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The Recent International Efforts to End Commercial Sexual Exploitation of Children

Keywords

Children, Sex, States, Sex Tourism

THE RECENT INTERNATIONAL EFFORTS TO END COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

Karene Jullien*

On February 15 1995, English writer John Stamford faced charges in Belgium for illicit publication and encouraging sexual exploitation of children.¹ How could an ex-Anglican Pastor be involved with child pornography or child prostitution?

Stamford was the publisher and editor of *Spartacus*, the first tourist guide catering to homosexuals. Available since 1970, the book was an instant success. It was presented in more than 150 countries, translated into five languages and sold more than 60,000 copies per year for 25 years.² Even with the original controversy surrounding the publication, it was not apparent that Stamford was involved with commercial sexual exploitation of children until an encoded message, hidden within the guide, was later discovered to be oriented toward pedophiles.

Stamford's indictment was one of the first public legal efforts to deter sexual exploitation of children in the world. However, it took 13 years for the authorities to take action. From 1981, the organization Terre des Hommes had been denouncing Stamford's activities and had repeatedly asked Interpol to investigate.³ Today, it has been established that Stamford was not only the editor of *Spartacus*, the tourist guide, but was also the head of "Spartacus," a pedophile organization. With approximately 30,000 members worldwide, the ring shared addresses, home movies, photos, etc.⁴ Stamford never lived to be convicted; he died of a heart attack in jail in December 1995.⁵ With his death, all investigation on the

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1. Jacqueline Remy, Christophe Agnus, Sylviane Stein, *La pédophilie – Enquête sur un sujet tabou*, L'Express, Feb. 2, 1995 [hereinafter Remy, *La pédophilie*]. Stamford was risking up to one year of imprisonment.

2. *Spartakus & Spartacus*, May 8, 2001, Réseau International pour la Dignité Humaine, par l'information et l'action contre la pédocriminalité, available at <http://www.dignaction.org/Fspart.html> (last visited Jan. 3, 2003), [hereinafter *Spartakus & Spartacus*].

3. Serge Garde, *Histoire secrète. Un répertoire photographique et un cédérom restent inexploités dans la lutte contre les réseaux transnationaux*, Le Web de L'Humanité, Feb. 24, 2000, available at <http://www.humanite.presse.fr/journal/2000/2000-02/2000-02-24/2000-02-24-018.html> (last visited Jan. 3, 2003)[hereinafter Garde, *Histoire Secrète*].

4. Thomas Sancton, *Partout dans le monde, des garçons et des filles sont maltraités dans un commerce méchant de sexe maintenant encouragé par des réseaux informatiques. Que pouvons-nous faire pour combattre le fléau?*, TEMPS International, Vol. 148, Num. 11, Sept. 2, 1996, available at <http://www.rosenczweig.com/presse/temps.htm> (last visited Jan.3, 2003).

5. See Garde, *Histoire Secrète*, supra note 3.

“Spartacus Organization” ended. Moreover, there is nowadays a new edition of *Spartacus*, published by Bruno Gmünder Handels, from Berlin, which is available over the Internet or in different bookstores in Europe.⁶ We are then inclined to wonder if any real progress has been made in the effort to end the commercial sexual exploitation of children.

Commercial sexual exploitation of children is not a recent problem but it has gained more public interest over the last decade. Up until the late 80's, with a mixture of indifference, apathy, denial, or even cynism, child labor and more specifically child prostitution was not an issue of major concern, at either national or international levels.⁷ However, in 1989, the United Nations adopted the Convention on the Rights of the Child (“UNCRC”) explicitly prohibiting child prostitution and illegal sexual practices with children under the age of 18.⁸ Since then, an increasing number of governmental and non-governmental organizations have been pressuring both governments and the general public to take steps against the commercial sexual exploitation of children. In 1990, the international campaign “End Child Prostitution in Asia Tourism” (“ECPAT”) was launched in Thailand. In 1996, the organization arranged the first World Congress against commercial sexual exploitation of children, in Stockholm, Sweden.⁹ In 1999, the International Labour Organization (“ILO”) adopted the Convention 182, directed against the Worst Forms of Child Labour and child exploitation.¹⁰

These are examples of international efforts that took place during the last decade to mark an end to the commercial sexual exploitation of children. The subject is not taboo anymore. International organizations have influenced some governments to take actions to protect the children. Many industrialized countries in Europe, the United States of America, and Australia have adopted new laws or extended their existing legislatures to authorize their local courts to prosecute citizens having sexual intercourse with minors¹¹ outside their home countries.¹² Currently, there are over twenty countries with extraterritorial legislations prohibiting the sexual exploitation of children.¹³ Simultaneously, developing

6. See *Spartakus & Spartacus*, supra note 2.

7. *Child Labour: Targeting the Intolerable; Report submitted to the 86th Session (1998) of the International Labour Conference*, (first published 1996), International Labour Organization, International Programme on the Elimination of Child Labour available at <http://www.ilo.org/public/english/standards/ipecc/publ/policy/target/index.htm> (last visited Jan. 3, 2003).

8. U.N. Convention on the Rights of the Child art.34 (1989).

9. *World Congress against Commercial Sexual Exploitation of Children*, Aug. 31, 1996, United States Embassy in Stockholm available at <http://www.usis.usemb.se/children/csec/> (last visited Jan. 16, 2003).

10. I.L.O. Worst Forms of Child Labour Convention (C182) (1999). Article 3 specifically prohibits any sexual exploitation.

11. “Minor” for the purpose of this discussion is defined by the UN Convention on the Rights of the Child, in Article 1, as a “human being below the age of 18 years.”

12. Margaret A. Healy, *Prosecuting Child Sex Tourists at Home: Do laws in Sweden, Australia, and the United States safeguard the rights of children as mandated by international law?*, 18 *Fordham Int'l L.J.* 1852, 1857-58 (1995) [hereinafter Healy, *Prosecuting Child Sex Tourists*].

13. Daniel Edelson, *The Prosecution of Persons Who Sexually Exploit Children in Countries Other Than Their Own: A Model for Amending Existing Legislation*, 25 *Fordham Int'l L.J.* 483, 496

countries such as Brazil and Thailand have reinforced their laws and social programs to protect children, to treat them as victims rather than offenders.¹⁴

This paper analyzes how effectively the new legal reforms prevent or deter commercial sexual exploitation of children. Part I summarizes how child prostitution and trafficking have developed. It explains how economic, social, and cultural conditions favored the sexual abuse of children. Part II focuses on specific actions taken by the international community to protect children and prevent sexual abuse. Part III explains how different governments intend to fight and prosecute sex tourism. Finally, part IV raises the limits of national and international laws against child prostitution and makes recommendations.

I – CHILD SEX TOURISM AND OTHER COMMERCIAL SEXUAL USE OF CHILDREN: CAUSES AND CONDITIONS OF THE DEVELOPMENT

Sex tourism, child trafficking, and sexual slavery are all linked to the longstanding issue of child prostitution. Even if the international community has outlawed such form of prostitution since the early 20th century,¹⁵ the phenomenon was spreading. Child prostitution reached the peak of its popularity in the late 50's when foreigners (mostly from rich industrialized countries), addicted to sexual intercourse with young boys and girls under the age of 14, discovered a "market" in Asia. In Sri Lanka and Thailand, children could be bought for a few cents for the night, the week, or the whole length of the business/pleasure trip.¹⁶

Today, it is almost impossible to pinpoint exactly how many children are used as sexual distractions due to the absence of accurate and reliable data.¹⁷ Governments of the developing world tend to minimize the numbers while child advocacy organizations tend to inflate them. In Asia, UNICEF reported that one million children are involved in prostitution;¹⁸ while the ECPAT reports there are over three million in India alone.¹⁹ One thing is sure; the problem is not located

(2001) [hereinafter Edelson, *A Model for Amending Existing Legislation*].

14. Hélia Barbosa, *Family Perspectives: Social and Economical Origins, Causes, Prevention and Care in Brazil*, ECPAT Brazil, available at http://www.unesco.org/webworld/child_screen/documents/barbosa.rtf (last visited Jan. 16, 2003) [hereinafter Barbosa, *Family Perspectives*]. Barbosa explains how Brazil laws include the protection of children.

15. In 1924, the Fifth Assembly of the League of Nation adopted the five-point declaration of children's rights, known as the Declaration of Geneva.

16. Maureen Seneviratne, *Family, Social and Economic Perspective: Origins, Prevention and Care: Sexual Abuse of Children*, available at http://www.unesco.org/webworld/ci_publications/Detailed/137.shtml (last visited Jan. 16, 2003) [hereinafter Seneviratne, *Family, Social and Economic Perspective*].

17. See Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1862-64, listing numbers of child prostitutes in different countries and how estimates vary according to the sources.

18. Figure estimated by the UN Children's Fund (UNICEF) available at <http://worldzone.net/family/dreammagic1/Unicorns?MultitudeOfChildren.htm> (last visited June 11, 2003).

