

SEX TOURISM AND CHILD PROSTITUTION IN ASIA: LEGAL RESPONSES AND STRATEGIES

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[The problem of child prostitution has been the subject of notable discussion and concern at least from the early 1980's. Nevertheless, it has taken the international community over a decade to accord it the attention and priority it deserves. Legal and other initiatives and strategies are only now being undertaken at the national and international levels. This article will attempt to canvass the nature and extent of Asian child sex tourism, its causes and effects, and possible national and international legal responses that might be adopted to alleviate it. The important role to be played by non-governmental organisations as well as the factors and considerations which make this phenomenon so intractable will also be examined.]

I INTRODUCTION

[The Ministers and representatives of Asian States] recognise the rights of the child to enjoy special protection and to be afforded the opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.¹

Child prostitution² within the context of the sexual exploitation of children has secured a prominent position in international legal and political agendas over the past decade. Delegates attending the United Nations Conference on Human Rights, held in Vienna in June 1993, called for the strengthening of national and international mechanisms and programs for the protection of, *inter alia*, children who have been economically and sexually exploited through child prostitution and child pornography.³ Indeed, article 1 of the Draft Optional Protocol of the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children ('Draft Optional Protocol') recognises that 'crimes of sexual exploitation of, or trafficking in, children represent crimes against humanity.' This is perhaps not surprising considering that child prostitution has been variously described as 'one of the worst contemporary forms of slavery'⁴ and 'one of the most abusive,

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¹ Final Declaration of the Regional Meeting for Asia preparatory to the United Nations World Conference on Human Rights, 2 April 1993, para 23 ('The Bangkok Declaration').

² Since prostitution is illegal in many countries, the use of the term 'child prostitution' has become somewhat contentious to some in stigmatising the child as a criminal. One commentator has suggested the use of the alternative term 'prostituted child' as more appropriately identifying the child as the victim: see Ron O'Grady, *The Child and the Tourist* (1992) 143.

³ United Nations, Department of Public Information, 'World Conference on Human Rights: Vienna Declaration and Programme of Action' (June 1993) Part I, para 21.

⁴ United Nations, Economic and Social Council, 'Report of the Working Group on Contemporary Forms of Slavery on its Fourteenth Session', Un Doc E/CN.4/Sub.2/1989/39 (28 August 1989) para 33 ('Working Group Report').

exploitative and hazardous forms of child labour'.⁵

This article will attempt to canvass the nature and extent of the problem of Asian child sex tourism, its causes and effects, and possible national and international legal responses and other strategies that might be adopted to alleviate it. Discussion will also focus on the important role to be played by non-governmental organisations and the factors and considerations which make this phenomenon so intractable.

II THE NATURE AND EXTENT OF THE PROBLEM

The following account typifies the story of what so many Asian children experience:

Tan is a fourteen-year-old Thai girl. She is from the North-East of Thailand but like many girls of her age lives and works in Bangkok. Tan works as a dancer in a bar in Pat Pong which is a centre of the sex tourist industry in Bangkok. Tan has to dance half-naked on the bar. She also has to have sex with tourist men if they select her. Tan was sold to an agent when she was only ten. For two years she cleared ashtrays and glasses in the bar until she was finally sold to a tourist who purchased her virginity. Since then Tan has had sex with many tourists and locals every night. She hates what she has to do as she has been beaten and abused often. But she cannot escape this life as it is her duty to honour her parent's debt and she has been threatened with violence if she tries to leave. Tan sends most of her money to her parents to take care of her brothers, sisters and grandparents — she believes it is her destiny.⁶

A *The Incidence of the Problem*

It has proven difficult to obtain accurate official statistical information on the incidence of child prostitution in Asia. Since child prostitution is, theoretically at least, illegal in Asian countries, people involved with the sex industry do not often co-operate with authorities.⁷ The definition of 'child' also varies between Asian countries.⁸ Nevertheless, the statistics which are available, even if considered rough estimates, tend to underline the magnitude of the problem.

The United Nations Working Group on Contemporary Forms of Slavery has recently observed that child prostitution 'involves a tragically high number of children throughout the world, perhaps extending well into the millions.'⁹ Child prostitution now exists in nearly all countries, and in some countries is now one of the most common forms of employment among children, especially for young girls.¹⁰ Although acknowledged to be a global phenomenon, the problem is

⁵ United Nations, Economic and Social Council, 'Written Statement Submitted by the United Nations Children's Fund on the Exploitation of Child Labour', Un Doc E/CN.4/Sub.2/1990/52 (22 August 1990) para 2 ('UNICEF Statement').

⁶ End Child Prostitution in Asia Tourism, Australia, *Education Appeal 1994* (leaflet) ('ECPAT Australia').

⁷ O'Grady, above n 2, 137.

⁸ For detailed discussion of the definition of 'child' and related problems, see below nn 92-6 and accompanying text.

⁹ Working Group Report, above n 4, para 29.

¹⁰ UNICEF Statement, above n 5, para 2.

particularly prevalent in the developing countries of the Asian region.¹¹ According to Mr Vitit Muntarbhorn, the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, the cross-frontier trafficking of children in South-East Asia for the purpose of child prostitution is widespread.¹² Reports have been received of thousands of minor girls from Bangladesh and Nepal being exported to Indian brothels.¹³ There also appears to be an increasing tendency to purchase and abduct children from Myanmar (Burma), Laos and China for use as child prostitutes in Thailand to supplement the diminishing Thai domestic supply.¹⁴ It is significant to note that the fourth preambular paragraph of the Draft Optional Protocol acknowledges that 'the sexual exploitation of children through prostitution, pornography and trafficking has assumed new and alarming dimensions at both national and international levels'.

1 Thailand

Conservative estimates of the number of child prostitutes under the age of 16 range from 30,000 (Women's Information Centre) to 200,000 (Friends of Women).¹⁵ In 1989, however, the Children's Rights Protection Centre and the Foundation for Children jointly estimated that there could be as many as 800,000 child prostitutes ranging from 12 to 16 years old.¹⁶ As recently as August 1993, the World Federation of Mental Health (WFMH), Committee on the Commercial Sexual Exploitation of Children estimated a range of 200,000 to 800,000.¹⁷

2 Sri Lanka

The Sri Lankan non-governmental organisation Protecting Environment and Children Everywhere (PEACE) has placed the number of male child prostitutes aged between eight and 16 years old at a minimum of 10,000, a figure which has been accepted by the Sri Lankan Department of Child Care.¹⁸ The international non-governmental organisation End Child Prostitution in Asian Tourism (ECPAT) and the WFMH Committee on the Commercial Sexual Exploitation of Children have, however, estimated a much higher figure of 30,000 (mainly

¹¹ Vitit Muntarbhorn, United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, 'Preliminary Report on the Sale of Children', Un Doc E/CN 4/1991/51 (28 January 1991) para 26 ('Preliminary Report'). See also Ecumenical Coalition on Third World Tourism, *Caught in Modern Slavery: Tourism and Child Prostitution in Asia* (1991).

¹² Committee on the Rights of the Child, Geneva, Press Release HR/3880, 12 October 1993.

¹³ Working Group Report, above n 4, para 30.

¹⁴ ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 4, 12. Also, see Michael Serrill, 'Defiling the Children', *Time Australia*, 21 June 1993, 30, 31-2.

¹⁵ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, Research Project, 'Pleasure in Paradise? Sex Tourism in Asia' (June 1993) 20.

¹⁶ O'Grady, above n 2, 139.

¹⁷ World Federation of Mental Health ('WFMH'), Committee on the Commercial Sexual Exploitation of Children, 'Reasons for the Explosion of Child Prostitution: a Perspective' (27 August 1993) as appears in *ECPAT Australia Bulletin* No 4 (October/November 1993) 4.

¹⁸ O'Grady, above n 2, 138-9.

young boys).¹⁹ Since no conclusive studies have yet been undertaken on the number of girls involved in child prostitution, the figure for the total number of both male and female children involved in child prostitution may in fact be much higher.²⁰

3 *India*

Estimates concerning India have been fairly consistent, ranging from 350,000 to 400,000 child prostitutes under the age of 16.²¹

4 *Philippines*

Estimates range from 60,000²² to at least 100,000.²³ Considering that the Salinlahi Foundation estimates that there are 1.2 million street children under the age of 16, many of whom participate in casual prostitution,²⁴ the latter estimate may be the more accurate.

5 *Other Countries*

A 1987 survey estimated that there were at least 100,000 child prostitutes in Taiwan.²⁵ Pakistan and Vietnam are each claimed to have 40,000 child prostitutes.²⁶ While no reliable figures are available, it is reported that child prostitution is on the increase in China (Sichuan Province and Hainan), Nepal, Cambodia, Indonesia (Bali and Java), Hong Kong and South Korea.²⁷ It is possible that the threats of HIV and AIDS and police crackdowns have had the effect of relocating child sex tourists to these destinations.

B *Source of the Demand for Child Prostitutes*

As one commentator has colourfully remarked, Europeans, North Americans, Australians and Japanese have flocked in recent years to South-East Asia by the thousands 'to engage in sex acts with Thai, Filipino and Sri Lankan youngsters that would win them a jail term [if committed] in their home countries.'²⁸ Many 'customers' are affluent professionals some of whom come from prominent and trusted backgrounds.²⁹ Some may visit as part of an organised sex tour for the sole purpose of having sex with children or to be part of an organised interna-

¹⁹ WFMH, Committee on the Commercial Sexual Exploitation of Children, above n 17, 4.

²⁰ ECPAT Australia, *ECPAT Australia Bulletin* No 3 (September/October 1993) 6.

²¹ O'Grady, above n 2, 137; WFMH, Committee on the Commercial Sexual Exploitation of Children, above n 17, 4; Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 21.

²² WFMH, Committee on the Commercial Sexual Exploitation of Children, above n 17, 4.

²³ ECPAT Australia, *Children in Prostitution/Victims of Asian Tourism: A Multidisciplinary Approach* (undated) 3.

²⁴ O'Grady, above n 2, 138.

²⁵ *Ibid* 139.

²⁶ ECPAT Australia, *Children in Prostitution/Victims of Asian Tourism: A Multidisciplinary Approach* (undated) 3.

²⁷ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 21; ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 12.

²⁸ Serrill, above n 14, 32. See also O'Grady, above n 2, 128.

²⁹ Margie Cook, 'The Sex Trade War', *West Australian* (Perth), 15 January 1994.

tional paedophile ring; others may be business persons or individual tourists who become involved on a casual experimental basis.³⁰ The demand is also driven by a significant number of local Asian men.³¹ Apart from the customers themselves, others benefit, including those engaged in child pornography, corrupt law enforcement officials, tour organisers, the producers and publishers of guides, and airlines and hotels offering holiday packages.³²

In terms of the Australian involvement, no statistics are available concerning the number of Australians who purchase child sex overseas. The Minister for Justice has recently conceded that 'Australian tourists have been identified as significant sexual abusers of children overseas, particularly in Asia.'³³ It would appear that Australians are not just involved in Asian sex tourism as sex tourists. There is evidence to suggest that they are also involved in the marketing of Asian child sex tourism through travel agencies and the production and distribution of pornographic materials involving Asian children.³⁴ Australians also own bars, brothels and hotels which offer child prostitutes in various Asian countries.³⁵

III THE CAUSES

It is necessary to identify and better understand the primary causes of child prostitution as they will condition the types of responses required to combat the problem.

