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FOR CHILDREN'S RIGHTS

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LOS DERECHOS DEL NIÑO

# REPORT

**First Public Hearings  
of the  
International Tribunal for Children's Rights**

***“Extraterritorial Legislation in  
Response to the International Dimension  
of Child Sexual Exploitation”***

Centre International de l'Enfance et de la Famille (CIDEF)  
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*“Extraterritorial Legislation in  
Response to the International Dimension  
of Child Sexual Exploitation”*

**FIRST PUBLIC HEARINGS OF THE  
INTERNATIONAL TRIBUNAL FOR CHILDREN’S RIGHTS**

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## **1. Background**

### **1.1. The Convention on the Rights of the Child**

The United Nations Convention on the Rights of the Child was the main impetus behind the Public Hearings on ‘Extraterritorial Legislation in response to the International Dimension of Child Sexual Exploitation’, which took place in Paris from 30 September to 02 October 1997. The United Nations General Assembly adopted this Convention on 20 November 1989 and it came into force on 2 September 1990, after having been ratified by the 20 States required under Article 49. The Convention on the Rights of the Child is unique among international human rights instruments in that it covers the full range of human rights, not only civil and political but also economic, social and cultural. Besides this wide scope it also contains two major conceptual innovations. The first is that the principle of the ‘best interests of the child’ should be the guiding principle in ‘all actions concerning children’ (Article 3 (1)). The second is that the views of children should be ‘given due weight in accordance with the age and maturity of the child’ (Article 12 (1)). These two key ideas provided guiding principles for the deliberations and recommendations of the members of the Tribunal at the Hearings.

The Convention on the Rights of the Child does not stand alone. It is an integral part of a human rights agenda with a long history which has gained increasing impetus since 1945 in the context of the United Nations. As the Preamble to the Convention makes clear, it is fundamentally based in the body of previous United Nations human rights instruments, which the judges also took into consideration (Appendix F). Moreover, this Convention has its own history within the human rights project. The first, five-point declaration of children’s rights, known as the Declaration of Geneva, was adopted by the Fifth Assembly of the League of Nations in 1924 and the United Nations Convention on the Rights of the Child should be viewed as the culmination of more than six decades of activity within the international community on behalf of children.

It is important to note that in recent years a change of emphasis has taken place in the field of international human rights. The initial focus was on setting standards as well as identifying and denouncing violations of rights. Now there is an increasing interest in ensuring the effective implementation of human rights instruments together with the progressive achievement of the provisions they contain. This is especially true with respect to the UN Convention on the Rights of the Child. Although there is considerable interest in the more formal matters such as relevant changes in the domestic legislation of States Parties and States Party reports to the Committee on the Rights of the Child, (for which provision is made in Articles 43 and 44), there is also considerable pressure from intergovernmental agencies and interested sectors of civil society to ensure that administrative and operational procedures are put into place in order to ensure effective implementation and monitoring.

#### **1.1.1. The sexual exploitation of children**

One of the motives for establishing a specific UN convention for the rights of children is the recognition of their special vulnerability. Thus, the Convention contains a number of articles concerned with protecting them against abuse and exploitation. Among these, Article 34, which deals with the sexual exploitation of children, is acknowledged to be one of the most important:

#### **Article 34**

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

- a. *The inducement or coercion of a child to engage in any unlawful sexual activity;*
- b. *The exploitative use of children in prostitution or other unlawful sexual practices;*
- c. *The exploitative use of children in pornographic performances and materials.*

The current prominence given by the international community to this Article is based on recognition of the scale of harm involved. This refers not only to the traumatic effects on individual children but also to the number of children reported to be affected. Within the provisions of the Convention, the theme of the sexual exploitation of children also includes those articles that provide the services and resources to children that should prevent sexual exploitation taking place, as well as articles that provide protection against other forms of exploitation (Articles 32-36), and against the sale and traffic of children. It is also important to take into account articles intended to provide support for parents (Articles 19, 26 and 27) so that the sexual exploitation of children does not become an inevitable income-generating mechanism within family survival strategies. In addition, the principles of self-determination and expression, enshrined in Article 12 but also dealt with in other 'participation' articles (Articles 13-16), are important for discussions of children's consent to sexual activity.

### **1.1.2. The responses of the international community**

A crucial catalyst for the development of international awareness of the dimensions of the sexual exploitation of children was the World Congress Against the Commercial Sexual Exploitation of Children, held in Stockholm, Sweden, in August 1996. Although the impetus for this event came initially from the non-governmental sector, the impressive involvement of governments and intergovernmental organisations resulted in a number of significant advances. These include:

- A focus on the international dimension of the sexual exploitation of children;
- Increased awareness of the sexual exploitation of children;
- Understanding of the need for implementing the provisions of relevant human rights instruments;
- Networking between governments and non-governmental organisations (NGOs), which represents a hitherto unrealised alliance between States and civil society, as well as opportunities for mutual learning.

Thus, it is understood that there is now a need for systems to be put in place to combat the sexual exploitation of children at national and international levels. Both governments and civil society realise that the challenge no longer consists simply in promoting a campaign of awareness-raising. The priority is implementation, not only of the UN Convention on the Rights of the Child and related instruments in terms of legislative changes, but also protection of children and prosecution of offenders. One response to the Congress and its Draft Declaration and Agenda for Action has been that several governments have adopted, and others are considering, new legislation designed to combat the international aspects of the sexual exploitation of children.

One further important element in the background to the Public Hearings is a continuing debate about the development of an optional protocol to the UN Convention on the Rights of the Child, dealing specifically with sexual exploitation. A Draft Optional Protocol, originally a combined Australian and French initiative in the context of a Working Group on ‘Traffic of Children, Child Prostitution and Child Pornography’ formed by the UN Economic and Social Council and UN Human Rights Commission, was discussed in 1993 at the Second International Workshop on National Institutions for the Promotion of Human Rights, held in Tunis. This protocol specifically addresses the international dimensions of sexual exploitation, particularly the activities that are often described as ‘sex tourism’. According to the author of a recent article in a legal journal:

Under the Draft Optional Protocol, parties would assume a substantial obligation to cooperate with other States to further the prevention, detection, prosecution, and punishment for crimes of sexual exploitation of or trafficking in children. The burden on parties would be greater than that imposed by the [UN Convention on the Rights of the Child], which generally obliges States Parties to take national, bilateral, and multilateral action to prevent child prostitution and exploitation, but does not require extraterritorial legislation or any other specific measure. In addition, Article 1 of the Draft Optional Protocol asserts that the sexual exploitation of and trafficking in children constitute “crimes against humanity,” placing them in the same category as war crimes such as wilful killing, torture, genocide, and unlawful mass deportations.<sup>1</sup>

Thus, extraterritorial legislation has been identified as one potentially powerful tool in the implementation of those provisions of international human rights instruments that are directed towards protecting children against sexual exploitation.

### **1.1.3. Extraterritorial legislation**

There are clearly several options for action that can be taken at the national and international level to combat the sexual exploitation of children, one of which is the adoption of legal measures. A number of countries have taken this route and enacted extraterritorial legislation, which makes it possible to prosecute sex tourists or others who have committed a sexual offence against a child in a country other than their own. In addition, intergovernmental action has resulted in the drafting of the Optional Protocol mentioned above, which, if adopted, could oblige a States Party to adopt or adapt extraterritorial laws to enable the prosecution of offenders for sexual crimes committed against children abroad.

Extraterritorial legislation is neither limited to the sexual exploitation of children nor new. Over 20 countries allow it to be applied in the case of sex offenders. This has been achieved through different approaches. Some States have a provision within their laws which extends their jurisdiction to acts committed by their nationals while abroad. Others have amended their criminal or penal laws to include the specific crime of child sexual exploitation through ‘sex tourism’ or ‘child prostitution’. Finally some have simply adopted new laws in order to deal with the eventuality of one of their nationals sexually exploiting a child while outside the country’s normal territorial jurisdiction. Thus far, however, even in cases that do not involve the sexual exploitation of children, the number of prosecutions based on principles of extraterritorial jurisdiction is very small. Thus, experience in this field is limited and the international community might be said to be still in a learning phase.

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<sup>1</sup> Healey, Margaret A., 1995, Prosecuting child sex tourists at home: do laws in Sweden, Australia and the United States safeguard the rights of children as mandated by international law? In *Fordham International Law Journal*, Vol. 18, 1852-1923, p. 1879.

There are a number of principles that govern the conditions under which a government can extend its jurisdiction to criminal acts committed beyond the boundaries of its own territory. In brief these are:

- What is called the ‘active personality’ of the offender, which means that jurisdiction can be extended outside national territory to acts committed by nationals;
- The ‘passive personality’ of the victim, whose nationality provides the basis for the establishment of extraterritorial jurisdiction;
- The principle of protection, through which States reserve the right to take action with respect to acts that threaten their national security;
- The principle of universality, which refers to ‘universal crimes’ sometimes called ‘crimes against humanity’.

One factor complicating the understanding and application of extraterritorial legislation is that these principles are neither universally agreed nor universally applied.

Other legal concepts that are important in this field are:

- Double criminality, which entails that, for extraterritorial legislation to be used, the act involved must be illegal according to the laws of the countries of the offender and of the country where the crime was committed;
- Double jeopardy (*ne bis in idem*), whereby a person who has been acquitted or convicted of an offence cannot be prosecuted again for that same offence.

In the case of child sexual exploitation, associated with sex tourism, the responsibility of corporate bodies, such as tour companies, becomes important. Where this exists, it not only allows companies involved in the sex industry to be found criminally liable but also subject to seizure and forfeiture of assets and responsible for damages to exploited children.

A further important principle in the sexual exploitation of children is the legal age of consent to sexual acts. This may establish the grounds for prosecution, but also be a complicating factor if the age of consent in the offender’s country differs from that of the country where the offence was committed..

Finally, various legal principles governing the period of time that can elapse between offence and prosecution, are of practical importance given the time-consuming nature of negotiations between States with different legislative and administrative mechanisms.

## **1.2. The International Bureau for Children’s Rights**

The International Bureau for Children’s Rights is a non-governmental organisation that was created in November 1994, with a mission to protect, defend and promote the rights and welfare of all children. Its objectives are:

- To ensure that children’s rights are respected in accordance with the principles set out in the UN Convention on the Rights of the Child;
- To denounce, condemn and publicise any situation which contributes to the continuation of children’s suffering and violation of their rights;

- To intervene, through its Tribunal, in high priority situations;
- To raise awareness and urge citizens and governments to take responsibility for the violation of children's rights;
- To call for concrete action to ensure the welfare and protection of children;
- To recommend action, facilitate cooperation with the international community and mobilise efforts at all levels.

### **1.2.1. The International Tribunal for Children's Rights**

The International Bureau of Children's Rights responded to the challenge presented by the need to implement the Convention on the Rights of the Child by establishing the International Tribunal for Children's Rights as a mechanism for conducting inquiries and proposing concrete solutions to specific children's rights violations.

The Tribunal is best described as a moral court rather than a formal, judicial institution. The judges hear evidence but the objective is to make recommendations rather than judgements. Thus, this Report from the first Public Hearings is neither a judicial report nor an expert report. Both the process of the hearings and the nature of reporting bear more resemblance to a commission of inquiry. Although it is concerned with investigating situations in which children's rights are violated, the Tribunal cannot formally incriminate, prosecute or punish those responsible. The judges have no powers beyond those of persuasion through the comments and recommendations they make in their report. The hearings offer an opportunity for public testimony, for sharing experiences and views, in both oral and written form.

### **1.2.2. Public Hearings of the Tribunal**

The International Tribunal for Children's Rights has two functions:

- To hear specific and individual cases of children's rights violations;
- To conduct public hearings to monitor specific and important issues surrounding the rights of children around the world.

These Public Hearings aim to:

- Raise the awareness and responsibility of citizens, governments, organisations and corporations in light of the principles set forth in the UN Convention on the Rights of the Child;
- Recommend necessary measures to insure the well-being and protection of children;
- Encourage cooperation between all members of the international community.

The Public Hearings have a flexible format within overall guidelines (Appendix C).

### **1.2.3. Membership of the Tribunal**

The Tribunal consists of judges chosen by the Selection Committee of the International Bureau for Children's Rights. These judges are appointed for the duration of the hearings themselves and production of the related report. They are internationally recognised legal experts from different regions of the world, eminent judges or jurists recommended by their peers and selected on the basis of a distinct set of professional and personal criteria. It is also necessary for them to be nationals of countries that have ratified the UN Convention on the Rights of the Child.

In order to become a member of the International Tribunal for Children's Rights, a judge or jurist is recommended to the Bureau by his/her peers and is sent information on the Bureau and its International Tribunal. Candidacies are then submitted to the Selection Committee whose decision is communicated in writing to the applicant.

Depending on their areas of expertise, nationality and availability, the members of the Tribunal may be called upon to constitute a bench that will conduct a series of hearings on a given area of children's rights violations in one or more regions of the world. In accepting the invitation to be a member of the Tribunal, each person agrees to abide by a Code of Ethics and to volunteer his or her services for a few weeks during the year.

