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Domestic Jurisdiction Over Child Sex Trafficking: Is the Universality Principle the Answer to Successfully Prosecuting Such Heinous Acts?

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I. Introduction

The sexual exploitation of minors via human trafficking is a global human rights problem, and the international community must do everything in its power to prevent such horrific and devastating acts.¹ One of the ways the international community can thwart the sex trafficking of minors is by successfully prosecuting child traffickers.² This paper, therefore, analyzes how domestic jurisdiction in international law plays a role in prosecuting child traffickers. The central question to be examined is whether Australia's broad use of domestic jurisdiction over child trafficking via the universality, nationality, and territoriality principles results in more child trafficking prosecutions in comparison to the United States' narrower exercise of domestic jurisdiction over child trafficking via the nationality and territoriality principles. Although it would seem that Australia's broader use of domestic jurisdiction would result in a greater amount of successful prosecutions, the United States prosecutes more child traffickers than Australia.

Part II of this paper discusses the international criminal law framework regarding domestic jurisdiction, along with the five justifications for a State to assert domestic jurisdiction. Part III analyzes the United States' assertion of domestic jurisdiction over the human trafficking of minors via the nationality and territoriality principles. Part IV similarly analyzes Australia's assertion of domestic jurisdiction over the human trafficking of minors via the universality, nationality, and territoriality principles. Part V lastly examines human trafficking statistics in each State to determine whether the United States or Australia is more successful in prosecuting child traffickers. One of the ways the international community can fight child trafficking is through the

¹ Jeremy SeaBrook, *No Hiding Place: Child Sex Tourism and the Role of Extraterritorial Legislation*, Zed Books (2000).

² U.S. Department of State, *The 3Ps: Prosecution, Protection, and Prevention* (June 20, 2019), <https://www.state.gov/the-3ps-prosecution-protection-and-prevention-3/>.

successful prosecution of child traffickers.³ Therefore, it is significant to determine whether Australia’s broader use of domestic jurisdiction over child sex trafficking is a main factor that can lead to a greater amount of successful child trafficking prosecutions.

II. International Criminal Law Framework Regarding Domestic Jurisdiction

A. Overview of Domestic Jurisdiction

This section provides an overview of the historical views of domestic jurisdiction, including the classical view and the later presumptions of permission and prohibition that emerged. This section also discusses the *Lotus Case*, along with its important determination regarding States rights to exercise domestic jurisdiction, and how it has influenced the broader principle that States are free to act when international law does not include a contrary rule.

To begin, “the classical view of domestic jurisdiction under international law is based upon a robust defense of national sovereignty and the close to unrestricted power of a State to regulate activities of its nationals or criminal conduct undertaken within, or directed toward, its territory.”⁴ Two competing positions on State sovereignty and international law “emerged beyond the classical view” – one based upon a presumption of permission, the other on a presumption of prohibition.⁵ The presumption of permission asserted that “States could only act internationally if there was a clear rule permitting such action.”⁶ The presumption of prohibition affirmed that “States could engage in any activity internationally so long as there was no clear rule prohibiting such activity.”⁷ It was not until the Permanent Court of International Justice (“PCIJ”) heard *S.S. Lotus*, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7), however, that these two competing theories were addressed.⁸

³ *Id.*

⁴ Beth Van Schaak & Ronald C. Slye, *International Criminal Law And Its Enforcement Cases and Materials* 81 (Saul Levmore et al.eds., 4th ed. 2019).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

In the *Lotus Case*, “Turkey asserted jurisdiction over a French national that was involved in a maritime accident that resulted in the death of, and injury to, Turkish nationals.”⁹ “France relied on the presumption of permission and argued that no rule of international law specifically allowed the Turkish courts to assert jurisdiction over a matter solely because it involved Turkish victims.”¹⁰ Turkey, on the other hand, “relied on the presumption of prohibition and argued that there was no rule that prohibited its assertion of jurisdiction.”¹¹ The PCIJ reasoned that “restrictions upon the independence of States cannot be presumed.”¹² Rather, “international law leaves States a wide measure of discretion which is only limited in certain cases by prohibitive rules.”¹³ Thus, the PCIJ ruled in favor of the Turkish exercise of criminal jurisdiction and “articulated the broad principle that States are free to act internationally except in the face of a clear rule of prohibition.”¹⁴ Moreover, although the *Lotus Case* was about the exercise of domestic jurisdiction, “it has been cited for the broader principle that States retain residual freedom to act in situations in which international law does not prescribe a contrary rule.”¹⁵

Thus, domestic jurisdiction was historically based upon a robust defense of national sovereignty. Over time, however, the presumption of permission and prohibition emerged. It was not until the *Lotus Case* when the presumption of prohibition became the dominant view of domestic jurisdiction, thereby influencing the broader principle that States are free to act when international law does not include a contrary rule.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 82.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

B. Five Justifications for a State to Assert Domestic Jurisdiction

Today, “international law provides five broad justifications for a State to assert domestic jurisdiction: protection, territoriality, effects, nationality, and universality.”¹⁶ This section will discuss all five of these principles, along with examples of each. Importantly, the last four principles – the territoriality, effects, nationality, and universality principles – are the focus of this paper.

