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## COMMENTS

# U.S. DOMESTIC PROSECUTION OF THE AMERICAN INTERNATIONAL SEX TOURIST: EFFORTS TO PROTECT CHILDREN FROM SEXUAL EXPLOITATION

SARA K. ANDREWS\*

### I. INTRODUCTION

The commercial sexual exploitation of minors by international tourists is a humanitarian tragedy carried out on a grand scale with virtually no repercussions for the criminal perpetrators.<sup>1</sup> According to End Child Prostitution in Asian Tourism (ECPAT), an international child advocacy organization based in Bangkok, child prostitution in developing countries is a culturally embedded problem that is significantly exacerbated by foreign tourists.<sup>2</sup> The United States is one of the “sending countries” that enables the international child sex market to flourish by providing a wealthy and willing customer base.<sup>3</sup>

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<sup>1</sup> See, e.g., JEREMY SEABROOK, *NO HIDING PLACE: CHILD SEX TOURISM AND THE ROLE OF EXTRATERRITORIAL LEGISLATION* (2000).

<sup>2</sup> ECPAT Int'l, *Frequently Asked Questions About CSEC: Child Prostitution*, at <http://www.ecpat.net/eng/CSEC/faq/faq2.asp> (last visited Mar. 3, 2004).

<sup>3</sup> LAURA BARNITZ, *COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: YOUTH INVOLVED IN PROSTITUTION, PORNOGRAPHY AND SEX TRAFFICKING* 16 (2d ed. 2000) (citing *The Paedo File*, 17 ECPAT INT'L NEWSLETTER 4-5 (Aug. 1996)). ECPAT compiled data on 240 foreigners who sexually abused children in Asian countries. Twenty five percent of the reported abusers came from the United States, followed by Germany (16%), the United Kingdom (13%), Australia (12%), France and Japan (7% each). ECPAT, an international non-governmental agency dedicated to the elimination of child prostitution, pornography and the trafficking of children for sexual purposes worldwide, is comprised of a network of groups and individuals working in over fifty countries.

Although exact figures of the number of American tourists who travel abroad for the purpose of engaging in sex with minors are difficult to obtain, arrest/detention records of popular travel destinations in the developing world, such as Southeast Asian countries, reveal a significant U.S. presence.<sup>4</sup> These records, however, are limited in their ability to provide an accurate assessment of the overall magnitude of the problem, because most sex tourists evade arrest in the countries in which they commit their crimes.<sup>5</sup> According to the U.S. House of Representatives Committee on the Judiciary, “[s]ex tourists often escape prosecution in the host countries” because of factors “ranging from ineffective law enforcement, lack of resources, corruption, and immature legal systems.”<sup>6</sup> Most developing nations have little incentive for domestic enforcement because tourism is one of the main driving forces behind their economies.<sup>7</sup>

Over the past decade, the U.S. has publicly recognized the severity of the problem of child sexual exploitation on a global level and has undertaken measures designed to help solve the problem.<sup>8</sup> In 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, better known as the Crime Bill.<sup>9</sup> The legislation included a provision, referred to as the Child Sexual Abuse Prevention Act, which made it a criminal offense to travel abroad for the purpose of engaging in sexual activity with a minor.<sup>10</sup> In June 2002, the U.S. House of Representatives passed the Sex Tourism Prohibition Improvement Act of 2002, declaring the bill would “close significant loopholes” in the existing law.<sup>11</sup> Certain provisions included in this bill became law in April 2003, when President George W. Bush signed the PROTECT Act.<sup>12</sup> In addition, in December 2002, the U.S. became the forty-second country to ratify the Optional Protocol to the United Nations (U.N.) Convention on the Rights of

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<sup>4</sup> Thomas Sancton, *Crimes Against Children: Preying on the Young All Over the World, Boys and Girls are Abused in Vicious Sex Trade Now Abetted by Computer Networks*, TIME INT'L, Sept. 2, 1996, at 22.

<sup>5</sup> H.R. REP. NO. 107-525, at 3 (2002).

<sup>6</sup> *Id.*

<sup>7</sup> JEREMY SEABROOK, TRAVELS IN THE SKIN TRADE 167 (2d ed. 2001).

<sup>8</sup> *Fact Sheet: U.S. Joins U.N. Protocol to Prevent Child Trafficking, Exploitation—Protocol Devoted to Protection of Children's Human Rights*, DOW JONES INTERACTIVE, Dec. 24, 2002, at 2002 WL 104129426 [hereinafter *Fact Sheet: Children's Human Rights*].

<sup>9</sup> 18 U.S.C. § 2423(b) (2000).

<sup>10</sup> *Id.*

<sup>11</sup> H.R. REP. NO. 107-525, at 11 (2002). The bill was passed by a vote of 418-8. See *Final Votes for Rollcall 259*, at <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=259> (last visited Mar. 3, 2004). It was not passed by the Senate during the 107th Congress.

<sup>12</sup> See *infra* Part VII.

the Child on the Sale of Children, Child Prostitution, and Child Pornography.<sup>13</sup> Adopted by the U.N. General Assembly in 2000, the Optional Protocol is the first instrument of international law to provide a framework for the criminalization of the actions of child sex abusers on a global level.<sup>14</sup>

Through its legislative efforts and support for the Optional Protocol, the U.S. has taken steps to acknowledge the gravity of the global problem of child sexual exploitation, as well as the complicity of U.S. citizens in its perpetuation. However, recognition of the severity of the problem, although an important development, is only the first step in the process of addressing child sexual exploitation in a meaningful and effective way. Since its passage in 1994, the Child Sexual Abuse Prevention Act has resulted in few actual prosecutions of U.S. nationals who traveled abroad for the purpose of committing sex crimes against minors.<sup>15</sup> Other "sending" countries, some with comparable extra-territorial legislation and some with more comprehensive laws, have also encountered low levels of enforcement.<sup>16</sup>

Part II of this Comment provides background on the extent of the problem of sex tourism. Part III explores the responses of the U.S and Australia on the one hand, and "receiving" countries on the other, examining what these nations are and are not doing in the areas of law and enforcement. Part IV describes the collective diplomatic reaction of the international community, and Part V concludes with recommendations for future U.S. initiatives to combat the complicity of U.S. citizens in the commercial sexual exploitation of children on a global level.

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<sup>13</sup> *Fact Sheet: Children's Human Rights*, *supra* note 8. There are currently 105 signatories to the Optional Protocol. U.S. ratification was effectuated by unanimous approval by the Senate and ratification by President George W. Bush on December 24, 2002. *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> As of November 2002, there had only been five prosecutions of U.S. nationals for sex crimes with minors abroad. Toni Heinzl, *Prison Term for 'Sex Tourist'*, FORT WORTH STAR-TELEGRAM, Nov. 19, 2002, at 1. The passage of the PROTECT Act in 2003 has resulted in more aggressive action against sex tourists. U.S. DEP'T OF STATE, FACT SHEET: RECENT DEVELOPMENTS IN U.S. GOVERNMENT EFFORTS TO END HUMAN TRAFFICKING (2004), available at <http://www.state.gov/g/tip/rls/fs/28548.htm> (last visited Mar. 3, 2004). A February 2004 U.S. State Department Fact Sheet reports that "the Justice Department has arrested eight U.S. citizens abroad for illegal sexual conduct with minors since May 2003." *Id.*

<sup>16</sup> Bernadette McMenamin, of ECPAT, has noted: "While there are 30 countries that have [extra-territorial] laws [against child sexual exploitation], they're not actively using them. The offices are just stumbling on these cases . . . the bottom line is money." Daniel Lovering, *International Paedophiles Flock to Asia Despite High-Profile Arrests*, AGENCE FRANCE PRESSE, Aug. 27, 2001.

## II. THE EXTENT OF THE PROBLEM

*"Tourism and the [sex] industry are mutually reinforcing."*<sup>17</sup>

Tourism is one of the largest, most lucrative industries worldwide.<sup>18</sup> For many vacationers, particularly those traveling from industrialized nations to developing countries, paying for sex with a male or female in their destination country is an integral part of the travel experience.<sup>19</sup> Each year foreign travelers from predominantly Western countries pump billions of dollars into the economies of developing nations when they purchase sexual services.<sup>20</sup> This practice, commonly referred to as "sex tourism," although more often than not illegal in both the host country and the country of the traveler's origination, has become widely acknowledged. In fact, it is so common that the New Oxford Dictionary added the phrase "sex tourism" to its publication in 1998.<sup>21</sup>

Whether by preference or circumstance, children are frequently targeted by travelers for commercial sexual exploitation.<sup>22</sup> The U.N. has defined child sex tourism as "tourism organized with the primary purpose of facilitating the effecting of a commercial-sexual relationship with a child."<sup>23</sup> Child advocacy groups identify three major categories of sexual

<sup>17</sup> LET'S GO: THE BUDGET GUIDE TO SOUTH EAST ASIA 183 (Grayman et al. eds., 1996).

<sup>18</sup> SEABROOK, *supra* note 7, at 167.

<sup>19</sup> See, e.g., CHRIS RYAN & MICHAEL C. HALL, SEX TOURISM: MARGINAL PEOPLE AND LIMINALITIES (2001). Of the 4.3 million tourists who visited Thailand in 1988, seventy five percent were unaccompanied men. Vickie F. Li, *Child Sex Tourism to Thailand: The Role of the U.S. as a Consumer Country*, 4 PAC. RIM L. & POL'Y J. 505, 515 (1995).

<sup>20</sup> According to a 1998 report by the International Labour Organisation (ILO), the money generated by sex tourism accounts for between two and fourteen percent of the Gross Domestic Product of Indonesia, Malaysia, the Philippines and Thailand. This has translated into an estimated \$1.2 to \$3.3 billion boost to Indonesia's economy each year. In Thailand, one of the most popular destinations for sex tourists worldwide, the Chulalongkorn University Political Economy Centre in Bangkok has estimated that prostitution accounts for at least two-thirds of the \$33 to \$44 billion brought in annually by Thai "underground businesses." See 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, 2-3 (1999).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> See, e.g., BARNITZ, *supra* note 3; see also Heinzl, *supra* note 15 (quoting Carol Smolenski, executive director of ECPAT-USA, as estimating "that twenty-five percent of sex tourists engage in sex with children").

<sup>23</sup> See *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, U.N. Comm. on Human Rights, 52d Sess., Agenda Item 20(b), U.N. Doc. E/CN.4/1996/100 (1996), available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/52710603d7ecc8d080256707004eb76f?Opendocument> (last visited March 3, 2004).

exploitation of minors for monetary gain: prostitution, pornography and trafficking for sexual purposes.<sup>24</sup>

The commercial sexual abuse of minors is not a new phenomenon.<sup>25</sup> It is a culturally embedded, global problem that has existed throughout history, with locals traditionally providing the largest customer base.<sup>26</sup> However, the technological advances that have facilitated global travel in the twentieth and twenty-first century have enabled a much broader, international range of consumers to travel long distances to obtain sex with minors.<sup>27</sup>

Although foreign demand for commercial sex in developing countries is significantly outweighed by local demand, the presence of international consumers and the financial resources that accompany them are significant factors in the perpetuation of the sex industry worldwide.<sup>28</sup> Additionally, the dramatic financial disparity between customers from industrialized "sending" countries and those who service them in the "receiving countries" results in a heightened imbalance of power that increases tourists' access to children and presents disincentives for local governments to criminally prosecute the perpetrators.<sup>29</sup>

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<sup>24</sup> BARNITZ, *supra* note 3, at 3.

<sup>25</sup> ECPAT Int'l, *supra* note 2.

<sup>26</sup> *Id.*

<sup>27</sup> 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, 487-88 (2001). Modern technology facilitates global travel by making travel to countries on the opposite end of the globe quick, relatively inexpensive and accessible to a large number of consumers. Additionally, the Internet has provided a forum for sex tourists to find a wealth of information about sex tourism destinations, learn about the experiences of other travelers, connect with travel providers who advertise sex tours online, and seek out pornography. *Id.* For example, an online "World Sex Guide" provides descriptions of travelers' sexual encounters with pre-pubescent girls in countries such as Thailand and Costa Rica. Julia O'Connell Davidson, *Sex Tourism and Child Prostitution*, in TOURISM AND SEX: CULTURE, COMMERCE AND COERCION 62 (Stephen Clift & Simon Carters eds., 2000).

<sup>28</sup> Margaret A. Healey, *Prosecuting Child Sex Tourists At Home: Do Laws in Sweden, Australia, and the U.S. Safeguard the Rights of Children as Mandated by International Law?*, 18 FORDHAM INT'L L.J. 1852, 1861 (1995).

<sup>29</sup> The commoditization of children is facilitated by the diminished social, economic and political status of minors. See O'Connell Davidson, *supra* note 27, at 59. One commentator, a British professor, has described sex tourism as "an appalling consequence of global recreation and the vast disparity between the resources of wealthy adults in the North and poor children in the South." Judith Masson, *Letters—UK Law Can't Stop Sex Tourists*, NEW STATESMAN, June 17, 2002, at 1.

