

**CANADA AND THE UN CONVENTION ON
THE RIGHTS OF THE CHILD**

by

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Canada and the UN Convention on the Rights of the Child

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Abstract

The current popular support for the UN Convention on the Rights of the Child (CRC) provides the context for this study. How do UN member states with their unique cultural and ideological systems relate to universal declarations such as this? The thesis limits itself to the Canadian response to the Convention. Based on a developmental approach to children's rights, the study uses a qualitative research approach involving interviews, analysis of various government, UN, and non-governmental organization (NGO) documents, together with other secondary sources, to examine Canada's role with respect to the Convention. Canada's role is reviewed from the drafting and ratification stages to implementation with a consideration of any implications for the well-being of children.

The major conclusion of this study could be summed up by the saying, "all that glitters is not gold". Canada is well respected in the international arena, particularly with respect to humanitarian issues. With such a position, Canada has played a leading role in the world in regard to the issues of human rights and international law. It was in this vein that it made significant contributions to the creation of the CRC, ratifying it in the relatively short time of two years. Significant efforts have been made to implement the Convention as exemplified by the Brighter Futures plan, the Child Development Initiative and the Aboriginal Head Start program, not to mention the already rich culture of rights in Canadian society. The significance of these efforts is also underscored by the statistics on the social indicators of well-being used in this study. For most of the social indicators, Canada's performance is above average and its National Performance Gap (NPG) is positive. However, such shining

national averages begin to dim when they are disaggregated to expose disparities among social groups and classes. The figures for First Nations' children, for example, relate more closely to those of children in developing countries than to any North American ideal. Add to that the problems of child poverty, teenage suicide and violence, in which Canada ranks second worst among its peers in the developed world, and the glitter begins to fade, exposing the gaps between the ideal and the reality.

However, the study does not have a pessimistic outlook on the prospects of the CRC making a positive impact on the quality of life of children in Canada for several reasons, including: (i) Canadian NGOs have been quick to seize the new opportunity offered by the CRC - the Convention has become one of the latest tools in their advocacy for better conditions for children; and, (ii) it is too early to determine the results of the government's new programs. Until an adequate evaluation can be done, it would be unfair to put a negative judgment on their outcome.

Dedication

To my wife, Dela, and my children, Sena, Eyram and Edem.

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Many people offered assistance which contributed to the completion of this study. My wife, Dela, gave all the needed home support for the work to go on, while my children, Sena, Eyram and Edem bore the brunt of my persistent absence from home.

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Requirements of confidentiality prevent me from mentioning names of interviewees. However, I want you all to know that I was so overwhelmed by your co-operation. My friends, Stella Serwaa Mfoafo-M'carthy, Subothini Francis and Carol Magambo, were always available to take care of the children. Dr. Ken Attafuah provided support and inspiration. Serwaa, Subo, Carol and Ken, thanks so much.

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CHAPTER I

INTRODUCTION

How children are viewed in a society constitutes what Philip Veerman (1992:9-10) refers to as the "image of childhood". Images of childhood relate to how children are treated. Consequently, the concept of childhood has direct consequences for the welfare of children, including the rights which are accorded them. Currently, assertion of support for the rights of children appears to have become fashionable all over the world especially, since the United Nations (UN) declaration of 1979 as the International Year of the Child¹ and the adoption of the United Nations Convention on the Rights of the Child in 1989² (hereafter referred to as the UNCRC, the CRC or the Convention as the case may be). These two historic events climaxed in 1990 with the World Youth Summit held in New York under the auspices of the UN (Cohen, 1993; 1992; Freeman, 1992). The Convention itself has enjoyed tremendous popularity as shown by the speed of ratification by member states. Within five years, 176 of the 190 UN member states had ratified it³. Of the remaining nations, at least 4 have recently signed, indicating their intention to ratify it⁴. Universal ratification seems to be in sight. This makes the UNCRC the most widely and rapidly accepted convention in the history of international human rights.

¹International Year of the Child, G.A. Res. 169, U.N. GAOR, 31st Session, Supp. No. 39, at 74, UN Doc. A/31/169 (1976)

²Convention on the Rights of the Child, adopted Nov. 20, 1989, 28 I.L.M. 1448 (1989), corrected at 29 I.L.M. 1340 (1990) (entered into force Sept. 2, 1990).

³UN Committee on the Rights of the Child. Tenth Session. *State Parties to the Convention on the Rights of the Child and Status of the Submission of the Reports under Article 44 of the Convention* CRC/C/44 31 July 1995

⁴ UNICEF *The Progress of Nations* New York, 1995

Such overwhelming popularity and response to the Convention, however, demands a pause for thought. For one thing, what constitutes children's rights varies among member states, who may sometimes appear to be in conflict on this issue, because of the wide variety of cultures and philosophies represented. Yet, the ratification of the Convention is a commitment on the part of member states to implement its provisions. With such support that the Convention is currently enjoying, it has become the standard against which children's issues are now measured all over the world. In fact, the CRC can be seen as a codification of the internationally expected image of childhood.

RESEARCH PROBLEM

Given the pervasive variations in socio-cultural and philosophical orientations among the UN member states, the current popular support for the Convention presents an interesting context to study the response of each individual state to the Convention. How do nations with their peculiar world views respond to a universal position such as this? How do those member states with cultures and beliefs which lay emphasis on strict conformity to parental authority over children, for example, respond to a Convention which is seen by some as espousing more liberal "western" ideals regarding children in society and child rearing practices? In light of such cultural differences, how could deviation from, and compliance with, the demands of the Convention be determined? The political and economic differences between the UN member states muddle the situation even further.

This research seeks to explore the involvement in the development and implementation of the Convention by one member state - Canada. Canada has been chosen because it is a western state highly regarded in international relations. It is also a member state of the UN recognised as having played a major role in the formulation of the Convention. It is hoped that the research will provide a basis for further comparative research involving a non-western developing country. In effect, this study is part of a long-term one, with the aim of providing a comparative study of the implementation of the Convention between a developed and developing country. Thus, this is the “reconnaissance flight”, the exploratory study, to prepare the way for a wider one.

RESEARCH QUESTIONS AND OBJECTIVES

The central research question this thesis attempts to address is: *what is the nature of Canada's response to the Convention?* An exhaustive discussion of this question requires that related questions be addressed:

- (i) what role did Canada play in the creation of the Convention and why?
- (ii) what changes - administrative, social policy, legislative - has the CRC engendered with respect to children in this country?
- (iii) have these changes made any qualitative differences in the life situation of children in Canada?

In effect, this is a socio-legal study of Canada's involvement in the birth, and implementation, of the Convention. It is also historical as the thesis traces the role of Canada

from the drafting stage of the Convention in 1979 through ratification to its implementation today. This research bears on the past and present welfare of children in Canada. The objectives of this research, however, go beyond this. It is part of a wider interest in social policy, social control, human rights in general, and children's rights in particular. Consequently, the Convention is treated as a piece of international social control legislation with the Canadian federal and provincial responses to it an example of relevant domestic social policy.

This research is based on the strong personal interest of the author in the application of western social control theories and models in the Third World, especially Africa. On the whole, the literature⁵ acknowledges that most developing countries, which constitute the majority of the UN membership, were **not** represented in the drafting of the Convention. Yet they were among the first countries to ratify it.⁶ What does this mean to these governments? More importantly, how does this affect the quality of life of children in the developing countries? A study of the role of Canada, a developed, western-liberal country, in the drafting process and implementation of this instrument provides an interesting background against which to analyse the responses of developing countries to the latest international treaty on children.

Such a comparison of the response between developed and developing nations to the same piece of legislation has important theoretical implications. It could address such theoretical

⁵See, for example, Cynthia P. Cohen "The Developing Jurisprudence of the Child" in *St. Thomas Law Review* Fall 1993, vol 6, pp. 84-85 and Jaap E. Doek "The Current Status of the UN Convention on the Rights of the Child" in Sharon Detrick (ed.) *The UN Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"* Martinus Nijhoff Publishers 1992.

⁶Ghana, a West African nation South of the Sahara, was the first country to ratify the Convention. When I was in Ghana in 1990 to collect data for a piece of research on juvenile delinquency policy, almost everybody I interviewed was quick to draw my attention to the fact that Ghana was the first country to ratify the CRC. They seem to be proud of this.

issues as: How does a sovereign state with its unique cultural world view respond to an international universal position? In other words, how does an international document get referenced by a sovereign state - developed or under-developed? Further, is it possible to identify a principle in the philosophy of law which could be said to be commonly held by all cultures, despite their differences? For example, what are the common principles of the developing international jurisprudence on the rights of the child? This study is not an attempt to seek the answers to these questions, it is only to lay the base for an eventual exploration of them.

RESEARCH METHOD

A combination of qualitative research methods involving archival research and interviews, were used for this study.

(i) Archival research

The research started in the spring, 1994, with a review of the general literature on human rights. Books, journal articles, newspapers and magazines were selected which would assist with a general understanding of the concept of rights as variously expressed. In June 1994, a Conference on the UNCRC with the theme "Stronger Children - Stronger Families" was held at the University of Victoria. It was part of the activities marking the International Year of the Family and was used to highlight both Canada and the international community's obligations as

signatories to the CRC.⁷ It marked this researcher's first serious encounter with the Convention as all the events and programs were Convention-centred. A large number of materials on the Convention were obtained at the Conference. This changed the focus from the general readings on human rights to children's rights and paved the way for writing the research proposal.

Apart from these, all the key segments of people interviewed generously made available to me various documents in their possession pertaining to the Convention and children. Hence, a number of NGO, UNICEF, UN Committee on the Rights of the Child, federal and provincial government reports, minutes of meetings, annual reports, observations, announcements, reports of a commission of inquiry, newsletters, Senate debates, magazines and journals were available to peruse. On the drafting process, the *travaux preparatoires* (legislative history or Working Group reports) of the Working Group that drafted the Convention⁸ and Sharon Detrick's (1992), *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Preparatoires*, among other secondary sources, proved very useful.

(ii) Interviews

The nature of the research dictated the use of purposive sampling in selecting for interviews. The key players as far as the Convention is concerned are (i) the state parties, and therefore the government of each nation that ratifies the CRC, and in federal countries such as Canada where the provinces have jurisdiction over children's issues, the provincial government;

⁷ For the proceedings of the Conference see *1994 International Year of the Family Conference on the UN Convention on the Rights of the Child, June 18-23, 1994, University of Victoria*, Woodfall Communications, Vancouver B.C.

⁸ UN Economic and Social Council (UNECOSOC), Commission on Human Rights (CHR), 36th Session, *Question of a Convention on the Rights of the Child*, E/CN. 4/1349, 17 January 1980, and *Reports of the Working Group on a Draft Convention on the Rights of the Child*, 35th - 45th Sessions, 1979 to 1989

(ii) The Committee on the Rights of the Child, which has been empowered by Article 43 of the Convention to monitor compliance and implementation of the Convention; (iii) Non-governmental organisations (NGOs), which by virtue of Article 45 of the Convention, can report directly to the Committee on the Rights of the Child; and (iv) the children themselves.

The June 1994 Conference in Victoria also provided the opportunity to meet and interact with most of the key government officials and leaders of NGOs dealing directly with the Convention and children. As a result, in September 1995 when letters were sent out to arrange for interviews, none of the requests for appointment were turned down. In fact, some of the respondents recommended others who could provide relevant information on the Convention. However, the financial and time constraints within which a Masters thesis is written has to be borne in mind. Consequently, the decision was to interview the following government officials: (i) two from the Children's Bureau (now renamed the Child and Youth Division), Health Canada, which co-ordinates, within the federal government, all activities and programs concerning children and youth; (ii) one from the Human Rights Directorate of the Department of Canadian Heritage, which has the overall responsibility for human rights in Canada and for dissemination of information regarding the UNCRC; (iii) one from the Justice Department, which is responsible for the legal aspects of the Convention; (iv) one from External Affairs, which represents Canada in the international arena; (v) one Senator, who regards herself as a Senator for Children; and (vi) 3 officials of UNICEF. At the provincial level, interviews were limited to B.C. Here, (i) one official of the Ombudsman's Office; (ii) 3 researchers on the Convention at the University of Victoria; and (iii) a director of an NGO were interviewed.

An unstructured interview schedule employing mainly open-ended questions, was used to collect data. The purpose of using this method of interview was not to limit the amount of information respondents could provide, since this is an exploratory study. Since government bureaucrats are generally known for their reluctance to release information in their possession, it was thought best give them a format which allowed them greater discretion or more “openness” in their response. The questions were all related to the research objectives (see Appendix 1): (i) Canada’s role in the creation (drafting and ratification) of the Convention; (ii) implementation; (iii) the impact of the convention on the well-being of Canadian children; (iv) the role of NGOs and (iii) the committee in Geneva.

The interviews were conducted in Ottawa, Toronto, Victoria and Vancouver between November 1995 and January 1996. Informed consent was sought from all interviewees (See introduction of Interview Guide, Appendix 1). They were assured of anonymity and the confidentiality of their responses, except for those who stated explicitly that they did not have any reservations against being identified by name or position in the thesis. Only a handful of respondents stated explicitly that they could be identified in this report by name and position, but even that was based on certain conditions⁹. Since it has not been possible to meet those conditions, it has been decided not to disclose the names of any of the respondents in this study.

Again, financial and time constraints prohibited interviews with any children or members of the UN Committee in Geneva. Hence, apart from information made available through the interviews of others on these two key players, for children, reliance was placed on NGO, federal

⁹ The conditions were that they would want to see whatever is attributed to them before the release of the final thesis report. The time constraints under which the researcher is currently working do not permit him to make the report available to these respondents before the final report. Copies will, however, be made available to some of the respondents later.

and provincial reports and other published materials such as UNICEF's *The Progress of Nations*. For the Committee in Geneva, the research relied on its own reports, observations and minutes of meetings with respect to Canada.

THE BACKGROUND

It was noted at the beginning of this thesis that the ideas a society possesses about children, constitute its image of childhood. This in turn determines the type of care, protection or rights that a society grants its children. As Philip Veerman (1992) puts it, "ideas on children's rights are expressions of an image of childhood of the beholder" (p.xv). The concept of childhood is based on the awareness or ideas of the particular nature which distinguishes the child from an adult. If the awareness changes, so does the image of childhood and it in turn affects the rights of the child. It could be expressed this way: the history of children's rights, is a history of the image of childhood. The concept of childhood varies from society to society and in a particular society from time to time. There may be differences across gender, class, region and even between children and youth. Of interest to this study, is the history of children's rights in the context of international human rights treaties and Canadian social history.

The UN And The Evolution Of Children's Rights¹⁰

The most prominent landmarks in this unfolding history of the concern of the UN about children's rights are sketched here. The predecessor of the UN, the League of Nations, adopted the *Declaration of the Rights of the Child* (the Geneva Declaration) in 1924. It comprises five principles aimed at assuring every child the conditions essential for survival. In 1946, UNICEF was created by the UN General Assembly, testifying to the increasing attention to children's needs. The *Universal Declaration of Human Rights* was proclaimed in 1948. Even though children were not specifically mentioned, the rights and liberties it proclaimed had implications for them. That same year the UN Economic and Social Council adopted a Resolution on the Protection of Children. The thrust of this Resolution was to modify or supplement the 1924 Geneva Declaration as a UN Charter of the Rights of the Child. The *Declaration of the Rights of the Child* was unanimously adopted by the UN General Assembly on November 20, 1959. It increased the principles of the 1924 Declaration from five to ten, adding principles on disabled children while expanding on others.

It should be emphasised that all the documents up to this point were only declarations. Declarations are statements of principle which are not legally binding. At best they serve as guiding principles or recommendations to which nations can aspire. Declarations could be interpreted and implemented in several ways. The danger is that their impact and enforceability diminishes as a result. Besides, these declarations were only concerned with the survival and protection of the child. The image of childhood behind them was that childhood is a special

¹⁰ Unless otherwise indicated, this section relies on information from: UNICEF Canada *Convention on the Rights of the Child: Training Manual* 1994; Liza Goulet *Module 1: The UN Convention on the Rights of the Child A Technical tool for Trainers Prepared for the Canadian Coalition for the Rights of Children*, n.d.; and Philip Veerman *The Rights of the Child and the Changing Image of Childhood* Martinus Nijhoff Publishers, 1992.

stage of growth needing special care and protection. Cynthia Cohen (1993:7), reduces this to an equation: "child rights = care and protection". A convention, on the other hand, is legally binding, though in some legal systems, such as in Canada, it requires implementing legislation to become part of domestic law.

