

Washington International Law Journal

Volume 4 | Number 2

5-1-1995

Child Sex Tourism to Thailand: The Role of the United States as a Consumer Country

Vickie F. Li

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>



Part of the [Comparative and Foreign Law Commons](#), and the [Criminal Law Commons](#)

Recommended Citation

Vickie F. Li, Comment, *Child Sex Tourism to Thailand: The Role of the United States as a Consumer Country*, 4 Pac. Rim L & Pol'y J. 505 (1995).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol4/iss2/8>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

CHILD SEX TOURISM TO THAILAND: THE ROLE OF THE UNITED STATES AS A CONSUMER COUNTRY

Vickie F. Li

Abstract: The proliferation of child prostitution in Thailand has been closely linked to the explosive growth of the sex industry. Political, economic, and cultural factors internal to Thailand alongside external forces from foreign sex tourism, have all contributed to the rising number of prostituted children. In September 1994, the United States enacted an amendment to the Mann Act to prosecute citizens for traveling or conspiring to travel abroad with the intent to engage minors in sexual activities. This Comment traces the development of child prostitution in Thailand and examines the effect of U.S. law in deterring sex tourism abroad. Comparisons to the laws in Europe and Australia demonstrate the procedural difficulties of establishing extraterritorial jurisdiction and meeting evidentiary standards. Consequently, law enforcement measures, educational campaigns, and ratification of the U.N. Convention on the Rights of the Child should supplement the United States' legal actions in deterring the demand for prostituted children in Thailand.

I. INTRODUCTION

Long regarded as the foremost destination for sex tourism,¹ Thailand has been unable to prevent the sex industry's explosive growth within its borders. Child prostitution is inextricably intertwined with this industry and has resulted in a rapidly rising number of prostituted children.² Political events, economic interests, cultural beliefs, and misconceptions about AIDS have all contributed to the proliferation of child prostitution in Thailand. Although Thai laws expressly condemn sexual offenses against children,³ the laws have been relatively ineffective due to poor law enforcement. However, child prostitution not only is locally supported, but also is sustained by tourists from the United States, Europe, and Australia.⁴ As a

¹ Lucy Johnson, *Children Human Rights: British Child Sex Tourists Go Unpunished*, Inter Press Service, June 22, 1994, available in LEXIS, EUROPE Library, ALLNWS File.

² Douglas Hodgson, *Sex Tourism & Child Prostitution in Asia: Legal Responses & Strategies*, 19 MELB. U.L. REV. 512 (1994). The author uses the term "prostituted child" instead of "prostitute" to avoid the stigma that is often associated with prostitution. Many countries declare prostitution to be illegal, giving the term "prostitute" a criminal connotation. However, in discussions about child prostitution, the child is generally seen as a victim and not a criminal.

³ Thai. Criminal Code, §§ 277, 286 (1989). See *infra* note 72 and accompanying text.

⁴ The organization, Protection of Children's Rights, notes that there are many Asian men, as well as men from the United States, Canada, Germany, Sweden, Australia, and New Zealand who are customers of child prostitutes in Asia. A number of the Asian men come from Japan, Singapore, and the Philippines.

result, international action should be taken to help bring an end to child prostitution in Thailand.⁵

Certain "consumer countries"⁶ have taken legal measures in response to the sex tourism to South East Asia. Sweden, Norway, Germany, Australia, and the United States currently have laws to prosecute citizens who commit sexual offenses abroad. However, prosecutions appear to be few.⁷ Establishing extraterritorial jurisdiction and meeting evidentiary standards complicate implementation of these laws. Furthermore, some of these laws are relatively new; therefore their effect is not yet known.

This Comment addresses the development of child prostitution in Thailand and the role of the United States as a consumer country in the child sex industry. The first half of this Comment will examine the political, economic, and cultural factors contributing to the rising number of prostituted children. The first section will also address Thai law and the problem of law enforcement which has engendered the need for international involvement.

The second half of the Comment will focus on the role of consumer countries with an emphasis on the United States. In September of 1994, the United States amended the Mann Act to prohibit citizens from traveling or conspiring to travel abroad to engage minors in sexual acts which would be illegal in the United States. This section will analyze what effect this new amendment will have on curbing sex tourism from the United States to Thailand. Comparisons to the laws of other consumer countries such as Australia, Sweden, and Germany suggest that the law alone is not enough. Consequently, the United States must seek additional solutions to support this legal framework. Cooperation with Thai police, U.S. tourism campaigns against the sex industry, and ratification of the U.N. Convention on the Rights of the Child would all work towards eliminating sex tourism from the United States. As a consumer country, the United States must take

Ravi Veloo, *Give Their Children the Shelter of Our Law*, THE STRAITS TIMES (Singapore), July 28, 1994, available in LEXIS, ASIAPC Library, ALLNWS File.

⁵ Child pornography, cross-border trafficking of children, and child labor are issues closely associated with child prostitution. However, these topics are not addressed as they are beyond the scope of this Comment.

⁶ The term "consumer countries" is used to refer to foreign countries which have contributed to the growth of the child sex industry through sex tourism. See Charles Wallace, *Widening the War on Child Sex: Weak Local Enforcement Has Helped South Asia's Vice Trade Flourish. Now the U.S. and European "Consumer" Countries Are Joining the Battle to Keep Men From Seeking Young Prostitutes Overseas*, L.A. TIMES, July 13, 1994, at 1.

⁷ Michael Perry, *Asian Crackdown on Pedophiles Has Little Impact*, Reuters Ltd., Mar. 21, 1995, available in LEXIS, NEWS Library, CURNWS File.

responsibility for contributing to the demand for prostituted children in Thailand by putting an end to its role in child sex tourism.

II. DEVELOPMENT OF PROSTITUTION IN THAILAND

A. *Political and Economic Forces*

Prostitution in Thailand burgeoned into a thriving industry due to a series of political and economic events during the late 1960s and early 1970s. The rapid development of prostitution has been commonly linked to the presence of U.S. military bases in Thailand during the Indochina War.⁸ In 1966, Thailand enacted the Service Establishments Act⁹ which in turn led to a 1967 treaty signed with the United States.¹⁰ The purpose of this 1967 Rest and Recreation treaty was to provide respite for U.S. military troops who were fighting in the Vietnam War.¹¹ This military buildup created a demand for services to meet soldiers' relaxation and recuperation needs, transforming prostitution in Thailand into a lucrative industry.¹²

Thailand's sex industry was bolstered not only by these political and military events, but also by the economic policy adopted by the Thai government. In 1971, the World Bank encouraged Thailand to supplement its exports with tourism.¹³ The World Bank Report in 1975 noted Thailand's "growth potential of tourism as part of [its] export strategy."¹⁴ The expectation was that wealthy visitors spending foreign currency in Thailand would stimulate the economy.¹⁵ In 1975, the Thai government officially endorsed this strategy by adopting the National Plan of Tourist Development.¹⁶

⁸ THANH-DAM TRUONG, *SEX MONEY & MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA* 99 (1990).

⁹ *Id.* at 161. Also known as the Entertainment Act, the decree regulated and legitimized operations of entertainment places in hotels, massage parlors, night-clubs and bars. U.S. military servicemen were the main clients of these facilities.

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

¹¹ TRUONG, *supra* note 8, at 161.

¹² STEVEN SCHLOSSSTEIN, *ASIA'S NEW LITTLE DRAGONS, THE DYNAMIC EMERGENCE OF INDONESIA, THAILAND, & MALAYSIA* 197 (1991).

¹³ Sachs, *supra* note 10, at 28.

¹⁴ James Petras & Tienchai Wongchaisuwan, *Thailand: Free Markets, AIDS, and Child Prostitution*, Z MAGAZINE, Sept. 1993, at 35, 36.

¹⁵ Sachs, *supra* note 10, at 28.

¹⁶ Petras & Wongchaisuwan, *supra* note 14, at 36.

The economic incentives behind this tourism policy appeared innocuous enough. However, it is likely that both the Thai government and the World Bank were aware of the sex industry that accompanied increased tourism.¹⁷ Robert McNamara, President of the World Bank in the 1970s, had previously worked as the U.S. Secretary of Defense during the signing of the 1967 Rest & Recreation Treaty with Thailand.¹⁸ It seems unlikely that the sex industry that flourished from the military presence in Asia could be so quickly forgotten.¹⁹ These surrounding political, military, and economic circumstances persuasively suggest that Thailand's national plan was essentially promoting tourism "with a sex package."²⁰ In effect, the tourism policy advocated by the World Bank and Thai government indirectly subsidized the sex industry.²¹

With these policy changes, industrialism took hold, bringing with it a culture of consumerism which placed rural areas throughout Thailand at a financial disadvantage.²² Economic struggles in farming impoverished much of the countryside.²³ These economic effects have been felt generally throughout the Golden Triangle, forest land on which villages have depended for their livelihood.²⁴ Over the past thirty years, these forests were destroyed by logging projects conducted by the government and private industries.²⁵ Despite the short-term economic boost created by logging and agricultural exports, villages in the Golden Triangle were no longer able to support themselves.²⁶ The poverty resulting from the depletion of natural resources has been exacerbated by population pressures and rapid modernization.²⁷

Consequently, poverty has been a key force behind the growing number of prostitutes, including prostituted children.²⁸ From an economic perspective, the increase in prostituted children in Thailand can be

¹⁷ Sachs, *supra* note 10, at 28.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Petras & Wongchaisuwan, *supra* note 14, at 36.

²¹ Sachs, *supra* note 10, at 30.

²² Paul Robinson, *Australia: Exposed—The Ugliest Australians*, SUNDAY AGE (Melbourne), Reuters Textline, Apr. 18, 1993, available in LEXIS, ASIAPC Library, ARCNEWS File [hereinafter Robinson, *Australia Exposed*].

²³ Petras & Wongchaisuwan, *supra* note 14, at 36.

²⁴ Sachs, *supra* note 10, at 26. The Golden Triangle is the region formed by the borders of Thailand, Burma, Laos, and China.

²⁵ *Id.* at 27.

²⁶ *Id.* at 27.

²⁷ Hodgson, *supra* note 2, at 516.

²⁸ *Id.*

attributed to the fluctuations of supply and demand.²⁹ The lack of economic opportunities in the countryside has coincided with the demand for more prostitutes in the cities' sex industry. Families in rural areas may sell their daughters for money and then rely on the steady income provided by their prostituted daughters.³⁰ The resulting economic benefits seem to make this transaction worthwhile. An income from prostitution is generally twenty-five times greater than an income from any other work in rural areas.³¹ Meanwhile, families may also receive "loans" from agents who represent various crime syndicates.³² These families' daughters prostitute themselves to pay off the loans with interest.³³ The unfortunate reality is that the loans are never fully repaid and the children are forced to remain in prostitution.³⁴

When parents resist the financial enticements of prostitution, procurement agents from bars and brothels will trick or coerce parents into releasing their children under the pretense of offering jobs in hotels or restaurants.³⁵ Furthermore, families that have broken down under the economic strain have left many children homeless.³⁶ These children then become easy victims to pimps and procurement agents.³⁷ This wide-reaching recruitment of children into the sex industry has emptied villages of children and teenagers.³⁸ The demand for child prostitution has created a large scale rural-urban migration that has particularly targeted girls aged ten to fourteen years old.³⁹

²⁹ Sachs, *supra* note 10, at 26.

