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# Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws

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# Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws

## I. INTRODUCTION

The United Nations defines child sex tourism as “tourism organized with the primary purpose of facilitating . . . a commercial sexual relationship with a child,”<sup>1</sup> but child sex tourism may also include the “opportunistic use of prostituted children while traveling on business or for other purposes.”<sup>2</sup> This commercial sexual exploitation of children is a global crisis, devastating the lives of countless poor children around the world, while governments routinely fail to prosecute the perpetrators of these crimes for their abhorrent conduct.<sup>3</sup>

Reasons such as inadequate laws, ineffective law enforcement, lack of resources, corruption, and immature legal systems frequently enable child sex tourists to escape prosecution in countries where the exploitation occurs.<sup>4</sup> To bring these perpetrators to account, many nations have enacted extraterritorial legislation (“ET legislation”),<sup>5</sup> which provides a country with the jurisdiction to prosecute its nationals for criminal conduct committed beyond its borders. Many commentators characterize ET legislation as an essential tool in combating the

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1. U.N. Econ. & Soc. Council [ECOSOC], Comm’n On Human Rights, *Rights of the Child: Report of Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, ¶ 56, U.N. Doc. E/CN.4/1996/100 (Jan. 17, 1996).

2. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, PROSTITUTED CHILDREN AND CHILD SEX TOURISM: AN ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES 32 (1999) [hereinafter NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT].

3. See, e.g., JEREMY SEABROOK, NO HIDING PLACE: CHILD SEX TOURISM AND THE ROLE OF EXTRATERRITORIAL LEGISLATION, at ix (2000).

4. H.R. REP. NO. 107-525, at 3 (2002).

5. ECPAT Europe Law Enforcement Group, *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children, Executive Summary* (1999) [hereinafter *Europe Law Enforcement Group Report*].

sexual exploitation of children.<sup>6</sup> Although perpetrators may escape criminal liability in destination countries (countries where the child sex tourist travels to and where the crime physically occurs), ET legislation provides a mechanism through which governments can hold perpetrators accountable for their despicable crimes.

Over thirty countries have passed some type of ET legislation that enables sex tourists to be prosecuted for their criminal behavior overseas.<sup>7</sup> While increasingly more child sex tourists have been arrested and convicted for their offenses, there are still relatively small numbers of actual prosecutions in comparison to the estimated number of child sex tourists.<sup>8</sup> This indicates that current forms of ET legislation are inadequate to protect the world's children from commercial sexual exploitation.

This Comment explores the scope and effectiveness of current ET legislation used to combat child sex tourism. In its current form, most ET legislation is insufficient, facing many evidentiary and procedural obstacles that hinder its effectiveness. Without a more comprehensive effort that recognizes inherent difficulties in extraterritorial prosecution, most existing child sex tourism laws will continue to operate as an empty shell, failing to protect countless, vulnerable children all over the world. However, even with substantial improvements, ET legislation is only one part of the fight against child sex tourism. If we are to truly protect the world's children from commercial sexual exploitation, more must be done to improve prosecution rates in destination countries and to address the broader circumstances that allow children to be exploited.

Part II of this Comment provides a background on child sex tourism, considering its causes, the victims, and the perpetrators. Part III examines existing international agreements and domestic legislation passed to prosecute sex tourists. Part IV explores major obstacles to the effective enforcement and implementation of ET

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6. Geraldine Van Bueren, *Child Sexual Exploitation and the Law: A Report on the International Legal Framework and Current National Legislative and Enforcement Responses*, Theme Paper from Second World Congress against the Commercial Sexual Exploitation of Children; see also SEABROOK, *supra* note 3, at xiv.

7. Sara Austin, *Commercial Sexual Exploitation of Children: How Extra-territorial Legislation Can Help*, in VIOLENCE AGAINST WOMEN: FROM SILENCE TO EMPOWERMENT 53 (Don Brandt ed., World Vision International 2003) (citing ECPAT international survey).

8. SEABROOK, *supra* note 3, at ix.

legislation, and proposes a draft Model Code. Part V provides some non-legislative proposals to fighting child sex tourism.

## II. DEFINING THE PROBLEM

### A. *Child Sex Tourism*

The commercial sexual exploitation of children occurs in a number of ways, one of which is child sex tourism. Child sex tourism is an extremely lucrative industry, sustained by the increasing demand of foreigners from wealthy nations.<sup>9</sup> Child sex tourists are generally men who travel from wealthier developed nations (“sending countries”) into poorer, developing nations (“destination countries”) with inadequate laws, weak enforcement mechanisms, vulnerable women and children,<sup>10</sup> and a highly commercialized sex industry.<sup>11</sup> Sending countries for sex tourists include countries such as the United States, France, Germany, Japan, Australia, and the United Kingdom, while destination countries include the Philippines, Thailand, Cambodia, India, and many countries in Africa and South America.<sup>12</sup> Tragically, the child sex tourism industry permeates almost every region of the world.

### B. *The Victims*

Typically child sex tourists target girls and boys between the ages of 10 and 18, although they have begun targeting increasingly larger numbers of even younger children.<sup>13</sup> As a result of the covert nature of child sex tourism, it is difficult to measure the precise numbers of children victimized by sex tourism.<sup>14</sup> Despite varying estimates provided by governments and non-governmental

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9. *Id.*

10. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP'T OF STATE, VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT, 2005 REPORT, 22 (2005) [hereinafter TIP REPORT].

11. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT, *supra* note 2, at 38.

12. Daniel Edelson, Note, *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, 485 (2001).

13. Theresa Tan, *Moves to Curb Worrying Rise in Child Sex Tourism*, STRAITS TIMES, Apr. 27, 2005, available at <http://straitstimes.asia1.com.sg> (reporting a case involving a three year-old Filipino girl who was forced to perform oral sex on strangers).