#### **1.2.4. Identification of the Tribunal's theme for 1997-1998**

The identification of priority areas of intervention and selection of cases to be heard takes place through an ongoing consultation process with organisations involved in the protection and promotion of children's rights around the world. In 1995, an international survey of more than 240 organisations clearly identified the international dimension of the sexual exploitation of children as the first issue that should be addressed by the Bureau.

However, the sexual exploitation of children is no longer the sole concern of the States where these illegal activities take place. Thus, during 1997 and 1998, the Tribunal is holding public hearings on 'the international dimension of sexual exploitation of children'. This Report is an account of the first of these hearings, held in Paris from 30 September 30 to 2 October 1997, at which the Tribunal heard evidence about the extraterritorial legislation used by States to prosecute their nationals for sexual crimes committed against children in other countries.

## **2. The first Public Hearings**

Nearly twenty countries have adopted extraterritorial legislation enabling them to prosecute their nationals for sexual crimes committed against children in other countries. Representatives from government and from non-governmental organisations (NGOs) of these countries were invited to inform the Tribunal on their efforts to curb child sex tourism and other variants of sexual abuses committed against children in foreign countries. Despite these legislative changes, actual experiences of the application of extraterritorial legislation are relatively few and not all cases have led to successful prosecutions.

In all, fourteen countries responded to the Tribunal's invitation: Australia, Belgium, Canada, France, Ireland, Italy, Germany, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States. Representatives from governments and NGOs gave testimony before the Tribunal on their experiences of the application of extraterritorial laws and/or submitted written briefs on the subject.

### **2.1. Objectives**

The aim of the Paris Hearings was to examine experiences of the use of extraterritorial legislation in combating the international dimension of the sexual exploitation of children. As the Tribunal is a moral court, the role of the judges was to:

- Examine testimony and documentary evidence about the application of extraterritorial legislation in the field of the sexual exploitation of children;
- Identify obstacles to the success of extraterritorial legislation in combatting the international dimension of the sexual exploitation of children;
- Identify the limits of the application of extraterritorial legislation in combatting the sexual exploitation of children;
- Propose ways in which existing extraterritorial legislation can be made more effective;
- Make recommendations for the future development of extraterritorial legislation that will be a more effective tool in combatting the sexual exploitation of children.

## **2.2. Members**

The members of the first Bench of the Tribunal are Judge Josiane Bigot (France), Chen Jianguo (China), Claire Suzanne Degla (Benin), Maria da Graça Diniz Costa (Brazil), and Roch Lalonde (Canada) (Appendix B). Judge Bigot was elected president of the 1997-1998 Tribunal hearings. Judge Chen Jianguo was unable to attend the Paris Hearings.

## **2.3. Procedures**

The Paris Hearings were governed by a set of procedural guidelines to ensure their orderly progress (Appendix C).

## **2.4. Structure of the Hearings**

In preparation for the hearings in Paris, governments and NGOs from countries that have adopted extraterritorial legislation were invited to submit written briefs to inform the Tribunal of their efforts to curb the international dimension of sexual exploitation of children. The Directorate of Legal Affairs of the Bureau developed guidelines to help the States and NGOs structure their briefs (Appendix E). Since the Tribunal is a moral court and does not benefit from a formal legal jurisdiction, it could not force States parties to attend its Public Hearings. The States sending representatives to attend the Public Hearings in Paris did so voluntarily, as did the NGOs.

The Tribunal first heard evidence from experts on key issues regarding the legislative responses to the international dimension of the struggle against sexual exploitation of children. Testimonies and presentations from selected government and NGO representatives formed the main part of the hearings. This evidence was heard in two groups (Appendix A). The first group consisted of government and NGO representatives from countries that already have experience in the actual implementation of their extraterritorial legislation. They were asked to address the effectiveness of those laws and the difficulties encountered in their implementation. The second group consisted of government representatives from countries whose extraterritorial legislation is still under preparation or was adopted very recently. Those representatives were asked to provide information concerning the drafting and adoption process of their extraterritorial legislation, including the obstacles encountered and the means to overcome them. Finally, case studies

illustrating the difficulties of implementation of extraterritorial laws were presented to the Tribunal.

On the final morning there was also a panel discussion, open to participation by the audience, on the measures needed to improve enforcement of these laws.

#### **2. 4. Key themes in the structure of the Report**

The Tribunal heard a significant body of verbal evidence and also took into consideration written reports and other materials (Appendices B, C & D). In their deliberations the judges identified a number of key themes. In many cases these consisted of questions for which satisfactory answers are not yet available due to the fact that, with respect to extraterritorial legislation on the sexual exploitation of children, the international community is still in a learning phase. These themes provide the framework on which this Report is organised:

##### *Protecting children: the first priority*

This principle follows from the principle of ‘the best interests of the child’, which is enshrined in the UN Convention on the Rights of the Child. The primary consideration when contemplating the use of extraterritorial legislation as a tool to combat the sexual exploitation of children is that children should be protected. There may be a paradox involved in the practical aspects of identifying and prosecuting offenders. Although bringing perpetrators to justice may protect children from further harm, and even, as a deterrent, act as a preventative measure, investigative and legal processes may result in further harm to victims.

It follows that child welfare should be the priority in the implementation of extraterritorial legislation. This means that legal systems should be adapted to children, with respect to aspects such as procedure and evidence. Nevertheless, the Tribunal also wishes to point out that adaptation must not be allowed to compromise the presumption of the innocence of the accused.

##### *Reconciliation of administrative and legislative mechanisms*

It is clear that the main obstacle to the effective application of extraterritorial legislation is the reconciliation of different national systems of investigation, legal measures and processes. This poses a major challenge for the use of extraterritorial legislation to combat the sexual exploitation of children. Once again, the ‘best interests of the child’ must remain the primary consideration when attempts are made to reconcile the structures and mechanisms of different policing and legal systems. Subsidiary themes identified by the Tribunal in this context entail taking into consideration other provisions of the UN Convention on the Rights of the Child, most notably those that deal with freedom to express an opinion (Articles 12 and 13) and respect for a child’s culture and language (Article 30).

The main concerns with respect to reconciling administrative and legislative mechanisms expressed by the Tribunal when considering the evidence presented to them at the Paris Hearings were:

- Definitions of central concepts such as ‘child’ and ‘exploitation’;
- Chronological age, which refers not only to legal aspects such as the different age of sexual consent in different legal systems, but also to mechanisms for establishing a particular child’s chronological age when a birth certificate is not available;

- Investigative practices, including the importance of respecting a child’s own culture and language;
- Rules and procedures for evidence and testimony, including taking children’s vulnerabilities into account and with particular concern for protecting child victims of sexual exploitation from further harm;
- Legal procedures, once again, with particular concern for protecting children from further harm.

### *Training*

Finally, the Tribunal identified the importance of learning from the evidence presented on experiences of providing appropriate training for those who are involved in the implementation of extraterritorial legislation, in order to equip them for carrying out their work more efficiently but without compromising the principle of protecting children.

## **3. Evidence from the Hearings**

The Tribunal heard oral evidence from governments and NGOs from six countries in which there is experience of the application of extraterritorial legislation in cases of the sexual exploitation of children, as well as from four governments that have recently adopted such legislation. The significant contribution of ECPAT among the national NGOs giving evidence was noted. The Tribunal also received and considered written evidence from governments and NGOs (Appendices A & D). They considered this evidence in the light of international human rights instruments (Appendix F) and other pertinent materials (Appendix G). The three presentations devoted to case studies on the final day of the Hearings, as well as the details of various cases in many of the government and NGO presentations, were particularly useful in assessing the impact of extraterritorial legislation in addition to the obstacles to its implementation and ways in which such obstacles can be overcome. Evidence provided by experts in the field provided valuable orientation with respect to the philosophical and legal basis of the use of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children. The judges of the Tribunal were also present during a Panel Discussion at which an exchange of views among participants took place (Section 4, below).

### **3.1. Philosophy**

Extraterritorial legislation is not new but has gained a new dimension within the context of international concern about the commercial sexual exploitation of children, particularly with respect to what has been called ‘sex tourism’. From all the evidence submitted it appeared that there is a crucial interplay between national and international legislation, for which the 1996 Congress Against the Commercial Sexual Exploitation of Children in Stockholm was a vital catalyst. The majority of submissions, oral and written, referred to this event as a benchmark in which international campaigning against the commercial sexual exploitation of children was transformed into international action through a Declaration and Agenda for Action which *inter alia* called for the enactment of extraterritorial legislation, and was adopted by the Congress, including the 119 States that sent representatives. Thus, in the case of sex tourism, the Agenda for Action calls for action from all States to:

[...] develop or strengthen and implement laws to criminalise the nationals of the countries of origin when committed against children in the countries of destination ("extraterritorial criminal laws"); promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country; strengthen laws and law enforcement, including confiscation and seizure of assets and profits, and other sanctions, against those who commit sexual crimes against children in destination countries; and share relevant data.

In some cases, adopting and implementing extraterritorial legislation is seen as having a deterrent effect. Thus, written evidence from the Belgian government referred to the intention to 'effect a sharp increase in penalties for serious cases of sexual abuse of children', and also stated that:

The idea at the base of this extension of judicial competence of Belgian tribunals was to send a clear message to those who sell child pornography and abuse children. (translated by the International Bureau for Children's Rights)

Nevertheless, it was clear from most of the evidence presented that extraterritorial legislation is only one tool among many in the fight to protect children from sexual exploitation. It should not be regarded as an end in itself. Both oral and written evidence from the government of Australia, for example, underlined that, despite adopting new legislation and taking measures to implement it, the government's position is that the primary responsibility for protecting children against the international dimensions of the sexual exploitation of children rests with the country in which the offence takes place. The testimony of the government of Spain also emphasised that the adoption of extraterritorial legislation does not do away with the need for legislation and implementation at the national level. The adoption of extraterritorial legislation, according to a written submission from the government of the United Kingdom, 'has required careful thought.' because '[t]he requirement of oral testimony and the right of the defence to cross-examine witnesses are central to criminal trials' in that country and 'it is therefore very difficult to mount successful prosecutions for offences committed abroad'. For this government, therefore, extradition 'will always be the preferred option'. Nevertheless, despite these practical difficulties, the seriousness of the offences entailed in the international dimensions of the sexual exploitation of children eventually led to the decision that the adoption of extraterritorial legislation by the United Kingdom could be justified. According to the oral evidence given by Terrence Lonergan, reporting on behalf of the Canadian Ministry of Justice, children's rights are now a Canadian government priority. Thus, in the Canadian government's written submission it is stated that the justification for using extraterritorial legislation to combat child sexual exploitation is based on international human rights law:

In the case of child sex tourism, it can be argued that the Convention on the Rights of the Child, which was ratified by Canada in 1991, provides a sufficient basis for this extension of jurisdiction [...] In addition, the degree of consensus on the need for extra-territorial legislation that exists within the United Nations Commission on Human Rights' working group on the draft Optional Protocol [...] would indicate an emerging principle of customary international law with respect to child sex tourism.

To ensure effective implementation, this principle must be seen in the context of international realities as well as international legislation. This was given its clearest expression in the expert testimony of Muireann O'Briain, a Senior Counsel in the Republic of Ireland (Eire) and Legal

Advisor to ECPAT International since 1995, who stated that the roots of the problem in developing countries cannot be eradicated by a campaign, for they arise from poverty. A swift and forceful implementation of legal changes must be accompanied by social action aimed at eliminating the need for children to generate income in the market for sex tourism and other forms of exploitation.

As will also be seen later in this Report, several submissions emphasised the fact that successful implementation of extraterritorial legislation, in the few cases that have so far been pursued has largely depended on personal contacts between professionals in the countries involved, the commitment and often ingenuity of individuals as well as voluntary actions. The costs involved in bringing cases to court are high, partly because of the need for law enforcement agencies and witnesses to travel between countries, but also because of factors such as translation and interpretation. Until now voluntary and individual action has reduced costs to a certain extent and made it possible to demonstrate that extraterritorial legislation can be used effectively to combat the international dimension of the sexual exploitation of children. However, many submissions strongly stated that in the long term the success of extraterritorial legislation should depend not on occasional volunteer activities but rather on being able to establish sustainable systems, based on what has been learned through the cases pursued thus far, and on finding sufficient resources to support such systems.

Most of the evidence submitted related to direct sexual exploitation of children in prostitution. Nevertheless there was a strong undercurrent of concern about child pornography, with particular reference to dissemination of pornographic material on electronic networks, such as the INTERNET. Although there were no specific references to the application of extraterritorial legislation in combating the international distribution of pornographic material relating to children, it is clear that some governments are considering ways in which this might be achieved. The employment of extraterritorial legislation in this respect may be less concerned with the production of pornographic materials than with their distribution. Thus, wide-ranging provisions within New Zealand legislation refer to acquiring, transporting and publishing child pornography by any means, 'whether by written, electronic or any other form of communication and including the distribution of information.' The government of France includes within the definition of pornography, virtual images as well as non-pornographic images designed to be used by paedophiles, thus acknowledging the importance of the use to which images are put, as much as the actual exploitation of individual children in the production of pornography.