³⁰ Petras & Wongchaisuwan, *supra* note 14, at 36. The organization, Friends of Women, reported that children are being recruited as young as six years old. A study in Northern and Northeastern Thailand estimates that the price of a child ranges from US\$280-US\$1,200. *Id.* at 37. However, another study reports that a child may be sold for as little as 3,000 Baht (US\$120). Rodney Tasker, *Dirty Business, A Spate of Child Sex Cases Highlights A National Concern*, FAR E. ECON. REV., Jan. 13, 1994, at 23.

³¹ Lillian S. Robinson, *Touring Thailand's Sex Industry*, THE NATION, Nov. 1, 1993, at 492, 495 [hereinafter Lillian S. Robinson] citing a 1982 study.

³² Hodgson, *supra* note 2, at 519. The author cites criminal organizations from the United States, Germany, Australia, as well as the Japanese Yakuza, all of whom are involved in organized prostitution throughout Southeast Asia.

³³ *Id.* at 519.

³⁴ *Id.* at 519.

³⁵ *Id.* at 517.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Sachs, *supra* note 10, at 26.

³⁹ *Id.* at 27.

B. *Social and Cultural Ideology*

The expansion of the sex industry from political and economic forces has invariably influenced the increase in child prostitution. However, the demand for underage sex has also been affected by cultural beliefs, social expectations, and in particular, misconceptions about AIDS.⁴⁰

The interest in child sex has been perpetuated in part by a "mythicization of virginity."⁴¹ One example of this is a cultural belief that sexual intercourse with a virgin will bring longevity or increased sexual energy.⁴² Another myth revolves around notions of a child's youth and purity which has led to a misunderstanding about the transmission of AIDS. The belief that sexual intercourse with a child is a form of safe sex⁴³ is dangerously held. This notion rests on the idea that there is less chance of contracting the AIDS virus from sex with a child than sex with an adult.⁴⁴ In fact, children are more susceptible to HIV infection due to their underdeveloped bodies.⁴⁵ During sexual intercourse, children's tissues are easily torn which dramatically increases the likelihood of HIV passing into their blood stream.⁴⁶ The Children's Rights Protection Center in Thailand estimates that fifty percent of all prostituted children in Thailand are infected with HIV.⁴⁷ As a result, prostituted children greatly risk contracting and transmitting the AIDS virus.

While no study has linked the increasing number of prostituted children to the increasing number of AIDS cases, a positive correlation between the two seems apparent. In general, the global spread of HIV has been largely attributed to rural-urban migration along with an international movement of HIV infected people.⁴⁸ Studies have shown that there is an increasing number of child prostitutes who have become infected with

⁴⁰ Wallace, *supra* note 6. Wallace attributes the increase in child prostitution to several factors including the increasing number of hard-core pedophiles, mature looking teenage girls under the legal age of consent, cultural beliefs that sexual intercourse with children brings longevity, and misconceptions that there is no risk of AIDS in sexual intercourse with children.

⁴¹ Sachs, *supra* note 10, at 27.

⁴² Robinson, *Australia Exposed*, *supra* note 22.

⁴³ Hodgson, *supra* note 2, at 520.

⁴⁴ Sachs, *supra* note 10, at 27.

⁴⁵ *Id.*

⁴⁶ Hodgson, *supra* note 2, at 520.

⁴⁷ Sachs, *supra* note 10, at 27.

⁴⁸ *Knowledge, Attitudes & Behavior—Social Changes Needed to Control AIDS Pandemic*, AIDS WEEKLY, March 6, 1993, available in LEXIS, NEWS Library, CURNWS File [hereinafter AIDS WEEKLY] (quoting Dr. Thomas C. Quinn).

HIV.⁴⁹ Thailand and Burma, which are regarded as the "nexus of Asian sex and drug traffic," have also become known as the epicenter of the AIDS epidemic.⁵⁰ In 1993, Thailand's Public Health Ministry estimated that as many as 200,000 to 400,000 Thais were infected with HIV.⁵¹ The World Health Organization reported 13,246 AIDS cases in 1994, and predicted that by the year 2000, more than four million Thais will test HIV positive.⁵² It is predicted that 125,000 to 150,000 Thais will die of AIDS by 1997.⁵³ Thailand has become and will likely continue to be an area of serious health concern.⁵⁴ The statistics persuasively suggest that the expansion of the sex industry and the growing number of prostitutes with HIV have contributed to the spread of the AIDS epidemic.

In addition to the mythicization of child youth and virginity, the general acceptance of prostitution in Thai culture has been an equally influential factor that has heightened the demand for prostituted children. A Harvard study revealed that seventy-five percent of all men in Thailand have had sex with a prostitute.⁵⁵ Furthermore, many Thai men engage in child sex.⁵⁶ Promiscuity among men is apparently culturally acceptable. At the same time, prostitution also seems to have become favorably regarded as a profitable form of employment. Interests driven by poverty and consumerism have distorted society's perception of the sexual exploitation of children.⁵⁷ As a financially rewarding vocation, prostitution represents an opportunity for social mobility.⁵⁸ One daughter's earnings may make it possible for an entire family to survive.⁵⁹

Ironically, the economic benefits of prostitution have shifted societal views on the value of female children.⁶⁰ A prostituted girl may still fulfill the cultural expectations of being a good daughter by sending money home

⁴⁹ Hodgson, *supra* note 2, at 520.

⁵⁰ Lillian S. Robinson, *supra* note 31, at 496 (quoting John Dwyer).

⁵¹ *Id.*

⁵² AIDS WEEKLY, *supra* note 48.

⁵³ Petras & Wongchaisuwan, *supra* note 14, at 38. Currently, Thailand has a population of more than fifty-nine million people. THE WORLD ALMANAC AND BOOK OF FACTS 1995 826 (Robert Famighetti et al. eds., 1994).

⁵⁴ AIDS WEEKLY, *supra* note 48. While the majority of AIDS cases have occurred in Africa, it is believed that Southeast Asia will be the focus of the AIDS epidemic in the 1990s. *Id.*

⁵⁵ Sachs, *supra* note 10, at 28. Citing a study conducted by Huin Huin Pyne.

⁵⁶ Cameron W. Barr, *Thais Target World Trade In Child Sex, But Police Enforcers Get Little Support From Government*, CHRISTIAN SCIENCE MONITOR, Apr. 17, 1995, at 1.

⁵⁷ Hodgson, *supra* note 2, at 519.

⁵⁸ Lillian S. Robinson, *supra* note 31, at 496.

⁵⁹ *Id.* at 495.

⁶⁰ *Id.* at 496.

and caring for her parents.⁶¹ Traditional sexism favoring boys over girls has been pushed aside by the "commodification of sexuality."⁶² Girls are now more profitable to raise than boys.⁶³ Although many parents sell their children out of sheer poverty, others are motivated by materialism and the desire to possess modern conveniences.⁶⁴

A final dimension to the cultural and social forces driving child prostitution lies in the strong commitment to the family. Children often remain in prostitution out of loyalty and obedience, in spite of being sold by their families.⁶⁵ The prostituted child feels duty bound to pay off the family loans and generate income to support the family. These emotional ties complicate and hinder possible prosecution of the parents for sale of their children.⁶⁶ Familial obligation often overwhelms any negative feelings about working in prostitution.⁶⁷

C. *Law and Enforcement in Thailand*

A staggering number of children in Thailand are involved in prostitution due to the surrounding political, economic, and cultural factors. Control of this social problem has been partially hindered by the inability to determine the actual number of prostituted children in Thailand. Children are often trafficked across borders from Cambodia, China, Laos, and Burma, complicating this statistical task.⁶⁸ A 1990 Thai police study reported that there were 100,000 underage female prostitutes.⁶⁹ The Centre for the Protection of Children's Rights, however, estimated that there were 800,000 prostituted children.⁷⁰ Meanwhile, the organization, End Child

⁶¹ SCHLOSSSTEIN, *supra* note 12, at 198.

⁶² Lillian S. Robinson, *supra* note 31, at 496.

⁶³ However, there is a growing number of young male prostitutes due to the increasing number of pedophiles traveling abroad. Hodgson, *supra* note 2, at 518.

⁶⁴ *Id.* at 517.

⁶⁵ Tasker, *supra* note 30, at 23.

⁶⁶ *Id.* Child prostitutes have generally been reluctant to prosecute their own families. However in 1992, a mother of a 14 year old girl was successfully prosecuted for selling her daughter into prostitution. The mother was sentenced to 26 years in prison.

⁶⁷ Lillian S. Robinson, *supra* note 31, at 496.

⁶⁸ Leah Makabenta, *Asia—Children: West Urged to Take Action on Child Sex Trade*, Inter Press Service, June 1, 1994, available in LEXIS, WORLD Library, ALLWLD File.

⁶⁹ Tasker, *supra* note 29, at 23.

⁷⁰ *Id.*

Prostitution in Asian Tourism ("ECPAT"), has offered a 1994 estimate of 250,000 prostituted children in Thailand.⁷¹

Although the statistics vary widely, the number of prostituted children is already far too great. Thailand has responded to the problem by enacting laws against such sexual offenders.⁷² Thai law prohibits sexual intercourse with a child who is under the age of fifteen regardless of consent.⁷³ The penalty for such an offense is a maximum of twenty years in prison and up to a 40,000 Baht fine.⁷⁴ Sexual intercourse with a child under the age of thirteen may warrant life imprisonment.⁷⁵ Sex offenders who inflict great bodily harm or death upon their victims receive additional punishment.⁷⁶ Thai law also addresses the procurement of children by consent⁷⁷ or through deceit⁷⁸ to gratify the sexual desire of another.⁷⁹

⁷¹ RON O'GRADY, *THE RAPE OF THE INNOCENT* 135 (1994). This figure includes Thai children as well as children from other countries who have been trafficked into Thailand for prostitution.

⁷² In § 277 of Title IX Offenses Relating to Sexuality, Thailand punishes anyone 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 over 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.

Criminal Code, Title IX Offenses Relating To Sexuality, § 277, B.E. 2530 (1989) (Thail.) [hereinafter *Thail. Criminal Code*]. Author's revision of a translation sent by End Child Prostitution in Asian Tourism, Thailand.

⁷³ *Id.* § 277 (1989).

⁷⁴ *Id.* § 277 (1989). As of March 1994, 25.29 Baht = US\$1. See *World Almanac*, *supra* note 53, at 826.

⁷⁵ *Thail. Criminal Code* § 277 (1989).

⁷⁶ *Id.* §§ 277^{bis}, 277^{ter} (1989). Furthermore, the commission of indecent acts on children are also punished. See §§ 278-80.

⁷⁷ *Id.* § 282.

⁷⁸ *Id.* § 283.

⁷⁹ In *Thail. Penal Code* § 286, anyone over 16 years old who subsists on earnings of a prostitute is also punished. However, there is an exception for anyone to "whom a prostitute is bound to give maintenance according to law or morality." *Id.* § 286.

