Responses to the International Child Sex Tourism Trade

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INTRODUCTION

Child sex tourism is one of the most horrifying scourges in Asia. Each year, thousands of men from Western European consumer countries, as well as from consumer countries like the United States, New Zealand, and Australia, flock to Southeast Asia seeking young boys and girls to patronize what has become a lucrative child prostitution and pornography industry. In certain countries, the problem involves mature-looking teenaged girls who happen to be below the age of consent. Elsewhere, however, Western sex tourists specifically seek children younger than twelve, or even ten years of age. They do so for a variety of reasons. Among them are the beliefs that sex with children will give them longevity, and that sex with children will bring a lower risk of AIDS. Many others are simply attracted to children.

Whatever the reasons, the effect on the children being exploited is devastating. Most of the countries where the child sex tourism trade occurs have laws prohibiting child prostitution and child pornography. Nonetheless, enforcement of these laws is generally very lax.

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3 Wallace, supra note 1.
4 Id.
5 See id; Paul Robinson, Australia Exposed - The Ugliest Australians, SUNDAY AGE (Melbourne), Apr. 18, 1993, available in LEXIS, World Library, Ttxnws File.
6 See Wallace, supra note 1.
8 See Leah Makabenta, Asia-Children: West Urged to Take Action on Child Sex Trade, Inter Press Service, June 1, 1994, available in LEXIS, World Library, Inpres File. The Philippines, Sri Lanka, and Thailand, have all passed recent measures to crack down on the child sex trade. See id.
9 See Wallace, supra note 1. Most tourists, when accused of child sex crimes, manage to either bribe an official or flee the country while out on bail. Id.

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Thus, international child welfare organizations are calling on members of the world community, particularly those nations whose citizens are traveling to Southeast Asia to engage in child pornography and child prostitution, to take measures of their own to help combat the growing problem.\(^{10}\) "Consumer" countries like the United States, Sweden, Germany, and Australia have responded through such measures as the signing of the United Nations Convention on the Rights of the Child and the proposal of domestic laws enabling them to prosecute their own nationals for engaging in child sex crimes in Southeast Asia.\(^{11}\)

Part I of this Note examines the various parties involved in child sexual exploitation, the child sex tourism trade in Asia, and measures that the countries where the industry prospers (Thailand, Sri Lanka, and the Philippines) have taken to combat the problem. Part II of this Note examines various measures that the consumer countries either have taken or could potentially take to help fight child sex tourism, such as laws to gain criminal jurisdiction over their nationals who engage in child sex crimes abroad, and ratification and enforcement of the UN Convention on the Rights of the Child. Part III of this Note analyzes the legal and practical questions these measures will create. This Note concludes that, in order to successfully fight the problem of child sex tourism in Southeast Asia, consumer countries need to pass laws enabling them to prosecute their own nationals for engaging in child sex crimes abroad.

I. THE CHILD SEX TOURISM TRADE IN SOUTHEAST ASIA

A. Parties Involved in Sexual Exploitation of Children

Few forms of exploitation are as degrading as child prostitution and pornography.\(^{12}\) Children are dependent upon adults and the state for protection of their rights, but when such protection breaks down, they become easy targets for such exploitation.\(^{13}\) Statistics offer evidence

\(^{10}\) See Wallace, supra note 1.


\(^{12}\) See *Child Sexual Exploitation in Developing Countries, 44 Rev. of the Int’l Comm’n of Jurists* 42 (1990) [hereinafter Int’l Comm’n].

\(^{13}\) See id.
that this is most apparent in Southeast Asia. According to an estimate by End Child Prostitution in Asian Tourism (ECPAT), an international organization founded in Bangkok in 1990 to combat this trade, nearly one million children are involved in Asia’s sex trade. Although child prostitution and pornography are illegal in almost every country in the world, this number is merely an estimate because no exact numbers exist to show the magnitude of the problem. Nonetheless, the ECPAT and the police estimates indicate that a tremendous number of children are being exploited in Asia.

"Whether the acts of sexual exploitation of children involve prostitution, pornography, or the sex tourism industry, four parties are generally involved in the transaction: the perpetrator, the vendor, the facilitator, and the child." The perpetrator is generally male, and, in the case of prostitution, rationalizes his behavior in several ways. One rationalization is that he is less likely to contract the AIDS virus through sex with children. According to Dr. Pers-Anders Mardh, director of the World Health Organization’s Collaborating Center for Sexually Transmitted Diseases, however, sexually-active children are more likely to carry the virus than adults. While many perpetrators are attracted to children at least in part from fear of AIDS, Dr. Mardh asserts that the AIDS epidemic alone is sufficient to justify a heightened war against child prostitution.

Some perpetrators also believe that sex with a virgin or a child cures venereal diseases; likewise, many pimps represent their child prostitutes as virgins. Other perpetrators operate under the mistaken belief

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15 See id. ECPAT breaks its estimate down to 300,000 children in India; 200,000 to 300,000 in Thailand; 100,000 each in the Philippines and Taiwan; 40,000 in Vietnam; and 30,000 in Sri Lanka. *Id.*
16 See Wallace, *supra* note 1; Int’l Comm’n, *supra* note 12, at 42. Nonetheless, police statistics back up the ECPAT estimate, indicating that 1,200,000 minors under the age of 16 are kidnapped, bought, or coerced into the sex trade each year, creating a five billion dollar industry. *Id.*
17 Int’l Comm’n, *supra* note 12, at 42.
18 Campagna, *supra* note 7, at 144.
19 *Id.*
20 See Klothen, *supra* note 11.
21 Serrill, *supra* note 7, at 52. Dr. Pers-Anders Mardh, director of the World Health Organization’s Collaborating Center for Sexually Transmitted Diseases in Uppsala, Sweden, notes: “[B]oth boys and girls are more vulnerable to infection because they are prone to lesions and injuries in sexual intercourse.” *Id.*
22 See id.
23 See id.; Klothen, *supra* note 11.
that sex with a child leads to male longevity.\(^24\) Finally, some perpetrators simply get a greater sexual thrill from intercourse with children.\(^25\) In the words of Colonel Bancha Jarureet, Bangkok's senior police officer in charge of the operation against child prostitution, "[m]ost men prefer very young prostitutes, it's the men's instinct. Don't you agree?"\(^26\)

