

A Critical Evaluation of the Effectiveness of International and National Legal Regulatory Responses to the Problems of Child Trafficking, Prostitution and Sex Tourism

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INTRODUCTION

Trafficking in persons for the purpose of their exploitation is widely regarded as a contemporary form of slavery. Together with arms and drug trafficking, trafficking in persons is one of the most lucrative branches of international organized crime.¹ Trafficking in persons is the fastest-growing form of organized crime as it is less risky than these other forms of trafficking² and is estimated to reap profits of up to 12 billion Euros annually.³ As there is no need to cross an international border for trafficking to occur, it can also be accomplished domestically within the borders of a particular state (internal trafficking). Due to the clandestine nature of trafficking in persons, reliable statistics are difficult to garner. However, the US Department of State estimated in its 2005 Trafficking in Persons Report that approximately 600,000 – 800,000 people are transnationally trafficked annually, with children accounting for 50% of the total.⁴ The figure for persons trafficked internally would appear to be much higher.⁵ The situation is approaching a humanitarian crisis. In the Preamble of its *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2000), the United Nations expressed its grave concern “at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography” as well as its deep concern “at the widespread and continuing practice of sex tourism.”⁶

Although child trafficking victims may be subjected to various forms of exploitation such as domestic work, debt bondage, street begging, drug production and trafficking, service in armed conflicts, and organ trafficking, this paper will focus on the commercial sexual exploitation of children, which is the most common type of exploitation faced by trafficking victims. Of particular concern here is the sale of children for child prostitution, child sex

¹ T. Raviv “International Trafficking in Persons: A Focus on Women and Children – The Current Situation and the Recent International Legal Response” (2003) 9 *Cardozo Women’s Law Journal* 659, 660.

² S. Scarpa “Child Trafficking: International Instruments to Protect the Most Vulnerable Victims” (2006) 44 *Family Court Review* 429.

³ Europol 2004 European Union Organised Crime Report 12 (December, 2004) at <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2004.pdf>

⁴ U.S. Department of State Trafficking in Persons Report (2005) 6 available at <http://www.state.gov/documents/organization/47225.pdf>.

⁵ *Ibid.*

⁶ See the third and fourth preambular paragraphs thereof.

tourism, and child pornography. The following account typifies the story of what many trafficked children experience:

Tan is a fourteen-year-old Thai girl. She is from the North-East of Thailand, but like many girls of her age lives and works in Bangkok. Tan works as a dancer in a bar in Pat Pong, which is a centre of the sex tourist industry in Bangkok. Tan has to dance half-naked on the bar. She also has to have sex with tourist men if they select her. Tan was sold to an agent when she was only ten. For two years, she cleared ashtrays and glasses in the bar until she was finally sold to a tourist who purchased her virginity. Since then, Tan has had sex with many tourists and locals every night. She hates what she has to do as she has been beaten and abused often. But she cannot escape this life as it is her duty to honour her parent's debt and she has been threatened with violence if she tries to leave.⁷

Commercial sexual exploitation is the most widespread form of exploitation of trafficked victims.⁸ The International Labour Organization has estimated that in relation to commercial sexual exploitation, women and girls represent 98% of the victims.⁹ South East Asia remains a primary source of forced prostitution with Asian women trafficked within the region to feed a massive sex industry that serves both local men and Western sex tourists.¹⁰ Trafficking in women and girls for forced prostitution has also increased in Eastern Europe since the dissolution of the Soviet Union.¹¹ That girl children are disproportionately represented among the sexually exploited is explicitly recognized by the fifth preambular paragraph of the said *Optional Protocol*.¹²

By the late 1990s, the phenomenon of commercial sexual exploitation was perceived to be such a serious problem as to warrant its categorization by the drafters of the *Rome Statute* (1998),¹³ which established the International Criminal Court as a crime against humanity. Indeed, both sexual slavery and enforced prostitution are explicitly mentioned in Article 7 (1) (g) as constituting such a crime. And in 1999, the International Labour Organization defined

⁷ End Child Prostitution in Asian Tourism, Education Appeal 1994 (leaflet) (ECPAT Australia).

⁸ U.S. Department of State Trafficking in Persons Report (2005) 6.

⁹ P. Belser *et al.* I.L.O. Minimum Estimate of Forced Labour in the World (International Labour Office, 2005).

¹⁰ Raviv, *op.cit.*, 661.

¹¹ *Ibid.*

¹² Indeed Article 7 (2) (e) of the *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (Convention No. 182), adopted by the International Labour Conference on 17 June 1999, calls on Member States of the International Labour Organization to take account of the special situation of girls.

¹³ A/CONF.183/9, adopted on 17 July 1998.

the term “the worst forms of child labour” as comprising all forms of slavery, such as the sale and trafficking of children as well as their use in child prostitution and child pornography.¹⁴

THE CAUSES OF TRAFFICKING IN CHILDREN FOR THE PURPOSES OF THEIR COMMERCIAL SEXUAL EXPLOITATION

The causes of trafficking in children for their use in the commercial sex and sex tourism industries are manifold. Children are the most vulnerable victims of trafficking due to their inferior physical, and intellectual capabilities compared with adults and suffer the gravest consequences. Widely recognized causes of child trafficking include poverty, lack of educational and employment opportunities, rural-urban migration, irresponsible adult sexual behaviour, major political upheavals, the displacement of family members from the effects of armed conflict,¹⁵ inadequate state infrastructure, gender discrimination, and underdevelopment. Local cultural traditions also contribute to child trafficking.¹⁶ Inadequate laws, ineffective law enforcement, corrupt government officials and police personnel, and immature legal systems enable trafficking rings and sex tourists to operate with relative impunity.

On the other side of the equation is the market demand for the ‘services’ that trafficked children are forced to provide. Customers play a significant role by supplying the demand for these services, which keeps child trafficking a multi-billion dollar a year industry.¹⁷ There would not be such a massive offer of trafficking victims by organized trafficking syndicates, were it not for the demand for their services.¹⁸

THE TRAFFICKING EXPERIENCE

Trafficking generally involves three parties – the victims, the customers, and the facilitators. The typical trafficking victim is a young female from a poor family living in a rural area.¹⁹ While child trafficking is mainly done by organized criminal groups, the first point of contact might be a trusted local person who deceives the young woman with promises concerning an attractive employment prospect, marriage proposal, or educational opportunity. Debt bondage

¹⁴ See Article 3 (a) (b) of the *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*.

