

CHILD SEX TOURISM AND CHILD PROSTITUTION IN ASIA: WHAT CAN BE DONE TO PROTECT THE RIGHTS OF CHILDREN ABROAD UNDER INTERNATIONAL LAW?

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I. INTRODUCTION

Children are undoubtedly the future of any society, and have the potential for someday becoming incredible assets to the countries in which they live. Major traumatic events that occur during ones youth assists to mold individuals into the adults they become. Sexual abuse as a child is one such traumatic event of such major proportion that impacts an individual's life so profoundly the event carries over into adulthood by aiding in the formation of ones adult personality and psyche. Children do not possess the capability to address situations such as being the victims of sexual abuse by adults. Children by their very nature are inexperienced and vulnerable to adult persuasions. Adults are the authoritative figures in virtually all societies throughout the world. Hence, children do not possess the ability to handle themselves in adult situations regarding their own sexual exploitation by adults.

Due to poverty resulting from lack of employment opportunities for their parents, many children in Asia are forced to fend for themselves in the adult world. Unfortunately, a myriad of children, both boys and girls, turn to a life of prostitution. Although some choose prostitution, the majority of them are forced into it through kidnapping. Often, children are trafficked across borders. The traumatic experiences of these children are so intense that rehabilitation is almost impossible. These victims are generally left psychologically as well as physically scarred for life.

In Thailand, estimates of the number of prostituted children range anywhere from 200,000 to 800,000.¹ Although Thai laws expressly condemn sexual offenses against children, the laws have been relatively ineffective due to poor law enforcement.² Despite the obvious inhumanity

1. Patricia D. Levan, *Curtauling Thailand's Child Prostitution Through an International Conscience*, 9 AM. U.J. INT'L L. & POL'Y 869, 869 (1994); RON O'GRADY, *THE CHILD AND THE TOURIST* 24 (EPCAT 1992).

2. Thai. Criminal Code, §§ 277, 286 (1989) (Thailand's criminal law which addresses the punishment of any person who engages children in sexual activity).

Whoever has sexual intercourse with a girl who is not yet over fifteen years of age and who is not his wife, whether or not the girl consents, shall be imprisoned four to twenty years and fined eight thousand to forty thousand Baht.

If the commission of the offense according to the first paragraph is committed against a girl not yet over thirteen years of age, the offender shall be imprisoned seven to twenty years and fined fourteen thousand to forty thousand Baht, or imprisoned for life.

If the commission of the offense according to the first or second paragraph is committed by participation of persons and such girl does not consent, or by carrying a gun or explosive, or by using such weapons, the offender shall be imprisoned for life.

If the offender commits the act stated in the first paragraph against a girl over thirteen years but not yet fifteen years of age with her consent, and the Court grants such man and girl to marry together afterwards, the offender shall not be punished for such offense. If the Court permits them to marry while the offender is in prison for such an offense, the Court shall release such offender.

of child exploitation, a number of countries in Asia have created an international market for child prostitution: *child sex tourism*. Most of the consumers are males from the industrialized nations.³ Countries such as Thailand and the Philippines are often chosen because they are havens for organized sex tours.⁴ Some are simply looking for a causal experimental experience. Others are notorious pedophiles, representing a significant sector of the trade.⁵

The first part of this note will focus on the national laws of the leading providing countries providing *child sex tourism*, namely Thailand and the Philippines, and the national laws of consumer countries, namely the United States. It will concentrate on the implementation of national laws as mandated by international law, and the likelihood of success of criminal prosecution here in the United States of Americans committing sex offenses abroad. The second part of this note will deal with suggestions for enforcing national strategies here in the United States in order to eliminate *child sex tourism* abroad. The third and final part of this note will address the issue of how the emerging International Criminal Court may also play a role in adjudicating matters of child trafficking and prostitution.