A Poverty

While the causes of child prostitution are numerous and varied, poverty, especially that experienced in the rural sector, is considered to be the root cause.³⁶ The poverty itself may be a consequence of population pressures, a lack of natural resources, an over-spending military and/or a compulsive drive for rapid modernisation whose so-called 'trickle-down benefits' fail to reach those who need them most.³⁷ In the context of preparations for the 1993 Vienna World Conference on Human Rights, the Ministers and representatives of Asian States adopted 'The Bangkok Declaration' in which they affirmed that 'poverty is one of the major obstacles hindering the full enjoyment of human rights'.³⁸

³⁰ Bernadette McMenamin, 'Child Prostitution: A Tourism Industry Issue', *Travelweek*, 21 July 1993, 6; ECPAT Australia, *Children in Prostitution/Victims of Asian Tourism: A Multidisciplinary Approach* (undated) 2.

³¹ Paul Ehrlich, 'Asia's Shocking Secret', *Reader's Digest*, October 1993, 17, 19.

³² Andrew Byrnes, 'Extraterritorial Criminal Legislation Against the Sexual Exploitation of Children by Australians Abroad', paper presented to the First World Congress on Family Law and Children's Rights, Sydney, 5-9 July 1993, 2.

³³ Duncan Kerr MP, Minister for Justice, 'Amendments to the Crimes Act 1914: Child Sex Tourism Offences', Press Release, 4 November 1993, 2.

³⁴ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 18.

³⁵ *Ibid.*

³⁶ Preliminary Report, above n 11, para 34.

³⁷ O'Grady, above n 2, 123.

³⁸ United Nations, Department of Public Information, above n 3, Part I, para 19.

Poverty results in illiteracy, under-education, a lack of marketable skills and employment opportunities and ultimately a lack of real and effective choices. Visiting the slums and poorest villages, procurement agents, working on commission from bar and brothel owners, coerce or entice parents to surrender their child on the promise that he or she will be given a legitimate job in a restaurant or hotel. Instead the reality is that their child is sold into prostitution. Financial pressures also result in the breakdown of the family unit leading to homelessness and vulnerability to pimps and other procurement agents.³⁹

Sadly, some children become prostitutes with the full knowledge of their parents. While most parents sell their children on the basis of abject poverty, an estimated 32% of transactions are motivated by the desire to pursue consumerism and materialism as 'many villagers now demand the luxuries of western living, to the extent that they will sell off their own children for modern comforts and conveniences.'⁴⁰

B *The Tourism Link*

The greater ease of travel between countries and the development of organised tourism has expanded tourism in South-East Asia over the past two decades. This has led in turn to the phenomenon of sex tourism which has been described as an industry balancing the supply of, and demand for, sexual services and involving a segment of the local sex industry which is directly linked with the international tourist market.⁴¹ Sex tourism involves the systematic and deliberate exploitation of many women and children who are forced by circumstances into prostitution.

The United Nations Working Group on Contemporary Forms of Slavery has recognised that child prostitution is largely connected with mass tourism.⁴² A working group sponsored by the Ecumenical Coalition on Third World Tourism investigated tourism and child prostitution in the Philippines, Sri Lanka and Thailand and concluded that tourism is now very closely linked with the acceleration (and, in some cases, is the cause) of child prostitution.⁴³ In some countries, including Sri Lanka, public officials claim that child prostitution was introduced by tourism,⁴⁴ while in others it would appear that tourism has merely aggravated an existing problem in so far as child prostitution has provided an

³⁹ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 19; Preliminary Report, above n 11, 10.

⁴⁰ Ian Hopley, Research Project, 'The Australian Police Role in Combating Child Prostitution in Asian Tourism' (April 1992) 7.

⁴¹ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 14.

⁴² Working Group Report, above n 4, para 32. Specifically in the context of child prostitution, the Working Group urged, in Recommendation 22 of its 'Programme of Action for Prevention of Sale of Children, Child Prostitution and Child Pornography', that legislative and other measures should be taken to prevent sex tourism.

⁴³ *Ibid* paras 32-3.

⁴⁴ ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 4 (statement of Padma Ranasinghe, Sri Lankan Commissioner, Probation and Child Care Services).

additional attraction to tourists.⁴⁵ The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography has also identified a direct link between sex tourism and a greater number of local boy prostitutes and visiting paedophiles.⁴⁶

C *Weak Law Enforcement in the Receiving Countries*

Although the laws of South-East Asian countries concerning child prostitution are ostensibly adequate to deal with the problem,⁴⁷ local authorities are reluctant to rigorously enforce the laws, especially against foreign tourists. The worst sanction is deportation which sometimes results in the offender travelling to another receiving country to continue the abuse of children.⁴⁸ Whether or not they are deported, the vast majority of sex tourists face no prosecution in their home countries. In the receiving countries, few sex tourists are convicted⁴⁹ and, even when prosecuted, have been known to simply jump bail.⁵⁰

The reasons for the under-enforcement of the laws are manifold. In the context of rapid economic modernisation drives, the lure of the tourist dollar induces governments and law enforcement officials to look the other way. Low-paid law enforcement officers are prime targets for bribery by affluent foreign tourists and the well-organised sex trade industry. The police have been implicated in the trafficking and procurement of children for prostitution⁵¹ and have even acted as guards at child-sex establishments.⁵² Other reasons include an under-resourced police and labour inspectorate,⁵³ legal loopholes or lacunas,⁵⁴ and the unwillingness of prostituted children to co-operate in police investigations due to a fear of prosecution and possible retaliation by the underworld.⁵⁵

⁴⁵ Abdelwahab Bouhdiba, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Exploitation of Child Labour' (Final Report), Un Doc E/CN.4/Sub.2/479/Rev.1 (1982) para 122.

⁴⁶ Preliminary Report, above n 11, para 26.

⁴⁷ Ibid para 48; Hopley, above n 40, 16.

⁴⁸ When several paedophiles were deported from Pagsanjan in the Philippines in 1989, they simply flew to Thailand where they continued abusing children: ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 6.

⁴⁹ In the Philippines, fewer than 100 child abusers were convicted between 1986 and 1992; Ehrlich, above n 31, 21.

⁵⁰ In April 1991, a Japanese paediatrician on holiday in Manila was charged with molesting nine children in his hotel room. Having paid a modest bond to secure release, he fled the country. Ehrlich, above n 31, 20.

⁵¹ ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 6. The recently released Asia Watch Report, *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand* has condemned those police and government officials who are allegedly profiting from the forcible recruitment of thousands of Burmese women and girls into Thai prostitution.

⁵² Ehrlich, above n 31, 20.

⁵³ Preliminary Report, above n 11, para 48.

⁵⁴ Such as laws which fail to regulate the responsibility and liability of parents.

⁵⁵ Justice Elizabeth Evatt, 'Legal Responses to Child Prostitution and Tourism', paper presented at the End Child Prostitution in Asian Tourism Conference, Melbourne, Australia, November 1992, 5.

D *Organised Criminal and Paedophile Groups*

The Working Group on Contemporary Forms of Slavery has stated that the lucrative child prostitution industry has been created and is being maintained and promoted by a marketing system usually controlled by those who already control a great deal of wealth and power.⁵⁶ Crime syndicates from the United States, Germany and Australia as well as the Japanese Yakuza are involved in South-East Asian organised prostitution and have now extended their influence to child prostitution.⁵⁷ At the grass roots level, girls are often committed by their parents to a procurement agent who visits their villages on behalf of the syndicates to identify prospective prostitutes for the city brothels. The form of exchange is usually a loan of money and the girl must work for the brothel until the loan and interest are repaid. The reality is that there is little real prospect of full repayment and the child becomes a virtual prisoner in the exchange. Many of the parents are deceived and do not become aware of the nature of the work until it is too late.⁵⁸

Demand for Asian prostituted children has also been generated by increasing numbers of paedophile⁵⁹ tourists mainly from Western countries.⁶⁰ As Asian paedophilia laws are not as severe or strictly enforced as in Western countries, paedophile tourists can be reasonably confident that they will succeed in avoiding harsh penalties like those meted out by the courts of their home countries.⁶¹ Because their activities, if exposed, could ruin their lives at home, many paedophiles rely on what the United Nations Children's Fund has described as 'the economic power and effective information systems'⁶² of clandestine paedophile networks to help them find the safest destinations and to learn ways to avoid detection.⁶³ Paedophile tourists are also able to obtain guides which lists locations where paedophilia can be indulged in without fear of repercussions as well as the legal limits in each receiving country.⁶⁴

E *Erosion of Cultural Taboos*

The WFMH Committee on the Commercial Sexual Exploitation of Children aptly describes the process by which poverty and consumerism combine to desensitise society's perception of the sexual exploitation of children:

[p]overty plays a major role in creating the atmosphere where sexual exploitation occurs. However, poverty has always existed yet in the past cultural taboos

⁵⁶ Working Group Report, above n 4, para 32. See also Preliminary Report, above n 11, para 7.

⁵⁷ O'Grady, above n 2, 120. Children from China, Myanmar and Laos are being lured by syndicates to brothels in Thailand.

⁵⁸ ECPAT Australia, *Children in Prostitution/Victims of Asian Tourism: A Multidisciplinary Approach* (undated) 2.

⁵⁹ The term 'paedophile' is used here to denote an adult with a sexual preference for children.

⁶⁰ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 17.

⁶¹ *Ibid.*

⁶² UNICEF Statement, above n 5, para 3.

⁶³ Ehrlich, above n 31, 19.

⁶⁴ Bouhdiba, above n 45, para 122.

and societal norms have prevented the widespread use of children for sex. As the world moves to a global economy there is something happening which erodes the cultural taboos ... This erosion seems to occur when a relatively insulated culture is suddenly exposed to a media image of the availability of an easier life via material possessions. Agents enter this culture, lure people with money and goods, then deceive parents into allowing their children to be put to work in the city. In this way child prostitution becomes available on a large-scale basis. This then creates the perception that child prostitution is normative within that society.⁶⁵

The United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography has recently noted what he describes as the apparent emerging social acceptance of child prostitution and sexual exploitation in some communities.⁶⁶

F *Fear of HIV and AIDS*

With each passing year World Health Organisation (WHO) statistics report an increasing incidence of HIV and AIDS in Asia⁶⁷, particularly in Thailand, India and the Philippines.⁶⁸ WHO surveillance has also identified that HIV infection is significant and growing particularly amongst lower-paid prostitutes.⁶⁹ The growth in the Asian child prostitution industry is attributable in part to a growing public awareness of the deepening HIV/AIDS crisis in the region. Younger sex partners are now being preferred as a form of safe sex in the mistaken belief that they are less likely to have contracted HIV or other sexually transmitted diseases.⁷⁰ Dr Vicharn Vithayasai, an immunologist at Thailand's Chiang Mai University, explains that '[b]ecause the girls are small, they are not physically ready for sex yet, and as a result there is rupture [of the tissue] and a lot of bleeding that makes them vulnerable to HIV infection.'⁷¹ The tissues lining the male child's anus are also thin and easy to rupture, thereby facilitating direct passage of HIV into the blood stream.⁷² Not surprisingly, surveillance surveys have found increasing rates of HIV in Asian prostituted children⁷³ thus perpetuating the vicious cycle. As it is likely that the unchecked spread of HIV will have a devastating impact on tourism, it would appear to be in the interest

⁶⁵ WFMH, Committee on the Commercial Sexual Exploitation of Children, above n 17, 4.

