

The Implications of International Law in Sexual Tourism

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Introduction

Through complex systems and currents of sexual exploitation and human trafficking, the global movement of individuals, thoughts, and goods has produced a growing global sex industry, all of which have become increasingly common among the world's population. Individuals are responsible for adapting to the changing nature of sexual touristic practices, worldwide. The North's authoritative influence on the South and East is visible in a variety of ways, including the operation of sexual tourism. The following discussion looks at the specific dimensions of sexual tourism in various international law contexts and customs. Advocating the necessity and relevance of investigating both the personal and the subjective, in correlation to the related dimensions impacted by this sort of tourism; such as but not limited to economic, sociological, political, and cultural spheres.

What is Sexual Tourism?

Briefly, sexual tourism can be defined as travels specifically arranged with the intent of procuring certain sexual services more easily (International Association for Medical Assistance to Travellers, 2017). This phenomenon is escalating on the global scale, and disregarding its transcendence seems to raise questions of legality. Indeed, the global reality of sex tourism is in a constant state of flux. While the permanence of traditional practices is still evident, the ongoing changes resulting from socio-economic conditions necessitate a continuous revision of the topic. The principal purposes and motives behind sexual tourism include having a sexual encounter (Graburn, 1983). Other scientific perspectives emphasize that 'sex tourism' is more of a euphemism for the abuse of women, children and racial minorities, mainly perpetrated by rich men arriving in developing countries in continents such as Asia, South America, and Eastern

Europe. These “tourists” prefer to use the prostitution agencies and industries in these underdeveloped areas, as a segment of the industry itself is based on sexual exploitation and racial bias (Jeffreys, 2002). In general, sex and tourism are linked in a variety of ways that are not always discernible. When sex tourism is associated with a vacation period where the initial motivation is to have a short-term sexual encounter, it is most prominently affiliated with traditional sex trade. Southeast Asia is the most suitable representation for this system. Montmagny-Grenier (2011) classified sexual tourists in two separate categories: casuals and repeated users.

1. Casual users are travellers that do not intend to participate in the pleasures of the sex industry; they "purchase" it only if it is presented to them. This proposal can range from "traditional" to "child" prostitution. To be more explicit, three kinds of visitors fall into this primary classification. The casual type tourist does not limit itself to previous offenders or criminals, as people who are perceived as ordinary citizens, also participate in opportunities that involve sex with locals. In short, most casual tourists are solely consuming the supply.
 - a. Party tourists are included in the first tier. For them, the tourist experience is comparable with a large playground where everything appears to be permitted, including the use of paid sexual services. They are mostly found in clubs and bars.
 - b. The next class is the self-proclaimed average tourist. They frequent public tourist attractions searching for sensual rather than sexual rendezvous, preferring amorous or romantic encounters. They are frequently alone for an extended period.

- c. The final classification includes both business travellers and backpackers.

These tourists take advantage of the sex industry when the opportunity arises, but they have not chosen their destination based on the above proposition (Montmagny-Grenier, 2011).

2. Repeated users are considered the minority group of the sexual tourist industry (Oppermann, 1999). The "recurrent type" refers to tourists who are primarily travelling to engage in sexual relations that are, in most cases, illegal in their home country (pedophilia, sexual orgy, homosexual relations, and more.) It is common for a casual tourist to become a repeat visitor. For example, they might have enjoyed their previous experiences so much that they decided to return to the country they previously visited and perceived it as their sexual paradise (O'Connell Davidson, 2001).

Nevertheless, reality exhibits that some different habits and practices may not meet either categories, such as 1. sexual transactions amongst tourists, 2. casual sex in which the local considers sexual transactions with tourists from powerful countries to be a conquest, 3. long term relationships with the intention of gaining something, 4. tourists having sex with sex workers in developed countries, and a long list of others. Now, anyone can find sex virtually everywhere in exchange for monetary or in-kind payment. Globalization, or the migration of people, ideas, and goods, means that the sex industry has become globalized through increasingly sophisticated successions and systems of prostitution, accommodating to developing interpretations and functions of sex.

