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INTERNATIONAL LEGISLATIVE EFFORTS TO COMBAT CHILD SEX TOURISM: EVALUATING THE COUNCIL OF EUROPE CONVENTION ON COMMERCIAL CHILD SEXUAL EXPLOITATION

KALEN FREDETTE*

Abstract: This paper assesses the recent national and multinational efforts to combat global child sex tourism (CST), focusing particularly on the Council of Europe’s Convention on the Protection of Children Against Sexual Exploitation and Abuse. Ultimately, the rise in CST offenses compared to the sparse number of CST convictions strongly suggests the inadequacy of the national and multinational efforts currently in play. However, even a significant increase in convictions by “Sending States” (the focus of most legislation, including the COE Convention) is unlikely to sufficiently diminish CST unless matched by heightened enforcement efforts in “Destination States.” Properly addressing CST requires comprehensive legislation at the national and international level that stimulates multinational cooperation and motivates Destination States to prosecute offenders and foster local initiatives for victim prevention, protection and assistance.

INTRODUCTION

In many developing countries, destitute children are routinely sexually exploited by foreign visitors. Child sex tourism (CST) is a global humanitarian crisis, both in terms of scale and its devastating impact on victims and their communities. Due to the inherently clandestine nature of the activity, estimates of the number of offenses are uncertain.¹ The recent estimate by the U.S. State Department—that

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¹ Sara Austin, *Commercial Sexual Exploitation of Children: How Extra-Territorial Legislation Can Help*, in *VIOLENCE AGAINST WOMEN: FROM SILENCE TO EMPOWERMENT* 39 (Don Brandt ed., 2003); JEREMY SEABROOK, *NO HIDING PLACE: CHILD SEX TOURISM AND THE ROLE OF EXTRATERRITORIAL LEGISLATION*, at ix (2000); Naomi L. Svensson, *Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws*, 28 *LOYOLA INT’L COMP. L. REV.* 641, 643–44 (2006).

each year, more than two million children fall victim to commercial sexual exploitation—provides a sobering indication of the problem’s magnitude.² The number of CST perpetrators is also uncertain because few are held accountable, but the statistical indicators available are troubling.³ For example, among the roughly five million tourists who visit Thailand annually, perhaps two-thirds are sex tourists, ten percent of whom purportedly engage in sex with minors.⁴ Statistical inexactitude aside, CST is clearly widespread and rapidly growing.⁵ Almost every state is affected and the problem will only grow worse as perpetrators popularize new regions.⁶

² See OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 24 (2008), available at <http://www.state.gov/documents/organization/105501.pdf> [hereinafter 2008 TIP REPORT]; Heather C. Giordanella, *Status of § 2423(b): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 TEMP. INT’L & COMP. L.J. 133, 134 (1998); Cynthia Price Cohen, *Child Sexual Exploitation in Developing Countries*, 44 REV. INT’L COMM’N OF JURISTS 42, 42 (1990). But see REUTERS HEALTH, CHILD PROSTITUTION A GLOBAL PROBLEM, Apr. 19, 2002, <http://www.thebody.com/content/whatis/art22944.html> (estimating that the number of prostituted children worldwide “could be as high as 10 million”); see also END CHILD PROSTITUTION, CHILD PORNOGRAPHY AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES, available at http://www.ecpat.net/EI/Csec_onlineDatabase.asp (containing survey of sexually exploited children by state and reason). For articles highlighting CST numbers in specific regions, see Timothy Roche, *Tourists Who Prey on Kids*, TIME, Feb. 15, 1999, at 58; Di Caelers, *Child-Sex Tourists Target Cape Town’s Juvenile Prostitutes*, AFR. NEWS, Feb. 5, 1999; Kate Connolly, *Sex in a Cold Climate: On the E55 Highway That Runs Along the Border Between the Czech Republic and Germany, Sex Tourism is Booming*, GUARDIAN, Jan. 5, 1999, at 44.

³ See SEABROOK, *supra* note 1, at xi (noting that two-thirds of the 6 million annual tourists to Thailand during the mid-1990s were unaccompanied men, and speculating that “some percentage were CST offenders”); Svensson, *supra* note 1, at 645 (noting that CST numbers are uncertain because most perpetrators escape detection); Tracy Agyemang, Note, *Reconceptualizing Child Sexual Exploitation as a Bias Crime Under the Protect Act*, 12 CARDOZO J.L. GENDER 937, 939 (2006) (noting that the number of tourists is not easily calculable).

⁴ Vickie F. Li, *Child Sex Tourism to Thailand: The Role of the United States as a Consumer Country*, 4 PAC. RIM L. & POL’Y J. 505, 516 (1995); see also Lucy Ward, *Cook Cracks Down on Child Sex Tourism; Britain Leads Crusade Against Paedophiles: International Co-operation to Target Prostitution Trade*, GUARDIAN, Apr. 1, 1999, at 3 (reporting 250,000 Western child-sex tourists visiting Asia yearly); Aaron Sachs, *The Last Commodity, Child Prostitution in the Developing World*, WORLD WATCH, July/Aug. 1994, at 26, 28 (discussing explosive growth of sex tourism industry).

⁵ Eric Thomas Berkman, Note, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT’L & COMP. L. REV. 397, 408 (1996).

⁶ See Stacey Mathews, *International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story?*, 27 HOUS. J. INT’L L. 649, 658–59 (2005); see also Eleanor Clift, *Foreword to Gilbert King, Woman, Child for Sale: The New Slave Trade in the 21st Century* 4 (2004) (asserting that sex trade crosses all boundaries). But see JULIA O’CONNELL DAVIDSON, *CHILDREN IN THE GLOBAL SEX TRADE* 7–10 (2005) (suggesting that awareness of CST is what has grown in recent years, not the problem itself).

Compounding the scale of the crisis is the destructive impact of CST on victims and their communities. Repetitive sexual abuse physically and emotionally scars children.⁷ Victims endure violence from handlers, pimps and patrons alike.⁸ The abuse often damages the victims' immature sex organs and increases their risk of contracting diseases such as AIDS.⁹ Furthermore, the children's mental vulnerability often results in psychological trauma.¹⁰ All of these factors converge to diminish victim life expectancy rates.¹¹

CST not only claims child victims, it also ruptures families, causes cultural disintegration, and endangers public health.¹² Struggling communities, seduced by the short-term financial gain that frequently accompanies CST, divest themselves of vital human capital needed for sustainable development.¹³ Moreover, CST gives rise to both corruption and organized crime, which overwhelms local law enforcement.¹⁴

This Article assesses the recent state and international efforts to combat global CST, focusing particularly on the Council of Europe's (COE) Convention on the Protection of Children Against Sexual Exploitation and Abuse (Convention).¹⁵ Part I briefly explores the criminological contours of CST offenses by describing perpetrators, victims, and root causes. Part II investigates the utility of various national efforts to fight CST, including those of Destination States (where the unlawful contact occurs), and Sending States, (where sex tourists originate). Finally, Part III assesses the successes and failures of relevant provisions in the recent COE Convention.

Ultimately, the rate of CST offenses compared to the sparse number of convictions strongly suggests the inadequacy of current law

⁷ KING, *supra* note 6, at 16; 2008 TIP REPORT, *supra* note 2, at 25; REUTERS HEALTH, *supra* note 2.

⁸ See Abigail Schwartz, *Sex Trafficking in Cambodia*, 17 COLUM. J. ASIAN L. 371, 400–01 (2004).

⁹ See *id.* at 401–02; Nicholas D. Kristof, *Children for Sale: Asian Childhoods Sacrificed to Prosperity's Lust*, N.Y. TIMES, Apr. 14, 1996, at A8; see also REUTERS HEALTH, *supra* note 2 (reporting that millions of children are infected with STDs, have abortions, attempt suicide and are raped each year).

¹⁰ See KING, *supra* note 6, at 16; Schwartz, *supra* note 8, at 402; Elizabeth Bevilacqua, *Child Sex Tourism and Child Prostitution in Asia: What Can Be Done to Protect the Rights of Children Abroad Under International Law?*, 5 ILSA J. INT'L & COMP. L. 171, 172 (1998).

¹¹ See REUTERS HEALTH, *supra* note 2.

¹² See Schwartz, *supra* note 8, at 396–401.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ Council of Europe, Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, Oct. 25, 2007, CETS No. 201, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/201.htm> [hereinafter Convention].

enforcement efforts. Yet even a significant increase in convictions attained by Sending States is unlikely to sufficiently diminish this global problem unless it is matched by heightened enforcement and prevention efforts in Destination States. This article argues that addressing CST requires comprehensive legislation at both the state and international levels and increased international cooperation, which together will motivate Destination States to prosecute offenders and support local initiatives for victim prevention, protection and assistance.

I. CST: A CRIME OF INTERNATIONAL CONCERN

Because CST has only recently attracted global attention, many of the underlying sociological and criminological forces are not fully understood. Nevertheless, several key aspects of the CST phenomenon are describable.

A. *A Trend Among Trends*

CST is intimately linked with the fastest growing international criminal trend: human trafficking.¹⁶ Current estimates indicate that approximately 13 million persons—80% of whom are female and approximately 50% of whom are children—have been trafficked, both internally and across borders.¹⁷ The majority of these women and children are trafficked for purposes of commercial sexual exploitation, or sex trafficking.¹⁸ CST, as a prevalent type of sexual exploitation, relies heavily on this victim base.¹⁹

B. *Victims*

CST victims principally come from rural communities and impoverished families in underdeveloped or destabilized states in East Asia, Africa, Latin America, and Eastern Europe.²⁰ Targeted victims

¹⁶ See 2008 TIP REPORT, *supra* note 2, at 3, 23–25; LeRoy G. Potts, Jr., *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 GEO. WASH. INT'L L. REV. 227, 227 (2003).

¹⁷ 2008 TIP REPORT, *supra* note 2, at 7; see also KING, *supra* note 6, at 13–14.

¹⁸ See 2008 TIP REPORT, *supra* note 2, at 23; see also Trafficking Victims Protection Act, 22 U.S.C.A. § 7102(9) (2003) (defining sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act”).

¹⁹ See Agyemang, *supra* note 3, at 945.

²⁰ See Karene Jullien, *The Recent International Efforts to End Commercial Sexual Exploitation of Children*, 31 DENV. J. INT'L L. & POL'Y 579, 583 (2003); see also KING, *supra* note 6, at 9 (“the profit potential of forced slavery is at its greatest when there are weak economies and war destabilized regions”); Schwartz, *supra* note 8, at 381–91 (explaining historical, eco-

are often members of marginalized populations that are lacking in educational and economic opportunities.²¹ These disempowered victims are neither able to help themselves nor affect political change.²²

Generally, victims fall between the ages of thirteen and eighteen, though the under-thirteen victim population is growing.²³ While victims tend to be female, the likelihood of whether a particular child will be victimized by sex tourists depends on the market in the Destination State. For example, 90% of Sri Lanka's prostituted children are male,²⁴ while Thailand's are predominantly female.²⁵

C. Perpetrators

Perpetrators in the CST industry resist monolithic profiles. While commentators tend to focus on patrons of child sex, CST crimes involve a host of complicit persons.²⁶

I. Traffickers

International or regional criminal syndicates regularly supply the CST market with children.²⁷ Traffickers facilitate the recruitment, transport, detention, and sale of children.²⁸ Recruiters offer employ-

nomic and cultural characteristics of "Sending States" in South East Asia). *See generally* Héliana Barbosa, Family Perspectives: Social and Economical Origins, Causes, Prevention and Care in Brazil (Jan. 1999), <http://unesdoc.unesco.org/images/0011/001147/114739eo.pdf> (discussing characteristics of South American States where children are taken into sex trafficking). For a criticism of the effectiveness of "Sending State" law enforcement, see EVA J. KLAIN, AM. BAR ASSOC. CTR. ON CHILDREN AND THE LAW, PROSTITUTION OF CHILDREN AND CHILD-SEX TOURISM: AN ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES 38 (1999).

²¹ Mathews, *supra* note 6, at 659.

²² *Id.*; *see also* *Trafficking in Women and Children in East Asia and Beyond: A Review of U.S. Policy: Hearing Before the Subcomm. on E. Asian and Pac. Affairs of the Senate Comm. on Foreign Relations*, 108th Cong. 26–27 (2003) (statement of Gary A. Haugen, President & CEO, International Justice Mission).

²³ *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, 1, n.3 (1999). *See generally* Theresa Tan, *Moves to Curb Worrying Rise in Child Sex Tourism*, STRAITS TIMES (Sing.), Apr. 27, 2005 (reporting case of prostituted three year-old Filipino girl).

²⁴ Cohen, *supra* note 2, at 42.

