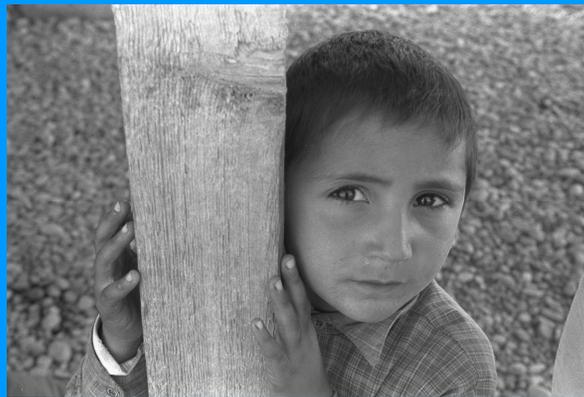


# Preventing Child Sex Tourism: Legal Responses and Private Sector/Community Partnerships



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# Innocenti Literature Review and Preliminary Research

- Broad overview of International, Regional and National Legislation.
- Specific Sex-tourism related measures.
- General provisions on Extra-territoriality.
- Other Laws and Policies that can be used to combat sexual exploitation of children in travel and tourism (SECTT).
- Cooperation Models.
- Illustrative examples / case studies.

# Definitions of SECTT ?

UNICEF : Sexual Exploitation of Children in Travel and Tourism.

Child Sex Tourism ? A descriptive term to name a phenomena, but no relation to criminal law.

Difficulties in terminology and definition reflect wider conceptual difficulties when framing responses to the phenomena.

# **International Standards: The Convention on the Rights of the Child and its Optional Protocols**

- **The Convention on the Right of the Child (1989), and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).**
- **The fundamental protection of children against commercial sexual exploitation is addressed in the Convention on the Rights of the Child in Articles 34, 35, 36 and 19. The CRC commits states parties to undertake all appropriate measures to ensure that children are protected from sexual exploitation and abuse, including prostitution and pornography**

**Article 34 recognizes the cross-border aspects, which sexual exploitation of children can comprehend, and obviously does in the case of SECTT. It requires governments not only to take national but also bilateral and multilateral measures.**

## International Standards: The Convention on the Rights of the Child and its Optional Protocols

- **The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).**

The term “sex tourism” is not accurately defined in the document but is associated with the term “child prostitution” (“Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration”).

Article 3 requires states parties to the Protocol to ensure that their domestic legislation allows the prosecution of their nationals for crimes of child sexual exploitation regardless of whether they were committed domestically or internationally. States are recommended to criminalize the act of “Offering, obtaining, procuring or providing a child for child prostitution”

Article 5, paragraph 2, however enables states to use the Optional Protocol as a “legal basis for extradition”, that is to say as an extradition treaty between two state parties.

# International Standards: The Convention on the Rights of the Child and its Optional Protocols

## Issues:

- The CRC and Protocol – which have been widely supported by both developing and developed countries – do at least represent a broad statement of support for the principle of international cooperation in the fight against child sexual exploitation.
- The Optional Protocol does not mention a special definition of an “age of consent” that could help to harmonize legislation toward combating SECTT.
- It remains unlikely that most courts and legislatures will be willing to move beyond the existing legal framework, and reliance upon treaties between states, for extradition, despite the provisions of Article 5.
- ‘Child Sex Tourism’ / SECTT is not defined as a specific, discrete criminal offence or phenomena although its existence is referred to.

# Other International Instruments and Conventions

**The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)**

**The International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999)**

**The UN Convention on the Elimination of all Forms of Discrimination against Women (1979)**

- Do not mention sex tourism specifically, but do serve to enhance the wider legal framework in which states address the phenomena.

# Non-Binding International Agreements and Declarations

## The UNWTO Statement against organized sex tourism (1995)

*"organized sex tourism" is defined as "trips organized from 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 tourist with residents at the destination".*

In this Statement the UNWTO explicitly *"denounces and condemns in particular child sex tourism, considering it a violation of Article 34 of the Convention on the Rights of the Child and requiring strict legal action by tourist sending and receiving countries".*

# **Non-Binding International Agreements and Declarations**

## **The Stockholm Agenda for Action (1996) and the Yokohama Global Commitment (2001)**

**SECTT / Child Sex Tourism not defined as such: Commercial sexual exploitation of children was defined as comprising in relation to a child sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons**

**Yokohama Global Commitment”, calling for “action to criminalize the commercial sexual exploitation of children in all its forms and in accordance with the relevant international instruments, while not criminalizing or penalizing the child victim.”**

# Non-Binding International Agreements and Declarations

Challenges: The UNWTO declaration, the Stockholm Agenda for Action and the Yokohama Global Commitment are non binding and regarded as 'soft law'.

Monitoring of implementation has varied greatly from region to region.

The World Congress III in Brazil offers an opportunity to review and renew efforts, especially in light of recent regional legal agreements on child sexual exploitation.