To begin, under the protection principle, “States can criminalize conduct that threatens interests that are vital to the State.”¹⁷ Statutes that rely on this basis of jurisdiction “generally target extraterritorial offenses directed against the security of the State, including espionage, counterfeiting, and falsification of official documents.”¹⁸ In *Kawakita v. United States*, 343 U.S. 717, 719 (1952), for example, the defendant was a national both of the United States and of Japan. He resided in Japan during World War II and tortured Allied prisoners of war who were being forced to work in a Japanese factory.¹⁹ Consequently, the defendant was charged with treason under Article III § 3 of the United States Constitution, which relies on the protection principle.²⁰

“A State asserts territorial jurisdiction when it criminalizes and seeks to prosecute certain undesirable conduct committed within its territory.”²¹ “Some extraterritorial areas can be treated as national territory, such as the territorial sea, airspace, flagship vessels, and the contiguous high seas.”²² There are two sub-principles within the territorial principle – the subjective territorial principle and the objective territorial principle.²³ Under the former, “a State may assert jurisdiction

¹⁶ *Id.* at 83.

¹⁷ *Id.* at 85.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 736.

²¹ Beth Van Schaak & Ronald C. Slye, *supra* note 4 at 83.

²² *Id.*

²³ *Id.*

over criminal acts commenced within the State, even if they are ultimately consummated abroad.”²⁴ For example, the International Convention for the Suppression of Counterfeiting Currency is a 1929 League of Nations treaty that relies on that subjective territorial principle to criminalize acts of currency counterfeiting.²⁵ Under the latter, “a State may assert jurisdiction over acts committed abroad that are consummated within the territory of the prosecuting State.”²⁶ A variation of this objective territorial principle is the effects principle, which “allows States to criminalize conduct that has an effect on the State itself, even if the act that creates the effects is committed outside the State.”²⁷ This principle is applied “most often in the antitrust and securities contexts.”²⁸ For example, § 1 of the Sherman Act provides that “every contract, combination, . . . or conspiracy in restraint of trade or commerce. . . with foreign nations is declared to be illegal.”²⁹ The jurisdictional question in antitrust actions, therefore, is “whether the defendants’ conduct has substantial economic affect upon interstate commerce.”³⁰

Pursuant to the nationality principle, “a State may apply its criminal law to its nationals, who may be either perpetrators or victims of criminal acts.”³¹ The nationality principle, therefore, comes in two forms – the active personality principle and the passive personality principle.³² The active personality principle “permits jurisdiction when the offender is a national or resident of the State prescribing or prosecuting undesirable conduct.”³³ This principle is “common and uncontroversial” because it allows States to prosecute its nationals while they are in different

²⁴ *Id.*

²⁵ International Convention for the Suppression of Counterfeiting Currency, Apr. 20, 1929, 112 U.N.T.S. 372.

²⁶ Beth Van Schaak & Ronald C. Slye, *supra* note 4 at 83.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 15 U.S.C. § 1 (2020).

³⁰ *Gough v. Rossmoor Corp.*, 487 F.2d 373, 376 (9th Cir. 1973).

³¹ Beth Van Schaak & Ronald C. Slye, *supra* note 4 at 84.

³² *Id.*

³³ *Id.*

countries.³⁴ For example, in the United States, the Military Extraterritorial Jurisdiction Act of 2000 allows for the “prosecution of certain felonies committed by individuals employed by or accompanying the United States’ armed forces abroad.”³⁵ The passive personality principle, however, is rarer because it “permits jurisdiction when the victim is a national or resident of the prosecuting State.”³⁶ Thus, under the passive personality principle, States can prosecute other State perpetrators.³⁷ For example, Article 113-7 of the French Penal Code states that “French criminal law is applicable to any felony, as well as to any misdemeanor punishable by imprisonment, committed by a French or foreign national outside the territory of the French Republic.”³⁸

Lastly, the universality principle “allows States to define and prosecute perpetrators of certain violations of international law, regardless of the nationality of the perpetrator, the nationality of the victim, or the place of commission.”³⁹ Therefore, “universal jurisdiction allows for assertions of jurisdiction absent any connections to the prosecuting forum.”⁴⁰ For example, Article 19 of the Geneva Convention on the High Seas provides that “on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft... and arrest the persons and seize the property on board.”⁴¹ But, it is important to note that “many States render their universal jurisdiction statutes more conditional and require the presence of the accused in the forum or other relevant connections.”⁴² For example, “Belgium amended its universal jurisdiction law in 2003 to require some substantial connection between Belgium and the criminal conduct in question, such as the presence of the defendant or the victim (for at least

³⁴ *Id.*

³⁵ *Id.*; 18 U.S.C. § 3261 (2020).

³⁶ Beth Van Schaak & Ronald C. Slye, *supra* note 4 at 84.

³⁷ *Id.*

³⁸ Code Penal Art. 113-7.

³⁹ Beth Van Schaak & Ronald C. Slye, *supra* note 4 at 86.

⁴⁰ *Id.*

⁴¹ Geneva Convention on the High Seas, April 29, 1958, 450 U.N.T.S. 11.

⁴² Beth Van Schaak & Ronald C. Slye, *supra* note 4 at 86.

three years) in Belgium.”⁴³ Notably, however, “such limitations are not required by international law.”⁴⁴

Therefore, the protection, territoriality, effects, nationality, and universality principles are five broad justifications for a State to assert domestic jurisdiction in international law. Four out of the five principles – territoriality, effects, nationality, and universality – are the focus of this paper.

