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Protecting Children: The Battle against Child Pornography and Other Forms of Sexual Exploitation

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Honorable Chairmen, and distinguished members of the Commission.

I am privileged to testify before you here today on further legal measures that I believe the United States should adopt to fully and effectively protect our children from commercial sexual exploitation, including trafficking, prostitution, sex tourism and pornography.

At the 1st World Congress Against the Commercial Sexual Exploitation of Children of 1996, countries declared in the "Stockholm Declaration and Agenda for Action" their commitment to "review and revise, where appropriate, laws, policies, programs, and

practices to eliminate the commercial exploitation of children." Countries reaffirmed this pledge at the 2nd World Congress of 2001 in the "Yokohama Global Commitment", calling for "action to criminalize the commercial sexual exploitation of children in all its forms and in accordance with the relevant international instruments, while not criminalizing or penalizing the child victim."

A review of the United States recent legislative enactments against the commercial sexual exploitation of children since then, reveals the existence of a comprehensive legal framework, especially after the passage of the Trafficking Victims Protection Act of 2000 as reauthorized in 2003 and 2005, the Protect Act of 2003, the Children's Internet Protection Act of 2000, and the Adam Walsh Child Protection and Safety Act of 2006.

These laws reflect, in my judgment, three main aspects, what I refer to as the three E's: expansion of criminal liability, extension of territorial jurisdiction and enhancement of child protection.

First, the United States law recently expanded the basis of criminal liability for commercial sexual exploitation in several ways. For instance, under the child sex tourism law, proof of travel with the intent to engage in illicit sexual conduct with a child is no longer required. In addition, the law now punishes attempts to commit the crime and provides for liability of the legal person, the travel agency or a similar facilitator, involved in inducing the crime. The penalty for the crime of child sex tourism has been doubled from fifteen to thirty years under Section 105 of the Protect Act. Similarly, in accordance with the Trafficking Victims Protection Act, the penalty for child trafficking is enhanced from twenty years to life if the trafficked person is under the age of fourteen. Under the Internet Safety Act, whoever engages in a child exploitation enterprise will be imprisoned for any term of years not less than 20 or for life. While the previous law provided that a statute of limitations expired when the child attained the age of twenty-five, Section 202 of the Protect Act has now abolished the statute of limitations for any sex crime that involves children. Sex offenders should not escape prosecution by mere passage of time.

Second, the United States law applies the principle of extraterritoriality in several ways. The Protect Act applies to any U.S. citizen or resident who travels abroad to engage in illicit sexual activity with a child regardless of where the act has been committed. The Act also applies to foreigners, and in fact, it has been applied to a French and a German tourists who traveled from the U.S. to Mexico to engage in sexual conduct with minors. Similarly, the Trafficking Victims Protection Reauthorization Act of 2005 provides for extraterritorial jurisdiction over trafficking in persons offences committed by persons employed by or accompanying the Federal Government outside of the United States. Finally, under Section 506 of the Protect Act production of child pornography outside the United States for the purpose of distribution in the United States is a crime.

Third, the United States law enhances the protection of children who are victims of commercial sexual exploitation, and adopts a child-sensitive approach in several ways. A trafficked child is entitled to benefits under the Trafficking Victims Protection Act

regardless of cooperation with law enforcement officials. A child victim of trafficking also has the right to civil compensation under the Trafficking Victims Protection Reauthorization Act of 2003. Moreover, a trafficked child may receive an immigration status that extends to his or her parents. In the event that a child's testimony is required, out of court testimony is allowed to avoid revictimizing the child.

These legislative measures fully comply with international legal standards. In fact, although the United States has not ratified the Convention on the Rights of the Child, it has ratified the three main international legal instruments against the commercial sexual exploitation of children: the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

Here, I would like to congratulate the United States Senate, which on August 7, 2006, voted to ratify The Council of Europe Convention on CyberCrime of 2001, which entered into force in 2004. Article 9 of the CyberCrime Convention calls upon states to adopt such legislative and other means to establish as criminal offences producing child pornography for the purpose of its distribution, offering or making it available, distributing, transmitting or producing child pornography through a computer system or possessing it in a computer system.