While Thailand's laws seem strict and comprehensive in scope, there appears to have been few prosecutions.⁸⁰ After his election in September 1992, Prime Minister Chuan Leekpai declared his commitment to eliminate child prostitution.⁸¹ Yet the tourism policy has been a powerful and influential force to combat.⁸² Tourism, including the sex trade, has become a major industry in Thailand, creating resistance against the child sexual offenses laws. In addition, corruption has undermined enforcement of these laws. In the past, foreign sex tourists received lenient treatment and were often only fined and deported.⁸³ Today, affluent foreign offenders may escape prosecution by bribing Thai officials and then fleeing the country while on bail.⁸⁴ Meanwhile, the Thai police have been known to guard brothels, as well as traffic or procure children for prostitution.⁸⁵ Protection fees from brothel owners further encourage corruption by doubling or tripling a mid-level police officer's salary.⁸⁶ Worse yet, Thai police are often customers themselves, but they are rarely investigated or prosecuted.⁸⁷ At most, police officers may be transferred to another position.⁸⁸

However, the Thai government has attempted to curb corruption by rotating policemen to different locations to prevent protection rackets from forming.⁸⁹ In addition, a government edict places police commissioners on inactive duty if child prostitution is found in their district.⁹⁰ Yet, the government's crackdown on child prostitution has been limited to a few highly publicized police raids on brothels.⁹¹ Even when police task forces are

⁸⁰ Wallace, *supra* note 6. Last June, a case was reportedly pending in Thailand against a French national. Makabenta, *supra* note 68.

⁸¹ Wallace, *supra* note 6.

⁸² Barr, *supra* note 56.

⁸³ Hodgson, *supra* note 2, at 528.

⁸⁴ Wallace, *supra* note 6. As one reporter notes, the corruption is so commonplace that the term "bail" has become a euphemism for bribery. Barr, *supra* note 56.

⁸⁵ Hodgson, *supra* note 2, at 518.

⁸⁶ Patricia Callahan, *Little Progress In Ending Thai Child Prostitution*, Reuters, Ltd. (BC Cycle), Sept. 14, 1994, available in LEXIS, WORLD Library, ALLWLD File. The article cites a U.S. State Department report which states that Thai police could receive US\$120-US\$200 per month in 1992. Today, the protection fees are double or triple that amount.

⁸⁷ Sachs, *supra* note 10, at 29.

⁸⁸ Callahan, *supra* note 86.

⁸⁹ Jonathan Manthorpe, *Child Prostitution: Customers Keeping an Evil Business Alive*, CALGARY HERALD, Aug. 4, 1994, at A5.

⁹⁰ *Id.*

⁹¹ Wallace, *supra* note 6. Thai officials are generally not investigated despite evidence of direct involvement in child prostitution. However, there was a highly publicized prosecution of one official on a murder charge.

effective, the lack of support from the police bureaucracy and the government also hinder enforcement of the child sex laws.⁹²

The prevalence of prostitution must also be attributed to the involvement of sex traffickers, pimps, and brothel owners.⁹³ Pimps and brothel owners often use underage girls and forge identification cards to bypass age restrictions.⁹⁴ The problem of child prostitution also extends beyond Thai borders due to traffickers and procurement agents who go out of the country to kidnap or trick children, and then bring them back into Thailand.⁹⁵ But again, the ease with which sex traffickers and brothel owners may operate reflects back upon the weak law enforcement in Thailand.

In sum, the rapid development of Thailand's sex industry may be attributed in part to internal forces—a combination of political events, economic conditions, and cultural beliefs. Thai laws address the problem of child prostitution, but they are difficult to enforce. Meanwhile, external forces must be recognized for their role in promoting the sex industry. International tourism has introduced countless sex tourists to Thailand.⁹⁶ As a result, consumer countries such as the United States must take responsibility for contributing to the rising number of prostituted children in Thailand.

III. ROLE OF CONSUMER COUNTRIES: THE UNITED STATES IN A COMPARATIVE ANALYSIS WITH EUROPE AND AUSTRALIA

While a large number of the customers of underage prostitutes are Thai men,⁹⁷ statistics reflect the impact that international tourism has had on the expansion of the sex industry in Thailand.⁹⁸ The 1.8 million tourists visiting Thailand in 1980 more than doubled to 4.3 million tourists in 1988.⁹⁹ Three-fourths of these 1988 tourists were unaccompanied men.¹⁰⁰

⁹² Barr, *supra* note 56. Police Colonel Bancha Jarujeet was removed from the head of a child sex-crime task force despite being one of Thailand's most effective enforcers. It was believed that he was doing his job so well that he interfered too much with the profits from tourism and the sex trade, two powerful industries in Thailand. The task force received little support to function effectively, having to rely instead on private resources and assistance from non-governmental organizations. *Id.*

⁹³ Sachs, *supra* note 10, at 29.

⁹⁴ Tasker, *supra* note 30, at 23.

⁹⁵ Sachs, *supra* note 10, at 29.

⁹⁶ Petras & Wongchaisuwana, *supra* note 14, at 36.

⁹⁷ Barr, *supra* note 56.

⁹⁸ Hodgson, *supra* note 2, at 517.

⁹⁹ Sachs, *supra* note 10, at 28.

¹⁰⁰ *Id.*

Today, it is estimated that there are more than five million vacationers to Thailand annually.¹⁰¹ Of these five million tourists, two thirds are sex tourists and ten percent of these sex tourists seek underage sex.¹⁰² The accelerated rise in child prostitution is strongly linked to the growth of tourism.¹⁰³ No current comprehensive study details the number of sex tourists traveling from each country to Thailand. However, non-governmental organizations in Thailand generally concur that the majority of sex tourists and pedophiles are from Germany, Australia, and the United States.¹⁰⁴

With foreign offenders often evading prosecution in Thailand, consumer countries have taken legal action against this sex tourism. The United States, Australia, Germany, and Sweden are four consumer countries that have enacted laws to prosecute citizens for sexual offenses committed against children abroad.¹⁰⁵ While these laws demonstrate a progressive attitude towards curbing sex tourism, their actual legal effect seems minimal. Prosecution of sex offenders appears to be rare.¹⁰⁶ While Thailand must grapple with problems of law enforcement, consumer countries such as the United States must first resolve issues regarding extraterritorial jurisdiction and evidentiary standards, two main obstacles in implementing the laws.

The next section of this Comment will compare the provisions in the U.S. amendment to the Mann Act with the laws of other consumer countries, namely Australia, Germany, and Sweden. All of these countries have indicated that sexual offenses against children will not be tolerated whether at home or abroad. While these consumer countries must be applauded for

¹⁰¹ Norbert Schnorbach, *States and Travel Agencies Move Against Sex Tourism*, Deutsche Presse-Agentur (BC Cycle), July 5, 1994, available in LEXIS, EUROPE Library, ALLWLD File.

¹⁰² *Id.* Quoting a report prepared by the organization, Terre des Hommes.

¹⁰³ Hodgson, *supra* note 2, at 517.

¹⁰⁴ Maree Flynn, *Australians Profiting from Brothels in Asia*, Press Association Newsfile, July 6, 1993, available in LEXIS, AUST Library, ALLNWS File (reporting information from End Child Prostitution in Asian Tourism ("ECPAT") in Thailand). An ECPAT study that was released in 1994, recorded the number of foreign men who were arrested by Asian police for sexually abusing children in Asia. The three year study showed that of the 160 foreign men arrested, 25% were American, 18% were German, and 14% were Australian. O'GRADY, *supra* note 71, at 136-37.

¹⁰⁵ Norway and France also have similar legislation. Meanwhile, Japan, Belgium and New Zealand are in the process of changing their laws. Informational letter from *Coalition on Child Prostitution and Tourism* (Jan. 17, 1995) (on file with author).

¹⁰⁶ Norway appears to have the most recent prosecutions for sexual offenses committed abroad. The 1994 U.N. study on the "Rights of the Child" reported a 1990 case in which three Norwegian men were sentenced for sexually exploiting 13 year old children in Thailand and the Philippines. U.N. Doc. E/CN.4/1994/84/35 (1994).

taking a definitive legal stance, the effectiveness of these laws appears to be limited. This section will explore the extent to which these laws have an impact on deterring sex tourism abroad by addressing issues of jurisdiction and evidence. The following section will then discuss additional measures that the United States should take to support its legal framework. Cooperating with Thai law enforcement and creating a systematic informational exchange will assist prosecutions in the United States. The tourism industry would also benefit from an education campaign to inform businesses and tourists of the legal and medical repercussions of engaging in sex tourism abroad. Ratification of the U.N. Convention on the Rights of the Child will also strengthen the United States' commitment against its participation in the international sex industry.

A. Legal Responses: U.S. Mann Act

In September 1994, the Child Sexual Abuse Prevention Act was passed by Congress and signed by President Bill Clinton to amend the Mann Act.¹⁰⁷ The Mann Act, also known as the White Slave Traffic Act, prohibits the transportation of a woman or girl in interstate or foreign commerce for the purpose of prostitution, debauchery, or for any other immoral purpose.¹⁰⁸ The September amendment expands the Mann Act by adding sections which address the importation of child pornography and the sexual exploitation of children abroad.¹⁰⁹ More specifically, the new law makes it a felony to travel outside the United States to engage a minor in any sexual

¹⁰⁷ ECPAT-USANEWS (End Child Prostitution In Asian Tourism, New York, N.Y.) Mar. 1995, at 2. This amendment was signed into law as part of the 1994 crime bill, also known as the Violent Crime Control and Law Enforcement Act.

¹⁰⁸ White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. § 2421-2424 (1988)). Specifically, § 2423 states:

(a) Transportation With Intent To Engage In Criminal Sexual Activity—A person who knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 2423 (1988).

¹⁰⁹ Pub. L. No. 103-322, 108 Stat. 2036 (1994) (to be codified at 18 U.S.C. § 2258 (1988) (Production of sexually explicit depictions of a minor for importation into the United States); 108 Stat. 2037 (1994) (to be codified at 18 U.S.C. § 2423 (1988), see *infra* note 110).

act which would be illegal in the United States.¹¹⁰ Conviction of this crime is punishable by a fine, a maximum sentence of ten years in prison, or both.¹¹¹ The language "conspires to travel" would also seem to include anyone who assists sex tourists, such as travel agencies or pedophilia organizations. In short, the United States will not tolerate any citizen who is involved in sex tourism abroad.

In the following three sections, the likelihood of successfully implementing the U.S. amendment will be discussed through comparisons to the laws of Australia, Germany, and Sweden. While the statutory language of the Mann Act amendment demonstrates a serious stance against sex tourism, jurisdictional and evidentiary issues reveal the complexities of using this law in practice.

1. Statutory Language: Penalties

The United States has lagged behind Europe and Australia in enacting laws to prohibit its citizens from sexually exploiting children abroad. While the child's age requirements differ in the United States, Australia, Germany, and Sweden, the severity of the penalties are comparable and seem to reflect the extent of each country's involvement in sex tourism abroad. The statutory language alone suggests that these countries strongly condemn the sexual exploitation of children. However, these positions are weakened when offenders fail to be prosecuted and penalties are not imposed.

In June 1994, the Australian government enacted a Crimes Amendment Act specifically addressing "Child Sex Tourism."¹¹² This law apparently imposes the stiffest penalties of all consumer countries with similar laws. The amended Australian law imposes a seventeen-year prison

¹¹⁰ The amendment provides an additional paragraph to 18 U.S.C. § 2423 regarding citizens who travel abroad and engage in sexual activities with minors:

(b) Travel With Intent To Engage In Sexual Act With A Juvenile. A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in § 2245) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

Pub. L. No. 103-322, 108 Stat. 2037 (1994)(to be codified at 18 U.S.C. § 2423 (1988)).

