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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Initial reports of States parties due in 2005

UNITED STATES OF AMERICA* **

[10 May 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

** Annex II may be consulted in the files of the secretariat.

CONTENTS

CONTENTS (*continued*)

Introduction

1. The Government of the United States of America welcomes this opportunity to report to the Committee on the Rights of the Child on measures giving effect to its undertakings under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in accordance with article 12 thereof. The organization of this initial report follows the General Guidelines of the Committee on the Rights of the Child regarding the form and content of initial reports to be submitted by States parties (CRC/OP/SA/1).[1]

2. It is especially important for the United States that the Protocol contains effective and practical strategies to prosecute and penalize those who commit crimes involving child prostitution, child pornography and trafficking in children. The Protocol is subject to ratification by any State party or signatory to the Convention on the Rights of the Child. Thus, the United States was able to become a party to the Protocol because it had signed the Convention on the Rights of the Child in February 1995, although the United States assumed no obligation under the Convention by becoming a party to the Protocol. The U.S. instrument of ratification is attached at annex I.

3. Prior to U.S. ratification of the Protocol, U.S. federal and state law satisfied the substantive requirements of the Protocol. Accordingly, no new, implementing legislation was required to bring the United States into compliance with the substantive obligations that it assumed under the Protocol, although a technical legal lacuna caused the United States to enter a reservation with respect to offenses committed on board a ship or aircraft registered in the United States. The provisions of the Protocol are not self-executing under U.S. domestic law, with one exception. That exception is Article 5, discussed below, which permits States parties to consider the offenses covered by Article 3(1) as extraditable offenses in any existing extradition treaty between States parties.

I. INFORMATION ON MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE PROTOCOL

Article 1 - Prohibition of Sale of Children, Child Pornography and Child Prostitution

4. Article 1 provides that "States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol." By its terms, Article 1 is introductory in nature and creates no obligations aside from those set forth in the remaining articles.

[1] We note that the Committee adopted Revised Guidelines on November 3, 2006 (CRC/C/OPSC/2). Because most of the preparation and drafting of this initial report predates the Revised Guidelines, the organization of this report follows those guidelines adopted in 2002 (CRC/OP/SA/1).

Article 2 - Definitions

5. Article 2 defines “sale of children,” “child prostitution” and “child pornography.”

6. Article 2(a) defines sale of children as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or other consideration.”

7. To clarify the definition of sale of children in Article 2(a) the following understanding accompanied the U.S. instrument of ratification:

> “The United States understands that the term “sale of children”, as defined in Article 2(a) of the Protocol, is intended to cover any transactions in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto authority over the child.”

8. With this understanding, as more fully discussed in the analysis of article 3, U.S. law is consistent with the obligations of the Protocol with respect to the sale of children.

9. Article 2(b) defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration.” As more fully described in the analysis of Article 3, the definition set forth in the Protocol is consistent with U.S. federal and state law and practice.

10. Article 2(c) defines child pornography as “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, the dominant characteristic of which is depiction for a sexual purpose. ” A number of delegations, including those of the European Union, Japan, and the United States, stated their understanding that the term “any representation” meant “visual representation.” Delegations, including the U.S. delegation, also stated their understanding that the term “sexual parts” meant “genitalia.” These understandings were included in the negotiating record of the final session.

11. To confirm this meaning of article 2(c), the following understanding accompanied the U.S. instrument of ratification:

> “The United States understands the term, “child pornography”, as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.”

12. With this understanding, as more fully discussed in the analysis of article 3, U.S. law is consistent with the obligations of the Protocol with respect to child pornography.

Article 3 - Criminalization

13. Article 3(1) provides that States parties shall ensure that the following acts are covered under their criminal or penal law and punishable by appropriate penalties, taking into account the grave nature of such offenses:

- In the context of sale of children, the offering, delivering, or accepting by whatever means a child for the purpose of sexual exploitation of the child, transfer of organs for profit, or engagement of the child in forced labor (article 3(1)(a)(i));

- In the context of sale of children, "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international instruments on adoption" (article 3(1)(a)(ii));

- Offering, obtaining, procuring or providing a child for child prostitution (article 3(l)(b)); and

- Producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for these purposes child pornography (article 3(1)(c)).

14. As discussed below, these acts violate criminal statutes under U.S. federal and state laws.

Article 3(1)(a)(i)a - Sexual Exploitation

15. The requirement to criminalize the sale of a child for purposes of sexual exploitation largely overlaps with the requirement to criminalize acts concerning child prostitution and child pornography. The term "sexual exploitation" is not defined, but it was generally understood during the negotiations that the term means prostitution, pornography, or other sexual abuse in the context of the sale of children.

16. In the United States, the Federal and State Governments have enacted criminal laws to protect children from sexual exploitation by adults . For example, federal and state laws prohibiting child sexual abuse and statutory rape laws are used to prosecute adults who sexually exploit children for the above-described purposes. Moreover, as set forth in detail in the analysis of article 3(1)(b) and 3(1)(c), federal and state law prohibit exploitation of children for purposes of prostitution and pornography . Additionally, federal law prohibits trafficking in children for sexual purposes. 18 U.S.C. § 1591, which was passed as part of the Trafficking Victims Protection Act of 2000, criminalizes all sex trafficking of children, regardless of whe ther fraud, force or coercion was used in the offense. There is no requirement that the sex trafficking cross state lines, provided it can be shown that the conduct is in or affecting interstate or foreign commerce. In addition, under 18 U.S.C. § 2423(a), it is prohibited to transport in interstate commerce any individual under age 18 with the intent that the "individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense." Attempts to do so are prohibited by 18 U.S.C. § 2423(e). As an example of a state law, see, for example NMSA [New Mexico] 1978, § 30-6A 1-4, Sexual Exploitation of Children. During its Legislative Session 2007, New Mexico is also proposing a bill similar to 18 U.S.C. § 1591 to criminalize the trafficking of persons. In Utah, child prostitution is a second-degree felony punishable by 1 to 15 years in prison. (Section 76-10-1306, Utah Code Annotated). Also,

enticement of a child to engage in sexual activity over the Internet is a second-degree felony punishable by 1 to 15 years in prison (Section 76-5-401, Utah Code Annotated). Idaho punishes the following offenses: sexual abuse of a child under the age of 16 years (I.C. § 18-1506), ritualized abuse of a child (I.C. § 18-1506A), sexual exploitation of a child (I.C. § 18-1507), lewd conduct with minor child under sixteen (I.C. § 18-1508), Sexual battery of a minor child under eighteen years of age (I.C. § 18-1508A).

Article 3(1)(a)(i)b - Transfer of Organs of the Child for Profit

17. During the negotiations, States limited the scope of the Protocol with respect to organ trafficking to situations where (1) the sale of a child occurred and (2) the organs of that child were subsequently extracted and sold for a profit.

18. U.S. federal law contains comprehensive protections against trafficking in the organs of a child. U.S. federal law criminalizes acquiring, receiving, or otherwise transferring any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce (42 U.S.C. § 274e, National Organ Transplant Act of 1984, as amended). The federal proscription is limited to transfers affecting interstate commerce because "laws governing medical treatment, consent, definition of death, autopsy, burial, and the disposition of dead bodies are exclusively State law." (S.Rep. 98-382, 98th Cong., 2nd Sess. 1984). Nonetheless, the phrase "affecting interstate commerce" is generally interpreted broadly by U.S. courts.

19. While U.S. state law may not always criminalize the sale of organs per se, the situation addressed in the Protocol would inevitably fall within the scope of one or more criminal state statutes. Since the transfer of organs of a child must be within the context of the sale of a child, situations involving the lawful consent of a child to donate an organ in which the transfer does not involve valuable consideration are not prohibited. Accordingly, depending on the nature of the crime and state law, the conduct prohibited by the Protocol would constitute assault, and might also be battery, maiming, child abuse or criminal homicide.

20. Consequently, to clarify the scope of the obligation to criminalize the transfer of organs in article 3 the United States expressed the following understanding in its instrument of ratification:

> "The United States understands that the term "transfer of organs for profit" as used in Article 3(l)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent. Moreover, the United States understands that the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs."