²⁵ *Id.* For an informative discussion of the historical elements affecting these gender trends in CST in Southeast Asian States see Schwartz, *supra* note 8, at 381–91.

²⁶ *See, e.g.*, Timothy Roche & Julia Powell, *Tourists Who Prey on Kids: Central America Is the New Hunting Ground for Pedophiles. Can a U.S. Law Stop Them?*, TIME, Feb. 15, 1999, at 58.

²⁷ *See* KING, *supra* note 6, at 15; *see also* Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 79 (1998).

²⁸ *See* Potts, *supra* note 16, at 228–30.

ment opportunities—legal or illegal—in remote locations.²⁹ When such recruitment efforts fail, traffickers often simply procure victims by abduction.³⁰

Once in the control of traffickers, children are usually removed from their communities, further increasing their vulnerability.³¹ Traffickers then either sell them to vendors or market them directly. In either case, victims are forcibly held and made to provide sexual services to patrons, many of whom are sex tourists.³² Traffickers gain victim compliance by fabricating debt, confiscating identity documents, plying victims with drugs, and threatening and using violence.³³ Such tactics discourage escape and attempts to notify the authorities.³⁴

2. Sex Tour Operators

A group of perpetrators involved in CST, who sometimes partner with traffickers, are so-called “sex tour operators.” Operating predominantly in industrialized countries, certain travel agencies arrange tour packages for tourists who seek sexual encounters with children.³⁵ In addition to securing standard travel accommodations, operators arrange local guides who facilitate sexual encounters at brothels populated with prostituted children.³⁶ The number of sex tour operators has increased in recent years, multiplying patrons’ avenues for exploitation.

3. Patrons

The group most responsible for driving the CST industry is the actual patrons who seek child sex.³⁷ Generally, patrons are drawn to a destitute state by low-risk and affordable sexual access to children, as

²⁹ See Tal Raviv, *International Trafficking in Persons: A Focus on Women and Children—The Current Situations and the Recent International Legal Response*, 9 *CARDOZO WOMEN’S L.J.* 659, 662 (2003); see also *Trafficking of Women and Children in the International Sex Trade: Hearing Before the Subcomm. on International Operations in Human Rights*, 106th Cong. 11–12 (1999) (statement of Harold Hongju Koh, Assistant Secretary of State, Bureau of Democracy, Human Rights, and Labor) (testifying to the forced labor of victims of the international sex trade).

³⁰ See Schwartz, *supra* note 8, at 377–78.

³¹ See *id.* at 376.

³² Potts, *supra* note 16, at 231–32.

³³ *Id.* at 229–30.

³⁴ Schwartz, *supra* note 8, at 376.

³⁵ See Todres, *supra* note 23, at 4.

³⁶ See *id.*; see also Toddi Gutner & Ron Corben, *Asian Sex Tours Are an American Business*, *Too*, *Bus. Wk.*, June 17, 1996, at 46.

³⁷ Svensson, *supra* note 1, at 643.

well as the enhanced anonymity that comes in a foreign country.³⁸ Patrons represent diverse groups.³⁹ Despite frequent mischaracterizations, patrons are not exclusively, or even predominantly, Western pedophiles.⁴⁰ Locals account for a significant portion, and at times the majority, of patrons.⁴¹ Even when patrons are foreigners, they are not necessarily Westerners.⁴² Japanese men reportedly constitute the largest number of CST perpetrators in many Asian countries.⁴³ The most consistent characteristic of patrons is that they originate from comparatively affluent states, with more stringent law enforcement for child sex crimes.

Many patrons are not, in fact, pedophiles, defined as persons sexually aroused by physically underdeveloped children, or those under the age of thirteen.⁴⁴ The narrowness of this definition is significant because of the distinction between preferential patrons (those who actively seek sexual encounters with children) and opportunistic or circumstantial patrons (those who have sex with minors if the opportunity presents itself).⁴⁵ Though either type of patron can be a pedophile, opportunistic patrons likely are not. They may initially travel for legitimate purposes, and then, free of their own society's moral restraints, choose to experiment.⁴⁶ Identifying all patrons as pedophiles implies that they principally seek sex with pre-pubescent children.⁴⁷ But because in most modern legal systems the age of sexual majority does not coincide with the age of puberty, even persons who

³⁸ See Agyemang, *supra* note 3, at 941–42.

³⁹ U.N. GAOR, Comm'n on Human Rights, *Promotion and Protection of the Rights of Children: Interim Report by the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography*, ¶¶ 18–21, U.N. Doc. A/51/456 (Oct. 7, 1996) (prepared by Ofelia Calcetas-Santos).

⁴⁰ See DAVIDSON, *supra* note 6, at 127–28; Carol Smolenski, *The Commercial Sexual Exploitation of Children: How to Fight Back*, CATH. WOMEN, Sept./Oct. 1998, at 4; Berkman, *supra* note 5, at 397; see also Coalition Against Trafficking in Women, *Trafficking in Women and Prostitution in the Asia Pacific: Fact Sheet*, <http://www.uri.edu/artsci/wms/hughes/apmap.htm> (last visited Oct. 1, 2008) (noting that Japanese men constitute the largest number of sex tourists in Asia).

⁴¹ See Schwartz, *supra* note 8, at 383–84; REUTERS HEALTH, *supra* note 2.

⁴² Svensson, *supra* note 1, at 651. *But see* SEABROOK, *supra* note 1, at ix.

⁴³ Svensson, *supra* note 1, at 651 (quoting ECPAT International Report); see also KING, *supra* note 6, at 21 (noting that sex trade from Japan generates \$400 million annually).

⁴⁴ See DAVIDSON, *supra* note 6, at 85 (citing to the American Psychiatric Association's 1995 manual).

⁴⁵ SEABROOK, *supra* note 1, at x.

⁴⁶ See *id.*; see also Svensson, *supra* note 1, at 641.

⁴⁷ DAVIDSON, *supra* note 6, at 85–86.

actively seek sex with persons considered to be minors under state law may not be pedophiles.⁴⁸

Influential definitions like those used by the World Trade Organization (WTO) and United Nations (UN), which narrowly identify offenders as persons who engage in tourism with the “primary purpose” of “commercial exchanges” for child sex, advance the problem of mischaracterization by omitting opportunistic sex tourists.⁴⁹ The frequency with which foreigners avail themselves of child sex via informal commercial arrangements adds additional difficulties to the task of defining patrons. Sex industries of Destination States often have both formal and informal markets.⁵⁰ In the latter, sexual arrangements with prostituted children can look remarkably non-commercial, with prostitutes performing both sex labor and non-sex labor for patrons.⁵¹ Child prostitutes may also behave like romantic companions during prolonged periods of time and for unspecified monetary amounts.⁵² Alternatively, tourists may integrate into communities and obtain child sex through systematic gift giving.⁵³ Statutes risk being under-inclusive when they blindly adhere to the prominent but misguided definitions of CST patrons that only contemplate traditional commercial arrangements within formal sex markets.

Accurately identifying perpetrators is essential for good criminological analysis and effective law enforcement. For example, opportunistic sex tourists may well be more susceptible to legal deterrents than preferential sex tourists, and legislation must be sensitive to this difference in order to be successful.⁵⁴ Ultimately, legislation must consider all perpetrators, and not merely patrons, to be effective.

⁴⁸ See *id.*

⁴⁹ See U.N. Econ. & Soc. Council, 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) (*prepared by* Ofelia Calcetas-Santos); see also World Tourism Org., Statement on the Prevention of Organized Sex Tourism, Adopted by the General Assembly of the World Tourism Organization, Res. A/Res/338(XI) (Oct. 17–22, 1995) (defining “organized sex tourism” as “trips organized . . . with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination.”).

⁵⁰ DAVIDSON, *supra* note 6, at 132–33.

⁵¹ *Id.* at 133.

⁵² *Id.*

⁵³ See *id.* at 126.

⁵⁴ See SEABROOK, *supra* note 1, at x.

D. Economic, Political, and Cultural Causes

As CST is an entrenched, complex problem, there is no single explanation for why the industry is thriving. Some causes appear pervasive, while others are state-specific. Essentially, CST is a niche service-market that operates according to basic supply and demand principles. Many of its contributing factors appear rooted in state impoverishment, and consequently, an economic analysis of CST is necessary for a full understanding.

Given the market's scale, CST is unsurprisingly lucrative for its criminal actors.⁵⁵ Additionally, states also have a financial stake in CST. Tourism is the single largest global industry,⁵⁶ and sex tourism generates billions of dollars for many Destination States with associated, legitimate tourist industries.⁵⁷ Between 2–14% of the GDPs of Indonesia, Malaysia, the Philippines, and Thailand can be linked to sex tourism.⁵⁸ Significant economic ties with CST have been forged in Destination States, which helps explain why they continually fail to address it.

Historically, to obtain sex tourism-related monies, Destination States have insufficiently protected⁵⁹ and even victimized vulnerable groups within their population.⁶⁰ Though no state has ever explicitly promoted CST, states have tolerated it by failing to enact or enforce criminal statutes.⁶¹ Some states indirectly encourage CST by enacting polices that rapidly develop prostitution.⁶² The most notorious examples are various wartime arrangements between states that provide sexual services to foreign military personnel on overseas deployment.⁶³ Such legislation legitimizes and regulates brothels for military men,

⁵⁵ See KING, *supra* note 6, at 19; Cohen, *supra* note 2, at 42; Susan Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?* 38 CASE W. RES. J. INT'L L. 249, 249–50 (2007); Cohen, *supra* note 2, at 42.

⁵⁶ SEABROOK, *supra* note 1, at xi (“The expansion of travel and vacations, journeys, and holidays have made tourism the largest single industry on earth.”).

⁵⁷ Schwartz, *supra* note 8, at 389; *see also* Lin Lean Lim, *The Economic and Social Bases of Prostitution in Southeast Asia*, in THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA 1, 7–10 (Lin Lean Lim ed., 1998).

⁵⁸ See Lim, *supra* note 57, at 7.

⁵⁹ SEABROOK, *supra* note 1, at ix.

⁶⁰ See Mathews, *supra* note 6, at 661.

⁶¹ KING, *supra* note 6, at 2, 9, 15; SEABROOK, *supra* note 1, at ix.

⁶² See Svensson, *supra* note 1, at 645; Maya Raghui, Note, *Sex Trafficking of Thai Women and the United States Asylum Response*, 12 GEO. IMMIGR. L.J. 145, 163 (1997).

⁶³ See THANH-DAM TRUONG, SEX MONEY AND MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA 99, 155–56 (1990) (providing detailed analysis of Thailand's 1967 Service Establishments Act and the 1967 Rest and Recreation Treaty in effect during the Vietnam War).

bolstering the Destination State's sex industry.⁶⁴ The World Bank indirectly encouraged the growth of this tourism base as part of an "export strategy,"⁶⁵ and numerous Destination States officially adopted this economic stimulation plan.⁶⁶ Critics contend that key actors within the World Bank and state governments knew that these policies indirectly subsidized the sex industry and charge them with promoting tourism with a sex package.⁶⁷

States that simply viewed sex tourism as an "inevitable, and fairly unproblematic, by-product" of economic development are also culpable.⁶⁸ For example, "Kisaeng"⁶⁹ tours for Japanese tourists formed a part of South Korea's plan for economic development.⁷⁰ Likewise, senior Chinese officials have argued that prostitution is inevitable in any emerging economy.⁷¹

Though CST is driven by economic gain, victim impoverishment generates the vulnerability that ultimately enables it.⁷² Where poverty is widespread, CST thrives. For example, before the CST boom erupted throughout the Golden Triangle, industrialism triggered rampant consumerism that disadvantaged rural villages throughout the region.⁷³ Logging projects destroyed forestlands that had previously sustained

⁶⁴ STEVEN SCHLOSSSTEIN, *ASIA'S NEW LITTLE DRAGONS: THE DYNAMIC EMERGENCE OF INDONESIA, THAILAND, & MALAYSIA 197* (1991).

⁶⁵ Sachs, *supra* note 4, at 28.

⁶⁶ *See id.*

⁶⁷ *Id.* at 28, 30 (discussing complicity of Robert McNamara, President of the World Bank in the 1970s, who also facilitated the 1967 Rest and Recreation treaty with Thailand as U.S. Secretary of Defense).

⁶⁸ DAVIDSON, *supra* note 6, at 128.

⁶⁹ Traditionally, kisaeng were a female slave class in Korea. Like their better-known Japanese counterparts, geishas, kisaeng were often highly trained entertainers, additionally valued for their erotic services. During the 1970s, many (predominantly Japanese) tourists purchased kisaeng services, erotic and otherwise, revenue from which was delivered to the South Korean government. *See* John Lie, *The Transformation of Sexual Work in 20th-Century Korea*, *GENDER AND SOCIETY*, June 1995, at 310. *See generally* Matsui Yayori & Lora Sharnoff, *Sexual Slavery in Korea*, *FRONTIERS: A JOURNAL OF WOMEN STUDIES* (1977).