14. Austin, *supra* note 7, at 39.

organizations, child sex tourism is certainly a widespread problem that devastates the lives of far too many children. The U.S. State Department estimates that each year, sex tourists and traffickers exploit more than one million children.<sup>15</sup> However, according to UNICEF, this number is closer to two million.<sup>16</sup> In India alone, according to one major organization,<sup>17</sup> there are an estimated 270,000 child prostitutes.<sup>18</sup>

Commentators note that conditions such as poverty, family breakdown, prior experiences of sexual victimization, lack of employment opportunities, consumer pressure, and cultural traditions push or force children into child prostitution.<sup>19</sup> Although it may seem that some children “choose” to enter into the sex industry, in reality, most children do not enter prostitution by free will. Rather, most children are tricked or forced into prostitution. Brothel owners, human traffickers, and their accomplices frequently deceive, kidnap, and coerce children into prostitution.<sup>20</sup> Traffickers sometimes lure children from their homes by promises of lucrative employment, or pay willing parents a price for each child.<sup>21</sup>

### C. The Perpetrators

Those who are involved in sex tourism range from mere tourists to businessmen, to military personnel and pedophiles, and can come from any level of society.<sup>22</sup> While local or domestic perpetrators increase the demand for child prostitutes,<sup>23</sup> the scope

15. TIP REPORT, *supra* note 10, at 22.

16. UNICEF Fact Sheet on Commercial Sexual Exploitation, *available at* <http://www.unicef.org/protection/files/sexex2.pdf> (last visited Feb. 8, 2006).

17. End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (“ECPAT”) is a network of organizations and individuals working together to eliminate the commercial sexual exploitation of children. More information about ECPAT is available at <http://ecpat.net/eng/index.asp>.

18. ECPAT, Profile of Commercial Sexual Exploitation, [http://www.ecpat.net/eng/Ecpat\\_inter/projects/monitoring/online\\_database/index.asp\\_\(last visited Feb. 10, 2006\)](http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/index.asp_(last%20visited%20Feb.%2010,%202006)).

19. Austin, *supra* note 7, at 41.

20. Karen D. Breckenridge, Comment, *Justice Beyond Borders: A Comparison of Australian and U.S. Child-Sex Tourism Laws*, 13 PAC. RIM L. & POL'Y 405, 410-11 (2004).

21. *Id.*

22. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT, *supra* note 2, at 37; SEABROOK, *supra* note 3, at 104 (noting that even low-income workers in the West can find ways to visit poor countries).

23. For example, Thai locals compose 86 percent of the clientele of prostituted children in Thailand. KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 204 (1995).

of this Comment focuses on foreign perpetrators. These foreign child sex tourists generally choose countries with widespread poverty, and take advantage of the anonymity and lack of criminal repercussions involved in committing sexual offenses overseas.<sup>24</sup> The number of men and women who engage in child sex tourism is uncertain, since most escape criminal liability in countries where they commit the offenses.<sup>25</sup>

#### D. Destination Countries

The countries in Asia, Latin America, Africa, and Eastern Europe (where most child prostitution exists) generally lack a stable economy, with high unemployment rates, great disparities between the rich and the poor, and a large underage population.<sup>26</sup> Because many such countries rely heavily on tourism as a vital means for economic development, revenues from sex tourism, now an unfortunate part of many countries' tourist attractions, form a significant portion of many national economies.<sup>27</sup> With such economic reliance on sex tourism, it is no wonder that nations with a well-developed sex tourism industry have little to no incentive to prosecute wealthy foreigners who pour their foreign currency into the local market.<sup>28</sup> With so few local incentives for prosecution, there is a clear need for ET legislation that sending countries can use to hold their own nationals accountable.

### III. EXISTING LEGISLATION—INTERNATIONAL AND COUNTRY-SPECIFIC EFFORTS TO PROSECUTE SEX TOURISTS

There are a number of international and domestic legal instruments that aim to protect children from commercial sexual exploitation. If enforced effectively, these laws can work to protect children, deter child sex tourism, and allow for the prosecution of offenders.

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24. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT, *supra* note 2, at 38.

25. *See, e.g.*, SEABROOK, *supra* note 3, at ix.

26. Karene Jullien, *The Recent International Efforts to End Commercial Sexual Exploitation of Children*, 31 DENV. J. INT'L L. & POL'Y 579, 582-83 (2003).

27. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT, *supra* note 2, at 37. *See also* Breckenridge, *supra* note 20, at 410.

28. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT, *supra* note 2, at 37.

### A. *International Efforts to Combat Child Sex Tourism*

A number of international treaties and instruments require state parties to protect children from commercial exploitation.<sup>29</sup> Several instruments, such as the Convention on the Rights of the Child and its optional protocols,<sup>30</sup> specifically require member states to combat child sex tourism, such as by enacting ET legislation. Foremost is the Convention on the Rights of the Child ("CRC"). To date, all U.N. member nations except the United States and Somalia have ratified the CRC.<sup>31</sup> The CRC requires state parties to protect children "from all forms of sexual exploitation," including taking appropriate domestic and international measures to prevent the "exploitative use of children in prostitution or other unlawful sexual practices."<sup>32</sup> While effectively codifying the universal rights of children and creating a uniform standard, the CRC provides only the broadest framework for confronting and combating child sex tourism.<sup>33</sup> It fails to provide specific guidance on how to create laws that protect children.<sup>34</sup>

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29. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A, art. 4, U.N. GAOR, 3d. Sess., 1st plen. mtg., U.N. Doc. A/810, (Dec. 12, 1948) (stating that "no one shall be held in slavery or servitude"); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at 52, 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/6316 (1966) (article 8 states again that "no one shall be held in slavery or servitude"); Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, art. 6, U.N. GAOR, 34th Sess. Supp. No. 46, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) (requiring all States Parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."); Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, art. 1, *opened for signature* March 21, 1950, 96 U.N.T.S. 271 (requiring member states to agree to punish any person who procures, entices or leads away, for purposes of prostitution, another person; or exploits the prostitution of another person); International Labour Organization (ILO) Convention 182 on the Worst Forms of Child Labour (calling upon parties to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour" which includes child prostitution).

30. Convention on the Rights of the Child, G.A. Res. 44/25, art. 34, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter *Convention on the Child*]. Current ratification status of CRC available at <http://www.unhcr.ch/html/menu2/6/crc/treaties/status-crc.htm>.

31. *Id.*

32. Convention on the Child, *supra* note 30, art. 34.

33. World Vision UK, "No Child of Mine...!" *Opening the World's Eyes to the Sexual Exploitation of Children*, Briefing Paper on the sexual exploitation of children (April 2002) [hereinafter *No Child of Mine*].

