

# TREATING THE INTERNATIONAL CHILD SEX TOURISM INDUSTRY AS A CRIME AGAINST HUMANITY

---

*Raven Washington\**

I.	INTRODUCTION.....	362	R
II.	INTERNATIONAL NATURE AND PROBLEMATIC EXTENT OF SEX TOURISM.....	365	R
III.	THE NEED FOR UNIVERSAL JURISDICTION.....	369	R
	A. <i>United States Legislation and Enforcement</i> .....	371	R
	1. Participation in International Conventions.....	372	R
	2. Specific Legislation and Enforcement.....	373	R
IV.	MODERN DAY SLAVERY AND THE SEX TRAFFICKING OF CHILDREN.....	374	R
V.	TORTURE AND PSYCHOLOGICAL CONSEQUENCES ON CHILDREN.....	377	R
VI.	THE END ALL BE ALL OF THE SEX TOURISM INDUSTRY: AGENDA FOR THE UNITED STATES.....	380	R
	A. <i>Age of Protection: Consent</i> .....	381	R
	B. <i>Victim Testimony</i> .....	381	R
	C. <i>Effective Co-Operation and Communication Between Sending and Destination Countries</i> .....	382	R
	D. <i>Strict Sentences</i> .....	383	R
VII.	CONCLUSION.....	384	R

---

\* J.D., May 2018, Southwestern Law School. I chose this topic after exploring the popular Red Light District of Amsterdam. The faces of the young girls in the windows inspired my research. I would like to thank my family and friends for their endless support during the writing process. I would also like to thank the Journal's faculty advisors, particularly Professor Johnathan Miller for encouraging me to critically think through my arguments and reach my end result. I would like to dedicate this paper to my amazing mother, Artrice, who sacrificed so much to give my siblings and I the world. Ye are of God, little children, and have overcome them: because greater is he that is in you, than he that is in the world.

## I. INTRODUCTION

Child prostitution and sex trafficking have gained increased visibility throughout the world in recent years. Though we travel the world to find its beauty, in this modern interconnected world, children are more at risk than ever of being sexually exploited or sold to foreign travelers.<sup>1</sup> The United States Department of Justice defines the extraterritorial sexual exploitation of children as the act of traveling to a foreign country and engaging in sexual activity with a child in that country.<sup>2</sup> This is often referred to as “international sex tourism.”<sup>3</sup> Sex tourism occurs over domestic waters and “across international frontiers—affecting victims, communities and nations across the globe.”<sup>4</sup>

According to End Child Prostitution in Asian Tourism (ECPAT), an international child advocacy organization based in Bangkok, child sex tourism in developing countries is a culturally embedded problem significantly exacerbated by foreign tourists.<sup>5</sup> Numerous nationalities are affected by child sex tourists and many tourists come from nations (“sending countries”) that enjoy a standard of living much higher than the countries to which they travel (“destination countries”).<sup>6</sup> Many tourists are identified as Americans who evade punishment, both abroad and in the United States.<sup>7</sup> Some countries try to extraterritori-

---

1. See Najat Maalla M'jid (Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography), *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, U.N. Doc. A/HRC/25/48* at 10 (Dec. 23, 2013); *Child trafficking, exploitation on the rise, warns UN expert*, U.N. NEWS CTR. (Mar. 13, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47346#V9DOKullgdU>; *Sexual exploitation of children: Global response urged to increasingly global crime*, U.N. HUM. RTS. OFF. COMMISSIONER (Mar. 13, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14363&LangID=E>.

2. *Extraterritorial Sexual Exploitation of Children*, U.S. DEP'T JUST., <https://www.justice.gov/criminal-ceos/extraterritorial-sexual-exploitation-children> (last updated Jan. 25, 2016).

3. See Jan Jindy Pettman, *Body Politics: International Sex Tourism*, 18 THIRD WORLD Q. 93, 96 (1997) (“The growth of military-base sex and of international air travel and tourism has increased the demand for paid hospitality, and for paid sex.”).

4. Miriam Cohen, *The Analogy Between Piracy and Human Trafficking: A Theoretical Framework for the Application of Universal Jurisdiction*, 16 BUFF. HUM. RTS. L. REV. 201, 202-03 (2010).

5. See CATHERINE BEAULIEU, *EXTRATERRITORIAL LAWS: WHY THEY ARE NOT REALLY WORKING AND HOW THEY CAN BE STRENGTHENED* 4 (2008), [http://ecpat-france.fr/centre\\_research/2-etudes\\_et\\_rapports/9-Legislation\\_relative\\_a\\_ESEC/4-Extraterritorial\\_laws\\_ECPAT-08.pdf](http://ecpat-france.fr/centre_research/2-etudes_et_rapports/9-Legislation_relative_a_ESEC/4-Extraterritorial_laws_ECPAT-08.pdf).

6. Daniel Edelson, *The Prosecution of Persons Who Sexually Exploit Children In Countries Other than Their Own: A Model For Amending Existing Legislation*, 25 FORDHAM INT'L L. J. 483, 485 (2001) (citing Margaret A. Healy, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of the Children as Mandated by International Law?*, 18 FORDHAM INT'L L. J. 1852, 1853 n.11 (1994)).

7. Edelson, *supra* note 6, at 483-84 (citing *Poverty, Aids Fear Promote Sex Trade*, SEATTLE-POST INTELLIGENCER, Nov. 27, 1995, at A7).

ally extend their domestic laws against the sexual exploitation of children.<sup>8</sup> Unfortunately, this expansion only holds nationals<sup>9</sup> liable for offenses committed in countries other than their own, potentially leaving a gap for offenders to escape criminal liability.<sup>10</sup>

Article 1 of the Draft Optional Protocol of the United Nations Convention of the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children (“Draft Optional Protocol”) recognizes the extent of the problem of sexual exploitation crimes and child trafficking, and identifies the need for both national and international legal responses to alleviate it.<sup>11</sup> All countries but two have signed the Draft Optional Protocol, making it one of the most universally ratified of all U.N. Conventions.<sup>12</sup> Article 1 of the Optional Protocol imposes the more specific obligation of criminalizing child prostitution, and Article 3 requires that this be so, whether or not the acts occur domestically or transnationally.<sup>13</sup> Given the lack of central authority to enforce these international obligations, practical effectiveness is dependent on implementation through domestic legal frameworks.<sup>14</sup> However, the United States has never sent the treaty to the Senate for consent and approval.<sup>15</sup> The United States’ failure to ratify the Draft Optional Protocol proves the need for an amendment of current legislation that encompasses universal jurisdiction.

---

8. Edelson, *supra* note 6, at 484 (citing Mahesh Uniyal, “Sex Tourists” Face Prosecution at Home, INTER PRESS SERV., Aug. 23, 2000).

9. A national is someone “who is legally a citizen of a country or a nation.” *National*, COLLINS, <https://www.collinsdictionary.com/dictionary/english/national> (last visited Jan. 22, 2018).

10. See CHIEF FEDERAL MAGISTRATE PASCOE, FED. MAGISTRATES CT. AUSTR., THE PROBLEM OF ENFORCEMENT IN EXTRATERRITORIAL LAWS RELATING TO SEX TOURISM 5 (2012) (Chief Federal Magistrate Pascoe “[A]ssesses the effectiveness and desirability of extraterritorial sex tourism laws enacted in Australia, Japan, South Korea and Singapore”).