⁷⁰ *See* SWASTI MITTER, *COMMON FATE, COMMON BOND: WOMEN IN THE GLOBAL ECONOMY* 64 (1986).

⁷¹ *See* DAVIDSON, *supra* note 6, at 128.

⁷² *See id.*; *see also* Schwartz, *supra* note 8, at 410; *Dateline: Children for Sale* (NBC updated transcript Jan. 9, 2005), available at <http://www.msnbc.msn.com/id/4038249>.

⁷³ Paul Robinson, *Exposed—The Ugliest Australians*, *SUNDAY AGE* (Austl.), Apr. 18, 1993, at 4.

villages.⁷⁴ The ensuing rural poverty was exacerbated by a population spike and rapid urban modernization.⁷⁵

The collapse of rural economies coincided with a rising urban demand for child prostitutes.⁷⁶ As income from prostitution is sometimes twenty-five times greater than legitimate rural wages, many destitute families succumb to the temptation of immediate financial gain and exploit their children.⁷⁷ Families often are forced to choose between prostituting their children, selling them outright to recruiters, or accepting ill-advised loans with exorbitant interest, payment of which is performed through child sex work.⁷⁸ In most cases, the problem is compounded by the fact that the children rarely receive the full financial benefit of their sex work.⁷⁹

The poverty of victims is only exploitable because of the comparative affluence of CST perpetrators, particularly the patrons.⁸⁰ The widening economic gap between developing and developed states allows for sex tourists with significant disposable income, who in turn drive demand in Destination States.⁸¹

Several globalization trends enhance these market forces. The ease and affordability of travel, for example, along with increased communication via the Internet, has enhanced sex tourist mobility.⁸² Ironically, this “mobility trend” does not extend to the poor of Destination States.⁸³ Rather, economic desperation constricts legal immigration possibilities and increases susceptibility to trafficking.⁸⁴ Desperate and poor individuals are baited by trafficker promises. Increasingly porous borders, which facilitate the legal migration of the affluent, merely help to mask the traffickers’ transportation of their illicit human cargo.⁸⁵

⁷⁴ See Sachs, *supra* note 4, at 26–27.

⁷⁵ See Douglas Hodgson, *Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies*, 19 MELB. U.L. REV. 512, 516 (1994).

⁷⁶ Li, *supra* note 4, at 508–09.

⁷⁷ Lillian Robinson, *Touring Thailand’s Sex Industry*, NATION, Nov. 1, 1993, at 492, 495.

⁷⁸ See Hodgson, *supra* note 75, at 519.

⁷⁹ See Sabin Russell, *The Role of Prostitution in South Asia’s Epidemic Push for Safe Sex in Red-Light Districts*, S.F. CHRON., July 5, 2004, at A1.

⁸⁰ See Mathews, *supra* note 6, at 661.

⁸¹ See *id.*; see also KING, *supra* note 6, at 15 (noting disparity between developed and developing countries).

⁸² See SEABROOK, *supra* note 1, at 120–21.

⁸³ *Id.* at xi.

⁸⁴ *Id.*

⁸⁵ See KING, *supra* note 6, at 2; see also 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, 485–500 (2001) (emphasizing importance of territorial legislation in addressing child sexual exploitation).

Beyond political and economic factors, CST is perpetuated by deeply-rooted cultural beliefs and stereotypes. Traditional views of male dominance support domestic consumption of child sex.⁸⁶ Inaccurate beliefs about AIDS transmission also contribute; many consumers falsely assume that youthful prostitutes are less likely to be infected.⁸⁷ Other cultural beliefs suggest that sex with virgins will cure infections⁸⁸ or increase male longevity.⁸⁹ Finally, family choices to exploit their children are sometimes reinforced by cultural beliefs that children should support their aging parents, encouraging prostitution by children with no other means of doing so.⁹⁰

While most commentators agree that CST is steadily increasing, others are skeptical. Several contend that while the frequency and prominence of reports has risen, no evidence of an increase in actual offenses exists.⁹¹ Julia O'Connell Davidson forcefully argues that the current fascination with stories of abuse is simply a function of the cravings of Westerners for such stories.⁹² These social reactions can be linked, according to Davidson, to a new socially constructed "fetishization" of children.⁹³ She concludes that there is simply nothing new about the commercial sexual exploitation of children "except the term itself."⁹⁴

It is not clear if this brand of skepticism is well founded. Admittedly, the data concerning the incidents of abuse is not optimal. However, this is unsurprising if one supposes, as most experts do, that trafficking in its current form is a modern criminal trend. Further, to suggest—as Davidson does—that the policy decisions of Destination States and the phenomena of globalization have had no impact at all on the number of abuses seems improbable.

⁸⁶ See Wathinee Boonchalaksi & Philip Guest, *Prostitution in Thailand*, in *THE SEX SECTOR*, *supra* note 57, at 133 (noting that men are perceived as natural sexual predators).

⁸⁷ See Schwartz, *supra* note 8, at 385; Li, *supra* note 4, at 510.

⁸⁸ See Schwartz, *supra* note 8, at 385.

⁸⁹ Kenneth J. Hermann, Jr. & Michael Jupp, *International Child Sex Trade*, in *THE SEXUAL TRAFFICKING OF CHILDREN* 140, 144–45 (Daniel S. Campagna & Donald L. Poffenberger eds., 1988).

⁹⁰ Schwartz, *supra* note 8, at 387. For a detailed account of South East Asian cultural influences, see *id.* at 387–88.

⁹¹ See DAVIDSON, *supra* note 6, at 7–8 (quoting CHRIS JENKS, *CHILDHOOD* 92 (1996)).

⁹² See DAVIDSON, *supra* note 6, at 8.

⁹³ *Id.* at 23.

⁹⁴ *Id.* at 8.

II. CRIMINALIZATION AND ENFORCEMENT EFFORTS OF DESTINATION COUNTRIES

Ideally, the frontline against CST would involve the law enforcement systems of states where offenses occur. Law enforcement proceedings are most effective when temporally and spatially proximate to the crime.⁹⁵ Detection of offenses is more likely, evidence is easier to gather and present, witnesses are more accessible for interview and testimony, and linguistic and cultural hurdles are less problematic. Addressing crimes domestically shortens the time between offenses and prosecutions, reduces party bias, improves cost effectiveness, and prompts higher rates of conviction. Any introduction of a transnational element to enforcement proceedings significantly retards these advantages.

As things exist today, the law enforcement mechanisms of Destination States rarely move with the desired level of force against CST perpetrators.⁹⁶ A principal failure of such states has been the absence of laws addressing child sexual exploitation.⁹⁷ For the most part, tourism-dependant Destination States have been politically hesitant to adopt laws or policies that might endanger revenue by discouraging potential tourists who tailor itineraries to include destinations with favorable criminal codes.⁹⁸ Informal state policies of tolerance toward CST have fostered sluggishness towards legislative reform.⁹⁹

Alternatively, where prostitution-related law exists, weak or misdirected statutory enforcement mechanisms undermine its effectiveness. The application of criminal laws either selectively penalize only the prostituted person's behavior or it fails to penalize perpetrators in a way that reflects the gravity of the offenses.¹⁰⁰

Under international pressure, most Destination States have begun to modernize their criminal codes by equipping them with stronger, CST-related provisions.¹⁰¹ The statutory trend among these States has been to identify children as victims of exploitation, a practice that im-

⁹⁵ See U.S. Dep't of Justice, G8 Experience in the Implementation of Extraterritorial Jurisdiction for Sex Crimes Against Children 4 (2007), available at <http://www.usdoj.gov/criminal/ceos/Extraterritorial%20Jurisdiction.pdf>.

⁹⁶ *Id.*; see also Charles P. Wallace, *Widening the War on Child Sex*, L.A. TIMES, July 13, 1994, at A1.

⁹⁷ See Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Anti-Trafficking in Persons Legislation in Domestic Laws*, 14 TUL. J. INT'L & COMP. L. 357, 358-62 (2006).

⁹⁸ See Svensson, *supra* note 1, at 643-44.

⁹⁹ See Schwartz, *supra* note 8, at 424.

¹⁰⁰ Mattar, *supra* note 97, at 361-65.

¹⁰¹ See Cohen, *supra* note 2, at 46-47.

munizes the victims from prosecution. Other legal developments include the criminalization of sexual contact with minors¹⁰² and stiffer penalties for CST patrons, traffickers, and brothel owners.¹⁰³

Despite these advances, statutory deficiencies persist. Some states prosecute prostituted minors involved in homosexual acts, a legal artifact of Western colonialization.¹⁰⁴ Consequently, CST victims who participate in homosexual sex acts often fail to report offenses. The adults, conversely, can exploit the well-trodden avenues of corruption described above and offend with impunity, making such states havens for foreign men seeking sexual encounters with boys.¹⁰⁵

Another statutory deficiency is the lack of provisions that specifically address CST as a distinct form of sexual exploitation with unique contours. An example of the statutory failure of merely offering more generalized protections is a recently proposed amendment to Sri Lanka's criminal code that lowers the age of consent to thirteen.¹⁰⁶ Currently, Sri Lanka criminalizes sex with female persons under the age of sixteen,¹⁰⁷ a potentially useful legal tool against rampant CST. Reportedly, Sri Lankan men were being incarcerated for having sexual intercourse with their underage romantic partners.¹⁰⁸ The proposed statute provides that cases involving persons under twenty-one apprehended for having sexual contact with persons twelve years and under will be reviewed by the Attorney General.¹⁰⁹ This fix highlights the dangers of failing to statutorily address CST directly. Though the solution addresses over-penalization problems, it invites corruption from officials charged with oversight. It might be better to have a tai-

¹⁰² See, e.g., Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings, art. 5 (1996) (Cambodia), translated by the Legal Assistance Unit of the Cambodia Office of the U.N. High Commissioner for Human Rights (criminalizing sex with minors).

¹⁰³ See, e.g., Special Protection Against Child Abuse, Exploitation and Discrimination art. III §§ 5–6, Pub. Act No. 7610 (Phil.) (augmenting anti-prostitution statutes with stronger penalties for pedophiles and traffickers); Thai Prostitution Prevention and Suppression Act, B.E. 2539 (1996) (recognizing child prostitutes as victims and imposing tougher penalties on brothel owners and patrons); Penal Code of Sri Lanka art. 281, Ord. No. 2 of 1883, (amended under the 1995 Act of Amendments) (instituting mandatory sentences for sex with children and stronger punitive measures).

¹⁰⁴ See SEABROOK, *supra* note 1, at 105.

¹⁰⁵ Cohen, *supra* note 2, at 42–43.

¹⁰⁶ See Sri Lanka Reduces Age of Consent, TamilNet.com, Sept. 16, 2005, <http://www.tamilnet.com/art.html?catid=13&artid=15883> (last visited Nov. 19, 2008).

¹⁰⁷ See *id.*

¹⁰⁸ See *id.*

¹⁰⁹ See *id.*

lored, statutory approach to CST offenses by attaching provisions directly addressing non-nationals committing commercialized sex acts.

Even with their shortcomings, the Destination States' newly revamped statutes, if strictly enforced, have the potential to significantly reduce CST crimes. Unfortunately, enforcement has been sluggish, and critics have criticized legal reforms as merely cosmetic.¹¹⁰ Principal encumbrances to effective enforcement include corruption and inadequate resources.¹¹¹

Corruption is nurtured by prior state policies, both explicit and implicit, which tolerate CST as a non-serious offense. Such policies create lax attitudes toward CST among officials who often tolerate offenses (and sometimes violate the law themselves).¹¹² Now entrenched, these attitudes resist top-down policy changes and perpetrators continue to receive a soft hand at the local level. Consequently, traffickers move with impunity and patrons act without fear of real punishment from Destination States, except perhaps deportation.¹¹³

Corruption is also linked to insufficient state resources. Underpaid law enforcement personnel are susceptible to bribes from perpetrators.¹¹⁴ For example, the meager salary of Cambodian judges, fifteen dollars a week, is significantly augmented by routine bribes. Sadly, this patterned abuse provides CST perpetrators a relatively easy way to either avoid arrest or ensure early release from detention.¹¹⁵

Insufficient resources may also mean that law enforcement and judiciary personnel lack proper training and equipment to suppress CST. Police are often ill-prepared to combat highly sophisticated, technologically advanced traffickers who utilize various methods of avoiding detection.¹¹⁶ Insufficient resources may also cripple courts. For example, the Khmer Rouge robbed Cambodia of adequately trained legal

¹¹⁰ See Interview with Jagath Wellawatte, Chairman, National Child Protection Agency, <http://www.childprotection.gov.lk/newsarticles.html> (last visited Oct. 27, 2008); see also Li, *supra* note 4, at 514.