Why is Sexual Tourism an Issue in International Law?

Many issues have arisen from sexual tourism. Given that tourism provides economic gains worldwide, sex tourism has been a subset of revenue-generating tourism for many countries. Even though sexual tourism is a factor in the preservation of steady economies, it also harms the welfare and well-being of these nations and the individuals within them. The exploitation of individuals in less developed countries as a result of sex tourism contributes towards the globalization of the world economy. The unfortunate reality is that the industry has grown into a mainstream sector that will not be curtailed overnight since all forms of sex tourism have become the norm in the world. This phenomenon is because every facet of the tourist sector profits from this industry, including airlines, hotels, tour operators, and locally owned businesses within the country (Grouchy, 2015). To control this international problem, certain organizations, treaties and declarations try to minimize the international impacts of sexual tourism, yet some issues regarding this topic still stand in the globalized 21st century. Thus, how can these issues be fixed, if even?

The United Nations preaches the universal suffrage of human rights on the international scale, but with bureaucratic institutions that dilute their overall effectiveness and international law principles that limit their capacity to intervene, such as self-determination, it is difficult to construct effective plans that will thwart the perpetration of these human rights violations. Moreover, when addressing child sexual tourism, the subject of the matter becomes more and more of an issue that must be resolved and discussed by the international courts due to the criminal aspect of these crimes. According to an article published by the Office of the High Commissioner of Human Rights (2013), commercial sexual exploitation of children in the travel and tourism industry is becoming increasingly common in destinations around the world. Sexual

exploitation affects an estimated two million children worldwide each year, according to UNICEF (UNICEF, 2020). The exploitation of minors for sexual purposes by offenders who travel to participate in sexual activities with children is known as child sexual tourism. Child trafficking, child prostitution, child pornography, and the sale of minors for sexual exploitation are all examples of this. Sexual tourism of children takes place in any country or tourist destination (Office of the High Commissioner of Human Rights, 2013).

Analysis

What has already been done

Mechanisms, Conventions & Covenants

The jurisdiction and competence of UN bodies to address human rights concerns in general, as well as their status in specific countries, stems either from multilateral treaties to which a State may have adopted or ratified, or from the UN's own constitutional authority. From the UN General Assembly to individual rapporteurs and small working groups, the UN bodies responsible for human rights issues are organised in a hierarchy. The Economic and Social Council sits beneath the General Assembly and its component committees (ECOSOC). The Commission on Human Rights and the Commission on the Status of Women are subsidiary to it and were created as a consequence of article 68 of the charter.

As for its addressing of human rights issues within sexual tourism, before 2006, there was the sub-commission on the promotion and protection of human rights, originally constituted as the Sub Commission on Prevention of Discrimination and Protection of Minorities, renamed in 1999. The main responsibilities of the Sub-Commission were to conduct human rights studies,

make recommendations on the prevention of discrimination of any kind relating to human rights and fundamental freedoms, and the protection of racial, national, religious, and linguistic minorities, as well as to carry out any other duties that were entrusted to it. The sub-commission addressed topics that were congruent with sexual tourism, such as the trafficking of persons and the sexual exploitation of minority groups. However, all mandates & functions of the Commission on Human Rights, including its sub-commissions, were assumed by the Human Rights Council on June 19, 2006, pursuant to General Assembly resolution 60/251.

Another mechanism that no longer presently exists, but greatly contributed to the thwarting of sex tourism's prevalence is the United-Nations Commission on Human Rights' (UNCHR) working group on contemporary forms of slavery. As main theme, the working group would cover issues that pertained to the "prevention of traffic in persons and the exploitation of the prostitution of others" (OHCHR, 1951). In 1989, the Working Group also began its research into the sale of children & child prostitution as it further collaborated with the Special Rapporteur on the Sale of Children. These efforts resulted in a comprehensive international approach to child-sex tourism specifically as it permitted the creation of the Programme for Action for the Prevention of then Sale of Children, Child Prostitution & Child Pornography, adopted by the UNCHR in 1992.