## A. THE EXPLOITED

Due to the covert nature of child sexual exploitation and the lack of a comprehensive methodology for tracking the levels of involvement of children in the sex industry, both governmental agencies and youth advocacy organizations are hesitant to assign concrete figures to the numbers of minors involved.<sup>30</sup> Reliable estimates are exceedingly difficult to obtain, as much of the evidence of child exploitation is anecdotal.<sup>31</sup> Consequently, figures vary.<sup>32</sup> Nevertheless, most organizations are in agreement that the commercial sexual abuse of children occurs at an alarming rate.<sup>33</sup> UNICEF has estimated that there are more than one million child prostitutes in Asia alone.<sup>34</sup> While child commercial sexual exploitation has customarily been associated with Asian countries such as Thailand, the Philippines, Sri Lanka and Taiwan, it has become a significant social problem in Africa and Latin America, and the trafficking of youth into the sex industry is on the rise in Eastern Europe.<sup>35</sup>

Part of the difficulty in obtaining accurate empirical data is the lack of a universal definition of what constitutes a child.<sup>36</sup> While the U.N. Convention on the Rights of the Child defines children as “every human

<sup>30</sup> Although there have been efforts to collect information, research methods have varied and consequently, aggregating data from numerous sources has proved a formidable challenge. Additionally, the research that has been conducted has primarily focused on the most visible forms of exploitation, such as that carried out with the poverty stricken children in quasi-public places such as brothels. While this type of information is undoubtedly the most easily accessible, it fails to take into account other forms of more covert, but equally pernicious abuse. ECPAT Int'l, *Frequently Asked Questions About CSEC: How Many Children Are Victims?*, at <http://www.ecpat.net/eng/CSEC/faq/faq8.asp> (last visited Mar. 3, 2003).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* Child advocacy organizations provide high-end estimates, while governmental agencies tend to underestimate. *Id.*

<sup>33</sup> In 2001, the U.N. Secretary General estimated that over thirty million children are trafficked into the sex industry each year. Amy McCoy, *Children “Playing Sex for Money”*: A Brief History of the World's Battle Against the Commercial Sexual Exploitation of Children, 18 N.Y.L. SCH. J. HUM. RTS. 499, 500 (2002); see also UNICEF, *Second World Congress Against Commercial Sexual Exploitation of Children: Analysis of the Situation of Sexual Exploitation of Children in the Eastern and Southern Africa Region* (Oct. 2001), at <http://www.unicef.org/events/yokohama/csec-east-southern-africadraft.html#Toc527979960>.

<sup>34</sup> R. Barri Flowers, *The Sex Industry's Worldwide Exploitation of Children*, 575 ANNALS 147, 149 (2001).

<sup>35</sup> Healey, *supra* note 28, at 1861-64. NGOs estimate that over one million children are prostituted in Asia alone. UNICEF calculates that around half a million child prostitutes reside in Brazil, mainly street children. Additionally, countries in Africa such as Kenya, Zaire, Mozambique, and South Africa have become popular destinations for child sex tourists. *Id.*

<sup>36</sup> Edelson, *supra* note 27, at 489.

being below the age of eighteen years," the age of majority for the purpose of consent varies from country to country.<sup>37</sup>

Although the breadth of the child sex industry is difficult to measure, reasons why children are drawn into it are more easily discernable. Money is almost always at the root of the problem.<sup>38</sup> Most children who are coerced or lured into the sex industry come from extremely poor, rural areas, where one daughter's earnings as a prostitute could support an entire family.<sup>39</sup> Some children are knowingly sold into prostitution by their parents, while others are duped into separating from their families based on the false promises of recruiters who offer aid in securing legitimate employment for the child only to market that child into the sex industry for personal profit.<sup>40</sup>

Many children who suffer psychological or physical abuse from their families take to the streets and become casualties of the sex industry due to financial necessity.<sup>41</sup> Additionally, significant numbers of women and children are abducted either forcibly or based on false promises, trafficked across national lines, and coerced into engaging in sexual activity for the profit of others.<sup>42</sup>

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<sup>37</sup> See Office of the High Commissioner for Human Rights, *Convention on the Rights of the Child*, art. I (Nov. 20, 1989), available at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>. For example, Spain's Penal Code sets the legal age of consent at thirteen. ECPAT Int'l, *Frequently Asked Questions About CSEC: Who is a Child?*, at <http://www.ecpat.net/eng/csec/faq/faq7.asp> (last visited Mar. 3, 2003).

<sup>38</sup> Healey, *supra* note 28, at 1869. Healey notes that although poverty is the main factor behind the entrance of children into the sex industry, some parents knowingly part with their children, not out of a desperate need for money, but rather, because of their desire to procure modern luxury items. *Id.* at 1870.

<sup>39</sup> Li, *supra* note 19, at 511. In Thailand, a woman's income from prostitution is generally twenty-five times the amount she could earn from all other typical forms of rural labor. *Id.* at 509.

<sup>40</sup> *Id.*

<sup>41</sup> ECPAT Int'l, *Frequently Asked Questions About CSEC: What Makes Children Vulnerable to Sexual Exploitation?*, at <http://www.ecpat.net/eng/csec/faq/faq9.asp> (last visited Mar. 3, 2003).

<sup>42</sup> See, e.g., Katrin Corrigan, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 FORDHAM INT'L L.J. 151, 152-54 (2001). The sex trafficking industry has received a significant amount of international attention over the past decade. It is an extremely lucrative business, encompassing "pornography, sex tourism, mail order brides and forced prostitution." *Id.* International sex trafficking is generally defined as the coercing of women and children into sexual slavery. Women and children are usually sold, abducted or raped, then sold into debt bondage and forced to perform sexual acts to repay their "debts." *Id.*

The U.N. estimates that sex trafficking in human beings is a five to seven billion dollar a year business, and the U.N. International Children's Emergency Fund (UNICEF) estimates



## B. THE PERPETRATORS

A common misperception about child sex abusers is that they are all pedophiles.<sup>43</sup> Although it is true that pedophiles contribute to the problem, the majority of customers who pay money to sexually exploit children are first and foremost prostitute users.<sup>44</sup> They may or may not actively seek out underage victims, and their use of sex workers may be habitual or situational.<sup>45</sup> Moreover, they come from all walks of life.<sup>46</sup> They are predominantly male and predominantly from wealthy, industrialized nations like the U.S., Germany, the U.K., Australia, France and Japan.<sup>47</sup>

Children may be sought out as the victims of sexual exploitation for a variety of reasons. In many countries a premium is placed on purchasing sex with virgins, who are prized not only for their youth, but also for their purity and expected lack of sexually transmitted diseases.<sup>48</sup> This expectation of purity is often mistakenly extended to all children.<sup>49</sup> Some abusers prize the innocence of children while others correlate youth with beauty or attractiveness.<sup>50</sup> Some tourists' choice of minors as the objects of

that thirty percent of trafficked women are minors. Alice Leuchtag, *Human Rights, Sex Trafficking and Prostitution: Perspectives on Prostitution*, HUMANIST, Jan. 1, 2003, at 10-11.

<sup>43</sup> O'Connell Davidson, *supra* note 27, at 54. "Paedophile" is a clinical term used to identify an adult with a personality disorder that is manifested by a specific and focused sexual interest in pre-pubescent children. *Id.* at 55.

<sup>44</sup> *Id.* at 54. According to O'Connell Davidson, the Western stereotype that the majority of child sex abusers are pedophiles who seek out children in brothels diminishes the reality of the mainstream and widespread nature of the problem. *Id.*

<sup>45</sup> ECPAT Int'l, *Frequently Asked Questions About CSEC: Who Sexually Exploits Children?*, at <http://www.ecpat.net/eng/csec/faq/faq13.asp> (last visited Mar. 3, 2003).

<sup>46</sup> See, e.g., SEABROOK, *supra* note 1. Seabrook profiled a wide range of perpetrators of child sex abuse, including a computer programmer, a businessman, a student, a plumber, an engineer, a journalist, a teacher, and an unskilled, low-income worker. *Id.*

<sup>47</sup> BARNITZ, *supra* note 3, at 16.

<sup>48</sup> Li, *supra* note 19, at 510. Sudarat Srisang, founder of the Thai organization Fight Against Child Exploitation (FACE), has noted, "[t]he demand for younger women is increasing in the sex industry. When people want to avoid AIDS, they want fresh, unspoilt girls or children. Normal people don't want sex with children. Most sex tourists, of course, are not pedophiles." SEABROOK, *supra* note 7, at 150. In addition, many customers are influenced by the "mythicization of virginity," which can include a cultural belief that sex with a virgin promotes a longer life span or increases one's sex drive. The increased value placed on virgins can be seen in countries such as Burma, where "unveiling" a virgin can cost a customer up to 100 times the price that child will garner as a prostitute after her first sexual experience. BARNITZ, *supra* note 3, at 19.

<sup>49</sup> Li, *supra* note 19, at 510. In reality, children are actually at a greater risk for contracting diseases like HIV because their tissue is more fragile and more easily torn, resulting in facilitated transmission. *Id.*

<sup>50</sup> O'Connell Davidson, *supra* note 27, at 64-66. O'Connell Davidson quotes a German ex-patriate living in South Africa as saying "[t]he little girls, 10 or 12 years old . . . they're

their sexual attention is rooted in a racist ideology that views children from other cultures as more highly sexualized than those in the West and perceives sex with children in foreign cultures as being "natural."<sup>51</sup> Others justify their actions as being financially beneficial for destitute children.<sup>52</sup> Some sex tourists do not claim to choose youth at all, generally denying that the person they were sexually involved with was underage and renouncing any kind of moral complicity for the perpetuation of the child sex industry.<sup>53</sup>

### C. IMPACT ON CHILDREN

Although many tourists seek out children believing them to be free of sexually transmitted diseases such as AIDS, children are actually at a greater risk of contracting infections because their body tissue is more fragile than that of adults.<sup>54</sup> Additionally, young prostitutes are less likely

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fresh. They don't have the attitude of the older whores . . . [who] are hardened. The little girls . . . they're not hardened. They want to please you, they don't know what to expect. You get better service from them." *Id.* at 64. The correlation of youth with beauty is often conveyed through the media, as is evidenced by a publicity campaign for Brazil's *Playboy Magazine*, in which photos of young models were accompanied by headlines such as "She may be 18, but she has the body of a 15-year-old." BARNITZ, *supra* note 3, at 19.

<sup>51</sup> O'Connell Davidson, *supra* note 27, at 64. A sex tourist visiting the Dominican Republic remarked:

Sex is the natural thing in [the Dominican Republic]. . . . They're like animals. That's the only way I can explain it to you . . . By the time a girl is 10 years old, she's had more experience than . . . well, an American woman or an Irish woman won't ever have that much experience in her whole life. . . . Girls learn it's the way to keep a man happy. [I]t's natural to them.

*Id.* (alternations in original). Barnitz quotes a Canadian expatriate living in Costa Rica as saying "[t]hey all get pregnant by the age of 13, for Christ's sake . . . this is such an open, natural culture. Girls are so willing and open, they want to please. They're sexual from the age of six." BARNITZ, *supra* note 3, at 20.

<sup>52</sup> A sixty-five year old retired schoolteacher and grandfather from Orlando, Florida, described his trip to Latin America as such:

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.

Kathy J. Steinman, *Sex Tourism and the Child: Latin America's and the United States' Failure to Prosecute Sex Tourists*, 13 HASTINGS WOMEN'S L.J. 53, 61 (2002).

<sup>53</sup> O'Connell Davidson, *supra* note 27, at 67. O'Connell Davidson recounts numerous interviews with middle-aged men who engaged in commercial sexual activity with girls around the age of fifteen. When the men were asked how old their "girlfriend" was, they usually claimed she was at least nineteen. *Id.*

<sup>54</sup> BARNITZ, *supra* note 3, at 10-14. In a 1992 study of 143 Guatemalan street children, seventy percent of the children reported servicing at least one or two sexual partners per day,

to be in a position to enforce the practice of safe sex with uncooperative customers.<sup>55</sup> The U.N. estimates that more than fifty percent of new HIV infections worldwide are occurring in people between the ages of fifteen to twenty-four, and ten percent of infections are being transmitted to children under the age of fifteen.<sup>56</sup> Furthermore, prostituted children experience high rates of other sexually transmitted diseases, such as herpes, chlamydia, crabs, gonorrhea and syphilis.<sup>57</sup>

For many sexually exploited children, life is a battleground that involves constant physical and psychological abuse.<sup>58</sup> They are targets for rape, assault, torture, abuse and murder by traffickers, pimps, and customers.<sup>59</sup> They are, more often than not, poorly fed, inadequately sheltered and prime candidates for malnutrition.<sup>60</sup> Not surprisingly, researchers report that children who are subjected to inappropriate sexual attention at an early age experience acute psychological harm, often resulting in symptoms such as depression, lack of self esteem and post-traumatic stress disorder.<sup>61</sup> Suicide is a common escape for sexually exploited children.<sup>62</sup>

#### D. THE FACILITATORS

A broad network of adults enables and facilitates the commercial sexual exploitation of children.<sup>63</sup> On a micro-level, family members or recruiters (often former sex workers themselves) may be responsible for a child's initial entry into the sex industry.<sup>64</sup> On a broader level, community leaders may be complicit in the cycle of exploitation when they accept money to stay quiet or simply look the other way as children from their village are trafficked.<sup>65</sup> Corrupt law enforcement officials may accept bribes or even sexual services in return for not arresting pimps or brothel

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and all of the children reported having contracted STDs from their clients. All of the children also reported that they used drugs. *Id.*

<sup>55</sup> Flowers, *supra* note 34, at 153.

