The Progression of International Law in Fostering the Extraterritorial Prosecution of Child Sex Tourist Offences

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Child sex tourism refers here to persons travelling to a foreign country, where they sexually exploit children.\(^2\) The traveller might very well have made the journey for the specific purpose of sexually exploiting a child. Not uncommonly, though, this person is not so inclined prior to his or her journey but is presented with the opportunity of doing so by some intermediary, such as a member of the local sex industry or an adult acquaintance or relative of the child. Such ‘situational’ offenders do not thus have a particular preference for sexual contact with children. Most offenders will be short-stay visitors to the country in question, coming there for ‘leisure’ or business. Others will have more established contacts. They may thus have secured employment as teachers or social workers to gain contact with children or taken up long-term residence in the country.\(^3\)

Transborder child sex tourism has proliferated in recent years as ever greater numbers gain access to international travel and as ever more countries develop a tourism infrastructure. Although reliable global figures for child sex tourism are hard to come by, the number of child victims of commercial sexual exploitation as a whole is put at about two million.\(^4\) Many of these children will have been internally or internationally trafficked and ultimately forced into prostitution. Child sex tourism tends increasingly to go underground, given the

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2 We will not thus be concerned with the domestic form of child sex tourism, in which the offender has travelled to a locality within his/her own country. cf ecpat International, Strengthening Laws and Addressing Child Sexual Exploitation: A Practical Guide (ecpat 2008).

3 Maureen Atwell, ‘Combating American Child Sex Tourism in Cambodia under the 2003 U.S. Protect Act’ (2008–2009) 26 Wisconsin International Law Journal 173. Given that not all child sex offenders who hail from foreign countries are tourists, a more apt term would perhaps be ‘travelling child sex offenders’.

expanded presence of foreign and international police liaisons in destination countries,\(^5\) and the increasing role of NGOs in reporting suspected cases of child prostitution.\(^6\) Although there is no universal definition of ‘child’, it may be assumed that the younger and poorer the child, the more vulnerable he or she will be to sexual exploitation.\(^7\)

The physical and emotional trauma that the child victim is subjected to underlines the strong human security interest in counteracting child sex tourism at the domestic and international levels. A common scenario is that the sex tourist travels from his or her home state (source state) to a state in which he or she sexually exploits a child (destination state) and thereafter returns to the source state in time to elude prosecution in the destination state. In the (all too common) case where the source state lacks an extradition treaty with the destination state or otherwise lacks support in its domestic law for extradition, the offence is likely to go unpunished unless the source state asserts jurisdiction over offences committed in the territory of another state. In actual fact, states can, if they so choose, exercise such jurisdiction over their nationals or residents under the ‘active nationality’ principle of international customary law.\(^8\) Only a relatively small number of states have however availed themselves of this possibility in the context of child sex tourism. There thus exist gaps in transnational enforcement that only a multilateral – preferably universal – treaty-based regime can properly fill.

An effective international regime against child sex tourism will thus need to establish grounds of extraterritorial criminal jurisdiction so that offenders can be prosecuted in source states in cases where prosecution in the destination state is not a feasible option. In the following, we will inquire how far international law has progressed in protecting children against sexual exploitation by obliging states to exercise criminal jurisdiction over child sex tourism offences committed beyond their own borders.

\(^{5}\) For example, Interpol and the Nordic Liaison Officer in Bangkok.

\(^{6}\) Interview with Annethe Ahlenius, Project Coordinator, Project Childhood (Protection Pillar) (Icpo Interpol Liaison Office for Asia and South Pacific, 7 December 2012).

\(^{7}\) Art 1 of the UN Convention on the Rights of the Child stipulates 18 years of age but allows state parties to instead apply the age of majority recognized under national law.