⁶⁶ Preliminary Report, above n 11, paras 34, 70.

⁶⁷ Extensive spread of HIV infection has been documented since the late 1980's. Cumulative HIV infection to the end of 1991 for South-Eastern Asia has been estimated at more than one million cases: United Nations, Department of Economic and Social Information and Policy Analysis — Statistical Division, *Statistical Yearbook: Thirty-Eighth Issue: 1991/92* (1993) 170.

⁶⁸ *Ibid* 175-6.

⁶⁹ O'Grady, above n 2, 113, 141.

⁷⁰ Hopley, above n 40, 15. Customers are willing to pay considerably higher prices for children who are considered to be virgins. An organised network to supply virgin prostitutes has been exposed in a number of Vietnamese hotels and tourist venues: ECPAT Australia, *Children in Prostitution/Victims of Asian Tourism: A Multidisciplinary Approach* (undated) 3.

⁷¹ Serrill, above n 14, 31.

⁷² O'Grady, above n 2, 112.

⁷³ Serrill, above n 14, 31; O'Grady, above n 2, 111. The HIV infection rates for prostituted children are also exacerbated by the unwillingness of their customers to use condoms.

of South-East Asian governments to take appropriate preventive measures.

G *Gender Discrimination*

The United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography has adverted to various disadvantages for the female child in some Asian communities including, for example, a 'family setting where priority is accorded to boys in relation to access to schooling.'⁷⁴ Such inequalities limit choices both for the family and the female child thereby increasing the risk of the latter's involvement in child prostitution.

IV THE EFFECTS AND CONSEQUENCES OF CHILD PROSTITUTION

The 1993 Vienna World Conference on Human Rights proclaimed that 'all forms of sexual ... exploitation, including those resulting from ... international trafficking, are incompatible with the dignity and worth of the human person'.⁷⁵ Both the United Nations Children's Fund and the Working Group on Contemporary Forms of Slavery have expressed concern at the permanent psychological trauma and stress sustained by children as a result of their rendering sexual services.⁷⁶ The dynamics of the process have been described thus:

[t]he whole system of child prostitution creates pressures which effectively destroy the child's self-image and result in a total loss of confidence ... The children are continually told they are no good and will be punished for what they are doing if they try to escape. Customers rarely treat them as real human beings but as objects to be used ... Whatever self-esteem the young child has is quickly lost in this psychological battering.⁷⁷

This dehumanisation, coupled with the prospect of encountering social ostracism from family members and the village community,⁷⁸ frequently leads to alcohol and drug abuse, criminal activity and even suicide.⁷⁹

Apart from psychological trauma, prostituted children are forced to endure physical harm and illness inflicted by agents, pimps and customers.⁸⁰ The United Nations Children's Fund has described the exposure of these children to HIV and AIDS as the most frightening consequence of child prostitution.⁸¹ Apart from a slow and agonising premature death, the children suffer the double stigmatisation of being child prostitutes who are also HIV positive in

⁷⁴ Preliminary Report, above n 11, para 34.

⁷⁵ United Nations, Department of Public Information, above n 3, Part I, para 18.

⁷⁶ UNICEF Statement, above n 5, para 6; Working Group Report, above n 4, para 34.

⁷⁷ O'Grady, above n 2, 119.

⁷⁸ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 16.

⁷⁹ Working Group Report, above n 4, para 34. Also, see the 'ECPAT Conference Statement', Bangkok, April 1992.

⁸⁰ Working Group Report, above n 4, para 34. Rape has been used to subjugate girls as part of their initiation to the sex industry: Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 12.

⁸¹ UNICEF Statement, above n 5, para 6.

countries where policies and education campaigns on HIV/AIDS have yet to be fully developed and implemented.⁸² Other deleterious effects of child prostitution include possible arrest and detention of foreign prostituted children as illegal entrants, disruption to education and vocational skills training, and involvement in pornography and drug trafficking.⁸³

These affronts to moral, spiritual and physical dignity and integrity entail significant breaches of children's rights recognised by international human rights law. The more notable breaches of such rights include: the child's right to life, liberty and security of the person;⁸⁴ the prohibition of slavery, servitude and forced labour;⁸⁵ freedom from torture and cruel, inhuman or degrading treatment or punishment;⁸⁶ the prohibition on arbitrary or unlawful interference with the child's privacy or family;⁸⁷ the child's right to the enjoyment of the highest attainable standard of physical and mental health;⁸⁸ the child's right to education;⁸⁹ and the child's right to be protected from economic exploitation and work which is harmful to his or her morals, health or normal development.⁹⁰

V LEGAL RESPONSES

Child prostitution is a complex phenomenon which requires multiple, long-term and co-ordinated strategies underpinned by budgetary commitment to address its various dimensions. These strategies include, *inter alia*, the law and its enforcement, the national and international co-operation of governments and law enforcement agencies, the responsible involvement of tourist bodies and governmental agencies concerned with the delivery of social, educational and health services and the more efficient targeting of foreign development assistance. The strategies must go beyond the symptoms and address the root causes of the problem while appreciating the wider social and international context in which it arises. The factors which influence the supply of, and demand for, prostituted children must be confronted simultaneously and jointly by the receiving and sending countries.⁹¹ Possible national and international legal

⁸² HIV-infected child prostitutes who have been returned to Myanmar (Burma) from Thailand have, allegedly, been quarantined in prisons and in some cases even put to death. Serrill, above n 14, 32.

⁸³ Preliminary Report, above n 11, para 26.

⁸⁴ Universal Declaration of Human Rights, approved by General Assembly resolution 217A (111), 10 December 1948, art 3 ('UDHR'); International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171, arts 6, 9 (entered into force 1976) ('ICCPR'); Convention on the Rights of the Child, opened for signature 20 November 1989, 28 ILM 1457, art 6 (entered into force 1990) ('CROC').

⁸⁵ UDHR, above n 84, art 4; ICCPR, above n 84, art 8.

⁸⁶ UDHR, above n 84, art 5; ICCPR, above n 84, art 7; CROC, above n 84, art 37.

⁸⁷ UDHR, above n 84, art 12; ICCPR, above n 84, art 17; CROC, above n 84, art 16.

⁸⁸ CROC, above n 84, art 24; International Covenant on Economic, Social and Cultural Rights, opened for signature 19 December 1966, 993 UNTS 3, art 12 (entered into force 3 January 1976) ('ICESCR').

⁸⁹ UDHR, above n 84, art 26; ICESCR, above n 88, art 13; CROC, above n 84, art 28.

⁹⁰ ICESCR, above n 88, art 10(3); CROC, above n 84, art 32(1).

⁹¹ Strategies to restrict supply include preventive education, development assistance and protective measures such as child refuges. Strategies to restrict demand include responsible tourism and public information campaigns and stricter and more closely targeted criminal laws and their more rigorous enforcement.

measures constitute only one, albeit important, component of a more comprehensive campaign which must necessarily use a wide range of interventions.

A Problems Complicating the Legal Response

The temporal point at which childhood ends and adulthood begins varies as between cultures and national legal systems. The United Nations Convention on the Rights of the Child defines a 'child' to mean 'every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.'⁹² Concerning the issue of child labour, however, the Convention does not specify any minimum age for employment but merely urges States Parties to provide for minimum ages for admission to employment having regard to other international standards.⁹³ The International Labour Organisation has prescribed in its Minimum Age Convention 1973 (No 138) that the basic minimum age shall not be less than 15 years except for countries 'whose economy and educational facilities are insufficiently developed', which may instead initially specify a minimum age of 14 years.⁹⁴ Despite these international legislative attempts, uniformity of definition remains elusive.

Similarly, differing standards exist in sending and receiving countries concerning the age of consent.⁹⁵ The age of consent may vary as between the component parts of a federation and may even vary within the same jurisdiction depending on gender.⁹⁶ The final preambular paragraph to the Draft Optional Protocol recognises that 'it is in the interests of States Parties to harmonise, as far as possible, their national legislation on sexual exploitation of children in order to improve the co-ordination and effectiveness of action taken at both national and international levels.' Regrettably, no attempt was made in the operative provisions of the Draft Optional Protocol to define 'child' and/or to prescribe the age of consent in the limited context of sexual exploitation.

B The International Legal Responses

1 International Regulatory History

Since the early part of this century the international community has adopted a number of anti-trafficking⁹⁷ and anti-slavery⁹⁸ conventions designed to suppress

⁹² CROC, above n 84, art 1.

⁹³ CROC, above n 84, art 32(2)(a).

⁹⁴ International Convention (No 138) Concerning Minimum Age for Admission to Employment, opened for signature 26 June 1973, 1015 UNTS 297, art 2 (entered into force 1976).

⁹⁵ In a number of developing countries, children may engage in sexual relations as young as 12 or 13, although the consent of the child's parents may be required. The age of consent in developed countries tends to be set higher.

⁹⁶ Evatt, above n 55, 13.

⁹⁷ International Agreement on Suppression of White Slave Traffic, opened for signature 18 March 1904, 1 LTS 83 (entered into force 1905); International Convention on Suppression of White Slave Traffic, opened for signature 4 May 1910, GBTS 1912:20 (entered into force 1910); International Convention for the Suppression of the Traffic of Women and Children, opened for signature 31 March 1922, 9 LTS 415 (entered into force 1922); International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others, opened for signature 21 March 1950, 96 UNTS 271 (entered into force 1951).

the traffic in persons and the exploitation of the prostitution of others and to prohibit slavery. Article 1 of the International Convention for the Suppression of the White Slave Traffic 1910 (as amended by the 1949 Protocol) requires Contracting Parties to punish '[a]ny person who, to gratify the passions of others, has hired, abducted or enticed, even with her consent, a woman or a girl who is a minor, for immoral purposes'. Slavery has been defined by article 1(1) of the Slavery Convention 1926 as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'

International organisations have also confronted these issues. The International Labour Organisation has adopted conventions concerning forced labour⁹⁹ and the minimum age for admission to employment.¹⁰⁰ The United Nations has also banned forced labour¹⁰¹ and slavery.¹⁰² In 1974 the United Nations Economic and Social Council authorised the creation of the Working Group on Contemporary Forms of Slavery to review developments in the field of the slave trade, including the exploitation of the prostitution of others.

