECPAT AUSTRALIA BULL., Nov. 1994, at 8.

338. Crimes (Child Sex Tourism) Amendment Act 1994 § 50EA(d).

339. *Id.* § 50FA(a)-(d) states that the "court may treat any of the following as admissible evidence: (a) the person's appearance; (b) medical or other scientific opinion; (c) a document that is or appears to be an official or medical record from a country outside Australia; (d) a document that is or appears to be a copy of such a record." *Id.*

340. *Id.* § 50CA "It is a defense to a prosecution for an offense against Division 2 that the defendant believed at the time of the sexual intercourse or act of indecency that the person in relation to whom the defense was allegedly committed was 16 or over." *Id.*

341. *Id.* § 50CD. The Standing Committee on Legal and Constitutional Affairs was very concerned that the bill not undermine some traditional safeguards afforded to accused persons in Australia. AUSTRALIAN PARLIAMENT ADVISORY REPORT, *supra* note 21, § 2.2.4, at 6.

The extraterritorial jurisdiction contained in the Australian law is a departure from the customary basis for the exercise of criminal jurisdiction — territoriality — whereby a sovereign state has jurisdiction over citizens and aliens alike with respect to acts committed within the territory of that state.<sup>342</sup> Nationality, however, is a well-recognized alternative basis in international law and civil systems.<sup>343</sup> Under this theory, the state of origin may assume jurisdiction over a national, regardless of whether the victim is also a national of that state or of the state where the crime took place.<sup>344</sup>

### 3. Enforcement

Since its enactment in July, the Australian government has yet to prosecute a sex tourist under the new law.<sup>345</sup> The Minister for Justice admitted that the authorities will encounter difficulties in enforcing the new law but expressed his belief that there will be successful prosecutions.<sup>346</sup> Australian citizens have been arrested in receiving countries and most recently two Australians

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342. Hodgson, *supra* note 18, at 533; see BROWNLIE, *supra* note 163, at 300. "The principle that the courts of the place where the crime is committed may exercise jurisdiction has received universal recognition." *Id.*

343. Hodgson, *supra* note 18, at 533; see BROWNLIE, *supra* note 163, at 303. "Nationality . . . is also generally recognized as a basis for jurisdiction over extra-territorial acts." *Id.* The nationality principle is often limited to serious crimes. *Id.*

344. Hodgson, *supra* note 18, at 533; see STARKE, *supra* note 177, at 244 (delineating active nationality principle from passive nationality principle). Under the former, which is a generally accepted principle, "jurisdiction is assumed by the state of which the person, against whom proceedings are taken, is a national." *Id.* Under the passive nationality principle, "jurisdiction is assumed by the state of which the person suffering injury or civil damage is a national". *Id.* This principle is embedded in the criminal codes of Italy, Brazil, and Mexico, but the United States and United Kingdom have never acknowledged its propriety. *Id.*

345. Telephone Interview with Ellis Shenk, Coordinator of ECPAT-USA (Mar. 28, 1995) (reporting on his trip to Australia for meeting on child sex tourism in March 1995).

346. Minister of Justice Nov. '93 Press Release, *supra* note 310 at 2 (identifying evidentiary issues as potential problem but stating that "despite the perceived difficulties of obtaining evidence we do expect successful prosecutions"); see *supra* notes 308-11 and accompanying text (describing determination of Australian prosecutors to prosecute Australian sex tourists). In addition, some of the States and Territories of Australia have enacted or propose to enact legislation complementary to the Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.). Facsimile Transmission from Paul Bravender-Coyle, Secretary General, Anti-Slavery Society, to Peggy Healy 1-2 (Feb. 24, 1995). One example is the Prostitution Control Act 1994 passed by the Parliament of Victoria, under which the State of Victoria can prosecute tour operators within their jurisdiction. *Id.*; Prostitution Control Act 1994 (Vic.) (Austl.).

were held in custody in Thailand for sex crimes against children.<sup>347</sup> One was subsequently released by Thai authorities.<sup>348</sup> Advocates of the Australian child sex tourism law have pressed for vigorous enforcement and the appropriation of the necessary resources.<sup>349</sup> In January 1995, the Australian Parliamentary Joint Committee on the National Crime Authority organized an inquiry into organized pedophilia networks involved in pornography and sex tours.<sup>350</sup> The Committee, which will recommend enforcement guidelines, is requesting submissions from the public and from NGOs of views and information on the subject.<sup>351</sup>

#### 4. Collaboration With NGOs

ECPAT-Australia is a diverse coalition of Australian child advocacy groups, religious organizations, and civic groups whose aim is the elimination of the sexual abuse of children taking place in the context of tourism.<sup>352</sup> ECPAT-Australia has assumed a leadership role in the passage of the new child sex tour legislation passed by the Parliament.<sup>353</sup> The organization has also been responsible for national media and educational campaigns on the issue of sex tourism.<sup>354</sup>

ECPAT-Australia's National Coordinator, along with representatives of other NGO's and law enforcement agencies, was invited to give extensive testimony during the public hearings on

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347. ECPAT-AUSTRALIA BULL., Nov. 1994, at 5.

348. *Id.*

349. See *Australian Parliament Public Hearing*, *supra* note 243, at 6 (testimony of Bernadette M. McMennamin, National Coordinator, ECPAT-Australia) (calling on Australian government for enforcement of child sex tourism law). Increased resources are needed for the training of authorities and police in Australia. *Id.* Stronger liaison with other governments, NGOs, and law enforcement agencies is necessary and should be formalized in mutual assistance treaties. *Id.*

350. See Burstin, *supra* note 96, at 2-3 (reporting on probe of pedophile networks).

351. *Id.*

352. See *Australian Parliament Public Hearings*, *supra* note 243, at 3 (testimony of Bernadette M. McMennamin, National Coordinator, ECPAT-Australia). "ECPAT Australia is part of an extensive international network of agencies in both sending and receiving countries. There are currently 30 ECPAT groups internationally working on both national and international campaigns." *Id.*

353. *Id.*

354. See ECPAT AUSTRALIA BULL., Dec. 1994-Jan. 1995, at 1-2 (detailing media and educational campaigns, speaking tours, and other activities of ECPAT Australia and noting that "ECPAT Australia has become a prime contact for written and electronic media working on this issue").

the new law.<sup>355</sup> LAWASIA, a group of private attorneys, convoked the First World Congress on Family Law and Children's Rights<sup>356</sup> in Sydney in July 1993, which examined and supported the proposed legislation.<sup>357</sup> The government of Australia is cooperating with ECPAT Australia's campaign to distribute information regarding sex tourism to travel agents, airlines, and airports.<sup>358</sup> The government has also provided funding for ECPAT Australia's projects.<sup>359</sup>

### C. *United States*

The National Coalition Against Pornography<sup>360</sup> ("NCAP") describes the passage of the Child Sexual Abuse Prevention Act of 1994<sup>361</sup> as the product of over two years of considerable work to assure that the U.S. law conforms to the appropriate standards

355. *Australian Parliament Public Hearings*, *supra* note 243, at 3-18.

356. See Suganthi Singarayer, *Stricter Enforcement of Child Protection Laws Urged*, Inter Press Serv., July 13, 1993, available in LEXIS, News Library, Curnws File. More than 700 lawyers from some 40 countries attended the Congress. *Id.* They agreed to form LAWASIA Children's Rights Trust, an organization to monitor children's rights and child abuse. *Id.*

357. *Id.*; see Byrnes, *supra* note 164, at 1-18 (analyzing and supporting Australian child sex tourism law in paper presented at First World Congress on Family Law).