34. Stacey Mathews, Comment, *International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story?*, 27 HOUS. J. INT'L L. 649, 667 (2005).

In response to the need for more specific measures to better protect the rights of children guaranteed by the CRC, the General Assembly ratified the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (“Protocol on the Sale of Children”) on May 25, 2000.<sup>35</sup> Thus far ratified by 101 nations,<sup>36</sup> the Protocol on the Sale of Children requires member states to ensure that its domestic legislation allows the prosecution of its nationals for crimes of child sexual exploitation regardless of whether committed domestically or internationally.<sup>37</sup> In addition, the Protocol states that parties may take measures to establish jurisdiction over such offenses when either the perpetrator or the victim is a national of that party state.<sup>38</sup> Although not as far-reaching as prior drafts of the Protocol<sup>39</sup> (the scope having been narrowed as a result of compromise and the need for consensus), the Protocol clarifies vague obligations under the CRC to require member states to enact ET legislation to prosecute child sex tourists.<sup>40</sup>

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35. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter Protocol on the Sale of Children].

36. Current ratification status for the Protocol on the Sale of Children available at [http://www.ohchr.org/english/countries/ratification/11\\_c.htm](http://www.ohchr.org/english/countries/ratification/11_c.htm).

37. Protocol on the Sale of Children, *supra* note 35, art. 3.

38. *Id.* art. 4.

39. In 1993, a Draft Optional Protocol to the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children (“Draft Optional Protocol”) was submitted to the Commission on Human Rights to serve as a basis for recommendations concerning the issue of child sexual exploitation and trafficking. Article 2 of the Draft Optional Protocol requires states to agree to pass domestic legislation that makes the sexual exploitation or trafficking of children a crime subject to universal criminal jurisdiction, thereby empowering every state the right to arrest, convict, and punish offenders, regardless of the nationality of the alleged criminal or where the criminal conduct took place. In addition, the draft requires states to “ensure that their national legislation extends to crimes of sexual exploitation or trafficking in children” involving their own nationals, residents, corporations, and associations. U.N. Econ. & Soc. Council [ECOSOC], Comm’n on Human Rights, *Report of the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights, Addendum: Draft Optional Protocol to the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children*, art. 2(a), U.N. Doc. E/CN.4/1994/45/Add.1 (Mar. 1, 1994).

40. Protocol on the Sale of Children, *supra* note 35.



## B. State-Specific Efforts—Domestic and Extraterritorial Legislation

### 1. Legislation and Prosecution in Destination Countries

In general, child sex tourists are rarely prosecuted in destination countries. Although many destination countries are strengthening their domestic laws to fight sex tourism, still weak enforcement mechanisms and corrupt officials hinder the effective implementation of such laws.<sup>41</sup>

For example, in 1996, Cambodia passed a law permitting the prosecution of persons who engage in sexual activities with minors.<sup>42</sup> However, the Khmer Rouge devastated Cambodia and stripped the country of adequately trained attorneys and judges, and caused corruption in the judiciary, police, and military forces.<sup>43</sup> Without a system to support and enforce a potentially powerful piece of legislation, Cambodia continually fails to protect its children from on-going exploitation.

Government corruption, extreme poverty, civil unrest, and numerous other factors cause similar instability or otherwise inadequate judicial mechanisms in countless other countries.<sup>44</sup>

To remedy such domestic failures, sending countries with effective criminal justice systems must pass and enforce ET legislation designed to combat child sex tourism.

### 2. Extraterritorial Legislation of “Sending Countries”

Growing international pressure, along with increasing media attention surrounding child sex tourism, have caused many nations to implement some type of ET legislation that prohibits the sexual exploitation of children.<sup>45</sup> ET legislation may be based on the personality principle (where jurisdiction is exercised in the interest of the victim, who is a national, or the perpetrator, who is a national or resident), the protective principle (where a state exercises jurisdiction to protect its own interests), or the

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41. SEABROOK, *supra* note 3.

42. Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings, arts. 5, 7 (1996) (Cambodia), *translated by* the Legal Assistance Unit of the Cambodia Office of the UN High Commissioner for Human Rights, *available at* [http://www.cdpcambodia.org/trafficking\\_law.asp](http://www.cdpcambodia.org/trafficking_law.asp).

43. Abigail Schwartz, *Sex Trafficking in Cambodia*, 17 COLUM. J. ASIAN L. 371, 408-10 (2004).

44. See SEABROOK, *supra* note 3, at ix-xiv.

45. Edelson, *supra* note 12, at 494-96.

universality principle (where a state is willing to prosecute because of the universally punishable nature of the crime, such as in cases involving piracy, genocide or torture).<sup>46</sup>

While over thirty countries have implemented such ET laws,<sup>47</sup> the requirements, effectiveness, and level of enforcement of such laws vary greatly. For example, in terms of enforcement, Japan has yet to prosecute anyone under its extraterritorial law,<sup>48</sup> whereas the United States has charged at least twenty U.S. citizens under its most recent ET law.<sup>49</sup> Canada recently convicted its first Canadian citizen under its revised criminal codes granting extraterritorial jurisdiction.<sup>50</sup> In addition, ET laws also vary in their scope and requirements. The crimes for which nationals can be charged, as well as the age of protection vary from country to country.

The following section focuses on the content and enforcement of various countries' ET legislation.

#### a. Canada

In 1997, the Canadian Parliament amended its criminal code to extend criminal liability to Canadian nationals who commit sexual offenses outside of the country.<sup>51</sup> Bill C-15A added several sections to the code, making prosecution of child sex tourists easier by removing procedural prerequisites for prosecution.<sup>52</sup> Prior to the amendment, the Canadian government could not proceed with prosecuting the offender until the government of the country where the offense occurred requested such prosecution.<sup>53</sup> Amended sections 7(4.2) and (4.3) of the criminal code now

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46. SEABROOK, *supra* note 3, at 5.