¹⁵ Child refugees are particularly vulnerable targets for trafficking rings whose activities opportunistically flourish in armed conflict situations.

¹⁶ Scarpa, *op.cit.*, 432; V. Garrard “Sad Stories: Trafficking in Children - Unique Situations Requiring New Solutions” (2006) 35 *Georgia Journal of International and Comparative Law* 145, 154.

¹⁷ Garrard, *op.cit.*, 151-2.

¹⁸ Scarpa, *op.cit.*, 430.

¹⁹ Garrard, *op.cit.*, 151.

is another common recruitment method. Poverty-stricken families may sell a child into prostitution in the mistaken belief that their child has been recruited for a more desirable and decent job. In exchange for an immediate cash payment to the family, the child is placed in a brothel and is personally responsible for paying off the debt over many years. Illegal forms of inter-country adoption can also constitute child trafficking when the adopted child is forced into involuntary servitude and sexually exploited.

Once in the hands of traffickers, children forfeit all control over their own lives. Passports or other travel documents are usually seized from them. Various tactics are used to detain the children and to prevent them from seeking the assistance of local authorities, such as the use of drugs, violence, and threats to the well-being of the family members they have left behind. The victims may be kept in appalling conditions in which their freedom of movement is restricted and their access to health care and education is very limited.²⁰

RESCUE AND ASSISTANCE: THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

Non-Governmental organizations and local non-profit organizations have a significant role to play in the struggle against child trafficking. Their contributions range from victim rescue, protection, and assistance to information-gathering and the development of anti-trafficking standards, policies, and best practices.²¹ The important role of NGOs in combating child trafficking, preventing revictimization, and gathering information and conducting research has been explicitly acknowledged by the United Nations in its *Trafficking Protocol*.²²

CHILD TRAFFICKING FOR THE PURPOSES OF COMMERCIAL SEXUAL EXPLOITATION: INTERNATIONAL HUMAN RIGHTS IN A GENERAL CONTEXT

Child trafficking for the purposes of their commercial sexual exploitation implicates a variety of serious violations of the rights of children under international human rights law. These violations are incompatible with the dignity and worth of the most vulnerable. Article 4 of the *Universal Declaration of Human Rights*²³ recites that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” To identical effect are Sub-articles (1) and (2) of Article 8 of the *International Covenant on Civil and Political Rights*.²⁴ Although no mention is made of trafficking in persons in Article 8, the Human Rights

²⁰ Raviv, *op.cit.*, 662-3; Garrard, *op.cit.*, 152.

²¹ Garrard, *op.cit.*, 170; Raviv, *op.cit.*, 663-4.

²² Article 9(3) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000).

²³ G.A. Res. 217 (A) (III), Article 4, U.N. Doc. A/810 at 71, (1948).

²⁴ G.A. Res. 2200, Article 8, U.N.Doc. A/6316 (1966).

Committee, a body of independent experts that monitors the implementation of the *ICCPR*, has nevertheless interpreted Article 8 as including child trafficking within its scope. In its General Comment 28,²⁵ the Committee declared that having regard to their obligations under Article 8, States parties to the *ICCPR* should inform the Committee of measures taken to eliminate trafficking of women and children and their forced prostitution. All the regional human rights conventions also require that no one shall be held in slavery or servitude.²⁶

Child trafficking and child prostitution also potentially violate other fundamental human rights including the right to life,²⁷ the right to health,²⁸ the right to safe and healthy working conditions,²⁹ the right to education,³⁰ the right not to be subjected to cruel, inhuman or degrading treatment or punishment,³¹ the right to freedom of movement,³² and the right to liberty and security.³³ Governments of those States which are a party to the relevant human rights conventions must ensure that private actors subject to their jurisdiction, including members of organized criminal syndicates, do not contribute to the commission of such human rights violations.

More specific protections from trafficking are provided to young women and girls by other United Nations human rights conventions, which are specifically targeted at certain vulnerable groups. Article 6 of the *Convention on the Elimination of Discrimination Against Women*³⁴ provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” In its monitoring role under the *Convention*, the Committee on the Elimination of Discrimination Against Women has expressed concern over, and made recommendations to States parties on, trafficking in girls and their forced prostitution. The other important international human rights instrument in this regard is the *Convention on the Rights of the Child*.³⁵ When the United

²⁵ United Nations, General Assembly, Article 3: Equality of Rights Between Men and Women, *ICCPR* General Comment 28, 68th Session, 2000, A/55/40 Volume I, 133, 12 (2000).

²⁶ *European Convention for the Protection of Human Rights and Fundamental Freedoms* (4 November 1950), Article 4; *American Convention on Human Rights* (1969), Article 6; *African Charter on Human and Peoples’ Rights* (1981), Article 5.

²⁷ *International Covenant on Civil and Political Rights*, Article 6.

²⁸ *International Covenant on Economic, Social and Cultural Rights* (1966), Article 12.

²⁹ *International Covenant on Economic, Social and Cultural Rights*, Article 7 (b).

³⁰ *International Covenant on Economic, Social and Cultural Rights*, Article 13.

³¹ *International Covenant on Civil and Political Rights*, Article 7.

³² *International Covenant on Civil and Political Rights*, Article 12.

³³ *International Covenant on Civil and Political Rights*, Article 9.

³⁴ G.A.Res. 34/180, Annex, U.N. Doc. A/Res/34/180/Annex (18 December 1979).

³⁵ G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (20 November 1989).