358. See *Australian Parliament Public Hearings*, *supra* note 243, at 10 (testimony by Bernadette M. McMnamin, National Coordinator, ECPAT-Australia). The Australian Minister for Small Business, Customs and Construction has agreed to provide information on sex tourism at every Australian airport. *Id.* In addition, ECPAT Australia is about to initiate a major travel industry campaign. ECPAT AUSTRALIA BULL., Mar. 1995, at 1. With the promised cooperation of hundreds of agencies, ECPAT Australia will distribute a travel kit to every travel agent, airline, and travel industry organization in Australia including educational materials and a window display sticker showing support for ending child sex tourism. *Id.* ECPAT Australia will then encourage the public to utilize only those supportive agencies identified by the sticker. *Id.*

359. ECPAT AUSTRALIA BULL., Dec. 1994-Jan. 1995, at 1-2 (noting that Australian government has allocated funds for ECPAT projects in Asia as well funds for ECPAT Australia's operating costs).

360. Telephone Interview with Deen Kaplan, Vice President of Public Policy, National Coalition for the Protection of Children & Families (Jan. 25, 1995) [hereinafter Kaplan Interview]. The National Coalition Against Pornography ("NCAP") is a broad-based alliance of over 50 citizen action organizations, religious groups, and foundations that work to increase public awareness of the harm caused by child pornography, hard core pornography, and the related problems of sexual violence against women and children. *Id.* The organization has been active against child sex tourism. *Id.* In January 1995, the NCAP became known as the National Coalition for the Protection of Children and Families, reflecting the increased attention being given to the effects of child pornography. *Id.*

361. Child Sexual Abuse Prevention Act, Pub. L. No. 103-322, § 160001(g), 108 Stat. 2037 (1994) (to be codified at 18 U.S.C. § 2423(b)).

for the protection of children.<sup>362</sup> The United States has lagged behind the majority of the world in its support for the UNCRC,<sup>363</sup> which defines minimum standards for protection of children from exploitation.<sup>364</sup> Supporters of the U.S. child sex tourism legislation believe, however, that the new law will protect child victims from sexual exploitation.<sup>365</sup>

### 1. International Obligations

In June 1992, the United States ratified the International Covenant on Civil and Political Rights,<sup>366</sup> which protects citizens from slavery and forced labor.<sup>367</sup> The United States has not, however, ratified the UNCRC,<sup>368</sup> which provides for direct protection against the sexual exploitation of children under international law.<sup>369</sup> Prospects for ratification appear slim.<sup>370</sup>

The United States has not taken a position on the Draft Optional Protocol,<sup>371</sup> nor has it responded to the Working Group on the Draft Optional Protocol.<sup>372</sup> Adoption of the Draft Op-

362. See National Coalition Against Pornography Press Release 1 (Sept. 28, 1994), [hereinafter NCAP Press Release] (describing passage of U.S. child sex tourism law).

363. See *supra* notes 161-62 and accompanying text (noting that United States, unlike 163 other nations, has not ratified UNCRC).

364. See *supra* notes 153-54 and accompanying text (quoting language of UNCRC mandating protection of children from sexual exploitation).

365. NCAP Press Release, *supra* note 362, at 1-2.

366. ICCPR, *supra* note 143; Michael H. Posner & Peter J. Spiro, *Adding Teeth to the United States Ratification of the Covenant on Civil and Political Rights: The International Human Rights Conformity Act of 1993*, 42 DEPAUL L. REV. 1209 (1993).

367. ICCPR, *supra* note 143, art. 8(1), at 175 (slavery); *id.* art. 8(3), at 175 (forced labor).

368. See *supra* note 162 and accompanying text (noting that United States, unlike majority of nations, has not ratified UNCRC); see also Calciano, *supra* note 148, at 516 (indicating same). Ironically, the United States played a key role in the drafting of the UNCRC. Levesque, *supra* note 131, at 225 n.213. Although Poland formulated the initial proposal, the United States and Canada dominated the later negotiations with little input from Eastern Europe. *Id.*

369. See *supra* notes 153-54 and accompanying text (detailing text of Article 34(a)-(b), which prohibits sexual exploitation of children).

370. Telephone Interview with Bill Saunders, Consultant, Lawyers Committee for Human Rights (Mar. 24, 1995) [hereinafter Saunders Interview]. A Washington D.C. UNCRC Working Group has determined that support for the treaty is slipping in the Senate. *Id.* There is popular opposition because of the fear that the UNCRC will prohibit home-schooling. *Id.*

371. Draft Optional Protocol, *supra* note 21; see *supra* note 184 and accompanying text (illustrating that United States is not among those who have responded).

372. See *supra* note 183 and accompanying text (explaining origin of Working Group and its request for input on draft optional protocol).

tional Protocol, however, would require significant changes in U.S. domestic law.<sup>373</sup> Because U.S. ratification of the ICCPR was conditioned upon the attachment of reservations, declarations, and understandings that precluded the Covenant from having any effect on U.S. domestic law,<sup>374</sup> the Draft Optional Protocol, would arguably suffer the same fate.<sup>375</sup>

## 2. Relevant Law and Legislative History

The Child Sexual Abuse Prevention Act of 1994<sup>376</sup> extends the Mann Act of 1910,<sup>377</sup> which was passed to prevent the transport of women across state lines for sexual purposes.<sup>378</sup> The power to enact such legislation derives from the federal government's power to regulate interstate and foreign commerce,

373. See *supra* notes 176-80 and accompanying text (highlighting provision that would require States Parties to make crime of child sexual exploitation subject to universal criminal jurisdiction and noting that Anglo-American jurisprudence is hostile to principle of universal jurisdiction).

374. See Posner & Spiro, *supra* note 366, at 1210 (discussing reservations attached to ICCPR).

375. Cf. Calciano, *supra* note 148, at 528-29 (listing reservations that will probably accompany U.S. ratification of UNCRC).

376. Child Sexual Abuse Prevention Act, Pub. L. No. 103-322, § 160001(g), 108 Stat. 2037 (1994) (to be codified at 18 U.S.C. § 2423(b)). Section 2423(b) states:

Travel with intent to engage in sexual act with a juvenile.—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 purpose of engaging in any sexual act (as defined in section 2245) with a person under 18 years of age if that would be in violation of chapter 109(A) 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 ten years, or both.

*Id.* A further provision under this act provides that any person outside the territory of the United States producing or trafficking in child pornography with the intent that those materials be imported into the United States, is guilty of a felony. Child Sexual Abuse Prevention Act, Pub. L. No. 103-322, § 160001(a), 108 Stat. 2036 (to be codified at 18 U.S.C. § 2258). This portion of the act is not being considered in this Note.

377. White Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (1988)). This was also known as the "White Slave Act." *Id.* "After ratification of the Thirteenth Amendment, many abolitionists turned their attention to women forced into prostitution." Neal Kumar Katyal, Note, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 *YALE L.J.* 791, 805 (1993); see U.S. CONST. amend. XIII (prohibiting slavery). "[T]he [Mann] Act was so named because its central purpose was to halt . . . a practice that resembled black servitude in its exploitative and barbarous nature." Marlene D. Backman, Note, *The White Slave Traffic Act*, 72 *GEO. L.J.* 1111, 1111 (1984).

378. Katyal, *supra* note 377, at 806.

granted by the U.S. Constitution.<sup>379</sup> In 1986, the Mann Act was amended<sup>380</sup> to criminalize the transport of any person under the age of eighteen either between states or abroad with the intent that the minor engage in sexual activity.<sup>381</sup> The current 1994 amendment criminalizes traveling to foreign countries for the purpose of engaging in sexual acts<sup>382</sup> with a child less than eight-

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379. U.S. CONST. art. I, § 8, cl. 3 (giving Congress power to regulate commerce "with Foreign nations, and among the several States, and with the Indian Tribes"); see *Caminetti v. United States*, 242 U.S. 470 (1917) (upholding constitutionality of White Slave Traffic Act). The White Slave Traffic Act

has its constitutional sanction in the power of Congress over interstate commerce. The broad character of that authority was declared once [and] for all in the judgment pronounced by this court, speaking by Chief Justice Marshall, in *Gibbons v. Ogden*, [22 U.S. 1 (1824)] and has since been steadily adhered to and applied to a variety of new conditions as they have arisen.