47. Austin, *supra* note 7, at 53 (citing ECPAT international survey).

48. See SEABROOK, *supra* note 3. *But see Pedophilic Teacher Back in Custody Over Sex Tourism*, MAINICHI DAILY NEWS, Feb. 17, 2004, at 8 (discussing the arrest of Hideaki Nakao, a 48-year-old former teacher charged with having sex with at least eight girls aged between 12 and 16 in Cambodia).

49. The most recent piece of ET legislation passed by the US to combat the commercial sexual exploitation of children is the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003. TIP REPORT, *supra* note 10, at 23.

50. Daniel Girard, *B.C. Man Gets 10 Years for Sex Crimes*, TORONTO STAR, June 3, 2005, at A03.

51. Bill C-15A: An Act to Amend the Criminal Code and to Amend Other Acts (Can.), available at [http://www.parl.gc.ca/common/Bills\\_ls.asp?lang=E&Parl=37&Ses=1&ls=C15A&source=Bills\\_House\\_Government](http://www.parl.gc.ca/common/Bills_ls.asp?lang=E&Parl=37&Ses=1&ls=C15A&source=Bills_House_Government) (last visited Feb. 10, 2006) [hereinafter Bill C-15A].

52. *Id.* cl. 19.

53. *Id.* cl. 3(2).

permit the Canadian government to prosecute the national simply after receiving the consent of the Attorney General.<sup>54</sup>

While the amendment facilitates the prosecution of child sex tourists, Canada has thus far only convicted one person under this law.<sup>55</sup> One major reason for the lack of convictions is the difficulty involved in obtaining evidence to prosecute a crime committed outside the country's territory.<sup>56</sup> Prosecutors must overcome linguistic, cultural, and territorial barriers to obtain witnesses and other physical evidence necessary to effectively prosecute. Part IV contains a discussion of some of these evidentiary obstacles.

#### b. United Kingdom

The United Kingdom's ET legislation, the Sex Offenders Act 1997,<sup>57</sup> permits the prosecution of British nationals in the United Kingdom for sexual offenses committed overseas.<sup>58</sup> While several British citizens have been prosecuted under this law,<sup>59</sup> the Sex Offenders Act 1997 is problematic because it requires that the offense in question be recognized as a crime both in the foreign country and in the United Kingdom (known as double criminality).<sup>60</sup> Unfortunately, this encourages child sex tourists to choose destination countries that fail to criminalize child prostitution, thereby escaping prosecution under ET laws that require double criminality.<sup>61</sup> In one case, a British national escaped prosecution for sexually assaulting boys in Nepal because Nepal

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54. *Id.*

55. Girard, *supra* note 50. Donald Bakker, the first to be convicted under Canada's amended ET law, pleaded guilty to seven counts of sexual assault involving Cambodian girls. See also *Combating Trafficking in Persons: An International Perspective: Hearing Before the Subcomm. on Domestic & Int'l Monetary Policy, Trade & Tech. of the H. Comm. on Fin. Servs.*, 109th Cong. 7 (2005), available at <http://financialservices.house.gov/media/pdf/109-40.pdf> [hereinafter Michael O'Connor Testimony] (statement of Michael E. O'Connor, Jr., Director of Operations, South Asia International Justice Mission).

56. SEABROOK, *supra* note 3, at 1-2.

57. Sex Offenders Act, 1997, c. 51, Part II (U.K.), available at [www.opsi.gov.uk/acts/acts1997/97051--c.htm](http://www.opsi.gov.uk/acts/acts1997/97051--c.htm) (last visited Feb. 10, 2006).

58. *Id.*

59. Owen Bowcott, *Prison for Briton who went abroad for child sex*, GUARDIAN (London), June 19, 2001, at 10 (describing the British citizen, Mark Towner, who was convicted of sexually abusing girls as young as seven while on a "business trip" to Cambodia under the Sex Offenders Act 1997; he was sentenced to eight years in prison in June, 2001).

60. Sex Offenders Act, *supra* note 57.

61. Edelson, *supra* note 12, at 515.

did not have legislation protecting against the sexual exploitation of children.<sup>62</sup>

In addition to double criminality, the Association of the Chief of Police Officers in the UK noted several additional factors making convictions under its ET law difficult.<sup>63</sup> These factors included evidentiary obstacles such as the difficulty of tracking down victims,<sup>64</sup> the challenge of determining the victim's age,<sup>65</sup> and other challenges involving transnational fact-gathering. It is no wonder that convictions are a rare phenomenon.

### c. Japan

Effective as of 1999, Japan's Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children, makes any person "who engages in child prostitution" punishable by imprisonment.<sup>66</sup> Article 10 specifies that this allows for the prosecution of Japanese nationals who commit such acts abroad.<sup>67</sup>

Japanese men "are thought to make up the largest number of child sex tourist perpetrators in many Asian countries."<sup>68</sup> Japan's law does not contain a double criminality requirement nor requires the complaint of the victim or the victim's country to initiate investigation and prosecution,<sup>69</sup> making it one of the most structurally complete ET laws. However, the state rarely convicts Japanese nationals.<sup>70</sup> Japan's ET legislation fails to protect children because the government does not effectively enforce its law, not because the law itself is structurally deficient. It is difficult to say whether sending countries such as Japan fail to invest in

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62. Austin, *supra* note 7, at 46.

63. *Id.*

64. *Id.* See discussion *infra* section IV.

65. Austin, *supra* note 7, at 46.

66. Law for Punishing Acts Related to Child Prostitution and Child Pornography, art. 4 (Japan), translation available at [http://www.crnjapan.com/japan\\_law/laws/en/childoffenses-comp-199905.html](http://www.crnjapan.com/japan_law/laws/en/childoffenses-comp-199905.html) (last visited Feb. 10, 2006).

67. *Id.* art. 10; *see also* KEIHO, Law No. 45 of 1907, art. 3 (Japan) ("This Code shall apply to a Japanese national who commits any of the following crimes outside the territory of Japan.").

68. ECPAT International, Japan: Profile of Commercial Sexual Exploitation of Children, [http://www.ecpat.net/eng/Ecpat\\_inter/projects/monitoring/online\\_database/index.asp](http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/index.asp) (select "Japan"; then select "Profile of Commercial Sexual Exploitation of Children") (last visited July 9, 2006).

69. *See* SEABROOK, *supra* note 3, at 90.