II. THE LAWS OF PROVIDER AND CONSUMER NATIONS OF CHILD SEX TOURISM: PROTECTING CHILDREN FROM SEXUAL EXPLOITATION

Thailand, the Philippines, Sri Lanka, and Taiwan are the countries traditionally connected with *child sex tourism*, and all have serious child prostitution problems.⁶ Prostitution of a massive nature involving children originated in Thailand and the Philippines in the late 1960s during the Vietnam War.⁷ In Thailand, Burmese women and girls as young as 13 are illegally trafficked across the border by recruiters, and sold to brothel owners.⁸ In the Philippines, many children are tricked into prostitution after their parents sell them to recruiters with the promise of legitimate work in the city.⁹ The organization, End Child Prostitution in Asian Tourism ("ECPAT"), has offered a 1994 estimate of 250,000 prostituted children in Thailand alone.¹⁰ The Philippine government calculated the number of child prostitutes in the Philippines at 50,000.¹¹

Thail. Criminal Code, Title IX Offenses Relating to Sexuality, § 277, B.E. 2530 (1989) (Thail.).

3. Paul Ehrlich, *Asia's Shocking Secret*, READER'S DIGEST, Oct. 1993, at 70.

4. *Id.*

5. O'GRADY, *supra* note 1, at 56.

6. *Id.* at 91-106.

7. *Id.* at 92-101.

8. *Id.*

9. *Id.*

10. RON O'GRADY, *THE RAPE OF THE INNOCENT* 135 (1994).

11. *Id.*

During the late 1970s and early 1980s, pedophiles from both Europe and North America found a Shangri-La for sexual activity with minors in Thailand and the Philippines.¹² More than half of the overall sex tourists are pedophiles, and approximately one-third of them are North American or European.¹³

A. *The Provider Countries: The National Laws of Thailand and the Philippines*

Thailand has responded to the problem of child exploitation by enacting laws criminalizing sexual activity with minors.¹⁴ Thai law prohibits sexual intercourse with a child under the age of fifteen regardless of consent.¹⁵ Sexual activity with a child under thirteen may warrant life imprisonment.¹⁶

The Philippine government has taken positive measures to curb child exploitation by promoting the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act.¹⁷ The Act allows heavy penalties to be applied against advertisers, clients, procurers, pimps, and houses of prostitution.¹⁸ It has provided for the arrest and deportation of a number of foreign pedophiles.¹⁹

Although it is evident that the providing countries have passed legislation that protects children from sexual exploitation, these laws are often not enforced against tourists.²⁰ In Thailand, the sex tourism policy has been a difficult force to rise up against.²¹ The sex trade has become a major industry in both Thailand as well as in the Philippines, creating resistance against the child sexual offenses laws.²² The police have known to guard brothels, as well as traffic or procure children for prostitution.²³

12. O'GRADY, *supra* note 1, at 98-99, 103-104.

13. Ehrlich, *supra* note 3, at 21.

14. *See supra* note 2, at § 277.

15. *Id.*

16. *Id.*

17. Laurie Nicole Robinson, *The Globalization of Female Child Prostitution: A Call For Reintegration and Recovery Measures Via Article 39 of the United Nations Convention on the Rights of The Child*, 5 IND. J. GLOBAL LEGAL STUD. 239 n.10 (1997) (citing to Viti Muntarbhorn, *International Perspectives and Child Prostitution in Asia*, in *Forced Labor*, 23 (1996)).

18. Philippine Rep. Act No. 7610 88 Official Gazette, No. 30, Jul. 27, 1993 at 4851.

19. Robinson, *supra* note 17.

20. Vickie F. Li, *Child Sex Tourism To Thailand: The Role of The United States As A Consumer Country*, 4 PAC. RIM L. & POL'Y J. 505 n.2 (1995) (citing Douglas Hodgson, *Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies*, 19 MELB. U.L.REV. 512, 518 (1994)).

21. *Id.* at 505.