¹¹¹ See Li, *supra* note 4, at 514.

¹¹² *Id.*

¹¹³ See generally Lucy Johnson, *Children-Human Rights: British Child Sex Tourists Go Unpunished*, INTER PRESS SERVICE, June 22, 1994.

¹¹⁴ Schwartz, *supra* note 8, at 140.

¹¹⁵ *Id.*; see also SEABROOK, *supra* note 1, at 89 (providing example of law enforcement personnel giving early release to CST patron in exchange for bribe).

¹¹⁶ See Potts, *supra* note 16, at 231; see also Press Release, United Nations, More Than 120 Nations Sign New UN Convention on Transnational Organized Crime as High-Level Meeting Concludes in Palermo, U.N. Doc. L/T/4359 (Dec. 15, 2000).

professionals; as a result, those who remain struggle with the implementation of the state's potentially powerful anti-CST legislation.¹¹⁷

Under-training also allows outmoded practices to persist in both law enforcement and judiciary systems. The adversarial questioning of child prostitutes by authorities is an excellent example, as it often garners incomplete or inaccurate information from intimidated and uncooperative victims.¹¹⁸ Worse, interrogated children frequently evade subsequent encounters with authorities, which can compromise future legal proceedings.¹¹⁹ These results are similar to the difficulties experienced with child witnesses during courtroom proceedings that lack child-sensitive practices.¹²⁰

Antiquated practices can also undermine otherwise successful law enforcement efforts. A review of documented cases shows that sex tourists who have their passports confiscated prior to bail release are repeatedly successful in securing new passports at their embassies in order to leave the country.¹²¹ In part, this miscarriage of justice reveals that poor communication practices between local authorities and foreign State departments can frustrate both institutions.¹²² Ultimately, it seems that releasing foreign sex criminals on bail into a state with demonstrably porous borders shows a failure to appreciate these perpetrators as obvious flight risks. Offering bail to CST offenders is a practice held over from times past when CST crimes were not taken seriously.

Some Destination States are updating practices to fight CST and curb corruption. For example, Sri Lanka recently tightened laws by making pedophilia a non-bailable offense, which prevents the flight of alleged perpetrators.¹²³ Further, under the advisement of Non-Governmental Organizations (NGOs), Sri Lanka instituted child sensitive measures by amending its Evidence Ordinance to permit child video testimony in court proceedings, diminishing the risk of psychological trauma to child victims.¹²⁴ When child victims do participate in

¹¹⁷ See Svernnson, *supra* note 1, at 648; see also Schwartz, *supra* note 8, at 408 (discussing the role of Khmer Rouge in deteriorating legal profession, and its incapacitating effects on 1996 Anti-Trafficking Law).

¹¹⁸ See, e.g., SEABROOK, *supra* note 1, at 106 (providing example of how untrained police interrogators can compromise child testimony).

¹¹⁹ See Dep't of Justice, *supra* note 95, at 4.

¹²⁰ See *id.* at 4-5.

¹²¹ See SEABROOK, *supra* note 1, at 24, 74-75.

¹²² See *id.* at 75.

¹²³ Factbook on Global Sexual Exploitation: Sri Lanka, <http://www.uri.edu/artsci/wms/hughes/srilank.htm> (last visited Dec. 2, 2008).

¹²⁴ See D.G. Harendra de Silva, *Sri Lanka*, in CHILD ABUSE: A GLOBAL VIEW 235-36 (Beth M. Schwartz-Kenney et al. eds., 2001).

judicial proceedings, formalities are relaxed to make them more comfortable.¹²⁵ Finally, reforms are augmented by the creation of the National Child Protection Agency (NCPA), which was charged with the promotion of legal reform, monitoring and improvement of enforcement activities.¹²⁶ For example, the NCPA recently established the “Cyber Watch” Unit, which monitors websites in order to prevent the use of Sri Lankan children for the purposes of child pornography and other forms of commercial sexual exploitation.¹²⁷

Overall, Destination States have yet to meet the challenges presented by CST crimes. Often, this failure is a result of stale institutional practices ill-suited to political, social, and legal realities. Reforms are often ill-conceived or lack political backing, producing little or no positive changes.

III. SENDING STATE LEGISLATION

The unfortunate reality of Destination State failure with regard to rampant CST underscores the need for Sending State involvement. Furthermore, as their citizens are a significant source of the demand that fuels CST, Sending States share a responsibility for prosecuting CST offenses. In light of this, numerous Sending States have passed legislation addressing CST offences.

A. Extraterritorial Legislation

Over thirty-two States have enacted Extraterritorial (ET) legislation to address CST.¹²⁸ ET legislation provides States with the jurisdiction to conduct prosecutorial proceedings over certain persons for offenses committed abroad.¹²⁹ While ET legislation can be an effective tool in combating CST,¹³⁰ investigations and prosecutions encounter

¹²⁵ *See id.*

¹²⁶ *See* National Child Protection Authority Act, arts. 14–15, Act no. 50 (Sri Lanka) (1998).

¹²⁷ de Silva, *supra* note 124, at 236.

¹²⁸ U.S. Dep’t of State, The Facts About Child Sex Tourism (2005), *available at* <http://www.state.gov/documents/organization/51459.pdf>; Austin, *supra* note 1, at 53.

¹²⁹ Seabrook, *supra* note 1, at 4.

¹³⁰ CHILD SEXUAL EXPLOITATION AND THE LAW: A REPORT ON THE INTERNATIONAL LEGAL FRAMEWORK AND CURRENT NATIONAL LEGISLATIVE AND ENFORCEMENT RESPONSES 16 (2001) (unpublished theme paper for the Second World Congress against the Commercial Sexual Exploitation of Children), *available at* http://www.csecworldcongress.org/PDF/en/Yokohama/Background_reading/Theme_papers/Theme%20paper%20CSEC%20and%20the%20Law.pdf.

numerous structural, procedural and evidentiary hurdles.¹³¹ Crafting successful ET legislation is largely a matter of surmounting these hurdles.

1. ET Statutory Structure and Scope

Scope and jurisdictional reach are two critically important features of effective ET legislation,¹³² and both can be significantly expanded through adjustments to existing child exploitation statutes. Indeed, some states have broadened the ambit of criminal laws to cover more perpetrators, offenses and victims.

a. *Perpetrators*

One such structural adjustment is enlarging the field of people able to be prosecuted for CST offenses. Current ET legislation varies in this respect. In part, this reflects the several theoretical bases for ET legislation. To date, most ET legislation relies on active or passive personality principles, under which jurisdiction is based on the victim or perpetrator's nationality or resident status.¹³³ Most States restrict the application of their ET legislation to nationals,¹³⁴ while others extend the ambit of coverage to both nationals and residents.¹³⁵

Some theorists assert that the devastating human rights impact of CST's exploitative acts qualify them as "crimes against humanity," and base jurisdiction on the universality principle.¹³⁶ Though no state has explicitly based CST legislation on this principle,¹³⁷ both Belgium¹³⁸ and Sweden¹³⁹ extend application to persons who have merely passed

¹³¹ *Id.* at 16–17.

¹³² Dep't of Justice, *supra* note 95, at 2.

¹³³ Svensson, *supra* note 1, at 655.

¹³⁴ See SEABROOK, *supra* note 1, at 101. See generally Strafgesetzbuch [StGB] [Ger. Penal Code] §§ 174–184 (1986) (addressing sexual abuse of person and trafficking crimes); StGB § 7 (providing for ET application for child sex crimes so long as the perpetrator is a German citizen).

¹³⁵ See, e.g., PROTECT Act of 2003, Pub. L. No. 108–21, § 105, 117 Stat. 650 (codified as amended in scattered sections of the U.S.C.) (establishing jurisdiction over citizens as well as "permanent" or "habitual" residents); Crimes (Child Sex Tourism) Amendment Act, 1994, ch. 105 § 50 (Austl.); see also Brottsbalken [BrB] [Criminal Code] ch. 2 § 2 (Swed.) (providing jurisdiction over persons "domiciled in Sweden").

¹³⁶ Cf. FATUMA HASHI, *Foreword in VIOLENCE AGAINST WOMEN: FROM SILENCE TO EMPOWERMENT* 7 (Don Brandt ed., 2003).

¹³⁷ Cf. SEABROOK, *supra* note 1, at 113.

¹³⁸ See SEABROOK, *supra* note 1, at 68 (discussing the Law of April 1995 as it relates to the Belgian Criminal Code arts. 372–377); see also Svensson, *supra* note 1, at 655.

¹³⁹ BrB ch. 2 § 2.

through their territories, which suggests a form of universal jurisdiction to some commentators.¹⁴⁰ While persons apprehended under ET legislation have predominantly been nationals, non-nationals seem no less likely to offend and should therefore be prosecutable under state criminal jurisdiction.¹⁴¹

b. *Offenses*

ET legislative scope can be further enhanced by increasing the number of covered offenses. While CST principally involves commercial sexual exploitation of children, it frequently coincides with other crimes.¹⁴² Examples which are commonly part of ET legislation include non-commercial child sex abuse and child pornography.¹⁴³ States have also criminalized conduct such as the inducement of minors into prostitution and the general corruption of minors as part of an overall anti-CST strategy.¹⁴⁴ Criminalizing related crimes of CST enables law enforcement to prosecute even when evidence of the CST itself is weak.¹⁴⁵

Not all states comprehensively address CST-related offenses. Generally, states exhibiting more complete coverage are those that apply their domestic penal codes extraterritorially.¹⁴⁶ These penal codes have numerous provisions which bear on CST.¹⁴⁷ One advantage of this approach is that children abroad are afforded the same legal protections as domestic children.

A major shortfall of this strategy is that while domestic penal codes have relevant provisions, they are rarely CST-specific and therefore are unresponsive to the uniquely exploitative conditions of foreign victims and elements.¹⁴⁸ In particular, they withhold special protections that CST victims require. While legal protections are ostensibly equal for children residing domestically and those abroad, *actual* protection is uneven. Some states compensate for this failure by augmenting their domestic legislation with provisions designed to facilitate CST prosecu-

¹⁴⁰ See Svensson, *supra* note 1, at 655.

¹⁴¹ See SEABROOK, *supra* note 1, at 101.

¹⁴² Dep't of Justice, *supra* note 95, at 2.

¹⁴³ See *id.* at 5.

¹⁴⁴ See SEABROOK, *supra* note 1, at 100.

¹⁴⁵ See Dep't of Justice, *supra* note 95, at 5.

¹⁴⁶ See SEABROOK, *supra* note 1, at 5–6.

¹⁴⁷ Mattar, *supra* note 97, at 359, n.4.

¹⁴⁸ See Berkman, *supra* note 5, at 409–10.

tions.¹⁴⁹ Other states have adopted ET legislation specifically targeting CST.¹⁵⁰ Either method should provide additional protection for vulnerable children in Destination States.

c. Dual Criminality

Another structural element that affects legislative scope is the dual criminality requirement, under which an offense must be recognized in both the prosecuting state and the state in which the offense occurred.¹⁵¹ Dual criminality protects both the interests of states in which the crimes occur and those of foreign nationals traveling abroad. Because jurisdiction is based principally on territoriality, states generally set the legal norms within their own borders.¹⁵² Usually these norms exhaustively describe the legal duties of persons, including foreign nationals.¹⁵³ ET legislation creates an exception to this general rule by generating legal requirements for a state's citizens traveling abroad.¹⁵⁴ The dual criminality requirement, however, significantly limits the exception created through ET legislation. The dual criminality requirement also appreciates that retaining legal assistance in foreign states can be problematic when the violation is unrecognized by that state.

Critics argue that when ET legislation addresses CST concerns, dual criminality requirements undermine the effectiveness of the legislation.¹⁵⁵ They encourage "criminal preference" among offenders who seek out states with reduced child protections and those who purchase experiences criminalized in their own countries.¹⁵⁶ Perpetrators can offend their state's ET legislation and then return home with impunity. Dual criminality requirements are particularly contentious in CST cases involving states with different ages of consent.

Critics also assert that international legal norms,¹⁵⁷ established by agreements such as the United Nations Convention on the Rights of the Child (CRC),¹⁵⁸ create an international duty for states to assist the

¹⁴⁹ SEABROOK, *supra* note 1, at 6; *see* StGB §§ 176–184.

¹⁵⁰ *See, e.g.*, PROTECT Act of 2003, Pub. L. No. 108–21, § 105(c), 117 Stat. 650 (codified as amended in scattered sections of the U.S.C.).

¹⁵¹ SEABROOK, *supra* note 1, at 5.

