

The Struggle to Eliminate the Sexual Exploitation of Children

**A Survey of International and National Endeavours to Address
Child Prostitution and Related Issues**

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Preface

In recent years countries around the world have begun to make renewed efforts to tackle the problem of the sexual exploitation of children. The phenomenon is not a new one, but recently the scale of the sex industry, centred on developing countries, has grown enormously, with a corresponding rise in the number of children involved. However, because of the very underground nature of the phenomenon, it is very difficult to grasp accurately the spread of the problem with statistics. Some argue that this problem has always been present but hidden, and has only begun to surface because of a rise in social awareness. However, with the approach of the twenty-first century, it is clear that the sexual exploitation of children has become a pathological phenomenon of global scale. Moreover, the average age of the child victims has dropped significantly.

Ove Narvesen who investigated the situation of eight countries in Asia and Latin America in late 1980s with the support of Radd Barna (Save the Children Norway) has described the sexual exploitation of children as "the worst form of exploitation" and she also termed it a "contemporary form of slavery."¹ Narvesen was not alone in this view. Gaye Phillips of UNICEF-Australia states that "sexual exploitation of children is more about abuse of power than it is about sex. The multi-billion dollar illegal industry that buys and sells children as sexual commodities subjects them as one of the most hazardous forms of exploitative child labour, endangers their mental and physical health, and undermines all aspects of their development. It is one of the worst violations of human rights, and has been identified by many international and national bodies as a modern form of slavery. Its scope is trans-national."²

Following the recognition of the seriousness of this problem, legislative review was placed high on the international political agenda. New international agreements were forged at the United Nations, and at the same time, or earlier in some cases, several countries took the initiative to establish new national legislation. This action is, to quote Mr. Ron O'Grady who is the chairman of International ECPAT, based on a sense of "anxiety about the use of destructive

¹ Narvesen, O., (1989) The Sexual Exploitation of Children in Developing Countries, p.9.

² Phillips, G., *Children in Commercial Sexual Activity—A Global Overview*, in Proceedings of the National NGO and Government Consultation on the World Congress against Commercial Sexual Exploitation of Children, Canberra, 20 June, 1996, 1 (Commonwealth Department of Foreign Affairs and Trade, ECPAT Australia, Defense for Children International)

force toward persons without power." It is anxiety about the one-sided abuse of the human rights of children, and abuse of the inherent inequalities of power between children and adults. In the majority of cases the child victims are female and so this is also a question of the violation of the human rights of women, and in the case of use of children in prostitution by foreign tourists, there is the further question of race and racial stereotypes and discrimination.

Legislative review, if it is carried out from the point of view of the human rights of children and women, is characterised by urging society to make important changes in its values. The dominant theory regarding human rights, of "the abstract independent individual" has, in reality, had the function of justifying patriarchal social values. We cannot say that the values of women and children have been completely ignored, but they have certainly never been fully incorporated. The unequal distribution of social resources is evidence of this reality, and for example sufficient resources have never been invested in the fight against sexual violence and child abuse.

Legislative reform based on promoting the human rights of women and children urges us to change or revise current patriarchal social values. Once the issue of sexual exploitation is raised, challenges to the various deep-rooted values and myths relating to sex naturally arise. Such values and myths have been constructed over long periods of time, and their deconstruction will surely require time and effort. It is clear, however, that new legislative instruments represent a desire to reform established structures and ensure a more equal redistribution of social resources to include women and children. "The law (only) provided a sign of the authorities' assessment of which interests demand protection, what kind of behaviour cannot be tolerated."³ Legal reforms may be considered as the expression of national policies that give priority to the protection of the interests of children and the unacceptability of their sexual exploitation. In many countries these kinds of policies have been brought into existence, although actual implementation is as yet far from satisfactory.

This report will firstly attempt to outline the current situation of sexual exploitation of children, said to have "reached alarming levels"⁴, and discuss the background and causes. Secondly,

³ Report of the Working Group on Contemporary Forms of Slavery on its Fourteenth Session, UN Doc E/CN. 4/Sub. 2/1989/39, para 46

⁴ Zoller, *Sub-Commission: 48th Session, Human Rights Monitor*, (1996), p.13, 24.

efforts for eliminating the problem at both national and the international level will be analysed, and finally the current situation in Japan will be discussed.

I. Overview

1. Definitions

Several terms to be used in this report should at first be defined. This report focuses on "children." Strictly speaking, there is no single definition of children. The Convention on the Rights of the Child defines in Article 1 that "a child means every human being below the age of eighteen years." However, a conditional phrase adds that "unless, under the law applicable to the child, majority is attained earlier." In some reports and papers, anyone under 16, or sometimes under 15 is recognised as a child. Although there are differences between countries, because of the global diffusion of the Convention, the age of 18 has been most recognised as the legal age dividing children from adults. The age of consent for sexual intercourse is however not necessarily consistent with this age. As is the case with Japan and other countries, the two ages differ, with the age of consent usually the lower of the two.

"Sexual exploitation of children" refers to any action whereby an adult uses a child for sexual purposes (ie. the sexual satisfaction of the adult). Adults may use their economic and social power to exploit children's youth and sexuality. "Commercial sexual exploitation" refers to such actions whereby financial profit is made from the sexual exploitation of children.

"Child prostitution" is the sexual exploitation of children in which cash or products play a role. In many cases child prostitution is organised by intermediaries such as parents, other family members, teachers, etc. In this report, the term child "prostitution" is used to refer to the criminal actions of adults who commercially exploit children in a sexual way. In many countries, selling oneself in prostitution is illegal, leaving open the question of whether or not offenders should be penalised. This is the case with Japan's Anti-Prostitution Law. Under these circumstances, use of the expression "child prostitution" risks placing the children in the position of the criminal or deviate. The question is however not limited to the rights and wrongs of children "selling" themselves. What is essentially problematic is the fact that children are exploited by adults; "sold" and "bought" as sexual objects. I use the term "child prostitution" in this report with the intention of emphasising the criminality of those adults who buy children in order to sexually exploit them, or profit from their exploitation in any way.

The definition of "child pornography" differs from country to country. In this report the term is used to refer to any audio or visual material which represents children in a sexual context.

Child pornography therefore includes pictures, drawings, slides, magazines, movies, videos and computer images which reproduce the child's image in a sexual manner. The content of child pornography varies from that which explicitly depicts a child's sexual behaviour, to less explicit images, for example those which show children posing in a 'seductive' manner, and so on.

These definitions are given for the convenience of this report, and are in no way meant to be conclusive.

2. Child Prostitution

(i) Current Situation

"If the world lasts into the 22nd century, future historians may well ask how it could be that human society at the end of the 20th century was so irresponsible that it could let several million children be kept in slavery to serve the sexual appetites of adults. They will rightly equate this appalling state of affairs with the squalor of Rome in the second century and the widespread practice of slavery in the 18th."

Ron O'Grady, Chairman, International ECPAT⁵

As Ron O'Grady describes above, the phenomenon of child prostitution now exists on a scale which cannot be ignored. Several years ago, political leaders from Thailand, Sri Lanka and Taiwan stated that there were very few child victims of prostitution in their respective countries. However, recently the Thai Prime Minister has acknowledged that "prostitution in Thailand, particularly child prostitution, has reached a state where it is unacceptable to both the country and the international community"⁶. The same comment can be made in relation to a number of other countries. The current situation in a number of countries is outlined below:⁷

⁵ Ron O'Grady, Ajia no Kodomo to Sexu Tsuristo (1994) Akashi Shoten, p.7.
(Ron O'Grady, The Rape of the Innocent, (1994), p.7)

⁶ *ibid.*, p.104 (*ibid.* pp.89-90)

⁷ ECPAT Australia, End Child Prostitution, Pornography and Trafficking: ECPAT Resource, p.8-14.

(a) Thailand

Reported figures of the numbers of children involved in the sex industry in Thailand vary enormously. Most sources give a number between 10,000 and 800,000, although ECPAT estimates between 200,000-250,000.

There has been a sex industry exploiting impoverished children in Thailand since ancient times. Such "traditional" practices, combined with an influx of male migrant workers, the presence of the US military during the Vietnam War, the "development" of the tourist industry, and the promotion of "sex tours" have all contributed to the expansion of the sex industry to current levels. The arrival of sex tourists and foreign businessmen created further "demand". Demand grew to such a level that intermediaries, in particular criminal organisations, began to reach deeply into rural areas in search of new sources of women and children.

Girl children at brothels in remote areas account for the largest number of those exploited in the Thai sex industry. It is recognised that families or guardians may sell their own children, and there are reports of children as young as ten years old being sold in this way. Traditional values uphold the concept that girls should support their family financially, even by selling themselves, and therefore some women may even consider it an honour to be engaged in the sex industry. Children may have to continue working in this way until they have paid back the debt owed when they were sold (debt bondage). Many are forced to take considerable numbers of customers every day, and condoms are rarely used. The nature of the power relationship means that if the customer does not wish to use a condom, there is little that the girl or woman can do.

Thailand is also a "sending country," and Thai children are trafficked abroad for the purpose of their sexual exploitation. It is, at the same time, a "receiving country" and a "relay country". Sophisticated criminal groups are known to be responsible for this trade, which involves millions of women and children. There have been cases in which girls as young as thirteen have been trafficked in this way to Australia and Japan.

(b) The Philippines

According to NGO statistics, the number of children engaged in the sex industry is estimated to be between 60,000-100,000 (government figures are slightly lower). Child prostitution became a growing problem during the 1970s and the 1980s. Expansion may be attributed to the presence of the US Navy, the "development" of the tourist industry, the promotion of "sex

tours,” and the increasing internal economic disparities. Furthermore a very large number of Filipino women are exploited abroad as “hostesses”.

(c) Taiwan

ECPAT estimates that there are about 100,000 children involved in the sex industry in Taiwan. The "demand" is mostly attributable to local Taiwanese males, although the presence of tourists from various other Asian countries, especially Japanese sex tourists, can not be disregarded. Taiwan has long been a destination for sex tourists from Japan.

Most of the children involved lead lives of considerable deprivation in brothels. Most of these children are from economically disadvantaged backgrounds, and a high percentage of are of aboriginal ethnic origin. In Taiwan, ethnic aborigines account for only 2% of the total population; but about 20% of child victims of commercial sexual exploitation, reflecting the cultural and economic marginalisation of this group.

Similar to Thailand, Taiwan is also a “sending” country, with many Taiwanese children being trafficked abroad the purpose of their sexual exploitation, and is also known to be a “receiving” and “relay” country.

(d) Sri Lanka

Unlike Thailand, child prostitution is a recent phenomenon in Sri Lanka. In addition to local "demand," the "development" of the tourist industry since the 1970s has contributed to the expansion of prostitution. PEACE, an NGO which has been actively dealing with these issues in Sri Lanka, estimates that about 10,000 children aged between six and fourteen are bound into sexual slavery, in addition to about 5,000 children aged between ten and eighteen who are exploited in the sex industry at tourist resorts. One special feature of child prostitution in Sri Lanka is that, in most cases, it is boys who are sought out and sexually exploited. “Customers” are mostly Western paedophiles who visit Sri Lanka for the express purpose of abusing children in child prostitution.

Among these children, it would seem that some become involved in the sex industry to earn money to purchase consumer products rather than to escape from poverty.

(e) Cambodia

During the 1970s prostitution in Cambodia was completely prohibited under the authority of the Khmer Rouge. Anyone engaging in extramarital intercourse was liable to capital punishment. In the 1980s, however, there were indications that the sex industry had re-emerged, although legislative regulations toward commercial sex workers were strict, and there was no change of policy following the withdrawal of the Vietnamese army. As of 1991, the number of commercial sex workers in Phnom Penh was estimated to be about 6,000.

However, following the arrival of the United Nations Transitional Authority in Cambodia (UNTAC), the number of commercial sex workers immediately jumped to more than 20,000. With the conclusion of UNTAC duties, the number decreased, but the average age appeared to fall. According to an NGO investigation, in 1992 the youngest sex workers were about 18 years old. However by 1994, 35% of the sex workers in Phnom Penh were under 18. The investigation, which was conducted in Phnom Penh and eleven states, estimates that children between thirteen and seventeen accounted for 31% of all sex workers at that time.

Most of the "demand" is attributable to local men. However, active networks of paedophiles are known to be operating clandestinely, and a considerable number of businessmen, sex tourists, and persons involved in development aid are thought to make up a further significant group of customers. There is also trafficking of women and children to Thailand and Vietnam for the purpose of sexual exploitation.

(f) India

Most of 400,000 to 500,000 children engaged in the sex industry offer their services to local customers and businessmen from Western Asia. According to an NGO, 20% of those in brothels in Bombay are children under the age of eighteen, and a half of these are estimated to be infected with the HIV virus. A large number of children are smuggled from Nepal as virgins and many return home after becoming infected with HIV. There are also reports of visitors from Saudi Arabia who have purchased girl children as "brides," with the actual intention of profiting through their forced prostitution.

Similar to the situation in Thailand, child prostitution has existed since ancient times. There is a tradition of dedicating girl children to a Hindu goddess, who are thereby known as "devadasis" (This practice is in modern times practically devoid of religious meaning, and is a

way of recruiting child prostitutes with a considerable portion of the "profit" from prostitution dedicated to temples). This practice is now illegal, but continues. As of 1994, there were an estimated 5,000 devadasis in Cultanaka. Most of the children who become devadasis end up spending their entire lives in the sex industry. Some ethnic groups have traditionally worked in prostitution (for example, the Rajnat), and in 1995, of 4090 Rhajunat engaged in the sex industry in Rhajiput, 1,500 were children between eleven and sixteen.

(g) Nepal

There are over 200 brothels in Kathmandu and many children are among those exploited. The overwhelming majority of those who are sexually exploited in Nepal are girls from Sindhupalchowk, from where they are sent to India. In India, there is a high demand for girls with smooth skin and oriental features. Some statistics show that in brothels in India there are approximately 200,000 girls from Nepal. Every year between 5,000 to 6,000 girls are sent into India. A girl is sold for an average of about 800 dollars, which is more than three times the average annual income. These children have to keep working until they can pay back the debt generated by the sale, which is thought to be about three years. According to an NGO report published in 1995, about half of the children engaged in the sex industry in Bombay are from Nepal. Some children return to their own country infected with HIV and AIDS. A preference for virgins has become more prevalent in India, and consequently the age of the children being exploited has dropped. The average age, which was between fourteen and sixteen about ten years ago, is now between ten and fourteen.

(h) Vietnam, Burma, China

In Vietnam, children account for 20% of those engaged in the sex industry. The development of the tourist industry has accelerated the expansion of the sex industry. It would appear that men from Hong Kong, Singapore, and Taiwan believe that to have intercourse with a virgin, will increase their longevity, and maintain youth and vigour. The existence of organisations which specifically work to provide virgins for this purpose has come to light. Vietnamese women and children are also trafficked to Cambodia and Thailand, and there is trafficking in women to China as "brides".

About 10,000 Burmese girls are trafficked to Thailand every year. Bound into slavery in brothels they may be forced to have sexual intercourse many times every day, and customers

rarely use condoms. A significant number of women are deceived by intermediaries and abducted from rural districts.

The number of children involved in the sex industry has also increased in China, and estimates of the numbers range from 200,000 to 500,000. There are also many cases of women and children from ethnic minorities from the Southwest being trafficked to Thailand and Burma.

(i) Others

Child prostitution is also a growing problem in other areas of the world. In Latin America, 500,000 children (most of them homeless "street children") are thought to be involved in prostitution in Brazil alone. The number of children who are being sexually exploited in this way has also been increasing in the Dominican Republic, Columbia, Haiti, Bolivia, and Mexico.

In Africa the number of sexually exploited children has been increasing with poverty, rapid urbanisation, and "development" of the tourist industry. Cases of child prostitution have been reported in Kenya, Zaire, Mozambique, and the Gambia.

In Eastern Europe, the situation has significantly worsened in recent years, and many children have become caught up in the sex industry in countries with economies in transition, such as Russia, Romania, the Czech Republic, Poland, and Hungary. Exploitation of children by tourists from Western Europe, and the sale of children to brothels in Western Europe are also rapidly become major problems.

Child prostitution is also a recognised phenomenon in those industrialised countries where the issues of unemployment and social divisions are prominent.

(ii) Structure

Child prostitution involves a three-point structural relationship between buyer, seller, and intermediaries.

(a) Prostitute Users—Demand

What type of people seek out children as sexual partners? What explains this behaviour? Those who specifically seek out children as sexual partners are known as "paedophiles."

Besides paedophiles, there are other individuals who can be categorised as "preferential child sex abusers." However, the group who represent the greatest source of demand for children are "situational child sex abusers." These individuals choose to have sexual relations with children or adults, depending on the circumstances.

ECPAT further categorises those who sexual exploit children in prostitution into nine groups based on occupational status⁸. According to ECPAT, the main groups known to exploit children are as follows:

1. military personnel (including UN peacekeeping troops);
2. seamen and truck-drivers;
3. migrant labourers;
4. travelling businessmen (some companies are reported to reward employees for their loyalty and contribution to the company with sex holidays abroad. Other companies are known to supply employees with domestic servants who are expected to provide free sexual services in addition to other duties. Children often become victims of such sexual exploitation.);
5. sex tourists;
6. expatriates;
7. local clients;
8. aid workers
9. employers of domestic workers.

There would seem to be diverse reasons why adults seek out children for sex, some based on deeply-held myths regarding sex. For example, a belief that men have a simple biological need for women, compounded by the cultural ideal that younger women are more desirable may lead to children to being targeted. Recently the heightened fear of AIDS would appear to have caused abusers to seek out younger and younger children, although there is no scientific or objective grounds to believe that children will not be infected with the HIV virus.

The use of prostitutes by a group may be thought to strengthen the bonding of the group. If their sexual partners are children, bonding seems to be stronger. Men are socialised to behave in "masculine" manner, and dominant definitions of "masculinity" involve the notion of men

⁸The Sex Exploiter, submitted by ECPAT to the World Congress against Commercial Sexual Exploitation of Children, Stockholm Sweden, 27-31 August 1996, pp. 4-8

holding and exerting power over others. The sex industry, which treats women and children as sexual objectives or commodities, is a perfect vehicle for men to play out this myth of "masculinity." Children, who are more likely to be subservient to the wishes of the abuser, may be the preferred 'objects' for those who wish to act out such fantasies of domination.

Some clients, intimidated by the rise of women's status and self-awareness, are compelled to search for women who can be easily controlled. These kinds of men may end up abusing children in prostitution, as they feel threatened by adult women prostitutes, who may ask for a time limit or demand the use of condoms and so on. These men would prefer a subservient and obedient partner. This may explain why many abusers have a preference for Asian women, and especially Asian children.

The vast majority of those who have sexual contact with children know that their behaviour is illegal and socially unacceptable. Abusers however attempt to justify and legitimise their behaviour. According to ECPAT the most common justifications are as follows; Firstly, abusers convince themselves that the children they exploit have actively chosen prostitution. Secondly they claim cultural differences, i.e. that the culture that hosts them is more sexually open than for example, Western culture, and that sexual behaviour should not be judged by the same standard it is judged in the West. Abusers further claim that child prostitutes desperately need money, and that since they are helping these children by rescuing them from poverty they should be praised rather than chastised⁹. These three justifications are however delusions. There is rarely real consent on the part of children; the existence of a "tolerant" culture where child prostitution is accepted is a further myth; and any money involved is usually absorbed by a third party (brothel owners, pimps, brokers, etc.)—in most cases the children receive very little if any of the money paid by the abuser.

(b) Providers—Supply

The main background factor leading to the sale of children into prostitution would appear to be poverty, and the overwhelming majority of the children who become victims of prostitution are from economically disadvantaged backgrounds. When poverty is accompanied with low levels of education, lack of information, and unemployment, parents, families, and villages can easily

⁹ Ibid, pp.15-18

fall prey to intermediaries. There is evidence to suggest that parents may be deceived into selling their children.

However, poverty is not the only reason for the existence of this problem. Increased consumerism is also playing an increasingly significant role. In areas where the influx of consumer products is destroying traditional values, it has been observed that parents or guardians may agree to sell their own children because they wish to obtain 'luxury goods'. Gender discrimination is a further causal factor. "Traditional" values which support the belief that it is natural for girls to "sacrifice" or sell themselves for the good of the family, or religious "tradition" such as those whereby girls are dedicated as temple prostitutes etc.; are manifestations of sexist values where men are more highly valued by society than women. Furthermore, as women may have limited access to education, such values are reproduced and passed on to future generations.

The sale of children or inducement to sale of children is prohibited by law in many countries; but yet is a growing problem. This is partly because there is insufficient law enforcement. Thailand presents a good example of this point. Many developing countries have put heavy emphasis on the tourist industry as a development strategy, putting considerable efforts and resources into attracting foreign tourists. Under such policies, the sex industry has been more or less acknowledged as a legitimate entity. If national policy encourages prostitution it is highly unlikely that sufficient resources will be put into enforcement of legislation which punishes prostitution. On the contrary, there are cases in which law enforcement officers who are faithful to the law find their career prospects damaged. There are also cases in which law enforcement officers are easily bribed, perhaps partly because of low wages. In Thailand, India, and the Philippines, there have been cases in which police were positively co-operating in the operation of brothels. Police officers do not receive sufficient training in dealing with these sensitive issues, and the child victims tend not to be co-operative in investigations for fear that they themselves will be punished. Furthermore, developed countries have not been paying much attention to criminal behaviour of this nature committed by their nationals abroad.

(c) Intermediaries

Since the sexual exploitation of children is profitable, various groups, including organised criminal gangs, operate as "intermediaries," connecting the "demand" and the "supply." This is

a complex area, but it would be useful at this point to mention the phenomenon of “sex tourism”.

In the 1960s the Vietnam War proved to be one of the reasons for the expansion of the sex industry in Thailand, the Philippines, and Taiwan. During this period, many young American soldiers visited Thailand and Taiwan on leave. The area around the Olongapo US naval base in the Philippines became a major focus for the sex industry. Following the end of the Vietnam War the majority of customers were local men, although the area also became an increasingly popular destination for foreign “sex tourists”.

At the same time, a large number of Japanese male tourists began to visit Thailand, the Philippines, and Taiwan on ‘sex tours,’ organised with the complicity of local branch offices of Japanese tourist agencies and other enterprises, and in Japan guidebooks encouraging and promoting such tours became freely available.

Paedophiles began to visit Thailand, the Philippines, and Sri Lanka in significant numbers from the 1970s onwards. Although paedophile rings are by necessity clandestine, they are adept at networking and information exchange. The majority of paedophiles are male; although the existence of a certain number of female paedophiles has been noted.

Sex tours not only take place between Europe to Asia but also between Asian countries. As mentioned above Japan is one of the main sending countries for these kind of tours, although there is also similar activity from Taiwan to Vietnam, and from Malaysia to Thailand. Major tourist agencies no longer act as intermediaries, although in Japan and Australia, for example, small-scale tourist organisations continue to do so.

3. Child Pornography

(i) Problematic issues

Child pornography is a serious and problematic issue, but unlike adult pornography, not merely because it is 'obscene' or offends 'public decency'. The most important issue is the prevention of the abuse of children through their sexual objectification. The problem is not the influence which child pornography has on society, but rather the damage done to the children abused in this way. Considering the potential damage inflicted on children exposed to child pornography, and the fact there are paedophiles who justify their behaviour with child pornography, it should be recognised that child pornography has a unique social influence different from that of adult pornography.

There are several ways in which children can be potentially harmed by child pornography¹⁰. Firstly, as video tapes and pictures are reproduced and preserved, the children who have been filmed in this way are never able to escape from these negative experiences. Furthermore, the psychological development of children who have been sexually exploited may be disturbed, and these children may be at high risk of becoming abusers themselves in the future. Also, there is the fear that children who view child pornography may be seduced into believing that pornographic activity is normal for children. It may act as a model that results in children emulating and engaging in sexual violence and the sexual exploitation of others.

The function of child pornography may be various, and for paedophiles, however, the utility value of pornography is especially high. Paedophiles use child pornography to justify their behaviour. Furthermore, knowing that many people, including those holding positions of responsibility in society are involved in child pornography, paedophiles convince themselves that their behaviour is not abnormal. Paedophiles also use child pornography as a medium of information exchange and of communication with other paedophiles, as well as to assist in the seduction of children. Child pornography is used as a medium of blackmail to ensure the life long silence of the victimised child.

¹⁰ Child Pornography: An International Perspective, submitted by ECPAT for the World Congress against Commercial Sexual Exploitation of Children, Stockholm Sweden, 27-31 August 1996, pp.14-15; and Yamada, Toshiyuki, *Senshinkoku ni Okeru Jidou Poruno Kisei* (Measures against Child Pornography in Developed Countries), *Gaikoku Rippou* (Foreign Legislation), vol.34, No. 5&6, pp.139-140.

There remains a number of points relating to the nature of the relationship between crimes committed by paedophiles and child pornography which require further investigation.

Generally speaking, there are two models to explain the relationship between pornography and sexual violence; the “catharsis” model, and the “imitation” model¹¹. According to the former, pornography is a release for suppressed sexual tension, and sexual violence is prevented as a result. According to the latter, however, pornography provides a model for sexual violence. Depending on the interpretation applied, the evaluation of the harm caused by pornography differs. Whether or not pornography is a trigger for sexual violence has not been scientifically proven, and this is also the case with the crimes committed by paedophiles. It is true that child pornography benefits paedophiles, but further investigation is needed to prove a causal relationship between child pornography and the actual sexual abuse of children.