70. *Id.* at 91.

enforcement because of the difficulties of implementing the laws or because such countries are not truly committed to solving this crisis.

#### d. United States

Recently, the United States enacted the PROTECT Act, which makes it a crime for any person to travel abroad with the purpose of engaging in child sex tourism.<sup>71</sup> Under the PROTECT Act, the government can establish the offender's culpability by proving one of the following: (1) that the accused traveled with the intent to engage in sexual conduct with a minor, (2) actually engaged in sexual conduct with a minor overseas, or (3) otherwise attempted to violate the law.<sup>72</sup>

Since its passage, there have been over 20 indictments, and more than a dozen convictions.<sup>73</sup> Because the PROTECT Act targets both citizens and residents, and because a violation of this law can be established through one of three possible means, this law will likely prove more successful at prosecuting criminals than under prior versions of United States ET legislation.

#### e. Australia

Australia's Parliament passed the Crimes (Child Sex Tourism) Amendment Act in 1994,<sup>74</sup> which introduced a new section into the pre-existing Crimes Act. The Act permits prosecution of an Australian citizen or resident for engaging in sexual activities with a child under 16 outside of Australia, and may result in penalties ranging from 12 to 17 years in prison.<sup>75</sup>

The Australian ET legislation possesses several strengths, including stiff penalties and provisions to overcome some of the evidentiary obstacles of extraterritorial prosecutions. For example, in 1999, a child sex tourist was convicted and sentenced to 12 years of imprisonment which, to date, was the "heaviest sentence imposed anywhere in the world for extra-territorial child sex

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71. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 105, 117 Stat. 650 [hereinafter PROTECT Act].

72. PROTECT Act § 105 (2003).

73. TIP REPORT, *supra* note 10, at 23.

74. Crimes (Child Sex Tourism) Amendment Act, 1994, No. 105 (Austl.), available at <http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/F517DE6B14C978EBCA256F720018338B?OpenDocument>.

75. *Id.* §§ 50AD, 50BA, 50BB, 50BC.

offences.”<sup>76</sup> In addition, the law permits the child victim or other witnesses to testify via video link, thereby facilitating prosecution.<sup>77</sup> Further, the law allows prosecution to proceed without evidence from the destination country if sufficient evidence can be found in Australia, such as in the conviction of Lee,<sup>78</sup> which is discussed below in Section IV B.

However, one major shortcoming is that the law only protects children under the age of 16.<sup>79</sup> Having ratified the Convention on the Rights of the Child,<sup>80</sup> which protects the rights of children under the age of 18, Australia should extend the application of its ET legislation to protect children under the age of 18 from commercial sexual exploitation.

#### f. Denmark

In response to obligations imposed by Article 4 of the Optional Protocol, Denmark also passed its own ET legislation. Denmark’s ET legislation extends criminal jurisdiction to acts committed outside Denmark by a national or a resident, provided that the act is also punishable under the laws of the country where it is committed.<sup>81</sup> Like other countries that have maintained double criminality requirements, Denmark’s ET laws likely will not have the effect of deterring criminal activity, but will rather encourage sex tourists to commit their sexual acts in destination countries that do not criminalize their behavior.

On the up side, similar to the video link provision in Australia’s law, Denmark has recently amended the Administration of Justice Act to grant express authority for the use of video interviews of children as evidence in a trial.<sup>82</sup> This provision addresses both the needs of the child victim and the general evidentiary obstacles present in extraterritorial cases.

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76. Fiona David, *Trends and Issues in Crime and Criminal Justice: Child Sex Tourism*, 156 AUSTL. INST. OF CRIMINOLOGY 1, 5 (2000) (citing ECPAT Australia May/June 1999), available at <http://www.aic.gov.au/publications/tandi/ti156.pdf>.

77. Crimes (Child Sex Tourism) Amendment Act, 1994, § 50EA (Austl.).

78. David, *supra* note 76.

79. Crimes (Child Sex Tourism) Amendment Act, 1994, §§ 50AD, 50BA, 50BB, 50BC (Austl.).

80. Convention on the Child, *supra* note 30, art. 1.

81. Denmark’s Initial Report on the Implementation of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, at 8 (Aug. 2005) [hereinafter Denmark Report].

82. *Id.* at 14.

Chart 1 below compares characteristics of various countries' ET legislation used to fight child sex tourism.

	Age of Protection (years)	Requires Double Criminality?	Maximum Sentence (years)	Application to Nationals and Residents?	Offense to Travel with Intent?	Provision to Prosecute Child Sex Tour Operators?	Requirement of Prior Denunciation?	Number of Convictions	Overall Effectiveness
Australia	16	N	12 or 17*	Y	N	Y	N	11	B
Canada	18	N	5	N	N	N	N	1	B
Japan	18	N	U	N	N	Y	N	0	C
New Zealand	16	N	14	Y	N	Y	Y	U	B-
U.K.	16	Y	U	Y	N	N	N	5	B-
United States	18	N	30	Y	Y	Y	N	12	A-

\* depends on nature of the sexual act.

U = unknown

Needs Improvement

#### IV. EXTRATERRITORIAL LEGISLATION: RECOMMENDATIONS FOR IMPROVEMENT

Current ET legislation, while an effective tool in the war against child sex tourism, can be improved in a number of ways. The following sections outline some suggested areas of improvement in the content and implementation of these laws. Changes in the laws' content (such as expanding the application of ET legislation and removing double criminality requirements) and implementation (such as addressing evidentiary obstacles) can enhance the effectiveness of ET legislation and help to better protect children from sexual exploitation. In addition, the last section includes a draft extraterritorial Model Code, incorporating the strengths of various versions of current child sex tourism laws.

