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ARTICLES

PROSECUTING SEX TOUR OPERATORS IN U.S. COURTS IN AN EFFORT TO REDUCE THE SEXUAL EXPLOITATION OF CHILDREN GLOBALLY

JONATHAN TODRES*

“The exploitation of the powerless by the powerful is at the heart of the problem [of sexual exploitation of children]: power of male over female, adult over child, devious over naive, rich over poor, organised (e.g. sex tour operators) over unorganised (individuals).”¹

I. INTRODUCTION

The sexual exploitation of children is a global human rights abuse that has devastating effects on millions of young girls and boys. Already an enormous problem, its occurrence continues to increase at an alarming rate, as over one million children enter the world sex trade each year.² In addition, increasingly younger children, many under the age of ten, are being drawn into the sex trade.³

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¹ Cynthia Price Cohen, *Child Sexual Exploitation in Developing Countries*, 44 INT’L COMM’N OF JURISTS REV. 42, 43 (1990).

² See ECPAT-USA, WHAT YOU SHOULD KNOW ABOUT SEX TOURISM BEFORE YOU GO ABROAD (1997). ECPAT is one of the leading non-governmental organizations dedicated to ending the sexual exploitation of children. Founded in Bangkok in 1990 as End Child Prostitution in Asian Tourism, ECPAT now has a global focus, with offices in over 25 countries working to eliminate all aspects of commercial sexual exploitation of children, and is simply known by its acronym.

³ One study of a city on the northeast coast of Brazil with a thriving tourist trade revealed that 18% of the child prostitutes were 10 years old or younger. See JUNE KANE, SOLD FOR SEX 12 (1998). In Kenya, most of the exploited children are girls between 6 and 16 years old. *Id.* at 44. The demand for younger and younger prostitutes is in part driven by the spread of AIDS and the belief (mistaken, though it is) that a younger child is more likely to

These children "are often recruited under the false pretense of marriage or a good job in the city. Others are kidnapped, or sold by their parents, and some are trafficked across national borders."⁴ The United Nations Children's Fund (UNICEF) estimates that there are over one million child prostitutes in Asia alone,⁵ with several hundred thousand in Africa,⁶ Latin America,⁷ Eastern Europe,⁸ and in industrialized nations.⁹

With such large numbers of children involved, the sexual exploitation of children has become big business. One report estimates that the sexual exploitation of children is a "five billion dollar industry for go-betweens (agents, pimps, madams, etc.) and criminal organisations."¹⁰ A significant aspect of the sex trade industry is sex tourism, defined by the World Tourism Organisation as "trips organized within the tourism sector, or from outside this sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the

be a virgin and thus less likely to have AIDS. *See, e.g.*, RON O'GRADY, *THE CHILD AND THE TOURIST* 112 (1992)

[T]he tragic reality is that sex between a young child and an adult is more likely to transmit the AIDS virus than sex between two adults Medical examinations point to the fact that the sexual act of an adult upon the immature body of a child almost always results in some tearing of the tissue. The possibility of sexually transmitted diseases developing from the sexual encounter is therefore greater with the child, rather than less.

Id.

⁴ 5 U.S. Bureau of International Labor Affairs, *BY THE SWEAT & TOIL OF CHILDREN, EFFORTS TO ELIMINATE CHILD LABOR* 31 (1998).

⁵ *See* Heather C. Giordanella, *Status of §2423(b): Prosecuting United States Nationals for Sexually Exploiting Children in Foreign Countries*, 12 *TEMP. INT'L & COMP. L.J.* 133, 134 (1998).

⁶ *See, e.g.*, *Child-Sex Tourists Target Cape Town's Juvenile Prostitutes*, *AFRICA NEWS SERVICE*, Feb. 5, 1999, 1999 WL 7547507 (noting that South Africa is becoming a new destination for child-sex tourists). *See also* KANE, *supra* note 3, at 40 ("In Angola, girls as young as 12 are reported to offer themselves to visiting foreigners in an attempt to survive following 30 years of civil war in that country in which at least 100,000 children lost their families.").

⁷ *See* Timothy Roche and Julia Powell, *Tourists Who Prey on Kids: Central America Is the New Hunting Ground for Pedophiles*, *TIME*, Feb. 15, 1999, at 58 ("[S]ex tourists from the U.S. are finding new victims in Latin America, where an estimated 2 million kids are homeless. . .").

⁸ *See* Kate Connolly, *Sex in a Cold Climate: On the E55 Highway that Runs Along the Border Between the Czech Republic and Germany, Sex Tourism is Booming*, *THE GUARDIAN*, Jan. 5, 1999.

⁹ *See* Mark Clayton, *In United States, Canada, New Laws Fail to Curb Demand for Child Sex*, *CHRISTIAN SCIENCE MONITOR*, Sep. 5, 1996, at 11 (stating that there are between 100,000 and 300,000 child prostitutes in North America, and that the average age of entry into prostitution is 14).

¹⁰ Cohen, *supra* note 1, at 42.

tourist with residents at the destination.”¹¹ The fact of “sex tourism” has become so commonplace that the term has been included in the latest edition of the Oxford dictionary.¹² Sex tourism has emerged as a lucrative industry generating large revenues from the sexual exploitation of children and other vulnerable populations, such as women who are forced or sold into prostitution.

A 1998 report by the International Labour Organization (ILO) calculates that 2-14% of the Gross Domestic Product of Indonesia, Malaysia, the Philippines, and Thailand derives from sex tourism.¹³ In Indonesia, for example, the financial impact of the sex sector is estimated at between \$1.2 and \$3.3 billion annually.¹⁴ The impact is even greater in Thailand. A recent study by the Chulalongkorn University Political Economy Centre in Bangkok on the illegal economy in Thailand calculated that “underground businesses” (including prostitution, drug trafficking, arms trading, contraband in diesel fuel, trafficking in human labor and gambling) generate at least \$33 billion to \$44 billion a year, and prostitution-related revenue accounts for two-thirds of that total.¹⁵ The international sex tourism industry adds significant amounts of foreign currency to the sex sectors in these countries.

Although the majority of sex tourism occurs in the developing world, the United States would be amiss in saying that this issue is simply not our problem. “Sending countries,” countries from which sex tourists originate, are a significant part of the problem, as sex tourists create demand for prostituted children. While it is difficult to obtain precise statistics, a significant number of sex tourists come from the United States. Sex tourists to Southeast Asia, for example, come primarily from Western countries. Over an eight-year period from the late-1980s to the mid-1990s, of the individuals arrested in Southeast Asia for sexually abusing children, 24% were Americans, 16% were Germans, 13% were British, and 13% were Australian.¹⁶ The United States is also a major supplier of the sex tourists to

¹¹ WTO Statement on the Prevention of Organized Sex Tourism, Adopted by the General Assembly of the World Tourism Organization, 11th Sess., Cairo (Egypt), Oct. 17-22, 1995 (Res. A/RES/338(XI)).

¹² See *New Oxford Dictionary Comes Up With 2000 New Words*, AGENCE FRANCE-PRESSE, Aug. 12, 1998, 1998 WL 16577164. Oxford defines “sex tourism” as “[t]he organisation of holidays with the purpose of taking advantage of the lack of restrictions imposed on sexual activity and prostitution in some foreign countries.” This definition is somewhat misleading, since prostitution is illegal in many of the destination countries for sex tourists (e.g. Thailand).

