

## THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN A REVIEW OF INTERNATIONAL LEGAL RESPONSES

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*Our children are our most treasured asset. They are not ours to be used and abused, but to be loved and nurtured. Their well-being is ultimately the well-being of an entire nation...Commercial and other forms of sexual exploitation, is one of the most disturbing forms of child abuse. It is not limited by race, ethnicity or economic boundaries.*

*President Nelson Mandela<sup>1</sup>*

### INTRODUCTION

The commercial sexual exploitation of children (“CSEC”) may be broadly defined as the “use of a child for sexual purposes in exchange for cash or in-kind favours between customer, intermediary or agent and others who profit” from such trade.<sup>2</sup> The CSEC shares many characteristics with legitimate industry. For example, marketeers, strategic planners and hierarchies of profit-takers are all involved in selling “the product” and protecting and promoting “good business”.<sup>3</sup> Although CSEC itself is not a new phenomenon the extent of the problem certainly is.<sup>4</sup> Research

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<sup>1</sup> Message to the World Congress Against Commercial Sexual Exploitation of Children, Stockholm, 27-31 August 1996 (“Stockholm World Congress”), delivered by Geraldine Fraser-Moleketi, Minister of Welfare and Population Development South Africa at [http://www.oneworld.org/news/partner\\_news/aug96\\_children\\_mandela.html](http://www.oneworld.org/news/partner_news/aug96_children_mandela.html). All the websites referred to in this article were visited in September/ October 1999.

<sup>2</sup> Belsey M, “Health and psychosocial dimensions”, paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2152.htm>.

<sup>3</sup> “Children as Commodities”, Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/218e.htm>.

<sup>4</sup> Guidelines by the Sub-Group on Sexual Exploitation of Children of the NGO Group for the Convention on the Rights of the Child, United Nations Mechanisms for use by National NGOs in the Combat against the Sexual Exploitation of Children at <http://www.crin.org/iasc/ngose.htm>. The NGO Group for the Convention on the Rights of the Child is a coalition of international non-governmental organisations (presently composed of 41 organisations) that work together to facilitate the implementation of the United Nations Convention on the Rights of the Child (“UNCRC”). See further NGO Group for the Convention on the Rights of the Child, Child Rights Information Network (“CRIN”) Organisation Leaflet at <http://www.crin.org/fullweb.nsf/b54d47...36f9259a4802565c300366b0c>.

indicates that CSEC is expanding worldwide.<sup>5</sup> It is now clearly evident that the CSEC is not a phenomenon restricted to certain countries or regions, it is a global problem. Every year millions of children throughout the world are deceived and coerced into various forms of commercial sexual exploitation, including prostitution, pornography and trafficking and sale for sexual purposes.<sup>6</sup>

The CSEC is one of the most complex and profound problems that currently confronts the international community. Despite international recognition of the problem for some time, and implementation of legal measures directed at protecting children from such exploitation, the problem continues to escalate.<sup>7</sup> Advances in communications and technology, the burgeoning of consumerism and sex tourism, and the spread of HIV and AIDS have in particular provided new fertile ground for the growth of CSEC throughout the world.<sup>8</sup>

The transnational character of CSEC is increasingly becoming apparent as more children every year are sold and trafficked across national borders and sex markets.<sup>9</sup> The global dimension to this problem is acutely evident and requires the urgent and continued attention of international law. The international community must take greater responsibility for the development of integrated strategies aimed at reducing the vulnerability of children to commercial sexual exploitation and ensure that effective modes of legal protection and law enforcement are implemented globally. International law must firmly drive national initiatives and law reform aimed against the CSEC. Global cooperation and mobilisation on a large scale are essential to successfully combat the CSEC.

This article examines the nature and scope of CSEC and demonstrates that the problem has clearly developed a transnational and global character. Accordingly, international legal responses to this problem are reviewed. The paper argues that there is a need for more international law that directly addresses specific aspects of CSEC. In particular, international law

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<sup>5</sup> "World Congress", Fact Sheet prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/21 ae.htm>.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Muntarhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>9</sup> "Overview", Fact Sheet prepared for the Stockholm World Congress at <http://193.135.156.14/web pub/csechome/21 ae.htm>.

must provide clear definitions and legal standards that nation states can adopt and implement. International law must also explicitly address the transnational character of CSEC and must ensure that any requisite legal frameworks required to support international cooperation and mobilisation are effectuated. In conclusion, directions for the future development of international legal interventions and strategies are briefly discussed.

## DEFINING COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

### *The Inherent Difficulties in Defining CSEC*

It is difficult to provide a precise definition of CSEC because of its multifarious nature. This phenomenon is undeniably “complex and can take many forms”<sup>10</sup> from child labourers and young domestic workers being used for the sexual gratification of an employer or other adults, to children being used as attractions in sex tourism, and children who are sexually exploited within the context of cultural or traditional practices such as child marriages.<sup>11</sup> Abhorrent practices such as rape, murder, abduction, bribery, false marriage, illegal adoption, illegal immigration, bonded labour, extortion and mail-order brides, often characterise CSEC.<sup>12</sup>

The commercial aspects of the sexual exploitation of children can be difficult to define and distinguish from other forms of child sexual abuse. Studies have consistently demonstrated a relationship between CSEC and child sexual abuse more generally.<sup>13</sup> It is clear that CSEC and other types of child sexual abuse share a multitude of common causes.<sup>14</sup> The underlying causes of CSEC are numerous and “encompass a wide range of conditions and pernicious practices inimical to the child’s interests.”<sup>15</sup> These may include economic inequalities, consumerism, homelessness,

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<sup>10</sup> Ibid.

<sup>11</sup> Refer Guidelines by the Sub-Group on Sexual Exploitation of Children of the NGO Group for the Convention on the Rights of the Child, note 4 above.

<sup>12</sup> Muntarhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>13</sup> Sackstein H, Coordinator of the Support Group Focal Point Programme, Bridging the gap between reality on the ground and international action at <http://www.crin.org/fullweb.nsf/b54d47...9ab08f212802565ec003c9bfd>.

<sup>14</sup> Ibid.

<sup>15</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f2oo54534e>.

gender discrimination, domestic violence, family disintegration, lack of support structures, substance abuse, lack of education, urban-rural migration, cross border migration, irresponsible male sexual behaviour, the presence of armed conflict and military bases, corruption, and a fundamental breakdown of human values and morals.<sup>16</sup> Each situation of commercial sexual exploitation involving a child will usually implicate a complex interaction of different causes that vary not only from one country to another but also within a country itself.<sup>17</sup>

Certain characteristics that typify activities driving the CSEC produce further difficulties in defining the phenomenon and prevent a clear understanding of the problem. For example, the invisibility of CSEC is a major barrier to a thorough understanding of the nature and scope of the problem. Children who are drawn into the net of commercial sexual exploitation are mostly hidden from society at large and from “public scrutiny, either physically...or under the guise of being of age, through the falsification of identification papers.”<sup>18</sup> The invisible nature of CSEC precipitates a need for frequent changes in the location of operations. As a result, CSEC has developed a strong transnational character.<sup>19</sup>

Furthermore, as CSEC takes on more of a global character, the lines are increasingly being blurred between those countries traditionally recognised as supply countries and those recognised as demand countries. The result is a global epidemic both in the supply and demand for children for the purposes of sexual exploitation.<sup>20</sup> As a result of the high profitability of CSEC, trade is often conducted by “international profiteers who use systematic methods of recruitment within a highly organised syndicated network.”<sup>21</sup> The covert nature of the activity means that a precise understanding of the phenomena is difficult to obtain.<sup>22</sup>

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<sup>16</sup> Muntarhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>17</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f2oo54534e>.

<sup>18</sup> Keynote speech given by Calcetas-Santos O, United Nations Special Rapporteur at the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22f6.htm>.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> “Overview”, Fact Sheet prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2176.htm>.