### A. Structural Amendments to Current Extraterritorial Legislation

#### 1. Expand Scope of Application to Nationals and Residents

Most ET legislation applies only to nationals, but several countries have extended the scope of its extraterritorial jurisdiction to apply to permanent residents or even to those merely passing through their country. For instance, under the extraterritorial laws of France, Belgium,<sup>83</sup> and the United States,<sup>84</sup> both citizens and permanent or “habitual” residents are punishable for acts of child sexual exploitation committed outside each country’s territory. Similarly, Denmark’s criminal jurisdiction extends to include Danish nationals and persons “residing within Danish territory.”<sup>85</sup>

Commentators urge that ET legislation should apply both to nationals and residents of the legislating country.<sup>86</sup> Although most documented cases of child sex tourist prosecutions involve nationals, there are undoubtedly resident aliens that would escape extraterritorial jurisdiction in countries such as Switzerland where their ET legislation only applies to Swiss nationals.<sup>87</sup> Although some countries have amended their ET legislation to permit jurisdiction over foreigners passing through their country, commentators only support such universal jurisdiction as long as it does not invoke double criminality requirements.<sup>88</sup>

#### 2. Eliminate Double Criminality Requirements

As discussed, the ET legislation of many countries stipulates that the crime committed must constitute an offense both in the destination and sending country.<sup>89</sup> Such requirements of double criminality pose significant obstacles to the successful prosecution of child sex tourists. Experts state that imposing double criminality requirements are inconsistent with “the international legal norms established by a near universal ratification of the Convention on the Rights of the Child.”<sup>90</sup> Since all CRC member states have

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83. *Europe Law Enforcement Group Report, supra* note 5, at 9.

84. PROTECT Act, *supra* note 71, § 105(c).

85. Denmark Report, *supra* note 81, at 8.

86. Europe Law Enforcement Group Report, *supra* note 5, at 9.

87. SEABROOK, *supra* note 3, at 101.

88. *Id.*

89. Europe Law Enforcement Group Report, *supra* note 5, at 2.

90. *Id.* at 10.



committed to protect the children of the world, the issues of national sovereignty that arise from doing away with double criminality pale in comparison to fulfilling international obligations to protect vulnerable children.<sup>91</sup> Further, double criminality encourages a type of forum shopping among child sex tourists looking for destination countries with weaker laws.<sup>92</sup> Because of these drawbacks, the double criminality requirements should be discarded.<sup>93</sup>

### 3. Universalize Age of Protection

The age of children protected under varying ET laws is inconsistent. Germany protects children under the age of 14, France and Sweden protect children under the age of 15, and Australia, Netherlands, Switzerland and Belgium protect children under the ages of 16.<sup>94</sup> Japan's ET legislation protects all children under the age of 18.<sup>95</sup> Where the ET legislation of sending countries imposes a double criminality requirement, the fact that different countries protect children of differing ages poses an obstacle to prosecution. For example, if a child sex tourist abuses a 16 year-old in country X (the laws of which protect only children under the age of 14), ET legislation requiring double criminality would disqualify this crime from prosecution since by the laws of country X, a sexual act with a 16 year-old would not constitute a crime.

The CRC, which has obtained near universal ratification,<sup>96</sup> defines children as people under the age of 18.<sup>97</sup> Since provisions of the Convention are binding for all member states, all member states should raise age limit protections of their ET legislation to 18. Further, the virtual universal ratification of the Convention has presumably raised the status of the CRC to customary international law. Therefore, since its provisions would then be

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91. *Id.*

92. *Id.*

93. Van Bueren, *supra* note 6, at 20.

94. SEABROOK, *supra* note 3, at 103.

95. Law for Punishing Acts Related to Child Prostitution and Child Pornography (Japan), translation available at [http://www.crnjapan.com/japan\\_law/laws/en/childoffenses-comp-199905.html](http://www.crnjapan.com/japan_law/laws/en/childoffenses-comp-199905.html).

96. Current ratification status of CRC available at <http://www.unhchr.ch/html/menu2/6/crc/treaties/status-crc.htm>.

97. Convention on the Child, *supra* note 30, art. 1.

binding even on non-member states,<sup>98</sup> all countries, member and non-member states, should be required to raise the age of protection to 18.

#### 4. Offenses

The ET legislation of some countries currently contain provisions that criminalize not only sexual conduct with a child, but also criminalizes traveling with the intent to commit sexual acts with a child.<sup>99</sup> For example, the United States' PROTECT Act allows for prosecution based solely on evidence of intent to travel abroad for the purpose of engaging in sexual conduct with a minor.<sup>100</sup> This type of provision allows prosecutors to charge child sex tourists without evidence that any sexual misconduct took place. Prosecutors can obtain and rely on evidence available in the sending country, thereby removing the difficult task of collecting evidence overseas.<sup>101</sup> While proving an offender's state of mind may appear difficult, the United States government has achieved some positive results.

For example, government agents arrested John W. Seljan, age 85, in Los Angeles as he attempted to board a flight to the Philippines. Officers had intercepted a letter Seljan had sent to Filipino girls indicating his intent to have sex with two underage girls.<sup>102</sup> At the time of his arrest, officers found pornographic materials, sexual aids, chocolate, and currency in his luggage.<sup>103</sup> The PROTECT Act enabled prosecutors to proceed to charge him based on this demonstration of intent. As a result, Seljan was convicted and sentenced to 20 years in prison.<sup>104</sup>

As such, some commentators suggest that ET legislation enacted to combat child sex tourism should include provisions, like that in the PROTECT Act, that allow for the prosecution of those

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98. Customary law results from a "general and consistent practice of states followed by them from a sense of legal obligation." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987). Therefore, such laws are "legally binding on the international plane." THOMAS BUERGENTHAL & SEAN D. MURPHY, PUBLIC INTERNATIONAL LAW IN A NUTSHELL 21 (3d ed. 2002).

99. See, e.g., PROTECT Act § 105(b) (2003).

100. See, e.g., *id.*

101. See, e.g., *id.*

102. See Operation Predator Fact Sheet on Child Sex Tourists, available at <http://www.ice.gov/graphics/news/factsheets/sextourists.htm> (last visited Feb. 10, 2006).

