Child Sex Tourism in Anti-Trafficking Laws: Recent Developments

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Child sex tourism is being addressed in different ways today, I will limit myself to the legal framework and I would like to share with you some of the recent legal developments in the U.S. law especially in relation to the law on trafficking since trafficking is the focus of this conference.

First, as you all know, addressing child sex tourism in the context of a trafficking law is something new:

- The original TVPA of 2000 mentioned child sex tourism only twice when defining the sex industry in section 102 which defines sex to include prostitution, pornography, sex tourism and other commercial sexual activities, and in section 105 which defines the duties of the Interagency Taskforce to include examining the impact of international sex tourism.

- The TVPRA of 2003 addressed for the first time child sex tourism in the context of prevention when it required the
airlines to develop and disseminate information warning Americans traveling abroad about the danger of child sex tourism. I am not sure how successful we are in getting airlines to respond to the problem.

- It was TVPRA of 2005 which included combating demand for child sex tourism as one of the minimum standards for the elimination of trafficking that foreign countries must comply with.

Second, that is why the TIP Report of 2008 inquires into the issue of child sex tourism in foreign countries. If you take a look at the report this year, cases of child sex tourism have been reported in 57 of the 170 countries included in the report:

- 20 countries are listed as countries of origin, countries like Australia, Austria, Belgium, Denmark, Germany and Spain. They are all countries of demand and they are all placed on Tier 1.

- 31 countries are listed as countries of destination, countries like Cambodia, Costa Rica, Cuba, Dominican Republic, South Africa and Thailand.

- 2 countries are listed as both and these are Russia and Canada.

- And 4 countries, I would say are ‘maybe’ countries. For example, Egypt, the report says “Some Egyptian cities may be destinations for child sex tourism”.
This is how we analyzed the TIP Report. As you all know our review of the report is posted on The Protection Project website.

Third, I am not sure to what extent our trafficking law is addressing child sex tourism as part of the definition of trafficking.

As you all know, sex trafficking is defined as ‘trafficking for a commercial sex act’ but the law does not tell us what is a commercial sex act:

- Is it limited to prostitution?

- Does it include pornography? Well, in *United States vs Marcus*, a case decided in 2007, the Court found that the term ‘commercial sex act’ in the TVPA applied to photographs of sex acts as opposed to only the sex acts themselves.

- How about marriage by catalog or the mail order bride? Would you consider this commercial sex or non-commercial sex?

- And then, how about child sex tourism? One assumes that it is a form of prostitution and prostitution is a form of a commercial sex act.

- One also assumes that there us a link between child sex tourism and child pornography. This was the case in 42 percent, 21 out of the 50 cases that we studied in the U.S. and published as part of the TPP publication of 2007 “International Child Sex Tourism, The Scope of the Problem and Comparative Case Studies”.
Fourth, I would have liked to see child sex tourism explicitly stipulated in the definition of trafficking itself.

And that’s why I like the law of the Philippines 2003. Section 4, ‘Acts of Trafficking in Persons’ is defined as follows:

“To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation.”

Fifth, as to the child sex tourism itself, apart from trafficking, the PROTECT Act, section 105, expands criminal liability in several ways:

• Proof of travel with the intent to engage in illicit sexual contact is no longer required.

• The law punishes attempts to commit the crime. So in United States v Seljan, John W Seljan, an 85 year old retired businessman was arrested in Los Angeles airport on his way to the Philippines to have sex with two girls, ages 9 and 12. Seljan was sentenced to 20 years in prison.

• Provides for liability of the legal person – the tour operator.
And in Section 202, the PROTECT Act abolishes the statute of limitations in sex crimes involving children.

Six, the good news is that the PROTECT Act was held constitutional. In United States vs Clark 2006, the Court said extraterritoriality is fine based upon the nationality principle which allows a country to apply its statutes to extra-territorial acts of its own nationals.

The Court also said that it is within the power of Congress to regulate foreign commerce and that a commercial sex act with a child is within the definition of foreign commerce.

So we are not only talking about regulating a criminal conduct, we are talking about regulating commerce or maybe a commercial transaction that involves pay for the child or maybe we are talking about the travel to a foreign country and that is enough to trigger the application of the foreign commerce clause.

Anyway, the PROTECT Act is fine and many cases have been decided in accordance with the act.

Prior to the passage of the Act in April 2003, the total number of Americans charged with child sex tourism was 12. 8 of these individuals were charged in the Operation Mango case which involved a resort in Mexico, while in the 3 years following the passage of the Act, 38 Americans where charged with the offense of child sex tourism. In these cases, Cambodia, Philippines,
Thailand, Honduras and Mexico emerge as the most frequent countries of destination for American child sex tourists.

In *United States vs Jackson*, a case decided in 2007, Jackson left the U.S. to Cambodia, he was arrested there for having sex with three Cambodian boys, the Court distinguished between the element of travel in foreign commerce and the element of illicit sex.

Seven, the Act was also challenged not only on the basis of unconstitutionality but on the basis that it violates international law.

I am referring here to *United States vs Frank*, a case decided in 2007, in which Frank was indicted for traveling to Cambodia to engage in illicit sexual conduct with females under the age of eighteen. He argued that the age of consent in Cambodia is fifteen.

The Court said that the PROTECT Act is an application of the Optional Protocol of the CRC on sale of children child prostitution and child pornography which the U.S. ratified in 2002.

The Court said that the PROTECT Act does not infringe upon the sovereignty of Cambodia since the Act applies only to U.S. nationals. In addition, Cambodia ratified the Optional Protocol itself, so it will not be offended by a law that was enacted to give effect to Article 10 of the Optional Protocol that requires countries to take the necessary legislative measures to combat child sex tourism.

And that is what is good about the U.S. law, it does not require double criminality like the law of Sweden for example. I know that you all like the Swedish law on prostitution but the Swedish law on sex tourism is not as good. Not only the Swedish law
requires that the act constitutes an offense both in the destination and sending country, it also protects children under the age of 15. The age of protection is 14 in Germany, 15 in France, 16 in Australia, Switzerland, Belgium and the Netherlands.

Eight, the Optional Protocol requires in Article 12 that every country submit a report on the status of compliance with its different provisions including Article 10 on sex tourism.

The U.S. submitted its initial report in 2005. The report says the following:

“The United States has also funded deterrence and public information campaigns abroad in countries such as Cambodia, Costa Rica, Brazil, Belize, and Mexico, targeted at U.S. child sex tourists”

“The United States funds training for law enforcement and consular officials of foreign countries in the areas of trafficking in persons, child sex tourism, and sexual exploitation of women and children.”

I want to congratulate the US for these serious efforts, especially in light of the difficulty in obtaining testimony from child victims and the difficulty in obtaining evidence, and that is why I am for plea-bargaining in sex crimes after I was against it. 54% of the cases we studied ended in a Guilty Plea Agreement.

In 16% of the cases, the sentence was between 21-30 years in prison. In 18% of the cases, the sentence was between 11-20 years in prison. In 47% of the cases, the sentence was between 2-10 years in prison.
Nine, let me end with the new trafficking reauthorization bill and I understand that there is a disagreement between the House and the Senate.

Sex tourism is criminalized only when the victim is a minor. Under §2423, illicit sexual conduct is defined as abuse of a person under the age of eighteen. The House would like to criminalize sex tourism in cases of arranging travels for the purpose of having sex abroad with adults.

So should we expand the crime of sex tourism and if so should we still not require double criminality. The Senate version would make sex tourism a crime only if the country in which the sex act takes place makes the act a crime.

Ten, thank you.