Article 3(1)(a)(i)c - Engagement of the Child in Forced Labor

21. The Protocol requires States parties to criminalize the conduct of both the seller and buyer of a child in the context of a sale, i.e., (1) acts of arranging for a buyer of a child (seller's conduct), (2) delivering the child pursuant to a sale (the seller's conduct or the conduct of his/her agent), and (3) accepting the child pursuant to the sale (the buyer's conduct). Since

"offering, delivering or accepting" a child for the purpose of forced labor must take place in the context of a sale, criminal penalties are required under article (3)(1)(a)(i)c where the transaction has been completed.

22. U.S. federal law, consistent with the requirements of article 3(1)(a)(i)c, criminalizes the sale of a child for the purpose of engagement in forced labor. Forced labor is specifically prohibited by 18 U.S.C. § 1589, which was passed as part of the Trafficking Victims Protection Act of 2000. Section 1589 criminalizes providing or obtaining the labor or services of a person by (1) threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, or (3) by means of the abuse or threatened abuse of the law or the legal process. Congress passed § 1589 in response to the Supreme Court's narrow interpretation of the involuntary servitude statute (18 U.S.C. § 1584), in *United States v. Kozminski*, 487 U.S. 931 (1988), holding that the statutory prohibition against involuntary servitude is limited to cases involving compulsion of services by use or threatened use of physical or legal coercion. In addition to the forced labor statute, other provisions of the U.S. Code provide criminal penalties for peonage, enticement into slavery, involuntary servitude, and trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, sex trafficking, as discussed above, and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor. (*See* 18 U.S.C. §§ 1581, 1583, 1584, 1590, 1591, and 1592). Attempts to commit such crimes are penalized under 18 U.S.C. § 1594. These laws reach any such conduct that takes place anywhere in the United States. Federal law further criminalizes interstate kidnapping (18 U.S.C. § 1201). The kidnapping statutes punish individuals who kidnap others, including minors, across state lines. Also, New Mexico is proposing a bill during its Legislative Session 2007 to criminalize the trafficking of persons, including provisions to prohibit forced labor of children, and will include provisions to penalize the seller and the buyer. Idaho law prohibits human trafficking for sexual purposes or for labor (I.C. §§ 18-18-8501 through 18-8505).

23. The provisions of 18 U.S.C. § 241, the federal civil rights conspiracy statute, prohibits conspiracies to violate the Thirteenth Amendment. The Thirteenth Amendment prohibits slavery and involuntary servitude and has been interpreted very broadly. "The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States." (*Pollock v. Williams*, 322 U.S. 4, 17 (1944)). It has been construed to grant Congress the "power to pass all laws necessary and proper for abolishing all badges and incidents of slavery." (*Civil Rights Cases*, 109 U.S. 3, 20 (1883)). In *Jones v. Alfred H. Mayer* Co. (392 U.S. 409, 440 (1968)), the Supreme Court declared that Congress has the power "rationally to determine what are the badges and the incidents of slavery." Furthermore, under the Thirteenth Amendment, Congress may reach conduct by private individuals as well as governments.

24. Finally, a person who "aids, abets, counsels, commands, induces or procures" the commission of one of these federal offenses is punishable as a principal under 18 U.S.C. § 2. Accordingly, those who take part in a portion of the transaction resulting in the sale of a child for the purpose of forced labor will also be subject to punishment under U.S. anti-trafficking laws in combination with § 2. Such conduct when involving two or more persons could also incur conspiracy liability under 18 U.S.C. § 371.

Article 3(1)(a)(ii) - Improperly Inducing Consent as an Intermediary for Adoption in Violation of Applicable International Legal Instruments on Adoption

25. The obligation contained in article 3(l)(a)(ii) to criminalize "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption" is drawn from the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, adopted May 29, 1993. Article 4(c)(3) of the Hague Convention requires that an adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin determine, inter alia, that consent has not been induced by payment or compensation of any kind.

26. During the final session of negotiations of the Protocol, both Japan and the United States stated their understanding that "applicable international instruments on adoption" meant the Hague Convention. Further, both countries stated their understanding that, since they were not parties to that instrument, they would not be bound to penalize the conduct barred by the Hague Convention, i.e., improperly inducing consent. The United States further stated that it understood the term "improperly inducing consent" to mean knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights. These understandings are reflected in the negotiating record of the last session. No delegation stated a contrary understanding.

27. On September 20, 2002, the United States Senate gave its advice and consent to ratification of the Hague Convention. The Executive Branch is expected to deposit the instrument of ratification for the Convention as soon as it is able to carry out all of the obligations of the Convention. If the United States were to ratify the Hague Convention, it would have an obligation under the Protocol to criminalize the conduct specified in article 3(1)(a)(ii). The implementing legislation with respect to the Hague Convention would criminalize an intermediary's knowing and willful inducement of consent by offering or giving compensation for the relinquishment of parental rights (see the Intercountry Adoption Act of 2000, § 404, P.L. 106-279).

28. The U.S. Government has issued final regulations necessary to meet Convention obligations, notably 22 C.F.R. 96. Application of the regulations is underway; accrediting entities have been identified and engaged and they are in the process of accrediting adoption service providers. New immigration rules also need to be promulgated and/or put into effect by the Department of Homeland Security, which exercises authority over immigration matters. Once these processes are complete, the United States will be in a position to carry out obligations under the Convention. Currently, it is estimated that this will occur, and that the United States will be able to deposit its instrument of ratification sometime in 2007. Up-to-date status information is available on the web at http://www.travel.state.gov/family/adoption/convention/convention_462.html.

29. In order to clarify the nature of U.S. obligations under article 3(1)(a)(ii), the following understanding accompanied the U.S. instrument of ratification:

> "The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at the Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention"). The United States is not a Party to The Hague Convention, but expects to become a Party. Accordingly, until such time as the United States becomes a Party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol. The United States further understands that the term "improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights."

Article 3(1)(b) - Child Prostitution

30. Child prostitution is not legal anywhere in the United States. Under U.S. federal law, the Mann Act, 18 U.S.C. § 2421, prohibits transporting a person across foreign or state borders for the purpose of prostitution. In addition to this general prohibition, federal law specifically prohibits transportation across foreign or state borders of any individual under age 18 with the intent that the "individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense." (18 U.S.C. § 2423). Federal laws further prohibit enticing, persuading, inducing, etc., any person to travel across a state boundary for prostitution or for any sexual activity for which any person may be charged with a crime (18 U.S.C. § 2422), and travel with intent to engage in any sexual act with one under age 18 (18 U.S.C. § 2423(b)). The newest federal legal tool in the fight against child prostitution is 18 U.S.C. § 1591, which prohibits sex trafficking of children. Sex trafficking is defined as causing a person to engage in a commercial sex act through force, fraud, or coercion, or where the victim is under 18. The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by anyone. For offenses involving persons under the age of 18, there is no requirement of force, fraud, or coercion. There are additional penalties if the victim is younger than 14. Furthermore, unlike the Mann Act, there is no requirement that any person be transported across foreign or state borders.

31. In addition, all 50 states prohibit prostitution activities involving minors under the age of 18. State child prostitution statutes specifically address patronizing a child prostitute, inducing or employing a child to work as a prostitute, or actively aiding the promotion of child prostitution. (See, e.g., NMSA [New Mexico] 1978, §30-6A (4), Sexual Exploitation of Children by prostitution); in Utah, child prostitution is a second-degree felony punishable by 1 to 15 years in prison (Section 76-10-1306, Utah Code Annotated).

Article 3(1)(c) - Child Pornography

32. U.S. federal and state criminal laws also prohibit the child pornography activities proscribed by article 3(1)(c).

33. Federal law prohibits the production, distribution, receipt, and possession of child pornography, if the pornographic depiction was produced using any materials that had ever been transported in interstate or foreign commerce, including by computer, or if the image was transported interstate or across a U.S. border (18 U.S.C. §§ 2251-2252A). Conspiracy and attempts to violate the federal child pornography laws are also chargeable federal offenses. Thus, federal law essentially reaches all the conduct proscribed by this Article.