*Id.* at 491.

380. Pub. L. No. 99-628, § 5(b)(1), 100 Stat. 3511 (1986) (codified at 18 U.S.C. § 2423).

381. *Id.* Section 2423 states:

Whoever knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.

*Id.*

382. See Facsimile Transmission from Professor Roger Levesque, University of Nebraska, Center on Children, Families and the Law, to Peggy Healy (Jan. 12, 1995) [hereinafter Levesque Fax]. The language of 18 U.S.C. § 2423(b) (Child Sexual Prevention Act of 1994) refers to 18 U.S.C. § 2245 for the definition of "sexual acts." *Id.*; see *supra* note 376 (quoting wording of Section 2423(b)). The Crime Bill renumbered Section 2245 as Section 2246 and created a new Section 2245 providing for the death penalty for the sexual abuse of a person resulting in death. See 18 U.S.C. § 2246 (noting that Section 2245 has been renumbered as Section 2246). Section 2423(b), however, instead of changing its reference from Section 2245 to Section 2246, continues to refer to Section 2245 for the definition of "sexual acts," thereby creating confusion over the definition. Levesque Fax, *supra*. Section 2246 defines "sexual act" to include intercourse, oral sex, or sodomy "with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." 18 U.S.C. § 2246. The drafters of Section 2423(b) were unaware of the mistaken reference to Section 2245 and later determined that it was a scribner's error. Kaplan Interview, *supra* note 360. Upon notification of the error by the author, the drafters commenced action to amend Section 2423(b) to include the definition of "sexual act" that is currently found in Section 2246. *Id.* Section 2423(b) is in the process of being amended by the Sexual Crimes Against Children Prevention Act of 1995. Committee Amendment in the Nature of a Substitute to H.R. 1240, 104th Cong., 1st Sess. § 6 (1995). Section 6 states: "Section 2423(b) of title 18, United States Code, is amended by striking '2245' and inserting '2246.'" *Id.* The amendment passed in the full U.S. House of Representatives Judiciary Committee in March 1995. Facsimile Transmission from Glenn R. Schmitt, Counsel, Committee on the Judiciary, to Pat Trueman 1 (Mar. 23, 1995).

een years of age if that act would be in violation of U.S. federal law.<sup>383</sup> The legislation carries penalties of fines, or imprisonment up to ten years, or both.<sup>384</sup> Additionally, the law contains no double criminality requirement.<sup>385</sup>

The specific wording of the law makes it a crime to "travel in interstate commerce" or to conspire to do so, for the purpose of engaging in a sexual act with a minor.<sup>386</sup> Therefore, it is not a restriction on U.S. citizens when travelling in other countries.<sup>387</sup> Rather, it is a restriction on the utilization of common carriers such as airplanes, ships, trains, and other means of international travel in U.S. foreign commerce for the purpose of committing prohibited sexual acts.<sup>388</sup> The crime occurs during the actual travel where the offender has the requisite intent to commit a proscribed sexual act.<sup>389</sup> Therefore, the law does not require proof of sexual acts but rather proof of intent to travel for the purpose of engaging in such acts.<sup>390</sup> This permits the prosecution of sex tour operators who package tours for pedophiles or others with the promise of sex with children, but it will be difficult to establish intent in other cases.<sup>391</sup>

383. 18 U.S.C. § 2423(b); *see supra* note 376 (quoting language of Child Sexual Abuse Prevention Act of 1994).

384. 18 U.S.C. § 2423(b); *see supra* note 376 and accompanying text (quoting language of Child Sexual Abuse Prevention Act of 1994).

385. *See supra* note 232 and accompanying text (defining double criminality); *see supra* note 273 and accompanying text (indicating that Sweden's law includes double criminality requirement); *see also* Dear Colleague Letter from Hon. Jim Ramstad et al., to Members of Congress 1 (Mar. 18, 1994) (explaining that U.S. law does not require double criminality) [hereinafter Dear Colleague Letter]. "Some countries have a lower age of 'consent' for minors, or lax laws or enforcement against prostitution. But sex with children is harmful and immoral, regardless of the local laws." *Id.* at 2.

386. *See supra* note 376 (detailing language of statute).

387. National Law Center for Children and Families, Memorandum of Law on the New Child Sex Tourism Statute, 18 U.S.C. § 2423(b), at 3 (Feb. 3, 1995) (on file with *Fordham International Law Journal*) [hereinafter National Law Center Memorandum].

388. *Id.* Therefore, the law would not likely apply to U.S. citizens who live abroad and who travel from their foreign residence to commit prohibited sexual acts unless it could be proven that they had formed the requisite intent to commit the crime before they left the United States via travel in interstate commerce. Telephone Interview with Bruce Taylor, President and General Counsel, National Law Center for Children and Families (Feb. 3, 1995) [hereinafter Taylor Interview 2].

389. National Law Center Memorandum, *supra* note 387, at 4.

390. *Id.*

391. *See* NCAP Press Release, *supra* note 362, at 2 (asserting that new law will have significant impact on U.S. tour operators because law makes travel agreement illegal). Criminal intent can be demonstrated in a case where a contract for a child sex tour exists even if tour members never actually have sex with minors. Telephone Interview



The prohibitions of the new law extend only to sexual acts perpetrated upon persons under eighteen years of age and only for sexual acts that are encompassed by Chapter 109A of 18 U.S.C.<sup>392</sup> Under this chapter, an offender would be guilty of aggravated sexual assault if he or she knowingly engages in or attempts to engage in a sexual act<sup>393</sup> with any child under twelve years of age.<sup>394</sup> In addition, sexual acts with children between the age of twelve and sixteen constitute the crime of sexual abuse of a minor.<sup>395</sup> Sexual acts with children of sixteen or seventeen years of age, however, are not criminalized unless the offender uses force, serious threats, or otherwise impairs the victim.<sup>396</sup> Therefore, children of this age are not protected by the

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with Bruce Taylor, President and General Counsel, National Law Center for Children and Families (Jan. 12, 1995) [hereinafter Taylor Interview 1]. Intent to travel for the purpose of engaging in sex with a minor, however, could be difficult to prove in the case where individuals travel without a tour or where businessmen have other legitimate business reasons for travel. *Id.*; Telephone Interview with Donald Huycke, Program Manager and Senior Special Agent, U.S. Customs Child Pornography Enforcement Program (Mar. 20, 1995) [hereinafter Huycke U.S. Customs Interview] (expressing similar opinion). "Although a high standard of proof is required to establish the necessary intent for this crime, prosecutors have successfully utilized a wide variety of direct and circumstantial evidence to establish intent in other analogous cases." Taylor Interview 1, *supra*. At least one commentator believes that the law will be virtually impossible to enforce against most perpetrators since intent to travel with the purpose of engaging in sex with minors is extremely difficult to prove in the absence of a contract for such. Vachss Telephone Interview, *supra* note 223.

392. See *supra* note 376 and accompanying text (quoting text of new law, which prohibits travel for purpose of engaging in any sexual act "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"); National Law Center Memorandum, *supra* note 387, at 2. "Special maritime and territorial jurisdiction of the United States" is defined by 18 U.S.C. § 7 and includes places such as the high seas, U.S. vessels and aircraft, and U.S. military installations and government properties. *Id.* at 3. Chapter 109A also refers to crimes committed in federal prisons. *Id.*

393. See *supra* note 382 and accompanying text (defining term "sexual act").

394. 18 U.S.C. § 2241 (1988). Section 2241(c) states: "Whoever . . . knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both." *Id.* In prosecuting such an act, however, the "Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years." 18 U.S.C. § 2241(d).