In 1978, Poland submitted the original text of the Convention on the Rights of the Child. The purpose was to get the UN to adopt a CRC by 1979. This year had already been declared the International Year of the Child in commemoration of the twentieth anniversary of the Declaration of the Rights of the Child. Even though the UN accepted the challenge, getting the Convention ready did not take the one year that Poland had anticipated, but 10 years. The Working Group on a draft Convention on the Rights of the Child commenced work in 1979 and finally produced the draft Convention in 1989.¹¹ The Convention was adopted by the General Assembly on November 20, 1989 and entered into force on September 20, 1990, after ratification by 20 states.

The CRC is the most comprehensive document ever made on children's issues. It covers a child's rights to (i) identity, learning and self-expression; (ii) family and community; (iii) physical and mental well-being and (iv) the justice system. In essence, it ensures not only a child's survival, development and protection, but also participatory rights. All conventions and declarations before it deal only with specific issues. The CRC, however, deals with all aspects of a child's life. In recognizing both civil and political rights as well as economic, social and cultural rights, it bridged the traditional gap between these two types of human rights.

¹¹ UN Economic and Social Council (UNECOSOC), Commission on Human Rights (CHR), 36th Session, *Question of a Convention on the Rights of the Child*, E/CN. 4/1349, 17 January 1980, and *Reports of the Working Group on a Draft Convention on the Rights of the Child*, 35th - 45th Sessions, 1979 to 1989

Cynthia Cohen's equation for the CRC is: "children's rights = care and protection + individual personality rights" (1993:7). The CRC is also the first UN human rights document with guidelines for implementation and monitoring.¹² Instead of the UN tradition of State Parties presenting their reports for a monitoring body's review, the CRC also accepts information from NGOs and specialized agencies. With these innovations accepted by the international community, a new era of international law and legal theory has been given birth. The Committee on the Rights of the Child could be described as an "International Supreme Court" for member states with regard to compliance with the policy goals of the Convention. Consequently, the Committee's linguistic interpretation of the Convention is a central element of the emerging jurisprudence of the child (Cohen 1993:5-7). From the perspective of international human rights law, the image of childhood evolved from that of childhood as a stage in human development needing special care and protection, to a holistic view of the child as a distinctive being. Each milestone in the evolution added something extra to the principles of protection and care.

Before discussing the evolution of the Canadian image of childhood, it would be proper to comment on the relationship between the UNCRC and the Declaration of the World Summit for Children, held in September 1990. At the Summit, leaders of the world made a commitment to substantially improve the welfare of children. The result was the *World Declaration on the Survival, Protection and Development of Children* and *Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s*.¹³ The

¹² Articles 4, 43 - 45 of the Convention

¹³ World Summit for Children, *World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s* United Nations, 30 September 1990

Action Plan made a commitment to a range of goals to be achieved by the year 2000 in the areas of child survival, health, nutrition, education, family planning and protection for girls and women. Most of the provisions of the UNCRC reflect the Summit goals, particularly those dealing with survival and developmental rights. Hence, monitoring progress towards the Summit goals is a way of monitoring the Convention. The Convention, however, goes beyond the Summit goals. First, the target of the Summit goals are for fulfilment by the year 2000. However, the application of the rights laid out in the Convention are not limited to any time period. Second, declarations are not legally binding, while Conventions are. Thus, the CRC is a more powerful instrument than the Summit declaration. Third, the Convention is all embracing. It goes beyond survival and development rights to encompass participation rights. A unique feat of the Convention was to bridge the traditional gap of separation between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. It was in this vein that James P. Grant, former Executive Director of UNICEF, referred to the CRC as the “cutting edge of human rights”.¹⁴

In spite of the timeless nature of the Convention goals, as Maggie Black rightly pointed out, “events surrounding it take place in time and space and their unfolding story is an important indicator of the ‘state of play’ concerning children’s rights” (1994:11). The Convention goals have to be brought “down to earth”. Goals limited to specific periods have to be set and monitored. This is the only way we can know how far along the nations of the world are in implementing the Convention. Fortunately, UNICEF has in its *The Progress of Nations* reports

¹⁴ James P. Grant, Address to the World Conference on Human Rights, Vienna, June 1993 in Maggie Black, *Monitoring the Rights of Children* Innocenti Global Seminar, 23 May - 1 June 1994, Florence, Italy. Summary Report. UNICEF International Child Development Center 1994, p.10

reduced the Summit goals to measurable indicators such as rates of under-five mortality, malnutrition, immunization, school drop out, family planning usage and the number of women in parliament. With the similarity between the Summit goals and the provisions of the CRC, it was not difficult to adopt the Summit goals indicators, as indicators of the implementation of the Convention.

Urban Jonsson, a Regional Director of UNICEF, has developed a construct for looking at this relationship. According to her, “[W]here needs exist, there may be embarrassment about the failure to meet them, but until needs become claims and eventually rights, there is no obligation on the State to do so” (Maggie Black, 1994:10). The issues addressed by both the World Summit Goals and the CRC are at different points on a scale of children’s issues. At the base of the scale are basic survival needs of children and, at the end, children’s rights. What marks the different points on the scale are (i) the extent of children’s issues covered and (ii) the type of responsibility that governments of the world assume for the particular issues at stake. At the basic needs level, only survival and development needs are at stake. Everybody recognises their existence and even the means of fulfilling them, but the needs remain unfulfilled because of the lack of political will to meet them.

The World Summit marked the point at which world leaders recognised it as their duty and promised to meet the basic needs of children. The World Summit resulted in a declaration to meet certain goals, in this regard, by the year 2000. There is, however, an absence of legal duties; they are only what Urban Jonsson calls “claims”. The CRC transformed claims into legal rights, thus, marking a different point in the scale of children’s issues. The nations of the world accepted to do more than before: to go beyond just care and protection and include rights

of participation backed by laws. In effect, citizens can now seek redress for violations of children's rights. Essentially, the CRC transformed basic needs of children into basic rights. The role of the Summit in accelerating the ratification of the Convention, and how the Convention in turn is contributing to the fulfilment of the Summit goals (the synergy between the two) will be discussed under the role of Canada in the creation of the Convention. This relationship will be touched on again when the theoretical assumptions of this study are outlined in the next chapter.

The Canadian Image Of Childhood

The Canadian pattern of evolution of the image of childhood seems to follow the general Western trend from "chattel to person" (Cohen, 1993:9). From early times the state was not involved in child protection. In ancient Rome, the concept of *patria potestas*, "the power of the father" ruled. Fathers owned their children and could sell, indenture, ship off to sea, exploit, beat, ignore or even kill them. Christianity tempered this and by the sixth century A.D. fathers' powers became limited to "reasonable chastisement". Prior to this stage, English common law had consented to the principle of a parental right of "reasonable chastisement". In practice, however, children were still subjected to harsh discipline and could even be sold.¹⁵

In the Middle Ages, there was no childhood, as currently understood. Children were regarded as miniature adults. Eventually, religious bodies and later Municipal Councils did a bit

¹⁵ Nicholas Bala, "An Introduction to Child Protection Problems" in Bala, N; Hornick, J. and Vogl, R. (eds.) *Canadian Child Welfare Law: Children, Families and the State* Thompson Educational Publishing Inc. 1991, pp. 1-16

to help orphans but there was no help for children with their parents. Social criticism of the situation of children led to a period of social reform in the United States, Great Britain and Canada (Bala 1991:2). By the late nineteenth century, childhood became perceived as a special stage in life requiring protection and training (Macintyre, 1993:16). In Canada, philanthropists and the churches (led mainly by the Women's Societies) spearheaded the reform process. Orphanages and various types of homes for the poor and disadvantaged were built. J.J. Kelso, an Ontario philanthropist, was one of the prominent leaders of this reform. He was responsible for the establishment of Children's Aid Societies not only in Ontario but also in other provinces, such as B.C. and Nova Scotia, to help orphaned, abandoned and neglected children. In 1893 the Ontario Legislature passed the Children's Protection Act to enable Children's Aid Societies to move neglected or abused children from their homes and become their legal guardians. In 1894, children's trials were permitted in private to avoid the stigma attached to criminal trials. If found guilty, the culprits were put in separate prisons from adults. The federal Act Respecting Juvenile Delinquency was passed in 1908 (Bala, 1991; Macintyre, 1993).

Initially, the Children's Aid and church-based Societies made use of volunteers, but gradually started employing trained staff. With that and the establishment of the first Departments of Social Work at the University of Toronto and McGill University, the professionalisation of Social Welfare in Canada began to take form (Macintyre, 1993). By the early 1900s child protection agencies were established throughout Canada and each province had child protection legislation. It was, however, from the 1960s that the legalisation and the current expansion of children's rights occurred (Bala, 1991). Up to this point, the concern was

for care and protection and the emphasis still on abandoned children, juvenile delinquents and the adoption and placement of illegitimate children.

However, the Battered Child Syndrome was discovered in the 1960s, leading to subsequent change in legislation requiring professionals and members of the public to report suspected cases. This was followed by growing awareness concerning child sexual abuse in the late 1970s and early 1980s. Illegitimacy faded as an issue and most provinces no longer distinguished between legitimate and illegitimate children (Bala, 1991). The 1980s and 1990s ushered Canada's image of childhood into the rights era. Andrew Armitage (1993:43) attributes this to the influence of the Canadian Charter of Rights and Freedoms (1982) and the UN Convention on the Rights of the Child. Canada signed the Convention on May 28, 1990, ratified it on 11 December, 1991, and it came into force on January 12, 1992.

Does the Charter offer children in Canada all the rights that the CRC does? The provisions of the Charter are equally applicable to all Canadians, including children. However, if one considers that Canada entered the rights era only from the 1980s, would Canadians have accorded children, who until recently were seen only as special objects to be cared for, all the rights accorded them by the CRC because of the Charter? Considering the flurry of activities engendered by the CRC as opposed to the few number of Charter cases involving children's issues (Bala, 1991:5), while the Charter ushered in the rights era for adults, it was the CRC which did the same for children. It was the CRC which explicitly marked the recognition of children's' rights in Canada.

CHAPTER II

APPROACHES TO CHILDREN'S RIGHTS: TOWARDS A THEORETICAL MODEL

LITERATURE REVIEW

As noted earlier, various nations and cultures define children's rights differently. It was also indicated earlier that a nation's image of childhood determines its approach to issues pertaining to children. Thus, which aspects of the Convention on the Rights of the Child a state party chooses to implement or ignore, would be a reflection of its image of childhood and children's rights. Consequently, theories and approaches which contend with the question of children's rights are relevant to this study. Two basic approaches to children's rights are readily distinguished in the literature: protection versus self-determination (autonomy).

(i) **Protecting children:** Also referred to as the "nurturance" approach, this is concerned with the provision to children of all the basic needs like food, clothing, training - what adults think is good for children. It accords with "child-saving" notions.¹⁶

(ii) **Self-determination orientation:** It stresses "rights which would allow children to exercise control over their environment, to make decisions about what they want, [and] to have autonomous control over various facets of their lives" (Rogers and Wrightsman, 1978 cited in Freeman (1983)). This conforms to the ideas of the child liberationists such as Farson (1974) and Holt (1974).

Freeman¹⁷, however, thinks that this distinction is simplistic and deceptive. He contends that an examination of the various claims made on behalf of children reveals that there are a

¹⁶Tove Dahl, *Child Welfare and Social Defence* Norwegian University Press 1985

number of different categories, and that these differences must be recognised. Based on this, he has come up with four categories of children's rights.

(i) **Rights to Welfare** These are generalised claims on behalf of all children. They could also be conceptualised as human rights. They are the most fundamental of children's rights such as the right to nutrition and medical care. A good example of this, Freeman notes, is the United Nation's Declarations of the Rights of the Child. The basic problem with this orientation is that the rights are not easily claimed from anyone but rather from everyone, what he calls "rights against the world", and therefore tend to be vague. These rights are usually protectionist.

(ii) **Rights Protecting Children** Rights of welfare are only one category of rights of protection. "It demands that children be protected from inadequate care, from abuse and neglect by parents, from exploitation by employers or potential employers, and from other forms of danger in their environment" (p.40). As Freeman points out, these rights are highly paternalistic and very different from the assertion that children should have more independence or autonomy.

(iii) **Treating Children Like Adults** These are rights based on arguments of social justice. The main demand here is that rights which adults have should be extended to children since it is unjust to treat children differently because they can reason just like adults. Children's incapability or lack of maturity has been used as the major basis for treating them differently from adults. The problem here is establishing the cut-off point. Age has usually been used to

¹⁷Michael Freeman *The Rights and Wrongs of Children* Frances Pinter (Publishers) 1983

achieve this. However, the major question is what is the significant difference between an 18 year old and a 19 year old, for example?

Freeman suggests three ways of solving this dilemma: (i) We accept the inevitability of some distinctions, however arbitrary, and merely reassess current restrictions in terms of their assumptions; (ii) Abolish all age-related disabilities as the version of liberationism represented by Farson and Holt would have it. As Freeman rightly notes, "to do this would be to fly in the face of evidence from developmental psychology"; and (iii) Make decisions on a case-by-case basis. This, however, requires an objective way of measuring capacity. This is Freeman's preference and he thinks a notion of rationality could be developed, based on Rawls' *Theory of Justice*. The most important thing for Freeman, however, is that no matter what one's preference is, age limits must constantly be re-examined as children mature more quickly than in past ages.

(iv) **Rights Against Parents** Freeman's fourth category of rights are based on the demand that children should be free to act independently of their parents before they reach the age of majority. According to him, this is the claim for more freedom from control, greater recognition of their capacity to choose from alternatives and more autonomy over their lives. "Decision-making can range from the relatively trivial (what to eat, the length of a child's hair, what television programmes to watch) to major steps such as leaving home or having an abortion" (p.48).

Freeman's categories are not very different from the traditional dichotomy he rejects. His first two rights - Rights to Welfare and Rights of Protection - fall into the traditional protection approach. The other two - "rights against parents" and "rights based on treating children as

adults" - are variants of the traditional self-determination approach, an approach broadly labelled as liberationist. Indeed, Veerman (1992) makes a similar observation about Freeman's categories in that the fourth category is undifferentiated, and the boundaries between it and the third category are unclear (p.54).

Thus, the traditional dichotomy Veerman rejects seems to stand. However, before analyzing these two dominant approaches any further, it will be useful to examine the relevance of the theories of natural law and legal positivism to the concept of children's rights. It should, however, be noted that Freeman's "liberal paternalism" perspective provides useful insights into the issue of children's rights. This will be further developed.

(i) Natural Law

Natural law is one of five main schools of thought in jurisprudence (Brett, 1975)¹⁸ The central question in jurisprudence seems to be "What is law?", and revolves around the issue of whether laws must be written in order to become law. This appears to be one of the major bones of contention between natural law and legal positivism, the two basic polarities in legal theory (Brett, 1975; Cohen, 1992; 1993).

Natural law points to a law above human-made laws. Its philosophical underpinning is the concept of *ius naturale*, a law of reason of the universe, eternal and immutable (Brett, 1975:3). According to Brett, St. Thomas Aquinas' solution to the problem the early Christians faced -

¹⁸Peter Brett *An Essay on Contemporary Jurisprudence* 1975. The other four he mentioned are positivism, the historical school, the sociological school and the realist (American or Scandinavian) school.

whether to obey their temporal rulers or the laws of the church - may represent the claims of this school of legal thought:

God created the universe and ordained laws to govern it. These laws could be known to men either by revelation or by ascertaining the true nature of man (sic) by the exercise of reason. The principles of law which emerge from this are the necessary rules for the behaviour of man in society (p.4).

Morality plays a central role in this legal theory. Brett notes, however, that the Roman Empire, which Christendom displaced, had adopted a similar solution when the Romans came into contact with other nations such as the Athenians, and had to develop a law which was applicable also to these other people. Others, such as Cohen (1992, 1993), point to the writings of Hobbes or Locke as the origin of natural law.

What is the relevance of all these issues to human rights and therefore children's rights? Cynthia Cohen (1992, 1993) has attempted to answer this question. According to her, human rights scholars have consistently agreed that all rights are rooted in the higher law concepts of natural law theories. She uses the "demands lead to legal recognition" model to explain her point. Demands for rights that were based on natural law claims have always led to the development of positive law recognising those demands. The only exception she finds in international law to this model is the UN Convention on the Rights of the Child. According to her a significant portion of the Convention's rights were never part of any prior demand for rights by or on behalf of children. This is the sense in which she refers to the Convention on the Rights of the Child as an anomaly among human rights treaties. To her, then, "these rights that were awarded by the Convention's drafters without being previously demanded, make it unrealistic to attempt to analyze the jurisprudence of the rights of the child within the framework

of natural law". She opts for the analyses of the emerging jurisprudence of the rights of the child within the confines of legal positivism (1993:3-5). Cohen, however, thinks that due to the quasi-judicial nature of the Committee on the Rights of the Child, positive law analysis of the Convention must be supplemented with analysis based on the jurisprudential theory of legal realism. This theory is built on the idea that the essence of law exists in its interpretation and application.