¹³ Lin Lean Lim, *Preface*, THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA 7 (Lin Lean Lim ed., 1998) (hereinafter “THE SEX SECTOR”). In addition, another report estimates that 250,000 child-sex tourists travel from the West to Thailand every year. See Lucy Ward, *Cook Cracks Down on Child Sex Tourism, Britain Leads Crusade Against Paedophiles: International Co-operation to Target Prostitution Trade*, THE GUARDIAN, Apr. 1, 1999, at 3.

¹⁴ See THE SEX SECTOR, *supra* note 13, at 10.

¹⁵ See *id.*

¹⁶ See Thomas Sancton, *Crimes Against Children: Preying on the Young All Over the*

Central America. In Costa Rica, 25% of foreigners detained from 1992-1994 for child sexual abuse were from the United States.¹⁷ While the exact figures for overall numbers of travelers from each sending country engaging in sex tourism may differ somewhat, these arrest/detention records reveal the significant presence of U.S. citizens.

In the United States, as in many industrialized countries, travel agencies organize sex tours to places such as Thailand, the Philippines, and other destinations in the developing world. At present, there are over twenty-five companies in the United States known to offer sex tours.¹⁸ The price of a typical ten-day or two-week tour ranges from \$1,800 to \$2,500 per person and includes round-trip airfare to Bangkok or Manila, hotel accommodations, ground transportation, a local guide, and "introductions to lady companions throughout your stay as desired," as a brochure from New-York based Big Apple Oriental Tours puts it.¹⁹ A California-based tour operator's brochure advertises that tour groups visit "the 'hottest entertainment centers' in Thailand with 'literally thousands of beautiful Thai women who will be more than willing to satisfy your every sexual whim.'"²⁰ As this industry continues to grow, so too do the number of tour operators.

In recent years, women's and children's rights advocates have highlighted the need for government action in addressing the problem of sex tourism, particularly where it involves children. As a result, a number of governments from "sending countries" have passed legislation criminalizing overseas travel for the purpose of engaging in sexual activity with a minor. Countries which have enacted such laws include Australia, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, New Zealand, Norway, Sweden, the United Kingdom, and the United States.²¹ Although these laws enable governments to punish individuals engaging in such acts, this case-by-case approach is limited. These laws address the problem only one individual at a time and do little to reduce individuals' access to sex tours. As such, this Article examines whether the U.S. government can prosecute sex tour operators under current law. One of the primary goals in prosecuting sex tour

World, Boys and Girls Are Abused in a Vicious Sex Trade Now Abetted by Computer Networks, TIME INT'L, Sept. 2, 1996, Vol. 148, No. 10, at 22.

¹⁷ See *Casa Alianza Supports US Move to Halt Sex Tourism*, March 5, 1999 (citing a report by the newspaper LA Prensa Libre) <<http://www.casa-alianza.org/EN/1mn/docs/19990305.00247.htm>>.

¹⁸ See Toddi Gutner and Ron Corben, *Asian Sex Tours Are an American Business Too*, BUS. WK., Jun. 17, 1996, at 46.

¹⁹ *Id.*

²⁰ Michael Pina, *Despite Stigma, Underground Operators Thrive*, TRAVEL WKLY., Apr. 22, 1996 available in 1996 WL 8636987 (quoting materials obtained by Travel Weekly from a California-based sex tour operator).

²¹ See JUNE KANE, *supra* note 3, at 107. See also Margaret A. 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 INT'L L.J. 1852, 1887-88 (1995).

operators would be to cut down on the avenues by which sex tourists have access to pursue such horrific behavior.

Part II of this paper examines the prospects for prosecuting sex tour operators under federal law by exploring new ways to utilize the Mann Act. Part III looks at state law, focusing on law in New York, a state in which known sex tour operators run their businesses. Part IV looks at other efforts to combat the sexual exploitation of children and examines the implications of prosecuting sex tour operators in this context.

II. USING FEDERAL LAW – “REINVENTING” THE MANN ACT

The use of federal law, where practicable, is the most effective means by which to pursue sex tour operators. Federal law can establish a uniform standard, thereby preventing sex tour operators from relocating their operations to states that have more lenient regulations.

The White Slave Traffic Act, more commonly known as the Mann Act,²² offers the most promising option under federal law for prosecuting sex tour operators. This is perhaps somewhat surprising, given that the Mann Act has fallen into disfavor among some activists, feminists, and academics. Scholars and activists have criticized the Mann Act as an attempt by Congress to legislate morality.²³ Furthermore, others view the Mann Act as inhibiting the rights of women, the class of individuals it was intended to protect.²⁴ The Act did promote “an implicit assumption of feminine weakness,”²⁵ as evidenced by one federal judge’s interpretation of the legislative intent as “Congress passed the Mann Act to protect ‘weak women from bad men.’”²⁶ Although it is important to recognize the negative aspects of the Mann Act, it is also worth noting that many of the problems associated with it result from subsequent interpretation of the Act. Marlene Beckman writes that a closer examination of the Mann Act reveals two important ideas:

First, Congress intended the act to apply only to commercial vice and those cases where there was evidence of coercion. Second, the act was not intended to apply to ordinary prostitution, control of which remained within the police

²² White Slave Traffic (Mann) Act, ch. 395, 36 Stat. 826 (1910) (codified as amended at 18 U.S.C. §§2421-2424 (1998)).

²³ See, e.g., DAVID J. LANGUM, CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT (1994).

²⁴ See *id.*

²⁵ *Id.* at 10.

²⁶ *United States v. Williams*, 55 F. Supp. 375, 380 (D. Minn. 1944) (paraphrasing *Denning v. United States*, 247 F. Supp. 463, 465 (5th Cir. 1918) (“A primary purpose of the Mann Act was to protect women who were weak from men who were bad.”)).

powers of the states. Instead, Congress intended to supplement local authority by reaching interstate transportation for commercial purposes.²⁷

As the House Report stated, the Mann Act "does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution."²⁸

Despite Congress's original intent, the courts broadened the scope of the Act to include non-commercial sexual relations. This led to the use of the Mann Act as a tool for policing morality. In *Caminetti v. United States*,²⁹ the Supreme Court "upheld convictions under the Act where there was no evidence (1) that the women were prostitutes, (2) that their actions were involuntary, or (3) that the defendants derived any profit."³⁰ This early decision set the standard and led subsequent courts to utilize the Mann Act to regulate acts that it deemed "immoral," a purpose well beyond the original intent of the Act. These judicial interpretations created an Act that did little to help the individuals it aimed to protect. For example, one study reveals that 23% of the women sentenced to prison terms under the Mann Act between 1927 and 1937 were convicted despite an absence of prostitution or any other commercial activity.³¹ A common pattern found among many of these women involved "single women traveling with men they loved and hoped to marry, but who turned out to be already married; both the woman and man were arrested as co-conspirators when the man's wife turned them in."³²

Historically, another problem is that the law, in the area of prostitution, has focused on criminalizing the behavior of the prostituted women rather than on the customers. For many years, prostitution was viewed as a woman's crime, and only the female prostitute was singled out and punished, not the male customer. Even after the statutory language was changed, making prostitution laws gender neutral and applicable to customers, enforcement of the laws often reflected a discriminatory bias.³³ Frances Bernat's study reveals that, despite the gender-neutral language of New York's prostitution statutes, during a four-year period in the City of Buffalo, female prostitutes comprised 77.4% of arrests, whereas male patron arrests accounted for only 13.1%.³⁴ This historical bias is also evident in many other countries. In England and Wales, for example, between 1989 and

²⁷ Marlene D. Beckman, *The White Slave Traffic Act: Historical Impact of a Federal Crime Policy on Women*, PORNOGRAPHY, SEX WORK, AND HATE SPEECH 33, 35 (Karen J. Maschke ed., 1997) (hereinafter "Beckman").