The second party involved in the child prostitution transaction is the vendor.\(^27\) The vendor, also known as the "procurer" or "pimp," is the individual who extends the services, capital, and resources that make sexual trafficking of children both a feasible and lucrative industry.\(^28\) The vendor will generally maximize his profits both by keeping children under grossly substandard living conditions and by denying them an adequate share of the income they have produced through their labor.\(^29\)

The third party in the child prostitution transaction is the facilitator, who expedites the victimization process of the child and usually reaps the financial benefits.\(^30\) The facilitator might be either a recruiter, a parent who sells his or her child into prostitution,\(^31\) a landlord or motel owner who permits the activity to occur on his or her property, or, in the case of child pornography, a film laboratory technician.\(^32\)

Finally, the fourth and most affected party involved in the child prostitution transaction is the child.\(^33\) Most of the children come from severely impoverished families living in either isolated rural areas or overpopulated urban slums.\(^34\) In such Asian countries as Thailand, Sri Lanka, and the Philippines, these children fall into the child sex industry in a variety of ways.\(^35\)

\(^{24}\) Campagna, \textit{supra} note 7, at 144–45.


\(^{27}\) Campagna, \textit{supra} note 7, at 144.

\(^{28}\) \textit{Id.} at 145.

\(^{29}\) \textit{See id.}

\(^{30}\) \textit{Id.}

\(^{31}\) \textit{See id.; INT’L COMM’N, supra} note 12, at 43–44.

\(^{32}\) \textit{See Campagna, supra} note 7, at 145.

\(^{33}\) \textit{See id.}

\(^{34}\) \textit{See Klothen, supra} note 11.

\(^{35}\) \textit{See, e.g., Klothen, supra} note 11; \textit{INT’L COMM’N, supra} note 12, at 43–45; Serrill, \textit{supra} note 7, at 52.
In some instances, children take to the streets in an effort to support themselves, and perhaps their families, as street vendors, shoeshine boys, or in other "legitimate" jobs, and then turn to prostitution when they find they cannot survive on the income these jobs bring.36 These children range in age from under ten to their late teens.37

Other children are essentially sold into prostitution by their parents.38 In these cases, children are generally turned over by their parents to recruiters in return for a cash advance, to be paid off by the child’s labor.39 Frequently, parents do not know what kind of work their child is being "indentured" into.40 Parents often give up their child under the mistaken assumption that the child will be working in a legitimate capacity.41 Other parents, however, knowingly sell their children into prostitution, often in return for money to buy drugs.42

Finally, some children leave their homes to escape violence and neglect, and find themselves unable to support themselves by any means other than prostitution.43 These children wind up at the mercy of their pimp or "madam" out of fear of exposure to the authorities, which would result either in their being sent back to their homes or being placed in state care.44

Although the majority of children sold, indentured, or lured into prostitution remain in their home country, movement of children across international borders has become quite common.45 For example, children from Nepal, Bangladesh, and India have been discovered in Pakistan and the Gulf States; Thai children have been found in Japan.46 In Thailand, which has the world’s largest child sex industry,
the supply of young girls is diminishing.\textsuperscript{47} Thus, Thai traffickers have made inroads into Burma and China in search of young girls.\textsuperscript{48}

These children are essentially slaves to their procurers.\textsuperscript{49} Those who were sent to “work” off a “loan” to their parents face usurious interest rates, charges for room and board, and various other fraudulent expenses, making the prospect of ever actually working off the loan appear quite illusory.\textsuperscript{50} In Thailand, child prostitutes serve “an average of three customers a day, six or seven days a week, every week of the year.”\textsuperscript{51} The effects of such a lifestyle are devastating, both psychologically and physically.\textsuperscript{52}

Psychologically, victims of child sexual exploitation live in constant fear.\textsuperscript{53} They live in fear of violence and sadistic acts by their clients, fear of being beaten by the gangsters and pimps who control the sex trade, and fear of being apprehended by the police.\textsuperscript{54} Additionally, they often suffer from feelings of depression and low self-esteem as a result of being constantly degraded, and from feelings of hopelessness as a result of their inability to change their circumstances.\textsuperscript{55} Among these children, “despair is the norm,” and “suicide is common.”\textsuperscript{56}

The physical damage among sexually exploited children in Asia, particularly among child prostitutes, is also very serious.\textsuperscript{57} Venereal diseases are endemic among these children, and infection of the AIDS virus is sweeping through at startling rates.\textsuperscript{58} Children rarely receive treatment and are generally taken for medical care only when they are seriously or terminally ill.\textsuperscript{59}

Child prostitutes are also poorly fed and sheltered and commonly suffer from malnutrition and tuberculosis.\textsuperscript{60} Despite these conditions,

\textsuperscript{47} See Serrill, \textit{supra} note 7, at 52. Entire villages in northern Thailand, along the Burma border, are nearly devoid of young girls because so many have been sold into prostitution. \textit{Id.}

\textsuperscript{48} \textit{Id.} Incidentally, when these girls have outlasted their usefulness, they are cast aside. \textit{Id.} For example, when Burmese girls return to their own country, those carrying the AIDS virus are imprisoned by the military government, and in some instances killed. \textit{Id.}

\textsuperscript{49} Klothen, \textit{supra} note 11.

\textsuperscript{50} See \textit{id.}

\textsuperscript{51} \textit{Id.} Some have served as many as 15 customers a day. \textit{Id.}

\textsuperscript{52} See INT’L COMM’N, \textit{supra} note 12, at 45–46.

\textsuperscript{53} \textit{Id.} at 45.

\textsuperscript{54} \textit{Id.}

\textsuperscript{55} See \textit{id.} at 45–46; Serrill, \textit{supra} note 7, at 52.

\textsuperscript{56} Serrill, \textit{supra} note 7, at 52.

\textsuperscript{57} See INT’L COMM’N, \textit{supra} note 12, at 46.

\textsuperscript{58} See Serrill, \textit{supra} note 7, at 52.

\textsuperscript{59} INT’L COMM’N, \textit{supra} note 12, at 46.

\textsuperscript{60} \textit{Id.}
if they do not earn enough money, they are severely punished, often through beatings and starvation. These living conditions frequently lead to hard drug use among the children. The psychological, emotional, and physical repercussions of this lifestyle, in addition to the deprivation of education that the situation creates, prevents most of these children from ever making positive contributions as members of their communities. These children are deprived of their childhood and society is deprived of these children.