# International Standards: Regional Treaties and Policy Commitments in Europe

The European Union (EU) and The Council of Europe (CoE) represent a unique body of law and policy that facilitate cooperation and legal harmonization between member states on an unprecedented level. Additionally, the Organisation for Security and Cooperation in Europe provides a platform for states to agree upon politically powerful (though non-binding) statements of commitment in areas including criminal law and children's rights.

## **International Standards: Regional Treaties and Policy Commitments in Europe**

**The European Parliament's resolutions on combating child sex tourism (1997 and 2000) and the EU Council Framework Decision (2004) on combating the sexual exploitation of children and child pornography.**

**Resolutions of the European Parliament are non-binding, however, they represent a strong statement of collective political will and common agreement by the 27 member states of the EU as represented by the parliament.**

# International Standards: Regional Treaties and Policy Commitments in Europe

Additionally, from the EU:

- Commission Communications (1996 and 1999)
- 2006, the Communication “Towards an EU Strategy on the Rights of the Child”
- The European Parliament:

The resolution from November, 6th 1997

The resolution from March, 30th 2000

# International Standards: Regional Treaties and Policy Commitments in Europe

2003, the **European Council** adopted a framework decision on combating the sexual exploitation of children and child pornography.

- Introduces common European provisions to address certain issues such as the creation of offences, penalties and aggravating circumstances .
- The beginning of the move towards the use of extraterritoriality provisions to punish sexual abuse of children committed by EU nationals abroad.
- Deadline for adaptation of national legislation was January 2006. Many states have fully complied, but some states still face considerable difficulty in adapting their legislation and criminal codes.

# International Standards: Regional Treaties and Policy Commitments in Europe

Council of Europe

2 Recommendations from the Council of Ministers (1991 and 2001).

**Parliamentary Assembly** enacted Resolution 1099 on the sexual exploitation of children in 1996 which recommends member states, to take action against sex tourism.

*“The Assembly also calls on member states to work in close co-operation with countries whose children and young people suffer sexual exploitation by nationals of the member states in order to combat sex tourism abroad.”*

# **International Standards: Regional Treaties and Policy Commitments in Europe**

## **The Council Of Europe Convention On The Protection Of Children Against Sexual Exploitation And Sexual Abuse**

- **Opened for Signatures in Lanzarote, October 2007.**
- **Harmonization / common definitions of offences of abuse and exploitation.**
- **Major advances in the fields of extraterritorial prosecution of offences and Corporate Liability.**

# National Legislation

The implementation of Extraterritorial Jurisdiction

- Complex and often highly political area of law.
- Many different regimes applied in different countries / jurisdictions.
- Growing move towards the application of extraterritorial jurisdiction in cases of child sexual exploitation but progress is slow.

# Extraterritorial Jurisdiction

The *Personality Principle* is the main principle through which the state establishes its right to exercise extraterritorial jurisdiction: The state has a clear interest in exercising jurisdiction in the interest of victims that are its nationals – known as passive personality – or in ensuring that nationals who commit offences abroad are prosecuted (active personality.).

A state may also claim the Protective Principle – that it is enforcing extraterritorial actions to protect its own interests and the interests of its citizens.

Universal jurisdiction - whereby a state does not need to demonstrate a connection – through the personality principle – with the offences committed - is reserved for a limited number of serious offences in international law.

Almost all cases related to the sexual exploitation of children in tourism and travel, states will be relying upon the Active Personality Principle

# Extraterritorial Jurisdiction

Challenges:

Double Criminality and the age of consent

- Age of consent often differs for heterosexual and homosexual acts.
- Age of consent often defined differently.
- Sometimes differs for boys and girls.
- Great variation (i.e. Japan, 18, and Spain, 13).

# Extraterritorial Jurisdiction

Further conditions and challenges:

Double Jeopardy

Complaint requirements

Choice of Court and Choice of Law.

# Child Sex Tourism: Three broad categories of approach

- Application of a general principle of extraterritoriality to offences committed by their citizens abroad. (Japan, Switzerland)
- Facilitate the prosecution of child sex abuse by nationals of the state abroad, through amendments to the procedural and evidential requirements for pursuing such cases. (France, Belgium, Germany)
- Specific legislation to combat and prosecute the abuse of children abroad by their nationals. (UK, USA, Australia).

# Destination Countries:

Strengthening of domestic legislation on child sexual exploitation and abuse (Brazil, Thailand, Philippines)

Cooperation with 'States of Origin'

Strong NGO role in awareness raising, victim assistance and lobbying and advocacy.

# Challenges and Questions

- Child Sex Tourism or Sexual Abuse of Children ?
- Enhancing the overall Protective environment for children as means of combating SECTT ?
- Impact of the Stockholm Agenda ?
- Prosecution and Protection ?
- Victim Assistance and support to Civil Cause of Action on behalf of Children ?