Cohen describes natural law claims, with regard to children's rights, as all those activities on behalf of children up to the beginning of the global interest in children and their rights, which she pegged at the 1979 International Year of the Child. These activities include children's rights advocacy of the mid-19th century; activities of the "child savers"; the writings of philosophers such as Aristotle, Thomas Aquinas, Jean Bodin, Thomas Hobbes, John Locke and Jean-Jacques Rousseau; and the child advocates of the 1970s.

Brett also has problems with the natural law perspective. The ultimate question is whether a particular law which is unjust or immoral is to be treated as invalid. To him, this becomes an issue of power with the more powerful gaining the upper hand as in non-democratic countries of the world where a judge has to apply laws no matter how immoral or be removed from office. Further, in Western pluralist democratic societies, where belief in God and God as the source of a ruler's power and authority, is not as widely held, the relevance of natural law is to be doubted.

While it has been pointed out that natural law has been removed from theology (Eide, 1990), and as we observed earlier, some analysts point to Hobbes or Locke, and not to Christianity as the origin of natural law, Brett's concern exposes other problems. The appeal to natural law as a touchstone of justice and morality is now shaky in most societies of the world. For example,

with the upsurge in postmodernist ideas, there are simply no universally accepted ethical principles. On whose standards do we base what is just or immoral, for instance? There are many rival views to choose from. Even if one set of ethical principles was generally accepted by a society, in different hands, as Brett rightly observes, they yield different conclusions. He substantiates this by pointing out that natural law has been used to justify the existing order and to justify revolt against that order; to justify the institution of slavery and to condemn it.

(ii) Legal Positivism

This is the counter-ideology to natural law. Like natural law, however, this perspective has several varieties. This paper would follow Brett by concerning itself only with the commonalities of the various theories under this orientation. As far as this school of thought is concerned, only written law is law. It also holds that law must ensue from a sovereign. Making law is an exercise of power and the ruled must obey the law till the law-maker chooses to change it. Brett has observed that this gives rise to the typical positivist judge's argument: "I take the law as I find it, and if it is bad let Parliament change it". This to him encourages judges to disregard the requirements of morality in formulating their decisions. Morality may thus be divorced from law or it might only be the morality of the law makers with which everyone else is forced to abide. Consequently, positivism appears to be a closed system which does not make room for change and cannot respond to transformations in society.

With respect to the rights of the child, the positive law response, Cohen argues, comprises the various International Declarations, Covenants and regional treaties of which the most

important is the UN Convention on the Rights of the Child. However, she notes, the Convention does little to clarify the picture of the tensions between theories of natural law and those of legal positivism. If anything, it may have added fuel to the debate over the relevance of the two theories.

It is beyond the scope of this review to discuss the other schools of thought in legal theory identified by Brett. However, his general critique of these schools is relevant to this work. Brett contends that jurisprudence is based on sciences and philosophies of general applicability formulated long ago which do not take account of modern developments spurred by the technological explosion of the past 25 years. A more relevant jurisprudence, needs to take account of advances in the science and philosophy of the recent past. To conceive events as effects of causes, with simple linear relationships, is untenable.

With this, and based on Karl Popper's notion of science, Brett advocates the application of systems theory to the analysis of law. The most important elements in his systems theory are the interplay between the environment and the organism and the emphasis on wholeness and the hierarchic order. "From all these, instead of seeking the 'essence' of law by asking such questions as 'what is law?' let us see how the notion of system may be applied to a body of law, such as 'the law of England'" (p. 38).

Brett was not writing with the rights of children in mind. However, the main attraction in his systems theory proposal is the emphasis on the interaction between the environment and the organism and the idea of wholeness. As Berger and Luckmann (1974) point out, in their *Social Construction of Reality*, laws must be derived from a society's value system, which in turn is a consequence of the interplay between the stock of knowledge available to a people and their

social and environmental realities. Law appears as a codification of the values that a people see as most important to them. In effect, laws cannot be understood without first understanding the value system from which they emerge. Neither can a society's value system be separated from its culture. An analysis of a system of laws which does not take the culture of that society into consideration can only be partial. A holistic analysis of laws is to be preferred to analyses based on a single theory.

It is important to add that there are many value systems in any given society. Thus, **the** value system from which the laws of a given people are derived is often the set of ideas and values subscribed to by the powerful group in that community. As Berger and Luckmann (1974) put it, "[h]e who has the biggest stick, has a better chance of making his definition of reality stick". So the above argument is **not** to ignore the existence of other value systems in a particular society. Rather, law *per se* does not evolve from a vacuum. It is a reflection of the world-view of a particular group. The crux of this argument is that laws generated from a particular value system, and which are best understood in the culture and society from which the values derive, might not necessarily elicit positive responses in another society with its different culture and value system. In fact, such a situation is a basis of potential conflict.

Consequently, the call for a holistic approach to laws is a call for an analysis which considers not only the value system from which the laws derive but also the value systems of other societies or sections of the same society with different value systems. In the context of the Convention, for example, this would be to say, apart from seeking to understand the value system which gave birth to it, one must also understand the value system of the **other** societies which are expected to conform to its demands in order to appreciate how and why particular

nations respond to it as and how they do. For now, attention will be given to two basic approaches to children's rights mentioned earlier: protection versus self-determination or autonomy¹⁹. Since the liberationist view is a reaction to protectionism, we shall first examine the protectionist perspective.

Protectionism

The protectionist, also referred to as the "nurturance", approach to children's rights is that parents must provide of all the basic needs, such as food, clothing, training for children. In return, children should not have the same rights as adults. Protectionists have pointed to two main bases for their position. One is evidence in support of the extent to which irrationality or lack of moral maturity undermines claims to freedom. The other is the theories of human development that characterise it as a succession of necessary stages, which cannot be greatly speeded up because they are, at least partially, biologically based (Purdy 1992:212).

The English Philosopher, John Locke, helped provide the philosophical basis for protectionist attitudes towards children. He argued that the authority of parents over children did not derive from consent but rather from taking responsibility for their welfare. This created a duty to care for them and to see that they develop to become responsible beings. The basis for this relationship is trust in parents' concern for their children's welfare (Purdy 1992:5).

¹⁹For these two approaches, I rely heavily on Laura M. Purdy's *In their Best Interest? The Case Against Equal Rights for Children* (1992). Purdy's work is the single most detailed analysis of the two approaches.

Purdy reviews a number of advantages of giving protection to children. First, protection can shield children from physical danger or exploitation and grant them a relatively settled family life and time to play. Second, protection can increase both freedom and other values such as equality and utility:

...it can promote freedom by safeguarding certain types of choices that would otherwise not exist. So a law requiring school attendance for children apparently narrows their choices; at the same time, though, it protects a choice that would probably disappear altogether for some children - getting an education. And, for all children ... some kinds of limits make possible a wider range of choices later, choices that may both be intrinsically valuable and also advance other desirable states of affairs. A math requirement, for instance, can help foster equality by making sure that all children have the prerequisites for interesting and well-paid occupations (p. 213).

However, protection has its negative side. The loss of freedom that it sometimes gives rise to is not always connected to positive protectionist aims. Protection has sometimes resulted in parents abusing their children and state institutions harming children. The failures of the institutions resulting from the child saving movement have been well documented²⁰. The most vocal attack on the protectionists, however, comes from the liberationists.

The Liberationist Approach To Children's Rights

There are several variants of the liberationist approach ranging from the radical or extremist approach advocated by such scholars as Farsons (1974) and Holt (1974), who demand that

²⁰See, for example, Stan Cohen, *Visions of Social Control* (1985), Tove Stang Dahl *Social Defence and Child Welfare* (1985), Anthony Platt *The Child Savers: the invention of delinquency* (1977) and Michael Harris, *Unholy Orders: Tragedy at Mount Cashel* (1990)

children should have every right that adults have, to the moderate liberal viewpoint which holds that adults should interfere as little as possible with children's autonomy. Common to all the variants, however, is the orientation to self-determination, what Freeman (1983) terms "protecting the rights of children" perspective. This approach stresses "... rights which would allow children to exercise control over their environment, to make decisions about what they want, to have autonomous control over various facets of their lives" (Rogers and Wrightsman, 1978 cited in Freeman, 1983 p.19).

Liberationist arguments fall into two broad perspectives. First, it is argued that justice requires granting children equal rights. They view protective rights as unjustly limiting children's freedom since there are no morally relevant differences between children and adults to support depriving children of the "goods" represented by full adult rights. Hence, it is morally wrong and oppressive to limit children's freedom. Second, they argue that the consequences of letting children have equal rights as adults will not be catastrophic. Consequently, their arguments are based on justice, rationality-moral claims, and the consequences of having unlimited rights (Purdy 1992:15).

Purdy concedes that she has considerable sympathy with some of the assumptions of the liberationists, the "kiddie libbers". Other things being equal, she agrees that freedom ought to be promoted. People should be free to live their lives as they see fit. She, however, points out that this applies also to parents, whose freedom would be greatly enhanced if childhood were shortened. Second, she agrees with the liberationists that despite certain biological limits on human development, the evidence for substantial flexibility and responsiveness to conditions cannot be denied (p.212). Her sympathy with their position, however, stretches only so far.

Purdy notes that all things are not equal in this world and therefore freedom cannot always prevail over other conflicting values. Thus, even though freedom is lost at a cost, so long as the loss can be connected to some desirable ends, then the loss of freedom may be justified. Her arguments are based on evidence from moral theory, history, psychology, sociology and her personal observations in the course of child rearing, which she refers to as "a variety of practical issues to which little heed has in general been paid" (p. 13).

She listed positions as arguments based on (i) the consequences of children's liberation; (ii) justice and rationality; and, (iii) research evidence from the social sciences.

(i) The arguments from consequences

Purdy argues that the disadvantages of the liberation of children would far outweigh its advantages. It would weaken parental authority and lead to the break-up of families. Radical liberationists argue that children should have the right to leave home. A walk-away who decides to return home, as do some runaways, should not expect to come and meet his/her parents and a warm home. One potential consequence of this would be the slackening of parental responsibilities towards children. A second would be that adolescents would no longer take their parents seriously. This worsens an already fragile situation between the two. Both of these considerations have been shown to be important for children's well-being and ability to participate constructively in a good society (Bainham, 1993). Purdy points to the experiences of today's runaways to illustrate this argument.

Equal rights would require the abolition of compulsory schooling. This would deprive some children, for whom it is a safety net, of an adequate education. In our contemporary world we all know the role of education in the job market. Formal education has become an

indispensable prerequisite for effective participation in the contemporary labour force. Equal rights could compel children into the job market without education. They would be fit only for menial, low-paid jobs.

(ii) The argument from the view point of justice/rationality

Purdy argues that because children can think like adults is not a sufficient ground for according them equal rights as adults. In effect, there is no injustice in limiting some of their freedom. She contends that the liberationist argument depends on a minimally demanding instrumental conception of reason. There are more demanding conceptions of rationality, such as the ability to plan systematic utility-enhancing projects and having a rational life plan.

Purdy states that examination of these notions reveals that they presume substantial knowledge about the world and sensitivity to societal interests. They also require certain character traits such as self-control, ability to sometimes postpone the gratification of one's desires or suspend one's interests for the sake of others or for the collective good, that is, enabling virtues for proper functioning in a good society. She defines the good society as one which recognises some level of equality, justice and well-being for all and not only an individualistic, narrowly-conceived idea of well-being. As Purdy puts it:

Tolerable - let alone good- life depends on the moral character of the members of society. The moral character of those individuals depends not only upon their possessing self-control but upon a caring that is reflected in action that promotes interests of others. Furthermore, currently popular moral views tend to underestimate the extent to which we need to limit the pursuit of our own private projects in order to care for others in this way. I conclude that there is good reason to doubt whether a moral theory adequate in this respect would recommend equal rights for children (p.77).

Purdy draws on the literature of human development and provides evidence to the effect that these character traits or enabling virtues, as she prefers to call them, are (i) largely learned (ii) best learned when one is young and (iii) more in the possession of older children, though age itself is suspect. Consequently, she accuses the liberationists of ignoring the evidence from human development. To her, the liberationist argument based on justice is not tenable. Implicit in her position is the assumption that there are still good parents who care and are interested in the welfare of their children. She recognises that there are some bad parents and that children are abused as a result. She draws attention to the difference between parental authority, and parental authoritarianism. The place for the state is to create policies which enhance parental authority while limiting parental authoritarianism, using either an age-based approach or a competency-based approach that attempts to match right to ability.

What are the lessons from her work? First, rights and freedom are important. Second, all human beings are entitled to the status of equality and personal well-being and therefore an individual's rights and freedom should be limited when they threaten serious harm to others. Third (and most important), we must justify with valid evidence why we set limits on freedom and rights. In terms of children's rights, or rights in general, Purdy has carried the theoretical debate further: rights should no longer be thought of solely from the perspective of individual freedom nor exclusively from the individual's present needs. Rights must be analyzed from an approach of "direct consideration of children's own present and future welfare and from indirect considerations about the survival of civilisation" (54). She has advanced the debate beyond whether children should have rights of autonomy or not. While agreeing they do, she pushes the debate into a broader context by stressing consideration of both the present and future needs of

the child and the interests of the wider society of which the child is a member. These considerations might justify curtailing some of the child's independent interests.

With respect to this study, Purdy's insights provide access to some underlying principles or suppositions with which to assess the Convention. First, rights are human creations based on moral and cultural values. Even though it is the powerful interests in society who get their values imposed on the other segments of society, this principle characterizes rights as not only being individual, but most importantly, social. Thus, for example, while freedom and autonomy for children are important, they must not override wider societal needs and values. In this vein, one might want to know whether the Convention which Canada supports and helped to create espouses individual rights to the disadvantage of general societal rights and values. Second, rights must cover all aspects of a society. Rights must not be limited to, for example, only the civil or political aspects of a people. Nor for that matter should rights be limited to a consideration of the interests of children to the neglect of adults or vice-versa. The approach to rights should not be piece-meal. Otherwise, as the history of international human rights law has shown, no sooner are we done with satisfying one need or the need of one group than another need or the needs of another group cry out to be met²¹. An adequate human rights approach should seek to satisfy the total development or functioning of all human beings everywhere in the world.

Consequently, none of the existing approaches - natural law, positive law, protectionist nor liberationist - is fully adequate. Natural law is flawed because it posits that rights are not human-made, positive law because it does not conceive that the moral values of people should

²¹ V. Aubert (1989), G. Butcher (1992), J. Berting *et al* (1990) and J. Censer *et al* (1992)

be part of law, and protectionist and liberationist because all the varied evidence produced by writers such as Purdy, Freeman and Bainham shows that extreme forms of both could harm children and society. Hence, this study will favour a more **developmental** approach to children's rights. It is an approach where the child's quality of life plays a central role. It is a perspective which considers the quality of life of children, not only in the present, but also in the future, as well as the effective functioning of society as a whole. A holistic analysis of children's rights must embody these characteristics.

THEORETICAL PERSPECTIVE

This study draws on Julia and Herman Schwendinger's (1975) approach to human rights, what they term "a modern humanistic alternative"²². Their view of human rights is based on the concept of *equality*. They distinguish between their conception of equality and that of the 18th century middle-class-fashioned rights to challenge economic prerogatives of the feudal aristocracies. During that period, the functional imperatives of the patriarchal family, price-making market and the political state were reified, by recourse to law, as basic human needs. Equality in this context meant the immutable right to compete equally with others for a position in the social, economic and political spheres of life. The Schwendingers point out, however, that in today's political and economic institutions equality has not had, as an empirical outcome, the furtherance of human equality. Instead, it is used to justify inequalities between the sexes,

²²Herman and Julia Schwendinger "Defenders of Order or Guardians of Human Rights?" in Taylor, Walton and Young (eds.) *Critical Criminology* Routledge and Kegan Paul 1975, pp. 113-146

classes, races and nations. The last two-hundred years of the industrialised nations demonstrated that rhetoric regarding the equality of opportunities cannot effect substantive equality.

The Schwendingers reject the concept of equality as espoused by liberals. For them, Liberalism is a highly elitist ideology. Although it claims all individuals should be treated equally, some criterion is always introduced to guarantee that some people are treated more equally than others. George Orwell captured this in *Animal Farm* (1945). Further, equality in the liberalist parlance refers to principles of equity or fairness which should govern the ways in which social inequality is instituted in our society. The Schwendingers contend that there is no universal moral rule or empirical property which is inherent to human beings or society which makes social inequality a functional necessity. They argue, "there is no valid moral or empirical justification for the outstanding forms of social inequalities in existence today including economic, racial and sexual inequality" (p.133).