Nations General Assembly adopted it in 1989, it provided the most detailed regime of protection for children against the practices of trafficking and commercial sexual exploitation. Five of its provisions are particularly relevant in this context. Article 11 requires States parties to take measures to combat the illicit transfer of children abroad. Pursuant to Article 32, States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to interfere with the child's education or to be harmful to his or her development. Under Article 34 States parties undertake to protect the child from all forms of sexual exploitation and to take measures to prevent the exploitative use of children in prostitution and in pornographic performances and materials. Article 35 obliges States parties to take measures to prevent the abduction, sale, or traffic in children. Finally, Article 39 requires State Parties to take appropriate measures to promote the physical and psychological recovery and social re-integration of those children who are victims of commercial sexual exploitation. The Committee on the Rights of the Child was set up under the *Convention on the Rights of the Child* to monitor its implementation by States parties. The Committee has emphasized the need to suppress child trafficking many times in its recommendations and observations on States parties' reports. However, the *Convention on the Rights of the Child* lacks meaningful enforcement mechanisms. It lacks remedies for victims and does not provide for mechanisms to allow children, children's advocacy groups, or non-governmental organizations to prosecute complaints concerning human rights violations. Added to this is the failure of State Parties to regulate the conduct of private actors to the extent required to impede trafficking flows.

EARLY ATTEMPTS AT PROTECTING CHILDREN FROM SLAVERY, TRAFFICKING, AND PROSTITUTION

The conditions of slavery and servitude and the slave-trade presented the international community with one of its first international human rights issues, leading to the conclusion of the world's first human rights treaties and the creation of the first human rights non-governmental organizations.³⁶ It is a remarkable irony that 60 years on since Article 4 of the *Universal Declaration of Human Rights* declared that no one shall be held in slavery, and slavery in all its forms shall be prohibited, that trafficking in persons has been a constantly growing phenomenon.³⁷ The trafficking of children to feed the sex tourism and commercial

³⁶ Anti-Slavery Society.

³⁷ Raviv, *op.cit.*, 660.

sex industries may be regarded as a contemporary manifestation or permutation of the age-old practice of slavery.

At the beginning of the 20th century, the term “white slavery” was introduced to describe a new form of the slave trade – forced prostitution. This phenomenon was widespread in the world at that time, consisting of the abduction of women and young girls who were transported abroad and forced into prostitution.³⁸ Four international conventions were adopted between 1904 and 1933 to abolish the white slave trade: the *International Agreement for the Suppression of the White Slave Traffic* (1904),³⁹ the *International Convention for the Suppression of the White Slave Traffic* (1910),⁴⁰ the *International Convention for the Suppression of the Traffic in Women and Children* (1921),⁴¹ and the *International Convention for the Suppression of the Traffic in Women of Full Age* (1933).⁴² The first international instrument to define ‘slavery’ was the *Slavery Convention*⁴³ adopted by the League of Nations in 1926. It defined ‘slavery’ as the “status or condition of a person over whom any or all powers attaching to the right of ownership are exercised.” Although an important step forward, the *Slavery Convention* (1926) failed to establish a permanent monitoring body. The United Nations later expanded the definition of slavery when it adopted in 1956 the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*.⁴⁴ To the 1926 definition of slavery was added debt bondage and any other institution or practice whereby a woman or child may be transferred by a person to another.

In 1949 the United Nations consolidated and extended the scope of all of these earlier treaties into the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* (1949).⁴⁵ The 1949 Convention extended its scope of application to men and boys and adopted an abolitionist model to regulate prostitution. Trafficking and the exploitation of others for prostitution were thus prohibited and punished. However, the 1949 Convention failed to prescribe a definition for trafficking in persons and did not approach trafficking as a human rights issue, leaving victims’ human rights largely unprotected. The Convention has not proved effective and has not been widely ratified as many States regarded

³⁸ Scarpa, *op.cit.*, 435.

³⁹ 1 LNTS 83.

⁴⁰ 8 LNTS 278.

⁴¹ 9 LNTS 415.

⁴² 150 LNTS 431.

⁴³ 60 LNTS 253.

⁴⁴ 266 UNTS 3.

⁴⁵ 96 UNTS 271.

the punishment of offenders in this context as a matter traditionally left to domestic policy.⁴⁶ As with the *Slavery Convention* (1926), the 1949 Convention did not contain implementation and supervision mechanisms to better ensure its efficacy.

The prohibition of slavery and enforced prostitution enjoys an elevated status under international law today. The gender-related offences of sexual slavery and enforced prostitution have been included in Article 7(1)(g) as crimes against humanity in the *Rome Statute* setting up the International Criminal Court.⁴⁷ Indeed, the prohibition of slavery is now a norm of customary international law⁴⁸ and the same can be said of trafficking for the purposes of forced prostitution.⁴⁹ In its 1970 decision in the *Barcelona Traction* case,⁵⁰ the International Court of Justice has gone so far as to include the slavery prohibition as an *erga omnes* State obligation⁵¹ and a *jus cogens* principle.⁵² Nevertheless, despite this long line of treaties abolishing slavery and trafficking in persons, it was acknowledged by the 1990s, in the face of continuous trafficking flows, that these instruments would not be effective in addressing the evolving trafficking patterns in the 21st century.⁵³ Indeed, the United Nations Special Rapporteur on Violence Against Women has described the anti-slavery and anti-trafficking conventions as ‘ineffectual’ in dealing with contemporary trafficking trends.⁵⁴

RECENT ATTEMPTS AT PROTECTING CHILDREN FROM SLAVERY, TRAFFICKING, AND PROSTITUTION

Apart from the *Convention on the Rights of the Child* (1989), other more recent attempts have been made by international conventions to directly or indirectly regulate child trafficking. The *Hague Convention on Inter-country Adoption* (1993)⁵⁵ seeks to address the problem of children being sold under the guise of adoption by standardizing inter-country adoptions and preventing

⁴⁶ Garrard, *op.cit.*, 158-9.

⁴⁷ A/CONF. 183/9, adopted on 17 July 1998.

⁴⁸ M. Cherif Bassiouni “Enslavement as an International Crime” (1991) 23 New York University Journal of International Law and Policy 445, 449.

⁴⁹ K. Knaus *et al.* *Combat of Trafficking in Women for the Purpose of Forced Prostitution* (Ludwig Boltzmann Institute of Human Rights, 2000) 23.

⁵⁰ *Barcelona Traction, Light & Power Co., Limited (Belgium v Spain)* (1970) ICJ Rep. 3, 32-33.

⁵¹ An *erga omnes* obligation is one that is owed by a State towards the international community as a whole and in respect of which all States are concerned in view of the importance of the rights involved and the legal necessity of their protection.

⁵² A *jus cogens* principle is a peremptory norm of general international law from which no derogation is permitted by treaty. See Article 53 of the *Vienna Convention on the Law of Treaties* (1969).

