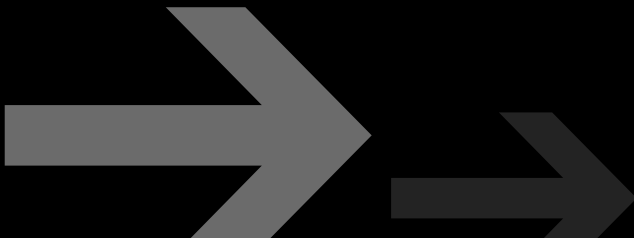


EXTRATERRITORIAL LAWS
WHY THEY ARE NOT REALLY WORKING AND
HOW THEY CAN BE STRENGTHENED

SEPTEMBER 2008



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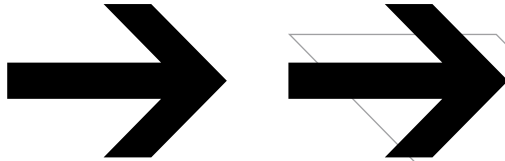


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EXTRATERRITORIAL LAWS: WHY THEY ARE NOT REALLY WORKING AND HOW THEY CAN BE STRENGTHENED

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The problem of child sex tourism was first brought to the world's attention in the early 1990s largely as a result of the work of ECPAT and other non-governmental organisations (NGOs). The international community's recognition and concern "at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography" was also clearly stated in the preamble to the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (OPSC)¹. While a number of legally binding instruments currently impose obligations upon States to take measures to counter child sex tourism, the problem persists and continues to devastate the lives of countless children around the world, with often irreparable consequences.

ECPAT International defines child sex tourism as the sexual exploitation of children by a person or persons who travel from their home district, geographical region or home country in order to have sexual contact with children.² Child sex tourists may be domestic travellers or international tourists. Offenders often travel from a richer country ('sending country') to one that is less developed ('destination country'), but they may also be travellers within their own countries or regions. Child sex tourism usually involves the use of accommodation, transportation and other tourism-related services, allowing perpetrators to remain fairly inconspicuous when making contact with children.

Weak legal frameworks are among the factors that increase children's vulnerability to sexual exploitation and encourage demand. In fact, child sex offenders tend to choose destinations known for their lenient laws. In this context, the importance of strict laws coupled with severe penalties that reflect the gravity of child sex tourism offences and act as efficient deterrents cannot be overemphasised. This paper focuses on extraterritorial law as a tool that can be used by sending countries to fight child sex tourism. It suggests how these laws could be improved and highlights the importance of international assistance and cooperation as part of a broad framework to counter this phenomenon.

EXTRATERRITORIAL LEGISLATION: A TOOL TO FIGHT CHILD SEX TOURISM

Recognising the global nature of a growing problem and acknowledging that their own nationals engage in child sex tourism, some sending countries have opted to strengthen their legal frameworks through the enactment of extraterritorial legislation. As at June 2008, over 40 countries have enacted or will apply such laws and have had varying levels of success in implementing them.

Through extraterritorial jurisdiction, countries can deem an offence committed abroad to be an offence committed within their borders. In other words, it makes possible the prosecution of a country's nationals at home, under national laws, for offences committed abroad. Extraterritorial jurisdiction is particularly useful because: (1) it provides a basis for arresting and prosecuting an offender who escapes from the destination country and returns to her/his country of origin in order to avoid prosecution; and (2) it sends a clear message that countries will not let their citizens take a 'holiday' from their own legal systems.

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As a general rule, the primary and most widely accepted form of jurisdiction for prosecuting crimes is territorial jurisdiction, which implies that a State may prosecute crimes committed on its territory irrespective of the nationality of the offender and/or victim.³ Thus, the country in which a crime is committed is the primary 'jurisdiction holder', with the authority to prosecute the offender at the place where the crime was allegedly committed. The OPSC makes this form of jurisdiction mandatory.⁴

As the territorial State is the one in which victims, witnesses, written and material evidence and the suspect are usually located,⁵ in many instances it constitutes the most appropriate forum for investigation and prosecution. However, in some instances the State in which the crime is committed may be unwilling or unable to prosecute for a variety of reasons. In such cases extraterritorial jurisdiction may provide a solution. Extraterritoriality thus allows for prosecution of a citizen for crimes committed outside her/his own country.⁶ Extraterritorial legislation may be based on various principles of extraterritorial jurisdiction. None of these are universally accepted, but most extraterritorial laws are based on one or more of the following principles:

The Passive Personality Principle prescribes that a State may assert jurisdiction on the basis of the nationality of the victim. It derives from the idea that a State must protect its own nationals, even when they are living or travelling abroad⁷. In practice, this means that State A could prosecute a crime committed by a national of State B against a child who is a national of State A, even if the offence was

committed outside the borders of State A. Both the OPSC and the recent Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*⁸ encourage States to prescribe jurisdiction under this principle, but neither the OPSC nor the Convention actually makes it mandatory.