34. More specifically, 18 U.S.C. § 2251 establishes as criminal offenses the use, enticement, employment, coercion, or inducement of any minor to engage in "any sexually explicit conduct for the purpose of producing any visual depiction" of that conduct. That provision further prohibits the transportation of any minor in interstate or foreign commerce with the intent that the minor engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. Parents, legal guardians and custodians are punishable under this provision if they permit a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct that the parent or guardian knows or has reason to know will be transported or has been transported in interstate or foreign commerce. The provision also subjects to criminal penalty those who produce and reproduce the offending material, as well as those who advertise seeking/offering to receive such materials or seeking/offering participation in visual depictions of minors engaged in sexually explicit conduct.

35. Federal law also prohibits (1) the transfer, sale, purchase, and receipt of minors for use in production of visual depictions of minors engaged in sexually explicit conduct (18 U.S.C. § 2251A); (2) knowingly transporting, shipping, receiving, distributing, or possessing any visual depiction involving a minor in sexually explicit conduct (18 U.S.C. §§ 2252 and 2252A); (3) the use of a minor to produce child pornography for importation into the United States, and the receipt, distribution, sale, or possession of child pornography intending that the visual depiction will be imported into the United States (18 U.S.C. § 2260). For purposes of these statutes, a minor is defined as anyone under age 18 (18 U.S.C. § 2256(1)).

36. Sexually explicit conduct is defined in these federal statutes as "actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person." (18 U.S.C. § 2256(2)). Further, each state has enacted laws addressing child pornography. The precise scopes of these statutes vary from state to state; however, they all prohibit the visual depiction by any means of a child engaging in sexually explicit conduct. While the exact wording of the statutes may differ, all state statutes address the following three areas: (1) production: employment or use of a minor to engage in or assist in any sexually explicit conduct for the purpose of producing a depiction of that conduct; (2) trafficking: distributing, transmitting or selling child pornography; and (3) procurement: inducing or persuading a minor to be the subject of child pornography. Under NMSA 1978, § 30-6A (3) (Sexual Exploitation of Children), New Mexico state law prohibits the production, distribution, receipt, and possession of child pornography, and under NMSA 1978, § 30-37-3.2 (Child Solicitation by a Computer), it prohibits the soliciting of a minor, by computer, to engage in sexual intercourse, sexual contact, or in a sexual obscene performance. For the purposes of determining jurisdiction, child solicitation by computer is committed in New Mexico if a computer transmission either originates or is received in New Mexico. In Utah, possession, production or distribution of child pornography is a second-degree felony punishable by 1 to 15 years in prison (Section 76-5a-4,

Utah Code Annotated.) Enticement of a child to engage in sexual activity over the Internet is also a second-degree felony punishable by 1 to 15 years in prison (Section 76-5-401, Utah Code Annotated).

Article 3(2) - Ancillary Criminal Liability

37. The Protocol does not obligate States to criminalize attempts to commit acts covered by article 3(1) or complicity or participation in such acts. Article 3(2) provides that "subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts." The phrase "subject to the provisions of a State Party's national law" was specifically incorporated into Article 3(2) to reflect the fact that practice with respect to the coverage of attempts differs in national laws.

38. Under 18 U.S.C. § 2, aiding and abetting the commission of an offense against the United States is a criminal offense. Federal and state laws do not, however, criminalize all attempts to commit the offenses covered by the Protocol. (e.g., many U.S. states do not criminalize attempts to commit prostitution.)

39. In sum, although U.S. law does not always punish the attempt to commit, or all forms of participation in, article 3(1) offenses, U.S. law is consistent with the requirements of article 3(2).

Article 3(3) - Effective Sanction

40. U.S. federal and state laws punish the conduct proscribed by the Protocol with sufficient severity as required by article 3(3). For example, federal offenses cited above, by which the United States would implement the Protocol's requirement to criminalize the conduct described in article 3(1), are felonies. For 18 U.S.C. § 1584 (involuntary servitude) and § 1589 (forced labor), the term of imprisonment is up to 20 years, but if death results or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant may be sentenced to any term of years or life. Penalties for sex trafficking of children are even more severe. 18 U.S.C. § 1591 provides for a mandatory minimum of 15 years imprisonment and a maximum penalty of life imprisonment for child sex trafficking if the victim is under 14 years of age, and a mandatory minimum of 10 years imprisonment and a maximum of 40 years imprisonment if the victim is between the ages of 14 and 18.

41. The statute relating to sexual exploitation of minors, which prohibits producing and advertising child pornography (18 U.S.C. § 2251), provides for a range of penalties, including fines and sentences ranging from 15 years to life imprisonment; the statute prohibiting selling or buying of children for the purpose of producing child pornography (18 U.S.C. § 2251A) has a mandatory minimum penalty of 30 years imprisonment and a maximum penalty of life imprisonment; the statutes covering activities related to material involving the sexual exploitation of children and child pornography , 18 U.S.C. §§ 2252 and 2252A, (the statutes are slightly different, but both generally cover child pornography offenses other than production, which is covered by § 2251), , provide for penalties ranging from a maximum of 40 years imprisonment (for knowing distribution, transportation, receipt, etc., of child pornography, with a prior qualifying conviction), a mandatory minimum of five years imprisonment for knowing distribution, transportation, receipt, etc., of child pornography, and a maximum imprisonment of

not more than 10 years for possession of child pornography without a prior qualifying conviction (possession of child pornography with a prior qualifying conviction is punishable by a mandatory minimum term of 10 years imprisonment and a maximum term of 20 years imprisonment). The prohibition of the production or use of sexually explicit depictions of a minor for importation into the United States (18 U.S.C. § 2260) contains penalties ranging from a mandatory minimum of five years and a maximum of 15 years for a first offense not involving production and a mandatory minimum of 15 years imprisonment and a maximum penalty of 30 years for a first offense involving production to a mandatory minimum of 35 years and a maximum of life for a third offense involving production.

42. The statutes relating to transportation for purposes of prostitution or criminal sexual activity (18 U.S.C. §§ 2421-2423) provide for fines and terms of imprisonment ranging from not more than 10 years imprisonment (18 U.S.C. § 2421 - transportation of any individual for prostitution or criminal sexual activity) to life imprisonment (18 U.S.C. § 2422(b) - enticement of a minor to engage in criminal sexual activity; 18 U.S.C. § 2423(a) - transportation of a minor to engage in criminal sexual activity). Both 18 U.S.C. §§ 2422(b) and 2423(a) have a 10-year mandatory minimum term of imprisonment. Additionally, as noted above, 18 U.S.C. § 1591 provides for a mandatory minimum of 15 years imprisonment and a maximum penalty of life imprisonment for child sex trafficking.

43. With regard to the transfer of organs, 42 U.S.C. § 274e(b) provides for a substantial fine and/or a term of imprisonment of not more than five years.

Article 3(4) - Liability of Legal Persons

44. Article 3(4) requires States parties, where appropriate and subject to provisions of their national law, to establish liability (whether criminal, civil, or administrative) of legal persons for the offenses established in article 3(1).

45. Generally, under U.S. law, a corporation is criminally liable for the acts of its employees or agents if the employee's or agent's acts (1) lie within the scope of employment and (2) are motivated at least in part by an intent to benefit the corporation (see *United States v. Sun Diamond,* 138 F.3d 961, 970 (D.C. Cir. 1998)). Liability can be imputed to the corporation even though the employee's conduct was not within the employee's actual authority (provided it was within his "apparent authority") and even though it may have been contrary to the corporation's stated policies (see *United States v. Hilton Hotels*, Inc., 467 F.2d 1000, 1004 (9th Cir. 1972). Accordingly, U.S. law is consistent with article 3(4) since a State party is required to establish corporate liability "where appropriate" and "subject to provisions of its national law."