B. The Child Sex Tourism Trade in Asia and Enforcement of Local Laws

Many Asian nations have tourist areas that cater to foreigners seeking sex. Foreigners come primarily from Western Europe, the United States, and Australia seeking boys and girls for sex or pornography. Child welfare activists assert that these travelers, who are able to act with virtually no fear of punishment except deportation, enable the child sex trade to flourish. These excursions are facilitated, in many cases, by actual sex tours visibly marketed in the countries of the consumers, or by advertisements in travel magazines, highlighting the underage sex available in Asia and elsewhere.

Nearly every country in which the child sex tourism trade prospers has national laws prohibiting such activities. For example, child prostitution is already illegal in Thailand, whose government has recently imposed measures to strengthen its thirty-four year old prostitution

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61 Id.
62 Id.; see Serrill, supra note 7, at 52.
63 See INT’L COMM’N, supra note 12, at 46.
64 See Klothen, supra note 11; INT’L COMM’N, supra note 12, at 46.
65 Klothen, supra note 11.
66 See Wallace, supra note 1.
67 See Lucy Johnson, British Child Sex Tourists Go Unpunished, Inter Presse Service, June 22, 1994, available in LEXIS, World Library, Inpres File; Wallace, supra note 1. “Tourism is providing the context in which the child abuse exists,” says Ron O’Grady, one of the founders of ECPAT, “you often find that the farther a traveler gets away from home, the more they lose restraints.” Wallace, supra note 1.
68 See Johnson, supra note 67; Campagna, supra note 7, at 152. A British “financial” publishing group called Scope International, for example, advertises tours to places where “most of the inhabitants are young and they live for only one thing... SEX,” and where “thirty percent of the prostitutes are said to be between 12-16.” Johnson, supra note 67. In addition, at least two travel agencies are known to exploit foreign children, including a German agency that includes sexual experiences with children as part of the tour package and offers guides to assist the tourist in negotiating the prices of child prostitutes, locating hotels to use, circumventing local laws and dealing with local officials. Campagna, supra note 7, at 152.
69 See INT’L COMM’N, supra note 12, at 42.
law. 70 Under the bill (still awaiting passage) laying out these measures, brothel customers caught engaging in sex with girls under fifteen are subject to prison terms of up to six years and fines of up to 120,000 baht (approximately $4800). 71 Those caught with prostitutes who are eighteen years of age or younger are subject to three years in prison and a 60,000 baht ($2400) fine. 72 Finally, the draft bill proposes to give Thai courts the right to revoke the guardianship of any parent who sells his or her child into the sex trade. 73

In addition, in 1992 the Philippine government adopted a Child Protection Code to fight exploitation of children through stronger measures against pedophiles and traffickers of children; previously the law prohibited prostitution, but provided little or no protection for the children from sexual exploitation. 74 Sri Lanka has also taken measures to protect children under the age of eighteen. 75 Laws in Sri Lanka now clearly prohibit the sexual exploitation of children, and intercourse with a child under twelve is now considered rape irrespective of consent. 76

Despite these official attempts to curb the child sex trade, the problem remains prevalent. 77 This is due largely to lack of enforcement (despite the public maneuvers described in the preceding paragraph) on the part of police and government officials. 78 The lack of enforcement is attributable in part to corruption within the police forces. 79 Additionally, countries affected by the sex tourism trade are, for the most part, very poor, and socio-economic realities lead the governments to concern themselves more with the money that such tourism brings in than with the effect it might have on the children. 80 This

71 Id. Nothing is mentioned here regarding punishment for sex with boys. See id.
72 Id. It is unclear whether this applies to sex with boys as well as girls. See id.
74 See Serrill, supra, note 7.
75 Makabenta, supra note 8.
76 Int’l Comm’n, supra note 12, at 46.
77 See Wallace, supra note 1.
78 See Campagna, supra note 7, at 150–51.
79 See id.; Robinson, supra note 5. According to ECPAT director Sudarat Srisang, brothel owners stay in business by paying off the police in their districts; usually brothels will stay in operation if they furnish police stations with $15 to $25 monthly “fees.” Id.
80 See Klothen, supra note 11. Along these lines, the Deputy Prime Minister of Thailand has openly encouraged provincial governors to consider “forms of entertainment [the governors]
might explain why Bradley Pendragon, a thirty-three-year-old Australian sex tourist recently convicted in Thailand for child pornography, was only the first foreign national ever tried in a Thai court for engaging in the child sex trade.\textsuperscript{81} In any event, without enforcement of domestic laws on the part of Asian governments, the only way to combat the child sex tourism industry is through international means.\textsuperscript{82}

II. \textbf{INTERNATIONAL EFFORTS AT COMBATTING THE SEXUAL EXPLOITATION OF CHILDREN}

A. \textit{The United Nations Convention on the Rights of the Child}

On November 20, 1989, the United Nations (UN) adopted the United Nations Convention on the Rights of the Child (Convention).\textsuperscript{83} The Convention, which the United States did not sign until February 16, 1995, entered into force on September 2, 1990 and has been signed by over 150 nations.\textsuperscript{84} The Convention is the first legally binding international agreement that protects children from sexual exploitation.\textsuperscript{85}

\textsuperscript{81} See \textit{Sunday Edition}, supra note 26. Pendragon had photographed one 12-year-old girl with a statue of the Buddha in her vagina and another 12-year-old girl with a 100-baht bill (featuring a portrait of the King of Thailand) across her genitals; the Centre for the Protection of Children's Rights in Bangkok believes that the primary motivation behind Pendragon's prosecution was not the sexual abuse of the girls, but rather outrage over Pendragon's use of the Buddha and the image of the king. \textit{Id.} In January 1995, Pendragon received a sentence of two and a half years in prison—two years for defaming Buddha and six months for producing pornography with children. \textit{Update on Pendragon: Australian Jailed on Thai Sex Count}, \textit{ECPAT Australia Bull.} (End Child Prostitution in Asian Tourism, Melbourne, Austl.), Feb. 1995, at 5.