The Nationality Principle (Active Personality Principle) is particularly important and allows States to exercise jurisdiction on the basis of the nationality of the suspect, e.g. over offences committed abroad by their own nationals. The *aut dedere aut judicare* ('extradite or prosecute') Principle serves to ensure that countries with laws that do not extradite their citizens take effective action to ensure that culprits do not go unpunished. The Nationality Principle is reflected in the extraterritorial laws of several countries and serves as a good basis for prosecuting child sex tourists, allowing States to prosecute their own nationals under their own laws for crimes committed outside their borders. For example, the Government of Canada could prosecute a Canadian citizen under Canadian law for a crime committed against a child in any other country.

- 6 The Universality Principle is based on the concept that some crimes are by their very nature so heinous that all States are allowed to prosecute them regardless of the place where they are committed and/or the nationality of the perpetrator or victim. The application of this principle is understood to be reserved for crimes considered "[so] universally repugnant that every State has jurisdiction over them".⁹ The Universality Principle is not based on the link or contact point between the crime and the State willing to prosecute (such as the *locus delicti* – i.e. the place where the crime was committed – or the status of the victim or the offender). The heinous nature of the crime is enough to render prosecution legitimate. In the realm of customary international law,¹⁰ universal jurisdiction extends only to crimes of "piracy, slave trading, war crimes, hijacking and sabotage of aircraft, hostage-taking, crimes against internationally protected persons, apartheid, torture and genocide".¹¹ However, there is no consensus as to which crimes the Universality Principle can be applied.¹² Although there has been no universal recognition that sexual crimes against children fall into this category, some indications have been given by the international community as to which crimes are considered universally condemnable.

The Stockholm Declaration and Agenda for Action refers to child sexual exploitation as "forced labour and a contemporary form of slavery",¹³ in which case it would fall within the group of crimes considered subject to universal jurisdiction. Although the final OPSC did not retain this wording, an earlier draft version stated that "States Parties recognize that crimes of sexual exploitation of, or trafficking in, children represent crimes against humanity"¹⁴ and specifically invoked the principle of universal jurisdiction in the prosecution of commercial sexual exploitation of children (CSEC) crimes.¹⁵

Of the above principles, the Universality Principle provides the broadest ground for prosecuting crimes committed abroad because it does not require the offender or the victim to be of a specific nationality. However, the Universality Principle is far from having gained universal acceptance, and recent trends in international law are not indicative of such acceptance. In fact, the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* does not mention universal jurisdiction.¹⁶ ECPAT, however, believes that States should ensure their jurisdiction over CSEC crimes to the maximum extent possible, on the basis of all the above described territorial and extraterritorial jurisdiction principles.

Summary of the Basic Forms of Jurisdiction in the Context of CSEC Crimes	
Type of Jurisdiction	OPSC Requirements
<p>Territorial</p> <p>If a crime is committed in country A, this country is the primary 'jurisdiction holder', with the authority to arrest and prosecute.</p>	<p>States must exercise territorial jurisdiction. If States have constitutional difficulty in extraditing, they must prosecute.</p>
<p>Extraterritorial</p> <ul style="list-style-type: none"> • If the victim is a national of country A • If the suspect is a national of country A • If the national interests of country A are threatened • If country A applies the principle of universal jurisdiction 	<p>States may chose to exercise jurisdiction based on any of these principles.</p>

EXTRATERRITORIAL LEGISLATION REGARDING OFFENCES AGAINST CHILDREN AS IMPLEMENTED IN SELECTED EXAMPLES OF DOMESTIC JURISDICTION

Over the past few years countries that apply extraterritorial jurisdiction as a matter of general principle (ie that apply their criminal laws to offences committed abroad) have amended their laws specifically to address child sex tourism and to facilitate the prosecution of offences committed against children. Other countries have enacted new, comprehensive laws to target child sex tourism. In 1994, Australia enacted Part IIIA of the *Crimes Act 1914*, which deals with offences applying to Australian citizens and residents who engage in sexual activity with children under the age of 16 while overseas.¹⁷

8 A number of countries criminalise 'attempts' as distinct offences. In the context of child sex tourism, some countries have also chosen specifically to criminalise 'attempts', a term that encompasses acts preceding the actual commission of sexual offences with children (for example, making travel arrangements for that purpose). This broadens the scope of extraterritoriality and serves to strengthen preventative measures in order to stop child sex tourists before they actually commit their crimes.