²⁸ H.R. REP. NO. 61-47, at 10 (1909).

²⁹ 242 U.S. 470 (1917).

³⁰ Marlene D. Beckman, Note, *The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women*, 72 GEO. L. J. 1111, 1118 (1984).

³¹ See Beckman, *supra* note 27, at 39.

³² *Id.*

³³ See, e.g., Frances P. Bernat, *New York State's Prostitution Statute: Case Study of the Discriminatory Application of a Gender Neutral Law*, in Beckman, *supra* note 27, at 51-68.

³⁴ *Id.* at 55.

1993, 1500 children were convicted of offenses relating to children.³⁵ Furthermore, in Thailand, it was not until 1996 that by law the Thai Government recognized child prostitutes as “victims of the illegal sex trade” and that “customers and procurers, not the victims, should face punishment.”³⁶ This bias toward punishing the prostituted woman or child rather than the customer is evident in the history of the Mann Act. That the same bias exists elsewhere only makes it more difficult to overcome this newer global form of prostitution – sex tourism.

Despite this negative past and the historical bias against women, the language of the Mann Act offers other possibilities. With globalization, practices involving prostitution have changed, as marked by the growth of sex tourism. Customers now travel to areas where prostitutes are available, instead of the transportation of the prostitutes occurring. This calls for a different approach to prostitution – one focused on the demand side (customers) rather than on the supply side (the prostituted individuals). To address the demand side, it is possible to “reinterpret” the Mann Act to address current practices in the sex trade industry and make a positive contribution to reducing the sexual exploitation of children. Under the Mann Act, there are three possible means to prosecute sex tour operators: for transporting under §2421, for inducing or enticing under §2422, or for aiding and abetting an individual convicted of engaging in sexual activity with a minor under §2423(b).

A debate exists in some circles as to whether the state should involve itself in policing prostitution at all. An analysis of state policing of voluntary prostitution is beyond the scope of this article. However, few, if any, individuals would oppose efforts to eliminate the prostitution of children or of adults forced into the sex trade. Therefore, this “new” application of the Mann Act (as well as the subsequent examination of state law) is aimed at addressing these latter two problems, both of which are clear violations of human rights.

A. Section 2421 of the Mann Act – Transportation Generally

Section 2421 of the Mann Act states that:

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.³⁷

Historically, prosecutors have used §2421 to punish individuals who transported prostitutes in interstate or foreign commerce.³⁸ A man who transported a woman

³⁵ See KANE, *supra* note 3, at 110.

³⁶ *Id.* at 111.

³⁷ 18 U.S.C. §2421 (1998).

³⁸ See, e.g., *Mortensen v. United States*, 322 U.S. 369, 377 (1944) (“Congress was attempting primarily to eliminate the ‘white slave’ business which uses interstate and foreign commerce as a means of procuring and distributing its victims and ‘to prevent panders and

across state boundaries for the purpose of having her engage in prostitution could be found guilty under the Act. Thus prosecutors, and the courts, have relied primarily on the language of the first part of §2421.

The case against a sex tour operator is somewhat different; instead of transporting the prostitute, the sex tour operator transports the customer to the prostitute. The second part of §2421 allows for the application of this statute to sex tour operators. Read in this light, §2421 states that it applies to a person [sex tour operator] who knowingly transports any individual [a sex tourist] with the "intent that such individual [the sex tourist] engage . . . in any sexual activity for which *any person* can be charged with a criminal offense" [emphasis added]. A broad reading of "any person" can encompass either the sex tourist or the prostitute. Pursuant to this, if the tour operator arranged a sex tour to Thailand, both the sex tourist and the prostitute would have engaged in illegal sexual activity for which they could be charged with a criminal offense, since prostitution is illegal in both the United States and Thailand.³⁹ A narrow reading of the statute, in which the person transported (the sex tourist) must be the one who engages in the criminal activity, still enables the prosecution of the tour operator, as solicitation of prostitution is also illegal in Thailand.⁴⁰

Furthermore, the legislative intent of the Mann Act supports reading the statute in this fashion. The language of the second part of §2421 was amended to its current form as part of the Child Sexual Abuse and Pornography Act of 1986.⁴¹ The statute's intent was to reduce the incidence of sexual exploitation, particularly of children.⁴² Prosecuting sex tour operators is consistent with this goal. The House Report stated with regard to the second part of §2421, "[u]nder this language, the offense is transporting any person for illegal sexual activity under any applicable law."⁴³ In this era of globalization and continuing expansion of international travel, this is precisely what sex tour operators do – they transport tourists for the purpose of illegal sexual activity.

procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution." (quoting H.R. Rep. No. 47, at 10 (1910)). See also *United States v. Marks*, 274 F.2d 15, 18 (7th Cir. 1959) ("The statute is aimed at prevention of transportation of a female in interstate commerce for purpose of commercial and non-commercial vice") (citing *Malaga v. United States*, 57 F.2d 822 (1st Cir. 1932)).

³⁹ See Prohibition of Prostitution Act of B.E. 2503 (1960). There may be a question as to whether "criminal offense" relates to U.S. law or the law of the jurisdiction in which the act took place. The more plausible reading is the latter, and it should be further noted that prostitution is illegal in Thailand.

⁴⁰ See The Prostitution Prevention and Suppression Act of B.E. 2539 (1996). If the activity must be a criminal offense in the United States, then the fact that solicitation of a prostitute is a criminal offense in almost all jurisdictions in the United States would still allow for §2421 to apply to sex tour operators.

⁴¹ See Child Sexual Abuse and Pornography Act of 1986, Pub.L. No. 99-628, 100 Stat. 3510 (1986).

⁴² See H.R. Rep. No. 99-910 (1986).

⁴³ *Id.*

Since the second half of §2421 encompasses the actions of sex tour operators, the question remains whether the tour operator transported the tourists with the “intent” that the travelers engage in illegal sexual activity. Today, sex tour operators’ advertising has become more discreet. One tour operator is quoted as saying “Sure, we sell sex . . . but we have to refrain from mentioning it in our brochure. If we sold sex directly, we’d be selling prostitution, and that’s illegal in Thailand as well as America.”⁴⁴ In addition, several sex tour operators in the United States have changed their marketing strategies “for fear of attracting the attention of prosecutors.”⁴⁵ Some itineraries have begun to feature golf and scuba diving activities along with wet T-shirt contests and lingerie shows.⁴⁶ Other agencies simply claim to provide matchmaking services for men seeking Asian wives.⁴⁷

Despite denials by sex tour operators or carefully worded brochures, the fact remains that a main selling point of these tours is sex. The Mann Act only requires that the prostitution or illicit sexual activity be a “dominant” purpose of the travel.⁴⁸ Individuals often travel for more than one reason, and “in the context of multiple purposes, ‘dominant’ simply means that these motivations predominate over other, less powerful motivations for conduct.”⁴⁹ In other words, the illicit sexual activity need not be the “sole and single purpose” of the transportation to sustain a conviction, rather “[i]t suffices if one of the efficient and compelling purposes in the mind of the accused in the particular transportation was illicit conduct of that kind.”⁵⁰ The strongest selling point for these tour operators, and the reason consumers buy tour packages from them as opposed to any other tour agency, is the illicit sexual activity. The threshold question then is not whether these tour operators advertise illicit sexual activity as the sole purpose of the trip, as long as it is one of the primary purposes.