For the egalitarian principle that all human beings are to be provided the opportunity for the free development of their potentialities to be achieved in modern industrialised societies, persons must be regarded as more than objects to be "treated equally" by institutions of social control. This sets the tone for their definition of human rights:

All persons must be guaranteed the fundamental prerequisites for well-being, including food, shelter, clothing, medical services, challenging work and recreational experiences, as well as security from predatory individuals or repressive and imperialistic social elites. These material requirements, basic services and enjoyable relationships are not to be regarded as rewards or privileges. They are rights (pp. 133-134).

There are several implications of the Schwendingers' position. First, they make a distinction between individual rights or, looking at their definition, what one could term

developmental rights (as opposed to protectionism) on the one hand, and civil/political rights on the other. Second, developmental rights take precedence over civil and political rights. This point is more clearly illustrated by the situation in which the majority of Third World people find themselves. Civil and political rights mean nothing to the millions of African people for whom the lack of food, clothing and personal security (as in the case of the hundreds of thousands on the continent fleeing tribal and civil wars) represent a reality each day.

As the Schwendingers put it, "[o]bviously, a danger to one's health or life itself endangers all other claims. **A dead man can hardly realise any of his human potentialities**" (p.137 emphasis added). It was in a similar vein that Freeman (1983:24) wrote, "It is difficult to talk of rights when resources are such that basic needs are not being met". Social systems which inhibit the realisation of racial, sexual and economic equality should be seen as criminal. The abrogation of these rights limits the individuals' chances to fulfil themselves in many spheres of life. Social conditions which give rise to violations of human rights must become the object of social policy. Hence, the Schwendingers contend:

It is not enough to provide good reasons for the achievement of broader human rights. Criminologists must be able to identify those forms of individuals' behaviour and social institutions which should be engaged in order to defend human rights. To defend human rights, criminologists must be able to sufficiently identify the violations of these rights - by whom and against whom; how and why (p.134).

Crime control would no longer be the control of atomistic individuals, but is rather for the elimination of social relationships (e.g. of sex, race and class), properties of social systems (which make these possible), or social systems taken as a whole.

The question of priorities brings to the fore another implication of the Schwendingers' stand. They think each political economy should answer this problem differently. For example,

they think while civil and political rights issues should be of more concern to the former USSR, the US should be more concerned about the right to economic well-being of individuals. This is a major break from the current trend in human rights where international treaties are prescribing a universal (often Western) perspective for all nations of the world to follow.

Following from the Schwendingers', the operating standards of human rights which this thesis shall adopt are the basic necessities to ensure life and the security of person and also egalitarian principles which eschew racism (or for that matter ethnicism and classism), sexism and poverty. The emphasis here is on **the effective functioning of all children**. These standards include infant mortality, length of life, quality of food, diets, medical and recreational services and employment opportunities. Thus, when referencing the quality of life enjoyed by children in Canada, the measure is the extent to which these standards are part of the reality of all children in this country, irrespective of ethnic background, class, gender or sexuality. This study was not only concerned about the average national figures of these standards in comparison to Canada's peers in the western industrialized world, but also comparative figures for some of the ethnic groups within Canada. This way of conceptualising human rights has been well operationalised by UNICEF in its *The Progress of Nations* Report.

THE PROGRESS OF NATIONS ²³

The World Summit for Children, as noted earlier, established goals for meeting minimum human needs such as survival, nutrition, health, education, family planning and progress for

²³ UNICEF, *The Progress of Nations*, New York, 1993, 1994 and 1995

women. These needs, assessed respectively by such measures as: (i) child death rates or under-five mortality rate (U5MR), (ii) malnutrition rates and iodine deficiency disorders (IDD), (iii) immunization rates against the most common child health problems such as measles, polio, pneumonia and tetanus, (iv) the proportion of children in primary school and drop out rate before grade 5, (v) the proportion of couples using modern contraceptive methods and fertility rates, (vi) maternal mortality rates and (vii) the number of women in politics, have been pin-pointed as very critical to the effective functioning of human beings. The purpose of *The Progress of Nations*, as stated in its first issue, is to bring statistics together each year on the progress being made, in each country, towards meeting the goals set for attaining these basic human needs (*The Progress of Nations* 1993, p.4). This is because:

it is time that the standing and prestige of nations was assessed less by their military and economic prowess and more by the protection they provide for the lives, the health, the growth, and the education of their children (p.4).

The point of departure of *The Progress of Nations* is that in spite of the growing doubts about material progress in the industrialized world, for at least a billion other people in the world, especially in the developing countries:

...material progress has different connotations. It holds out the hope of adequate food, clean water, safe sanitation, decent housing, reliable health care, and at least a basic education. This is a definition of progress which remains entirely valid. And it is one with which the rest of the world must keep faith (1993, p.3).

Yet, *The Progress of Nations* report views material progress differently from the traditional view, which is based solely on economic growth, inflation, and interest rates statistics:

If progress towards meeting minimum human needs is to be given more priority, then similar use must be made of annual statistics which show what percentage

of a nation's children are adequately nourished, or are immunized, or are enrolled in school, or have access to clean water and basic health care" (p.5).

Essentially, it is a view of material progress which puts the most vulnerable groups in society, such as children, first:

Progress of all kinds is undermined when millions of children are malnourished and uneducated Ninety per cent of growth of the human body and brains occurs in the first few years of life. The intricate processes of that growth cannot be postponed. That is why action to protect the normal health and growth of children should be at the forefront of development strategies. And that is why children have a legitimate first call on the capacities and concerns of the adult world" (p.5).

According to *The Progress of Nations*, there is no need to be disillusioned about the failure of the efforts to end absolute poverty because a "serious attempt to meet minimum human needs has ... not yet been made" (p.3). So far, only 10% of the annual budgets of the developing countries have been devoted, on average, to nutrition, water supply, primary health care, primary education, and family planning. The same is true for all international aid for development. Besides, the total amount of aid being given for development to meet these basic needs is less than promised. "This means that the many governments of the poor world have been spending less on meeting human needs than on meeting military bills and debt servicing" (p.3). It is a case of not channeling funds to basic human needs that contributes to poverty in the world. Based on the successes of experiments in which monies were directed specifically to meeting human needs, as stated above, UNICEF in its *The Progress of Nations* is convinced that if we do the same on a massive scale, an opportunity opened by the Summit goals and the UN Convention on the Rights of the Child, the world would see concrete social progress and development.

The emphasis of *The Progress of Nations* report is on those who are being left out, the socially and culturally discriminated against, the poor, the rural folks, the girls and women. Whereas it does not discard averages, *The Progress of Nations* highlights the disparities involved when national averages are given. In disaggregating national averages, the differences between urban and rural, different ethnic and cultural groups, men and women, and especially between different economic strata of society are exposed (1994, p.5). This is a disadvantaged people's approach!

A novelty in *The Progress of Nations* approach is the concept of National Performance Gap (NPG):

The national performance gap is the difference between a country's actual level of progress and the expected level for its per capita GNP. For each indicator, the expected level of achievement has been calculated from the per capita GNPs and relevant social indicators of all countries ... The expected level therefore represents the level that the average-performing country could be expected to have reached for its level of GNP per capita" (1993:50).

The general trend that emerges is that under-five mortality rates and malnutrition rates generally decrease with increasing GNP, whereas the percentage of children reaching grade 5 generally increases with GNP. Divergence from this general trend, the expected level of performance, gives the national performance gap for each country. The National Performance Gap (NPG) could be positive or negative, when a nation performs other than the level of performance expected of it. This is one of the most useful means of monitoring the performance of nations with respect to the UNCRC. Even though the Convention espouses a universal position, with regards to implementation, Article 4 states, among other things, that, "... State Parties shall undertake such measures to the maximum extent of their available

resources ...” The concept of NPG takes into account the economic ability of each country in its calculations. In this regard, the NPG will prove an invaluable tool in monitoring the implementation of the Convention by all states, rich and poor.

The Progress of Nations groups nations into similar socio-economic categories. Like the concept of the NPG, while giving a picture of the general world trends on the various indicators, it also depicts the performance of states in relation to others similar to it, in terms of cultural and socio-economic characteristics. This should enable countries with their unique social, cultural, economic and political circumstances to respond in a positive way to a universal position such as the UNCRC.

The Progress of Nations is not flawless. For a lot of countries, “... the data are extrapolations derived from mathematical models and regional trends rather than actual figures derived from recent and on-the-ground national surveys or comprehensive vital registrations systems” (1993:4). This reflects a lack of development as nations make sure they produce quarterly statistics on the health and growth of their economies but not even annual statistics on the health and growth of their children. Nonetheless, *The Progress of Nations* statistics are the most recent and reliable estimates available to the UN system and the indicators covered present a more accurate picture of progress for the majority of a nation’s people than per capita GNP, the conventional measure of progress and development. Further, the indicators measured here represent attempts to grapple with the most fundamental causes as well as most distressing symptoms of poverty (p.4-5).

The concept of NPG, which measures performance according to ability; the method of disaggregating national statistical averages, which highlights disparity between regions,

gender, and classes; and the comparison of progress with countries with similar social, cultural and economic circumstances more than with any others, is a unique contribution from UNICEF for monitoring the Convention. Data analysis for this study was based on these measures. By ratifying the Convention, Canada made a major commitment to the survival, development, protection and participation of children in this country. From the approach of this study, the key questions for data analysis were: has Canada lived up to its commitments? has it done this to the best of its ability? are there any regional, gender, class and ethnic differences in the enjoyment of these rights? what is Canada's performance in comparison to its peers, the industrialized countries?

The preoccupation of this study - the response of Canada to the UN Convention on the Rights of the Child - does not only raise the substantive issue of what children's rights are, an issue grappled with above, but also a procedural one, that of implementing an international Convention. This latter issue brings to mind questions about international law and jurisprudence: What is behind the making of treaties between nations? What are the different forms of establishing understanding between nations in terms of protocols and model treaties? What are the general implementation problems with international laws - the definition of minimum standards versus their enforcement?

One scholar who has attempted to answer some of these questions is Ian Cameron (1994) in *The Protective Principle of International Criminal Jurisdiction*. As the title of the book suggests, the primary interest of Cameron's work is not the Convention on the Rights of the Child, which the present study is concerned about, but the protective principle in international law, using international criminal jurisdiction as an illustration. In doing this, however, Cameron

touches on a number of general principles of international law, treaties and conventions. These general aspects of his work are of more interest to this thesis.

At the core of the protective principle is the concept of *jurisdiction*, which he defined, among other things, as "the power of a sovereign to affect the rights of persons, whether by legislation, executive decree or by the judgement of the court" (p.3). Implicit in this definition is the idea that an important aspect of jurisdiction is the ability to enforce the laws emanating from a sovereign. Domestically, this is quite a straight-forward issue as all modern sovereign states have their law enforcement agencies. With international law, however, the issue of jurisdiction or enforcement becomes complex. One of the reasons for this is that the international society is a collection of sovereign states with both common and disparate interests. As a result, the relative weight given to international over domestic law varies from state to state and even, in the case of a state, from issue to issue. Worse of all, unlike a sovereign state with its own law enforcement agencies, there are no international law enforcement agencies, or if they exist, they are often too weak to perform their functions.

One might point to bilateral or multilateral conventions as a probable solution to this problem. However, Cameron points out that there is no universally applicable multilateral convention. Thus, there is no universal jurisdiction. For example, a crime recognised by a multilateral treaty should not be described as a "crime of universal jurisdiction" until all the states of the world ratify the treaty. No such treaty or convention has existed in the history of the world. Until this happens, the treaty regime is a "reciprocating states" regime (p.80).

The test for the creation of customary international law is not universal, but general state practice (p.80). Customary international law is defined by Article 38(c) of the Statute of the

International Court of Justice as the "general principles of law recognised by civilised nations". To avoid arguments as to what a civilised nation is, the principle could simply be understood as a general practice accepted as law by the international community. Thus, if a treaty receives general support, as does the UN Convention on the Rights of the Child, the jurisdiction recognised by the treaty can become part of customary international law.

Yet, customary international law does not help overcome the problems of international jurisdiction. First, different contracting parties to multilateral treaties interpret their rights and obligations under these treaties in slightly different ways, depending upon their own interests. In this regard, Cameron identified two basic principles of the system of jurisdiction in international law: (i) *protectionism*, which basically leans more towards the protection of national interest, and has more potential for conflict with other states and (ii) *universalism*, more geared towards the protection of individuals, other states, or the common interests of the world community. States would, generally, prefer the former to the latter. The research seeks to know how Canada interprets the Convention, and which Canadian interests, values and practices are being protected in the process.

Second, even if states ratify a convention, they are still permitted to make reservations about sections they are dissatisfied with and once that is done, they are not bound to abide by the terms of such sections. This often leads to the defeat of the main purpose and spirit of treaties as states selectively pick out sections of treaties they will or will not abide by.

Third, there is the absence of *enforcement*, as noted earlier, in most international treaties. The Committee on the Rights of the Child which is to oversee the implementation of the Convention, for example, has no power to affect the behaviour of states in terms of how they

treat children. Customary international law in principle forbids a state to exercise enforcement jurisdiction in the territory of another state. This applies even to offences covered by the protective principle which occur outside a state's territory. Contravention would amount to violation of the norm of non-intervention and appropriate reparations would have to be made to the state whose rights have been violated. The only exceptions where a state can exercise jurisdiction over somebody outside its own territory are (i) when the issue of self-defence arises, (ii) where X commits offences against state A's "custom, fiscal, immigration or sanitary laws and regulations" on a vessel situated in A's maritime contiguous zone, that is, in an area of coastal waters not more than 24 miles from the territorial water base line (UN Convention on the Law of the Sea, 1982) and (iii) where X is committing his/her crimes in an area not belonging to any state such as an unclaimed island, space - the moon, and other celestial bodies (Cameron, 1994).

In light of its seeming peripheral importance in the justice system of many states, can customary international law be relied upon to regulate a state's behaviour? That is, with all its shortcomings are international treaties worth all the energies put in: bringing them into being? Despite the existence of some older state practice which holds that neither custom nor general principles place restrictions upon a state's discretion to make whatever assertions of jurisdiction it chooses, Cameron (1994) argues (chapter 7) that there is a substantial amount of state practice which does not conform to this notion. According to him, most writers agree there are some restrictions on a state's jurisdiction, the only point of disagreement and confusion being the origins of the restrictions they claim exist. He points out that the legal basis of the ultimate control exerted by international law on states' jurisdiction derive from (i) the prescriptive nature

of the principles of jurisdiction or the theory of "meaningful contact" (ii) a customary duty on the part of states to "balance" interests before asserting jurisdiction, (iii) the principle of the abuse of rights and (iv) the principle of non-intervention.

The realities of international politics do not, however, always reflect Cameron's optimism. It appears what matters in international jurisdiction is how powerful a nation is economically and militarily - that is what determines what and how much a modern state has. Consequently, this study will not be as optimistic about the importance and efficacy of international law enforcement as Cameron appears to be. Nevertheless, the research will be guided by the view that international law is an important tool to direct some common world issues. That the world has become a global village, and whatever happens in one country affects the other, is now common knowledge. Thus, it will be unwise for a country not to be concerned about what happens in others. Take for example the issue of environmental pollution. This is something which can easily cross national borders without warning. Hence, it is only fair on the part of countries sharing the same region of the world to have a strong interest in how its neighbours deal with environmental issues. In fact, there are both common interests and dangers that bind the fate of nations of the world together. Consequently, international treaties of all kinds - bilateral, multilateral, regional - are necessary.

The problem, however, is the way these treaties are made and enforced. This has led to the oppression of certain groups such as the countries of the Third World. The multicultural, social, religious and even economic differences of the world must be reflected in these treaties. Is it fair if international treaties are made from the perspective of only a certain country or groups of countries? Is it fair if, in terms of enforcement, only certain groups of countries are penalised for

contravening international laws while others disregard the same laws with impunity and go scot free? Then too, because of the differences between nations as indicated above, would it be appropriate to have rigid laws binding all nations of the world? Are guiding principles better, in this regard, than universal laws?

For this study, the issues with respect to the UN Convention on the Rights of the Child were (i) how much was Canada's input in its drafting; (ii) how different is the Convention from existing Canadian laws on children's issues; (iii) how has the Convention been implemented in Canada; (iv) how did the Committee react to Canada's First Report (1994) on the implementation of the Convention; (v) have all these turned for the better or worse for children in Canada, and (viii) as the Coalition for the Rights (1993) of Children asked in its response to Canada's Action Plan, will it be a brighter future?