(ii) Current Situation

The victims of child pornography may be boys or girls, and in some cases very young children. Many materials seized in the United States and Canada depict boys; although it would seem that overall most child pornography depicts girls. In Japan, it is female children that are predominantly exploited in pornographic material. In most countries, ‘street children,’ children from broken homes, poor children, and children with special needs are especially vulnerable. However children from other backgrounds may also become victims of child pornography. Some paedophiles, holding positions of some responsibility in society, are able to use their social status to gain access to children, and in some cases parents or guardians may use their own children to create child pornography.

International networks active in the production and distribution of child pornography promote the dissemination of child pornography.

Until recently child pornography has been most widely available in Northern Europe and North American. Much of this material had been produced in the United States, some portraying Asian or African children. Regulations were tightened in the 1970s and 1980s, and the amount of material in circulation decreased significantly. However, this decrease is of materials in general distribution, and the production and distribution of child pornography among paedophiles without any commercial motive would appear to be on the increase. Unlike adult

¹¹ Kinjou, Kiyoko, Ho Joseigaku (Law and Gender Studies), (Second Edition), Nipponhyoronsha, (1996), p.258

pornography there is no evidence of the involvement of organised crime, perhaps because of the lack of commercial incentive. Nonetheless, commercial child pornography still exists.

Japan has now become the main centre for the commercial production of child pornography, and materials which depict children sexually are regularly published in a large number of Japanese magazines and newspapers, with images of school uniform-clad girls seem having the highest commercial value. Pornography involving pre-pubescent children are also freely available. The market for Japanese child pornography, centred on Asia, is expanding world wide, and the involvement of Japanese crime syndicates has been noted.

Child pornography is also a problem in developing countries. However, the problem is often concealed because of lack of reliable data. The exploitation of children from developing countries in pornography and sex tourism by people from developed countries is now being recognised as a seriously problem. Paedophiles in Europe have recently begun targeting children in Eastern Europe where the legislative regulations are as yet loose.

Recording media have become simpler, and this has accelerated the expansion of the problem. The spread of video cameras has enabled amateurs to produce pornography easily, and the spread of personal computers is also of some concern. The rapid development of computer technology has made the production of child pornography easier, and the recent appearance of child pornography which uses child-like images rather than real children has further complicated the issues. Child pornography can be disseminated instantaneously across the globe on the Internet, and regulation of this is extremely difficult.

(iii) Child Pornography and Freedom of Speech

In order to decide how best to regulate child pornography, the relationship between child pornography and freedom of expression needs to be clarified.¹²

There is a strong opinion that pornography in general is "a form of coerced sexual practice" or an "institutionalisation of gender equality." For instance, in Canada, there is a provision in the Crimes Act which makes illegal any article that denigrates or dehumanises women. The Canadian Supreme Court approved the constitutionality of this provision in 1992, when it was

¹² Yamada, supra note 10, pp 141-143

ruled that pornographic expression is seen as an expression of sex discrimination and is therefore liable to legal regulation. On the other hand, in the USA the need to protect women from any expression of sex discrimination is not considered to be so acute as to require federal intervention. An ordinance of the City of Indianapolis states that pornography dehumanises women and any woman victimised during the production of pornography has the right to pursue a civil suit. However, this article has been overruled by a judgement of the Supreme Court as contradictory to the First Amendment of the United States Constitution, which guarantees freedom of speech¹³.

However even in the United States, the question of the best interests of children has been taken up as a separate issue. In *Roth v. United States*, 354 U.S. 476 (1957), the Supreme Court formed a two-tier theory of freedom of speech which states that there are two kinds of expression; one is protected by the constitution and the other is not. However, in *Miller v. California*, 413 U.S. 15 (1973), the Supreme Court clarified three criteria for determining forms of 'obscene expression' which would not be protected by the First Amendment. According to this ruling, any work could be categorised as an obscene expression) if it appeals to the sexual interests of others, ii) if it clearly expresses lewd sexual acts, or iii) if it is without literary, artistic, political, or scientific value. This however left the open questions of whether all child pornography should be considered as obscene or whether some pornography could be protected. However, in *New York v. Ferber*, 458 U.S. 747 (1982), the Supreme Court ruled that child pornography, regardless of whether or not it is defined as an obscene expression, is not protected by the First Amendment.

However, the Ferber case centred on the question of production and distribution of child pornography, and not the possession of child pornography. Regarding the possession of child pornography, in *Stanley v. Georgia*, 89 S. Ct. 1243, the Supreme Court decided that private possession of any obscene materials can not be outlawed. The decision was made based on the reasons that the right to receive information and the right to privacy are guaranteed regardless of the nature of the information received.

In *Osborne v. Ohio*, 495 U.S. 103 (1990), the Supreme Court, emphasising the difference from *Stanley*, held that prohibition against possession of child pornography is not unconstitutional.

¹³ Kamiya, Masako, *Sei no Shohinka to Hyougen no jiyuu* (Commercialisation of Sex and Freedom of Speech) in *Sei No Shohinka* (The Commercialisation of Sex), ed. Ehara, Yumiko, (1995), Keiso Shobo

According to the decision of the court, regulation of pornography based on a paternalistic view point that the possession of pornography corrupts the mind of the viewer, but in the case of child pornography, regulation must be based on the best way to protect the victims of child pornography, a necessary part of which is the destruction of the market. In addition, because of the difficulties in attacking production and distribution it is necessary to outlaw even possession of such materials. The Court maintained that the Ohio Revised Code which prohibits the possession of child pornography is constitutional.

Even in the United States where freedom of speech is highly respected, regulation of child pornography has received constitutional protection, and a similar idea that child pornography is not entitled to protection under laws protecting freedom of speech has also become widespread in Europe. However, the current situation in the United States have received several criticism such as that "it is undeniable that the two-level theory which has been adopted since Roth has a side which curtails freedom of speech"¹⁴ and that "(the court decision over Osborne) damaged the right to privacy. There have been further misgivings that this decision is a first step towards greater interference by government in the private home life of citizens"¹⁵.

¹⁴ Ebashi, Takashi, *Jidou Poruno no Kisei to Hyogen no Jiyuu* (The Regulation of Child Pornography and Freedom of Speech), *Jurisuto*, No.828, p.220

¹⁵ Yaguchi, Toshiaki, *Jidou Poruno to Shiteki Shoji to Shusei Ichijou no Hogo* (Private Possession of Child Pornography and the First Amendment), *Jurisuto*, no.1019, p.164

II. International Standards

1. Conventions on the Sexual Exploitation of Children

The first international measures regarding the sexual exploitation of children were brought into existence at the beginning of the 20th century.

The International Agreement on Suppression of the White Slave Traffic (1904), the International Convention for the Suppression of the White Slave Traffic (1910) and "International Convention for the Suppression of the Traffic in Women and Children (1921)" took the lead. In this series of agreements, it is stated that signatories agreed to punish any person engaged in procuring, enticing or leading away another person under the age of 21 for purposes of forced prostitution, regardless of the consent of the latter. In 1930, the International Labour Organisation adopted ILO 29 concerning forced labour. This convention prohibits the forced labour of men below the age of eighteen, and women of all ages. In this convention "forced or compulsory labour" was defined as "all work or service....for which the said person has not offered himself voluntarily," and signatories were placed under the obligation to punish any persons who engage in such coercion. In "The Convention for the Suppression of the Circulation of and the Traffic in Obscene Publications," which was concluded in 1923, signatories agreed to suppress the production, possession and trafficking of any kind of obscene publication. The International Slavery Convention, which urged the prevention and prohibition of the slave trade and abolishment of any forms of slavery, was adopted in 1926.

In the era of the United Nations, in response to the above agreement and conventions regarding the suppression of the sale of women and children, "the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others" was adopted in 1949. In this convention, it is stated that "prostitution and.....the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community" (Preamble). It was agreed to punish any person who "procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person" (Article 1). Signatories to the Convention are obliged to further to any person who "keeps or manages, or knowingly finances or takes part in the financing of a brothel" or who "knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others" (Article 2). These offences were regarded as extraditable offences. The establishment of an investigative body was advised, (Articles 8,

13 and 14.). In addition, signatories are also obliged to take measures for the rehabilitation of victims, "in order to prevent the international traffic in persons for the purpose of prostitution", (Article 16, 17). The signatories are further obliged to, "(p)ending the completion of arrangements, offer repatriation of destitute victims of international traffic in persons for the purpose of prostitution, make suitable provisions for their temporary care and maintenance," (Article 19).

On the other hand, as new forms of slavery began to appear, "the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery" was adopted in 1956. This convention urged signatories to abolish as quickly as possible debt bondage, serfdom, sale of women for purposes such as marriage or forced child-bearing, and the traffic in children for exploitation. The following year (1957), the ILO adopted an international convention (No. 105) concerning forced labour.

Proscription on the trafficking of human beings and slavery are clearly provided in the "International Covenant on Civil and Political Rights," and regional legal measures such as the European Convention on Human Rights and the African Charter on the Human Rights. It is also stated in Article 10, paragraph 3 of the International Covenant on Economic, Social and Cultural Rights that "children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, or dangerous to life or likely to hamper their normal development should be punishable by law." As a matter of course, sexual exploitation of children, including prostitution and pornography, is included in this provision. Moreover, article 6 of the Convention on the Elimination of All Forms of Discrimination Against Woman states that "parties, take any appropriate measures in order to prohibit any form of sale of women and the exploitation or the prostitution of women."

The "Declaration(s) of the Rights of the Children" adopted in 1924 and 1959 are international documents which directly deal with the protection of the rights of the child. Both declarations state that children need to be protected from any form of exploitation. Although it is not clearly stated, "sexual" exploitation is implicitly included in this.

2. Convention on the Rights of the Child

Children have a right to be protected from sexual exploitation. However, there are huge disparities between such normative demands and reality. In the late 1980's, the international community was required to set further standards. The Convention on the Rights of the Child,

which was adopted at the United Nations General Assembly in 1989, includes more comprehensive provisions regarding the prevention of the sexual exploitation of children.

Article 34 is of particular significance:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- A) The inducement or coercion of a child engage in any unlawful sexual activity;
- B) The exploitative use of children in prostitution or other unlawful sexual practices;
- C) The exploitative use of children in pornographic performances and materials.”

As the delegations from the Netherlands and France stated during drafting, "the purpose of this article is not to regulate the sexual life of the child, but to prohibit the sexual exploitation of the child¹⁶." Parts A) to C) are nothing more than an enumeration of examples; however, it is very significant that child pornography is prohibited by C). This filled in the gaps in existing international documents, such as the 1923 "Convention for the Suppression of the Circulation of and the Traffic in Obscene Publications".

This article, however, remains problematic in its interpretation. For instance, this article does not explicitly stipulate the complete prohibition of the use of children in pornography, although "exploitative" use of children is prohibited. This article may then be interpreted as saying that children may be used in prostitution or pornography, if that use is not "exploitative."

Unless one takes a strong stand that all children under 18 who are engaged in prostitution are being practically exploited, it is possible for one to interpret that the engagement of children who are supposedly exercising their sexual autonomy in prostitution should not be prohibited.

In common with international documents in the past, the difficulty of how to legally regard prostitution remains problematic. The United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others regards prostitution as being "incompatible with the dignity and worth of the human person and endangers the welfare of the individual, the family and the community." This is applicable to all forms of prostitution,

¹⁶ Hatano, Ribou, Zuijōu Kaisetsu: Jidō Poruno Kenri Jōyaku, (The Convention on the Rights of the Child), (1994), p Yuuhikaku, p.235

and naturally includes child prostitution. The same convention also obliged the signatories to punish any persons who "procures, entices or leads away, for purposes of prostitution, another person even with the consent of that person." The stance taken toward prostitution is very clearly stated by this convention, as opposed to the rather obscure stance taken in the Convention of the Rights of the Child. As mentioned above, it was however extremely significant that the regulation of child pornography was regulated under this convention, but the fact that the definition of pornography is left ambiguous remains a central issue¹⁷.

Overall this provision permits "the parties a considerable degree of flexibility in determining the measures." For example, this provision does "not specifically require parties to enact legislation extending criminal jurisdiction over their citizens abroad. The Convention may be interpreted, however, as giving the state the latitude to enact such legislation if this action would fulfil the objectives of the Convention"¹⁸. As many scholars point out, it is certain that this provision plays an important role in demarcating a legislative outline for the protection of children from sexual exploitation.

3. Draft Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

(i) Initiatives

Thanks to the consciousness-raising effect of the World Summit for Children, the number of countries having ratified the 1989 CRC increased over a very short period of time, and consequently the obligations enumerated by the Convention became more widely applicable. The international community began to present various concrete measures aimed at eliminating the sexual exploitation of children, centred on the efforts of two key organisations; the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights. Despite these endeavours the problems showed little sign of disappearing, and so further measures aimed at strengthening the legislative framework begun to be discussed.

¹⁷ Van Bueren, The International Law on the Rights of the Child, (1995), pp275-279

¹⁸ Healy, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 Fordham International Law Journal 1852, 1878, (1995)

This initiative was taken by an Australian Human Rights Commissioner, Brian Burdekin, who has a strong interest in the issues of the human rights of children. Burdekin, who attended the Second International Workshop of National Institutions for the Promotion of Human Rights in Tunis as the representative of the "Human Rights Equal Opportunity Commission," submitted a draft (the Draft Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) at the conference. The conference, in response to the Draft Optional Protocol (consisting of a preamble and twelve articles), adopted a recommendation requesting the UN Commission on Human Rights to initiate urgent discussion on the draft. (E/CN. 4/1994/45 & Add. 1)

During the same period (on December 20, 1993,) with the initiative of the Latin American group, the UN General Assembly adopted Resolution 48/156, and the political debate concerning the Draft Optional Protocol began. The resolution, entitled "The need to adopt efficient international measures for the prevention of the sale of children, child prostitution and child pornography," requested that the Commission on Human Rights "consider, during its fiftieth session (Feb. to March 1994,) the creation of a working group to study, as a matter of priority and in close contact with the Special Rapporteur, the elaboration of guidelines for a possible draft convention on the issues related to the sale of children, child prostitution and child pornography." Therefore the Commission on Human Rights received the same suggestion from the General Assembly, as well as the International Workshop of National Institutions for the Promotion of Human Rights.

At the fiftieth session of the Commission on Human Rights in 1994, Cuba took a leading role in the debate, with the support of the Latin American group. Many developed countries, with the exception of Australia and France, questioned the necessity of the Draft Optional Protocol, while most developing countries agreed with the proposal Cuba had made in response to the General Assembly. To fill the gap, Canada and Finland suggested that the Commission request the advice of the Special Rapporteur, regarding the issues of the sale of children, child prostitution and child pornography, as well as from the Committee on the Rights of the Child. The majority of the participants began work on the draft, and there appeared to be general lack of willingness to compromise. The United States expressed its disapproval of the Cuban proposal; and for some time there was deadlock. Finally the United States decided to abstain from voting vote and the proposal was adopted. Resolution 1994/90 entitled "The need to

adopt effective international measures for the prevention and eradication of the sale of children, child prostitution and child pornography" aspires to establish an open-ended inter-sessional working group responsible for elaborating guidelines for a possible draft optional protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography, as well as the basic measures necessary to ensure their prevention and eradication.

(ii) Working Group—first session

The first session of the Working Group was held during two weeks in November 1994 (with Ivan Mora Godoy from Cuba as Chairman-Rapporteur.)¹⁹ While all participants agreed that the sexual exploitation of children was a serious problem demanding urgent and concerted international action, various views were expressed with regard to the means that should be employed to address the issue. Some delegations indicated that the Convention on the Rights of the Child already provided for the necessary legal framework and that urgent action was needed to implement the relevant provisions, rather than the creation of new legislation. Other delegations however indicated their wish to support the creation of a new instrument to reinforce the fight against sexual exploitation of children.

Three proposals were submitted to the Working Group; the Draft Optional Protocol submitted by the Second International Workshop of National Institutions for the Promotion of Human Rights; a proposal submitted by France; and guidelines submitted by the Chairman-Rapporteur. The Working Group decided to use the revised proposal by France as the guiding document for its work. After a large number of revisions, the Working Group put together the "Guidelines for a possible draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography," and advised the Commission on Human Rights to set up an investigation in a possibly wider range. The guidelines consists of seven chapters (Introduction; Definitions; Implementation of Relevant Instruments; Punishment, Compensation and Protection of Children; International Cooperation and Co-ordination; and Information, Education and Participation,) and three separate guidelines; Non-discrimination, Reservation, and Reporting. During this session, the Working Group also created the "Basic measures other than a possible optional protocol needed for the prevention and eradication of

¹⁹ Report of the Working Group, UN Doc. E/CN. 4/1995/95

the sale of children, child prostitution and child pornography, " demanding the effective implementation of the Convention on the Rights of the Child.

At the Commission of Human Rights of 1995, there were differences of opinion concerning the need for the Draft Optional Protocol. Sweden expressed the opinion that the exploitation of children is attributable not to the lack of legal instruments to protect children but rather to insufficient implementation of those already in existence. It also emphasised the significance of the ratification and the efficient implementation of the Convention on the Rights of the Child. The Swedish government also called attention to the "Programme of Action" of the Commission of Human Rights. Australia, France, Cuba among other countries opposed this, being of the opinion that in order to deal with the internationalisation of the problem, the new legal framework outlined by the Draft Optional Protocol is necessary. Australia also called attention to the question of punishment of those who committed offences in other countries. Despite the differences of opinion, the resolution, which in effect called for the creation of the Draft Optional Protocol by the Working Group was finally submitted to the Commission on Human Rights, and was passed by voting (the United Kingdom had requested a vote). The resolution was adopted with 41 votes in favour, 0 in opposition, and 11 abstentions (1995/78.)

Australia, Brazil, Canada, Germany, Hungary, Italy, Japan, the Netherlands, United Kingdom and the United States abstained from voting, and as explanation of the votes they repeated their stance that the problems can be dealt with simply by the effective implementation of the existing legal framework.

(iii) Working Group—second session

The second session of the Working Group took place during two weeks from the end of February to the beginning of March in 1996²⁰. With the proposal of the Chairman-Rapporteur, co-ordinators were appointed to each section contained in the guidelines created during the previous session in order to act as a leaders in conducting informal consultations between delegations. However, this process did not function effectively and the work did not proceed smoothly.

²⁰ Report of the Working Group on its Second Session, UN Doc. E/CN.4/1996/101

Certain delegations from industrialised countries further questioned the need for new legislation. M. Santos Pais of the Committee on the Rights of the Child participated in this session, and delivered the statement of the Committee on the Draft Optional Protocol. The Committee had previously questioned the necessity of the creation of a new treaty, and again during this session expressed its firm belief that the implementation of existing international instruments should be a priority. However the consensus seemed to more strongly favour creation of the Draft Optional Protocol, although as the many brackets in the "Draft Optional Protocol" compiled by the Working Group shows, there was still a lack of agreement.

In the section on "Definitions," there was a huge conflict of opinion over whether the meaning of the term "the sale of children" should be restricted to sale for the purpose of sexual exploitation alone, or whether it should also include all forms of sale, such as sale of organs. In the chapter on "International Cooperation and Co-ordination," which was overseen by the Australian government, at the final stages of the drafting process India, Iran, and some other countries proposed to insert phrases such as "elimination of poverty" and "elimination of the consumer market, in addition to the main article concerning mutual cooperation which was modelled after Article 9 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." This further complicated the issue and in the end this whole chapter was put in parentheses. In the section regarding "Punishment, Compensation, and Protection of Children," the French co-ordinator submitted a proposal which was modelled after Chapter 5 (establishment of jurisdiction) and Chapter 8 (extradition) of the Convention against Torture, and there was general consensus on this. However, discussion of the Preamble, and the chapters on "Protection of children," "Assistance and rehabilitation," and "Information, education, and participation" was thought to be insufficient. The session of the Working Group was concluded before the Protocol could be finished.

At the 1996 session of the Commission on Human Rights, few delegates expressed their concerns about the Draft Optional Protocol itself. European countries which had taken a sceptical stance during the previous session refrained from making any formal statements. However, a group of developing countries again called for the creation of the Draft Optional Protocol. The resolution which called for the continuation of work on the Draft Optional Protocol was submitted by Italy on behalf of the EU, and 63 countries also backed this move, including Austria, Brazil, Canada, Germany, the Netherlands, Poland, the UK and the United States of America, all of whom had abstained from voting in the previous session. From East and Southeast Asia, the Republic of Korea and the Philippines also backed the joint proposal.

The resolution gained overwhelming approval, and after being revised orally, was adopted without a vote.

(iv) Working Group—third session

The third session of the Working Group was held from the beginning to the middle of February, 1996²¹. During this session, countries such as Japan and Spain which had been thus far reluctant to express their commitment to the Draft Optional Protocol finally expressed their support.

The discussion regarding Chapter 6 (Assistance and Rehabilitation), Chapter 7 (Information, Education, and Participation), Chapter 8 (Others), and the Preamble (formerly Chapter 3) did not take place, although considerable progress was made overall, and the parentheses which remained in place from the previous session were removed during this session.

Nonetheless, the prospect for the swift adoption of the Draft Optional Protocol is not favourable. It was extremely difficult to gain a consensus on the chapters such as Chapter 2 (Definitions), Chapter 4 (Punishment, Compensation and Protection of children), and Chapter 5 (International Cooperation and Co-ordination), and most delegates remained very unwilling to compromise. The conflict of opinion over the definition of "sale of children" was particularly severe.

Countries of the "South," such as Cuba, Uruguay, Colombia, Peru, Nicaragua, Costa Rica, Syria, Egypt, Nigeria, Ethiopia, and China expressed their concern that the definition of the sale of children should be as comprehensive as possible, and it should include any forms of exploitation including economic exploitation and trade in organs, drawing attention to the problem of illegal adoption in Latin America. On the other hand however, Germany, the Netherlands, Australia, Finland, France, Italy, Switzerland, the United States of America, Canada and the Republic of Korea proposed that the definition of the sale of children should focus on the sale of children for the purpose of sexual exploitation to avoid ambiguity. Regarding this the representative of the United States said, "we seem to be quite divided on this issue."

²¹ Report of the Working Group on its Third Session, UN Doc. E/CN.4/1997/97

As the representative of Mexico pointed out, every country needs to find a common solution to safeguard the best of interests of children. The Commission on Human Rights adopted Resolution 1997/78 which called for completion of drafting during the next session. However, the resolution also indicate the possibility that the term of the Working Group may be shortened, and the likelihood that the Draft Optional Protocol will be adopted is therefore rather remote.

III. International Implementation

1. UN Organisations for the Protection of Human Rights

(i) Initiative of the Working Group on Contemporary Forms of Slavery

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities is a United Nations organ which has played a central role in tackling the issues of exploitation of children, and the role Working Group on Contemporary Forms of Slavery, which operates under the auspices of the Sub-Commission, has been particularly important. The working group, consisting of five members of the Sub-Commission, was established in 1974, although it was renamed in 1988, to reflect the changing nature of slavery in the contemporary era, and has strengthened its functions, although little attention has been paid to the working group so far. The participation of Government Missions and NGOs is remarkably low, compared to, for example, the Working Group on Indigenous Populations, or the Working Group on Minorities. In spite of this, the working group tackles the issues of the sexual exploitation of children with consistency and from a progressive stance.

Under the leadership of Asbjørn Eide of Norway, who has made an outstanding commitment to the issues of human rights, the Working Group on Contemporary Forms of Slavery decided that, from 1989 to 1991, it would discuss one main theme each year. Sexual exploitation of children, among others, was designated as the main theme for its fourteenth session in 1989²². The session, in which prevention of sale of children, child prostitution and child pornography was discussed, gathered various information and suggestions from concerned NGOs, such as the International Abolitionist Federation, International Catholic Child Bureau, International Save the Children Alliance, Radda Barnen International, Defence for Children International, World Association of the School as an Instrument of Peace. INTERPOL and UNESCO also sent their representatives and each gave valuable statements on law enforcement measures and education.

But what attracted the most attention was participation by the Norwegian Minister of Justice, Ms. Helen Bosterud, along with several specialists. The Minister, who gave an overview of the

²² Report of the Working Group on Contemporary Forms of Slavery on its Fourteenth Session supra note 3: Davies, *The Working Group on Contemporary Forms of Slavery*, 6 *Human Rights Monitor* 14, (1989)

issues and described the efforts of her own country, organised to show a video entitled "Throwaway Children" which depicts the current situation of child prostitution and pornography around the world, which was extremely effective in communicating the acute nature of the problems to the other participants. This movie was produced with the cooperation of the Norwegian Ministry of Justice, and was shown on television in Norway and other Scandinavian countries. Participation by the Norwegian Minister of Justice indicates the seriousness with which the Scandinavian countries are making efforts to address the problem of sexual exploitation of children. This has not come about by the efforts of the government alone—effective approaches made by concerned NGOs including Redd Barna (Save the Children Norway) and the rise in public concern have played an important role in this.

The session of the Working Group on Contemporary Forms of Slavery in that year became a turning point in the realisation of international efforts to eradicate sexual exploitation of children. The Working Group made two important recommendations to the Sub-Commission, which is the body above the Working Group; that the Commission on Human Rights to appoint "a special Rapporteur to consider matters relating to the sale of children, child prostitution and child pornography," and also a request that the "Programme of Action for prevention of sale of children, child prostitution and child pornography," which was drawn up by the Working group be adopted. In response to the recommendations, the Sub-Commission (in its forty-first session), in Resolution 1989/43, requested the Commission on Human Rights to appoint a special Rapporteur and in Resolution 1989/44 adopted the "Programme of Action" which consists of twenty nine items. The Sub-Commission also requested the Commission on Human Rights to send the "Programme of Action" to governments, specialised agencies and NGOs and ask for their comments.