395. 18 U.S.C. § 2243 (1988 & Supp. V 1993). Section 2243 states in relevant part: "Whoever . . . knowingly engages in a sexual act with another person who (1) has attained the age of 12 years but has not attained the age of 16 years; and (2) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both." *Id.*

396. 18 U.S.C. § 2241(a)-(b). This section identifies the use of force; threats of death, serious bodily injury, or kidnapping; or the use of drugs or intoxicants that im-

new law, particularly in commercial or consensual situations not involving coercion.<sup>397</sup>

In the United States, criminal jurisdiction is defined and enforced according to whether the crime committed is deemed to be within the state or federal sphere of authority.<sup>398</sup> If an offense is committed outside a sovereign's territory, the jurisdictional rules are not as clear as those applied domestically.<sup>399</sup> Under the nationality principle of jurisdiction,<sup>400</sup> the United States can exercise jurisdiction over its nationals abroad.<sup>401</sup> The Ninth Circuit applied the nationality principle in *United States v. Thomas*,<sup>402</sup> where a man crossed the border into Mexico with a thirteen year-old girl and photographed his sexual acts with her.<sup>403</sup> Despite a presumption against the extraterritorial application of domestic law, the court held the defendant guilty on the theory that the congressional intent to apply the criminal statute on pornography extraterritorially could be inferred from

pair the victim's ability to control conduct, as elements of the crime of aggravated sexual abuse if the minor is above 12 years of age. *Id.* The lesser crime of sexual abuse involves the use of less serious threats or the engagement or attempt to engage in sexual acts with persons who are mentally or physically impaired. 18 U.S.C. § 2242 (1988).

397. Taylor Interview 2, *supra* note 388. Mr. Taylor, however, pointed out that prostitution often involves elements of coercion or intimidation, particularly prostitution involving minors. *Id.*

398. Christopher L. Blakesley, *United States Jurisdiction Over Extraterritorial Crime*, 73 J. CRIM. L. & CRIMINOLOGY 1109 (1982); Michael Koby et al., Memorandum of Law: The Child Sexual Abuse Prevention Amendment of 1994 at 4 (Mar. 1994) [hereinafter Memorandum of Law] (on file with *Fordham International Law Journal*).

399. Blakesley, *supra* note 398, at 1109.

400. See *supra* notes 343-44 and accompanying text (discussing nationality principle).

401. Bruce Zagaris & Jay Rosenthal, *United States Jurisdictional Considerations in International Criminal Law*, 15 CAL. W. INT'L L.J. 303, 308 (1985).

The nationality principle is derived from the notion of State sovereignty under which nationals are entitled to their State's protection even while outside of its territorial boundaries. These individuals have a corresponding obligation of allegiance to national laws even when outside of the State of which they are citizens. The nationality principle is universally recognized in international law, although its precise definition and application differ widely.

*Id.* (citations omitted)

402. *United States v. Thomas*, 893 F.2d 1066, 1069 (9th Cir. 1990).

403. *Id.* at 1067-68. "International law permits a country to apply its statutes to extraterritorial acts of its nationals." *Id.* at 1069. The defendant unsuccessfully argued that 18 U.S.C. § 2251, under which he was charged, did not apply to extraterritorial acts. *Id.* at 1068. However, the Fifth Circuit, in 1980, found that the extraterritorial jurisdiction of a statute can be inferred from the nature of the offense and other Congressional efforts to eliminate the crimes involved. *Id.* at 1068 (citing *United States v. Baker*, 609 F.2d. 134, 136 (5th Cir. 1980)).

the nature of the crime and from other legislative efforts to eliminate child pornography.<sup>404</sup> The congressional intent to apply this new statute against sex tourism to crimes committed outside the territory of the United States does not have to be inferred.<sup>405</sup> Instead, the new law gives full notice to those who would attempt to escape the jurisdiction of U.S. courts in order to commit crimes overseas.<sup>406</sup>

The current legislation was originally introduced into the 102d Congress and later re-introduced to the 103d Congress in both the House of Representatives and the Senate as part of the 1994 Crime Bill.<sup>407</sup> On March 22, 1994, the Subcommittee on International Security, International Organizations and Human Rights held a hearing on the Sexual Exploitation of Women and Children at which time it heard testimony regarding sex tourism.<sup>408</sup> The bill was signed into law by President Clinton on September 13, 1994.<sup>409</sup>

### 3. Enforcement

The section on child pornography<sup>410</sup> of the Child Sexual

404. *Thomas*, 893 F.2d at 1068.

405. Memorandum of Law, *supra* note 398, at 8.

406. *Id.*

407. See Dear Colleague Letter, *supra* note 385, at 1. It was sponsored by Rep. Jim Ramstad [R-Minn.], Thomas Bliley [R-Va.], Joseph P. Kennedy II [D-Mass.] and Tom Lantos [D-Cal.] in the House and by Sen. Charles Grassley [R-Iowa] in the Senate. *Id.* at 2. The legislative intent was delineated by the four House co-sponsors:

U.S. criminal law, under the Mann Act, currently makes it illegal to transport a minor for the purpose of prostitution or abusive sexual practices. Our legislation would simply amend this provision to make it illegal to travel or conspire to travel in foreign commerce for the purpose of sexual acts with minors that would be illegal if they were conducted in the United States.

*Id.*

408. *Hearing on the Sexual Exploitation of Women and Children Before the Subcommittee on Int'l Security, Int'l Orgs. and Human Rts.* (Mar. 22, 1994) (on file with *Fordham International Law Journal*). The hearings were not held exclusively to hear testimony regarding this bill. Kaplan Interview, *supra* note 360. Rep. Joseph P. Kennedy II, however, testified on the issue of sex tourism: "It is outrageous that U.S. citizens are allowed to travel abroad to engage in the sexual exploitation and abuse of minors that would be illegal in the United States, and that U.S. agencies organize and advertise such travel." Senate Hearings, *supra*, at 2 (statement by Rep. Joseph P. Kennedy II).

409. *North America: Child Sex Tourism Outlawed*, ECPAT NEWSL., Dec. 1994, at 5.

410. Penalties for International Trafficking in Child Pornography, Pub. L. No. 103-322, tit. XVI, § 160001(a), 108 Stat. 2036 (to be codified at 18 U.S.C. 2258); see *supra* note 376 and accompanying text (quoting language of pornography section of Child Sexual Abuse Prevention Act).

Abuse Prevention Act of 1994 may be used in a landmark international child pornography case against a U.S. citizen who operated a child pornography bulletin board system from Mexico to the United States.<sup>411</sup> To date, there have been no prosecutions of U.S. citizens under the section of the bill regarding travel with intent to engage in sexual acts with a minor.<sup>412</sup> Recently the Department of Justice expressed its interest in prosecuting operators of child sex tours.<sup>413</sup> The U.S. Customs Child Pornography Enforcement Program has initiated investigation of those potentially liable under the new U.S. law.<sup>414</sup> Supporters of the bill vow that they will press for enforcement.<sup>415</sup>

#### 4. Government Collaboration with NGOs

The Child Sexual Abuse Prevention Act of 1994 was promulgated largely as a result of the initiative and perseverance of a broad-based coalition of child welfare groups, human rights advocates, and religious organizations.<sup>416</sup> Many of these organiza-

411. NCAP Press Release, *supra* note 362, at 1.

412. Huycke U.S. Customs Interview, *supra* note 391. The U.S. Customs Service will be one of the principle agencies responsible for the enforcement of the new law. *Id.* Most recently, the priority in the U.S. Customs Service Child Pornography Enforcement Program has been the investigation and prosecution of child pornographers who operate using computer bulletin boards. *Id.* "We are issuing 2 search warrants a week and following 15-20 cases." *Id.*

413. Kaplan Interview 2, *supra* note 360.

In preliminary conversations with Department of Justice officials who would be charged with enforcement, genuine interest has been expressed that any child sex tour operators be brought to account. It is likely that what the Department of Justice will do is bring an initial case after careful investigation and use that case to test the efficacy of the new law.