However, I find it appropriate here to highlight some additional measures that may be considered to further protect our children against commercial sexual exploitation.

First, funding must be allocated to conduct research on the number of victims of commercial sexual exploitation. Regarding trafficking in children, Congress recognized in the Trafficking Victims Protection Reauthorization Act of 2005 that "no known studies exist that quantify the problem of trafficking in children for the purpose of commercial sexual exploitation". Consequently, we still need, as stated in article 112 of the Trafficking Victims Protection Reauthorization Act of 2005, "[a]n effective mechanism for quantifying the numbers of victims of trafficking on national, regional, and international bases." The United States Department of Justice acknowledges, in its 2006 Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons, that the current number of trafficked persons into the United States, which ranges between 14,500 and 17,500 victims must be reconsidered. As stated in the report, "[t]his figure was an early attempt to quantify a hidden problem. Further research is underway to determine a more accurate figure based on more advanced methodologies and more complete understanding of the nature of trafficking."

Second, we did not fully succeed in identifying victims of commercial sexual exploitation, especially victims of trafficking. As of March 1, 2006, the U.S. Department of Health and Human Services has certified only 947 persons as victims of human trafficking, of whom 87 are minors. We have 5,000 T-Visas available for victims of

trafficking, and we granted only 297 in 2003, 136 in 2004, and 112 in 2005. We definitely have a problem in finding the victims. We must reach them, so we can reach out to them and help them.

Third, while expanding criminal liability, the U.S. law should shift the focus towards penalizing the purchaser of sexual services. The Trafficking Victims Protection Reauthorization Act of 2005 addressed demand explicitly for the first time, and amended section 108 of the Trafficking Victims Protection Act, that provides for the minimum standards for the elimination of trafficking in persons that foreign countries must comply with, to include: "whether a country is taking the appropriate measures to reduce the demand for commercial sex acts and for participation in international sex tourism; and whether a country is taking the appropriate measures to ensure that its nationals who are deployed abroad as part of a peace keeping mission do not engage or facilitate an act of trafficking in persons or exploit victims of such trafficking."

Moreover, for the first time, the Trafficking Victims Protection Reauthorization Act of 2005 addressed the issue of prostitution, or a commercial sex act separate from trafficking on the federal level, calling for enhancing state and local efforts to investigate and prosecute purchasers of commercial sexual services, in addition to establishing various federal programs to reduce demand for such acts. The appropriate funding must be allocated to establish these programs. Unfortunately we are arresting the victims, not the purchasers of sexual services. According to congressional findings in the "End Demand for Sex Trafficking Bill": 11 females used in commercial sexual acts were arrested in Boston for every arrest of a male purchaser; 9 females used in commercial sexual acts were arrested in Chicago for every arrest of a male purchaser; and 6 females used in commercial sexual acts were arrested in New York City for every arrest of a male purchaser.

Prosecuting demand is consistent with most international legal developments. The Council of Europe Convention on Action Against Trafficking in Human Beings of 2005 calls, in article 19, upon states to consider criminalizing the use of services provided by victims of trafficking. On March 11, 2005, the United Nations Commission on the Status of Women adopted a resolution presented by the U.S. on eliminating demand for trafficked women and girls for all forms of exploitation. The resolution reflects the mandate of article 9(5) of the United Nation Protocol on Trafficking that called upon states to take the necessary measures to discourage demand. U.S. law on the prohibition of prostitution is also consistent with International Law on prostitution, which provides under the 1949 Convention for the Suppression of the Traffic of Persons and the Exploitation of the Prostitution of Others, that "[p]rostitution and the accompanying evil of traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community."

There is a recent trend in comparative legislation that focuses on prosecution of demand. The Macedonian law, under article 418 of the Penal Code, provides for a punishment of 6 month to 5 years to be imposed on anyone who uses or procures the sexual services of a

person with the knowledge that that person is a victim of trafficking in human beings. Article 323 of the Greek Criminal Law provides that "those who with full knowledge accept the services of a victim of trafficking are punished with a minimum imprisonment period of six months". Similarly, article 11 of the 2003 anti-trafficking law of the Philippines states that any person who buys or engages the services of trafficked persons for prostitution shall be penalized with six months of community service and a fine or imprisonment of one year and a fine.