III. United States Domestic Jurisdiction Over Child Sex Trafficking

This section focuses on the United States’ bases of jurisdiction over child sex trafficking and how they evolved over time. Specifically, this section begins by analyzing the Child Sexual Abuse Prevention Act (“1994 Act”), which is the first child-sex tourism law in the United States.⁴⁵ The 1994 Act relied on the nationality principle alone to assert domestic jurisdiction. Then, the United Nations Convention against Transnational Organized Crime influenced Congress to pass the bipartisan Trafficking Victims Protection Act (“TVPA”), which ultimately expanded the United States’ use of domestic jurisdiction over child sex trafficking by asserting not only the nationality principle, but also the territoriality principle.⁴⁶ Most recently, Congress passed the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (“the PROTECT Act”), which still utilizes both the nationality and territoriality principles to assert domestic jurisdiction over child sex trafficking.⁴⁷ Importantly, however, the PROTECT ACT has expanded the ways in which the government can prosecute child sex trafficking by including a section without an intent requirement.⁴⁸

⁴³ *Id.* at 124.

⁴⁴ *Id.* at 86.

⁴⁵ The Child Sexual Abuse Prevention Act of 1994, Pub. L. No. 103-322, 160001(g), 108 Stat. 2037 (Jan. 31, 1974).

⁴⁶ The Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000).

⁴⁷ The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. 108-21, 117 Stat. 650 (Apr. 30, 2003).

⁴⁸ *Id.* (to be codified at 18 U.S.C. § 2423(c) (2020)).

A. Nationality and Territoriality Principles

The United States first adopted a child-sex tourism law in 1994 under the 1994 Act.⁴⁹ The 1994 Act relied on the nationality principle to assert domestic jurisdiction over “any United States citizen or permanent resident who traveled to a foreign country with the purpose of engaging in a sexual act with a person under the age of eighteen.”⁵⁰ Thus, under the 1994 Act, United States citizens or permanent residents could be convicted for their sexual acts abroad, as long as there was evidence of their intent before leaving the United States.⁵¹ Yet, in the following decade, the federal government only successfully convicted two individuals under this legislation.⁵²

Then, the United Nations Convention against Transnational Organized Crime convened in Palermo, Italy, in December 2000 and entered into force on September 29, 2003.⁵³ The Convention is supplemented by three Protocols, one of which is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁵⁴ The United States Government helped to develop and support this “Palermo Protocol,”⁵⁵ which is the “first global legally binding instrument with an agreed definition on trafficking in persons.”⁵⁶ Article 3(a) of the Protocol defines trafficking as:

“... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation

⁴⁹ The Child Sexual Abuse Prevention Act of 1994, *supra* note 45.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *United States v. Hersh*, 297 F.3d 1233 (11th Cir. 2002); *United States v. Bredimus*, 234 F.Supp.2d 639 (N.D. Tex. 2002).

⁵³ United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (last visited Dec. 8, 2020), <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

⁵⁴ *Id.*

⁵⁵ Alliance To End Slavery & Trafficking, *Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017* (Jan. 11, 2017), <https://endslaveryandtrafficking.org/summary-trafficking-victims-protection-act-tvpa-reauthorizations-fy-2017-2/>.

⁵⁶ United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, *supra* note 53.

of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁵⁷

“The contention behind this definition was to facilitate convergence in national approaches with regard to the establishment of domestic criminal offenses that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.”⁵⁸

During the development of the Palermo Protocol, Congress passed the bipartisan TVPA “to provide for both implementation of the Palermo Protocol and to fill gaps in United States law.”⁵⁹ The TVPA was created to “ensure just and effective punishment of traffickers, and to protect their victims.”⁶⁰ Specifically, “there are three main components of the TVPA, commonly referred to as the three P’s.”⁶¹ The first P is Prosecution.⁶² “Under the frameworks set forth in both the Palermo Protocol and the TVPA, effective law enforcement action is an indispensable element of government efforts to fight human trafficking.”⁶³ Thus, “an effective criminal justice response to human trafficking should treat the prosecution of cases as seriously as other grave crimes.”⁶⁴ Interestingly, “non-criminal resolutions, such as mediation procedures, fall short of the Palermo Protocol’s standards, which essentially define trafficking in persons as a crime to be prosecuted, not a civil wrong to be remedied by damages alone.”⁶⁵ The second P is Protection because “protection is key to the victim-centered approach that the international community takes in its

⁵⁷ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, November 15 2000.

⁵⁸ United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, *supra* note 53.

⁵⁹ Alliance To End Slavery & Trafficking, *Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017*, *supra* note 55.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² U.S. Department of State, *The 3Ps: Prosecution, Protection, and Prevention*, *supra* note 2.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

efforts to combat modern slavery.”⁶⁶ “Effective victim protection entails identifying victims, which is a critical step in ensuring their ability to receive the support and resources they need.”⁶⁷ The third P is Prevention, and “prevention efforts address the tactics of human trafficker’s head on, providing communities with the tools necessary to respond to the threat of human trafficking.”⁶⁸

Under the TVPA, “federal law makes it a federal crime to conduct the activities of a sex trafficking enterprise in a way that affects interstate or foreign commerce or that involves travel in interstate foreign commerce.”⁶⁹ One of the primary TVPA offenses is found in 18 U.S.C. § 1591,⁷⁰ which “outlaws sex trafficking activities that affect interstate or foreign commerce.”⁷¹ § 1591(a) states that “whoever knowingly

- (1) In or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
- (2) Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),
Knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).”⁷²

This statute, therefore, makes it a “federal offense to knowingly recruit, entice, harbor, transport, provide, obtain, or maintain a minor knowing or in reckless disregard of the fact that the

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Charles Doyle, *Sex Trafficking: An Overview of Federal Criminal Law*, Congressional Research Service, 1, 2 (2015).

⁷⁰ 18 U.S.C. § 1591 (2020).

⁷¹ Charles Doyle, *supra* note 69.