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

12. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (as of June 2, 2010, only two nations have not signed the Convention, for a total of 193 parties); Adam Graycar, *Introduction* to Fiona David, *Child Sex Tourism*, AUSTRALIAN INST. CRIMINOLOGY, June 2000, at 1.

13. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography art. 1 & 3, *opened for signature* May 25, 2000, 2171 U.N.T.S. 227, 248.

14. Marianna Brungs, *Abolishing Child Sex Tourism: Australia’s Contribution*, 8 AUSTRALIAN J. HUM. RTS. 101, 107 (2002).

15. See Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US*, AM. CIV. LIBERTIES UNION (Nov. 20, 2015, 1:30 PM), <https://www.aclu.org/blog/speak-freely/theres-only-one-country-hasnt-ratified-convention-childrens-rights-us>.

Who are these sex tourism victims? Children have always been one of the groups most vulnerable to exploitation in the world. The subjects of the sex trafficking industry are children who cannot in any way express significant forms of legal consent.<sup>16</sup> A universal definition of a child does not exist; therefore, the definition of “child” varies among countries.<sup>17</sup> The United Nations Convention on the Rights of the Child (“U.N. Convention”), as well as the United States, defines the age of majority as eighteen years old.<sup>18</sup> Varying ages of consent frustrate the prosecution of a person for sexual crimes committed against children in other countries.<sup>19</sup> Defendants are likely to raise the defense of legal consent under laws of the country where the incident occurred to a child of a varying age.<sup>20</sup>

Sex tourism, however, “is not an ordinary crime with transnational dimensions” and can be ranked among one of the “most serious crimes of concern to the international community as a whole.”<sup>21</sup> Domestic bans on prostitution are almost impossible to enforce. Therefore, sex tourism with minors should be treated as a crime against humanity with universal jurisdiction where any country can bring charges against an offender.<sup>22</sup> Specifically, the U.S. Department of Justice should take legislative and enforcement measures to hold Americans accountable for the mistreatment of children overseas. In addition, Congress should modify its current legislation to expand and apply the concept of universal jurisdiction to the lesser age of sixteen and under and prosecute those who participate. Under universal jurisdiction, any nation will be able to prosecute foreign offenders for sexual acts committed abroad against non-nationals.

The purpose of this article is to encourage the U.S. legislature to expand current laws and push other countries to adopt universal jurisdiction and treat sex tourism as a crime against humanity. First, this article will begin with an examination of the definition of “sex tour-

---

16. FARHAD MALEKIAN & KERSTIN NORDLOF, PROHIBITION OF SEXUAL EXPLOITATION OF CHILDREN CONSTITUTING OBLIGATION *Erga Omnes* 145 (2013).

17. Margaret A. Healy, *Child Pornography: an international perspective*, COMPUTER CRIME RES. CTR. (Aug. 2, 2004), <http://www.crime-research.org/articles/536/> (paper prepared for the World Congress against Commercial Sexual Exploitation of Children).

18. G.A. Res. 44/25, art. 1, Convention on the Rights of the Child (Nov. 20, 1989); *Age of Majority Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/a/age-of-majority/> (last visited Jan. 22, 2018).

19. Edelson, *supra* note 6, at 490.

20. *See id.*

21. Tome Obokata, *Trafficking of Human Beings as a Crime Against Humanity: Some Implications for the International Legal System*, 54 INT'L & COMP. L. Q. 445, 445 (2005).

22. *Cf. id.* at 448-53 (making the argument that sex trafficking can be considered a crime against humanity).

ism” and describe the international nature of the industry. It will examine the extent of the problem around the world and the specific cause of children’s involvement. Second, this article will analyze the need for universal jurisdiction and how it will help combat the growing sex tourism industry. It will examine the evolution of child sex tourism legislation in the U.S. Third, just as universal jurisdiction is appropriate in slavery and torture, child sex tourism will be analogized to slavery and torture in the modern world.<sup>23</sup> Finally, this article will describe why universal jurisdiction would make the ultimate difference in taming the problem of child sex tourism.

## II. INTERNATIONAL NATURE AND PROBLEMATIC EXTENT OF SEX TOURISM

Child sex tourism is a global problem. It is difficult to measure the exact number of children affected by sex tourism and the exact number of sex tourists.<sup>24</sup> The problem with sex tourism has exponentially increased due to globalization, poverty, organized crime, government corruption, and the growth of the global commercial sex industry.<sup>25</sup> The sex tourism problem is still beyond the reach of the laws created to help combat it.<sup>26</sup>

ECPAT International defines child sex tourism as “the sexual exploitation of children by a person or persons who travel from their home district, home geographical region, or home country [to a foreign country] in order to have sexual contact with children.”<sup>27</sup> Participants of child sex tourism usually come from the United States, Japan,

---

23. *Cf. id.* at 453-56.

24. *See, e.g.*, Office of the Spokesman, *The Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography*, U.S. DEP’T ST. (Dec. 24, 2002), <https://2001-2009.state.gov/r/pa/prs/ps/2002/16216.htm> (“We do not know how many millions of children in the world are victimized in the multi-billion dollar commercial sex trade, since most of this criminal activity is hidden.”).

25. *See* KATHRYN CULLEN-DUPONT, *HUMAN TRAFFICKING* 3-9 (2009).

26. Caitlyn S. Goodman, *Human Trafficking: Modern-Day Slavery in Need of a Modern-Day Solution* (Dec. 2014) (unpublished M.A. in Government thesis, Johns Hopkins University) (on file with the Sheridan Libraries, Johns Hopkins University), <https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/37297/GOODMAN-THESIS-2014.pdf> (first citing Moshoula Capous Desyllas, *A Critique of the Global Trafficking Discourse and U.S. Policy*, 34 *J. Soc. & Soc. WELFARE* 57 (2007); and then citing Amy Farrell & Stephanie Fahy, *The Problem of Human Trafficking in the U.S.: Public Frames and Policy Responses*, 34 *J. CRIM. JUST.* 617 (2009)).

27. ECPAT INT’L, *COMBATING CHILD SEX TOURISM: QUESTIONS & ANSWERS* 6 (2008), [http://www.ecpat.org/wp-content/uploads/legacy/cst\\_fa\\_q\\_eng.pdf](http://www.ecpat.org/wp-content/uploads/legacy/cst_fa_q_eng.pdf).

Australia, and many European countries.<sup>28</sup> “Destination countries include Cambodia, Fiji, the Philippines, Sri Lanka, Thailand, Vietnam, several African countries, and countries in Central and South America.”<sup>29</sup> Tourists focus on these destination countries because their laws “protect children less rigorously.”<sup>30</sup>

The means of participation in child sex tourism vary. Some tourists visit countries as a part of an organized sex tour; others are a part of an organized international pedophile ring; still, others visit and “become involved on a casual experimental basis”<sup>31</sup>—first for the beauty of the land and suddenly falling into curiosity. Some tourists believe that their sexual encounters with children help the children financially better their families and themselves, while others engage in sex tourism because “they enjoy the anonymity and security that comes with being in a foreign land.”<sup>32</sup>

Eva Klain, author of *Prostitution of Children and Child-Sex Tourism: An Analysis of Domestic and International Response*, states that “children in other countries enter prostitution [and consequently the sex tourism industry] through exploitation of their lack of emotional security and self-esteem, homelessness, unemployment, or abuse and neglect.”<sup>33</sup> Other contributing factors of sex tourism include poverty, the expansion of the Internet, travel opportunities, and weak law enforcement.<sup>34</sup>

---

28. Edelson, *supra* note 6, at 485 (first citing Laurie Nicole Robinson, *The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures via Article 39 of the United Nations Convention on the Rights of the Child*, 5 IND. J. GLOBAL LEGAL STUD. 239, 242 (1997); and then citing Defense for Children International, *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children, End Child Prostitution, Pornography and Trafficking for Sexual Purposes (“ECPAT”) Europe Law Enforcement Group (1999)* [hereinafter DCI Report]).