Perhaps Congress would like to consider an amendment to that effect in the Trafficking Victims Protection Act. Such an amendment would be advisable if we want to be really serious about addressing demand.

Fourth, a false distinction is sometimes drawn between adult prostitution and child prostitution. Clients of adult prostitutes are moving to the young and the virgin for fear of being infected with HIV/AIDS, and based upon this fact some argue, without merit, that decriminalization of prostitution is better in creating safe sex, so the clients no longer resort to children out of fear of being infected with HIV/AIDS from adult women in prostitution. According to this view prostitution should be legalized and brothels licensed. Studies have shown that "the presence of pre-existing adult prostitution" market is a factor contributing to sexual exploitation of children. In the United States, 80% of women in prostitution enter into the prostitution market before they are 18 years old.

There is also a link between adult pornography and child pornography. Many start accessing adult pornography and then move to child pornography. Consequently, any effort to combat commercial sexual exploitation of children will fail, if we fail to acknowledge such a link.

Fifth, a comprehensive approach to combat the four evils of commercial sexual exploitation is imperative since they are very often linked to each other. A remarkable statement made in the Preamble to the Optional Protocol to the Convention on the Rights of the Child provides: "The widespread and continuing practice of sex tourism […] directly promotes the sale of children, child prostitution and child pornography."

There is a link between child prostitution and child pornography. Pornographers seek out children already in prostitution. Similarly, the possession of child pornography may cause some to commit child sex crimes. There is also a link between child pornography and child sex tourism. Pornography is being used to entice children into illicit sexual relations. For example, in the United States v. Seljan case, John W. Seljan, 85 years old, was arrested in Los Angeles as he attempted to board a flight to the Philippines, where he intended to have sex with two girls aged 9 and 12. At the time of his arrest, Seljan was found to have pornographic materials alongside chocolates and sexual aids. On March 28, 2005, John W. Seljan was sentenced to 20 years in prison. A similar case was United States v. Datan. On November 19, 2004, Datan, age 60, who served as a volunteer in a community center working with troubled youth in San Diego, was indicted on charges of child sex tourism and child pornography as he returned from a 2-month trip to the Philippines. He admitted he had sex with four Filipino boys. On June 17, 2005, Datan

was sentenced to 17 years in prison. Pornography is also being produced by child sex tourists, as it is the case in United States v. Bredimus. Nicholas Bredimus, 52 years old, recorded himself while molesting minor boys in Thailand on a compact video camera. Likewise, in United States v. Weber, Lester Christian Weber, age 50, produced pictures and videos of sexual abuse of minors he had perpetrated while he was in Kenya.

Sixth, reforming the law itself is not enough. What is more important is to change "the functional equivalent of the law". By that I mean the customs, the traditions, and the behavior. In the United States v. MRA Holding LLC case of 2006, MRA Holding LLC agreed to comply with the reporting requirements imposed by 18 U.S.C 2257, regarding the material produced and distributed under the name "Girls Gone Wild", which contained sexually explicit performances, and to pay the sum of $2.1 million. This recent prosecution of the "Girls Gone Wild" video's producers is encouraging. It will have effect on a harmful cultural practice that is spreading and contributing to sexual exploitation of children. The prosecution gave effect to Section 2257 of the US Code, which protects minors by requiring producers of sexually explicit videos to maintain age and identity records for every performer.

It is also encouraging that the U.S. Department of Justice, in its Model State Law on Trafficking in Persons, expanded the definition of child sex trafficking to include not only trafficking for a commercial sex act but sexually explicit performances, stating that: "a number of recent federal cases have involved persons being held in servitude for purposes of sexually-explicit performances such as "exotic dancing." Unlike prostitution, which is typically illegal and involves commercial sexual activity, sexually-explicit performance may be legal, absent any coercion. Inclusion of sexually-explicit performance in this Model Law recognizes that such activity can have an impact on victims similar to sexual abuse, and reflects federal experience in which international traffickers are increasingly placing their victims into strip clubs rather than prostitution." In fact, this was the case in US v. Virchenko, the first case to be decided under the Trafficking Victims Protection Act, in which a Russian dance instructor recruited six women including two minors to Alaska to dance in a strip club. Virchenko was sentenced to 48 months in prison.