The 2003 US PROTECT Act¹⁸ criminalises not only sexual acts committed with children abroad but also the intent to do so.¹⁹ The Act allows for prosecution based on evidence of intent to travel abroad with the purpose of having sexual intercourse with a child.²⁰ Evidence that sexual intercourse with a child actually took place is not required. With such strong laws in place and efficient enforcement, in recent years the US has achieved impressive results in arresting child sex offenders, with approximately 55 child sex tourism indictments/complaints and approximately 36 convictions in 2006.

SOME OBSTACLES TO EXTRATERRITORIAL JURISDICTION

Extraterritorial jurisdiction is difficult to apply in practice for a number of reasons: complications in obtaining evidence from abroad, additional associated costs, complications resulting from the use of different languages, additional strains on child victims and child witnesses, etc.²¹ The data concerning arrests and convictions made possible due to extraterritorial laws is limited, but, as the table below illustrates, the information currently available is not very encouraging,

especially considering that data on the number of cases brought in front of national courts may differ greatly from the number of sexual offences actually committed in other countries. This table is in no way exhaustive but provides a snapshot of extraterritoriality experiences from around the world.

Country	Extraterritorial Law	Description	Number of Convictions ²²
Australia	<i>Crimes Act 1914</i> , as amended by the <i>Crimes (Child Sex Tourism) Amendment Act 1994</i> ²³	The <i>Crimes Act 1914</i> contains a chapter entitled 'Child Sex Tourism' which details offences applying to Australian citizens and residents who engage in sexual activity with children under the age of 16 while overseas.	20 ²⁴
Canada	Criminal Code ²⁵	Since 1997, under section 7(4.1) of the <i>Criminal Code</i> , Canadian citizens and permanent residents can be prosecuted in Canada for certain sexual offences committed against children in other countries. ²⁶	1 ²⁷ . Donald Bakker of Vancouver was the first to be prosecuted and convicted under s. 7 (4.1). In May 2005, he pleaded guilty to, among other domestic crimes, seven counts of sexual interference involving children aged under 14 in Cambodia. After he was arrested on sexual assault charges in Vancouver, videotapes were found in his possession depicting him sexually assaulting 7-to-12-year-old girls in Cambodia in February and March 2003.

Country	Extraterritorial Law	Description	Number of Convictions
France	Penal Code ²⁸	French penal law applies to crimes and misdemeanours committed by French citizens outside French territory. These include sexual offences against children.	6 ²⁹
Italy	Penal Code	Under Article 604 of the Penal Code, crimes related to the commercial sexual exploitation of children committed abroad by an Italian citizen can be prosecuted in Italy.	2 ³⁰
Japan	Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children (1999) ³¹ as amended by the Law Amending a Part of the Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children (Law No. 106 of 2004)	Under the 1999 law, crimes of child prostitution and child pornography committed by Japanese nationals outside Japan are subject to extraterritorial jurisdiction. ³²	4 arrests, 0 conviction ³³
New Zealand	Crimes Amendment Act 2005 and Films, Videos and Publications Classification Act 1993	The Crimes Amendment Act 2005 created a new extraterritorial offence that makes it illegal to engage in certain sexual conduct with children overseas that would be an offence if it occurred in New Zealand. ³⁴	0 ³⁶

Country	Extraterritorial Law	Description	Number of Convictions
		The 1993 Films, Videos and Publications Classification Act also provides for extraterritorial jurisdiction for offences related to child pornography. ³⁵	
Spain	Ley Orgánica del Poder Judicial 11/1999	This law extended the principle of universal justice so that Spanish jurisdiction could be exercised over offences of “prostitution and corruption of minors” committed by Spaniards or foreigners outside national territory.	0
United States	PROTECT Act (Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act) 2003	The 2003 PROTECT Act makes it a crime to engage in illicit sexual conduct while travelling abroad, regardless of whether this was the intended purpose of the travel.	Approximately 55 child sex tourism indictments/complaints and approximately 36 convictions ³⁷

Extraterritorial laws are usually subject to a number of conditions that further complicate their application. These conditions should be reviewed as part of legal reforms to enhance child protection.