It would seem, then, that a comprehensive international legislative framework which seeks to abolish the impugned practices and to punish the perpetrators already exists. Its effectiveness, however, is undermined by the antiquated nature of some of the instruments, the modest number of ratifications and accessions and the lack of effective implementation by States Parties.¹⁰³ Some instruments also fail to adopt a preventive approach to tackle the root causes and to embrace a 'carrots' philosophy whereby incentives such as development assistance are offered to help change local practices.¹⁰⁴

2 *Recent Developments*

The United Nations Convention on the Rights of the Child, which was adopted by the General Assembly in 1989 and which entered into force in 1990, contains two provisions which bear directly on child prostitution. Article 34(b) obliges States Parties to 'take all appropriate national, bilateral and multilateral measures to prevent ... the exploitative use of children in prostitution'. Article 35 obliges States Parties to 'take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.' Despite its relatively brief existence, the near

⁹⁸ International Convention on Slavery, opened for signature 25 September 1926, 60 LTS 253 (entered into force 1927); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, opened for signature 7 September 1956, 266 UNTS 3 (entered into force 1957).

⁹⁹ International Convention on Compulsory Labour, opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1947); International Convention for the Abolition of Forced Labour, opened for signature 25 June 1957, 320 UNTS 291 (entered into force 1959).

¹⁰⁰ International Convention (No 138) Concerning Minimum Age for Admission to Employment, opened for signature 26 June 1973, 1015 UNTS 297 (entered into force 1976).

¹⁰¹ ICCPR, above n 84, art 8(3).

¹⁰² ICCPR, above n 84, art 8(1); UDHR, above n 84, art 4.

¹⁰³ Preliminary Report, above n 11, para 41.

¹⁰⁴ *Ibid.*

universal acceptance¹⁰⁵ of the Convention by governments will enable those working for the eradication of child prostitution, particularly non-governmental organisations, to remind them of these important obligations which they have solemnly assumed. Apart from some notable exceptions,¹⁰⁶ it is promising that most sending and receiving countries have now become parties to the Convention and will thus become subject to the scrutiny of the Committee on the Rights of the Child.

The 1990 World Summit for Children constituted not only a catalyst for the impressive international support accorded the Convention but also prescribed further elements for improving the protection of children. The World Summit recognised in its World Declaration on the Survival, Protection and Development of Children and Plan of Action that millions of children live in especially difficult circumstances, including those who are 'trapped in the bondage of prostitution, sexual abuse and other forms of exploitation.'¹⁰⁷ In its Vienna Declaration and Programme of Action, the 1993 United Nations World Conference on Human Rights urged all States to co-operate to address the acute problem of children enduring especially difficult circumstances:

[e]xploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against ... harmful child labour, sale of children ... child prostitution, child pornography, as well as other forms of sexual abuse.¹⁰⁸

The United Nations Commission on Human Rights and the Working Group on Contemporary Forms of Slavery have been actively considering child prostitution issues since 1989 when the latter was charged with the task of investigating the sale of children, child prostitution and child pornography. In 1990 Mr Vitit Muntarhorn of Thailand was appointed as the Commission's Special Rapporteur to consider and report on these matters.¹⁰⁹ On the basis of a report¹¹⁰ submitted by the Special Rapporteur advocating a multidisciplinary, multilateral approach including exchange of information about offenders and better targeted aid programs, the Commission recently adopted the Programme for the Prevention of the Sale of Children, Child Prostitution and Child Pornography which called for, *inter alia*, both sending and receiving countries to adopt legislative and other measures to prevent sex tourism.¹¹¹

¹⁰⁵ As at the time of writing (January 1994), 146 countries had become parties to the Convention on the Rights of the Child.

¹⁰⁶ Japan and the United States.

¹⁰⁷ 1990 World Summit for Children, 'World Declaration on the Survival, Protection and Development of Children', para 22.

¹⁰⁸ United Nations, Department of Public Information, above n 3, Part II, para 48.

¹⁰⁹ United Nations, Economic and Social Council, 'An Analytical Summary of Comments Received by the Secretary-General on the Draft Programme of Action for Prevention of Sale of Children, Child Prostitution and Child Pornography', Un Doc E/CN 4/1991/50 (28 January 1991) ('Draft Programme').

¹¹⁰ Vitit Muntarhorn, United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, 'Report on the Sale of Children', Un Doc E/CN 4/1992/55 (22 January 1992).

¹¹¹ Adopted by the United Nations General Assembly Resolution 1992/74, 5 March 1992.

The most recent initiative undertaken by the United Nations in this area is the Draft Optional Protocol. Although the Convention on the Rights of the Child itself creates general obligations for States Parties to take national and international measures to protect children from sexual exploitation, it does not include a particular obligation to create specific offences or to assume extraterritorial criminal jurisdiction. A discretion is left with individual States Parties to decide whether the enactment of extraterritorial legislation is an appropriate measure. Amongst the substantive obligations proposed to be assumed by States Parties include an undertaking in article 3 to co-operate with other States Parties for the purposes of preventing, detecting, prosecuting and punishing the crimes of sexual exploitation of, or trafficking in, children.¹¹² This will undoubtedly assist in facilitating and co-ordinating inter-country arrangements concerning extradition and law enforcement. Article 1 of the Draft Optional Protocol achieves a significant breakthrough in proclaiming that ‘States Parties recognise that crimes of sexual exploitation of, or trafficking in, children represent crimes against humanity.’ These crimes are now to be considered in the same category as war crimes such as wilful killing, torture, genocide, enslavement, unlawful mass deportations and the like.¹¹³ Article 2(c) obliges States Parties to ensure that their national legislation extends in application to sexual exploitation and trafficking crimes committed within the territory of other States by their own nationals, residents and domiciliaries.

The most innovative provision of the Draft Optional Protocol, however, is article 2(a) pursuant to which States Parties agree to give effect in their national legislation to the principle of universal criminal jurisdiction concerning these crimes. An offence subject to universal criminal jurisdiction is one which comes within the jurisdiction of all States regardless of where the offence was committed and the nationality of the alleged offender. Since the offence is considered to be contrary to the interests of the international community, it is treated as a *delict jure gentium* whereby all States are entitled to apprehend and punish the offenders in their own courts.¹¹⁴ The rationale behind conceding universal jurisdiction is to ensure that no such case goes unpunished. In the context of child prostitution, this will ensure that the possibility of a charged person jumping bail pending trial and absconding to another receiving country to continue his ‘sexploits’ will be minimised. The ‘internationalisation’ of these crimes stands in contrast to the former position under international law which dealt with offences relating to the trafficking in women and children on the basis of *aut punire aut dedere* whereby the offenders are either to be punished by the State on whose territory they are found or are to be surrendered to the

¹¹² Other obligations will be discussed in more detail below.

¹¹³ See, eg, the grave breaches enumerated in the International Convention for the Protection of Civilians in Time of War, opened for signature 12 August 1949, 75 UNTS 287, art 147 (entered into force 1950).

¹¹⁴ Joseph Starke, *Introduction to International Law* (10th ed, 1989) 234. Universal criminal jurisdiction is most commonly exercised in relation to the crime of piracy *jure gentium* and war crimes (grave breaches) under the Geneva Conventions of August 12, 1949.

State which is competent and desirous of exercising jurisdiction over them.¹¹⁵

Overall, the Draft Optional Protocol is an important symbolic step forward; its value, however, is diminished by some notable omissions such as the lack of provisions concerning the financing of rehabilitation schemes and the extra costs which will have to be incurred by the law enforcement agencies of the developing receiving States. The failure of the Draft Optional Protocol to prescribe a uniform definition of 'child' or 'age of consent' for the purposes of the Protocol will also create a potential for variations between national laws and consequent 'forum shopping' for the weakest link in the chain. Whether the age threshold for protecting children from sexual exploitation should be raised to the age of 18 years in all States, in line with the definition of 'child' in article 1 of the Convention on the Rights of the Child, is an issue which merits further consideration.¹¹⁶

C *The National Legal Responses*

1 *The Receiving Countries*

The criminal law of Thailand prohibits prostitution; both prostitutes and agents who procure, trick or coerce children into prostitution are committing criminal offences.¹¹⁷ The Thai Government has recently proposed legislation that would for the first time target the customers of child prostitutes.¹¹⁸ The female age of consent in Thailand prior to 1987 was 13 years of age; sexual intercourse with a girl not over 16 now exposes the offender to a fine and term of imprisonment of up to 12 years.¹¹⁹ Laws concerning procuring, coercion, trickery or violence have also been amended to increase penalties.¹²⁰ Attempts at Sri Lankan law reform have not been as successful despite the recommendations of a committee convened in 1988 by the Ministry of Social Services to investigate the sexual exploitation of Sri Lankan children.¹²¹ Nevertheless, a Police and Ministers' Task Force has since been established and given the same mandate¹²² and the Sri Lankan Government is now considering the enactment of laws rendering the sexual abuse of children punishable by up to 10 years imprisonment.¹²³ In Taiwan, the Government has recently introduced into the legislature the Child Prostitution Prevention Bill providing for criminal sanc-

¹¹⁵ Ibid 235.

¹¹⁶ Vitit Muntarbhorn, United Nations Special Rapporteur on the Sale of Children, 'Sale of Children', Un Doc E/CN 4/1993/67/Add 1 (9 February 1993) para 62.

¹¹⁷ See the Prostitution Control Act (Thailand) and the Penal Code 1956 (as amended in 1982) (Thailand).

¹¹⁸ ECPAT Australia, *ECPAT Australia Bulletin* No 4 (October/November 1993) 6.

¹¹⁹ Penal Code 1956 (as amended in 1982) (Thailand) s 277(2); Evatt, above n 55, 4.

¹²⁰ Evatt, above n 55, 4-5.

¹²¹ United Nations, Committee on the Elimination of Discrimination Against Women, 'Report of the Committee on the Elimination of Discrimination Against Women', UN Doc C/13/Add 18 (24 January 1989) 9.

¹²² ECPAT Australia, 'Australians in Sri Lanka', *ECPAT Australia Bulletin* No 3 (September/October 1993) 6.

¹²³ ECPAT Australia, *ECPAT Australia Bulletin* No 6 (January-March 1994) 7.

tions for perpetrators as well as education and counselling for child victims.¹²⁴

The most impressive legislative initiatives have emerged from the Philippines. While formerly the age of consent was only 12 and all forms of prostitution were criminalised, children below the age of 18 who engage in prostitution are now exempt from criminal liability.¹²⁵ The child will now be considered the exploited party, thus enabling children to seek protection from, and to cooperate with, law enforcement officials.¹²⁶ The Republic Act No 7610 (1991) (Philippines) (otherwise known as the Special Protection Against Child Abuse, Exploitation and Discrimination Act) creates a number of criminal offences targeting clients, procurers, advertisers, brothel owners and pimps and imposes heavy penalties. Section 6 creates a new legal rebuttable presumption whereby an adult found in a hotel room with an unrelated child is deemed to be engaged in sexual exploitation. Section 31 provides that convicted foreigners are to be deported but only after having served any custodial sentence imposed by the court.¹²⁷

Three caveats must be entered in respect of these encouraging law reform attempts. Much of the existing, including the most recent, legislation tends to be remedial, deterrent and punitive in object and effect. No systematic attempt is made to address the underlying causes.¹²⁸ Law by itself, moreover, will not suffice; it must be supported by other interventions and strategies.¹²⁹ Finally, the legislation must be duly enforced to be effective. Until recently, foreign sex tourists have been dealt with leniently by the justice systems of the South-East Asian receiving countries. At worst they have merely been requested to leave the country or been fined and deported, thereby enabling them to continue their activities in neighbouring countries.¹³⁰ This prompted the international conference on 'Children in Prostitution: Victims of Tourism in Asia' held in Bangkok in 1992 to urge law enforcers to investigate without fear or favour those alleged to be guilty of abusing children and to bring them to justice while resisting the temptation of compromise.¹³¹

It is important that foreign child sex tourists be brought to justice in the countries where the offences occurred for symbolic, deterrent and logistical reasons. Now that the Draft Optional Protocol proposes to classify the crimes of sexual exploitation of, and trafficking in, children as crimes against humanity,

¹²⁴ Ibid 19.