Although prostitution in itself is of high debate within the UN as to its legality & human rights violations, it seems that the International Law leaves no room for subjective interpretation when it comes to the sexual exploitation of children, as such human rights violations goes above the mere concept of state sovereignty and violates the very essence of these individuals' humanity. As consequence, UN mechanisms seem more comfortable when addressing these

topics, as in its past, UN members often regarded the sex trafficking of children as more of a social ill than a criminal problem (OHCHR, 1951).

The International Labor Organisation has also made significant contributions to the monitoring and punishing of sexual tourism through conventions, such as its forced labor convention of 1930. Its intention and objective was to prohibit the use of forced labour in all of its forms, regardless of the nature of the job or the industry in which it is carried out. With a few exceptions, such as obligatory military duty, the Convention defines forced labour as "any employment or service which is exacted from any person under the threat of any punishment and for which the said person has not volunteered himself willingly" (ILO, 1930). The ILO also views child prostitution as one of the worst forms of forced labor to exist, thus reiterating the point of the above paragraph as to the clear and undeniable violation of human rights when treating of prostitution of children specifically. It is also important to note that the UN Convention on the Elimination of All Forms of Discrimination against Women addresses and prohibits sex tourism, as it is "incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. It puts women at a special risk of violence and abuse" (OHCHR, 1979).

Moreover, collectively known as the International Bill of Rights, the United Nations International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights and the Universal Declaration of Human Rights attempt to ensure the protection of Human Rights on the international scale. Articles 2 and 3 of the ICCPR include the ICCPR's unifying themes and principles, which are founded on the concept of non-discrimination. Art. 2 guarantees that the ICCPR's recognised rights would be protected and available to everyone within the territory of nations that have ratified the Covenant. Art. 3

guarantees that men and women have equal access to all civil and political rights outlined in the ICCPR (OHCHR, 1976). Art. 8 also guarantees one's right not to be enslaved, which directly relates to the sex tourism industry and the involvement of children in such issues of sex trafficking and prostitution.

The United Nations Convention on the Rights of the Child (UNCRC)

The UN Convention on the Rights of the Child (CRC) is the first legally enforceable international agreement that expressly protects children from sexual abuse and exploitation. The UN adopted it in 1989. Canada is one of 191 countries that have ratified the CRC. Article 34 of the Convention outlines state obligations regarding the sexual exploitation of children. Moreover, art. 34 further declares that Parties who participate in the convention must safeguard children facing all types of sexual exploitation and abuse. As a result, Parties must foster all necessary national, bilateral, and multilateral measures to circumvent:

- (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 (OHCHR, 1990).

Furthermore, Art. 19 of the CRC requires countries to pass laws against the sexual exploitation of children, preventing parents from forcing their children into the sex industry. Articles 19 and 39 of the Convention also require governments to implement social programs designed to aid in the rescue and rehabilitation of children who are victims of sexual exploitation (OHCHR, 1990).

What are the current issues

As mentioned earlier, many treaties, organizations and others are currently fighting or have fought to end this problem. However, the problem of sexual tourism is much too large to describe on its own and is composed of many different variables and aspects.

First and foremost, many cities ranging from Amsterdam, Netherlands to Bangkok, and Thailand all somewhat participate in this sexual tourism culture, where people may fly across international borders to knowingly take advantage of individuals desperate enough to sell their own bodies. Yet, only a fraction of these visitors actually acknowledges being “sex tourists”, many preferring to call their temporary relationship a “romance”, or even a “friendship” (Ward-Pelar, 2021). This makes the identification, which may then lead to the eradication, of sexual tourism tricky for international organizations or treaties who wish to do so.