1.Procedural prerequisites for prosecution: victim’s complaints and formal State requests

Some countries make prosecution conditional upon the filing of a complaint by the victim or a formal request by the State of which the victim is a national. Such formalities can cause delays and, in some cases, lead to the failure of the prosecution if the officials in the destination country are unfamiliar with the requirements of the offender’s country. Children are also very seldom predisposed

to filing complaints against offenders. The requirement to file a complaint also provides an opportunity for the offender to 'buy off' the victim or her/his family. Some countries, mainly in Europe, have eliminated this requirement in recent years. For example, in 2002, Dutch extraterritorial jurisdiction was made more effective in child sex tourism cases through the abolition of the requirement for a complaint to be filed before the prosecution of offences of sexual abuse of children between 12 and 16 years of age. Before this change was implemented, the criminal justice authorities could not prosecute such offences without a complaint having first been made.³⁸

2. The discretionary character of the prosecutor's decision to press charges

In some countries prosecution is discretionary (as opposed to compulsory).³⁹ ECPAT adopts the view that a prosecutor who refuses to prosecute a case involving a child victim should always be required to justify her/his decision. Furthermore, it should be possible in all jurisdictions for a foreign victim, or a person or organisation on her/his behalf, to initiate a prosecution, even where the State authorities have decided not to do so, or to appeal against a decision not to prosecute.⁴⁰

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3. **Double jeopardy** (*ne bis in idem*) finds different interpretations across legal systems, but in criminal matters it is generally understood to mean that a person, once acquitted, cannot be tried twice for the same offence. In other words, a child sex offender having served a sentence in a foreign country cannot be tried again at home for the same crime. Double jeopardy should never enable offenders to escape prosecution in their home country by serving a short-term or partial sentence abroad.⁴¹

4. **Double criminality** imposes a condition on prosecution in some legal systems by requiring that the allegations constitute an offence both under that country's extraterritorial jurisdiction and in the foreign country. This may constitute a significant obstacle to the prosecution of child sex tourists. For instance, an offender of country A, where laws protect children up to the age of 18 and where the double criminality requirement is upheld, travels to country B, where children are protected up to the age of 15, and there abuses a child aged 16. Although the act amounts to a crime according to the legislation of country A, the courts of that country would be barred from criminally prosecuting the offender since the act does not amount to a crime in the legal system of country B. Double criminality may also encourage 'forum shopping' among child sex tourists, as offenders often seek out countries with weaker laws where children are not adequately protected.⁴² In recent years, a number of countries have eliminated the requirement of double criminality for the prosecution of certain sexual offences against children. For instance, Denmark reviewed its extraterritorial legislation in relation to crimes involving sexual abuse of children

and since 2006, the principle of double criminality no longer applies. In 2005, Sweden eliminated double criminality for serious sexual crimes committed abroad against children below 18 years of age.⁴³

5. Statutes of limitation or periods of prescription establish the period of time during which proceedings must be initiated. Once that period has elapsed, litigation can no longer be pursued. The length of the statutory limitation varies from country to country, however there has been a debate about the need to harmonise these periods so that they begin only from the time the alleged victim reaches the age of majority (18) under the Convention on the Rights of the Child (CRC), rather than from the date of the alleged offence.⁴⁴ In addition, once notice has been given of steps taken in a foreign jurisdiction by the competent authorities, time should stop running against the victim.⁴⁵ It is important to ensure that the prosecution of CSEC crimes is subject to adapted statutory limitations (that begin only after a child has reached the age of 18) as in many instances child victims are unable to speak about their experience until years after the event.

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INTERNATIONAL COOPERATION AND ASSISTANCE

In addition to the constraints described above, there is insufficient international cooperation to facilitate the detection, investigation and prosecution of CSEC crimes. States should therefore consider the following measures:

1. Extradition Agreements: As mentioned above, it is generally preferable that offenders be tried in the country where the offences were committed as this is where the victim is situated and where witnesses and other evidence are available. Therefore, where an offender has escaped the jurisdiction in the country where he/she committed the offence, extradition to that country is usually the best option provided that the country possesses the resources to ensure efficient prosecution. The UN Model Treaty on Extradition was designed to facilitate the development of extradition treaties and can be used as guidance for States wishing to develop such agreements.⁴⁶

In its Concluding Observations to the initial State reports on the implementation of the OPSC, the Committee on the Rights of the Child noted in many instances that legislation regarding extradition was inadequate.⁴⁷

For example, the Committee welcomed the Government of Spain's affirmation that the offences covered by the OSPC were subject to universal jurisdiction, but nevertheless expressed concern that its extradition conditions required acts to be defined in the laws of both countries as offences. It has expressed similar concerns to the governments of Guatemala, Bangladesh, Sudan, the Syrian Arab Republic, Qatar and Morocco (vast majority of reports examined).