<sup>56</sup> BARNITZ, *supra* note 3, at 11.

<sup>57</sup> Flowers, *supra* note 34, at 153.

<sup>58</sup> *Id.*

<sup>59</sup> BARNITZ, *supra* note 3, at 11.

<sup>60</sup> Eric Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT'L & COMP. L. REV. 397, 402 (1996).

<sup>61</sup> Flowers, *supra* note 34, at 153.

<sup>62</sup> Berkman, *supra* note 60, at 402.

<sup>63</sup> ECPAT Int'l, *Frequently Asked Questions About CSEC: Who is Involved?*, at <http://www.ecpat.net/eng/CSEC/faq/faq12.asp> (last visited Mar. 3, 2004).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

owners.<sup>66</sup> And recent trends indicate that organized criminal networks have recognized the lucrative nature of the child sex trade and are increasingly becoming involved in the system to share in the profits.<sup>67</sup>

#### E. ROLE OF "SEX TOUR" OPERATORS

The modern business of child sexual exploitation is both highly organized and aggressively marketed.<sup>68</sup> As of 1996, over twenty-five companies in the U.S. were known to offer "sex tour"—package deals for travel to either Southeast Asia or other developing countries, including round trip airfare, accommodations, ground transportation, a local guide, and thinly-veiled promises of facilitated sexual encounters with local girls.<sup>69</sup> Sex tour operators in the U.S. often market their access to child prostitutes using euphemistic language such as "fresh young ladies" and "beautiful, unspoiled girls."<sup>70</sup> One U.S.-based sex tour operator promises customers that they will "never sleep alone on this tour," and could potentially have sex with a different girl every day, "two if you can handle it."<sup>71</sup> There is no doubt that sex tour operators encourage and enable a group of customers who might not have the audacity on their own to sexually exploit women and children in developing countries.<sup>72</sup> However, it is unlikely that those who participate in organized sex tours constitute a majority of child sex abusers.<sup>73</sup> Rather, a good number of abusers are independent travelers, whether in the host country on vacation or for business purposes.<sup>74</sup> They are willing and able to engage in sexual acts with minors in large part

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<sup>66</sup> ECPAT Int'l, *Frequently Asked Questions About CSEC: How Can this Happen?*, at <http://www.ecpat.net/eng/csec/faq/faq11.asp> (last visited Mar. 3, 2004).

<sup>67</sup> ECPAT Int'l, *supra* note 63. Among the better known organized criminal networks involved in the commercial sexual exploitation of children are "the Chinese and Vietnamese Triads, the Japanese Yakuza, the South American cartels and the Italian and Russian mafia." *Id.*; see also Mark Baker, *Innocents for Sale*, SYDNEY MORNING HERALD, July 13, 2002, at 29 [hereinafter Baker, *Innocents for Sale*].

<sup>68</sup> BARNITZ, *supra* note 3, at 4. Seabrook quotes Sudarat Srisang, founder of Thai organization, Fight Against Child Exploitation, as saying, "[s]ince 1982, we know of organised sex tours from Holland, Germany, the USA, the UK, Switzerland, but not for sex with minors. Now [as of the mid-1990s], there are entrepreneurs who are arranging excursions specially for those who want children." SEABROOK, *supra* note 7, at 150.

<sup>69</sup> Todres, *supra* note 20, at 4. Promises such as visits to "entertainment centers" where "literally thousands of beautiful Thai women . . . will be more than willing to satisfy your every sexual whim," are common. *Id.*

<sup>70</sup> BARNITZ, *supra* note 3, at 5.

<sup>71</sup> *Id.* at 4.

<sup>72</sup> Todres, *supra* note 20, at 4.

<sup>73</sup> *Id.* at 22.

<sup>74</sup> *Id.*

because they are not afraid of being caught or criminally prosecuted for their acts.<sup>75</sup>

### III. LAW & ENFORCEMENT

#### A. RECEIVING COUNTRIES

International child sex tourists face little fear of repercussion for their acts because there is a relatively low risk of prosecution in the countries where they commit their crimes.<sup>76</sup> This is true despite the fact that most child sex tourism destination countries have laws against prostitution.<sup>77</sup> In many host countries, there appears to be a glaring disconnect between the prostitution laws on the books and the actions taken by government officials to enforce those laws.<sup>78</sup>

In Thailand, for example, prostitution was outlawed in 1960.<sup>79</sup> Although the Thai Penal Code recognizes prostitution as a crime, Thai business law<sup>80</sup> treats it as a “personal” or “special” service, which is generally left alone by Thai police.<sup>81</sup> Costa Rica, an increasingly popular sex tourist destination, has specific laws that enable the government to criminally prosecute child sex offenders.<sup>82</sup> While these laws are relatively stringent, they are rarely enforced.<sup>83</sup>

A major obstacle to effective enforcement of anti-prostitution laws is corruption among police officers and public officials.<sup>84</sup> In Cambodia, for example, Dr. Kek Galabru, president of Licadho, a human rights group, asserts that public officials profit greatly from protection of the child sex trade and are themselves frequent patrons of brothels where children are

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<sup>75</sup> O’Connell Davidson, *supra* note 27, at 57.

<sup>76</sup> Edelson, *supra* note 27, at 483-84.

<sup>77</sup> Berkman, *supra* note 60, at 403.

<sup>78</sup> *Id.* at 404.

<sup>79</sup> SEABROOK, *supra* note 7, at 7. Prostitution in Thailand was made illegal by the Prostitution Suppression Act of 1960. *Id.*

<sup>80</sup> *Id.* Six years after prostitution was deemed a criminal offense, the Thai Government enacted the Entertainment Places Act of 1966, which “regulated nightclubs, dance halls, bars, massage parlours, baths, and places ‘which have women to attend to male customers.’” *Id.*

<sup>81</sup> Elizabeth Rho-Ng, *The Conscriptation of Asian Sex Slaves: Causes and Effects of U.S. Military Sex Colonialism in Thailand and the Call to Expand U.S. Asylum Law*, 7 *ASIAN L.J.* 103, 117 (2000).

<sup>82</sup> Steinman, *supra* note 52, at 66-67.

<sup>83</sup> *Id.* at 67.

<sup>84</sup> ECPAT Int’l, *supra* note 66.

sold.<sup>85</sup> This serves to discourage enforcement by police.<sup>86</sup> In addition, in some host countries, the police are willing to accept protection fees from brothel owners or bribes from customers.<sup>87</sup> In certain countries, allowing the sexual exploitation of women and children to take place is regarded as a necessary component of maintaining local order.<sup>88</sup>

Additionally, many developing countries simply do not have adequate resources to invest in proper training and law enforcement.<sup>89</sup> Funding necessary to support effective prosecution of child sexual exploiters is either impossible to provide or stymied by the incredibly lucrative nature of the tourism industry.<sup>90</sup> A report by the Judiciary Committee of the U.S.

<sup>85</sup> *Id.* at 29. Dr. Galabru noted, “[Cambodian] laws are very weak and corruption is rampant.” Mu Sochua, Cambodia’s Minister for Women’s Affairs commented:

The Government has made almost no impact in controlling the trafficking of women and children. There is no control or monitoring of brothels and what is going inside these brothels. There is an attitude . . . that women and children can be spared, can be bought, can be brutalized and it doesn’t matter.

*Id.* Seabrook calls Thailand’s attitude toward prostitution a “culture of institutionalized mendacity.” SEABROOK, *supra* note 7, at 8.

<sup>86</sup> SEABROOK, *supra* note 7, at 8; *see also* Rho-Ng, *supra* note 81, at 118 (asserting that military and government officials in Thailand are often patrons of hotels and entertainment establishments where prostitution takes place, hindering efforts at law enforcement). Rho-Ng describes the existence of “conspicuous collusion between law enforcement and the owners of sex establishments.” *Id.*

<sup>87</sup> Li, *supra* note 19, at 514; *see also* ECPAT, *supra* note 66. ECPAT cautions that although police corruption is often identified as a root cause of the perpetuation of the child sex industry, “it is important to bear in mind that not all police and law enforcement officials are corrupt.” *Id.*

<sup>88</sup> BARNITZ, *supra* note 3, at 24. Barnitz notes the reaction of a Thai police chief to the arrest of forty Burmese prostitutes under the age of eighteen who had been trafficked into Ranong, Thailand to provide services to Burmese fishermen working there:

[I]t is normal that there is a prostitution problem. In my opinion it is disgraceful to let Myanmar [Burmese] men frequent Thai prostitutes, so I have been flexible in allowing Myanmar prostitutes to work here . . . . If we do not allow brothels in Ranong, the Myanmar fishermen will commit crimes and mischief here.

*Id.*

<sup>89</sup> Steinman, *supra* note 52, at 67. Although Costa Rica established the Patronato Nacional de la Infancia, an organization predicated on the protection of children, as of 2001, the Department of the Special Prosecutor of the Sex Crimes Division of the Ministerio Publico, responsible for the entire country, did not have access to the Internet, had no vehicles, no travel budget and no video cameras. *Id.* at 66.

<sup>90</sup> Sudurat Srisang, founder of Fight Against Child Exploitation commented, “[a]nyone who spoke out against [sex] tourism at that time, around 1988-1989 was thought to be dangerous because tourism was a major generator of income.” SEABROOK, *supra* note 7, at 142. Srisang also observed:

Tourism is seen as a way of getting money to pay off [Thailand’s] debt to the IMF and the World Bank. They have to build bigger hotels, better roads, more resorts, to attract foreigners . . . . It

House of Representatives asserts that “[b]ecause poor countries are often under economic pressure to develop tourism, those governments often turn a blind eye toward this devastating problem [of commercial sexual exploitation of children] because of the income it produces.”<sup>91</sup>

Moreover, when host countries do apply laws against the sexual exploitation of children, the application of the laws may be misguided.<sup>92</sup> Frequently the victims, rather than the offenders, are punished.<sup>93</sup> Law enforcement officials are more likely to crack down on and imprison child sex-workers than their adult clients.<sup>94</sup>

## B. LAW AND ENFORCEMENT IN THE UNITED STATES

### *i. A History of Complicity*

Historically, there has been a disconnect between U.S. domestic policies on prostitution and child sexual exploitation and the country’s actions abroad.<sup>95</sup> While prostitution has been illegal in most of the U.S. since the beginning of the twentieth century,<sup>96</sup> the U.S. has been instrumental in the development and growth of the sex industry in certain foreign countries from its incipient phases.<sup>97</sup> For instance, the U.S. military’s presence in Southeast Asia during the latter half of the past century greatly contributed to the transformation of Thailand into the

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turns out to be a drain on the resources of the country, not a gain; and when you add the social costs it becomes disastrous. Tourists are not going to pay for the health care of sex workers with AIDS.

*Id.* at 155.

<sup>91</sup> H.R. REP. NO. 107-525, at 2 (2002).

<sup>92</sup> Heather C. Giordanella, *Status of §2423(B): Prosecuting U. S. Nationals for Sexually Exploiting Children in Foreign Countries*, 12 TEMP. INT’L & COMP. L.J. 133, 146 (1998).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*; see also BARNITZ, *supra* note 3, at 24-25.

<sup>95</sup> See, e.g., Rho-Ng, *supra* note 81.

<sup>96</sup> Kate DeCou, *U.S. Social Policy on Prostitution: Whose Welfare is Served?*, 24 N.E. J. ON CRIM. & CIV. CONFINEMENT 427, 431-33 (1998).