⁷² § 1591(a).

victim is a minor and would be caused to engage in a commercial sex act.”⁷³ Minor is defined as “someone under 18 years of age,” and commercial sex act is “defined very broadly to include ‘any sex act, on account of which anything of value is given to or received by any person.’”⁷⁴ In other words, “it is illegal both to offer and to obtain a child, and cause that child to engage in any kind of sexual activity in exchange for anything of value – whether it be money, goods, personal benefit, in-kind favors, or some other kind of benefit.”⁷⁵ Under the nationality principle, “§ 1591 applies equally to American children (United States citizens or residents) who are prostituted within the United States.”⁷⁶ Under the territoriality principle, “§ 1591 applies to foreign nationals (persons not a United States citizen or resident) who are brought into the United States and are then caused to engage in prostitution.”⁷⁷

Congress next passed the PROTECT Act in 2003, which expanded the ways in which the United States government can prosecute sex trafficking offenses.⁷⁸ Specifically, the PROTECT Act preserves the 1994 Act by enabling the prosecution of individuals based on their intent via 18 U.S.C. § 2423(a), which prohibits the transportation of minors with the intent to engage in criminal sexual activity.⁷⁹ Section (a) states that:

“A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, 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, shall be fined under this title and imprisoned not less than 10 years of life.”⁸⁰

⁷³ The United States Department of Justice, *Citizen’s Guide to U.S. Federal Law on Child Sex Trafficking*, (May 28, 2020), <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-sex-trafficking>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, *supra* note 47.

⁷⁹ 18 U.S.C. § 2423(a) (2020).

⁸⁰ *Id.*

§ 2423(a) therefore utilizes the territoriality principle to assert jurisdiction over “anyone who knowingly transports a minor in any territory of the United States with the intent that they engage in sexual activity.”⁸¹ Similarly, 18 U.S.C. § 2423(b) prohibits the transportation of minors with the intent to engage in illicit sexual conduct.⁸² Illicit sexual conduct is defined as: “(1) a sexual act... with a person under 18 years of age...; or (2) any commercial sex act... with a person under 18 years of age.”⁸³ Thus, 2423(b) states that:

“A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, with a motivating purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.”⁸⁴

Here, under the nationality principle, § 2423(b) applies to United States citizens or aliens admitted for permanent residence.⁸⁵ But, § 2423(b) also utilizes the territorial principle to assert jurisdiction over “anyone who travels into the United States with the motivating purpose of engaging in any illicit sexual conduct with another.”⁸⁶

Moreover, the PROTECT ACT expands the 1994 Act by criminalizing an additional category of sex trafficking.⁸⁷ Now, the PROTECT Act also enables the prosecution of a person who engages in illicit sexual conduct in foreign places via § 2423(c), which states that:

“Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.”⁸⁸

⁸¹ *Id.*

⁸² § 2423(b).

⁸³ § 2423(f).

⁸⁴ §2423(b).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ § 2423(c).

⁸⁸ *Id.*

Requirements under this section are that the “person travel in foreign commerce” and “engage in illicit conduct.”⁸⁹ Unlike the 1994 Act, there is no requirement that the defendant “intend” to commit the act.⁹⁰ Additionally, § 2423(c) asserts jurisdiction here based on the nationality principle because it applies only to “United States citizens or aliens admitted for permanent residence.”⁹¹

Thus, the United States’ bases of jurisdiction over child sex trafficking have evolved over time. Specifically, the 1994 Act was the first child-sex tourism law in the United States, and it relied solely on the nationality principle to assert domestic jurisdiction.⁹² As time progressed, however, the TVPA expanded the United States’ domestic jurisdiction over child sex trafficking by utilizing both the nationality and territoriality principles.⁹³ Most recently, the PROTECT Act still utilizes both the nationality and territoriality principles to assert domestic jurisdiction.⁹⁴ Notably, however, the PROTECT ACT has also expanded the ways in which the government can prosecute child sex trafficking by including a section without an intent requirement.⁹⁵

IV. Australia Domestic Jurisdiction Over Child Sex Trafficking

This section focuses on Australia’s bases of jurisdiction over child sex trafficking and how they evolved over time. Specifically, this section begins by analyzing the Crimes (Child Sex Tourism) Amendment Act 1994 (“CST Act”), which was Australia’s first response to child sex trafficking.⁹⁶ The CST Act relied on the nationality principle alone to assert domestic jurisdiction over “Australian citizens, residents, or corporations who engaged in sexual intercourse with someone under the age of 16.”⁹⁷ Then, the Criminal Code Amendment (Slavery and Sexual

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² The Child Sexual Abuse Prevention Act of 1994, *supra* note 45.

⁹³ The Trafficking Victims Protection Act of 2000, *supra* note 46.

⁹⁴ The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act 2003, *supra* note 47.

⁹⁵ *Id.*

⁹⁶ The Crimes (Child Sex Tourism) Amendment Act 1994, No. 105 (July 5, 1994).

⁹⁷ *Id.* at Part IIIA, Div. 1, § 50AD.