### *International Definitions of the "Child"*

The difficulties in defining CSEC as underlined above are further "compounded by varying definitions of childhood and adolescence, and their application in different cultural, social, religious and legal contexts in different countries."<sup>23</sup>

Article 1 of the United Nations Convention on the Rights of the Child ("UNCRC")<sup>24</sup> defines a child as a person "below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." In some states the threshold age for protection of a child in circumstances of sexual exploitation is determined by the age of consent.<sup>25</sup> However, the issue of consent is irrelevant as far as the CSEC is concerned as "[t]here is and can be no issue of choice, free will or self-determination in a situation of sexual exploitation, precisely because sexual exploitation is a suppression of choice, eradication of free will and decimation of self determination."<sup>26</sup>

When the age of consent is lower than 18, as it is in numerous countries,<sup>27</sup> a serious barrier arises to the full implementation of the UNCRC.<sup>28</sup> This stems in part from a basic confusion between the concepts of sexual relation and sexual exploitation, and also from the inherent ambiguity of the Convention regarding the definition of the child.<sup>29</sup> However, Article 3 of the Convention clearly states that "the best interests of the child" should at all times be a primary consideration. This means that international law must adopt the best interests of the child as an underlying principle in addressing all aspects relevant to the CSEC.

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<sup>23</sup> Belsey M, "Health and psychosocial dimensions", paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2152.htm>.

<sup>24</sup> For further discussion on the UNCRC see 119-121 below.

<sup>25</sup> Muntarbhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>26</sup> *Ibid.*

<sup>27</sup> See generally the Reports of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Commission on Human Rights at <http://www.uncchr.ch/html/menu2/isschild.htm>.

<sup>28</sup> United Nations High Commissioner for Human Rights, General Assembly, Document A/49/478.

<sup>29</sup> *Ibid.*

Clearly then, international law needs to adopt a clear and unambiguous definition of “child” before it can satisfactorily define CSEC and address the phenomenon at any level. In doing so the best interests of the child must be paramount. It is submitted therefore that all international laws dealing with any aspect of CSEC should define a ‘child’ as any person under the age of 18. This definition has recently been adopted by the International Labour Office (“ILO”) in the Worst Forms of Child Labour Convention 1999 (“WFCLC”).<sup>30</sup> This Convention has been championed as a “decisive step towards liberating scores of millions of children from [commercial sexual exploitation]”.<sup>31</sup> Article 2 of the Convention states that “the term child shall apply to all persons under the age of 18.” This unambiguous statement “regarding the age for protection...will undoubtedly enhance action against sexual abuse and exploitation of children and youth” at both the international and national level.<sup>32</sup>

### *International Attempts to Define CSEC*

The CSEC may, at its most fundamental level, be defined as the “exploitation, for sexual purposes, and for financial or in kind profit, of children”.<sup>33</sup> CSEC is “an extremely hazardous form of child labour, an abuse of power over children and a way to dominate them.”<sup>34</sup> It is the most “savagely and disgusting category of crime.”<sup>35</sup> Ofelia Calcetas-Santos, the incumbent United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography,<sup>36</sup> has described CSEC as:<sup>37</sup>

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<sup>30</sup> For further discussion of the WFCLC see 122-123 below.

<sup>31</sup> International Labour Organisation, The Work of the ILO regarding the Issue of Child Pornography, paper presented at the International Conference on Combating Child Pornography on the Internet, Vienna, 29 September-1 October 1999 at <http://www.stop-childpornog.at/ilo.asp>.

<sup>32</sup> NGO Group for the Convention on the Rights of the Child, Focal Point on Sexual Exploitation of Children, Issue No 3, August 1999.

<sup>33</sup> “Overview”, Fact Sheet prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2176.htm>.

<sup>34</sup> *Ibid.*

<sup>35</sup> Opening Statement given by Persson G, Prime Minister of Sweden at the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22c3.htm>.

<sup>36</sup> The United Nations Commission on Human Rights created this post in 1990. The first Special Rapporteur, Professor Vitit Muntarbhorn was appointed in 1991. Following his resignation, Ms Ofelia Calcetas-Santos was appointed in January 1995. The Special Rapporteur’s main function is to serve as the United Nations focal point for government and international NGOs and individuals, report problem areas and recommend solutions.

<sup>37</sup> Keynote speech given by Calcetas-Santos O, United Nations Special Rapporteur at the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22f6.htm>.

an assault on children on all fronts. It is considered to be a form of forced labour, yet it is worse than most forms of forced labour. It is considered a kind of slavery, yet it is worse than most forms of slavery. It is totally vile and is the most contemptible violation of human rights imaginable.

These same sentiments are also clearly echoed in the Declaration of the World Congress Against Commercial Sexual Exploitation of Children,<sup>38</sup> which defines the CSEC as:<sup>39</sup>

a fundamental violation of children's rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery.

Article 4 of the Declaration of Human Rights 1948 states that "no one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all its forms". Under Article 5 "no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." Clearly CSEC is a violation of such fundamental human rights.

The UNCRC identifies three primary elements of CSEC, namely:

1. child prostitution;<sup>40</sup>
2. child pornography;<sup>41</sup> and
3. the sale and trafficking of children for sexual purposes.<sup>42</sup>

These elements are *prima facie* distinct and separate. However in reality, they are inextricably linked and intertwined with one another.<sup>43</sup> An

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<sup>38</sup> For further discussion of the World Congress Against Commercial Sexual Exploitation of Children see 123-124 below.

<sup>39</sup> Para 5 of the Declaration and Agenda for Action, Stockholm World Congress Against Commercial Sexual Exploitation of Children at <http://193.135.156.14/webpub/csechome/22e.htm>.

<sup>40</sup> Article 34(b).

<sup>41</sup> Ibid.

<sup>42</sup> Article 35.

<sup>43</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www>.

examination of various international instruments sheds further light on the definition and nature of these three pivotal elements of CSEC.

### 1. Child Prostitution

Children may be lured into prostitution for a variety of reasons, as a way to survive, help support families or to pay for clothes and goods. Drug addiction has also been implicated in child prostitution.<sup>44</sup> Children in communities where economic prospects or opportunities are bleak are most at risk of being coerced into prostitution.<sup>45</sup> Child prostitution has been “likened to torture in terms of the trauma caused to children and is one of the greatest infringements of their rights.”<sup>46</sup>

Currently, there is no recognised legal definition of “child prostitution” in international law. Black’s Law Dictionary<sup>47</sup> defines “prostitution” as:

an act of performing, or offering or agreeing to perform a sexual act for hire. Engaging in or agreeing or offering to engage in sexual conduct with another person under the fee arrangement with that person or any other person.

Professor Vitit Muntarbhorn, the first Special Rapporteur for the Sale of Children, Child Prostitution and Child Pornography defined “child prostitution” as:<sup>48</sup>

the sexual exploitation of a child for remuneration in cash or kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc...).

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[unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438](http://unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438).

<sup>44</sup> “Backgrounder 1: Prostitution of Children”, Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2262.htm>.

<sup>45</sup> Ibid.

<sup>46</sup> Calcetas-Santos O, Provisional Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/50/456, 20 September 1995 at <http://www.unchr.ch/Huridocda/Huridoc...9be18883f80256719005e5661>.

<sup>47</sup> Nolan JR and ors (eds), Black’s Law Dictionary (1990, West Publishing Co, St Paul, Minnesota).

<sup>48</sup> United Nations High Commissioner for Human Rights, General Assembly, Document A/49/478.

More recently, Ms Ofelia Calcetas-Santos defined “child prostitution” as:<sup>49</sup>

the act of engaging or offering services of a child to perform sexual acts for money or other consideration with that person or any other person.

Under this definition child prostitution is not “committed” by the child itself, but by the person “engaging or offering the services of a child to perform sexual acts for money or other consideration with that person or any other person.”<sup>50</sup>

The UNCRC identifies child prostitution as a key element of CSEC but it does not advance a definition of child prostitution. The Draft Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography however attempts to redress this deficiency and defines “child prostitution” as:<sup>51</sup>

offering, obtaining or procuring the use of a child for sexual activities for remuneration or any other form of consideration.