\textsuperscript{82} See, e.g., Kloten, supra note 11; Lisa Murray, \textit{World Congress Suggests Punishment of Sex Crimes}, \textit{Hotel & Motel Mgmt.}, Aug. 16, 1993, at 4; Serrill, supra note 7.

\textsuperscript{83} Cohen, supra note 11, at 36.

\textsuperscript{84} Kloten, supra note 11; \textit{United States Signs the Convention on the Rights of the Child}, \textit{ECPAT-USA News} (End Child Prostitution in Asian Tourism, New York, N.Y.), Mar. 1995, at 3. The United States has merely signed the Convention; ratification will not be complete until it has been reviewed by the State Department and the President and ratified by a two-thirds majority in the Senate. \textit{Id.} Prospects for ratification are uncertain as long as there is a Republican majority in the Senate. \textit{Id.}

\textsuperscript{85} \textit{INT'L COMM’N}, supra note 12, at 47. A number of international documents, such as the 1959 United Nations Declaration on the Rights of the Child, have dealt with the issue of sexual exploitation, but the Convention is the first to have actual legal effect, in that it lays out terms by which signatories are technically obligated to abide. \textit{Id.}
The regulations on sexual exploitation of children are outlined in article 34 of the Convention. 86 According to article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes states Parties shall in particular take all appropriate national, bilateral, and multilateral measures to prevent:
(a) the inducement or coercion of a child to engage in any unlawful sexual activity;
(b) the exploitative use of children in prostitution or other unlawful sexual practices;
(c) the exploitative use of children in pornographic performances and materials. 87

This means that the governments of countries like Thailand, the Philippines, and Sri Lanka, which have all ratified the Convention, are now obligated to take every measure possible, whether individually or in conjunction with other governments, to prevent child prostitution and child pornography within their borders. 88 Thus, if these governments fail to enforce their own laws against such behavior, they are in violation of the Convention. 89

Article 19 of the Convention also addresses sexual exploitation of children:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child

87 Id.
88 See id.
89 See generally id.
maltreatment described heretofore, and, as appropriate, for judicial involvement.90

Thus states like Thailand, Sri Lanka, and the Philippines are required by the Convention to actually pass appropriate legislation against both the sexual exploitation of children and the sale and indenturing by parents of children into situations where they will be sexually exploited.91 Additionally, under the second paragraph of article 19, such states are required to take appropriate steps in providing social programs to rescue children who do fall prey to such situations.92 Finally, article 39 provides:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.93

Article 39 strengthens article 19(2) by mandating among the parties to the Convention (including Thailand, Sri Lanka, and the Philippines) the establishment of social programs to mentally and physically rehabilitate victims of sexual exploitation once they have been removed from the exploitative environment.94 This means that the governments of Thailand, the Philippines, and Sri Lanka have acknowledged that they are expected to provide medical and psychological care, and, in many instances, shelter, to children who have become involved in prostitution or child pornography.95

The Convention's implementation mechanisms, found in articles 43, 44, and 45 anticipate that those countries bound by the Convention

90 Id. art. 19.
91 Convention, supra note 86, art. 19. The Author notes, however, that the use of the word "appropriate" to modify "legislation" seems to undercut the Convention's mandatory force. See id.
92 See Convention, supra note 86, art. 19. Again, the authority of the Convention is undercut by merely requesting "procedures" for the establishment of programs, rather than actually mandating the establishment of specific programs. See id.
93 Id. art. 39.
94 See id.
95 See id. The fact that a country has ratified the Convention implies that it respects and intends to adhere to its terms.
will make a good faith attempt to abide by its terms. Article 43 establishes a Committee on the Rights of the Child, comprised of ten independent experts “of high moral standing and recognized competence in the field” to implement the terms of the Convention. Article 44 requires that each nation bound by the Convention submit a report to the Committee two years after it ratifies the Convention and every five years thereafter, highlighting the progress it has made in adopting measures that give effect to the terms of the Convention. The Committee, in turn will address difficulties the country may have had in implementing certain terms of the Convention, and will make recommendations to that country accordingly.

Unfortunately, the Committee lacks any authority to receive petitions from states or individuals alleging violations by parties to the Convention, which seems to relegate its operation to a passive advisory capacity. Nonetheless, the framers of the Convention feel that it is useful because it gives non-governmental children’s rights organizations an international framework through which they can more effectively pursue their agenda. Additionally, by getting nations to attest in writing to their opposition to particular activities harmful to children, the Convention helps to establish a uniform international standard on dealing with the problems related to the sexual exploitation of children, particularly in the child sex tourism industry.

B. Extraterritorial Jurisdiction Over Child Sex Tourists

Tourists from the United States, Japan, Australia, and Western Europe are a large part of the market for child prostitution and child pornography in Asia. Despite the UN Convention and commitments by Asian governments to crack down on the sex trade, the number of children falling victim to sexual exploitation increases each year.

96 See generally, Convention, supra note 86, arts. 43–45.
97 Id. art. 43.
98 Id. art. 44(1)(a), 44(1)(b).
99 Id. art. 45.
100 See INT’L COMM’N, supra note 12, at 48.
101 Id.
102 See Klothen, supra note 11.
103 See Pressure Grows to Discourage Sex Tourists, OTTAWA CITIZEN, July 9, 1994, available in LEXIS, News Library, Ottawa File.
104 See id. According to United Nations statistics, about 10,000,000 Third World children are
Thus, at the urging of international organizations, consumer nations have taken steps to aid in the fight against the sex tourism industry.\textsuperscript{105} One tactic that many consumer nations have proposed (and some have implemented) is the extraterritorial application of their own criminal laws to crack down on their nationals engaging in child sex tourism.\textsuperscript{106}

1. Sweden

A Swedish court recently convicted Bengt Bolin, a sixty-nine year-old retired civil servant, for molestation of a thirteen year-old boy at the Thai beach resort of Pattaya.\textsuperscript{107} Sweden took such action under the principle of extraterritoriality.\textsuperscript{108} This is the first time that Swedish authorities have utilized the principle of extraterritoriality to prosecute a Swedish citizen for child sex crimes committed overseas.\textsuperscript{109}

Sweden has the authority to apply its criminal law extraterritorially pursuant to its own penal code.\textsuperscript{110} Chapter 2 of the Swedish Code covers the applicability of Swedish law, and section 2 of that chapter deals specifically with prosecution in Sweden of crimes committed elsewhere.\textsuperscript{111} According to section 2:

A person who has committed a crime outside the realm shall be tried according to Swedish law and in a Swedish court if the person is:

\begin{itemize}
\item involved in prostitution. \textit{Id.} According to the international organization \textit{Terre des Hommes}, an additional one million children enter the industry each year. \textit{Id.}
\item \textsuperscript{105}Wallace, \textit{supra} note 1.
\item \textsuperscript{106} See Makabenta, \textit{supra} note 8. Extraterritoriality in the criminal sense is the concept of one state prosecuting an individual for acts occurring in another state. See generally, \textsc{Joseph M. Sweeney, et al., The International Legal System} 90–118 (3d ed. 1988).
\item \textsuperscript{107} \textit{Swedish Court Convicts Swedish Man of Sexually Abusing Child in Thailand}, ECPAT–USA News, (End Child Prostitution in Asian Tourism, New York, N.Y.), Dec. 1995, at 6 [hereinafter \textit{Swedish Court Convicts}]. Bolin, who was arrested during a police raid of Pattaya, which is famous for its brothels, was released on $4000 bail and fled the country. Wallace, \textit{supra} note 1. Bolin’s native Sweden has no extradition treaty with Thailand, so the only way Bolin could be punished was through prosecution in his own country. \textit{Id.}
\item \textsuperscript{108} \textit{Id.}; \textit{Swedish Penal Code}, ch. 2, §2 and ch.6, §§4–7. While sexual intercourse with a minor carries a maximum penalty of four years’ imprisonment, Bolin was given a three-month prison sentence (as well as a fine) because of his age and poor health. \textit{Swedish Court Convicts}, \textit{supra} note 107, at 6.
\item \textsuperscript{109}Wallace, \textit{supra} note 1.
\item \textsuperscript{110} \textit{Swedish Penal Code}, ch. 2, §2.
\item \textsuperscript{111} \textit{Id.}
1. a Swedish citizen or an alien domiciled in Sweden;
2. an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present here; or
3. some other alien, who is present in the Realm and the crime is punishable according to Swedish law by imprisonment for more than six months.\textsuperscript{112}

Since Sweden’s Code gives it the authority to apply its criminal laws extraterritorially,\textsuperscript{113} it follows that Sweden may prosecute sex tourists pursuant to domestic laws against child pornography and child prostitution.\textsuperscript{114}

Chapter 6 of the Sweden Penal Code governs sex crimes, and has sections dealing specifically with sexual activity involving children.\textsuperscript{115} According to section 6, for example, sexual intercourse with a child under the age of fifteen carries a sentence of up to four years in prison.\textsuperscript{116} Sexual activity other than intercourse carries a one-year prison term, as laid out in section 7.\textsuperscript{117}

These statutes combined with the extraterritorial application statute in chapter 5 give Sweden a basis upon which to prosecute its nationals for engaging in child prostitution and pornography while abroad.\textsuperscript{118} Such prosecutions do, however, raise evidentiary issues that might emerge in the prosecution of extraterritorial crimes.\textsuperscript{119} In the Bolin case, Swedish prosecutors traveled to Thailand to obtain videotaped

\textsuperscript{112} Id.
\textsuperscript{113} See generally id. ch. 2.
\textsuperscript{114} See id. chs. 6, §§ 4–7.
\textsuperscript{115} See id.
\textsuperscript{116} SWEDEN PENAL CODE § 6. According to this section: “[i]f a person . . . has sexual intercourse with a child under fifteen years of age, a sentence of imprisonment for at most four years shall be imposed for sexual intercourse with a child. (emphasis in original). Id.
\textsuperscript{117} Section 7 states:

A person who . . . sexually touches a child under fifteen years of age or induces the child to undertake or participate in an act with sexual implication shall be sentenced to a fine or imprisonment for at most one year for sexual molestation. The same shall apply if a person exposes himself to another in a manner apt to give offence or otherwise behaves indecently toward the latter by word or deed that flagrantly violates a sense of decency. (emphasis in original).

Id. § 7.
\textsuperscript{118} See generally id. chs. 2, 6.
\textsuperscript{119} See Makabenta, supra note 8.
testimony by Bolin’s alleged victim. This was made easier by Thailand’s 1992 passage of the Act on International Cooperation in Criminal Matters, which enables the Thai Attorney General’s Office to assist in finding evidence and sending it to the country prosecuting the case. Nonetheless, if other countries with a child sex tourism problem are not as helpful in gathering evidence, certain sex crimes would seemingly go unpunished for failure to meet a burden of proof.

2. Australia

Australia has also taken a hard line against its citizens who travel to Thailand and the Philippines for sex with children. On July 5, 1994, Australia passed the Crimes (Child Sex Tourism) Amendment Act 1994, which is now one of Australia’s few extraterritorial criminal laws.

According to section 50BA of this act: “A person must not, while outside Australia, engage in sexual intercourse with a person who is under 16.” Violation carries a penalty of seventeen years in prison.

According to section 50BB: “A person must not induce a person who is under 16 to engage in sexual intercourse with a third person outside Australia and in the presence of the first-mentioned person.”

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122 See generally id. Particularly hard to prove without assistance from the country where the crime took place is the issue of the alleged victim’s age, which is a key element in any child sex crime. Id.


124 Crimes Amendment Act, supra note 123.

125 Wallace, supra note 1.

126 Crimes Amendment Act, supra note 123, § 50BA. According to section 50AD, a person may be prosecuted under this act if he or she is an Australian citizen, a resident of Australia, a corporation incorporated in Australia, or a corporation carrying on its activities principally in Australia. Id. § 50AD.