22. *Id.*

23. *Id.*

Moreover, police officers also tend to be customers themselves, yet they are virtually never investigated or prosecuted.²⁴ Child prostitutes are reluctant to cooperate with legitimate law enforcement officials for fear of prosecution themselves.²⁵

B. *The United States' Role as a Consumer Country: Laws Enacted at Home to Prevent Child Exploitation Abroad*

On September 13, 1994, President Bill Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994 ("Crime Bill").²⁶ The Crime Bill included the Child Sexual Abuse Prevention Act of 1994, which criminalizes travel to another country for the purpose of engaging in sexual intercourse with a minor.²⁷ The present act extends the Mann Act of 1910, which was originally passed to prevent the transport of women across state lines for sexual purposes.²⁸ In 1986, the Mann Act was amended to criminalize the transport of any person under the age of eighteen either between states or abroad with the intent that the minor engage in sexual activity. The current 1994 amendment criminalizes traveling to foreign countries for the purpose of engaging in sexual acts with a child less than eighteen years of age if that act would be in violation of United States federal law.²⁹ The legislation carries financial penalties or imprisonment up to ten years, or both.³⁰ In addition, the law contains no double criminality requirement. Therefore, the United States nationals who commit sex offenses abroad may be prosecuted under federal law, regardless of whether or not the act is considered a crime abroad.³¹

C. *The Mandates of International Law on the United States as a Consumer Nation*

The most widely recognized development in international law regarding the protection of children is contained in the United Nations Convention on the Rights of the Child [hereinafter "UNCRC"].³² It was

24. *Id.* at n.10 (citing Aaron Sachs, *The Last Commodity, Child Prostitution in the Developing World*, WORLD WATCH, July/Aug. 1994, at 24, 28).

25. Robinson, *supra* note 17.

26. Child Sexual Abuse Prevention Act, Pub. L. No. 103-322, 108 Stat. 2036 (1994) (to be codified at 18 U.S.C. § 2258 (1988); 108 Stat. 2037 (1994) (to be codified at 18 U.S.C. § 2423 (1988)).

27. *Id.*

28. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (1994)).

29. 18 U.S.C. § 2423(b).

30. *Id.*

31. *Id.*

32. Convention on the Rights of the Child, November 20, 1989, G.A. Res. 14/25, U.N. G.A.O.R. 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/44/736 (1989), 28 I.L.M. 1448 (1989).

adopted by the United Nations General Assembly in 1989, and entered into force in 1990.³³ Articles 34(a) and (b) of the Convention require all signatories to take appropriate national, bilateral, and multilateral measures to prevent the exploitation of children in unlawful sexual activities and prostitution.³⁴ Article 35 provides that states take measures in order to prohibit the sale, abduction, or trafficking of children.³⁵

To date, 191 nations have ratified the UNCRC.³⁶ However, the United States has not yet done so.³⁷ There are a number of reasons why opposition to the ratification of the UNCRC exists in the United States. A main concern is federalism. Many of the convention's enunciated rights fall within areas, which have traditionally been left to the discretion of the individual states.³⁸ Under the United States Constitution, ratified treaties become federal law.³⁹ Therefore, there is some apprehension that the UNCRC would supersede a number of state laws, thus allowing for prosecution in federal rather than state courts.

D. *The Likelihood of Success of Prosecution of Sex Tourists in the United States.*

While these national laws demonstrate a progressive approach towards abolishing sex tourism in providing countries like Thailand and the Philippines as mandated by international law, the actual legal effect is minimal.⁴⁰ While providing countries have difficulty enforcing laws against child exploitation within their borders, consumer countries like the United States face the obstacles of extraterritorial jurisdiction and evidentiary standards.⁴¹ International law recognizes five areas of extraterritorial criminal jurisdiction.⁴² The United States adheres to the principles of territoriality and nationality in order to establish federal jurisdiction in criminal cases.⁴³ Territoriality deals with *where* a crime is

33. *Id.*

34. *Id.* at art. 34(a) and (b), at 11, 218 I.L.M. at 1469.

35. *Id.* at art. 35, at 11, 28 I.L.M. at 1469.

36. As of this writing, there are 191 states parties to the CRC. U.N. Homepage (visited Nov. 17, 1997), <http://www.un.org/Depts/Treaty/final/ts2/newsfiles/part_boo/iv_11html> .

37. *Id.*

38. Gary L. Bauer, *Watch out for the Children's Rights Treaty*, Family Research Council, WASH. WATCH, Mar., 1991, at 4.

39. *Id.*

40. Ethan A. Nadelmann, *The Role of the U.S. in the International Enforcement of Criminal Law*, 31 HARV. INT'L L.J. 37, 57 (1990).