### **3.2. Old and new legislation**

While extraterritorial legislation is a recent creation, its application to the sexual exploitation of children is relatively recent. Already-existing legislation has been extended or amended by a number of governments, some of which already had experience in implementing this kind of legislation in other contexts, such as the interests of national security. The relevant Swiss legislation, for example, had been in force since 1937. Written evidence from the government of Sweden reports that extraterritorial rules had been in force for 'a very long time' and that '[t]he application of the rules has very seldom caused special problems' although evidence from Helena Karlén, of ECPAT-Sweden, States that, from the NGO perspective, the requirement for double criminality should be removed in the case of sexual exploitation. Canada already had experience of extraterritorial offences for war crimes and crimes against humanity. Likewise Belgium already had provision for this kind of legislation in the Penal Code, but it had only been used

previously with respect to national security, and Italy, which is extending extraterritorial legislation to sexual offences this year, is amending an existing provision in its Criminal Code.

The grounds for extending or amending existing extraterritorial legislation vary between countries, having been enacted for different motives and according to different principles and overall legal philosophies. In the case of Spain, the government extended the principle of universality in 1994 to include the sexual exploitation of children. Australia enacted new legislation, the Crimes (Child Sex Tourism) Amendment Act, in direct response to a perceived problem. The United States has extended to international use a principle of interstate law on travelling with the intention of sexually exploiting children. In addition to the information given to the Tribunal at the hearings, and provided for the judges in written submissions, the judges are aware of many other examples of national legislation in this regard. This means that there is a great variety of different legislation, providing a somewhat confusing international framework. However, it seemed clear from the evidence that political will to combat the international sexual exploitation of children can be, and in many cases has been, transformed into legislative action in three ways, which are not mutually exclusive:

- Identification of existing legislation that can be extended to use in cases of sexual exploitation, the justification tending to rest on acknowledging the seriousness of sexual offences against children and thus activating a principle of universality;
- Changing existing legislation to include sexual offences against children that cross national borders;
- Enacting new legislation.

New legislation may include novel offences, such as the offence of ‘benefiting from or encouraging’ child sex tourism, included in the Australian Crimes (Child Sex Tourism) Amendment Act, which is specifically designed to address offences committed by tour operators. The government of Germany also stated in written evidence that it is planning to create special offences for cases of sexual abuse of children that occurs in conjunction with the marketing of pornographic materials. However, the creation of new offences may raise further problems with respect to double criminality because these offences may not exist within the legal systems of receiving countries.

Despite these legislative changes, actual experiences of the application of extraterritorial legislation are relatively few and not all cases have led to successful prosecutions. In addition, much extraterritorial legislation designed to combat the sexual exploitation of children is new and has still to be put to the test. The evidence presented to the Tribunal thus provided an overview of experiences to date in this field, including the reasons for successes as well as some of the obstacles and how to overcome them.

### **3.3. Optional Protocol**

Several of the governments testifying before the Tribunal have been involved in the process of drafting the Optional Protocol to the Convention on the Rights of the Child, which, as stated earlier, seeks to address the international dimensions of the sexual exploitation of children. Most governments expressed an overall positive attitude to this Protocol even though some, such as the government of Sweden, expressed reservations:

Sweden participates in the working group for an optional protocol to the Convention on the Rights of the Child. The Swedish position is positive, but it is important that this work does not undermine the obligations already covered by the Convention.

The Australian government has been active in his process from the beginning. It stated in both oral and written submissions that the government's objective in being involved in the drafting process is based on a concern that the Optional Protocol should:

- More clearly define what constitutes child sexual exploitation, pornography and extraterritorial legislation;
- Address the issue of the international sale and traffic of children for sexual exploitation;
- Establish international minimum standards of legal provision for child victims.

The draft of the Optional Protocol considered by the Tribunal<sup>2</sup> does provide various options for defining such terms as 'sale of children', 'child prostitution' and 'child pornography', while making it clear that definitions should be '[i]n accordance with the objectives' of the relevant articles in the Convention on the Rights of the Child. Nevertheless, it should be noted that the Convention does not itself provide any definitions, other than that of 'child' in Article 1. In fact, the Convention is not infrequently criticised for the vague and open-ended nature of its provisions, which largely resulted from political pressures during the drafting process.<sup>3</sup> Some impatience with the time taken up in developing agreed definitions at this point was expressed by Ms O'Briain during her expert testimony. In her opinion, it is implementation rather than definition that is required at this juncture, particularly the development of local legislation, local law enforcement and local prosecutions. Thus, debates around the Draft Optional Protocol echo the tension between the two complementary levels at which action can take place —international and national. As the Australian government itself made clear, implementation of extraterritorial legislation entails simultaneous activity at more than one level of legislative and administrative provision, which results in initiatives or actions in three arenas:

- International activities such as involvement in the work leading to the Draft Optional Protocol;
- Regional activities, that might involve discussion of, for example, double criminality in a regional intergovernmental forum (such as has occurred within the European Union) and would include regional bilateral treaties such as that being developed between the governments of Australia and the Philippines;
- Changes in domestic legislation and legal procedures.

### **3.4. Protecting children: the first priority**

#### **3.4.1. The human rights of children**

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<sup>2</sup> E/CN.4/1996/101.

<sup>3</sup> Cantwell, N., 1992, The origins, developments and significance of the United Nations Convention on the Rights of the Child, in Detrick, S., *The United Nations Convention on the Rights of the Child: A guide to the 'Travaux Preparatoires'*, Dordrecht, Boston, London, Martinus Nijhoff Publishers, p. 22.

As Professor Verhellen pointed out in his expert testimony, the past two decades have witnessed changes in approach towards both children as human beings and human rights in general. Nevertheless, as he stressed throughout his evidence, the way in which both local and international implementation of human rights takes place more often entails that children's rights be protected, while children themselves are not. Children continue to be treated as legal objects rather than legal subjects and, despite the provisions within the Convention on the Rights of the Child for children to express their views and for these to be given 'due weight' (Article 12), in life, research and legal procedures children tend to be neither heard nor listened to.

Nevertheless, the recognition that child rights are based in the universality of human rights, which pertain equally and inalienably to 'all members of the human family' (Preamble to the Convention on the Rights of the Child), permeated much of the evidence heard by the Tribunal. The Belgian government, for example, stressed that universality should not only be applied to the sexual exploitation of and traffic in children because of the gravity of the offences (as also emphasised by the United Kingdom government) but also because they constitute 'a grave breach in basic personal rights and especially human dignity'.

Human dignity is the foundation and justification for all the rights defined in the United Nations Universal Declaration of Human Rights and its related instruments. It is an undefined touchstone, the specific content of which is human rights. Thus, the Convention on the Rights of the Child not only recognises the special vulnerability of children, which leads to the need to define their rights to protection from abuses and exploitation, it also mentions dignity seven times within the text, emphasising throughout the principle that children have dignity as members of the human community. The evidence provided to the Tribunal gave rise to concern among the Judges that to protect children by prosecuting those who have sexually exploited them, may at times lead to further damage to children. Such involvement in investigative and legal procedures may also constitute breaches in their right to human dignity.

The situations in which this might arise are founded on the power adults in general have over children, even when their 'best interests' are the motive for adult action. Several of those presenting evidence echoed Professor Verhellen's comments about the need to listen to children and hear what they are saying, while giving priority to their interests rather than to adult indignation. In her presentation of case studies, Muireann O'Briain stressed that adults should automatically give priority to children, without resorting to sensationalised accounts of exploitation. Moreover she stated that adult reactions to child prostitution need to be tempered by an understanding of the conditions in which children live. Similarly, Italian government evidence emphasised the need to give children psychological protection and support during every stage of investigation and legal proceedings. The implication is that children's right to protection should take priority over both adult indignation and adult retribution. The principle of any action taken in the prosecution of perpetrators of sexual offences against children should be 'do no harm' to the child victim. The United Nations Standard Minimum Rules for the Administration of Justice (1985, 'Beijing Rules) Paragraph 10.3 refers to the need to 'avoid harm' to juvenile offenders in the course of investigation and prosecution, with the Commentary stating that 'the term "avoid harm" should be broadly interpreted [...] as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm'. If this is the standard international minimum for juvenile offenders it should be applied with equal force to the treatment of child victims and witnesses. Yet evidence provided to the Tribunal shows that investigations and legal

proceedings involved in the implementation of extraterritorial legislation do not always abide by this principle.

### **3.4.2. Equality in legal proceedings**

Anxiety about the effects of legal proceedings on child victims of sexual exploitation has led to a number of innovations in the ways in which legal systems deal with child witnesses, some of which were mentioned to the Tribunal. Yet these innovations are themselves subject to debate and reservations. Thus, although Muireann O’Briain referred in her expert testimony to the Australian legal system as ‘child-friendly’, Christine Beddoe, representing ECPAT-Australia, queried whether this is the case. She stated that, despite directives to the contrary, cross-examination is seldom child-friendly and culturally sensitive: ‘It would be difficult enough for an adult to withstand let alone a child and especially one from another country’. Indeed, the Australian government’s written submission itself points to an anomaly in Australian law that entails that there is no provision making evidence of sexual reputation inadmissible: ‘Child victims of sexual assault should have no less protection than adult victims. In fact, there should be greater protection as consent is not an issue’. Similarly there should be no difference made between the ways in which child nationals and non-nationals are treated as witnesses. For example, the ECPAT evidence refers to the acquittal of John Holloway in a 1994 sex tourism case in 1994 because the evidence given by two teen-aged Cambodian boys was insufficient. On this occasion the magistrate himself reportedly ‘commented that an Australian child would not have been cross examined so rigorously’ and added that ‘cross examination of child witnesses under the [Sex Tourism] Act should be reviewed.’

On the basis of the principle of preventing further harm to child witnesses in abuse cases in general as well as in sex tourism cases, various means of using closed-circuit television links and video-taped evidence are being used in many countries. These take three basic forms:

- In cases involving sexual abuse in national contexts or in cases in which extraterritorial legislation is used in which a foreign child has been brought to the country of its exploiter, a closed circuit television link may be set up between the court and a safe place where the child gives evidence, without having to confront the abuser or be overwhelmed by the formal atmosphere of the court (many examples in domestic legislation);
- A video-link may be set up between the domestic point (country of the exploiter) and the overseas point (country of the exploited child) in which it is possible to both see and hear in both directions, so that evidence can be heard and cross-examination take place (Australia);
- Evidence given by a child may be video-recorded in the child’s own country and used in the foreign court (Sweden).

These methods may mean that children are protected from having to confront their abusers in court (as well as from the court process itself which could be a distressing experience) or from having to travel to the country of the accused to give evidence. Evidence given at the Paris Hearings shows that experiences of the use of television and video are as varied as extraterritorial legislation itself, and that opinions about the wisdom of using such evidence are correspondingly different, both with respect to the legal consequences and the effects on children. As with

extraterritorial legislation, the use of television and video in court cases involving child abuse and exploitation is at the learning stage.

In the United States, a child, like any other witness, has to be present in court because this is a constitutional right for the defendant. Therefore television links and video-taped evidence are not possible. In Canada, although the Criminal Code (Section 715.1) provides for the admissibility of video-taped evidence made shortly after the offence in which the child witness describes the acts complained of, the child witness, nevertheless, has to appear in court and 'adopt the contents of the videotape'. In other countries, a more flexible approach is possible. Thus, written evidence from the German government states that 'video technology as a means of protecting children is being tested in Germany by the police and the courts. Correspondingly, draft legislation is currently before the German parliament for discussion.' In the case of Sweden, the written submission of the government points out that children under the age of 16 years are not considered as witnesses. Thus,

It should be stressed that the abused child is not considered as a witness and that it is not possible for the child to give evidence under oath. The child is heard by the court as a plaintiff, but not under oath. The police interrogation is normally videotaped, and can be shown to the court instead of hearing the child in court, but this is up to the judge's discretion in each case.

In the successfully-pursued and well-publicised Bolin case, once the boy in question had reached the age of 15 years he travelled to Sweden to give evidence against his abuser.

The fact that video evidence is used may, in itself, affect proceedings. As pointed out in the submissions from the Australian government, there are no proven criteria for deciding on whether or not a court experience and/or the culture shock that might be consequent on travelling to another country to give evidence might cause further distress to a particular child. It might even be the case, as the ECPAT-Australia evidence suggested, that a courtroom appearance could be more beneficial in the healing process of an abused child. There is no established expertise in this area that could provide overall guidelines for making decisions in international cases. Even where video technology evidence is available, Australian government evidence states:

[...] it may not be desirable to use it. In addition to the problems experienced by the child within his or her home country, the weight of the evidence may be affected and it may not be cost effective, as the prosecution would have to travel to the overseas country to talk to the witness and assess the reliability of the evidence.