127 Id. § 50BA.

128 Id. § 50BB.
ing a child to engage in sexual intercourse carries the same penalty of seventeen years.\textsuperscript{129}

Sexual acts with children, other than intercourse, committed abroad are also punished very harshly.\textsuperscript{130} Section 50BC of the act states:

A person ("the first person") contravenes this section if, while the first person is outside Australia:

(a) the first person commits an act of indecency on a person who is under 16; or

(b) the first person submits to an act of indecency committed by a person who is under 16; or

(c) the first person commits an act of indecency in the presence of a person who is under 16 ("the child"), and the first person intends to derive gratification from the child's presence during the act; or

(d) the first person submits to an act of indecency committed in the presence of a person who is under 16 ("the child"), and the first person intends to derive gratification from the child's presence during the act; or

(e) the first person engages in sexual intercourse with another person in the presence of a person who is under 16 ("the child"), and the first person intends to derive gratification from the child's presence during the sexual intercourse.\textsuperscript{131}

Violation of this section of the act carries a prison term of twelve years.\textsuperscript{132} Also carrying a twelve-year prison term is the inducement of a child under sixteen "to commit, to submit to, or to be present" while a third person commits an act of indecency outside of Australia and in the presence of the first person (the inducer).\textsuperscript{133} "The law sends a message that this country will not tolerate its citizens going offshore to abuse the children of other countries," says Mark Lever, an aide to Australian Attorney General Michael Lavarch.\textsuperscript{134}

Nonetheless, this measure faces criticism in Australia from a legal standpoint.\textsuperscript{135} According to Ian Barker, a leading Sydney judge, the bill

\textsuperscript{129} Id.
\textsuperscript{130} See Crimes Amendment Act, supra note 123, § 50BC.
\textsuperscript{131} Id. § 50BC.
\textsuperscript{132} Id.
\textsuperscript{133} Id. § 50BD.
\textsuperscript{134} Wallace, supra note 1.
\textsuperscript{135} See generally Australian Gov't Defends Proposed Child Sex Tourism Law, JAPAN ECON.
is dangerous because it contains a "series of shortcuts to conviction," in that it places a burden on the accused to prove his innocence for activities that might be immoral, but are not necessarily criminal. Judge Barker feels that the long-term solution is for Asian countries to outlaw the sex trade. Notwithstanding Barker's criticisms, the Australian Crimes Amendment Act (unlike the Swedish extraterritorial statute) contains specific provisions dealing with anticipated evidentiary difficulties. Under Division 5, section 50EA of the act, the court may direct that a witness give evidence by video link if:

(a) the witness will give the evidence from outside Australia; and
(b) the witness is not a defendant in the proceeding; and
(c) the facilities required by section 50E are available or can reasonably be made available; and
(d) the court is satisfied that attendance of the witness at the court to give the evidence would:
   (i) cause unreasonable expense or inconvenience; or
   (ii) cause the witness psychological harm or unreasonable distress; or
   (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
(e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.

Thus the accused's rights are adequately safeguarded under the act.
3. Germany

Germany has also taken steps to help combat the sex tourism industry. In 1993, Germany enacted a law providing for up to ten years imprisonment for any German engaging in sexual activity with a child under the age of fourteen, irrespective of where the act occurs.\(^\text{141}\) The German government hopes such a measure will discourage its citizens from traveling abroad for sex with children.\(^\text{142}\)

The German prohibitions work much like those in Sweden in that Germany has general laws (that do not address the issue of where the crimes occur) proscribing sexual activity involving children and a separate law that gives German criminal law extraterritorial applicability (this law contains a paragraph specifically applicable to sex crimes).\(^\text{143}\) According to section 5 of the German Penal Code, the code’s provisions may be applied toward criminal acts abroad, including “criminal acts against sexual self determination.”\(^\text{144}\)

Section 176 of the German Penal Code, addressing the sexual abuse of children, can be applied extraterritorially pursuant to section 5, provided the perpetrator is German and has his residence in Germany.\(^\text{145}\) Section 176 provides:

(1) Whoever commits sex acts on a person under fourteen years of age (a child) or whoever permits a child to do the same to him, shall be punished by imprisonment from six months to ten years or, in less serious cases, by up to five years imprisonment or fine.
(2) Similar punishment shall be imposed on anyone who induces a child to commit sex acts on a third person, or to permit a third person to do the same to the child.
(3) Imprisonment from one to ten years shall be imposed in especially serious cases. As a general rule, an especially serious case shall be deemed to exist if the offender:

1. has sexual intercourse with the child; or

\(^{141}\) See Wallace, \textit{supra} note 1.

\(^{142}\) See \textit{id.}


\(^{144}\) \textit{Strafgesetzbuch} (Penal Code) § 5 [hereinafter StGB].

\(^{145}\) \textit{id.} §§ 5, 176. Unlike similar provisions in countries like Sweden, the German code provides no provisions for alien perpetrators. \textit{See id.} §§ 5, 176.
2. in committing the act grossly abuses the child.

(4) If, in committing the act, the offender recklessly caused the death of the child, not less than five years' imprisonment shall be imposed.

(5) Up to three years' imprisonment or fine shall be imposed on anyone who:
   1. commits sex acts in front of a child;
   2. induces a child to commit sex acts in front of him or a third person; or
   3. exerts influence on a child, by showing him pornographic illustrations or representations, by playing recordings of pornographic content, or by suggestive speech of the same nature in order to thereby sexually arouse himself, the child or a third person. . . .

The extraterritorial reach of the German laws is not as broad as that of Australia or Sweden in that they can only be applied to German citizens who reside in Germany.

4. The United States

On September 13, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, better known as the Crime Bill. This legislation expands upon the Mann Act (which already had made it a felony for one to travel across state lines for immoral purposes) to cover those who travel or conspire to travel outside the United States to engage in any sexual activities with minors that would have been illegal had they occurred in the United States. The relevant language of the amendment reads:

A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2245) with

146 Id. § 176.
147 Id. § 5.
a person under 18 years of age . . . shall be fined under this title, imprisoned not more than ten years, or both.\textsuperscript{150}

This legislation is enforced by a special Justice Department Office and calls for ten years in prison for a first offense and twenty years for a second offense.\textsuperscript{151} The bill, however, has faced questions over its legality in terms of extraterritoriality.\textsuperscript{152} Nonetheless, extraterritorial criminal laws have been upheld in other instances in American courts.\textsuperscript{153} It should be noted, however, that this law criminalizes the intent of U.S. nationals to engage in sexual exploitation of children overseas as well as the acts themselves.\textsuperscript{154} Intent is an easier issue for prosecutors both in a legal and practical sense because, in such an instance, extraterritoriality is no longer really an issue (the intent aspect of the crime occurs in the United States) and because intent can be easily revealed through contracts or travel agreements made by the defendant, evidence of which generally remains in the United States.\textsuperscript{155} Prosecution based strictly on the actual conduct would require cooperation by foreign officials, since most of the evidence remains abroad.\textsuperscript{156}

5. Great Britain

Great Britain has made very limited efforts to assist in the international fight against sexual exploitation of children.\textsuperscript{157} Although Parliament defeated an amendment to the Criminal Justice Bill that would have given British courts extraterritorial jurisdiction over British sex tourists, Britain has promised to provide Asian countries with lists of known British pedophiles so they can be kept out by immigration


\textsuperscript{151} Wallace, supra note 1.