19. See Roz Prober and Mark Erik Hecht, *Child Advocates Unite Against a Global Rise in Child Exploitation*, *Human Rights Tribune*, Vol. 6, No.4 (Dec. 1999), available at <http://www.hri.ca/tribune/viewArticle.asp?ID=2531> (last visited June 11, 2003).

only in Asia. The phenomenon has spread to Latin America, Africa, Eastern Europe, and even to western developed countries such as the United States.²⁰

While industrialized nations blame developing governments for their laxism and failure to act against the sexual use of children, developing countries blame industrialized governments for letting their nationals create a large demand. It is true that without a demand there would not be a supply and that some governments allow child prostitution in order to attract the revenue from such tourism. However, the problem is more complex.

Socio-economic background of the supplying countries

Child prostitution is principally present in underdeveloped or developing countries in Asia, Africa, Latin America, and Eastern Europe. It is not a coincidence that such states do not have a stable or strong economy. They share the common traits of high unemployment rates, great discrepancy of revenue between the higher and lower income, absence of a middle class, and a low GDP per capita. A large part of the population is undernourished or malnourished and is dying of the consequences of malnutrition.²¹ In addition, the poor level of sanitary conditions increases the high mortality rates.²²

Still, minors constitute a large percentage of the population. For example, Brazil counts 40 percent of its population as being under the age of 18.²³ Most of the children are not enrolled in school and work legally or illegally to bring revenues to their family. Despite the fact that all countries – other than Somalia and the United States - have signed and recognized the Convention, few can fulfill their responsibility to provide free education for children of age to attend primary and elementary school.²⁴ Even where free education is available, most children do not have the luxury to attend schools; they have little or no formal academic instruction.²⁵

Many live in rural areas where living conditions are sparse. Parents raise their children from a young age to work in the fields and to do domestic work of the family.²⁶ The number of these children used to labor from an early age amounts to

20. The UNICEF estimates that 300,000 children are involved in prostitution in the United States; figure available at <http://worldzone.net/family/dreammagic1/Unicorns?MultitudeOfChildren.htm> (last visited June 11, 2003).

21. See Barbosa, *Family Perspective*, *supra* note 14, stating that Brazil is the 5th greatest world food producer but 74th in quality of life.

22. *Id.* The mortality rate of children under the age of five is 44 percent in Brazil

23. *Id.*

24. U.N. Convention on the Rights of the Child art.28 (1989).

25. UNICEF, *Children out of school: A cost and cause of child labour*, (1996), available at <http://www.unicef.org/sowc97/download/ftcsgrfs.pdf> (last visited Jan. 3, 2003). In 1996, The UNICEF reported that 47 percent of children of age to attend elementary school in Sub-Saharan Africa did not go to school. This number falls to 34 percent in East Asia and Pacific, and 12 percent in Latin America and the Caribbean.

26. UNICEF, *A working day in the life of a 10-year-old girl in Nepal*, (1997), available at <http://www.unicef.org/sowc97/download/ftcsgrfs.pdf> (last visited Jan. 3, 2003).

400 million worldwide.²⁷ They know of no other style of living.

In more urban areas, the poorest part of the population lives in ghettos or in the streets. Some children were even born in the street, not knowing the luxury of a personal house or apartment. To live, they engage themselves in any legal or illegal activities that allow them to acquire money, food, or clothing.²⁸

This low social-economic background leads children to fight for their survival. In this context, sexual traffic and commerce flourishes by exploiting the misery of famished families. The majority of young boys and girls who, voluntarily or involuntarily, engage in prostitution do so for minimum economic revenues. They are the most vulnerable segment of the social pyramid and easily allured by promises of a job or better opportunities. They believe the "recruiter" is offering great job opportunities but end up in brothels or in the street.²⁹ Others just discover that selling their body is an easy way to obtain quick and easy money. They are self-employed or work in gangs, sharing the same living quarters.³⁰

Cultural background of the children involved in prostitution and governmental overlook

Children are often viewed as assets by their families, as a way to gather some revenue and share the work. It is not uncommon in extremely poor regions that parents sell their sons or daughters, or exchange them for luxuries such as meat, or farm animals. Some parents just do not think of the consequences; others hope for a better life for their children working as maids or handymen in richer households. Whether or not parents are consciously acting for their own benefit or are under the misconception that they are providing greater opportunities for their kids, few ever see or hear about their child again.

The child's self esteem is also undermined by years of abuse suffered at home. Studies indicate that minors engaged in prostitution have often experienced incest and sexual abuse during the first years of their lives.³¹ They are oppressed, abandoned, and generally used to violence. Moreover, in patriarchal societies such as Sri Lanka, such topics are simply not discussed because they are considered "dirty", "indecent", or merely too common to openly report or converse about.³² Child abuse is just swept under the carpet and crimes against children are not reported. Young girls are particularly at risk since they grow up with the belief that they are inferior as females. They witness abuse against their own mothers. They do not question their role in society and believe in their duty to serve men. They live in a prejudiced society where men have all the rights but women are

27. UNICEF, *The State of the World Children, Shadowy figures*, (1997), available at <http://www.unicef.org/sowc97/download/fctsgfrfs.pdf> (last visited Jan. 3, 2003).

28. *European Conference on Street Children Worldwide*, Letter of Summary, Oct. 1996, available at <http://www.hri.ca/children/reports/ecscw.shtml> (last visited Jan. 3, 2003).

29. Barbosa, *Family Perspective*, *supra* note 14.

30. Seneviratne, *Family, Social and Economic Perspective*, *supra* note 16.

31. Barbosa, *Family Perspective*, *supra* note 14.

32. Seneviratne, *Family, Social and Economic Perspective*, *supra* note 16.

discriminated against. Obligated to live on "under-employment," they are often forced to establish sexual relations with their bosses in order to keep their job.³³ For those minors engaged in sexual activities, it is "normal" to be used for such purposes. They also see themselves as guilty perpetrators of crimes instead of victims. They fear arrest and prosecution.³⁴ Unfortunately, those children are often guilty of theft or drug use, in addition to prostitution.

Governments are also to blame for the status quo of indifference or denial toward the sexual exploitation of children. Quite often, sex tourism is a large part of the revenue for the country.³⁵ Some villages depend upon child prostitution to fill a common public fund used to finance schools, roads and equipment.³⁶ Therefore, states look the other way instead of taking action to end the phenomenon. In addition, corruption is common at all levels, from the police officer to the judge. Law enforcement personnel often use sex tourism to inflate their own revenues.

Governments lack commitment to guarantee the basic rights of the juvenile population. Even if they passed laws and statutes to warranty to each child the right to life, health, nutrition, education, liberty, or safeguard from neglect,³⁷ they often do not have the means to enforce and assure such rights. Governments do not have the monetary resources to assure minimal social welfare services. Most of the time, those regimes are in a precarious situation, without political or economic stability. Threatened by instability, they have numerous priority issues to resolve before allocating their spare resources to the younger population's welfare.

To summarize, families, society, and governments might be offended or saddened, or they might be indifferent. In any case, they benefit from child prostitution and are then reluctant to take meaningful steps towards resolving of the problem. Children are left to provide for themselves and sometimes for their families. Seizing the opportunity, promising a better world, the recruiters can

33. Barbosa, *Family Perspective*, *supra* note 14.

34. See Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1852 & note 5. Healy related the story of Rosario (11 or 12 years old) who died after one of her clients broke a vibrator in her vagina. Rosario fled from the doctor's office, scared of being arrested and going to prison, if she had to explain how she got the vaginal infection. She never got the pieces of vibrator removed and died after 7 months of agonizing pain.

35. Roger J.R. Levesque, *Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights*, 60 Brook. L. Rev. 959, 981(1994) [hereinafter Levesque, *Sexual Use, Abuse*].

36. *Id.* at 981.

37. Barbosa, *Family Perspective*, *supra* note 14, giving the example of Brazil, which in addition to the Convention on the Rights of the Child, has adopted Article 227 in its Federal Constitution, which states:

"It is the duty of the Family, of the Society and of the State to assure with absolute priority to the child and adolescent the right to life, health, nutrition, education, leisure, professionalism, culture, dignity, respect, liberty, home and community life, and to safeguard them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression."

However, Barbosa explains that the government does not enforce its policy.

easily organize the prostitution market and sexual traffic.