(ii) Appointment of a Special Rapporteur

In the following year (1990), the Commission on Human Rights, by the request of the Sub-Commission, adopted Resolution 1990/68 and decided to appoint a Special Rapporteur. It requested the person to submit a comprehensive report, make conclusions and recommendations relating to the sale of children, child prostitution and child pornography. Professor Vitit Muntarbhorn of Chulalongkorn University, Thailand, who is well acquainted with the issues, was subsequently appointed to the position. The tenure was originally for one year, although it was extended for 2 years according to the Economic and Social Council

Decision 1990/20, and then again in 1992 by an additional 3 years (the Commission of Human Rights Resolution 1992/76 and the Economic and Social Council Decision 1992/224).

Prof. Muntarbhorn submitted four reports E/CN.4/1991/51, E/CN.4/1992/55, E/CN.4/1993/67 and E/CN.4/1994/84, which were of exceptional depth and insight. Muntarbhorn pointed out that the sexual exploitation of children is now world-wide phenomena and advocated an interdisciplinary approach in tackling the problem. He also completed an detailed investigation into the situations of Australia and Nepal, and his recommendations greatly contributed to the amendment of domestic laws in Australia. Muntarbhorn analysed in detail sex tours, adoption for commercial purposes, poverty and structural adjustment related to the sexual exploitation of children, and his reports have been highly praised. In October 1994, he resigned from his post as Special Rapporteur because of the lack of support from the United Nations Centre for Human Rights, and the position was taken by Ofelia Calcetas-Santos. In 1995 the Commission on Human Rights extended the tenure of Special Rapporteur by three years and requested her to submit a report. She submitted two reports (E/CN.4/1996/100: E/CN.4/1997/95) which included information such as the current situation and an update on efforts to address the issues in various countries around the world.

(iii) Adoption of the Programme of Action and Follow-up

The "Programme of Action for the prevention of the sale of children, child prostitution and child pornography" was adjusted according to the comments of the interested parties, and the precise content and wording was decided at the 1991 session of the Working Group on Contemporary Forms of Slavery. This programme of action was adopted as an official programme of action according to Resolution 1992/74 of the Commission on Human Rights²³. Through the resolution, the Commission requested all states to take "concerted measures at the national, regional and international levels, including information, education, assistance and rehabilitation, legislative measures and a strengthening of law enforcement". NGOs were also called upon to undertake similar activities, and to lend their full support to these efforts.

The Programme of Action consists of eleven themes: "General," "Information," "Education," "Legal measures and law enforcement," "Social measures and development assistance," "Rehabilitation and reintegration," "International co-ordination," "Trafficking in and sale of

²³ Please refer to Appendix 1

children," "Child prostitution," "Child Pornography" and "Follow-up" with a total of 59 sections. In the "General" section, it is clearly stated that "the trafficking in and sale of children, child prostitution and child pornography constitute modern forms of slavery" and "states are required to accord a clear high level of commitment and priority to combat and eliminate the trafficking in, sale and sexual exploitation of children." "The sale of children, child prostitution and child pornography cannot be justified by reason of poverty or underdevelopment." It is also stated that "the best interests of the child should govern every decision and guide all efforts undertaken to implement this Programme of Action."

Regarding "Legal measures and law enforcement", along with the strengthening of "(p)reventive legislation aimed at protecting children", it is requested that the police and courts "should focus on the welfare and protection of children." When obtaining evidence from child consideration of the child as a victim, and protection of witnesses are requested. Sexual exploitation of children is a sexual crime and must be treated as such. "Efforts should be made to detect arrest and convict clients, consumers, procurers, intermediaries and accomplices." Effective legislative measures must be directed against the intermediaries who make profits from the trafficking in, sale and sexual exploitation of children. Moreover, according to the Programme, "national institutions composed of representatives of public agencies, non-governmental organisations and associations should be established," for the effective implementation of the Convention on the Rights of the Child within States. States are also urged to ratify and implement the International Labour Organisation conventions pertaining to the employment of children, "the Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery," and "the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others". States are further urged to ensure that persons involved in the sexual exploitation of children are punished or extradited to their home countries.

Under the section on "International Co-ordination," it is confirmed that international cooperation among law enforcement agencies is essential.

With regards to "Child prostitution", it is advised that "legislative and other measures should be taken to prevent and combat sex tourism"; and the marketing of child sex tourism "should be penalised on the same level as procurement." The World Tourism Organisation was requested to "convene an expert meeting designed to....combat sex tourism." It is also notable that there was a clear statement that states should take all necessary measures to prevent military

personnel and public servants who are posted abroad from involvement in child prostitution. According to the section on "Child pornography," states are "urged to enact legislation making it a crime to produce, distribute or possess pornographic material involving children" and they should "encourage the mass media and the journalistic profession to adopt (similar) codes of practice."

The Commission on Human Rights requested the Parties to regularly submit information to the Sub-Commission regarding the measures taken for the implementation of the Programme of Action and their effectiveness. The Commission also requested the Sub-Commission to report the conditions of each country in implementation of the Programme of Action. In response to the request, the Sub-Commission, through the secretary-general, requested the Parties to provide information which will be examined by the Working Group on Contemporary Forms of Slavery.

Thus far the Working Group has put together the information provided by the following organisations and governments and submit it to the Commission on Human Rights:

States: Austria, Brazil, Burkina Faso, Finland, Germany, Iraq, Japan, Liechtenstein, the Philippines, Poland, Spain, Sri Lanka, Thailand, Yugoslavia (The States mentioned above are included in E/CN.4/Sub. 2/1993/31,) Angola, Australia, Brunei, Croatia, Mauritius, Nepal, Norway, Sweden, the Ukraine, Bosnia-Herzegovina and Syria (E/CN.4/Sub. 2/1995/29 & Add. 1.)

UN Bodies: Economic Commission for Latin America and the Caribbean (E/CN.4/Sub. 2/1993/31)

Specialised Organisations: UNESCO, World Tourism Organisation (E/CN.4/Sub. 2/1993/31)

Intergovernmental organisations: Organisation of American States (E/CN.4/Sub. 2/1993/31)

Non-Governmental Organisations: World Muslim Congress (E/CN.4/Sub. 2/1993/31)

Though the request of the Commission was to submit the information regarding the measures taken towards implementation of the Programme of Action and the effectiveness of these measures, the information submitted by each country is, by and large, superficial. Many of the reports only introduce civic law related to the issues. A follow-up would become truly

meaningful if the concerned parties submit detailed and honest information on the problems faced in the implementation of the Programme of Action.

2. Other UN Bodies

In 1985 the WTO (World Tourism Organisation) adopted the Tourism Bill of Rights and Tourist Code. In the Bill, it advised governments to remove opportunities for people to use tourism as a way of engaging in prostitution, to stop the tourist industry from encouraging the use of tourism to exploit others. The General Assembly of the WTO, which was held in Cairo in October 1995, adopted the "WTO Statement on the Prevention of Organised Sex Tourism" WTO Resolution A/RES/338 (XI). In the statement the WTO clearly stated that it condemns sex tourism as subversive to "the fundamental objectives of tourism in promoting peace, human rights, mutual understanding, respect for all peoples and cultures, and sustainable development." It also states that sex tourism is considered as a violation of Article 34 of the Convention of the Rights of the Child, and through legislation and administrative measures, sex tourism should be eliminated. It also recognises the importance of bilateral agreements to facilitate the prosecution of sex tourists. In addition, it appeals to the travel industry for cooperation with NGOs, for the education of staff members, for the development of professional codes of conduct, and for the development of industry self-regulatory mechanisms. It also appeals to the industry to warn tourists of the criminal nature of sex tourism and to encourage the media to uncover, condemn and prevent sex tourism.

WTO, in connection with this statement, formed the "Tourism and Child Prostitution Watch Task Force." Several organisations and governments expressed interest in participating in the task force, including France, Thailand, Brazil, Kenya, UNICEF, ECPAT, the Universal Federation of Travel Agency Association (UFTAA), the International Air Transport Association (IATA) and the Swedish Association of Travel Agencies. The Task force aims to encourage the self-regulation of the tourism industry by increasing awareness of the problems of sexual exploitation in tourism and to collect information to eliminate sex tours²⁴.

INTERPOL (the International Criminal Police Organisation) is also actively addressing the issues of the sexual exploitation of children. The Standing Working Party on Offences Against Minors was established in 1992, and law enforcement officers from about 30 countries are now

²⁴ *WTO Forms Task Force Against Sex Tourism*, 36 ECPAT Australia Bulletin 7 (1997)

engaged in a joint effort to prevent the sexual exploitation of children. In 1995, by their efforts to suppress child pornography through the Internet, a number of criminals were arrested in the United Kingdom, Hong Kong, Germany, South Africa, Singapore, Canada, and the United States.

The Standing Working Party set up subgroups to examine the following issues:

- a) Law enforcement; legislation
 - (i) Child pornography and child prostitution
 - (ii) International cooperation; liaison network; legislation and application of laws;
 - (iii) Sex tourism; international adoption;
- b) General measures
 - (i) Victim assistance; police structure; missing children; free telephone help-lines; prevention models;
 - (ii) Training
 - (iii) Research - Gathering statistics

Through the activities of the subgroups which deal with the above issues, INTERPOL aims to increase the sharing of information among member countries and to promote the training of police on human rights issues²⁵.

3. Regional structure

Compared to other regions efforts made in Europe have been salient. Much attention has been paid to this issue in Europe since the late 1980's. The Special Committee on the Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults" was established as a lower body of the Committee on Crime Problems of the Council of Europe. The Special Committee examined the main problematic issues from 1988 to 1990, and concluded with a draft recommendation. The draft was later discussed in the Committee of Ministers, through the Committee on Crime Problems; and in September 1991, was adopted as "Recommendation No.R(91)11 of the Committee of Ministers to member states concerning

²⁵ Report submitted by Mr. Vitit Muntarbhorn, Special Rapporteur, in accordance with the Commission on Human Rights resolution 1993/82, UN Doc. E/CN.4/1994/84, para.139

sexual exploitation, pornography and prostitution of and trafficking in children and young adults²⁶."

In the preamble to the Recommendation it is noted that the sexual exploitation of children has assumed alarming dimensions at national and international levels²⁷. It also concluded that exploitation of this kind may be detrimental to a child's psychosocial development, and that it is therefore in the best interests of member states of the Council of Europe to harmonise their national legislation. It recommended member states to take necessary measures, in line with the European Social Charter and the United Nations Convention on the Rights of the Child.

The text is made up of three sections. The first section deals with national aspects and it includes sub-sections as follows:

- A) general measures;
- B) measures relating to pornography involving children;
- C) measures relating to the prostitution of children and young adults, and;
- D) measures relating to the trafficking in children and young adults.

"A) general measures" has four subdivisions: A) public awareness, education and information, B) collection and exchange of information, C) prevention, detection, assistance, D) criminal law and criminal procedure, and a total of 16 items discussing in detail measures which should be taken. C) and D) strongly advise member states to ensure that the rights and interests of children be safeguarded. They are further advised to provide compensation to children who have been victims of sexual exploitation, and for the possibility of confiscating the proceeds from offences relating to the sexual exploitation of children.

In "B) Measures relating to pornography involving children," member states are advised to provide for appropriate sanctions, taking into account the gravity of the offence and to examine the advisability of introducing penal sanctions for mere possession of pornographic material involving children.

²⁶ Council of Europe, Sexual Exploitation, Pornography and Prostitution of, and trafficking in Children and Young Adults: Recommendation No.R(91)11 and Report of the European Committee on Crime Problems (1993)

²⁷ Please refer to Appendix 2

In "C) Measures relating to the prostitution of children and young adults," member states are advised to expand welfare for street children, to identify those who foster or encourage the prostitution of children and to combat travel agencies which promote sex tourism in any form.

The second section of the Recommendation deals with international aspects. It recommends that member states sign and ratify human rights related conventions, introduce rules on extraterritorial jurisdiction, exchange information through INTERPOL and establish links with international associations and organisations working for the welfare of children.

In the third section "Research priorities," 10 items are suggested as guidelines for investigating the current situation.

The Recommendation, which consists of 44 items has influenced the national legislation of European countries to a significant extent, and as a result many countries have introduced legislation on extradition of their nationals who have committed offences abroad (laws of extra-territoriality).

Moreover, in response to the incident of child abuse and murder by a paedophile in Belgium in the summer of 1996, the European Union adopted, in February 24, 1997, the Joint Action Committee to combat human trafficking and the sexual exploitation of children²⁸. This Joint Action²⁹ consists of a preamble and a total of four titles. Bearing in mind the conclusion of the World Congress in Stockholm in the summer of 1996, which will be described later on in this report, and also recalling the Convention on the Rights of the Child, the preamble confirmed that joint action among member states is necessary to combat the trafficking of human beings and the sexual exploitation of children, both of which constitute a major form of international organised crime.

Title I clarifies the definition of terms used in the Joint Action and sets the goal of this Action. Title II clarifies the "Measures to be taken at national level." In point A, the criminalisation of the offences in the trafficking in or the sexual exploitation of human beings is emphasised, and the definite sanctions to be taken against such offences are clearly stated. Member States are

²⁸ cited in Childrights, (bulletin concerning law and policy affecting children and young people in England and Wales, published by the Children's Legal Centre, in association with the University of Essex, UK)

²⁹ Please refer to Appendix 3

required to establish laws under which offenders will be severely punished. The Action however also clearly states that the possession of pornography is not a criminal offence, and such statement has not been found in any other international documents so far. It seems odd that point B deliberately recognises the maintenance of the requirement of a double criminality. It is, however, stated in point C, that a Member State which maintains the requirement of double criminality provided for in point B shall keep its law under review. Moreover Title II provides for a strengthening of the investigation power, the appropriate and necessary assistance for victims, and cooperation among concerned organisations.

Title III is concerned with "Cooperation between Member States," and Title IV is "Commitment and follow-up." It is clearly stated that the council will assess how the Member States have fulfilled their obligations under this Joint Action by the end of 1999.

4. International Conferences

The issue of sexual exploitation of children was adopted in the "World Declaration and Programme of Action regarding existence, protection and development of children," at the "World Children's Summit" in 1990. The Summit recognised that millions of children live under particularly harsh conditions and are forced into prostitution and other forms of exploitation. Consequently, at the Second World Conference on Human Rights, universal ratification of the Convention of the Rights of the Child was called upon. Member states were also advised to take "effective measures toward harmful child labour, sale of children.....child prostitution, child pornography and other forms of sexual abuse."

In 1995, the United Nations Fourth World Conference on Women referred to the current situation in which the sexual exploitation of (female) children has intensified. International efforts toward these problematic issues reached a peak with the first "World Congress against the Commercial Sexual Exploitation of Children" held in Stockholm in late August, 1996. The objectives of this conference were "to raise international awareness (toward sexual exploitation of children) and to propose definite actions nationally and internationally to end this abominable violation of the rights of children," and was initiated by the Swedish Government, with the cooperation of UNICEF, ECPAT and the NGO group for the Convention of the Rights of the Child. The participants included representatives of 122 states, about 20

international organisations, and 1200 representatives of concerned NGOs. "This was the first congress in which NGOs and governments participated on equal ground³⁰."

The Congress adopted a "Declaration" and an "Agenda for Action"³¹. The "Declaration" calls for the establishment of "global partnership against the commercial sexual exploitation of children," and consists of ten sections under "The Challenge" and two sections under "The Commitment". Here, it is clearly stated that the commercial sexual exploitation of children, which "comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons," treats children as "a sexual object and as a commercial object" and "amounts to a contemporary form of slavery." It is also noted that poverty cannot be used as a justification for commercial sexual exploitation of children, and factors such as criminal networks, corruption, lack of proper law and lax law enforcement contribute to the problems. The "Declaration," moreover, calls upon all States to give high priority to action against the commercial sexual exploitation of children and to locate adequate resources for this purpose, to criminalise the commercial exploitation of children, while ensuring that the child victims are not penalised, to review and revise, where appropriate, laws, policies, programmes and to practice them, to work out comprehensive gender-sensitive plans to protect and assist child victims, to mobilise national and international communities, including intergovernmental organisations and non-governmental organisations, to assist countries in overcoming the issues, and to reinforce the role of popular participation, including that of children.

Furthermore, the "Agenda for Action," calls for various actions under themes "Co-ordination and Cooperation," "Prevention," "Protection," "Recovery and Reintegration" and "Child Participation." In "Protection," the Agenda advises States to strengthen national laws to establish the criminal responsibility of service providers, customers and intermediaries in child prostitution, child trafficking, child pornography, including the possession of child pornography, to strengthen legislation to ensure that those who exploit children in sex tourism are prosecuted, to set up special units among law enforcement personnel with adequate resources and child-friendly facilities. Further, in the section entitled "Child Participation," states are advised to promote the participation of children to protect children from commercial sexual exploitation and to assist child victims to be reintegrated into society.

³⁰ Ministry of Foreign Affairs of Japan, *Jidou no Shogyoteki Seiteki Sakushu ni Hantai Suru Sekai Kaigi* (The World Congress against Commercial Sexual Exploitation of Children), Dec. 10, 1996.

³¹ Please refer to Appendix 4

This Congress was concluded with the adoption of the "Declaration" and the "Agenda for Action. "Worthy of special mention is that the Congress established a basis for partnership among governments, international organisations and NGOs in order to most effectively tackle the issues. According to comments made by Ron O'Grady, "the ultimate goal for all the participants is to create a situation where a second World Congress against the Commercial Exploitation of Children would be unnecessary." In order to achieve this it is necessary that governments, international organisations and NGOs make sincere efforts to put the "Declaration" and the "Agenda for Action" into practice, maintaining the enthusiasm and motivation inspired by the conference.

5. NGOs and the Tourist Industry

(i) ECPAT

NGOs have played an number of important roles in raising awareness among the international community about the sexual exploitation of children. Above all, the existence of ECPAT, who proposed the "World Congress against Commercial Sexual Exploitation of Children," is particularly remarkable³². ECPAT was formed in 1991 as the "Campaign to End Child Prostitution in Asian Tourism" with its headquarters in Bangkok. The shocking death of Rosario Baluyot, who was murdered in Olongapo in the Philippines by an Austrian paedophile proved a catalyst for action, and awareness of child prostitution in Asia intensified. With the leadership of "The Ecumenical Coalition of Third World Tourism", an international conference was held in Chiang Mai, Thailand in 1990. Social workers from several countries met at the conference to report on the current situation of child prostitution in Sri Lanka, Thailand and the Philippines. The reports however brought the increasing urgency of the problem and the sense of powerlessness sharply into focus—ECPAT was formed as a result of this conference.

³² I am indebted to Ms. Christine Beddoe, National Director of ECPAT Australia, who gave me detailed information during a visit to Australia from March 15-21, 1997. ECPAT's activities in Japan are described in the Japanese editions of The Child and the Tourist and The Rape of the Innocent.

ECPAT requested related governments to take actions in opposing prostitution by tourists and to follow the conventions ratified by these countries. The following are some of the concrete strategies recommended by ECPAT:

- 1) ensure, in developing countries, legislation and law enforcement;
- 2) ensure that these legislation treat the exploited children not as criminals but as victims;
offer necessary rehabilitation;
- 3) ensure in developed countries, legislation to prosecute offenders who return to their countries after exploiting children, and;
- 4) develop information and educational campaigns, in both developing and developed countries, to give high visibility to the spread of the child prostitution by tourists.

ECPAT is an international movement which has set a time frame for its own activities. The first phase was set from 1991 to 1993, the second phase from 1994 to 1996 and the third from 1997 to 2001. It may appear paradoxical, but the dissolution of the movement is the group's ultimate goal. During these first periods, ECPAT has begun expanding their campaign target to all children affected by commercial sexual exploitation, not only Asian children. Child pornography, issues involving aboriginal ethnic groups, HIV/AIDS and international measures are new themes for the campaign. In response to the expansion of activities, the official name of ECPAT was changed to End Child Prostitution, Child Pornography and Trafficking in children for sexual purpose.

ECPAT now is an international organisation with branch organisations in more than 30 countries in North America, Western Europe, Eastern Europe, Asia-Pacific, Africa, and South and Central America. Ties have been forged with governments and international organisations, and campaigns are producing tangible results. In the area of information and education, books "The Child and the Tourist (1992)" and "The Rape of the Innocent (1994)" written by International Co-ordinator Ron O'Grady brought these issues to the attention of the world. Both of these works have been translated into Japanese and were published in 1993 and 1995 respectively.

Remarkable results can also seen in the new legislation which has been introduced in some countries. To quote a well known six German women members of the parliament who attended an international conference held by ECPAT in Bangkok in March 1992, began to draft laws to amend the penal code after returning to Germany. Moreover, in Australia, ECPAT strongly

promoted the approval of the Crimes (Child Sex Tourism) Amendment Act, which was adopted in March 1994. (A detailed description of the relevant amendments in each country will be described later in this report).

(ii) The Tourist Industry

ECPAT has also made energetic approaches to the tourist industry³³. The first tourist association to admit the significance of ECPAT was UFTAA (Universal Federation of Travel Agents' Associations.) In 1995, UFTAA produced "Children's and Travel Agents' Charter" to combat the prostitution of children in so-called "sex tourism" and to protect the child victims of such tourists." It is stated that "the signatory travel agents of this Charter will act according to the dictates of their conscience and in accordance with the legislation of the countries concerned." According to the Charter, the members pledged not to plan or promote tours and travel whose purpose is the sexual exploitation of children, and pledged to give every assistance possible to the victims of sex tours. The members of UFTAA, in accordance with Article 34 of the Convention of the Rights of the Child, pledged to protect children against exploitation and sexual violence attributable to the activities of tourists.

In January of the same year (1995) the board of IHA (International Hotel Association) adopted a resolution which strongly condemned all forms of sexual child abuse and supported the efforts of ECPAT and other organisations. The IUF(International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations) also adopted a resolution which condemned sex tours and requested governments to introduce appropriate legislation. In this way the various elements of the tourist industry have been working closely together.

The domestic tourist industry has also been targeted for lobbying by ECPAT. In Australia, for instance, in 1995, an information kit titled "Child Sex Tours, Travel Agents and the Law," was produced by ECPAT Australia, with the support of the Federal Department of Tourism, and was distributed to all travel agents in Australia. Travel agents in Australia display ECPAT's logo to demonstrate their support for the elimination of child sex tourism. The Australian Federation of Travel Agencies also amended the organisational codes of conduct and pledged

³³ End Child Prostitution, Pornography and Trafficking: An ECPAT Resource 28, ECPAT Australia (1996); see also, *Protect Our Children*, Pata Travel News, Jan 1996, p.8

never to provide any forms of travel services in connection with sexual exploitation of children. In addition to the above, the ECPAT leaflet; "New Law for Tourists" which draws the attention of tourists to the Australian laws prohibiting sexual exploitation of children is distributed to the diplomatic establishments abroad, as well as all the airport customs in Australia.

ECPAT-related groups in several European countries such as Switzerland, France and Sweden have made arrangements with local travel agents to include a warning note in air tickets. For example, in Sweden, a brochure was included in all airline tickets to Asia. On the back of the brochure, there is the warning³⁴:

"In Thailand, Sri Lanka and the Philippines, there are thousands of children who are forced into prostitution in order to survive. The sad thing is that there are "tourists" who exploit this fact. Sex tourists who travel to these countries say that they are helping the families of these children financially but that, of course, is not true. The profits are always made by those who control the sex industry. It is the children who pay the price both physically and mentally—for the rest of their lives—if they survive!"

"According to the Convention on the Rights of the Child, all children under the age of 18 years have the rights to protection from sexual molestation. Thailand, Sri Lanka, the Philippines and Sweden have signed this agreement. A child is entitled to this protection no matter where he or she might live.

"Have a nice vacation and remember to consider both sides."

³⁴ Ron O'Grady, The Rape of the Innocent (1995), p.74

IV. Legal Provisions of Selected Countries

Although the degree of awareness and commitment towards international standards varies, considerable efforts to eradicate the sexual exploitation of children have been made at the national level in many countries. In this chapter, the legislation in selected countries will be discussed.

1. Child Prostitution

Though the degree of awareness and commitment toward international standards vary, efforts to eradicate the sexual exploitation of children have been considerable at national levels in line with developments at the international level. In this chapter I will discuss legislation in various countries.³⁵

(1) Australia

The Crimes (Child Sex Tourism) Amendment Bill came into force in Australia on July 5, 1994. The legislation criminalises any Australian citizen or resident who engages in a sexual practice with a child overseas, or who is involved in organising or promoting sex tours³⁶. A report by Paul Robinson, which appeared in the *Sunday Age* of Melbourne on April 18, 1993, vividly described Australians who have indulged in child prostitution in the Philippines and Thailand. Social awareness toward this issue was heightened following the appearance of this article. In response, a parliamentary bill was prepared immediately and was brought to discussion.

In response to the question of why the Australian Parliament should enact legislation to protect children in other countries from sexual exploitation, those defending the proposal gave two reasons. Firstly, many Australians feel angry about the abuse of any children and desire that these kind of laws be put in place. Public hearings on the issue were held by the Standing Committee on Legal and Constitutional Affairs, and most testimonies at the public hearings

³⁵ I am indebted to Ms. Nobuko Iida of the Human Rights and Refugees Division of the Ministry of Foreign Affairs, Japan, for her help in obtaining material relating to legal measures in various countries.