2. Mutual Legal Assistance is the formal mechanism by which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country. The UN has developed a Model Treaty on Mutual Assistance in Criminal Matters to assist governments in this regard.⁴⁸

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3. Informal cooperation mechanisms must also be developed. The facilitation of personal contacts between the law enforcers in the countries of origin and destination should be prioritised. Police Liaison Officers can and should play an important role in this regard. Examples include the establishment of the Australian Federal Police (AFP) liaison office in Phnom Penh and the Cambodian National Police, who together are providing mechanisms to effectively investigate and prosecute suspected offenders in Cambodia.⁴⁹ The Cambodian authorities also work with the British police to track down sex tourists travelling from the UK to Cambodia in order to abuse children. British officers advise their counterparts on how to investigate and prosecute child sex offenders.⁵⁰

Thai Police arrest Christopher Neil, identified as man in child sexual abuse photos

INTERPOL website. Accessed from: <http://www.interpol.int/Public/THB/vico/Default.asp>

Christopher Paul Neil, a 32-year-old Canadian man identified as being the person in a series of child sex abuse photos posted on the Internet, was arrested by Royal Thai Police on 19 October 2007. Neil's arrest in northeast Thailand came just 10 days after INTERPOL launched an unprecedented global public appeal on 8 October to identify the man whose face appeared in more than 200 images of child sex abuse. INTERPOL received more than 300 statements from the public in response to the appeal, with five people naming Neil as a potential match. Police immediately followed up on the leads, and on 18 October, Thai police issued an arrest warrant for Neil and INTERPOL published a Red Notice (international wanted persons notice).

Neil had been working as an English-language teacher in South Korea, but flew to Bangkok, Thailand on 11 October. His arrest came as a result of extensive police work in several countries to firstly identify the man and then to find him.

Police codenamed the operation 'Vico' because the images were believed to have been taken in Vietnam and Cambodia in 2002 or 2003. The Thai arrest warrant was based on a statement from a Thai teenage boy who accused Neil of sexually molesting him.

Landmark extraterritorial case in the UK

Extract from ECPAT UK, The end of the line for child exploitation: safeguarding the most vulnerable children. ECPAT UK website. Accessed from: <http://www.ecpat.org.uk/publications.html>

British national Alexander Kilpatrick was sentenced in the UK for offences related to the sexual abuse of children in Ghana. The case was tried under the UK extraterritorial provisions in the Sexual Offences Act (2003) and was an excellent example of cooperation and collaboration between different police agencies in the UK and Ghana. Kilpatrick was charged of multiple rape, sexual assault and a range of other charges including the production of child abuse images which occurred between October 2004 and May 2005 as he travelled several times to Ghana. He was also charged for separate offences in the UK for the abuse of British children. Kilpatrick received a landmark sentence in extraterritorial cases within the UK. In January 2006 Judge Roger Chapple upon sentencing Kilpatrick to an indefinite period with a minimum of 5 years said "You took advantage of the abject poverty and the circumstances in which children in Africa and other countries find themselves. You plied them with meals, treats and alcohol and then you sexually abused them in the most appalling ways".

4. The establishment of national databases on child sexual exploitation should also be considered in order to facilitate the international exchange of information on victims and perpetrators. Indeed, "the end result of the work undertaken by INTERPOL should be that member states see the need of sharing information and issue Green Notices⁵¹ on the offenders that travel to commit their crime".⁵² Sex offenders' registries should also be put in place to prevent high-risk convicted offenders from leaving their home countries.

5. Hotlines should be established to provide channels for the public to report child exploitation. Collaboration between law enforcement agencies and NGOs is particularly important in this regard.