41. *Id.*

42. *Id.*

43. *Id.*

committed.⁴⁴ Therefore, the United States will rely on its territorial power to try any criminal offenses committed within its borders. Nationality provides for jurisdiction over United States nationals who commit criminal acts abroad.⁴⁵ The amendment to the Mann Act, which explicitly allows for prosecution of United States nationals for traveling or conspiring to travel abroad for purposes of engaging minors in sexual acts, permits the United States to exercise federal jurisdiction based on the nationality principle.⁴⁶

Although they may overcome potential jurisdictional obstacles, United States law enforcement officials may have problems meeting federal evidentiary standards.⁴⁷ Due to the novelty of the amendment to the Mann Act, such problems have not yet arisen.⁴⁸ However, retrieving admissible evidence from foreign nations may prove to be an arduous task in prosecuting sex offenders in the United States. It should be noted that United States law focuses on the *intent* to commit a sex offense abroad rather than the sexual act itself.⁴⁹ This would otherwise indicate that procuring admissible evidence from another country may be unnecessary, since one could be prosecuted without ever having left the country. Nevertheless, most offenders are likely to be apprehended in a foreign country while engaging in the criminal act.⁵⁰ This, in turn, will necessitate collecting evidence abroad, which is admissible in a United States court of law. In order to aid in this process, the United States and Thailand have signed the Mutual Legal Assistance Treaty [hereinafter "MLAT"]⁵¹ which facilitates the gathering of admissible evidence from abroad. It guarantees that the evidence collected corresponds with the constitutional and evidentiary requirements of both countries.⁵² However, in sex offense cases, the testimony of the victim may be inadmissible if not given in person, due to hearsay objections.⁵³

To date, there have been no prosecutions of United States citizens regarding the amendment to the Mann Act which deals with travel with the intent to engage in sex with a minor.⁵⁴ The United States Department of Justice has expressed interest in prosecuting operators of child sex tours,

44. Nadelmann, *supra* note 40.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Nadelmann, *supra* note 40.

50. *Id.*

51. Mutual Legal Assistance Treaty, Feb. 1994, U.S. - Thailand, Art. VII, 247 U.S.T.

52. Nadelmann, *supra* note 40, at 37.

53. *Id.*

54. National Coalition for the Protection of Children and Families, Press Release 1 (Sept. 28, 1994).

and the United States Customs Child Pornography Enforcement Program has initiated investigation of those potentially liable under the new United States law.⁵⁵

III. BEYOND LAW ENFORCEMENT: WHAT THE UNITED STATES MUST DO AS A GLOBALLY RECOGNIZED PROPONENT OF CHILDREN'S RIGHTS IN ORDER TO ERADICATE CHILD SEX TOURISM ABROAD.

Child sex tourism is a lucrative business of international proportions.⁵⁶ Its suppression necessarily involves the participation of governments, national and international law enforcement agencies, non-governmental organizations, and international bodies such as the United Nations.⁵⁷ National legislation of both provider nations, such as Thailand and the Philippines, and consumer nations, such as the United States, are important components in the effort to end child sexual exploitation abroad. The United States must take additional steps in order to deter sex tourism originating in the United States.

A. *Ratifying the UNCRC*

The United States' position regarding the UNCRC stands in stark contrast to other consumer nations, such as Sweden and Australia, which have not only ratified the convention, but have incorporated it fully into their strategies against *child sex tourism*.⁵⁸ Although the United States has signed the convention, it appears unlikely that it will be ratified without significant reservations denying the treaty binding power over United States law.⁵⁹ The United States' disposition regarding the ratification of the convention leads other consumer nations to believe that the United States holds itself above international treaties, while at the same time, the United States seeks to bind provider nations to the mandates of international law. This lack of support for the UNCRC weakens the effectiveness of the United States' position against child sexual exploitation, and its capability as a world leader to encourage respect for children's rights worldwide.⁶⁰

By becoming a party to the convention, the United States would recognize the international human rights of children, including civil,

55. *Id.*

56. The author has arrived at this conclusion after researching numerous sources on the subject.

57. Li, *supra* note 20, at 522.

58. Multilateral Treaties Deposited with the Secretary General, Status as at 31 Dec. 1993, at 193-194, U.N. Doc. ST/LEG/SER.E/12 and Supp. (1994).