³⁶ Yokoyama, Kiyoshi, 1994 *Hanzai (Kodomo Baishun Tour) Kaisei Horistu*, (Crimes (Child Sex Tourism) Amendment Act 1994), *Gaikoku no Rippo* (Foreign Legislation), Vol.34, No.6

and the documents submitted to the Committee, who whilst disagreeing on technical details, expressed support for the draft. The committee stated in the Advisory Report that;

“Whatever the actual numbers, the Committee is convinced that many Australian men touring Asia (in particular) are involved in the sexual abuse of children. Their conduct is morally outrageous and deserves to be criminalised in Australia. (It is already a criminal offence in the countries in which the conduct occurs.) In addition to being morally repugnant, such behaviour brings Australian into disrepute and ought not to be tolerated by Australians at home.”³⁷

Secondly the same person proposed the fulfilment of Australians’ international obligation and mentioned the current international movement towards protecting children from sexual exploitation. Australia has ratified the Covenant of the Rights of the Child, which demands the international community to take necessary measures to protect children from sexual exploitation and abuse (particularly Articles 19 and 34). The Covenant establishes the legal basis for extraterritorial jurisdiction. In addition, it was pointed out that it had been an Australian Human Rights Commissioner who had initially proposed the Draft Option Protocol to the Covenant of the Rights of the Child; that UN Commission on Human Rights Special Rapporteur Vitit Muntarbhorn, had visited Australia in the course of his investigation, and had encouraged efforts to establish extraterritorial jurisdiction, and that furthermore the World Congress on Human Rights requested all participating countries to take appropriate measures to eliminate exploitation and abuse of children. Moreover, at the First World Congress on Family Law and Children’s Rights, organised by LAWASIA among other organisations in Sydney, during July of 1993, and attended by the Minister of Justice, a communiqué was issued which requested all countries to amend existing criminal law and to establish provisions for extraterritorial jurisdiction.

Under the Crimes (Child Sex Tourism) Amendment Bill of 1994 (an amendment of the Crimes Act of 1914) allows the prosecution any Australian citizen or resident who commits a crime abroad which is punishable under Australian law, even if it is not considered an offence in that country. This law was established specifically with the intention of allowing the punishment of crimes committed abroad by Australian paedophiles. This legislation does not however give

³⁷The Parliament of the Commonwealth of Australia, *Crimes (Child Sex Tourist) Ammendement Bill 1994: Report by the House of Representatives Standidng Committee on Legal and Constitutional Affairs*, (1994)

the police powers to investigate crimes abroad, and the Minister of Justice pointed out that it remains the fundamental responsibility of the local police in the country where the crime was committed to protect children from sexual exploitation, and that the intended use of this new legislation is to help bring to justice those who manage to escape legal sanction in the country where the crime was committed. This legislation which allows “punishment by proxy” is a manifestation of the principle of international cooperation. A provision to recognise double jeopardy also demonstrates this stance.

The Crimes Amendment Bill has a number of notable features. It states that anyone having sexual intercourse with a person under the age of sixteen outside Australian territory, or who induces a person under the age of sixteen to engage in sexual intercourse with a third person in his or her presence is liable to imprisonment for up to seventeen years. Anyone who commits an indecent act on a person under sixteen years of age, or induces a person under sixteen years of age to commit an indecent act upon him or her is liable to imprisonment for up to twelve years.

The second feature of the bill is that it legislates the punishment of brokers and middle-men who facilitate sexual crimes against children. According to the bill, anyone encouraging or profiting from, any of the above offences shall be liable to imprisonment for up to sixteen years, and attempt shall also be punishable. This provision was included because “those who propose, organise and advertise child sex tours are not liable to punishment under ordinary complicity clauses, and they cannot be prosecuted as accomplices if they are not present at the scene of the actual offence. It is possible to be prosecuted for incitement, but the maximum penalty is only³⁸ twelve months imprisonment”. Furthermore, the Amendment Bill regulates not only individual citizens and residents, but also Australian-based corporations and businesses. According to Article 14 of the Proceeds of Crime Act, any property used in the commission of the offence, or any profit gained from the offence is to be forfeited to the Government.

The third feature of the Amendment Bill is the establishment of the legislative procedure. For example, it is possible for the court to allow a witness in an overseas location to give evidence via a video-link, and recognises that bringing witnesses to Australia may cause unreasonable expense, inconvenience or distress to that person.

The fourth notable feature of the bill is that it allows two possible lines of defence and a wide range of evidence to be used with regard to the age of the victim. One is based on their being a genuine belief that the victim was sixteen or over at the time of the alleged offence, and the second is based on their having been a valid and genuine marriage between the defendant and the alleged victim at the time of the act. Either of these defences could be judged according to a 'balance of probability'. During the discussion which lead up to the establishment of the law there was some concern that this may deprive defendants of their rights, but it was made clear that any rights which are guaranteed under usual legal proceedings or evidence regulations would not be violated.

(2) New Zealand

According to the Crimes Act of New Zealand, anyone who has sexual intercourse with a girl under the age of twelve is liable to imprisonment for a term not exceeding fourteen years. To attempt such an act is to risk imprisonment for a term not exceeding ten years. Under this section, whether or not the girl has consented, or whether or not the person accused believed that she was of or over the age of twelve will not be considered as material for defence. The girl shall not be charged as a party to an offence committed upon or with her.

Anyone who indecently assaults any girl under the age of twelve is liable to imprisonment for a term not exceeding ten years. Any male who commits any indecent act with or upon any girl under the age of twelve or who induces any girl under the age of twelve to commit any incident act with or upon him is also liable to imprisonment for a term not exceeding ten years. Under this section, whether or not the girl had consented, or that the person accused believed that she was of or over the age of twelve will not be considered as material for defence. The girl shall not be charged as a party to an offence committed upon or with her.

Anyone who has sexual intercourse with a girl of or over the age of twelve and under the age of sixteen years, not being his wife, is liable to imprisonment for a term not exceeding seven years. Those who attempt such an act are liable to the same penalty. Anyone who indecently assaults a girl of or over the age of twelve and under the age of sixteen, not being his wife, is liable to imprisonment for a term not exceeding seven years. Any male who performs any indecent act with or upon any girl of or over the age of twelve and under the age of sixteen or who induces any girl of or over the age of twelve and under the age of sixteen to commit any

³⁸ Yokoyama, *Supra* note 37, p.93

incident act with or upon him is also liable to imprisonment for a term not exceeding ten years. Under this section, if the person charged proves that the girl consented and that he is younger than the girl, this can be considered in the defence. If the person charged proves that the girl consented, that he was under the age of twenty-one at the time of the commission of the act, and that he had reasonable cause to believe, and did believe, that the girl was of or over the age of sixteen, this will also be considered material for defence. The girl shall not be charged as a party to an offence committed upon or with her. Any female of or over the age of twenty one who commits any indecent act with or upon any girl under the age of sixteen or who induces any girl under the age of sixteen to do any incident act with or upon her is also liable to imprisonment for a term not exceeding seven years.

Any male who indecently assaults any boy under the age of twelve, who commits any indecent act with or upon any boy under the age of twelve or who induces any boy under the age of twelve to carry out any incident act with or upon him is also liable to imprisonment for a term not exceeding ten years. Under this section, whether or not the boy had consented, or that the person accused believed that he was of or over the age of twelve will not be considered as material for defence. The boy shall not be charged as a party to an offence committed upon or with him.

Anyone who indecently assaults a boy of or over the age of twelve and under the age of sixteen is liable to imprisonment for a term not exceeding seven years. Any male who commits any indecent act with or upon any boy of or over the age of twelve and under the age of sixteen or who induces any boy of or over the age of twelve and under the age of sixteen to do any incident act with or upon him is also liable to imprisonment for a term not exceeding ten years. Under this section, if the person charged proves that the boy consented and that he is younger than the boy, this will be a material for defence. If the person charged proves that the boy consented, that he was under the age of twenty-one at the time of the commission of the act, and that he had reasonable cause to believe, and did believe, that the boy was of or over the age of sixteen, this will also be a material for defence. The boy shall not be charged as a party to an offence committed upon or with him.

Anyone who commits sodomy on a person under the age of sixteen is liable to imprisonment for a term not exceeding seven years, a person who commits sodomy on a person under the age of twelve is liable to imprisonment for a term not exceeding fourteen years.

Section 144A was amended to the Crimes Act on August 2, 1995, and it states that anyone who is a New Zealand citizen or ordinarily resident in New Zealand, who commits the offence above is liable to the same penalty.

According to an Amendment to the Evidence Act in 1989, the judge may advise to obtain advice from the professional regarding the influence of the trial on the child as a witness and to provide the evidence by a video tape or a closed circuit television.

(3) The United States of America

The United States has not expressed a strong commitment to protect human rights through international structures. It has not yet signed the Convention on the Rights of the Child, (most countries in the world have). Approval of the Child Sexual Abuse Prevention Act in 1994 is attributable to the approaches of organisation such as NCAP (National Coalition Against Pornography), rather than proof that the USA is working with the international current. The NCAP is a coalition of more than fifty citizen's and religious organisations whose aim is to raise awareness of the harm caused by child pornography and by violence against women and children. In January 1995, in response to the rise of awareness of child pornography the coalition changed its name into National Coalition for the Protection of Children and Families.

The Child Sexual Abuse Prevention Act was enacted based on the 1910 White Slave Traffic (Mann) Act. The Mann Act was amended in 1986. According to the amended act, anyone who transports any person under the age of eighteen in interstate or abroad with the intent that the minor engage in sexual activity is liable to imprisonment for a term not exceeding ten years, and/or fines. According to the Child Sexual Abuse Prevention Act, any US citizen or permanent resident who travels abroad or conspires to do so for the purpose of engaging in any sexual act with a person under eighteen years of age if that would be in violation of chapter 109(A) is liable to a fine and/or imprisonment for a term not exceeding ten years. Double criminality is not required—it is possible to prosecute and punish the offender regardless of whether or not the act is punishable under the law in the place it was committed. According to the Act, any US citizen or permanent resident who travels in interstate or conspires to do so for the purpose of engaging in any sexual act with a person under eighteen years of age if that would be in violation of chapter 109(A) is liable to the same punishment. Intention is punishable and the evidence of whether or not an actual practice was carried out is not necessary. This means that it is possible to prosecute those who organise sex for paedophiles.

However, it would be very difficult to prove that ordinary businessmen or individual tourists had such intentions of engaging in sexual acts with children.

The following sexual acts are prohibited in Chapter 109A. Chapter 109A states that any person who knowingly engages in or attempts to engage in any sexual act with a person under the age of twelve is liable to a fine and/or imprisonment for a definite term or for life. The government need not prove that the defendant knew that the victim had not attained the age of twelve year. Any person who knowingly engages in or attempts to engage in any sexual act with a person of or over the age of twelve and under the age of sixteen is liable to a fine and/or imprisonment for a term not exceeding one year. However, this is limited to cases in which the victim is at least four years younger than the defendant. Sexual acts with children of sixteen or seventeen year of age are not criminalised unless the offender uses force, serious threats, or otherwise harms the victim. Therefore, children of this age are not protected by the Child Sexual Abuse Prevention Act, unless the sexual acts involves an element of coercion. So whether consensual or commercial, sexual acts with children of sixteen or seventeen year of age are not criminalised in the United States.

(4) Sweden

According to the Swedish Penal Code, anyone who has sexual intercourse with a child under the age of fifteen is liable to imprisonment for a term not exceeding four years. This is a criminal offence regardless of whether or not obvious coercion has taken place in the course of act. A child under fifteen is not considered capable of giving "consent" to sexual intercourse with an adult. A person who, by giving compensation (cash, gifts, etc.) or promising such, has or tries to have sexual intercourse with someone under the age of eighteen shall be sentenced for *seduction of youth*, and be liable to a fine or imprisonment for a maximum period of six months. In addition, a person who sexually touches a child under the age of fifteen or induces the child to undertake or participate in an act with sexual implication shall be sentenced for *sexual molestation*, and liable to a fine or imprisonment for a maximum period of one year.

According to Section 2, Part 2 of the Penal Code, a Swedish citizen or an alien resident in Sweden who has committed a crime outside of Sweden is liable under Swedish law and in a Sweden court. This does not apply if the act is not punishable under the law at the place it was committed (i.e. there is a requirement of "dual criminality") The sanction for such a crime may

not exceed the maximum penalty prescribed for that crime under the law of the country where it was committed.

(5) Finland

According to the Finnish Penal Code, anyone who commits indecent acts with a child under the age of fourteen or who aids and abets such acts is liable to imprisonment for a term not exceeding ten years. However, when the act is sexual intercourse, the punishment must not be less than one year. Depending on the other circumstances surrounding the act, or if the indecent act was committed toward a child under the age of ten, a person is liable to imprisonment for a term not exceeding twenty-one years. Claiming belief that the child was older shall not be a valid defence. There may be extenuating circumstances in cases where the offender is the same age or developmental stage as the victim.

Anyone who commits indecent acts with a child under the age of sixteen or who aids and abets such acts is liable to imprisonment for a term not exceeding five years. Depending on the circumstances of the act, a person is liable to imprisonment for a term not exceeding fifteen years. Mistaking the age of the child shall not be a reason for escaping liability as described above. Anyone who commits indecent acts with a child under the age of eighteen who is under their care or in their custody is liable to imprisonment for a term not exceeding one year. Again, mistaking the age of the child shall not be a valid defence as described above.

Any Finnish citizen or anyone who has an address in Finland who commits any of the above crimes, is liable to the same punishment. In Finland, measures have been taken to facilitate prosecution extraterritorial criminals, measures such as placing liaison officers in diplomatic establishments abroad for detection of crimes, and ensuring video link evidence that would allow Finnish courts to hear direct evidence from witnesses in an overseas location where a crime has been committed.

(6) Norway

The Norwegian Citizen's Penal Code has legislative provisions similar to that of the Finnish Penal Code.

(7) Denmark

According to the Danish Citizen's Penal Code, anyone who has sexual intercourse with a child under the age of fifteen is liable to imprisonment for a term not exceeding six years. In cases when the offender commits the above acts with a child under the age of twelve, or with a child under the age of fifteen with violence or through intimidation, the person is liable to imprisonment for a term not exceeding ten years.

Anyone who engages in sexual intercourse with an adopted child, a stepchild, a foster child or a child in his/her custody under the age of eighteen is liable to imprisonment for a term not exceeding four years. Anyone, taking advantage of status or a position of responsibility/trust to induce a person under the age of eighteen to have sexual intercourse is also liable to similar punishment.

(8) Germany

According to section 176 of the German Penal Code, any person who engages in sexual practices with a person (child) under the age of fourteen years or induces the child to carry out sexual activity with him, is liable to imprisonment for more than six months but no more than ten years, and in less severe cases, for no more than five years. However, in especially serious cases, the term of imprisonment will be for more than one year but no more than ten years. As a general rule, a case is considered especially serious if the offender has sexual intercourse with the child or grossly abuses the child physically, or induces a child to carry out sexual practices in front of him or a third person in order to sexually arouse the child or the third person. Attempt to carry out any of the above acts is also illegal.

The Penal Code was amended in 1993 following appeals such as the one from the six female members of parliament who attended the international ECPAT conference in Bangkok in March 1992. As a result, provisions for the punishment of persons committing any of the above acts overseas was reinforced. Up to that time, only when the offender and the victim were both German nationals and had the basis of their livelihood in Germany, were they punishable as extraterritorial criminals. The German Penal Code was not applicable in cases in which the victim was a foreigner. The twenty seventh amendment to the German Penal Code has accounted for this discrepancy, and the offender can be prosecuted if he/she is a German who has the basis of their livelihood in Germany.

(9) Austria

According to the Austrian Penal Code, anyone who has sexual intercourse with a child under the age of fourteen is liable to imprisonment for a term of no more than one year but no less than ten years. In cases in which the offender injures the victim seriously or the victim was impregnated as a result, the offender is liable to imprisonment for no more than fifteen years but not less than five years. If the offender takes the life of the victim, the offender is liable to imprisonment for no more than twenty years but not less than ten years.

Any person who commits indecent acts with persons under the age of fourteen or who induces persons under the age of fourteen to engage in indecent acts with a third person is liable to imprisonment for no more than five years but not less than six months. In the cases in which the offender injures the victim seriously, the offender is liable to imprisonment for a maximum period of ten years. If the offender takes the life of the victim, the offender is liable to imprisonment for no more than fifteen years and not less than fifteen years. However, this law is cannot be invoked where there is less than two years age difference between the offender and victim, unless the victim is killed or seriously injured. However, this is limited to the cases in which the victim is at least four years younger than the defendant.

The Austrian Parliament approved an amendment to the Penal Code in November of 1996. As of March 1, 1997, Any Austrian citizen who sexually abuses a child overseas is liable to punishment. The Austrian Penal Code does not require dual criminality, nor does it recognise a prohibition of double jeopardy by an overseas court.

10) France

The French Penal Code defines as rape any act where the genitals are inserted into another persons body using violence, coercion, intimidation or force. Rape of a child under fifteen years of age is punishable by imprisonment of up to twenty years. Other acts of sexual violence are punishable by imprisonment of up to seven years or a fine of up to 700,000 francs. Acts of sexual violence committed against a child under the age of fifteen, even without violence, coercion, intimidation or force, are punishable by imprisonment of up to two years or a fine of up to 200,000 francs. If payment is offered the punishment is imprisonment for up to ten years and a fine of 1,000,000 francs.

According to Law No. 94-85 (February 1st, 1994) the French Penal Code applies to any of the above crimes when committed by a French citizen overseas. Neither accusation by the victim nor prosecution by the authority at the location of the offence is required. Dual criminality is not required.

11) Belgium

The Belgium Penal Code states that anyone who commits indecent acts on a person under the age of sixteen, without violence or intimidation, is liable to imprisonment for not less than five years but not more than ten years. Sexual intercourse with a child under the age of fourteen is considered as rape, and is punishable by imprisonment for not less than fifteen but no more than twenty years. Anyone committing such an act on a child under ten years old is liable for life imprisonment.

According to the amended Act to Control Traffic in Human Beings and Child Pornography (April 13th, 1995), Article 10, Section 3 of the Criminal Procedure Act, any Belgian citizen or resident who commits any of the above acts overseas is liable to prosecution. Notification from the overseas authority is not required.

12) Italy

The Italian Penal Code states that anyone who commits a sexual act using violence or intimidation is liable to imprisonment for a minimum of five and a maximum of ten years. When the victim is under the age of fourteen, imprisonment shall be for a minimum of six and a maximum of twelve years. This also applies to family members, foster parents or legal guardians who commit any of these acts on a child in their custody under the age of sixteen. If such an offence is committed against a child under the age of ten, imprisonment shall be for a minimum of seven and a maximum of fourteen years.

Sexual acts committed without violence or intimidation against a child under the age of fourteen shall be punishable by imprisonment for not less than five years and no more than ten years. This also applies to family members, foster parents or legal guardians who commit any of these acts on a child in their custody. Where the victim is under the age of ten years old the offender is liable to imprisonment for not less than five years but no more than ten years. These provisions are however limited to cases where the victim is at least four years younger than the defendant.

(13) The United Kingdom

Sixteen is considered to be the age of consent, and anyone under the age of sixteen years is defined as a child in matters of sexual crimes. The Sexual Offences (Conspiracy and Incitement) Act of 1996 criminalises any conspiracy and incitement to commit certain sexual acts outside the United Kingdom. Anyone who arranges a tour in order to have sexual intercourse with children shall be liable to prosecution. However, conspiracy and incitement cases are only limited to mutual consent or acts taking place in the United Kingdom. The territorial principle has been adopted in the United Kingdom and, therefore, extraterritorial criminals can not be brought to trial.

The UK Parliament is at present debating legislation regarding sexual crimes. Under this legislation, any citizen or foreign resident of the United Kingdom will be liable for any sexual crime he/she commits overseas. In the United Kingdom, despite lack of any specific regulations, it is understood that the effect of the prohibition of double jeopardy is applied to overseas decisions, just as it is not applied to decisions made inside the United Kingdom.

14) Canada

Canadian criminal law prohibits touching a person under the age of fourteen, either directly or indirectly, for sexual purposes. Inducement to such acts is also punishable. In the case when the person is in a position of authority and trust in relation to the victim, where the victim is a child between the age of eighteen, the offender is liable to the above punishment, with inducement also punishable

Anyone profiting from the prostitution of a child under the age of eighteen is liable to imprisonment for a term not exceeding fourteen years. Any person who obtains or attempts to obtain, for a financial consideration, the sexual services of a child under eighteen is liable for imprisonment for a term not exceeding five years.

Parliament is currently debating the introduction of a law of extra territoriality to punish Canadian citizens who engage in prostitution overseas. The proposed legislation will not require dual criminality, but will recognise a decision made in the country concerned to prohibit double jeopardy.

In addition, the Act to amend the Criminal Code and the Young Offenders Act of 1993 recognises that testimonies by children are as credible as those made by adults. It also recognises the “guardian ad litem” system, in which a child witness may request the presence of a supporting person while they are testifying. The court may order that any convicted sexual criminal be prohibited from entering any area where children gather, and from obtaining any employment that involves being held in a position of trust by children.

15) Thailand

The Thai government has been making concerted efforts towards the elimination of child prostitution since 1992. As a result the Prevention and Suppression of Prostitution Law was established in 1996 and the preceding law abolished.

According to the new law, anyone who introduces a person fifteen or older but younger than eighteen to prostitution is liable to imprisonment for not less than five years or
Anyone who engages in sexual intercourse or any other sexual act with a person not younger than fifteen but under eighteen is liable to imprisonment for a period of not less than one year but not more than three years and a fine of not less than 20,000 baht but not more than 30,000 baht, regardless of whether there is consent on the part of the child. If the act is committed with a person under the age of fifteen, punishment shall be aggravated (Article 8). Article 8 was introduced with the most recent reforms. The new law also provides the establishment of a committee of experts to discuss measures to prevent and redress the current problems relating to prostitution.

The amendment of the Criminal Procedure Code is under discussion with consideration of the effects on children who testify in court. As a result the following reforms have been proposed; that the testimony of the child be recorded on a video tape and the tape used in court; that the cross-examination of child victims concurring the contents of the video tape shall be carried out only by professional psychologists; and that an affidavit shall be taken from the child victim prior to the trial.

16) The Philippines

In 1992, the Special Protection of Children against Child Abuse, Exploitation, and Discrimination Act (Republic Act No.7610) came into force in the Philippines. This clarifies that the protection of children from abuse and exploitation is a matter of national policy. It also

determines that "the best interest of children" should be the most important factor in cases involving children. Under this law a "child" is defined as a person under the age of eighteen.

Under the law, a child, regardless of gender, who engages in sexual intercourse or indecent acts for material goods, under coercion or influence by any individual or organisation is regarded as exploited for prostitution/sexual abuse. Anyone who encourages or facilitates child prostitution is also liable for prosecution under this law to imprisonment for life or a medium-length term (Article 5a). Anyone who commits sexual intercourse or indecent acts with a child exploited in prostitution or subjected to other sexual abuse is liable to the same punishment. Where the victim is under the age of twelve, the offender shall be prosecuted for rape or indecent acts which are defined in Article 335, Section 3 and Article 336 of the Penal Code, respectively (Article 5b).

Anyone not a relative of a child who is with child alone in a private residence, a hotel room, or an isolated location, under circumstances in which any "reasonable person" would have reason to believe that the child may be sexually exploited is considered to attempt to engage in child prostitution as described in Article 5b.

Foreign nationals convicted of any of the above sexual crimes, after serving his/her full term in prison, shall be deported and prohibited from re-entering the Philippines for life.

According to the regulation relating to the report and investigation of child abuse, in cases where sexual exploitation of children is suspected, hospitals, doctors, nurses, and law enforcement officers are obligated to report his/her suspicions to the relevant authority. In the case whereby a child makes a complaint of abuse, a guardian ad litem must be appointed immediately.

17) Taiwan

In Taiwan, the Child Prostitution Prevention Bill was promulgated in August of 1995. This Bill defines prostitution as sexual intercourse or indecent acts for consideration (Article 2). Anyone entering into such a contract with a person under the age of sixteen is liable to imprisonment for a term not exceeding three years. Anyone entering into such a contract with a person not younger than sixteen but under the age of eighteen is liable to a fine (Article 22). In these cases offenders are obligated to receive guidance education (Article 35). In the

Amendment to the Child Welfare Act, a child is defined as a person under the age of twelve (Article 2), and the Bill also indicates that anyone who engages in prostitution, who enters into a sexual contract with a child, or who engages in indecent acts for commercial purposes is liable to a fine, and the names of such offenders will be made public (Article 46). According to the enforcement regulation Article 36 of the Child Welfare Act, the name of the offender may be announced by the media.

Furthermore, the Penal Code recognises sexual intercourse with a girl under the age of fourteen as rape (Article 221). It also states that anyone who commits indecent acts on a person under the age of fourteen is liable to imprisonment for seven years (Article 224), that anyone who commits sexual intercourse with a girl not younger than fourteen but under the age of sixteen is liable to imprisonment for a term not exceeding seven years. Anyone who commits indecent acts on a person not younger than fourteen but under the age of sixteen is liable to imprisonment for a term not exceeding five years (Article 227). However, these offences are subject to prosecution only upon receipt of a complaint and to date there have been no prosecutions.