29. Edelson, *supra* note 6, at 485 (citing Healy, *supra* note 17, at 1854).

30. *Id.* at 485-86 (first citing Serge Kovaleski, *Sexual Exploitation in Latin America Soars as Tourism Does*, COM. APPEAL, Jan. 4, 2000, at A10; then citing Tom Hilditch, *The Price of Innocence*, SCOTSMAN, June 23, 2001, at 10; and then citing Uttara Choudhury, *India to Compile Foreign Paedophile Blacklist*, AGENCE FRANCE PRESSE, June 20, 2001 (Lexis Advance)).

31. Hodgson, *supra* note 11, at 515-16 (first citing Bernadette McMenamin, *Child Prostitution: A Tourism Industry Issue*, TRAVELWEEK, July 21, 1993, 6; and then citing ECPAT AUSTRALIA, *CHILDREN IN PROSTITUTION/VICTIMS OF ASIAN TOURISM: A MULTIDISCIPLINARY APPROACH 2*).

32. *Extraterritorial Sexual Exploitation of Children*, *supra* note 2.

33. EVA J. KLAIN, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, AM. BAR ASSOC. CTR. ON CHILDREN & THE LAW, *PROSTITUTION OF CHILDREN AND CHILD-SEX TOURISM: AN ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES* 36 (1999).

34. *See id.* at 36, 37.

Poverty is considered to be the root cause of child sex tourism and trafficking.<sup>35</sup> Author Ron O'Grady believes "poverty may be a consequence of population pressures, a lack of natural resources, an over-spending military and/or a compulsive drive for rapid modernization whose so-called 'trickle-down benefits' fail to reach those who need them most."<sup>36</sup> Unfortunately, many poor countries encourage the growth of their tourism industry to generate revenue while willfully ignoring the problem sex tourism generates.<sup>37</sup> Many children enter the industry because they are poor, illiterate, and lack the protection of a structured family.<sup>38</sup> As such children and their families search desperately for employment, they "become easy game for sex procurement agents who scour impoverished areas" in search of young children from financially struggling families.<sup>39</sup> In an effort to provide for their family, poverty stricken parents often sell their children or force them to leave their homes because brothel owners "convince them that their children will be performing legitimate jobs in the cities."<sup>40</sup> The introduction of Western goods in places where they were previously unavailable encourages parents and children to desire "modern comfort and luxury items[.]" further exacerbating poor parents' willingness to allow or encourage their children to enter the industry.<sup>41</sup>

Globalization and the ease of traveling has allowed the child sex tourism industry to both develop and flourish.<sup>42</sup> The ease and affordability of international travel has allowed for the mobility of individuals to travel abroad and engage in sex tourism with children.<sup>43</sup> In

---

35. Vitit Muntarbhorn (Special Rapporteur on the Sale of Children), *Rep. on the Sale of Children*, ¶ 34, U.N. Doc. E/CN.4/51 (Jan. 28, 1991).

36. Hodgson, *supra* note 11, at 516 (citing RON O'GRADY, *THE CHILD AND THE TOURIST* 123 (1992)).

37. Amy Fraley, *Child Sex Tourism Legislation Under the Protect Act: Does it Really Protect?*, 79 ST. JOHN'S L. REV. 445, 454 (2012).

38. Nancy Beyer, *The Sex Tourism Industry Spreads to Costa Rica and Honduras: Are These Countries Doing Enough to Protect Their Children from Sexual Exploitation?*, 29 GA. J. INT'L & COMP. L. 301, 306 (2001).

39. *Id.*

40. Fraley, *supra* note 37, at 453 n.47 (citing Eric Thomas Berkman, *Responses to the International Child Sex Tourism Trade*, 19 B.C. INT'L & COMP. L. REV. 397, 401 (1996)).

41. Kathy J. Steinman, *Sex Tourism and the Child: Latin America's and the United States' Failure to Prosecute Sex Tourists*, 13 HASTINGS WOMEN'S L. J. 53, 57 (2002) (citing and quoting Healy, *supra* note 17, at 1870).

42. See Arielle K. Eirienne, *Child Sex Tourism: "Us" and "Them" in a Globalized World*, INQUIRIES J. (2009), <http://www.inquiriesjournal.com/articles/34/child-sex-tourism-us-and-them-in-a-globalized-world>.

43. See *id.* (citing JEREMY SEABROOK, *NO HIDING PLACE: CHILD SEX TOURISM AND THE ROLE OF EXTRATERRITORIAL LEGISLATION* xi, 104 (2000)).

addition, “[m]odern technology makes child sex tourism easier.”<sup>44</sup> Often, the Internet acts as the marketplace where sex tourists find children to engage with sexually in other countries, and “also enables child sex tourists to provide each other with [relevant] advice and encouragement.”<sup>45</sup> These chat rooms and message boards provide detailed instructions on how to partake in the child sex tourism industry.<sup>46</sup> Tourists can now speak directly to their victims using social media channels with near immediacy.<sup>47</sup> They are able to groom and procure children before arrival by the click of a button.<sup>48</sup> According to researchers, “[i]n a country like South Korea, where advanced communication technologies are widespread, more than 95 percent of commercial sexual exploitation of children is arranged over the Internet.”<sup>49</sup> There is no accurate number of sex tour travel agents and sex tour websites that exist worldwide;<sup>50</sup> however, in 1999, it was estimated that there were “over twenty-six businesses in the United States that offered and arranged sex tours.”<sup>51</sup>

In many of the destination countries, local laws are not seriously enforced against foreign tourists, resulting in lax punishment.<sup>52</sup> Low-paid law enforcement and other government officials have “been known to accept bribes from sex tourists” and many “are even part owners of brothels and prostitution enterprises.”<sup>53</sup> Seemingly as a result, “The worst sanction . . . sex tourists face is deportation which sometimes results in the offender travelling to another . . . [destination] country to continue the abuse of children.”<sup>54</sup> Sex tourists are rarely, if ever, convicted by the destination country.<sup>55</sup> Some sex tour-

---

44. Edelson, *supra* note 6, at 487 (citing SEABROOK, *supra* note 43, at 122).

45. Edelson, *supra* note 6, at 487 (first citing Joshua Kurlantzick, *Harm's Way: Child Sex Tourism Feeds Thailand's Economy*, THESE TIMES, Aug. 7, 2000, at 6; then citing SEABROOK, *supra* note 43, at 122; then citing Madeleine Mercedes Plasencia, *Internet Sexual Predators: Protecting Children in the Global Community*, 4 J. GENDER RACE & JUST. 15, 19-20 (2000); and then citing Rod Nor-land & Jeffrey Bartholet, *The Web's Dark Secret*, NEWSWEEK, Mar. 19, 2001, at 44).