Furthermore, as much as governments seem to be against sexual tourism “on paper”, there seems to be a reemerging pattern within countries that disproves this theory, at least on some level. Indeed, taking the northeast coast of Brazil as an example, groups and non-governmental organizations (NGOs) have been pushing for the abolition of child exploitation and human traffic since Brazil’s tourism industry’s explosion in the 20th century. With a million-dollar spent by the Ministry of Tourism in Brazil to limit the spread of sexual tourism in 2004 alone and the convocation of the World Tourism Organization to help combat this issue since 2005, it would seem like the issue should be on the route of being solved. Yet, its rise is ever-growing, which begs the question: *Why hasn’t Brazil made adult prostitution illegal yet?* One answer could be seen through the Rational Choice Theory, which states that humans inherently function by making choices rationally, disregarding societal norms. Under this lense, a country’s decision to *secretly* support Sexual Tourism is based on a cost-benefit analysis, where

the suffering of some in these prostitution spheres is necessary to help develop their overall tourist industry, and therefore their overall economic wealth and prosperity. Nevertheless, from an international law and auto-deterministic perspective, no IGO, NGO or other country alliances could meddle with how a country decides to manage its own economy and laws. Coupled with the fact that most of these lesser developed countries (LDCs) do technically have laws that prohibit the prostitution of children, and sometimes even adults, it then becomes harder for these international collaborations to sanction those *sex tourist capitals* (countries or cities known for their large prostitution rings) (NaRanong, 2019). Therefore, the need for International Jurisdiction regarding this issue seems essential, but in reality, existing laws regarding child sexual tourism and traffic are straightforward and already set up. Rather, there is a need for stricter law enforcement agencies and better cooperation between national and international governments on all parts :

- a. *Sending Countries*, such as the United States and China, who enable rich individuals to fund these prostitution rings; and
- b. *Destination Countries*, such as Thailand and India, who permit these events within their borders (Washington, 2018).

As Overall (1992) states in their article, sex work is inherently linked to the concepts of Capitalism and the Patriarchy, meaning that this industry mainly functions because of sex workers' need for capital in a capitalist world and because of male tourists' need to feel "masculine" by using women in such contexts. In other words, it is the globalization of such Western ideologies that have caused sexual tourism to spread in the "global south". In addition, it has facilitated the moving of tourists and the propagation of information regarding the subject over international borders. Yet, one aspect of sexual tourism that seems to stay untouched by

globalization is the understanding and acceptance of other cultures. This has led to a phenomenon within sexual tourism named the “otherization” of children in LDCs, where sex tourists from developed countries justify the sexual exploitation of children by creating a line between their own and the ones in LDCs, rooted in racism (O’Connell Davidson, 2004). This difference is understood under two views :

1. Circumstantial Sex Tourists :

- a. These tourists mainly believe in certain stereotypes that help them to justify the fact that they indulge in the prostitution of minors , namely believing these children “need the money for their survival”, that children in LDCs are simply more “sexually inhibited”, or even that these children are more primal. These tourists simply refuse to acknowledge their wrong actions, which leads to them seeing children in *destination countries* in such demeaning views, prompting them to easily turn physically and sexually abusive.

2. Preferential Sex Tourists :

- a. These tourists, on the other hand, acknowledge the fact that they are pedophiles or hebephiles before visiting these countries. Therefore, their incentive to visit these countries is purely legal, as they believe that they are less likely to face repercussions overseas.

To combat this problem, many UN conferences and NGOs/IGOs have pushed for the elimination of such practices. For example, the 1989 UN Convention of the Rights of the Child strictly forbids the “exploitative use of children in prostitution or other unlawful sexual practices”, and the Global Alliance Against Trafficking in Women, a coalition of over 80 NGOs around the world dedicated to defending human rights and protecting people from any

international or national sex traffic (Eirienne, 2021). Intersectioning with child sexual exploitation and traffic are one of the young men by homosexual tourists. Indeed, some sexual tourists are attracted to the “exoticism” of homosexuality in a country where it is legally criminal (Navarro-Ayala, 2018). These countries, who go against the UN’s Universal Declaration of Human Rights (article 1, 9 and 16 for instance) as well as many other IGOs/NGOs who claim homosexual and transgender rights, are not only disregarding this aspect of international law, but are also actively harming their own population by indirectly making homosexual sex tourism the only acceptable way to manifest this will of love for young, mostly male, gays.

What countries are doing to implement International Law.