(18) Sri Lanka

With the ratification of the Convention of the Rights of the Child, a committee was established regarding the legislation to protect children from sexual exploitation. In response to the recommendation made by this committee, which includes representatives of NGOs, the Penal Code and the Criminal Procedure Act were amended. As a result the age of consent was raised from twelve to sixteen. The sexual exploitation of children, sale of children and the use of children in pornography became legislated as new criminal acts.

(19) Malaysia

According to the Malay Penal Code, any male who has sexual intercourse with a girl under the age of sixteen, regardless of whether or not consent was obtained, is liable to a flogging or to an imprisonment for no less than five years but no more than twenty years. (Article 375 and 376) Anyone who induces a child under the age of fourteen to commit extremely indecent acts is liable to a flogging or to imprisonment for a term not exceeding five years. (Article 377E)

(20) Singapore

According to Article 140(1) (i) of the Charter for Women in Singapore, anyone who has sexual intercourse with any girl under the age of sixteen, not being his wife, is liable to imprisonment of a term not exceeding five years or a fine not more than 10,000 S\$. According to Article 376 of the Penal Code, anyone who has sexual intercourse with any girl under the age of fourteen, without consent, shall be sentenced for *rape* to a flogging for not more than twelve times or to an imprisonment for no less than five years but not more than twenty years. According to Article 6 of the Child/Adolescent Act, anyone who sexually exploits children (under the age of fourteen) or an adolescent (not younger than fourteen but under sixteen) is liable to a fine and/or imprisonment for a term not exceeding two years.

(21) Indonesia

According to the Indonesian Penal Code, anyone who has sexual intercourse with a woman, not being his wife, under the age of fifteen, is liable to imprisonment for a term not exceeding nine years. Anyone who commits an indecent act on a woman under the age of fifteen or induces a woman under the age of fifteen to an indecent act is liable to imprisonment for a term not exceeding seven years.

(22) Republic of Korea

According to Article 305 of the Korean Penal Code, anyone who commits adultery or indecent acts with women under the age of thirteen shall be sentenced for *rape, forced indecent act, or homicide or injury by rape*. Anyone who induces a minor to commit obscene acts for commercial gain is liable to imprisonment for a term not exceeding three years, or a fine. According to the 1991 Entertainment and Amusement Trades Control Act, it is prohibited to engage persons under the age of eighteen as sex workers.

(23) Brazil

According to the Brazilian Penal Code, the age of consent is fourteen. One who forces a woman over the age of fourteen but under the age of eighteen to have intercourse, to commit any indecent act with or upon him shall be liable to punishment under the law. Anyone who, taking advantage of a relationship of trust, has sexual intercourse with a woman over the age of fourteen but under the age of eighteen shall be sentenced. Anyone who induces a woman over

the age of fourteen but under the age of eighteen to commit sexual acts with a third party shall also be punishable under the law.

2. Child Pornography

(i) Overview

Since the 1960s many people have argued that pornography is a "victimless crime", and there has been a growing current towards legalising pornography in Western and Northern Europe. Accordingly, crimes such as prostitution and peeping have become 'un-punishable' and the regulations looser. As a result, the sex industry has expanded rapidly and the incidence of cases in which children are sexually exploited has increased. Thus, in the 1990s, legislation has been under review to reinforce the regulation of child pornography. In most parts of Europe, except for Eastern Europe, production or distribution of child pornography is now prohibited. In Austria, Belgium, Denmark, the United Kingdom, Germany, the Netherlands, and Norway even possession is prohibited. In Ireland, Iceland, Italy, Liechtenstein, and Malta pornography is prohibited in general.

A law to prohibit the production, distribution and possession of child pornography has also been adopted in Canada. Possession of child pornography is prohibited in the United States, however Federal Law prohibits a person to be in possession of more than three pornographic articles, and so possession of two or less pornographic articles is not punishable.

In Eastern Europe, with the exception of Estonia, Croatia, Latvia, and Slovakia, legislation to regulate child pornography are not in place. The situation in Asia is similar. Lack of sufficient regulations, combined with economic problems, have contrived to allow these areas to remain sources of child pornography.

3. Special Legislative Conditions of Selected Countries

(a) Austria

Anyone who produces illustrations of sexual practices of a minor (persons under the age of fourteen) which gives an impression that an actual sexual act was carried out at the time of production, who imports or transports such materials in purpose of distribution, or who provides a third person with such materials is liable to imprisonment for a term not exceeding one year or a fine equivalent to 360s days' imprisonment. Anyone who obtains or possesses such illustrations is liable for imprisonment for a term not exceeding six months or fine equivalent to 360 days' imprisonment (Article 207a). This provision was amended in 1994.

(b) Australia

Under Australia's federal system, the regulation of child pornography is left for each state to decide. In each state, the production, distribution, and possession of child pornography is prohibited. According to the Federal Classification (Publications, Films and Computer Games) Act of 1995, child pornography is defined as a publication that has been "refused classification." Publications, films, or computer games, which depict persons under the age of sixteen in a condition which is objectionable to the majority of adults are targeted under regulation at the federal level, regardless of whether an actual sexual practice is depicted or not.

(c) Belgium

According to the Penal Code amended on April 13, 1995, anyone who exhibits, sells, lends or mails illustrations, articles, films, photographs, slides or other visual media which depict sexual practices or sexual figures with pornographic nature involving children under the age of sixteen is liable to imprisonment (not less than five years but not exceeding ten years) and a fine of not less than 500 Francs but not more than 10,000 Francs. Anyone who distributes, produces, possesses, imports or mails to any shipping agency with the intention of commercial gain, is liable to the same punishment. Anyone who in possession of any of the above stated visual media, knowing its contents, is liable to imprisonment for a term not exceeding one year and a fine of not less than 100 Francs but not more than 1000 Francs (Article 383b).

(d) Brazil

Article 240 of the "Statute of the Child and Adolescent," (No. 8096 of July 13, 1990) prohibits the uses of children in pornographic practices in theatre, on television or in movies. The photographing and publishing of any scene depicting pornographic activity concerning children is also prohibited. (Article 241) According to this law, a minor is deemed to be a child under the age of twelve and an adolescent is defined as a person no younger than 12 but under 18. Article 72 of the Penal Code, which prohibits unjust acts toward children, can be invoked regarding child pornography, and there is regulation which clearly prohibits the distribution and possession of child pornography.

(e) Canada

Article 163.1 of the Penal Code, which was amended by Law No. 46 on June 23, 1993, regulates child pornography. Section 1 of the article defines "child pornography as a photograph, film, video or other visual representation, whether or not it was made by electronic or mechanical means, (i) that shows a person who is or is depicted as being under the age of eighteen and is engaged in or is depicted as engaged in explicit sexual activity, or (ii) the dominant characteristics of which is the depiction, for sexual purposes, of a sexual organ or the anal region of a person under the age of eighteen. Any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen is also defined as child pornography.

According to Section 2 and 4 of the same article, the production, distribution, sale and possession (regardless of intent) of child pornography is punishable: Anyone who makes, distributes, or sells such materials is liable to imprisonment for a term not exceeding ten years, and anyone in possession of such materials is liable to imprisonment for a term not exceeding five years. If such material has artistic merit or educational, scientific, and medical purposes, the court shall find the accused not guilty (Section 6).

(f) China

There is no clear legislation to regulate child pornography in China. However, according to Article 170 of the Penal Code, anyone who makes and sells pornographic written material or pictures with the intention of commercial gain shall be punished under the law. With the decision of the "Standing Committee of the Committee of the Representative of the People regarding the Punishment of Criminals who Smuggle, Make, Sell, and Distribute Pornographic Materials," obscene materials are strictly regulated. "The Measures regarding Censorship of the Contents of Visual Products," which was promulgated and enforced by the Ministry of Culture on January 8, 1996, prohibits the production, import, and distribution of any product that "graphically illustrates sexual activity of a child or adolescent." The "Temporary Measures to Discipline the Management of International Computer Networks," which was adopted by the State Council on January 23, 1996 and which came into force on February 1st of the same year, in Article 13, prohibits the production, search, reproduction and distribution of information and of pornographic materials that will threaten public order and of pornographic materials. Furthermore, according to the "Law for Protection of Minors," which was adopted

at the Standing Committee of the Committee of the Representative of the People on September 4, 1991, sale of pornographic material to children is prohibited.

(g) Denmark

Article 235 of the Penal Code prohibits the production, distribution and possession of child pornography. According to the same article, anyone who sells, distributes, produce or acquires indecent photographs, films or similar articles of children with an intention to gain profit is liable to a fine or imprisonment of a term not exceeding six months (Section 1). Anyone in possession of photographs, films or similar articles which depict children who commit sexual intercourse or other forms of sexual interaction is liable to a fine. Anyone in possession of photographs, films or similar articles which depict children engaged in sexual activity involving animals or who use objects in extremely obscene manners is also liable to a fine (Section 2). Section 2 was amended in 1994 by Act No. 1100. In Denmark, there is no legislation to regulate the circulation of adult pornography.

(h) Finland

Production and distribution of child pornography is illegal in Finland; however, possession of child pornography for personal use is not prohibited. Legislation to prohibit possession of child pornography is currently under discussion. A new legislation to regulate child pornography on computers is to be established.

(i) France

Production and distribution of child pornography are prohibited in Article 227-23 of the Penal Code. Production of any image of a pornographic nature depicting minors (persons under the age of eighteen) with an intention for distribution, publication, reproduction or transmission is punishable (imprisonment not exceeding a period of one year of imprisonment and a fine of 20,000 Francs). Distribution of such an image is similarly punishable, regardless of the means by which it is distributed. If the minor involved is under the age of fifteen, punishment shall be more severe. Article 227-24 prohibits the exposition of any child to pornography. However, French law does not prohibit the possession of child pornography.

(j) Germany

The 27th Amendment to the Penal Code of July, 1993, inserted a provision (Article 184) concerning child pornography. Anyone who distributes, exhibits publicly or produces with an intention for distribution and exhibition, pornographic documents which depict the sexual exploitation of children is liable to imprisonment for not less than three months and not more than five years (Article 184, Section 3). In the case that such pornographic documents produced for commercial purpose depict a real incident, the punishment is imprisonment of not less than six months but not more than five years (Section 4). Any one who obtains or possesses pornographic documents concerning sexual exploitation of children, depicting real incidents, whether for private use or for a third person is liable to imprisonment for a term of not more than one year (Section 5). Possession was prohibited for the purpose of plugging the market for child pornography. According to the German Penal Code (Article 176, Section 1), a child is defined as any person under the age of 14.

In Germany, regulation of “cyber-pornography” is advancing, and certain sites on the Internet have been outlawed.

(k) Indonesia

In Indonesia, there is no clear legislation to regulate child pornography. However, according to Article 282, Section 1 of the Penal Code, it is prohibited to broadcast or exhibit publicly, or to transport into the country with the intention to broadcast or publicly exhibit that which is against public order and the standard of decency. The mailing and forwarding overseas of such written materials, drawings and articles is also prohibited. Anyone who engages in such acts is liable to imprisonment for a term not exceeding a year and four months.

(l) Italy

There is no clear legislation concerning child pornography in Italy. However the Penal Code prohibits the publication and exhibition of obscene materials and the sale of written materials, drawings, and articles that are counter to public order and the accepted standard of decency.

(m) Republic of Korea

The distribution, sale, public exhibition, production, possession, and import/export of obscene documents, drawings and articles are prohibited by Article 243-244 of the Penal Code.

(n) Malaysia

In Malaysia, there is no clear legislation to regulate child pornography. However, the Penal Code prohibits the sale, importation, advertisement, and distribution of obscene materials (Article 292 a-e).

(o) The Netherlands

Anyone who makes, imports/exports and possesses illustrations of sexual activity involving persons who are obviously under the age of sixteen, or information media that include such illustrations, is liable to imprisonment for a term not exceeding four years or a fine of 100,000 guilders. However should such material be proven to have academic, educational, or medical purposes, the persons shall not be liable to prosecution. This type of crime has already been defined thus in 1985. However, the Penal Code was amended in 1995, and the punishment was increased in (imprisonment: from three years to four years and the Fine: from 10,000 guilders to 100,000 guilders).

(p) New Zealand

In New Zealand, the Classification of film, video and publication Act of 1993 regulates child pornography. According to Article 3, Section 2 of the Act, any publication which encourages or support the exploitation of children or adolescent with a sexual intention or which has a trend in encouraging or supporting such acts is defined as objectionable. Anyone who produces, distributes, exhibits or (private or corroborative) possesses with an intention of providing a third person with such publications is liable to a fine or imprisonment (Article 2, Section 2a, Article 123, and Article 124).

(q) Norway

Article 221, Section 1d of the Citizen's Penal Code states that anyone who possesses or imports illustrations, film, video or other similar article which depicts persons under the age of sixteen, or persons who are believed to or appear to be under the age of sixteen in an obscene or

pornographic manner is liable to a fine and/or imprisonment for a term not exceeding two years. Production and distribution of pornography is regulated in Article 211, Section 1 a-d.

(r) The Philippines

Article 9 of the Special Protection Against Child Abuse, Exploitation and Discrimination Act of 1992 states that "anyone who employs, uses, persuades, induces or coerces children (persons under the age of eighteen) to perform in obscene exhibitions or indecent shows, whether live or video, or to model in an obscene publication or pornographic materials" is liable to imprisonment for not less than six months and one day but not more than twelve years. If the children involved in such acts are under the age of twelve, punishment shall be aggravated to imprisonment for the longest term. Any guardian who aids the sexual exploitation of their own child is liable to imprisonment for not less than six months and one day but not more than twelve years.

(s) Singapore

There is no legislation to regulated child pornography itself. However, Article 292 of the Penal Code regulates obscene materials in general. Moreover, "to protect adolescents in particular from the broadcasting of illegal or objectionable materials," since the beginning of 1996 all Internet servers have been requested to register with the Singapore Broadcasting Authority. The Authority monitors cyber-space and removes objectionable sites which include pornography.

(t) Sri Lanka

The Penal Code was amended in 1995, to include a provision to prohibit the production and sale of child pornography that uses persons under the age of eighteen (Article 286A).

(u) Slovakia

Article 204 of the Penal Code of 1992 prohibits the production, distribution, presentation, or transport of indecent materials that depict "abnormal sex" or child pornography. The prohibited forms of transport are not specified.

(v) Sweden

According to Section 10a, Article 16 of the Swedish Penal Code, a person who depicts children in pornographic illustrations with the intention to distribute, or a person who distributes such an illustration shall be sentenced for *child pornography* and will pay a fine or be imprisoned for no longer than six months. According to the Forfeiture of Child Pornography Law, any pornographic illustrations that portray children will be forfeited except in special circumstances.

(w) Taiwan

The "Child Prostitution Prevention Bill" of 1995 criminalises the production of paintings, video tapes, photographs, CD-ROMs, electronic signals and other products depicting indecent conduct or sexual interaction involving persons under the age of eighteen.

(x) Thailand

There is no legislation to regulate child pornography itself; however Article 287 of the Penal Code regulates pornography in general.

(y) The United Kingdom

According to the Protection of Children Act 1987, anyone who publishes, distributes, possess for the purpose of distribution and exhibition, or advertises indecent photographs or pseudo-photographs of a child (anyone who is under the age of sixteen) shall be liable to prosecution (Article 1). "Pseudo-photographs" are defined as pictures that could be judged as photographs regardless of whether they were made by computers or by any other means (Section 7, Article 7). In addition, any "data that is saved on a computer disk or any other electric means, that can be converted into a photograph" is included in the category of pseudo-photographs (Section 9, Article 7.) Moreover, the Criminal Justice Act of 1988 criminalises the mere possession of indecent photographs or pseudo-photographs.

(z) The United States of America

The United States Code, Volume 18, Chapter 110 (Sexual Exploitation and Other Abuse of Children) provides regulations for anyone who employs, uses, persuades, induces, entices, or coerces children under the age of eighteen to engage in any sexually explicit conduct for the

purpose of producing any visual depiction of such conduct. Anyone who receives, reproduces, distributes, transports or ships interstate or abroad, advertises, or possesses any child pornographic material is liable to prosecution. Under the current law, child pornographic materials which are regulated are not limited by definition "obscene". Regardless of whether a person has an intention to sell such materials or not, possession of such materials is outlawed. However, in the case of mere possession, it is required that the person be in possession of three or more such items (Article 2252, a(4)).

Anyone who is convicted of an offence concerning child pornography shall forfeit, not only the pornographic material itself but also any assets or profit gained in association; including property, or any property or equipment used or intended to be used to commit such offence. Whoever produces any material which contains one or more visual depiction of actual sexually explicit conduct is obligated to keep records pertaining to every performer, including his/her age (Article 2257). Furthermore, following the amendment in 1994, anyone who, outside the United States, produces child pornography with the intention that the such material will be imported into the United States, receives, transports, ships, distributes, sells, possesses with intent to transport, sell or distribute shall be liable to prosecution.

The United States is one of the countries with the highest consumption of child pornography; although it has some of the strictest regulations. According to the Telecommunication Act of 1996, anyone who knowingly transmits "indecent or obscene materials" which may be seen by children under the age of eighteen on the Internet or other on-line computer services is liable to prosecution. However, this provision was indicated to be in conflict with freedom of speech, and it is under the investigation of unconstitutionality in the Supreme Court.

4. Law Enforcement

Since the beginning of the 1990s, each country has been working to establish new legislation in order to eradicate sexual exploitation of children. Each country has completed the first stage of the lawmaking process, and now the focus is shifting toward the enforcement of such legislation. Although there are as yet few cases, examples of endeavours to enforce these laws in several countries will be described below.

(1) Sweden

The decision on the Bolin case³⁹ which was given at the Stockholm District Court on June 22, 1995 drew a great deal of attention to a case in which a man was prosecuted for engaging children in prostitution while overseas. Bengt Bolin engaged in sexual intercourse with a thirteen-year-old boy in Pattaya, Thailand in February of 1993, and was ordered by the court to be imprisoned for a term of three months and to pay 100,000 baht in damages. Bolin was arrested in Thailand through cooperation between Thai police and two Swedish police officers who were sent to Thailand at the request of Radda Barnen (Save the Children Sweden) to investigate sexual crimes by Swedish nationals. He was released on bail, was issued a new passport at the Swedish Embassy, and went back to Sweden. Some people in Sweden were sympathetic towards Bolin, but thanks to the strong stance of the government and NGOs, Bolin was prosecuted. With support from ECPAT, the victim appeared and gave testimony in court. There were discrepancies between the victim's testimony and Bolin's; however, the court, taking other evidence into consideration, finally found credibility in the victim's testimony and made the conviction.

(2) Norway

The very first case in which a prosecution was made occurred in Norway. The Norwegian Supreme Court, invoking the provision regarding punishment of extraterritorial criminals, sentenced three Norwegian men who sexually abused thirteen-year-old boys in the Philippines to imprisonment for a term from six to eighteen months. The video tape showing the boy's forced sexual activity was an important piece of evidence in this case.

³⁹ Sakai, Kimiko, *Bolin Jiken Hanketsu* (The Verdict on the Bolin Case), *Gaikoku no Rippo* (Foreign Legislation), Vol.34, No.5&6, pp.112-118

(3) Germany

In Germany, two German men aged forty-three and thirty-three who made pornographic films and took photographs of boys between the ages of nine and fourteen between 1994 and 1995, were sentenced to imprisonment on November 27, 1996 for terms of four years and four years and ten months respectively. This was the first case in which a German who committed a sexual crimes overseas was prosecuted. These two men were arrested in Berlin in November of 1995 after customs in Frankfurt revealed the contents of mail sent from Thailand. The defendants admitted to the transfer of money and the production of pornographic materials; however, they made a plea that they obtained consent from the boys and the boys voluntarily engaged in the sexual practices. This plea was turned down. One of the two men went to Pattaya in Thailand twice in 1994 and took photographs of twelve young boys engaging in sexual intercourse with adults. At that time, the boys were tied and severely injured. The two men are allegedly involved in the production and sale of child pornography for paedophiles.

Subsequently, a further case of prosecution of extraterritorial criminals occurred on December 18th of the same year. The following passage describes this incident. In January 1996, a thirty-three-year-old German man who was staying, together with a twelve year-old girl, at a tourist resort in the Philippines was placed in police custody. He was later released on bail and returned to Germany. However, the man was arrested in Germany following a report from the PREDA Foundation and was later prosecuted. With the support of Fr. Cullen of the PREDA Foundation, the girl travelled to Germany to testify at a closed hearing. The court found credibility in the testimony, which was carried out with great care so that the girl did not need to see the defendant, and the man was sentenced to imprisonment for three years and six months. The German government bore the expense for the girl to come to Germany and testify.

(4) The Netherlands

In the Netherlands on October 8, 1996, a forty-three-year-old Dutch man was sentenced to imprisonment for five years by the Hague District Court. This was the first judicial judgement concerning sexual crimes overseas to be made in Denmark. One of the abused was an eleven year old child. The case become known because pictures which depicted scenes of sexual activity with girls were found among pictures the man had later had developed.

(5) Australia

There have been five cases of prosecution under the Crimes-Child Sex Tour Act 1994. An overview of each case is presented below.

Anthony Richard Curr was the first person to be prosecuted. He was sentenced to imprisonment for no less than six months by the New South Wales State District Court for sexual abuse of a five-year-old girl in the Philippines. He was first sentenced to imprisonment for seven years for a sexual crime he had committed in Sydney, and the incident in the Philippines came to the light from the child pornography confiscated during the criminal investigation of this crime. During the trial, a video tape of the scene of sexual violence against the five-year-old Filipino girl was used as evidence. The girl was not brought to Australia. In addition, information regarding this case was sent to the Philippine authorities by the Australian Police, and an aunt of the girl was later arrested.

The second prosecution involved a seventy-five-year-old man and a thirty-eight-year-old man. Both were prosecuted under suspicion of sexual crimes they committed against local boys and girls in the Philippines between July of 1994 and 1996. A large amount of child pornography was seized. These two cases are currently being processed by the courts.

The fourth case is that of John Holloway. Holloway was arrested on suspicion of child sexual abuse in Cambodia, where he resided as Australian ambassador to Cambodia. However, after eight days of hearings, he was released by a security judge on grounds of insufficient evidence. Two boys who were allegedly the subjects of Holloway's sexual abuse, and one adult witness were brought to Australia for the hearings. The testimony of the two boy was sent into the court from another room via closed circuit television. During the cross-examination, the security judge found inconsistencies in the boys' testimony concerning the date and place the act was allegedly carried out and Holloway was acquitted.

In this case the relentless cross-examination of the boys over a period of three days drew serious criticism. Under the federal law, unlike state law, the age of the witnesses is not taken into any consideration. In the Holloway case, there was a cross-examination which would be considered severe for an adult to undergo, and yet in this case the witness was a child from overseas. Moreover, he was the alleged victim in this case. Insufficient legislation concerning cross-examination in these cases has been noted. In addition there were criticisms that the interpretation was of questionable quality and that the testimony was not interpreted precisely.

Because the witness's safety was threatened in Cambodia, this case also exposed that there were no measures taken in the protection of witnesses brought in from overseas. This case drew serious attention because it involved a diplomat, and highlighted insufficient procedures regarding the treatment of witnesses.

The fifth case involved Raymond John Jones. Jones, who was fifty-six years old, was prosecuted on suspicion of having sexual intercourse with children in the Philippines and inducing a third person to have sexual intercourse with children. The case is currently being prosecuted.

The Australian Federal Police, with the cooperation of the authorities of the concerned countries, have already established the Australian Federal Police Overseas Officer Liaison Network to deal with international crimes such as trade in narcotics. For the purpose of eliminating sexual exploitation of children, the network will be reinforced. All the overseas officers have received necessary information by now and will obtain data overseas.

The efficacy of such activities can be secured by the adoption of agreements on mutual assistance in these kinds of investigations. An agreement with the Philippines was concluded in December of 1993, and a similar agreement with Thailand has been adopted. These agreements have made it easier for a victim or a third-party to be brought to Australia to serve as a witness.

(6) The Philippines

The first judicial judgement under the Special Protection of Children Act of 1992 was handed down in the Olongapo District Court on May 7, 1996. Victor Keith Fitzgerald from Australia, who paid money to have sexual intercourse with a twelve-year-old girl, was sentenced to imprisonment for a minimum of eight but not more than seventeen years. Fitzgerald was also ordered to pay damages of 50,000 pesos to the girl. Fitzgerald, who was identified by the Court as "obviously a paedophile," claimed that he did not have sexual intercourse with the girl and he was only interested in the welfare of children. This case was prosecuted by the PREDA Foundation, and Fitzgerald claimed that the Foundation and Fr. Cullen were fabricating the evidence. However, his claim was rejected by the judge as not being unfounded.

In the Philippines, under the leadership of the PREDA Foundation, a number of prosecutions have been taking place under the Special Protection of Children Act. By the end of 1996, the PREDA Foundation had dealt with fifty-five cases involving paedophiles or sexual offenders. The case of a British man who was sentenced to imprisonment for sixteen years for promoting child prostitution on October 11, 1996 was also filed by the foundation. In addition, another British national was arrested on March 3, 1997, because, through the efforts of the PREDA Foundation. It became clear that he committed indecent acts involving children of the ages of four and eight. Under the Special Protection of Children Act, he was sentenced to imprisonment for a minimum of fourteen but not more than seventeen years. He was also ordered to pay damages to the two victims.