¹⁵² *Id.* at 4.

¹⁵³ *See id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 114–15; Svernmson, *supra* note 1, at 655–56.

¹⁵⁶ SEABROOK, *supra* note 1, at 114.

¹⁵⁷ *Id.*

¹⁵⁸ Convention on the Rights of the Child, 1577 U.N.T.S. 3, 28 I.L.M. 1448 (Nov. 20, 1989) [hereinafter CRC].

defenseless.¹⁵⁹ Many argue that these duties trump the opposing interests of states or traveling nationals, and that a failure to prosecute because of dual criminality restrictions implies that states prioritize protection for their nationals.¹⁶⁰ Critics construe this prioritization as untoward solidarity or even as blatant racism.¹⁶¹

While these criticisms are without legal force, the fact that dual criminality has the potential to derail convictions of CST offenders is uncontested. A trend is developing to drop dual criminality requirements for CST crimes.¹⁶² This ameliorates the obstacle of inadequate CST legislation in Destination States, and increases the scope of ET legislation. Where Destination States mainly suffer from poor enforcement—rather than inadequate laws—the benefit of excising this prerequisite is limited, however.

d. *Victims*

Perhaps the most contentious structural element affecting legislative scope is the age of consent for CST victims. Current ages of consent represented in ET legislation vary from thirteen to eighteen.¹⁶³ The protections afforded also vary depending upon the particular nature of the offense.¹⁶⁴

States with lower ages of consent tend to be those that apply their domestic law extraterritorially. Such states appear reluctant to penalize sex with sexually mature consenting minors residing within their territories.¹⁶⁵ This may include sex between an adult and minor where no undue influence exists. These lower age limits may reflect cultural or social values about sexual maturity, as well as beliefs about the law's relationship to sexual development and expression.¹⁶⁶

¹⁵⁹ SEABROOK, *supra* note 1, at 114.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *See id.* at 115.

¹⁶³ Svensson, *supra* note 1, at 654; *see* Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children, Law No. 52 of 1999, art. 177 (Japan). *See generally* Council of Europe, Explanatory Report on Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (July 2007), available at <http://conventions.coe.int/Treaty/EN/Reports/html/201.htm> [hereinafter Explanatory Report].

¹⁶⁴ SEABROOK, *supra* note 1, at 103.

¹⁶⁵ Explanatory Report, *supra* note 163, ¶ 129.

¹⁶⁶ *See id.*

Some commentators propose harmonizing the age limit at eighteen.¹⁶⁷ They contend that the CRC, which defines persons under the age of eighteen as children and endorses numerous child protections,¹⁶⁸ favors a universal definition.¹⁶⁹ Some argue that because the provisions of the CRC are binding, member States should synchronize age limits.¹⁷⁰ Moreover, because the CRC has received near-universal ratification,¹⁷¹ it has enhanced authority, prompting one advocate to suggest that CRC provisions are customary international law and bind both member and non-member states alike.¹⁷²

Such conclusions are spurious. Though the CRC does define “child” as suggested, it also permits member states to set divergent age protections.¹⁷³ Also, customary law requires that there be universal or near-universal state practice; the widespread variability among child protections upsets this element of customary law. Moreover, state detractors represent persistent objectors, ultimately foreclosing any reasonable claims that the CRC’s age provisions constitute customary law.

Advocates of harmonization note that when ET legislation requires dual criminality, and age limits under the relevant state penal codes differ, the effectiveness of ET legislation is undermined.¹⁷⁴ Criminal preference draws offenders to states with lower age limits; because the victim’s age constitutes an element of the offense, successful prosecutions require that state age provisions coincide. This issue is negated, however, if prosecuting states simply drop the dual criminality requirement.

Another argument for a universal standard of eighteen is that persons under that age simply cannot give informed consent.¹⁷⁵ While this conclusion is perhaps overly broad, it has some merit with respect to CST. The deprivation in many Destination States strips a prostituted child’s “consent” of its autonomous character. Raising the age of consent in CST relevant legislation is one reasonable response to this enhanced vulnerability. In cases where Sending States wish to preserve the domestic age of consent for minors, states should establish

¹⁶⁷ SEABROOK, *supra* note 1, at 114; *see* Svensson, *supra* note 1, at 656–57.

¹⁶⁸ CRC, *supra* note 158, at art. 1.

¹⁶⁹ *See* SEABROOK, *supra* note 1, at 114; Svensson, *supra* note 1, at 656–57.

¹⁷⁰ Svensson, *supra* note 1, at 656.

¹⁷¹ *See* CRC, *supra* note 158, art. 1.

¹⁷² Svensson, *supra* note 1, at 656–57.

¹⁷³ CRC, *supra* note 158, art. 1.

¹⁷⁴ *See* Svensson, *supra* note 1, at 656.

¹⁷⁵ SEABROOK, *supra* note 1, at 114.

CST-specific ET legislation and introduce special legal protections for foreign victims.

2. Procedural Hurdles

Transnational prosecutions for CST raise unique procedural requirements which further impact the effectiveness of ET legislation. Generally, procedural devices within ET legislation aim to address differences among diverse legal systems, strengthen diplomatic relations, and avoid unfairness to accused persons. Yet these procedural mechanisms sometimes impose burdens which may preclude investigations or add significant delay and cost.¹⁷⁶

Some ET legislation prohibits any investigation or prosecution of accused persons until either a formal request is made by the state where the offenses occur, or a complaint is properly filed by the victim.¹⁷⁷ Victim complaint prerequisites appear beneficial insofar as they forecast victim cooperation as well as the accusation's veracity. Additionally, awaiting state requests promotes diplomacy where multiple states have competing interests in prosecuting offenders. Considering the extensive state assistance and cooperation that transnational prosecutions require, such diplomacy has strong policy appeal.

Relying on formal state requests also preserves resources. A formal Destination State request indicates that the case against the accused is both substantive and a priority for that government. When Destination States make requests, vital cooperation is likely to be forthcoming. Moreover, resource preservation is at issue where double jeopardy restraints exist in the Sending State and the Destination State happens to initiate criminal proceedings against the accused.¹⁷⁸ Sending States avoid devoting significant resources to transnational proceedings that may end up being disrupted by extradition requests or convictions *in absentia* in Destination States.¹⁷⁹

These procedures are not always followed. Despite evidence of an offense, for example, formal requests or complaints are often not

¹⁷⁶ See generally *id.* (recounting numerous transnational prosecutions of CST offenders where procedure encumbered proceedings).

¹⁷⁷ See, e.g., Criminal Law Amendment Act, 2001, R.S.C, ch. C-46 (2002) (Can.); Bill C-15A: An Act to Amend the Criminal Code and to Amend Other Acts (2002) (Can.). For a survey of states with state/victim request complaint prerequisites, see Svennsson, *supra* note 1, at 649–54.

¹⁷⁸ See SEABROOK, *supra* note 1, at 102–03.

¹⁷⁹ See *id.*

made.¹⁸⁰ The former can be the result of numerous factors, such as a state being unaware of the formal request requirement, or simple government corruption or incompetence.¹⁸¹ The latter is often caused by individual victims' lack of knowledge or resources.

When these procedural steps are not met, Sending State authorities who have access to the accused and sufficient evidence of the alleged crime are frustrated. Complying with procedures can consume so much time that prosecutions are compromised. Fresh evidence grows stale, witnesses become less accessible, and statutes of limitation run.

Exasperated by these shortcomings, some states have abandoned these procedural encumbrances.¹⁸² For example, under parliamentary Bill C-15A, Canada eased the formal requirement of state requests,¹⁸³ amending criminal code sections 7(4.2) and (4.3) to permit prosecutions upon permission from the Canadian Attorney General.¹⁸⁴ Relinquishing this requirement seems to have facilitated convictions.¹⁸⁵

3. Evidentiary Hurdles

Law enforcement personnel encounter several challenges to effectively gathering and presenting evidence in CST cases, including obtaining victim testimony and coordinating the transnational transfer of evidence while ensuring its integrity.¹⁸⁶ The transnational aspect of CST enforcement proceedings is usually costly and cumbersome. Consequently, Sending States tend to assign CST crimes a low priority.¹⁸⁷

a. *Child Victim Testimony*

Gleaning evidence from traumatized victims is a central challenge to transnational CST prosecutions.¹⁸⁸ Both the volume of child prostitutes in popular CST Destination States and their transient life-

¹⁸⁰ See *id.* at 115.

¹⁸¹ *Id.*; Sverinsson, *supra* note 1, at 648.

¹⁸² See generally Criminal Law Amendment Act, 2001 (Can.).

¹⁸³ *Id.* ¶ 19.

¹⁸⁴ *Id.* ¶ 3(2).

¹⁸⁵ See Daniel Girard, *B.C. Man Gets 10 Years for Sex Crimes*, TORONTO STAR, June 3, 2005, at A3; 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) (statement of Michael E. O'Connor, Jr., Director of Operations, South Asia International Justice Mission).

¹⁸⁶ Dep't of Justice, *supra* note 95, at 4.

¹⁸⁷ See Tiefenbrun, *supra* note 55, at 253-54.

¹⁸⁸ See Dep't of Justice, *supra* note 95, at 4.

styles make victim identification and location difficult.¹⁸⁹ This location problem is compounded as transnational proceedings are often delayed. Aggressive handling by untrained law enforcement personnel exacerbates the avoidant behavior of victims and their reluctance to cooperate with investigations. Finally, even available victims who are willing to testify suffer from diminished recollection as time between offenses and prosecutions lengthens.¹⁹⁰

Sending States can adopt various policy measures to alleviate difficulties in locating victims and securing quality testimony. A first step is increasing law enforcement cooperation with NGOs.¹⁹¹ NGOs frequently provide credible reports of CST crimes.¹⁹² Their familiarity with the victim population can facilitate foreign and domestic law enforcement contacts and interviews.¹⁹³ Also, NGO aftercare facilities provide housing and support services, which help maintain witness availability.¹⁹⁴ Furthermore, their expertise in victim care can help ensure that law enforcement contact with victims is child sensitive.

Once law enforcement personnel have a working relationship with NGOs, efforts should be made to create a practice of recording victim statements shortly after the offenses; this will help ensure the quality, admissibility and availability of witness testimonies.¹⁹⁵ Videotaped statements can preserve testimony where victims become inaccessible or exhibit poor recall.¹⁹⁶ Videotaped depositions taken in the presence of defense lawyers help ensure admissibility in courts.¹⁹⁷ Sending States can facilitate these measures by either training local law enforcement personnel or by establishing law enforcement liaisons in popular Destination States. Financial considerations may dictate a preference between these two approaches.¹⁹⁸

Finally, because child victims can be traumatized by traveling to culturally unfamiliar states,¹⁹⁹ resulting testimony may be compromised or misconstrued by courts.²⁰⁰ As such, a mutual agreement by

¹⁸⁹ *See id.*

¹⁹⁰ *Id.*

¹⁹¹ *See id.* at 3–4.

¹⁹² *See id.* at 3.

¹⁹³ *See* SEABROOK, *supra* note 1, at 9; Dep't of Justice, *supra* note 95, at 3.

¹⁹⁴ Dep't of Justice, *supra* note 95, at 4.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Dep't of Justice, *supra* note 95, at 6.

¹⁹⁹ SEABROOK, *supra* note 1, at 85.

²⁰⁰ *Id.*

the involved states to permit testimony via video or satellite link is advisable. Because this technology is both costly and inconsistent with some states' fair practice procedures, some commentators have found this use of technology impracticable.²⁰¹ However, these aids seem more economical than transporting witnesses, and these aids appear to be the only way to ensure dependable witness testimony. Australia, a leader in addressing CST-related evidentiary issues, has implemented several technology aids that have successfully enhanced victim protections and curbed the state's prosecution expenditures. In particular, Australian courts permit foreign child witness testimony by video link when witness reliability is threatened by unreasonable expense, inconvenience, psychological harm, or intimidation.²⁰²

When victims do testify in foreign courts, testimonial aids should be implemented and court personnel should undergo cultural training. Some states have endorsed the use of closed-circuit television (CCTV), conditioned upon the presence of a support person during the testimony, while others have conducted closed proceedings.²⁰³ These provisions both enhance victim protections and ultimately limit expenditures.

b. *Physical Evidence*

In CST cases, physical evidence can include anything from contraception to sexual toys, gifts, and border control records, and even records from hotels where sexual activity occurred.²⁰⁴ The most common and vital evidence, however, are sexually explicit images of victims, and the equipment that manufactures and contains them.²⁰⁵ Increasingly, perpetrators record their crimes with photographic or video equipment for personal or communal consumption.²⁰⁶ Such evidence can play numerous roles in CST enforcement efforts. Discovery of explicit images can spark CST investigations or substantiate existing allegations.²⁰⁷ Furthermore, some Sending State courts have allowed images to establish a victim's age,²⁰⁸ the perpetrator's knowl-

²⁰¹ Li, *supra* note 4, at 526.