Developing countries' responsibilities

It has been argued that child prostitution of a massive nature originated in Thailand, the Philippines, and Taiwan during the Viet Nam War.³⁸ While the troops were stationed in these countries they made use of bars and massage parlors for rest and recreation. These places were often frequented by underage prostitutes. Just after the war, the governments used the sex industry to promote tourism. They made no effort to limit prostitution at that time and tourists from Japan, Europe, and Australia came to experience the "charms" of the countries. Nobody talked about pedophilia then. In the late 70's, early 80's, travel agencies started to organize sex tours catering to men from industrialized nations. They went to Asia to engage in sexual intercourse with minors at a minimum risk. Such practices were unlawful and a great risk in their home countries. Thailand became popular for its young girls³⁹ and Sri Lanka for its young boys.⁴⁰ Prostitution was not only legal but became a great source of revenue for the states which therefore did not really care about the age of the prostitute or the consequences to the children. Rapidly, surrounding countries used the same niche to attract tourism to their countries. Children were purchased or abducted and then sold in Asia to serve men from the western world. Today, China, Burma, Laos, Vietnam, India, Bangladesh, and Pakistan are all involved in the commercial sexual exploitation of children one way or another.⁴¹

Unlike the Asian market, the Latin American market developed mostly because of the local demand and then spread to cater to North American customers. Street children became engaged, voluntarily or involuntarily, in prostitution to service the upper class of their home countries. Many adolescents, bought or kidnapped from Paraguay, Bolivia, Brazil, or Salvador, ended up in brothels located in the gold mining regions of the Amazon, highly populated by males.⁴² Sex tourism happens in major cities in Latin America, like Rio de Janeiro, where businessmen from the United States, Canada, and Europe, while visiting or making deals seize the opportunity offered by the sex market.⁴³

38. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1864.

39. See Levesque, *Sexual Use, Abuse*, *supra* note 35, at 979, explaining that "children below sixteen years of age make up 40% of the total number of prostitutes in Thailand . . . and some are as young as ten."

40. *Id.* at 979. "In Sri Lanka, about 30,000 boys aged six to fifteen are thought to work as prostitutes."

41. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1862-64. Thailand has between 200,000 and 250,000 prostitutes under the age of 18, including children who have been purchased or abducted from Burma, Laos, and China. The Philippines has between 50,000 and 60,000 child prostitutes; Taiwan has approximately 70,000. In Sri Lanka, the number varies between 10,000 and 15,000. ECPAT reported 200,000 to 500,000 in China, 2,000 in Cambodia, and 6,000 in Vietnam. In India, there are about 400,000 to 500,000 children involved in the sex trade. Finally, Bangladesh admitted the existence of 10,000 child prostitutes between the age of 12 and 16 in 1985.

42. Barbosa, *Family Perspective*, *supra* note 14.

43. See Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 483, reporting the

The Eastern European market is newer, starting after the downfall of the communist regimes at the beginning of the 90's. Sex rings were organized by local mafia, between Bulgaria, Russia, Romania, Poland, and Hungary. The demand is local or from businessmen from Western Europe. Again sex is not the main objective for the trip, but the opportunity is easily accessible. The European market is also more "high tech," and available on the Internet. On special web pages, you can book company for your trip the same way you reserve a hotel room.⁴⁴

For many years, industrialized countries did not take any action to prevent or control the behavior of their nationals in other countries. Adopting the "ostrich tactic," developed nations denied any responsibility. They could be embarrassed, even ashamed, but since the crimes took place far from their territorial limits, they believed that it was the receiving countries' responsibility to act. Since the adoption of the Convention and the implication of many child advocacy organizations, western governments are acting against sexual exploitation of children worldwide. The first regional organization to face up to its responsibility was the Council of Europe, which in 1988 addressed the problem of child prostitution and the involvement of Europeans. The Council made recommendations to all European countries to establish extraterritorial jurisdictions in order to allow courts to prosecute nationals for crimes committed outside their countries.⁴⁵ In May 1990, in Thailand, churches, women's rights organizations, and charitable services organized ECPAT. The campaign openly blamed the developed countries for providing the demand necessary to maintain the sexual exploitation of children and asked the governments to join and help the fight against child prostitution around the world.⁴⁶

II – INTERNATIONAL ACTIONS TAKEN AGAINST SEXUAL EXPLOITATION OF CHILDREN

1) ILO Worst Forms of Child Labour Convention

One of the first conventions adopted by the international community, designed to protect children, was the Declaration of Geneva, adopted in 1924 by the Fifth Assembly of the League of Nations, which did not consider the issue of child prostitution at that point. In 1973, the ILO adopted the Minimum Age Convention 138 ("C 138"), meant to replace all prior existing conventions, which

statement of a retired U.S. schoolteacher bragging about his 'adventures' while visiting Latin America; "On this trip, I've had sex with a 14 year-old girl in Mexico and a 15 year-old in Columbia. I'm helping them financially. If they don't have sex with me, they may not have enough food. If someone has a problem with me doing this, let UNICEF feed them. I've never paid more than \$20 to these young women, and that allows them to eat for a week."

44. Christophe Agnus, *Le Minitel de la Honte*, L'Express, Feb. 2, 1995.

45. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1886.

46. Jacqueline Remy, *Halte au Tourisme Sexuel*, L'Express, Feb. 2, 1995.

imposed a minimum working age according to specific economic sectors.⁴⁷ By the end of October 2000, 102 ILO member States had ratified C 138, binding the parties to act toward the abolition of child labour.⁴⁸ Article 3 obligates members to raise the minimum age to 18 year-old for any “type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons.”⁴⁹ Although prostitution can easily be included as a work jeopardizing the “health, safety or morals” of any child, the Convention failed to link sexual exploitation to “work.” In addition, the same article provides for exceptions, allowing minimum age to be as low as 16 years of age.⁵⁰

Because C 138 failed to properly address the issue of sexual exploitation of children, ILO implemented the Worst Forms of Child Labour Convention (“C 182”) in 1999,⁵¹ urging each of the members to take “immediate and effective measures to secure the prohibition and elimination of the worst forms of child⁵² labour as a matter of urgency.”⁵³ Such “labour” includes sexual exploitation.⁵⁴ Twelve months after ratification, a member State is bound under international law to align its national regulations and practices to the requirement of the Convention.⁵⁵ In addition, the state must report regularly to the ILO regarding the application of C 182 and be accountable for allegations of violation.⁵⁶ Even if a State has not yet ratified C 182, it can still be required to report about its situation and efforts made toward the abolition of the worst forms of child labour under the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998.⁵⁷ ILO then has a very wide jurisdiction over its member States and can impose standards and regulations upon them to end commercial sexual exploitation of children.

47. I.L.O. C138 Minimum Age Convention (1973). Article 3(1) specified:

“The minimum age for any type of employment or work which by its nature or circumstances was likely to jeopardize the health, safety or morals of young persons should not be less than 18 years.” Article 7(1)(a) and (b) stated “that national laws could permit employment or work of persons 13 to 15 years of age on light work not likely to be harmful to their health or development, and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes.”

48. I.L.O., *ILO Worst Forms of Child Labour Convention comes into force: Convention provides new legal tool to combat most exploitative and dangerous forms of child labour*, Nov. 17 2000, ILO/00/43/ available at <http://www.ilo.org/public/english/bureau/inf/pr/2000/43.htm> (last visited on Jan. 3, 2003) [hereinafter ILO/ 00/43].

49. I.L.O. C138 Minimum Age Convention art 3(1) (1973).

50. I.L.O. C138 Minimum Age Convention art 3(3) (1973).

51. By June 2003, C 182 has been ratified by 141 countries, including Thailand, Sri Lanka, Brazil, European Union members, Australia, and the United States. The complete list of ratification status is available at <http://ilolex.ilo.ch:1567/english/convdisp1.htm> (last visited Jan. 3, 2003).

52. I.L.O., C182 Worst Forms of Child Labour Convention art 2;

“For the purpose of this Convention, the term *child* shall apply to all persons under the age of 18.”

53. I.L.O. C182 Worst Forms of Child Labour Convention art 1 (1999).

54. I.L.O. C182 Worst Forms of Child Labour Convention art 3(b) (1999).

55. ILO/00/43, supra note 48.

56. *Id.*

57. *Id.*

Article 7(1) of C 182, conveys into a government the obligation to apply “all necessary measures, . . . including the provision and application of penal sanctions” to enforce the Convention,⁵⁸ which aims at securing “the prohibition and elimination of the worst forms of child labour,”⁵⁹ including “the use, procuring or offering of a child for prostitution,”⁶⁰ as well as “the sale and trafficking of children, . . . and forced or compulsory labour.”⁶¹ Under these principles, a member State is obligated not only to condemn child prostitution but also to adopt and enforce laws effectively eliminating it. This international commitment is mostly important for receiving countries. Because of the broad language of article 3, the Convention impresses upon governments the responsibility to sanction all participants in the sex trade, sanctioning any person who “use,” “procure,” or “offer” a child for prostitution.⁶² This would include the parents. According to the Center for the Protection of Children’s Rights, in 1989, 63% of girls under sixteen were brought to prostitution by their own parents.⁶³ The possibility of facing criminal charges in a court of law could deter parents from becoming accomplices to the exploitation of their children, and diminish the supply.

While the Convention engages members to prosecute adults involved in exploitation of children, it also reinforces that the child is to be protected and treated as a victim. Article 7(2) mandates states to “take effective and time-bound measures to (a) prevent the engagement of children in the worst forms of child labour, and (b) provide necessary and appropriate assistance for the removal of the children . . . and for their rehabilitation and social integration.”⁶⁴ In addition, governments are to “identify and reach out to children at special risks.”⁶⁵ Developing countries are now bound by international law not only to stop child prostitution but also to prevent the involvement of further children.