Article 4 - Jurisdiction

46. Article 4 provides that each State party shall take measures as may be necessary to establish jurisdiction over criminal conduct identified in article 3(1) concerning the sale of children, child prostitution, and child pornography when the offense is committed in its territory or on board a ship or aircraft registered in that State (article 4(1)). Each State party is also required to establish jurisdiction when the alleged offender is present in its territory and it does not extradite him to another State party on the ground that the offense has been committed by one of its nationals (article 4(3)). Article 4 further provides that each State party may, but is not obligated to,

establish jurisdiction in the following cases: (1) when the alleged offender is a national of that State or has his habitual residence in that country (article 4(2)(a)) and (2) when the victim is a national of that State (article 4((2)(b)).

47. The general nature of the U.S. obligations under the Protocol was clarified by the following U.S. understanding:

> "The United States understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of the Protocol."

Article 4(1) - Territorial, Ship, and Aircraft Jurisdiction

48. Article 4(1) obligates States to take "such measures as may be necessary" to establish jurisdiction over the offenses referred to in article 3(1), when the offenses are committed in its territory or on board a ship or aircraft registered in that State.

49. Federal laws criminalizing the offenses described in the Protocol confer jurisdiction over such offenses committed on U.S. territory. Additionally, U.S. laws extend special maritime and territorial criminal jurisdiction (18 U.S.C § 7) over crimes involving (among others) sexual abuse (18 U.S.C. §§ 2241-2245), child pornography (18 U.S.C. §§ 2252 and 2252A), assault (18 U.S.C. § 113), maiming (18 U.S.C. § 114), murder (18 U.S.C. § 1111), and manslaughter (18 U.S.C. § 1112). Special maritime and territorial jurisdiction extends to any vessel or aircraft belonging in whole or in part to the United States, or any citizen or corporation thereof, while such vessel or aircraft is on or over the high seas or any other waters within the admiralty or maritime jurisdiction of the United States and out of the jurisdiction of any particular State. Special maritime jurisdiction also extends to any place outside of the jurisdiction of any nation with respect to an offense by or against a national of the United States. Additionally, federal law extends special aircraft jurisdiction over the following crimes (among others) if committed on aircraft registered in the United States (49 U.S.C. §§ 46501, 46506): assault (18 U.S.C. § 113), maiming (18 U.S.C. § 114), murder (18 U.S.C. § 1111), manslaughter (18 U.S.C. § 1112), and attempts to commit murder or manslaughter (18 U.S.C. § 1113). For cases not covered by special aircraft or special maritime and territorial jurisdiction, U.S. law extends jurisdiction in other ways. U.S. law extends jurisdiction over transportation in foreign commerce of any individual who has not attained the age of 18 years with the intent to cause the person to be used to produce child pornography and the transportation in foreign commerce of child pornography images (18 U.S.C. §§ 2251, 2252, and 2252A). U.S. law also prohibits travel with intent to engage in illicit sexual conduct (defined as a commercial sex act with a person under 18 or a sexual act with a person under 18 that would be in violation of federal law had it happened in the special maritime and territorial jurisdiction of the United States) (18 U.S.C. § 2423(b), or engaging in illicit sexual conduct in foreign places (18 U.S.C. § 2423(c)). U.S. law also applies extraterritorially to child pornography offenses where there is an intent to import the images to the United States (18 U.S.C. § 2260). U.S. law also broadly extends criminal jurisdiction over vessels used in peonage and slavery (18 U.S.C. §§ 1582, 1585-1588), while the statute outlawing child sex trafficking applies in cases in or affecting foreign commerce as well (18 U.S.C. § 1591).

50. Accordingly, while U.S. law provides a broad range of bases on which to exercise jurisdiction over offenses covered by the Protocol that are committed "on board a ship or aircraft *registered* in" the United States (emphasis added), U.S. jurisdiction in such cases is not uniformly stated for all crimes covered by the Protocol, nor is it always couched in terms of "registration" in the United States. Therefore, the reach of U.S. jurisdiction may not be co-extensive with the obligation contained in this article. This is a minor technical discrepancy. As a practical matter, it is unlikely that any case would arise which could not be prosecuted due to the lack of maritime or aircraft jurisdiction. The United States did not, therefore, delay ratification of the Protocol for this reason, but instead entered a reservation at the time of ratification that suspended the obligation that the United States establish jurisdiction over any covered offenses that may fall within this technical gap until the United States has enacted the necessary legislation to establish such jurisdiction. Accordingly, the following reservation accompanied the U.S. instrument of ratification:

> "Subject to the reservation that, to the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in article 3(1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of article 4(1) of the Protocol."

Article 4(2) - Nationality and Passive Personality Jurisdiction

51. With respect to article 4(2), some federal laws provide for the assertion of jurisdiction over U.S. nationals for covered offenses committed outside the United States, e.g., 18 U.S.C. § 1585 (seizure, detention, transportation, or sale of slaves); 18 U.S.C. § 1587 (possession of slaves aboard vessel). However, U.S. extraterritorial jurisdiction based on nationality of the offender does not reach all offenses set forth in the Protocol. Also, federal law generally does not provide for the assertion of extraterritorial jurisdiction where the victim is a U.S. national. Nonetheless, since article 4(2) is permissive rather than obligatory, U.S. law is consistent with the requirements of the provision.

Article 4(3) - Jurisdiction Where Extradition is Denied on Grounds of Nationality

52. The requirement of article 4(3) that States parties that do not extradite their nationals must have a means of asserting jurisdiction over them does not apply to the United States. The United States does not deny extradition on the grounds that the person sought is a U.S. national, and the Secretary of State may order the extradition of a U.S. citizen under an extradition treaty if the other requirements of the treaty are met (see 18 U.S.C. § 3196). Accordingly, this paragraph does not require any change in current U.S. law or practice.

Article 5 - Extradition

53. Article 5 addresses the legal framework for extradition of alleged offenders and contains standard provisions that effectively amend existing U.S. bilateral extradition treaties to include the offenses defined in article 3(1) as extraditable offenses for purposes of those treaties. The

article is generally modeled on similar provisions contained in other multilateral conventions to which the United States is a party, such as the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

54. Article 5(1) provides that the offenses described in article 3(1) will be "deemed to be included as extraditable offenses" in preexisting extradition treaties between States parties to the Protocol and will be included in future extradition treaties. The effect of article 5(1) on the bilateral extradition treaties to which the U.S. is a party is to expand any lists of extraditable offenses to include the offenses described in article 3(1) of the Protocol.

55. Articles 5(2) and (3) concern extradition requests when no bilateral extradition treaty exists between the requesting and requested State. If, under the law of the requested State, a treaty is required for extradition, that State may at its option consider the Protocol as the treaty that provides the legal basis for extradition. If, on the other hand, the law of the requested State permits extradition without a treaty, it must extradite subject to the conditions established by its law. Under U.S. law, with very limited statutory exceptions, a treaty is generally required for extradition from the United States. Article 5(2) does not provide an obligatory basis for extradition. Moreover, since the United States has a general regime for extradition by treaty, no obligation exists under article 5(3) to extradite to States with which the United States does not have an extradition treaty.

56. Article 5(4) provides that for purposes of extradition between States parties, offenses shall be treated as if they occurred within the States required to assert jurisdiction in accordance with article 4. This provision is understood to require a party to determine extraditability by assessing whether the conduct would be criminal if it had been committed in its territory. Under U.S. extradition law, precisely this type of analysis is undertaken in assessing whether the dual criminality standard has been satisfied. (See, e.g., *Collins v. Loisel*, 259 U.S. 309 (1922); *Bozilov v. Seifert*, 983 F.2d 140 (9th Cir. 1993); *United States v. Casamento*, 887 F.2d 1141 (2d Cir. 1989); *Emami v. United States District Court*, 834 F.2d 1444 (9th Cir. 1987).

57. Article 5(5) provides that if a request for extradition of an alleged offender found within its jurisdiction is refused on the basis of the nationality of the offender, the State shall "take suitable measures" to submit the case to its competent authorities for prosecution. As stated above, since the United States does not deny extradition on the basis of nationality, the United States is in compliance with article 5(5) of the Protocol.