<sup>97</sup> See, e.g., Emily Nyen Chang, *Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 621 (2001). Chang notes that there is a disturbing disconnect between the domestic policies of the U. S. with regard to child sexual exploitation and prostitution, and the encouragement of the sex industry abroad. See also Nicholas D. Kristof, *Children for Sale-A Special Report: Asian Childhoods Sacrificed to Prosperity’s Lust*, N.Y. TIMES, Apr. 14, 1996, at A1. Kristof writes, “Americans and other Westerners helped build the child prostitution trade in Asia, and many of the brothel districts date from R&R breaks from the Vietnam War, or surround former U.S. military bases. Now they sustain it with an appetite for what at home would be child molestation and rape.” *Id.*

“sexual Disneyland of the world.”<sup>98</sup> The U.S. government not only allows, but also encourages the promulgation of an active sex industry in areas surrounding U.S. military bases.<sup>99</sup> In 1967, the U.S. government signed a “Rest and Recreation” agreement with Thailand to promote the use of the country and its services to meet the relaxation and recuperation needs of U.S. soldiers.<sup>100</sup> As a result, by 1970, U.S. military personnel spent over \$20 million in Thailand, and by 1987, almost seventy percent of foreign tourists to Thailand were single males.<sup>101</sup> The complicity of the U.S. government and its citizens in the perpetuation of the sex industry in Southeast Asia provides a strong argument for the necessity of U.S. action to combat the problem of the exploitation of women and children in both Southeast Asia and other developing nations around the globe.

*ii. Prohibition of “White Slave Traffic”: Mann Act (1910)*

In 1910, the U.S. Congress passed the White Slave Traffic Act, commonly known as the Mann Act, which criminalized the act of transporting any woman or child in interstate or foreign commerce for the purpose of “prostitution, or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice.”<sup>102</sup> The law was an early attempt by Congress to thwart the (primarily domestic) trafficking of American women across state lines into prostitution, with Congressional authority deriving from the federal government’s constitutionally-mandated power to regulate interstate and foreign commerce.<sup>103</sup> While there is evidence that Congress intended the act to apply solely to commercial vice and acts of coercion, the

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<sup>98</sup> Rho-Ng, *supra* note 81, at 104.

<sup>99</sup> Nyen Chang, *supra* note 97, at 623.

<sup>100</sup> Li, *supra* note 19, at 507.

<sup>101</sup> SEABROOK, *supra* note 7, at 7, 79. This figure was calculated according to a survey taken by the *Bangkok Post*. *Id.*

<sup>102</sup> White Slave Traffic (Mann) Act, ch. 395, 36 Stat. 826 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (2000)). The full text of 18 U.S.C. § 2421 in its current, amended form reads:

Whoever knowingly transports any individual 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, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

The text was formerly gender specific, referring to the transportation of a “woman or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose . . .” *Id.*

<sup>103</sup> U.S. CONST. art. I, § 8, cl. 3; see Healey, *supra* note 28, at 1904.



courts broadly interpreted the law, extending its application to non-commercial sexual relations.<sup>104</sup> For example, the U.S. Supreme Court held that the act of transporting minors across state lines for the purpose of using the girls as mistresses and concubines, although lacking a commercial profit component, fell within the scope of the law's coverage of "immoral practices."<sup>105</sup> Courts have additionally interpreted the Mann Act to cover the interstate transportation of females for the purpose of engaging in polygamy, as well as adultery.<sup>106</sup> Consequently, some scholars have criticized the legislation as an inappropriate and overly-invasive legislative attempt to police morals, while other critics have maintained that the law, in practice, served to inhibit the rights of women more than it protected them.<sup>107</sup> Nevertheless, the Mann Act laid the foundation for future legislative efforts to shield children from commercial sexual exploitation.

### *iii. The Child Sexual Abuse Prevention Act (1994)*

Starting in the early 1990s concerned child advocates, including non-governmental organizations (NGOs), the U.N. and the media, applied pressure to sex tourism "consumer" countries to combat the commercial sexual exploitation of children through the passage and implementation of extra-territorial legislation.<sup>108</sup> In 1994, nearly a century after it passed the Mann Act, Congress added language to the statute that extended its application to the actions of U.S. citizens traveling across state lines or international borders to engage in sexual activity with children.<sup>109</sup> Known as the Child Sexual Abuse Prevention Act, this addition to the Mann Act

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<sup>104</sup> Todres, *supra* note 20, at 6.

<sup>105</sup> See *Caminetti v. United States*, 242 U.S. 470, 486 (1917).

<sup>106</sup> See *Cleveland v. United States*, 329 U.S. 14 (1946); see also *Johnson v. United States*, 215 F. 679 (7th Cir. 1914).

<sup>107</sup> Todres, *supra* note 20, at 5-6. Todres points out that traditionally, laws regulating prostitution have resulted in the criminalization of the behavior of the prostituted women, rather than the illicit activities of the customers. *Id.*

<sup>108</sup> SEABROOK, *supra* note 1, at ix-x. Extra-territorial legislation enables a country to prosecute one of its citizens under its laws for a crime that was committed on foreign soil.

<sup>109</sup> 18 U.S.C. § 2423(b) (2000). The language 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 U.S. citizen or an alien admitted for permanent residence in the U. S. 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.

was included as part of President Bill Clinton's Crime Bill of 1994.<sup>110</sup> The bill empowers the U.S. Department of Justice (DOJ) to criminally prosecute both U.S. citizens and permanent residents, and includes a *mens rea* component—the accused must have manifested intent to engage in sexual acts with a juvenile.<sup>111</sup> The language focuses on the intentions of the accused, not the accused's act itself.<sup>112</sup> The DOJ has interpreted this language to mean that the accused's intention must be formed prior to the actual encounter with the child, either in the U.S. or the destination country.<sup>113</sup> The actual crime occurs during the travel where the accused has the intent to commit a forbidden sexual act with a minor.<sup>114</sup> Courts have further clarified that the government is not obligated to prove that engaging in illicit sexual activity with a minor was the sole purpose of the defendant's trip, but rather, a significant factor.<sup>115</sup> Those found guilty face penalties of fines or imprisonment up to fifteen years, or both.<sup>116</sup>

#### *iv. Enforcement of the Sexual Abuse Prevention Act*

Although the Child Sexual Abuse Prevention Act is an important symbol of U.S. recognition of the severity of child sexual exploitation worldwide and the complicity of certain U.S. citizens in the problem,

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<sup>110</sup> Giordanella, *supra* note 92, at 148.

<sup>111</sup> *Id.* at 149.

<sup>112</sup> *Id.* Note that this burden of proof was modified by the PROTECT Act of 2003. See *infra* Part VII. The government may now prove the defendant's culpability by demonstrating that the accused either: (1) traveled with the intent to engage in illicit sexual conduct with a minor; (2) actually engaged in illicit sexual conduct with a minor in a foreign place; or (3) attempted or conspired to violate the statute. Pub. L. No. 108-21, 117 Stat. 650 (codified as amended at 18 U.S.C. § 2423 (2000)).

<sup>113</sup> Edelson, *supra* note 27, at 528.

<sup>114</sup> See *United States v. Bredimus*, 234 F. Supp. 2d 639, 644-45 (N.D. Tex. 2002):

The government maintains that Bredimus completed his crimes when he exited the U.S. with the requisite intent. That the accused actually engage in a sexual act with a juvenile is not required, and therefore not necessary to obtain a conviction under the statute. Evidence that the alleged sex acts occurred *may* be relevant to prove Bredimus's intent; however, the actual commission of those acts is not necessary for a conviction under the statute. As stated before, a U.S. citizen commits a crime under § 2423(b) if the individual travels in foreign commerce (that is, from the U.S. to a foreign country) with the requisite intent.

<sup>115</sup> Edelson, *supra* note 27, at 529; see *United States v. Garcia-Lopez*, 234 F.3d 217, 220 (5th Cir. 2000); *United States v. Miller*, 148 F.3d 207, 211-13 (2d Cir. 1998); *United States v. Vang*, 128 F.3d 1065, 1072 (7th Cir. 1997); *United States v. Meacham*, 115 F.3d 1488, 1495 (10th Cir. 1997); *United States v. Campbell*, 49 F.3d 1079, 1082-83 (5th Cir. 1995); *United States v. Ellis*, 935 F.2d 385, 389-90 (1st Cir. 1991).

<sup>116</sup> 18 U.S.C. § 2423(b). Note that this has changed since the writing of this article. See *infra* Part VII.

domestic prosecutions under the act have been scant.<sup>117</sup> In the first eight years that followed the passage of the Sexual Abuse Prevention Act, the U.S. government only used its § 2423(b) powers to prosecute U.S. nationals for sex crimes committed abroad on five occasions.<sup>118</sup> The majority of convictions obtained under § 2423(b) were prosecutions of U.S. nationals who traveled across domestic state lines for the purpose of engaging in sexual acts with U.S. minors.<sup>119</sup>

Marvin Hersh, a college professor, was the first U.S. citizen convicted under § 2423(b) for crimes committed outside U.S. borders.<sup>120</sup> The Court of Appeals for the Eleventh Circuit affirmed both his conviction and 105-year sentence for multiple crimes, including transporting a minor in foreign commerce with the intent to engage in criminal sexual activity,<sup>121</sup> conspiracy to travel in foreign commerce with the intent to engage in sexual acts with minors,<sup>122</sup> receiving and possessing material containing visual depictions of minors engaged in sexually explicit conduct, making false statements in the application and use of a passport, and harboring an illegal alien.<sup>123</sup>

Over a period of several years, Hersh traveled to Honduras for the purpose of establishing sexual relations with several Honduran brothers, aged eight to sixteen.<sup>124</sup> He coerced the boys into repeated sexual encounters in return for clothing and other gifts.<sup>125</sup> Hersh eventually falsified a birth certificate and brought one boy back to the U.S. with him, where his suspicious conduct was reported to the Florida Department of

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<sup>117</sup> See Heinzl, *supra* note 15. Heinzl profiles the prosecution of Nick Bredimus, a U.S. national, who was sentenced to five and one half years in prison for sexually exploiting minors in Thailand. He was sentenced in November 2002, under the Child Sexual Abuse Prevention Act, and his federal prosecutors stated that it was only the fifth such prosecution in the United States. *Id.*

<sup>118</sup> *Id.*; see, e.g., *Garcia-Lopez*, 234 F.3d at 217; *United States v. Hersh*, 15 F. Supp. 2d 1310 (S.D. Fla. 1998). In *Garcia-Lopez*, the defendant was not a sex tourist. Rather, his crime was transporting his girlfriend's thirteen-year old daughter from the U.S. into Mexico for the purpose of engaging in illicit sexual acts with her. 234 F.3d at 217.

<sup>119</sup> See, e.g., *United States v. Han*, 230 F.3d 560 (2d Cir. 2000); *United States v. Brockdorff*, 992 F. Supp. 22, 24-25 (D.D.C. 1997). In both of these cases the defendants, U.S. nationals, were arrested pursuant to 18 U.S.C. § 2423(b) when they crossed state lines to pursue sexual relations with thirteen-year old girls they had met over the Internet. The potential victims turned out to be undercover law enforcement agents who had been posing as underage youth.

<sup>120</sup> *Hersh*, 15 F. Supp. 2d at 1310.

<sup>121</sup> This was in violation of § 2423(a).

<sup>122</sup> This was in violation of § 2423(b).

<sup>123</sup> *United States v. Hersh*, 297 F.3d 1233, 1236 (11th Cir. 2002).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

Children and Families.<sup>126</sup> The jury heard testimony regarding the nature of Hersh's molestation and saw evidence of Hersh's possession of copious amounts of child pornography.<sup>127</sup>

The conviction of Nick Bredimus is another example of a successful domestic prosecution under § 2423(b).<sup>128</sup> Bredimus, the fifty-two year old owner of a prosperous U.S. consulting business, fled Thailand following his apprehension by Thai police who caught him in a hotel room engaging in illicit sexual activity with underage Thai boys.<sup>129</sup> Bredimus traveled to Chiang Rai, Thailand in 2001, obtained two hotel rooms and paid a Thai female money to lure youth to the hotel for the purposes of photographing them.<sup>130</sup> Upon complaints from Thai parents who reported their children missing, the Thai police raided the hotel and found that Bredimus had videotaped himself engaging in illicit sexual acts with several young males.<sup>131</sup> Bredimus was taken into custody, but posted bail, fled the country to the U.S., and evaded a scheduled appearance before a Thai court.<sup>132</sup> He was subsequently taken into custody by U.S. law enforcement and charged with traveling in foreign commerce with the intent to engage in a sexual act with children in violation of § 2423(b) and traveling in foreign commerce with the intent to use minors to engage in sexually explicit conduct for the purpose of producing visual depictions of that conduct, in violation of 18 U.S.C. § 2251A(b)(2)(A).<sup>133</sup>

In a statement to the district court judge, Bredimus' attorney, Thomas Mills, tried to place the blame for his client's actions on the broad availability of child prostitutes in Thailand and the complicity of Thai parents in prostituting their children to wealthy tourists.<sup>134</sup> "We have one individual who was in a foreign country, a patron of a professional pimp," Mills said.<sup>135</sup> "What you see is as much a financial transaction as it had to

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<sup>126</sup> *Id.* at 1238.