*Id.*

414. Huycke U.S. Customs Interview, *supra* note 391. Mr. Huycke, Program Manager and Senior Special U.S. Customs Agent, has notified the 135 U.S. Customs offices in the U.S. of the new law. *Id.* Customs officials will investigate known tour operators if it appears that they have violated the law. *Id.*

415. NCAP Press Release, *supra* note 362 at 2. ("Although this initial phase of our work is complete, we will be vigilant in pressing strong enforcement of this law with the Justice Department and other agencies.")

416. Newsletter from Congressman Jim Ramstad (Mar. 16, 1994). "This important legislation has been endorsed by over 30 mainstream . . . groups. This coalition, which crosses religious, political and social boundaries, is international in its scope and virtually unprecedented in its breadth." *Id.* The language of the law was drafted principally by David Anderson of Rep. Thomas Bliley's staff, Deen Kaplan of the National Coalition for the Protection of Children and Families, and their colleagues, who then found sponsors in the House and Senate to introduce this bill. Kaplan Interview, *supra* note 360. The law was harshly criticized by the North American Man-Boy Love Association

tions belong to ECPAT-USA,<sup>417</sup> which has undertaken several projects related to the elimination of sex tourism.<sup>418</sup> ECPAT-USA and the U.S. Customs Child Pornography Enforcement Program have collaborated through an exchange of information.<sup>419</sup> A more important activity of ECPAT-USA, however, is the campaign to ensure U.S. ratification of the UNCRC.<sup>420</sup> Over two hundred political, professional, religious, civic, human rights, and child advocacy organizations have expressed their support for such ratification.<sup>421</sup> Although most supporters of the legislation against sex tourism also support ratification of the UNCRC, this is not universally true.<sup>422</sup>

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("NAMBLA") which called it a "draconian" measure that would "whittle away the rights of sexual minorities." *Crime Bill is a Disaster for Civil Liberties: New Law Undermines Constitution and Targets Sexual Minorities*, NAMBLA BULL., Sept. 1994, at 4 (protesting that it will now be crime to travel to Canada and have sexual relations with 15 year-old partner, an act not previously criminal because national age of consent in Canada is 14).

417. *Some ECPAT Initiatives*, CHILDREN WORLDWIDE, no. 2, at 31 (1992). ECPAT-USA was founded in 1991 by Protestant and Catholic NGOs with the objective of reducing U.S. participation in Asian child sex tourism. *Id.*

418. *Id.* ECPAT-USA's original plan of action included: 1) raising public awareness and outrage regarding participation of U.S. citizens in child sex tourism; 2) development and enforcement of laws which protect the rights of all children in conjunction with the UNCRC; 3) fundraising for ECPAT and specific Asian projects. *Id.*; see *ECPAT-USA Launches Newsletter as Part of Campaign to End Child Prostitution*, ECPAT-USA NEWS, Mar. 1995, at 2 (identifying similar objectives).

419. Huycke U.S. Customs Interview, *supra* note 391 (describing meetings with ECPAT-USA representatives). The U.S. Customs Service has encouraged ECPAT and other organizations to send them information regarding child sex tour operators. *Id.*

420. See *ECPAT-USA Launches Newsletter as Part of Campaign to End Child Prostitution*, *supra* note 418, at 2 (identifying U.S. ratification of UNCRC as ECPAT-USA focus); *United States Ratification of the U.N. Convention on the Rights of the Child and Senate Resolution 70*, ECPAT-USA Memorandum at 1 (June 1994). "Senate Resolution 70" is a campaign supported by ECPAT-USA designed to identify Senators who support ratification of the UNCRC. *Id.*; see S. Res. 70, 103d Cong., 1st Sess. (1993). Senate Resolution 70 was originally sponsored by Sen. Richard Lugar [R-Ind], Sen. Mark Hatfield [R-Or.] and Sen. Patrick Leahy [D-Vt.]. *Id.* As of September 1994, forty eight Senators had co-sponsored "Senate Resolution 70" in bi-partisan support of U.S. ratification of the UNCRC. ECPAT-USA NEWSL. (Sept. 1994).

421. See DEFENSE FOR CHILDREN INTERNATIONAL USA, ORGANIZATIONS SUPPORTING U. S. RATIFICATION OF THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD (1994). Supporters of the UNCRC include groups as diverse as the American Bar Association, Amnesty International, Association of Junior Leagues International, Baptist World Alliance Council, International Catholic Child Bureau, American Red Cross, and Women Strike for Peace. *Id.*

422. See *UN Treaties Threaten American Families*, FAMILY VOICE, Mar. 1993, at 32. Opponents of the ratification profess that the UNCRC threatens the American family and encroaches on the rights of parents. *Id.* Of note is the fact that Rep. Thomas Bliley [R-Va.], a co-sponsor of the Child Sexual Abuse Prevention Act against sex-tourism, is also

### III. *THE SWEDISH, AUSTRALIAN, AND U.S. LAWS ALONE WILL NOT ELIMINATE CHILD SEX TOURISM*

Child sex tourism is a complex issue of international proportion.<sup>423</sup> It is intimately connected to the financially lucrative business of child prostitution.<sup>424</sup> As such, its elimination necessarily involves the participation of governments, local and international law enforcement agents, tourist agencies, social welfare organizations, NGOs, and international bodies such as the United Nations.<sup>425</sup> National legislation is an important element in the concerted effort to eliminate child sex tourism,<sup>426</sup> and the laws of Sweden, Australia, and the United States each comprise a distinct approach to the realization of that goal.<sup>427</sup> The laws, however, represent only one component in a more comprehensive campaign that must employ multiple long-term and coordinated strategies.<sup>428</sup>

#### A. *Comparative Analysis of the Laws*

It would be an easier task to analyze and compare the laws of Sweden, Australia, and the United States through the illuminating perspective of hindsight. Each of these initiatives, however, is quite new, precluding the opportunity to enforce or test the laws.<sup>429</sup> Therefore, an evaluation of the potential effectiveness of each strategy requires an analysis that will include: a) each country's support for international law; b) the relevant content of the laws; c) the potential for enforcement; and d) the degree of collaboration with NGOs.<sup>430</sup>

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an outspoken opponent of U.S. ratification of the UNCRC. *Id.* at 33. " 'Ratification is not about children; it is about power . . . . It is a potential threat to some of our most precious freedoms, civil liberties, and our form of government.' " *Id.*

423. See *supra* notes 44-129 and accompanying text (describing scope of problem).

424. See *supra* notes 15-17 and accompanying text (asserting that child prostitution industry is multi-million or perhaps multi-billion dollar industry).

425. Hodgson, *supra* note 18, at 522.

426. See *supra* note 208 and accompanying text (asserting importance of national legislation in receiving countries).

427. See *supra* notes 257-307, 308-59, 360-422 and accompanying text (detailing three distinct approaches).

428. Hodgson, *supra* note 18, at 522-23.

429. See *supra* notes 30-34 and accompanying text (indicating recent passage of these laws).

430. See *supra* notes 253-56 and accompanying text (setting forth rationale for this analytical framework).

### 1. Commitment to International Law

The U.S. position regarding the UNCRC stands in stark contrast to Sweden and Australia, which have not only ratified the UNCRC but have incorporated it fully into their strategies against child sex tourism.<sup>431</sup> The United States has only recently signed, but not yet ratified the UNCRC,<sup>432</sup> despite hopes that the Clinton Administration was ready to do so.<sup>433</sup> Even though signed, it is unlikely that the Convention has any chance of being ratified without significant reservations that would deny the treaty any binding power over domestic U.S. law.<sup>434</sup> Such a position transmits a message to the world community that the United States holds itself above international treaties, even while it works to hold other countries to such international norms.<sup>435</sup> This lack of support for the UNCRC<sup>436</sup> weakens the effectiveness of the U.S. approach, especially in the area of international relations, and its ability to encourage respect for children's rights worldwide.<sup>437</sup>

In regard to the Draft Optional Protocol,<sup>438</sup> Sweden's position<sup>439</sup> is the most pragmatic and timely approach. It is in alignment with the position of the major NGOs.<sup>440</sup> The focus is on the protection of children currently at risk as opposed to the introduction of a new international instrument.<sup>441</sup> Furthermore,

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431. See *supra* notes 262-64, 312-18 and accompanying text (describing incorporation of UNCRC in Sweden's and Australia's approaches to child sex tourism).