¹²⁵ United Nations, Committee on the Elimination of Discrimination Against Women, 'Report of the Committee on the Elimination of Discrimination Against Women', UN Doc C/13/Add 17, (25 January 1989) 43.

¹²⁶ Evatt, above n 55, 4.

¹²⁷ Ibid.

¹²⁸ Preliminary Report, above n 11, para 33.

¹²⁹ To be discussed below. To date, the Republic Act No 7610 (1991) (Philippines) has not had the anticipated success in stemming the incidence of child prostitution: ECPAT Australia, *ECPAT Australia Bulletin* No 6 (January-March 1994) 10.

¹³⁰ Evatt, above n 55, 13; Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 18.

¹³¹ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 27.

appropriately harsher penalties should be imposed by the legislatures of the receiving countries. Consideration might also be given to empowering the courts to order the confiscation of the proceeds derived from these offences.¹³² The receiving countries might also adopt a less ambivalent attitude towards the rights of sex tourists. As one commentator observes:

[t]he tourist is not above the law. This principle has now become fully accepted in relation to drugs and some Asian countries have introduced strong measures to punish those who are convicted of trafficking in drugs, even if they are foreign nationals. There is no reason why similar strong punitive measures should not be enacted against those foreigners who knowingly traffick in children.¹³³

The stricter prescription and enforcement of bail conditions to prevent absconding before trial and closer liaison and co-ordination between the law enforcement agencies of receiving countries would also achieve more effective implementation of the regulatory framework. Protective measures such as the setting up of prostituted children's refuges or 'safe houses' to which the police could make appropriate referrals might also prove useful.

Perhaps the most critical factor in effecting tighter law enforcement in the receiving countries is the reform of the police themselves. Charged with enforcing the law, the police are also in a position to profit from failing in this task. Accordingly, adequate police accountability and review mechanisms should be adopted to limit bribery and other official corruption. Ensuring that police receive adequate remuneration, training and education and enjoy reasonable working conditions might be a more positive way to limit corruption. Finally, receiving countries might consider emulating the recent Sri Lankan initiative of creating a specialist child protection police unit with a special mandate to investigate child prostitution, pornography and paedophile rings.¹³⁴

2 *The Sending Countries*

(a) *Recently Enacted and Proposed Legislation*

Recently enacted and proposed legislation in a number of sending countries will permit the prosecution of their nationals for the sexual exploitation of children committed outside the country of nationality. The Prime Minister of Thailand, Mr Chuan Leekpai, has welcomed the deterrent effects of such laws which will also strengthen Asian parliamentarians in their efforts to end child prostitution.¹³⁵

In mid 1993 the German Parliament extended the application of its Penal Code to certain criminal acts committed abroad by German nationals including carrying out sexual practices with a child under the age of 14 years.¹³⁶ As the legislation is expressed to be independent of the law of the country where the

¹³² Draft Programme, above n 109, paras 14-5.

¹³³ O'Grady, above n 2, 127.

¹³⁴ ECPAT Australia, *ECPAT Australia Bulletin* No 3 (September/October 1993) 7.

¹³⁵ ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 7.

¹³⁶ See the Penal Code (Germany) ss 5 and 176.

criminal act was committed, the German legislators appear to have dispensed with the 'double criminality' requirement.¹³⁷ Also, the victim need not be a German national at the time of the crime's commission. Sweden also has legislation pursuant to which Swedish nationals who sexually exploit children in other countries can be prosecuted in Sweden,¹³⁸ France and New Zealand are now considering adopting similar legislation.¹³⁹

(b) *The Proposed Australian Legislation*

Australian law enforcement authorities have been aware for some time of the activities of Australian child sex tourists overseas. Under existing Australian legislation, however, they have been powerless to prosecute in relation to sex crimes that Australians commit against children outside Australia. The only possible prosecutions that can be brought against returning Australian paedophiles relate to the possession of illegal pornography. To address this lacuna, the Minister for Justice, Mr Duncan Kerr, announced on 4 November 1993 the Federal Government's proposed amendments to the Crimes Act 1914 (Cth) to ensure that Australian citizens and residents sexually exploiting children overseas will face prosecution under Commonwealth law upon their return to Australia.¹⁴⁰ Thus, offenders will no longer be as certain to escape prosecution by returning or absconding to Australia. The amendments, moreover, will address the situation where the authorities of the receiving country choose not to prosecute themselves.

The amendments, contained in the Crimes (Child Sex Tourism) Amendment Bill 1994 (Cth), were prompted by the international criticism being generated by the perceived growth in the activities of Australian child sex tourists and hypocrisy in only criminalising conduct which occurred within Australia.¹⁴¹ Other reasons included 'the Government's view that paedophile behaviour is abhorrent and unacceptable'¹⁴² and the Government's desire to 'send a powerful message to those who engage in these abhorrent practices that it is no longer safe to do so.'¹⁴³

(i) *Offences and Penalties*

The amendments will create three types of offences. The first type will deal with prescribed sexual offences against children aged between 12 and 16 years

¹³⁷ The efficacy of this requirement will be discussed below.

¹³⁸ Barrie Virtue, 'Getting the Evidence on Paedophiles' (September 1993) 28 *Australian Lawyer* 28 as appears in ECPAT Australia, *ECPAT Australia Bulletin* No 4 (October/November 1993) 3.

¹³⁹ ECPAT Australia, *ECPAT Australia Bulletin* No 5 (November/December 1993) 14.

¹⁴⁰ Kerr, 'Amendments to the Crimes Act 1914: Child Sex Tourism Offences', above n 33, 1.

¹⁴¹ Duncan Kerr MP, Minister for Justice, 'Commonwealth, State and Territory Governments Take a United Stand Towards Eradicating Child Sex Tourists', Press Release, 25 June 1993, 1. A member of the Thai Cabinet is reported to have stated: 'There must be some concern about men from so-called advanced societies coming over here to exploit uneducated women and children because they can't get away with it at home.': Louise Williams, 'Death by Desire in Thai Sex Industry', *New Zealand Herald* (Auckland), 29 May 1991.

¹⁴² Kerr, 'Commonwealth, State and Territory Governments Take a United Stand Towards Eradicating Child Sex Tourists', above n 141, 2.

¹⁴³ Kerr, 'Amendments to the Crimes Act 1914: Child Sex Tourism Offences', above n 33, 2.

of age.¹⁴⁴ The prescribed offences are engaging in sexual intercourse¹⁴⁵ with a person, who is at least 12 but under 16, outside Australia (carrying a maximum of 14 years imprisonment) and committing an act of indecency upon, or in the presence of, a person, who is at least 12 but under 16, outside Australia (carrying a maximum of 10 years imprisonment).¹⁴⁶

The second type of offence will essentially be an aggravated sexual offence consisting of engaging in sexual intercourse with a person under 12 years of age outside Australia (carrying a maximum of 17 years imprisonment) and committing an act of indecency upon, or in the presence of, a person under the age of 12 years outside Australia (carrying a maximum of 12 years imprisonment).¹⁴⁷ A common defence is provided in respect of both types of offences. If the victim is between 12 and 16, the defendant can avoid conviction if he establishes that he believed at the time of the sexual intercourse or act of indecency that the alleged victim was 16 or over and contemporaneously consented, or that a valid marriage existed between the defendant and the alleged victim.¹⁴⁸ If the person is under 12, the defendant can avoid conviction only by establishing the 'valid marriage' defence.¹⁴⁹

The third type of offence involves inciting, organising or profiting from child sex tourism.¹⁵⁰ This offence will attract a maximum penalty of 10 years imprisonment and ostensibly appears to be aimed at travel agents and tour operators, paedophile networks, advertisers and expatriate Australian bar and brothel owners. What is not so clear is whether exploitation of the child for the purposes of child pornography is caught within the ambit of this offence. Consideration might be given, therefore, to including a separate provision criminalising the inducement or coercion of a child in respect of any unlawful sexual activity. In conjunction with these amendments to the Crimes Act 1914 (Cth), it might be appropriate and timely to consider the enactment of uniform state and territory legislation concerning the age of consent, the sexual abuse and exploitation of children within Australia and associated activities including the production, possession and sale of child pornography. This would assist police investigations and prosecutions of paedophile activities within Australia and prevent paedophile groups establishing a base in a jurisdiction with less rigorous standards.¹⁵¹ Concerning the liability of travel agents, how much

¹⁴⁴ ECPAT has defined 'child' as one under 16 years of age for the purposes of its international campaign.

¹⁴⁵ An extended definition of 'sexual intercourse' has been provided: see Crimes (Child Sex Tourism) Amendment Bill 1994 (Cth) (first reading version) proposed s 50AB.

¹⁴⁶ Crimes (Child Sex Tourism) Amendment Bill 1994 (Cth) (first reading version) ss 50BB, 50BF ('Child Sex Tourism Bill').

¹⁴⁷ *Ibid* ss 50BA, 50BE.

¹⁴⁸ *Ibid* ss 50CA, 50CB.

¹⁴⁹ *Ibid* s 50CB.

¹⁵⁰ *Ibid* ss 50DA, 50DB.

¹⁵¹ Commonwealth, Standing Committee of Attorneys-General (General Business) Item No 31(4), 'Paedophile Sex Tours', Darwin, 24 June 1993, 6. For a discussion of the Australian involvement in the production and distribution of pornographic materials involving Asian women and children, see Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 18.

knowledge, actual or constructive, will be sufficient to warrant a conviction? In relation to the common defence to the prescribed aggravated offences — namely, that a valid marriage existed between the defendant and the child aged under 12 years — when, if at all, and under which circumstances would Australian public policy ever recognise the validity of such a marriage?

Since the offences are indictable offences, they will be subject to the confiscation and forfeiture provisions of the Proceeds of Crime Act 1987 (Cth) s 14. It is possible, then, that a tour operator convicted of organising child sex tours may have any of its property used in the commission of the offence or proceeds of the offence forfeited to the Commonwealth. This disposition should be utilised and, indeed, is sanctioned by article 3(c) of the Draft Optional Protocol. Another positive feature of the proposed amendments is the absence of any 'double criminality' rule which would criminalise only those acts which would also be criminal under the law of the country in which they occur.¹⁵² The variations in the laws of the receiving countries, particularly concerning the age of consent and the prospect of having to submit to the Australian court expert evidence on their laws, militate against the adoption of such a rule in this context.¹⁵³ Overall, the proposed amendments to the Crimes Act 1914 (Cth) substantially comply with the obligation that States Parties would assume under article 2(c) of the Draft Optional Protocol which requires them:

to ensure that their national legislation extends to crimes of sexual exploitation of, or trafficking in, children involving their own nationals, persons resident or domiciled within their territory, or corporations or associations operating within their territory, occurring within the territory of other States.