Destination Country Legislative Initiatives

To derive the influx of sex tourists and protect their children from exploitation, several destination countries have recently strengthened their laws regarding child prostitution, such as the Phillipines. Foreign child sex tourists have recently come under increased government scrutiny, and the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act was promoted. In addition to the pimps, advertisers, patrons, procurers, and brothel owners, the Act also creates criminal offences. Foreigners convicted of a crime can be expelled from the country and barred from returning after serving their sentences, but only after serving their sentences. In any case, the child is considered an exploitation victim, and the Act legally presumes that an adult found in a hotel room with an unrelated child is engaging in sexual exploitation (International Labour Organization, 1997). On the other hand, the Thai government has also taken several new measures against child-sex tourism. The Prohibition of Prostitution Act in Thailand prohibits all forms of prostitution. It punishes those involved in the sex trade, but

it does not penalize customers and will not be strictly enforced. In Thailand, statutory-rape laws let a customer accused of committing rape to be sentenced to a 7- to 20-year prison term and fine if the customer is found with a 15 years old or younger. In cases where the victim is younger than 13 years, the sentence is life imprisonment (International Labour Organization, 1996).

Many other nations have also responded to the call for tougher laws and increased penalties to discourage the sexual exploitation of children within their borders. Portugal has enacted laws making it a crime, either directly or indirectly, to profit from prostitution, even though prostitution itself has long been illegal. The Czech Republic prosecutes those who traffic children, while the Portuguese government has made prostitution a crime (Duarte, 2012).

Case Studies

Jan van Schelling - Dutch v. Philippines

Jan van Schelling, a 43-year-old divorced computer programmer, has made several trips to the Philippines. He arranged for underage girls to see him in his hotel room on these travels. He documented his actions in pornographic photographs and movies, with which he returned to the Netherlands. Many of them depicted illegal sexual practises that occurred in both the Netherlands and the Philippines. A team from the Dutch Federal Bureau of Investigation travelled to the Philippines to locate the victims. A worker with a street children's organization recognized one of the suspects after police showed him photos. Rita eventually admitted to having oral sex with Van Schelling when questioned by the police. Her statement served as the basis for a criminal investigation in the Netherlands. For the first time, a Dutch court has awarded damages to a foreign victim of child sex tourism. Because Van Schelling was bankrupt and unable to pay damages, the money was paid to Rita and her mother by Defence for Children.

In addition to a prison sentence, it is now possible to get compensation for a damage claim as a punishment (ECPAT, 2009).

Ohms - German v. Cambodia

NGOs play a significant role in bringing attention to the problem of child sex tourism and helping victims in cases where suspects were convicted. To apprehend and punish child sex tourists, all parties involved must work together. NGOs have an extensive network of people who can help speed up the process, including child victims, police officers, lawyers, the media, and politicians. The following is proven in the Ohms case. Street children informed a German NGO that a German sex tourist (Ohms, 47) was sexually abusing them. Ohms was sentenced to several years in prison for sexual abuse and possessing pornographic materials. He tested positive for HIV and had at least five prior convictions in his home country. He told a corrections officer shortly before his release that he planned to live in Southeast Asia. The corrections officer sought to persuade Ohms that his plans were illegal both in Cambodia and in Germany (ECPAT, 2009).

Ohms travelled to Thailand after his release but was denied entry due to German officials' concerns. With a fake Danish passport, he entered Cambodia through Bali and Kuala Lumpur and hired a guesthouse. The case was taken up by the French NGO Action Pour Les Enfants (APLE), which fights child sexual exploitation after receiving a tip concerning Ohms. In January and February 2007, APLE workers witnessed the suspect riding his motorcycle through Sihanoukville, looking for boys. According to the report, the suspect had intercourse with multiple children aged eleven to thirteen and attempted to rape one of them. Ohms was convicted of using a fraudulent passport in September 2007 and has been serving a fourteen-month sentence since then. Because he deliberately took the danger of infecting the victims with HIV/AIDS, Ohms was charged with sexual exploitation and bodily damage of at least five

juveniles. Although those who testified against Ohms were not infected with the virus, it is unknown if all boys are HIV/AIDS-free. A juvenile victim from the Philippines appeared as a witness in a German court case for the first time (ECPAT, 2009).