46. KLAIN, *supra* note 33, at 37.

47. *New Tech Fuelling Global Boom in Child Sex Tourism: Study*, AGENCE FRANCE PRESSE, May 12, 2016 (Lexis Advance).

48. *Id.*

49. *Id.*

50. Linda M. Ambroise, *Regulatory Space and Child Sex Tourism: The Case of Canada and Mexico*, in SEX AND THE SEXUAL DURING PEOPLE'S LEISURE AND TOURISM EXPERIENCES 81, 87 (Neil Carr & Yaniv Poria eds., 2010).

51. *Id.*

52. See KLAIN, *supra* note 33, at 37.

53. *Id.*; Fraley, *supra* note 37, at 456.

54. Hodgson, *supra* note 11, at 518.

55. *Id.* (citing Paul Ehrlich, *Asia's Shocking Secret*, READER'S DIG., Oct. 1993).



ists even jump bail and disappear without a trace during the prosecutorial stage.<sup>56</sup> This is not so shocking since the lucrativeness of the sex trade industry “attracts criminal syndicates and networks worldwide.”<sup>57</sup> Douglas Hodgson, author of *Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies*, identifies additional reasons for the lack of serious enforcement in the destination countries, including: “under-resourced police agencies and labour inspectorate, legal loopholes or lacunas, and the unwillingness of prostituted children to co-operate in police investigations due to a fear of prosecution and possible retaliation by the underworld.”<sup>58</sup>

### III. THE NEED FOR UNIVERSAL JURISDICTION

The complexity of the sex tourism industry requires multiple, long-term coordinated strategies including: enforcement of the law, co-operation of national and international governments and their law enforcement agencies, the involvement of tourist and governmental agencies, and the more efficient targeting of foreign development assistance.<sup>59</sup> Because of a lack of resources, many developing countries do not regularly enforce a prostitution ban, and are known destinations for sex tourists. Although there are federal crimes against sex tourism, the industry has continued to thrive. In order to combat this issue, the extraterritorial sexual exploitation of children should be treated as a crime against humanity and given universal jurisdiction because of its heinous nature.

The International Justice Resource Center defines universal jurisdiction as:

the idea that a national court may prosecute individuals for any serious crime against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect.<sup>60</sup>

Typically, universal jurisdiction results when more conventional criminal jurisdiction does not exist; for instance, when “the defendant

---

56. Hodgson, *supra* note 11, at 518 (citing Ehrlich, *supra* note 55).

57. KLAIN, *supra* note 33, at 37.

58. Hodgson, *supra* note 11, at 518 (first citing *Rep. on the Sale of Children*, *supra* note 35, ¶ 48; and then citing Justice Elizabeth Evatt, *Legal Responses to Child Prostitution and Tourism*, paper presented at the End Child Prostitution in Asian Tourism Conference, Melbourne, Australia, Nov. 1992, 5).

59. Hodgson, *supra* note 11, at 522.

60. *Universal Jurisdiction*, INT’L JUST. RESOURCE CTR., <http://www.ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Jan. 26, 2018).

is not a national of the State, the defendant did not commit a crime in that State's territory or against its nationals, or the State's own national interests are not adversely affected."<sup>61</sup>

The doctrine of universal jurisdiction was originally created as a means to repress piracy.<sup>62</sup> Since piracy occurred in the high seas, it was seen as outside the territory or traditional jurisdictional reach of states.<sup>63</sup> Pirates attacked ships, destroyed international navigational commerce, and thus created both a physical and economic threat to all nations.<sup>64</sup> Furthermore, these attacks were universally viewed as "grave" crimes because they involved heinous and wicked acts.<sup>65</sup> As a result, the basis for the claim that all states would be justified in exercising jurisdiction over pirates was formed.

The nature of crimes like piracy has been heavily relied on as a basis for expanding universal jurisdiction to other offenses.<sup>66</sup> As a result, what was developed was the "gravity of the harm" rationale, which views certain crimes as so heinous as to constitute an attack on the international order, and therefore, justifying states to prosecute alleged offenders in the interests of the international community.<sup>67</sup> This rationale has been invoked to expand the application of universal jurisdiction by analogizing the heinous nature of piracy with that of modern human rights.<sup>68</sup> Like pirates once did, the sex tourists move easily between countries without the fear of prosecution by universal jurisdiction. Sex tourists, like pirates, may evade justice and cause chaos in new locations. Thereby, based on the heinous nature of child sex tourism and its global impact, universal jurisdiction should apply to child sex tourism.

---

61. *Id.*

62. A. Hays Butler, *The Doctrine of Universal Jurisdiction: A Review of the Literature*, 11 CRIM. L.F., no. 3, 2000, at 353, 355 (citing WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 66 (1962)).

63. See Eugene Kontorovich, *Implementing Sosa v. Alvarez-Machain: What Piracy Reveals About the Limits of the Alien Tort Statute*, 80 NOTRE DAME L. REV. 111, 154 (2004).

64. See *id.* at 152-54.

65. See, e.g., *Trials of Major Bonnet and others 1718*, in 15 STATE TRIALS (HOWELL) 1231, 1235 (indicating that "As for the heinousness or wickedness of the offence, it needs no aggravation, it being evident to the reason of all men[.]" when discussing a case involving piracy).

66. See, e.g., M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 VA. J. INT'L L. 81, 103, 107, 108-12, 152-53 (2001).

67. See ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 58-59 (1994).

68. See M. Cherif Bassiouni, *The History of Universal Jurisdiction and Its Place in International Law*, in UNIVERSAL JURISDICTION: NATIONAL COURTS AND PROSECUTION OF SERIOUS CRIMES UNDER INTERNATIONAL LAW 39 (Stephen Macedo ed., 2004).

Currently, “[m]ore than twenty countries legislate extraterritorially against the sexual exploitation of children.”<sup>69</sup> Extraterritorial legislation allows a sovereign country to apply and enforce its laws upon nationals for activities that occur outside of its territorial boundaries.<sup>70</sup> “[Extraterritorial] laws increase the likelihood of successfully prosecuting child sex tourists, because the legislation denies the tourists a safe haven in their home countries.”<sup>71</sup> However, extraterritorial legislation is not the ultimate solution to abolishing the child sex tourism industry because extraterritorial legislation traditionally only covers nationals and their conduct that has a substantial effect within the national’s own country.<sup>72</sup> Restatement § 402 states the bases of state’s jurisdiction:

- (1)
  - (a) conduct that, wholly or in substantial part, takes place within its territory;
  - (b) the status of persons, or interests in things, present within its territory;
  - (c) conduct outside its territory that has or is intended to have substantial effect within its territory;
- (2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and
- (3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.<sup>73</sup>

Thus, to prosecute participating sex tourists, regardless of where they are or come from, universal jurisdiction should apply to the crime of child sex tourism.

#### A. *United States Legislation and Enforcement*

Even a limited U.S. statute has enabled some prosecutions and forced sex tourism underground. As a “sending country,” the United States “enables the international child market to flourish by providing

---

69. Edelson, *supra* note 6, at 493 (citing Defense for Children International, *supra* note 28).

70. Edelson, *supra* note 6, at 493 (citing Mark Weisburd, *Due Process Limitations of Federal Extraterritorial Legislation?*, 35 COLUM. J. TRANSNAT’L L. 379, 383 (1997)).