59. Elizabeth M. Calciano, *United Nations Convention on the Rights of the Child: Will it Help Children in the United States?*, 15 HASTINGS INT'L & COMP. L. REV. 515 (1992).

60. International Convention on Civil and Political Rights, Dec. 16, 1996, G.A. Res. 2200 A, U.N. GAOR, 21st Sess. Supp. No. 16 at 1211.

political, social, cultural, and economic rights.⁶¹ Although there is opposition to ratification on grounds of federalism, implementing a federal-state reservation clause so as to allow individual states to conform or not to conform to the Convention in certain matters traditionally left to the states, may serve as a tool to facilitate Congressional consent in ratifying the treaty. Under international law, the United States may still become a party to the treaty even with a federal-state reservation.⁶²

B. *Collaboration with Foreign National Governments and Non-governmental Organizations*

In order to prevent sex offenders from further exploiting children in providing nations, exchange programs between law enforcement officials and community leaders of provider and consumer countries should be fostered. Such programs would include tracking the behavior of United States nationals where there is a threat to children of providing countries.⁶³ This may be achieved by the exchange of information and data to trace and track pedophiles and criminals who exploit children.⁶⁴

A further way to stop the spread of sex tourism is through the use of travel restrictions by both provider and consumer countries. For example, governments should consider revoking the passports of convicted sex tourists. In addition, opponents of the trade should promote campaigns that enlist the support of national and international commercial airlines and travel agents in order to guarantee that sex tour operators are identified and prosecuted. This will help to deter travelers looking for casual sex with children in foreign countries.⁶⁵ Withdrawing the licenses of travel agencies promoting sex tours may also help to deter sex tourism.

There have been a growing number of national initiatives against child sexual exploitation conducted by non-governmental organizations [hereinafter "NGOs"] that have become increasingly coordinated in networking to prevent child prostitution with effective media campaigns.⁶⁶ Contrary to legal remedies, NGOs seek to attenuate the root causes of child prostitution and to offer help where the problem exists.⁶⁷ Projects include

61. Ron O'Grady, Keynote Speech, World Congress Against Commercial Sexual Exploitation of Children (Mar. 1995) (transcript available on web site <<http://www.childhub.ch/webpub/csechome/22d6.htm>>).

62. Lawrence L. Stenzel II, *Federal State Implications of the Convention*, CHILDREN'S RIGHTS IN AMERICA: THE UNCRC COMPARES WITH U.S. LAW 57 (Cynthia P. Cohen & Howard A. Davidson eds., 1990).

63. Robinson, *supra* note 17, at 31.

64. *Id.*

65. CONCETTA TALIERCIO, INTERNATIONAL LAW AND LEGAL ASPECTS OF CHILD SEX TOURISM IN ASIA: A CONTEMPORARY FORM OF SLAVERY? 3 (1993).

66. Robinson, *supra* note 17.

67. *Id.*

helping families in social development, hot lines to help children in difficulty, and emergency homes and shelters for abused and exploited children.⁶⁸ NGOs cite education and awareness as the focal points of their crusade against child sex tourism.⁶⁹

One notable campaign against child sex tourism is End Child Prostitution in Asian Tourism [hereinafter "ECPAT"].⁷⁰ ECPAT works to influencing governments to eliminate tourist-related prostitution and to comply with international conventions.⁷¹ It has also been effective in mobilizing action at the national level by initiating children's forums against military bases, and advocacy against pedophilia and the exploitative use of children in advertising in various countries.⁷² In addition to gathering data on sex tourism, ECPAT has brought this issue to the world's attention and has mobilized global concern regarding the exploitation of these innocent child victims.⁷³ By working closer with organizations such as ECPAT, the United States will set an example for other consumer nations as a global leader in effectuating an end to child sex tourism and child prostitution abroad.