<sup>127</sup> *Id.*

<sup>128</sup> See *United States v. Bredimus*, 234 F. Supp. 2d 639 (N.D. Tex. 2002).

<sup>129</sup> See Cliff Despres, *Local Man Charged with Engaging in Sexual Acts with Minors for Pay*, COPPELL GAZETTE, Apr. 26, 2002, available at <http://www.opengovt Coppell.com/file/news/2002/0426gaz2.htm> (last visited Mar. 15, 2003).

<sup>130</sup> See Cliff Despres, *Coppell Man Gets 66-Month Sentence in Child Sex Case*, COPPELL GAZETTE, Nov. 20, 2002, available at <http://www.opengovt Coppell.com/file/news/2002/1120gaz1.htm> (last visited Mar. 15, 2003).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Bredimus*, 234 F. Supp. 2d at 639.

<sup>134</sup> Heinzl, *supra* note 15.

<sup>135</sup> *Id.* at 1.

do with a sexual encounter."<sup>136</sup> Assistant U.S. Attorney Linda Groves countered the notion of parental complicity in the case, pointing out that the parents had actually searched for their missing children.<sup>137</sup> Groves also contested the idea that the young children were consenting participants in sexual activities with a fifty-two-year old stranger: "He controlled them. It was not a consensual act."<sup>138</sup>

Bredimus was convicted, sentenced to five and one half years in prison and ordered to pay a \$30,000 fine.<sup>139</sup> The U.S. District Court for the Northern District of Texas affirmed the constitutionality of § 2423(b), stating that Congress has authority

"to keep the channels of interstate commerce free from immoral or injurious uses has been frequently sustained, and is no longer open to question." Because Congress's authority is even more broad in the area of foreign commerce, it necessarily follows that it has authority to keep the channels of foreign commerce free from immoral or injurious uses. As such, Congress's authority under the Commerce Clause is broad enough to include individuals who travel in foreign commerce for the purpose of engaging in prohibited sexual activity with minors.<sup>140</sup>

While Bredimus' conviction is an example of the potential for successful enforcement of § 2423(b), certain factors that are not necessarily present in other child sexual exploitation cases contributed to the end result. The child victims had concerned guardians who reported their disappearance to the police and consequently, the Thai police took action in a more proactive and organized fashion than is usually the case.<sup>141</sup>

#### *v. Legal Precedent for Extra-territorial Jurisdiction*

Although territorial jurisdiction—control over crimes committed within a country's borders—is the primary basis for U.S. criminal jurisdiction,<sup>142</sup> the U.S. and other nations have frequently invoked the

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* In support of her statement, Groves pointed out that a boy is seen (on videotape) crying during the sexual encounter with Bredimus. *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *United States v. Bredimus*, 234 F. Supp. 2d 639, 644 (N.D. Tex. 2002) (citing *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256 (1964) (quoting *Caminetti v. United States*, 242 U.S. 470, 491(1917))).

<sup>141</sup> It is true, however, that in the twenty-first century, Thai officials, under growing international pressure, are improving their efforts at combating the child sex industry in Thailand. This has scant effect on child sex offenders, however, who simply shift the focus of their activities to other countries such as Laos, Cambodia and Latin American countries where prosecution is almost non-existent. See *Lovering*, *supra* note 16.

<sup>142</sup> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute." *Schooner Exchange v. McFaddon*, 11 U.S. 116, 136 (1812).

doctrine of nationality to prosecute domestic citizens for crimes committed extra-territorially.<sup>143</sup> This principle relies on the nationality of the criminal perpetrator, rather than the place where the crime was committed, to establish jurisdiction.<sup>144</sup> In the United States, Congress must establish national jurisdiction over a particular crime legislatively.<sup>145</sup> The ultimate authority for such a power lies in Article I, Section 8 of the Constitution, which accords Congress the power "to regulate commerce with foreign nations . . . to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations," as well as "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . . ."<sup>146</sup> This authority is recognized by the Third Restatement of the Foreign Relations Law of the United States, which asserts "a state has jurisdiction to prescribe law with respect to the activities . . . of its nationals outside as well as within its territory."<sup>147</sup>

Over the course of the nineteenth century, the U.S. claimed broad consular criminal jurisdiction over its nationals abroad.<sup>148</sup> However, this practice was discontinued and replaced by a presumption of deference to the foreign country's criminal jurisdiction.<sup>149</sup> Although prosecution in and by the host country of all criminals who commit crimes within its borders is the preferable course of action, in certain cases, the host country is neither willing nor able to prosecute.<sup>150</sup> Moreover, American perpetrators of crimes abroad often flee the host country, returning to the U.S., where they

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<sup>143</sup> See, e.g., Frank Tuerkheimer, *Globalization of U.S. Law Enforcement: Does the Constitution Come Along?*, 39 HOUS. L. REV. 307 (2002).

<sup>144</sup> Geoffrey R. Watson, *Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction*, 17 YALE J. INT'L L. 41, 42 (1992). Watson argues that, despite international criticism of imperialistic motives, compared to other countries, the U.S. is relatively restrained in its use of the nationality principle to prosecute criminals. *Id.*

<sup>145</sup> Li, *supra* note 19, at 521.

<sup>146</sup> U.S. CONST. art. I, § 8, cls. 3, 10, 18.

<sup>147</sup> RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 402.2 (1987).

<sup>148</sup> Watson, *supra* note 144, at 49. Consular jurisdiction was based on the premise that U.S. consuls in foreign nations were vested with the power to exercise jurisdiction over the criminal acts of U.S. nationals in the host country. It can be traced to a 1782 agreement with France, whereby "offences committed in France by a citizen of the United States, against citizens of the United States" were placed under the jurisdiction of the U.S. consul in France, and in the Nineteenth Century was extended to a broad array of countries where the U.S. had commercial interests. This practice was widely criticized as imperialistic. *Id.* at 48.

<sup>149</sup> *Id.* at 54.

<sup>150</sup> *Id.* at 55.

are subject to our current extradition law, which frequently forbids extradition to the host country for prosecution.<sup>151</sup>

*vi. Evidentiary and Procedural Problems*

Prosecuting criminal child sex exploiters outside of the country in which their crimes were committed presents a host of evidentiary and procedural hurdles.<sup>152</sup> Obtaining the evidence necessary to secure a conviction can be exceedingly difficult due to distance, language and cultural barriers, and the amount of time that may have transpired since the commission of the crime.<sup>153</sup> Efforts as simple as establishing the identity of the child victim may be severely impaired by the lack of a formal or reliable birth certificate.<sup>154</sup> Moreover, the victim's memory and ability to identify the perpetrator may be clouded by the large numbers of customers serviced by the child in the interim.<sup>155</sup> In addition, arranging for live testimony of a foreign child in a U.S. court is expensive and sometimes not possible.<sup>156</sup> Some countries, such as Australia, are attempting to circumvent this problem by transmitting testimony via satellite, but critics have strongly resisted this practice, contending that it is not a fair way of presenting testimony, as the child witnesses are not subjected to cross examination.<sup>157</sup> In countries where extra-territorial legislation requires the sending country to prove the actual occurrence of a sex crime with a minor, prosecutors are confronted with the potentially formidable challenge of finding and gathering evidence in the host country.<sup>158</sup>

*vii. H.R. 4477: Sex Tourism Prohibition Act of 2002<sup>159</sup>*

On June 26, 2002, the U.S. House of Representatives passed legislation which would amend The Child Sexual Abuse Prevention Act (§ 2423(b)).<sup>160</sup> The Sex Tourism Prohibition Improvement Act of 2002 (HR

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<sup>151</sup> *Id.* U.S. law does not allow extradition absent an extradition treaty with the host country. *Id.* Currently, the U.S. is lacking extradition treaties with countries such as Korea, the Philippines, and Saudi Arabia. *Id.*

<sup>152</sup> *See, e.g.,* BARNITZ, *supra* note 3, at 28.

<sup>153</sup> Li, *supra* note 19, at 525.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 526.

<sup>157</sup> *Id.* at 524.

<sup>158</sup> *Id.* at 524-25.

<sup>159</sup> *See infra* Part VII. The PROTECT Act of 2003 includes certain provisions found in H.R. 4477.

<sup>160</sup> 18 U.S.C. § 2423(b) (2000).

4477) was approved by a vote of 418-8.<sup>161</sup> The bill would amend § 2423(b) by striking out the section in its entirety and inserting three substitute sections.<sup>162</sup> Under the new language, the government would no longer have to prove the defendant's intent—that he or she traveled for “the purpose” of engaging in the illegal activity.<sup>163</sup> Rather, the government would have to prove that the activity actually took place.<sup>164</sup> Additionally, the legislation sought to prohibit any person from traveling into the U.S. to engage in illicit sexual activity with a minor, and to criminalize the actions of sex tour operators who arrange, induce, procure or facilitate the travel of a person in the knowledge that the person intended to sexually abuse a minor in violation of the statute.<sup>165</sup> An amendment was added during the House Judiciary Committee Hearing that removed strict liability for crimes under the legislation, requiring instead that the prosecution prove beyond a reasonable doubt that the perpetrator “knows or should have known” the victim had not yet reached the age of eighteen.<sup>166</sup>

The House Report from the Committee on the Judiciary suggests that part of the impetus for the bill was requests from countries such as Nicaragua, Costa Rica, Thailand, and the Philippines that the U.S. help to address the problem of sex tourism.<sup>167</sup> The Report claims that the legislation “will close significant loopholes in the law that persons who travel to foreign countries seeking sex with children are currently using to

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<sup>161</sup> See *Final Votes for Rollcall 259*, at <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=259> (last visited Feb. 3, 2004). The Sex Tourism Prohibition Improvement Act was not passed by the Senate during the 107th Congress.

<sup>162</sup> See H.R. REP. NO. 107-525, at 2 (2002). The amended language reads:

(a) In General- Section 2423 of title 18, U.S. Code, is amended by striking subsection (b) and inserting the following: “(b) TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT—A person who travels in interstate commerce or travels into the United States, or a U.S. citizen or an alien admitted for permanent residence in the U.S. who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 15 years, or both. (c) ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES—Any U.S. citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 15 years, or both. (d) ANCILLARY OFFENSES—Whoever arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 15 years, or both.

*Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 3.



their advantage in order to avoid prosecution.”<sup>168</sup> It states, “[c]urrent law requires the Government to prove that the defendant traveled ‘for the purpose’ of engaging in the illegal activity. Under this [new] bill, the Government would only have to prove that the defendant engaged in illicit sexual conduct with a minor while in a foreign country.”<sup>169</sup>

Although proving that someone traveled with the intent to engage in illegal sexual activity with a minor is undoubtedly difficult,<sup>170</sup> some critics argue that proving intent is actually easier than having to prove that the crime took place.<sup>171</sup> In some cases, prosecutors can prove that a defendant traveled with the intent to commit a sex crime with a minor by obtaining his travel contracts or agreements.<sup>172</sup> Proving the actual occurrence of the sex crime presents prosecutors with arguably more difficult evidentiary challenges since the scene of the crime may be thousands of miles away.<sup>173</sup>

### C. LAW & ENFORCEMENT IN AUSTRALIA

Any attempt to assess the effectiveness of U.S. extra-territorial laws against child sex tourism must take into account the success of other countries that have enacted similar laws. In the last decade of the twentieth century, more than thirty countries have enacted extra-territorial laws, including Australia, Sweden, Germany, the U.K., Canada, Japan and the U.S.<sup>174</sup> However, the race to enact legislation by and large has not been accompanied by frequent enforcement of the laws that have been passed.<sup>175</sup> Australia, which has enacted what is arguably the most comprehensive extra-territorial child sex tourism law, provides an example of the

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 2.

<sup>170</sup> Bruce Taylor, President and Chief Legal Counsel of the National Law Center for Families and Children has commented: “Enforcing [the Sexual Abuse Prevention Act] is tough, and we knew that. Proving that a person is in a state of mind of intending to engage in sex with minors before he leaves the country is difficult. It’s a lot of work, but it can be done.” Jose Lambiet, *Umbrella of Protection for Children is Tattered*, SUN-SENTINEL (Ft. Lauderdale, FL), May 17, 1998, at 17A. He pointed out that a businessman who travels overseas for business purposes and ends up sexually abusing a child while on the trip may escape prosecution under the law. *Id.*

<sup>171</sup> Berkman, *supra* note 60, at 416; *see also* Steinman, *supra* note 52, at 72.

<sup>172</sup> Berkman, *supra* note 60, at 416.

<sup>173</sup> *Id.*

<sup>174</sup> ECPAT Int’l, *Frequently Asked Questions about CSEC: Child Prostitution*, at <http://www.ecpat.net/eng/CSEC/faq/faq2.asp> (last visited Jan. 18, 2004).