71. Edelson, *supra* note 6, at 494 (first citing Heather C. Giordanella, *Status of § 2423(B): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 TEMP. INT’L & COMP. L.J. 133, 155 (1998); and then citing *Rep. on the Sale of Children*, *supra* note 35, ¶ 167).

72. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 402(1)(c) (AM. LAW INST. 1987).

73. *Id.* § 402(1)-(3).

a wealthy and willing customer base.”<sup>74</sup> The U.S. has adopted extensive legislation and other measures to curb the international exploitation of children and protect children.<sup>75</sup> “In order for these statutes to apply, the conduct must fall under federal jurisdiction.”<sup>76</sup>

### 1. Participation in International Conventions

International conventions include provisions against child sexual exploitation.<sup>77</sup> In 1989, the United Nations adopted the seminal U.N. Convention on the Rights of the Child (“U.N. Convention”).<sup>78</sup> It is a human rights treaty that sets forth the civil, political, economic, social, health, and cultural rights of children.<sup>79</sup> After its introduction, 196 countries ratified the U.N. Convention.<sup>80</sup> The U.S. signed the U.N. Convention in 1995, but Congress has yet to ratify it.<sup>81</sup> Articles 19, 34, and 35 of the U.N. Convention address the sexual exploitation of children, and require ratifying states to ensure that adequate legislative and enforcement measures exist to protect and to treat child victims of sexual abuse.<sup>82</sup> There is no good reason for the United States not to ratify the U.N. Convention. However, “Ratifying the convention is not just saving face in the international community”—the U.S. must confront truths about the terrible treatment of children and how to bring laws and practices in line with human rights.<sup>83</sup>

---

74. Sara K. Andrews, *U.S. Domestic Prosecution of the American International Sex Tourist: Efforts to Protect Children from Sexual Exploitation*, 94 J. CRIM. LAW & CRIMINOLOGY 415, 415, 422, 428 (2004) (first citing LAURA BARNITZ, *COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: YOUTH INVOLVED IN PROSTITUTION, PORNOGRAPHY AND SEX TRAFFICKING* 16 (2d ed. 2000); and then citing Emily Nyen Chang, *Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 621 (2001)).

75. See, e.g., Mann Act, 18 U.S.C. §§ 2421-2423 (2016).

76. KLAIN, *supra* note 33, at 19.

77. See, e.g., Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter Child Rights Convention]; G.A. Res. 1386 (XIV), Declaration of the Rights of the Child (Nov. 20, 1959).

78. Child Rights Convention, *supra* note 77.

79. See *id.* art. 2, 3, 4, 8.

80. *11. Convention on the Rights of the Child*, U.N. TREATY COLLECTION, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf> (last visited Jan. 27, 2018, 7:30 AM) (detailing that 196 parties have ratified the Convention).

81. See *id.* (indicating that, although the “United States of America [signed the Convention on] 16 Feb. 1995[.]” the United States has not yet ratified the convention, which is apparent by the lack of notation under the “ratification” column).

82. See Child Rights Convention, *supra* note 77, art. 19, 34, 35.

83. Mehta, *supra* note 15.

## 2. Specific Legislation and Enforcement

Federal law makes it a crime for American citizens and U.S. residents to travel between states or to a foreign country “with the intent to engage in any form of sexual conduct with a minor (defined as persons under 18 years of age).”<sup>84</sup> The U.S. Department of Justice, in accordance with 18 U.S.C. § 2251, declares it illegal to assist or help another person travel for these purposes.<sup>85</sup> A conviction could land offenders with high fines and up to 30 years in prison.<sup>86</sup>

Eva Klain points out that, “Proof of actual sexual acts is not required; only proof of travel with the *intent* to engage in sexual acts with a minor.”<sup>87</sup> For successful prosecution based on one’s intent to engage in sexual acts with a minor, intent must have formed prior to traveling; “and such intent may be difficult to prove without direct evidence such as travel arrangements booked through obvious child-sex-tour networks or operations.”<sup>88</sup> However, countries that have strengthened their national laws against child sex tourism have taken very different approaches. Combining the laws that have worked for other nations with the existing laws of the U.S. and universal jurisdiction should be effective in combating sex tourism, with the aim of eliminating the industry altogether.

The United States’ Mann Act (“Act”), which was extended in 1994 with the Child Sexual Abuse Prevention Act, criminalizes traveling in foreign commerce with the purpose of committing a sexual act with a child.<sup>89</sup> Section 2423(b) states:

(b) Travel with intent to engage in illicit sexual conduct.—A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person [who is younger than 18 years old] shall be fined under this title or imprisoned not more than 30 years, or both.<sup>90</sup>

Section 2423(b) punishes a defendant who travels “for the purpose of engaging in any sexual act” with a minor, even if no transpor-

---

84. *Extraterritorial Sexual Exploitation of Children*, *supra* note 2; 18 U.S.C. § 2251(a) (2016).

85. *Extraterritorial Sexual Exploitation of Children*, *supra* note 2; 18 U.S.C. § 2251(b)-(c)(1) (2016).

86. *Extraterritorial Sexual Exploitation of Children*, *supra* note 2; *see* 18 U.S.C. § 2251(e) (2016).

87. KLAIN, *supra* note 33, at 45 (emphasis added).

88. *Id.*

89. *See* 18 U.S.C. §§ 2421-2424 (2016).

90. *Id.* § 2423(b).

tation of a minor occurred.<sup>91</sup> Application of the Act allows the U.S. to effectively prosecute sex tourists before they harm a child.<sup>92</sup> To establish a defendant's criminal "purpose" in traveling, the government need only prove that engaging in a sexual act with a minor was the defendant's significant purpose, but not necessarily the sole purpose, of travel.<sup>93</sup> However, prosecution under the Mann Act has several issues including "the defendant's intent to engage in sexual activity, the purpose of interstate travel, and the defendant's knowledge of minor victim's age."<sup>94</sup> In 2002 and 2003, respectively, the United States effectively strengthened the Mann Act by passing the Sex Tourism Prohibition Act of 2002, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act ("PROTECT Act") and the Trafficking Victim's Protection Reauthorization Act, which removed the "intent" requirement and criminalized the actions of sex tour operators as well as increased the maximum sentence for a violation from fifteen to thirty years.<sup>95</sup>

#### IV. MODERN DAY SLAVERY AND THE SEX TRAFFICKING OF CHILDREN

The trafficking and exploitation of children can be viewed as an act of modern day slavery. The term "slavery" is a recognized term under international law which is given universal jurisdiction.<sup>96</sup> The Slavery Convention of 1926 defines slavery as "the status or condition of a person over whom any or all of the powers attached to the right of ownership are excised[.]" meaning that a "slave" is a person in such condition or status.<sup>97</sup> Farhad Malekian and Kerstin Nordlöf describe in their book titled *Prohibition of Sexual Exploitation of Children Constituting Obligation Erga Omnes*, "The term [slavery] implies the position of a person who has been denied any rights of her/his own and who is forcefully taken by another person or organization in order to be sold, exploited and used in whatever manner deemed necessary for the benefit of the owner."<sup>98</sup> The authors point out that, histori-

---

91. *See id.*

92. Edelson, *supra* note 6, at 527 (Healy, *supra* note 17, at 1906 n.391).

93. Edelson, *supra* note 6, at 529 (citing *United States v. Miller*, 148 F.3d 207, 211-13 (2d Cir. 1998)).

94. KLAIN, *supra* note 33, at 20.

95. *See* 18 U.S.C. §§ 2421-2423 (2016).