\textsuperscript{152} Id.

\textsuperscript{153} Id. Most notably in the case of former Panamanian strongman Manuel Noriega, who was tried and convicted in the United States on eight counts of racketeering, conspiracy, and cocaine-smuggling. Id. Extraterritorial application of U.S. criminal law has also been upheld in United States v. Thomas, 893 F.2d 1066, 1069 (9th Cir. 1990), where the Ninth Circuit found that a United States national could be convicted of violating the Federal Child Pornography Statute irrespective of whether the crime took place in the United States. Id. at 1069.


\textsuperscript{155} Id.

\textsuperscript{156} Id.

\textsuperscript{157} See Wallace, supra note 1.
officials. Opponents of the proposed amendment argued in Parliament that such changes would make authorities in the countries where such offenses were committed less likely to prosecute such cases themselves. The British government was also unwilling to act until it saw prosecutions successfully being made in other consumer countries that have already passed legislation.

III. ANALYSIS—PRACTICAL MERITS AND LEGALITY OF VARIOUS INTERNATIONAL APPROACHES

A. The United Nations Approach

The UN has addressed the issue of sexual exploitation of children through its Convention on the Rights of the Child. The Convention calls upon its signatories (including Thailand, Sri Lanka, and the Philippines) to adopt and enforce laws against child pornography and child prostitution. The Convention does not, however, provide true enforcement measures in case of violation; it merely empowers its implementing Committee to act in an advisory capacity, providing recommendations to countries that are having difficulty adhering to its terms.

Additionally, the signatory nations have only an illusory obligation to pass any anti-exploitation laws; states are merely required to take all “appropriate” legislative measures to protect children. The authority of the Convention is further undercut in Article 19 by merely requesting “procedures” for the establishment of social programs to protect children rather than actually mandating the establishment of specific programs. Thus, while proponents of the Convention argue that it is a potential means of educating various governments about the problem of sexual exploitation of children (provided these governments actually seek out its advice), the Convention is, from a practical stand-

158 See Johnson, supra note 67; Wallace, supra note 1.
160 See id.
161 See generally Convention, supra note 86, arts. 19, 34, 39, 43–45.
162 See id. arts. 19, 34, 39.
163 See id. arts. 43–45.
164 See Convention, supra note 86, art. 19. The use of the word “appropriate” seems to strip the Convention of mandatory force. See id.
165 See id.
point, inadequate on its own as a means of fighting the child sex tourism industry on an international level.

B. Extraterritorial Criminal Laws

Criminal laws enabling consumer countries to prosecute their nationals for child sex crimes committed while abroad would be likely to make a huge difference in an international fight against child sex tourism.¹⁶⁶ As Congressman Joseph P. Kennedy II has written, "[T]hese new laws could be an essential first step in eliminating the scourge of traffic in child pornography and international tourism for sex with minors."¹⁶⁷ Nonetheless, critics of these laws have called into question whether these laws are appropriate from an evidentiary and procedural standpoint and whether consumer countries have the jurisdiction to prescribe these laws under customary international law.¹⁶⁸

For example, when the British Parliament voted down an amendment to its Criminal Justice Bill that would have conferred upon its courts extraterritorial jurisdiction over British child sex tourists, it did so partially on evidentiary grounds.¹⁶⁹ "It's the principle and the practicality of the thing," explained a British diplomat (who declined to be named in an interview with the Inter Press Service), "it is extremely difficult to obtain evidence that would satisfy our courts of law and our people that there is a case to answer."¹⁷⁰ The countries that have chosen to apply laws against sexual exploitation of children, particularly Australia, have, however, addressed these concerns, which involve such procedural safeguards as burden of proof, presumption of innocence, and right to confront a witness, as well as substantive issues like the age of the defendant.¹⁷¹

For example, Australia, as noted before, has amended its rules of evidence as laid out in its Crimes Act to permit child victims to testify via satellite video link and has laid out evidentiary standards in determining the age of an alleged victim.¹⁷² Between the video link capacity

¹⁶⁶ See Klothen, supra note 11.
¹⁶⁷ Kennedy, supra note 149.
¹⁶⁸ See Australian Gov't, supra note 135; Wallace, supra note 1.
¹⁶⁹ Makabenta, supra note 8. Opposition in the Parliament, however, was based only partially on evidentiary concerns; the Government was also hesitant to take the step of applying its laws extraterritorially until it saw another country do the same thing successfully. See Government Wary, supra note 159.
¹⁷⁰ Makabenta, supra note 8.
¹⁷¹ See generally Crimes Amendment Act, supra note 123.
¹⁷² Id. §§ 50EA, 50FA. According to section 50FA, in determining whether a person is under
(and the technical requirements for admissibility of video testimony) and the reasonable doubt standard for determination of a child’s age, a defendant’s individual procedural rights seem to be addressed and safeguarded as much as they would be if the act took place in Australia. The defendant still has the ability to confront a witness and the burden of proof has not shifted. The only remaining issue seems to be whether the prosecutor can come up with enough evidence to meet the burden; this may be more difficult in the case of an extraterritorial crime, but would not impact upon the due process rights of the defendant; if the prosecutor is unable to come up with enough evidence, like in any other crime, he or she does not have a case.