With respect to the other aspect of the mens rea under §2421—“[w]hoever knowingly transports any individual in interstate or foreign commerce”—the courts have held that the knowledge requirement applies to the actual transportation, so that a person is guilty if he *knowingly or willfully transports* an individual for the purpose of illicit sexual activity.⁵¹ As long as the necessary intent described in the

⁴⁴ Christopher P. Baker, *Prostitution: Child Chattel Lure Tourists for Sex*, THE NAT’L TIMES, Sept. 1995, at 8 (quoting the owner of Miami-based G&F Tours).

⁴⁵ Gutner, *supra* note 18, at 46.

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *See* *Mortenson v. United States*, 322 U.S. 369, 374 (1944).

⁴⁹ *United States v. Miller*, 148 F.3d 207, 212 (2nd Cir. 1998).

⁵⁰ *United States v. Campbell*, 49 F.3d 1079, 1082 (5th Cir. 1995). *See also* *United States v. Snow*, 507 F.2d 22, 24 (7th Cir. 1974) (then-Judge Stevens wrote that “[it] now appears settled that prostitution or other immoral conduct, need not be the sole reason for the transportation; the Act may be violated if prostitution is a dominant or a compelling and efficient purpose.”).

⁵¹ *See, e.g., Neff v. United States*, 105 F.2d 688, 691 (8th Cir. 1939)

[T]he offense is complete the moment the female has been transported across the state

previous paragraph is present, then proving knowledge with regard to the transportation of the sex tourist is not a significant obstacle. As a result, a court could find a sex tour operator guilty under §2421.

B. Do Sex Tour Operators Entice or Induce Individuals to Engage in Illegal Sexual Activity?

The Mann Act provides a second option, the prosecution of sex tour operators under §2422. Section 2422(a) reads in part:

Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce . . . to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense. . . , shall be fined under this title or imprisoned not more than ten years, or both.⁵²

As under §2421, the language of §2422(a) does not facially require the individual who travels in interstate or foreign commerce to be the prostitute. Therefore, one can argue that authorities may prosecute a sex tour operator for inducing or enticing a tourist to travel in foreign commerce to engage in illegal sexual activity. To convict under §2422(a), the prosecution must prove two elements: (1) the interstate transportation of the individual; and (2) that the defendant intended, at the time of the transportation, to have the individual engage in illegal sexual activities.⁵³ The first element will be easy to prove, as there should be clear records of individuals who have traveled on these tours. After all, these tour operators attempt to present themselves as legitimate business operations and therefore should have business records including customer lists.

The second element, however, requires further exploration. Similar to §2421, there can be “dual purposes” under §2422 for the transportation of the individual, and “prostitution need only be one of the principal purposes.”⁵⁴ With respect to the actual inducement or enticement, courts have held that “the requisite inducement is any offer sufficient to cause the [individual] to respond.”⁵⁵ Further, courts have held that “[w]hen an offer to travel interstate for purposes of prostitution elicits a positive response from [an individual] to whom it is made, it constitutes a requisite

line with the immoral purpose or intent in the mind of the person responsible for her transportation. The immoral conduct and relations of the parties are, of course, in no sense elements of the offense charged, but evidence of improper conduct.

Id.

⁵² 18 U.S.C. §2422(a) (1998).

⁵³ See *Lerma v. United States*, 387 F.2d 187, 188 (8th Cir. 1968).

⁵⁴ *United States v. Jenkins*, 442 F.2d 429, 434 (5th Cir. 1971). See also *Nunnally v. United States*, 291 F.2d 205, 208 (5th Cir. 1961) (“prostitution or such immoral purpose need not be the sole motive for the interstate trip. It is sufficient if it is one of the principal purposes.”).

⁵⁵ *Harms v. United States*, 272 F.2d 478, 481 (4th Cir. 1959), cert. denied, 361 U.S. 961 (1960).

inducement under the statute.”⁵⁶ That one of the major selling points of these tours is “providing companionship” to each tourist every night of the trip is evidence that sex is one of the principal purposes of the inducement or enticement to travel in foreign commerce. In addition, the fact that the tour operator takes the tourists to “night spots” to meet women further suggests that the tour operator intends for the tourists to engage in illegal sexual activity.

Although intent to entice or induce can be difficult to prove, “the elements of this crime may be established by facts and circumstances without direct evidence.”⁵⁷ Therefore, prosecutors can establish intent from facts that suggest that both the tour operator and tourist knew that illegal sexual activity was part of the plan, and that the illegal sexual activity was the primary means of enticing the tourist to travel overseas. Therefore, a conviction under this section of the Mann Act is possible, although it may be a more difficult case than an action under §2421.

C. Do Sex Tour Operators Aid and Abet Child-Sex Tourists?

The third avenue under the Mann Act is to prosecute the sex tour operator for aiding and abetting an individual who is convicted under §2423(b). Section 2423(b) reads as follows:

Travel with intent to engage in sexual act with a juvenile – A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2245) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 10 years, or both.⁵⁸

This section is the primary means prosecutors have for pursuing child-sex tourists. Under 18 U.S.C. §2, they can prosecute a sex tour operator for aiding or abetting an individual acting in violation of §2423(b). Section 2 states that:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.⁵⁹

To establish aiding and abetting, the government must prove that: (1) the defendant acted to further the execution of the criminal offense, and (2) that the

⁵⁶ United States v. Pelton, 578 F.2d 701, 713 (8th Cir. 1978).

⁵⁷ *Nunnally*, 291 F.2d at 207.

⁵⁸ 18 U.S.C. §2423(b) (1998).

⁵⁹ 18 U.S.C. §2.

defendant intended to aid in the commission of the offense.⁶⁰ The first question is whether the government can prove that a sex tour operator acted to further the illegal activity proscribed by §2423(b). Undoubtedly, sex tour operators will deny that their tours involve children. The government can argue, however, that arranging tours to countries known to have high numbers of child prostitutes and poor records of enforcement of child prostitution laws, and bringing the tourists to red light districts, indicates that the sex tour operators took steps to facilitate the criminal activity.

The intent element will be harder to prove, as sex tour operators have become more careful about advertising their child-sex activities. Sex tour operators, however, cannot simply assert that they lacked knowledge of tourists engaging in illegal sexual activity with minors. Under common law, an individual is considered to know "what he would have known if he had not deliberately avoided knowing."⁶¹ The Supreme Court has relied on this principle, as in *Turner v. United States*, where the Court held that "those who traffic in heroin will inevitably become aware that the product they deal in is smuggled, unless they practice a studied ignorance to which they are not entitled."⁶² Similarly, the incidence of child-prostitution in places such as Bangkok or Manila has been well reported in newspapers and magazines. It would be difficult for any travel agent who has tours to Asia, even those who run legitimate tours, to profess to have never heard that some tourists seek travel opportunities to places where they can find child prostitutes. As such, it would seem to be a willful avoidance of knowledge for a sex tour operator to arrange tours to red light districts in Thailand, the Philippines, or elsewhere, and yet deny knowing that child prostitution was involved. This approach could supply the requisite intent to enable a jury to convict sex tour operators as principals under §2423(b) through the use of 18 U.S.C. §2.