⁵³ Garrard, *op.cit.*, 161-2; Raviv, *op.cit.*, 665-6.

⁵⁴ U.N. Doc. E/CN.4/2000/68 (2000). *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Radhika Coomaraswamy, on Trafficking in Women, Women’s Migration and Violence Against Women.*

⁵⁵ 32 I.L.M. 1134 (29 May 1993).

trafficking that results from non-monitored adoptions.⁵⁶ In its *Worst Forms of Child Labour Convention* (1999),⁵⁷ the International Labour Organization has defined the term “the worst forms of child labour” to include, *inter alia*, “all forms of slavery... such as the sale and trafficking of children”, “the use... of a child for prostitution, for the production of pornography or for pornographic performances” or “work which...is likely to harm the health, safety or morals of children.”⁵⁸ Pursuant to Article 1, ILO. Member States which ratify the Convention assume an unconditional obligation to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”⁵⁹ In terms of its regulatory objective, States parties are obliged to apply penal sanctions,⁶⁰ implement programmes of action,⁶¹ and establish appropriate monitoring mechanisms.⁶² The Convention is not merely abolitionist, however. In terms of a human rights prospective, Article 7 obliges State Parties to take effective measures to provide for the rehabilitation and social integration of children removed from the worst forms of child labour and for their access to free basic education and vocational training. States parties will be required to report to the ILO. Committee of Experts on the Application of Conventions and Recommendations on the steps they have taken to implement the *Worst Forms of Child Labour Convention* (1999) and it can be expected that the Committee will make comments dealing with trafficking in children on a regular basis.

THE UNITED NATIONS *TRAFFICKING PROTOCOL* (2000)

Prior to the adoption by the United Nations in 2000 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000), the protection of trafficking victims might have come from the various treaties and conventions previously mentioned. However, the international community became increasingly concerned by the mid-1990s that stronger protection of persons vulnerable to trafficking could be achieved by a

⁵⁶ S. Matthews “International Trafficking in Children: Will New United States Legislation Provide an Ending to the Story?” (2005) 27 *Houston Journal of International Law* 649, 669.

⁵⁷ *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (17 June 1999) (Convention 182).

⁵⁸ Convention 182, Article 3.

⁵⁹ Article 2 defines the term ‘child’ as all persons under the age of 18. This provides stronger protection for young persons than under Article 1 of the *Convention on the Rights of the Child* (1989) which defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

⁶⁰ Convention 182, Article 7 (1).

⁶¹ Convention 182, Article 6 (1).

⁶² Convention 182, Article 5.

single, universal instrument that addressed all aspects of trafficking, regardless of the age or sex of the victims.⁶³ This would avoid the former ad hoc approach to fighting trafficking using a patchwork of various provisions spread across various international agreements. It was also hoped that a universally agreed-upon definition of trafficking could be attained. There was also a growing recognition of the linkage between transnational organized criminal activities and trafficking in persons. Thus, when the United Nations adopted in 2000 the Convention Against Transnational Organized Crime (2000), it was decided to supplement it with an international instrument in the form of a protocol against trafficking.⁶⁴

The intention of the drafters of the *Trafficking Protocol* (2000) was to adopt a comprehensive and holistic instrument, including measures to prevent trafficking, punish traffickers, and protect the human rights of trafficking victims.⁶⁵ One of the most significant accomplishments of the Protocol was the adoption of a definition of “trafficking in persons” for the very first time under international law. Article 3(a) states that for the purposes of the Protocol:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude...

Pursuant to Article 3(b), the consent of a trafficking victim to the intended exploitation is irrelevant where illicit means are used.⁶⁶ The *Trafficking Protocol* (2000) thus provides a modern and comprehensive definition of trafficking in persons. Former international anti-trafficking efforts focussed mainly on the forced prostitution of women; the Protocol now views trafficking in a wider sense in covering a variety of exploitative practices including child pornography, regardless of gender or age.

In terms of the operative substantive provisions of the Trafficking Protocol (2000), Article 5 requires each State Party to adopt legislative measures to criminalize the conduct

⁶³ See the second and third preambular recitals of the *Trafficking Protocol* (2000).

⁶⁴ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2 November 2000) 40 I.L.M. 335.

⁶⁵ See Article 2 (Statement of Purpose).

⁶⁶ As is the case with Article 2 of the *Worst Forms of Child Labour Convention* (1999), Article 3 (d) of the *Trafficking Protocol* (2000) defines a ‘child’ to mean any person under 18 years of age.

prescribed in the definition of “trafficking in persons” contained in Article 3 (a). Division II contains provisions protecting the human rights of trafficking victims. Each State Party is required to protect the privacy and identity of trafficking victims,⁶⁷ to provide for their physical safety,⁶⁸ and to ensure that its domestic legal system offers victims the possibility of compensation.⁶⁹ Pursuant to Article 6(3), each State Party “shall consider” implementing measures to provide for the physical, psychological, and social recovery of trafficking victims including, in appropriate cases, the provision of appropriate housing, medical assistance, and employment, educational and training opportunities. Nevertheless, the weak and qualified nature of the language in which these provisions on victim assistance are framed means that most of them are not mandatory obligations on the States parties.⁷⁰ Too much latitude is left for interpretation and inaction. Indeed, the United Nations Working Group on Contemporary Forms of Slavery and the United Nations Secretary-General have called upon States to provide protection and assistance to trafficking victims beyond that provided in the Protocol.⁷¹ The only specific reference to children is contained in Article 6(4), which states that each State Party shall take into account “the special needs of children, including appropriate housing, education and care.” No requirements or standards are prescribed in this context, however. Nevertheless, those provisions of the Trafficking Protocol (2000) dealing with assistance to trafficking victims have been supplemented by the Recommended Principles and Guidelines on Human Rights and Human Trafficking⁷² adopted in May 2002 by the United Nations High Commissioner for Human Rights. Recommended Principle 10 deals specifically with the protection of minors and provides that children who are trafficking victims should be identified as such and their best interests shall be considered paramount at all times.

Division III of the Protocol deals with the prevention of trafficking and the co-operation of States parties with each other and with non-governmental organizations to better secure its aims. States parties are required to establish comprehensive policies and programmes and undertake research and information campaigns to prevent and combat trafficking in persons.⁷³

⁶⁷ Article 6 (1).