103. *Id.*

104. *Id.*

traveling with the intent to commit acts of engaging in sexual activities with children.<sup>105</sup> While this permits opportunistic offenders (those that don't "intend" to engage in sex with a minor, but find themselves presented with the opportunity to do so) to escape liability under this provision, they nonetheless are subject to basic provisions prohibiting the act of engaging in sex with minors.<sup>106</sup>

### 5. Enact Provisions to Punish Sex Tour Operators

While current ET legislation allows governments to prosecute acts of child sexual exploitation committed extra-territorially, domestic legislation should include provisions that criminalize the activities of sex tour operators, travel agents, and others involved in procuring children for sex tourists.<sup>107</sup> The governments of Australia and New Zealand have both included provisions in their ET legislation that permit the prosecution of sex tour operators and others. For example, Australia's Crimes (Child Sex Tourism) Amendment Act 1994 provides that a person who acts with the intent of benefiting from or encouraging conduct that would constitute a violation of the Act is subject to imprisonment of up to 17 years.<sup>108</sup> Similarly, New Zealand's Crimes Amendment Act 1961 prohibits conduct that facilitates others in the commission of acts of child sex tourism, such as making travel arrangements or printing or publishing information intended to promote child sex tours.<sup>109</sup> Such activities are punishable by up to seven years imprisonment.<sup>110</sup> Other countries should similarly include provisions that will allow for strict penalties to those who aid in exploiting children.

### 6. Time Limitations

The length of time that a government has jurisdiction over a crime of engaging in sexual conduct with a child varies from country to country. For example, under a prior version of Japan's

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105. 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, 72-73 (2002).

106. *Id.*

107. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN REPORT, *supra* note 2, at 48.

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

109. Crimes Act 1961, 1961 S.N.Z. No. 43 § 144(c), available at <http://legislation.govt.nz> (last visited Apr. 10, 2006).

110. *Id.*

ET legislation, the government could no longer prosecute a Japanese national after a mere five years since the crime had been committed.<sup>111</sup> In other countries, the time limitation only starts to run after the child attains majority age.<sup>112</sup> Commentators agree that time limitations should be harmonized to run from the time the child reaches majority age, rather than from the time the offence is committed.<sup>113</sup>

### *B. Overcoming the Obstacles to Effective Enforcement*

Juan Miguel Petit, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, noted that “if legislation is a first, indispensable step, the real challenge lies in implementation.”<sup>114</sup> The effective enforcement of international, domestic, and ET laws requires international cooperation and adequate government investment in financial and human resources.<sup>115</sup> Without effective cooperation and enforcement, the most comprehensive ET legislation is useless to protect the world’s children. The following sections address the evidentiary and procedural obstacles faced by those attempting to enforce ET legislation, as well as some of the measures taken by specific countries to overcome these obstacles.

The Association of the Chief of Police Officers stated that in the United Kingdom,<sup>116</sup> obtaining evidence sufficient to secure a conviction in an extraterritorial prosecution is difficult. This is due to factors such as distance, difficulties involved in identifying the location of the offenses or the victims involved, possible language barriers, and the amount of time that has passed since the commission of the offense.<sup>117</sup>

A closer look at the facts surrounding the conviction of Canadian Donald Bakker gives great insight into these evidentiary

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111. SEABROOK, *supra* note 3, at 107.

112. *Id.* at 115.

113. *Id.*

114. U.N. Econ. & Soc. Council [ECOSOC], Comm’n On Human Rights, Rights of the Child: Report of Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, ¶ 34, U.N. Doc. E/CN.4/2004/9 (Jan. 5, 2004) [hereinafter Special Rapporteur Report 2004].

115. *Id.*

116. Austin, *supra* note 7, at 46.

117. Sara K. Andrews, Comment, *U.S. Domestic Prosecution of the American International Tourist: Efforts to Protect Children From Sexual Exploitation*, 94 J. CRIM. L. & CRIMINOLOGY 415, 436 (2004).

problems surrounding the enforcement of ET legislation. While Canadian police had seized videotapes that Bakker had made of his sexual acts with underage Cambodian girls, they were unable to identify either the location of the crime or the specific children involved.<sup>118</sup> However, in an astonishing coincidence, an investigator involved in the case happened to watch a *Dateline NBC* broadcast that showed footage taken during an investigation of a brothel in Svay Pak conducted by a non-profit organization, International Justice Mission. The investigator recognized both the location and the girls that were in Bakker's videotape.<sup>119</sup> As a result, Bakker was successfully convicted.

In most circumstances where such coincidences do not occur, investigators are faced with the difficult task of identifying the victim and gathering evidence in a foreign country, all of which is likely to require a substantial investment of time, staffing, and resources. The Honorable Amanda Vanstone, Australian Minister for Justice and Customs, stated that "[P]rosecutions are not easy under this legislation. Investigators and prosecutors face difficulties."<sup>120</sup> It is no wonder the number of actual convictions under ET legislation remains relatively small.

However, Australia's ET laws have attempted to resolve some of these evidentiary problems. For example, in *The Queen v. Jesse Spencer Pearce*, the defendant was successfully prosecuted for offenses of child sex tourism based on photographs in his possession that depicted him engaging in indecent acts involving Asian girls and boys.<sup>121</sup> Based on the photographs and Pearce's accompanying confession as to the details of the photograph, the state convicted Pearce without any evidence from the destination country.<sup>122</sup>

Similarly, in the *Lee* case, while police were unable to locate the children involved in Cambodia, they were able to obtain photographs of Lee engaged in sexual activities.<sup>123</sup> Although the photographs did not show Lee's face, forensic scientists matched the perpetrator's fingers in the photograph with Lee's fingerprints,

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118. Michael O'Connor Testimony, *supra* note 55, at 7.

119. *Id.*

120. Media Release from Senator, the Honorable Amanda Vanstone, Minister for Justice and Customs, Child Sex Tourism: No Place to Hide (Jul. 30, 2000), available at <http://www.aic.gov.au/media/20000730.html>.

121. David, *supra* note 76, at 3.

122. *Id.*

123. *Id.* at 5.

which led to Lee's conviction.<sup>124</sup> Australia's ET law, containing provisions to deal with some of the evidentiary difficulties of extraterritorial prosecutions, demonstrates that ET legislation can be remarkably effective.