Seventh, I would suggest another standard for the elimination of trafficking that foreign countries must comply with, in accordance with section 108 of the Trafficking Victims Protection Act. The amendment would read as follows: "whether the government of the country cooperates with nongovernmental organizations and other members of civil society in adopting preventive and protective measures to combat trafficking and protect victims of trafficking." The United Nations Protocol on Trafficking mandates that State Parties must cooperate with NGOs in adopting preventive measures to combat trafficking and measures of assistance and protection. Arguably, the U.N. Protocol establishes an international obligation of cooperation. My proposed amendment complies with this mandate. NGOs play an important role in providing services for victims of trafficking, their repatriation, their reintegration into society, and in preventing their revictimization after returning to their country of origin. Unfortunately, some countries do not allow NGOs and other members of civil society to function freely without government's intervention or restrictions.

Eighth, appropriate measures must be taken to give effect to the Trafficking Victims Protection Reauthorization Act of 2003 that provides that "[t]he President, pursuant to such regulations as may be prescribed, shall ensure that materials are developed and disseminated to alert travelers that sex tourism is illegal, will be prosecuted, and presents dangers to those involved. Such materials shall be disseminated to individuals traveling to foreign destinations where the President determines that sex tourism is significant."

A research we recently conducted at The Protection Project reveals that the primary countries of destination for U.S. child sex tourists are Cambodia, The Philippines, Thailand, Costa Rica and Mexico. Steps must be taken to warn U.S. tourists who travel to these countries against engaging in child sex tourism.

I was in Costa Rica this last December and right before landing, I read the following on my immigration form: "The penalty for sexual abuse towards minors in Costa Rica implies prison, Law 7899." The custom form read: "The crime for exploitation of minors is punishable with up to 16 years in prison." When I entered the airport, this is how I was greeted: "Dear tourist: in Costa Rica, sex with children under the age of 18 is a serious crime. Should you engage in it, we will drive you to jail. We mean it." And, billboards in the street would warn: "The law protects our children. So Do We. Sexual abusers and exploiters of minors will be prosecuted and imprisoned. Call 911. It's a law. It's a promise." Similar measures should be implemented in the United States.

Ninth, adequate and effective enforcement of the U.S. law against commercial sexual exploitation of children depends in many cases upon foreign law, since the problem is of a transnational nature.

For instance, the age of legal consent varies from one country to another. In the United States the age of consent varies from one state to another. In 14 states it is 18, in 8 states it is 17, and in 29 states it is only 16. In 71 of countries, the age of consent is 16. In 19 countries the age of consent is 18. And in 6, it is 17. But, in 25 countries, including Cambodia, Thailand and Costa Rica, the age of consent is only 15, and in 18 countries the age of consent is only 14. In 4 countries, Nigeria, South Korea, Spain and Burkina Faso, the age of consent is only 13. In Italy it is 13 if the sexual activity is taking place among minors whose age gap is not wider than 3 years of age, it is 14 years if the sexual activity is among minors or between a minor and an adult, and it is 16 if the sexual activity is between a minor and an adult living with the minor or taking care of the minor.

For the purpose of applying the rules that protect children against sexual exploitation, a child must be defined as a person who has not attained the age of 18 regardless of the legal age of consent in a legal system.

The age of consent for sexual activities is often lower in countries of destination for child sex tourism than in the United States. Local law enforcement officials are less likely to enforce foreign laws by arresting men that are found engaging in sexual activities with persons that would be considered minors according to U.S. law, but not according to

local law. This may undermine U.S. extraterritorial activities since local investigations would most commonly focus on cases that involve a crime according to local law.

Moreover, not all countries agree with the United States law on child sex tourism. For example, the Australian Sex Tourism Law prohibits an Australian from engaging in sexual activities with children under the age of 16 while abroad. 16 is also the age recognized in the extraterritorial laws of the Netherlands and Belgium, while France and Sweden are satisfied with the age of 15.