⁶⁸ Article 6 (5) (to prevent retaliation or intimidation of victims by their traffickers).

⁶⁹ Article 6 (6).

⁷⁰ Reflecting their high costs of delivery, particularly for developing States.

⁷¹ Report of the U.N. Secretary-General, U.N.Doc. E/CN.4/2002/80 (2002)

⁷² Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Substantive Sess. 2002, U.N. Doc. E/2002/68/Add.1 (2002).

⁷³ Article 9 (1) and (2).

States parties are also required to strengthen border controls⁷⁴ and to ensure that their law enforcement authorities shall co-operate with each other through exchanging information on such matters as the methods used by organized criminal groups for trafficking.⁷⁵

The *Trafficking Protocol* (2000) recognizes the need for an appropriate balance between crime-control measures and measures to protect and assist trafficking victims. The Protocol is expected to standardize terminology, laws, and practices of States parties in the trafficking context. However, two shortcomings must be noted. The Protocol does not resolve the issue of whether all facilitated migration for prostitution constitutes trafficking or only that which involves illicit means. As one commentator has noted, the failure to define all migration for prostitution, regardless of the victim's consent, and regardless of the means, does not bode well for children in the sex tourism industry.⁷⁶ The second problem arises in relation to Article 4 of the Protocol dealing with its scope of application. According to Article 4, the Protocol shall apply to those offences which are transnational in nature and involve an organized criminal group. The reasonable implication is that domestic or internal trafficking (regardless of who the trafficker is) and international trafficking perpetrated by others is not covered by the Protocol. However, the *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* has clarified that the Protocol "also applies to the protection of victims regardless of transnationality and involvement of an organized criminal group."⁷⁷ Nevertheless, such an important matter should have been made explicit in Article 4 rather than being left to speculative implication or clarification *ex post facto*.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (2000)

In an effort to strengthen the protection accorded to children in this context by the *Convention on the Rights of the Child* (1989), the United Nations General Assembly adopted the *Second Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*.⁷⁸ States parties are obliged under Article 1 to prohibit under their criminal or penal law the sale of

⁷⁴ Article 11.

⁷⁵ Article 10 (1).

⁷⁶ Garrard, *op.cit.*, 164. This apparent gap is implied in the combined effect of Sub-articles (a) (b) and (c) of Article 3 of the *Trafficking Protocol* (2000).

⁷⁷ United Nations Office on Drugs and Crime Division for Treaty Affairs (*Legislative Guide for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* 259, para. 25 (United Nations, 2004).

⁷⁸ Opened for signature 25 May 2000; entered into force 18 January 2002.

children,⁷⁹ child prostitution,⁸⁰ and child pornography.⁸¹ Pursuant to Article 3, States parties shall ensure that various activities are criminalized, “whether such offences are committed domestically or transnationally or on an individual or organized basis.” This presupposes an extra-territorial operation of each State Party’s criminal law and in terms is wider in its scope of application than Article 4 of the *Trafficking Protocol* (2000). The various activities criminalized include the sale of children for their sexual exploitation, procuring or providing a child for child prostitution, or producing or distributing child pornography.

Article 4 of the *Second Optional Protocol* deals with the exercise by States parties of their jurisdictional sovereignty in relation to such offences. Each State Party must exercise its criminal jurisdiction over those offences committed within its own territory (pursuant to the territorial principle of jurisdictional sovereignty).⁸² By contrast, each State Party may exercise its jurisdiction when the alleged offender is a national of that State Party (pursuant to the active nationality principle) or when the victim is a national of that State Party (pursuant to the passive nationality principle).⁸³ To better ensure that an offender does not escape punishment, the various activities criminalized by the *Second Optional Protocol* shall be deemed to be included as extraditable offences in any existing extradition treaty between States parties.⁸⁴ States parties must adopt and implement laws, policies, and programmes to prevent the various criminalized activities⁸⁵ and the measures to provide for the seizure and confiscation of goods used to commit the offences and the proceeds derived therefrom.⁸⁶

The *Second Optional Protocol* also contains provisions to protect and assist child victims of the various criminalized activities. States parties are required to protect the rights of child victims throughout the criminal justice process by, *inter alia*, protecting their privacy and identity.⁸⁷ Other provisions concerning child victims are framed in weak and flexible language.

⁷⁹ Defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.

⁸⁰ Defined as “the use of a child in sexual activities for remuneration or any other form of consideration”.

⁸¹ Defined as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”.

⁸² Article 4 (1).

⁸³ Article 4 (2). Each State Party is obliged under Article 4 (3) to exercise its criminal jurisdiction when the alleged offender is one of its own nationals and present within its territory and it does not extradite the offender to another State Party because of a constitutional barrier to such extradition.

⁸⁴ Article 5 (1).

⁸⁵ Article 9 (1).

⁸⁶ Article 7.

⁸⁷ Article 8 (1) (e).

For example, States parties are only required to take all ‘feasible’ measures to ensure ‘appropriate’ assistance to victims, “including their full social reintegration and ... physical and psychological recovery.”⁸⁸

The *Second Optional Protocol* clearly recognizes the critical role played by international co-operation as a means of combating these often transnational activities. States Parties shall afford to each other mutual assistance in gathering evidence and in their criminal investigations and extradition proceedings.⁸⁹ States parties are also required to “take all necessary steps to strengthen international co-operation ... for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.”⁹⁰

The *Second Optional Protocol* is a step forward in certain respects. It is the first international instrument to define such important concepts as the “sale of children,” “child prostitution,” and “child pornography.” As such, it nicely supplements the *Trafficking Protocol* (2000), which is more concerned with more extreme methods of securing control over the child victim. It is also a multi-faceted instrument in covering all relevant aspects, including prevention, criminalization, extradition, victim support, international co-operation in law enforcement, and addressing the root causes of these illicit activities.⁹¹ However, the Protocol can be criticized for failing to prescribe target-setting or monitoring criteria. Apart from Article 12 requiring each State Party to submit a periodical implementation report to the Committee on the Rights of the Child, no formal complaints mechanism is provided for child victims, their representatives, NGOs, or advocacy groups. Nor are the governments of states parties required to set up taxpayer-funded compensation funds to benefit the victims of such devastating practices. A further concern involves the decision of certain Arab States such as Oman and Qatar to enter general reservations concerning any provisions of the *Second Optional Protocol*, which are incompatible with the precepts of Islamic Shariah Law. The governments of seven States parties⁹² have objected to these reservations on the grounds that they are too general and indeterminate in nature, and leave other States parties in doubt as to the real extent of the

⁸⁸ Article 9 (3). Similarly, under Article 9 (4), States parties shall ensure that all child victims “have access to” adequate procedures “to seek” compensation from those legally responsible.