432. See *supra* note 162 and accompanying text (noting that United States did not sign UNCRC until February 16, 1995, and that its ratification in Senate is uncertain).

433. Levesque, *supra* note 131, at 196.

434. See, e.g., Calciano, *supra* note 148, at 528-30 (supporting this position); Saunders Interview, *supra* note 370 (expressing same view).

435. See Posner & Spiro, *supra* note 366, at 1211 (referring to conditions attached to U.S. ratification of ICCPR and stating that such a position "could lead other parties to question the sincerity of our commitment to the Covenant and our willingness to submit to the same international standards we urge on others").

436. See, e.g., *supra* note 422 and accompanying text (quoting one co-sponsor of U.S. child sex tourism law, Rep. Bliley [R-Va.], and his statements against UNCRC).

437. See, e.g., Posner & Spiro, *supra*, note 366, at 1211 (supporting similar thesis as regards reservations attached to ICCPR).

438. Draft Optional Protocol, *supra* note 21.

439. See *supra* notes 263-64 and accompanying text (describing Sweden's position as being critical of Draft Optional Protocol).

440. See *supra* note 185 and accompanying text (describing NGO criticisms of Draft Optional Protocol).

441. See *supra* notes 263-64 and accompanying text (describing Sweden's position on the Draft Optional Protocol).

the Draft Optional Protocol would necessitate extensive changes in many countries' domestic law, which is not likely to invite widespread ratification. Therefore, the Draft Optional Protocol is unlikely to become an effective source of customary international law.<sup>442</sup> Furthermore, it has gathered little international support to date.<sup>443</sup> The United States has taken no position on the Draft Optional Protocol; it has not even ratified the UNCRC.<sup>444</sup> Australia appears to support the concept of a protocol but has serious criticisms of this version.<sup>445</sup>

## 2. Content of the Laws

Sweden's law can be characterized as moderately effective. One of its major advantages is that it provides a model of how an already established law can be applied to sex tourists and sex tour organizers who operate outside of natural state boundaries.<sup>446</sup> The law, however, has major drawbacks. It contains a double criminality provision so that the law cannot be enforced against a sex tourist who acts in a country where sex tourism is not a crime.<sup>447</sup> Furthermore, courts can apply only the maximum sentence under the law of the host country.<sup>448</sup> In addition, the law defines two distinct crimes depending on the age of the child: statutory rape for intercourse with a child under fifteen years of age<sup>449</sup> and lesser penalties for paying for sex with a child under eighteen,<sup>450</sup> thus denying comprehensive protection for

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442. See *supra* note 163 and accompanying text (defining elements of customary international law, including generality).

443. See *U.N. Report on the Draft Optional Protocol*, *supra* note 140 (noting that of few countries which have commented, Australia is only country that suggests this particular version of optional protocol as starting point for discussion).

444. See *supra* notes 373-75 and accompanying text (indicating U.S. position on the UNCRC and asserting unlikelihood of future ratification without inclusion of significant reservations).

445. See *supra* notes 314 and accompanying text (describing Australia's criticisms of Draft Optional Protocol).

446. See *supra* notes 283-96 and accompanying text (describing how Swedish authorities are preparing to prosecute Swedish sex tourist under already existing law).

447. PENAL CODE ch. 2, § 2 (Swed.) (Allmanna Forget 1990); see *supra* note 273 and accompanying text (describing Swedish double criminality requirement).

448. PENAL CODE ch. 2, § 2 (Swed.) (Allmanna Forget 1990); see *supra* note 277 and accompanying text (describing maximum penalty in Sweden).

449. PENAL CODE ch. 6, § 6 (Swed.) (Allmanna Forget 1990); see *supra* notes 275-76 and accompanying text (describing statutory rape provision).

450. PENAL CODE ch. 6, § 10 (Swed.) (Allmanna Forget 1990); see *supra* note 278 and accompanying text (detailing this provision).



all children under eighteen as defined by the UNCRC.<sup>451</sup>

The U.S. law is an advance over the Swedish law because it protects all children up to the age of sixteen. In addition, like Australia, there is no double criminality requirement. The law is enforceable against both sex tourists and sex tour operators and was expressly written to cover intent to travel so that prosecuting authorities do not necessarily have to prove that a sexual act took place — a difficult evidentiary challenge. Intent, however, is also difficult to prove and unless there is evidence of some intent to travel for the purpose of engaging in sex with a minor, the Child Sexual Abuse Protection Act is unenforceable.<sup>452</sup>

The Australian law is the most comprehensive of the three.<sup>453</sup> There is no double criminality requirement. In addition, it provides for the stiffest penalties of the three models.<sup>454</sup> The law provides for video link evidence,<sup>455</sup> which recognizes the evidentiary problems of extraterritorial prosecution and indicates a sensitivity towards child victims and child witnesses. It is directed against tourists who engage in sex with minors<sup>456</sup> as well as specifically against tour operators<sup>457</sup> and extends even to corporations that have their principle place of business in Australia.<sup>458</sup> Furthermore, the legislation contains a forfeiture provision in keeping with the higher standard of the Draft Optional Protocol.<sup>459</sup> The patent drawback is that it affords protection

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451. See UNCRC, *supra* note 19, art. 1, at 2, 28 I.L.M. at 1549 (defining "child" as person under 18 years of age).

452. See *supra* note 391 and accompanying text (examining intent as element of crime and difficulties of proving such intent).

453. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) (amending Crimes 1914 (Austl.)); see *supra* notes 326-41 and accompanying text (detailing provisions of law).

454. See *supra* notes 327, 331 and accompanying text (indicating maximum penalty of 17 years for sexual acts with children under 16).

455. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) §§ 50EA-50EG; see *supra* notes 336-38 and accompanying text (relating to video link evidence).

456. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) §§ 50BA-BD; see *supra* notes 325-29 and accompanying text (describing provisions regarding sex with children under 16).

457. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) §§ 50DA-DB; see *supra* notes 329-32 and accompanying text (describing provisions directed at sex tour operators and those who benefit from sex tourism).

458. Crimes (Child Sex Tourism) Amendment Act 1994 (Austl.) § 50AD; see *supra* note 332 and accompanying text (identifying corporations as liable under law).

459. See *supra* notes 333-35 and accompanying text (describing forfeiture under Crimes Act 1987).

only to children sixteen years of age and under. This is an advance over the Swedish law, but like the U.S. law, it falls short of the optimal standard of the UNCRC.<sup>460</sup> One of the most important goals of child advocates is the establishment of a uniform age of protection at age eighteen in keeping with the UNCRC.<sup>461</sup> None of these laws achieves that goal.