The Belgian government's submission drew attention to an important consideration in this area, which is linked to Professor Verhellen's emphasis on the importance of identifying ways of listening to children in general and thus facilitating their ability to give evidence in legal proceedings. Although the use of video technology is an interesting option, it is more important, as the Belgian government evidence suggests, to treat the evidence of children with the same seriousness as that of adults. However, because of the power imbalance between adults and children it is equally important, in terms of the viability of evidence, that children be able to provide testimony that is free from adult suggestion or intimidation. This entails that child witnesses, whatever the environment in which they give evidence, should be accompanied by an adult of their choice and that psychologists should be involved in the process.

### **3.4.3. Guarantee of safety**

Two issues regarding the physical and psychological safety of child victims of sexual exploitation arose from the evidence given to the Tribunal. These concern:

- The requirement to guarantee the safety of children during investigation, pre-trial and prosecution stages, when they may be subjected to intimidation and/or actual physical harm;
- The safety and psychological well-being of children after legal proceedings have taken place, whether or not prosecution of offenders has been successful;

With respect to the first of these issues, it is clear that the elapsed time between investigation and trial leaves children vulnerable to intimidation and violence. In international cases this may be prolonged because of the difficulties experienced by the prosecution in obtaining and translating the requisite documents. For example, Helena Karlén, speaking on behalf of ECPAT-Sweden, pointed out that in the Bolin case, it took three years to obtain a birth certificate for the boy victim. It can be both difficult and costly to provide sufficient protection for children in these circumstances. If it is considered necessary for the children's safety to remove them from their own country in order to avoid threats and actual physical harm, the consequent culture shock, disruption of family life and the experience of being virtually incarcerated for a considerable time in order to ensure their continued protection may be psychologically damaging. Furthermore, it may affect the viability of the evidence they can provide in court and their ability to stand up to cross-examination. In the Holloway case, reported by both the Australian government and ECPAT-Australia, the two Cambodian boy victims were threatened and even kidnapped after they had given testimony to the police in Cambodia. They were then taken to Australia, where the authorities refused to provide protective custody. When ECPAT provided a safe house it found the safety of its own staff under threat.

Whether or not prosecution is successful, the particular vulnerability of children, which is cited in the Preamble to the Convention on the Rights of the Child as the justification for a special children's human rights instrument, entails that follow-up care is likely to be necessary in order to ensure continued protection of their rights. 'What do you do with the children you have saved?' asked Muireann O'Briain during her testimony. She cited the case of two Burmese children who had been sexually exploited in Thailand who were subsequently executed when they were repatriated to Burma because they were known to be HIV positive. ECPAT-Australia also voiced this concern with respect to less dramatic cases. For example, two boys from the Solomon Islands who had been trafficked to Australia for sexual purposes were sent back to their home country, but without the benefit of counselling or legal support, which were not available under legislation at the time.

#### **3.4.4. Respect for children's cultural background**

Concern for children's safety and psychological well-being is closely related to issues of culture and language raised in several testimonies before the Tribunal, and of particular importance in combating the international dimensions of the sexual exploitation of children. It was also clear that these issues affect the viability of evidence provided by children and, therefore, the outcome of any prosecution.

The principle of dignity, referred to above, also includes respect for an individual's identity, language and culture. This is enunciated in the Convention on the Rights of the Child, particularly Article 30, which provides that children of minority communities and indigenous populations have the rights to enjoy their own culture and to practice their own religion and language. Article 40, which deals with the administration of juvenile justice also refers (in paragraph (vi)) to the right of children who are believed to have infringed the law to 'have the free assistance of an interpreter' if they cannot 'understand or speak the language used'. By extension, child witnesses need to be accorded the same rights, so that their evidence is both admissible and meaningful. Cultures vary considerably with respect to sexual mores as well as ideas about children and childhood, and these differences in conceptual structure also affect the language used to describe or discuss sexual behaviour and sexual exploitation. There may also be considerable differences within countries between different socio-economic or ethnic groups. Interpreters and translators thus need to be cross-culturally sensitive as well as capable of communicating with children. It is also important that all adults involved in cases implicating the international sexual exploitation of children, be they lawyers, judges, magistrates or juries, are aware of and able to understand the pertinent cultural differences and pressures that might, for instance, lead a child (particularly from an impoverished background) to seek an income through prostitution. In this respect, Muireann O'Briain's reference to the reaction of the Swiss investigator who visited Sri Lanka to collect evidence in the Baumann case is relevant. It was reported that he regretted not having made a video record of the conditions of poverty in which the children lived in order to be able to demonstrate to Swiss authorities their potential influence on children's decision to become prostitutes.

These issues were summed up particularly well in the written evidence of the Australian government:

[...] it is vital that the investigation and prosecution team understand the cultural background of the victim from the outset. Child witnesses, particularly victims of sexual assault, must develop a relationship of trust with the questioner or they cannot give evidence of their experience. This relationship of trust is not possible where there is no appreciation of the child's cultural background. In an Australian prosecution for sexual assault on a child, investigators and prosecutors are aware that the child's statement relates to his or her family and social background. Questions are framed and answers interpreted in the context of a shared culture. Without some cultural understanding, the interview with the victim may appear to give inconsistent evidence as to time or place or even the particular act alleged.

ECPAT-Australia commented that the unsuccessful prosecution of John Holloway showed unpreparedness of courts to deal with cross-cultural issues that may be as much psychological as linguistic. The evidence of one of the teenagers involved in this case was discredited because of a previous case with a United Kingdom national, without taking into consideration that the sexual reputation of a child cannot be judged by the same criteria that might be applied to adults. The pressures that forced him into prostitution might be different for a child than for an adult. In addition, it was reported that the Director of Public Prosecutions found it difficult to brief the boys without leading them, which meant that they had limited briefing and no recourse was made to a psychologist who had experience of cross-cultural issues.

Language is one of the main manifestations of culture. Once again the implications for the implementation of extraterritorial legislation are well summed up in the written evidence of the Australian government:

Cultural differences are exemplified in language differences. It may not be easy for the investigators or prosecution to locate an appropriate interpreter in the overseas jurisdiction. The interpreter must not only understand the dialect of the witness but needs to be of at least the standard required by Australian courts, with a level of proficiency in both the witness's dialect and English. The interpreter must be aware of possible cross-cultural misunderstandings at the time of the interview.

The written submission from the Belgian government also emphasised the need for translators and interpreters to be able to indicate to legal and other professionals involved in international child exploitation cases the cultural meaning of the words and phrases children use in their mother tongue and local dialect. In addition, further evidence from the same government pointed out that its experience in an extraterritorial case involving cooperation between Belgian and Thai authorities revealed that, at times, the two were not talking the same legal language. Expectations of, for example, what counted as evidence were different with the Thai authorities considering that there was no requirement to seek further evidence beyond the production of photographs.

With respect to the evidence given by children, a further consideration is specific to children as a social group, and that is the necessity to take into account the maturity and level of language development of child witnesses. Children's language in general differs from adult language with respect to the level of development of vocabulary and grammar, as well as in terms of understanding the meanings of words. This is acknowledged in the Convention on the Rights of the Child particularly in Article 13, which deals with freedom of expression and also provides for the possibility of adopting alternatives to written modes: 'either orally, in writing or in print, in the form of art, or through any other media of the child's choice.' Moreover, it is made clear especially in Article 12, that the age and maturity of a particular child should be taken into consideration when children give their opinion on adult plans or provisions for their welfare, which by extension can also be applied to the testimony of child witnesses. This is clearly related to the necessity stressed by Professor Verhellen to find ways of listening to children and being able to hear what they are really trying to express. Although this was mentioned at various times during the Paris Hearings, it was not clear what experience exists in the field of communicating with children in general, much less in cases of the implementation of extraterritorial legislation.

All these considerations have cost implications. Translation and interpretation at the level of competence required may also require special training and thus the need for both human and financial resources may make it difficult to develop sustainable systems. Currently it appears from the evidence provided to the Tribunal that translation of legal documents, for example, is costly and time consuming as well as often depending on the support and good will of external agencies. Thus, for example, Cléa Cremers, giving case study evidence on behalf of the Swiss NGO CIDE (Comité International pour la Dignité de l'Enfant), pointed out that pursuing the case against Bauman was facilitated with the aid of an international NGO with respect to translating evidence, which would otherwise have been extremely expensive.

### **3.5. Reconciliation of administrative and legislative mechanisms**

Differences between countries in which offences are committed and countries in which offenders are prosecuted result in a number of obstacles to the successful implementation of extraterritorial legislation. These may have their roots in differences between systems of investigation and information, legal systems and systems of administration as well as in culture and language. The outcome may be poor levels of cooperation, which may occur even when there is a common commitment to the prosecution of the perpetrators of sexual offences against children. The main body of evidence presented at the Paris Hearings dealt with experience of these obstacles as well as ways in which they have been overcome. The Tribunal identified five main areas in which reconciliation of differences between countries could aid the successful use of extraterritorial legislation:

- Definitions of offences and the ages to which they apply;
- Determination of the chronological age of a child victim;
- Investigations of offences;
- Differences between legal processes;
- Rules concerning the admissibility of evidence.

### **3.5.1. Definitions**

The Tribunal noted that the evidence revealed an interplay between the chronological age of a child and the definition of particular offences. There are also considerable variations and much lack of clarity in the legal definitions of significant terms such as exploitation, sexual relations, sexual abuse, sexual violence, age of sexual consent and rape. This may make it impossible to prosecute offenders, particularly where the principle of double criminality is in use in the country of origin of the offender.

One issue is the interplay between the age of a child, defined as under 18 years of age in the Convention on the Rights of the Child, and the age of consent to sexual relations, which is not specified in the Convention. Penal codes in most countries tend to establish an age at which a child can consent to sexual relations. However, what this last term entails is not always clearly defined. Among many other examples, Swiss legislation refers to ‘sexual intercourse or any similar act or a different sexual act’ while the Norwegian Penal Code (Section 213) states that ‘The term sexual intercourse [...] shall mean vaginal and anal intercourse’ as well as terms such as ‘insult to honour’ and ‘indecent relations’.

With respect to sexual offences against children it is common for national legislation to determine an age under which any sexual relations (however defined) are automatically considered to be abusive, and an older group, still in their minority, for whom abuse and exploitation are defined by association with sexual violence and rape. Although the age of majority may be 18 years of age, and can thus be associated with sexual offences against minors (for example in United States legislation), it is more general for the age of 16 years to be associated with sexual maturity. Nevertheless, the evidence presented at the Paris Hearings showed that the range of ages associated with sexual offences against children is wide. Furthermore, the age of the abuser may also be significant with respect to legal definitions. Thus, Swiss law associates achieving the age of 16 years with the offence of sexual abuse, but not if the age difference between the parties involved does not exceed three years. And certain sexual

offences set out in the Norwegian Penal Code can be waived ‘if those who have committed the act of indecency are about equal in age and development’.

The significance of differences in the chronological ages associated with different offences, even among the ‘developed’ nations that gave evidence at the Hearings, is that in ‘developing’ countries these ages tend to be somewhat lower. This means that there may well be a group of children, aged for example between 16 and 18 years of age, who would be regarded as sexually abused or exploited in the country of origin of their abuser, but not in their own country. If the country of the offender uses the double criminality principle then it is unlikely that prosecution will take place.

It is worth noting that there is considerable overlap between the definitions of key terms in the sexual exploitation of children and considerable lack of clarity even in legal definitions. As pointed out by ECPAT-Australia, anomalies of this kind leave considerable space within which sex tour operators can organise their commercial activities without fear of prosecution. Thus, it may be the case that focusing on the intentions of the operators rather than on the actual offences against children (as in the case of the United States offence of ‘travelling with intent’), might be a more effective means of protecting children than prosecuting individual offenders after the event.

### **3.5.2. Chronological ages**

As seen above, the interplay between the ages linked with specific sexual offences against children, the age of sexual maturity and the principle of double criminality can have a crucial influence on whether or not a prosecution can take place in the field of extraterritorial legislation. Thus, it is important to be able to establish the actual chronological age of child victims. Nevertheless, in the developing countries that attract sex tourism, this may not be easy particularly as the children involved are likely to come from impoverished socio-economic or ethnic groups. Many such children have never been registered at birth, or their birth certificates have been lost and are difficult, or even impossible, to locate especially if children have lost contact with their natal families. If evidence of age is dependent on the production of a valid birth certificate, the absence of this document alone can prevent prosecution of an alleged offender from taking place.

Nevertheless, evidence provided to the Tribunal showed that some countries are able to take a flexible approach to establishing a child’s age. In the Republic of Ireland, the court may have regard to a person’s physical appearance or attributes for the purpose of determining whether that person is [or was] under the age of 17 years. In Australia, evidence of age may be provided by means of a number of flexible alternatives:

- The child’s appearance;
- Medical or other scientific opinion, which includes interpretation of X-rays, which may have to be arranged in the overseas country and interpreted through expert evidence presented in the proceedings in Australia;
- ‘A document that is or appears to be an official or medical record from a country outside Australia’;
- ‘A document that is or appears to be a copy of such a record’;
- ‘Other possible admissible evidence’.