(ii) *Constitutional and Jurisdictional Issues*

It would appear that the Commonwealth does have constitutional power to make conduct occurring overseas an offence in Australia.¹⁵⁴ A number of bases exist on which extraterritorial legislation could be supported under the power to legislate with respect to external affairs in the Constitution s 51(xxix). The first basis flows from that aspect of the external affairs power which enables the Commonwealth to legislate with respect to matters physically external to Australia. The fact that the proposed amendments would deal with acts committed outside Australia would appear to be a sufficient constitutional foundation.¹⁵⁵ The second basis — namely that the proposed amendments would be giving effect to an international treaty obligation binding on Australia — also appears to provide a sufficient constitutional basis. The proposed amendments are justified as an appropriate measure in fulfilling Australia's

¹⁵² Double criminality will in most cases be present in relation to children under 12 years of age but may not always be present for children aged between 12 and 16 years.

¹⁵³ For a more detailed discussion, see Byrnes, above n 32, 11-2.

¹⁵⁴ *New South Wales v Commonwealth* (1975) 135 CLR 337 (*Seas and Submerged Lands* case).

¹⁵⁵ A number of statutes already enable prosecution in Australia of Australians who allegedly have committed offences overseas, including the War Crimes Act 1945 (Cth) and the Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990 (Cth). See also *Polyukhovich v Commonwealth* (1991) 172 CLR 501.

obligations under articles 34 and 35 of the Convention on the Rights of the Child¹⁵⁶ which Australia ratified on 17 December 1990. Although the Convention does not explicitly require a State Party to enact extraterritorial criminal legislation in respect of its nationals, it should be construed purposively, conceding to each State Party the latitude to so legislate provided the legislation pursues its objectives.¹⁵⁷ A third basis for the constitutional validity of the proposed amendments — namely, that they would deal with matters of international concern — might also succeed in any legal challenge. The international significance and gravity of child prostitution are attested to by its treatment in article 34 of the Convention on the Rights of the Child and by its recognition as a crime against humanity in article 1 of the Draft Optional Protocol. Moreover, the notoriety accorded child prostitution in South-East Asia and the involvement of Australians in it will impact on the Australian Government's relations with other countries in the region.¹⁵⁸

The extraterritorial criminal jurisdiction contained in the proposed amendments departs from the usual basis for the exercise of criminal jurisdiction in common law systems — namely territoriality. The exercise of criminal and civil jurisdiction by a sovereign State over persons (citizens and aliens alike), property, acts or events occurring within its territory has long been conceded by international law and the common law.¹⁵⁹ Nevertheless, nationality is an alternative, well-recognised basis in international law and civil law systems whereby criminal jurisdiction may be assumed by the State of which the person (against whom proceedings are taken) is a national, regardless of the nationality of the victim or the place of the crime.¹⁶⁰ As such, the proposed amendments appear to be consistent with the active nationality principle recognised by international law.¹⁶¹

(iii) *Prospects for Success*

There appear to be a number of factors and considerations which will make it difficult to obtain admissible evidence of the offences. As one commentator remarks:

[p]rosecuting a sexual offence where a child has been the victim is a difficult enough task in any event; when it is further complicated by the problems of

¹⁵⁶ See above Section V.B.2 (Legal Responses — The International Legal Responses — Recent Developments).

¹⁵⁷ Byrnes, above n 32, 8. See also *Commonwealth v Tasmania* (1983) 158 CLR 1 (*Tasmanian Dams* case). The proposed amendments will not only help prostituted children in the receiving countries but could conceivably assist Australian children in cases where a convicted Australian sex tourist has multiple victims both at home and abroad: see O'Grady, above n 2, 63. CROC, above n 84, arts 2(1) and 34, clearly requires Australia to take measures to prevent the sexual exploitation of Australian children.

¹⁵⁸ Indeed, the real prospect of HIV-infected Australian sex tourists spreading their ailment in Australia upon their return renders child prostitution a matter of concern to Australia itself. States Parties to the Convention on the Rights of the Child are obligated to undertake preventive health care measures for the benefit of all children within their respective jurisdictions: CROC above n 84, arts 2(1) and 24(2)(f).

¹⁵⁹ *Compania Naviera Vascongado v Cristina SS* [1938] AC 485, 496-7 (Lord Macmillan).

¹⁶⁰ Starke, above n 114, 232.

¹⁶¹ *Ibid.*

obtaining evidence in a foreign country ... the task becomes even more onerous.¹⁶²

The prostituted child may be the key or, indeed, the sole witness. The child's co-operation with the investigating authorities may not be forthcoming due to the possibility of criminal prosecution in his or her own country, persecution by criminal elements and/or the unwillingness to forgo the financial benefits to be gained from continuing the activity. The child may also suffer stress in having to travel to Australia where he or she will encounter a foreign culture, language and judicial process.¹⁶³ Since Australian authorities would have no coercive powers to secure the attendance of witnesses, it would be difficult to proceed without their full co-operation. Overseas-based Australian police have limited investigatory powers and are unable to gather evidence themselves. To counter the prospect of corrupt local law enforcement,¹⁶⁴ greater efforts might be made to permit evidence to be gathered by Australian police for use in Australian courts. Failing that, Australia might follow the practice of Swedish courts in admitting evidence gathered by law enforcement officials of the country where the crime took place.¹⁶⁵ Language difficulties, as well as the potentially large number of persons who may have sexually exploited the child over a lengthy period of time between commission of the offence and trial, may make it easier for the defence in a contested case to succeed on the issue of identity.¹⁶⁶

In view of these potential problems and the unequal relationship between the prostituted child on the one hand and the customers and members of the child sex trade industry on the other, consideration might be given to modifying or relaxing some of the rules of evidence. If the Australian Government is serious about securing convictions under the proposed amendments, it will at least consider dispensing with the corroboration rule.¹⁶⁷ Some of these problems might be partially overcome through the conclusion of treaties, between Australia and the receiving countries, on mutual assistance in criminal matters. Such treaties normally provide for assistance in identifying and locating persons, serving documents, examining witnesses, search and seizure, obtaining evidence and facilitating the personal appearance of witnesses. Indeed, article 3(b) of the Draft Optional Protocol obliges States Parties to undertake co-operative bilateral and multilateral arrangements concerning mutual recognition and reception of evidence.

¹⁶² Byrnes, above n 32, 3.

¹⁶³ To address these problems, the Child Sex Tourism Bill ss 50EA, 50EB will respectively permit or require an Australian court to direct an overseas witness to give evidence by video link under certain conditions.

¹⁶⁴ See above Section III.C (The Causes — Weak Law Enforcement in the Receiving Countries).

¹⁶⁵ Virtue, above n 138.

¹⁶⁶ Commonwealth, Standing Committee of Attorneys-General, above n 151, 5.

¹⁶⁷ Civil law countries such as Germany have more flexible procedures for the reception of evidence in a criminal trial, such as in the narrative or hearsay form: Commonwealth, Standing Committee of Attorneys-General, above n 151, 3. Prosecutions against alleged sexual exploiters of children have been hampered in the past by the requirement that the child's evidence be corroborated and consequently the rules of evidence may need to be liberalised so as not to require corroboration: Muntarhorn, 'Sale of Children', above n 116, paras 62, 108.

The proposed amendments themselves will not be an adequate legal response to the problem of child prostitution if they are not underpinned by a firm commitment on the part of the Australian Government to allocate sufficient resources to their enforcement. Such a budgetary commitment will help to ensure greater co-ordination and co-operation between police forces within Australia, and also between the latter and their South-East Asian counterparts. It is encouraging, therefore, that the Minister for Justice has already secured a commitment through the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council to ensure co-operation between Federal authorities and state and territory police forces in the investigation of offences under the proposed amendments.¹⁶⁸ Close liaison with customs officials will also be necessary to secure evidence of the commission of such offences from returning Australian nationals, such as photographs or videotapes. The Commonwealth has also obtained the agreement of state and territory Police Ministers that their police forces will fully co-operate with Federal authorities in the investigation and prosecution of the associated activities of paedophile groups within Australia.¹⁶⁹ The Commonwealth has moved to develop closer co-operation between Australian law enforcement agencies and their counterparts in Thailand and the Philippines.¹⁷⁰ It is envisaged that the Australian Federal Police based in Australian embassies in Asia will play a major role in gathering information on the activities of Australian paedophiles.¹⁷¹ Australian Federal Police officers will be able to draw upon the experience gained in conducting joint operations with the local police in the area of drug trafficking.

VI OTHER INTERVENTIONS AND STRATEGIES

A *Reactive Remedial Measures Benefiting Victims*

1 *Protection of Migrant Child Prostitutes*

Girls forced into prostitution have sometimes been arrested as 'illegal immigrants', imprisoned and otherwise harshly treated pending return to their country of origin.¹⁷² Prostituted children who have been forced into the industry and to cross national boundaries should be protected from harm and have their human rights respected pending, and following, their return, whether or not they entered the receiving country illegally.¹⁷³

¹⁶⁸ Kerr, 'Amendments to the Crimes Act 1914: Child Sex Tourism Offences', above n 33, 1.

¹⁶⁹ Close co-operation between state and federal police forces will be necessary to ensure intelligence-sharing on suspected paedophiles and the effective monitoring of their activities both within Australia and overseas.

¹⁷⁰ Kerr, 'Commonwealth, State and Territory Governments Take a United Stand Towards Eradicating Child Sex Tourists', above n 141, 2.

¹⁷¹ *Ibid.*

¹⁷² In July 1993, Thai police raided three brothels in Ranong Province and detained 144 Myanmar female prostitutes ranging from 15 to 34 years of age on illegal entry charges: 'Myanmar Prostitutes Nabbed', *Jakarta Post* (Jakarta), 4 August 1993.

¹⁷³ See UNICEF Statement, above n 5, para 6. Accommodation in 'safe houses' or refugee hostels pending return would be a more appropriate disposition.