If this Draft Protocol is adopted in its current form this definition of ‘child prostitution’ will constitute the first such formulation under international law. It is submitted that its focus on persons “offering, obtaining or procuring the use of a child” for sexual purposes, as opposed to the actions of the child itself, is entirely appropriate. Any definition of child prostitution adopted under international law should “avoid any blame or criminality falling on the child.”<sup>52</sup> However, the proposed definition in the draft protocol is too restrictive. The definition should be “inclusive rather than exhaustive” and should be “sufficiently broad to cover not just acts of

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<sup>49</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>50</sup> Ibid.

<sup>51</sup> Commission on Human Rights, Fifty-fifth Session, Document E/CN.4/1999/74b at <http://www.unhchr.ch/Huridocda/Huridoca.n...9105c2a1a78680256754005314a1>. For further discussion of the Draft Protocol see 121-122 below.

<sup>52</sup> Australian Human Rights and Equal Opportunity Commission in Note by the Secretary-General on the working group on the elaboration of a draft optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council, E/CN.4/1999/WG.14/2, 26 November 1998 at <http://www.unchr/Huridocda/Huridoc...e27146ec780256704003c8302>.

[prostitution], but also [all] associated activities, such as promoting, advertising, facilitating, inducing and so on."<sup>53</sup>

## 2. Child Pornography

Until recently, child pornography had attracted substantially less international attention than child prostitution. However, recent advances in electronic technologies, in particular computer technologies and the advent of the Internet, have revolutionised the trade in child pornography.<sup>54</sup> There is now growing international awareness of the impact of modern technologies on the proliferation of child pornography worldwide. Child pornography has become a multi-billion dollar industry dominated by electronic images and modern forms of audio pornography.<sup>55</sup> Many of these materials are entirely computer-generated or computer manipulated. Traditional definitions of child pornography are too narrow to catch such modern forms of "cyber porn".

International attempts to define "child pornography" have not yielded a clear, unambiguous working definition nor have precise legal standards been established as to materials that should be classified as illicit.<sup>56</sup>

The World Congress Against Commercial Sexual Exploitation of Children described child pornography as the "sexually explicit reproduction of a child's image".<sup>57</sup>

Professor Vitit Muntarbhorn, the first Special Rapporteur defined "child pornography" in 1993 as:<sup>58</sup>

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<sup>53</sup> Ibid.

<sup>54</sup> See generally Shackel, "Regulation of child pornography in the electronic age: the role of international law" [1999] Macarthur Law Review (forthcoming).

<sup>55</sup> "Technology and the Media", Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/219e.htm>.

<sup>56</sup> See Shackel, "Regulation of child pornography in the electronic age: the role of international law" [1999] Macarthur Law Review (forthcoming).

<sup>57</sup> "Pornography", Background paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2186.htm>.

<sup>58</sup> See generally the Reports of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Commission on Human Rights at <http://www.uncchr.ch/html/menu2/isschild.htm>.

the visual or audio depiction of a child for the sexual gratification of the user and involves the production, distribution and use of such material.

However, more recent attempts to define child pornography at the international level have attempted to catch within their ambit electronic modes of production. Accordingly, computer generated and/or manipulated images are explicitly identified.<sup>59</sup>

Ms Ofelia Calcetas-Santos recently concluded that in light of:<sup>60</sup>

...recent developments where the telephone or other audio devices are also being widely used for pornographic messages involving children, there is now a need to distinguish visual from audio pornography.

She defined visual pornography as:<sup>61</sup>

the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the sexual gratification of the user, and involves the production, distribution and or/use of such material.

And she defined audio pornography as:<sup>62</sup>

the use of any audio devices using a child's voice, real or simulated, intended for sexual gratification of the user, and involves the production, distribution and/or use of such material.

Further, she emphasised that audio pornography should be distinguished from the use of audio devices to offer the sexual services of a child. The latter would be considered as solicitation and would accordingly fall within the ambit of prostitution and not pornography.<sup>63</sup>

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<sup>59</sup> Shackel, "Regulation of child pornography in the electronic age: the role of international law" [1999] *Macarthur Law Review* (forthcoming).

<sup>60</sup> Keynote speech given by Calcetas-Santos O, United Nations Special Rapporteur at the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22f6.htm>.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid* at para 25.

<sup>63</sup> *Ibid.*

Again the UNCRC fails to provide a definition of “child pornography”. However, its Draft Protocol defines “child pornography” as:<sup>64</sup>

any representation of a[n actual] child engaged in [real or simulated] explicit sexual activities [or any representation of the body or part of the body of a child, the dominant characteristic of which is depiction for sexual gratification].

Further, the working document of the draft convention on cybercrime includes in its definition of “child pornography” pornographic material that visually depicts:

- (a) a minor engaged in a sexually explicit conduct;
- (b) a person representing a minor engaged in a sexually explicit conduct;
- (c) [realistic] images representing a minor engaged in a sexually explicit conduct.<sup>65</sup>

The term “images representing” include entirely computer-generated and manipulated (morphed) images that do not represent a real situation.<sup>66</sup> The definitions of “child pornography” contained in the draft optional protocol to the UNCRC and the draft convention on cybercrime go a long way towards recognising the formidable impact of modern technology on child pornography. They explicitly address the emergence of pseudo-images in the child pornography market. However, both definitions fail to embody modern forms of audio child pornography as emphasised by the Special Rapporteur. Furthermore, the definition contained in the draft protocol to the UNCRC makes no real attempt to specify what constitutes sexually explicit materials. In contrast the draft convention on cybercrime appears to

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<sup>64</sup> Commission on Human Rights, Fifty-fifth Session, Document E/CN.4/1999/74b at <http://www.unhchr.ch/Huridocda/Huridoca.n...9105c2a1a78680256754005314a1>. For further discussion of the Draft protocol refer 121-122.

<sup>65</sup> Draft Article 3. Refer paper presented by Csonka P, Secretary to Committee PC-CY, Council of Europe, at the International Conference on Combating Child Pornography on the Internet, Vienna, 29 September-1 October 1999 at [http://www.stop-childpornog.at/pa\\_eu.html](http://www.stop-childpornog.at/pa_eu.html). The committee of experts on crime in cyberspace (PC-CY Council of Europe) has been working on the draft convention since April 1997. It is intended that the treaty will be open for signature by Council of Europe members and non-members.

<sup>66</sup> Gerding R, “Combating child pornography on the Internet – the role of the European Judicial Network”, paper presented at the International Conference on Combating Child Pornography on the Internet, Vienna, 29 September-1 October 1999 at [http://www.stop-childpornog.at/pa\\_gerding.html](http://www.stop-childpornog.at/pa_gerding.html).

address this issue. It is anticipated that the explanatory note to the final convention on cyber crime will specify that “sexually explicit conduct” covers at least actual or simulated:<sup>67</sup>

- (a) sexual intercourse, including genital-genital, oral-genital, anal-genital or anal-anal, between minors, or between an adult and a minor, of the same or opposite sex;
- (b) bestiality;
- (c) masturbation;
- (d) sadistic or masochistic abuse; or
- (d) lascivious exhibition of the genitals or the pubic area of a minor.

International law must adopt clear definitions of child pornography and provide a clear basis for determination of materials as illicit. The definition presented by the Special Rapporteur should as a minimum be adopted in all international law instruments. Furthermore, any definition of “child pornography” adopted under international law should be sufficiently broad to encompass associated activities such as assistance and incitement in the production and distribution of child pornography.<sup>68</sup>

### 3. Trafficking and Sale of Children for Sexual Purposes

Sexual trafficking of children is the profitable business of transporting children for commercial purposes. It can be across borders or within states, across state lines, from city to city, or from rural to urban. It can “be small-scale and informal, carried out by relatives or acquaintances, involving one sale and one move...or large scale and organised.”<sup>69</sup> The trafficking of children for sexual purposes is often “governed by syndicates that have the resources, contacts and expertise to coordinate the movement of human beings illegally and clandestinely across borders.”<sup>70</sup> Armies in certain countries with access to technology, clearances and means of transport and

<sup>67</sup> Refer paper presented by Csonka P, Secretary to Committee PC-CY, Council of Europe, at the International Conference on Combating Child Pornography on the Internet, Vienna, 29 September-1 October 1999 at [http://www.stop-child-pornog.at/pa\\_eu.html](http://www.stop-child-pornog.at/pa_eu.html).