<sup>175</sup> Bernadette McMenamin, of ECPAT, has noted: “While there are 30 countries that have [extra-territorial] laws [against child sexual exploitation], they’re not actively using them. The offices are just stumbling on these cases . . . the bottom line is money.” Lovering, *supra* note 16.

challenges facing law enforcement officers in the implementation of extra-territorial legislation.<sup>176</sup>

In 1994, in response to frustration over the government's inability to curb the international abuses of Australian sex tourists, the Australian Parliament passed The Crimes (Child Sex Tourism) Amendment Act of 1994.<sup>177</sup> The legislation makes it a crime for an Australian citizen to engage in sexual intercourse with a child under the age of sixteen in a foreign country.<sup>178</sup> Evidence admissible in court for the purposes of establishing the age of the victim includes the child's appearance, medical or scientific opinion and foreign medical records,<sup>179</sup> but the accused may be entitled to a complete defense if he or she can convince the jury that the commission of the crime was based on a reasonable belief that the victim was above the age of sixteen.<sup>180</sup>

The Australian law also criminalizes the act of "induc[ing] a person who is under sixteen to engage in sexual intercourse with a third person outside Australia and in the presence of the first-mentioned person,"<sup>181</sup> as well as engaging in indecent sexual acts other than intercourse with foreign children.<sup>182</sup> A person found guilty of engaging in illegal sexual intercourse under the law may be imprisoned for up to seventeen years;<sup>183</sup> committing other indecent acts or inducing a foreign child to engage in sexual intercourse with a third party can incur a prison term of up to twelve years.<sup>184</sup> In addition, the legislation contains sections aimed at travel agents, tour operators and other sex tourism facilitators that prohibit them from encouraging, advertising, benefiting from, or assisting a person to travel outside of Australia for the purpose of sexually exploiting a minor under the age of sixteen.<sup>185</sup> These offenses also carry with them a penalty of up to seventeen years in prison.<sup>186</sup>

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<sup>176</sup> Li, *supra* note 19, at 518-19.

<sup>177</sup> Crimes (Child Sex Tourism) Amendment Act, 1994 No. 105 (Austl.) (amending Crimes Act 1914 (Austl.)) [hereinafter Crimes Amendment Act]; Healey, *supra* note 28, at 1896-98.

<sup>178</sup> Crimes Amendment Act § 50BA.

<sup>179</sup> *Id.* § 50FA(a)-(d).

<sup>180</sup> *Id.* § 50CA ("It is a defence [sic] to a prosecution for an offence 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.").

<sup>181</sup> *Id.* § 50BB.

<sup>182</sup> *See id.* § 50BC.

<sup>183</sup> *Id.* § 50BA.

<sup>184</sup> *Id.* §§ 50BC, 50BD.

<sup>185</sup> *See id.* §§ 50DA, 50DB.

<sup>186</sup> *Id.* §§ 50DA, 50DB; *see* Healey, *supra* note 28, at 1898-99.

The Australian Parliament attempted to address potential evidentiary and procedural difficulties when it drafted The Crimes Amendment Act of 1994.<sup>187</sup> The law includes several sections that allow courts to hear witness testimony via video link from remote locations.<sup>188</sup> This modern technology may be used if

the court is satisfied that attendance of the witness at the court to give the evidence would:

- (i) cause unreasonable expense or inconvenience; or
- (ii) cause the witness psychological harm or unreasonable distress; or
- (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
- (iv) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.<sup>189</sup>

Although Australia's law is quite comprehensive, a major Australian newspaper reported in July 2002 that "legislation enacted in 1994 to combat sex crimes against minors by Australian tourists is failing to stem the tide [of Australian sex tourism] and that Australian law enforcement agencies have largely given up on the problem."<sup>190</sup> As of that time, there had been only twelve prosecutions under the law, nine of which led to convictions.<sup>191</sup> The government brought its first charges against an Australian sex tour operator in 2001, seven years after the law had been passed.<sup>192</sup>

The Australian government was forced to respond to public outcry in July 2002, following a series of newspaper articles that disclosed that large numbers of Australian men were traveling to Cambodia to have sex with children.<sup>193</sup> One paper reported that "[h]undreds of Australian men . . . are heading to Phnom Penh and rural areas of Cambodia where girls and boys—some as young as nine years old—are openly sold in brothels that operate with high-level political protection and the connivance of corrupt

<sup>187</sup> Healey, *supra* note 28, at 1899.

<sup>188</sup> Crimes Amendment Act §§ 50EA-EG. The witness giving testimony by videolink may not be the defendant. *Id.* § 50EA(b).

<sup>189</sup> *Id.* § 50EA(d)-(e).

<sup>190</sup> Baker, *Innocents for Sale*, *supra* note 67, at 29.

<sup>191</sup> Mark Baker, *Australians Feeding Asia's Child Sex Trade*, THE AGE (Melbourne), July 13, 2002, at 1 [hereinafter Baker, *Australians Feeding Asia's Child Sex Trade*].

<sup>192</sup> *Perth Man to Stand Trial Over Child Sex Tours of Thailand*, AUSTRALIAN ASSOCIATED PRESS, Sept. 18, 2002. The seventy year old Perth man was charged in January 2001 following a seven week investigation by Australian police into child sex tours in Thailand.

<sup>193</sup> Phillip Hudson, *PM Vows to Act on Sex Tourists*, THE AGE (Melbourne), July 16, 2002, at 2; see also Mark Baker, *Cambodia a Haven for Australian Pedophiles*, SYDNEY MORNING HERALD, July 13, 2002, at 17 [hereinafter Baker, *Cambodia a Haven*].

police and judges.”<sup>194</sup> Australian Senator Meg Lees was quoted as saying, “[m]any in [Australia] are just desperate to put an end to this . . . . We can pass all the laws we like, but if we don’t have any support for them within the countries concerned, it’s extremely difficult to get long-term change.”<sup>195</sup> Calling the information disclosed by the reports “appalling,” Australian Prime Minister John Howard vowed to further investigate into the problem.<sup>196</sup>

In early August 2002, the Australian government announced it was launching an operation to send additional federal police agents and resources to Cambodia.<sup>197</sup> The director of Federal Police International Operations said that Australian overseas agents were on “high alert” in Southeast Asia, and asserted that the new operation was “a warning to those Australians traveling overseas to engage in child sex tourism to look out . . . . We will pursue all avenues in our efforts to disrupt [those] activities and have [the perpetrators] prosecuted to the full extent of the law.”<sup>198</sup> One of the Australian agents was appointed as a full-time advisor to a special team of Cambodian police, and Australia pledged to provide training,

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<sup>194</sup> Baker, *Cambodia a Haven*, *supra* note 193, at 17. A joint survey commissioned by NGO World Vision and the Cambodian Government in 2000 found that seventy percent of children surveyed in Siem Reap, a popular Cambodian tourist destination near the temples of Angkor Wat, had been approached by tourists for sex or were aware of children who had been. Orietta Guerrera & Phillip Hudson, *Australians Arrested in Cambodia Face 20 Years’ Jail on Child Sex Charges*, THE AGE (Melbourne), Aug. 7, 2002, at 3. The *Sydney Morning Herald* reported:

This is the price of childhood [in Cambodia]: \$27 [\$US 15] an hour in a room at the back of a plywood shack with a single 25-watt lightbulb and a filthy mattress. Mei is 10 and Toy is 12. Their mother, a plump, pushy woman in a leopardskin pants-suit, is eager to negotiate. Her youngest daughter will have oral sex with the foreigner for \$US15 (\$27). With the elder one, he can do what he will for the same price. Or it’s two for \$US25, a deal made in hell.

Baker, *Innocents for Sale*, *supra* note 67, at 29.

<sup>195</sup> Hudson, *supra* note 193, at 2. One article disclosed that “[o]nly two foreigners [had] been successfully prosecuted in Cambodia for sexually abusing children in the past decade, while dozens of arrested paedophiles have escaped after paying bribes.” Baker, *Australians Feeding Asia’s Child Sex Trade*, *supra* note 191, at 1. No charges had been brought by Cambodian authorities against Australian tourists. *Id.* Of the two foreigners who had been convicted of child sex abuses in Cambodia, one, a British doctor, is currently practicing medicine in Phnom Penh, and the other, a former British school principal, spent a year in a Cambodian prison after making pornographic videos with young girls in a park. See Baker, *Innocents for Sale*, *supra* note 67, at 29. Following his conviction, he threw a chair in court and screamed that he had paid the judge three hundred U.S. dollars for an acquittal. *Id.*

<sup>196</sup> Baker, *Australians Feeding Asia’s Child Sex Trade*, *supra* note 191, at 1.

<sup>197</sup> Phillip Hudson, *Bigger Blitz on Child Sex Tourists*, THE AGE (Melbourne), Aug. 8, 2002, at 3. Federal Police said they had elevated the problem of child sex tourism to the same level of priority as drug trafficking and the smuggling of humans. *Id.*

<sup>198</sup> *Id.*

surveillance and interviewing equipment.<sup>199</sup> The moves helped encourage a crackdown in late August 2002 by the Cambodian police which led to the arrest of three foreigners accused of sexually exploiting Cambodian minors, the rescue of fifteen children from Phnom Penh brothels and the arrest of three Vietnamese men accused of trafficking children.<sup>200</sup>

The Australian government's response to the 2002 media exposés is an example of how public pressure can spur government action. It remains to be seen whether the increased efforts of Australian law enforcement will outlast potential future decreases in public awareness and whether they will be extended to other Australian sex tourist destinations outside of Southeast Asia. Importantly, Australia's experiences demonstrate that extra-territorial legislation alone cannot successfully combat the problem of child sexual exploitation.

#### IV. INTERNATIONAL RESPONSE TO THE SEXUAL EXPLOITATION OF CHILDREN

The alarming evidence of global sexual exploitation of minors has not gone unnoticed by the international community. In 1989, the U.N. General Assembly unanimously adopted what has become "the most widely accepted human rights treaty ever"—the U.N. Convention on the Rights of the Child (UNCRC).<sup>201</sup> The UNCRC is the first legally binding agreement that obligates countries to protect children from sexual exploitation.<sup>202</sup> The treaty was the product of ten years of drafting and cooperation between international governments and NGOs.<sup>203</sup> Entered into force in 1990, the UNCRC has been signed and ratified by over 190 countries.<sup>204</sup> Along with other pressing children's rights issues, the UNCRC specifically addresses child sexual exploitation. Article 34 provides:

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<sup>199</sup> *Id.*

<sup>200</sup> Mark Baker, *Australian Role in Sex Tourism Crackdown*, SYDNEY MORNING HERALD, Aug. 31, 2002, at 17. Laurence Gray, an Australian who runs child support programs for World Vision in Cambodia expressed approval of the police raids, but cautioned that "there is still a gap in arresting people who are profiting from this, and that is a concern. [The Cambodian police] need to act against the key people and they know who they are." Mark Baker, *Net Closes on Sex Tourists*, THE AGE (Melbourne), Aug. 31, 2002, at 13 [hereinafter Baker, *Net Closes*].

<sup>201</sup> McCoy, *supra* note 33, at 499; UNICEF, *United Nations Special Session on Children*, available at <http://www.unicef.org/specialsession/about/index.html> (last visited Mar. 3, 2004).

<sup>202</sup> Berkman, *supra* note 60, at 405.

<sup>203</sup> *Id.*; see also Healey, *supra* note 28, at 1875-76.

<sup>204</sup> UNICEF, *Conventions on the Rights of the Child, Introduction*, available at <http://www.unicef.org/crc/crc.htm> (last visited Mar. 3, 2004).

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;
- (c) The exploitative use of children in pornographic performances and materials.<sup>205</sup>

The UNCRC defines a child as anyone under eighteen years of age.<sup>206</sup> It establishes a Committee on the Rights of the Child and requires that "every participating country submit reports [to the Commission] on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights" within two years of ratification and every five years thereafter.<sup>207</sup> The Committee, however, lacks the authority to identify or punish violations of the UNCRC by participating parties.<sup>208</sup> Additionally, the treaty does not specify what form each country's preventative measures should take, nor does it make recommendations to that effect.<sup>209</sup>

In August 1996, representatives of 122 nations convened in Stockholm, Sweden at the First World Congress Against Commercial Sexual Exploitation of Children.<sup>210</sup> Attended by members of government, NGOs, U.N. delegates, and the press, the Congress was the first broad-scale meeting of international advocates focused solely on the need to create awareness about and develop measures to combat child sexual exploitation.<sup>211</sup> A delegation of forty-seven youth also participated in the event.<sup>212</sup> Congress participants unanimously adopted a Declaration and Agenda for Action, in which they reaffirmed their commitment to the UNCRC and pledged to "commit [themselves] to a global partnership

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<sup>205</sup> UNICEF, *Full Text of the Convention on the Rights of the Child*, at <http://www.unicef.org/crc/fulltext.htm> (last visited Mar. 3, 2004).

<sup>206</sup> Healey, *supra* note 28, at 1876.

<sup>207</sup> UNICEF, *supra* note 205, at 43-44.