²⁰² Crimes (Child Sex Tourism) Amendment Act, 1994, § 50EA(d) (i)–(iii) (Austl.).

²⁰³ Dep't of Justice, *supra* note 95, at 5.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ See SEABROOK, *supra* note 1, at 124.

²⁰⁸ See, e.g., Crimes (Child Sex Tourism) Amendment Act, 1994, § 50FA (1)–(2) (Austl.).

edge of the victim's age,²⁰⁹ or even the occurrence of a criminal act,²¹⁰ making the victim's presence and testimony unnecessary.²¹¹

The prominence of images in CST prosecutions does create problems, however. A review of CST apprehensions suggests that authorities have focused on particularly conspicuous offenders, such as those with images recording their exploits.²¹² Offenders can thus insulate themselves from detection by destroying or better concealing such evidence. Cautious and opportunistic CST offenders are less likely to endanger their anonymity by retaining incriminating evidence. Furthermore, as digital imaging has grown more prominent, the need for commercial developers has been reduced. Without such physical evidence, elements of CST offenses are harder to establish, reliance on child victim testimony increases, and convictions become more difficult. Commentators have suggested that CST investigations can obviate the need for image-based evidence by conducting undercover sting operations.²¹³ The preservation of evidence from Destination States, however, and the expense of foreign sting operations remain problematic for prosecutions.

Finally, consistent preservation and custody procedures between Sending and Destination State law enforcement officials are vital to the admissibility of physical evidence.²¹⁴ Sending States can progress in this area by providing liaisons to local law enforcement and training them in relevant evidentiary standards.²¹⁵ Though these measures have upfront costs, they reduce the number of law enforcement agents from Destination States that are needed to testify, and ultimately reduce the costs of proceedings.²¹⁶ Legislative measures taken in Destination States can also be helpful in easing some expected evidentiary difficulties.²¹⁷ For example, a Thai law empowers that state's Attorney General to gather and transfer evidence to prosecuting states.²¹⁸

²⁰⁹ *See id.*

²¹⁰ *See id.*

²¹¹ *See id.*

²¹² *See Agyemang, supra note 3, at 938.*

²¹³ *See generally* PROTECT Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered sections of the U.S.C.).

²¹⁴ *See* Dep't of Justice, *supra note 95, at 4-6.*

²¹⁵ *Id.* at 5-6.

²¹⁶ *Id.*

²¹⁷ *See, e.g., Berkman, supra note 5, at 410-11.*

²¹⁸ Act on Mutual Assistance In Criminal Matters, B.E. 2535 (1992) (Thail.); Vitit Muntarbhorn, *Countering the Spread of Child "Sexploitation,"* BANGKOK POST, Dec. 5, 1994, at 4.

B. Domestic Legislation

In addition to passing ET legislation, some Sending States have enacted domestic laws aimed at CST offenses occurring principally within their territory.²¹⁹ The implementation of these laws creates a unique set of benefits and obstacles.

1. Inchoate Crimes

Some Sending States have criminalized inchoate crimes that occur domestically. For example, under the U.S. PROTECT Act (Act), criminal liability exists if the accused traveled with the intent to engage in sexual conduct with a minor.²²⁰ This intent provision offers several enforcement advantages. First, authorities can apprehend offenders prior to the violation, preempting victimization. Second, no proof that a sexual violation actually occurred is required for conviction.²²¹ Where evidence of sexual violations is scant, convictions for these inchoate offenses may still be attainable. Finally, prosecutors can rely solely on stateside evidence and avoid the difficult and costly task of collecting evidence overseas.²²²

Establishing proof of intent is challenging. To alleviate this burden, the Act acknowledges that sex with a minor need not be the primary purpose of travel.²²³ Nevertheless, when offenders raise competing purposes for traveling, establishing criminal intent can still be troublesome. In one successful prosecution, U.S. agents arrested John Seljan for violating the intent provision of the act as he boarded a plane for the Philippines.²²⁴ Proof of intent was established through intercepted correspondence and was corroborated by his possession of pornography, sexual aids, chocolate, and foreign currency.²²⁵ Cases

²¹⁹ See, e.g., Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 105, 117 Stat. 650 (codified as amended at 117 U.S.C. § 2422) (2003); Sexual Offences (Conspiracy and Incitement) Act, 1996, c. 29, §§ 1, 2 (Eng.) (as amended by the Sexual Offences Act of 2003); Crimes (Child Sex Tourism) Amendment Act, 1994, ch. 105 § 50 (Austl.); Crimes Act 1961, 1961 S.N.Z. No. 43 § 144(c) (N.Z.).

²²⁰ See generally Prosecutorial Remedies Act, 117 U.S.C. § 2422 (2006).

²²¹ See *id.*

²²² See PROTECT Act of 2003, Pub. L. No. 108-21, § 105(d), 117 Stat. 650 (codified as amended in scattered sections of the U.S.C.); Svemson, *supra* note 1, at 658.

²²³ See generally 117 U.S.C. § 2422.

²²⁴ See U.S. Immigrations and Customs Enforcement, Fact Sheet: Operation Predator, <http://www.ice.gov/pi/news/factsheets/070607operationpredator.htm> (last visited Dec. 2, 2008).

²²⁵ Agyemang, *supra* note 3, at 938.

rarely yield such damning evidence, however. Because persons must possess criminal intent prior to travel, opportunistic offenders are not covered. Despite this, laws criminalizing inchoate crimes do expand the legal arsenal against CST.²²⁶

2. Sex Tour Operator Prosecutions

Other forms of legislation target CST facilitators such as sex tour operators who operate within Sending States.²²⁷ Recently, the British government enacted legislation targeting domestic actors who organize sex tours or encourage others to sexually exploit children abroad.²²⁸ Similarly, both Australia and New Zealand have legislation targeting operator activity.²²⁹ Australia criminalizes persons who act “with the intent of benefiting from or encouraging” prohibited conduct.²³⁰ New Zealand outlaws conduct that facilitates CST, such as making travel arrangements or printing or publishing information intended to promote child sex tours.²³¹

Prosecuting sex tour operators can be a complicated process, however. As one commentator notes, there are no “paedophile [sic] package tour operators.”²³² Rather, child sex tourists are principally aided by mainstream tour operators²³³ who invariably deny that their tours involve children and assert that it is not their intention for their customers to exploit minors.²³⁴ These agents make themselves known to interested parties by way of thinly-veiled advertisements that fall just short of promising commercial sex.²³⁵ Discreet sex tour advertisements may boast an introduction to a “female companion” who accompanies the tourist,²³⁶ or they may pose as “match-making” services.²³⁷

²²⁶ See 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 (2002).

²²⁷ See Todres, *supra* note 23, at 1–23 (arguing for extension of U.S. criminal liability to sex tour operators).

²²⁸ Sexual Offences (Conspiracy and Incitement) Act, 1996, c. 29 (Eng.).

²²⁹ C. Hall, *The Legal and Political Dimensions of Sex Tourism: The Case of Australia's Child Sex Tourism Legislation*, in *SEX TOURISM AND PROSTITUTION: ASPECTS OF LEISURE, RECREATION AND WORK* 87–90 (M. Opperman ed., 1998).

²³⁰ Crimes (Child Sex Tourism) Amendment Act, 1994, (Austl.).

²³¹ Crimes Act 1961, 1961 S.N.Z. No. 43 § 144(c) (N.Z.).

²³² DAVIDSON, *supra* note 6, at 130.

²³³ *Id.*

²³⁴ See Todres, *supra* note 23, at 9, 12.

²³⁵ *Id.* at 9.

²³⁶ Michael Pina, *Despite Stigma, Underground Operators Thrive*, TRAVEL WKLY., Apr. 22, 1996, at 38 (quoting New York-based sex tour operator).

²³⁷ Todres, *supra* note 23, at 9.

Despite these hurdles, it is still possible to establish the requisite criminal elements for offenses committed by operators.²³⁸ One element, criminal encouragement, is evidenced by tour advertisements motivate individuals to travel abroad for illicit sex.²³⁹ Despite carefully-worded brochures, sex with child prostitutes is the determinative factor for numerous consumers purchasing advertised services.²⁴⁰ Operators facilitate these offenses with their services.²⁴¹

Another common element linked to operators is criminal intent. Because the high incidence of child prostitution in Destination States has been widely reported, operators should be considered to have constructive knowledge.²⁴² Combined with the fact that operators arrange tours to red light districts with rampant child prostitution and abysmal enforcement, it may be possible to prove that operators intend for their clientele to engage in CST.²⁴³

Despite some practical difficulties, legislation targeting sex tour operators does help diminish CST. Unlike legislation aimed at patrons, shutting down sex tour operators eliminates entire avenues.²⁴⁴ Perhaps more importantly, prosecuting operators helps raise public awareness and deters perpetrators.²⁴⁵

3. Incentive-Based Aid and Sanctions

Though legislation expanding Sending State prosecutorial capacity is crucial, there are limitations. In particular, detection rates of offenders and the root causes behind victim vulnerability are insufficiently impacted. Accordingly, some Sending States have adopted legislation designed to motivate Destination States to bolster their own domestic law enforcement, victim prevention, and aid programs.²⁴⁶ Responding to Destination States' need for financial assistance to combat CST-related activity, some Sending States have offered direct financial assistance aimed at reform.²⁴⁷ Given the historical link between weak law enforcement and CST in most Destination States, extending direct

²³⁸ *Id.* at 9–11

²³⁹ *Id.* at 9.

²⁴⁰ *Id.*

²⁴¹ See Agyemang, *supra* note 3, at 950.

²⁴² See Todres, *supra* note 23, at 20.

²⁴³ See *id.*

²⁴⁴ *Id.*

²⁴⁵ See generally Todres, *supra* note 23.

²⁴⁶ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of U.S.C.).

²⁴⁷ See Explanatory Report, *supra* note 162, ¶ 261.

financial assistance provides strong new incentives to tourism dependent states. It also introduces an important element of accountability to states that commit their resources toward reform.

The most visible legislative effort to combat CST-related crimes through incentive-based programs is the recently augmented U.S. Victims of Trafficking and Violence Protection Act of 2000 (TVPA).²⁴⁸ At the center of the TVPA's incentive program is the Office to Monitor and Combat Trafficking, which publishes annual Trafficking in Persons Reports (TIP Reports).²⁴⁹ TIP Reports compile and analyze information on global trafficking, and provide this data to the U.S. Congress, partner agencies and the NGO community.²⁵⁰

In addition to providing statistically significant data, TIP Reports act as both accountability mechanisms and catalysts for foreign governments to combat global trafficking. They rate states based on government efforts to remedy trafficking²⁵¹ and on compliance with the TVPA "minimum standard" guidelines.²⁵² States are placed in tiers, which form the basis for various incentives and disincentives.²⁵³ For incentives, the TVPA offers assistance to states either directly or through international programs that provide aid to victims and high-risk populations.²⁵⁴ In 2002, the United States dedicated fifty-five million dollars to anti-trafficking programs in over fifty countries.²⁵⁵ In 2004, the United States provided ninety-six million dollars. TVPA disincentives include economic sanctions levied against the "worst offenders," as well as the international stigmatization associated with having a poor human rights record.²⁵⁶

Upon the release of the first TIP Report, numerous governments took immediate steps to prevent trafficking, prosecute traffickers and

²⁴⁸ PROTECT Act of 2003, Pub. L. No. 108-21, § 105, 117 Stat. 650 (codified as amended in scattered sections of the U.S.C.).

²⁴⁹ Tiefenbrun, *supra* note 55, at 255.

²⁵⁰ *Id.* at 255-56.

²⁵¹ See 2008 TIP Report, *supra* note 2, at 4; Tiefenbrun, *supra* note 55, at 266-68 (discussing TIP Report tiering system and various criteria used to evaluate states).

²⁵² 2008 TIP Report, *supra* note 2, at 5; see also 22 U.S.C. § 7106 (2006); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 108(a), 114 Stat. 1464 (codified as amended in scattered sections of U.S.C.).

²⁵³ Victims of Trafficking and Violence Protection Act, § 108(a)-(b).

²⁵⁴ *Id.* § 107. See generally Susan Tiefenbrun, *Sex Sells but Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution*, 23 T. JEFFERSON L. REV. 199 (2002).

²⁵⁵ See Paula J. Dobriansky, Under Sec'y of State for Global Affairs, Remarks at Conference to Stop Child Trafficking (June 3, 2003) (transcript available at http://www.usis.it/file2003_06/alia/A3060506.htm).