2 *Rehabilitation and Compensation*

While proactive and deterrent measures may be taken to restrict supply and demand, steps must also be taken to assist the thousands of children who have been exploited and then cast aside to return to their communities and adopt other lifestyles. Article 39 of the Convention on the Rights of the Child obligates States Parties to 'take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse'. Article 4 of the Draft Optional Protocol provides that 'States Parties recognise that rehabilitation of victims of crimes of sexual exploitation and trafficking in children ... should be a priority in their social development programs'. Appropriate measures undertaken jointly by governmental agencies and community organisations might include medical attention, temporary accommodation and protection, counselling and psychological support, education and employment training. Although the issue of the financing of these rehabilitation measures is not directly addressed by either the Convention or the Draft Optional Protocol, governments might consider following the lead of the Philippines Government in allocating a portion of the fine money towards rehabilitation of the prostituted child victims.¹⁷⁴ ECPAT is proposing to establish a 'Fund for Children' which would have as one of its purposes the rehabilitation of prostituted children rescued from brothels. The Draft Optional Protocol does, however, canvass the prospect of compensation being paid directly to these children in accordance with national legislation, including, where applicable, from the property of the offenders.¹⁷⁵

A note of caution must be sounded, however. As one experienced commentator has remarked:

[a] young girl not yet in her teens forced to receive thirty to fifty customers a night will be so severely traumatised after a single week that the possibility of rehabilitation is almost non-existent. Those who have worked to try and give child prostitutes a new start in life despair at finding any real solution for a life which is virtually over before it has begun.¹⁷⁶

This negative experience of social workers has convinced many of them that the only real solution is to stop the child sex industry entirely by cutting it off at its source.¹⁷⁷

B *Measures Restricting Supply*

1 *Development and Poverty Alleviation*

Development strategies aimed at poverty alleviation are essential in confronting child prostitution since poverty is one of the main causes of the phenom-

¹⁷⁴ Evatt, above n 55, 4.

¹⁷⁵ See UDHR, above n 84, art 8 and ICCPR, above n 84, art 2(3)(a) which guarantee everyone's right to an effective remedy.

¹⁷⁶ O'Grady, above n 2, 132.

¹⁷⁷ *Ibid* 120.

enon.¹⁷⁸ In those countries most affected by the child prostitution problem, there is still a lack of social subsidy support for families.¹⁷⁹ The satisfaction of the basic needs of children, parents and the local community, in conjunction with educational measures, will empower them to make informed choices and so protect them from the cycle of poverty and exploitation.¹⁸⁰ Article 2(3) of the Declaration on the Right to Development¹⁸¹ declares that:

States have ... the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their ... meaningful participation ... in the fair distribution of the benefits resulting therefrom.¹⁸²

Delegates at the international conference on 'Children in Prostitution: Victims of Tourism in Asia' called on government leaders to '[p]ursue economic policies which put people before profits and lead to true human development.'¹⁸³

Australia and other sending countries might consider allocating a portion of their overseas aid funds to the creation of local community self-help projects, the rehabilitation of former prostituted children and the education and vocational skills development of young children. World financial institutions such as the International Monetary Fund and the World Bank should be encouraged to link loan repayment conditions with the success of development programs in the receiving countries in improving socio-economic conditions.¹⁸⁴

2 *Prevention Programs*

Greater efforts should be made to build upon successful intervention measures which have been undertaken in a number of countries including Thailand and the Philippines to prevent young children from entering prostitution. Such measures include fostering an awareness in the children of the circumstances which put them at risk as well as providing information and training facilities for possible alternative means of livelihood. One example of a successful rural program is the 'Daughters of Education' project in Mae Sai, Thailand. Supported by funding from Australia and Japan, 150 at-risk young girls are housed, protected, trained and empowered to make choices they would not otherwise have.¹⁸⁵ International non-governmental organisations such as World Vision have set up 'safe houses' and similar programs specifically for 'street children' in various South-East Asian countries.

¹⁷⁸ See above Section III.A (The Causes — Poverty).

¹⁷⁹ Preliminary Report, above n 11, para 49.

¹⁸⁰ Draft Programme, above n 109, Annexure, para 11.

¹⁸¹ Adopted by the United Nations General Assembly Resolution 41/128, 4 December 1986.

¹⁸² See CROC, above n 84, arts 6(2) and 27 concerning the right to development in the children's rights context.

¹⁸³ Anglican General Synod Social Responsibilities Commission and the International Affairs Commission, above n 15, 27.

¹⁸⁴ Preliminary Report, above n 11, para 44.

¹⁸⁵ ECPAT Australia, 'Child Prostitution and the Daughters of Education Project', *ECPAT Australia Bulletin* No 3 (September/October 1993) 4-5.

C Education Campaigns to Restrict Supply and Demand

1 Responsible Tourism

Any new laws passed by sending countries prohibiting the sexual exploitation of children overseas by their nationals must be accompanied by a comprehensive public education campaign. One objective of such a campaign would be to dispel certain myths adhered to by some sex tourists that child prostitution in South-East Asia is legal and culturally relevant.¹⁸⁶ Other objectives would include increasing public awareness of the social unacceptability of child sex tourism and warning sex tourists on what is unacceptable and illegal behaviour in the receiving countries and what criminal sanctions they are liable to face on their return home. Religious groups and the media also have an important role to play in breaking the silence surrounding child sex tourism and galvanising public opinion against it.¹⁸⁷

Perhaps the most critical factor to the success of any public education campaign is the acceptance of responsibility by, and commitment from, the tourism and airline industries to assist in confronting the problem. Apart from restraining its members from organising or promoting sex tours, Australian organisations such as the Australian Federation of Travel Agents (AFTA) and the Australian Tourism Industry Association (ATIA) should be vigilant in monitoring advertisements which subtly promote sex tourism. Consideration might be given to the adoption of a responsible tourist code of ethics. What must be undertaken by the private sector tourism industry jointly with government, and perhaps with certain non-governmental agencies,¹⁸⁸ is a briefing of overseas travellers on the criminal laws of Australia and the country of destination concerning child prostitution, the encouragement of greater respect for the human rights of children and Asian cultural and religious sensitivities, and information on the rising incidence of HIV and AIDS amongst Asian prostituted children. Leaflets containing similar information have been placed in the airline tickets of Swedish and French tourists destined for Asia.¹⁸⁹ The World Tourism Organisation has been requested recently by the United Nations to convene a Working Group of Experts on Sex Tourism and the Universal Federation of Travel Agents Associations comprising 85 national associations

¹⁸⁶ ECPAT Australia, *ECPAT Australia Bulletin* No 3 (September/October 1993) 2.

¹⁸⁷ At the First World Congress on Family Law and Children's Rights held in Sydney in July 1993, LAWASIA, an international legal group with members from various countries in Asia and Australasia, announced its intention to create a trust to finance public education campaigns on child prostitution and sex tourism. This trust was in fact established on 9 December 1993: 'Lawyers' trust to combat Asian child sex trade', *West Australian* (Perth), 10 December 1993. Nevertheless, it is reasonable to expect such financing to be primarily a government responsibility.

¹⁸⁸ A 'Travel Wise and Be Welcome' brochure has been developed by an ethics and tourism working group in association with Community Aid Abroad as an ethical behaviour guide for tourists. Australian Federation of Travel Agents (AFTA) has agreed to print and distribute 2,500 copies for distribution to travel agents: ECPAT Australia, 'Travel Body to Promote Responsible Tourism', *ECPAT Australia Bulletin* No 4 (October/November 1993) 2. ECPAT Australia has recently announced that one of its 1994 aims will be to help equip travel agents and overseas travellers with appropriate educational materials and warnings.

¹⁸⁹ ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 9.

resolved at its recent 27th General Assembly in Malta to 'condemn strongly any form of tourism involving child abuse.'¹⁹⁰ Governments of sending countries in consultation with these associations should consider the possibility of the revocation or non-renewal of the licences of travel agencies or tour operators which are involved in the organisation and promotion of child sex tourism.¹⁹¹

2 *Raising Awareness in the Receiving Countries*

Article 5(1)(a) of the Draft Optional Protocol obligates each State Party to:

promote awareness of the effects of sexual exploitation and support for measures to prevent such exploitation by making appropriate documentation concerning human rights and sexual exploitation of children available to parents, ... concerned groups and associations, and the general public.

Public education campaigns have already begun. In many Asian cities, rallies of several thousand children have been held each year on 20 November to commemorate the date on which the United Nations adopted the Declaration of the Rights of the Child in 1959 and the Convention on the Rights of the Child in 1989. The occasion is used to raise awareness among children, parents and the general public of children's rights in the context of the child prostitution problem.¹⁹²

Preventive educational programs should be developed as part of the primary school curriculum to warn children of health dangers including AIDS,¹⁹³ while emphasising their human right to bodily integrity. Religious and community leaders, non-governmental organisations, social workers and the media should assume a leadership role in developing educational programs for parents and villages. Such programs could reduce the fraud practised upon parents by explaining the tactics of procurers to them. They would also strive to restore former communal and social values of rural communities which included a taboo against using children for sex. This could be achieved by challenging the notion that children are the property of parents and the apparent growing social acceptance of the need/greed justification for child prostitution in some communities.¹⁹⁴

D *Measures Restricting Demand*

1 *International Co-operation*

Considering the transnational aspects of trafficking in children and the child

¹⁹⁰ ECPAT Australia, 'World Travel Agents Condemn Child Prostitution', *ECPAT Australia Bulletin* No 6 (January-March 1994) 4.

¹⁹¹ See nn 144-153 and accompanying text for discussion on the possibility that a tour operator, convicted of organising child sex tours, may have any proceeds of the offence forfeited to the Commonwealth under the proposed amendments. See also Draft Optional Protocol, art 3(c).

¹⁹² ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 8.

¹⁹³ UNICEF has recently established a program on educating youth on how to avoid HIV: see 'Child Prostitution Flourishes in Asia Because of Scare', *Philippine Star* (Manila), 29 September 1993 as appears in ECPAT Australia, *ECPAT Australia Bulletin* No 6 (January-March 1994) 18.

¹⁹⁴ Preliminary Report, above n 11, 10, 18; O'Grady, above n 2, 127.

sex tourist industry, international co-operation amongst national and international law enforcement agencies on a multilateral, regional and bilateral basis constitutes one of the more important strategies. This co-operation is encouraged by provisions such as articles 34 and 35 of the Convention on the Rights of the Child¹⁹⁵ and article 3(a) of the Draft Optional Protocol which require States Parties to ensure that their police forces co-operate with each other for the purposes of detecting and apprehending offenders and investigating offences. The experience gained in international police co-operation in combating drug trafficking should also prove useful in this context.¹⁹⁶ The United Nations Children's Fund has observed that 'the economic power and effective information systems among the internationally organised paedophile groups have enabled them to increase rapidly their activity in other neighbouring ... countries.'¹⁹⁷ International solidarity and co-operation can assist in avoiding the situation where these groups simply relocate elsewhere if one receiving country becomes too difficult a location from which to operate.

The types and areas of international co-operation are numerous but would primarily entail, to use the words of article 3(e) of the Draft Optional Protocol, the 'exchange of information to facilitate prevention of international travel for the purpose of engaging in crimes of sexual exploitation of, or trafficking in, children.' A recent Asian bilateral initiative is the exchange of paedophile lists between receiving and sending countries identifying those who have been deported for having committed sexual offences against children.¹⁹⁸ In view of its mandate to investigate internationally organised crime and crimes involving transnational elements, the international organisation INTERPOL might play a leading role in co-ordinating inter-country exchanges of information and setting up data banks.¹⁹⁹ Apart from an expansion and strengthening of extradition arrangements and mutual assistance in criminal matters agreements,²⁰⁰ other forms of international co-operation might include bolstering the law enforcement communication resources of the receiving countries to enhance the flow of information, assisting in the creation of specialist independent child protection police units and exchange visits by the law enforcement personnel of sending and receiving countries to enhance co-ordination of activities.