96. *See* Stephen Macedo et al., *The Princeton Principles on Universal Jurisdiction* 11, 29 (2001), [https://lapa.princeton.edu/hosteddocs/unive\\_jur.pdf](https://lapa.princeton.edu/hosteddocs/unive_jur.pdf).

97. Slavery Convention, art. I, § 1, Sept. 25, 1926, 60 L.N.T.S. 253.

98. MALEKIAN & NORDLÖF, *supra* note 16, at 123.

cally, the sex trafficking and exploitation of children has been likened to “white slave traffic.”<sup>99</sup>

The White Slave Traffic Act, also known as the Mann Act, was signed into law by President Taft in 1909. Legislators sought to combat forced prostitution by making it illegal to transport a woman across state lines for “prostitution or debauchery, or for any other immoral purpose.”<sup>100</sup> In 1986, Congress amended the Act. The amendment further protected minors and replaced “debauchery” and “any other immoral purpose” with “any sexual activity for which any person can be charged with a criminal offense.”<sup>101</sup> The term “white slavery” became popular to describe the predicament women faced.<sup>102</sup> It was alleged that men would trick, coerce, and drug females to get them involved in prostitution and then force them to stay in brothels.<sup>103</sup>

One of the most important sections of the Mann Act covering minors is Section 2423(a), which prohibits:

(a) Transportation with intent to engage in criminal sexual activity.—A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the 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 and imprisoned not less than 10 years or for life.<sup>104</sup>

Because Section 2423(a) outlaws the transfer of children across state lines for the purpose of prostitution, the statute essentially criminalizes modern day slavery.

In addition, there are a number of international conventions related to abolishing slavery and suppressing sex trafficking to protect and secure the position of women or minors and to prevent and

99. *Id.* at 120.

100. *Knockout, The Mann Act*, PBS (Jan. 2005), <http://www.pbs.org/unforgivableblackness/knockout/mann.html>.

101. Eric Weiner, *The Lone, Colorful History of the Mann Act*, NPR (Mar. 11, 2008, 2:00 PM), <https://www.npr.org/templates/story/story.php?storyId=88104308>.

102. See generally *White Slavery*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/white%20slavery> (last updated Mar. 15, 2018) (defining the term as “enforced prostitution”); *White Slave*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/white%20slave> (last updated Mar. 15, 2018) (defining the term as “a woman or girl held unwillingly for purposes of commercial prostitution”).

103. Hannah Spruce, *Methods of Human Trafficking and Recruitment*, THEHUB (Feb. 15, 2017), <https://www.highspeedtraining.co.uk/hub/methods-of-human-trafficking/>; see *Sex Slavery/Trafficking: Frequently Asked Questions*, SOROPTIMIST, <https://www.soroptimist.org/trafficking/faq.html> (last visited Jan. 20, 2018).

104. 18 U.S.C. § 2423(a) (2016).

criminalize all acts of slavery or similar slavery practices.<sup>105</sup> The International Convention for the Suppression of the Traffic in Women and Children was adopted in 1921 to criminalize the sexual exploitation of women and children.<sup>106</sup> The convention omitted the term “white slave trafficking” and broadened the view for the criminalization of the sexual exploitation of women and children.<sup>107</sup> However, the international laws and conventions have not fixed the overall problem.

In the context of traveling to a foreign country to engage in sex with a minor, subsequent exploitation can easily be regarded as slavery because the right of ownership is fully exercised and retained when people are exploited in the sex industry of destination countries. The children are forcibly kept and are “exploited through acts which are neither permitted by law nor by custom.”<sup>108</sup> Often times, the children are kept drugged to comply. And the issue is prevalent, as “This modern form of slavery is the fastest growing organized crime and considered the third most profitable trafficking activity in the world . . . .”<sup>109</sup>

Sex tourism can be analogized as slavery and should therefore be given universal jurisdiction. The majority of children being sold for sex are girls between the ages of twelve and fourteen.<sup>110</sup> They are abducted, lured or forcibly taken by traffickers and then repeatedly raped, beaten into submission, and sometimes even branded.<sup>111</sup> If girls tried to escape, traffickers often tortured and/or gang raped them.<sup>112</sup> This twenty-first century form of slavery causes victims to be fearful and resistant to reporting this large invisible crime against human-

---

105. MALEKIAN & NORDLÖF, *supra* note 16, at 121.

106. See International Convention for the Suppression of the Traffic in Women and Children, *approved* Sept. 30, 1921, 9 L.N.T.S. 415.

107. MALEKIAN & NORDLÖF, *supra* note 16, at 135.

108. *Id.* at 126.

109. Goodman, *supra* note 26, at 3 (citing Pinghua Sun & Yan Xie, *Human Trafficking and Sex Slavery in the Modern World*, 7 ALB. GOV'T L. REV. 91, 93 (2014)).

110. See RICHARD J. ESTES & NEIL ALAN WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U. S., CANADA AND MEXICO 17 (2001), <http://www.gems-girls.org/Estes%20Wiener%202001.pdf>.

111. Heather J. Clawson et al., *Human Trafficking into and Within the United States: A Review of the Literature*, OFFICE ASSISTANT SECRETARY PLANNING & EVALUATION (ASPE) (Aug. 30, 2009), <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature#>.

112. *Girls, Human Trafficking, and Modern Slavery in America*, THINKPROGRESS (Oct. 6, 2012, 2:00 PM), <https://thinkprogress.org/girls-human-trafficking-and-modern-slavery-in-america-65ccb08523a/>.



ity.<sup>113</sup> Since universal jurisdiction exists against slave trade, it should exist for child sex trafficking, which is categorized as a modern form of slavery. Therefore, universal jurisdiction over sex tourism and sex trafficking would effectively prosecute offenders and abolish this crime as a modern-day form of slavery.

## V. TORTURE AND PSYCHOLOGICAL CONSEQUENCES ON CHILDREN

The crime of sex tourism can also be analogized to the crime of torture. Sex with a minor is rape.<sup>114</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture in Article 1:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>115</sup>

United States Code § 2340 provides the following definitions in relation to torture, beginning with defining torture as:

an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

---

113. See Joachim Hagopian, *Global Human Trafficking, A Modern Form of Slavery*, GLOBALRESEARCH (Apr. 15, 2014), <http://www.globalresearch.ca/global-human-trafficking-a-modern-form-of-slavery/5377853>.

114. E.g., CAL. PENAL CODE § 261.5 (West 2012); see, e.g., Muthucumaraswamy Sornarajah, *Linking State Responsibility for Certain Harms Caused by Corporate Nationals Abroad to Civil Recourse in the Legal System of Home States*, in TORTURE AS TORT: COMPARATIVE PERSPECTIVES ON THE DEVELOPMENT OF TRANSNATIONAL TORT LITIGATION 503 n.51 (Craig M. Scott ed., 2001).

115. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality . . . .<sup>116</sup>

The United States has jurisdiction over any alleged offender who is a citizen of or present in the U.S., regardless of the victim or alleged offender's respective nationalities.<sup>117</sup> Since the crime of torture permits international jurisdiction,<sup>118</sup> it would not be a leap to apply universal jurisdiction to the crime of sex tourism due to its similar nature. Aida Alayarian, a Clinical Director of the Refugee Therapy Centre in the United Kingdom, defines torture as "a strategic means of limiting, controlling, and repressing basic human rights of individuals and communities that is often covert and denied by authorities."<sup>119</sup> Alayarian further explains, "The impact of tortured children varies depending on the child's coping strategies, support, and cultural and social circumstances . . . ."<sup>120</sup> This means that, because destination countries are typically on the lower end of global economic prosperity, children from destination countries, who are most affected by child sex tourism, are most prone to being impacted by forms of torture.

The abuse of power involved in a child's "decision" to prostitute themselves to foreign tourists becomes clear when considering the conditions under which many children make such a "decision."<sup>121</sup> The pimps and brothel owners intentionally inflict pain and suffering on the children to coerce them to have sexual encounters with stran-

---

116. 18 U.S.C. § 2340(1) (2012).

117. *Id.* § 2340A(b).

118. *Id.*

119. Aida Alayarian, *Refugee Therapy Centre, Children, Torture and Psychological Consequences*, 19 *TORTURE* 145, 145 (2009), [https://irct.org/assets/uploads/Children\\_torture\\_and\\_psych\\_consequences.pdf](https://irct.org/assets/uploads/Children_torture_and_psych_consequences.pdf); see also *Torture*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("The infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.").

120. Alayarian, *supra* note 119.

121. Sornarajah, *supra* note 114.

gers.<sup>122</sup> This intentional infliction of severe mental or physical suffering is done for the demand and financial gain.<sup>123</sup> Unfortunately, the childrens' lack of education prevents them from defending themselves from the torture. For the minors involved, these acts have devastating consequences, which may include "long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and even death."<sup>124</sup>

The psychological impact upon the victim is hard to measure. Nevertheless, many children suffer from a myriad of both emotional and physical problems.<sup>125</sup> The children live in constant fear because they are forced to endure violence regularly. The children are fearful of not only the physical abuse inflicted, but the fear of their next client and possible apprehension by the police.<sup>126</sup> In fact, many children are beaten and starved if they do not earn enough money.<sup>127</sup>

Some children are so removed from the reality of the situation due to their abuse that they "believe that the sexual abuse is their fault[;]" others believe "that their pimp is really their boyfriend who loves them."<sup>128</sup> Many children are simply looking for the love and affection from their family, who may have encouraged sexual exploitation in the first place.<sup>129</sup> In order to cope with the ongoing torture, many children turn to drugs while others commit suicide to escape.<sup>130</sup> As shown above, the child sex tourism industry results in the sexual exploitation and torture of children.

---

122. See UNICEF & DEP'T OF WOMEN & CHILD DEV., *MANUAL FOR SOCIAL WORKERS: DEALING WITH CHILD VICTIMS OF TRAFFICKING AND COMMERCIAL EXPLOITATION* 10-11 (2005).

123. See Mohamed Y. Mattar, Adjunct Professor of Law and Co-Director of The Protection Project at Johns Hopkins University, School for Advanced International Studies, Speech at the "Child Sexual Tourism: The Appropriate Legal Response" Conference (Aug. 26-27, 2003) (transcript available online through the Protection Project), <http://www.protectionproject.org/wp-content/uploads/2010/09/Sex-Tourism-Response.pdf>.

124. *What is Trafficking in Persons?*, U.S. DEP'T ST. (June 27, 2017), <https://www.state.gov/jtip/rls/fs/2017/272003.htm>.

125. See *id.*

126. See *Child Sexual Exploitation in Developing Countries*, 44 REV. INT'L COMMISSION JURISTS 42, 45 (1990).

127. Berkman, *supra* note 40, at 402-03.

128. Fraley, *supra* note 37, at 450-51 (quoting *FAQ*, ECPAT, <http://www.ecpat.org/faq/> (last visited Mar. 8, 2018)).

129. See Fraley, *supra* note 37, at 451, 454 (citing KLAIN, *supra* note 33, at 7).

130. See KLAIN, *supra* note 33, at 9.

## VI. THE END ALL BE ALL OF THE SEX TOURISM INDUSTRY: AGENDA FOR THE UNITED STATES

In order to combat sex tourism, extraterritorial sexual exploitation of children should be treated as a crime against humanity because of its heinous nature, but not necessarily created as a new crime under the Rome Statute.<sup>131</sup> The International Crimes Database defines crimes against humanity as “inhumane acts – which would constitute crimes in most of the world’s national criminal law systems – committed as part of a widespread or systematic attack against civilians.”<sup>132</sup> As a result, the sex tourism industry’s widespread and international effect justifies the simpler application of universal jurisdiction to the cause of that effect, sex tourism.<sup>133</sup>

The traditional jurisdictional principles under international law—based on territoriality, nationality of the offender or the victim, or the essential interest of the State—have not been the most effective approach to apprehend traffickers who operate in many states and relocate often. The United States’ legislation against child sex tourism provides a basis for universal jurisdiction but, although the U.S. has begun to act, it is still insufficient. The U.S. should amend its existing legislation to incorporate universal jurisdiction to provide a guideline for other countries to follow. Thus, universal jurisdiction can become a useful tool to suppress a growing enterprise that plagues the world.<sup>134</sup>

Classifying sex tourism as a crime against humanity and applying universal jurisdiction would serve the symbolic purpose of emphasizing its seriousness and would avoid oversimplifying the nature of sex tourism by categorizing it within other crimes of universal concern. Sex tourists, like pirates, are highly mobile individuals because of the growing technology and inexpensive air-travel. Sex tourism constitutes a serious violation of fundamental human rights.<sup>135</sup> Its heinous

---

131. This is because, generally, creating a crime against humanity requires an approved international definition. *Crimes Against Humanity*, INT’L CRIMES DATABASE, <http://www.internationalcrimesdatabase.org/Crimes/CrimesAgainstHumanity> (last visited Jan. 19, 2018). As discussed, countries vary in their definitions and enforcement of laws. Instead, if the United States amends its laws, then other countries will likely follow.

132. KLAIN, *supra* note 33, at 9.

133. *See id.*

134. *See* Antonio Maria Costa, *Preface* to U.N. Off. on Drugs & Crime, *Global Report on Trafficking in Persons* 6, 7 (Feb. 2009), [https://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](https://www.unodc.org/documents/Global_Report_on_TIP.pdf).

135. *See* CHERYL THOMAS ET AL., *DEVELOPING LEGISLATION ON VIOLENCE AGAINST WOMEN AND GIRLS* 214 (May 2011), <http://www.endvawnow.org/uploads/modules/pdf/1355776748.pdf>.

nature is magnified by the fact that it has a harmful physical and emotional impact on children. Universal jurisdiction will eliminate the problem areas that are lacking within national laws. To eliminate sex tourism entirely, a few changes should be made to current legislation and adapted by all countries to create the universal jurisdiction that this crime deserves. If the U.S. implements these small changes into current legislations when prosecuting sex tourism, all other countries are likely to follow.

*A. Age of Protection: Consent*

Since there is no universal age of consent, an international uniform age of consent to safeguard children is required. Generally, countries around the world have set their age of consent between the ages of thirteen and seventeen.<sup>136</sup> The differences in statutory age of consent between countries render extraterritorial prosecution of human trafficking and ultimately child sex tourism difficult.<sup>137</sup> Therefore, the United States should lower its consenting age of eighteen to sixteen, and encourage other countries to adopt this uniform age of consent. Universal jurisdiction and a uniform age of consent will allow consistent enforcement of the law of sexual exploitation of children. Tourists will no longer be able to use the defense of the alleged victim's legal consent under the laws of the country where the incident occurred.<sup>138</sup> The U.S. should expand and implement the changes to its current legislation.