The problem is that local law enforcement officials in countries where the age of consent is under 18, for example, between 15-18, are unlikely to investigate any sexual conduct of a foreign citizen with a child of that age, and that is why, perhaps an Immigration and Custom Enforcement presence in some of these countries is imperative.

Moreover, an effective extraterritorial legislation should not require double criminality. Unfortunately, unlike the laws in the U.S., Germany, Italy, France, Canada, Australia and Belgium, the laws of Sweden, The Netherlands, Denmark, United Kingdom, Iceland, and Switzerland will not prosecute a citizen for the crime of sex tourism committed in another country, unless his action constitutes an offence that violates the law in both countries, the country of origin and the country of destination where the crime has been committed. Double-criminality encourages “forum shopping”, in other words, seeking jurisdictions in which children are not fully protected.

The Protection Project has drafted a model law on child sex tourism to promote unification or at least harmonization of existing laws and has been advising foreign countries on drafting child sex tourism laws.

There have been prosecutions of at least 34 cases of sex tourism since the passage of the Protect Act. In these cases, 62% of the defendants entered into a guilty plea agreement. In the absence of evidence other than the testimony of the child victim, plea-bargaining becomes imperative. We need to improve extraterritorial prosecutions by improving evidence collection methods and improving domestic prosecutions in countries of destination. It is important to work with law enforcement officials in countries of destination to enhance their skills in gathering evidence in cases of child sex tourism. Of course, the U.S. needs cooperating with other countries and has already entered into mutual legal assistance treaties (MLAT) with 61 countries, 52 of which are currently in force. One way of utilizing these treatises in the context of child sex tourism is sharing database information, and obtaining names of convicted or wanted sex offenders.

Internet, Trafficking, Pornography, Prostitution, and Sex Tourism crimes require international response to combat, since different and possibly conflicting national laws could be ineffective in combating these crimes. Consequently, it is the policy of the U.S. under the Trafficking Victims Protection Act section 109 to assist foreign countries in drafting anti-trafficking legislation, “to prohibit and punish acts of trafficking.” In the last 6 years over 100 countries enacted specific anti-trafficking legislation. Similar efforts should be made in the case of child pornography, sex tourism, and Internet crimes.

There are still countries that fall behind in drafting anti-trafficking laws. Mexico and the Russian Federation, for example, have not enacted a specific law on trafficking yet. They were placed on Tier-2 Watch List for three consecutive years in the U.S. Department of State Trafficking in Persons Report of 2006. Congress designed this special category of tiers only to allow countries to provide "evidence" of effort to combat trafficking in persons and to materialize "commitments" that they have already made. Hong Kong, Luxembourg, and Singapore are placed in Tier 1 although they lack a specific anti-trafficking legislation.

The U.S. Department of State Trafficking in Persons Report of 2006, which I call "the reference on the status on trafficking in persons in foreign countries", devoted more attention this year to commercial sexual exploitation of children, especially child sex tourism, which the report refers to in 29 countries: Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, The Gambia, Honduras, Kenya, Madagascar, Malawi, Mexico, Mongolia, Morocco, Nicaragua, Peru, the Philippines, Russia, Senegal, Sri Lanka, and Thailand are mentioned as countries where child sex tourism and sex tourism are taking place. Australia, Belgium, Canada, Finland, France, Germany, New Zealand, and Singapore are listed as countries of origin for child sex tourism.

The Protection Project has conducted a capacity building program in Iraq and I am proud that article 35 of the Iraqi Constitution, explicitly prohibits trafficking in women and children, as well as the sex trade. The Protection Project is currently assisting the six Gulf States in drafting anti-trafficking legislation.

Only 32 countries there have extraterritorial laws on child sex tourism and at least 95 countries have no legislation at all that specifically addresses child pornography. I believe that any "representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes", as child pornography is defined in article 2(c) of the Optional Protocol, should be prohibited by the law of every country. Consequently, as required by article 3(c) of the Optional Protocol, laws must criminalize producing, distributing, disseminating, importing, exporting, offering, selling, or possessing child pornography for the above purposes.