⁸⁹ Article 6.

⁹⁰ Article 10 (1).

⁹¹ See the seventh preambular recital (causes) and Article 10 (3) which requires States parties to promote the strengthening of international co-operation to address those factors which make children more vulnerable to these illicit activities.

⁹² Austria, Finland, France, Germany, Netherlands, Norway, and Sweden.

commitment to the Protocol of the reserving States parties. Indeed, Article 19 (c) of the *Vienna Convention on the Law of Treaties* (1969) prohibits those reservations which are incompatible with the object and purpose of the treaty in question, while Article 27 thereof provides that a State Party may not invoke the provisions of its internal law as justification for its failure to perform its treaty obligations.

CHILD SEX TOURISM

A particularly pernicious form of the commercial sexual exploitation of children is the phenomenon of child sex tourism. The United Nations has expressed its deep concern “at the widespread and continuing practice of sex tourism ... as it directly promotes the sale of children, child prostitution and child pornography”.⁹³ The United Nations has defined child sex tourism as “tourism organized with the primary purpose of facilitating ... a commercial sexual relationship with a child”.⁹⁴ A leading non-governmental organization in the fight against the commercial sexual exploitation of children has defined child sex tourism as “the commercial sexual exploitation of children by persons who travel from their own country to another usually less-developed country to engage in sexual acts with children.”⁹⁵ Child sex tourism occurs either on an organized tour basis or on an opportunistic or situational basis while travelling on business or for other purposes.

Because of the clandestine nature of child sex tourism, it is difficult to attain reliable estimates of the number of victimized children. However, the US State Department has estimated that globally sex tourists and traffickers exploit more than one million children annually.⁹⁶ Child sex tourism is an extremely lucrative industry, generally sustained by men who travel from wealthier developed States to poorer, developing States.⁹⁷ These destination countries often have inadequate laws, weak law enforcement mechanisms, corruption, and a

⁹³ Fourth preambular recital of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2000).

⁹⁴ U.N. Economic and Social Council, Commission on Human Rights, Rights of the Child: Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, P 56, U.N. Doc. E/CN.4/1996/100 (17 January 1996).

⁹⁵ End Child Prostitution in Asian Tourism (ECPAT) *Frequently Asked Questions About Commercial Sexual Exploitation of Children* at “Child Sex Tourism” web page.

⁹⁶ Office to Monitor and Combat Trafficking in Persons, U.S. Department of State *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, 2005 Report*, 22 (2005).

⁹⁷ J. Seabrook *No Hiding Place: Child Sex Tourism and the Role of Extraterritorial Legislation* (2000) ix.

highly commercialized sex industry.⁹⁸ Child sex tourists exploit the anonymity and lack of law enforcement in the destination countries. Many countries encourage tourism to attract foreign investment and fund infrastructure, development, and the tourist revenue generated prevent destination countries from vigorously pursuing child sex tourists. Other factors like the Internet and the availability of cheap international airfares have also sustained demand. Sex tourism has devastating permanent physical and psychological effects on its child victims, including physical beatings at the hands of pimps, traffickers, and customers, sexually transmitted diseases, and low self-esteem and feelings of shame.⁹⁹

EXTRATERRITORIAL LEGISLATION

The enactment of extra-territorial legislation by sending countries will advance the enforcement of the law against sex tourists in those cases where the destination country is unable to prosecute due to a lack of resources or where it neglects to prosecute because of the perceived benefits of tourism dollars to the economy. Prosecutions are typically undertaken by sending countries against those of its own citizens or permanent residents who are alleged to have committed sex tourism offences abroad. Some 32 States have now enacted such extra-territorial legislation,¹⁰⁰ spurred on by growing international pressure and increasing media attention. This type of legislation may be based on international law either on the active nationality principle (whereby the accused is a citizen of the prosecuting sending State) or the passive nationality principle (whereby the victim is a citizen of such State). It is useful to examine the extra-territorial legislation enacted by Australia and the United States to determine how effective such an initiative may be in combating child sex tourism.

Australia

In 1994 Australia's Commonwealth Parliament passed the *Crimes (Child Sex Tourism) Amendment Act 1994*.¹⁰¹ The Act criminalizes sexual intercourse¹⁰² or acts of indecency¹⁰³ with a child under 16 years of age committed outside of Australia by persons who are

⁹⁸ N. Svensson "Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws" (2006) 28 *Loyola of Los Angeles International and Comparative Law Review* 641, 643. Sending countries include the United States, France, Germany, Japan, Australia, and the United Kingdom while destination countries include the Philippines, Thailand, Cambodia, India, and various countries in Africa and South America.

⁹⁹ K. Breckenridge "Justice Beyond Borders: A Comparison of Australian and U.S. Child-Sex Tourism Laws" (2004) 13 *Pacific Rim Law and Policy Journal* 405, 412-3.

¹⁰⁰ "The Facts About Child Sex Tourism" available on the U.S. State Department website.

¹⁰¹ No. 105, 1994 (Cth).

¹⁰² Section 50BA.

¹⁰³ Section 50 BC.