Cambodia: World Vision Hotline Helps Curb Child Sex Tourism

World Vision website. Accessed from: http://www.worldvision.org/news.nsf/news/200710_cstp_hotline_advo?Open&lid=csth&lpos=day_txt_sex_tourism_hotline

Established in 2005, a World Vision-supported 24-hour hotline provides citizens and humanitarian workers with a safe channel for reporting child exploitation. Currently operating in five Cambodian provinces and the capital city of Phnom Penh, the hotline is a desperately needed avenue for enforcement of child protection laws. World Vision publicizes the hotline in tourist hotspots through leaflets, posters, and key chains. In the past two years, 1,217 cases of child sexual exploitation, human trafficking, and rape have been reported to Cambodia's Ministry of the Interior; of those, 645 were reported through World Vision's hotline. In the past eight months alone, 349 cases have been reported using this method. More than 1,100 investigations have led to more than 665 prosecutions of both local and foreign sex offenders.

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ANALYSIS AND RECOMMENDATIONS

In light of the very low number of prosecutions and convictions achieved under extraterritorial laws, ECPAT International recommends that States review their criminal law and institute legal reforms in order to better counter child sex tourism. In particular, States should:

- Ensure that all forms of CSEC, including child sex tourism, are defined and specifically criminalised/penalised in national legislation.
- Ensure that elements of child sex tourism offences include: (1) engaging in sexual conduct with a child abroad, including non-commercial and commercial illicit sexual conduct with a child under 18; (2) travelling with the intent of engaging in sexual activities with a child abroad; (3) advertising or promoting child sex tours; (4) making travel arrangements for a person for the purpose of engaging in sexual activity with a child at the destination; and (5) transporting a person for the above purpose – the liability of tour operators should extend to local partners on the ground in order to ensure that the former's liability does not end once the clients have reached their destination.

- Exercise jurisdiction over child sex tourism crimes based on the active and passive personality principles (applying to both nationals and residents) and, whenever possible, the universality principle; the 'extradite or prosecute' obligation should form part of national law.
- Eliminate the requirement for a victim complaint or formal State request.
- Require that a prosecutor's refusal to proceed is justified.
- Limit the application of double jeopardy to instances where a person was acquitted, or if the sentence was served in full. The application of this principle should never enable offenders to escape prosecution in their home country by short-term detention or partial service of a sentence abroad.
- Eliminate the requirement of double criminality in relation to child sex tourism offences.
- Ensure that the applicable statute of limitation/period of prescription runs only once the victim has reached 18 years of age and not from the date of the alleged commission of the offence.

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In addition:

- Sexual crimes against children should always be considered as extraditable offences.
- All States should have clear processes for the execution of extradition and mutual assistance requests. Sexual crimes against children should be given special priority.
- All States should rapidly and effectively provide mutual legal assistance in relation to all sexual crimes committed against children and ensure that extradition requests are handled expeditiously. Unduly restrictive conditions on the provision of mutual legal assistance should be removed.
- Exchange of information among law enforcement agencies must be facilitated; national databases on CSEC should be established. Sex offenders' registries should be put in place and the relevant authorities (home and abroad) should be notified of registered sex offenders' intent to travel.
- Hotlines should be established to provide channels for the public to report child exploitation.

- Dual criminality should never restrict the provision of mutual legal assistance in instances of sexual crimes committed against children, nor should it be a consideration in extradition procedures. At a very minimum, States should allow for extradition for conduct punishable in both States by deprivation of liberty in excess of an agreed minimum period.

ENDNOTES

- ¹ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)*. G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000). Entered into force 18 January 2002.
- ² ECPAT International. *Combating Child Sex Tourism: Questions and Answers*. Accessed on February 2008 from: http://www.ecpat.net/EI/PDF/CST/CST_FAQ_ENG.pdf
- ³ Vander Beken, Tom. *The Best Place for Prosecution of International Corruption Cases. Avoiding and Solving Conflicts of Jurisdiction*. The Third Global Forum on Fighting Corruption and Safeguarding Integrity. Seoul. 29 May 2003. Accessed from: <http://www.ircp.org/uploaded/I-1%20Tom%20Vander%20Beken.pdf>
- ⁴ OPSC Article 4 reads:
1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
- ⁵ *Amnesty International. Universal Jurisdiction: the duty of states to enact and enforce legislation – Chapter One*. AI Index: IOR 53/003/2001, 1 September 2001. Accessed from: <http://web.amnesty.org/library/index/engior530032001?OpenDocument>
- ⁶ Fraley, Amy. Child Sex Tourism Legislation under the Protect Act: does it really protect? *St. John's Law Review*, 79 (2), 2005, p. 462.
- ⁷ Vander Beken, Tom. *The Best Place for Prosecution of International Corruption Cases. Avoiding and Solving Conflicts of Jurisdiction*. The Third Global Forum on Fighting Corruption and Safeguarding Integrity. Seoul. 29 May 2003. (p. 7). Accessed from: <http://www.ircp.org/uploaded/I-1%20Tom%20Vander%20Beken.pdf>
- ⁸ Council of Europe. *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. CETS No. 201. Art. 25. Accessed from: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=1&DF=7/21/2008&CL=ENG>
- ⁹ Watson, Geoffrey R. Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction. *17 Yale Journal of International Law*, 41, 1992, 45.
- ¹⁰ Customary international law refers to international law that has arisen from custom and usage, and that is recognised and accepted as binding even though not codified.
- ¹¹ Watson, Geoffrey R. Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction. *17 Yale Journal of International Law*, 41, 1992, 44, (quoting Randall, Kenneth C. Universal Jurisdiction Under International Law. 66 *Texas Law Review*, 785, 1988, 839.)