Servitude) Act 1999 (“1999 Act”) created slavery offenses under Division 270 of Australia’s criminal code,⁹⁸ which asserted universal jurisdiction over anyone who “intentionally or recklessly” violated such provisions.⁹⁹ The 1999 Act, however, failed to define trafficking in persons.¹⁰⁰ It wasn’t until Australia signed the Palermo Protocol in 2002¹⁰¹ that new offenses for trafficking in persons and children were created in Division 271 under the Criminal Code Amendment (Trafficking in Persons Offences) Act 2005 (“2005 Act”).¹⁰² To this day, Australia asserts domestic jurisdiction over these two offenses via the territoriality and nationality principles.¹⁰³ Thus, when read together, “Divisions 270 and 271 of the Commonwealth Criminal Code criminalize sex trafficking and labor trafficking.”¹⁰⁴ Most recently, the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013 (“2013 Act”) passed, expanding slavery offenses.¹⁰⁵ The Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015 (“2015 Act”) also clarifies that while Australia has universal jurisdiction over slavery offenses,¹⁰⁶ prosecutions for such offenses that occur wholly outside of Australia may only proceed with the Attorney-General’s written consent, which is unlike the 1999 Act.¹⁰⁷

⁹⁸ The Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, No. 104, (Aug. 24, 1999).

⁹⁹ *Id.* at 270.3(1)-(2).

¹⁰⁰ The Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, *supra* note 128.

¹⁰¹ United Nations Treaty Collection, *Statutes of Treaties Chapter XVIII*, (Jan. 12, 2020), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

¹⁰² The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, No. 96, (July 6, 2005).

¹⁰³ *Id.* at 271.1.

¹⁰⁴ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, (last visited Dec. 8, 2020) <https://www.state.gov/reports/2020-trafficking-in-persons-report/australia/>.

¹⁰⁵ The Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act 2013, No. 6, (Mar. 7, 2013).

¹⁰⁶ The Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015, No. 12, (Mar. 5, 2015), at § 270.3(A).

¹⁰⁷ *Id.* at 270.3(B)(1).

A. Universality, Nationality and Territoriality Principles

Australia's response to child sex trafficking began with the passage of the CST Act in 1994.¹⁰⁸ The CST Act criminalized sexual intercourse or acts of indecency¹⁰⁹ with a child under the age of sixteen.¹¹⁰ Specifically, Part IIIA, Div. 2, § 50BA stated that a person must not, while outside Australia, “engage in sexual intercourse with a person who was under 16.”¹¹¹ § 50BB similarly stated that a person must not “induce a person who was under 16 to engage in sexual intercourse with a third person outside Australia and in the presence of the first-mentioned person.”¹¹² Notably, Div. 1 § 50AD of the CST Act required that a person could *not* be charged with an offense under the CST Act unless, at the time of the offense, the person was: “(a) an Australian citizen; (b) a resident of Australia; (c) a body corporate incorporated by or under a law of the Commonwealth or of a State or territory; or (d) any other body corporate that carries on its activities principally in Australia.”¹¹³ Thus, the CST Act solely relied on the nationality principle to assert domestic jurisdiction over child sex trafficking.¹¹⁴

Trafficking-related legislation was then introduced in Australia in 1999 through the 1999 Act, which “created the offenses of slavery, sexual servitude, and deceptive recruiting for sexual services” in Division 270 of the Criminal Code.¹¹⁵ “Central to the application of these slavery offenses is the definition of slavery in § 270.1,”¹¹⁶ which defines slavery as “the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,

¹⁰⁸ The Crimes (Child Sex Tourism) Amendment Act 1994, *supra* note 96.

¹⁰⁹ *Id.* at Part IIIA, Div. 1 § 50AB-AC.

¹¹⁰ *Id.* at Div. 2 § 50BA-BC.

¹¹¹ *Id.* at § 50BA.

¹¹² *Id.* at § 50BB.

¹¹³ *Id.* at Div. 1 § 50AD.

¹¹⁴ *Id.*

¹¹⁵ The Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, *supra* note 98.

¹¹⁶ The University of Queensland, *Criminal Offences*, (July 11, 2016), <https://law.uq.edu.au/research/research-activities/human-trafficking/criminal-offences>.

including where such a condition results from a debt or contract made by the person.”¹¹⁷ The 1999 Act asserted universal jurisdiction over slavery offenses and provided that a person who, whether within or outside Australia, “intentionally or recklessly possessed a slave,” “engaged in slave trading,” “entered into commercial transactions involving a slave,” or “exercised control or direction over slave trading or commercial transactions involving a slave,” was “guilty of an offense.”¹¹⁸ Notably, however, the 1999 Act “failed to define trafficking in persons.”¹¹⁹

Then, the “United Nations Convention against Transnational Organized Crime convened in Palermo, Italy in December 2000 and entered into force on September 29, 2003.”¹²⁰ “Australia joined the United States in signing the Palermo Protocol in December 2002,”¹²¹ and in August 2005, “Australia’s relevant trafficking legislation underwent significant reform.”¹²² “A range of new offenses were created in Division 271 under the 2005 Act, including trafficking in persons, trafficking in children, domestic trafficking in persons, and debt bondage.”¹²³ Therefore, when read together, “Divisions 270 and 271 of the Commonwealth Criminal Code criminalize sex trafficking and labor trafficking.”¹²⁴

Specifically, Division 271, Subdivision B is entitled “Offences Relating to Trafficking in Persons” and includes a provision for the offense of trafficking in children.”¹²⁵ As per § 271.4, “a person commits an offense of trafficking in children if they (a) organize or facilitate the entry or

¹¹⁷ The Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, *supra* note 128 at Division 270 § 270.1.

¹¹⁸ *Id.* at § 270.3(1)-(2).

¹¹⁹ *Id.* at Division 270.

¹²⁰ United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, *supra* note 53.

¹²¹ United Nations Treaty Collection, *Statutes of Treaties Chapter XVIII*, *supra* note 101.

¹²² United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, *supra* note 53.

¹²³ The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102.