<sup>208</sup> Berkman, *supra* note 60, at 408.

<sup>209</sup> *See id.*

<sup>210</sup> UNESCAP, *Second World Congress Against the Commercial Sexual Exploitation of Children*, at <http://www.unescap.org/esid/hds/sae/secworld.htm> (last visited Mar. 3, 2004).

<sup>211</sup> *Id.*

<sup>212</sup> ECPAT Int'l, *First World Congress Against the Commercial Sexual Exploitation of Children*, at [http://www.ecpat.net/eng/Ecpat\\_inter/projects/monitoring/WC1.asp](http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/WC1.asp) (last visited Mar. 3, 2004).

against the commercial sexual exploitation of children.”<sup>213</sup> Recognizing that “every day more and more children around the world are subjected to sexual exploitation and sexual abuse,” the Declaration called for “action . . . at the local, national, regional and international levels to bring an end to the phenomena.”<sup>214</sup> Among other preventative measures, the Declaration called for the criminalization of child commercial sexual exploitation and the promotion of stronger cooperation between states and NGOs to prevent children from entering the sex trade.<sup>215</sup>

In December 2001, over 3000 participants representing 159 nations attended the Second World Congress on the Commercial Sexual Exploitation of Children in Yokohama, Japan.<sup>216</sup> The participants reviewed progress made under the First Congress’ Agenda and recommitted themselves to the Stockholm Declaration.<sup>217</sup> One month later, in January 2002, the U.N. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol) entered into force.<sup>218</sup> The Optional Protocol expands upon the UNCRC, laying out the measures that countries should undertake in order to guarantee the protection of children from trafficking, prostitution and pornography.<sup>219</sup> It calls upon participating countries to criminalize certain offenses, “whether such offen[s]es are committed domestically or transnationally or on an individual or organized basis,” including “offering, obtaining, procuring or providing a child for child prostitution.”<sup>220</sup> The Protocol formally defines the terms “sale of children,” “child prostitution” and “child pornography.”<sup>221</sup> It stipulates that “States Parties shall afford

<sup>213</sup> *Declaration and Agenda for Action*, art. 1, available at [http://www.ecpat.net/eng/ecpat\\_inter/projects/monitoring/Declaration.asp](http://www.ecpat.net/eng/ecpat_inter/projects/monitoring/Declaration.asp) (last visited Mar. 3, 2004).

<sup>214</sup> *Id.* art. 2.

<sup>215</sup> *Id.* art. 12.

<sup>216</sup> ECPAT Int’l, *Second World Congress Against the Sexual Exploitations of Children*, at [http://www.ecpat.net/eng/Ecpat\\_inter/projects/monitoring/WC2.asp](http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/WC2.asp) (last visited Mar. 3, 2004).

<sup>217</sup> *Id.*; see also McCoy, *supra* note 33, at 502.

<sup>218</sup> The Optional Protocol was adopted by the U.N. General Assembly on May 25, 2000. G.A. Res. 263, U.N. GAOR, 54th Sess., Annex II, U.N. Doc. A/RES/54/263 (2000), available at <http://www.unicef.org/crc/annex2.htm> (last visited Mar. 3, 2004).

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* art. 3, § 1, 1(b).

<sup>221</sup> *Id.* art. 2:

For the purposes of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration; (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth [within the Protocol]."<sup>222</sup>

In December 2002, the U.S. became the forty-second country to ratify the Optional Protocol when the U.S. Senate and President George W. Bush approved ratification.<sup>223</sup> A State Department press release described the Protocol as "a giant step forward in our efforts to combat trafficking for forced commercial sexual exploitation."<sup>224</sup> The U.S., however, has yet to ratify the UNCRC.<sup>225</sup> Although it indicated its intention to ratify the treaty by signing it in 1995, as of January 2004, the U.S. was one of only two signatory countries that had not yet ratified the UNCRC.<sup>226</sup>

In 1990, both Houses of Congress adopted resolutions urging President George Bush, Sr. to sign the UNCRC and to seek the advice and consent of the Senate for ratification. Following President Clinton's decision to sign the UNCRC five years later, Senator Jesse Helms of North Carolina introduced a resolution "expressing the sense of the Senate . . . that, because the U.N. Convention on the Rights of the Child could undermine the rights of the family, the President should not sign and transmit it to the Senate," and personally proclaimed that "[a]s long as I am chairman of the Senate Committee on Foreign Relations, it is going to be very difficult for this treaty even to be given a hearing."<sup>227</sup>

Certain political and religious organizations have aggressively opposed ratification of the UNCRC because they contend that vesting children with independent rights would infringe upon the parental rights of their guardians.<sup>228</sup> These critics generally perceive the UNCRC as a threat to parents' rights to guide their children's development and education, to discipline their children, and to provide religious training.<sup>229</sup> Pro-life

<sup>222</sup> *Id.* art. 6, § 1.

<sup>223</sup> See *Fact Sheet: Children's Human Rights*, *supra* note 8.

<sup>224</sup> *Id.*

<sup>225</sup> See Berkman, *supra* note 60, at 405.

<sup>226</sup> *Id.* Ratification would require Congressional approval. *Id.*; UNICEF, *Convention on the Rights of the Child*, at <http://www.unicef.org/crc/crc.htm> (last visited Mar. 3, 2004).

<sup>227</sup> *Id.* at 440; S. Res. 133, 104th Cong. (1995); 141 CONG. REC. 11, 16061, 16062 (1995) (statement of Sen. Jesse Helms).

<sup>228</sup> Susan Kilbourne, *Playing Politics with Children's Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 437, 439-40 (1996).

<sup>229</sup> *Id.* at 442. Kilbourne contends that UNCRC critics' fears are misguided. She argues that their fears are based on:

the erroneous assumption that the Convention is intended as a child-raising primer for *parents*, rather than as a check on the *State's* ability to infringe on the rights that children possess as human beings, and as a guide for States Parties to use when determining appropriate child welfare programs.



groups have claimed that the inclusion of articles in the UNCRC providing individuals with the right to family planning services and ensuring children's right to privacy signals the intent of UNCRC framers to forward a pro-abortion stance.<sup>230</sup> Another major complaint lodged against the UNCRC is that the comprehensive obligations<sup>231</sup> imposed by the treaty could potentially encroach on the jurisdiction of individual states.<sup>232</sup>

In contrast, children's rights advocates have actively called upon the U.S. to ratify the UNCRC.<sup>233</sup> They argue that ratification would increase the focus on children's issues in the U.S. and, rather than dictate the substance of U.S. policy, would provide a "unifying framework" for analyzing, improving and implementing current U.S. policies on child health, education, welfare and abuse.<sup>234</sup> Additionally, U.S. ratification would give the country representation on the Committee on the Rights of the Child and would be an important symbol of leadership and support of children's rights to the international community.<sup>235</sup>

It seems that political polarization on larger social policy issues has clouded meaningful debate on the practical implications of the UNCRC and resulted in the failure of the U.S. to support the most widely ratified human rights treaty in the history of the U.N.<sup>236</sup> Nevertheless, by taking the affirmative, if more limited measure of ratifying the Optional Protocol

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*Id.*

<sup>230</sup> *Id.* at 449-50; see also Alison Dundes Renteln, *Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 ILSA J. INT'L & COMP. L. 629, 634 (1997). The drafters of the UNCRC, in fact, made an effort to ensure that the treaty would be "abortion neutral." See David P. Stewart, *Ratification of the Convention on the Rights of the Child*, 5 GEO. J. ON FIGHTING POVERTY 161, 166 (1998). The UNCRC could just as easily be interpreted to be against abortion as it could be read to be in favor of it. Article 6 recognizes every child's "inherent right to life" and obligates States Parties to "ensure to the maximum extent possible the survival and development of the child." See Convention on the Rights of the Child, adopted Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49 U.N. doc. A/44/736 (1989), available at <http://193.194.138.190/html/menu3/b/k2crc.htm> (last visited Mar. 3, 2004). Moreover, the preamble references the child's need to "special safeguards and care, including appropriate legal protection, before as well as after birth." *Id.*

<sup>231</sup> Commercial Sexual Exploitation of Children is just one of the subjects covered by the UNCRC. It also addresses such topics as education, health, public benefits, domestic violence, freedom of expression and freedom of thought. *Id.*

<sup>232</sup> Li, *supra* note 19, at 538. Li points out that because treaties adopted by the U.S. are binding on each of the fifty individual states, each state would be obligated to comply with the terms of the UNCRC upon U.S. ratification. This could be "politically unpalatable" to the states. *Id.*

<sup>233</sup> Kilbourne, *supra* note 228, at 458.

<sup>234</sup> *Id.* at 458-60.

<sup>235</sup> *Id.* at 460-61.

<sup>236</sup> *Id.* at 438. The Cook Islands, Somalia, Switzerland, and the U.S. are the only countries worldwide who have not signed.

(wholly devoted to the problem of child trafficking, prostitution and pornography), the U.S. has demonstrated a commitment to combating the commercial sexual exploitation of children worldwide. The U.S. should now take the next step and make every effort to implement the measures contained in the Optional Protocol.

## V. WHERE DOES THE SOLUTION LIE?

U.S. governmental efforts to prevent American citizens from sexually exploiting minors in foreign countries have largely focused on legislation. However, extra-territorial legislation has not been widely enforced in the U.S. (or other sending countries), and consequently, has had a minimal effect on the global problem.<sup>237</sup> Although extra-territorial laws outlawing sex crimes with minors are an important component of child protection policies, it appears that a more comprehensive strategy is necessary.

### A. A HOLISTIC APPROACH

Ideally, a comprehensive solution to the problem of international commercial sexual exploitation of children would seek to eliminate the underlying economic disparities and imbalances of power between sending and receiving countries that enable the child prostitution industry to exist in the first place.<sup>238</sup> The U.N. Optional Protocol recognizes such an idea, asserting that "the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, [and] inequitable socio-economic structure . . . ."<sup>239</sup>

While attempting to eliminate the economic and social conditions that force children in developing countries into prostitution would be the ideal solution, it is not a goal that can be realistically accomplished in the short term.<sup>240</sup> The roots of poverty and socio-economic inequities run deep in

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<sup>237</sup> Lovering, *supra* note 16.

<sup>238</sup> See SEABROOK, *supra* note 1, at xiv; see also SEABROOK, *supra* note 7, at 146.

<sup>239</sup> *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, at <http://www.unicef.org/crc/annex2.htm> (last visited Mar. 3, 2004).

<sup>240</sup> Seabrook writes:

The most effective way of rescuing [child sex workers in Thailand] . . . would be a form of economic development that does not lead to growing inequality, more and more exclusion and marginalization of the poorest. Since this is not even on offer in the West, it is unreasonable to expect it to be so in those countries which have accepted the economic model proposed for the world by Western interests.

SEABROOK, *supra* note 7, at 146.

developing countries.<sup>241</sup> Nevertheless, although striking at the source of the problem appears an overwhelming task, addressing the social and economic factors that enable the child sex industry to thrive should be a goal of U.S. policy-makers when framing policies that impact developing countries.

#### B. INTERNATIONAL COOPERATION AND SHARING OF RESOURCES

In the short-term, the U.S. and other consumer countries should follow the example that Australia set in Cambodia and increase efforts to facilitate cooperation and the exchange of resources between law enforcement in sending and receiving countries. The U.S. understandably prefers that host countries take the initiative to prosecute American citizens for the crimes they commit while in a foreign nation.<sup>242</sup> Host country prosecution of crimes that occur within its borders can avoid the evidentiary and procedural problems that can hinder extra-territorial prosecution. However, for reasons explained previously, receiving countries have not been vigilant or largely successful in stemming the flow of sex tourists with domestic law enforcement.

Australia's efforts to assist Cambodian law enforcement officials by sharing manpower and resources produced strikingly successful results. The provision of U.S. personnel, training and monetary assistance to countries that are hotbeds for child sex tourism would likely produce similar outcomes. There are reasons, however, to suspect that the U.S. would be hesitant to allocate significant resources for this purpose. There is a perception on the part of some Western governments that it is not worth expending domestic resources on "other" children.<sup>243</sup> Further, due to the U.S.'s current domestic recession and the focus on national security efforts abroad, legislators are faced with severe budgetary constraints. An additional frustration and potential impediment to U.S. aid is the fact that when law enforcement efforts against sex tourism are successful in one country, sex tourists simply shift their attention to another country that has a burgeoning child sex market and lax law enforcement.<sup>244</sup> This could lead U.S. lawmakers to conclude that the issue is a lost cause.

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<sup>241</sup> *Id.*

<sup>242</sup> Giordanella, *supra* note 92, at 154.

<sup>243</sup> O'Connell Davidson, *supra* note 27, at 57.