IV. THE ROLE OF THE EMERGING INTERNATIONAL CRIMINAL COURT: THE PROPOSITION TO PROSECUTE TREATY CRIMES IN THE ICC.

The horrifying crimes against women and children in Rwanda and the former Yugoslavia have prompted the international community to call for the establishment of a permanent International Criminal Court [hereinafter "ICC"].⁷⁴ The ICC will most likely be created by a multilateral treaty, which will bind only state parties to the treaty.⁷⁵ There has been a broad consensus that the ICC will try serious war crimes, genocide, and certain crimes against humanity such as mass rape, and torture.⁷⁶ The inclusion of treaty crimes, such as the exploitation and trafficking of children presently remains under negotiation.

A. *The Possibility of Including Treaty Crimes Such as Crimes Against Children in the ICC Statute*

The concept of expanding the jurisdiction of the ICC to include other crimes, such as treaty crimes, has been met with much opposition. Many

68. *Id.* at 28.

69. *Id.* at 29.

70. O'GRADY, *supra* note 10.

71. Robinson, *supra* note 17, at 20.

72. *Id.*

73. *Id.*

74. [visited 10/13/97], <<http://gn2.getnet.com/wfa/court.htm>>.

75. *Id.*

76. *Id.*

states, including the United States claim that an ICC would not be equipped to adequately adjudicate treaty crimes.⁷⁷ Moreover, State Parties fear that broadening the powers of the ICC will infringe on the sovereignty of national courts. However, the most recent draft statute of the ICC includes the principle of complementarity.⁷⁸ This means that the ICC would hear a case only when no national court is available or willing to hear it.⁷⁹ Thus, State Parties would decide whether they were willing or able to try a case in domestic courts, or whether the state would rather submit the case to the ICC. The ICC could proceed only if consent to jurisdiction over that crime had been given by the following: 1) the state in whose territory the crime occurred; 2) the state with custody over the suspect; and 3) the state which requested extradition of the suspect from the custodial state.⁸⁰

International criminal law must be enforced if the perpetrators of the most serious crimes in the international community are to be brought to justice.⁸¹ An ICC would not only enforce international criminal law, but it would also serve as a model for other national criminal justice systems around the world.⁸² If certain treaty crimes, such as those in violation of the UNCRC, were to be prosecuted in an international criminal tribunal, this action may prompt provider countries like Thailand and the Philippines to deal with the exploitation of children within their borders more vehemently.

Arguments have been made that the substantive provisions of the UNCRC and its recognition of the need for coordinated efforts among intergovernmental and non-governmental bodies, offer significant potential to help curb trafficking in children.⁸³ The primary mechanism for monitoring implementation of the rights in the UNCRC is the state reporting procedure.⁸⁴ The reporting mechanism is intended to expose situations where a government may have adequate national legislation but inadequate law enforcement.⁸⁵ However, infrequency of monitoring is a significant drawback to the reporting mechanisms established under the

77. Leila Sadat Wexler, *The Proposed Permanent International Criminal Court: An Appraisal*, 29 CORNELL INT'L L.J. 665 (1996).

78. *Id.*

79. *Id.*

80. [visited 10/13/97], <<http://www.abanet.org/irr/hr/icc.html>>.

81. *Id.*

82. *Id.*

83. Stephanie Fariior, *The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to Its Potential*, 10 HARV. HUM. RTS. J. 213, 232 (1997).

84. Maureen Moran, *Ending Exploitative Child Labor Practices*, 5 PACE INT'L L.REV. 287 (1993).

85. Timothy John Fitzgibbon, *The United Nations Convention on The Rights of The Child: Are Children Really Protected? A Case Study of China's Implementation*, 20 LOY. L.A. INT'L & COMP. L.J. 325 (1998).

treaty. States do not always provide reports which are in compliance with the treaty, and oftentimes do not submit reports at all.⁸⁶ Moreover, the reporting mechanisms discussed in the treaty apply only to the states that have ratified the treaty.