<sup>68</sup> See the paper presented by AF de Saint Maur, Head of Trafficking in Human Beings Branch for Interpol, “The sexual abuse of children via the Internet: a new challenge” at the International Conference on Combating Child Pornography on the Internet, Vienna, 29 September-1 October 1999 at [http://www.stop-childpornog.at/pa\\_maur.html](http://www.stop-childpornog.at/pa_maur.html).

<sup>69</sup> “Backgrounder 3: Trafficking of Children”, Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/226a.htm>.

<sup>70</sup> Ibid.

resources have also been implicated in the trafficking of children for sexual purposes. Border police are also known to often enable abuse and to be actively involved in the sale and resale of children.<sup>71</sup>

Force, whether actually committed, threatened, or implicit in the abuse of authority or deception, is an important feature, though not a defining characteristic of trafficking.<sup>72</sup> The trafficking of a child “reduces that [child] to the level of a commercial commodity and is therefore inherently condemnable.”<sup>73</sup>

Despite the fact that the international community has recognised the trafficking of persons as a serious problem for most of this century, there is still no accepted definition of “trafficking in persons” under international law. Black’s Law Dictionary<sup>74</sup> defines “traffic” as:

commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. The subjects of transportation on a route, as persons or goods; the passing to and from of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, highways, etc...

Surprisingly, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others provides no concrete definition of “traffic in persons.”<sup>75</sup> The Preamble states that:

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<sup>71</sup> Ibid.

<sup>72</sup> Combating Traffic in Persons, Conclusions of the Conference on Traffic in Persons, 15-19 November 1994, Utrecht and Maastricht, Netherlands (Institute in Human Rights, Utrecht, 1995); Belsey M, “Health and psychosocial dimensions”, paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2152.htm>.

<sup>73</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>74</sup> Nolan JR and ors (eds), Black’s Law Dictionary (1990, West Publishing Co, St Paul, Minnesota).

<sup>75</sup> General Assembly Resolution 317(IV) of 2 December 1949; entered into force on 25 July 1951 at <http://www.unhchr.ch/html/menu3/b/33.htm>. For further discussion see 122 below.

[P]rostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human purpose...

Further, Article 1 defines “trafficker” as:

[a]ny person who, to gratify the passions of another...[p]rocures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person.

By adopting a restrictive and narrow meaning of “trafficking in persons” the convention seems to have equated “trafficking” with “prostitution”.<sup>76</sup> More recently it appears that trafficking has been expanded to refer not only to prostitution but also to a wider range of offences.<sup>77</sup> Hence, the General Assembly recently defined “trafficking of persons” as:

[the] illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment, and false adoption.<sup>78</sup>

Ms Calcetas-Santos has stated that the preferred definition of “trafficking of persons” is that suggested by the Transnational Training Seminar on Trafficking of Women, as it appears to be the most workable:

trafficking consists of all acts involved in the recruitment or transportation of persons within or across borders, involving deception, coercion or force, debt bondage or fraud, for the purpose of placing persons in situations of abuse or exploitation, such as forced

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<sup>76</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>77</sup> Calcetas-Santos O, Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, Commission on Human Rights, Document E/CN.4/1999/71, 29 January 1999 at <http://www.unchr.ch/Huridocda.n...a442b095774580256758003198>.

<sup>78</sup> General Assembly, Resolution 49/166.

prostitution, slavery-like practices, battering or extreme cruelty, sweatshop labour or exploitative domestic servitude.<sup>79</sup>

There is no international convention that specifically deals with trafficking of minors and particularly trafficking of children for sexual purposes. However “international traffic of minors” has been defined under the Inter-American Convention on International Traffic in Minors as:<sup>80</sup>

the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.

Unlawful purpose includes *inter alia* prostitution, sexual exploitation, servitude or any other purpose unlawful in either the state of the minor’s habitual residence or the state party where the minor is located. “Unlawful means” includes *inter alia* kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of parents or other persons who have control of the child.<sup>81</sup>

Clearly more international studies are required to determine the “modalities and intricacies of child trafficking.”<sup>82</sup> Our understanding of the dimensions of child trafficking has been slow to develop. At the very least it would appear that the trafficking of children involves some degree of involuntariness, through deceit, coercion or actual force, abuse of power or authority.<sup>83</sup> It remains unclear whether trafficking necessarily involves movement or transportation from one place to another, and if so, whether it has to be across borders.<sup>84</sup> These issues need to be addressed before the “trafficking of children” for sexual purposes can be satisfactorily defined.

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<sup>79</sup> Budapest 20-24 June 1998 in Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>79</sup> General Assembly, Resolution 49/166.

<sup>80</sup> Approved at the Fifth Inter-American Specialized Conference on Private International Law of the Organization of American States, Mexico City, 18 March 1994 in Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council, E/CN.4/1996/1000, 17 January 1996 at <http://www.unchr.ch/Huridocda/Huridoc...3d7ecc8d080256707004eb76f>.

<sup>81</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

International law also provides little guidance on the meaning of “sale of children” for sexual purposes. As far as the sale of children for sexual purposes is concerned children are sold largely for prostitution and pornography purposes. The sale of children for purposes of prostitution “must be distinguished from the act of prostitution itself or the act of solicitation or pimping” and “must be distinguished from the act of “renting out” the child for a specified period for the purpose of being utilized for either visual or audio pornography.”<sup>85</sup> The sale of children “reduces the child to an article of trade and grants the parents or any “seller” the power to dispose of him as if he were a chattel.”<sup>86</sup>

Black’s Law Dictionary<sup>87</sup> defines “sale” as:

a contract between two parties, called respectively, the ‘seller’ (or vendor) and the ‘buyer’ (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property.

As highlighted by Ofelia Calcetas-Santos:<sup>88</sup>

it is difficult to have a definition of “sale of children” since children are not, and should not be legally and/or morally, the objects of trade or commerce.

However, the fact that such sales actually take place demonstrates sufficiently the need for a definition.<sup>89</sup> The Special Rapporteur has defined the “sale of children” as:<sup>90</sup>

the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration.

This definition was adopted by the Special Rapporteur to exclude transactions that are strictly on a temporary basis such as when a child is

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Nolan JR and ors (eds), *Black’s Law Dictionary* (1990, West Publishing Co, St Paul, Minnesota).

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> First Report to General Assembly, A/50/456, Annex.

rented out, so as to obviate confusion as to whether the transaction constitutes sale or pimping.<sup>91</sup>

The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines the “sale of children” as:<sup>92</sup>

the transfer of a child from one party to another for whatever purposes in exchange for financial or other reward compensation.

The only real attempt to define the “sale of children” for sexual purposes under international law is found in the Draft Optional Protocol to the UNCRC, which states that:<sup>93</sup>

Sale of children means any act or transaction whereby a child [or any part of the body of a child] is transferred illicitly by any person to another for remuneration [with a view to the [sexual] exploitation of the child] [for any purpose or in any form].

This definition is useful, but must be expanded further to also include any associated activities such as advertising and enticement.

There is clearly a dearth in international law of concrete definitions relevant to the CSEC. This is problematic as it causes serious problems for the prosecution of such cases, in particular it is difficult to determine the nature of a particular transaction. For example where does the trafficking of children for sexual purposes begin and the sale of children for sexual purposes end. International law needs to provide a clear and workable definition of CSEC and its constituent elements namely, child prostitution, child pornography and trafficking and sale of children. Although there is considerable overlap between these three elements for the purpose of

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<sup>91</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>92</sup> Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council Resolution 608(XXI) of 30 April 1956, Geneva, 7 September 1956. Entered into force 30 April 1957.