Article 6 - Mutual Legal Assistance

58. This article provides for general mutual legal assistance between States parties in connection with investigations or criminal or extradition proceedings brought in respect of the offenses established in article 3(1). The article is modeled on other multilateral conventions, to which the United States is a party, including the International Convention for the Suppression of Terrorist Bombing and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 6(1) provides that States parties "shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings" concerning article 3(1) offenses, including the supply of evidence at their disposal necessary for the proceedings. While not expressly stated, it was generally understood that the law of the requested state applies to determine the scope of the assistance that would be afforded.

59. Article 6(2) provides that the obligation contained in article 6(1) shall be carried out "in conformity with" any treaties or arrangements on mutual legal assistance. In the event that no treaty or other arrangement on mutual legal assistance is in effect between the respective States, assistance would be provided in accordance with the domestic law of the requested State.

60. The United States has Mutual Legal Assistance Treaties (MLATs) with more than 50 countries and could offer assistance to those countries to the extent provided for under each MLAT. In the absence of a treaty, 28 U.S.C. § 1782 permits a U.S. district judge to order the production of evidence for a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation . Accordingly, this article can be implemented on the basis of U.S. law and treaties.

Article 7 - Seizure and Confiscation

61. Article 7 provides that States parties shall, "subject to the provisions of their national law" take, "as appropriate," measures: (1) to provide for the seizure and confiscation of goods used to commit offenses under the Protocol or proceeds derived from such offenses (article 7(1)); (2) to execute requests from another State party for seizure and confiscation of such goods or proceeds (article 7(2)); and (3) aimed at closing on a temporary or definitive basis premises used to commit such offenses.

62. Given that the obligations of article 7 are subject to the limits of a State party's laws and that each State party is obligated to take only such measures as are appropriate, U.S. ratification did not require implementing legislation. Existing U.S. law contains several provisions authorizing forfeiture for offenses covered by the Protocol. 18 U.S.C. § 1594 authorizes criminal forfeiture and civil (*in rem*, non-conviction-based) forfeiture for violations of federal laws prohibiting forced labor and child sex trafficking. 18 U.S.C. § 2253 and § 2254 authorize, respectively, criminal and civil forfeiture for violations of federal child pornography laws. 18 U.S.C. § 2428 authorizes criminal and civil forfeiture for violations of federal laws prohibiting transportation and enticement for criminal sexual activity and travel for illicit sexual conduct. These provisions all authorize forfeiture of all property, real and personal, used or intended to be used to commit or to facilitate the commission of the offense, and all property constituting or derived from proceeds of the offense. Sections 2253 and 2254 also authorize forfeiture of the pornographic depictions themselves. Most of the offenses that are predicates for these forfeiture statutes are also predicates for money laundering prosecutions pursuant to 18 U.S.C. §§ 1956 and 1957. The money laundering statutes prohibit certain domestic and international financial transactions with the proceeds of specified predicate offenses, and international movement of money for the purpose of committing such offenses. Property involved in money laundering, and property traceable to such property, are forfeitable under 18 U.S.C. § 981 (civil forfeiture) and 18 U.S.C. § 982 (criminal forfeiture).

63. Certain other U.S. statutes authorize forfeiture of obscene materials, not limited to materials involving children. 18 U.S.C. § 1467, as amended in July 2006 by the Adam Walsh Child Protection and Safety Act of 2006, authorizes civil and criminal forfeiture of obscene materials, real or personal property constituting or traceable to proceeds of obscenity offenses, and real or personal property used to commit or to promote the commission of such offenses. 19 U.S.C. § 1305 authorizes civil forfeiture of obscene materials being imported into the United States.

64. Thus, consistent with article 7, existing federal statutes authorize forfeiture of obscene and pornographic materials, proceeds derived from the subject offenses, and real and personal property used to commit the offenses. See, in this regard, *Alexander v. United States*, 509 U.S. 544 (1993) (forfeiture of businesses and real estate connected with the sale of obscene materials); *United States v. Parcels of Property Located at 14 Leon Drive*, 2006 WL 1476060 (M.D. Ala., May 25, 2006) (civil forfeiture under 18 U.S.C. § 2254 of residence used for child sexual exploitation); *United States v. Ownby* , 926 F. Supp. 558 (W.D. Va. 1996), *aff'd* 131 F.3d 138 (4th Cir. 1997) (forfeiture under 18 U.S.C. § 2253(a)(3) of a house used to store pornography of juveniles engaged in sexually explicit conduct); *United States v. Krasner*, 841 F. Supp. 649 (M.D. Pa. 1993) (forfeiture pursuant to 18 U.S.C. § 982 of a business involved in laundering the proceeds of obscenity offenses).

65. Neither federal nor state law generally provides for the forfeiture of all proceeds and instrumentalities of wholly foreign offenses covered by the Protocol in a U.S. criminal or civil (*in rem* non-conviction-based) forfeiture proceeding. However, U.S. law does provide for the execution of foreign confiscation orders and judgments for any foreign offense for which there would be forfeiture under U.S. federal law, if that offense had been committed within the United States (See 28 U.S.C. § 2467). As set forth in paragraphs 62 through 64 above, this means that the United States can enforce foreign confiscation orders and judgments against the proceeds and instrumentalities of offenses set forth in the Protocol as to which forfeiture is authorized under U.S. law. The only prerequisite for such assistance is that both the United States and the party requesting the assistance are parties to a treaty or agreement that provides for confiscation or forfeiture assistance, as the Protocol does.

Article 8 - Protection of Child Victims

66. Article 8(1) provides that State parties shall adopt "appropriate" measures to protect the rights and interests of child victims of the practices prohibited under the Protocol at all stages of the criminal justice process, in particular by: (1) recognizing the vulnerability of child victims and adopting procedures to recognize their special needs (article 8(1)(a)); (2) informing child victims of their rights and the progress and disposition of related proceedings (article 8(1)(b)); (3) allowing the views, needs and concerns of child victims to be presented in proceedings where their personal interests are affected, "in a manner consistent with the procedural rules of national law" (article 8(1)(c)); (4) providing "appropriate" support services to child victims throughout the legal process (article 8(1)(d)); (5) protecting, "as appropriate," the privacy and identity of child victims and taking measures "in accordance with national law" to avoid the "inappropriate" dissemination of information that could lead to the identification of child victims (article 8(1)(e)); (6) providing, in "appropriate cases," for the safety of child victims, family members, and witnesses (article 8(1)(f)); and (7) avoiding "unnecessary" delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims (article 8(1)(g)).

67. During the negotiations, delegations generally recognized that the protections to be afforded children under article 8(1) are necessarily a matter of discretion under national law. As described below, federal and state law provides extensive protection for child victims in the criminal justice process as contemplated by article 8(1).

68. With regard to article 8(1)(a), U.S. law at both the federal and state levels recognizes the special needs of child victims and witnesses. For example, in federal cases, 18 U.S.C. § 3509(b) provides various alternatives for live, in-court testimony when it is determined that a child cannot or should not testify. Additionally, all states provide special accommodation for child victims and witnesses, including the use of videotaped or closed-circuit testimony, child interview specialists, and developmentally-appropriate questioning (see, e.g., Colorado Revised Statutes 18-3-413.5; North Dakota Century Code, 31-04-04.1). New Mexico law, NMSA 1978 § 30-9-17, provides for videotaped depositions of alleged victims who are under sixteen years of age in lieu of direct testimony. Utah uses Children's Justice Centers to interview child victims of sexual or serious physical abuse. These Centers provide a safe, home-like, child-friendly facility with interviewers trained in child interviewing protocols to minimize the trauma for the child (Section 67-5b -101, et seq., Utah Code Annotated). In addition, nationwide, there are over 600 Child Advocacy Centers supported by various combinations of federal, state and local funds that use a similar approach. In order to reduce the need for multiple child-interviews by the various disciplines involved in a case, which can be traumatic to the child, Child Advocacy Centers utilize a multidisciplinary approach, with one key interviewer observed and provided questions by the rest of the team in one interview. The Federal Government also aids states in reducing the trauma to child sexual abuse victims through funding to states under the Children's Justice Act, established in the Victims of Crime Act (VOCA), and the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. § 5101 et seq.; 42 U.S.C. § 5116 et seq.).