In addition, as discussed above, Australia's law makes specific accommodations for foreign witnesses, including the child victim. Where obtaining the witness' presence would be too costly or distressing, the witness in a sex tourism case may testify from the foreign country by video link.<sup>125</sup> Denmark has also implemented similar provisions in their laws.<sup>126</sup> Accommodations such as these can help lead to convictions where evidence gathering would otherwise be too difficult. However, these accommodations may not be permitted everywhere, especially where they have the possibility of conflicting with domestic constitutional laws.<sup>127</sup>

In addition, governments can alleviate the evidentiary difficulties of establishing the age of the victim by allowing age to be proved through a variety of means.<sup>128</sup> For example, Australia's Crimes (Child Sex Tourism) Amendment Act 1994 considers all of the following as evidence of a child's age: (a) the person's appearance, (b) medical or other scientific opinion, (c) a document that is or appears to be an official or medical record from a country outside Australia, and (d) a document that is or appears to be a copy of such a record.<sup>129</sup>

By creating more than one way to prove a child's age, or by loosening standards for establishing age, governments can more easily overcome the evidentiary hurdle of proving the crime of child sex tourism.

Finally, improving international cooperation between police, prosecutors, non-governmental organizations, and others is vital to effective prosecution. Without an integrated effort between officers and prosecutors from both the destination country and the sending country, governments will have a difficult time obtaining

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124. *Id.*

125. Crimes (Child Sex Tourism) Amendment Act, 1994, § 50EA (Austl.).

126. Denmark Report, *supra* note 81, at 14.

127. There is no equivalent provision in the PROTECT Act. It is possible that a provision permitting video-link testimony conflicts with the Sixth Amendment of the U.S. Constitution, which guarantees the defendant the right to confront his accuser. *See* U.S. CONST. amend. VI; Breckenridge, *supra* note 20, at 426-35.

128. Crimes (Child Sex Tourism) Amendment Act, 1994, § 50FA (Austl.).

129. *Id.*

the necessary evidence to move forward with a successful prosecution.

### C. Proposed Model Code

Based on the discussions above, this draft Model Code is an attempt to integrate the strength of various child sex tourism laws into one model ET law.

#### **Penalties for Sexual Offenses Committed Outside the Territory of \_\_\_\_\_(Country).**

Article 1: Objective.

The purpose of this Law is to protect the rights of children by proscribing punishment for acts of sexual conduct engaged in with children outside the territory of \_\_\_\_\_(country).

Article 2: Definitions.

For the purposes of this Law, "child" refers to any person under the age of 18.

For the purposes of this Law, "illicit sexual conduct" includes (a) a sexual act with a person under the age of 18 that would constitute an offense if committed within the territory of this country; (b) any commercial sex act with a person under the age of 18.

For the purposes of this Law, "child prostitution" refers to engaging in any type of sexual conduct with a child in return for giving, or promising to give, a remuneration to the child, someone acting as protector or guardian to the child, or someone acting as an intermediary in engaging in sexual conduct with the child.

Article 3: Who can be prosecuted for an act of illicit sexual conduct.

A citizen of \_\_\_\_\_(Country)

An alien admitted for permanent residency of \_\_\_\_\_(Country)

A corporate entity incorporated or operating in the state or territory of \_\_\_\_\_(Country)

Article 4: Punishable Offenses.

Any person who travels in foreign commerce and engages in illicit sexual conduct with a child shall be fined or imprisoned for no more than 30 years, or both.

Any person who travels in foreign commerce with the intent to engage in illicit sexual conduct with a child shall be fined or imprisoned for no more than 30 years, or both.

Any person or entity that for the purposes of financial gain, arranges, encourages, facilitates, induces or procures the travel of a person, knowing that such a person is traveling in inter-state or foreign commerce for the purpose of engaging in illicit sexual conduct with a child shall also be fined or imprisoned for no more than 30 years, or both.

Article 5: Double Criminality.

This Law should not be read to require that the illicit sexual conduct also be deemed a criminal act in the country where the offense occurs. The offenses under Article 4 are punishable regardless of whether the territory where the offense occurs has criminalized the behavior in their criminal statutes.

Article 6: Time Limitation.

Prosecution for offenses under Article 4 can be pursued without the initiation or authorization of the victim or the victim's government. Offenses punishable under Article 4 remain punishable for a period of 10 years after the victim child has attained the age of majority.

#### V. ADDITIONAL RECOMMENDATIONS FOR SUCCESSFULLY COMBATING CHILD SEX TOURISM

In addition to implementing structurally sound child sex tourism laws, which should include provisions similar to those outlined in the draft Model Code, governments should also focus their efforts on non-legislative measures to prevent child sex tourism. Policy measures aimed at reducing poverty, creating access to education, and providing vocational training, among others, are a vital part of addressing the circumstances that lead to the vulnerability and exploitation of children.<sup>130</sup> Further, as concluded by the Special Rapporteur, “[M]ore action is needed to encourage behavior change of persons who actively or potentially engage in child sexual exploitation. This implies a transformative process involving not only the perpetrators but the whole of society with respect to the way women and men relate to each other.”<sup>131</sup>

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130. Special Rapporteur Report 2004, *supra* note 114, ¶ 96-114.

131. *Id.* at ¶ 136.



## VI. CONCLUSION

Improving current child tourism laws to better protect countless vulnerable children from sexual exploitation is vital. Destination countries must continue to take part in the global fight against child sex tourism by improving the content and enforcement of their ET legislation. However, governments of sending countries must add to these efforts by assisting the prosecution efforts in destination countries.

While ET legislation is an important part of combating sex tourism, it is “not a substitute for effective [domestic] laws, policies and law/policy enforcement.”<sup>132</sup> Attempting to prosecute an offender for crimes committed thousands of miles away has inherent difficulties that will always be present, regardless of the degree of cooperation between destination and sending countries. Therefore, focus should be placed on improving the enforcement of prosecution in destination countries.

The key to successfully combating child sex tourism lies not only in improving ET legislation (although important), but rather in supporting the efforts of destination countries in establishing and enforcing effective legislation to prosecute child sex tourists. It is with efforts such as UNICEF’s capacity-building project in Cambodia aimed at improving the “investigative capacity of police, judges and prosecutors in cases of sexual exploitation of children”<sup>133</sup> that destination countries can grow better equipped to locally combat child sex tourism. While improving ET legislation is an important role sending countries can and should play, more must be done to support both the legal and economic needs of destination countries if we are to truly protect children from commercial sexual exploitation.

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132. Van Bueren, *supra* note 6, at 16.

133. Special Rapporteur Report 2004, *supra* note 114, ¶ 39.

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