<sup>93</sup> Calcetas-Santos O, Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, Commission on Human Rights, Document E/CN.4/1999/74, 25 March 1999, at <http://www.unchr.ch/Huridocda/Huridoc.n...9105c2a1a78680256754005314a1>.

definition under international law they should be treated as separate and distinct categories. Clear and unambiguous definitions under international law are required to assist nation states to address CSEC in a consistent and convergent manner.

### *The Child Sex Exploiters*

To understand the problem of CSEC more completely, some insight into the individuals who violate children is required. Unfortunately, a "wide range of individuals and groups at all levels of society contribute to the CSEC. This includes intermediaries, family members, the business sector, service providers, customers, community leaders and government officials, all of whom may contribute to the exploitation through indifference, ignorance of the harmful consequences suffered by children, or the perpetuation of attitudes and values that view children as economic commodities."<sup>94</sup>

People who have sex with children may be categorised into three broad groups: those who specifically choose to have sex with children; those who have sex with children but do not necessarily have a preference for doing so; and those who do not realise they are having sex with a child.<sup>95</sup> The majority of child sex exploiters are "prostitute users who become child sexual abusers through their prostitute use, rather than the other way around."<sup>96</sup> Child sex exploiters have been identified as being primarily paedophiles, tourists, migrant workers and military personnel.<sup>97</sup> One European aid organisation has reported that 25% of the victims of CSEC it assists are young girls sexually exploited while working for diplomats in domestic services.<sup>98</sup> However, in most countries, local users are the main group of child sex exploiters and the major source of demand for child prostitutes.<sup>99</sup>

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<sup>94</sup> See para 8 of the Declaration and Agenda for Action, Stockholm World Congress at <http://193.135.156.14/webpub/csechome/222.e.htm>.

<sup>95</sup> Davidson J, paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2166.htm>.

<sup>96</sup> *Ibid.*

<sup>97</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f2oo54534e>.

<sup>98</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document A/54/11, 29 September 1999 at <http://www.unchr.ch/Huridocda/Huridoc...fb1ba9a2680256818005861fe>.

<sup>99</sup> Davidson J, paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2166.htm>.

A study by Parker Rossman estimates there are over 500,000 paedophiles worldwide and they are particularly prolific users of child pornography.<sup>100</sup> In an American study by D Gene Abel, Professor of Psychiatry at Emory University of Medicine in the United States, found 403 paedophiles had exploited 67,000 children.<sup>101</sup> Following the death of an Australian man, Clarence Osborn, photographs, notes and tape recordings were found. He had documented 2,500 boys with whom he had sex.<sup>102</sup> It has been suggested that “special attention needs to be given to the matter of paedophilia because of consistent reports that the average paedophile abuses a far greater number of children than other clients.”<sup>103</sup> In addition, it is generally recognised that there is greater difficulty in rehabilitating paedophiles.<sup>104</sup>

It is apparent that individuals who sexually exploit children come from all walks of life. International responses to CSEC have predominantly focussed on the supply side of the problem, more now needs to be done in relation to the demand side. Sex exploiters, irrespective of who they are, must be countered and penalised.<sup>105</sup>

### *The Consequences of CSEC*

It is beyond the scope of this paper to address in detail the consequences of CSEC. However, it is useful to gain even a superficial understanding of the consequences of the phenomena before examining the ways in which international law can more effectively address the problem in the future.

CSEC “is an egregious violation of the child’s right to survival, development, protection and participation.”<sup>106</sup> The consequences of CSEC are devastating and “can result in serious, lifelong, even life threatening

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<sup>100</sup> See Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council, E/CN.4/1996/1000, 17 January 1996 at <http://www.unchr.ch/Huridocda/Huridoc...3d7ecc8d080256707004eb76f>.

<sup>101</sup> Ibid.

<sup>102</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f2oo54534e>.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Muntarbhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>106</sup> Ibid.

consequences for the physical, psychological, spiritual, moral and social development of children, including the threat of early pregnancy, maternal mortality, injury, retarded development, physical disabilities and sexually transmitted diseases, including HIV/AIDS. Their right to enjoy childhood and to lead a productive, rewarding and dignified life is seriously compromised.”<sup>107</sup> Even this very brief discussion clearly demonstrates that the consequences of CSEC are far reaching and require urgent and effective action by the international community. As the discussion below demonstrates the lives of millions of children worldwide are at risk as a consequence of the CSEC.

### SCOPE OF THE PROBLEM

It is difficult to define the precise scope and extent of CSEC due to its criminal nature and the power inherent in a multi-billion dollar sex trade grounded in covert and transnational operations.<sup>108</sup> The invisibility of CSEC is aided by the not infrequent complicity of local authorities and law enforcement agencies.<sup>109</sup> This means that persons who should be identifying and reporting the incidence of CSEC are instead often responsible for hiding the facts and facilitating its commission.<sup>110</sup>

Ofelia Calcetas-Santos has recently expressed great alarm at the magnitude of CSEC in all corners of the world.<sup>111</sup>

To say these developments have caused dismay, if not utter revulsion, in the international community would be an understatement. The sale, prostitution and pornography of children are not only a direct assault on the child's physical and mental well being and personal dignity and integrity but also a very poor investment for the future.

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<sup>107</sup> Para 9 of the Declaration and Agenda for Action, Stockholm World Congress Against Commercial Sexual Exploitation of Children para 5 at <http://193.135.156.14/webpub/csec/home/222e.htm>.

<sup>108</sup> “Scope of the problem”, Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/217a.htm>.

<sup>109</sup> “Overview”, Fact Sheet prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2176.htm>.

<sup>110</sup> *Ibid.*

<sup>111</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

It has been estimated that well over one million children every year are exploited in the sex trade.<sup>112</sup> Research also indicates that the age of the children involved in commercial sexual exploitation is decreasing<sup>113</sup> and the occurrence of increasingly horrendous practices of commercial sexual abuse against younger and younger children, including infants is expanding.<sup>114</sup>

A great deal of attention has in the past focussed on the trafficking of children in Asian cities where the problem has been recognised for some time already. However, "trafficking occurs everywhere and is constantly shifting and expanding its frontiers, depending on legislation, opening of new markets and other factors."<sup>115</sup>

Ranked by governments "as the third most serious illegal trade after drugs and weapons, trafficking of children is a multi-billion dollar industry."<sup>116</sup> Girls constitute the majority of victims, "aggravated by deep seated cultural attitudes that discriminate against women and the girl child."<sup>117</sup> In excess of one million girls and women worldwide are trafficked and sold into prostitution each year, it is estimated that at least 35 percent of these are children under 18.<sup>118</sup> However, there has recently also been a "palpable increase in the violation of young boys."<sup>119</sup> For example, sources estimate that there are as many as 15,000 boy prostitutes at one particular beach resort in Sri Lanka alone. The "boy sex tourism is an open industry on the beaches and it is alleged that children as young as eight are involved."<sup>120</sup>

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<sup>112</sup> "Overview", Fact Sheet prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2176.htm>.

<sup>113</sup> "Scope of the Problem", Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/217a.htm>.

<sup>114</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f2oo54534e>.

<sup>115</sup> "Backgrounder 3: Trafficking of Children", Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2186.htm..>

<sup>116</sup> Ibid.

<sup>117</sup> Muntarbhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>118</sup> "Backgrounder 3: Trafficking of Children", Theme paper prepared for the World Congress Against Commercial Sexual Exploitation of Children at <http://193.135.156.14/webpub/csechome/2186.htm>.