CHAPTER III

THE DRAFTING, RATIFICATION AND IMPLEMENTATION OF THE CRC

Introduction

As indicated in the section on methods, two main qualitative research methods - interviews and archival research - lie at the heart of the approach to data collection for this thesis. This has produced two sets of data - primary data from interviews and secondary data, consisting mainly of reports, working papers, parliamentary debates and other documents. These data are presented in this chapter and in chapter IV. This chapter has been divided into three main sections. The first section addresses Canada's role in the creation of the Convention. The other two sections deal with Canada's ratification and implementation of the Convention. At the end of each section, there is a discussion of the results of these investigations.²⁴

CANADA'S ROLE IN THE CREATION OF THE CONVENTION

Much has been said about the important role Canada played in the drafting of the Convention (Jupp, 1990; Bala, 1990; Clarke, 1990). One aim of the thesis interviews was to find out exactly what Canada did in the drafting of the Convention to earn this reputation. This is important at least in part, because of the longer term interest in the implementation of

²⁴ Before conducting the interviews, an assurance was given to interviewees concerning confidentiality, except for those of them who stated explicitly that they do not have any reservation against being identified by name or position in the thesis report. It was only a handful of respondents who did the latter, but based on some conditions. Since it was not possible, within the constraints of this work, to meet those conditions, and in keeping with the assurance given to interviewees, it has been decided not to disclose the name of any of the respondents.

the Convention by states or persons in the Third World. It has been argued that the Convention is not applicable to the Third World because the latter was not proportionately represented at the drafting stage and hence, its views are not reflected in the Convention²⁵.

The contributions made by any state in the drafting process of an international Convention are facts which can be gathered by referring to the *travaux preparatoires* (Working Group reports or "legislative history"). Hence, this study referred extensively to the Working Group reports to identify each recorded contribution of Canada. However, these reports on the CRC primarily indicate which government delegations or UN bodies brought up particular ideas, how others responded to those ideas, and which portions of those ideas did or did not become part of the final document. There is, however, more to the creation of a convention than just the introduction and acceptance of ideas at the drafting stage. For example, a convention does not become valid until it is signed or ratified. This is a process which involves much lobbying and the selling of the ideas contained in the Convention to government representatives from various jurisdictions. Besides, the Working Group reports on the UN Convention on the Rights of the Child did not, in every instance, identify the state representative or agency which contributed a specific idea. This is exemplified in such statements as "a suggestion to ... was brought up and accepted by the working group" or "after much deliberation, the proposal was accepted" or "rejected" as the case may be. Hence, interviews with people who were involved in the drafting process or who closely monitored the process or are in a position to know, have the advantage of adding to the wealth

²⁵See Nigel Cantwell, "The Origins, Development and Significance of the United Nations Convention on the Rights of the Child" in Sharon Detrick (ed.) *United Nations Convention on the Rights of the Child: A Guide to the "Travaux Preparatoire* 1992, pp. 19-30 and Cynthia Cohen (1993) "The Developing Jurisprudence of the Rights of the Child" in *St. Thomas Law Review*, Fall 1993, vol. 6.,

of knowledge provided by the *travaux préparatoires*. This is what was discovered in the case of Canada's role in the drafting of the Convention.

Canada played a legal-technical role by having several of its lawyers involved in the drafting process of the Convention. As a result, Canada contributed to the language in which the Convention was couched. However, the technical role assumed by Canada does not mean that Canada contributed no specific ideas to the drafting of the Convention. As one interviewee put it, "you cannot write well if you do not have any ideas of your own". Articles mentioned by interviewees as reflecting Canada's contribution of ideas were 5 (parental direction), 25 (periodic review of placed children), 14 (freedom of religion) and 3 (best interests). The *travaux préparatoires*, however, show clearly that Canada did far more than that. The Canadian delegation were not passive participants in the deliberations of the UN Drafting Group. Sometime proposals were submitted independently, and at other times, with other countries. The delegation also supported or disagreed with proposals from other state parties and NGOs in consideration of existing Canadian law or opinion. Sections of the Convention the inclusion of which Canada was basically responsible for are the first preambular paragraph, Article 25 (periodic review of placed children) and Article 41 (other more favorable provisions). Other proposals of Canada became the basis of discussion and the subsequent adoption of Articles (i) 23 (disabled child); (ii) 14 (freedom of religion); (iii) 19 (protection from abuse by those having care); (iv) 24 (health and access to care); (v) 31

(rest and leisure); (vi) 32 (protection from economic exploitation); (vii) 40 (treatment in penal matters); and, (viii) 44 (reports from State parties).²⁶

Canada had a significant impact on the formulation, form and content of the following articles as a member of a drafting group for articles (i) 3 (best interests); (ii) 10 (family reunification, contact with parents); (iii) 17 (mass media); (iv) 26 (social security); (v) 27 (standard of living); (vi) 33 (protection from narcotic and psychotropic substances); (vii) 43 (establishment of Committee); (viii) 45 (methods of work of Committee); and, (ix) preambular paragraph 13 (international cooperation). Canada explicitly expressed support for the following Articles proposed by other states: (i) 12 , paragraph 1 (right to express opinion); (ii) 22 (refugee child), (iii) 28 (education); (iii) 29 (objectives of education); (iv) 15 (freedom of association and peaceful assembly); (v) 38 (armed conflicts); (vi) 20 paragraph 3 (paying attention to the ethnic, religious, and linguistic origins of parentless children); (vii) 24 paragraphs 3 and 4 (traditional practices prejudicial to the health of children); (viii) 30 (cultural, religious and linguistics rights); (ix) 34 (protection from sexual abuse); (x) 42 (dissemination of Convention); and, (xi) 5 (parental direction). Canada also objected to the inclusion of the unborn child provision in the Convention on the grounds that it was a controversial matter. On Article 21 (adoption), Canada placed on record her understanding that due regard should be paid to the child's ethnic, religious, cultural and linguistic background.²⁷

²⁶ UN Economic and Social Council (UNECOSOC), Commission on Human Rights (CHR), 36th Session, *Question of a Convention on the Rights of the Child*, E/CN. 4/1349, 17 January 1980, and *Reports of the Working Group on a Draft Convention on the Rights of the Child*, 35th - 45th Sessions, 1979 to 1989

²⁷ *ibid*

It is clear from the above that Canada made a substantial contribution in ideas to the drafting of the Convention. These were, however, not just ideas from the members of the delegation who represented Canada. It is established practice with regard to international treaties whose implementation requires cooperation from the provinces and territories, that the provinces and territories are consulted. This is particularly so in the case of human rights treaties. At the 1975 Ministerial Conference on Human Rights a document entitled *Modalities and Mechanisms* was approved. The document provides that before Canada acceded to future international human rights covenants, there should be a process of consultation between the federal government and the provinces (McKenzie and Holmes 1990:2). In line with this practice a federal-provincial-territorial working group was established in 1982 to examine and review the provisions of the Convention on the Rights of the Child adopted by the UN Working Group and to provide advice for the Canadian delegation (Holmes 1990:19). As a member of the Canadian delegation pointed out, this working group always met before the UN drafting group meetings and developed new proposals for inclusion in the Convention.

Canada also played a significant role in the diplomatic juggling that led to the massive support the Convention has received. As noted earlier, without the signing and ratification of a Convention, all the ideas that were crafted by the legal team in the span of 10 years could have come to naught. It is at this stage in the drafting process of international documents that people who can make things happen are needed. Such a person was Jim Grant, former Director of UNICEF, who conceived the idea of a Summit on Children. As one interviewee explained,

the Convention was moving along slowly, and became an agenda issue at the Summit and aroused the sudden interest of participants. The Convention was approved by the [UN] General Assembly in January/February 1989 and at that

time, nobody knew ratification could be so fast. But one month before the Summit, there was a flurry of activities to ratify it and at the Summit itself, several countries did sign it. One [the Summit] was set up for one reason, it picked up another issue [the Convention]. It [the Convention] was integrated into the whole fabric of the Summit and it accelerated the signing and ratification of the Convention. And of all the things that it [the Summit] did, it was moving the Convention along ... the Convention would not have happened without the Summit accelerating it all. And when it gathered momentum, it was beyond stopping.

The interviewee quoted Jim Grant as saying, "there was a synergy between the two [the summit and the convention]". Yet, one cannot talk of the Summit without mentioning Canada's then Prime Minister, Brian Mulroney, who co-chaired the Summit. There is a certain degree to which the success of a conference or gathering such as a Summit can be attributed to the role of its Chairman.

In addition to the government, NGOs played a significant role in the creation process of the Convention. This research did not specifically investigate the role of Canadian NGOs. However, it came up in the course of our interviews that Mr. Victor Sola Sala, then Director of Public Affairs of UNICEF Canada, was one of the UNICEF representatives at the drafting stage. UNICEF representatives were reluctant to join the drafting process initially, but when they did, they took over the leadership of the NGOs and other specialized agencies.²⁸ Mr. Sala, a lawyer, was identified as one of the main persons who pushed things along for UNICEF.

²⁸ Sharon Detrick (ed.) *United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"* 1992 and Cynthia Cohen (1993) "The Developing Jurisprudence of the Rights of the Child" in *St. Thomas Law Review*, Fall 1993, vol. 6., pp. 82-86

Discussion:

It is difficult to know the full contribution of any particular state to the drafting of the Convention. A careful reading of the *travaux preparatoires*²⁹ soon reveals that the UN Working Group operated on the basis of consensus. Each article and paragraph was discussed till a position acceptable to all was reached. Consequently, it is only fair to say that the draft Convention was the product of the Working Group and not of any specific country. This suggests that the criticism that the Convention does not reflect Third World views, is more a problem of the composition of the Working Group, than the manner in which it operated. Nevertheless, the working papers also show that some state parties were more active, particularly in terms of making contributions that led to the adopted position of most articles in the Convention. From the developing countries, the contributions of Senegal and Venezuela were most represented in the Working Papers. With the developed countries, Australia, the US, UK, Federal Republic of Germany, the USSR and Canada were the most active.

Another observation from reading the *travaux preparatoires* was that support or objection by state parties to contributions made by others was based mainly on how they perceive the idea as impacting on their domestic situation. For example, Article 9 of the Convention addresses the issue of separation of children from their families, which has implications for international migration. The East-West ideological split was reflected in these debates.³⁰

²⁹ UN Economic and Social Council (UNECOSOC), Commission on Human Rights (CHR), 36th Session, *Question of a Convention on the Rights of the Child*, E/CN. 4/1349, 17 January 1980, and *Reports of the Working Group on a Draft Convention on the Rights of the Child*, 35th - 45th Sessions, 1979 to 1989

³⁰ Cynthia Cohen (1993:11), who participated in the drafting process of the Convention as an NGO representative, testifies (in footnote #46) that "Western delegations were especially suspicious of what they perceived as an Eastern Bloc initiative".

Paragraphs 1 and 2 of this Article, originally Article 6, were adopted at the 1982 session of the working group³¹. By 1983, various amendments and disagreements on this article had started appearing.³² In 1984, the desire by state delegations for the said article to conform to their domestic immigration laws was clearly expressed. The United Kingdom (UK) representative stated that his delegation was having difficulties with some of the articles already adopted, including Article 6, which, as was noted earlier, became Article 9 of the adopted Convention. The reason being that Article 6, “as currently drafted was not compatible with UK legislation because the parents of a child who do not have rights of residence in the UK could not determine that he should live there unless he qualified for residence”.³³ The UK was supported by the Netherlands and the Federal Republic of Germany (FGR) representatives, who indicated that the same article did not conform with their country’s nationality laws. In 1989, the FGR introduced a proposal, sponsored also by Japan, to add a new paragraph to Article 6 as follows: “[n]othing in this Convention shall affect in any way the legal provisions of State Parties concerning the immigration and the residence of nationals”³⁴

Fortunately, the Working Group did not adopt this paragraph, which was to serve parochial ends (by impeding migration to the West) more than anything else. Questions are,

³¹ UNECOSOC, CHR, 38th Session, *Report of the Working Group on the Draft Convention on the Rights of the Child* E/CN.4/1982/L.41 8 March 1982, pp. 3-10, paragraphs 8-33

³² UNECOSOC, CHR, 39th Session, *Report of the Working Group on a Draft Convention on the Rights of the Child* E/CN. 4/1983/62, 25 March 1983, pp. 4-13, paragraphs, 8-57

³³ UNECOSOC, CHR, 40th Session, *Report of the Working Group on a Draft Convention on the Rights of the Child*, E/CN.4/1984/71, 23 February, 1984, p. 3

³⁴ UNECOSOC, CHR, 45th Session, *Report of the Working Group on a Draft Convention on the Rights of the Child*, E/CN.4/1989/48, 2 March, 1989, p. 33

however, being raised today as to how the countries of the West are applying that section of the Convention. Even though Canada did not take such an extreme position on this issue, its implementation of Article 9 of the Convention will be discussed when we analyze the reports that some NGOs sent to the Committee on the Rights of the Child in Geneva. The point here, however, is not on the merits of the arguments by these state parties, but to show how in the course of drafting international conventions, national interests are put before international interests. Indeed one interviewee, who was a member of the Canadian team on the Working Group admitted that “..we thought of it [the Convention] from a Canadian perspective, we never thought we were doing it for another country”. One of the strategies state parties use in order to be found as complying to international universal positions is to make sure, at the drafting stage, that a Convention does not contradict their domestic legislation or positions. Another strategy is making reservations and statements of understanding at the time of ratification. More will be said about Canada’s reservations and statement of understanding later.

For now, to summarize, Canada played three major roles in the creation of the Convention: Canada (a) contributed ideas from a Canadian perspective; (b) provided a legal-technical team and (c) was able to convince other nations to sign or ratify the Convention. A definite statement cannot be made about the role of Canadian NGOs, as specific investigations were not conducted in that area.

Two interviewees, however, had problems with the legal/technical role of Canada. For one interviewee, this role makes Canada see the Convention as a legal document and therefore as something which lawyers have to do deal with in order to get right. Even though

the document is couched in legal terms and fits into the context of International Human Rights jurisprudence, there must be the recognition that the Convention is not a legal but a social document. As she puts it, “the convention is talking of the way society treats its children, the most dependent and vulnerable members of society. This is a social issue and has little to do with legal structure because the laws in place have resulted in horrendous problems with child abuse as can be seen in countries with very good legal systems”. To her, even though Canada was a key player in the drafting process, it was done on the basis of an abstract international exercise which was not going to have any impact on Canada. To this end, she saw Canada's role as not based so much on the importance of the Convention itself, as on the self-image portrayed. For example, she sees the External Affairs Department as portraying itself as a major player in the external legal field, as shown in the significant role Canada has played in the drafting of all other major international Conventions.

It should be noted, however, that law has become one of the most important tools for the expression of social policy in contemporary times. Hence, it is not necessarily wrong to express the convention in legal terms. Besides, as seen earlier in the distinction between a convention and declaration, Conventions are more binding on State Parties, especially those which have legal systems which allow international conventions to become part of domestic law, than other forms of agreements. However, this interviewee may have a point: the emphasis should be on children more than the legal technicalities involved. Too much emphasis on legal technicalities can create a “big brother/sister” attitude which can hinder implementation. This will be discussed under the implementation section of this work.

CANADIAN RATIFICATION: THE PROCESS

The purpose of this section of the analysis is to see the nature of Canada's immediate response to the finished product. Having played such a significant role in the drafting process, one would have thought that the ratification would be a foregone conclusion. This was not the case. Canada ratified the Convention on December 13, 1991, two years after its adoption by the UN. It may be obvious that a ratification process in a federal state would take much longer than in a unitary state but for the purposes of this research, it was important to identify and explore all the factors which influenced the ratification process. Indeed, while the federal political structure of Canada was identified as important in the responses from interviewees, other reasons also came up. It is important to note that a long-term goal of this research is to compare the Canadian situation with that in developing countries which were not highly represented at the drafting stage but who were among the first to sign and ratify the Convention. Since the motivation for ratifying the Convention so quickly in the developing countries will be investigated, it just seems right to do the same in the case of Canada. Why did Canada take, relatively, so long in ratifying the Convention?

Here are some responses from the interviewees: "The Convention is a serious document, whose demands a State Party has to live up to, hence, there is no need to rush in ratifying it," said one interviewee. Another reflected, "[i]t is good it took Canada so long to ratify the Convention. Canada takes ratification seriously. It doesn't want to ratify and not implement it..." A government official expressed it this way:

... the convention is not meant to be a policy paper for today. On the one hand, it is a prescriptive for specific actions, on the other, it is a statement of endless interest especially in those areas of social policy. So the issue is not whether we

are the first or last to ratify it. The most important issue here is to take time to put in place institutions for implementation. It is not a race for signature!