### **3.5.3. Investigation**

Processes of investigation that aim to establish the grounds for prosecution of offenders in extraterritorial cases are subject to a number of obstacles. The country of origin of the offender may not be alerted to the fact that an offence has taken place. The vital role played by embassies and other agencies of foreign representation in setting in train the use of extraterritorial legislation was mentioned several times in both written and oral evidence presented to the Tribunal. In the case of Belgium, two circulars have been sent to all Belgian Embassies and Consulates drawing attention to the application of extraterritorial legislation to sexual offences against children and stating that all sexual exploitation cases concerning Belgian citizens must be reported, from the outset, to the Belgian legal system. The submission of the United States government to the Paris Hearings even made the following plea to all present:

If any member of your law enforcement community has evidence that a US citizen is involved in child exploitation, this evidence should be brought to the legal attaché located at the American embassy in your country. The representative will convey the information to the appropriate Department of Justice office in the US.

Once a case is under way, the investigating agencies of both countries need to cooperate but obstacles can be experienced. The level of financial and human resources in the two countries may not be equal. As Ms O’Brian stated in her expert evidence, policing is under-resourced in many countries, with police being underpaid and under-trained. Moreover, the identification of cases and collection of evidence has often in the past relied on the efforts of NGOs, which usually have little experience in collecting evidence that will be admissible or sufficient in court cases. Thus, it can be useful, as in the bilateral agreement between the United Kingdom and the Philippines, to include training programmes, financial assistance and the exchange of information and research as part of the inter-country collaboration. However, as Ms O’Brian pointed out in her case study evidence, formal bilateral agreements may not always be necessary. In the case of Van der S, a citizen of the Netherlands, the Dutch police went to the Philippines and were able to work there because of informal personal contacts with Filipino police formed as a result of networking begun at the Stockholm Congress Against the Commercial Sexual Exploitation of Children and in the context of ECPAT police training. Much depends on willingness to be flexible with respect to the powers permitted to foreign police and other investigating agents by their counterparts in the countries in which offences take place. Ms O’Brian also mentioned the Baumann case in which Sri Lankan police cooperated to the extent that they allowed a Swiss search warrant to be used. Such cases show that there is often considerable potential for collaboration but, as several witnesses at the Paris Hearings pointed out, the implementation of extraterritorial legislation in the context of child sexual exploitation should not rely on the good will and voluntary efforts of individual professionals and agencies, but rather be based in sustainable systems of intergovernmental cooperation. In addition, it was stressed that systems of cooperation between law enforcement agencies should be capable of rapid action.

Many of the submissions also referred to the need for information to be exchanged between and among the countries of origin of the offenders and those in which offences take place. However, the Australian government evidence reported problems in the exchange of information between law enforcement agencies at different levels: ‘That area is governed by a mixture of Commonwealth, State and Territory law, most of which differ.’ Because of problems such as these, many submissions made recommendations about information exchange. The Netherlands

government suggested that the VICLAS system of linkage centred on a data base about offenders should be extended. The Belgian government recommended the establishment of a European network of cooperation and exchange of information. In a press release included in documents submitted to the Tribunal, it refers to a proposal for exchanging information under the auspices of the European Union:

A European centre specialised in the disappearance of children. This centre will centralise all data gathered in each member State of the Union by the national cells for the disappearance of children; to draw up a manual for the benefit of the police setting forth techniques for fighting the trade in human beings and paedophilia.

The bilateral agreement between the governments of the United Kingdom and the Philippines includes exchange of information about best practice and research as well as 'relevant products and services offered by the private sector of either country'. The Swedish government refers in its written submission to the compilation of a computer register or data base of information that is intended to be shared.

#### **3.5.4. Evidence**

Rules governing what may be admitted as evidence in court vary considerably between countries, depending to a large extent on whether the legal system is accusatory or interrogatory in nature. Documents from one country may not be admissible evidence in the legal proceeding of another. For example, as the Belgian government submission pointed out, documentary information from developing countries may be regarded as vague and imprecise from the perspective of the Belgian legal system. This can be the case with respect even to establishing identity, and especially, as already discussed, in establishing the all-important factor of the chronological age of the victim.

One important aspect is whether or not it is necessary for child victims to travel to the country of the perpetrator to give evidence. The written evidence of the Swedish government indicates that it is not normally necessary for Swedish children to give evidence in court cases. Thus, in cases involving extraterritorial legislation, evidence gathered in the country where the offence is alleged to have taken place can be used in court. Similar instances were cited by Muireann O'Briain in her testimony about various instances of the use of extraterritorial legislation. In the case against Van der S in the Netherlands, it was seen that the court could convict without Filipino children having to travel to the Netherlands to give evidence. In the case against Baumann, which took place in his home canton of Zurich in Switzerland, Sri Lankan children did not have to travel to Europe. Instead, investigators from Zurich went to Sri Lanka to gather evidence. Canada provides another example of a legal system in which this is possible. As described in the government's written submission, although witnesses, including children, can be brought to Canada to testify, the Canadian authorities can also send a rogatory commission abroad to hear evidence. There are, of course, cost implications consequent on either action. The Canadian written testimony goes on to comment that:

[...] if the offence occurs in a country with which Canada has a mutual legal assistance treaty, there will be an enhanced capability to obtain admissible evidence. However, even with a treaty, given Canada's rigorous evidentiary laws and the standards set out in the Canadian Charter of Rights and Freedoms, the evidence gathering process could be lengthy

and costly. In those instances where no treaties exist, it will be even more difficult and expensive to investigate and prosecute a case.

Ms Lynn Mattucci, from the Criminal Division of the Department of Justice, giving evidence on behalf of the US government, made the same point when stating that the main reason why there have been no prosecutions of child sex offenders under extraterritorial legislation is because it is difficult to get evidence that will meet the 'very stringent' USA evidence and authenticity requirements, even though the offence of 'travelling with intent' does not require proof that a sexual act has taken place.

The Spanish government submission took a forward-looking approach when it referred to the fact that obtaining admissible evidence can be a problem when the legislation and standards of proof in the two countries involved are different. Under the provisions of Spanish extraterritorial legislation, evidence can be given in the foreign State or in Spain itself. This government, like those cited above, has found that questions can be sent from Spain but may not then meet Spanish criteria for evidence to be valid. Thus, the Spanish government recommends the development of international accords on standards to be achieved for evidence to be admissible.

### **3.5.5. Legal procedures**

Many of the witnesses at the Paris Hearings provided examples of the ways in which obstacles inherent in the rules of legal procedures can be overcome in order to prosecute child sex offenders. Ms O'Briain pointed out that, in the case of Van der S, a child's statement about the offence was interpreted by the court in the Netherlands as a 'complaint'. This enabled the court to proceed in the prosecution, despite the rule that a formal complaint must be made by a child, its parents or guardians. Indeed a legal change in Netherlands law is planned in this respect. However, as Ms O'Briain commented, it is worth remembering that it is not perhaps logical to ask a child whose livelihood depends on prostitution to make a complaint against a customer.

On the question of double criminality, the Tribunal heard many varied opinions in the course of the Hearings. Several witnesses indicated that the requirement for double criminality can act not only as an obstacle to legal proceedings taking place but also provide loopholes because sex tour operators can simply change their tour destinations to countries in which sex tourist would not be liable to prosecution. As pointed out above, there may be a crucial interplay between double criminality and the age of consent, or the age groups to which an offence refers in different legislation. It may be the case that certain acts are defined as criminal offences in both countries, but not for the same age groups. As stated in the Swedish government's written evidence, 'Since we normally require dual criminality, the age of consent in the foreign country is essential for jurisdiction'. The answer to this kind of problem may simply be to identify the correct offence or offences in the two countries involved, so that a double criminality requirement may be fulfilled. The Norwegian government's written submission states that:

The Norwegian Penal Code does not refer to a double criminality condition in general. However, the Norwegian prosecution will normally have less interest in pursuing a case when a foreign country has done so. One exception is criminal acts that are much more severely punished under Norwegian law compared with the actual legislation.

France and Australia are among those countries for which double criminality is not a requirement for prosecution. It would appear that, at the very least, countries using extraterritorial legislation as a tool to combat sex tourism should work towards unanimity on the question of double

criminality, and the Belgian government submission referred to various efforts made within the European Union in this regard. Although unanimity has not been achieved, member States have been requested to re-examine their legislation.

One practical obstacle to the implementation of extraterritorial law referred to in many submissions is the timing of the response to a reported offence and the speed necessary for investigators to gather evidence. In order to gather sufficient, admissible evidence, considerable cooperation and liaison between the law enforcement agencies is required. Means have to be found for obtaining and translating necessary documents with all possible speed. Even in the successfully-pursued case against Bolin, a period of three years elapsed before the boy's birth certificate was sent to Sweden from Thailand, even though, as stated by the representative from ECPAT-Sweden, there was 'good' cooperation between the Swedish and Thai authorities. The Belgian government's submission suggests that establishing a focal point in each country for communication would facilitate a more rapid response, and several submissions pointed to the important role that could be played by embassies in this respect. On the other hand, the Swedish government's submission implicitly warned against over-centralisation of collaboration:

The experience tells us that it is most effective if officials can take a direct contact with each other or with others who have the relevant information, instead of using central authorities or other middlemen [...] central contacts points could, however, be of value to facilitate such direct contacts.

Perhaps one of the most useful means of facilitating contact would be to include in bilateral agreements a requirement for action within a specified time limit, as is the case with the Memorandum of Understanding between the governments of the Philippines and United Kingdom (Section 2):

The law enforcement agencies covered by this MOU will provide an initial response within seven days to any request for assistance from agencies from the other country relating to a serious crime.

According to this MOU, such a response must be quick and confidential, include investigations and 'preparation for and assistance in liaison to each other's countries.'

### **3.6. Training**

Although the content and methods used were not detailed, the Tribunal heard of many training and awareness-raising schemes that are aiding the successful implementation of extraterritorial legislation in the fight against international child sex offenders. It appears that many of the activities in this field received considerable impetus from the Stockholm Congress Against the Commercial Sexual Exploitation of Children and that ECPAT has made significant contributions to this movement.

The importance of public education and awareness of the issues involved in the international dimensions of the sexual exploitation of children was mentioned by several witnesses. In the first instance, this includes raising the awareness of tourists as a preventive measure. However, general public awareness has an equally important role to play. Ms O'Briain referred to the fact that a public campaign for extraterritorial legislation in the United Kingdom led directly to legislative action by the government. With respect to individual cases, it was clear that public awareness also affects individual decisions to bring offences to light. Thus, in case study

evidence, the Tribunal heard from Lia Freitas Calvacante from CEDECA (Child & Adolescent Defence Centre), in Ceará, Brazil that police were alerted to offences through anonymous phone calls from the public about the activities of a German citizen and his Brazilian accomplices. Likewise, both Ms O'Briain and Stan Meuwese, who gave evidence on behalf of Defence for Children International - Netherlands, pointed out that the Van der S case in the Netherlands came to light because of the action of a concerned individual who, in the course of his employment developing photographs, became concerned about the content of some images and went to the police.

### **3.6.1. Training implementers**

The Tribunal also heard of various schemes to train those who are involved in implementation of extraterritorial legislation at many levels. Non-governmental organisations have been at the forefront of efforts to combat the commercial sexual exploitation of children, yet they tend to be more accustomed to gathering information for advocacy and campaign purposes, and require training in assembling evidence that can be used effectively in legal processes. Even law enforcement agencies may not be sufficiently trained in methods of investigation in this field, particularly in obtaining information from children. As Christine Beddoe, testifying on behalf of ECPAT-Australia, commented, '[t]his is a highly specialised area of the law and requires a high level of intensive training [...] this is no ordinary generic police work'.

The range of those who may require training is wide, including training customs and immigration officers to detect child pornography at airports and, as suggested by the National Commission against Sexual Exploitation in Belgium, specialised groups of magistrates, who would not only be able to employ new skills in court cases, but also exchange information and experiences among themselves. It was reported that, in Germany, 'further training seminars on specific topics for judges and public prosecutors, including some in collaboration with neighbouring European States, are being planned and held.' The MOU between the United Kingdom and Philippine governments entails that training for law enforcement agencies may include:

- Use of equipment;
- Skills training for law enforcement personnel;
- Expert assistance in curriculum development;
- Training opportunities for Filipino personnel in the United Kingdom.

With respect to training, the evidence indicates that many initiatives are under way, but with little exchange of information about content, methods and impact. To give one example, Muireann O'Briain stated in her expert evidence that ECPAT has arranged for a policeman working voluntarily in Thailand to train NGOs to assemble evidence, and also to train police officers in how to deal with evidence and children. However, she commented that this is an individual effort. In training, as in so many other aspects of the implementation of extraterritorial legislation, there is a need for sustainable systems to be put in place.

### **3.6.2. Training researchers**

Although few witnesses mentioned research, the Tribunal identified this as an important requirement for improving the implementation of extraterritorial legislation in the field of the

international sexual exploitation of children. One reason for this was pinpointed in the evidence of ECPAT-Australia:

Existing laws must be continually evaluated and improved. Child Sex Tourism and exploitation know no boundaries. People engaging in these activities are often predatory abusers who see themselves as mavericks and who in the past have been able to stay one step ahead of the law. Loopholes must be closed.