¹¹¹ *Id.*

¹¹² Crimes (Child Sex Tourism) Amendment Act 1994, No. 105 (Austl.) [hereinafter Crimes Amendment Act].

sentence for engaging or inducing a child under the age of sixteen to engage in sexual intercourse.¹¹³ Indecent acts on or in the presence of a child under sixteen outside of Australia are also punishable with a sentence of twelve years.¹¹⁴ Furthermore, any Australian national who organizes or profits from child sex tourism in or outside of Australia receives seventeen years in prison.¹¹⁵ This final provision is apparently aimed at travel agents, tour operators, pedophilia networks, advertisers, and expatriate Australian bar and brothel owners.¹¹⁶ On its face, the Australian statute appears quite comprehensive in scope.

As in the United States and Australia, the punishment under the amended German Penal Code is strict. Since 1993, the government has been able to prosecute any German who sexually exploits a child regardless of the child's nationality.¹¹⁷ Under German law, it is a crime to engage in sexual practices with any child who is under the age of fourteen.¹¹⁸

¹¹³ Crimes Amendment Act 50BA, 50BB (1994).

¹¹⁴ Crimes Amendment Act 50BC, 50BD (1994).

¹¹⁵ In 50DA and 50DB of the Crimes Amendment Act, Australia specifically punishes those who benefit or profit from engaging children in sexual acts.

Benefiting from offence against this Part, 50DA. (1) A person contravenes this section if: (a) the person does an act, or makes an omission, whether within or outside Australia, with the intention of benefiting, whether financially or not, from conduct of a kind that would constitute an offence against this Part; and (b) the act of omission is reasonably capable of resulting in the person benefiting from such conduct; whether or not that conduct in fact occurs or has occurred. Penalty: Imprisonment for 17 years. (2) An example of an act covered by paragraph (1)(b) is profiting from an arrangement that facilitates an offence against this Part.

Encouraging offence against this Part, 50DB. (1) A person contravenes this section if: (a) the person does an act, or makes an omission, whether within or outside Australia, with the intention of encouraging conduct of a kind that would constitute an offence against this Part (other than this section); and (b) the act or omission is reasonably capable of encouraging such conduct; whether or not that conduct in fact occurs. Penalty: Imprisonment for 17 years. (2) In this section: "encourage" means: (a) encourage, incite to, or urge, by any means whatever, for example, by written, electronic, or other form of communication; or (b) aid, facilitate, or contribute to, in any way whatever. (3) These are examples of acts covered by paragraph (1)(b): (a) organising an arrangement that facilitates an offence against this Part (other than this section); (b) assisting a person to travel outside Australia in order to commit an act that would constitute an offence against Division 2; (c) advertising an offer so to assist a person or an arrangement for so assisting a person.

Crimes Amendment Act 50DA, 50DB (1994).

¹¹⁶ Hodgson, *supra* note 2, at 531.

¹¹⁷ Letter from Dr. Susanne Walther, University of Freiburg, to Vickie Li, *Pacific Rim Law & Policy Journal*, (Feb. 3, 1995) (on file with author) [hereinafter Walther letter]; see also U.N. Doc. E/CN.4/1994/84/35 (1994), *supra* note 106 (reference made to Germany for having enacted such a law).

¹¹⁸ STRAFGESETZBUCH § 5 (F.R.G.) [hereinafter StGB]. Certain aspects of German Criminal Law, such as § 176, may be applied to crimes committed by a German citizen abroad, provided that his/her basis of living is in Germany (§ 5, No. 8b), regardless of *lex loci*. Information from Walther letter, *supra* note 117.

Conviction of such an offense brings a sentence of up to ten years in prison.¹¹⁹ While the penalties are comparable to those of other consumer countries, the scope of Germany's laws appears limited by being inapplicable to those who organize or provide access to prostituted children.

In contrast to Germany, Australia, and the United States, Sweden is less recognized as a consumer country.¹²⁰ Nevertheless, it has enacted legal measures to curtail sex tourism from its country. In Sweden, sexual intercourse with a child who is less than fifteen years old is punishable by a maximum sentence of four years in prison.¹²¹ The penalty for sexual molestation of a child less than fifteen years old is a fine or one year in prison.¹²² Like Australia, Sweden also has a law to punish anyone involved in the promotion of prostitution.¹²³ While the legal penalties are not as harsh as those of other consumer countries, Sweden's laws appear to be just as comprehensive.

¹¹⁹ StGB, § 176. The sexual abuse of children is generally punishable by imprisonment for six months to 10 years. In cases of less seriousness, there will be a fine or imprisonment of up to five years. In particularly serious cases, the offense is classified as a felony, raising the statutory minimum term to one year imprisonment. The law defines two situations which regularly bring a case into the serious category: 1) sexual intercourse with the child, or 2) serious physical abuse of the child (§ 176, cl. 3). If the offender recklessly caused the death of the child, the statutory minimum is five years (§ 176, cl. 4). Information from Walther letter, *supra* note 117.

¹²⁰ RON O'GRADY, *supra* note 71, at 136. A three year study conducted by End Child Prostitution in Asian Tourism compiled a list of 160 foreign men who were arrested for child sexual abuse in Asia. Among the 160 men, 40 were from the United States, 28 Germany, 22 Australia, 19 England, 4 Sweden, and 2 Norway. ECPAT notes, however, that the list is incomplete due to those convictions which did not receive news coverage and thereby were not accounted for in the study.

¹²¹ Svensk författningssamling 1984:399, § 6 [hereinafter SFS]. "If a person, otherwise than as previously stated in this chapter, has sexual intercourse with a child under fifteen years of age, a sentence of imprisonment for at most four years shall be imposed for *sexual intercourse with a child*."

¹²² Swedish law punishes the sexual molestation of a child in § 7 of its Code:

A person who, otherwise than as previously stated in this chapter, sexually touches a child under fifteen years of age or induces the child to undertake or participate in an act with sexual implication shall be sentenced to a fine or imprisonment for at most one year for *sexual molestation*.

SFS 1984:399, § 7.

¹²³ §8 of the Swedish Code punishes those who benefit or profit from such activity:

A person who promotes or in an improper way exploits the fact that someone has casual sexual relations against payment shall be sentenced for *procuring* to imprisonment for at most four years. If the person who consigns the usufruct of a dwelling acquires knowledge that the dwelling is wholly or to a substantial extent used for casual sexual relations against payment and fails to do what can reasonably be desired to terminate the consignment of usufruct, and if the activity continues or is resumed in the dwelling, he shall be considered to have promoted the activity and shall be sentenced in accordance with the first paragraph.

SFS 1984:399, § 8.

In sum, the U.S. law is similar in scope and severity to other consumer countries' laws. On its face, the U.S. amendment imposes serious penalties against sex offenders abroad. However, the law has yet to be implemented and will consequently have little effect if the penalties are not imposed. Establishing extraterritorial jurisdiction and meeting evidentiary standards are two concerns that have impeded the prosecution of sexual offenders in other consumer countries. These issues will likely influence the effectiveness of implementing this new U.S. law.

2. *Extraterritorial Jurisdiction*

Although critics of the U.S. amendment cite problems of extraterritoriality,¹²⁴ U.S. jurisdiction is clearly established under the amendment to the Mann Act. In general, international law recognizes five areas of extraterritorial criminal jurisdiction. These areas are territorial, national, universal, passive participation, and protective jurisdiction.¹²⁵ The U.S. government mainly relies on the principles of territoriality and nationality in establishing federal jurisdiction to prescribe criminal law.¹²⁶ Territoriality establishes jurisdiction based on the place where the offense is committed.¹²⁷ In general, the United States will rely on its territorial power and will only try offenses that were committed in the United States.¹²⁸ When territoriality does not apply, the nationality principle may permit jurisdiction over nationals for criminal acts committed abroad.¹²⁹ Yet, Congress must have established this jurisdiction by legislation.¹³⁰ Here, jurisdiction should be clear. The amendment to the Mann Act explicitly permits prosecution of U.S. citizens for traveling or conspiring to travel abroad for purposes of engaging minors in sexual acts.¹³¹

¹²⁴ Wallace, *supra* note 6.

¹²⁵ Abraham Abramovsky, *Extraterritorial Jurisdiction: The United States Unwarranted Attempt to Alter International Law in United States v. Yunis*, 15 YALE J. INT'L L. 121, 123 (1990). The territorial principle establishes jurisdiction based on the place where the offense is committed. National jurisdiction depends on the nationality of the offender. The protective principle focuses on whether a national interest has been injured. The principle of passive personality determines jurisdiction according to the nationality of the victim.

¹²⁶ WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 118 (2d ed. 1986).

¹²⁷ Abramovsky, *supra* note 125.

¹²⁸ LAFAVE & SCOTT, *supra* note 126, at 123.

¹²⁹ *Id.* at 121.

¹³⁰ *Id.* In note 22 of their text, the authors offer two explanations as to how Congress derived this power: (1) from history and the passing down of sovereignty from England, and (2) from the U.S. Constitution in its delegation of sufficiently broad powers to Congress.

¹³¹ Pub. L. No. 103-322, 108 Stat. 2036 (1994) (to be codified at 18 U.S.C. § 2423 (1988)).

Other consumer countries have also had to deal with problems of establishing extraterritorial jurisdiction. The Australian statute, like the U.S. amendment, specifically allows prosecution of its nationals for sexual offenses committed against children even while the nationals are abroad. Australia's external affairs power permits the Commonwealth to enact laws on issues that are "physically external to Australia."¹³² One commentator notes that there would also be sufficient constitutional grounds for jurisdiction due to Australia's treaty obligations under the U. N. Convention on the Rights of the Child.¹³³

In contrast, Germany and Sweden do not appear to have amended their criminal laws to refer specifically to sexual offenses committed abroad. Instead, these two consumer countries seem to have relied on their laws on general extraterritorial jurisdiction to prosecute nationals for such crimes. In Germany, the extraterritorial laws were extended to cover the sexual offenses of a German against a child anywhere.¹³⁴ One commentator suggests that this law also seems to have dispensed with the requirement of double criminalization.¹³⁵ As a result, German nationals may be prosecuted even though there is no comparable law in the country where the act was committed which criminalizes such an act. The only requirement is that the act be punishable under German law. Similarly, prosecution in Sweden may occur when the crimes committed outside of the country are punishable by Swedish law.¹³⁶

As a whole, jurisdiction appears to be more readily established in the United States, Germany, and Australia than in Sweden. In fact, the language of the U.S. amendment differs from the other laws in that extraterritorial jurisdiction may not even be necessary. The statute specifically includes conspiring to travel with the intent of engaging minors in sexual

¹³² Hodgson, *supra* note 2, at 532.

¹³³ *Id.* at 532-33.

¹³⁴ German Federal Penal Code, *supra* note 118, § 5. Certain aspects of German Criminal Law, such as § 176, may be applied to crimes committed by a German citizen abroad, provided that his/her basis of living is in Germany (§ 5, No. 8b), regardless of *lex loci*. See also Schnorbach, *supra* note 101.

¹³⁵ Hodgson, *supra* note 2, at 529-30.