Aside from evidentiary and procedural issues, critics have questioned whether there is a basis, under customary international law, for a state to claim extraterritorial jurisdiction at all in child sexual exploitation cases. Under customary international law, there are four bases of extraterritorial jurisdiction: the “effects doctrine,” nationality; the “protective principle”; and the “universality” principle. Thus, it

16 or was under 16 at the time of the alleged offense, a jury or court may consider as evidence the person’s appearance, medical or other scientific opinion, a document that is or appears to be an official or medical record from a country outside Australia, or a document that is or appears to be a copy of such a record. The jury must be satisfied beyond a reasonable doubt that the child is or was under 16. See id. 173

Evidence-gathering becomes less of a problem when the country where the crime occurred cooperates in the process. See Muntarbhorn, supra note 121, at 4. It might also be useful to note that Norway, which convicted three of its citizens in 1990 for sexual exploitation of children in the Philippines and Thailand, has established a special police unit to assist local police in Asia. Makabenta, supra note 8. This would very likely make the evidence-gathering process easier and more reliable for the purpose of extraterritorial prosecutions and would not seem to infringe upon the sovereignty of the country where the transaction occurred. See id. 175

See generally Crimes Amendment Act, supra note 123, §§ 50EA, 50FA.

173 See id.

174 See id.

175 See id.

176 See id.

177 See id.

178 See id.

179 See id.

180 See id.
stands to reason that, if acts associated with the child sex tourism industry can fit into any of these categories, extraterritorial jurisdiction is appropriate, assuming that evidentiary concerns can be satisfied to a degree where the defendant will be guaranteed a fair trial. 181

The most obvious basis of extraterritorial jurisdiction in such cases would be the nationality principle. According to the principle of active nationality, a state may exercise territorial jurisdiction over one of its nationals for crimes committed elsewhere. 182 Under this basis, a state like Sweden could claim jurisdiction over a defendant like Bengt Brolin for acts committed in Thailand simply because he is a Swedish national. 183 The only issue, aside from evidentiary concerns, would presumably be whether or not the government of the forum country refrains from using this principle as a jurisdictional basis, as common law states do in most cases. 184 If a common law state (like the United States or Great Britain) does not use the nationality principle as a basis for extraterritorial jurisdiction, it would have to find another basis of jurisdiction. 185

The “effects” doctrine might serve as another basis for extraterritorial jurisdiction over child sex tourists, particularly in cases involving child pornography. 186 Under the effects doctrine, which has been used frequently in drug-trafficking conspiracy cases, a state may apply its laws to acts occurring outside its territory, but having or intending to have “substantial effect within its territory.” 187 There is a perfectly reasonable basis for believing that child pornography committed overseas would have an effect within the consumer country: the activities of a sex tourist like Bradley Pendragon, for example, would almost certainly have an effect within his country’s territory if the photographs he took surfaced in his country for distribution. 188

In cases involving child prostitution, the effects on the consumer country are not as clear. One could argue, however, that the sex

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181 See Australian Gov’t, supra note 135.
182 Sweeney, supra note 106, at 109.
183 See id.
184 See id. The only policy justification the Author can see for such a policy is comity—perhaps the courts in common law states are hesitant to create conflicts of sovereignty with those nations where the crimes take place.
185 See id.
186 See Makabenta, supra note 8.
187 See Restatement, supra note 177, § 403.
tourist's home country is affected when it cultivates a negative image abroad as a result of the behavior of its nationals.\textsuperscript{189} Australia, in particular, has cultivated an unfavorable image in Southeast Asia as being a nation of "sex and beer predators" as a result of the activities of Australian sex tourists.\textsuperscript{190}

A third basis for extraterritorial jurisdiction over sex tourists might be the universality principle.\textsuperscript{191} This principle is based on an assumption that some crimes are so universally condemned that the perpetrators are enemies to the entire world community.\textsuperscript{192} The universality principle allows any nation with custody to prosecute a perpetrator for piracy, slave trade, hijackings, genocide, war crimes, and perhaps terrorism.\textsuperscript{193}

Sexual exploitation of children is not classified among these crimes of a "universal concern," but perhaps it might be considered a form of slave trade, which is covered by the universality principle.\textsuperscript{194} After all, most accounts liken the conditions faced by juvenile victims of the child sex tourism trade to slavery.\textsuperscript{195} Furthermore, the Convention, for what it is worth on a practical level, at least demonstrates a broad-based international condemnation of sexual exploitation of children.\textsuperscript{196}

Given these three options, Western nations appear to have a reason- able basis under customary international law for claiming extraterritorial jurisdiction over their citizens who travel to Asia in search of sexual activity with children.

\textbf{CONCLUSION}

The child sex tourism industry in Asia, particularly in Thailand, Sri Lanka, and the Philippines, is a heart-wrenching scourge that must be fought on every front. Unfortunately, the governments of the nations

\textsuperscript{189} See Robinson, \textit{supra} note 5.
\textsuperscript{190} See \textit{id.}
\textsuperscript{191} See \textit{Restatement}, \textit{supra} note 177, § 404.
\textsuperscript{193} See \textit{Restatement}, \textit{supra} note 177, § 404.
\textsuperscript{194} See \textit{id.; Klothen, supra} note 11.
\textsuperscript{195} See Klothen, \textit{supra} note 11. This is particularly true for those children who are "indentured" into prostitution with only the illusion of ever actually being able to work off the indenture. \textit{See id.}
\textsuperscript{196} See generally Convention, \textit{supra} note 86.
where these acts occur appear to have neither the motivation nor the
ability to combat the problem on their own.

The United Nations has taken measures to alleviate the situation
through the United Nations Convention on the Rights of the Child,
but these measures have no potential for real and immediate effect.
Thus the Western countries like the United States, Germany, Australia,
and Great Britain, which provide most of the market for the sex
tourism industry, are the only countries in a position to make progress
in the war against child prostitution and child pornography.

The most effective solution would be for these countries to pass laws
enabling their courts to prosecute nationals who commit child sex
crimes while traveling abroad. One obstacle to these laws is whether
they can be enacted without violating essential rights of the defendant
that are inherent in the legal system of any free society, for example
the presumption of innocence and the right to a fair trial. The other
obstacle is whether there is any basis in customary international law to
pass such laws.

Obstacles regarding bases in customary international law are fairly
easy to overcome—three separate bases of extraterritorial jurisdiction
might be evoked to justify the passage of such laws: the nationality
principle, the “effects” doctrine, and the universality principle. The
evidentiary and procedural obstacle is trickier, but credible solutions
and compromises have been suggested and implemented that seem
sufficient to overcome various procedural concerns. These measures
must be attempted by major consumer countries; it would be most
unfortunate if the developed countries of the world, out of an unwillingness
to take calculated risks, failed to improve a tragic situation that
they did much to create.

Eric Thomas Berkman