The implementation of national laws in provider and consumer countries through mandates in international law from the treaty itself and the collaboration with NGOs and foreign national governments are all effective initial attempts to abolish child sex tourism. However, more must be done to guarantee consistent and forceful application of existing laws. The UNCRC treaty itself does not provide true enforcement measures in case of violation.⁸⁷ Therefore, the inclusion of treaty crimes, such as crimes against children, within the ICC statute is necessary in order to command respect for the law.

B. *The Possibility of Including Crimes Against Children in the ICC Statute as Crimes Against Humanity*

There are several obstacles to curbing the problem of *child sex tourism*. First, there is an unwillingness to prosecute offenders in provider and consumer countries. In provider countries, reluctance stems from the economic benefits of child prostitution.⁸⁸ In consumer countries, the reason for the reluctance is more elusive. Second, not all states are parties to the UNCRC. Although many countries such as the United States have signed the UNCRC, signatories still need to ratify the treaty in order to prosecute violations of the treaty under the ICC. Finally, treaty crimes in general have not yet been included in the ICC statute. Therefore, crimes against children, such as *child sex tourism* and child prostitution, are more likely to be dealt with if prosecuted under the auspices of crimes against humanity.

Crimes against humanity have not yet been comprehensively codified but, like genocide and war crimes, they are considered crimes under customary international law.⁸⁹ One of the debates in negotiations on the draft statute of the ICC has centered on whether crimes against humanity should be linked to armed conflict.⁹⁰ NGOs have argued that such crimes should be separated from armed conflict because widespread and

86. *Id.*

87. Eric Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT'L & COMP. L. REV. 397, 417 (1996).

88. Ehrlich, *supra* note 3, at 70.

89. Nadelmann, *supra* note 40.

90. Jelena Pejic, *What Is An International Criminal Court? As Negotiations On The Establishment of an ICC Start, The Debate Heats Up*, 23 FALL-HUM RTS 16 (1996) (an American Bar Association publication).

systematic attacks against a civilian population can, and have been, committed in peacetime.⁹¹

In the event that a compromise cannot be reached regarding the inclusion of treaty crimes within the ICC statute, the only solution may be to include such crimes within the definition of crimes against humanity. Due to the fact that crimes against humanity have not been codified, this may allow for the definition to be structured so as to include crimes against children, such as child trafficking and *child sex tourism*. This way, states not party to the UNCRC will either have to try such an offense in domestic courts, tender the case to another state willing to try it, or submit it to the ICC.

V. CONCLUSION

The amount of children subject to prostitution and sex tourism is astronomical.⁹² The damage suffered by these children subject to such sexual crimes is often times irreparable. Countless numbers of children in countries like Thailand and the Philippines are grossly affected each day by child sex tourism, which has flourished in part from the involvement of industrialized nations such as the United States. The international community must acknowledge its role in fueling sex tourism and act responsibly by implementing laws to reign in these violations. Enacting national laws in order to facilitate criminal prosecution of sex offenders abroad is a step in the right direction for the United States and other consumer countries. However, much more can be done to deter child sex tourism. Cooperation with foreign law enforcement officials and NGOs, informational exchanges between countries, and educational campaigns are all events that if implemented can assist to deter child sex tourism within consumer countries. Of course the most effective mechanism may be to prosecute offenders in the International Criminal Tribunal. This may be done by including treaty crimes within the ICC statute, or including crimes against children within the definition of crimes against humanity. This may be the only way to circumvent the lack of criminal prosecution of offenders.

Sex Tourism has stimulated the growth of the child sex industry, making the sexual exploitation of children an international problem. The international community cannot simply close its eyes to these grave criminal offenses committed against children. It is obvious that the measures taken by both provider and consumer countries have not been very effective thus far. With the creation of an international criminal court, the next logical step in solving a problem of treat international proportions is to allow these offenses to be prosecuted on an international level. This would include owners, pimps and child trafficker from

91. This is referring to the crimes during wartime only.

92. See O'GRADY, *supra* note 1.

provider countries. The international community must acknowledge the seriousness of these heinous, senseless crimes and provide some sort of recourse to past victims as well as protection to those who may be the targets of such crimes in the future.