¹³⁶ In § 2, the Swedish law details the circumstances under which a person may be punished:

A person who has committed a crime outside the Realm shall be tried according to Swedish law and in a Swedish court if the person is: 1. a Swedish citizen or an alien domiciled in Sweden; 2. an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present here; or 3. some other alien, who is present in the Realm and the crime is punishable according to Swedish law by imprisonment for more than six months.

acts. It would seem that an offense is committed even if the defendant never left the United States, so long as it can be proven that he conspired to do so and possessed the necessary intent. Jurisdiction would then be based upon territoriality, and not nationality. Nevertheless, it seems likely that offenders will be apprehended while abroad. Consequently, establishing extraterritorial jurisdiction will be necessary. The statutory language of the amendment ensures that this jurisdictional requirement will be met. Yet after establishing jurisdiction, gathering admissible evidence is the next crucial step and is a greater obstacle to overcome in successfully prosecuting U.S. sex offenders.

3. *Evidentiary Standards*

Since the U.S. amendment has only recently been enacted, evidentiary problems have not yet been addressed. However, obtaining evidence from abroad that is admissible in U.S. courts will make it difficult to prosecute sex offenders back in the United States. Other consumer countries have experienced these problems making it likely that evidentiary exceptions are necessary to implement the new U.S. amendment.

Sweden has struggled to meet its own evidence requirements. Although its laws against sexually exploiting children abroad have been in effect for four years, they apparently have had little impact.¹³⁷ In 1994, the U.N. Special Rapporteur's report noted that Sweden faced procedural and substantive problems in establishing proof of the sexual offenses.¹³⁸ Specifically, the child's age could not be proven to the satisfaction of the Swedish authorities.¹³⁹ Consequently, convictions of offenders have been impeded.¹⁴⁰

¹³⁷ Peter Walsh, *Australia: Blatant Absurdity of Feel-Good Legislation*, AUSTRALIAN FINANCIAL REVIEW, Aug. 24, 1994, available in LEXIS, AUST Library, ALLNWS File.

¹³⁸ U.N. Doc. E/CN.4/1994/84/35 (1994), *supra* note 106. The Rights of the Child.

¹³⁹ *Id.* However, in an attempt to assist the gathering of information and evidence, Sweden has established a police liaison officer in Thailand to keep informed of any criminal developments.

¹⁴⁰ In a 1993 case, a Swedish national was arrested for sexually exploiting a 13 year old. The Thai police confiscated the Swede's passport, but the offender obtained a new passport and fled the country. Although the Swede can be prosecuted at home, it is difficult to prove the child's age to the satisfaction of the Swedish authorities. The problem is that the offender cannot be extradited to Thailand as long as he stays in Sweden. Makabenta, *supra* note 68.

However, one case is currently pending trial involving a 66 year old retired civil servant, Bengt Bolin, who was charged with molesting a 13 year old boy in Pattaya, Thailand. Upon paying a US\$4,000 bail in Thailand, Mr. Bolin fled the country only to face prosecution at home in Sweden. Wallace, *supra* note 6.

Australian law anticipates some of these evidentiary issues and permits a child's videotaped testimony to be used as evidence.¹⁴¹ As a result, a prostituted child will not need to go to Australia to appear in court and will presumably be less reluctant about testifying. Although this provision would seem to facilitate the prosecution of Australian sex offenders, numerous convictions are not expected.¹⁴² In fact, this law admitting videotaped testimony has met with a great deal of resistance. Opponents argue that defendants will not be ensured a fair trial.¹⁴³ Since child witnesses will not be exposed to cross examination, they will not risk perjury if the evidence is discovered to be false.¹⁴⁴ This could result in unfounded statements and consequently could prejudice defendants.

In contrast to Australian and Swedish laws, U.S. law focuses on the act of traveling abroad, rather than the sexual act itself. This statute merely refers to traveling or conspiring to travel with the intent to engage in sexual acts with minors.¹⁴⁵ The indication is that it is unnecessary to prove the actual occurrence of a sexual offense. Yet, the difficulty is that it is unclear how much evidence would be needed in order to prove a defendant's intent. As raised earlier, it may be possible to prosecute someone even though he never left the country. Travel contracts, which demonstrate the defendant's intent to travel abroad to engage in sex with a child, may be sufficient.¹⁴⁶ However, this scenario is unlikely to occur.

Instead, most offenders will probably be caught abroad while engaging minors in the sexual offense. Consequently, it will still be necessary to prove that a sexual act with a minor occurred. This situation

¹⁴¹ 50EA of the Australian Crimes Amendment Act specifically provides for video link:

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

Crimes Amendment Act 50EA (1994).

¹⁴² Wallace, *supra* note 6.

¹⁴³ *Stamping Out Child Sex Tourism*, SYDNEY MORNING HERALD, May 25, 1994, available in LEXIS, AUST Library, ALLNWS File [hereinafter SYDNEY MORNING HERALD].

¹⁴⁴ Walsh, *supra* note 139.

¹⁴⁵ Pub. L. No. 103-322, 108 Stat. 2036 (1994) (to be codified at 18 U.S.C. § 2423 (1988)).

¹⁴⁶ ECPAT-USANEWS, *supra* note 107, at 3.

raises problematic evidentiary issues since it requires the complex task of gathering evidence in a foreign country.

a. *Gathering evidence from abroad*

A main concern in implementing the U.S. amendment is gathering evidence to bring back to the United States. Several factors could hinder prosecution of U.S. sex offenders. The foreign language and the lack of contacts between United States and Thai officials will make communication difficult. Obtaining birth certificates to prove a child's age may be complicated by the fact that pimps and brothel owners often forge identification cards for their prostitutes.¹⁴⁷ Meanwhile, establishing the defendant's identity may also be troublesome.¹⁴⁸ The time between the commission of the offense and the trial, and the number of people that could have sexually exploited the child may obfuscate identification of the defendant as the sex offender.¹⁴⁹

Gathering evidence for prosecution in the United States, however, might be helped by the mutual legal assistance treaty ("MLAT") signed by the United States and Thailand.¹⁵⁰ In general, an MLAT facilitates the gathering of admissible evidence from abroad.¹⁵¹ It ensures that requests for information and evidence will conform with the constitutional and evidentiary requirements in both countries.¹⁵² If this treaty is comprehensive in scope, it should assist implementation of the U.S. amendment.¹⁵³ Still, it is questionable whether the evidence that is necessary in sexual offense cases, such as samples of hair, blood, and body fluid, would be covered by this treaty. Even with the MLAT, the prostituted

¹⁴⁷ Tasker, *supra* note 30.

¹⁴⁸ Hodgson, *supra* note 2, at 534.

¹⁴⁹ *Id.*

¹⁵⁰ The treaty on mutual assistance in criminal matters was signed on March 19, 1986, and went into effect on June 10, 1993. U.S. DEP'T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 1994 at 247 (1994).

¹⁵¹ Ethan A. Nadelmann, *The Role of the United States in the International Enforcement of Criminal Law*, 31 HARV. INT'L L.J. 37, 57 (1990).

¹⁵² *Id.* at 59. In the United States, requests are sent through the Office of International Affairs, a part of the Justice Dept.'s Criminal Division, and is processed through a foreign (i.e., Thai) counterpart. The requests include locating persons, finding records, taking testimony, and conducting search and seizure requests.

¹⁵³ However, a problem may arise if the MLAT is limited in scope thereby only applying to particular crimes, such as drug trafficking. In such a case, evidence may not be collected to prosecute sexual offense cases under the Mann Act.

child's testimony may nevertheless be difficult to admit into evidence depending on whether it is given in person.

b. Admissibility of testimony

In prosecuting citizens for sexual offenses committed abroad, the largest obstacle to overcome would be obtaining the prostituted child's testimony and ensuring its admissibility in U.S. courts. Traditionally, witnesses must testify under oath, in person at the trial, and subject to cross-examination.¹⁵⁴ Ideally, these three conditions would be satisfied by bringing the prostituted child to the United States to testify in court. However, bringing the child from Thailand to the United States would be tactically and practically difficult. Not only would the expense be great, but the stress of traveling overseas, coping with a foreign language, and undergoing unfamiliar court procedures would also arguably be harmful to the child. Consequently, the child's testimony will most often need to be obtained through alternative means such as using live television via satellite or an exception to the hearsay rule thereby permitting excited utterances,¹⁵⁵ medical testimony,¹⁵⁶ or a videotaped deposition.¹⁵⁷

Establishing a broadcast link to Thailand to transmit testimony via satellite would seem to be the most ideal method of giving testimony. Since the whole proceeding would be live, the jury would be able to observe the child's manner and the defendant would have the opportunity to audio-visually confront and cross-examine the child. However, using live televised proceedings would undoubtedly be costly and impractical, and therefore highly improbable.¹⁵⁸ In contrast, testimony using excited utterances, medical testimony or a videotaped deposition may be more easily obtained. Admissibility of this testimony will largely depend on how the Federal Rules of Evidence and the Confrontation Clause of the Constitution will be applied.

Under the Federal Rules of Evidence, the hearsay rule expresses a strong preference for testifying under oath, in person at trial, and subject to

¹⁵⁴ See U.S. CONST. AMEND. XI; Hearsay evidentiary rules, FED. R. EVID. 801-805; MCCORMICK ON EVIDENCE 426 (John William Strong gen. ed., 4th ed. 1992) [hereinafter MCCORMICK].

¹⁵⁵ FED. R. EVID. 803(2). See *infra* note 167.

¹⁵⁶ FED. R. EVID. 803(4). See *infra* note 170.

¹⁵⁷ FED. R. EVID. 803(24) OR FED. R. EVID. 804(b)(5).

¹⁵⁸ At the same time, it is feasible that this method could be used in the future when technology is so advanced that the costs of such a procedure would be diminished.

cross-examination.¹⁵⁹ The hearsay rule excludes any out-of-court statements offered as evidence to prove the truth of the matter asserted.¹⁶⁰ Consequently, hearsay statements are per se inadmissible in court unless there is an exception provided by the Federal Rules of Evidence ("FRE") or by Congress.¹⁶¹ Even when exceptions are granted and hearsay is admissible, however, the Confrontation Clause of the Constitution may be violated. The Sixth Amendment guarantees that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."¹⁶² In other words, the Confrontation Clause implies that personal presence and cross-examination of the declarant are necessary when extrajudicial statements are admitted under the hearsay exceptions.¹⁶³ Nevertheless, hearsay may still be admissible despite the Confrontation Clause.

Testimony that qualifies as an excited utterance, medical testimony, or a videotaped deposition is likely to be considered hearsay. Also, with the prostituted child remaining in Thailand and the testimony being given ex parte, the defendant's right to confront and cross-examine the declarant is possibly violated. Yet such testimony might nevertheless be admitted. As stated earlier, hearsay exceptions may be provided by the Federal Rules of Evidence or an act of Congress.¹⁶⁴ Excited utterance and medical testimony are permitted under FRE 803(2) and FRE 803(4) respectively. Alternatively, videotaped depositions could qualify under the catchall exceptions provided by both FRE 803(24) and FRE 804(b)(5). Although the catchall provisions are not considered to be as firmly rooted as the exceptions for excited utterances and medical testimony, Congress has passed a statute approving the use of testimony by two-way closed circuit television and videotaped depositions in order to protect child victims and witnesses.¹⁶⁵

¹⁵⁹ MCCORMICK, *supra* note 154. See FED. R. EVID. 801.

¹⁶⁰ FED. R. EVID. 801(C). "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

¹⁶¹ FED. R. EVID. 802. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress." A number of hearsay exceptions are listed under FRE 803 & 804.

¹⁶² U.S. CONST. AMEND. VI.

¹⁶³ 4 JACK B. WEINSTEIN AND MARGARET A. BERGER, WEINSTEIN'S EVIDENCE, 800-20 (1995) [hereinafter WEINSTEIN].