According to one government official, it was this desire to ensure that everything was in place for implementation before ratification, which accounts for Canada's reservation to Article 37 (c), which demands that "every child deprived of liberty shall be separated from adults". He explained:

... although it is the policy of the government of Canada to achieve the situation where juveniles will not be detained in the same facilities or in the same cells as adults, at this point, there are some parts of Canada, possibly in the far North, where there are not separate facilities. ... and one of the basic principles that Canada uses in the signing of any international Convention is that before we sign it, we wish to make sure that the law and the practice correspond to the obligations that we are taking on. So we will not accept just to say we will keep detained juveniles separately from adults if we can't do it ... We could not. We couldn't do it. We do not have separate facilities everywhere. We do in all major cities and stuff like that, but then in some small northern communities, it mustn't come as a surprise to you, that there are not separate facilities. ... Now, we are working towards it, and when we have reached that point, then we will be in a position to remove that reservation.

One other government official agreed with this view:

... there has long been the usage that Canada only ratifies a Convention when we are sure that we are already essentially in compliance, even before we sign it. Essentially in compliance means we realize a few things need to be changed ... and there's reasonable assurance that any changes that need to be made could be made within a reasonable time and there's agreement these changes would be made, then we go ahead and do [ratify] it [the Convention].

The second major reason offered by respondents, and the most popular on this issue of the length of time it took Canada to ratify the Convention, was the federal nature of the country and the consequent demand to consult the provinces and territories. As well, with this particular Convention, came also the need to have consultations with NGOs and native groups. As one official put it:

[W]e are often always slow to ratify, although we are very quick to sign ... and that simply reflects the fact that we are a federal state and not a unitary state. In order to be in a position to ratify a Convention ... we, as a matter of policy, want to make sure all the laws of Canada in effect, correspond to all the international obligations we are taking on. And so before we can do that we have to discuss, particularly with a convention like this one where a great deal of implementation will be the responsibility of the provinces, we have to discuss with each province how these new obligations are going to affect their laws and to come to some agreement about the modifications of their laws and, in some cases, agree to make a reservation. If a province refuses, we have to make a reservation not to be in breach of our obligations ... and the process of getting 10 provinces and 2 territories, all lined up, takes quite a while. 2 years is not at all a long time. On the American Convention on Human Rights, we have been negotiating with the provinces for almost the last 5 years and we are not finished”.

Another official could not agree more:

[T]hat kind of duration is quite fairly normal, in fact, for ratifying an international human rights instrument, and it's due to the federal set-up. Usually, when the federal government has pretty much decided that they can support a convention, that they can join it, on the federal side, there's not a whole lot left to do. In terms of analysis, they already have the answers. The next step is to consult every single one of the provinces ... there's a federal/provincial agreement, which includes the territories, all provinces must be consulted on the ratification of any international human rights instrument. There's a subtle nuance here. Provinces do not ratify conventions ... it's not that the federal government has to ask for the provinces' permission or approval. The way the constitution is set up, the federal government may sign any international instrument it wants without any reference to the provinces, theoretically. The only thing is that it would not make any sense especially with regard to human rights because most of human rights legislation actually falls under provincial jurisdiction. So if you sign a treaty that you cannot enforce, you look rather stupid. So the first thing is to go and ensure that all the provinces are satisfied. And so, of course, 10 provinces, 2 territories, it takes a lot of time. Two years is not unusual. Also, the provinces have different levels of resources. For some, the convention is a higher priority than others and so on. So for some provinces, it may take a week, others two, and some may sit on it for a year and a half before they become really satisfied to approve it. And with this one, I have to say there was a particular resistance. One province was not at all ready to ratify it right away. You may have come across it, that was the case of Alberta.

Some respondents, however, saw the whole issue of Canada's participation in the creation and ratification of the Convention in a completely different light, and this introduces a third

factor into the issue. According to them, it was more because of Canada's image abroad than anything else. "It's a public relations exercise, the presentation of self as the nice guys" said an official of a specialized agency. Only 2 out of 14 interviewees mentioned this factor, and even of that, the second respondent added this comment, "[f]rom my point of view, who cares if the motive is a little egotistical, if the effect is that governments will increase human rights just so that they can shine internationally?"

This issue of "image abroad" will be discussed later when the issue of "big sister/brother" comes up again.

Discussion:

The most popular reason offered for the timing of Canada's ratification, was the federal political structure of the country and the need to consult all provinces/territories. We have already seen McKenzie and Holmes' (1990:1-2) reference to the practice of federal/provincial/territorial consultations before the ratification of international, particularly human rights, treaties. Others, such as Holmes (1990) and Fairweather (1990) concur with this. The second reason offered was that Canada signs treaties only after first seeing to it that its domestic laws and practices conform to the particular treaty. This has some implications which may not augur well for proper implementation. It implies that at the time of ratifying a convention, Canada is already in compliance and, hence, there is nothing more for Canada to do about the Convention in question. Analysis of Canada's First Report to the UN Committee on the Rights of the Child gives a good example of the results of such an

assumption and its consequent dangers. This will be discussed under the section, "Implementation", in this chapter.

Compared to similar international documents, the CRC was ratified in a record time of two years. According to Gordon Fairweather (1990:15), it took Canada 10 years to give formal recognition to the Universal Declaration of Human Rights and 17 years to ratify the Refugee Convention. As one interviewee pointed out, in the five years since Canada joined the Organization of American States (OAS), it has not yet ratified the Inter-American Convention on Human Rights. Hence, that it took only two years for the CRC to be ratified, makes it seem like it was given a special treatment among similar documents.

Government officials were, however, quick to point out that this does not mean the CRC received any special treatment. As one pointed out, "it is not because we do not attach importance to other documents, it because there are some great differences between provinces and difficulties because of the text itself [referring to the OAS Convention on Human Rights]. Another official saw the apparent special treatment given to the CRC as due to the nature of the Convention itself. According to him, while it is true that more efforts were made to publicize the CRC than other similar treaties, the unusual decision to encourage the involvement of NGOs worked for the good of the CRC. "The world was just ready to receive such a convention", he concluded. Most interviewees agreed that the nature of the drafting process - the involvement of so many non-traditional participants - led to great differences between the CRC and other similar treaties. Others think it is because, on the whole, Canada takes the UN more seriously than most other nations, and is a good promoter of UN Conventions. In any case, considering the lead role Canada played in promoting the CRC,

particularly through the World Summit, it would have been morally wrong for Canada to have waited any longer before ratifying it.

However, all was not rosy with the Canadian ratification process. The issue of Alberta's refusal to give its assent to the Convention seemed to be a sore spot. The Alberta case was important to this research for 2 reasons. First, it gives a more accurate picture of the Convention experience in Canada. Secondly, it is of interest to see how the rest of Canada and the rest of the developed world reacts to Alberta's claims for not giving its blessings to the Convention. This is because some of Alberta's claims, such as the Convention being "anti-family", seem to be similar to those of critics which see the Conventions as anti-Third World cultural values.

As seen earlier, even though it is the federal government and not the provinces which has the responsibility of ratifying international treaties, by virtue of established practice in Canada, the federal government has to first consult the provinces before it ratifies any international human rights treaty³⁵. It is normally expected that the provinces will respond, either to agree or disagree, with proposals of the federal government to ratify international agreements. Alberta, however, did neither of the two. Why?

There was a unanimous agreement among interview survey respondents on this issue as shown in some of the following comments. "The powers that be think children's rights are covered by the Charter of Rights and that the convention was written for developing countries and not for them". Another responded: "...there were very powerful lobbies which influenced

³⁵ This is the principle of "cooperative federalism". See Barbara McKenzie and John Holmes *Reference Document on the Convention on the Rights of the Child* 1990:1-2..; and John Holmes "....." in *On the Right Side* 1990

the provincial government not to sign it. These groups believed families, parental rights, were not well catered for by the Convention. They think children's rights have been overdriven by the convention. Parents want the right to discipline their children". Another interviewee responded: "...very powerful lobby groups chose not to sign it".

In a similar vein, a government official put it this way:

that was for a kind of political reason. At the time there was a very strong lobby that had perceived the children's rights convention as somehow opposed to parent's rights so somehow compromising parental rights. And it became a very sticky political question out there. The result was that after the usual political consultations had taken place, all provinces and territories except Alberta, sent a letter through the Corporate Minister to the federal government saying they had no problem [with the convention]. Alberta did not send one, nor did it send any objections ... it didn't act. It was not quite clear whether Alberta might have eventually agreed or not, but the clock was ticking and nothing was moving and even we knew there was no positive objection. They were just reluctant to say we agree ... Finally, the federal government made the decision to go ahead anyway, without Alberta.

A feature article in the August 8, 1994 issue of the *Alberta Report*, by Celeste McGovern, substantiates most of the assertions of our interviewees. The only difference was where the interviewees stayed away from being specific, such as mentioning names, the *Alberta Report* was detailed and specific. The first concern of the article was the perceived state control of the family, what McGovern referred to as "Nanny Statism". "A powerful new federal bureaucracy wants to intervene in every aspect of family life, and few Canadians have ever heard of it. The Children's Bureau, with its Brighter Futures initiative, promises scores of "free" services from parenting skills courses to round-the-clock day care". So opened the article. McGovern continued:

the Children's Bureau ... is full of social engineers who want to ensure Canadian parents raise their children according to state-approved guidelines. And they [critics] believe these do-gooders are using the UN Convention on the Rights of the Child to advance a radical agenda that would outlaw spanking, reduce parental

authority over children and give the government even greater control over home life” (p.26).

REAL Women, Focus on the Family Canada, and the Alberta Federation of Women United for Families (AFWUF) were cited as the grassroots pro-family groups who championed the idea that the treaty ignores the rights of parents. Specific articles of the Convention particularly worrisome to these advocates include:

Article 13 for instance spells out the child’s ‘right to seek, receive and impart information of all kinds...in the form of art or through any other media of the child’s choice.’ Technically, says Kari Simpson of the Citizens Research Institute (CRI) a Vancouver-based watchdog in support of families, ‘that means parents can’t turn off the television.’ It also means parents may be unable to determine what their children are taught in public schools (p.26).

Article 20, which directs states to remove children from their homes for their own “best interests”, when “necessary”, also presented difficulties. Gwen Landolt, national vice-president of REAL Women was quoted as saying, “[T]he job of defining those terms is left in the hands of the arbitrary state.” As well, Article 24 on family planning education and services is seen as legitimizing the provision of birth control and abortion counseling to all children under 18, with or without parental consent.

McGovern labels supporters of the convention as “statists, socialists, and even pedophiles” (p.26). Thus the Canadian Coalition for the Rights of Children (CCRC) is labeled as “an umbrella group of about 50 largely left-wing organizations” (p.28). It even went as far as imputing self-seeking motives to the then Prime Minister Mulroney, who was said to be “in such haste [to ratify the convention] because he was being considered for the job of UN secretary-general at the time and had just pushed through the unpopular GST”. According to the article, Mulroney “wanted to look like a true leader in New York and a

compassionate one at home" (p.27). The CCRC was seen as the organization pushing for the abolition of spanking:

One of the CCRC's first endeavors was its own lobbying effort to abolish parents' right to spank their children. In January, the Children's Bureau gave \$40,000 to the CCRC to "review" section 43 of the Criminal Code, which allows parents and teachers to use "reasonable" force to correct children. Anti-spanking lobbyists, such as the CCRC, argue the section contradicts Article 19 of the UN Convention that states ratifying countries must "take all appropriate legislative measures to protect the child from all forms of physical or mental violence, injury or abuse" (p.28).

Obviously, some of the claims, such as pedophile organizations promoting the UNCRC, and labels, such as "socialists" for such organizations as the CCRC, sound outrageous. However - family rights, spanking, state control of the family - are issues which could be inferred from the Convention. Interviewees agree that such fears about the Convention are not unique to Albertans and that many Canadians share these. Third World societies place considerable emphasis on group or family values, and the strict discipline of children, including spanking. Also the state has little to do with and for children. How would such societies react to the Convention?

On the idea that the Convention is for developing countries, McGovern said:

[m]ost of the 54 articles in the children's convention are unexceptional. They were drafted for children suffering homelessness, starvation, poor education and state abuse in the Third World. Taken out of that context though, and applied to children in countries such as Canada, the document's ambiguous phrasing raises some red flags (p.26).

But is the Convention just for developing countries? The latter question was explored in the course of the interviews. The overwhelming view of respondents was an emphatic no, though a few seemed to support this assertion.

An interviewee said “[t]he convention is intended for industrialized countries as well. So much needs to be done for children in Canada too so I cannot agree with this statement...” A government official who played a role in the drafting process said, “I don’t like the position. It assumes all is well with developed countries. We thought of it from a Canadian perspective, we never thought we were doing it for another country. There was no conspiracy against the Third World”. Another respondent put it this way:

...it’s part of the assumption that we do not need it because we are doing it already. I agree that was the view of most developed countries ... but 20% of Canadian children live in poverty, what about Aboriginal children, suicides ... so we cannot pretend the convention does not apply to us”.

The next interviewee agreed: “... we still have a long way to go, child abuse, child poverty ... that’s a jaded view of what the Convention is all about. It is a very jaded view of what this Convention is all about”.

Yet still another respondent said:

I don’t agree with that ... Such a view creates problems. The Progress of the World Report shows some developing countries have better records than developed ones. That’s a complete fallacy. The convention doesn’t just focus on child survival but survival, development, protection and so on. Even in Canada, the survival rate has dropped. The Convention is for children of all countries. In the US children could still be put to death under the legal system ... but even in developing countries we are not just talking of child survival but also development, protection and so on. So we have the same issues in both worlds, so the convention equally applies to both worlds.

An NGO official responded thus:

We are not thinking of how the Convention is applied in India. ... India has to look at what they can do with the convention and the standards that they can rise to with these same rules. So many people have the attitude, you know, we are one of the wealthiest countries in the world, we don’t have to worry about that and the thing is we do. The reason we do is we are not talking about do we do the very minimum for children, what the UN Convention, to me, means is we have to have children as one of our highest priorities in whatever system we have. So it applies to every country of the world. So you look at the system of social welfare in B.C.

and look how that impacts on children and then ask, is this good enough? ... We are not meeting the standards of the Convention so long as children are being abused and killed by their parents.

So there was high consensus among interviewees (12 out of 14) that the Convention equally applies to children all over the world. The problems may differ from country to country, but children in each part of the world have their own share. The crux, as pointed out by this NGO official, is for State Parties to have children as one of their highest priorities in whichever system they find themselves in.

Two interviewees, however, seem to differ from the others. One official stated:

I think it is a general principle that international human rights conventions are not primarily designed ... let me put it this way, the Ten Commandments weren't designed for saints, they were designed to help sinners. So that an international human rights convention, as its prime use is not for countries in which human rights are essentially respected. It's for countries in which they are not.

Yet, this respondent was quick to add:

I guess I have to say that the main driving force for the convention in Canada is essentially internal and domestic. It's not an issue of international image except, maybe, we kind of go round it by way of saying that Canada has always sort of defined itself as a leader in terms of respect for rights internationally. But that is almost part of the pressure we put on ourselves that if we want to promote rights internationally, we better get our house in order. This follows almost a different rhythm from what the case may be in another country where there may not be internal pressure for rights at all or it's very little. However, the country feels that it wants to join this, it wants to present itself well in the UN so it should be deciding on this convention on rights, otherwise, public opinion will not look at them very favorably. So they sign the convention ... Canada tends to go the other way round.

The other respondent, who agreed with the assertion that the convention is only for Third World countries, added:

... we have to consider what the UN is. Even though a universal document [the CRC], for most part, was written by international representatives, but mainly by North American bureaucrats, with minimal input from developing countries. So

universality is expressed in quite ethnocentric terms. Cross-culturally, this focuses more on individual rights ... what about the whole notion of responsibility and collective rights? Though the convention talks of parental rights, it is more of a list of individual rights, written from an individualistic perspective.

What conclusions can we draw from all this? The consensus among respondents is that the Convention equally applies to industrialized countries because it could help in tackling the problems faced by children in developed countries as well. Even of the two interviewees who think otherwise, a close look at their responses tell that they are only being critical of the processes involved and not the idea of the Convention. One believes the ratification of the Convention can have the unintended consequence of putting pressure on Canada to implement it. This is something he considers good for children in this country. The argument of the other respondent that the Convention was written by Western bureaucrats and does not reflect Third World views could be interpreted that the Convention rather applies to the industrialized countries which created it. Consequently, her response is an affirmation that the Convention applies beyond the developing countries. In effect, all respondents agree the CRC equally applies to the industrialized countries, if not limited to them.

IMPLEMENTATION

The purpose of this section of the study was to find out what concrete legislative, administrative and social policy measures have been taken as a result of Canada's ratification of the convention. Obviously, ratifying a convention implies that a state party agrees to abide by its demands and obligations. One could get such information from government as well as

NGO documents and other publications. Some of this type of information was gathered in this research and the results are also presented below. However, interviews were also conducted on this issue in order to get a feel of people's views about what the governments of Canada were doing about the Convention.