69. With respect to article 8(1)(b), federal and state law also provides for informing child victims of their rights and the progress of their cases. For example, the general Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System provide that law enforcement personnel should ensure that victims are informed about the role of the victim in the criminal justice system, as well as the scheduling of their cases and advance notification of proceedings in the prosecution of the accused. The Federal Government also helps provide for appropriate notification of victims through funding to states under the Victims of Crime Act (VOCA) and technical assistance programs. The promotion by the Federal Government of state compliance is also an "appropriate measure" to protect the rights referred to in article 8(1)(b). Guidelines and statutes at the state level further provide extensive procedures for victim notification of the victim's rights and of the scheduling of proceedings (see, e.g. Iowa Victim Rights Act, 1997 Ia. HF 2527, §§ 6-14; and NM Const., Art. II § 24, [New Mexico] Victims Rights, NMSA 1978 §31-26-4, Victim Rights).

70. With respect to article 8(1)(c), federal and state law allows the views and needs of child victims to be presented in a manner consistent with the procedural rules of national law. For example, at the federal level, 18 U.S.C. § 3509 specifically provides for the preparation of a victim impact statement to be used to prepare the pre-sentence report in sentencing offenders in cases in which the victim was a child. Through guidelines and statutes, states provide for victims' presentation of their views at different stages of proceedings (see. e.g., Iowa Victim Rights Act, 1997 Ia. HF 2527, § 17).

71. Both federal and state laws also provide appropriate support services throughout the legal process consistent with the provisions of article 8(1)(d). For example, at the federal level, 18 U.S.C. § 3509(g) provides for the use of multidisciplinary child abuse teams "when it is feasible to do so". Likewise, in order to "protect the best interests of the child" 18 U.S.C. § 3509(h) provides for the appointment of a guardian *ad litem* for a child who has been a victim of

or witness to a crime involving abuse or exploitation. ("exploitation" is defined as child prostitution or pornography.) CAPTA requires that all states receiving the Basic State Grant under CAPTA provide a guardian *ad litem* to all child abuse victims involved in court proceedings related to their victimization (42 U.S.C. § 5106(a)(b)(2)(xiii)). Additionally, all states provide special accommodations and support services, including the appointment of guardians *ad litem* or other support persons (see, e.g., California Penal Code § 1348.5; and HRS § 587-2 (Hawaii)).

72. Federal and state laws further provide for protecting, "as appropriate," the privacy of child victims in accordance with national law, as required by article 8(1)(e). Both federal and state laws attempt to provide for the privacy of child victims (see, e.g., 18 U.S.C. § 3509(d), "confidentiality of information," which provides detailed procedures for keeping the name of or any other information about a child confidential; 18 U.S.C. § 3509(m), which provides for images of child pornography to remain in the care, custody, and control of the government or the court during criminal proceedings, thereby minimizing further dissemination of the images; and Iowa Code § 915.36.) While modalities of protection of privacy may vary from state to state, the Protocol requires only that a party provide the level of protection deemed "appropriate." Given this flexibility, current U.S. law meets the requirements of this provision.

73. With respect to article 8(l)(f), U.S. law and policy provide, "in appropriate cases," for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation . In the United States at both the federal and state levels there is a general policy of attempting to establish promptly the criminal responsibility of service providers, customers, and intermediaries in child prostitution, child pornography, and child abuse, in part in order to provide for the safety of victims and their families. Additionally, at both the federal and state levels, safe havens may be provided on a discretionary basis for children escaping from sexual exploitation, as well as protection for those who provide assistance to victims of commercial exploitation from intimidation and harassment (see. e.g., Federal Witness Protection Act, 18 U.S.C. § 3521; and HRS § 587-2 (Hawaii)).

74. The U.S. judicial procedure at both the federal and state levels provides protection against unnecessary delay in the disposition of cases and the execution of orders granting awards to child victims, consistent with the provisions of article 8(l)(g). In all U.S. criminal cases, the Sixth Amendment to the Constitution requires a speedy trial. Additionally, many states as well as the Federal Government have enacted speedy trial laws, which set strict time deadlines for the charging and prosecution of criminal cases (see Speedy Trial Act, 18 U.S.C. § 3161 et seq.).

75. Also, the immigration laws of the United States bear important protections for child victims of trafficking. For example, the Immigration and Nationality Act, as amended by section 107 of the Trafficking Victims Protection Act of 2000 provides for a "T visa" that allows victims of severe forms of trafficking in persons to remain in the United States and to receive certain kinds of public assistance to the same extent as refugees (see 8 U.S.C. § 1101(a)(15)(T); and 8 CFR 214.11). After three years in T status, victims of human trafficking may apply for permanent residency. In addition, subject to some limitations, eligible child victims of trafficking may apply for lawful immigration status for their parents. The immigration laws also provide that a child victim of trafficking may not be removed from the United States based solely on information provided by the trafficker and sets forth robust confidentiality protections for child trafficking victims (see 8 U.S.C. § 1367).

76. Furthermore, administered by the Office of Refugee Resettlement (ORR) in the U.S. Department of Health and Human Services, the Unaccompanied Refugee Minors (URM) program was developed in 1979 to address the needs of thousands of children from Southeast Asia who entered the United States as refugees without a parent or a guardian to care for them. Since 1980, over 12,000 minors have entered the URM program. Currently, ORR has over 600 minors in URM care. Two lead voluntary agencies, the Lutheran Immigration and Refugee Services (LIRS) and the United States Conference of Catholic Bishops (USCCB) work in conjunction with ORR on the URM program, and there are currently 19 URM affiliate sites. Those currently eligible for the URM program include minors who are unaccompanied refugees, Amerasians, Cuban and Haitian entrants, asylees, and victims of a severe form of trafficking. In addition, accompanied minors can become eligible for URM program services after arrival in the United States through a reclassification process, e.g., through family breakdown, age re-determination, a death in the family, or a granting of asylum.

77. Each child in the care of this program is eligible for the same range of child welfare benefits as non-refugee children. Depending on their individual needs, minors are placed in home foster care, group care, independent living, or residential treatment. The URM program assists unaccompanied minors in developing appropriate skills to enter adulthood and to achieve economic and social self-sufficiency. Services provided through the program include English language training, career planning, health/mental needs, socialization skills/adjustment support, family reunification, residential care, education/training, and ethnic/religious preservation. Individuals must be under the age of 18 in order to qualify for the program, but can in most cases remain in the program until age 20 or 21, depending on state guidelines for emancipation.

Article 8(2) through 8(6)

78. Article 8 further provides that States parties shall, with respect to the offenses prohibited under the Protocol: (1) ensure that uncertainty as to the actual age of the victim not prevent the initiation of a criminal investigation (article 8(2)); (2) ensure that the best interest of the child be a primary consideration in the treatment of child victims by the criminal justice system (article 8(3)); (3) "take measures" to ensure "appropriate" training, in particular legal and psychological, for the persons who work with child victims (article 8(4)); and (4) "in appropriate cases," adopt measures in order to protect the safety and integrity of the persons and/or organizations involved in the prevention and/or protection and rehabilitation of child victims (article 8(5)).

79. U.S. federal and state law satisfies each of these requirements . With respect to article 8(2), nothing in U.S. federal or state law prohibits an investigation of exploitation of a child from going forward when the age of the child is unknown, or when it is unclear if the victim is, in fact, an adult . In fact, it is common for investigations in the United States to try to determine the child's age while investigating all aspects of the case.

80. With respect to article 8(3), it is a general policy underlying both federal and state law that the best interests of the child are a primary consideration in the treatment of child victims. In many cases, laws have been passed with the child victim's best interest specifically in mind (see, e.g., Rhode Island Children's Bill of Rights, R.I. Gen. Laws § 42-72-15; and Hawaii Child Protective Act, HRS 587).