A breakdown of the fifty cases the PREDA Foundation had taken up by the end of 1996 includes six Britons, three Japanese, three Germans, one Swiss, one French, one Australian, one American, one Dutch, one Canadian, and thirty five Filipinos. In 1995 and 1996 alone, forty-five foreigners were arrested on suspicion of the violation of the Special Protection of Children Act. Among them were eight Americans, seven Japanese, seven Germans, five Swiss, and three Australians.

V. Japan: Actual Situation and Legal Measures

1. Overview

"In Japan, to prevent so-called sex tourism by Japanese tourists in foreign countries, under the provisions of the Travel Agency Law, travel agents, their representatives, employees or other workers are prohibited from soliciting and providing services for the performance of acts prohibited by the laws in the places visited (art. 13, pars. 1 - 3.) If it is evident that a travel agent was involved in unsound activities involving Japanese travellers, the name of the travel agent and details of the involvement will be made public. Moreover, the government will provide guidance and education for improving sound overseas tours by Japanese travellers through the Association for Travel Agencies in Japan," as it is clarified in the first report turned into the Convention of the Rights of the Child. Article 13, was inserted at the time of amending the Travel Agency Law. The fact that such a provision was inserted indicates that there were many sex tours which involved the tourist industry. The destinations of these tours were mainly Asian countries, and "Gi-saen trips" to Korean became widely known.

The number of sex tours arranged by tourist agencies has decreased since the amendment of the code; however, that does not mean that the number of sex tours itself has decreased. Several hundreds of thousand cases of prostitution are attributable to the sex tours and individual trips arranged by smaller agencies and "pleasure" trips of enterprises. The conduct of Japanese paedophiles has become a serious problem. There is a prominent number of Japanese men who sexually abused children in Thailand or the Philippines who have been punished under local jurisdiction⁴⁰. In 1996, there were cases in which the act of such paedophile was to be judged by the application of Japanese Penal Code.

Considerable number of people has been smuggled to Japan by way of organised trafficking in human being. Many Asian women are still forced into slavery-like conditions in modern Japan, as the so-called "Shimodate Incidence"⁴¹ revealed. In addition, the increasing number of "enjo

⁴⁰ *Stop Kodomo Kaishun no Kai* (Stop Child Prostitution Association), *Ajia no Mushibamareru Kodomotachi* (Children of Asia Under Attack), (1996), Akashi Shoten; pp.20-34

⁴¹ Shimodate Incident: *Thai Josei wo Sasaeru Kai* (Group to Support the Thai Victims of the Shimodate Incident), *Baishun Shakai Nihon e; Taijin Josei no Tegami* (Letters from Thai Women to 'Prostitution Society' Japan), (1995), Akashi Shoten

kô sai (compensated dating)" cases, involving female high school students indicates that this country is, without a doubt, one of the few societies tolerant of prostitution.

Along with the criticism of Japan as a "haven for prostitution," the indifference and tolerance toward child pornography has received severe criticism. In the centre of the capital, book stores which deal specifically in child pornography continue in business, and the number of such book stores is actually increasing. Much of the child pornography in circulation worldwide is thought to be produced in Japan, and a considerable number of Asian children are abused in such pornography.

2. Legal System

Laws dealing with child prostitution and child pornography and the problematic issues related to these laws are discussed below:⁴²

1) Penal Code

Article 176 of the Penal Code states that a person who uses violence or intimidation to commit an indecent act against a male or female of or over the age of thirteen is liable to a term imprisonment of no less than six months but not more than seven years. The same punishment shall be applied in the case of a person who commits such indecent acts against a male or female under the age of thirteen. Article 177 states that a person who uses violence or intimidation to engage in sexual intercourse with a woman of or over the age of thirteen shall be sentenced for rape, with imprisonment for a definite time but not less than two years. The same punishment shall be applicable in the case of a person who commits any of the above acts, even without violence or intimidation with a girl under the age of thirteen. It is also stated in the Penal Code that a person who, by taking advantage of loss of reason or inability to resist, or by causing such loss of reason or inability to resist, commits an indecent act on or sexual intercourse with a woman shall be sentenced for quasi-indecent assault or quasi-rape which the same punishment described in the previous two articles (Article 178). Attempts to commit the crimes mentioned in Articles 176 through 178, shall also be punished (Article 179).

These offences are subject to prosecution only upon receipt of a complaint. Complaint of an offence may not be filed after a six month period following the time when the victim become aware of the identity of the offender (Criminal Procedure Code, Article 231). However, if a

⁴² Regarding related legislation and court cases, please refer to Fujinaga Yuki Haru (Ed.) Fuzoku to Seihannzai (Customs and sexual crime) (1996) Tokyo Hourei Shuppan

crime was committed jointly by two or more persons at the same location, the offence does not require a complaint in order to be prosecuted (Article 180). A person who, by committing any of the crimes mentioned in Articles 176 through 179, kills or injures another shall be punished. In this case, again, the offence does not require a complaint to be filed (Article 181).

The Penal Code also states, in Article 182, that anyone who induces a woman, regardless of her age, who does not habitually engage in sexual intercourse in exchange for money shall be liable to prosecution. In the law it is therefore not the act of sexual intercourse itself which is punishable but its inducement.

The Penal Code is also applicable to any Japanese citizen who commits crimes mentioned in Articles 176 through 181 in an overseas location. The Japanese Penal Code is based on statistic principles and adopts "unlimited and active jurisdiction over all Japanese nationals."

Therefore, the Penal Code does not have provisions such as a requirement of double criminality, or that the sanction for such a crime may not exceed the maximum penalty prescribed for that crime under the law of the country where it was committed. The Japanese Penal Code does not recognise the active effect of the criminal decision made in other countries, and the approval of the passive effects of the criminal decision is limited. Even in cases that a final decision was made overseas the case can be brought to trial again in Japan, thus, the effects of double jeopardy toward decisions overseas are not recognised. If a foreign sentence was imposed, that length of time is calculated and deducted from the days the length of imprisonment sentenced in Japan (adoption of the principle of reckoning). The prohibition of double jeopardy needs to be recognised and established; and a provision which enables appropriate punishment of extraterritorial criminals needs to be evaluated. Considering the fact that extraterritorial legislation has only be introduced recently in many developed countries, the Japanese Penal Code can be regarded as rather "advanced."

On the other hand, the Japanese Penal Code has some aspects that require further debate. The first point is the age of consent, which at present is defined as thirteen years. The draft to the amendment of the Penal Code of 1961 and the Draft to the Amendment of the Penal Code of 1974 which was submitted by the Legislative Council (based on the former draft) both raised the age of consent to the age of fourteen; although this is still considered to be too young by many.

The period for filing a complaint which is limited to six months at this time needs to be reviewed. Sexual exploitation may cause serious trauma and six months is thought to be too short a period. Few countries limit the period for filing complaints to six months. The provision which states that these offences are subject to prosecution only upon a complaint being filed may be necessary to protect the interest of the victims. However, considering the fact that there are many cases in which the victims feel actual or 'invisible' (physical or intangible) pressure, and involuntarily withdraw complaints this regulation could be removed. Particularly in certain developing countries intermediaries involved in prostitution, including criminal organisations, may threaten victims or their families to cover up, and further consideration is needed as to how best to deal with such circumstances.

In addition to the period for filing a complaint, the law enforcement system needs to be reviewed. For the punishment of extraterritorial criminals in particular, special measures need to be taken to follow the local law enforcement system of the place where the offence was committed. This requirement is clearly stated not only in the Convention of the Rights of the Child, but also repeatedly in the Programme of Action of the Commission on Human Rights at the United Nations and in the Declaration made at the Stockholm World Congress. In reality, in order to eradicate the sexual exploitation of children there is a need to implement mutual assistance in police investigation and place well-trained law enforcement officers at diplomatic establishments abroad. Such special measures have not yet been taken in Japan, and the law enforcement system that targets extraterritorial criminals is not well-established. This does not mean that the Japanese government is violating its international obligations, but there would seem to be a lack of enthusiasm to observe international human rights standards, and there has yet to be a single case in which extraterritorial criminals were punished (although there are at present three cases in which complaints have been filed.)

To facilitate the punishment of extraterritorial criminals, procedures such as the examination of witnesses, recording of testimony, and taking of evidence need to be established, and particular attention needs to be paid to the care and security of child witnesses. As yet no such measures have been introduced.

The regulation of the traffic in human being to Japan is also problematic. Article 226 and 228 of the Penal Code provide that kidnapping, abduction, traffic in human being, and transporting of kidnapped person to foreign country shall be liable to prosecution. However,

these provisions were established based on the principle of regulation of trafficking of Japanese nationals overseas, rather than regulating such traffic into Japan. To date most cases involve systematic trafficking from Asian countries to Japan.

Concerning child pornography, Article 174 of the Penal Code provides that a person who publicly commits an indecent act shall be liable to prosecution. Under this provision, a person, including theatre managers etc., who has others commit indecent acts shall be liable to punishment for conspiracy or complicity under the same provision. Article 175 of the Penal Code provides that anyone who distributes, sells, or publicly displays obscene writings, drawings, or other materials shall be liable to imprisonment for a term not exceeding two years or a fine not more than 2,500,000 yen. "Obscene" materials are defined as any material that "irrationally excite or stimulate sexual desire, damage the normal sense of shame of ordinary persons, violate accepted standards of public decency". "Irrationally" is defined as "the way in which a person, according to the social condition, violate the sexual order, and excessively excite and stimulate sexual desire. "According to past cases, negatives and positives of photographs, video tapes, and undeveloped movie films, in addition to pictures, are included in the category of drawings. Sculptures, ornaments, records, and tape recordings are included in the "other materials" category. According to a decision by the Supreme Court, however, "the purpose for sale" is limited to sale within Japan, and these provisions do not regulate sale overseas.

There are certain cases in which Article 175 of the Penal Code regulates magazines and movies that deal with child pornography; however, an offence of *distribution of obscene materials* is defined as an offence that affects public decency and the punishment of such an offence does not protect individual interest. Article 175 is logically constructed as a provision that preserves. "Accepted standards of public decency" is objectively defined with reference to the ideas commonly accepted by society. Japanese society, however, has been established based on the standards commonly held by "healthy adult males," and therefore the judgement of obscenity is not favourable to women and children. Any materials which depict the genital area or the genitals of children are considered obscene and are regulated under the existing provisions, however what is protected is not the interest of children but "accepted standards of public decency." If the materials do not depict the genital area or the genitals of children, even if the materials degrade children, they are not considered "obscene." Article 175 will not be effective in the regulation of child pornography as long as such a concept of obscenity is maintained.

Article 175 of the Penal Code was established for the purpose of regulating "corporeal objects," therefore it is hard to apply this to the case of 'cyber pornography' on the Internet. The logic behind this article is that the televising of obscene film or movies is considered as "exhibition of obscene materials." However, what is considered to be "exhibited" is not the "image" but the "film" itself. When images are fixed on film the film becomes an "obscene material." As far as the target of regulation is limited to "objects," It would be very difficult to regulate pornographic pictures that appear on the Internet momentarily. It is necessary to free ourselves for the notion that pornography is a tangible object in order to regulate child pornography on the Internet.

2) Prostitution Prevention Law and Child Welfare Code

The Prostitution Prevention Law which came in to force in 1957 states that "prostitution degrades human beings, violates sexual morals, corrupts social decency" (Article 1), so "no one shall become a prostitute or engage in prostitution" (Article 2). Prostitution itself is clearly defined as harmful. However, because of the social background and political dynamics at the time of establishment of the legislation, prostitution and the activities to encourage prostitution became punishable by law (the so-called 'principle of abolishment' was adopted). Those who buy sexual services are not liable to prosecution under this law, and prostitution is defined as "having sexual intercourse with an unspecified person for consideration or consent to receive any consideration" (Article 2).

According to this law, prostitution is theoretically illegal in Japan. However, the Public Health Code and the Law on Control and Improvement of the Amusement and Entertainment Businesses legally allows the management of bathhouses which are "openly" places for prostitution. Therefore conflicts exist between the Prevention of Prostitution Law and other existing legislation⁴³. The current situation regarding prostitution indicates that in reality Japan adopts the "principle of regulation" rather than "abolishment" (in which prostitution is permitted under certain regulations).

⁴³ Kataiki, Hideto, Baishun Boshiho no Gendai Kadai; Gendai Baibaishun to Josei (Women and Prostitution—The Current Situation), (1995), Domesu Shuppan

Article 1 of the Law on Control and Improvement of Amusement and Entertainment Businesses states that "in order to maintain standards of public decency and a clean environment for amusement and entertainment businesses, to prevent any activities that will affect the sound development of young people, this law regulates business hours and locations of amusement and entertainment businesses and young people from using such business." As this provision clarifies, this law aims at sound development of the amusement and entertainment business and privation of juvenile sexual delinquency. Relating to children, Article 28, Section 5, No.2 of this Law prohibits employment of persons under the age of eighteen in bathhouses or strip theatres. Article 5 of the Enforcement Act of the Law prohibits employment of persons under the age of eighteen in massage parlours. The main focus of this law is to maintain standards of public decency, and little attention has been paid to the protection of children from sexual exploitation.

The Child Welfare Act, which plays an important role in protecting the interest of children states, in Article 34, Section 6, that prohibits any "act of inducing children to practice indecent act." Any person who violate this provision is liable to imprisonment of a term not exceeding ten years or a fine not more than 500,000 yen (Article 60, Section 1). Any person who engages in an act "to keep children under his/her control with intent to harm" (Article 34, Section 9)" is also liable (Article 60, Section 2). Under this law, children are protected from prostitution and pornography to some extent. However as the users prostitution are not breaking the law, only the act of inducing indecent acts is punishable under the law. The prohibition of the act of keeping children under his/her control with an intent to give " is not necessarily absolute. Prohibition does not apply to cases in which a child is within the fourth degree of relationship with the offender, or where the control of a child is based on a relation of employer and employee.

The Child Welfare Act defines a child as any person under the age of eighteen. Under the Act, special social workers for children, child welfare commissioners, and child guidance clinics have been established. This Act is certainly a useful measure to protect children from sexual exploitation. However, in cases in which children are abused by their parents or guardians, this Act does not work favourably for children. For example, "welfare measures" are taken only upon the consent of parents or guardians (Article 27, Section 4). In many cases, parents or guardians take custody of the children when they are institutionalised. It is possible for prefectural government to take measures such as institutionalisation against the wishes of the guardians with the approval of family courts but, in most cases, this provision has not been

applied. Authorities are reluctant to interfere in the rights of parents, and this is one barrier in the struggle to eradicate sexual abuse and exploitation of children.

3) Ordinances

Prefecture ordinances concerning the protection and care of young persons are enacted in forty-six prefectures except for Nagano prefecture. Most of these ordinances contain "provisions to punish indecent acts" that are committed against children under the age of eighteen. According to a Supreme Court decision an "indecent act" shall not be defined as any sexual activity committed against young persons. It shall be defined as sexual intercourse or similar acts committed by inducing, threatening, misleading, or other unreasonable means that take advantage of the immaturity of young persons. In addition to the above, it shall be defined as sexual intercourse or similar acts that can only be viewed as acts to objectify young people to satisfy the sexual desire of the perpetrator' (Supreme Court Case Book, October 23rd, 1975, Criminal Record vol.39, no.6, p13). It so states that "such interpretations shall meet the understanding of the general public." However, as a minority opinion of the decision indicates, whether or not the general public is able to judge is questionable. There remain many questions regarding the efficacy of the ordinance to regulate indecent acts committed against children.

One of the other problematic features here is whether or not these ordinances expand the extent of activities liable to prosecution, even though the Penal Code does not penalise sexual intercourse or indecent acts, committed on persons over the age of thirteen without violence or intimidation. The enactment of ordinances in general is stated in Article 94 of the Constitution and Article 14, Section 5 of the Local Government Act. These clearly state that ordinances are to be imposed "within the extent of legislation." Ordinances are of no effect if they are not within the limits of the Penal Code, which has super-ordinate legislative status. Some cases clearly indicate that the provision to punish indecent act does not contradict the Penal Code (for example, the Osaka District Court Case Book, December 20th, 1973, Criminal Record vol.26, no.5, p619). Another problematic feature is whether or not the differences in the contents of provisions regarding sexual activities is a violation of equalities before the law. There are a theory which states that sexual activities should not be regulated by mere ordinances, but should be uniformly regulated under the law.

4) Summary

The issues of child prostitution and pornography are complex and can not be discussed in sweeping statements. However, issues such as sexual crimes committed by Japanese abroad, the organised trafficking in human beings to Japan and child pornography are certainly grave problems. It is time to take effective measures, if there is any serious intention to protect the human rights of children. As a signatory to the Convention on the Rights of the Child, in order to express our intention to honestly implement the Convention, Japan should take action to overcome the imperfections in the existing legislation and the problems raised by the issues. In doing so, however, the following points need to be considered.

Firstly, there is a problem in the structure of the legislation itself. The goal of the regulation of child prostitution and pornography must be to protect the human rights of the child victims. If the goal is left ambiguous, the regulation itself will be ineffective. This might even become harmful to the expansion of human rights of children. It is necessary to re-confirm that what is most important is not the preservation of "standards of public decency" but the actualisation of the "best interests of the child."

Secondly, there is a problem with the dominant culture of the legislative agencies. "Police culture" needs to be reviewed if it is to be effective in the protection of the human rights of children. As it is stated in the Police Code, the Japanese police were originally established to serve and to secure human rights of individuals. However, the police have mainly taken the stance of maintaining public security and social defence. Concerning the issue of sex, it has regulated the areas of entertainment and amusement "severely," only when necessary. The police give priority to maintaining public order even in the realm of sex, rather than protecting human rights.

Not enough attention has been paid to victims. In May 1995, the National Police Agency established the Office for Crime Victims and began efforts to care for victims of these kinds of crimes. It should be noticed that emphasis is placed particularly on the issues of sex crimes and child victims, and this trend needs to be encouraged. To ensure further improvement of the situation more emphasis needs to be placed on reform of the patriarchal structure—currently 97% of police officers are male—and also on the establishment of new structures able to integrate the human rights of women and children into policy making.

Thirdly, legislation should not be applied discriminatingly to particular individuals. Those who exploit prostitution in other countries and the clients of Asian women prostitutes in Japan should not be singled out for punishment, and the clients of Japanese child prostitutes in Japan, for example, should be prosecuted. In this case, the evaluation of the phenomenon of "*enjo kô sai*" ("*compensated dating*"—*the recent phenomenon in Japan of school aged girls having sexual relations with adult men in return for cash or gifts*) becomes problematic.

Needless to say, "*enjo kô sai*," is actual form of child prostitution. One cannot easily put this peculiar form of child prostitution in the same light as the sexual exploitation of Asian women and children who have been forcefully trafficked to Japan, but if one hopes to eradicate all forms of prostitution, it is not necessary to differentiate between these two forms. However, if one takes a stance of aiming to eradicate only forced prostitution, "*enjo kô sai*" would then be viewed slightly differently, since "*enjo kô sai*," seems to be a choice made freely by an adult man and a girl.

Conclusion

1. International Efforts

Since the end of the 1980s, the issues of sexual exploitation of children have rightly been a focus for the attention of the international community. With the leadership of Northern European countries and the driving force of the non-governmental sector, and in particular the efforts of ECPAT, moves to help eliminate this problem are advancing across the world. In response to the proposal submitted by the Working Group on Contemporary Forms of Slavery of the Sub-Commission of the Commission on Human Rights, the Commission on Human Rights appointed a Special Rapporteur on the sale of children, child prostitution and child pornography. The Commission adopted the "Programme of Action for prevention of sale of children, child prostitution and child pornography." Mr Vitit Muntarbhorn of Thailand was appointed to be the Special Rapporteur, enthusiastically collected data, and produced report every year. Ms. Ofelia Calsetas-Santos took over his position in 1995. Moreover, the Working Group on Contemporary Forms of Slavery has been following up the Programme of Action.

At the regional level, in 1991, at the Council of Europe, the Committee of Ministers adopted the Recommendation concerning sexual exploitation, pornography, and prostitution of and trafficking in children and young adults, which consists of forty four components. In February, 1997, the European Union adopted the Joint Action Committee to combat human trafficking and the sexual exploitation of children. INTERPOL has also been actively dealing with the issues.

International efforts reached a peak at the First World Congress against the Commercial Sexual Exploitation of Children held in Stockholm in 1996. International organisations, governments, and NGOs participated in the Congress, and one of the main objectives was "to nationally and internationally propose definite actions to end this abominable violation of the rights of children." A Declaration and an Agenda for Action were adopted at the Congress.

The Convention of the Rights of the Child which was adopted in 1989 has formed an important foundation for the elimination of sexual exploitation of children. In particular, Article 34, that states that children should be protected from all forms of sexual exploitation is of central importance. However, Article 34 does not function as a strong measure to deal with the issues of sexual exploitation of children effectively and thus some countries, such as Australia and parts of Latin America have proposed the establishment of new legislation to eliminate the sale

of children, child prostitution and child pornography. These suggestions are under discussion in the form of the Draft Optional Protocol to the Convention of the Rights of the Child at the Commission on Human Rights. In the beginning, many Western countries and NGOs showed disapproval of the Draft Optional Protocol. However the coming to light of a number of brutal incidents committed by paedophiles in Belgium was a turning point, and since then most countries have given their support. The feasibility of the establishment of the Draft Optional Protocol is questionable because of the differences of opinion between individual countries.

2. Endeavours at the National Level

Working within the international current, many countries have modified their legislative systems. In Europe, many countries have introduced legislative measures under which anyone who commits sexual crimes in an overseas location shall be liable to prosecution in their home country. Some countries, such as Australia and the United States, have begun to regulate overseas trips for the purpose of sexual exploitation of children. The legal measures to ensure testimonies of children who are victimised overseas have been established in Australia, though it is not yet sufficient. The countries that have been "sources of supply" for people who sexually abuse children in child prostitution have been actively reforming domestic laws. Adoption of the Special Protection of Children against Child Abuse, Exploitation, and Discrimination Act (1992) in the Philippines, the Child Prostitution Prevention Bill of (1995) in Taiwan, and the Prevention and Suppression of Prostitution Law (1996) in Thailand are testimony to the efforts being made.

At the beginning of the 1990s, regulation of child pornography became a more prominent issue. The production and distribution of child pornography has become prohibited in most of the European countries except for Eastern Europe. Mere possession of child pornography is prohibited in Austria, Belgium, Denmark, the UK, Germany, the Netherlands, and Norway, Canada, the US, and Australia. During this period, the recognition that the principles of freedom of speech does not apply to child pornography has become widely accepted. On the other hand, adequate legal measures have not yet been established in many parts of Asia and Eastern Europe. Lack of legal measures, combined with conditions of poverty make these areas sources of supply of child pornography.

Some offenders have been prosecuted under recently established legal measures. The first case took place in Norway in 1990. Between 1995 and 1997, extraterritorial criminals have been prosecuted in Sweden, Germany, Australia, and the Netherlands. With strong support from

local NGOs, the regulations toward sexual exploitation of children have become prominent in the Philippines.

Sexual exploitation of children is not an issue of sexuality but rather of abuse of power, and have been recognised as violations of children's human rights of children. Other forms of discrimination such as that based on gender or the distinction between rich and the poor are also relevant. The review of existing legislation indicates the existence of a political intent to protect the interests of women and children which have been neglected by patriarchal social systems. Such political intent has become apparent in many countries.

3. Japan's Response

Japan has not been indifferent to the issue of the sexual exploitation of children. It is widely recognised that many Japanese nationals have "participated in" child prostitution in East and Southeast Asian countries, and the number of cases in which Japanese paedophiles have been arrested and prosecuted on suspicion of sexual crimes has been increasing.

An important feature of this country is that the production, distribution, and possession of child pornography is openly accepted. When Japan finally ratified the Convention of the Rights of the Child in 1994, the government did not take action to amend existing national legislation, on the judgement that no amendment was necessary. Certainly, the Japanese legal system and the Convention of the Rights of the Child do not actively contradict each other, however the government has still not yet invested the necessary resources for the realisation of the best interests of children. This country has not established an adequate legislative framework to protect children from all forms of sexual exploitation.

However, Japan is not necessarily out of step with international developments on this issue. Criticism that "the Japanese government has not taken any action, while other countries have been actively engaged in the establishment of legislation to eradicate the problem" is not wholly accurate. At the beginning of the 1990s, European countries began introducing, extraterritorial legislation to legally address the issue of child prostitution. However, such legislation was already a feature of the Japanese Penal Code. Some European countries have adopted the principle of dual criminality or approved the effect of criminal decisions abroad, which could possibly restrict punishment of extraterritorial criminals. In contrast, the Japanese Penal Code adopts the principle of "unlimited and active jurisdiction over all Japanese

nationals". Japanese legislation is not behind that of Europe, but rather Europe has been following the example of Japan.

Many concerned parties at national and international levels appear to be under the impression that the Japanese government has not taken any measures towards the elimination of the problem, and this is rather unfortunate for Japan from a political perspective. The government has, seemingly, failed to take measures to "protect the best interest of children." The existing legislative system requires further review, particularly of the following;

Firstly, regarding the Japanese Penal Code:

1. The existing Penal Code defines the age of consent as thirteen. The Draft to the Amendment of the Penal Code states it to be fourteen, but this is still thought by many to be inappropriately low. Further discussion of this point is desirable.

2. Sexual crimes such as rape or indecent assault are subject to prosecution only upon receipt of a complaint from the victim. At present the period within which a complaint can be filed is limited to six months. However, taking into account the trauma experienced by victims, this period seems too short, especially in cases in which victims are overseas. There remains the question of whether or not it is appropriate to consider sexual offences as only subject to prosecution only after receipt of a complaint by the victim.