Through the International Programme on the Elimination of Child Labour (IPEC), ILO has published a *Handbook for Parliamentarians* to guide member States in their fight against child labour.⁶⁶ The organization has set out seven measures by which parliaments can contribute to the elimination of the worst forms of child labour, including adoption and enforcement of legislation, establishment of programmes to prevent the involvement of children, providing the financing and human resources necessary, and mobilization of the public opinion.⁶⁷ Countries are welcomed to request the help of ILO or IPEC in order to implement Convention 182 into their national legislation and social programs.

58. I.L.O. C182 Worst Forms of Child Labour Convention art 7(1) (1999).

59. I.L.O. C182 Worst Forms of Child Labour Convention art 1 (1999).

60. I.L.O. C182 Worst Forms of Child Labour Convention art 3(b) (1999).

61. I.L.O. C182 Worst Forms of Child Labour Convention art 3(a) (1999).

62. I.L.O. C182 Worst Forms of Child Labour Convention art 3(b) (1999).

63. Levesque, *Sexual Use, Abuse, supra* note 35, at 980.

64. I.L.O. C182 Worst Forms of Child Labour Convention art 7(2)(a)&(b) (1999).

65. I.L.O. C182 Worst Forms of Child Labour Convention art 7(1)(d) (1999).

66. I.L.O., *Eliminating the Worst Forms of Child Labour: A Practical Guide to ILO Convention 182*, Handbook for Parliamentarians No. 3-2002, available at http://www.ilo.org/public/english/standards/ipec/publ/ipu_2002_gb_web.pdf (last visited Jan. 3, 2003).

67. *Id.*

2) UN Convention on the Rights of the Child

The most important achievement in the field of children's rights is the UN Convention on the Right of the Child, adopted in 1989. For the first time, non-governmental organizations oriented toward human rights and child advocacy participated in the drafting.⁶⁸ The purpose of the Convention was not only to guarantee basics rights to the children, but also to implement instruments to provide and monitor such rights.⁶⁹ The Convention established the creation of a Committee on the Rights of the Child⁷⁰ whose purpose is to oversee and control progress made by member states.⁷¹ The major advantage of the UNCRC is that it is the most widely ratified International Convention, binding nation states to its implementation.⁷²

Article 34 explicitly mandates State Parties to protect their children from sexual exploitation, urging them to implement measures to prevent the inducement of a child in sexual activity, prostitution, pornography, or other unlawful sexual practices.⁷³ In addition Article 35⁷⁴ and 36⁷⁵ require governments to assure the protection against abduction, sale or trafficking in children, and against any form of exploitation prejudicial to the child's welfare. Furthermore, Article 32 recognizes "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous . . . or to be harmful to the child's health or physical, mental, spiritual, moral, or social development."⁷⁶ By its very nature, prostitution qualifies as "hazardous" or "harmful." Lastly, Article 39 specifies that the child is mostly a victim and states must facilitate his or her physical and psychological recovery, and reintegration into society.⁷⁷

68. See Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1876.

69. Part II of the Convention on the Rights of the Child (article 42 to 45) is oriented toward implementation and monitoring of those rights.

70. U.N. Convention on the Rights of the Child art.43 (1989).

71. U.N. Convention on the Rights of the Child art.44 (1989).

72. To date, only two states failed to ratify the UNCRC: Somalia and the United States.

73. Article 34:

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:

- The inducement or coercion of a child to engage in any unlawful sexual activity;
- The exploitative uses of children in prostitution or other unlawful sexual practices;
- The exploitative use of children in pornographic performances and materials.

74. Article 35:

States 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.

75. Article 36:

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

76. U.N. Convention on the Rights of the Child art.32 (1989).

77. Article 39:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or

The combination of those articles imposes upon signatories a heightened level of dedication and commitment toward the protection of children from sexual exploitation and abuse. In addition, the Convention makes it clear that all states shall undertake "national, bilateral, and multilateral measures" in addressing the problem.⁷⁸ Accordingly, it seems appropriate for State Parties to create new laws prohibiting the sexual exploitation of children in their home country, criminalizing any person benefiting from child prostitution, as well as extending jurisdiction to cover citizen's actions abroad, using children for sex or pornography.⁷⁹ On the other hand, critics of the UNCRC have declared that the meaning of "exploitive use" could be left open for interpretation, allowing children to be used for sex so long as they consent.⁸⁰ However, the Convention could then be combined with the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which compels Parties "to punish any person who . . . procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person or exploits the prostitution of another person, even with the consent of that person."⁸¹ Member States who ratified both conventions are under international obligation to penalize organizers of the sex trade, even if the children came to prostitutions voluntarily.

The most significant limitation of the Convention is that it does not provide for mechanisms to allow children, NGO's, or child advocates to present personal complaints and lacks remedies in case of confrontation. The Convention is mostly oriented towards cooperation. It is up to State Parties to establish and implement measures for the protection of the children. Despite its limits, the UNCRC was the first international treaty distinctly prohibiting sexual exploitation of children. It created a sense of awareness to both the general public and governments, setting the foundation for more comprehensive regulations and opening the doors to NGO's negotiation with different administrations.

III – AMENDING THE LAWS: ACTIONS TAKEN BY RECEIVING AND SENDING COUNTRIES TO IMPLEMENT INTERNATIONAL STANDARDS

Legal measures taken in receiving countries

Due to international pressures, and depending on the economical, political, and social status of the receiving country, some governments have modified their legislatures to take action against sexual exploitation of children. However, in

punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self respect and dignity of the child.

78. See U.N. Convention on the Rights of the Child Articles 34 and 35.

79. Heather C. Giordanella, *Status of §2423(b): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 Temp. Int'l & Comp. L.J. 133, 139 (1998) [hereinafter Giordanella, *Status of §2423(b)*].

80. Levesque, *Sexual Use, Abuse*, *supra* note 35, at 985.

81. U.N. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others art. 1 (1949).

order to be able to pass new laws and to enforce them, the country needs a certain political and economic stability. Only developing countries can afford the time and resources needed to approve and apply new laws. Under-developed countries are too poor and do not have enough political support to concentrate on child exploitation.

Thailand

Thailand has ratified the UNCRC and ILO C 182, but reports estimate the number of child prostitutes anywhere between 25,000 and 800,000.⁸² ECPAT believes the figure to be between 200,000 and 250,000 children below the age of 18.⁸³ Until 1956, prostitution was legal in Thailand, which highly profited from sex tourism.⁸⁴

Today, the Thai Penal Code prohibits prostitution.⁸⁵ However, children involved in the sex trade are not prosecuted and are treated as victims rather than as suspects,⁸⁶ even if they consented. In 1996, the government enacted the Prostitution Prevention and Suppression Act ("Act") allowing the prosecution of customers having intercourse with child prostitutes.⁸⁷ The Act also permits the prosecution of parents allowing their child to enter the sex trade. In 1997, the government adopted the Prevention and Suppression of Trafficking in Women and Children Act, which increased prison time and penalties for people guilty of abducting and bringing to Thailand, women and children from China, Burma, Laos, or Cambodia for slave labor or prostitution.⁸⁸ Today, the country has passed a statute, similar to statutory rape in the United States, that punishes sexual intercourse with a minor under the age of sixteen by a fine and a prison term up to twelve years.⁸⁹

In addition to laws targeting the sexual exploitation or trafficking of children, the government took steps to promote the rights and welfare of children. In 1998,

82. Vandana Rastogi, *Preserving Children's Rights: the Challenges of Eradicating Child Sexual Exploitation in Thailand and India*, 22 *Suffolk Transnat'l L. Rev.* 259, 264 (1998) [hereinafter Rastogi, *Preserving Children's Rights*].

83. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1862.

84. Rastogi, *Preserving Children's Rights*, *supra* note 82 at 264. "Some reports state that prostitution brings in \$1.8 to \$2.2 billion per year to Thailand, while other reports estimate that amount at approximately \$20 billion per year."

85. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1884.

86. Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 *B.U. Pub. Int. L.J.* 1, 7 (1999) [hereinafter Todres, *Prosecuting Sex Tour Operators*]. "It was not until 1996 that by law the Thai government recognized child prostitutes as 'victims of the illegal sex trade' and that 'customers and procurers, not the victims, should face punishment.'"

87. U.S. Department of State, *Thailand Country Reports on Human Rights Practices for 1998*, Bureau of Democracy, Human Rights, and Labor, Feb. 26, 1999 available at http://www.state.gov/www/global/human_rights/1998_hrp_report/thailand.html (last visited on Jan. 16, 2003) (hereinafter *Thailand Report*).