²⁵⁶ See 2008 TIP Report, *supra* note 2, at 5.

protect victims. Poorly-rated states increased their anti-trafficking efforts to avoid economic sanctions and shed harmful stigma that threatened to impact their international trade, tourism, and aid.²⁵⁷ Many of the worst offenders sought direct assistance from the United States to improve their TIP rating.²⁵⁸ Overall, the general trend was improved performance by states in subsequent TIP Reports.²⁵⁹ In those rare cases where third-tier states made no progress, the United States did in fact impose sanctions.²⁶⁰

IV. A NEW INTERNATIONAL INITIATIVE

To some extent, recent local efforts have improved CST enforcement, increasing arrests and convictions. Despite these positive indicators, however, CST offenses continue to increase and the bulk of offenders continue to go unpunished,²⁶¹ indicating that unilateral local efforts alone are inadequate. International bodies have mobilized against the escalation of CST offenses with collaborative efforts, including treaties and agreements, that encourage member states to legislate aggressively against child sexual exploitation.²⁶² The most recent attempt to form a multi-state instrument addressing CST crimes is the COE Convention.²⁶³

²⁵⁷ Dep't of Justice, *supra* note 95, at 1.

²⁵⁸ See Tiefenbrun, *supra* note 55, at 268.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Seabrook, *supra* note 1, at ix.

²⁶² See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 art. 4 (1948) ("no one shall be held in slavery or servitude"); G.A. Res. 2200A (XXI), art. 10, U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Jan. 3, 1976); G.A. Res. 34/180, art. 6, 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, July 25, 1951, 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, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 2133 U.N.T.S. 161 (calling upon parties to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour," including child prostitution).

²⁶³ See Convention, *supra* note 15 (noting that it opened for signature October 25, 2007).

A. Background

On May 22, 2005, a COE committee convened to assess the need for a new instrument addressing child sexual exploitation.²⁶⁴ Addressing the committee, COE Deputy Secretary-General Boer-Buquicchio stressed that existing international instruments were simply “not working.”²⁶⁵ Among the principal deficiencies she cited was the lack of “universal, legally-binding” documents specifically addressing child sexual exploitation.²⁶⁶ Relevant COE texts were similarly flawed: none were both legally-binding and sufficiently focused.²⁶⁷

Deputy Secretary-General Boer-Buquicchio urged a “move forward,” contending that, in addition to being binding and focused, an optimally functioning instrument required “greater awareness, increased cooperation and immediate action.”²⁶⁸ She added that critically important inter-state cooperation necessitated the establishment of “common standards and definitions,” harmonized criminal provisions across Europe, and state court jurisdiction over offenders irrespective of nationality or location.²⁶⁹

According to COE negotiators, harmonized legislation facilitates action against CST in several ways.²⁷⁰ First, it spoils perpetrators’ criminal preference for offending in Destination States that have lenient child protection laws.²⁷¹ Second, shared laws yield comparable data that assists criminal research, as well as the exchange of information and experience.²⁷² Finally, and perhaps most importantly, harmonization facilitates international cooperation in the form of extradition and reciprocal legal assistance.²⁷³

Subsequent COE Committee deliberations resulted in the Convention, a collaborative response to deficiencies in member states’ child sexual exploitation protections. Even though the Convention is a re-

²⁶⁴ *Id.*; Maud de Boer-Buquicchio, Deputy Sec’y-Gen. of the Council of Europe, Remarks at the Opening of the First Committee of Experts on the Protection of Children Against Sexual Exploitation and Abuse Committee of Experts on the Protection of Children Against Sexual Exploitation and Abuse (May 22, 2005) (transcript available at http://www.coe.int/T/DC/Press/news/20060522_disc_sga_EN.asp).

²⁶⁵ *See id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ de Boer-Buquicchio, *supra* note 264.

²⁷⁰ Explanatory Report, *supra* note 163, ¶ 112.

²⁷¹ *Id.*; *see* Svensson, *supra* note 1, at 647–48.

²⁷² Explanatory Report, *supra* note 163, ¶ 112.

²⁷³ *Id.*

gional document for COE Member States, it is open to outside signature and accession.²⁷⁴ The scope of the Convention spans both key Destination States in Eastern Europe and numerous Sending States of Western Europe.²⁷⁵ Consequently, the instrument addresses CST both domestically and abroad through a “comprehensive international instrument” which protects children, assists victims, and combats offenses.²⁷⁶

B. Enforcement Measures

Arguably the Convention’s central effort, from a criminal law perspective, is the creation and enhancement of law enforcement measures that target sexually exploitative offenses. Perhaps unsurprisingly, many of the Convention’s CST-related provisions incorporate components of national CST legislation that have already been discussed.

1. Jurisdiction

Because the Convention covers both Sending and Destination States, its law enforcement measures must address local as well as ET offenses. To this end, the Convention’s criminalization program enhances statutes against exploitative conduct domestically, while also mandating that member states establish ET jurisdiction over Convention offences committed abroad by nationals or “habitual resident[s].”²⁷⁷ This latter requirement advances the position of those member states that are currently without CST-relevant ET legislation or that only have ET legislation covering nationals.

Additional provisions remove jurisdictional obstacles and extend states’ prosecutorial power. Notably, Articles 25(4) and 25(5) remove dual criminality and formal victim requests and state complaints as requirements of criminal prosecutions.

2. Criminalization: Perpetrators, Offenses

As important as broadening ET jurisdiction is to the Convention’s law enforcement program, at the document’s heart are those provisions that criminalize exploitative acts. Under Article 19, child prostitution is defined as the use of a child for sexual activities where

²⁷⁴ Convention, *supra* note 15, art. 45(1) (noting that non-member signature is available for all participants that have participated in its elaboration).

²⁷⁵ For a current list of signatory states, see <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=8&DF=11/4/2007&CL=ENG> (last visited Oct. 1, 2008).

²⁷⁶ Convention, *supra* note 15, pmbl.

²⁷⁷ *Id.* art. 25(d)–(e).

money “or any other form of remuneration or consideration [is] . . . promised as payment.”²⁷⁸ Child prostitution offenses include recruiting, causing, and coercing a child into prostitution as well as profiting from, otherwise exploiting, or having recourse to child prostitution.²⁷⁹ Additionally, Article 24 criminalizes intentionally aiding, abetting, and attempting offenses linked to child prostitution.²⁸⁰ Finally, Article 20 criminalizes production, possession, and distribution of child pornography.²⁸¹ Together, these provisions empower member states to pursue a wide range of CST offenses and perpetrators. Moreover, because Article 24 covers attempts, many of the legal benefits offered under the Act, such as pre-emptive enforcement, appear to be available.

Both traffickers and sex tour operators can be held criminally liable for causing, profiting from, or otherwise exploiting child prostitutes, as well as for intentionally aiding and abetting related offenses. These provisions have unique consequences for sex tour operators because Article 26 establishes administrative liability when persons inside a legal entity commit or “[make] possible” offenses on its behalf.²⁸² By targeting the legal entity, the Convention threatens the driving force behind these operations: profitability.²⁸³

This is not to say that these criminalization provisions are without problems. The Convention does not define “sexual activities,” leaving member states to come up with their own interpretations.²⁸⁴ This in turn invites the defense that allegedly criminal conduct is not in fact covered under narrow statutory interpretations.²⁸⁵ While the term “sexual activities” looks sufficiently general, a “laundry list” approach, describing some examples of covered acts, would better support prosecution efforts. This approach was utilized in the UN Protocol to Prevent, Suppress and Combat the Trafficking in Persons, Especially Women and Children²⁸⁶ (UN Protocol) to define and criminalize human trafficking. Commentators on the UN Protocol credit this defini-

²⁷⁸ *Id.* art. 19(2).

²⁷⁹ *Id.* art. 19(1)(a)–(c).

²⁸⁰ *Id.* art. 24(1)–(2).

²⁸¹ Convention, *supra* note 15, art. 20(1).

²⁸² *Id.* art. 26(1)–(2).

²⁸³ See, e.g., Agyemang, *supra* note 3, at 938–39 (discussing how prosecution of a sex tour operator business can halt productivity).

²⁸⁴ Explanatory Report, *supra* note 163, ¶ 127.

²⁸⁵ See SEABROOK, *supra* note 1, at 108–09 (discussing how this defense is asserted by perpetrators in numerous documented prosecutions).

²⁸⁶ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, art. 3(a), supplementing G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Jan. 8, 2001) [hereinafter UN Protocol].

tional specificity as the reason for more robust criminal statutes and enhanced national enforcement.²⁸⁷

Another problem with the Convention is that its focus on child prostitution involving commercial exchanges is limiting in light of the types of exploitation regularly occurring in informal sex markets. The Convention's broad description of commercial exchanges invites a wider understanding of CST offenses, perhaps including some that are more indicative of the activity of informal markets. In situations, however, where patrons receive both sexual and non-sexual services which have not been specified or promised in advance, authorities saddled with the Convention's definition may be unduly restrained and will ultimately have difficulty proving related offenses.

This shortcoming is significantly ameliorated by the Convention's criminalization of "non-commercial" forms of child exploitation. Article 18(1)(a) requires members to criminalize intentional sexual conduct with an underage child as defined by national law.²⁸⁸ This provision does not require that sexual conduct be overtly commercial. It does, however, allow member states to set their own ages of consent. This departure from the Convention's overall harmonization program is unlikely to create the disastrous outcomes some critics have suggested.²⁸⁹ The removal of dual criminality requirements weakens criminal preference among patrons who travel to states with low ages of consent and preserves criminal liability. Further, Article 18(1)(b) criminalizes intentional sexual conduct with any person under the age of eighteen, regardless of state-endorsed ages of consent, when there is an abuse of influence over a child.²⁹⁰ Under the Convention, abuses of influence include situations exhibiting unequal economic or social standing that enable individuals to "control, punish, or reward," children.²⁹¹ This encompasses the majority of CST cases, including those occurring in informal markets.

3. Victims and Criminal Justice Procedures

In addition to establishing broad criminalization provisions, a group of Convention provisions make several adjustments to criminal justice procedures, with particular concern to how they affect CST vic-

²⁸⁷ Mattar, *supra* note 97, at 368; Potts, *supra* note 16, at 236.

²⁸⁸ Convention, *supra* note 15, art. 18(1)(a).

²⁸⁹ See SEABROOK, *supra* note 1, at 103, 114; Svensson, *supra* note 1, at 656.

²⁹⁰ Convention, *supra* note 15, art. 18(1)(b).

²⁹¹ Explanatory Report, *supra* note 162, ¶ 124.

tims. These provisions track the progressive trends pursued by national legislation. Ultimately, however, Convention negotiators desired to minimize disparities between state procedural practices and transition beyond the standards set by previous national and international instruments.

Generally, member states are to be guided by the victims' rights and "best interests" while implementing a "protective approach" that avoids aggravating victim trauma and incorporates state assistance to victims.²⁹² Notably, under Article 31, states are required to protect the rights and interests of victims, "including their special needs as witnesses."²⁹³ A threshold issue addressed by this provision is the non-criminal status of child victims. By aligning children's roles as witnesses with their victim rights, the victim's utility as a *mere* witness is de-emphasized.

The Convention provides children, as both victims and witnesses, with specific protections designed to promote victim safety and comfort as well as witness cooperation.²⁹⁴ Article 31(a) requires states to inform victims of their rights and available services;²⁹⁵ this further assures victims of their non-criminal status. Additionally, 31(b) requires that victims are informed when detained perpetrators are released, in order to minimize intimidation, retaliation, or re-victimization.²⁹⁶

Child-friendly proceedings are furthered by safeguards placed on the victim's identity and privacy, so long as they comport with the fair trial procedures of the state.²⁹⁷ In particular, publication of the victim's image and identifying information is prohibited, victim contact with perpetrators is minimized, and intermediaries—instead of victims—may address courts and present evidence.²⁹⁸ All information is presented in a "manner adapted to their age and maturity and in a language that [victims] can understand."²⁹⁹ Other provisions mandate that investigatory and judicial interviews be conducted on child-friendly premises, by specially trained personnel.³⁰⁰ Finally, victim trauma is reduced during trial by permitting both closed hearings and the use of

²⁹² Convention, *supra* note 15, art. 30(1)–(2); *see also* Explanatory Report, *supra* note 163, ¶¶ 209, 214.

²⁹³ Convention, *supra* note 15, art. 31(1).

²⁹⁴ *See, e.g.*, Explanatory Report, *supra* note 163, ¶ 208.

²⁹⁵ Convention, *supra* note 15, art. 31(1)(a).

²⁹⁶ *Id.* art. 31(1)(b); *see also* Explanatory Report, *supra* note 163, ¶¶ 210(d), 219–21.

²⁹⁷ Explanatory Report, *supra* note 163, ¶¶ 212, 222.