¹²⁴ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹²⁵ The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at Division 271, Subdivision B.

exit of another person into or out of Australia; and (b) the other person is under the age of 18; and (c) they intend or are reckless as to whether that the person will be used to provide sexual services.”¹²⁶ Therefore, Australia’s definition of child trafficking requires the element of movement of a victim,¹²⁷ whereas the United States’ definition does not.¹²⁸ Notably, both the United States and Australia are members of the United Nations, which does not require the element of movement in its definition of human trafficking.¹²⁹ Thus, the United States Department of State’s 2020 Trafficking in Persons Report concludes that Australia’s “definition of trafficking is inconsistent with international law” because of its movement requirement.¹³⁰

Notably, § 271.1 provides that the offense of trafficking in children has “category B extended geographical jurisdiction.”¹³¹ This type of jurisdiction is defined in Division 15, § 15.2, which states that a person does not commit the offense “unless the conduct (a) occurs wholly or partly in Australia or on an Australian aircraft or ship.”¹³² A person also does not commit the offense “unless (b) the conduct occurs wholly outside Australia and a result of the conduct occurs wholly or partly in Australia or on an Australian aircraft or ship.”¹³³ In addition, a person does not commit the offense “unless (c) the conduct occurs wholly outside Australia and the person is an Australian citizen, resident of Australia, or Australian corporation.”¹³⁴ Lastly, a person does not commit the offense “unless (d) they are ancillary offenses that occurred wholly outside Australia

¹²⁶ *Id.* at § 271.4.

¹²⁷ *Id.*

¹²⁸ § 1591(b), *supra* note 72.

¹²⁹ The United Nations defines human trafficking as “the recruitment, transportation, transfer, harboring, or receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labor or sexual exploitation. United Nations Office on Drugs and Crime, *Trafficking in Persons and Migrant Smuggling*, (last visited Dec. 8, 2020), <https://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>.

¹³⁰ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹³¹ The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at Division 271, § 271.1.

¹³² *Id.* at Division 15, § 15.2(1)(a).

¹³³ *Id.* at § 15.2(1)(b).

¹³⁴ *Id.* at 15.2(1)(c).

and the primary offense was intended to occur wholly or partly in Australia or on an Australian aircraft or ship.”¹³⁵ Thus, Australia has jurisdiction over trafficking in children via the territoriality principle when the conduct occurs in Australia, and via the nationality principle when the conduct occurs outside Australia but the offender was an Australian corporation, citizen, or resident.¹³⁶

“Although the 2005 reforms brought Australia’s criminal law in line with the general criminalization requirements under the Palermo Protocol, several gaps and inconsistencies remained.”¹³⁷ Thus, the 2013 and 2015 Acts passed.¹³⁸ The 2013 Act specifically expanded Division 270, which only contained offenses for slavery, sexual servitude, and deceptive recruitment for sexual services,¹³⁹ to include a servitude offense, an offense for deceptive recruitment, and offenses for forced labor and forced marriage.¹⁴⁰ The 2015 Act then made explicit the fact that “slavery offenses have category D extended geographical jurisdiction,”¹⁴¹ which is defined in Division 15, § 15.4 and states that “if a law of the Commonwealth provides that this section applies to a particular offense, the offense applies: (a) whether or not the conduct constituting the alleged offense occurs in Australia; and (b) whether or not a result of the conduct constituting the alleged offense occurs in in Australia.”¹⁴² Thus, Australia asserts universal jurisdiction over slavery offenses, thereby “allowing Australian agencies to investigate and prosecute even where the offense was not committed wholly within Australian territory.”¹⁴³ §

¹³⁵ *Id.* at § 15.2(1)(d).

¹³⁶ *Id.* at Division 15.

¹³⁷ The University of Queensland, *Criminal Offences*, *supra* note 116.

¹³⁸ The Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act 2013, *supra* note 105; The Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015, *supra* note 106.

¹³⁹ The Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, *supra* note 98.

¹⁴⁰ The Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act 2013, *supra* note 105.

¹⁴¹ The Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015, *supra* note 106 at Division 270, § 270.3(A).

¹⁴² *Id.* at Division 15, § 15.4.

¹⁴³ *Id.*

270.3(B)(1) clarifies, however, “that prosecutions for slavery offenses, in which the alleged conduct takes place wholly outside of Australian territory, may only proceed with the written consent of the Attorney-General.”¹⁴⁴ But, § 270.3(B)(2) further provides that “an absence of permission to prosecute does not preclude the alleged offender in these circumstances from being arrested, charged, and remanded in custody or on bail.”¹⁴⁵

Thus, Australia’s bases of jurisdiction over child sex trafficking have evolved over time. Specifically, the CST Act was Australia’s first response to child sex trafficking, and it relied solely on the nationality principle to assert domestic jurisdiction.¹⁴⁶ Then, the 1999 Act created slavery offenses under Division 270 and asserted broad, universal jurisdiction over such acts.¹⁴⁷ Notably, however, child trafficking offenses were not created in Division 271 until the 2005 Act, which still currently asserts domestic jurisdiction over these acts via the territoriality and nationality principles.¹⁴⁸ Lastly, the 2013 Act expanded slavery offenses,¹⁴⁹ and the 2015 Act clarified that while Australia still asserts universal jurisdiction over the slavery offenses, prosecutions for such acts that occur wholly outside of Australia may now only proceed with the Attorney-General’s written consent.¹⁵⁰

V. Comparison Between Human Trafficking Statistics in the United States and Australia

This section will compare human trafficking statistics in both the United States and Australia to determine whether Australia’s broad use of domestic jurisdiction over child trafficking

¹⁴⁴ *Id.* at Division 270, § 270.3(B)(1).