88. *Id.*

89. See Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1885.

the compulsory education requirement was raised from six to nine years.⁹⁰ The Social Welfare Plan for Underprivileged People doubled the budget for children's programs for the years 1997-2001.⁹¹ NGOs and the government collaborate to provide shelter, rehabilitation, and reintegration programs for children and women involved in the sex industry. Since September 2000, the legislation requires a one-year training period for children victim of any kind of abuse.⁹²

Thailand has taken important steps to prevent children from being victims of the sex trade; it has enacted stronger laws against prostitution and trafficking. Penalties are harsher on brothel procurers and parents guilty of profiting from children engaged in the sex trade. However, the government faces the major problem of corruption.⁹³ Since the 1996 Act, 355 persons have been arrested for violating this law; only 14 have been convicted and sentenced.⁹⁴

Brazil

Reports estimate the number of child prostitutes in Brazil to be 250,000.⁹⁵ However, because most of the children involved in the sex trade are street children or come from Amazonian tribes – and therefore not counted during the national census – real data are impossible to get. Hélia Barbosa, working for ECPAT Brazil, argues that millions of young girls and adolescents exchange sexual favors for food and shelter.⁹⁶ Brothel keepers and providers lie to the young women by promising them work as nannies or household servants. Instead, they are sold by auction in brothels until the owner releases them to the streets where they continue to prostitute themselves in order to survive.

Even if the laws in Brazil prohibit sexual exploitation of children⁹⁷ and promote the Rights of the Child,⁹⁸ the country lacks enforcement power and experiences too much corruption to be able to bring them into full effect.⁹⁹ In

90. *Thailand Report*, *supra* note 87.

91. *Id.*

92. *Id.*

93. Rastogi, *Preserving Children's Rights*, *supra* note 82, at 271. "The police guard the brothels and warn the owners about any possible raids."

94. *Thailand Report*, *supra* note 87.

95. Levesque, *Sexual Use, Abuse*, *supra* note 35, at 979.

96. Barbosa, *Family Perspective*, *supra* note 14.

97. *Id.* Article 227(4) of the Federal Constitution states, "the law will severely punish child and adolescent abuse, violence or sexual exploitation." Articles 240 and 241 prohibit the use of children or adolescent in pornographic productions. However, no means exist to really severely punish sexual exploitation.

98. Barbosa, *Family Perspective*, *supra* note 14. *Cf. to note 36.*

99. U.S. Department of State, *Brazil Country Reports on Human Rights Practices for 1998*, Bureau of Democracy, Human Rights, and Labor, Feb. 26, 1999, available at http://www.state.gov/www/global/human_rights/1998_hrp_report/brazil.html (last visited Jan. 16, 2003) [hereinafter *Brazil Report*]. In June 1998, federal authorities charged eight persons with operating child prostitution rings in the city of Teresina. Among the accused clients of the rings were police officers. In September, civil police of Alagoas uncovered a child prostitution ring involving local judicial authorities. In October civil police of Maranhao uncovered a child prostitution ring involving police, judicial authorities, and elected authorities.

addition, prostitution rings are well organized involving the complicity of nightclubs, motels, hotels, taxi drivers, travel agencies, and the parents. It is very hard for the police to find people who are willing to talk.

Brazil has not yet implemented efficient legal and social instruments to prevent the sexual exploitation of children. The state has not formulated public policies for protection, defense and childhood promotion.¹⁰⁰ It neglects public services for family, health and home assistance.¹⁰¹ The Children and Adolescents Defense Center (CEDECA) admitted that the governmental efforts to better protect children were fruitless since crime against children is increasing.¹⁰² There exist some programs created in partnerships between NGOs and governmental entities, but they lack monetary resources and human power to be totally effective.¹⁰³ Two states, however - Pernambuco and Bahia - have adopted the legislation called Specialized Criminal Justice of Childhood and Youths to prosecute and judge crimes against children and adolescents.¹⁰⁴ Unfortunately, they are the only states which dedicated special courts to such crimes and have implemented, with the collaboration of NGOs, psychotherapeutic programs for the child victims.¹⁰⁵ We can hope that other states will follow.

Sri Lanka

Sri Lanka counts between 10,000 and 15,000 child prostitutes, most of whom are young boys.¹⁰⁶ Because of that factor, the government of Sri Lanka denied the facts for a long time. It had to face up to the reality after the publication in 1980 by Terres des Hommes, of Tim Bond's report on child prostitution.¹⁰⁷ The government immediately appointed a Review Committee to create new laws prohibiting and preventing commercial sexual exploitation of children.¹⁰⁸ Though, when a draft of the new legislation was presented in 1987, the Minister of State denied the necessity to adopt new laws curbing the commercial sexual exploitation of children.¹⁰⁹

Until 1995, efforts and pressures made by national and international organizations were fruitless.¹¹⁰ In 1995, however, the Ministry of Media, Tourism and Aviation created a special task force to study the problem of sex tourism and related offenses.¹¹¹ The task force was abolished in 1997 and was replaced by a

100. Barbosa, *Family Perspective*, *supra* note 14.

101. *Id.*

102. *Brazil Report*, *supra* note 99.

103. *Id.*

104. Barbosa, *Family Perspective*, *supra* note 14.

105. *Id.*

106. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1863. *See also* Levesque, *Sexual Use, Abuse*, *supra* note 35, at 979, reporting that 30,000 boys aged six to fifteen are thought to work as prostitute in Sri Lanka.

107. Seneviratne, *Family, Social and Economic Perspective*, *supra* note 16.

108. *Id.*

109. *Id.*

110. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1885.

111. U.S. Department of State, *Sri Lanka Country Reports on Human Rights Practices for 1998*,

presidential task force.¹¹² A year later, the Parliament enacted the Child Protection Authority ("CPA") statute and committee.¹¹³ The CPA encompassed all previous laws for the protection of children, integrated the principles of the UNCRC and made unlawful all forms of abuse against a child under the age of 18 years. The law prohibits any form of abuse – sexual, violence, traffic, cruelty, and even involvement in wars. It also proscribes the use of children in exploitative labor or illegal activities, or in any way contrary to compulsory education, which is obligatory to the age of 12.¹¹⁴

In addition to the legislature, the CPA formed a special committee composed of senior law enforcement officers, representatives from the educational, medical, and legal professions.¹¹⁵ Unfortunately by the end of 1998, the CPA committee had not yet been constituted.¹¹⁶

In general, the government of Sri Lanka is committed to protecting the welfare and rights of children. It made education free, including university, and compulsory up to the age of 12. It also provides free health care, including immunization programs.¹¹⁷ It welcomes the UNICEF and any child advocacy organizations to work toward the abolition of child exploitation. It has ratified the UNCRC and LIO C 182, hoping to resolve the problem. However, the major obstacle the government has to face is a lack of enforcement due to the many internal conflicts between ethnic groups, and with India. Resources are diverted; law enforcement forces have many other pressing issues to solve.

Legal measures taken in sending countries

In 1987, 11 or 12 year-old Rosario Baluyot died in Philippines, after Dr. Ritter, from Austria, forcibly inserted an electric vibrator in her vagina where it broke.¹¹⁸ Rosario endured seven months of agonizing pain and infection before she collapsed in the street, with green bile coming out of her mouth. The doctors removed a nine-centimeter rusty screw from her vagina. She died less than a week later.¹¹⁹ After the Philippine Supreme Court reversed his life sentence, Dr. Ritter returned to Austria where he never faced charges.¹²⁰

To prevent such injustices, international organizations and NGOs have pressured governments of industrialized countries to extend their legislatures in order to allow prosecution of nationals acting outside their boundaries. Today,

Bureau of Democracy, Human Rights, and Labor, Feb. 26, 1999, available at http://www.state.gov/www/global/human_rights/1998_hrp_report/srilanka.html (last visited Jan. 16, 2003).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. See Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1852.

119. *Id.* at 1852 & note 7.

120. *Id.* at 1853.

over 20 countries¹²¹ apply extraterritorial laws (ET) to sex tourists. However, not all nations strictly apply their ET legislations¹²² and different countries have taken different approaches. The ET legislations vary – some are extended application of the countries' penal codes¹²³ while others are new laws specifically created to target sex tourism.¹²⁴ Some laws require double criminality, while others enable the sending country to prosecute a sex tourist regardless of whether or not the person was already tried in the receiving country.¹²⁵

European Union

All European countries have ratified the UNCRC and are bound by its obligation under article 34, to take all appropriate measures to end child sexual exploitation. After the Council of Europe condemned sex tourism and alleged the responsibility of sending countries, it recommended to its member States to establish extraterritorial jurisdiction to allow prosecution of nationals engaged in sexual relations with minors in other states.¹²⁶ Many European states complied; France, Switzerland, the Netherlands, Ireland, Italy, Spain, Denmark, the UK, Sweden, Norway, Finland, Belgium, and Germany have adopted ET legislation in hope to control their citizens' behavior outside their borders. All those countries also have statutory rape status; however, the consenting age varies from 15 to 18 year-old.

Sweden used its own existing ET laws to prosecute Bengt Bolin, 66 year-old, arrested in Thailand in bed with a 14 year-old boy.¹²⁷ The laws were not constructed to apply specifically to sex tourists. Sweden extended its penal code extraterritorially in 1962.¹²⁸ The original purpose was to protect Swedish nationals

121. See Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 496 & note 58, listing the countries with ET legislation: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Mexico, New Zealand, Norway, Spain, Sweden, Switzerland, Netherlands, Taiwan, Thailand, United Kingdom, and United States.