²⁹⁸ Convention, *supra* note 15, art. 31(1)(c)–(e).

²⁹⁹ *Id.* art. 31(6).

³⁰⁰ *Id.* art. 35(1)(b)–(c).

appropriate communication technologies for victim testimony and confrontation with the accused.³⁰¹

Other key provisions also reduce victim trauma, enhance testimony quality, and account for various time and cost considerations of proceedings. In particular, as seen in the Australian system, victim interviews are videotaped “where appropriate,” and accepted as evidence.³⁰² Similarly, CCTV and direct satellite feeds that offer real time witness testimony from remote locations are promoted.³⁰³

A final procedural adjustment eases statutory limitations on Convention offenses. As noted, CST victims frequently lack the opportunity to identify offenders via formal channels. For this reason, the statute of limitations on offenses often expires before offenders are brought to justice. Seeking to address this problem, the Convention requires that the statute of limitations run within a “reasonable” time from the victim’s age of majority, not from the time of the offense.³⁰⁴

4. Inter-Party Cooperation

Supporting the Convention’s criminalization and procedural provisions are several measures bolstering international cooperation.³⁰⁵ One prominent provision aims to accelerate “circulation of information and evidence” in the areas of prevention, investigation, and prosecution, as well as victim protections and assistance. These efforts are designed, at least in part, to enhance the prosecutorial process, which will undoubtedly lead to lower costs and will improve the quality of evidence.

The cooperative provision which most affects CST prosecutions is that which establishes the Convention as the legal basis for mutual legal assistance in criminal matters or extradition.³⁰⁶ When perpetrators flee across international boundaries, insufficient cooperation between states can stifle transnational criminal proceedings, adding significant cost and delay to the process.³⁰⁷ Mutual legal assistance agreements al-

³⁰¹ *Id.* art. 36(2) (b).

³⁰² *Id.* art. 35(2).

³⁰³ Convention, *supra* note 15, art. 36(2) (b).

³⁰⁴ *Id.* art. 33.

³⁰⁵ *Id.* art. 38(1)–(4).

³⁰⁶ *Id.* art. 38(3); *see also* Explanatory Report, *supra* note 163, ¶¶ 252, 254 (citing COE instruments such as the Convention on Extradition and the Convention on Mutual Assistance in Criminal Matters, and EU instruments such as the Council Framework Decision regarding arrest warrant and the surrender procedures between member states).

³⁰⁷ *See* SEABROOK, *supra* note 1, at 111.

leviate such burdens on international investigations and prosecutions. Moreover, bureaucratic obstacles diminish as the frequent use of these instruments increases both the bonds between distinct state enforcement mechanisms and the familiarity with foreign operational systems.³⁰⁸ Because COE members and the European Union (EU) are already party to instruments that operate as mutual legal assistance agreements,³⁰⁹ the impact here will be most pronounced for states outside the COE and EU who accede to the Convention under Article 45.³¹⁰

Finally, the Convention requires states “to endeavor to integrate” action programs aimed at assisting Destination States to combat Convention offenses within their borders.³¹¹ If CST truly addressed, key Destination States must be integrated into international enforcement and prevention initiatives. Foreign assistance programs offer benefits to these Destination States by providing law enforcement training and resources to apprehend perpetrators, as well as by supplementing victim assistance programs. Programs that provide additional occupational, educational, or informational assistance to at-risk children can also be used to tackle some of the root causes of CST.

A potential criticism is that the Convention’s provision concerning these vital programs is merely permissive and not binding. However, it is difficult to imagine that any provision which requires members to aid non-member states would garner collective agreement and necessary signatories. This is particularly true considering the long histories of corruption in many Destination States.

A more serious criticism is that the Convention provision fails to establish the possibility of rendering coordinated economic sanctions for states which perpetuate CST offenses. Because states have traditionally tolerated and even indirectly promoted CST for financial gain, levying multilateral economic burdens on these same states could motivate a dramatic, curative response. Given the successful unilateral effort of the TVPA, a collaborative economic response would presumably yield even stronger results. With the proper financial motivators, Destination States may come to realize that their financial stake in CST is relatively small. Creating a financial cost for tolerating CST industry might prompt such states to finally crack down on CST, while retaining their “standard” sex tourism industry.

³⁰⁸ See Explanatory Report, *supra* note 163, ¶ 254.

³⁰⁹ See *id.* ¶¶ 252, 254, 258, 260.

³¹⁰ See *id.* ¶ 260.

³¹¹ Convention, *supra* note 15, art. 38(4); Explanatory Report, *supra* note 163, ¶ 261.

There is some evidence that states may be willing to back orchestrated economic sanctions to combat global criminal trends. One example is “The Forty Recommendations” offered by the Financial Action Task Force (FATF), which include coordinated countermeasures to penalize states that flout the FATF recommendations and harbor criminal behavior.³¹² The criminal trends addressed by the FATF have significant, immediate economic consequences for coordinating states that might mitigate the economic backlash that could accompany economic sanctions, and help explain a sanctioning state’s willingness to coordinate with others. Such economic considerations, however, are not necessarily dispositive for states trying to determine whether or not to join such a coordinated effort. Ultimately, the FATF’s reliance on a multilateral sanctions program shows that it is at least possible to achieve dramatic results from rogue states whose interest in criminal behavior is principally economic. This example holds out a beacon for change in states committed to curbing the global criminal trend of CST.

C. Prevention

Several provisions of the Convention’s comprehensive program are aimed at preventing exploitation.³¹³ Article 9 prompts states to encourage private-sector participation, particularly in the tourism and technology industries, in information campaigns designed to raise awareness about exploitation among travelers and communities with at-risk child populations.³¹⁴

Information campaigns are often championed as vital anti-CST measures because they address serious information deficiencies that perpetuate offenses.³¹⁵ As trafficked persons lack sufficient knowledge of immigration procedures, they are susceptible to a trafficker’s false advertisements for work abroad. The information deficit among child victims is especially problematic. Additionally, new evidence confirms that CST perpetrators increasingly exploit newly available technologies, such as text messaging and the Internet, to facilitate offenses.³¹⁶ Such technologies provide new distribution avenues for recruitment advertisements.³¹⁷ Arguably, the Convention’s promise of raising awareness

³¹² See Financial Action Task Force, *The Forty Recommendations* (2003), <http://www.oecd.org/dataoecd/5/9/22418712.pdf> (last visited Dec. 19, 2008).

³¹³ Convention, *supra* note 15, art. 4.

³¹⁴ *Id.* art. 9(2).

³¹⁵ See Explanatory Report, *supra* note 163, ¶ 70.

³¹⁶ 2008 TIP REPORT, *supra* note 2, at 13.

³¹⁷ *Id.*

of CST among Internet service providers and adjusting industry norms is responsive to such technologically informed exploitation techniques.

There is evidence, moreover, that tourists fail to understand the exploitative conditions of CST and assume their patronage principally benefits the prostituted child.³¹⁸ Tourists may also be unaware of the consequences of committing offenses in foreign states where child prostitution appears culturally acceptable. Such misunderstandings may contribute to the CST offenses, especially among opportunistic patrons. Information campaigns within the tourism industry highlighting the exploitative conditions of child prostitution, as well as health and legal risks associated with CST offenses, may act as effective deterrents for some offenders. Given their COE membership, Eastern European states in particular stand to benefit from these industry-based programs. To date, several states have teamed with the tourist sector to implement information campaigns, which appear to have achieved stricter criminal enforcement.³¹⁹

Article 8(2) prohibits the dissemination of materials advertising services which would be an offense under the Convention.³²⁰ Which materials are prohibited by this measure, however, remains unclear. Arguably, advertisements published by sex tour operators would be covered, as they are in New Zealand.³²¹ While successfully prohibiting such materials may dampen the industry and make child sex less accessible to perpetrators, problems will inevitably persist. As Convention drafters suggest, these prohibitions may encounter difficulties with freedoms of information and speech in several European nations protected under the ECHR, so the positive impact of this provision is uncertain.³²² It should also be noted that while information campaigns are vital, they can offer governments a merely cosmetic solution to CST.³²³ Making a show of compliance, states can ignore remedies that address more systemic causes.³²⁴

³¹⁸ See generally Norbert Schnorbach, *States and Travel Agencies Move Against Sex Tourism*, BC CYCLE, July 5, 1994.

³¹⁹ See *id.*

³²⁰ Convention, *supra* note 15, art. 8(2).

³²¹ See Crimes Act, 1961 S.N.Z. No. 43 § 144 (N.Z.).

³²² See Explanatory Report, *supra* note 163, ¶ 67 (discussing ECHR art. 10 protections).

³²³ Jonathan Todres, *The Importance of Realizing "Other Rights" to Prevent Sex Trafficking*, 12 CARDOZO J.L. & GENDER 885, 886–87 (2006). This article appeared as part of a symposium issue, entitled *Sexual Slavery: New Approaches to an Old Problem*.

³²⁴ *Id.*

D. *Victim Assistance*

Under the Convention, victim assistance provisions aim to establish “social programs” and “multidisciplinary structures” to support victims and their directly affected caregivers.³²⁵ The Convention establishes both short and long-term programs for “physical and psychosocial recovery.”³²⁶ Doing so positively impacts victims’ performance as witnesses. Long-term recovery initiatives respond forcefully to persistent criticisms of earlier instruments that victim care improperly focused on immediate rescue care and the victim’s performance as a witness.³²⁷ Convention negotiators note that protracted trauma may require long-term care, which also comports with the Convention’s goal of integrating victims back into society.³²⁸

Along these lines, the Convention stands out in addressing psychological scars that accompany the sexual victimization of children and impede social reintegration.³²⁹ Victim rehabilitation is further advanced by commitment to the family unit, particularly by prescribing “therapeutic assistance” for persons close to the victim.³³⁰ Investing in the family unit as a primary instrument for long-term victim rehabilitation is an innovative step forward for this type of legislation.

While these state assistance programs appear ambitious, the Convention alleviates some burden by requiring members to collaborate with victim aid organizations, particularly NGOs, to meet program goals.³³¹ Historically, NGOs have played a major role in the rehabilitation stage of child victims of sexual exploitation. Earnest collaborative efforts between states and NGOs will enhance the effectiveness of state assistance measures.

Despite its innovative program for victim assistance, the Convention is less directive than desirable when it comes to naming specific social and health services obligations of states. For example, negotiators note that state obligations for victim recovery could include medical screening and treatment concerning STD and HIV infection.³³² The lack of requirements by the Convention regarding which health and

³²⁵ Convention, *supra* note 15, art. 11(1); Explanatory Report, *supra* note 163, ¶ 88.

³²⁶ Convention, *supra* note 15, art. 14(1).

³²⁷ See, e.g., Nilanjana Ray, *Looking at Trafficking Through a New Lens*, 12 CARDOZO J.L. & GENDER 909, 918–19 (2006); Todres, *supra* note 323, at 886–88 (criticizing UN Protocol).

³²⁸ See Explanatory Report, *supra* note 163, ¶ 95.

³²⁹ See *id.* ¶¶ 96–97.

³³⁰ Convention, *supra* note 15, art. 14(4).

³³¹ *Id.* art. 14(2).

³³² Explanatory Report, *supra* note 163, ¶ 95.

social services states should pursue may allow states to evade taking more substantive steps toward victim recovery and rehabilitation. A major failure of the Convention, unlike other prior instruments, is that it fails to contemplate other basic victim needs, such as housing, food, and education—a glaring omission, given the economic deprivation that so commonly leads to child exploitation.³³³

CONCLUSION

Now that CST has attracted global attention, it frequently appears on the domestic and foreign policy agendas of national legislatures. Despite these signs of progress, CST offenses continue to escalate. To combat this, multinational approaches that synchronize various states' legislation are needed.

The Convention is currently the best standard. Its comprehensive program incorporates some of the best practices of both Sending and Destination States, and adds new, innovative enforcement and assistance provisions. Ultimately, participating states are moved toward robust action and greater legal homogenization while still enjoying a fair margin of leeway to realize their commitments.

Perhaps the greatest limitation of the Convention with respect to CST is the fact that, despite being open for outside ratification, its membership is unlikely to include many of the popular Destination States outside Europe. Because the ability of Sending States to detect, investigate, and prosecute CST offenders is limited even under the best circumstances, gaining serious involvement from all Destination States is vital to curbing the current escalation of CST.

For this reason, failing to adopt measures that would unite Convention members into a formidable economic bloc that could levy steep sanctions against states persistently tolerant of CST was a serious oversight. Future multi-national instruments should either secure the membership of all Destination States, or adopt provisions to coordinate economic sanctions against the remaining outliers.

³³³ See UN Protocol, *supra* note 286, art. 6(3).