*B. Victim Testimony*

The children who testify against their exploiters should be afforded the greatest protection and support possible. As proposed by Klain, victims' "testimony should be facilitated with the least disruption to their lives and rehabilitation[.]" in order to allow proper prosecution of sex tourists and secure victims' safety.<sup>139</sup> Legislation to protect children should have provisions that make testimony easier on the child, especially since the child often speaks a different language or does not understand the complexities of the foreign legal system. International interpreters should be easily accessible to translate a child's testimony.

---

136. KLAIN, *supra* note 33, at 45.

137. Edelson, *supra* note 6, at 534.

138. *See id.* at 490 (citing DCI Report, *supra* note 28, at 257).

139. KLAIN, *supra* note 33, at 46.

The victim's testimony is the most important evidence for litigation. It may be extremely hard for the child to come forward and relive their experience so it is understandable why children avoid testifying altogether. Telling their story can be done easier when victims are not pressured and intimidated by the presence of lawyers, judges and their oppressor. Author Daniel Edelson contends that the testimony process can be made easier if victims are "allowed to testify via video-link."<sup>140</sup> This is the perfect compromise to the fear of testifying.

The advancement of technology has allowed courts to bring video conferencing to the court room.<sup>141</sup> The jury can see the victim's demeanor while testifying and the child's reaction to questions. In addition, the travel expense is non-existent when the child is not required to appear in court. With video testimony, victims can tell their story uninterrupted in an environment that is comfortable. There will still be a need under U.S. law to protect the defendant; however, safeguarding the interests of the child is the ultimate goal.

C. *Effective Co-Operation and Communication Between Sending and Destination Countries*

To facilitate evidence collection and successful prosecutions in cases of child sex tourism, countries must communicate effectively with each other. The U.S. is an influential country that many countries often follow. If the U.S. creates an effective line of communication, other countries are likely to follow suit. Thus, the U.S. should create a shared database accessible by all other countries. This database can be updated with relevant prosecution information to put other countries on notice of alleged sex tourists. Knowledge of potential tourists who travel in order to sexually exploit children should be globally known. Countries need to ensure that their police forces co-operate with each other to detect and apprehend offenders and investigate offenses.<sup>142</sup> It has been proposed that co-operation between countries can effectively prevent actors in the sex tourism industry from merely relocating from one country to another.<sup>143</sup> In fact, Klain argues that "National legislation should promote strong extradition agreements and other arrangements to ensure that a person who exploits a child

---

140. Edelson, *supra* note 6, at 539.

141. See, e.g., Adam Bloomberg, *How Do I Present My Expert Witness In the Courtroom By Video Conference (AKA: Skype)?*, LITIG. INSIGHTS (Oct. 21, 2016), <http://litigationinsights.com/trial-technology/present-witness-courtroom-video-conference-skype/>.

142. See Hodgson, *supra* note 11, at 539-40.

143. *Id.* at 540.

for sexual purposes abroad is prosecuted in another country.”<sup>144</sup> The U.S. should train overseas police officers so that they are better able to investigate cases of child sexual exploitation and to care for victims. The U.S. should provide assistance to help destination countries enforce their domestic legislation against child sexual exploitation.

In addition to countries communicating with each other, countries should also communicate with the access channels of sex tourists. Currently, access channels—such as tour operators, travel agencies, airlines, and travel and tourism companies, as well as sending countries—have “developed information materials to inform their customers that CST [child sex tourism] is a problem that not only exists in multiple tourism destinations, but is illegal and has dire consequences for children[,]” which is communicated to travelers in several methods.<sup>145</sup> However, awareness should be brought to the forefront regarding the channels for reporting offenses by other tourists because it is not enough that these tourists be warned of the legal consequences of child sex tourism.<sup>146</sup> EPCAT groups provide safe reporting of incidents through email and telephone hotlines, which should be expanded to all nations as an available form of reporting.<sup>147</sup>

#### D. *Strict Sentences*

The criminal justice system was created to deter bad decisions. Author Amy Fraley asserts that “the length of incarceration against child sex tourists must be severe enough to serve as true deterrents of the heinous behavior.”<sup>148</sup> The U.S. sentencing of 30 years is reasonable and severe for universal jurisdiction, and fines should be incorporated as well. The strict sentence allows for a true reflection of their heinous crime and keeps the sex tourist on a travel restriction. Further, the fines may not fully restore the victim’s psychological state, but they compensate the victim for injuries and emotional distress. While this may be seen as overreaching and not perfectly effective, strict sentences and incorporated fines would make it easier to oversee prosecutors and protect the children.

---

144. KLAIN, *supra* note 33, at 47.

145. ECPAT INT’L, *supra* note 27, at 27.

146. *Id.* at 28.

147. *See id.*

148. Fraley, *supra* note 37, at 466.

## VII. CONCLUSION

Generally, crimes are subject to universal jurisdiction because of the extraordinary or aggravated level of heinousness.<sup>149</sup> The enduring violations against each individual victim's autonomy, liberty and basic human rights underscore the aggravated heinousness of child sex tourism. The lucrative financial gain increases the crime's abhorrence.<sup>150</sup> Additionally, child sex tourism affects most, if not all, nations. Because child sex tourism affects all states, it stands to reason that all states should be motivated to combat it.

Through an examination of sex tourism's international nature and cause, the problems with current legislation, and by comparing sex tourism to slavery and torture, the application of universal jurisdiction would close the loopholes in countries' laws that have allowed sex tourists to evade prosecution up to this point.

According to the U.N. News Center, in spite of real efforts and continued commitments, "significant efforts need to be done to protect, rehabilitate and reintegrate victims, provide reparation to children for the damage they have suffered, sanction those responsible, change social norms, and ultimately to prevent the exploitation."<sup>151</sup> Acts of child trafficking occur domestically as well as across international frontiers<sup>152</sup>—affecting victims, communities and nations across the globe. The complex nature of sex tourism, the failure of certain States to prosecute offenders, and the high mobility of offenders reveal the need to define it as a crime against humanity and expand the jurisdictional reach of States to suppose this phenomenon. It is up to the United States to push the boundaries to establish the principle of international law and produce co-operation among other countries. No place is too distant nor too remote to escape universal jurisdiction.

---

149. See, e.g., Kontorovich, *supra* note 63, at 136 (citing Eugene Kontorovich, *The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation*, 45 HARV. INT'L L.J. 184, 205 (2004)).

150. See KLAIN, *supra* note 33, at 37; see also *Child trafficking, exploitation on the rise, warns UN expert*, *supra* note 1.

151. *Child trafficking, exploitation on the rise, warns UN expert*, *supra* note 1 (quoting a statement made by Najat Maalla M'jid, the Special Rapporteur on the sale of children, child prostitution and child pornography, during her presentation to the U.N. Human Rights Council in 2014).

152. See *id.* (quoting a statement made by Najat Maalla M'jid, the Special Rapporteur on the sale of children, child prostitution and child pornography, during her presentation to the U.N. Human Rights Council in 2014).