The need to monitor the progress of the fight against international sexual exploitation of children entails that social science researchers may require special training in the development and use of social indicators and other monitoring tools. Moreover, as Professor Verhellen stressed in his expert testimony, academic researchers, particularly in developmental psychology, have blocked the scientific understanding of children as social actors, and thus placed limits on their credibility as witnesses. Training in listening to and hearing children is not only required by law enforcement and legal personnel but also by researchers who collect a broader range of information on the contexts in which sexual exploitation of children takes place, as well as the impact of various efforts to eliminate it. As seen above, there is currently little knowledge available to guide legal and other personnel in matters concerning cultural attitudes towards and concepts of sexuality; on children's ability to form opinions and express themselves at different maturational and chronological ages; as well as on trauma and healing processes in different cultures. Research topics such as these require the development of specific skills in the fields of cross-cultural and childhood research.

### **3.6.3. Data bases**

Consequent on the need for new research skills is the requirement to exchange experiences and information, not only among researchers themselves but also among service providers, law enforcement agencies, legislators and legal personnel. On the question of data bases, the written submission of the government of the Netherlands reports that:

Since July 1995, the CRI [National Criminal Intelligence Service] has been engaged in modifying and developing a system for the Netherlands which has been introduced in Canada, the United States and Austria under the name of VICLAS (Violent Crime Linkage Analysis System). This system can register the modes of operation of murderers and sex offenders. The offences covered are rape (by strangers), sexual offences relating to children (not within the family), sex-related murder and murders for psychotic motives. The system enables a link to be established between national and international crimes and possible offenders. Preparations for the introduction of this system are being made in other countries such as the United Kingdom, Finland, Belgium, Malta, Sweden and (outside Europe) Australia and New Zealand.

Such data bases, while necessary, are costly. The ECPAT-Australia submission mentions a paedophile unit of the Australian Federal Police, with a data base of suspected and convicted child molesters that are known to travel overseas, but also states that the mandate and resources of the Australian Federal Police 'do not extend to investigations of most of these cases'.

### **3.7. Types of cooperation**

Evidence indicated that there are three dimensions to cooperation with respect to the implementation of extraterritorial legislation in cases of the international sexual exploitation of children:

- Cooperation between States and civil society;
- Intergovernmental cooperation;
- Links at various levels between personnel in the two countries involved in an extraterritorial investigation and/or prosecution.

All three levels have already been mentioned in the course of this Report, but are here discussed in more detail because they are key factors in overcoming obstacles to implementation.

#### **3.7.1. Cooperation between States and civil society**

It was often clear and even more frequently implicit in the testimony heard by the Tribunal that commitment to implementing extraterritorial legislation in order to combat child sexual exploitation has led to an unusual degree of cooperation between governments and non-governmental organisations. A major catalyst in this regard was the Stockholm Congress Against the Commercial Sexual Exploitation of Children, which provided unprecedented opportunities for exchanging information and networking between representatives of governments and non-governmental organisations.

By definition, NGOs are not State bodies, although they may be subject to statutory laws and dependent for their proper functioning on at least tacit State approval. As part of civil society, they are sometimes referred to as the ‘third sector’ in national and international affairs, representing an independent, practical source of action for the public good, aiming to bring about beneficial changes that have not been successfully achieved by either government or market forces.

As pointed out earlier, the International Tribunal for Children's Rights is itself a response of civil society. Until the Stockholm Congress in 1996, NGOs (most notably ECPAT) had been at the forefront of campaigns to put the issue of the international dimensions of child sexual exploitation on the international agenda. In this role, NGOs had sometimes been cast in confrontational rather than cooperative relationships with governments. It is therefore notable that, in pursuit of the common aim of eradicating child sex tourism, new modes and levels of cooperation have been achieved. In the proceedings of the Paris Hearings this was manifest in the way the Australian government and Australian ECPAT representatives worked together to provide complementary evidence, with further examples of the same degree of alliance and trust occurring at other times in the Hearings with respect to other countries, such as Sweden and Belgium.

In addition to seeing this cooperation in action, the Tribunal heard evidence touching on several examples of such cooperation on the ground, of which one example is the training provided by the NGO ECPAT to law enforcement agents of the State in many parts of the world.

#### **3.7.2. Intergovernmental cooperation**

As seen earlier in this Report, intergovernmental cooperation can be bilateral, regional or global, and operate through formal treaties, such as the Convention on the Rights of the Child, in bilateral agreements and memoranda of understanding, as well as in agreements to cooperate at practical levels, through direct links between personnel, exchange of information and international assistance.

The Memorandum of Understanding between the governments of the United Kingdom and the Philippines is a case in point, covering a number of areas. The Preamble refers to the two governments' desire 'to form a united front against child abuse'. This MOU establishes a framework over three years of operation and was signed at a high level by the respective Secretaries of State for Foreign Affairs. It not only provides for cooperation, exchange of intelligence and a flow of assistance/training from United Kingdom to Philippines, but also includes provisions for counterpart funding from Philippines. The very practical terms of this MOU include precise definition of 'primary points of contact' for law enforcement agencies, setting out a schedule of meetings at which the two governments can discuss the progress of the activities covered by the MOU, especially with respect to monitoring their impact.

The representative of the Australian government acknowledged the importance of this model and stated that Australia's own MOU with the Philippines, which was not yet fully drafted, would aim to increase the capacity to prosecute, and cover the following areas:

- Agreement to cooperate between law enforcement agencies;
- Australian assistance to the Philippines;
- Immigration controls;
- Close consultation between the two governments.

Written evidence from the German government also emphasises the efficacy of oral, but still binding, agreements with other governments, such as has been achieved between the German Federal Ministry of Justice and the Thai Prosecutor General 'by which both States, in addition to diplomatic channels, also accept a communication from the prosecuting authorities', followed up by a formal 'exchange of notes'. It is noted in this submission that mutual assistance of this kind is more difficult in the case of 'sex tourism' countries, for example in South East Asia, than within Europe, but that the German Federal Ministry of Justice is seeking such agreements with 'as many as possible of the countries regarded as the destinations of sex tourists':

What this means in practice is this: If a German public prosecutor wants to ask his Thai colleague to interrogate a witness, then he will make the request not only through the usual diplomatic channels, but will also ask the Federal Ministry of Justice to communicate it direct to the Thai Ministry of Justice, which for its part immediately informs the Thai public prosecutor. In the age of the fax machine, this means that the Thai prosecutor can on the very same day learn of the request from his German colleague and already have secured the interrogation of the witness by the time the official request reaches him through diplomatic channels.

The important role played by embassies in the practical implementation of treaties and agreements has already been discussed. Embassy staff can be alerted to the issues involved by the circulation of information, as has been the case with all the embassies and other overseas representations of the government of Belgium. However, the Tribunal did not receive any

evidence that embassy staff of any country have been given specific training about either extraterritorial legislation or the sexual exploitation of children.

### **3.7.3. Bilateral cooperation between professionals and/or agencies**

This Report has already detailed many examples of cooperation as well as obstacles to bilateral cooperation between law enforcement agencies or legal professionals. Experiences described to the Tribunal in both written and oral submissions were varied. The main obstacles encountered appear to consist of problems of communication, including translation and interpretation, as well as problems of understanding (or misunderstanding) between different legal systems. Yet the Tribunal also heard of excellent examples of cooperation, based on flexibility and common commitment to eradicating the sexual exploitation of children, such as the Sri Lankan police in the investigation of the Baumann case, who permitted investigators from Zurich to use a Swiss search warrant when they visited Sri Lanka.

A considerable amount of testimony on this aspect of extraterritorial legislation was presented to the Tribunal, much of which was anecdotal and none of which was systematic. Nevertheless it was possible to distinguish three main themes:

- Successful cases of prosecution of sex tourists and associated agents have often been the result of investigations pursued through direct personal contact between law enforcement and legal agencies. This raises the issue, often referred to during the Hearings, of how to build and maintain sustainable systems given that these will be more costly in terms of both human and financial resources. As long as successful prosecution relies on the efforts of committed individuals or voluntary groups, prosecutions are likely to be limited to a few, awareness-raising 'show trials' that cannot protect more than a few children;
- Even if bilateral agreements can be set in place between, for example, different police forces, there is still a need to devise ways of coordinating the efforts of the various types and levels of organisation and individuals involved. These include justice systems, law enforcement bodies, legal systems, welfare systems and so on. The Belgian government's submission was among those that strongly recommended to the Tribunal for that there be focal points, or core groups to coordinate the different activities and policies involved in each case;
- A balance should be struck between formal, intergovernmental connections, which provide authority to act as well as the mandate to carry out investigations and collect evidence, and the direct contact between individuals in the same profession, which might be described as the oil that eases the wheels of investigation. There seems to be a clear link between this requirement and the provision of specialised professional training that acts simultaneously as the basis for international networking. Implicit in this is the idea of setting standards of good (and effective) practice.

## **4. Panel Discussion**

In the Panel Discussion, three invited experts considered the measures that might be taken to make extraterritorial legislation more effective after which the floor was open to a lively exchange of views, comments and questions from the public. The Panel was chaired by Jean-Pierre Rosenczweig, Judge at the Tribunal of Bobigny (France), with the participation of Dr Geert

Cappelaere, President of the Belgian Commission Against the Sexual Exploitation of Children, and Hélène Sackstein, Coordinator of the Focal Point on Sexual Exploitation of Children of the Geneva-based NGO Group for the Convention on the Rights of the Child.

Judge Rosenczveig underlined the comments made by Professor Verhellen in his expert evidence on the first day, stressing that changes in legislation are consequent on changes in the way society views children and childhood. Geert Cappelaere stressed the need to de-politicise the area, and also to make concrete propositions from a perspective that considers the total context of sexual exploitation. He stated that it is important that the principle of extraterritorial legislation exist and that it be used as one tool among many in the fight against the sexual exploitation of children, but it is more important that human rights, in general, and the Convention on the Rights of the Child, in particular, be brought into play in the countries in which offences take place. Thus, he reiterated the underlying philosophy apparent in evidence during the Hearings of preference for legislation and implementation at domestic level in all countries as the primary means of protecting children against sexual exploitation.

Judge Rosenczveig and Dr Cappelaere both identified the following priorities:

- Awareness-raising in police, legislative bodies and administrative bodies about child sexual exploitation and the Convention on the Rights of the Child;
- Strengthening the material means for implementing legislation at the local level;
- Finding out more about children —how to listen to them, hear them and obtain their opinions;
- Reinforcing the potential of police and legislative authorities to act in international cases of child sexual exploitation.

Ms Sackstein emphasised the issues of definition that had been apparent throughout the Hearings and drew attention to the work done in the area in the Draft Optional Protocol as well as to the need to compare different legislation, pointing to the confusions that exist about definitions of ‘sexual majority’ ‘sexual exploitation’, ‘sexual abuse’ and ‘sexual violence’.

Public comments largely underlined the views expressed by panellists. There appeared to be general agreement that the primary focus should be local level implementation, for which the role of NGOs is important. Speakers also emphasised that confusions about definitions and problems of evidence and proof lead to under-reporting and under-prosecution of sexual crimes against children.

## **5. Tribunal comments and recommendations**

### **5.1.1. General comments**

After deliberation, the Tribunal wished to emphasise certain general points before making specific recommendations.

The importance of international commitment to eliminating the commercial sexual exploitation of children by all means available cannot be too strongly stressed. It is summed up as follows in the written statement of the US government:

It is only through continued work, international cooperation and constant reassessment of our progress that we will reach our ultimate goal of permanently making the world a safe place for our children.

The primary goal is to protect children from all forms of exploitation. Thus, the Tribunal has drawn attention, not least in the structure of this Report, to their concern that the zeal to punish perpetrators of sexual offences against children should not cause secondary harm to children. They are also concerned with the testimony they received indicating that many perpetrators are not being convicted because of the insufficiency, poor quality and inadmissibility of evidence. There seems to be a balance to be maintained between the need to protect the rights of adult defendants and the need to protect children. These issues all revolve around the question of evidence. Means need to be found for obtaining good evidence from children, as well as for developing flexibility of process in legal proceedings concerning child victims and for further international and cross-cultural understanding and cooperation about matters concerning evidence. It may be that the special vulnerability of children requires particularly innovative and flexible interpretation of the rules regarding the giving of testimony in order for justice really to be done. Yet, this must not infringe the rights of defendants nor diminish evidentiary standards.

The international dimensions of the sexual exploitation of children should not be exclusively identified with sex tourism, nor yet confined to either developed or developing countries. Although extraterritorial legislation is important, it is one tool among many, and it is necessary to examine successes, failures and obstacles to the implementation of international law, in general, not only extraterritorial legislation. The evidence presented to the Tribunal at the Paris Hearings indicates that legislative change is possible. New laws are being passed, new offences created, innovative means of dealing with the obstacles to the implementation of extraterritorial legislation are being developed. Creativity, flexibility and harmonisation of investigative processes, legislation and legal proceedings are all necessary in the fight against the international dimensions of child sexual exploitation. The international community is in a learning phase with respect to applying extraterritorial legislation, which means that international exchange of experience is vital. In this respect, the Tribunal recognise the important role of the Stockholm Congress as a catalyst as well as the importance of the NGO contribution at both local and international levels.