Australian citizens or residents at the time of the offence.¹⁰⁴ Successful prosecutions may result in penalties ranging from 12 to 17 years in prison. Australian prosecutors may also charge organizers of sex tours for assisting persons in traveling outside Australia in order to commit the criminalized conduct.¹⁰⁵ The Australian legislation also contains a “double jeopardy” requirement whereby if a person has been convicted or acquitted in a foreign country of an offence against the law of that country, that person cannot be convicted in an Australian court in respect of that conduct.¹⁰⁶ The Australian legislation also contains provisions to overcome some of the evidentiary obstacles of extra-territorial prosecutions, such as permitting child victims or other witnesses located outside of Australia to testify via video link where the interests of justice so require.¹⁰⁷ After a decade of enforcement of its sex tourism legislation, Australia has charged only 16 persons and secured only 11 convictions, reflecting a very low percentage of an overall flow of Australian sex tourists abroad.¹⁰⁸

United States of America

The first US attempt to combat sex tourism took the form of the *Child Sexual Abuse Prevention Act 1994*, which made it a crime for any US citizen or resident to travel to a foreign country with the intent of engaging in a sexual act with a person under the age of 18.¹⁰⁹ In the ensuing decade, however, only two US citizens were convicted, prompting Congress to expand the scope of its extra-territorial legislation. This was achieved in 2003 with the enactment of the *Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003*.¹¹⁰ The *PROTECT Act* is very similar to the Australian legislation. A US citizen or permanent resident who travels overseas and engages in illicit sexual conduct with a person under 18 years of age or who travels overseas with the intent to engage in such conduct is liable to 30 years imprisonment.¹¹¹ Any person who, for the purpose of financial gain, arranges, procures, or facilitates the overseas travel of a person, knowing that such person is travelling for the purpose of engaging in illicit sexual conduct with a person under 18, is

¹⁰⁴ Section 50AD.

¹⁰⁵ Section 50 DB.

¹⁰⁶ Section 50FC. Nevertheless, such prosecutions rarely occur in the foreign countries in which the conduct took place.

¹⁰⁷ Pursuant to Section 50EA., the Australian court may direct that a witness give evidence by video link if it is satisfied that attendance of the witness at the Australian court to give evidence would cause unreasonable expense or inconvenience, cause the witness unreasonable distress, or cause the witness to become so intimidated that his or her reliability as a witness would be significantly reduced.

¹⁰⁸ Breckenridge, *op.cit.*, 422.

¹⁰⁹ 160001 (g), 108 Stat. 2037.

¹¹⁰ 108-21.

¹¹¹ Section 105.

liable to 30 years' imprisonment.¹¹² Thus, sex tour operators are also targeted. The *PROTECT Act* effectively adds two new bases of prosecutorial jurisdiction. Thus, both the US and Australian legislation permit the prosecution of sex tourists based on evidence of overseas sexual acts as well as the prosecution of sex tour organisers. Unlike the Australian legislation, however, the US legislation does not provide for the admissibility of remote video testimony, bearing in mind the US Sixth Amendment protection of a criminal defendant's right to confront an accuser. While the *PROTECT Act* allows for prosecutions based upon evidence of intent alone, the Australian legislation does not. Nor does the US legislation prescribe a "double jeopardy" requirement, unlike that of Australia. As of 2006, there have been over 20 indictments and more than a dozen convictions under the *PROTECT Act*, reflecting a greater success rate than the 1994 legislation.¹¹³ Nevertheless, the number of successful child-sex tourism prosecutions in both countries is disappointingly low, although some may argue that extra-territorial legislation is largely meant to serve as a deterrent and that the prosecution success rate should not be considered the true measure of its success.

EVALUATION OF THE EFFICACY OF EXTRA-TERRITORIAL LEGISLATION

A major factor underlying the small number of convictions is the difficulty in obtaining reliable evidence to prosecute an extra-territorial crime. Prosecutors must overcome linguistic, cultural, and distance problems to locate witnesses and physical evidence.¹¹⁴ Other evidentiary obstacles include determining the victim's age at the time of the offence and failing recollection due to the amount of time that has elapsed since the commission of the offence. These matters require a significant investment of time, staffing, and resources.¹¹⁵

For those States which have enacted extra-territorial child-sex tourism legislation, various desiderata should be borne in mind. First, such legislation should not contain any "double criminality" requirement whereby the offence in question must be recognised as a crime both in the foreign destination country and in the prosecuting sending State.¹¹⁶ The retention of such a requirement encourages child sex tourists to select destination countries that do not criminalize child prostitution, a type of "forum shipping" as it were. The discarding of this requirement from extra-territorial legislation would remove a significant obstacle to the

¹¹² *Ibid.*

¹¹³ Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, 2005 Report, 23 (2005).

¹¹⁴ Svensson, *op.cit.*, 650.

¹¹⁵ *Id.* 660.

¹¹⁶ See the United Kingdom's *Sex Offenders Act 1997* which requires double criminality.

successful prosecution of child sex tourists. Secondly, neither the complaint of the victim nor that of the government of the victim's State be required to initiate investigation and prosecution. Thirdly, although the sex tourism legislation of most States applies only to their own nationals, such legislation should apply to both citizens and permanent residents of the legislating State.¹¹⁷ Fourthly, extra-territorial legislation should make specific accommodations for foreign witnesses, including the child victim, in circumstances where the presence of the witness would be too distressing or inconvenient. As is the case with the Australian legislation, the witness should be allowed to give evidence from a foreign country pursuant to a remote video link if this would be consistent with the interests of justice. Fifthly, the sex tourism legislation of all countries should universalize the age of protection to 18, in line with the *Trafficking Protocol* (2000) and the *Worst Forms of Child Labour Convention* (2000). Currently, the age of children protected under the extra-territorial legislation of a number of countries is inconsistent, and in one case is under the age of 14.¹¹⁸ Sixthly, the law and policies of the prosecuting States should seek to enhance international co-operation between police, prosecutors, and non-governmental organizations. Obtaining the necessary evidence to secure a conviction will be difficult in the absence of a co-ordinated effort between the officials of sending and destination States.¹¹⁹ Finally, sex tourism legislation should criminalize the activities of sex tour operators and travel agents involved in procuring children for sex tourists, as indeed is the case with the Australian and US legislation. Law enforcement officials should focus their limited resources and investigations more on sex tour organizers than on individual perpetrators. As one commentator has observed, while apprehending a single sex tourist removes only one person from the industry, shutting down a child-sex tourism agency can frustrate the plans of a far greater number of sex tourists.¹²⁰

Nevertheless, even with substantial improvements, extra-territorial child-sex legislation is only one component in the fight against such a phenomenon. Much more must be done to improve prosecution rates in destination countries and to support their efforts in enacting and enforcing effective domestic legislation to prosecute foreign child sex tourists.¹²¹ More must be done, moreover, to address the wider circumstances that allow children to be commercially

¹¹⁷ As does the child-sex tourism legislation of Australia, Belgium, Denmark, France, and the United States.