Three groups of Cambodian children travelled to Germany in December 2007 and January 2008 to testify against Ohms. Residents of Cambodian descent in Kiel, Germany, were responsible for the children's well-being during their stay in Germany. Six children were reunited with their families after repatriation to Cambodia, and a social worker visited them regularly. Ohms was sentenced to six and a half years in prison on July 25, 2008 (ECPAT, 2009).

What is Canada doing to prevent sexual tourism?

As previously said, sex tourists can be an average Joe in nearly every country, including Canada. In contrast, one Canadian has been convicted and tried for child sex tourism - R. v. Bakker. - within its borders. Sex tourists from Canada, however, can and have been charged and convicted in the country where the incident occurred. Canada signed the Convention on the Rights of the Child in December 1991, promising to "undertake to safeguard the child from all types of sex exploitation and sexual abuse." Canada signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography in November 2001, which, as stated in the Convention, challenges states to build their jurisdiction protecting child sexual offences engaged on within their boundary, or when the asserted offender is a citizen of that state or an individual who resides typically in that nation. Furthermore, in 1997, Canada passed extraterritorial legislation to prosecute Canadians who sexually exploit children in other nations. In 2002, the law was slightly amended to remove the requirement that the nation's government request a Canadian prosecution where the offence occurred. (Hermida, 2010)

This measure (section 7, 4.1) in Canadian Legislation was a giant stride in progression for anyone commanding the punishment of Canadians who commit child sexual assaults while travelling. Before this legislation, Canadian judges lacked the authority to try a child exploitation case concerning a crime acted in another country. The receiving country was held liable for investigating and prosecuting the Canadians. In contrast, there have been situations where Canadians have been successfully investigated and prosecuted abroad; conditions in many of these countries make it difficult to investigate and prosecute foreigners who commit similar offences in their country. Crime, inadequate law enforcement means, poverty, illiteracy, and weak educational institutions are the circumstances (Hermida, 2010). This Act grants Canada to prosecute Canadians who commit these crimes overseas if the foreign country is unable or unwilling to do so.

Nonetheless, challenges in the prosecution of these heinous crimes remain difficult. An issue is determining where these crimes took place, which occurs considerably far from the extent of Canadian law enforcement. Likewise, when the authorities have recognized a suspect in a child sex tourism investigation, the investigation can be challenging, time-consuming, and costly. Victims, witnesses, and evidence are frequently located in another nation; victims and witnesses are typically hesitant to come forward. There is occasionally a different language to consider and separate legal and law enforcement systems. The practicalities of carrying out such an examination are pretty complex (Hermida, 2010). Despite the difficulties of these investigations, it is anticipated that further charges under section 7 will be filed in Canada (4.1). The government and law enforcement agencies have expressed a readiness to safeguard all children from sexual exploitation. Condemnations like Bakker's will no longer be an outlier

thanks to the combined efforts and resources of the government, law enforcement, and non-governmental organizations.

Conclusion

As this paper comes to an end, many conclusions can be made on the subject of Sexual Tourism and its place in international law. First and foremost, Sexual Tourism is a complex issue rooted in many Western ideological systems, such as patriarchy, capitalism and racism, which has exploded since the beginning of the 21st century due to the rise of globalization. In an international law context, there are clearly many organizations, treaties and declarations that denounce sexual tourism and its seemingly universal culture. Thankfully, some sex tourists are able to be prosecuted not only in their *Destination* countries, but in their *Sending* countries as well (such as Canada's case). Yet, due to the concept of auto-determination and the strenuous enforcement of international law, these regulations are hard to administer and implement. From *Pop Culture* references such as Jason Derulo's "Talk Dirty" song glorifying sexual tourism to powerful individuals such as Jeffrey Epstein being found guilty of sex trafficking, it seems like sexual tourism is on the rise for the worst. Taking into consideration the ever growing ascend of the internet and social media, sexual tourism may look very different in 5 to 10 years, which is why individuals and organizations must act against it now.

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