Although the principle of extraterritorial legislation and its application have a role to play, it is more fundamental that human rights, in general, and the Convention on the Rights of the Child, in particular, should be brought into play in the countries where offences take place, as well as the countries of origin of the offenders:

criminal law is not omnipotent. It cannot be used to right every social wrong or to eliminate ideological or political frictions. It would, therefore, be an illusion to pretend that the elimination of international conflicts of jurisdiction can solve the underlying social or political conflicts. Some conflicts exceed the capacities of criminal law. Criminal law derives its authority from its credibility, and its credibility is based on the tangible results of enforcement.<sup>4</sup>

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<sup>4</sup> Council of Europe, European Committee on Crime Problems, 1992, Criminal Jurisdiction, Criminal Law Forum, Vol 3., No. 3, Spring 1992, 441-478, p. 477.

Finally the Tribunal emphasises that extraterritorial legislation cannot bear the full burden for eliminating the sexual exploitation of children, given the underlying cultural, social and economic causes, of which the most important are:

- The vulnerability and powerlessness of children as a group compared to adults;
- The generalised lack of awareness of children's rights as human beings and lack of knowledge of the Convention on the Rights of the Child;
- The structures of gender, class and race that lead to sexual inequalities and to the vulnerability of certain groups of children.
- The poverty of both certain nations and certain social groups, which is an essential factor in the vulnerability of some children to exploitation of all kinds;
- Imbalances in power between rich and poor nations, which create the underlying structure of sex tourism.

## **5.2. Specific Recommendations**

### **THE MEMBERS OF THE INTERNATIONAL TRIBUNAL FOR CHILDREN'S RIGHTS,**

**Considering** that, in adopting the UN Convention on the Rights of the Child, the international community has reiterated its interest and determination in promoting the well-being of children and the respect of their rights;

**Recalling** that, pursuant to articles 19, 32 to 36 of the UN Convention on the Rights of the Child, States Parties have undertaken to protect children from all forms of abuse and exploitation, including all forms of sexual exploitation and sexual abuse;

**Recalling** that, to this end, States Parties to the UN Convention on the Rights of the Child have undertaken to take all appropriate national, bilateral and multilateral measures to prevent: 1) the inducement or coercion of a child to engage in any unlawful sexual activity, 2) the exploitative use of children in prostitution or other unlawful sexual practices, and 3) the exploitative use of children in pornographic performances and materials;

**Propose** the following recommendations:

1. The protection of children must be the first priority in all legislation and implementation of legislation aiming to combat the international dimensions of the sexual exploitation of children. Without prejudice to the presumption of innocence of the accused, this means that no harm should be caused to children in the course of investigations carried out for, or legal processes involved in, prosecuting and convicting those who commit sexual offences against children.

This principle entails that:

- a) investigations should not be carried out in ways that:
  - (i) are psychologically damaging to children;
  - (ii) put children at risk of intimidation or physical danger;
- b) children must be protected from intimidation and physical danger, as well as undue disruption to their lives, identities or economic security, during the period before ad

during court proceedings;

c) the best interests of the child (Article 3(ii) of the Convention on the Rights of the Child) and the right to have his/her opinion taken into account in all decisions taken on her/his behalf (Article 12 of the Convention on the Rights of the Child) should be the guiding principles in decisions about whether a child should:

(i) travel to the country of the accused to give evidence;

(ii) give evidence by video link, either between countries or in the country of the accused;

(iii) give evidence in court;

(iv) give evidence in some other place;

In all such decisions due consideration should be given to the child's age, maturity and culture.

d) child victims in sexual exploitation cases pursued through the application of extraterritorial legislation should not be cross-examined aggressively and in particular not to a greater extent than adults or than children who are nationals of the country of the accused. Domestic legislation should be amended to ensure that this is the case;

e) a child's prior reputation should be inadmissible evidence;

f) the interpretation of rules and procedures should be flexible in order to reflect the principle of the protection of children. Systems should adjust to the special vulnerabilities of children;

g) interpreters in investigative and legal proceedings should receive specialist training to enable them to deal sensitively with sexually exploited children. They should be able to express themselves fluently in both the dialect of the child and the language of the court. They should be aware of the cultural mores of the child's society and social group;

h) law enforcement and legal professionals should receive specialist training in communicating with and listening to sexually exploited children;

i) victim support services should be alerted to and involved in all cases involving extraterritorial legislation and the sexual exploitation of children to provide culturally-appropriate counselling and socio-economic support to children at all stages in the process, including follow-up;

j) children who have been victims of sexual exploitation or traffic should not be repatriated unless follow-up support can be provided and certainly not if there is evidence that repatriation might threaten their physical security;

k) the implementation and consequences of statutes of limitation should be researched and reviewed.

2. The implementation of extraterritorial legislation with respect to the sexual exploitation of children should have the objective of establishing sustainable systems for prosecuting individual and corporate offenders. Such systems should:

a) not rely on voluntary or individual efforts;

b) be able to deal with cases systematically, rather than on an occasional basis;

c) be cost effective;

d) be seen to be effective so that they act as a deterrent;

To this end, international cooperation should be encouraged and reinforced through agreements at international, regional and bilateral levels, building on the experiences gained from the implementation of existing memoranda of understanding, such as those between the governments of the United Kingdom and the Philippines, and Germany and Thailand;

These agreements should entail:

- a) cooperation between relevant ministries;
- b) cooperation between law enforcement agencies;
- c) cooperation between legal professionals
- d) exchange of information and the development of data bases;
- e) training at all levels, including specialist interpreters;
- f) support and resources;
- g) exchange of research results;
- h) monitoring and documentation of the implementation of extraterritorial legislation and bilateral agreements.

3. International cooperation should include, but not be limited to, further discussion of the Draft Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

4. A working group should be established at international level to develop a separate treaty that would reconcile the legal, administrative and investigative rules of concerned nations in order to facilitate the implementation of extraterritorial legislation in cases of the sexual exploitation of children. The agenda of this working group should include, but not be limited to:

- a) definitions of sexual offences against children;
- b) reconciliation of chronological ages of children with respect to sexual offences against children and the age of consent to sexual activities;
- c) the inter-relationship between rules of double criminality and the definition of ages;
- d) international agreements about, and the possible elimination of, double criminality;
- e) rules concerning testimony;
- f) standards of acceptable proof.

5. To ensure effective cooperation at international level between States and civil society, resources should be sought for the establishment of a specialised, permanent forum for the exchange of information, including a web site on the INTERNET.

6. Training of relevant professionals, including law enforcement personnel, judges, magistrates, welfare workers and researchers, should take into account the special requirements of child victims and child witnesses, with respect to the provisions of the United Nations Convention on the Rights of the Child. In addition, specialist training for national level focal points within all professions that are involved in the implementation of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children should take

place, with particular reference to the experience gained in existing training programmes.

Training issues include, but are not limited to:

- a) communicating with and listening to children;
- b) cultural meanings and linguistic issues involved in understanding the sexual exploitation of children;
- c) the development of 'child-friendly' investigative and legal procedures;
- d) appropriate research skills.

7. Research and documentation should provide the basis for informed collaboration. In particular, research is required on:

- a) monitoring and evaluation of the implementation of extraterritorial legislation in combating the international dimensions of the sexual exploitation of children;
- b) the impact of training programmes for professionals in this field;
- c) the potential of extraterritorial legislation in combating the dissemination of child pornography, particularly through electronic networks such as the INTERNET;
- d) the impact on children of involvement in international legal action against child sex offenders.

## **Appendix A: Programme of the Paris Public Hearings**

### **Public Hearings of the International Tribunal of Children's Rights Paris, 30 September to 2 October 1997.**

#### **30 September 1997**

09.45-12.30 Official opening by the President of the Tribunal, Judge Josiane Bigot

##### Expert Evidence

Professor Eugeen Verhellen, Director, Centre for the Rights of the Child, University of Gent, Belgium

Ms Muireann O'Briain, Legal Advisor, End Prostitution, Pornography and Trafficking (ECPAT) International

12.30-14.30 Lunch

*Speaker:* Judge Andrée Ruffo, President, International Bureau for Children's Rights

14.30-17.45 Country Reports (Group A)

##### *Australia*

Report by Mr. Crispin Conroy, First Secretary, Australian Permanent Mission to the United Nations, Geneva

Report by Ms. Christine Beddoe, ECPAT-Australia

##### *Belgium*

Report by Mr. Pierre Rans, Counsellor, Cabinet of the Ministry of Justice

##### *Switzerland*

Report by Ms. Ursula Schaffner, Arge Kipro (ECPAT-Switzerland)

#### **01 October 1997**

09.30-12.30 Country Reports (Group B)

##### *Canada*

Report by Mr. Terrence Lonergan, Policy Advisor, representing the Ministry of Justice

##### *Spain*

Report by Mr. Valentín Dueñas, Director General, Ministry of Justice

##### *United States of America*

Report by Ms. Lynn Mattucci, Attorney, Criminal Division, Department of Justice

*France*

Report by Mr. Pascal Vivet, General Secretary, COFRADE

*Italy*

Report by Ms. Ana Maria Teresa Gregori, Judge, Ministry of Justice

12.30-14.00 Lunch

*Speaker:* Dr. Olivier Brasseur, Director General, Centre International de l'Enfance et de la Famille

14.00-16.30 Country Reports (Group A)

*Germany*

Report by Mr. Lutz-Rüdiger Vogt, Social Affairs Advisor

*Netherlands*

Report by Mr. Henk Van de Stolpe, Policy Advisor, Legislation Department, Ministry of Justice

Report by Mr. Stan Meuwese, Executive Director, Defence for Children International - Netherlands

*Sweden*

Report by Ms. Helena Karlén, Director, ECPAT-Sweden

**02 October 1997**

09.30-12.30 Panel Discussion

*Chair:*

Judge Jean-Pierre Rosenczveig, President of the Tribunal of Bobigny, France

*Pannelists:*

Dr Geert Cappelaere, President of the Commission Against the Sexual Exploitation of Children, Belgium

Ms. Hélène Sackstein, Coordinator of the Focal Point on Sexual Exploitation of Children of the Geneva-based NGO Group for the Convention on the Rights of the Child

12.30-14.30 Lunch

*Speaker:* Professor Vitit Muntarbhorn, Former Special Rapporteur to the United Nations Human Rights Commission on Sale of Children, Prostitution and Child Pornography

14.30-15.30 Case study presentations

Ms. Lia Freitas Cavalcante, CEDECA (Child and Adolescent Defence Centre),  
Ceará, Brazil

Ms. Muireann O'Briain, Legal Advisor, End Prostitution, Pornography and  
Trafficking (ECPAT) International

Cléa Cremers, CIDE (International Committee for the Dignity of the Child),  
Lausanne, Switzerland.

16.00-16.30 Closure, by the President of the Tribunal

## **Appendix B: Profile of the Members of the Tribunal**

Josiane Bigot was first appointed *Juge des Enfants* in Strasbourg in 1977. She has since held a variety of positions within the court system of France, including *1<sup>er</sup> Juge de Strasbourg* and *1<sup>er</sup> Juge de l'Application des peines de Strasbourg*. Judge Bigot is presently vice-president of the *Tribunal de Grande Instance*, and president of the *Tribunal des enfants de Strasbourg*. She also presides THEMIS, a legal aid association that promotes and protects the rights of children and youth.

Chen Jianguo has held various positions at the Supreme People's Court of China and was, for many years, a judge at the Beijing Municipal High People's Court. Judge Chen has taught at various law faculties in China and has published numerous books, articles and essays on legal topics. He has been vice-president of the International Association of Juvenile and Family Court Magistrates and has participated in numerous international conferences and symposiums. Judge Chen is currently retired.

Claire Suzanne Degla has served, in the past 15 years, as judge and as counsel at various levels of the judicial system of Benin. She is a member of several professional organizations, among which are the International Association of Juvenile and Family Court Magistrates, the Human Rights Commission of Benin. Mme Degla is the Secretary of the Benin Section of Defence for Children International.

Maria da Graça Diniz Costa is a lawyer and psychologist. She has held teaching positions in law at various universities in Brazil. Professor Diniz Costa has been an active member and officer of the Orden de Advogados do Brasil (OAB) and is an advocate and expert on the rights and laws relating to children and adolescents. She has lectured and participated in numerous conferences, debates, seminars and round tables nationally and internationally.

Roch Lalande has 20 years of experience as provincial judge for the Family and Juvenile Division in Ontario, Canada. From 1966 to 1974, Judge Lalande was legal aid director for the region of Prescott Russell. Currently retired, he remains an active member of numerous professional associations and volunteer organizations both in Canada and other countries.