- ¹² Vander Beken, Tom. *The Best Place for Prosecution of International Corruption Cases. Avoiding and Solving Conflicts of Jurisdiction*. The Third Global Forum on Fighting Corruption and Safeguarding Integrity. Seoul. 29 May 2003. (p. 8). Accessed from: <http://www.ircp.org/uploaded/1-1%20Tom%20Vander%20Beken.pdf>
- ¹³ *Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children*. Article 5. First World Congress against CSEC. Stockholm, Sweden. 27-31 August 1996.
- ¹⁴ *Draft Optional Protocol to the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children*, Article 1.
- ¹⁵ *Ibid.* Article 2(a).
- ¹⁶ Council of Europe. *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. CETS No. 201. Accessed from: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=1&DF=7/21/2008&CL=ENG>
- ¹⁷ Government of Australia. *Crimes (Child Sex Tourism) Amendment Act 1994*. No. 105, 1994. Accessed from: <http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/frameLodgmentAttachments/332EE746136CDDF6CA256F720018338C>
- ¹⁸ Government of the United States. *Prosecutorial Remedies and Tools to End the Exploitation of Children Today (PROTECT) Act*, Pub. L. No. 108-21, 117 Stat. 650. 2003. 18 U.S.C. § 2423. Supp. 2004.
- ¹⁹ Before the PROTECT Act became law in 2003, the law required the government to prove that the defendant travelled to a foreign destination for the purpose of engaging in specified sexual conduct with a person under the age of eighteen. The PROTECT Act removed the intent requirement so that the government would only have to prove that the defendant engaged in illicit sexual conduct with a minor while in a foreign country.
- ²⁰ Government of the United States. *PROTECT Act* § 105 (b). 2003.
- ²¹ See Muntarhorn, V. *Extraterritorial Criminal Laws Against Child Sexual Exploitation*. UNICEF. Geneva. 1998.
- ²² As of January 2008. This information is based on desktop research conducted by ECPAT International. While care has been taken to ensure the accuracy of the information, it may not be exact, especially due to limitations on available data.
- ²³ Government of Australia. *Crimes (Child Sex Tourism) Amendment Act 1994*. No. 105, 1994.
- ²⁴ Information provided to ECPAT International by the Australian Federal Police. October 2007.
- ²⁵ Government of Canada. R.S.C. 1985, c. C-46.