122. *Id.* at 499 & note 71. The UK has used its ET law only once, against its citizen Kenneth Biden, owner of a vacation camp in France, frequented by English children. Biden pled guilty to three counts of violating the UK's ET law, and received a three-year sentence. Japan has never prosecuted any citizen for traveling overseas and sexually exploiting a child.

123. *Id.* at 496 & note 59. Countries that extraterritorially extend their national laws include Japan, the Netherlands, Norway, Sweden, and Switzerland.

124. *Id.* at 496 & note 60. Certain countries enacted specific legislation against child sex tourism, although these countries' laws already extend extraterritorially - including Belgium, France, and Germany.

125. *Id.* at 495-96.

126. *Id.* at 502. In 1997, the council of Europe adopted a Joint Action Programme, calling member states to review their laws and judicial procedures concerning child exploitation, and to enact and enforce ET legislation against child sex tourist.

127. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1890.

128. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 503 -04 & note 99: Swed. Penal Code ch. 2, § 2 (Swed.) (Law 1972:812). The code reads:

Section 2: Crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court where the crime has been committed:

1. by a Swedish citizen or an alien domiciled in Sweden,

2. by an alien not domiciled in Sweden who, after having committed the crime, has

and to ensure them a fair trial and sentence in case of crimes committed outside the country.¹²⁹ However, the law holds Swedish citizens and residents who travel outside the borders liable for any sexual activity with children that would constitute a crime within Sweden.¹³⁰

Nonetheless, the Swedish law is limited. It includes the requirement of double criminality. Therefore, in order to be prosecuted in Sweden, the national's activity must constitute a crime in both Sweden and the receiving country.¹³¹ Additionally, the court will not impose a penalty greater than the maximum penalty allowable under the laws of the country in which the crime occurred.¹³² Critics also find the law too laxist since the Swedish penal code carries a maximum sentence of four years imprisonment for sexual intercourse with a minor under the age of 15.¹³³ Lastly, a person will not be prosecuted in Sweden in cases where the destination country already held a trial to determine the guilt or innocence of that person.¹³⁴

The positive aspect of the Swedish approach is that it is "child-friendly." Courts will allow videotaped testimony of the child victim rather than requiring their physical presence.¹³⁵ They also will appoint free judicial counsel to children and permit victims to recover damages from the defendant.¹³⁶

The United Kingdom extraterritorially extended certain legislation to cover British citizens and residents involved in sex tourism by enacting the Sex Offenders Act in 1997.¹³⁷ The Act however, requires double criminality for any prosecution in British courts.¹³⁸ In addition, the country has implemented training

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

129. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 504.

130. *Id.* at 504.

131. *Id.* at 505.

132. *Id.* at 505.

133. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1893 & note 277, citing Penal Code ch.6, s 6 (Swed.). See also Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 506, relating that Bolin was sentenced only to three months incarceration following his trial in Sweden.

134. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 505.

135. *Id.* at 505.

136. *Id.* at 505.

137. *Id.* at 514.

138. *Id.* at 514, note 167. United Kingdom Sex Offenders Act 1997, ch. 51, part II, at 7.1(a)(b) states:

Subject to subsection (2) below, any act done by a person in a country or territory outside the United Kingdom which (a) constituted an offence under the law in that

programs in destination countries, teaching police officers questioning techniques used with children, and providing Thailand with child-friendly rooms in which to interview the children.¹³⁹

United States

In 1996, the United States actively participated in the ECPAT World Congress Against Commercial Sexual Exploitation of Children,¹⁴⁰ which aimed at (1) giving international visibility to the issues, (2) bringing together decision-makers from the relevant major disciplines, and (3) devising a plan of action to end this form of abuse in all countries in the world.¹⁴¹ America also participated in the Second World Congress held in Japan in December 2001.¹⁴² Despite the fact that the United States has not ratified the UNCRC, it is involved with the international community in order to fight sex tourism.

Amidst these international efforts, the Clinton Administration amended the Mann Act of 1910, by adding the Child Sexual Abuse Prevention Act,¹⁴³ to enable American courts to prosecute nationals traveling to foreign countries for the purpose of engaging in sexual acts with minors.¹⁴⁴ The law does not explicitly prohibit sexual intercourse with minors but traveling in foreign commerce, or conspiring to do so, for the purpose of engaging in any sexual act with a person under 18 years of age.¹⁴⁵ Therefore, in order to get a conviction, a prosecutor does not need to prove that actual sexual act happened, but only the defendant's intent to engage in such act with a minor.¹⁴⁶ The law allows the United States to

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

139. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 515-16.

140. Giordanella, *Status of §2423(b)*, *supra* note 79, at 144-45. The U.S. adopted the Declaration and its Agenda.

141. *Id.* at 142-43. The World Congress was held in Stockholm. Delegates from 126 countries and 50 non-governmental organizations attended this conference.

142. The United States adopted the Stockholm Declaration and the Agenda for Action, which was reaffirmed during the Second World Congress in Japan in 2001; see *Country Adoption of the Stockholm Declaration and Agenda for Action*, ECPAT International, available at http://www.Ecpat.net/eng/Ecpat_inter/projects/monitoring/country_adoption.asp (last visited June 11, 2003).

143. Giordanella, *Status of §2423(b)*, *supra* note 79, at 148.

144. 18 U.S.C.A. § 2423(b) (1994) reads:

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

145. *Id.*

146. See *United States v Stephen*, 19 Fed. Appx. 196, (6th Cir. 2001) (Not selected for publication in the Federal Reporter) (upholding the constitutionality of 18 U.S.C.A. § 2423(b), finding the statute

prosecute a child sex tourist even before he can harm a child. In addition, the prosecution does not have to prove that sexual activity was the sole purpose of traveling in foreign commerce; it only must show that "one of the defendant's motives in traveling in foreign commerce was to engage in a sexual act with a minor."¹⁴⁷ Since many sex tourists go overseas for other purposes other than engaging in sexual activities with minors, this interpretation of the statute grants a wider jurisdiction over potential defendants. Finally, the amendment does not contain a double criminality requirement. The major disadvantage of the U.S. statute is that it does not fully protect children ages sixteen and seventeen, unless the sexual conduct involves force, the serious threat of force, or other means to incapacitate the victim.¹⁴⁸

Section 2423(b) has been successfully used in many cases against nationals who travel in interstate commerce to engage in sexual acts with minors.¹⁴⁹ It has also been used once against a U.S. citizen who traveled to Honduras to engage in sexual activity with an underage boy¹⁵⁰ and once against a permanent resident who traveled to Mexico to rape a 13 year-old girl.¹⁵¹ Both trials resulted in conviction of multiple sexual offense charges.

Australia

Due to its proximity to Asia, the Australian government realized the degree of involvement of its nationals with the sex trade.¹⁵² Therefore, in 1994, Australia passed the Child Sex Tourism Act.¹⁵³ The Act is highly comprehensive,

did not violate Due Process while punishing for 'mere thought').

147. See *United States v. Garcia-Lopez*, 234 F. 3d 217, 219 (5th Cir. 2000) (affirming the district court's jury instruction) *cert. denied*, 532 U.S. 935, 121 S. Ct. 1389, 149 L.Ed.2d 313 (2001). See also *United States v. Miller*, 148 F.3d 207, 211-13 (2d Cir. 1998) (finding that illegal sexual acts with minor must be dominant purpose of traveling in interstate commerce, but not sole, or most important reason). The Miller court notes that every other circuit that has considered this issue has rejected the interpretation suggested by Miller [that illegal sexual acts with a minor be the most important or sole purpose of traveling in interstate commerce].

148. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1907, explaining that 18 U.S.C. § 2241 only legislates against sexual activity with a 16 or 17 year-old child if the sexual activity includes force or the threat of force.

149. Giordanella, *Status of §2423(b)*, *supra* note 79, at 150-52, relating examples of U.S. government applying § 2423(b) against citizens lured by police forces, posing as teenagers on the Internet, into traveling in another state for the purpose to engage in sexual conduct with these teenagers.

150. See Edelson, *A Model for Amending Existing Legislation*, *supra* note 13 at 529-32 & notes 267-88, relating the prosecution of Professor Marvin Hersh who traveled numerous times in Honduras to engage in sexual conducts with young boys. Hersh was convicted of 10 child sex charges, including § 2423(b), and was sentenced to a total of 105 years of imprisonment.

151. *United States v. Garcia-Lopez*, 234 F. 3d 217, 219 (5th Cir. 2000).

152. See EPCAT Online Newsdesk, AFP, *Australian brothels are making more than \$630,000 a week from Asian sex slave*, The Bangkok Post, May 23, 1999, available at http://www.ecpat.net/eng/Ecpat_inter/IRC/newsdesk_articles.asp?SCID=282 (last visited Apr. 15, 2002) (on file with author). The Bangkok Post reported that Australian organized crime syndicates smuggled hundreds of women from Asia to work as sex slaves in Australian brothels.

153. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 507. Crimes Amendment Act, No. 105, 1994 (Austl.).

prohibiting any citizen or resident from engaging in sexual intercourse or other sexual activity with any person under the age of sixteen, anywhere in the world.¹⁵⁴ It also prohibits inducing, advertising, benefiting from, assisting, or encouraging sexual acts between an Australian and a child under sixteen.¹⁵⁵ The Act carries a maximum sentence of seventeen years of imprisonment.¹⁵⁶ Because of the Act's broad language, the Australian judicial system has retained jurisdiction not only upon nationals traveling outside the country to engage in sexual activities with minors, but also upon travel agents, brothel keepers, advertisers, or any person or business benefiting from the commercial sexual exploitation of children.¹⁵⁷ Critics have praised this ET legislation because it is the only one allowing prosecution of corporations, having their principal place of business in Australia, implicated with sex tourism.¹⁵⁸ Additionally, the law does not require double criminality, or the physical presence of a child witness in court.¹⁵⁹

By May 1999, Australia had initiated nine prosecutions under the Child Sex Tourism Act, which resulted in six convictions.¹⁶⁰ Among them, was the case of John Arthur Lee, who was sentenced to twelve years in prison for 24 sex crimes against children in Cambodia.¹⁶¹ This case rested entirely upon forensic evidence,¹⁶² showing the determination of the Australian government to apply a policy of zero-tolerance with sex tourists.

Combined with its ET legislation, Australia conducts training programs for police officers from receiving countries, ensuring their familiarity with their own countries' laws against sexual exploitation of children and teaching non-threatening methods of questioning child victims.¹⁶³

IV – LIMITS AND RECOMMENDATIONS

In December 2001, ECPAT held the Second World Congress Against the

154. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1898.

155. *Id.* at 1898; *see also* Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 508.

156. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1898.

157. *Id.* at 1898. The provision enables Australia to prosecute businesses that promote child sex tours.

158. *Id.* at 1898.

159. *See* Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 508-09, explaining that the ET legislation permits children to testify by video-link where personal appearance in court would involve unreasonable expense or inconvenience, psychological harm, or sufficient stress to prevent the children from testifying reliably.

160. *See* ECPAT Newsclippings, *Australian child sex tourist sentenced*, May 29, 1999, available at <http://www.ecpat.net/newsup/news05/aus05.htm> (last visited Apr. 23, 2001)(on file with author).

161. *Id.*

162. *Id.* The article explains that Lee was arrested after he showed a co-worker pictures of an unidentified man having sex with girls as young as eleven. After the police went to Cambodia to find the girls in the picture and failed to locate them, the main evidence against Lee were forensic since there was no witness and the man in the photo did not show his face. Experts matched Lee's skin and fingerprints from the photographs and identified the age of the girls.

163. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 509-10.

Commercial Sexual Exploitation of Children,¹⁶⁴ during which 159 countries reaffirmed their commitment to the Stockholm Agenda for Action,¹⁶⁵ adopted in 1996 during the first World Congress. The Congress in Yokohama recognized and welcomed the developments that had occurred since 1996, including a greater emphasis on the rights of the child and a better implementation of the UNCRC, the increasing mobilization of national governments and the international community to safeguard the future of a child, and the adoption of multi-faceted laws, regulations and programs aimed to protect a child from sexual exploitation.¹⁶⁶ The organization recognized though that much more was required to fully protect children globally and expressed its concerns at the delays in the adoption of needed measures in various part of the world.¹⁶⁷ In order to be more effective against sexual exploitation of children, the Congress suggested that governments be more effective in their implementation of the UNCRC, ratify and apply ILO 182, ensure adequate resource allocation to social programs and law enforcement to prevent children from entering the sex trade, and commit to promote co-operation between all key actors.¹⁶⁸

Receiving and sending countries are co-operating with NGOs to better protect the children of the world but there are still some obstacles that must be overcome in order to end the commercial sexual exploitation of children. Many countries have adopted new legislation and awareness campaigns to deter the use of children in the sex trade, but the occurrence continues to increase.¹⁶⁹ The business is highly lucrative and intimately connected to criminal organizations, making it more difficult to eradicate.

Need of full cooperation between receiving countries, sending countries, and NGOs

ECPAT lists poverty, family breakdown and abuse, gender bias, lack of law enforcement, tourism, tradition and culture, unemployment, homelessness, and HIV/AIDS as principal causes for commercial sexual exploitation of children.¹⁷⁰ Another report adds illiteracy, tradition and superstition, a caste system, lack of economic opportunity, rural-urban migration, population growth, and political

164. See ECPAT, *Second World Congress in Yokohama, Japan*, Dec. 17 - 20, 2001, available at <http://ecpat.net/eng/index.asp> (last visited Jan. 3, 2003).

165. *Id.*

166. ECPAT, *The Yokohama Global Commitment 2001*, available at http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/wc2/yokohama_commitment.asp (last visited Jan. 3, 2003).

167. *Id.*

168. *Id.*

169. Todres, *Prosecuting Sex Tour Operators*, *supra* note 86, at 1, indicating that the number of children entering the sex trade amounts to one million per year. See also ECPAT, *Commercial Exploitation of Children for Sex Was Growing, Despite Promises From More Than 120 Countries to Tackle the Flesh Trade, Pornography and Sex Tourism, According to Child-Rights Workers Gathered in Bangkok*, Associated Press, Sep. 21, 1999, available at http://www.ecpat.net/eng/Ecpat_inter/IRC/tmpNews.asp?SCID=320 (last visited Jan. 3, 2003).

170. ECPAT, *Causes of CSEC*, available at <http://www.ecpat.org/cseccauses.htm> (last visited Apr. 16, 2002)(on file with author).

instability to the reasons for the lack of legal provisions.¹⁷¹ Most of these socio-economic issues could be targeted through the implementation of a long-term social plan promoting education, family values, and equality between genders. However, because of their status of being developing countries, the destination nations lack the monetary and human resources necessary for social programs and services. NGOs can help.¹⁷² Receiving countries must welcome the NGOs and publicly support their missions in order to suggest to parents and children in financial difficulties that alternatives to the sex trade exist to overcome poverty.¹⁷³ The status quo in destination countries relating to the position of the child must be changed. Studies showed that most children involved in the sex trade were neglected or abused by their own families.¹⁷⁴ In conjunction with NGOs, governments can develop family counseling programs, centers for runaway children, orphanages, and other institutions oriented toward promoting family values.

Industrialized countries can also participate in supplementing the costs of a social plan. Sweden for example, makes a defendant found guilty of sexual conduct with a minor contribute to a fund for victims of sexual abuse.¹⁷⁵ Such funds can then be used to finance different projects helping the social reintegration of a child prostitute, providing psychological help, instruction of skills, housing, etc.

There is a need for awareness and information; few people - including law enforcement - know the laws of their home country and the risk they take if they are involved with the sex trade. Therefore both sending and receiving countries must organize public campaigns, advertising their penal codes to alert potential sex tourists, brothel providers, parents selling their child, and any other participants to what the impending consequences of their actions are.¹⁷⁶ If people fear prosecution, they would probably think twice before acting. The campaign should also inform the sex tourists of the risk to their health. Many perpetrators act under the mistaken belief that having sex with young children will minimize the risk of contracting the HIV virus.¹⁷⁷ This is a myth; doctors believe that sexually active

171. Kimberly Svevo, *Expert Meeting on Sexual Abuse of Children, Child Pornography and Pedophilia on the Internet, An International Challenge*, at 6, UNESCO Global Report Child Abuse and Neglect, Jan. 18-19, 1999 (Dec. 1998), available at <http://unesdoc.unesco.org/images/0011/001147/114738eo.pdf> (last visited Jan. 3, 2003).

172. Rastogi, *Preserving Children's Rights*, *supra* note 82, at 281, relating how the organization "Women of Tomorrow" implemented in Thailand a scholarship program, offering girls training and jobs in the textile industry, gem cutting, and nursing assistantships. Such skills allow them to earn up to \$200 per month, more money than what most prostitutes in Southeast Asia make.

173. Levesque, *Sexual Use, Abuse*, *supra* note 35, at 980, explaining how poverty continues to play an important role in the enrollment of children in the sex trade and how the evidence of good incomes of many prostitutes encourage children to sell sex for a living.

174. Barbosa, *Family Perspective*, *supra* note 14.

175. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 505.

176. Todres, *Prosecuting Sex Tour Operators*, *supra* note 86, at 19, relating that Air France has implemented in-flight projection of a documentary informing tourists that sexual activities with minors are illegal and a French citizen or resident can face charges in a French court of law.

177. Erik Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, 19 B.C. Int'l

children are more likely to carry the virus than adults.¹⁷⁸ Some reports indicate that about 50% of underage exploited children have the AIDS virus and the number is on the rise.¹⁷⁹ Knowing the risk involved, an offender may reconsider his behavior before engaging in sexual intercourse with children.