## **Appendix C: Rules of Procedure for the Paris Hearings**

A set of procedural guidelines were adopted to ensure the smooth progress of the Paris Public Hearings. They are as follows:

1. The Tribunal is comprised of five judges, chosen by the Selection Committee in accordance with the Policy on the Selection Procedure of Candidates suitable for the Tribunal, and appointed for the duration of the hearings and rendering of a subsequent report. Throughout the public hearings, the Members of the Tribunal are assisted by the Secretary of the Tribunal.
2. The Secretary of the Tribunal is assigned to the Members of the Tribunal for the duration of the public hearings. His or her role is to assist them in all manners relevant to the execution of their mandate. In particular, the Secretary of the Tribunal must record all names and functions of witnesses that appear before the Tribunal, as well as report to the Members of the Tribunal on relevant activities and events that surround the public hearings. At the end of the public hearings, the Secretary of the Tribunal will provide them with the support and advice needed for the preparation of their final report. Furthermore, he or she will act as liaison between the Members of the Tribunal and the Bureau, ensuring that the final report is completed in time for the publication of the Bureau's annual report.
3. A President of the Tribunal is elected by his or her peers, prior to the opening of the public hearings. Generally speaking, the President will be responsible for the orderly progress of the hearings, from beginning to end. In particular, he or she must:
  - a) At the beginning of every session, remind the people present of the procedural rules for the hearings;
  - b) Call witnesses to the stand, according to the adopted schedule. If for some reason, a witness is late or simply not present at the appointed time, the next witness should be called to the stand without delay, and time should be made available, at the end of that session, for the postponed deposition;
  - c) With the help of the Secretary of the Tribunal, ensure that the time limits for each session are not exceeded;
  - d) At the end of the last session, present concluding remarks to the participants and officially close the public hearings.
4. Before testifying before the Tribunal, participants first have to be asked to do so by the President of the Tribunal or one of the other judges of the Tribunal.
5. While the Tribunal is in session, only the judges can ask questions to the witnesses. Other mechanisms that allow for discussion and further involvement from the participants, such as panel discussions or workshops, are generally included in the program. Although the Tribunal is not in session while these activities take place, a report on their outcome is presented by the Secretary of the Tribunal, at the end of the public hearings.
6. Once on the stand, each witness is awarded time to express his or her views, opinions, concerns and experiences (or those of his or her government, group or organisation) on the

topic under review. Once the presentation is over, time is awarded to the Members of the Tribunal to ask questions and/or demand further explanations from the witness;

7. English and French are the official languages of the International Tribunal for Children's Rights. Therefore, simultaneous translation in both English and French is made available throughout the hearings. Accordingly, all participants have to address the Tribunal in either one of these languages.
8. When asked to submit written briefs to the Tribunal, the participants should do so before the last session of the hearings, so that the Members of the Tribunal can take them into consideration for the preparation of their final report.
9. In order to ensure the orderly running of the hearings, silence must be maintained at all times while the Tribunal is in session. Dedicated rooms are made available for private discussions as well as interviews and photo shoots.

## **Appendix D: List of written submissions (by country, in alphabetical order)**

### **Australia**

Text of oral submission by Mr. Crispin Conroy, First Secretary, Australian Permanent Mission to the United Nations, Geneva.

*'International Tribunal for Children's Rights: Response to guidelines fo NGOs'*, prepared by Christine Beddoe, ECPAT Australia, 20 September, 1997.

### **Belgium**

*'LA SITUATION EN BELGIQUE CADRE LEGAL ET ACTION DES AUTORITES'*, communication faite par Pierre RANS, conseiller au cabinet du Ministre de la Justice.

Press Release from Cabinet Meeting of September 13, 1996, *'First initiatives taken by the Belgian Government to fight the exploitation of children for commercial purposes on the international level.'* <http://belgium.fgov.be>

*'Rapport des ONG -ECPAT-Belgique'*, Sophie Wirtz-Jekeler, ECPAT-Belgium.

### **Canada**

*'Canada: Child Sex Tourism and the Passage of Bill C-27'*, Department of Justice, Ottawa, 20.9.97

### **France**

*'Note relatif au projet de loi sur la prévention et la repression des infractions sexuelles ainsi que la protection des mineurs'*, COFRADE, 25.9.97.

### **Germany**

*Information by the German Government: Public Hearings of the International Tribunal for Children's Rights - Paris, September 40 to October 3, 1997.*

### **Italy**

*'The Italian legislation about children's sexual tourism and their sexual protection'*, text of oral presentation by Ms. Ana Maria Teresa Gregori, Judge, Ministry of Justice

### **Netherlands**

*'COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN'*, Government Ministry of Justice, the Netherlands.

*'Sex Tourism - the position in the Netherlands'*, by Stan Meuwese, Defence for Children International - NL, Member of ECPAT- NL, September 1997.

*'A proposal to improve the Dutch penal law to combat child prostitution and international child sex tourism'*, by Stan Meuwese, Defence for Children International - NL, Member of ECPAT- NL, September 1997.

**Norway**

Letter from Ms. Inge Lornge Backer, Director General, Legislation Department, Royal Ministry of Justice and the Police, 30.9.97.

**Spain**

*'Rapport de la delegation du Ministère de la Justice de l'Espagne devant le Tribunal International de Droits de l'Enfant sur la legislation extra-territorial penale'.*

**Sweden**

*'The Swedish Extra-territorial Legislation'*, Division for Criminal Law, Justitiedepartementet, Regeringknasliet, 15.9.97.

*'Swedish extra-territorial legislation and its effectiveness to prosecute Swedish nationals for sexual crimes committed against children in other countries - seen from an NGO perspective'* by Helena Karlén, ECPAT, Sweden.

**Switzerland**

Association against child prostitution (ECPAT Switzerland) 'Arge Kipro', 19.8.97

**United Kingdom**

*UK Extra-territorial legislation to combat 'Sex Tourism'*

Memorandum of Understanding on Law Enforcement Cooperation and Combatting Child Abuse between The Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland, 30.8.97.

**United States of America**

Ms. Lynn Mattucci, Attorney, Criminal Division, Department of Justice

## **Appendix E: Guidelines for the preparation of written submissions**

### **a) NGO**

The Tribunal invited NGOs to present a brief on the current conditions in their countries regarding the international dimension of sexual exploitation of children (hereinafter referred to as 'international SEC'). More specifically, they were invited to inform the members of the Tribunal on the following subjects:

1. On the magnitude of sexual exploitation of foreign children by individuals and organisations from your country;
  - What do we know about the people and organisations responsible for sexual exploitation of children in other countries, including those who benefit from such crimes, the procurers and the clients?
  - What do we know about the preferred destinations of those involved in the sexual exploitation of children in other countries?
2. On the degree of public awareness on international SEC and the involvement of sexual tourists from your country;
  - How informed and aware do you think the general public and the national authorities in your country are, with regard to sexual tourism originating from your country?
  - Can you comment on the coverage by the national media regarding international SEC?
3. On the role and involvement of your organisation concerning the protection of children and their rights:
  - What was the role of your organisation in the adoption of extraterritorial legislation in response to international SEC?
  - What can you say about the collaboration between your organisation, the government and other NGOs to denounce this type of violation and to collect information on the sexual exploitation of children on foreign soil?
4. On the adoption and application of extraterritorial legislation:
  - What is your assessment of laws currently in force?
  - What is your assessment of the application of these laws and, more specifically, of the results obtained?
  - In your opinion, how can these existing laws be more effective?
  - Should your country consider adopting new legislative measures or modifying existing ones?

## **b) Governments**

The Tribunal invited governments to send a brief on their legislative response to the international dimension of sexual exploitation of children (hereinafter referred to as ‘international SEC’). More specifically, they were invited to inform the members of the Tribunal on the following topics:

### 1. On the more technical aspects of your country’s extraterritorial legislation dealing with sexual exploitation of children;

- What is the theoretical justification for the extraterritorial scope of your country’s criminal jurisdiction over international SEC (nationality of the offender, universal jurisdiction over certain crimes, etc.)?
- What sort of activities are covered by the your country’s extraterritorial jurisdiction over international SEC (sex tourism, prostitution involving children, pornography of a paedophile nature, other forms of sexual abuse, etc.)?
- Who are the targeted perpetrators (in the case of sex tourism, for example, does the law target the procurers and middle-men as well as the tourists and clients)?
- What limit does the law impose concerning child protection with regards to his or her age (namely, age of consent to sexual relations, both in national and foreign legislation)?
- What are the statutes of limitation on offences committed against children?
- How are disparities or conflicts of jurisdiction dealt with (does the law refer to standards such as the double criminality condition)?
- What preliminary measures or procedures are conditional to the laying of an accusation before courts for crimes committed abroad with regards to international SEC?
- Does the law provide for special means of facilitating proof of criminal acts committed abroad (video links, agreements)?
- What are the sentences or penalties related to such crimes and what impact, if any, do the sentences provided for the same crimes in the receiving country have?
- What procedural guarantees does the accused have in cases where part of the investigation is done in the receiving country?
- Does the existence of an extradition treaty with the receiving country have an impact on the application of extraterritorial legislation?

### 2. On the actual implementation of your country’s extraterritorial legislation on international SEC:

- What were the difficulties encountered in the application of these measures?
- What steps are being taken to increase the effectiveness of these measures?
- What kind of training is there for the professionals responsible for applying these measures?

- What lessons can be learned from international cooperation with the foreign authorities, the various NGOs and Interpol representatives who are most likely to share necessary information with the authorities conducting the investigation?
- In regard to the protection of children and the public at large, what kind of information exists and is being distributed (is there, for example a register for paedophiles or some other means of alerting foreign authorities to the changes in whereabouts of people considered to be dangerous for children)?
- What kind of customs control, if any, exists concerning child pornography?
- Is your country involved in the project for a draft optional protocol concerning child sexual exploitation, and if so, what is your government's position on the question?

## **Appendix F: List of international human rights instruments used as background by the Tribunal**

Within the overall framework of international human rights instruments, both global and regional, the Tribunal took the following treaties into particular consideration when preparing their Report:

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption;

The Geneva Declaration of the Rights of the Child (1924);

The United Nations Declaration of the Rights of the Child (1959);

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1986);

United Nations Convention on the Rights of the Child (1989);

The Organisation of African Unity, African Charter on the Rights and Welfare of the Child (not yet in force);

## **Appendix G: Other materials received by the Tribunal**

### **ARTICLES IN LAW REVIEWS AND JOURNALS**

Council of Europe, European Committee on Crime Problems, “Extraterritorial Criminal Jurisdiction”. *Criminal Law Forum*, Spring 1992, Vol. 3, No 3, p. 441.

HEALY, Margaret A., “Prosecuting Child Sex Tourists at Home: do laws in Sweden, Australia, and the United States safeguard the rights of children as mandated by international law?”. *Fordham International Law Journal*, 1995, Vol.18 : 1852.

HECHT, Mark, “Canada’s Bill C-27, How does it Compare to Extraterritorial Legislation in Other Countries?”. *Human Rights Tribune*, Jan. 1997, v.4, No.1, p.10.

HODGSON, Douglas, “Combating the organized sexual exploitation of Asian children: recent developments and prospects”. *International Journal of Law and Family*, 1995, 9, p.23.

### **OFFICIAL UNITED NATIONS DOCUMENTS**

“The United Nations Convention on the Rights of the Child”, Nov. 20, 1989, G.A. Res. 44/25.

United Nations Commission on Human Rights, Economic and Social Council, “Draft Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Report of the Working Group on its second session”, Doc. No. E/CN.4/1996/101.

United Nations Commission on Human Rights, “Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography”, Resolution 1992/74 (adopted March 5 1992). In *International Review of Penal Law*, Vol.62, p. 972.

United Nations Commission on Human Rights, Economic and Social Council, “ Rights of the Child: Report of the Special Rapporteur on the sale of children, child prostitution and child pornography”, Ms. Ofelia Calcetos-Santos, Doc. No.: E/CN.4/1997/95.

### **CONFERENCE PAPERS AND DOCUMENTS:**

#### **World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, Aug.27 - 31 1996**

“Draft Declaration and Agenda for Action” drafted by the members present at the World Congress in Stockholm.

MUNTARBHORN, Vitit, “Report of the Rapporteur-General”.

O’BRIAIN, Muireann, “The international legal framework and current national legislative and enforcement responses”. (Paper prepared as a working document for the World Congress in Stockholm).

### **OTHER ARTICLES (from newspapers, journals and newsletters)**

“ECPAT hosts international consultation on law enforcement”, excerpts from Consultation Statement, in *PEACE (Protecting Environment and Children Everywhere)*, March 1996, Newsletter No.18, p. 3.

“Noose tightens on global child exploitation”, by Vitit Muntarbhorn, in *The Nation*, (Thailand), Wed., June 18, 1997, p.A5.

“Child sexploitation within the law’s reach”, by Vitit Muntarbhorn, in *The Nation*, (Thailand), Wed. July 2, 1997, p. A5.

“Securing justice for child sex victims”, by Vitit Muntarbhorn, in *The Nation*, (Thailand), Sat. July 19, 1997, p. A5.

‘PEACE’: Protecting environment and children everywhere, *Newsletter*, No.18. March 1996 (Excerpts from the Consultation Statement)