81. Article 8(4) and 8(5) are flexible; in view of the broad scope of the provision, the obligations were qualified, i.e., "take measures to ensure appropriate" training and protect the safety of the child in "in appropriate cases." Consistent with these articles, it is a general policy of the Federal and State Governments at all levels to provide training for those who work with child victims, and to adopt measures where appropriate to protect those involved with prevention of such offenses and the protection and rehabilitation of children. The United States also satisfies its obligations by providing federal funding to states where such training is needed. These federal funds are administered by, inter alia, the Department of Health and Human Services (HHS) and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Office of Victims of Crime (OVC). Similar provisions exist at the state level (see, e.g., Ark. Stat. Ann. § 20-82-206 (Arkansas); and Idaho Code § 16-1609A).

82. Article 8(6) is a savings clause. It states that nothing in it shall be construed as prejudicial to the rights of the accused to a fair and impartial trial. The provisions in United States law that provide for a fair and impartial trial are grounded in the United States Constitution. Nothing in this Protocol would or could undermine those fundamental human rights and civil rights protections of people brought before courts in the United States.

Article 9 - Prevention

83. Article 9 provides that States parties shall, with respect to the offenses referred to in the Protocol, (1) adopt or strengthen, implement, and disseminate laws, policies, and programs to prevent the offenses (article 9(1)); (2) promote awareness in the public at large, including children, about "the preventive measures and harmful effects of the offences" (article 9(2)); (3) take all "feasible" measures with "the aim" of ensuring "all appropriate" assistance to victims of such offenses, including their full social reintegration, and their full physical and psychological recovery (article 9(3)); (4) ensure that child victims have access to adequate procedures to seek compensation (article 9(4)); and (5) take "appropriate" measures "aimed at" effectively prohibiting advertisement of the offenses covered by the Protocol (article 9(5)).

84. The United States meets the requirements of article 9. With respect to articles 9(1) and 9(2), it is a priority commitment for the United States at both the federal and state levels to strengthen and implement laws to prevent the offenses prohibited by the Protocol. It is also a policy priority for the United States to create a climate through education, social mobilization, and development activities to ensure that parents and others legally responsible for children are able to protect children from sexual exploitation. In April 2006, the United States Government, in partnership with three U.S. non-governmental organizations, conducted a mid-term review to take stock of United States' efforts in combating child sexual exploitation since the 2001 Second World Congress on the Commercial Sexual Exploitation of Children in Yokohama. A report, including areas for improvement, was produced on the mid-term review and will be submitted for the Third World Congress in 2007.

85. With respect to measures to ensure appropriate assistance to victims, including their full social integration and full physical and psychological recovery, a wide range of federal and state programs satisfy the standards set forth in article 9(3). The Federal Government provides many types of aid to such agencies and comparable organizations that serve children. The Family and

Youth Services Bureau of the HHS administers grant programs supporting a variety of locally based youth services. These services include youth shelters, which provide emergency shelter, food, clothing, outreach services and crisis intervention for victimized youths; "transitional living programs" for homeless youth, which assist these youth in developing skills and resources to live independently in society; and education and prevention grants to reduce sexual abuse of runaway, homeless and street youth. The HHS Children's Bureau administers the Chafee Independent Living Program, providing concrete support such as housing and education for children who "age out" of the foster care system at 18.

86. The Justice Department's Office of Juvenile Justice and Delinquency Prevention oversees the Model Court Project, under which local courts have put in place a variety of reforms to strengthen their abilities to improve court decision-making in abuse and neglect cases, and to work more closely with the child welfare agencies to move children out of foster care and into safe, stable and permanent homes.

87. The HHS Children's Bureau supports research on the causes, prevention, and treatment of child abuse and neglect; demonstration programs to identify the best means of preventing maltreatment and treating troubled families; and the development and implementation of training programs. Grants are provided nationwide on a competitive basis to state and local agencies and organizations. Projects have focused on every aspect of the prevention, identification, investigation, and treatment of child abuse and neglect. The Children's Bureau also administers the Community-Based Child Abuse Prevention program, which provides funding to states for the maintenance of a state-wide prevention network and the provision of prevention services at the local level, as well as the Court Improvement Program focusing on the work of the courts in child welfare cases.

88. State child protection agencies ensure the safety of children and youth who require protective custody, making placement recommendations and coordinating assessments and interviews of children and adults with appropriate law enforcement and licensing agencies. Victim assistance programs provide victimized youth with assistance in dealing with the court system, emotional support, and referrals to additional resources. Such services enable these youth both to address the immediate consequences of their victimization and to reenter society. The routine operation of state child welfare agencies also serves these aims.

89. With regard to the requirement under article 9(4) that States parties ensure access by child victims to adequate procedures for seeking compensation, there is mandatory restitution for victims in these cases under federal law. 18 U.S.C. § 1593 provides for mandatory restitution for any trafficking offense, including the crimes of forced labor and sex trafficking. In addition, 18 U.S.C. § 2259 provides for mandatory restitution for any offense involving the sexual exploitation of children, including selling and buying of children. There are also civil remedies available to victims of trafficking and sexual exploitation (see 18 U.S.C. §§ 1595 and 2255). The Victims of Crime Act (VOCA) funds support to more than 4,000 victim services programs across the country, and many of these provide services for child victims. In addition, VOCA supports state victim compensation programs for which child victims or their caretakers can apply.

90. Consistent with the provisions of article 9(5), U.S. law contains certain restrictions on advertising that are appropriate under our legal system. For example, 18 U.S.C. § 2251 proscribes advertising child pornography when the child pornography actually exists for sale or distribution. Advertising or promoting child prostitution could, in some circumstances, be punished under federal law if it aids and abets child prostitution or constitutes a conspiracy to violate child prostitution laws.

91. The Department of Justice has formed and funded 42 anti-trafficking task forces in 25 states and territories. The task forces are primarily intended to lead to the identification and rescue of more victims of human trafficking by providing for support staff, training programs, interpreter/translator services, and liaisons with U.S. Attorneys' Offices and other agencies concerned with the identification and rescue of trafficking victims.

92. One initiative to protect children from sexual exploitation is the Innocence Lost Initiative, which combats child prostitution in the United States. The Innocence Lost Initiative is a partnership between the Criminal Division of the Department of Justice, the Federal Bureau of Investigation, and the National Center for Missing and Exploited Children. Part of this initiative is an intensive week-long training program on the investigation and prosecution of child prostitution cases, held for members of multi-disciplinary teams from cities across the United States. The program brings state and federal law enforcement agencies, prosecutors, and social services providers all from one city to be trained together. This grouping and training is designed to cultivate cooperation, partnership, and an effective integration among the critical enforcement entities in each city. As of September 30, 2006, the Innocence Lost Initiative has resulted in 241 open investigations, 614 arrests, 129 criminal informations or grand jury indictments, and 106 convictions in both the federal and state systems.

Article 10 - International Cooperation and Assistance

93. Article 10 provides that States parties shall undertake international cooperation for: (1) the prevention, detection, investigation, prosecution, and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography, and sex tourism (article 10(1)); (2) the rehabilitation and social reintegration of children who have been victims of such practices (article 10(2)); and (3) addressing the root causes of the vulnerability of children to these crimes (article 10(3)). Article 10 does not, however, require States parties to provide a specific type or amount of assistance. Article 10(4) specifies that States parties "in a position to do so" shall provide financial, technical, or other assistance through existing multilateral, regional, bilateral, or other programs.

94. With regard to article 10(1), the United States regularly engages in bilateral and multilateral efforts to deter and prevent the increasing international traffic in children for labor and sexual exploitation. In an effort to attack this issue at its source, the United States has worked with foreign Governments and non-governmental organizations (NGOs) to inform potential victims of the risks posed to them by the traffic in women and children, the tactics criminal groups use to coerce victims and conduct such traffic, and the ways in which victims can seek assistance in the United States. The United States has also funded deterrence and public information campaigns abroad in countries such as Cambodia, Costa Rica, Brazil, Belize, and Mexico, targeted at U.S. child sex tourists.