3. Whether or not extraterritorial legislation is well-established or well-maintained needs further attention. The implementation of mutual assistance in police investigation and the placement of well-trained law enforcement officers at diplomatic establishments abroad are repeatedly mentioned in the Programme of Action of the Commission on Human Rights at the United Nations and in the Declaration of the Stockholm World Congress. These measures need to be taken immediately. To punish extraterritorial criminals effectively, procedures for examination of witnesses, the recording of testimony, and the taking of evidence needs to be established. Attention also needs to be paid to the care and security of child witnesses.

4. The Japanese Penal Code needs to be revised to regulate traffic in human begin from overseas locations to Japan.

5. The Japanese Penal Code prohibits the distribution, sale, and public exhibition of any obscene writings, drawings, and other materials. However, in most cases, child pornography is

unregulated. These provisions only regulate to protect standards of public decency, not the human rights of women and children. The two notions may overlap to some extent but are not equivalents. Most child pornography is problematic from the point of view of protecting the human rights of children, although it is frequently not considered as obscene. Only if the current concept of "obscenity" which reflects the dominant patriarchal social values is reviewed and the perspectives of women and children are included, could child pornography possibly be regulated under the current Penal Code. If such a review is deemed improbable, new legislation needs to be established. Further review is also required to regulate child pornography in cyber-space which appears on the Internet momentarily but is not a tangible object.

It would be very difficult to regulate these kinds of pornographic pictures. In order to regulate child pornography on the Internet it will be necessary to free ourselves for the notion that pornography is a tangible object. Article 175 of the Penal Code was established for the purpose of regulating "corporeal objects," and therefore it is difficult to apply this to cyber pornography. The logic behind this article is that, the televising of obscene film or movies is considered to be the "exhibition of obscene materials," however, what is considered to "exhibited" is not the "image" but the film itself. Images and pictures are fixed on a film, then the film becomes an "obscene material." The target of regulation is limited to "objects".

The Prostitution Prevention Law does not regulate those who use prostitution. The question of why users are not liable to prosecution should be tackled. Future consideration is necessary regarding the "principle of abolishment" that is currently adopted which only regulates the act of inducement to prostitution. This legislation determines prostitution as illegal, but due to the existence of other legal measures, prostitution is in fact openly accepted. This contradiction needs to be discussed.

The Child Welfare Act, on the one hand, punishes anyone who induces a child to commit "indecent acts" but, as with the Prostitution Prevention Law it does not punish those who engage in prostitution. The Child Welfare Act is able to suppress child pornography to some extent by regulating "acts which have harmful affects on children." A serious limitation of the law is the weight it places on the wishes of parents/relatives and employers.

The so-called Ordinances for Protecting and Caring for Young Persons that have been enacted by local government have been mainly applied to punish those who use child prostitution in

Japan. Such ordinances that punish "indecent acts" have some problematic aspects, in particular the principle of statutory consistency with the Penal Code. The differences in the contents of provisions regarding sexual activities violates equalities before the law.

Regardless of the manner in which the legislation is enforced, one should keep in mind that the purpose of such enforcement is to protect the human rights of children and that the perspective of women and children needs to be introduced.

4. Future Considerations and Outlook

Four stages have been identified in the recognition of the nature of the problem of the sexual exploitation of children by society at large. The first stage is "denial and negligence" in which the existence of the problematic issues is not recognised, and therefore necessary information is not gathered. The second stage is "shifting responsibility to the deviant" in which despite growing recognition of the problem, it is blamed on a limited group of "deviants" within the population. The third stage is "blaming the victims" in which victims are accused for some way triggering their sexual abuse. After passing through these three stages, society tends to begin to recognise the true nature of the issues. Efforts to gain understanding of the issues by NGOs and citizens organisations are evaluated more appropriately and this then leads to the action by legislatures and administrative organisations.⁴⁴

It is difficult to identify at which stage Japan is currently at. However we have clearly not yet reached the fourth stage. More attention needs to be drawn to reinforce legislation to protect children from sexual exploitation.

In order to realise this goal, the possibility of follow international legislation needs to be considered. By effectively utilising the Convention on the Rights of the Child and the Draft Optional Protocol to the Convention on the Rights of the Child and on the Sale of Children, Child Prostitution, and Child Pornography, the government may be able to increase political awareness of the issues. The Japanese government has taken an extremely deliberating stance throughout the drafting of the Optional Protocol. If the government intends to reinforce national efforts for eliminating the sexual exploitation of children, it needs to firmly commit to the drafting process of the Optional Protocol. The Optional Protocol gives international

⁴⁴ Council of Europe, op cit., pp.17-18

legitimacy to efforts to challenge "this abominable violation of the rights of children." More citizens need to pay attention to the direction of the drafting process.

Appendices

Appendix 1: Programme of action for the prevention of the sale of children, child prostitution and child pornography

ANNEX

Programme of action for the prevention of the sale of children, child prostitution and child pornography

General

1. Child victims of trafficking and sale, child prostitution and child pornography are children in especially difficult circumstances, as indicated in the World Declaration on the Survival, Protection and Development of Children, adopted in New York on 30 September 1990 by the World Summit for Children (See E/CN.4/1991/59, annex).
2. The trafficking in and sale of children, child prostitution and child pornography constitute modern forms of slavery which are incompatible with human rights, human dignity and values and jeopardize the welfare of individuals, families and society as a whole.
3. To prevent the trafficking in and sale of children, child prostitution and child pornography, concerted measures are called for at the national, regional and international levels, including information, education, assistance and rehabilitation, legislative measures and a strengthening of law enforcement in this field. Coordinating agencies should be appointed or established at the national, regional and global levels.
4. At the global level, coordination of the Programme of Action should be carried out by the Centre for Human Rights in cooperation with other sections of the United Nations Secretariat, the Centre for Social Development and Humanitarian Affairs of the Secretariat, the United Nations Development Programme, the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the

World Health Organization. Cooperation should also be established with regional bodies, the World Tourism Organization, the International Criminal Police Organization and non-governmental organizations.

5. Economic conditions will continue to have considerable influence over the destiny of children, particularly in the developing countries. For the future of all children, it is absolutely essential to ensure or revive sustained and sustainable economic growth and development in all countries.

6. The best interests of the child should govern every decision and guide all efforts undertaken to implement this Programme of Action.

7. The measures contained within this Programme of Action should be implemented bearing in mind the economic imbalance which exists between industrialized States and the developing nations and the need to support the efforts of developing countries in this regard.

8. States are required to accord a clear high level of commitment and priority to combat and eliminate the trafficking in, sale and sexual exploitation of children.

9. States should systematically discourage the exercise of all customs, traditions and practices which encourage the trafficking in and sale or sexual exploitation of children.

10. The sale of children, child prostitution and child pornography cannot be justified by reason of poverty or underdevelopment. Besides the long-term action required to treat the underlying causes and thus prevent these phenomena from occurring in the future, it is essential that States take urgent and immediate measures to reduce the dangers that children face.

11. In situations of emergency, national or international conflicts, or disasters, when communities and normal patterns of life break down, children are especially vulnerable. In such circumstances, States should take all necessary measures to protect children from trafficking, sale and sexual exploitation.

Information

12. International, regional and national information campaigns are required to raise public awareness at all levels of the grave problems of trafficking in, and sale of children, child prostitution and child pornography by:

- (a) Warning and informing people about these grave abuses;
- (b) Informing them about prevention programmes;
- (c) Publicizing ways of reporting these abuses;

(d) Publicizing services for victims;

(e) Making known the penalties for the perpetrators;

(f) Teaching that culture and traditions which encourage these forms of child abuse are contrary to international norms for the protection of children.

13. In order to increase the availability and to improve the quality of information, investigation of abuses should be undertaken by public and private institutions. The results should, wherever possible, be made public and exchanged between governmental and non-governmental organizations at the local, national and international levels. Due regard should be paid to the need for confidentiality with regard to the identity of the victims.

14. It is imperative that information programmes be carried out on a continuous basis. Nevertheless, to provide a focus for the campaigns, States should consider the possibility of proclaiming a world day for the abolition of contemporary forms of slavery. The anniversary of the adoption of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December, might be an appropriate date. Alternatively, an international children's day already established in a State's calendar might be used for this purpose.

15. The media should contribute fully to these information efforts with a view to ending the silence surrounding these forms of child exploitation.

16. Non-governmental organizations and associations should be encouraged to lend their full support to these efforts.

17. Law enforcement agencies should be given a significant role in these information campaigns.

Education

18. The following educational goals are central to this Programme of Action:

(a) Universal primary education for all, with special emphasis on girls;

(b) Accelerated literacy programmes for women and girls;

(c) Vocation-oriented formal and/or non-formal education curricula.

19. Preventive educational programmes could usefully be integrated into primary and secondary school curricula. Similar programmes should be designed for out-of-school children and particularly vulnerable groups, for example, street children, adolescent mothers and single and abandoned mothers.

20. Specific educational measures and training should be directed towards professionals who work with children, including teachers, social workers, health workers, members of the police, members of the judiciary and religious

personnel. Special educational measures should be directed towards the general public, especially men and parents, and to particular groups, such as travel agencies, tourists and the military.

21. All educational efforts should be based on universal ethical principles including the recognition of the integrity of the family and of every child's fundamental rights to the integrity of his or her own body and the protection of his or her identity. Such educational programmes should include:

- (a) The rights of the child and the respect due to all children by all;
- (b) The inculcation of values such as self-esteem;
- (c) The transmission of universal ethical principles;

(d) Making the child understand the dangers of trafficking and sale, child prostitution and pornography, including health risks such as acquired immunodeficiency syndrome, and of drug and alcohol consumption and their damaging effects;

(e) Ways to prevent, identify and expose such abuses and to help child victims;

(f) Education in fatherhood and motherhood, including the need to create a family atmosphere of trust and communication within which a child can expose these issues;

(g) The principle of equality between men and women.

22. Innovative methods, including the use of the mass media, and grass-root community-based methods reaching the widest possible public, including potential victims, should be encouraged.

23. In all educational measures, care should be taken to avoid both underplaying and sensationalizing these issues. Account should be taken of the sociocultural characteristics and economic conditions of each country and, where children are involved, of the age of the child.

Legal measures and law enforcement

24. Preventive legislation aimed at protecting children should be promulgated, strengthened and better enforced. Police, courts and treatment and support systems should focus on the welfare and protection of children. Legal aid should be made available to those who claim to have been sexually violated and to parents or legal guardians in cases of trafficking in and sale of children. Methods should be developed to obtain evidence from the child without further traumatization, and witnesses should be afforded protection.

25. Trafficking in, sale or sexual exploitation of children are serious crimes and must be treated as such. Efforts should be made to detect, arrest and

convict clients, consumers, procurers, intermediaries and accomplices, and provision made for sanctions which take into account the grave nature of these offences.

26. Effective legislative and enforcement measures must also be directed against the intermediaries and others who encourage and make profits from the trafficking in, sale and sexual exploitation of children, such as agents, dealers, brothel-owners, policemen, and others involved. The proceeds from such activities should be seized and confiscated.

27. The Convention on the Rights of the Child provides protection against trafficking in, sale and sexual exploitation of children. States are encouraged to become parties to the Convention at the earliest possible date. For its implementation within States, national institutions composed of representatives of public agencies, non-governmental organizations and associations should be established to coordinate action and to protect children and their rights.

28. States are urged to become parties to the International Labour Organisation conventions pertaining to the employment of children, in particular the Minimum Age Convention, 1973 (No. 138), and effectively to enforce laws which prohibit the employment of children in work likely to endanger their morals and physical health.

29. States are urged to ratify and effectively implement the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, and, furthermore, to submit reports regularly to the Secretary-General of the United Nations on their implementation.

30. States are urged to take all necessary measures to ensure that persons involved in trafficking in, sale or sexual exploitation of children are punished or extradited to other countries.

31. States should keep under review all new forms of technology which could be used for trafficking in, sale or sexual exploitation of children, and adopt appropriate legislation.

Social measures and development assistance

32. These abuses are often linked with poverty. Their prevention and elimination requires long-range structural reforms in the social and economic fields. In the short term, development activities of United Nations agencies, especially the World Bank and the International Monetary Fund, and of other international and national agencies should have a substantive and positive impact on children and promote appropriate development strategies and policies. Priority should be given to formulating a family policy to prevent abuse and to policies aimed at improving the social, economic and working conditions of

girls and women in general, and of the poorest girls and women in particular. Local community-based projects, including collective self-help projects should also be encouraged.

33. The needs of children who have been victims of trafficking, sale or sexual exploitation should be taken into account in development plans and assistance. Special attention should be given to certain groups of children at risk, for example, street children, teenage single mothers, children of broken homes or those whose mothers are in prostitution and other children in especially difficult circumstances. Governments, specialized agencies, United Nations bodies and non-governmental organizations should be encouraged to initiate projects designed to protect street children from sexual abuse (mobile units to offer social and medical aid, small-scale enterprise projects for children, "safe houses", emergency centres, etc.). Efforts should be made to reunite street children in cities with their families in rural areas and in general to improve the social, economic and working conditions of parents whose children are victims of sexual exploitation or are at high risk.

Rehabilitation and reintegration

34. Rehabilitation and reintegration programmes using an interdisciplinary approach should be established to assist children who have been victims of trafficking, sale or sexual exploitation and their families. Agencies implementing such programmes, whether public or non-governmental, should be established, or strengthened by being provided with the necessary support and funding. They should be encouraged to request technical assistance, evaluational assistance, information on new methods of self-funding schemes, etc., from United Nations bodies and from public or private, national or international sources with relevant competence.

International coordination

35. Bilateral and multilateral cooperation among law enforcement agencies is essential. States should establish their own data bases, improve their reporting at all levels, exchange information and report to the International Criminal Police Organization to enable a special data bank on suspects involved in cross-border trafficking, sale or sexual exploitation of children to be set up. The experience gained in international police cooperation in combating drug traffic should be used to prevent international traffic in and sexual exploitation of children.

36. A special intergovernmental task force should be set up at the regional level to assist Governments in devising ways and means of checking the phenomena of the trafficking in, sale and sexual exploitation of children; national level commissions should plan new measures to address these problems in cooperation with concerned non-governmental organizations.

Trafficking in and sale of children

37. The measures mentioned in the following paragraphs specific to the trafficking in and sale of children are required.

38. States should take effective legal and administrative measures to prevent the abduction and sale of children for whatever purpose (sexual exploitation, any form of labour, adoption, criminal activities, trafficking in organs, etc.). Laws should be adopted or strengthened which impose penalties on parents and on all others knowingly involved in the trafficking in and sale of children.

39. States should pay special attention to preventing and severely punishing any case of sale, abduction or traffic of children for transplantation of organs, particularly from developing to developed countries. They should cooperate with each other and with intergovernmental and non-governmental organizations to these ends.

40. States should adopt urgent and effective procedures at the national level and through bilateral and international cooperation to find abducted, unlawfully removed or disappeared children and to trace families and reunite such children with their families. In this regard, special attention should be given to the situation of refugee children and their need for protection from trafficking, sale and sexual exploitation.

41. Measures should be taken to ensure that international adoptions do not involve the sale of children by their parents or their illicit removal. Procedures for this purpose should be based on the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 1986, and the Convention on the Rights of the Child. Under no circumstances must adoption be allowed to involve financial gain for any of the parties involved. The commercialization of adoption procedures should be prohibited.

42. Inter-country adoptions, where permitted by national law, should only take place through competent, professional and authorized agencies in both the country of origin and the receiving country of the children.

43. The procedures for child birth registration, renunciation of parental rights and consent to adoption by a parent should be strictly regulated by law and adequate counselling offered to the biological parents.

44. Governmental and non-governmental bodies should cooperate at the national and international levels in order to promote and develop local and national alternatives to inter-country adoptions, such as child care facilities, including day care and other support services for parents, care by relatives, foster family care and domestic adoptions. Special efforts should be made to ensure that parents are not incited to part with their children for socio-economic reasons.

Child prostitution

45. The measures mentioned in the following paragraphs specific to child prostitution, independently of whether the clients are locals or foreigners should be taken.

46. Incest and sexual abuse within the family or by the child's employers may lead to child prostitution. States therefore should take all appropriate legislative, administrative, social and educational measures to protect children against all forms of abuse while in the care of parents, family or legal guardians or any other person.

47. Special attention should be paid to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through the enticement of sex with children should be penalized on the same level as procurement.

48. The World Tourism Organization should be encouraged to convene an expert meeting designed to offer practical measures to combat sex tourism.

49. States with military bases or troops, stationed on foreign territory or not, should take all the necessary measures to prevent such military personnel from being involved in child prostitution. The same applies to other categories of public servants who for professional reasons are posted abroad.

50. Legislation should be adopted to prevent new forms of technology from being used for soliciting for child prostitution.

Child pornography

51. The measures mentioned in the following paragraphs specific to child pornography are required.

52. Law enforcement agencies, and social and other services should place a higher priority on the investigation of child pornography in order to prevent and eliminate any exploitation of children.

53. States that have not yet done so are urged to enact legislation making it a crime to produce, distribute or possess pornographic material involving children.

54. Where required, new legislation and penalties should be introduced for the mass media which broadcast or publish material threatening the psychic or moral integrity of children or containing unhealthy or pornographic descriptions and to prevent new technology being used to produce pornography, including video films and pornographic computer games.

55. States should be encouraged to protect children from exposure to adult pornography, especially through new forms of technology, by adopting suitable legislation and appropriate measures of control.

56. States should encourage the mass media and the journalistic profession to adopt codes of practice governing the publication of material, including advertising, with pornographic overtones, and should remind them of their responsibility in influencing public attitudes.

Follow-up

57. States are invited to consider this Programme of Action in relation to the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s (See E/CN.4/1991/59, annex) and to the implementation of the Convention on the Rights of the Child.

58. States are further invited to inform the Sub-Commission on Prevention of Discrimination and Protection of Minorities periodically on measures taken to implement the Programme of Action, whether or not they are parties to the Convention on the Rights of the Child.

59. United Nations bodies, specialized agencies and non-governmental organizations are invited to examine the application of the above Programme of Action as appropriate to their mandates.

1992/75. Implementation of the Convention on the Rights of the Child

The Commission on Human Rights,

Recalling General Assembly resolution 46/112 of 17 December 1991 and Commission resolution 1991/52 of 6 March 1991,

Reaffirming that the rights of children require special protection and call for continuous improvement of their situation all over the world, as well as for their development and education in conditions of peace and security,

Profoundly concerned that the situation of children in many parts of the world remains critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability, and convinced that urgent and effective national and international action is called for,

Mindful of the important role of the United Nations Children's Fund and of the United Nations in promoting the well-being of children and their development,

Convinced that the Convention on the Rights of the Child, as a standard-setting accomplishment of the United Nations in the field of human rights, makes a positive contribution to protecting the rights of children and ensuring their well-being,

Appendix 2: Recommendation No. R (91) 11 of the Committee to member states concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults

Recommendation No. R (91) 11

of the Committee of Ministers to member states
concerning sexual exploitation, pornography
and prostitution of, and trafficking in,
children and young adults

*(Adopted by the Committee of Ministers on 9 September 1991
at the 461st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the well-being and interests of children and young adults are fundamental issues for any society;

Considering that sexual exploitation of children and young adults for profit-making purposes in the form of pornography, prostitution and traffic of human beings has assumed new and alarming dimensions at national and international level;

Considering that sexual experience linked to this social phenomenon, often associated with early sexual abuse within the family or outside of it, may be detrimental to a child's and young adult's psychosocial development;

Considering that it is in the interests of member states of the Council of Europe to harmonise their national legislation on sexual exploitation of children and young adults in order to improve the co-ordination and effectiveness of action taken at national and international level with a view to tackling this problem;

Having regard to Recommendation 1065 (1987) of the Parliamentary Assembly of the Council of Europe on the traffic in children and other forms of child exploitation;

Recalling Resolution No. 3 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults of the 16th Conference of European Ministers of Justice (Lisbon, 1988);

Recalling Recommendation No. R (85) 4 on violence in the family, Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, Recommendation No. R (87) 20 on social reactions to juvenile delinquency and Recommendation No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961);

Bearing also in mind the United Nations Convention on the Rights of the Child (1989),

I. Recommends that the governments of member states review their legislation and practice with a view to introducing, if necessary, and implementing the following measures:

A. General measures

a. Public awareness, education and information

1. make appropriate documentation on sexual exploitation of children and young adults available to parents, persons having minors in their care and other concerned groups and associations;
2. include in the programmes of primary and secondary school education information about the dangers of sexual exploitation and abuse to which children and young adults might be exposed, and about how they may defend themselves;
3. promote and encourage programmes aimed at furthering awareness and training for those who have functions involving support and protection of children and young adults in the fields of education, health, social welfare, justice and the police force in order to enable them to identify cases of sexual exploitation and to take the necessary measures;

4. make the public aware of the devastating effects of sexual exploitation which transforms children and young adults into consumer objects and urge the general public to take part in the efforts of associations and organisations intervening in the field;
5. invite the media to contribute to a general awareness of the subject and to adopt appropriate rules of conduct;
6. discourage and prevent any abuse of the picture and the voice of the child in an erotic context;

b. Collection and exchange of information

7. urge public and private institutions and agencies dealing with children and young adults who have been victims of all forms of sexual exploitation, to keep appropriate statistical information for scientific purposes and crime policy, while respecting anonymity and confidentiality;
8. encourage co-operation between the police and all public and private organisations handling cases of sexual abuse within the family or outside of it and of various forms of sexual exploitation;

c. Prevention, detection, assistance

9. urge police services to give special attention to prevention, detection, and investigation of offences involving sexual exploitation of children and young adults, and allocate to them sufficient means towards that end;
10. promote and further the creation and operation of specialised public and private services for the protection of children and young adults at risk in order to prevent and detect all forms of sexual exploitation;
11. support public and private initiatives at local level to set up helplines and centres with a view to providing medical, psychological, social or legal assistance to children and young adults who are at risk or who have been victims of sexual exploitation;

d. Criminal law and criminal procedure

12. ensure that the rights and interests of children and young adults are safeguarded throughout proceedings while respecting the rights of the alleged offenders;
13. ensure throughout judicial and administrative proceedings confidentiality of record and the respect for privacy rights of children and young adults who have been victims of sexual exploitation by avoiding, in particular, the disclosure of any information that could lead to their identification;
14. provide for special conditions at hearings involving children who are victims or witnesses of sexual exploitation, in order to diminish the traumatising effects of such hearings and to increase the credibility of their statements while respecting their dignity;
15. provide under an appropriate scheme for compensation of children and young adults who have been victims of sexual exploitation;
16. provide for the possibility of seizing and confiscating the proceeds from offences relating to sexual exploitation of children and young adults;

B. Measures relating to pornography involving children

1. provide for appropriate sanctions taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material involving children;
2. examine the advisability of introducing penal sanctions for mere possession of pornographic material involving children;
3. ensure, particularly through international co-operation, the detection of firms, associations or individuals often linked with two or more countries, using children for the production of pornographic material;
4. envisage informing the public, in order to raise awareness, of the implementation of penal policy, the number of prosecutions and convictions in cases involving child pornography, while ensuring the anonymity of the children concerned and of the alleged offenders;

C. Measures relating to the prostitution of children and young adults

1. increase the material and human resources of welfare and police services and improve their working methods so that places where child prostitution may occur are regularly inspected;
2. encourage and support the setting up of mobile welfare units for the surveillance of, or establishment of contact with, children at risk, particularly street children, in order to assist them to return to their families, if possible; and, if necessary, direct them to the appropriate agencies for health care, training or education;
3. intensify efforts with a view to identifying and sanctioning those who foster or encourage the prostitution of children or young adults, or who profit from it, on the one hand, and of the customers of child prostitution, on the other;
4. create or develop special units within the police and, if necessary, improve their working methods, in order to combat procuring of children and young adults;
5. dissuade travel agencies from promoting sex tourism in any form, especially through publicity, in particular by instituting consultations between them and the public services;
6. give priority to vocational training and reintegration programmes involving children and young adults who are occasionally or habitually prostituting themselves;

D. Measures relating to the trafficking in children and young adults

1. supervise the activities of artistic, marriage and adoption agencies in order to control the movement within, or between countries, of children and young adults to prevent the possibility that they will be led into prostitution or other forms of sexual exploitation;
2. increase surveillance by immigration authorities and frontier police in order to ensure that travel abroad by children, especially those not accompanied by their parents or their guardian, is not related to trafficking in human beings;
3. set up facilities and support those existing, in order to protect and assist the victims of traffic in children and young adults.

II. International aspects

Recommends that the governments of member states:

1. examine the advisability of signing and ratifying, if they have not done so:

- the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1950);
- the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions (1965);
- the European Convention on the Adoption of Children (1967);
- Convention No. 138 concerning Minimum Age for Admission to Employment, of the International Labour Organisation (1973);
- the United Nations Convention on the Rights of the Child (1989);

2. introduce rules on extraterritorial jurisdiction in order to allow the prosecution and punishment of nationals who have committed offences concerning sexual exploitation of children outside the national territory, or, if applicable, review existing rules to that effect, and improve international co-operation to that end;

3. increase and improve exchanges of information between countries through Interpol, in order to identify and prosecute offenders involved in sexual exploitation, and particularly in trafficking in children and young adults, or those who organise it;

4. establish links with international associations and organisations working for the welfare of children and young adults in order to benefit from data available to them and secure, if necessary, their collaboration in combating sexual exploitation;

5. take steps towards the creation of a European register of missing children.