Interviewees mentioned several measures as resulting directly or indirectly from Canada's ratification of this convention. One respondent said, "I can't think of any new laws passed as a result of the convention but that doesn't mean there's not been some." Another official looked at it this way:

[w]ell, ... it shouldn't be surprising that you don't see any radical changes coming out of this [convention] because it's one of our own rules that we don't sign any convention until we are pretty sure everything is in place for compliance. ... we are relatively at the forefront of human rights development ... so that shouldn't be surprising. So in terms of changes, I wouldn't expect radical changes there.

... what you are looking for is some evidence that a country is doing the best it can with the resources it has on hand and is at least trying to go forward and not backwards in terms of social rights and economic rights and so on. ... but the thing is that it is very hard to measure, it's not something you can easily measure in terms of law and in a sense, something like the rights of the child has multiple aspects to it. There is the strictly legal aspect which in Canada we have largely covered already. We wouldn't have signed it if it were not so. ...

Then you get into the whole aspect, which is all in the rights of the child, of what are basically economic and social and cultural rights of children. ... well, that can have an influence in Canada of being an instrument in providing another incentive to trying to keep better or at least not to lag back.

On specific laws that have been passed as a result of the convention, this same official said:

[y]es, ... Nova Scotia, Saskatchewan, and I believe Alberta as well, still had some laws in the books that did make some legal discrimination between legitimate and illegitimate children and those were modified to get rid of the discrimination between the two categories of children. That was one of the direct results of the Convention. ... So there's, I suppose, 2 or 3 instances in mind, which seem fairly minor, overall ...

One respondent feels nothing has been done at all about the Convention in Canada:

The convention is not being applied anywhere, in B.C., a bit, but on the whole, there is no application of the Convention in Canada ... In regard to broad government policy and social policy, Canadian politicians are not aware of the convention. Think of all the restructuring that is going on. All the restructuring in all the provinces have not taken account of children. They are done without any principles of adjustment with a human face ... The only jurisdiction in Canada which really understood the convention was Alberta. That's why they refused to give their consent to it because the convention clearly understood, would change the way a lot of things are done. The convention is a tool for social change!

An official, talking more of the British Columbia situation than the rest of the country said:

We cannot talk of new legislation passed specifically in response to the Convention, but we can say consideration has been given to the Convention in the passing of new laws. For example, the [B.C.] Report, *Making Changes: A Place to Start*, which led to a white paper and later the 'Family and Advocacy Law' gave a lot of consideration to the Convention on the Rights of the Child. The law may not be the exact words as the Convention, but in keeping to the Convention's requirements that children have a right to be heard gave a lot of weight to that right. Amendments to the Infant's Act, which allows an emancipated minor to give his/her consent before medical treatment are in keeping to the convention.

The Child Advocate for the City of Victoria is very plugged into the Convention. The Child Advocate in Vancouver is well trained in the Convention and uses it as tool in his work. The Society of Youth and Children has been given money by the Law Foundation to review all B.C. legislation to see if they are in keeping with the Convention. I think a lot of B.C. legislation had those rights in them prior to the Convention but nobody even took time to study to ensure compliance. The Coalition [CCRC] and others have lobbied using the convention, for amendments of those sections of the Criminal Code which has to do with the discipline of children by parents. If the Criminal Code is amended on the issue of corporal punishment, this will be a direct result of the convention. Bill 46, the Child, Youth and Family Advocacy Act were all worked up based on lots of consideration to the Convention.

The summary of respondents' views is that whereas most government officials feel the Convention was ratified because everything is already in place, other respondents think otherwise. The latter, though they acknowledge that bits and pieces have been done here and there, still think that so much more needs to be done. Attention will now be focused on

documents and other published material on this same issue of Canada's implementation of the Convention.

Canada's First Report to the UN Committee on the Rights of the Child:

Currently, one cannot find a more comprehensive, single account, of what Canada has so far done about the Convention than the report, *Convention on the Rights of the Child: First Report of Canada*³⁶. It was prepared jointly by the Department of Justice (responsible for its legislative aspects) and the Children's Bureau, now known as the Childhood and Youth Division (CYD) of Health Canada, which is responsible, at the federal level, for broader issues relating to children in Canada. Overall coordination was by the Human Rights Directorate of the Department of Canadian Heritage, which has the overall responsibility for human rights in Canada and dissemination of information regarding the UNCRC³⁷. The Report gives a detailed account of federal, provincial and territorial measures which conform to the Convention and also specific measures taken to implement the convention. The Report was prepared according to the demands of the guidelines prepared by the UN Committee on the Rights of the Child³⁸

³⁶ Government of Canada, *Convention on the Rights of the Child: First Report of Canada*, Department of Canadian Heritage, May 1994.

³⁷ Human Rights Directorate, Department of Canadian Heritage *Background on Canada's First Report on the Implementation of the United Nations Convention on the Rights of the Child*, May 1994

³⁸ UN Committee on the Rights of the Child *General Guidelines Regarding the Form and Content of the Initial Reports to be submitted by States Parties under Article 44, Paragraph 1 (a), of the Convention CRC/C/5 30* October, 1994

Since a general approach was adopted for this research, the discussion of this First Report follows in the general picture which emerges from all the eight sections of the Report. One striking thing about the Report is that most of the measures reported are ones which were already in place before the UN adopted the Convention, apart from the creation of the Children's Bureau, which some will even argue was a result of the World Summit For Children³⁹, and a few legislative changes.

The major measures cited as Canada's implementation of the Convention were: the Canadian Charter of Rights and Freedoms, 1982; Canadian Human Rights Act, 197...; Young Offenders Act, 1985; Criminal Code; Food and Drugs Act, 1953; Narcotic Control Act; Canada Assistance Plan, 1966; Canada Labor Code; Canada Election Act; Canada Evidence Act; Canada Pension Plan; Divorce Act; Income Tax Act; Immigration Act; Citizenship Act; Access to Information Act; Broadcasting Act; Privacy Act; Hazardous Products Act; and, Motor Vehicle Safety Act. There is no doubt that all of these Acts, or at least sections of some of them, support some of the provisions of the Convention. Also, a few of the measures, such as Access to the Information Act, have been amended to conform to the Convention. However, all the Acts were passed, in some cases, long before the UNCRC came into being. If there was anything new in the Report, it was the *Brighter Futures Plan*⁴⁰ and *Child Development Initiative* (CDI)⁴¹.

³⁹ The relationship between the Declaration of the World Summit and the UNCRC has been discussed elsewhere in this thesis.

⁴⁰ Government of Canada *Brighter Futures: Canada's action plan for children* May 1992

⁴¹ Government of Canada *The Child Development Initiative of Brighter Futures* May 1992

The major document which resulted from the World Summit for Children held at the United Nations, New York, on September 30, 1990 was the *World Declaration on the Survival, Protection and Development of Children and Plan of Action*⁴². The *Brighter Futures* is the Canadian Action Plan for children in response to the World Summit Declaration. As former Prime Minister, Brian Mulroney, who served as co-host to the Summit described it, “[i]t defines our [Canada’s] priorities and charts our course ...”⁴³. The *Brighter Futures* addresses the ten issues for children outlined by the Summit Declaration: (i) children’s rights; (ii) health; (iii) growth and development; (iv) the status of women and girls in society; (v) the role of the family; (vi) the plight of children in difficult circumstances; (vii) education; (viii) the environment; (ix) protecting children in conflict zones; and, (x) reducing world poverty. The Action Plan includes over 30 different steps and programs, which spans several government departments, addressing these issues. The Children’s Bureau was created in February 1991 to coordinate these programs. In this regard the Bureau consults with other levels of government and NGOs and provides information on federal activities to the public and interested groups. Since Canada ratified the UNCRC, the Bureau has become the major agency coordinating the domestic aspects of its implementation⁴⁴.

The CDI is a follow-up to the *Brighter Futures* Plan. Like the *Brighter Futures* plan, it was also announced in May 1992 and is a “five year, \$500 million series of programs [which]

⁴² United Nations *World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s*, World Summit for Children, UN, New York, 30 September, 1990

⁴³ Brian Mulroney in the Foreword to the *Brighter Futures Program*, 1992, p.iii

⁴⁴ *Brighter Futures Program*, 1992, p.45; *Convention on the Rights of the Child: First Report of Canada*, 1994, p.3.

addresses conditions of risk that threaten the health and well-being of children, especially children 0 to 6 years of age”⁴⁵. Its areas of emphasis are Prevention, Protection, Promotion and Community Action. The purpose then is to combat conditions such as poverty, poor health, unhealthy living conditions, neglect and abuse, which threaten the ability of over one million children in Canada to develop into healthy and productive adults.

There is no doubt that these two plans are comprehensive and involve an investment of billions of dollars in both Canadian children and others worldwide. However, some of the programs such as the Child Tax Benefit only put together as one, already existing programs. Besides, at the time of the First Report, both the Brighter Futures Program and the Child Development Initiative were still just plans on paper. On balance, Canada’s First Report on the Convention had more to say about pre-Convention legislation, programs and policies than measures taken specifically towards implementing the Convention.

One government official was quick to point out that the nature of the Canadian Report was only due to its attempts to conform to the Guidelines set by the UN. There is no doubt about that because, as stated earlier, the Canadian Report conforms to the Guidelines. The First Report is to establish a “baseline”, with subsequent reports giving account of only the new measures adopted since the last report. However, it is also important to note that the Guidelines did not require any State Party to preclude from its First Report any measures taken specifically in response to the Convention. Consequently, it can only be concluded that as at the time of preparing the First Report, not much had been done regarding the implementation of the Convention. Indeed others have made similar observations. In its

⁴⁵ *The Child Development Initiative of Brighter Futures*, 1992, p.5

Response to the First Canadian Report, the Canadian Coalition for the Rights of the Child (CCRC), for example, stated that it:

is difficult to determine from Canada's report to the UN the impact that ratification of the Convention has had on new directions - especially at the international level. Similarly, the provincial reports within the Canada Response are basically descriptions of the status quo. ... there appear to be few instances (aside from the Child Tax Benefit and Child Development Initiative) in which the Convention actually has inspired or moved governments to take action to enhance and promote children's rights⁴⁶

Further, on Canada's international obligations under the Convention, this same report noted:

[n]either the Government nor CIDA, its agency for international development, has an explicit policy for how it proposes to help children around the world. The section of the *Brighter Futures* which dealt with the world's children was not a plan; it was simply a review of Canadian aid programs already in place. ... Canada has announced no new measures at the international level in respect of its signature of the Convention⁴⁷.

Basically, Canada's First Report was a restatement of the status quo, raising the question, did Canada need the Convention then? This brings us back to the issue of Canada's motivation for playing such a leading role in creating this treaty. These questions were explored in the course of the interviews. The responses were quite similar to those given when questioned about the view that the convention was only meant for developing countries.

According to one respondent, it was more because of Canada's image abroad than anything else:

It's a public relations exercise, the presentation of self as the nice guys ... Canada's role [in the drafting stage] was not based on a conviction of the

⁴⁶ Canadian Coalition for the Rights of Children *UN Convention on the Rights of the Child: The Canadian NGO Response* September, 1994, p.4

⁴⁷ *ibid*, 1994, p.13

importance of the Convention itself as the self image - especially that which External Affairs - has of itself as a major player in the external legal field. It was involved in all other major international conventions ... The problem this poses for Canada is that the Convention is still seen as a legal document and so as something which lawyers have to deal with to get right. But its not a legal but a social document. The convention is talking of the way society treats its children - members of society who are most dependent and vulnerable. This is a social issue. It has little to do with legal structure because the laws in place have caused horrendous problems such as child abuse as can be seen in countries with very good legal structures.

The majority of respondents, however, thought otherwise. One official said:

I guess I have to say that the main driving force for the convention in Canada is essentially internal and domestic. It's not an issue of international image except, maybe, we kind of go round it by way of saying that Canada has always sort of defined itself as a leader in terms of respect for rights internationally. But that is almost part of the pressure we put on ourselves that if we want to promote rights internationally, we better get our house in order. This follows almost a different rhythm from what the case may be in another country where there may not be internal pressure for rights at all or its very little. However, the country feels that it wants to join this, it wants to present itself well in the UN so it should be deciding on this convention on rights, otherwise, public opinion will not look at them very favorably. So they sign the convention ... Canada tends to go the other way round. ... there could be a little bit of that [image abroad], in it. But from my point of view, who cares if the motive is a little egotistical if the effect is that governments will increase human rights just so that they can shine internationally

One respondent said:

[S]ure, Canada needed the Convention. Canada needed something with a specific focus on children. Children are marginal, don't have a say ... they are one of the most vulnerable groups in society, so we need something specific for them. That takes us right to the heart of the convention.

In one official's view:

[J]ust because we have legislation does not mean we also have the service delivery system and programs, not to mention the quality of service. The convention is far broader than most of those pieces of legislation. It has to do with complete attitudinal shifts, how we view our children, how we bring them into the decision making process. The Convention goes far beyond the already existing programs.

Thus, on the issue of whether Canada could do without the Convention, he said:

[N]o, I couldn't say that. The convention is just a very useful tool for organizing our services and legislation. Canada could have got by without it but beyond services and legislation, the convention also allows people to advocate using it as a tool ... No, Canada still has a long way to go.

Several other interviewees expressed similar sentiments. One puts it this way,

"Canada still needed the Convention so that the best interests of the child could be considered more. ... These are standards we strive towards and it is just right to be part of it". Another said, "... the Convention has so many positive things. Goals such as participation of children give strength and direction for policy making. In my view, the Convention is a frame of reference, a leverage for NGOs to move forward. Canada is a long way along, we need to be pushing forward". The view of another official was:

In the world, we are supposed to become more humane ... the convention creates a sense of common playing field that everybody has a right to the same thing. It is a new level playing field for all ... we may never reach the ideal, but the convention points us toward that direction.

One conclusion to be drawn from the above responses is that whatever the motivations for the lead role in the creation and promotion of the convention, be it egotistical or not, respondents, to a large extent, agree that despite all the measures already in place, Canada, surely, needed the convention. This was because of what they perceive as the Convention's positive features. To them, these features are needed to help deal with the mounting children's problems in this country. Even if there is any egotistical motives behind Canada's participation, as a couple of respondents believe, the act of ratifying the Convention puts an obligation on Canada to implement it to the benefit of its children.

Discussion:

On the nature of Canada's First Report discussed above, one has to consider the time element. Canada ratified the Convention in December 1991 and was expected to make its first report within two years. It seems this is too short a time within which to have accomplished anything meaningful. Besides, the Report indicated clearly that it outlined only "measures adopted before December 31, 1992" (p.1), that is, only one year after Canada's ratification of the Convention. In effect, the Report was just an account of the very first year after Canada's ratification, when its plans of implementation were still on paper.

An equally plausible explanation for the First Report being more of a collection of pre-Convention measures, however, could also lie in the explanation offered by respondents as to why it took Canada two years to ratify the Convention in spite, of its leading role in the document's creation. As we saw earlier, apart from the federal-political nature of the country mentioned by respondents, there was also the practice whereby Canada ratifies Conventions only if it is sure that sufficient measures are already in place which conform to the terms of the convention in question. The danger involved in this type of attitude, however, is that once Canada ratifies a Convention, it assumes that it already meets its terms and so nothing is done again about implementation. After all, Canada would not have ratified any Convention if it did not see itself as already having met its obligations under the particular convention.

This danger was also pointed out by a member of the UN Committee on the Rights of the Child, Mr. Hammarberg, when the Committee considered Canada's First Report. His comment was made within the context of Article 4 of the Convention, which obliged State

Parties to undertake “all appropriate legislative, administrative, and other measures” to implement the Convention and Article 44, according to which the Committee might request “further information relevant to the implementation of the Convention”. He agreed that the Committee needed to keep in mind the overall situation in Canada with regard to children’s rights, rather than focusing too narrowly on the mechanisms which existed to protect them and also noted the widespread support of human rights in Canada. Nevertheless, Mr. Hammarberg added:

the Committee wished for assurance that the fundamental principles of the Convention, notably the primacy of children’s interests, would always be at the center of decision-making. Even in Canada the idea of the rights of the child was relatively new and to assume automatically that the principles of the Convention had already been implemented under Canadian law posed certain dangers⁴⁸

Even though Mr. Hammarberg did not mention the specific dangers, one of such dangers, in my opinion, is complacency regarding the implementation of international conventions, “we already have it in place, the convention is not for us, it is for the other people”. Such an attitude would engender the effective implementation of a convention at home. This issue came up during examination of Bill C-37, an Act to amend the Young Offenders Act and the Criminal Code, *vis a vis* the UNCRC by the Standing Senate Committee on Legal and Constitutional Affairs when officials of the Human Rights Law Section of the Justice Department were questioned⁴⁹. When questioned by Senator Doyle on whether there have been any court actions taken in Canada by individuals who felt that the

⁴⁸ UN Committee on the Rights of the Child, *Summary Record of the 214th Meeting Held at the Palais des Nations, Geneva, on Wednesday, 24 May 1995, at 10 a.m.* CRC/C/SR.214, 30 May 1995, pp. 12-13, paragraphs 50-58.]