¹⁴⁵ *Id.* at § 270.3(B)(2); The University of Queensland, *Criminal Offences*, *supra* note 148.

¹⁴⁶ The Crimes (Child Sex Tourism) Amendment Act 1994, *supra* note 96 at Part IIIA, Div 1, § 50AD.

¹⁴⁷ The Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, *supra* note 98 at § 270.3(1)-(2).

¹⁴⁸ The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at § 271.1.

¹⁴⁹ The Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act 2013, *supra* note 105.

¹⁵⁰ The Crimes Legislation (Psychoactive Substances and Other Measures) Act 2015, *supra* note 106 at Division 270, § 270.3(B)(1)-(2).

via the universality, nationality, and territoriality principles results in more child trafficking prosecutions in comparison to the United States' narrower use of domestic jurisdiction over child trafficking via the nationality and territoriality principles. This section will analyze the number of child trafficking investigations, prosecutions, and convictions in both the United States and Australia and ultimately conclude that Australia's broad use of domestic jurisdiction does not result in more child trafficking prosecutions as compared to the United States.

To begin, the United States Department of State released its 2020 Trafficking in Persons Report ("TIP Report") in June 2020.¹⁵¹ "The TIP Report is considered the most comprehensive resource of governmental anti-trafficking efforts," and the "United States government uses the TIP Report to engage foreign governments in dialogues to advance anti-trafficking reforms and to target resources on prevention, protection, and prosecution."¹⁵² According to the 2020 Trafficking in Persons Report, "the United States Government increased its number of investigations of human trafficking,"¹⁵³ and the Australian government also "increased law enforcement efforts under Divisions 270 and 271."¹⁵⁴

In the United States, "the Department of Justice (DOJ), Department of Homeland Security (DHS), Department of State (State) and Department of Defense (DoD) are the primary investigating agencies for federal human trafficking and other related offenses, with the DOJ

¹⁵¹ U.S. Department of State, *Trafficking in Persons Report 2020*, (last visited Dec. 8, 2020), <https://www.state.gov/trafficking-in-persons-report-2020/#:~:text=June%2025%2C%202020%3A%20Secretary%20Pompeo,at%20the%20Department%20of%20State.&text=This%20is%20a%20modal%20window>.

¹⁵² Human Trafficking Search, *The Department of State's 2020 Trafficking in Persons Report*, (last visited Dec. 8, 2020), https://humantraffickingsearch.org/the-department-of-states-2020-trafficking-in-persons-report/?gclid=CjwKCAiA4o79BRBvEiwAjteoYNd1V35sTQsL9eEiBqzUg1j4o0xPqg4NA57qf6J4yS0WXYkR4bNgkRoC2M0QAvD_BwE.

¹⁵³ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, (last visited Dec. 8, 2020), <https://www.state.gov/reports/2020-trafficking-in-persons-report/united-states/>.

¹⁵⁴ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

prosecuting federal human trafficking cases.”¹⁵⁵ “The federal government reports its law enforcement data by fiscal year,” and “in FY 2019, the DHS opened 1,024 investigations related to human trafficking.”¹⁵⁶ In addition, “the DOJ formally opened 607 human trafficking investigations,”¹⁵⁷ “the State opened 134 human trafficking related cases worldwide,”¹⁵⁸ and “the DoD investigated 65 human trafficking related cases.”¹⁵⁹ This amounts to a total of 1,884 human trafficking related investigations in the United States in FY 2019.¹⁶⁰ In comparison, the Australian government only “referred 213 suspected cases of trafficking for possible investigation in 2019.”¹⁶¹ The one common trend between the United States and Australia is that both States are seeing an increase in investigations.¹⁶² The United States had a total of “1,884 investigations in FY 2019,” as compared to “1,773 investigations in FY 2018”¹⁶³ and Australia had a total of “213 investigations in FY 2019” as compared to “179 in FY 2018.”¹⁶⁴

Specifically looking at prosecutions and convictions, in the United States during FY 2019 “the DOJ initiated a total of 220 federal human trafficking prosecutions” under 18 U.S.C. § 2423.¹⁶⁵ In comparison, Australia only initiated “prosecutions against nine defendants” under Division 271 during FY 2019.¹⁶⁶ Moreover, in the United States, “the DOJ charged 343 defendants”¹⁶⁷ and “secured convictions against 475 traffickers in FY 2019.”¹⁶⁸ In contrast, “although the Australian authorities continued prosecutions from previous reporting periods

¹⁵⁵ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹⁶² *Id.*; U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁶³ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁶⁴ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹⁶⁵ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁶⁶ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹⁶⁷ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁶⁸ *Id.*

against 12 defendants,” the government only “secured convictions in two cases against three defendants during FY 2019.”¹⁶⁹

The greater number of investigations, prosecutions, and convictions in the United States as compared to Australia is striking given the fact that Australia utilizes two Criminal Code Divisions to prosecute sex and labor trafficking,¹⁷⁰ one of which asserts universal jurisdiction over such crimes,¹⁷¹ whereas the United States does not. It would seem that since Australian agencies are able to investigate and prosecute labor trafficking even where such offenses are not wholly committed within Australian territory¹⁷² that Australia’s number of investigations, prosecutions, and convictions would far surpass the United States’, especially since the United States does not assert universal jurisdiction over such acts.¹⁷³ It is possible that the reason why the United States has such a higher number of investigations, prosecutions, and convictions is because Australia’s definition of human trafficking requires the movement of a victim.¹⁷⁴ Therefore, it could be that Australian authorities struggle with picking between prosecuting potential offenders under Division 270 or 271. Moreover, the 2020 Trafficking in Persons Report notes that “the Australian authorities often opt to pursue labor or employment violations in lieu of trafficking charges, thereby resulting in potential labor traffickers receiving only fines and other civil penalties that were inadequate to deter trafficking crimes.”¹⁷⁵ Thus, it is also possible that the consequences of being prosecuted under Divisions 270 and 271, one of which contains broad universal jurisdiction,

¹⁶⁹ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹⁷⁰ The Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act 2013, *supra* note 105 at § 270; The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at § 271.