III. Research priorities

Recommends that the governments of member states promote research at national and international level, in particular in the following fields:

1. nature and extent of various forms of sexual exploitation of children and young adults, especially with a cross-cultural view;

2. nature of paedophilia and factors contributing to it;
3. links between adoption and sexual exploitation;
4. links between sexual abuse within the family and prostitution;
5. characteristics, role and needs of the consumers of child prostitution and child pornography;
6. evaluation studies of vocational training and reintegration programmes concerning youth involved in prostitution;
7. structure, international networks, interconnections and earnings of the sex industry;
8. links between the sex industry and organised crime;
9. possibilities and limitations of the criminal justice system as an instrument of prevention and repression of various forms of sexual exploitation of children and young adults;
10. epidemiology, causes and consequences of sexually transmitted diseases in children and young persons, and analysis of their links with sexual abuse and exploitation.

Appendix 3: Acts adopted pursuant to Title VI of the Treaty on European Union

Acts adopted pursuant to Title VI of the Treaty on European Union

Pursuant to the Stockholm Conference the EU (covering 15 States, not to be confused with the Council of Europe) has adopted a plan of Joint Action to combat human trafficking and the sexual exploitation of children. This is one of the few instruments specifically aimed at the protection of children and requires all State Members to take important measures at national level. Given the recent police incompetence in Belgium in detecting and breaking up paedophile rings, which led to the loss of children's lives, this instrument is to be particularly welcomed. It is also to be welcomed as it recognises children's rights within the context of the Treaty on European Union. If fully implemented by Member States, the proposals contained in this joint action would promote co-operation between States Parties' police forces, ensure that trafficking and sexual exploitation of children is firmly recognised as a crime, and lead to better co-operation between national police forces and between the police and the families of victims.

JOINT ACTION of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children (97/1 54/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (b) thereof,

Having regard to the initiative of the Kingdom of Belgium,

Whereas the establishment of common rules for action to combat trafficking in human beings and sexual exploitation of children is likely to contribute to the fight against certain unauthorized immigration and to improve judicial cooperation in criminal matters, which are of common interest to the Member States within the meaning of Article K.1 (3) and (7) of the Treaty;

Having regard to the Resolution on trafficking in human beings and adopted by the European Parliament on 18 January 1996¹ and the Resolution on victims of violence who are minors, adopted on 19 September 1996²;

Bearing in mind the Recommendations on combating trafficking in human beings adopted by the Council on 29 and 30 November 1993;

Bearing in mind the conclusions of the European Conference on trafficking in women, held in Vienna on 10 and 11 June 1996;

Bearing in mind the conclusions of the World Congress against commercial sexual exploitation of children, held in Stockholm from 27 to 31 August 1996;

Recalling Article 34 of the Convention on the Rights of the Child of 20 November 1989.

Whereas trafficking in human beings and sexual exploitation of children constitute serious infringements of fundamental human rights, in particular human dignity;

Aware of the need to take account of the particularly vulnerable position of the victims of this type of crime, in particular the vulnerability of children;

Whereas trafficking in human beings and sexual exploitation of children may constitute an important form of international organized crime, the extent of which within the European Union is becoming increasingly worrying;

Anxious to implement the necessary measures to put a stop to trafficking in human beings and the sexual exploitation of children;

Taking into account the fact that the Council already has decided to take effective measures against the trafficking in human beings by the adoption of a Joint Action to set up a Directory of Centres of excellence³ and by establishing an Exchange Programme for training of persons competent in this matter⁴;

Considering that the Member States of the European Union concerning certain types of trafficking in human beings and

sexual exploitation of children should take concerted action to counter obstacles, where they exist, to effective judicial cooperation on the subject, in accordance with the multiannual programme on cooperation in Justice and Home Affairs, adopted by the Council on 14 October 1996;

Aware of the need for a multi-disciplinary approach to the question of trafficking in human beings and sexual exploitation of children;

Noting that the terms used in this Joint Action do not refer to any specific legal system or national law but rather should be interpreted in the light of the legal systems of Member States;

Noting that the provisions of this Joint Action are without prejudice to obligations of Member States under conventions to which they are bound, such as the 1950 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation or the Prostitution of others, or to the right of Member States to take measures which further enhance the protection of children or combat trafficking in human beings,

HAS ADOPTED THIS JOINT ACTION.

TITLE I Aims

A. For the guidance of Member States in applying this Joint Action, and without prejudice to more specific definitions in the Member States' legislation, the following concepts are understood, in the context of this Joint Action:

(i) 'trafficking', as any behaviour which

facilitates the entry into, transit through, residence in or exit from the territory of a Member State, for the purposes set out in point B (b) and (d);

(ii) 'sexual exploitation' in relation to a child, as the following behaviour:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of a child in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials, including the production, sale and distribution or other forms of trafficking in such materials, and the possession of such materials;

(iii) 'sexual exploitation' in relation to an adult, as at least the exploitative use of the adult in prostitution.

B. In order to improve judicial co-operation in the context of combating trafficking in human beings and sexual exploitation of children, each Member State undertakes, while respecting the constitutional rules and legal traditions of each Member State, to review their relevant national laws concerning the measures set out in Titles II and III relating to the following intentional types of behaviour, in accordance with the procedure set out in Title IV:

(a) Sexually exploiting a person other than a child for gainful purposes, where:

- use is made of coercion, in particular violence or threats, or

- deceit is used, or

- there is abuse of authority or other pressure, which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved;

(b) trafficking in persons other than children for gainful purposes with a view to their sexual exploitation under the conditions set out in paragraph (a);

(c) sexually exploiting or sexually abusing children;

(d) trafficking in children with a view to their sexual exploitation or abuse.

TITLE II

Measures to be taken at national level

A. Each Member State shall review existing law and practice with a view to providing that:

(a) the types of behaviour set out in Title B are classified as criminal offences;

(b) these offences, and, with the exception of the possession referred to in Title I A (ii) (c), participation in or attempt to

commit them, are punishable by effective, proportionate and dissuasive criminal penalties;

(c) legal persons may, where appropriate, be held administratively liable in connection with the offences listed in Title I B or criminally responsible for such offences, committed on behalf of the legal person in accordance with modalities to be defined in the national law of the Member State. That liability of the legal person is without prejudice to the criminal responsibility of the physical persons who have been accomplices in or instigators of those offences;

(d) the penalties and, where appropriate, the administrative measures referred to in paragraphs (b) and (c) of this Title include:

- insofar as natural persons are concerned, in serious cases at least, custodial penalties which may involve extradition,

- confiscation, where appropriate, of the instruments and proceeds of those offences,

- where appropriate and as provided by the administrative or criminal law of the Member State, the temporary or permanent closure of establishments which have been used or intended for committing such offences;

(e) the offences covered by this Joint Action will, where appropriate, fall within the scope of application of the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;

(f) its authorities are competent regarding the offences set out in Title I B (c) and (d), at least in cases where:

(i) the offence is committed, wholly or partly, on its territory,

(ii) with the exception of the offence of possession of pornographic material referred to in Title I A (ii) (c), the person committing the offence is a national or a habitual resident of that Member State.

B. Where it would be otherwise contrary to the established principles of its criminal law relating to jurisdiction, a Member State may in either adopting or exercising the competence referred to in point A (f) (ii), provide that the offence must also be punishable under the law of the State where it was committed.

C. Where a Member State maintains the requirement of double criminality provided for in point B, it shall keep its law under review, with a view to ensuring

that this requirement is not an obstacle to effective measures against its nationals or habitual residents who are suspected of engaging in such offences in jurisdictions which may not have taken adequate measures as referred to in Article 34 of the Convention on the Rights of the Child of 20 November 1989.

D. Member States may provide that they will only exercise the jurisdiction provided for in point A (f) (ii) if certain procedural conditions are fulfilled, or where the alleged offender cannot be extradited because of:

- a refusal by the Member States concerned to comply with a request for extradition made by the State where the offence was committed, or

- a confirmation by that latter State that it does not intend to request the extradition of the alleged offender, or

- failure by that State to request the extradition of the alleged offender within a reasonable time.

E. Each Member State shall take the measures necessary to ensure that in addition to ordinary constraining measures such as search and seizure, adequate investigation powers and techniques are available to enable the offences listed in point A (a), (b) and (e) to be investigated and prosecuted effectively, in compliance with the rights of defence and privacy of the persons subject to those measures.

F. Each Member State shall take the measures necessary to ensure:

(a) appropriate protection for witnesses who provide information concerning the offences referred to in point A (a), (b) and (e), in accordance with, in particular, the Resolution of the Council of the European Union of 23 November 1995 on the protection of witnesses in the fight against organized crime;

(b) appropriate assistance for victims and their families.

For this purpose, each Member State shall ensure that:

(i) victims are available where required by the Member State's criminal justice system to give evidence in any criminal action, which may entail provisional residence status in appropriate cases; and

(ii) victims are enabled to return to their country of origin, or another country which is prepared to accept them, with the full rights and protections accorded by the national law of the Member States.

In addition, each Member State shall ensure that victims of the offences referred to in Title I B are given appropriate assistance to enable them to defend their interests before the Courts.

Each Member State shall examine how to keep families of children who are victims of offences covered by this Joint Action informed of the progress of the enquiry.

G. Each Member State shall take the necessary measures to ensure that the services which are likely to have relevant experience in the context of the fight against trafficking in human beings and sexual exploitation of children, in particular the immigration, social security and tax authorities, give special attention to the problems connected with trafficking in human beings and sexual exploitation of children and, while respecting the internal law of the Member State, cooperate with the authorities responsible for investigation and punishment of the offences referred to in point A (a), (b) and (e). In cases which merit special attention, these services should in particular:

- advise those authorities on their own initiative, where there are reasonable grounds for considering that one of these offences has been committed,
- provide those authorities with all useful information, either on request or on their own initiative,
- if appropriate, take part in the procedures as experts.

H. For the purposes of ensuring that the fight against trafficking in human beings and sexual exploitation of children is fully effective, each Member State shall ensure that the activities of the authorities responsible for this fight are properly coordinated, allowing for the possibility of a multi-disciplinary approach. Such coordination could, for instance, involve a national or regional level, depending on the administrative structure and legal system of the Member State concerned, ministerial departments, the police services, the judicial authorities which specialize in the matter, as well as public bodies which have been given special responsibilities in this area.

I. The authorities of each Member State shall take due account of the contribution to the fight against trafficking in human beings and sexual exploitation of children

of any group, foundation or association which, by virtue of its Statute, has the aim of combating such offences.

TITLE III

Cooperation between Member States

A. Member States shall grant each other the widest possible judicial cooperation in the investigations and judicial processes relating to the offences referred to in Title II, point A (a), (b) and (e).

B. Each Member State which has made a reservation or declaration with respect to Article 5 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, shall review it in order to verify whether it might pose an obstacle to an effective cooperation with other Member States in relation to offences covered by this Joint Action.

C. Member States shall, in accordance with the applicable arrangements and conventions in force, ensure that letters rogatory are dealt with as quickly as possible and shall keep the requesting State fully informed of the progress of the procedure.

D. Member States shall, where appropriate, take the necessary measures, to allow the direct transmission of requests for assistance between locally competent authorities.

E. Each Member States shall, where such appointments do not already exist, appoint one or several contact authorities which may be contacted in the event of difficulty in complying with urgent letters rogatory.

F. Member States shall also, in conformity with the respective legal traditions of each Member State and applicable conventions and arrangements, grant each other assistance in the exchange of information which in one of the Member States is administrative in nature or falls under the competence of administrative authorities.

G. Each Member State shall ensure that information concerning missing minors and persons convicted of offences set out in this Joint Action as well as information which could be useful for investigations and prosecutions of such offences is organized in such a way that it is readily accessible and can be effectively used and exchanged with other Member States.

H. Without prejudice to its own investigations and procedures, each Member State may, without receiving a prior request, communicate to another Member State any factual information where it considers that disclosure of the said information is likely to help the recipient State to begin or carry out investigations or procedures to prevent or punish the offences referred to in Title II, point A (a), (b) and (e) or is likely to involve a request for judicial cooperation from that Member State.

I. The exchange and communication of information referred to in paragraphs F, G and H shall be carried out in compliance with the right to privacy and applicable instruments and national law relating to the computerized processing of personal information.

J. Member States shall inform and alert their diplomatic and consular posts, where applicable, in third countries and make the best use of the possibilities offered by them, in the context of international cooperation against trafficking in human beings and sexual exploitation of children.

TITLE IV

Commitment and follow-up

A. Each member State shall bring forward appropriate proposals to implement this Joint Action for consideration by the competent authorities with a view to their adoption.

B. The Council will assess, on the basis of appropriate information, the fulfilment by Member States of their obligations under this Joint Action, by the end of 1999.

C. This Joint Action shall be published in the Official Journal.

D. It shall enter into force on the date of its publication.

Done at Brussels, 24 February 1997.

For the Council

The President

H. VAN MIERLO

1 OJ No C 32, 5.2.1996, p.88.

2 OJ No C 320, 28.10.1996.

3 OJ No L 342, 31.12.1996, p.2.

4 OJ No L 322, 12. 12.1996, p.7.

Appendix 4: National Legislation on Child Pornography

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
NORTH AMERICA								
Canada	Yes	Yes	Yes	Yes	18	18	14	X
Mexico	No	No	No	Yes	18	18	18	X
United States	Yes	Yes	Yes	Yes	18	varies by state	varies by state	NO
CENTRAL AMERICA								
Belize	No	No	No	Yes	18	18	16	X
Costa Rica	No	No	No	Yes	18	15	17	X
El Salvador	No	No	No	Yes	18	14f/16m		X
Guatemala	No	No	No	Yes	18	18	18	X
Honduras	No	No	No	No	18	21	No law	X
Nicaragua	No	No	No	No	21	18f/21m		X
Panama	No	No	No	No	18	14f/16m	18	X
SOUTH AMERICA								
Argentina	No	No	No	Yes	18	16f/18m	15	X
Bolivia	Yes	No	No	Yes	21	14f/16m	17	X
Brazil	Yes	No	No	Yes	21	16f/18m	14	X
Chile	No	No	No	Yes	18	18	12	X
Colombia	No	No	No	No	18	14f/16m	14	X
Ecuador	No	No	No	Yes	18	12f/14m		X
Guyana	No	No	No			14f/16m		X
Paraguay	No	No	No	Yes	20	12f/14m		X
Peru	No	No	No	No	18	14f/16m	14	X
Suriname	No	No	No	Yes	21	18	12	X

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
Uruguay	No	No	No	Yes	18	18	16	X
Venezuela	No	No	No	Yes	18	14f/16m		X
CARIBBEAN								
Antigua & Barbuda	No	No	No	No	18	14	14	X
Bahamas	No	No	No	Yes	18	18	14	X
Barbados	No	No	No	No	14	18	14	X
Cuba	Yes	Yes	Yes	No	21	18	14	X
Dominica	No	No	No	Yes	18	18	16	X
Dominican Republic	No	No	No	No	18	18	18	X
Grenada	Yes	Yes	Yes	Yes	18	21		X
Haiti	No	No	No	No	18			X
Jamaica	No	No	No	Yes	18	16	16	X
St. Kitts & Nevis								X
St. Lucia	No	No	No	No	18	16	16	X
St. Vincent & The Grenadines								X
Trinidad & Tobago	No	No	No	Yes	14	18	14	X
CENTRAL & EASTERN EUROPE								
Albania	No	No	No	No				X
Armenia	No	No	No	Yes	18	16	16	X
Azerbaijan	No	No	No	Yes			16	X
Belarus	No	No	No	Yes	18	18	18	X
Bosnia Hercegovina	No	No	No	Yes				X
Bulgaria	No	No	No	Yes				X
Croatia	Yes	Yes	No	No	14	18	14	X
Czech Republic	Yes	Yes	No	Yes	18	18	15	X

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
Estonia	Yes	Yes	Yes	No	18			X
Georgia	No	No	No	Yes		18	sexual maturity	X
Hungary	No	No	No	Yes	16			X
Latvia	Yes	Yes	Yes	Yes	18	18	16	X
Lithuania	No	No	No	No		18	14	X
Macedonia (former Yugoslavia)	No	No	No	Yes	18	16-18	14-16	X
Republic of Moldova	No*	No*	No*	Yes*	18	18	18	X
Montenegro								X
Poland	Yes	No	No	Yes	18	18f/21m	15	X
Romania	No	No	No	Yes	18		18	X
Russian Federation	No	No	No	Yes	18	18	no law	X
Serbia								X
Slovakia	Yes	Yes	No	Yes	15	18	16	X
Slovenia	Yes	Yes	No	Yes	14	18	14	X
Turkey	No	No	No	Yes	18	15f/17m	15	X
Ukraine	No	No	No	Yes	18	17f/18m	16	X
WESTERN EUROPE								
Andorra	Yes	Yes	No	Yes	18		16	X
Austria	Yes	Yes	Yes	Yes	14	16f/19m	14	X
Belgium	Yes	Yes	Yes	No	18	18	18	X
Cyprus	No	No	No				16	X
Denmark	Yes	Yes	Yes	No	18	18	15	X
Finland	Yes	Yes	No	Yes	18	18	14	X
France	Yes	Yes	No	Yes	18	18	18	X
Germany	Yes	Yes	Yes	Yes	18	18		X

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
Greece	Yes	Yes	Yes	Yes	18	18	18	X
Iceland	No	No	No	Yes	16-18	18	14	X
Ireland	No	No	No	Yes	18	18	17	X
Italy	No	No	No	Yes	18	18	14/13	X
Liechtenstein	No	No	No	Yes	18	18f/20m	18	X
Luxembourg	No	No	No	Yes	18	15f/18m	16	X
Malta	No	No	No	Yes	18	18	18	X
Monaco					18	18	18	X
Netherlands	Yes	Yes	Yes	No	18	18	16	X
Norway	Yes	Yes	Yes	Yes	18	18	16	X
Portugal	Yes	Yes	Yes	Yes	18	18	18	X
San Marino								X
Spain	Yes	No	No	Yes	18	16	12	X
Sweden	Yes	No	No	No	18	18	15	X
Switzerland	Yes	Yes	No	Yes		18	16	NO
United Kingdom	Yes	Yes	Yes	Yes	18	18	16	X
AFRICA								
Algeria					19	18f/21m	16	X
Angola	No	No	No	Yes	18	18	18	X
Benin								X
Botswana	No	No	No	Yes	18	18	18	X
Burkina Faso	No	No	No	No	21	17f/21m	No law	X
Burundi								X
United Republic of Cameroon	Yes	Yes	Yes	Yes	21	16	18	X
Cape Verde								X
Central African Republic	No	No	No	Yes	18	18	18	X

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
Chad								X
Comoros								X
Congo	No	No	No	Yes	18	18	18	X
Cote d'Ivoire	No	No	No	Yes	21	18f/21m	21	X
Djibouti	No*	No*	No*	Yes*	18	18	18	X
Egypt	No*	No*	No*	Yes*		puberty	puberty	X
Equatorial Guinea	No	No	No	No	18	no law	18	X
Eritrea	No	No	No	Yes		18		X
Ethiopia	No*	No*	No*	Yes*				X
Gabon								X
The Gambia	Yes	Yes	Yes	Yes	18	18	18	X
Ghana	No	No	No	Yes	18	customary	customary	X
Guinea	Yes	Yes	Yes	Yes	18	17f/21m		X
Guinea-Bissau								X
Kenya	No	No	No	Yes	18	18	18/16	X
Lesotho	No	No	No	No	21	18		X
Liberia	No	No	No	Yes	18	18	18	X
Libyan Arab Jamahiriya	No	No	No	Yes	18	18	marriage	X
Madagascar	No	No	No	Yes	18	14f/17m		X
Malawi								X
Mali	Yes	Yes	Yes	Yes	21	18	18	X
Mauritania	No*	No*	No*	Yes*	18	21	21	X
Mauritius	Yes	Yes	Yes	Yes	18	16	16	X
Morocco	No*	No*	No*	Yes*				X
Mozambique	Yes	Yes	Yes	Yes	18	21	18	X
Namibia	No	No	No	Yes	16	21	12/16	X

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
Niger	No*	No*	No*	Yes*	18	15f		X
Nigeria					16			X
Rwanda	No	No	No	No	21	21		X
Sao Tome & Principe	No	No	No	Yes				X
Senegal	No*	No*	No*	Yes*	21	18f/21m		X
Seychelles					18f/21m	21	21	X
Sierra Leone	No	No	No	No		18	18	X
Somalia	NA	NA	NA	NA	NA	NA	NA	NO
South Africa	No	No	No	No	18	18	16	X
Sudan								X
Swaziland	Yes	Yes	Yes	Yes	18	18	16	X
United Republic of Tanzania	No	No	No		12		14	X
Togo					21	21	21	X
Tunisia	No*	No*	No*	Yes*	20	18f/20m	13	X
Uganda								X
Zaire					18			X
Zambia	No	No	No	Yes	18	18	16	X
Zimbabwe	Yes	Yes	Yes	Yes	18	15f/18m	16	X
MIDDLE EAST								
Bahrain	No*	No*	No*	Yes*				X
Iran	No*	No*	No*	Yes*	18	18	NA	X
Iraq	No*	No*	No*	Yes*	18	18	NA	X
Israel								X
Jordan	No*	No*	No*	Yes*	18	16	NA	X
Kuwait	No*	No*	No*	Yes*			NA	X

Region & Country	Law specifically prohibits child pornography			Law prohibits both adult & child pornography under a general law	Age of majority	Legal age for marriage	Legal age for sexual relations	CRC ratification
	Prod.	Dist.	Poss.					
Lebanon					18		12-15	X
Oman						21	21	NO
Qatar	No*	No*	No*	Yes*	puberty	18	18	X
Saudi Arabia	No*	No*	No*	Yes*	puberty	puberty	marriage	X
Syrian Arab Republic	No*	No*	No*	Yes*	18	18	18	X
United Arab Emirates								NO
Yemen					18	16f/18m		X
ASIA								
Afghanistan	No*	No*	No*	Yes*	16	18 (15?)	N/A	X
Bangladesh	No	No	No	Yes		18f/22m		X
Bhutan	No	No	No	No	18	18	18	X
Brunei Darussalam	No	No	No	No				X
People's Republic of China	No*	No*	No*	Yes*	18	20f/22m	14	X
India	No	No	No	Yes	18	21f/18m	18	X
Indonesia	No	No	No	Yes	18	16f/19m	marriage	X
Japan	No	No	No	Yes	20		18	X
Kampuchea	No	No	No	Yes		18	18	X
Kazakhstan	No	No	No	Yes	18	18		X
Kyrgyzstan	No	No	No	Yes	18	18		X
Democratic People's Republic of Korea								X
Republic of Korea	Yes	Yes	Yes	Yes	20	16f/18m	no law	X
Lao People's Democratic Republic	No	No	No	Yes	18	18	15	X
Malaysia	No	No	No	Yes	18	21	16	X

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	Prod.	Dist.	Poss.					
Maldives								X
Mongolia	Yes	No	No	Yes	18	18		X
Myanmar (Burma)	No	No	No	Yes	14f/18m	21f/18m	14	X
Nepal	Yes	Yes	No	Yes	16	18f/21m	marriage	X
Pakistan	No	No	No	Yes	14	18	N/A	X
Philippines	Yes	Yes	Yes	Yes	12	18f/?	12	X
Singapore	No	No	No	Yes	21	18	14	X
Sri Lanka	Yes	Yes	Yes	Yes	18	16	marriage or 21	X
Taiwan	Yes	No	No					X
Tajikistan	No	No	No	Yes	18	18		X
Thailand	No	No	No	Yes		20	20	X
Turkmenistan	No	No	No	Yes	18	18		X
Uzbekistan	No	No	No	Yes	18	18		X
Viet Nam	No	No	No	Yes	18	18f/20m		X
PACIFIC								
Australia								
West. Australia	Yes	Yes	Yes	Yes	18	18	16	X
S. Australia	Yes	Yes	Yes	Yes	18	18	16	X
New S. Wales	Yes	Yes	Yes	Yes	18	18	16	X
Victoria	Yes	Yes	Yes	Yes	18	18	16	X
Tasmania	Yes	Yes	Yes	Yes	18	18	16	X
Queensland	Yes	Yes	Yes	Yes	18	18	16	X
N. Territories	Yes	Yes	Yes	Yes	18	18	16	X
Aust. Cap.	Yes	Yes	Yes	Yes	18	18	16	X
Fiji	No	No	No	Yes	14	21	16	X
Kiribati	No	No	No	Yes	18	18	18	X

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	Prod.	Dist.	Poss.					
Marshall Islands	No	No	No	No	18	customary marriage	no law	X
Micronesia								
St. of Chuuk	No	No	No	No	18	18	13	X
St. of Pohnpei	No	No	No	Yes	18	18	13	X
St. of Yap	No	No	No	No	18	18	13	X
Nauru	Yes	Yes	Yes	Yes	18	18	18	X
New Zealand	Yes	Yes	Yes	Yes	18	16	16	X
Palau	No	No	No	No	18	18	16	X
Papua New Guinea	Yes	Yes	Yes	Yes	16	16f/18m		X
Solomon Islands	No	No	No	Yes	18	customary marriage	16	X
Tonga								X
Tuvalu								X
Vanuatu								X
Western Samoa	No	No	No	Yes		16f/18m	21	X

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