<sup>119</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>120</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child

The transnational nature of CSEC is attested to by the existence of child trafficking routes throughout the world. Five major international trafficking networks have been identified: Latin America to Europe and the Middle East; South East Asia to northern Europe and the Middle East; a European regional market; an Arab regional market; and exports of girls from West Africa.<sup>121</sup> The most lucrative child trafficking routes are from South East Asia to Japan and Hawaii *via* Hong Kong and from South East Asia (particularly India and Pakistan) to the Middle East. Reports from China indicate that more than 10,000 women and children are abducted and sold each year in Sichuan Province alone. Between 5,000 and 7,000 girls are reportedly trafficked from Nepal to India each year and are sold for around 15,000 rupees or about US\$383. Estimates also suggest that 10,000 Burmese women and girls are trafficked into Thailand annually.<sup>122</sup>

Child prostitution is also on the increase globally, netting an estimated five billion dollars annually.<sup>123</sup> Research suggests that child prostitutes service between 2 and 30 clients per week or 100-1,500 clients annually. The clients of children run into the millions.<sup>124</sup> The mean nightly rate for a child prostitute up to 15 years old varies from an average of US\$270 in the Philippines to as much as US\$530 in Moscow.<sup>125</sup> Boy prostitutes may earn as much as US\$800 a night in some major cities.<sup>126</sup>

In Asia it is estimated that over 1 million children are involved in the sex trade under conditions indistinguishable from slavery.<sup>127</sup> The Philippines

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Pornography, General Assembly Document A/54/11, 29 September 1999 at <http://www.unchr.ch/Huridocda/Huridoc...fb1ba9a2680256818005861fe>.

<sup>121</sup> "Trafficking Routes", Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/21a6.htm>.

<sup>122</sup> *Ibid.*

<sup>123</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>124</sup> Davidson J, paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2166.htm>.

<sup>125</sup> Rossuskaya Gazeta, 1 November 1996 in Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f2oo54534e>.

<sup>126</sup> *Ibid.*

<sup>127</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

alone may have as many as 100,000 child prostitutes.<sup>128</sup> A study conducted by the Centre for the Protection of Children's Rights estimated that a shocking 800,000 child prostitutes are working in Thailand alone.<sup>129</sup>

According to a United States Department of Health and Human Services Report 300,000 child prostitutes are working on the streets in the United States, many who have been found to be eleven and twelve years old and some as young as nine.<sup>130</sup> In Latin America and the Caribbean child prostitution is particularly prevalent. It is estimated that over 100,000 children in Brazil work as child prostitutes on the streets. In Colombia as many as 7,000 child prostitutes work in the capital and a third of all prostitutes have been identified as under 14 years. In the Dominican Republic over 25,000 child prostitutes are exploited annually by tourists. In Venezuela as many as 40,000 children may be involved in child prostitution.<sup>131</sup>

Although Asia and South America have been faced with huge problems of child prostitution in past decades, Eastern Europe is now emerging as an area of concern.<sup>132</sup> It is believed that as many as 340,000 children work as prostitutes in Moscow alone.<sup>133</sup> Certain parts of Africa and the Middle East that were previously unaffected are also now increasingly being affected by the child sex trade.<sup>134</sup> For example, it is estimated that over 70,000 children are forced to live and work on the streets as prostitutes in Zambia.<sup>135</sup>

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<sup>128</sup> "Regional Profiles", Background paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/226e.htm>.

<sup>129</sup> *Ibid.*

<sup>130</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>131</sup> "Regional Profiles", Background paper prepared for the for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/226e.htm>.

<sup>132</sup> Muntarhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>133</sup> Rossuskaya Gazeta, 1 November 1996 in Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council Document, E/CN.4/1997/95, 7 February 1997 at <http://www.unchr.ch/Huridocda/Huridoc...c572fe679802566f20054534e>.

<sup>134</sup> Muntarhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>135</sup> "Regional Profiles", Background paper prepared for the for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/226e.htm>.

It is impossible to determine precisely the number of children involved in pornography. Estimates of the number of children involved worldwide range from thousands to hundreds of thousands.<sup>136</sup> INTERPOL has cited Germany as a major producer of child pornography, the Netherlands and the United Kingdom as distribution centres and the United States as the largest market, with an annual turnover of US\$1 billion in 1980.<sup>137</sup> The introduction of new national laws in the eighties however has seemingly shifted much of the industry to South East Asia.<sup>138</sup> Recent advances in computer technology and the advent of the Internet in particular, have opened the industry up to a global market. A recent study of 50,000 pictures extracted from the Internet showed over 2,000 children engaged in sexually explicit acts. According to INTERPOL, US studies in 1995 revealed one million on-line pornographic images involving children.<sup>139</sup> Some of these sites received several thousand hits each day.<sup>140</sup>

These statistics demonstrate that the CSEC is a serious and widespread problem. Given the invisibility and covert nature of CSEC it is likely that these figures represent merely the tip of the iceberg. Clearly the CSEC "is a global phenomenon pervading both developing and developed countries, although its typology and extent vary per country. It is both national and transnational in dimension, both generational and inter-generational in impact."<sup>141</sup> Because CSEC reaches every corner of the world and has a strong transnational character, international cooperation is essential. The magnitude of this problem clearly indicates that the international community must act urgently.

### *The Reasons why CSEC is an Escalating Problem*

A main cause underlying the continued escalation of CSEC is the growth

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<sup>136</sup> O'Briain M, The international legal framework and current national legislative and enforcement responses, paper prepared as a working document for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2156.htm>.

<sup>137</sup> "Pornography", Background paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2186.htm>.

<sup>138</sup> Ibid.

<sup>139</sup> UNESCO, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Statement to the Commission on Human Rights 55<sup>th</sup> Session at <http://www.crin.org/fullweb.nsf/b54d4788d...3f226a1fc210802567a3004d615e>.

<sup>140</sup> Ibid.

<sup>141</sup> Declaration and Agenda for Action, Stockholm World Congress Against Commercial Sexual Exploitation of Children para 5 at <http://193.135.156.14/webpub/csechome/222e.htm>.

of consumerism and the impact of globalisation.<sup>142</sup> Consumerism “encourages those who do not value their children and respect their rights to simply trade them for something they want more.”<sup>143</sup> CSEC is a sophisticated global market that is more lucrative than the drug or arms markets. The risks for managers are considerably less as the penalties for crimes associated with CSEC remain lower than those for other illicit trades.<sup>144</sup> Children are also easier merchandise to trade.<sup>145</sup> Globalisation has encouraged the lifting of import restrictions and has seen the injection of greater amounts of foreign investment in many countries. The influx of money and goods has aggravated disparities and promoted new levels of consumerism. Social and economic crises in the last 20 years have destabilised families and communities and have increased income disparities.<sup>146</sup>

The rapid development of electronic technologies, particularly computer technologies and the advent of the Internet, has also had a dramatic impact on the growth of CSEC worldwide. The Internet has broken down national boundaries and has enormously facilitated the distribution of child pornography and promoted generally the transnational trade in children for sexual purposes.<sup>147</sup>

AIDS has become both a cause and consequence of the trade in children.<sup>148</sup> Although the prostitution of children has a long history, the demand for child partners may be growing because of fears and delusions about AIDS.<sup>149</sup> Dr Piot, Executive Director of UNAIDS has reported that some men seek out children because they believe children are less likely to be infected with AIDS than adult prostitutes. However as Dr Piot points out “sex between man and child is particularly likely to transmit HIV because

<sup>142</sup> “Backgrounder 1: Prostitution of Children”, Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2262.htm>.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Sackstein H., Coordinator of the Support Group Focal Point Programme, Bridging the gap between reality on the ground and international action at <http://www.crin.org/fullweb.nsf/b54d47...9ab08f212802565ec003c9bfd>.

<sup>146</sup> “Pornography”, Background paper prepared for the World Congress at <http://193.135.156.14/webpub/csechome/2186.htm>.

<sup>147</sup> See generally Shackel, “Regulation of child pornography in the electronic age: the role of international law” [1999] *Macarthur Law Review* (forthcoming).

<sup>148</sup> Keynote speech given by Piot P, Executive Director UNAIDS at the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22de.htm>.