The advantage of prosecuting under 18 U.S.C. §2 is that the sex tour operator can be convicted of a crime involving minors, which carries a heavier sentence and enables the state to condemn the sexual exploitation of children.⁶³ A disadvantage with this approach, however, is that there have been few prosecutions under §2423(b).⁶⁴ Further, the individual prosecuted under §2423(b) may not have been

⁶⁰ See *United States v. Triplett*, 922 F.2d 1174, 1178 (5th Cir. 1991), *cert denied*, 500 U.S. 945 (1991). See also *United States v. Dolt*, 27 F.3d 235, 238 (6th Cir. 1994); *United States v. Frorup*, 963 F.2d 41, 43 (3rd Cir. 1992).

⁶¹ ROLLIN M. PERKINS & RONALD N. BOYCE, *CRIMINAL LAW* 868 (1982).

⁶² *Turner v. United States*, 396 U.S. 398, 417 (1970). See also *United States v. Giovannetti*, 919 F.2d 1223, 1228 (7th Cir. 1990) (a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires"); *United States v. Jewell*, 532 F.2d 697, 700 (9th Cir. 1976), *cert. denied*, 426 U.S. 951 (1976) ("[D]eliberate ignorance and positive knowledge are equally culpable").

⁶³ The situation is analogous to prosecuting organized crime. Ideally, the state would like to get the conviction for murder or other serious crime, rather than tax evasion. The former carries harsher penalties and enables the state to publicly condemn the more serious crime.

⁶⁴ One of the obstacles to prosecuting sex tourists is the problem of obtaining evidence from overseas. See Vickie F. Li, *Child Sex Tourism to Thailand: The Role of the United*

part of a tour. So, there may be limited opportunities to prosecute sex tour operators through this approach. The use of either §2421 or §2422 may prove easier, as the government does not have the additional burden of proving that minors were involved,⁶⁵ though as a result the penalties may be lighter. Overall, prosecuting sex tour operators under §2421 may be the most promising avenue under federal law. The language of the statute covers the actions of the sex tour operators and such convictions would be consistent with the intent of the Mann Act.

III. PROSECUTING SEX TOUR OPERATORS UNDER STATE LAW – THE NEW YORK EXAMPLE

The other alternative is to prosecute sex tour operators under state law. A drawback to this approach is that tour operators may soon learn which states have more lenient laws and may relocate their operations. Most states, however, have laws that prohibit the promotion of prostitution or similar activity.⁶⁶ This article focuses on the New York law on prostitution, as one example, but there is similar law in other states.

Since the actual prostitution or other illegal sexual activity takes place overseas, there is an initial threshold question regarding jurisdiction. Under New York law, if the action did not take place in the state of New York, it must constitute an offense in the jurisdiction in which it occurs as well as in New York.⁶⁷ If, for example, the sex tour was to Thailand, where prostitution is illegal, then a New York court would have jurisdiction. Once the jurisdictional requirements are satisfied, the government can proceed with prosecuting the sex tour operator for promoting prostitution.

Under New York law, it is a crime to promote prostitution.⁶⁸ Section 230.20 of the New York Penal Law states that “[a] person is guilty of promoting in the fourth

States as a Consumer Country, 4 PAC. RIM L. & POL’Y J. 505, 524 (1995).

⁶⁵ See *United States v. Hamilton*, 456 F.2d 171, 173 (3rd Cir. 1972) (Under the Mann Act, “knowledge that the girl is under eighteen years of age is not part of the proof requisite by the Government in order to sustain a conviction.”).

⁶⁶ See, e.g., N.Y. Penal Law §§230.15 (McKinney 1995); Fla. Stat. ch. §796.07 (1992) (making it unlawful in Florida “to direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation” §796.07(2)(d)); Cal. Penal Code §§266h, 266i, 318 (prohibiting pimping, pandering, and the prevailing upon a person to visit a place for the purpose of prostitution respectively).

⁶⁷ See N.Y. Penal Law §200.30 (McKinney 1995). See also *People v. Johnson*, 512 N.Y.S.2d 724, 725 (N.Y. App. Div. 1987) (“Venue for a criminal prosecution may be established in a county when conduct occurred within such county sufficient to establish one element of the offense.”).

⁶⁸ See N.Y. PENAL LAW §§ 230.15, 230.20, 230.25, 230.30, 230.32 (promoting prostitution).

degree when he knowingly advances or profits from prostitution.”⁶⁹ Therefore, determining whether a sex tour operator promotes prostitution entails a two-part analysis: (1) whether the sex tour operator “advances” or “profits from” prostitution; and (2) whether the tour operator does this knowingly.

Pursuant to Section 230.15, a person advances prostitution when

acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.⁷⁰

Several arguments support a finding that sex tour operators “advance prostitution.” First, the sex tour operator “aids a person to . . . engage in prostitution.” Not only do tour operators transport travelers to countries where it may be easier to engage in prostitution, they organize trips to noted red light districts and provide instructions to tour-goers on how to find a “companion” for the night.⁷¹

Second, the sex tour operator “procures or solicits patrons for prostitution.”⁷² The tour operators attract customers by advertising that tour-goers can sleep with a different woman each night of their trip. In addition, the tour operators then take the tourists to the locations where they can find prostitutes (e.g., not just to Bangkok, but to the red light districts of Bangkok).

Third, the sex tour operator’s actions fall under the catch-all provision of § 230.15(1) when he “engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.” Under this language, the sex tour operator could be found guilty of aiding or facilitating an act of prostitution by bringing men—who were sold on the idea of a tour in which women would be readily available on the tour—to “night spots” where prostitutes work. Each of these three avenues offers strong support for concluding that sex tour operators “advance” prostitution.⁷³

The second element of the § 230.20 analysis is whether the sex tour operator “knowingly” advances prostitution. The marketing materials of these tour operators clearly indicate that the operators are using sex to sell the tours. Often, these materials include brochures or websites that display photographs of a previous customer accompanied by a scantily clad woman or surrounded by several women. Some even advertise that “prostitution is everywhere” and that tour-goers

⁶⁹ N.Y. PENAL LAW § 230.20.

⁷⁰ N.Y. PENAL LAW § 230.15(1).

⁷¹ See *supra* notes 18-20 and accompanying text.

⁷² N.Y. PENAL LAW § 230.15(1).