¹⁷¹ The Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015, *supra* note 106 at Division 270, § 270.3.

¹⁷² *Id.*

¹⁷³ 18 U.S.C. § 2423, *supra* note 79.

¹⁷⁴ The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at Subdivision B § 271.4.

¹⁷⁵ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

are not enough of a deterrent for child traffickers. It is also worth keeping in mind that the United States has a greater population size in comparison to Australia. According to the United States Census Bureau, the United States population is around 330,684,789,¹⁷⁶ whereas the Australian population is only around 25,632,065.¹⁷⁷

Although the actual number of investigations, prosecutions, and convictions in the United States far surpasses Australia's investigations, prosecutions, and convictions, "the United States is seeing an overall decrease in prosecutions and convictions"¹⁷⁸ whereas "Australia is seeing an increase."¹⁷⁹ For example, the DOJ's federal human trafficking prosecutions under 18 U.S.C. § 2423 "decreased from 230 in FY 2018" to "220 in FY 2019."¹⁸⁰ In contrast, although Australia only initiated prosecutions against nine defendants under Division 271 in FY 2019, this was an increase compared to just "two prosecutions in 2018."¹⁸¹ Furthermore, the United States experienced a decrease in the number of convictions against traffickers from "526 in FY 2018" to "475 in FY 2019."¹⁸² On the other hand, Australia experienced an increase in the number of convictions against traffickers from "zero in 2018" to "two in 2019."¹⁸³ Although the increase in prosecutions and convictions is a step in the right direction for Australia, it is unclear whether Australia's broad use of domestic jurisdiction is a direct factor that has contributed to this increase. Additionally, even if Australia's broad use of domestic jurisdiction were a contributing factor,

¹⁷⁶ United States Census Bureau, *U.S. and World Population Clock*, (Dec. 8, 2020), <https://www.census.gov/popclock/>

¹⁷⁷ Worldometer, *Australia Population (Live)*, (Dec. 8, 2020), <https://www.worldometers.info/world-population/australia-population/>.

¹⁷⁸ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁷⁹ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹⁸⁰ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁸¹ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

¹⁸² U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁸³ U.S. Department of State, *Trafficking in Persons Report 2020: Australia*, *supra* note 104.

there is still a large gap between the amount of prosecutions and convictions in the United States as compared to Australia.

Thus, Australia's broad use of domestic jurisdiction via the universality, nationality, and territoriality principles does not result in more child trafficking prosecutions in comparison to the United States' narrower use of domestic jurisdiction via the nationality and territoriality principles. Although Australia utilizes two Divisions to prosecute sex and labor trafficking,¹⁸⁴ and Australian authorities are able to investigate and prosecute trafficking crimes that do not occur within Australian territory,¹⁸⁵ the United States has a higher number of investigations, prosecutions, and convictions.¹⁸⁶ Therefore, Australia's use of broad, universal jurisdiction is not a main factor that results in a greater amount of successful child trafficking prosecutions.

VI. Conclusion

In conclusion, Australia's broader use of domestic jurisdiction over child trafficking via the universality, nationality, and territoriality principles does not result in a greater number of child trafficking prosecutions as compared to the United States' narrower use of domestic jurisdiction over child trafficking via the nationality and territoriality principles. The sexual exploitation of minors via human trafficking is a global human rights problem, and the international community must do everything in its power to prevent such horrific and devastating acts from happening.¹⁸⁷ One of the ways the international community can fight child trafficking is by successfully prosecuting child traffickers.¹⁸⁸ Hence, this paper endeavored to discover whether Australia's broad use of domestic jurisdiction over child trafficking resulted in more child trafficking

¹⁸⁴ The Crimes Legislation Amendment (Slavery, Slavery-like Conditions, and People Trafficking) Act 2013, *supra* note 105 at § 270; The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at § 271.

¹⁸⁵ The Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015, *supra* note 106.

¹⁸⁶ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.

¹⁸⁷ Jeremy SeaBrook, *supra* note 1.

¹⁸⁸ U.S. Department of State, *The 3Ps: Prosecution, Protection, and Prevention*, *supra* note 2.

prosecutions in comparison to the United States' narrower exercise of domestic jurisdiction over child trafficking. As it turns out, Australia's assertion of universal jurisdiction over these heinous acts does not appear to be the answer to prosecuting more child traffickers. Although there are certain factors to take into account, such as Australia's stringent definition of child trafficking¹⁸⁹ and its much smaller population size,¹⁹⁰ the United States far surpasses Australia in terms of prosecuting child traffickers.¹⁹¹ Thus, universal jurisdiction does not appear to play as important of a role in the successful prosecution of child traffickers as one might think.

¹⁸⁹ The Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, *supra* note 102 at Subdivision B § 271.4.

¹⁹⁰ Worldometer, *Australia Population (Live)*, *supra* note 177.

¹⁹¹ U.S. Department of State, *2020 Trafficking in Persons Report: United States*, *supra* note 153.