<sup>244</sup> Australia Ambassador to Cambodia, Louise Hand, has commented:

All governments and many agencies need to be involved in addressing [the problem of child sex tourism] in a strategic way. If one country in the region achieves more effective action against the problem, then the perpetrators can too easily move . . . to a country with less effective law enforcement in place.

Baker, *Net Closes*, *supra* note 200, at 13.

If the U.S. is not willing to devote significant resources to aid host country law enforcement efforts, at the very least, it should take action to open and maintain lines of communication with host countries. Law enforcement agencies in host and sending countries should develop shared databases with the names of previously convicted child sex abusers. U.S. embassies abroad should keep close contact with local law enforcement officials and establish avenues for communication when a U.S. national is arrested under suspicion of child sexual exploitation. This could help avoid potential escape from the host country by the suspect, as was the case with Nick Bredimus, who fled Thailand following his arrest by obtaining a new U.S. passport from the U.S. Embassy in Bangkok.<sup>245</sup>

Additionally, prosecutions of child sex offenders in both the host and sending countries can be facilitated by effective use of Mutual Legal Assistance Treaties (MLATs). MLATs are bi-lateral treaties that formalize cooperation between signatory countries and bind them to provide legal assistance to one another upon request.<sup>246</sup> The U.S. currently is a party to forty-nine such treaties.<sup>247</sup> MLATs can be useful in overcoming some of the evidentiary hurdles that U.S. prosecutors face in domestic courts. They have been used effectively in certain international criminal cases.<sup>248</sup> The U.S. should seek to establish MLATs with developing countries in which the child sex trade flourishes.<sup>249</sup> The U.S. should also step up its efforts to more effectively utilize this mode of cooperation with countries with which the treaties already exist.

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<sup>245</sup> Despres, *supra* note 129.

<sup>246</sup> Edelson, *supra* note 27, at 513.

<sup>247</sup> The U.S. has MLATs currently in force with: Anguilla, Antigua/Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Brazil, British Virgin Islands, Canada, Cayman Islands, Cyprus, Czech Republic, Dominica, Egypt, Estonia, Greece, Grenada, Hong Kong, Hungary, Israel, Italy, Jamaica, Korea (South), Latvia, Lithuania, Luxembourg, Mexico, Montserrat, Morocco, Netherlands, Panama, Philippines, Poland, Romania, St. Kitts-Nevis, St. Lucia, St. Vincent, Spain, Switzerland, Thailand, Trinidad, Turkey, Turks and Caicos Islands, Ukraine, United Kingdom, and Uruguay. See Bureau of Consular Affairs, U.S. Dep't of State, *Mutual Legal Assistance in Criminal Matters, Treaties (MLATs) and Other Agreements*, at <http://travel.state.gov/mlat.html> (last visited Mar. 3, 2004).

<sup>248</sup> See 135 CONG. REC. 25, 634-35 (1989) (statement of Sen. Kerry) (noting effectiveness of MLATs in obtaining bank records, depositions, recordings of telephone conversations, and appearance of witnesses from other countries).

<sup>249</sup> For example, the U.S. should seek to establish MLATs with countries such as Cambodia and Costa Rica where child sex tourism is increasing at alarming rates and local law enforcement does not have the resources to respond.

## C. THE CONSUMERS: A NEED FOR EDUCATION

One potential domestic strategy for combating child sex tourism is initiating informational campaigns directed at those who sexually exploit children in foreign countries for the purpose of promoting behavioral changes and discouraging abuse.<sup>250</sup> A broader level of awareness could be sought through joint initiatives between government and the private sector.<sup>251</sup> Other countries have made such efforts. For example, in 1993, French travel agencies placed a half-million informational leaflets in their customers' tickets, informing travelers of the problem of child prostitution and encouraging them to refrain from participating in sex tours.<sup>252</sup> In Germany, travel agencies, hotels, and trade unions have distributed information about commercial child sexual exploitation.<sup>253</sup> In October 2002, a major hotel group, Accor Hotel Management, launched a program for its international hotels aimed at educating both staff and guests about child prostitution.<sup>254</sup>

It is unclear, however, whether educating travelers about commercial child sexual exploitation serves as a measurable deterrent to sex tourism. ECPAT International claims that consumer educational efforts are largely successful in decreasing the occurrence of sex crimes.<sup>255</sup> On the other hand, informing potential consumers about sex tourism may have the adverse effect of providing potential customers with a greater wealth of knowledge about the child sex trade.

At the very least, the U.S. should inform its citizens about the potential legal ramifications of traveling abroad to purchase sex with minors.

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<sup>250</sup> ECPAT Int'l, *Agenda for Action Against Commercial Sexual Exploitation of Children*, available at [http://www.ecpat.net/eng/ecpat\\_inter/projects/monitoring/agenda\\_action.asp](http://www.ecpat.net/eng/ecpat_inter/projects/monitoring/agenda_action.asp) (last visited Mar. 3, 2004).

<sup>251</sup> Li, *supra* note 19, at 535.

<sup>252</sup> *Id.* at 536.

<sup>253</sup> *Id.*

<sup>254</sup> Peerawat Jariyasombat, *Sex Tourism—Accor Bids to Combat Child Abuse*, BANGKOK POST, Oct. 17, 2002, at 4. Accor Hotel Management announced that it joined forces with ECPAT Thailand to initiate a training program for hotel employees in Thailand to educate them on how to handle situations involving child prostitution. Accor also committed to prominently displaying a poster in its hotels aimed at educating guests about the problem. The program was initiated in Thailand with plans to extend it globally. *Id.*

<sup>255</sup> ECPAT reports that an information campaign in Brazil that included posters and information sheets, a police hotline and special signs in hotels resulted in 500 reports of child sexual abuse to police within the first month of the initiative. ECPAT also maintains that the distribution of 500,000 awareness brochures at Katunayake Airport in Sri Lanka resulted in a decrease of child sex activity. Sendrine Fabié & Hervé Barioulet, *Child Sex Tourism Action Survey*, Apr. 2001, at 15, available at [http://www.ecpat.net/eng/ecpat\\_inter/projects/sex\\_tourism/sex\\_tourism.asp](http://www.ecpat.net/eng/ecpat_inter/projects/sex_tourism/sex_tourism.asp) (last visited Jan. 22, 2004).

Legislation providing for U.S. extra-territorial jurisdiction over sex crimes committed abroad has little chance of acting as a deterrent if the people it seeks to deter are either unaware of its existence or unafraid of potential repercussions for their acts. It does not appear that the existence of the Sexual Abuse Prevention Act has been sufficiently publicized to U.S. citizens traveling to potential target countries. The U.S. should take steps to remedy this informational deficit. It could, for example, target travelers by posting signs in foreign terminals of domestic airports, displaying informational messages during overseas flights or distributing information through consulates during the visa application process.<sup>256</sup> It could seek a more comprehensive approach by reaching the general public through informational television spots, similar to those warning of the dangers of illegal drug or tobacco use. Either way, the U.S. should seek to raise the American public's level of awareness about the potential negative consequences of sexually abusing minors in foreign countries.

## VI. CONCLUSION

Some may question the necessity and prudence of expending U.S. resources to combat a problem that exists miles and oceans away. They may view the sexual exploitation of foreign children by tourists as a relatively insignificant problem that is mainly the result of isolated incidents of pedophilia.<sup>257</sup> Unfortunately, this perception has been proven wrong.<sup>258</sup> Although accurate statistics on the numbers of child sex abusers and the volume of those abused are exceedingly difficult to obtain, there are nevertheless clear and unmistakable indications that the commercial sexual exploitation of children is a frequent, daily occurrence in countries around the globe, that many perpetrators are not pedophiles, and that U.S. citizens contribute to the problem.<sup>259</sup>

The U.S. has enacted extra-territorial legislation against child sex tourism.<sup>260</sup> While such laws are necessary components of efforts to combat the global problem of commercial sexual exploitation of children and have been used successfully against some of the most egregious and visible offenders, legislation has not to date proven to be an effective,

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<sup>256</sup> Several European airlines are now showing in-flight videos on preventing child sex tourism. *Sex Tourism on the Rise*, ASSOCIATED PRESS, Aug. 24, 2000, available at <http://abcnews.go.com/sections/travel/dailynews/childsextourism000824.html> (last visited May 30, 2003).

<sup>257</sup> O'Connell Davidson, *supra* note 27, at 54-55.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> See Edelson, *supra* note 27, at 493, 503.

comprehensive solution. The U.S. should devote resources to educating the public about the problem of sex tourism and convincing travelers that they may face prosecution in a U.S. criminal court as a result of participating in it. Additionally, the U.S. should increase its efforts to facilitate communication, cooperation and the sharing of resources with law enforcement officials in receiving countries.

Although the U.S. is not solely responsible for the commercial sexual exploitation of children in foreign countries, it contributes to the problem in significant ways. As the world's most powerful nation, the U.S. has a moral obligation to prevent the complicity of some of its citizens in appalling crimes against humanity's most vulnerable population.

## VII. EPILOGUE

Since the writing of this Comment, there have been a number of important developments related to U.S. efforts to prosecute American nationals who engage in illicit sexual acts with minors while abroad. In April 2003, Congress passed and President George W. Bush signed into law the PROTECT Act (Prosecuting Remedies and Tools Against the Exploitation of Children Today Act of 2003).<sup>261</sup> Among other provisions, the PROTECT Act amends the Child Sexual Abuse Prevention Act of 1994 by increasing penalties to thirty years imprisonment for convicted sex tourists and criminalizing persons or organizations that assist or organize sex tours.<sup>262</sup> The law also modifies the burden of proof requirements that existed under the previous legislation.<sup>263</sup> While the Child Sexual Abuse Protection Act required prosecutors to prove the intent of the accused, the government may now establish the defendant's culpability by proving that the accused either: (1) traveled with the intent to engage in illicit sexual conduct with a minor; (2) actually engaged in illicit sexual conduct with a minor in a foreign place; or (3) attempted or conspired to violate the statute.<sup>264</sup> In addition, the PROTECT Act contains a "Two Strikes and You're Out" provision that imposes a mandatory life sentence on persons twice convicted of federal sex offenses against a minor.<sup>265</sup>

In September 2003, the DOJ secured its first indictment under the PROTECT Act against Michael Lewis Clark, a sixty-nine year old veteran

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<sup>261</sup> Pub. L. No. 108-21, 117 Stat. 650 (codified as amended at 18 U.S.C. § 2423 (2000)).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> Pub. L. No. 108-21, 117 Stat. 650.

from Seattle.<sup>266</sup> Clark was charged with both attempting to engage and engaging in sexual acts with two boys, aged ten and thirteen, in Cambodia.<sup>267</sup> Clark's indictment was issued just one day after President Bush devoted a surprisingly large portion of his address to the U.N. General Assembly to the problem of the international sex trade.<sup>268</sup> Calling the trafficking of women and children into the sex trade a "humanitarian crisis," Bush asserted that sex tourism "should be a crime in all nations" and that "governments should inform travelers of the harm this industry does and the severe punishments that will fall on its patrons."<sup>269</sup> Bush stated that "the Department of Justice is actively investigating sex tour operators and patrons" under the PROTECT Act, and announced that "the American Government is committing fifty million dollars to support the good work of organizations that are rescuing women and children from exploitation."<sup>270</sup>

Bush's focus on the international sex trade and the evils of sex tourism in his address to the U.N. was somewhat unexpected, given the speech's primary focus on the U.S. decision to intervene militarily in Iraq. However, his remarks, while perhaps surprisingly timed, demonstrated a firm and unparalleled commitment on the part of the U.S. government to combat the sexual abuse of minors worldwide.<sup>271</sup> Whether the PROTECT Act will make a noticeable or meaningful dent in the numbers of Americans who travel abroad for the purpose of engaging in sex with minors remains to be seen. However, the U.S. Government's willingness to devote time and resources to the problem and to highlight it on the international stage are encouraging developments that will hopefully lead to a broader awareness of and a higher degree of protection for child victims of sex tourists.

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<sup>266</sup> Blaine Harden, *Veteran Indicted on Sex Charges; Man is First Charged under PROTECT Law's Provision on Tourism*, WASH. POST, Sept. 25, 2003, at A5.

<sup>267</sup> *Id.* Clark was initially arrested by Cambodian police in Phnom Penh in June 2003. U.S. federal prosecutors allege that Clark may have molested as many as fifty Cambodian boys in the past, and that when he flew to Cambodia it was aboard a military transport plane. *Id.*

<sup>268</sup> *The President's Address to the UN General Assembly*, FINANCIAL TIMES, Sept. 23, 2003. Bush devoted approximately one-third of his speech to the problem of the international sex trade and the U.S. Government's efforts to combat the problem. *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* Justice Department officials stated that the U.S. offers no financial incentives to countries that agree to cooperate with its investigations into sex tourism crimes. Harden, *supra* note 266, at A5.

<sup>271</sup> It is the author's hope that the non-partisan nature of this issue will mean that it is one that can be supported by future administrations, regardless of political party affiliation.