¹⁶⁴ FED. R. EVID. 802, *supra* note 161.

¹⁶⁵ 18 U.S.C. § 3509(b) (1988).

i. *Excited utterances and medical testimony*

Under FRE 803(2), excited utterances may be permitted as evidence when the occurrence of an event is so startling that the declarant's normal reflective thought process is disrupted.¹⁶⁶ The declarant's spontaneous reactions to the event are treated as sufficiently reliable if the time between the event and the statement is not so long as to allow reflective thought and possible fabrication.¹⁶⁷ In child sexual abuse cases, however, courts have liberally interpreted the length of time allowable between the event and the child's statement.¹⁶⁸

Meanwhile, FRE 803(4) provides for statements made by a patient to a doctor during a medical examination.¹⁶⁹ Courts have admitted the doctor's testimony as reliable evidence because a patient is likely to give accurate information to ensure effective treatment.¹⁷⁰ Still, only statements that are reasonably pertinent to the medical diagnosis are admissible. This provision generally excludes statements regarding fault.¹⁷¹ Yet in child sexual abuse cases, many courts have again allowed exceptions by admitting statements that have specifically identified individuals as perpetrators.¹⁷²

Even if hearsay testimony falls under these federal exceptions, the Confrontation Clause may then pose a problem in trying to admit such testimony. However, courts have generally held that once hearsay is admitted under a firmly rooted exception, such as FRE 803(2) and 803(4), and the

¹⁶⁶ FED. R. EVID. 803(2). "Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."

¹⁶⁷ MCCORMICK, *supra* note 154, at 477.

¹⁶⁸ *White v. Illinois*, 112 S.Ct. 736, 739, 743 (1992) (testimony by child's baby-sitter, child's mother, police officer, and emergency room personnel regarding four year old child's report of sexual assault admissible, despite fact that child's declarations were not all made immediately after the assault).

¹⁶⁹ The Federal Rules of Evidence provides an exception for medical testimony:

Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

Fed. R. Evid. 803(4).

¹⁷⁰ CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE 950 (1995).

¹⁷¹ *Id.* at 952.

¹⁷² See *People v. Rushing*, 548 N.E. 2d 788, 793-94 (1989) (examining physician allowed to testify that the defendant told nine year old victim not to tell anyone and threatened to kill the child's mother and father if she did; examining physician also allowed to name the defendant in testimony); *People v. White*, 555 N.E. 2d 1241, 1251 (Ill. App. 4 Dist. 1990) (medical testimony may include details of the crime).

statement has an indicia of reliability, then it is found to satisfy the Confrontation Clause.¹⁷³

ii. *Videotaped deposition*

In contrast to testimony based on excited utterances and statements from medical treatment, videotaped testimony actually offers the jury an opportunity to observe the child's demeanor, albeit at a delayed time. However, videotaping is only useful if it is structured as a recording of a deposition which in itself is a written record of testimony taken under oath and subjected to cross-examination by the defense. While the U.S. amendment to the Mann Act does not specify the use of videotaped testimony, the Federal Rules of Evidence might be used to admit videotaped depositions.

Federal Rule of Evidence 803(24) provides a catchall category of exceptions that could be applied to videotaped testimony.¹⁷⁴ Before it is admitted, the statement must be both trustworthy and necessary as probative evidence.¹⁷⁵ Similarly, FRE 804 permits hearsay but requires the declarant to be unavailable. Under FRE 804(b)(5), it may be possible to find a prostituted child in Thailand "unavailable" by virtue of being in a foreign country and having no reasonable means by which to attend the trial in the United States.¹⁷⁶ The prostituted child could also be found psychologically

¹⁷³ See *Ohio v. Roberts*, 448 U.S. 56, 66 (1980) (establishing two prong approach which requires 1) the speaker to be unavailable and 2) the statement to be trustworthy and reliable which can be established if it falls under a firmly rooted exception); *White v. Illinois*, 112 S.Ct. 736, 743 (1992) (statements falling under excited utterance and medical statement hearsay exceptions satisfied unavailability requirement in the Confrontation Clause).

¹⁷⁴ One catchall provision under the Federal Rules of Evidence states:

A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes it known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Fed. R. Evid. 803(24).

¹⁷⁵ MUELLER & KIRKPATRICK, *supra* note 170, at 1057.

¹⁷⁶ FED. R. EVID. 804(a): "Unavailability as a witness" includes situations in which the declarant . . . (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance . . . by process or other reasonable means"

unavailable.¹⁷⁷ While a good-faith effort must be made in trying to obtain the declarant's attendance,¹⁷⁸ this effort is examined under heightened scrutiny in criminal cases.¹⁷⁹

Nevertheless, many courts will not permit use of the catchall provisions in FRE 803(24) and 804(b)(5). Congress intended these catchall rules to be used rarely and only in "exceptional circumstances."¹⁸⁰ Furthermore, unlike the federal rules for excited utterances and statements for medical treatment, these two rules are not regarded as firmly rooted exceptions.¹⁸¹ Accordingly, use of these federal rules would seem to be limited. Yet hearsay exceptions may be found in a Congressional act as well as under FRE 803 and 804.¹⁸² Currently, there is a federal statute that permits use of two-way closed circuit television and videotaped depositions to protect child victims and witnesses.¹⁸³ This statute allows such testimony if the court finds that the child cannot testify in open court in the presence of the defendant due to fear, emotional trauma, or some infirmity.¹⁸⁴ Furthermore, Congress has enacted a federal statute to provide financial assistance to states which have laws permitting closed-circuit television and videotaped testimony of children who are abused.¹⁸⁵

These federal and state statutes have been in response to the need to shield abused children from the emotional and psychological trauma of judicial proceedings. Such legislation reflects a general movement towards creating hearsay exceptions for child sexual abuse cases. However, children's statements must still be found to be sufficiently reliable. As stated earlier, out of court statements may be allowed if the statements are trustworthy and necessary. In addition, a showing of the child's potential

¹⁷⁷ See MUELLER & KIRKPATRICK, *supra* note 170, at 1068. A child who is "psychologically unavailable" is incompetent to testify or is psychologically unable to testify. State law provisions often define the term and limit it to cases involving child victims of sexual abuse. *Id.* at 1065.

¹⁷⁸ MCCORMICK, *supra* note 154, at 445.

¹⁷⁹ See *Barber v. Page*, 390 U.S. 719, 724-25 (1968) (state must make good faith effort to obtain presence of witness at trial).

¹⁸⁰ MUELLER & KIRKPATRICK, *supra* note 170, at 1057 (citing a 1974 Senate Report at 20).

¹⁸¹ See *Idaho v. Wright*, 497 U.S. 805, 817 (1990) (Idaho's 803(24) catchall was not a "firmly rooted" exception under the Confrontation Clause; statements' trustworthiness are determined case by case).

¹⁸² FED. R. EVID. 802, *supra* note 161.

¹⁸³ 18 U.S.C. § 3509(b) (1988).

¹⁸⁴ 18 U.S.C. § 3509(b)(1)(B), (2)(B) (1988).

¹⁸⁵ 42 U.S.C. § 3796 (1988); see also *Maryland v. Craig*, 110 S.Ct. 3157, 3167-68 nn.2-4 (1990) (listing 37 states that allow videotaped testimony; 24 states that allow closed circuit television; and 8 states that allow two-way video transmission where child is permitted to see the courtroom).

for emotional trauma is generally required to justify use of videotaped testimony or live remote testimony.¹⁸⁶

After a videotaped deposition is admitted under a hearsay exception, however, there are still concerns about Confrontation Clause violations. Under the federal statute, the defendant must still be afforded his confrontation and cross-examination rights.¹⁸⁷ These conditions are usually dealt with by having the defendant remain in another room during the testimony and then televising images of the witness and the defendant between the two rooms. The defendant also has a means of communicating with his defense attorney who has the opportunity to cross-examine the witness. Yet once a child witness is found to be unavailable under a hearsay rule, some courts have held that the Confrontation Clause requirement of unavailability is also satisfied.¹⁸⁸ If all of these conditions are satisfied, a court may allow testimony to be given outside of the courtroom and the defendant's presence.

Although the hearsay and Confrontation Clause issues may be relatively easy to resolve in the United States, problems may nevertheless arise when dealing with cases from Thailand. There may be objections to the manner in which the child is deposed and the testimony is recorded. The defense could object to the style and substance of the cross-examination if it is not conducted by a U.S. official. Since the proceedings will occur in Thailand, it may be difficult to ensure that U.S. standards will be met. The validity of these objections, however, will most likely be left to the court's discretion.

All of these difficulties suggest that prosecutions in the United States will be rare. The limitations of such legal action, however, should not diminish the importance of having this law. Every prosecution that is achieved is crucial. The complexities involved in implementing these laws merely emphasize the need for additional measures to support the existing legal framework in the United States.

¹⁸⁶ See 18 U.S.C. § 3509(b)(1)(B), (2)(B) (1988); *Maryland v. Craig*, 110 S.Ct. 3157, 3169 (1990) (case-specific finding that live remote testimony was necessary to protect the child's welfare).

¹⁸⁷ 18 U.S.C. § 3509(b) (1988).

¹⁸⁸ MCCORMICK, *supra* note 154, at 446. But see Robert Mosteller, *Remaking Confrontation Clause and Hearsay Doctrine Under the Challenge of Child Sexual Abuse Prosecutions*, 1993 U. ILL. L. REV. 691, 693. Critics protest that the Confrontation Clause has virtually been reduced to a "hollow formalism" under which the defendant's confrontation right is nothing more than a mere opportunity to call and cross-examine the witness.

B. *Additional Deterrents*

Since the amendment to the Mann Act will not singly deter sex tourism abroad, the United States must supplement this legal framework with additional measures. Three steps would aid implementation of this law. First, cooperation with law enforcement officials in Thailand would facilitate an exchange of information. This would establish a more assured means of collecting evidence which would in turn assist prosecutions in the United States. In addition, creating a database of names and past offenses would establish a system of monitoring sex tourists traveling in and out of the United States and Thailand.¹⁸⁹ Consequently, sexual offenses might be prevented from occurring in the future.

An important second step would be to educate tourism participants of their role in the child sex industry abroad. The U.S. amendment already includes prosecution of those who conspire to travel for purposes of engaging in sexual offenses. This would presumably include anyone promoting, arranging, or profiting from sex tours. This legislation could be supplemented by an educational campaign to inform tourists about the penalties for sexual offenses and the risk of AIDS.

Finally, the United States should ratify the United Nations' Convention on the Rights of the Child. By becoming a party to the Convention, the United States would join 154 other countries in recognizing the human rights of children on an international level.¹⁹⁰ Altogether, these three general measures would establish a framework which would support any legal action taken by the United States against its citizens for committing sexual offenses abroad.

¹⁸⁹ Johnson, *supra* note 1. Suggested by End Child Prostitution in Asian Tourism. For further discussion regarding international action against child prostitution see also Comment, Patricia D. Levan, *Curtauling Thailand's Child Prostitution Through An International Conscience*, AM. U. J. INT'L L. & POL'Y 869 (Spring 1994).