- ²⁶ Including offences of Sexual Interference, Invitation to Sexual Touching, Sexual Exploitation, Incest, Child Pornography and Obtaining the Sexual Services of a Child under 18. Government of Canada. *Criminal Code*, R.S.C. 1985, c. C-46, s. 7(4.1).
- ²⁷ As at February 2008 there had also been two arrests: Kenneth Robert Klassen was charged in 2007 for alleged sex crimes in Cambodia, Colombia and the Philippines; the case has not yet gone to trial. In February 2008, two humanitarian workers from Quebec were charged under Canadian extraterritorial law with multiple counts of sexual assaults on minors in a Haitian orphanage.
- ²⁸ Government of France. *Code Pénal*. Consolidated version as of 21 November 2007. Art. 113-6 to 113-9. Accessed from: <http://www.legifrance.gouv.fr>
- ²⁹ Information provided by ECPAT France as of December 2007.
- ³⁰ Gruppo di Lavoro per la Convenzione sui diritti dell'infanzia e dell'adolescenza, *I diritti dell'infanzia e dell'adolescenza in Italia. Terzo rapporto di aggiornamento sul monitoraggio della convenzione sui diritti dell'infanzia e dell'adolescenza in Italia 2006-2007*. Coordinated by Save the Children Italia. 2007. 103 pp.
- ³¹ Government of Japan. *Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children (1999)*. Unofficial English translation. Accessed from: http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=53924
- ³² Government of Japan. *Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children (1999)*. Art. 10. Unofficial English translation. Accessed from: http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=53924
- ³³ Japan's extraterritorial law is one of the most structurally complete. However it is not enforced, and as such fails to protect children. See Svensson, Naomi L. Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws. *Loyola Law School Los Angeles. International and Comparative Law Review*. Vol. 28, 641-664. Accessed from: http://ilr.lls.edu/documents/Article6Svensson_000.pdf
- ³⁴ These offences include sexual intercourse and attempted sexual intercourse with children under 16 years of age. See Government of New Zealand. *Crimes Amendment Act 2005*, Section 144A.
- ³⁵ Government of New Zealand. *Films, Videos and Publications Classification Act 1993*, Sections 145A(1), (2).
- ³⁶ Statistics New Zealand. *National Annual Apprehensions for the Latest 10 Fiscal Years to 2004/05: Sexual Conduct with Child outside NZ*. Accessed from: <http://xtabs.stats.govt.nz/eng/TableViewer/wdsview/print.asp>. New Zealand Ministry of Justice, *Protecting Our Innocence: New Zealand's National Plan of Action against the Commercial Sexual Exploitation of Children*. December 2001. Accessed from: <http://www.justice.govt.nz/pubs/reports/2002/protectinnocence/index.html> pp.11-12.

- ³⁷ United States Department of Justice. *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2006*. United States Department of Justice. May 2007. (p.18).
- ³⁸ Government of the Netherlands. *Criminal Code*, Art. 245, 247, 248 and *Code of Criminal Proceedings*, Art. 167a.
- ³⁹ For example, the Japanese *Code of Criminal Procedure* prescribes standards to be used by prosecutors in deciding whether to institute prosecution in a given case.
- ⁴⁰ ECPAT International. *Extraterritorial Legislation As a Tool to Combat Sexual Exploitation of Children: A Study of 15 Cases (Executive Summary)*. ECPAT International. Bangkok. Accessed from: http://www.ecpat.net/eng/Ecpat_inter/projects/promoting_law/promoting_law.asp
- ⁴¹ *Ibid.*
- ⁴² ECPAT Europe Law Enforcement Group. *Extraterritorial Legislation as a Tool to Combat Sexual Exploitation of Children, Executive Summary* (1999).
- ⁴³ Government of Sweden. *Fact Sheet, New Legislation on Sexual Crimes*. Accessed from: <http://www.sweden.gov.se/sb/d/5076/a/46797>
- ⁴⁴ Svensson, Naomi L. *Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws*. Loyola Law School Los Angeles. *International and Comparative Law Review*. Vol. 28, 641-664. Accessed from: http://ilr.lls.edu/documents/Article6Svensson_000.pdf
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- ⁴⁶ United Nations. *Model Treaty on Extradition*. A/RES/45/116 (1990). Accessed from: <http://www.un.org/documents/ga/res/45/a45r116.htm>
- ⁴⁷ Committee on the Rights of the Child: 46th session. *Consideration of Reports submitted by States Parties under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. Concluding Observations: Spain. CRC/C/Optional Protocol/ESP/CO/1. 2 October 2007. Paras. 31,32.
- ⁴⁸ United Nations Office on Drugs and Crime (UNODC). *Model Treaty on Mutual Assistance in Criminal Matters*. Accessed from: http://www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf
- ⁴⁹ Government of Australia, Department of Foreign Affairs and Trade. *Cambodia Country Brief*. April 2008. Accessed from: http://www.dfat.gov.au/geo/cambodia/cambodia_brief.html

- ⁵⁰ *International Child Sex Tourism: The Scope of the Problem and Comparative Case Studies*. The Protection Project. The Paul H. Nitze School of Advanced International Studies. Johns Hopkins University. Baltimore. January 2007. Accessed from: http://www.kmk-studio.com/JHU/JHU_Report.pdf
- ⁵¹ Green Notices serve to provide warnings or criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
- ⁵² Interpol website: <http://www.interpol.int/Public/Children/Default.asp>



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