Finally, to facilitate evidence collection and successful prosecutions, some suggest that countries adopt the Mutual Legal Assistance Treaty ("MLAT").¹⁸⁰ The suspect is usually arrested in the receiving nation, where the criminal sexual act happened, where the witnesses are and where evidence can be gathered. Therefore, if the sending country, the home of the suspect, is to try him, there must be collaboration between the two countries. Most often, the lawyers and prosecutors will have to go on site to interrogate people and verify the facts, which raises the issues of translation and interpretation. The process depends heavily on the diplomatic relations between the two countries and is also very costly. Until now, voluntary and individual action has reduced the costs to a certain extent.¹⁸¹ Conversely, if the sending country decides to import the witnesses and evidence rather than going to the receiving country, other issues are raised. Cost is still high and the children involved might be scared off. Without MLATs, countries must rely on these individual efforts to persuade courts and law enforcement to cooperate. To be fully effective, the system should not depend on occasional volunteers but on professionals, permanently working against sexual exploitation of children, who are knowledgeable about the sex industry and sensitive to the situation of the children. Special agencies could be created -composed of police officers, child psychologists, interpreters, lawyers, and social workers - who would dedicate their efforts and resources to dismantle the sex trade and protect the children.

We have seen how some industrialized countries are already involved with the destination country in developing joint programs and partnership – e.g. Australia and the UK.¹⁸² Many more must get involved in training law enforcement units and providing financing for police forces committed to combat the sexual exploitation of children. Because sending countries depend heavily on the co-operation with the police from the receiving country, there is a need of a well-trained, uncorrupted force to provide adequate assistance.

& Comp. L. Rev. 397, 399 (1996).

178. *Id.* at 399. See also Rastogi, *Preserving Children's Rights*, *supra* note 82, at 266, explaining that young girls are more susceptible to contract AIDS than women because the sexual offenders will likely tear the tissue in a young girl's body during intercourse.

179. *Id.* at 266 explaining that brothel owners are aware that the children have the virus but still force them to work as prostitute. Rastogi also reports that in India, three to five million people have contracted the disease and an estimated 10 million people will within the next decade.

180. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 513.

181. Pierre Dionne, Director-general International Bureau for Children's Rights, *Legal and Judicial aspects: extraterritorial law and extradition*, at 6, available at http://www.unesco.org/webworld/child_screen/documents/dionne.rtf (last visited Jan. 16, 2003).

182. Anucha Charoenpo, *The United States and Thailand will launch joint programmes to combat smuggling of people for prostitution and illegal labour*, The Bangkok Post, Feb. 11, 2002, ECPAT Online Newsdesk, available at http://ecpat.net/eng/Ecpat_inter/IRC/tmpNews.asp?SCID=640 (last visited Jan. 3, 2003)

Model ET legislation

Countries that have already adopted ET legislation must ensure their consistency with the UNCRC and ILO C 182 principles. Such laws are to enable countries to prosecute a child sex tourist for activity in a receiving country which would constitute a crime against a child in the sending country;¹⁸³ they must be enforced unanimously. Unfortunately, too many offenders go unpunished.¹⁸⁴ It has been suggested that all sending countries should implement a model ET legislation.¹⁸⁵ Such legislation would apply to both citizens and permanent residents of a country,¹⁸⁶ to establish jurisdiction over a greater population. It would not have a double criminality requirement, which frustrate the purpose of ET legislation.¹⁸⁷ With this constraint, many children are left unprotected since the consenting age significantly varies between countries.¹⁸⁸ In addition, ET laws should not require that victims make a formal complaint or that the receiving government request prosecution.¹⁸⁹ On the contrary it should be child-friendly, allowing video-link testimony, in order to limit the psychological harm to the child victim.¹⁹⁰ Children are often unaware that they may access the court system to help their situation; they are often scared as well and not willing to collaborate with the judicial system. Not all destination countries will file requests for prosecution – sex tourism is too profitable for their economy. Finally, the ET legislation should be modeled after the U.S. Child Sexual Abuse Prevention Act.¹⁹¹ Such a statute penalizes persons traveling overseas with the intent to sexually exploit children. There is no need of actual sex conduct and the sex tourist may be inculpated even if sex was not the only reason for the trip; conviction can happen even before a child is harmed.

In addition to applying jurisdiction over their nationals, sending countries should enact ET legislation that would allow them to punish businesses and corporations that benefit from sex tourism.¹⁹² Today, only Australia provides for

183. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 533.

184. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1853, relating how Dr. Ritter never faced prosecution in Austria.

See also Roz Prober, *Canada's Flawed Sex Tourism Legislation Puts All Kids at Risk*, *Tribune*, Sept. 2000, Vol. 7, No. 2 & 3, available at <http://www.hri.ca/children/texts/newindex.shtml> (last visited Jan. 3, 2003). The article reported that a Canadian teacher escaped prosecution for the rape of a seventeen year-old in Costa Rica since the act is not criminal in that destination country.

185. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 532-35.

186. *Id.* at 533.

187. *Id.* at 533-34.

188. Remy, *La Pédophilie*, *supra* note 1, at 80. The authors explain that the French statutory rape laws concern children up to the age of 15 years. See also Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1853 & note 8, relating that the Philippines statutory rapes laws protect children up to the age of 12 only. And Levesque, *Sexual Use, Abuse*, *supra* note 35, at 985-86, stating that many countries either have no laws relating to emancipation or consider children as young as 13 to be sexually emancipated.

189. Edelson, *A Model for Amending Existing Legislation*, *supra* note 13, at 534.

190. *Id.* at 535.

191. *Id.* at 533-34.

192. See generally Todres, *Prosecuting Sex Tour Operators*, *supra* note 86, explaining how the

the prosecution of corporations¹⁹³ and of nationals who operate brothels, bars, or any businesses promoting sexual exploitation of children, regardless of their location.¹⁹⁴

Making commercial sexual exploitation of children a crime against humanity

In 1993, France and Australia presented the Draft Optional Protocol ("Draft") to the UN Convention on the Right of the Child.¹⁹⁵ Under the Draft, states are obligated to collaborate on the issue of commercial sexual exploitation of children.¹⁹⁶ In addition, Article 1 categorizes sexual exploitation and trafficking in children as a crime against humanity.¹⁹⁷ If that were the case, commercial sexual exploitation of children would be under universal jurisdiction, in the same category as genocide, torture, slave trade, piracy, attacks and hijacking of aircraft, and war crimes.¹⁹⁸ Any state would have jurisdiction over the suspect, no matter his nationality or the place of the sexual act.¹⁹⁹ Universal jurisdiction would resolve the issues of dual criminality and discrepancy in the age of consent. It would also facilitate the prosecution of many more sexual crimes against minors.

CONCLUSION

By the end of the year 1999, the Tribune reported that more than 70 prosecutions of sex tourists had occurred worldwide.²⁰⁰ Such trials were permitted because of the efforts of NGOs pressuring governments to take action against the commercial sexual exploitation of children. Since then, other suspects have been brought to court and face responsibility, and many more will.

After the Second World Congress of Yokohama, 159 countries²⁰¹ committed or re-committed to the Stockholm Agenda for Action, which called all states to (1) accord high priority to action against the commercial sexual exploitation of children, (2) promote better cooperation between states to prevent children from entering the sex trade, (3) criminalize and penalize the offenders, and (4) review and enforce all laws, policies and programmes designed to protect children.²⁰²

Mann Act and State laws of New York can be applied to prosecute sex tour operators in U.S. Federal and State courts.

193. Healy, *Prosecuting Child Sex Tourists*, *supra* note 12, at 1915.

194. *Id.* at 1915.

195. *Id.* at 1879.

196. *Id.* at 1879.

197. *Id.* at 1879. Draft Optional Protocol, art. 1(1).

198. Restatement of Foreign Relations Law § 404 (1986).

199. Restatement of Foreign Relations Law § 423 (1986).

200. Roz Prober, Mark Erik Hecht, *Child Advocates Unite against a Global Rise in Child Exploitation*, Tribune, Dec. 1999, Vol. 6, No.4, available at <http://www.hri.ca/cftribune/templates/article.cfm> (last visited Feb. 19, 2001)(on file with author).

201. ECPAT, *Second World Congress Against the Commercial Sexual Exploitation of Children*, available at http://ecpat.net/eng/Ecpat_inter/projects/monitoring/WC2.asp (last visited Jan. 3, 2003).

202. Mark Hecht, *The World Congress Against the Commercial Sexual Exploitation of Children*, Tribune, Jan. 1997, Vol. 4, No. 7-9, available at <http://www.hri.ca/children/texts/wcacsec.shtml> (last

This proves that nations are joining together to prevent the phenomenon from spreading.

However, there are still millions of children who are involved in the sex trade or who risk getting involved. It should no longer be controversial to propose that there exists a developed body of customary and formal international law constituting children's human rights to be protected from sexual maltreatment. Countries are bound by the UNCRC and ILO C 182 to protect children of the world from sexual exploitation. International law offers the necessary first step.²⁰³ It is now up to national governments to implement its principles and respect Children's Human Rights.

visited Feb.19, 2001)(on file with author).

203. Levesque, *Sexual Use, Abuse, supra* note 35, at 998.