¹⁹⁰ U.N. Doc. A/Res/44/25 (1989), in UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL STATUS AS AT 31 DECEMBER 1993 (1994) [hereinafter UNITED NATIONS]. However, an updated report notes there are 168 parties to the Convention. Facsimile of U.N. Doc. A/Res/44/25 (1989) from United Nations, to Vickie Li, *Pacific Rim Law & Policy Journal* (Feb. 10, 1995) (on file with author). More currently, End Child Prostitution in Asian Tourism notes that there are currently 177 countries. ECPAT-USANEWS, *supra* note 107, at 3.

1. *U.S. Cooperation with Law Enforcement in Thailand*

In order to make any impact on child sex tourism, law enforcement must act both at a local level within Thailand and at an international level with the consumer countries.¹⁹¹ To assist prosecutions in the United States for sexual offenses committed abroad, the United States must work actively with law enforcement in Thailand, as other consumer countries have begun to do.

In Australia, the government has stressed cooperation with foreign law enforcement officials to avoid any evidentiary problems that might arise by prosecuting citizens at home. The offender is more likely to be caught before he returns to Australia if Australian officials work with Asian police.¹⁹² This would in turn reduce excessive reliance on using a child's videotaped testimony as evidence.¹⁹³ As a result, concerns about the defendants' confrontation rights might be avoided. Australia has also proposed to enact a mutual-assistance treaty with Thailand to facilitate the exchange of information on Australian pedophiles.¹⁹⁴ Emphasizing this cooperative exchange over prosecution in Australia suggests that the Australian amendment is merely a threat that Australia will not tolerate citizens who go abroad and abuse children in other countries.¹⁹⁵ Enforcing the law through policing instead of the judicial process is preferred.

Great Britain is the only one of the major consumer countries that has failed to enact legislation to prosecute nationals for engaging in sex tourism abroad.¹⁹⁶ However, the British government has agreed to provide the names of known British pedophiles to Asian immigration officials in order to prevent these men from entering Asian countries.¹⁹⁷ Furthermore, the police intelligence work in Britain and Thailand will create a dossier of information and photographs on British pedophiles to block visa

191 Johnson, *supra* note 1. Advocated by the Coalition of Child Prostitution & Tourism. The article also refers to Sweden's liaison officer in Asia, Australia's training courses for Thai social workers with abused children, and Japan's expatriate information center in Bangkok, Thailand as examples of other measures being taken.

192 SYDNEY MORNING HERALD, *supra* note 143.

193 *Id.*

194 Paul Robinson, *Australia: Sex Tourists to Face Jail*, SUNDAY AGE (Melbourne), Nov. 28, 1993, available in LEXIS, AUST Library, ALLWLD File.

195 Wallace, *supra* note 6.

196 UK: *Britain's Lords Clear Bill to Curb Child Sex*, Reuters Textline, Apr. 19, 1995, available in LEXIS, EUROPE Library, UK File. The Sexual Offences Amendment Act passed the House of Lords in April, 1995 and is awaiting passage in the House of Commons. See *infra* note 239 and accompanying text.

197 *Id.*

applications.¹⁹⁸ While these measures appear useful, they are still not enough. Non-governmental organizations are currently pushing for laws to be enacted to stop sex tourism from Great Britain.¹⁹⁹

This type of direct action should be implemented by the United States to bolster enforcement of the amendment to the Mann Act. Exchanging information with the Thai police and immigration officials could stop American sex offenders from reaching Thailand. By blocking visas or passports, sex offenders might be prevented from leaving the United States or denied entrance into Thailand. In addition, the appointment of liaison officers or special police units abroad would increase the likelihood that sufficient, admissible evidence would be collected. This enforcement system might ease the evidentiary problems faced in prosecuting offenders in the United States.

A major obstacle to establishing such a policing system is the sheer expense of posting American officials abroad. The United States will probably be unwilling to make a substantial commitment to this cause when faced with equally pressing domestic concerns. Sending police abroad may demand a greater financial investment than the government would want to make. Nevertheless, an informational network could be implemented fairly easily. This could then be supplemented with regular publication of sex offenders' names. If American offenders are arrested and prosecuted abroad, their names could be published in the United States. Those who refrain from committing sexual crimes in the United States might be discouraged from committing those very acts while abroad. Such public exposure would be an effective deterrent. While it would be necessary to ensure that only the names of convicted sex offenders are publicized, publication would be a less costly alternative to sending law enforcement abroad.

As a result, the limitations in law enforcement techniques emphasize the need for cooperation between the officials of both countries, as well as the need to look for solutions back in the United States to stop sex tourism at its origins.

¹⁹⁸ Stewart Tendler & Richard Ford, *Police Link with Thailand to End Trips for Child Sex*, THE TIMES, Mar. 5, 1994, available in LEXIS, WORLD Library, ALLWLD File.

¹⁹⁹ Coalition on Child Prostitution and Tourism, *supra* note 105.

2. *Private Sector: Tourism Industry*

Involving the private sector in a campaign against the child sex industry would directly strike at the source of sex tourism. As mentioned earlier, the U.S. amendment already refers to anyone who conspires to travel for purposes of engaging minors in sexual acts. Consequently, anyone who promotes or profits from sex tourism including travel agencies, tour operators, and pedophilia organizations should be alert to the legal repercussions of such involvement. The threat of property confiscation or profit forfeiture already exists for pornography offenses. Extending this law to include any association with sex tourism would deter many.²⁰⁰ Pedophilia organizations²⁰¹ and publications²⁰² which advertise child sex tours would be discouraged from promoting sex tourism and child prostitution. Agreements between travel agencies, tour operators, and hotels would then be reexamined to penalize any of the parties involved in child prostitution. Since many tour agencies organize sex tours,²⁰³ withdrawing travel agencies' licenses for promoting sex tours to Asia might also be useful.

At the same time, the United States should move beyond legislative and judicial solutions and encourage education within the tourism industry. Other consumer countries have similarly involved their tourist industries and have focused on two main groups: businesses and tourists.

Alongside Norway's extraterritorial laws which prosecute citizens for sexual offenses abroad, the Norwegian private sector has taken action to combat sex tourism to Asia.²⁰⁴ The Norwegian Travel Business Association has planned to ban sex tour operators from their association as part of its campaign against sex tourism.²⁰⁵ Likewise, Germany has recognized the

²⁰⁰ Hodgson, *supra* note 2, at 532. Australia has this provision in its Proceeds of Crime Act 1987 (cth) § 14. However, Hodgson comments that it may be difficult to determine what establishes liability. How much knowledge must a tour agent have about agency arranged sex tours to be liable?

²⁰¹ Clandestine pedophilia networks have provided sex tourists with information on safe destinations, methods of evading detection, and the legal repercussions in various countries. Hodgson, *supra* note 2, at 519.

²⁰² One publication, Spartacus, has been known to publish information on hotels, bars, and discotheques with the code "YC" (young clientele). Ludmilla Lelis, *Asia: U.S. NGOs Join Fight Against Child Prostitution*, Inter Press Service, Jan. 3, 1992, available in LEXIS, ASIAPC Library, ALLWLD File.

²⁰³ *Crime Bill Cracks Down on Child Exploitation*, CHRISTIAN SCIENCE MONITOR, Sept. 6, 1994, at 19 [hereinafter CHRISTIAN SCIENCE MONITOR]. Sex tours are often offered in package deals which arrange airline, hotel, food, and transportation. Tour agencies may inform clients of available local brothels, arrange an "escort" during the entire stay, or go so far as to provide a different "companion" everyday.

²⁰⁴ U.N. Report, *supra* note 106.

²⁰⁵ *Id.*

key role that tour organizers play.²⁰⁶ Major travel agencies, hotels, trade unions, and international aid organizations have worked to disperse information on the sexual exploitation of children.²⁰⁷ In fact, twelve major tour operators have agreed to boycott hotels that encourage child prostitution.²⁰⁸ Trade unions have also begun to educate travel guides as well as hotel personnel on the problem of child prostitution.²⁰⁹

Consumer countries have also focused on the tourists themselves. In 1993, travel agencies throughout France placed half a million informational leaflets in their customers' tickets.²¹⁰ The leaflets denounced child prostitution in Asia and encouraged travelers to abstain from participating in sex tours.²¹¹ Meanwhile a similar campaign has been implemented in Great Britain through the Thai embassy, rather than the travel agencies. The pressure group, Coalition of Child Prostitution & Tourism ("CCPT") has urged the Thai embassy in London to issue warning leaflets in the passports of prospective travelers upon application for visas.²¹²

These actions would also be persuasive deterrents to sex tourism originating in the United States. An educational campaign similar to those in France and Great Britain would raise tourists' awareness about the sexual offenses committed against children abroad. The campaign should emphasize AIDS awareness and dispel the safe sex myth of having sex with a prostituted child. These health risks must be stressed, particularly in light of the fact that sexual diseases will be spread when sex offenders return to the United States, possibly harming and infecting more children. Consequently, travel agencies, tour operators, and Thai embassies located in the United States should inform travelers about the risks and penalties in Thailand and the United States. Involving all aspects of the tourism sector will help thwart the growth of the child sex industry.

206 Schnorbach, *supra* note 101.

207 *Id.*

208 *Experts to Tackle Global Child Sex Trade*, United Press Intl., Apr. 5, 1995, available in LEXIS, EUROPE Library, CURNWS File.

209 Schnorbach, *supra* note 101.

210 *France Launches Campaign Against Child Prostitution in Asia*, Agence France Presse, Nov. 16, 1993, available in LEXIS, EUROPE Library, ALLWLD File.

211 *Id.*

212 *Thai Child Sex Warning for Tourists*, Press Association Newsfile, June 22, 1994, available in LEXIS, EUROPE Library, ALLWLD File [hereinafter Press Association Newsfile].

3. *U.N. Convention on the Rights of the Child*

A final, crucial step for the United States would be to ratify the U.N. Convention on the Rights of the Child.²¹³ The Convention was unanimously adopted by the U.N. General Assembly on November 20, 1989, and took effect on September 2, 1990.²¹⁴ The Convention is unique in that it focuses on the rights of the individual child, rather than the child as a family or group member.²¹⁵ It is a comprehensive compilation of civil, political, economic, and humanitarian rights, which some regard as a "magna carta for children."²¹⁶ By the end of 1993, 154 countries had become parties to the Convention.²¹⁷ However, the United States is not one of them. The United States only recently signed the Convention and has yet to ratify it.²¹⁸

By becoming a party to the Convention on the Rights of the Child, the United States would recognize the international human rights of children, including civil, political, social, cultural and economic rights.²¹⁹ The United States would be required to report its progress and take the necessary steps to fulfill the obligations listed in the treaty's fifty-four articles. Article 34 requires all participating State Parties to take appropriate "national, bilateral and multilateral measures" to prevent the sexual exploitation and sexual abuse of children.²²⁰ Although the United States has not yet ratified the Convention, the United States has arguably already fulfilled aspects of this article with the amendment to the Mann Act. There is no requirement under the Convention on the Rights of the Child to enact extraterritorial laws or to create particular criminal offenses.²²¹ Yet, the United States has already legislatively approved prosecution of its nationals for traveling or conspiring to travel to commit sexual offenses abroad.²²² Ratifying the Convention would logically seem to follow.

²¹³ Convention on the Rights of the Child, U.N. Doc. A/Res/44/25 (1989) [hereinafter, Convention].

²¹⁴ *Id.*

²¹⁵ CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW at iii (Cynthia P. Cohen & Howard A. Davidson eds., 1990).

²¹⁶ *Id.* (quoting James Grant, Executive Director of UNICEF).