2 Travel Restrictions

Travel restrictions to limit the demand for child prostitution may be imposed

¹⁹⁵ See above Section V.B.2 (Legal Responses — International Legal Responses — Recent Developments).

¹⁹⁶ Draft Programme, above n 109, 23.

¹⁹⁷ UNICEF Statement, above n 5, para 3.

¹⁹⁸ Preliminary Report, above n 11, para 45. The Australian Government regularly informs foreign authorities when it is known that Australian paedophiles travel abroad: Ehrlich, above n 31, 21.

¹⁹⁹ Draft Programme, above n 109, Annexure, para 18; UNICEF Statement, above n 5, para 4. The INTERPOL Standing Working Party on Offences Against Minors has recently included sex tourism as a priority item on its agenda: ECPAT Australia, *ECPAT Australia Bulletin* No 4 (October/November 1993) 8.

²⁰⁰ See above Section V.C.2(b)(iii) (Legal Responses — The National Legal Responses — The Sending Countries — The Proposed Australian Legislation — Prospects for Success).

by both the receiving and sending States. Under recently enacted legislation in the Philippines, foreigners convicted of sex offences against children will be deported but only after having served any custodial sentence; they will thereafter be banned from re-entering the country.²⁰¹ The communication of this information by the authorities of the receiving country to those of the sending country would also enable the latter to monitor the subsequent activities of the deportee within his home country.²⁰²

Sending countries might consider revoking the passports of those of its nationals who have been convicted either at home or abroad of having committed sex offences against children. The legislative framework already exists in Australia. The Passports Act 1938 (Cth) s 8(1B) empowers the Minister to cancel an Australian passport where he or she has formed an opinion that its holder is likely to engage in conduct that might endanger the health or physical safety of other persons, whether in Australia or in a foreign country, or might interfere with their rights and freedoms as set out in the International Covenant on Civil and Political Rights. Such an administrative decision would appear to be lawful under article 12(3) of the Covenant which permits States Parties to restrict the international travel of their citizens by laws which are deemed 'necessary to protect ... public health or morals or the rights and freedoms of others'.

3 *Publication of the Names of Convicted and Deported Child Molesters*

Media²⁰³ in both the receiving and sending countries should publish the names of tourists convicted of sexual offences against children. As one official of the United States Justice Department has remarked, '[i]t's not the end of the world to most paedophiles if an Asian newspaper reports their arrest. What they dread is the crime following them home.'²⁰⁴ The potentially strong deterrent effect of the threat of exposure is acknowledged by article 5(c) of the Draft Optional Protocol which obligates each State Party to promote support for measures to prevent sexual exploitation of children by 'publicising prosecutions and convictions in cases involving the sexual exploitation of children'. Swedish television and newspaper coverage of these matters has attracted wide publicity.²⁰⁵ Publication can, of course, be undertaken by other means. On World AIDS Day 1993, street children of Ermita, a suburb of Manila, marched behind banners naming the most prominent of the foreign paedophiles and urging their expulsion from the Philippines.²⁰⁶ It is submitted, however, that publication should only occur after a conviction has been secured in order to respect the common law presumption of innocence as well as article 14(2) of the

²⁰¹ Republic Act No 7610 (1991) (Philippines) s 31.

²⁰² Evatt, above n 55, 9.

²⁰³ The 1993 United Nations Conference on Human Rights urged the media to increase its involvement in the protection of human rights: see United Nations, Department of Public Information, above n 3, Part I, para 39.

²⁰⁴ As quoted in Ehrlich, above n 31, 21.

²⁰⁵ Virtue, above n 138.

²⁰⁶ Cook, above n 29.

International Covenant on Civil and Political Rights which provides that '[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.'

4 *Confronting Paedophilia and Child Pornography*

Through their information systems and financial resources, paedophile organisations have contributed significantly to the growth of the child sex trade in South-East Asia. It is essential, therefore, that law enforcement agencies take aggressive measures to break up their networks.²⁰⁷ The Standing Committee of Attorneys-General meeting in Darwin in June 1993 urged state and territory Ministers to examine developing a uniform regime for dealing with the financial activities of paedophile groups within Australia.²⁰⁸ A regular exchange of paedophile lists between receiving and sending countries would also help to prevent the repetition of offences by the same persons. Greater efforts might also be made to understand the psychology of paedophilia. As one commentator has proposed, '[a]dults who abuse children, whether in their own country or overseas, must be confronted with the damage they are doing ... and they must themselves be offered some form of treatment'.²⁰⁹

The links between the sexual abuse of children and exposure to child pornography as well as that which exists between the child prostitution and child pornography industries are now well established.²¹⁰ Child pornography perpetuates the sexual victimisation of children and legislators should therefore consider stricter laws to prevent its production and distribution both domestically and internationally. It is encouraging, therefore, that the Standing Committee of Attorneys-General has also recently recommended that the States and Territories develop uniform laws concerning child sexual abuse and prostitution and the production, distribution, sale and possession of child pornography.²¹¹

VII THE ROLE OF THE NON-GOVERNMENTAL ORGANISATIONS

The 1993 United Nations Conference on Human Rights acknowledged the important role of non-governmental organisations in increasing public awareness of human rights issues and effectively implementing the Convention on the Rights of the Child.²¹² It is often through their expertise, recommendations and lobbying that the United Nations and governments have become motivated to correct injustices. A multitude of non-governmental organisations exist today whose agenda includes the sexual exploitation of, and trafficking in, children. These include the Anti-Slavery Society, the International Catholic Child

²⁰⁷ Ehrlich, above n 31, 21.

²⁰⁸ Commonwealth, Standing Committee of Attorneys-General, above n 151, 6.

²⁰⁹ O'Grady, above n 2, 128.

²¹⁰ *Ibid* 130.

²¹¹ Commonwealth, Standing Committee of Attorneys-General, above n 151, 6.

²¹² United Nations, Department of Public Information, above n 3, Part I, para 38 and Part II, para 52 respectively.

Bureau, LAWASIA, Rainbow Project (Taiwan), Women's Information Centre (Thailand), Stop Trafficking of Philipinas, Defence for Children International, International Abolitionist Federation, International Save the Children Alliance, Task Force to End Child Exploitation in Thailand, PEACE (Sri Lanka), Centre for Child Welfare (India), Ecumenical Coalition on Third World Tourism and Salinlahi (the Philippines).

The international non-governmental organisation which has come to be most closely identified with child prostitution issues, particularly in the context of tourism, is the International Campaign to End Child Prostitution in Asian Tourism (ECPAT).²¹³ ECPAT was formed as a result of a consultation convened by the Ecumenical Coalition on Third World Tourism and held in Chiang Mai, Thailand in 1990. ECPAT is a community of concerned individuals and organisations who work together to end child prostitution in Asian tourism and to confront related issues such as trafficking in children, child pornography and paedophilia.²¹⁴ Its main campaign objectives are to raise world-wide awareness of prostituted children, lobby for tougher laws and law enforcement in both the receiving and sending countries, support and fund educational and developmental projects at the local level and make illegal the advertising and promotion of Asian child sex tourism in sending countries. ECPAT national campaigns have been established in both receiving²¹⁵ and sending²¹⁶ countries and extensive links have been developed with over 250 social and religious organisations in 22 countries.²¹⁷ ECPAT Australia was established in November 1992 following a national conference which examined the involvement of Australians in Asian child sex tourism. ECPAT Australia is affiliated with ECPAT International and works in partnership with other ECPAT national campaigns.

Lobbying and consultations by ECPAT and other like-minded non-governmental organisations have proven successful both internationally and domestically.²¹⁸ What these organisations must now turn their efforts to is the lobbying of governments to allocate the resources necessary to secure the effective implementation of their tougher laws and policies. Non-governmental organisations might also consider developing data bases containing statistics, lists of publications and other information on prostituted children as well as initiating research on selected topics and ensuring a regular exchange of information between themselves and governmental organisations. Representatives of non-governmental organisations might also usefully serve as members of national

²¹³ ECPAT was the recipient of the 1993 Anti-Slavery Medal awarded by Anti-Slavery International and the 1993 Peace Trophy awarded by the Universal Federation of Travel Agents Associations.

²¹⁴ ECPAT Australia, *ECPAT Executive Statement* (May 1993).

²¹⁵ Thailand, Sri Lanka, Taiwan, Philippines, Vietnam and India.

²¹⁶ Australia, Germany, United States, Canada, United Kingdom, France, Sweden, Netherlands, Norway, Japan, Switzerland, Belgium and New Zealand.

²¹⁷ ECPAT Australia, 'The International Campaign to End Child Prostitution in Asian Tourism', *ECPAT Australia Bulletin* (Special Edition, July 1993) 2.

²¹⁸ They have been partly responsible for the Draft Optional Protocol and the campaign to eliminate child prostitution announced by Thai Prime Minister Chuan Leekpai in November 1992.

task forces to monitor the implementation of extraterritorial laws and to develop a range of strategies. At the international level, national task forces can encourage States Parties to the Convention on the Rights of the Child to include information concerning the sexual exploitation of children in their implementation reports to the Committee on the Rights of the Child.

VIII CONCLUSION

In canvassing the nature and extent of the problem of Asian child sex tourism, its causes and effects, and possible national and international legal responses and other strategies to deal with it, this article has hopefully conveyed some sense of its complex and formidable nature. No quick or easy solutions are possible. The Australian Government must press on with its commitment to enact into law the Crimes (Child Sex Tourism) Amendment Bill 1994 as an important first step. This initiative must be supported by appropriate programs, budgetary commitment and vigorous enforcement measures. The Government should also consider the creation of a national task force to monitor the implementation and effectiveness of the new extraterritorial laws and develop a range of other supporting strategies.

Despite a crackdown on child prostitution ordered by Thai Prime Minister Chuan Leekpai in late 1992, trafficking in children for the purposes of sexual exploitation 'continues virtually unchecked and, according to some local activists, is on the increase.'²¹⁹ Similarly, the Philippine Republic Act has not stopped child prostitution in that country.²²⁰ These assessments support the proposition that changes in laws and policies will not have their desired effect unless accompanied by a wide range of long-term and graduated interventions which address the root causes as well as the symptoms of child prostitution. It is incumbent on the United States, Japan, Germany, the United Kingdom and Australia, in their capacity as influential actors on the world stage and as the more notorious of the sending countries, to exert pressure on the governments of receiving countries to secure the political will necessary to overcome official corruption and other entrenched and systemic factors which have caused, or are delaying the demise of, child prostitution. International and regional organisations like the United Nations and ASEAN, and international and national non-governmental organisations will also have a similar salutary role to play.*

²¹⁹ 'Thailand: Partner in Crime in Burma Flesh Trade', *The Nation* (Bangkok), 1 February 1994, as appears in ECPAT Australia, *ECPAT Australia Bulletin* No 6 (January-March 1994) 11. See also Asia Watch Report, above n 51.

²²⁰ ECPAT Australia, *ECPAT Australia Bulletin* No 6 (January-March 1994) 10.

* Editors note: the Crimes (Child Sex Tourism) Amendment Bill 1994 (Cth) was passed (with amendments) by Federal Parliament on 30 June 1994.