¹¹⁸ Germany (under 14); France and Sweden (under 15); Australia, Belgium, Netherlands, and Switzerland (under 16): see Svensson, *op.cit.*, 656-7.

¹¹⁹ Svensson, *op.cit.*, 661-2.

¹²⁰ Breckenridge, *op.cit.*, 435-6.

¹²¹ Svensson, *op.cit.*, 664.

sexually exploited. A solution that identifies and addresses the sources of the disease, and not merely one which treats the symptoms, is likely to be more successful.

CONCLUSION

Over the past two decades, the United Nations has succeeded in promulgating an impressive set of normative standards and protections for children vulnerable to trafficking and commercial sexual exploitation. This has taken the form of the *Convention on the Rights of the Child* (1989), the *Trafficking Protocol* (2000), and the *Optional Protocol to the Convention on the Rights of the Child for the Sale of Children, Child Prostitution and Child Pornography* (2000). These international efforts demonstrate good intentions but despite these efforts child trafficking continues unabated.¹²² The international community has so far lacked the ability and/or political will to effectively translate these good intentions into action. It must not only talk the talk, but walk the walk as well. As one commentator has poignantly observed, while words on paper mean a great deal on the theoretical or symbolic level, to the world's suffering children they mean very little.¹²³ Accordingly, the international community must be more committed to enforcing these normative standards and protections for the sake of the children. Global efforts to eradicate trafficking in children and their commercial sexual exploitation demand strong political commitment by all governments of the sending, transit, and destination States.

An agenda for better implementation and enforcement should include the following 10-point plan:

- I. creation of a systematic data collection regime under United Nations auspices to better determine the nature, extent, and methods of child trafficking;
- II. greater governmental regulation of Internet service providers to prevent the use of the Internet for the purposes of child prostitution and pornography, paedophilia, child trafficking, and child-sex tourism;
- III. greater efforts by United Nations agencies and representatives to address, within their respective mandates, the above-mentioned problems, to bring pressure to bear on governments to act, and to raise public awareness of the issues involved. These UN agencies and representatives include the Special Rapporteur on Violence Against Women, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, the Special Rapporteur on Trafficking in Persons, the United Nations High Commissioner for Human Rights, the Working Group on Contemporary Forms

¹²² Matthews, *op.cit.*, 670.

¹²³ Garrard, *op.cit.*, 172.

of Slavery, and the Inter-Governmental Organization Contact Group on Human Trafficking and Smuggling;¹²⁴

- IV. the governments of UN Member States must undertake concrete measures such as research and information and mass media campaigns as a means of raising public awareness of the relevant issues;¹²⁵
- V. enhanced co-operation with non-governmental organizations in acknowledgment of their efforts and expertise in compiling information on trafficking and the commercial sexual exploitation of children, in providing sanctuary to them, in assisting in their voluntary repatriation to their countries of origin, and in developing best practices in this area;¹²⁶
- VI. identification and counteraction of those factors which increase the vulnerability of children to trafficking and commercial sexual exploitation and which sustain demand¹²⁷ for these illicit activities. These factors include poverty and underdevelopment, illiteracy and lack of educational opportunity, economic and social disparities, harmful traditional practices, and gender inequality. Indeed, Article 10(3) of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* obliges States parties to address the root causes which contribute to the vulnerability of children in these contexts;
- VII. greater efforts at the international and national levels to adopt a victim-centered approach which seeks to protect the human rights of child victims and promotes their physical and psychological recovery and social re-integration.¹²⁸ Concrete measures in this context would include sanctuary, counselling, health care, education and vocational training, and protection of the victim's privacy and identity so as to prevent revictimization.¹²⁹
- VIII. more efficient national law enforcement to discourage demand for children for the purposes of trafficking and their commercial sexual exploitation, both in the sending country (through the enactment of extra-territorial legislation) and the destination country;

¹²⁴ The IGO Contact Group was created in 2001 to facilitate inter-agency co-operation, information-sharing, and collaborative action on trafficking-related issues. Members include the United Nations High Commissioner for Refugees, the International Labour Organization, and the Office of the High Commissioner for Human Rights.

¹²⁵ *Trafficking Protocol* (2000), Article 9 (2).

¹²⁶ *Id.* Article 9 (3).

¹²⁷ See *Trafficking Protocol* (2000), Article 9 (5) which obliges States parties to adopt measures to alleviate the factors that make children vulnerable to trafficking.

¹²⁸ *Convention on the Rights of the Child* (1989), Article 39. See also Article 9 (3) of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2000); Article 7 (2) (b) (c) of the *Worst Forms of Child Labour Convention* (1999); Article 6 of the *Trafficking Protocol* (2000).

¹²⁹ The United Nations Working Group on Contemporary Forms of Slavery has established the Voluntary Trust Fund on Contemporary Forms of Slavery. Voluntary contributions support local non-governmental organization projects to assist child victims. Donors include governments, NGO's, trade unions, and schoolteachers and students.

- IX. as transnational problems must be confronted on a global scale, the opportunities for international co-operation must be expanded.¹³⁰ The modalities of such co-operation include the co-ordination of law enforcement efforts, exchange of information and resources, border control, documentation of persons, the implementation of poverty eradication and universal education programmes, and child victim repatriation;
- X. up until now, international legislation adopted to address issues relating to child trafficking and the commercial sexual exploitation of children has been rather piecemeal and *ad hoc*, as evidenced by the international instruments previously examined. The international community should consider the adoption of a comprehensive, stand-alone convention which consolidates and builds on the protections accorded by previous instruments, is more prescriptive in terms of formulating more precise standards of protection, contains stronger enforcement mechanisms, and universalizes the age of protection to be accorded to child victims. A new treaty which addresses the unique issues facing children in a combined crime control/human rights context and regulates the inter-related issues of child trafficking, sex tourism, and the commercial sexual exploitation of children, would evidence a stronger commitment from the international community.

¹³⁰ *Worst Forms of Child Labour Convention* (1999), Article 8; Articles 2 (c) and Article 10 of the *Trafficking Protocol* (2000); Articles 6 and 10 of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2000).