<sup>149</sup> Ibid.

of the physical disproportion between the partners. A child who is not fully-grown is more easily torn or damaged by penetrative sex. This makes it easier for the virus to pass into the child's body."<sup>150</sup> Immature membranes of a child readily transmit viruses and bacteria.<sup>151</sup> Moreover, a child cannot fight back no matter how rough the sex or how long it lasts.<sup>152</sup> Children are also "less likely to have been reached with accurate information on the risks and consequences of HIV infection. They are less likely than older individuals to have access to information on and the means to prevent infection...Even if they had such access, their powerlessness...[may] nullify the usefulness of the information."<sup>153</sup>

The huge surge in business travel and tourism has also had a profound impact on the CSEC. International tourist arrivals alone totalled 567 million in 1995, this represents a sevenfold increase since 1960.<sup>154</sup> Tourism has brought with it sex tourism and more particularly child sex tourism ie "tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship with a child."<sup>155</sup>

In response several attempts have been made at the international level to address the issue of child sex tourism. The Manila Declaration on World Tourism of 1980 emphasises that "in the practice of tourism, spiritual elements must take precedence over technical and material elements" including "the total fulfilment of the human being" and "the liberation of man in a spirit of respect for his identity and dignity".<sup>156</sup>

The 1985 Tourism Bill of Rights and Tourist Code,<sup>157</sup> which was adopted by the World Tourism Organisation ("WTO"), requires states to "prevent

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Belsey M, "Health and psychosocial dimensions", paper prepared as a working document for the Stockholm World Congress at <http://www.usis.usemb.se/children/csec/2152.htm>.

<sup>154</sup> "Backgrounder 1: Prostitution of Children", Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2262.htm>.

<sup>155</sup> Calcetas-Santos O, Provisional report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/50/456, 20 September 1995, at <http://www.unchr.ch/Huridocda/Huridoc...9be18883f80256719005e5661>.

<sup>156</sup> Article 21. The Manila Declaration of World Tourism emerged from the World Tourism Conference held at Manila, Philippines, 27 September-10 October 1980.

<sup>157</sup> Adopted by the General Assembly of the WTO at its 6<sup>th</sup> Ordinary Session held at Sofia, People's Republic of Bulgaria, 17-26 September 1985.

any possibility of using tourism to exploit others for prostitution purposes".<sup>158</sup> Further, tourism professionals and suppliers of tourism and travel services "should in particular refrain from encouraging the use of tourism for all forms of exploitation of others."<sup>159</sup> Tourists must also "refrain from exploiting others for prostitution purposes."<sup>160</sup>

The WTO's 1995 Statement on the Prevention of Organized Sex Tourism rejects sex tourism.<sup>161</sup>

as exploitative and subversive to the fundamental objectives of tourism in promoting peace, human rights, mutual understanding, respect for all peoples and cultures, and sustainable development.

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.

Most recently, the Global Code of Ethics for Tourism adopted on 1 October 1999 by WTO members, states in Article 2:

The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad.

The international community has clearly implemented a range of legal strategies aimed against CSEC. However, most of these legal measures may be described as "soft law" as they do not bind member states. The fight against CSEC now demands implementation of "hard law" at the

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<sup>158</sup> Article IV para (e).

<sup>159</sup> Article VIII Para 3.

<sup>160</sup> Article XI Para 2(d).

<sup>161</sup> Adopted by the General Assembly of the WTO at its 11<sup>th</sup> Session, Cairo, Egypt, 17-22 October 1995, Resolution A/RES/338 (XI).

international level that is binding on member states, or better still, its application to the international community at large.

## INTERNATIONAL LEGAL RESPONSES

Numerous treaties in this century have dealt with conduct closely associated with the CSEC, including slavery, forced labour and the creation and dissemination of pornography.<sup>162</sup> However, few have directly addressed the CSEC in a clear and unambiguous manner. The more significant of these instruments will now be examined.

### *United Nations Convention on the Rights of the Child*

The UNCRC is the most important international legal instrument in the protection of children's rights.<sup>163</sup> It is the principal legal instrument in the fight against CSEC and marks "a significant evolution in international law."<sup>164</sup> The UNCRC endows children with the rights to respect and identity and with rights to economic, social and cultural development.<sup>165</sup> States parties have undertaken to protect such rights by creating and strengthening a protective environment and by promoting a caring environment.<sup>166</sup> Implicit within this bundle of rights is the right of the child to protection from commercial sexual exploitation.

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<sup>162</sup> O'Briain M, "The international legal framework and current national legislative and enforcement responses", paper prepared as a working document for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2156.htm>.

<sup>163</sup> The UNCRC was adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989. The convention came into force on 2 September 1990. As at 1 January 1998, 191 states had ratified or acceded to the convention. One additional state has signed the convention. See generally Reservations, Declarations and Objections relating to the Convention on the Rights of the Child, CRC/C/2/Rev. 7, 11 March 1998 at <http://www.unchr.ch/tbs/doc.nsf/Maste...b7929334d8025662000041435a>.

<sup>164</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>165</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document E/CN.4/1998/101, 13 January 1998 at <http://www.unchr.ch/Huridocda/Huridoc...381c5d60fc1256620004ced2>. See also Articles 2, 7-8, 23, 26 and 40.

<sup>166</sup> *Ibid.* See also Articles 3, 6, 9, 11, 16, 18-38.

Several provisions contained in the convention also provide explicitly for the protection of children from commercial sexual exploitation. Pursuant to Article 34 "States Parties undertake to protect the child from all forms of sexual exploitation and abuse" and 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 practice; and
- (c) the exploitative use of children in pornographic performance and materials.

Similarly Article 35 requires "States Parties [to] 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." Article 11(1) also requires "States parties [to] take measures to combat the illicit transfer and non-return of children abroad." Under Article 36 children are protected "against all other forms of exploitation prejudicial to any aspects of the child's welfare." Article 37 provides the following:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment...
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily...
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age... [and]
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance...

Further, Article 19 requires that:

States Parties...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...

Clearly the UNCRC provides a broad basis for the protection of children's rights, including the right of the child to protection from commercial sexual

exploitation. However, as outlined earlier despite these positive features the Convention fails to provide clear and unambiguous definitions and precise legal standards required for international consensus and cooperation in the fight against CSEC.<sup>167</sup>

***Proposed Optional Protocol to CROC on the Sale of Children, Child Prostitution and Child Pornography***

The Draft Protocol goes a long way in overcoming the ambiguity of the UNCRC in relation to CSEC. However many parts of the document remain to be agreed upon.<sup>168</sup> Twenty-three international organisations have supported a statement of Defence for Children International that endorses the Draft Protocol and recognises an urgent need to provide definitions, which are sufficiently broad to ensure they can be universally accepted.<sup>169</sup> Nevertheless, there remains “a basic disagreement within the Working Group regarding the scope of the proposed protocol.”<sup>170</sup> Some participants want it to be as broad as the mandate can allow whilst others insist on a strict focus on sexual exploitation.<sup>171</sup>

The latter view is to be preferred. If the protocol is too broad in scope it will not remedy the deficiencies of the UNCRC but rather replicate them. What is required is an international legal instrument that deals specifically with CSEC in a clear, detailed and unambiguous manner. Many of the broader issues that could emerge from the mandate, such as sale of organs and inter-country adoptions, are already dealt with in other forums.<sup>172</sup>

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<sup>167</sup> O’Brian M, The international legal framework and current national legislative and enforcement responses, paper prepared as a working document for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2156.htm>.

<sup>168</sup> ECPAT, International Activities at <http://www.ecpat.net/Bluebook/Bbginfo/IntAct.htm>. The Draft Protocol is not likely to be completed before 2000.

<sup>169</sup> Statement by Defence for Children International on the Draft Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography at <http://www.crinorg/fullweb.nsf/b54d4788d...01899ff289a2802567a300463e32>.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Australian Human Rights and Equal Opportunity Commission in Note by the Secretary-General on the working group on the elaboration of a draft optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Economic and Social Council, E/CN.4/1999/WG.14/2, 26 November 1998 at <http://www.unchr/Huridocda/Huridoc...e27146ec780256704003c8302>.

*1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*<sup>173</sup>

Article 1 of this convention obliges states parties to punish "any person who, to gratify the passions of another, procures, entices or leads away another person for purposes of prostitution" or "exploits the prostitution of another person, even with the consent of that person." Under the Convention such offences are to be regarded as extraditable or punishable by the courts of the home state of the offender, where he has returned after the commission of the offence.<sup>174</sup> The Convention also outlines measures to combat international trafficking in persons, in particular women and children, exposed to the danger of prostitution.<sup>175</sup>

However, the usefulness of this convention in combating CSEC is limited in two principal ways. First, the convention is essentially restricted to the trafficking of persons for the purpose of prostitution. Thus it is not sufficiently broad to encapsulate all the elements of CSEC. Secondly, the convention is not specifically directed to the trafficking of children for sexual purposes and accordingly is not sufficiently specific to strike at the core of CSEC.