⁷³ Since a case can be made that the tour operator “advances” prostitution, this paper will not explore in depth the option of trying to prove that the tour operator “profits from” prostitution. The latter would be a more difficult case to prove, as it is aimed at those who directly profit from a prostitute, as in the case of a pimp.

can have “companionship” on every night of the tour.⁷⁴ In addition, the operators arrange tours specifically to countries where prostitutes are easily accessible, further establishing the knowledge element. Moreover, the state could assert that the sex tour operators would have to deliberately avoid knowing that the tourists would engage in illegal sexual activity in order to be found not to have actual knowledge. Such intentional avoidance of the truth is tantamount to knowledge.⁷⁵

The fourth degree of promoting prostitution is “generally utilized in cases where there are no aggravating factors, such as where a cab driver or bellhop directs someone, upon request, to a prostitute.”⁷⁶ In the instant action, these sex tour operators play at least as big a role in the procurement of a prostitute for a customer as a cab driver or a bellhop. Arguably, the culpability of sex tour operators is much greater, since the primary purpose of their businesses is to arrange sex tours, whereas in the case of a cab driver or bellhop, the promotion of prostitution is incidental to the position. The sex tour operator found in violation of § 230.20—promoting prostitution in the fourth degree—is guilty of a class A misdemeanor, which is punishable by imprisonment of up to one year and/or a fine not exceeding \$1,000.⁷⁷

In addition, the state potentially could charge the sex tour operator with the more serious crimes of promoting prostitution in any of the first three degrees. In prosecuting a sex tour operator under the first three degrees of prostitution, the relevant factor is the age of the prostitute.⁷⁸ The difficulties with pursuing sex tour operators under any of the first three degrees of promoting prostitution, however, include (1) proving the age of the prostitutes involved; and (2) proving that the sex tour operators knowingly advanced prostitution with children. The former requires obtaining evidence from abroad, which can prove challenging and may hinder the prosecution of sex tour operators.⁷⁹ In contrast, the latter may be easier to prove.

⁷⁴ See Donna M. Hughes, *Sex Tours via the Internet*, 28 *AGENDA: J. ABOUT WOMEN & GENDER* (S. Afr.) 71-76 (1996) <<http://www.uri.edu/artsci/wms/hughes/catw/sextour.htm>>.

⁷⁵ See *supra* notes 58-60 and accompanying text.

⁷⁶ *People v. Freaney*, 488 N.Y.S.2d 759, 761 (N.Y. App. Div. 1985) (quoting 9 Zett, N.Y. Crim. Prac. §88.3[3][a]). See also *Aguilera v. Superior Court*, 273 Cal. App. 2d 848 (Cal. 1969) (maitre d’); *People v. Morgan*, 98 Ill. App. 2d 435 (Ill. 1968) (bellhop); *People v. Osuna*, 251 Cal. App. 2d 528 (Cal. 1967) (cab driver).

⁷⁷ See N.Y. PENAL LAW §§ 60.01(3)(c), 70.15(1), 80.05(1) (McKinney 1995). See also *People v. Freer*, 312 N.Y.S.2d 277 (N.Y. App. Div. 1970) (holding that a jail term of one year for promoting prostitution in the fourth degree was not excessive).

⁷⁸ Knowingly advancing or profiting from prostitution of a person less than 19 years old constitutes promoting prostitution in the third degree, a class D felony. See N.Y. PENAL LAW § 230.25(2). If the prostitute is less than 16 years old, the crime is prostitution in the second degree, a class C felony. See N.Y. PENAL LAW § 230.30(2). Finally, if the child prostitute is less than 11 years old, the crime is prostitution in the first degree, a class B felony. See N.Y. PENAL LAW § 230.32.

⁷⁹ On the issue of obtaining evidence abroad, see Vickie F. Li, *Child Sex Tourism to Thailand: The Role of the United States as a Consumer Country*, 4 *PAC. RIM L. & POL’Y J.* 505, 523-26 (1995).

First, in denying their involvement in child prostitution, many tour operators claim that the women they introduce to men on the tours are at least eighteen years old. Yet § 230.25(2)—promoting prostitution in the third degree—makes it unlawful to advance prostitution of a person less than *nineteen years old*. If the operators only insist that all of the women are eighteen or older, then there is a strong likelihood that an eighteen-year-old is involved, and hence the tour operator is in violation of § 230.25(2). Since violation of § 230.25(2) is a class D felony, the penalty rises to a maximum sentence of seven years.⁸⁰ The first two degrees of promoting prostitution would be available if the children are even younger. In the alternative, the state can establish constructive knowledge through the tour operator's deliberate avoidance of the truth.⁸¹ Although the first three degrees of promoting prostitution create an additional burden on the state of proving the age of the prostitutes involved, they are worth pursuing for their stronger penalties, and for the message that the state would send by condemning such acts involving children. Alternatively, prosecuting sex tour operators for promoting prostitution in the fourth degree would carry a lighter penalty but would be easier for the state to prove.

IV. THE IMPLICATIONS OF PROSECUTING SEX TOUR OPERATORS

Although there are differing perspectives on a number of human rights issues, no one would dissent from the view that sexual exploitation of children should stop. This Article proposes one step toward that end, a step which must be taken along with efforts to address other aspects of the sexual exploitation of children.

A. Other Efforts to Address the Problem of Sex Tourism

The rapid and considerable growth of sex tourism in recent years has attracted the attention of human rights advocates and activists. As a result, both the public and private sectors have undertaken a number of efforts in an attempt to address this problem.

In the public sector, governments can fulfill two important functions: adopting and enforcing tougher laws to crack down on those individuals who sexually exploit or profit from the sexual exploitation of children. At the international level, a number of agreements make these acts illegal and mandate that governments ensure the rights of children. Foremost is the U.N. Convention on the Rights of the Child ("CRC"),⁸² the most widely-ratified human rights treaty that contains several applicable provisions. The CRC's most relevant provision, Article 34, reads:

⁸⁰ See N.Y. PENAL LAW § 70.00.

⁸¹ See *supra* notes 61-62 and accompanying text.

⁸² Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25 (1989) [hereinafter "CRC"]. The CRC has been ratified by all but two countries. Only the United States, which has signed the Convention, and Somalia have not ratified the Convention.

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 to 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.⁸³

Other international human rights treaties that call on states to crack down on sex tourism include: the Convention on the Elimination of All Forms of Discrimination against Women;⁸⁴ the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;⁸⁵ and the International Covenant on Civil and Political Rights.⁸⁶ A U.N. Working Group is developing a draft

⁸³ *Id.* at art. 34. Also relevant to child prostitution are the following articles of the CRC: Article 6(1) and (2): "States Parties recognize that every child has the inherent right to life [. . . and . . .] States Parties shall ensure to the maximum extent possible the survival and development of the child"; Article 19(1): "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"; Article 32(1): "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;" and Article 35: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." *Id.* at arts. 6(1) & (2), 19(1), 32(1), 35.

⁸⁴ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 194, U.N. Doc. A/34/180 (1979), reprinted in 19 I.L.M. 33 (1980). Article 6 reads: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." *Id.* at art. 6.

⁸⁵ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, opened for signature Mar. 21, 1950, 96 U.N.T.S. 271 (entered into force July 25, 1951). Article 1 reads: "The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person." *Id.* at art. 1.

⁸⁶ International Covenant on Civil and Political Rights, art. 8, G.A. Res. 2200A (XII), U.N. Doc. A/6316 (1966), reprinted in 6 I.L.M. 368 (1967). Article 8 prohibits all forms of slavery and servitude.

optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, and the U.N. has appointed a Special Rapporteur to examine the issue of sexual exploitation of children.⁸⁷

Although international human rights conventions are, without question, important in the fight against human rights abuses of children, they do have limitations. Most important in this context is that these treaties impose duties on the States Parties to the respective conventions. The treaties do not reach action by private individuals, and therefore, the State retains the burden of policing individuals, such as sex tour operators, to ensure compliance with its treaty obligations.