²¹⁷ UNITED NATIONS, *supra* note 190. As stated earlier, 177 countries is the current number of parties to the Convention. ECPAT-USANEWS, *supra* note 107, at 3.

²¹⁸ ECPAT-USANEWS, *supra* note 107, at 3.

²¹⁹ *Id.*

²²⁰ Convention, *supra* note 213.

²²¹ Hodgson, *supra* note 2, at 526.

²²² Pub. L. No. 103-322, 108 Stat. 2036 (1994) (to be codified at 18 U.S.C. § 2423 (1988)).

However, ratification of the Convention on the Rights of the Child depends upon approval by the Senate and State Department, as well as the President.²²³ The comprehensive scope of the Convention may be problematic because the obligations that are imposed might infringe upon individual states' jurisdiction.²²⁴

In general, a treaty adopted by a country's central government is binding on its constituent units as well.²²⁵ As a result, if the U.S. federal government ratified the Convention on the Rights of the Child, all fifty states would be obligated to comply with its terms. Although the treaty's precedence over state law might be well accepted, allowing the Convention to override state law may still be "politically unpalatable."²²⁶ Consequently, a federal-state clause may be required to allow individual states to conform or not to conform to the Convention in certain matters traditionally reserved to the state.²²⁷ A reservation clause serves as a political tool to facilitate Congressional consent in ratifying a treaty.²²⁸ Still, the administration may ratify a treaty without a reservation clause.²²⁹ In fact, a reservation clause may be undesirable because deferring to the states' own policies may defeat the purpose of joining the Convention. Giving states discretion to exclude particular state matters undermines the United States' commitment as well as the strength of the Convention's individual terms.²³⁰

Nevertheless, it seems likely that the United States will need to include a reservation clause before ratifying the Convention on the Rights of the Child in order to dispel any concerns about separation of federal and state power.²³¹ Under international law, the United States may still become a party to a treaty even with a federal-state reservation.²³² The United States would only be bound by the provisions of the Convention that are

²²³ ECPAT-USANEWS, *supra* note 107, at 3. There must be a two-thirds majority vote by the Senate.

²²⁴ Lawrence L. Stentzel, II, *Federal-State Implications of the Convention*, in CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW 57 (Cynthia P. Cohen & Howard A. Davidson eds., 1990).

²²⁵ *Id.* at 58.

²²⁶ *Id.* Reference to Restatement of Foreign Relations.

²²⁷ *Id.* at 64.

²²⁸ *Id.* at 62.

²²⁹ *Id.*

²³⁰ *Id.* at 64.

²³¹ *Id.* at 69.

²³² *Id.* at 66.

unaffected by the reservation clause.²³³ Critics may claim that a reservation clause is merely a half-hearted commitment to the Convention on the Rights of the Child. However, U.S. acknowledgment of the Convention's concerns, particularly with regard to article 34, will be useful in effectuating an end to sex tourism and child prostitution abroad, particularly in Thailand. U.S. ratification of the Convention on the Rights of the Child is key in this campaign.

C. *United States Involvement: Empty Symbolism?*

Critics may question why the United States should expend effort and resources to combat a problem elsewhere. Similar criticism has been raised in other consumer countries. Some have labeled the Australian amendment as mere "feel-good" legislation²³⁴ and have argued that the Australian government should not be doing the work of other foreign countries' governments.²³⁵ There is concern over "innocent" tourists and businessmen being trapped abroad by corrupt police or blackmailed by crime syndicates.²³⁶

In Great Britain, the government has been unwilling to take legal action against citizens who have committed sexual offenses abroad.²³⁷ But in April 1995, the House of Lords passed an amendment to the Criminal Justice Bill after rejecting it twice before.²³⁸ While the Sexual Offences Amendment Bill is currently set to be presented to the House of Commons, immediate passage is unlikely.²³⁹ This reluctance stems from the insistence

²³³ *Id.*

²³⁴ Walsh, *supra* note 137.

²³⁵ SYDNEY MORNING HERALD, *supra* note 143.

²³⁶ *Id.*

²³⁷ Johnson, *supra* note 1. In 1993, approximately 273,000 British citizens traveled to Thailand. Of those travelers, 62.5% were men and of those men, 9.3% went for business and 89.3% went for leisure. Estimated by Coalition on Child Prostitution & Tourism, an alliance of five child campaign organizations (CAFOD, Christian Aid, Save the Children (UK), Anti-Slavery International and Jubilee Campaign).

²³⁸ UK: *Britain's Lords*, *supra* note 196.

²³⁹ It is believed that it will take some time before the bill is passed by the House of Commons. Information provided by the Coalition on Child Prostitution and Tourism (May 2, 1995) (on file with author). The Bill extends jurisdiction to try sexual offences against children committed overseas:

1. (1) Any sexual offences against a child under the age of 18 years committed in any jurisdiction outside the United Kingdom, including the aiding, abetting, counseling or procurement of the commission of the offence, shall be triable and punishable in the relevant jurisdiction of the United Kingdom as if it had been committed in that jurisdiction if—(a) it is an offence under the law of the country or territory where it occurred: and (b) it is a sexual offence in the relevant jurisdiction of the United Kingdom, as defined in section 31(1) of the Criminal Justice Act 1991,

that existing extradition agreements are enough²⁴⁰ and that an extraterritorial law would be unsuccessful due to insufficient evidence from abroad.²⁴¹ Others believe that having weak, unenforceable laws would only undermine the force of other more effective laws. As one member of the House of Lords argued, such legislation would merely be a paper provision and an illusion of practical action.²⁴²

All of these arguments present legitimate concerns. Yet child prostitution in Thailand has flourished in part from foreign influence and involvement. Consumer countries must act because these countries have contributed to the rapid rise in child prostitution. The dire need to end child prostitution in Thailand is emphasized by the overwhelming trauma and stress that result from the dehumanizing treatment of sexual exploitation.²⁴³ Many prostituted children struggle with the double stigma of being a prostitute and being infected with the HIV virus, and often do not receive support services to help them survive.²⁴⁴ Even when services are available, the trauma is so great that rehabilitation of the child is almost impossible.²⁴⁵ The child is generally left psychologically and physically scarred for life.²⁴⁶

Meanwhile in consumer countries without laws prohibiting such behavior, sexual offenders have been able to escape punishment. For example, in the past five years, no Briton who has been arrested by Thai

or under the Sexual Offences (Scotland) Act 1976 or under Article 12 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988; and (c) the person accused of the offence is a citizen of the United Kingdom, or is ordinarily resident in the relevant jurisdiction of the United Kingdom.

(2) Nothing in this Act shall affect the legal principle of double jeopardy. 2. (1) This Act may be cited as the Sexual Offences (Amendment) Act 1995. (2) This Act shall come into force six months after the date on which it is passed. (3) This Act extends to Northern Ireland.

H.L. Bill 25 (1995). Provided by Coalition on Child Prostitution and Tourism, to Vickie Li, *Pacific Rim Law & Policy Journal* (May 2, 1995) (on file with author).

²⁴⁰ UK: *Britain's Lords*, *supra* note 199. However, supporters state that extraterritorial powers already exist to try crimes involving murder, torture, treason, and slavery. It is argued that this protection for adults should be extended to protect children as well.

²⁴¹ Makabenta, *supra* note 68.

²⁴² Debates on the Criminal Justice and Public Order Bill, H.L. Deb. col. 1623-24 (June 14, 1994).

Citing Lord Roger of Earlsferry.

²⁴³ Hodgson, *supra* note 2, at 521.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 536. The author cites RON O'GRADY, *THE CHILD AND THE TOURIST* 132 (1992). See also THE ECUMENICAL COALITION ON THIRD WORLD TOURISM, *CAUGHT IN MODERN SLAVERY: TOURISM AND CHILD PROSTITUTION IN ASIA* (1991) (Report and Proceedings of the Chiang Mai Consultation, May 1-5, 1990).

²⁴⁶ Lelis, *supra* note 202. Citing End Child Prostitution in Asia. Prostituted children must often grapple with torture, depression, drug addiction, suicide, homicidal rage, genital disfigurement, venereal diseases, and AIDS.

police for sexual offenses against children has gone to court in Thailand.²⁴⁷ These offenders have then remained unpunished upon their return to Great Britain. Consequently, laws enacted by consumer countries are a crucial step against sex tourism. Prosecutions may be few, but these prosecutions refute the argument that the laws are merely symbolic. Not to act at all would symbolize an indifference to the plight of prostituted children.

IV. CONCLUSION

The growth of the child sex industry in Thailand can be partially attributed to domestic circumstances as well as international tourism from the United States, Germany, and Australia.²⁴⁸ Radical economic change within Thailand is needed to eliminate poverty in the rural areas from where many prostitutes come.²⁴⁹ At the same time, the international community must acknowledge its role in fueling sex tourism abroad and act responsibly.

Enacting extraterritorial laws to prosecute nationals for committing sexual offenses abroad is essential. In the United States, citizens should know that sexual acts involving minors will not be tolerated whether at home or abroad. Citizens should not be allowed to escape prosecution for criminal acts merely because they are abroad. Yet implementing this amendment will not be easy. While extraterritorial jurisdiction may be quickly established, evidentiary issues will be difficult though possible to resolve through adjusting or changing evidentiary standards to assist prosecutions in the United States.

It would be simplistic to suggest that the laws alone could bring an end to child prostitution. With an internationally pervasive problem, numerous strategies must be pursued in the attempt to end child sex

²⁴⁷ Andrew Drummond, *Briton Buys Freedom From Thai Sex Charge*, THE HERALD (Glasgow), Mar. 8, 1994, available in LEXIS, EUROPE Library, ALLNWS File. The article reports that two British men were released from the Pattaya jail with a bail of approximately 370,000 Baht each. The only other publicized case involved a 48 year old retired man, Eric Hollett, who was arrested, charged, and imprisoned for having sex with five underage girls and for raping two of the girls. However, Hollett was not brought to court in Thailand. Instead, he signed a confession denying the rape, but admitting to having sex with four of the girls. After 84 days in jail, he paid a bail of 410,000 Baht. He has since returned to Britain and denied the charges, believing that there would be no record of the arrest. Lacking the extraterritorial laws to prosecute these sexual offenders, the British courts were powerless to try Hollett.

²⁴⁸ CHRISTIAN SCIENCE MONITOR, *supra* note 203.

²⁴⁹ Lindsay Murdoch, *Thailand Steps Up Campaign to Wipe Out Widespread Child Prostitution*, THE AGE (Melbourne), Reuters Textline, June 30, 1993, available in LEXIS, WORLD Library, ALLWLD File.

tourism. As a result, the United States must provide sufficient resources to support its legal framework. Cooperation with law enforcement, informational exchanges between countries, and educational campaigns within the private sector are all crucial. The tourism industry must also educate businesses and tourists about the health risks and legal penalties. Having this multifaceted approach will help deter sex tourism from the United States and child prostitution in Thailand.

The United States and other consumer countries may be reluctant to get involved because child prostitution abroad may be seen as "another's problem." However, sex tourism has spurred the growth of the child sex industry, turning child prostitution in Thailand into an international problem. Even though the new amendment may result in few prosecutions, these prosecutions are crucial. The United States cannot look the other way as its citizens commit sexual offenses in Thailand because those actions abroad eventually affect the social welfare and health of citizens, particularly children, at home. Children, as representatives of the future, deserve to be protected everywhere.