*1999 ILO Convention on the Worst Forms of Child Labour*

On 17 June 1999 the 174 member states of the International Labour Organisation ("ILO") unanimously adopted this convention (No 182).<sup>176</sup> Pursuant to Article 3 the worst forms of child labour comprise:

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<sup>173</sup> Approved by General Assembly Resolution 317(IV) of 2 December 1949 and entered into force on 25 July 1951; refer <http://www.unhchr.ch/html/menu3/b/33.htm>. This treaty basically consolidated earlier treaties on the topic, namely, the 1904 International Agreement for the Suppression of White Slave Traffic; the 1910 International Convention for the Suppression of White Slave Traffic; the 1921 International Convention for the Suppression of the Traffic in Women and Children; and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age.

<sup>174</sup> Article 8 and 9. For further discussion see generally Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>175</sup> Article 20.

<sup>176</sup> ILO, "The Work of the ILO regarding the Issue of Child Pornography", paper presented at the International Conference on Combating Child Pornography on the Internet, Vienna, 29 September-1 October 1999 at <http://www.stop-childpornog.at/ilo.asp>.

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children...;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and
- (c) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The convention is supplemented by Recommendation 190, which urges "ILO members to declare the worst forms of child labour, including the use of a child for the production of pornography, criminal offences and impose penal sanctions on violations of international laws."<sup>177</sup> The recommendation also calls for "international cooperation" in "detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering children for illicit activities, for prostitution, for the production of pornography or for pornographic performances..."<sup>178</sup>

This convention is certainly a step forward in the protection of children from prostitution and pornography. It is arguable however as to whether the convention goes far enough in the realm of trafficking and sale of children for commercial sexual exploitation.

### *World Congress Against the Commercial Sexual Exploitation of Children*

In addition to the above treaties there have also been numerous international declarations and conferences that have focused on the problem of CSEC. Probably the most notable has been the World Congress Against Commercial Sexual Exploitation of Children held in Stockholm, in August 1996. There were almost 2,000 participants from 119 states. They included government representatives, inter-governmental organisations, NGOs and individuals, including youth from eight states.<sup>179</sup>

A Declaration and Agenda for action against the commercial sexual exploitation of children was unanimously adopted.<sup>180</sup> The Declaration

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<sup>177</sup> Ibid.

<sup>178</sup> NGO Group for the Convention on the Rights of the Child, Focal Point on Sexual Exploitation of Children, Issue No 3, August 1999.

<sup>179</sup> Muntarhorn V (General Rapporteur), Report of the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22ca.htm>.

<sup>180</sup> Ibid.

“calls upon all States in cooperation with national and international organisations and civil society to [*inter alia*]:<sup>181</sup>

- (1) accord high priority to action against the commercial sexual exploitation of children and allocate adequate resources for this purpose;
- (2) promote stronger cooperation between States and all sectors of society to prevent children from entering the sex trade...;
- (3) criminalise the commercial sexual exploitation of children...and condemn and penalise all those offenders involved, whether local or foreign...;
- (4) enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities; and
- (5) mobilise political and other partners, national and international communities, including intergovernmental organisations and non-government organisations, to assist countries in eliminating the commercial sexual exploitation of children.

The World Congress brought “to the attention of the international community on an unprecedented scale” the abuse that many children suffer in the context of commercial sexual exploitation.”<sup>182</sup> Whilst the agenda for action emerging from the congress was extremely ambitious, follow-up activities to the Congress have been slow to develop.<sup>183</sup>

#### **SOME FUTURE DIRECTIONS FOR INTERNATIONAL LAW**

The discussion above clearly highlights the need for more international law specifically directed at CSEC. In particular international law must provide clear and unambiguous definitions of child prostitution, child pornography, and the trafficking and sale of children for sexual purposes.

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<sup>181</sup> Para 12 of Declaration and Agenda for Action, Stockholm World Congress Against Commercial Sexual Exploitation of Children para 5 at [http://193.135.156.14/webpub/csec/home/222\\_e.htm](http://193.135.156.14/webpub/csec/home/222_e.htm).

<sup>182</sup> Calcetas-Santos O, Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/53/311, 26 August 1998 at <http://www.unchr.ch/Huridocda/Huridoc...1fc006e06802566aa00353438>.

<sup>183</sup> Focal Point, Follow-up activities to the Stockholm World Congress at [http://www.childhub.ch/dcifp/DOCS/98\\_0011\\_uk.html](http://www.childhub.ch/dcifp/DOCS/98_0011_uk.html).

International law directed against CSEC must present solutions that are suitable for a world without borders. To this end international law should encourage nation states to adopt extraterritorial legislation<sup>184</sup> and enter into extradition and mutual assistance arrangements so as to facilitate cooperation worldwide.<sup>185</sup> These initiatives must of course, also be accompanied by improvements in law enforcement.<sup>186</sup> There is clearly a continued need for cross-border and international cooperation among law enforcement agencies such as INTERPOL and EUROPOL.<sup>187</sup>

Importantly, international law must provide the victims of CSEC with legal protection. Children involved in CSEC are often arrested and subjected to cruel treatment and treated as criminals.<sup>188</sup> There are a number of initiatives at the international level that address the concerns of the child in conflict with the law such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).<sup>189</sup> However, there are no initiatives directed at the child victim. This issue needs to be addressed urgently. The child's right to such protection is clearly embodied in the UNCRC and reflected in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which states that:<sup>190</sup>

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress...for the harm they have suffered.

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<sup>184</sup> See for example the 1994 Crimes (Child Sex Tourism) Amendment Act (Cth), which allows the prosecution of Australian citizens for sex crimes committed overseas.

<sup>185</sup> See generally Shackel, "Regulation of child pornography in the electronic age: the role of international law" [1999] *Macarthur Law Review* (forthcoming).

<sup>186</sup> "Backgrounder 1: Prostitution of Children", Theme paper prepared for the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/2262.htm>.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> Calcetas-Santos O, Provisional Report on the Sale of Children, Child Prostitution and Child Pornography, General Assembly Document, A/50/456, 20 September 1995 at <http://www.unhcr.ch/Huridocda/Huridoc...9be18883f80256719005e5661>.

<sup>190</sup> Adopted by General Assembly Resolution 40/34 of 29 November 1985 at [http://www.unhcr.ch/html/menu3/b/h\\_comp49.htm](http://www.unhcr.ch/html/menu3/b/h_comp49.htm).

## CONCLUSION

The CSEC is a blatant violation of human rights. As underlined by Nelson Mandela CSEC "is not limited by race, ethnicity or economic boundaries." Accordingly, nor should strategies directed against CSEC be limited by such factors. The CSEC is a powerful transnational and global phenomenon that can only be countered by a strong and coordinated response from the international community. Essentially what is required now is "hard core" international law aimed directly at CSEC in a clear and unequivocal manner.

Unless the international community is prepared to take urgent and immediate action against CSEC the lives of millions of children worldwide will continue to be placed at risk.

To conclude, the following is borrowed from Dr Peter Piot who concluded his keynote speech at the World Congress Against Commercial Sexual Exploitation of Children with this story:<sup>191</sup>

A woman approached a Buddhist monk, and said: When I was 12, my parents, who were very poor, sold me to a brothel and I have had to do this work ever since. I must beg your forgiveness for my sin.

The monk replied: There is no need to beg forgiveness from me. It is I and the world who should beg your forgiveness, for we have not done enough to protect you. Please forgive me and the world for having failed to protect you in the first place.

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<sup>191</sup> Keynote speech given by Piot P, Executive Director UNAIDS at the Stockholm World Congress at <http://193.135.156.14/webpub/csechome/22de.htm>.