At the national level, the United States and other countries have adopted legislation criminalizing travel abroad for the purpose of engaging in sexual activity with a minor.⁸⁸ In addition to enacting tougher laws and international agreements, governments must take decisive steps to enforce these measures. Therefore, the United States must endeavor to prosecute both sex tourists and sex tour operators.

Several governmental agencies attempt to track both individuals who engage in illegal sexual activity with children (e.g., pedophiles and child pornographers) and victims of the sex trade industry. Interpol has established a Standing Working Party on Offences against Minors, which coordinates efforts among its members to identify and investigate child sex exploiters.⁸⁹ In tracking the victims, organizations such as the U.S. National Center for Missing and Exploited Children, the U.K.-based National Missing Persons' Helpline, and the Brussels-based European Centre for Missing and Exploited Children help to publicize missing persons and aid in locating and returning these children.⁹⁰

The United States and other countries must also take steps to involve the private sector in tackling this problem. In 1996, the first World Congress against Commercial Sexual Exploitation of Children convened, with over 120 countries participating, including the United States. The Congress adopted an Agenda for Action which commits governments to "mobilise the business sector, including the tourism industry, against the use of its networks and establishments for the commercial sexual exploitation of children."⁹¹ Further, Senator Charles Grassley

⁸⁷ On the U.N. Working Group, see, for example, *Report of the Working Group on a Draft Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on its Fifth Session*, U.N. Commission on Human Rights, 55th Sess., U.N. Doc. E/CN.4/1999/74 (1999). For details of the work of the Special Rapporteur, see, for example, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, U.N. Commission on Human Rights, 55th Sess., U.N. Doc. E/CN.4/1999/71 (1999).

⁸⁸ See *supra* notes 21, 58 and accompanying text.

⁸⁹ See KANE, *supra* note 3, at 107.

⁹⁰ See *id.* at 125-26.

⁹¹ World Congress Against Commercial Sexual Exploitation of Children, *Declaration and Agenda for Action* (adopted Aug. 28, 1996) (visited Oct. 7, 1999) <<http://193.135.156.14/webpub/csechome/222e.htm>>.

introduced an amendment to the 1999 FAA reauthorization bill aimed at deterring American sex tourists by requiring airports and airlines to inform passengers that U.S. law prohibits child sex tourism.⁹²

Initiatives in the private sector, particularly on the part of non-governmental organizations (“NGO’s”), have been equally important. Women’s and children’s rights groups have begun to focus more of their attention on sex tour operators in an effort to “attack the demand side of the international sex trade.”⁹³ NGO action has taken several forms. NGO’s, such as New York-based Equality Now and California-based Captive Daughters, have continued to press local district attorneys to prosecute sex tour operators in their states.⁹⁴ NGO’s have also targeted the demand side of the sex tourism industry by organizing protests at airports on the days that sex tours are scheduled to depart.⁹⁵ Finally, the work of NGO’s has led other segments of the private sector to take action to combat the growing incidence of sex tourism. The World Tourism Organisation (“WTO”) and the Universal Federation of Travel Agents’ Association (“UFTAA”) have also condemned sex tourism, and have worked to try to “ensure that those agencies promoting sex tours will lose their licenses to trade as tour agents.”⁹⁶ Both NGO’s and travel associations have been instrumental in encouraging commercial airlines to play a more active role in stopping sex tourism. Air France has agreed to show a short in-flight video about the problem of sex tourism to passengers travelling from Europe to Asia.⁹⁷ In addition, France, Germany, Belgium, and the Netherlands have developed “luggage tag flyers” in three different languages for distribution through their airlines.⁹⁸ In some countries, airlines now include inserts or leaflets with tickets, providing travelers with general information on the sexual exploitation of children and the penalties for engaging in such activities.⁹⁹ Although all of these efforts are positive developments in the fight against sexual exploitation of children, more still needs to be done.

⁹² *Progress in the Fight Against the Sexual Exploitation of Children*, ECPAT-USA News (ECPAT-USA, New York, N.Y.), Aug. 1999, at 1.

⁹³ Alexandra Marks, *Activists Unleash Campaign to Shut Down ‘Sex Tours’: Human Rights Groups Demand Tougher Laws to Drive Out Tour Operators Who Offer ‘Romantic’ Holidays Overseas*, CHRISTIAN SCI. MONITOR, Jan. 15, 1999, at 2.

⁹⁴ See Captive Daughters Fact Sheet 1, *Sex Tours—A Learning Model* (visited July 1, 1999) <<http://www.captive.org/ByandAboutCD/CDdocuments/cdfactsheet1.htm>>.

⁹⁵ See *id.*

⁹⁶ KANE, *supra* note 3, at 118-19.

⁹⁷ See *Air France to Campaign Against Paedophile Tours*, REUTERS, Mar. 11, 1999, available in LEXIS, NEWS Library, CURNWS File.

⁹⁸ See ECPAT, *ECPAT Fights Child Sex Tourism: Learning from the European Experiences* (visited Oct. 7, 1999) <<http://www.ecpat.net/newsjan/cover.htm>>.

⁹⁹ See KANE, *supra* note 3, at 119-20.

B. Potential Benefits of Prosecuting Sex Tour Operators

In addition to the efforts described above, prosecuting sex tour operators is an essential element in the fight against sexual exploitation of children. Such prosecutions cannot substitute for the other important work described above, but they will help to achieve several ends. First, prosecutions of tour operators will reduce the number of sex tourists. Shutting down agencies that promote sex tours will eliminate some tourists' means of engaging in the sexual exploitation of children. As a result, some individuals may not get involved in sex tourism.

Prosecuting sex tour operators will also serve another important purpose. Many sex tourists do not go on organized tours. In some instances, tourists have legitimate business overseas and then simply take advantage of the opportunity while abroad. For these individuals, law criminalizing the sex tourist's behavior already exists.¹⁰⁰ However, convictions in the area of sex tourism, of both tour operators and individual tourists, will help to raise public awareness about the issue and deter tour operators and potential sex tourists from engaging in this illegal activity. If a businessman travels overseas and is aware that both individuals and tour operators have been convicted of crimes for engaging in sex tourism, he may not try it "just this one time." Therefore, prosecuting sex tour operators would deter the individual who may otherwise try it only once or twice, as well as reduce the opportunities that more regular sex tourists have to sexually exploit children.

C. Whose Responsibility? The Prosecution of Sex Tour Operators as a Duty of Sending Countries

As globalization has changed the face of prostitution and the sex trade industry, the responsibility for eliminating the sexual exploitation of children lies not only with countries where these abuses of children take place, but with all countries.

In trying to eliminate the sexual exploitation of children, developing countries certainly must accept a significant share of the burden of eliminating sex tourism and the incidence of sexual exploitation of children. For many years, some developing countries have tolerated a growing sex trade and have not done as much as they could have to eliminate sexual exploitation of children. In Southeast Asia, for example, the tourism boom of the 1970s and 1980s was built in part upon suggestions as to the availability of sex.¹⁰¹ A report by the Institute of Population and Social Research at Mahidol University in Bangkok notes:

[T]he influence of foreign tourists on the sex industry does not stem from the numbers who frequent prostitutes. Instead, the influence derives from the perception of policy makers and politicians that commercial sex is a major factor in bringing tourists to Thailand and therefore the sex industry should be, at a minimum, ignored and, in some cases supported, but not banned . . . [t]his desire to see the sex industry flourish in order to encourage the inflows of

¹⁰⁰ See Mann Act § 2423(b). See *supra* note 58 and accompanying text.