Tenth, the Internet is widely used for the purpose of engaging children in commercial sexual exploitation. The Internet has led to an increase in child prostitution, child sex tourism, child trafficking, and child pornography. It is estimated that since 1997, the number of child pornography images on the Internet has increased by 1500%. In 2001, the Cyber Tip Line, mandated by the Congress of the United States received 21,603 reports of child pornography. In 2004, the number increased by 491% to 106,176 reports of child pornography on the Internet.

Only a few countries have adopted laws aimed at combating Internet-related crimes against children. For example, the United States Protect Act created a Cyber Tip Line to provide the general public an effective means of reporting Internet related child sexual

exploitation in the areas of distribution of child pornography, online enticement of children for sexual acts, and child prostitution. The U.S. federal law imposes an obligation upon anyone who, while providing an electronic communication service, obtains knowledge of facts or circumstances, involving child pornography, of sexual exploitation of children, selling or buying of children, activities relating to material constituting or containing child pornography, misleading domain names on the Internet, production of sexually explicit depictions of a minor for importation into the United States, to report such acts or circumstances as soon as reasonably possible to the Cyber Tip Line. In the United Kingdom, it is an offense for a person to have any indecent photograph of a child in his possession. In addition, the law makes it an offense to distribute, show, or publish such a photograph. In China, the government introduced revised Internet rules requiring Internet service providers to re-register their news sites and monitor them for content that can "endanger state security" and "social order." In South Korea, the "Internet Content Filtering Law" requires Internet service providers to block access to websites that contain illegal or harmful information. In Australia an "Internet Censorship System" makes it illegal to host certain sites that may not be appropriate for children.

I believe an international convention on Internet and related crimes similar to the Council of Europe Convention on CyberCrime is needed to mobilize countries to enact Internet laws that protect children from commercial sexual exploitation. Perhaps an idea of an international convention or an international declaration may be raised in the Internet Governance Forum (IGF), which will be held in October 2006, in Athens, Greece, in response to the mandate of the World Summit on the Information Society (WSIS) in Tunis in November 2005.

In conclusion, let me say that Shared Hope International, ECPAT and The Protection Project conducted the Mid-term Review of the United States Efforts to Combat Commercial Sexual Exploitation of Children on April 3-4, 2006, and since then, further progress has been made.

At the federal level, the U.S. Congress signed the Adam Walsh Child Protection and Safety Act of 2006 and the U.S. Senate voted to ratify the Council of Europe Convention on CyberCrime. In addition, the State Department issued its 2006 Trafficking in Persons Report.

On the state level, anti-trafficking state laws became effective in Alaska, Colorado, Connecticut, Idaho, Indiana, Iowa, Michigan, Mississippi, and South Carolina, making it a total of 24 states with anti-trafficking laws, although we have only one conviction In Texas that I am aware of. Additionally, interagency task forces to combat human trafficking have been created in Hawaii, Iowa, and Maine. Legislators in Alaska, Missouri, and Washington State joined Hawaii in enacting laws making it a state offense to knowingly sell or offer to sell travel services that include or facilitate travel for the purpose of engaging in prostitution (Sex Tourism).

On the international level, seven more countries have ratified the United Nations Protocol on Trafficking in Persons, including Bolivia, Finland, Germany, Italy, Kuwait, Mozambique, and Sao Tome and Principe.

As I mentioned, there are still steps that must be taken to enhance the protection of our children against commercial sexual exploitation. Funding must be allocated to give effect to existing laws that call for research on effective mechanisms for quantifying the problem, identifying the victims, warning American travelers that sex tourism is a crime, and establishing programs to enhance state law enforcement officials in prosecuting demand and providing services for victims.

Furthermore, since child prostitution, child pornography, child trafficking, and child sex tourism are transnational crimes requiring international policies, the U.S. effort in leading the world against commercial sexual exploitation is imperative, especially towards negotiating an international convention against Internet crimes and assisting foreign countries in drafting adequate and effective laws.

I would like to applaud your leadership and commitment and thank you for holding this hearing.