95. Additionally, pursuant to bilateral and multilateral legal assistance treaties with foreign Governments, the United States regularly cooperates with law enforcement agencies of other countries to counteract child prostitution, pornography, and sale of children, as well as sex tourism. The United States funds training for law enforcement and consular officials of foreign countries in the areas of trafficking in persons, child sex tourism, and sexual exploitation of women and children. The United States also supports deterrent programs that encourage innovative partnerships among Governments, labor, industry groups, and NGOs to end the employment of children in hazardous or abusive conditions. Examples of these innovative partnerships include: cooperation with the Government of the Republic of Korea to replicate a San Francisco-based model offenders prevention program targeted at persons arrested for soliciting sexual services from prostituted persons; cooperation with travel and tourism companies both in the U.S. and abroad to support an ethical code of conduct to protect children from commercial sexual exploitation, which was developed by a U.S. NGO in partnership with tour operators from Nordic countries; and cooperation between an international faith-based organization, UNICEF and the ministries of population, tourism and education of Madagascar to conduct a survey of the types of child labor and sexual exploitation, which will lead to a nationwide anti-trafficking campaign.

96. In 2003, President Bush launched a $50 million Initiative on Trafficking in Persons (POTUS Initiative) to support organizations that rescue, shelter, and provide services to women and children who are victims of trafficking. This initiative has funded projects in Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania. In 2007, New Mexico and the State of Chihuahua, Mexico, will enter into a bilateral agreement to create an initiative similar to the POTUS Initiative. It will include the establishment of a joint task force and the sharing of resources and information regarding organized criminal trafficking networks.

97. The United States contributes to a wide array of programs that support the elimination of child labor worldwide, including programs to address the sexual exploitation of children. In particular, since 1995, the U.S. Government has provided approximately US$ 500 million for technical assistance projects aimed at eliminating exploitative child labor around the world. Of this amount, over US$ 191 million has been awarded to the International Labour Organization and other grantees to address the trafficking of children for commercial sexual exploitation and labor in Asia, Africa, Latin America and the Caribbean, the Middle East, and Europe. These projects promote educational and training opportunities for child laborers or children at risk of engaging in exploitative labor. The projects also aim to develop comprehensive regional and national strategies to combat trafficking, improve law enforcement capacity to arrest and prosecute traffickers, enhance support to victims of trafficking, and increase awareness of both at-risk populations and policymakers to trafficking.

98. With regard to articles 10(2) and 10(3), the United States is committed to working with other Governments to address the root causes of these crimes and to developing rehabili tation approaches that are effective . The United States funds and supports international initiatives to provide vocational training for children and income-generating opportunities for their families and assists various countries in developing, implementi ng, and enforcing national policies to combat child labor and sex crimes . In addition, the United States supports and funds a variety

of international initiatives to safeguard children from hazardous or abusive working conditions, including projects that assist exploited children and provide them and their families with a variety of social services. The United States has recently provided funds to expand existing shelters and rehabilitation programs, including in Morocco for former child maids, in India for children of prostituted women, as well as in the Philippines and Gabon for trafficked children.

99. Through various components of the Department of Justice, the U.S. has trained foreign law enforcement officials in numerous countries on investigating and prosecuting child sex trafficking and has worked with Governments to develop model anti-trafficking legislation.

100. For example, the Civil Rights Division sent prosecutors to Ukraine and Mexico and its victim witness coordinator to Georgia to share the experiences of the United States in combating human trafficking and assisting victims. Several countries, such as Poland, Thailand, Venezuela, Azerbaijan, the United Kingdom, Brazil, India, the Russian Federation, China, Bhutan, Bulgaria, the Netherlands, Kazakhstan, Turkmenistan, Nepal and Bangladesh, sent representatives to the United States to learn more about this global issue through meetings with Civil Rights Division attorneys and victim staff.

101. The Child Exploitation and Obscenity Section (CEOS) of the U.S. Department of Justice Criminal Division, in partnership with the Office of Overseas Prosecutorial Development and Training and the State Department, regularly provides training for foreign delegates on child exploitation offenses as part of the State Department's International Visitor Program. These training sessions range from providing an overview of U.S. child exploitation laws, including child protection statutes, to how to investigate and prosecute human trafficking cases successfully.

102. In 2006, CEOS presented 24 training sessions to delegates from around the world. CEOS discussed these issues with delegates from countries such as Indonesia, Brazil, Ecuador, China, France, Germany, and Saudi Arabia, to name a few.

103. Moreover, CEOS trial attorneys regularly perform extensive overseas training programs. For example, in May 2006, a CEOS trial attorney was a member of a training team sent to Latvia to train law enforcement on human trafficking. Members of the team traveled to several cities throughout Latvia, including Riga, to train an audience of Latvian judges, police, and prosecutors on numerous topics related to human trafficking. These topics included an overview of U.S. laws, a discussion of appropriate investigative techniques, and a primer on the international response to human trafficking, including a discussion of relevant international treaties. This program was part of a continuing effort in Latvia to support the fight against trafficking in persons.

104. In 2006, CEOS attorneys conducted similar training programs in Nigeria, Armenia, and Indonesia, and from July to November 2006, a CEOS attorney served as the Intermittent Legal Advisor for Human Trafficking in the Republic of Indonesia.

105. The United States is also party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The United States signed the Protocol on December 13, 2000, and it entered into force for the United States on December 3, 2005. The Protocol calls for information exchange in certain circumstances (art. 10). The general provisions

of the Transnational Organized Crime Convention, to which the United States is also a party, apply to the Protocol and contain provisions on extradition (art. 16) and mutual legal assistance (art. 18).

106. Additionally, since the Trafficking Victims Protection Act (TVPA) was passed in 2000, the United States has submitted annual Trafficking in Persons Reports to the U.S. Congress on foreign Governments' efforts to eliminate severe forms of trafficking in persons. The report is a major tool for advancing international cooperation to combat human trafficking and raising global awareness on the issue. The 2006 Report assessed the efforts of 149 countries to combat trafficking in persons, including their efforts to prosecute traffickers, protect victims, and prevent the crime. A Government that fails to make significant efforts to bring itself into compliance with the minimum standards for eliminating trafficking, as established in the TVPA, receives a "Tier 3" assessment in the report. Such an assessment may trigger the withholding of U.S. non-humanitarian, non-trade-related foreign assistance to that country.

Annex I

U.S. INSTRUMENT OF RATIFICATION

GEORGE W. BUSH

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, was adopted by the United Nations General Assembly on May 25, 2000 and signed on behalf of the United States on July 5, 2000; and

The Senate of the United States of America by its resolution of June 18, 2002, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Optional Protocol, subject to the following reservation:

> To the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3(1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of Article 4(1) of the Protocol.

The Senate's advice and consent is subject to the following understandings:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD - The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) THE TERM "SALE OF CHILDREN" - The United States understands that the term "sale of children", as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.

(3) THE TERM "CHILD PORNOGRAPHY" - The United States understands the term "child pornography", as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.

(4) THE TERM "TRANSFER OF ORGANS FOR PROFIT"- The United States understands that-

> (A) the term "transfer of organs for profit", as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and

(B) the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.

(5) THE TERMS "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS" AND "IMPROPERLY INDUCING CONSENT"-

(A) UNDERSTANDING OF APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS" - The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").

(B) NO OBLIGATION TO TAKE CERTAIN ACTION - The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(l)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.

(C) UNDERSTANDING OF "IMPROPERLY INDUCING CONSENT"- The United States understands that the term "improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.

(6) IMPLEMENTATION OF THE PROTOCOL IN THE FEDERAL SYSTEM OF THE UNITED STATES - The United states understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of the Protocol.

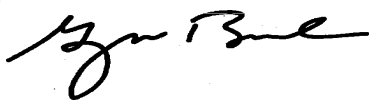
NOW, THEREFORE, I, George W. Bush, President of the United States of America, ratify and confirm the said Optional Protocol, subject to the above reservation and understandings.

IN TESTIMONY WHEREOF, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington

this fourteenth day of September in the year of our Lord two thousand two and of the Independence of the United States of America the two hundred twenty-seventh.

By the President:



Secretary of State

Annex II

PRINCIPAL U.S. STATUTES CITED IN THIS REPORT

[May be consulted in the files of the secretariat.]