¹⁰¹ See Wathinee Boonchalaksi & Philip Guest, *Prostitution in Thailand, in THE SEX SECTOR*, *supra* note 13, at 130.

foreign exchange that help explain the government's supportive attitude towards the entire sex industry.¹⁰²

This permissive attitude extended not only to the national government, but also to local governing officials and local police, making it more difficult to address the problem.¹⁰³ Developing countries must tackle this problem by adopting tougher laws on child prostitution and more strictly enforcing these laws. Some countries have taken steps in this direction. In 1996, Thailand adopted new legislation regulating prostitution and the trafficking of women and children. The new Thai laws impose tougher penalties on brothel owners and their customers, revising a law that previously targeted the prostitute for punishment.¹⁰⁴

In addition, developing countries must take appropriate social measures to protect and assist these children, and to provide other opportunities for children so that they do not fall prey to the sex industry. NGO's and government agencies have done considerable work in this area. For example, the Daughters Education Programme ("DEP"), located in the northernmost part of Thailand, aims to address the problem of young girls being sold into prostitution. DEP examines how Thais view the value of their daughters and provides education and vocational skills to village girls to increase their employment prospects and, ultimately, their status.¹⁰⁵ Similar programs are needed in Thailand and elsewhere, so that families and children have alternatives to pursue to support themselves and their communities.

It would be a mistake, however, for industrialized nations to assume that the entire burden lies with the developing world. The United States and other Western governments can take steps to reduce the supply of sex tourists. In fact, as major sending countries, the United States and other Western countries have a duty to help address this problem, since their citizens contribute to it. Western nations can help to eliminate the demand for child prostitutes, as well as provide assistance to developing countries in their efforts to provide social, educational, and economic programs for children. Prosecuting sex tour operators is an important step that the United States can take to help reduce the demand for child prostitutes.

D. The Limitations of Prosecuting Sex Tour Operators

Finally, while prosecuting sex tour operators is an important step in the fight against sexual exploitation of children, it is a remedy with certain limitations. Sex tourism constitutes only one aspect of the sexual exploitation of children. It is one form of the two primary areas of sexual exploitation of children: child prostitution and child pornography.¹⁰⁶

¹⁰² *Id.* at 137.

¹⁰³ *See id.*

¹⁰⁴ *See* Thai Prostitution Prevention and Suppression Act of B.E. 2539 (1996).

¹⁰⁵ *See* KANE, *supra* note 3, at 122.

¹⁰⁶ Child pornography is also a growing problem, worsened by the increase in child pornography on the Internet. *See* ECPAT, *Child Pornography on the Internet* (visited Oct. 7, 1999) <<http://www.ecpat.net/NewsletA/coversto.html>>.

In addition, sex tourists on organized tours do not necessarily form the majority of customers for child prostitutes. Clients of prostituted children come from a range of groups, including: "paedophiles, preferential child sex abusers or regular situational customers, local prostitute users, tourists, travelling businessmen, migrant foreign workers, military personnel, and public workers in isolated places."¹⁰⁷ The majority of child sex abusers, however, are not pedophiles.¹⁰⁸ Two groups, in particular, add to the significant demand for child prostitution: domestic clients and sex tourists not on organized tours. In some countries, the domestic market provides most of the demand for prostitutes. This may be a result of cultural practices or traditional views of male dominance.¹⁰⁹ For example, Thailand's significant domestic market results in part from the societal view "that men are sexual predators, and that their sexual appetite must be satisfied if the virtue of 'good' women is to be protected."¹¹⁰ Whatever the underlying causes, the fact remains that in some countries, domestic clients' demand for prostitutes is greater than demand created by sex tourists. In Thailand, for example, 4.6 million Thai men routinely use prostituted women and children, whereas the number of foreign tourists visiting prostitutes in Thailand is 500,000 each year.¹¹¹

Additional demand for child prostitutes comes from tourists who are not on organized tours. ECPAT's Ron O'Grady describes these "casual sexual experimenters" as often being individuals who "live quite unremarkable lives in their home country but the further they venture from their home the less they feel bound by the moral restraints of their own society. Travelers have often shown the tendency to do in Bangkok or Manila things they would not even contemplate in their home town."¹¹² These individuals may travel to Bangkok or Manila on legitimate business or a vacation, and then simply decide to experiment. Still, regardless of whether tourists are on organized sex tours, sex tourism undoubtedly creates a significant demand for prostituted children. Therefore, the prosecution of

¹⁰⁷ *Promotion and Protection of the Rights of Children: Interim Report by the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography*, U.N. GAOR, 51st Sess., Agenda Item 106, at 5, U.N. Doc. A/51/456 (1996).

¹⁰⁸ See Carol Smolenski, *The Commercial Sexual Exploitation of Children: How to Fight Back*, CATHOLIC WOMAN, Sept./Oct. 1998, at 4.

¹⁰⁹ The problem of sexual exploitation of children is unquestionably deep-seated and complex. It has its roots in many factors, including cultural practices, the traditional patriarchal views of some societies, as well as poverty and other social conditions of hardship. Cultural differences may also determine which group is most at risk in a particular country or region. For example, boys account for 90% of child prostitutes in Sri Lanka, while girls account for 90% of child prostitutes in Thailand. See Cohen, *supra* note 1, at 42. Still, the legal system has an important role to play.

¹¹⁰ Boonchalaski & Guest, *supra*, note 101, at 133.

¹¹¹ See Coalition Against Trafficking in Women, *Trafficking in Women and Prostitution in the Asia Pacific: Fact Sheet* (visited Apr. 20, 1999) <<http://www.uri.edu/artsci/wms/hughes/catw/apmap.htm>>.

¹¹² O'GRADY, *supra* note 3, at 81-82.

sex tour operators is an important element in the fight against the sexual exploitation of children.

One final limitation relates to attitudes and cultural practices. The sexual exploitation of children—whether sex tourism, child pornography on the Internet, or any other practice—will not be eliminated simply by government efforts to punish those individuals who prey on and exploit children. Instead, the solution requires a change in attitudes. The prosecution of sex tour operators will create greater awareness of the problem and help to shape new attitudes, but there must also be a concerted effort to address attitudes and practices that permit such abuses of children.

V. CONCLUSION

Despite the above limitations, the prosecution of sex tour operators remains an important step in the effort to reduce sexual exploitation of children globally. It is not only an important step, but a logical next step. First, sending countries such as the United States contribute to this problem of sexual exploitation most directly through the sex tourism industry. Thus, the United States has a duty to take steps to prevent these abuses of children. Second, this Article demonstrates that the United States, or various individual states, have the tools to shut down sex tour operators now. New legislation is not needed in order to crack down on sex tour operators. Both the Mann Act and relevant state law already criminalize the actions of sex tour operators. Although sexual exploitation of children in Southeast Asia, Africa, or Latin America, may seem far removed, both federal and state prosecutors have the means to address this problem. They must act now to help put an end to the sexual exploitation of children and to prevent sex tour operators from profiting from these human rights abuses of children.