### 3. The Probability of Enforcement

It is too early to tell if any of these laws will be effectively and vigorously enforced. The fact that the Swedish prosecutor has gone to Thailand to collect testimony from a Thai victim is an excellent sign of Sweden's commitment to enforce its law against sex tourists.<sup>462</sup> Swedish prosecutors are aware that they are entering into an entirely new application of the old law and are proceeding with care in order to create a precedent that will safeguard the possibility of future enforcement.<sup>463</sup>

It remains to be seen what steps Australia will take. The positive signs are that the Australian law was introduced by the Minister of Justice himself in response to the frustration of Australian prosecutors who were unable to prosecute known Australian sex tourists.<sup>464</sup> Additionally, the Australian government is inviting the public to participate in a new investigation of pedophile networks who may be operating child sex tours.<sup>465</sup> Furthermore, Australia is the only country that has admitted so openly and publicly that its citizens are engaging in this activity and, in turn, has expressed its commitment to enforce this law.<sup>466</sup>

The U.S. Department of Justice did not initiate the U.S. child sex tourism law in order to prosecute sex tourists, and therefore it is difficult to predict how aggressively it will pursue

460. See UNCRC, *supra* note 19, art. 1, at 2, 28 I.L.M. at 1549 (defining "child" as person under 18 years of age).

461. See *U.N. Report on the Draft Optional Protocol*, *supra* note 140, at 16 (comments of Defence of Children International).

462. See *supra* notes 285-96 and accompanying text (detailing investigation of Swedish national charged with sexual abuse in Thailand).

463. See *supra* note 296 and accompanying text (noting that Bolin case is test case).

464. See *supra* notes 308-11 and accompanying text (discussing Minister of Justice's initiation of child sex tourism legislation).

465. See *supra* note 350 and accompanying text (describing this investigation).

466. See *supra* notes 308-11 and accompanying text (citing Minister of Justice's press release asserting Australians' participation in child sex tourism and determination to prosecute).

its enforcement. The NGOs that drafted the legislation and pressured for its passage will now have to encourage the Department of Justice to enforce it.<sup>467</sup> It is a good sign that U.S. prosecutors may indict a child pornographer under another section of this same law<sup>468</sup> and that the Department of Justice and U.S. Customs have shown some signs of interest in prosecuting sex tour operators.<sup>469</sup> Tour operators, predatory pedophiles, and those who profit from the child sex trade, however, will not be deterred unless it is clear that they will be prosecuted to the fullest extent of the law.

#### 4. Government Collaboration with NGOs

Both Sweden and Australia have demonstrated positive levels of collaboration with NGOs and some sensitivity to their demands.<sup>470</sup> The NGOs in those countries have played a creative and important role in the formulation, execution, and enforcement of strategies to prevent sex tourism.<sup>471</sup> The national media, pressured by NGOs, has devoted broad coverage to the actions of Swedish and Australian sex tourists abroad, thus educating the public on this issue.<sup>472</sup> Both the Swedish and Australian governments have welcomed NGO participation in a variety of initiatives directed at the elimination of sex tourism.<sup>473</sup>

The United States presents a somewhat different scenario.<sup>474</sup> U.S. NGOs have been equally as active as their Swedish and Australian counterparts. The U.S. law, unlike Sweden's and Australia's, was actually crafted by at least one representative of

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467. See Kaplan Interview, *supra* note 360. NGOs are being encouraged to write to the head of the Child Exploitation and Obscenity Section in the Department of Justice to encourage enforcement of this law. *Id.*

468. See *supra* note 411 and accompanying text (noting possible indictment of pornographer operating in Mexico).

469. See *supra* notes 412-15 and accompanying text (describing conversations with Department of Justice and U.S. Customs officials).

470. See *supra* notes 297-307, 352-59 and accompanying text (describing cooperation between NGOs and Swedish and Australian governments).

471. See *supra* notes 297-307, 352-59 and accompanying text (describing activities of NGOs).

472. See *supra* notes 300, 354 and accompanying text (describing media campaigns of NGOs).

473. See *supra* notes 297-307, 352-59 and accompanying text (describing government collaboration with NGOs).

474. See *supra* notes 416-22 and accompanying text (detailing U.S. collaboration with NGOs).

NGOs.<sup>475</sup> The NGOs made efforts to bring this issue into the national concern,<sup>476</sup> but there was never a case that arrested the attention or provoked the horror of the populace. The sex tourism bill, for strategic reasons, was embedded in the lengthy Crime Bill.<sup>477</sup> Therefore, apart from the child advocacy groups who were supporting this legislation,<sup>478</sup> it was virtually passed in secret, leaving NGOs with the challenge of disseminating it and pressuring for its enforcement.

### B. *The Need for A More Comprehensive Campaign*

Each of these laws represents an enormous step towards the protection of children who are, or might become, victims of child sex tourism. The Special Rapporteur hailed the Australian law as a major accomplishment.<sup>479</sup> Other sending countries are following the lead of Sweden, Australia, and the United States. New Zealand is introducing a similar law that would prosecute New Zealanders who participate in child sex tourism while overseas.<sup>480</sup> The British Parliament may well consider the same.<sup>481</sup> In addition, the governments of the developing receiving countries welcome such legislation as support of their efforts to end child sex tourism.<sup>482</sup> In a world where legislation to protect chil-

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475. See *supra* note 416 and accompanying text (identifying one of main drafters of U.S. law as member of National Coalition for Protection of Children and Families).

476. See *supra* notes 416-22 and accompanying text (describing activities of U.S. NGOs).

477. See Kaplan Interview, *supra* note 360. "The bill had a greater chance of passing as an amendment to the much larger Crime Bill with its many controversial provisions and amendments—on the theory that some version of the Crime Bill was sure to finally pass and this relatively uncontroversial provision would not raise alarm." *Id.* The strategy turned out to be effective. *Id.*

478. See *supra* note 416 and accompanying text (describing broad coalition of organizations that supported U.S. law).

479. See *Special Rapporteur Fourth Report, supra* note 65, at 38-39, ¶¶ 166, 170 (referring to Australian legislation as "perhaps the most interesting innovation during the year" and as "a welcome step towards promoting accountability and responsibility with respect to the ever-expanding transnational sexual exploitation of children").

480. See *supra* note 246 and accompanying text (describing bill approved by New Zealand Parliament).

481. See *supra* note 241 and accompanying text (noting that, based on experience of other European countries, British Parliament may well reconsider such legislation in future).

482. See ECPAT NEWSL. no. 10 at 10 (regarding Thailand's Prime Minister and his support of such legislation); *Australia Outlaws Child Sex Tourism*, SRI LANKAN SUNDAY TIMES, Oct. 2, 1994, translated in ECPAT AUSTRALIA BULL., Nov. 1994, at 7 (expressing positive reaction to Australian legislation).

dren has historically not been a priority,<sup>483</sup> these laws represent an enormous advance in the struggle for the recognition of children's rights.

One of the major drawbacks of each of these laws, however, is that they do not protect all children under the age of eighteen. In fact, none of the three provides protection to the large majority of sixteen and seventeen year-olds who are prostituted children. These children must be shielded from adults who exploit them for financial gain or sexual gratification. Only the international standardization of the age of consent at eighteen would guarantee the degree of protection afforded by the UNCRC<sup>484</sup> and assure children the fullest opportunity for their psycho-social development and maturation.

Even with optimal legislation that protects all children, it is questionable whether these laws are enforceable as a practical matter. The evidentiary challenges involved in gathering information from a developing country, procuring witnesses to testify, adapting to cultural and language differences, and establishing the ages of children, may very well be insurmountable. And the question still remains, even if these laws are vigorously enforced, is this the most effective way to deal with this problem? Prosecution will be extremely expensive, perhaps prohibitively so, and enforcement against individual sex tourists, one by one, cannot be considered cost effective. A better case might be made for the prosecution of sex tour operators or an organized pedophile network because of the potential deterrent force. These laws alone, however, as important as they are, are far from adequate to address the problem of sex tourism.

Any solution to this problem must include action that addresses the root causes of sex tourism. Funding for education, jobs, and rehabilitation is necessary for the elimination of child prostitution.<sup>485</sup> Projects designed to serve the needs of children in urban slum areas, including employment opportunities and

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483. See, e.g., Paul J. Buser, *Habeas Corpus Litigation In Child Custody Matters: An Historical Mine Field*, 11 J. AM. ACAD. MATRIM. L. 1, 2 (noting that in 1873, first child abuse case in New York City was brought by American Society for the Prevention of Cruelty to Animals ("ASPCA") on theory that abused child was entitled to humane treatment as "a member of the animal kingdom"). Until this case of first impression, there was no such legal recourse for abused children. *Id.*

484. UNCRC, *supra* note 19 art. 1, at 2, 28 I.L.M. at 1459.

485. See *supra* notes 222-26 and accompanying text (asserting need for comprehensive approach).

educational programs, can provide alternatives for children in desperate need. A most pressing challenge is the prevention of the spread of the HIV virus and the present and future care of thousands of prostituted minors who have contracted AIDS.<sup>486</sup> Additionally, children must be taught that they have a right of determination over their own bodies and their own futures, especially female children who suffer profound gender discrimination.<sup>487</sup>

Because pedophiles who act on their preference for sex with children comprise an important sector of international sex tourists,<sup>488</sup> more research is needed in order to understand the dynamic of this disorder. Preferential child molesters or predatory pedophiles<sup>489</sup> will often not be deterred by education or even by the passage of strict laws unless they are vigorously enforced. Clandestine pedophile networks that operate to foment sex tourism must be identified and prosecuted. Those that operate on computer networks<sup>490</sup> must be monitored for illegal activity.

The receiving countries have a primary role in this problem, and it is vital that adequate local laws be promulgated and enforced against all sex tourists.<sup>491</sup> Primarily, this requires the political will of these governments to provide the necessary means for effective enforcement. Increased funding for local enforcement and for increased surveillance will be necessary. The industrialized world could play a significant role in encouraging such enforcement.<sup>492</sup> The Special Rapporteur has suggested that economic assistance to developing countries involved in sex tourism could be conditioned by their commitment to the

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486. *See supra* notes 111-16, 128-29 and accompanying text (documenting connection of HIV virus with child sex tourism and rapid spread of AIDS among child prostitutes).

487. *See supra* notes 117-20 and accompanying text (naming gender discrimination as root cause of female child sexual exploitation).

488. *See supra* notes 86, 96 and accompanying text (defining pedophilia and describing pedophiles' role in sex tourism).

489. *See supra* note 86 (describing preferential child molesters and predatory pedophiles).

490. *See supra* note 96 and accompanying text (noting that pedophile networks operate via international computer link).

491. *See supra* notes 105-10 and accompanying text (noting lack of local enforcement).

492. *See supra* note 182 and accompanying text (documenting commitment United States has made to enforce Rhinoceros and Tiger Conservation Act of 1994).

protection of children.<sup>493</sup> There are those who would go much further to contend that sex tourism will not be stopped until there is concerted action in the form of international or unilateral boycotts of the worst offenders.<sup>494</sup>

A further way to arrest the spread of sex tourism is the use of travel restrictions by both sending and receiving countries. Under the new Philippine law, if it is enforced, sex tourists will be deported from the country after they have served their sentence and will be banned forever from reentering.<sup>495</sup> An exchange of information between the sending and receiving country regarding the deportee would allow authorities to monitor the deportee's subsequent behavior.<sup>496</sup> Furthermore, one Australian commentator suggests that governments might consider revoking the passports of convicted sex tourists.<sup>497</sup>

In addition, the establishment of bilateral treaties would enhance the implementation and enforcement of local laws.<sup>498</sup> The liaison officer system,<sup>499</sup> which has been established, must be strengthened, as well as individual country cooperation with Interpol.<sup>500</sup> A more effective exchange of information regarding known sex tourists, pedophiles, and sex tour operators is also needed. Finally, campaigns that enlist the support of national and international commercial airlines and travel agents<sup>501</sup> will

493. See *Special Rapporteur Fourth Report*, *supra* note 65, at 54, ¶ 228 (noting that socioeconomic development should be linked to protection of children's rights).

494. Vachss Interview, *supra* note 223. Andrew Vachss, Esq., maintains that a massive U.S. boycott of goods made or manufactured in Thailand is the only way to change the situation. *Id.* "A country which peddles the flesh of its children for money is a country guaranteed to respond to economic warfare—be it boycott, embargo, or the loss of Most Favored Nation trading status". *Id.*

495. An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties For Its Violation, and For Other Purposes, Republic Act No. 7610 § 31 (Phil.) (1992).

496. Hodgson, *supra* note 18, at 541.

497. *Id.*

498. See *supra* note 349 (noting support of ECPAT Australia for development of bilateral and multilateral agreements between Australia and developing countries to assure implementation of Australian law).

499. See *supra* notes 267-70 and accompanying text (describing Nordic liaison officer).

500. See *supra* notes 303-05 and accompanying text (describing NGO collaboration with Interpol).

501. See *supra* notes 301-02, 358 and accompanying text (detailing campaigns targeted at airlines and travel agencies). In addition, the International Hotel Association has condemned child sex tourism and The Universal Federation of Travel Agents Association is preparing a charter for presentation at its 1995 General Assembly that

guarantee that sex tour operators are identified and prosecuted and can help deter travellers looking for casual sex with children in exotic foreign countries.

### C. *The Critical Role of NGOs*

The single most important measure in the fight against sex tourism is the strengthening of local and international NGOs. They have accomplished what would have been considered inconceivable three years ago — the promulgation of major legislation in several industrialized countries to confront the problem of child sex tourism.<sup>502</sup> Their efforts have not been limited to the legal sphere.<sup>503</sup> The education and rehabilitation required on a local level is often accomplished most effectively by NGOs.<sup>504</sup> In addition to gathering the available data on sex tourism, they have brought this issue to the world's attention and have marshalled global concern for a problem that was previously just a terrible secret.

Because of the vital role that they play, NGOs must be given increased economic and logistical support on a local and international scale. They must be granted an expanded role in U.N. initiatives. This expanded role would include greater participation in the implementation of the UNCRC, in the evaluation of existing programs, in the drafting of new protocols and international instruments, and in the enforcement mechanisms of international law.<sup>505</sup>

### CONCLUSION

Rosario Baluyot is a tragic victim of child sex tourism.<sup>506</sup> There are many others like her who have died and thousands

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would commit its members to take specific steps against child sex tourism. ECPAT AUSTRALIA BULL., Mar. 1995, at 1-2.

502. See *supra* notes 297-307, 352-59, 416-22 and accompanying text (detailing activities of NGOs in Sweden, Australia, and United States and their success in pressuring governments to pass child sex tourism legislation).

503. See *supra* notes 297-307, 354-59 and accompanying text (detailing other campaigns such as tourist brochure campaigns and educational campaigns).

504. See NARVESEN, *supra* note 44, at 63-64 (recommending that local NGOs be given assistance in work being done for child victims).

505. See *supra* note 149 and accompanying text (describing NGO Group and its substantial input into UNCRC as model for drafting international legislation).

506. See *supra* notes 1-7 and accompanying text (detailing tragic story of Rosario's life and her death at hands of Austrian sex tourist).



more who live but whose lives have been shattered by the effects of sexual abuse and child prostitution. Despite the almost universal ratification of the UNCRC, children continue to be treated as a valuable commodity in the sex trade market. The individual nations of the world have not yet taken the necessary steps to protect children from sexual exploitation. The law recently enforced in Sweden and those passed in Australia and the United States are a significant step toward the elimination of child sex tourism. Much more needs to be done, however, particularly increasing the role and the prestige of NGOs. Only a comprehensive and coordinated program, on national and international levels, will make it possible to implement the UNCRC and guarantee child victims the kind of protection they so need and deserve.