⁴⁹ Senate of Canada: *Examination of Bill C-37, An Act to amend the Young Offenders Act and the Criminal Code* Eighth Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue No. 30, Thursday, May 4, 1995

rights guaranteed to them by UNCRC had not been observed, Mr. John Scratch, Senior General Counsel, Justice Department, first gave the obvious answer to the effect that international laws are not self-executing in Canada and that there was need to enact domestic laws in order to implement such treaties. He added:

[N]ormally, however, we do not do that with one act; we normally do not come in with an act to implement the Convention of the Rights of the Child because, in the first place, *with respect to most human rights conventions, many of the rights are already in the Canadian Charter of Rights and Freedoms*. Therefore, you must really start off with the Charter as a base, *because many of these rights are already enshrined there*”⁵⁰ (emphasis added).

Mr. Scratch’s response points to this Canadian attitude to international conventions, which Senator Doyle aptly summed up in his next question:

[W]hat I am coming to here is ... the fact that, in truth, the UN convention has been seen to have its greatest effect in undeveloped or slowly developing countries rather than in our own. Not that it is not a useful guide and grade on what we might or might not do, but it principally exists for other countries - or at least that has been part of the Canadian attitude. I do not want to take your description too far, but I would suggest to you that *there is a sort of “big sister” or “big brother” attitude towards UN conventions* in this and in a number of other areas where we think that we will be delivering more than we receive by way of example. Is that not correct?⁵¹ (Emphasis added).

Even though Mr. Scratch did directly say yes in reply, his answer indicates that, at least, that used to be the case. According to Mr. Scratch, there has been a change of attitude over the last few years. The focus of the continuing committee of officials responsible for human

⁵⁰ *ibid*, p. 17

⁵¹ *ibid*, p.17

rights has now changed to considerations of follow-up from the UN and implementation. Mr.

Scratch continued:

[W]e are learning a great deal, and it is sometimes a very steep curve. I think the rest of the government is learning, too, that you ignore some of these UN treaties at your peril. In my opinion, things will continue to change in the next few years, and these UN treaties will have a big influence on the development of Canadian legislation⁵²

Such a confession from a senior officer of the Justice Department, seem to confirm what a couple of our interviewees have said earlier about the motivation of Canada in being part of the UNCRC - the self image abroad, to be seen as the champions and leaders of human rights, writing for others to do. The good news about Mr. Scratch's statements, however, is the mention of a gradual change in attitude by Canadian authorities towards international conventions. This new attitude could also be summed up in Senator Doyle's words, "...let us call it *a learning attitude* rather than a missionary attitude, has permeated the justice department, and *now we feel we are learning from conventions rather than being the oracle that writes them*; that this is something we can rely on ..."⁵³ (emphasis added).

The reasons offered for this change of attitude, provide useful insights into some new ways of ensuring Canada's future compliance to international treaties. Mr. Scratch offered three reasons for this change of attitude. First, UN Committees, who are monitoring conventions with increasing frequency, are finding problems with Canada. Second, the opportunity given to NGOs to present their own views on the implementation of conventions to UN monitoring committees arms the committees to pose more stringent questions when the

⁵² *ibid*, p. 18

⁵³ *ibid*, p. 18

representatives of Canada appear before them. Third, in the last six or seven years, Canada's appearance before these UN committees is receiving publicity in the media. There is, as Scratch put it, "... a reporter in Geneva who regularly reports on the comments of these committees with respect to Canada's legislation, and I think it is a much bigger factor now that we are having to consider when we develop legislation and when we develop policies."⁵⁴

The records of the four meetings⁵⁵ Canada's representatives had with the UN Committee, when Canada's First Report was considered, clearly testify to the truth in Mr. Scratch's first two reasons. The Canadian delegation did not just get away with it. The Canadian Report was subjected to very close scrutiny, something which is not usually done to Canadian reports to the UN and which the Canadian delegation was not expecting. The UN Committee on the Rights of the Child also made reference to the report of the Committee on Economic, Social and Cultural Rights, which was said to be unusually critical of Canada⁵⁶. Further, the *Concluding observations of the Committee on the Rights of the Child: Canada*⁵⁷, indicate that the Committee really listened to what the Canadian NGOs, which presented their own separate reports, had to say.

⁵⁴ Senate of Canada: *Examination of Bill C-37, An Act to amend the Young Offenders Act and the Criminal Code* Eighth Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue No. 30, Thursday, May 4, 1995, p.18

⁵⁵ See UN Committee on the Rights of the Child, Ninth Session, "Summary Record of the 214th - 217th Meetings Held at Palais des Nations, Geneva", in May 1995, CRC/C/SR.214, 30 May 1995; CRC/C/SR.215, 1 June 1995; CRC/C/SR.216, 1 June 1995; CRC/C/SR.217, 1 June 1995

⁵⁶ The Committee on the Rights of the Child referred to this report when it considered Canada's First Report. See UN Committee on the Rights of the Child *Summary Record of the 214th Meeting Held at Palais des Nations, Geneva, on Wednesday, 24 May 1995, at 10 a.m.* Ninth Session, CRC/C/SR.214, 30 May 1995, pp. 7-8

⁵⁷ UN Committee on the Rights of the Child, Ninth Session, *Consideration of Reports submitted by States Parties under Article 44 of the Convention Concluding observations of the Committee on the Rights of the Child: Canada* CRC/C/15/Add.37, 20 June 1995

In effect, if the UN Committee on the Rights of the Child will do its job properly without favoring any countries, developed or underdeveloped; if NGOs interested in children's issues will seize the new opportunity to send accurate reports to the Committee independent of the State; and, if the media will be drawn into giving some publicity to these reports; then we will see more state parties complying, more effectively, with the terms of the UNCRC. However, the successful implementation of a convention in any country, also depends on the attitude and vigilance of its people. In this regard, the majority of our interviewees do not share the "big brother/sister" or "missionary" attitude. As seen previously, they believe the Convention is equally applicable to the situation of Canadian children, and that more should be done about implementing the Convention in this country. If that is any reflection of the attitude of the Canadian population, then it offers hope for the future of the Convention in Canada.

To the credit of the Canadian government, it should be noted that since its First Report and the UN Committees observations came out, further measures have been taken to make the Convention more of a reality for Canadian children. The next chapter discusses some of these measures and also the impact the Convention has had on the quality of life of children in Canada.

CHAPTER IV

THE CONVENTION AND THE WELL-BEING OF CANADIAN CHILDREN

Introduction

No matter how effective a State Party and NGOs are in ensuring the implementation of the UNCRC, the ultimate measure of how well this was done would be how it impacts on the quality of life of children. This chapter addresses the issue: have the actions of the governments of Canada (federal and provincial) since the ratification of the Convention affected the quality of life of children in this country either positively or negatively? At the end of the last chapter, it was mentioned that since its First Report and the UN Committees observations came out, further measures have been taken to make the Convention more of a reality for children in this country. Before tackling the issue of the Convention and the quality of life of children in this country, it is appropriate to discuss some of these “new” measures. “New”, because these measures consist mainly of efforts to put life in the already existing programs established under the Brighter Futures Plan and Child Development Initiative (CDI). Very few programs have been announced which are unrelated to the earlier program initiatives.

The Childhood and Youth Division (CYD) was created on July 1, 1995 to replace the Children’s Bureau. According to Francois Roberge, Special Assistant to the former Minister of Health, Diane Marleau, the CYD was:

created to become a center of expertise, leadership and coordination within the federal government and the Department of Health for issues, activities and programs concerning children and youth. Its mandate is to monitor and improve

the broad determinants of health and well-being that influence the state of childhood and youth in Canada⁵⁸.

The primary categories of programs within the CYD are (i) planning, coordination and analysis of the CDI, (ii) Partners for Children Fund, a program administered through NGOs for the benefit of international children, (iii) Parent Support Program, (iv) Community Action Program for Children, (v) Canada's Prenatal Nutrition Program, (vi) Children's Mental Health and Youth, (vii) Aboriginal Head Start, and (viii) Family and Child Health with component programs such as Healthy Babies, Breastfeeding Promotion and Childhood Safety. These are all programs under either the Brighter Futures plan or the CDI. Consequently, it could be said that the creation of the CYD to replace the Children's Bureau was only to give life to these programs.

The few new programs are ones aimed at Aboriginal Children. One is the Aboriginal Head Start Initiative. This program, launched in Vancouver on May 29, 1995 by Health Minister Diane Marleau, is an "early intervention strategy which addresses the needs of young Aboriginal children living in urban centres and in large Northern communities"⁵⁹. With a focus on local control, the components of the project are culture and language, education, health promotion, nutrition, social support programs and parental involvement. Another program aimed at Aboriginal children is the First Nations and Inuit Child Care Initiative announced at the First Nation's Child Care Forum on January 26, 1995 by Lloyd Axworthy, former Minister of Human Resources Development, and Ethel Blondin-Andrew, Secretary of

⁵⁸ Francois Roberge, "Children-Related Programs within Health Promotion and Programs Branch, [Health Canada]" in *Children and the Hill: The Pearson Report* Issue No. 3, Winter 1996. Most of the information on the CYD was gleaned from this article.

⁵⁹ Health Canada, *Aboriginal Head Start Initiative*, 1995

State for Training and Youth. Developed in close consultations with Native groups, the Initiative aims at the creation of 4,300 new child care spaces and the improvement of about 1,700 existing spaces, for a total of 6,000 child care spaces in line with services available to the general population⁶⁰. Again "on February 29, 1996, the Honorable Ethel Blondin-Andrew, Secretary of State for Training and Youth, launched a video campaign that promotes good prenatal health for Aboriginal mothers-to-be⁶¹". According to the report, the "Caring Together" video offers guidance for pregnant women on good nutrition and healthy lifestyles encouraging a supportive role for the women's partners. The approaches in the video are said to draw on both Western medicine and Aboriginal health and cultural traditions that have been tested extensively in Native communities.

The Provincial Level

One cannot complete a report on children's issues in Canada without mentioning what is happening at the provincial level. Even though the provinces do not ratify international conventions, the implementation of most international human rights treaties, which Canada is party to, fall within provincial jurisdiction. The UNCRC is one such treaty. In Canada, the provinces/territories have jurisdiction over most children's issues such as welfare and the administration of justice, though the federal government is not entirely excluded. This study was limited to the province of British Columbia (B.C.) due to constraints mentioned in the introductory chapter. All the federal programs, both old and new, discussed earlier equally apply to children in B.C.

⁶⁰ *Children and the Hill: The Pearson Report* Issue No. 3, Winter 1996

⁶¹ *Children and the Hill: The Pearson Report* Issue No. 4, Spring 1996

A good point of departure in this regard is the B.C. portion of Canada's First Report to the UN Committee on the Rights of the Child. This section of the report reveals that the most important impact the CRC has had in the province was in the White Paper released in June 1993 by the B.C. Ministry of Social Services. The White Paper is related to the Child, Family, and Community Service Act. This Act has since passed as Bill 46 through the B.C. Legislature. It effectively replaces the Family and Child Service Act of 1980. Bill 46 provides a framework for providing family support services and for working with families to develop plans for the protection of children in care.

The influence of the Convention in the framing of this Act, particularly the following sections, is readily noticeable: "Introductory Provisions" of Bill 46, particularly Sections 2, "Guiding principles"; Section 3, "Service delivery principles"; and, Section 4, "Best interests of child". These are the principles according to which the Act is to be administered and interpreted. The Act is a result of two separate, but related, extensive community consultations processes began in November 1991 when the Minister of Social Services appointed the Community Panel to review family and child protection legislation. To a great extent, Bill 46 reflects the recommendations made in the Reports of the Community Panel.⁶²

Another product of the Community Panel's work was the creation of the Office of the Child, Youth and Family Advocate in British Columbia. Legislation to that effect, Bill 45, Child, Youth and Family Advocacy Act, was passed in June 1994. One cannot give all the

⁶² The Community Panel produced the Report, *Making Changes: A Place to Start* Report of the Community Panel, Family and Children Services Legislation Review in British Columbia, October 1992. An Aboriginal Committee was formed within the Community Panel to listen to the opinion of Aboriginal communities concerning these same issues. Their Report was, *Liberating Our Children Liberating Our Nations* Report of the Aboriginal Committee, Community Panel, Family and Children's Services Legislation Review in British Columbia, October 1992

credit to the Community Panel for this. The Office of the Ombudsman of British Columbia has been a strong advocate for the establishment of an Office of Child and Youth Ombudsperson in B.C.⁶³ Whatever it is that convinced the government of B.C. to do this, the important thing in the context of this study is that it was heavily influenced by the principles of the UNCRC. The first Child, Youth and Family Advocate of British Columbia took office in 1994⁶⁴. Her functions include: (i) ensuring that the rights and interests of children, youths and their families relating to designated services are protected and advanced and that their views are heard and considered, (ii) ensuring that children, youths, and their families have access to fair, responsive and appropriate complaint and review processes at all stages in the provision of designated services, (iii) providing information and advice to the government and communities about the availability, effectiveness, responsiveness and relevance of designated services, and (iv) promoting and coordinating in communities the establishment of advocacy services for children, youths and their families⁶⁵.

Another issue to the credit of B.C. with respect to the Convention was the Stronger Children - Stronger Families Conference co-sponsored by the Ombudsman Office, B.C., and the University of Victoria in 1994. It was part of the activities to mark the International Year of the Family and was used to highlight both Canada and the international community's obligations as signatories to the UNCRC. The unique thing about this Conference was it

⁶³See discussion paper on this: Office of the Ombudsman of British Columbia, *Advocacy For Children and Youth in British Columbia: an Ombudsman Discussion Paper*, October 29, 1993. The Deputy Ombudsman, Brian Parfitt, was the Chair of the Community Panel. See 1992 Annual Report to the Ombudsman to the Legislative Assembly of the Province of British Columbia p.26. For the role of the Ombudsman herself in urging the government of British Columbia to create such an office see *Ombudsreport* Annual Report of the Ombudsman, Province of British Columbia, 1994, p.3 and 1993, p.8

⁶⁴ *Ombudsreport* Annual Report of the Ombudsman, Province of British Columbia, 1994, p.3

⁶⁵ Bill 45 - 1994, Child, Youth and Family Advocacy Act, p.2

involved children and youth in every aspect. Thus, the conference lived up to its theme of “giving voice” to children and the chance of being heard by all the experts and professionals from all over the world who were present. The conference gave wide publicity to the UNCRC. As a result of this Conference, the federal government, the province of B.C. and UNICEF have jointly established a course on the Convention at the University of Victoria’s School of Child and Youth Care⁶⁶.

An interviewee neatly summed up measures which have been adopted in B.C. as a result of the Convention:

We cannot talk of new legislation passed specifically in response to the Convention, but we can say consideration has been given to the Convention in the passing of new laws. For example, the [B.C.] Report, *Making Changes: A Place to Start*, which led to a white paper and later the ‘Family and Advocacy Law’ gave a lot of consideration to the Convention on the Rights of the Child. The law may not be the exact words as the Convention, but in keeping to the Convention’s requirements that children have a right to be heard gave a lot of weight to that right. Amendments to the Infant’s Act, which allows an emancipated minor to give his/her consent before medical treatment are in keeping to the Convention. The Child Advocate for the City of Victoria is very plugged into the Convention. The Child Advocate in Vancouver is well trained in the Convention and uses it as tool in his work. The Society of Youth and Children has been given money by the Law Foundation to review all B.C. legislation to see if they are in keeping with the Convention. I think a lot of B.C. legislation had those rights in them prior to the Convention but nobody even took time to study to ensure compliance ... Bill 46, the Child, Youth and Family Advocacy Act, were all worked up based on lots of consideration to the Convention.

The Society for Children and Youth of B.C. will be discussed under the section on the children’s problems in the country and the activities of Canadian NGOs in exposing these.

⁶⁶ For a complete list of the outcome of the Conference, see *1994 International Year of the Family Conference on the UN Convention on the Rights of the Child, June 18-23, 1994, University of Victoria*. Woodfall Communications, Vancouver, B.C.

However, the question at the beginning of the chapter still stands, have children in Canada become better-off as a result of these programs or any other actions taken by the governments of Canada since the Canadian ratification of the Convention?

Interviewees were of one accord in their responses to this question. A researcher on the Convention said:

I can only give a general idea. From my observation, there's been a lot of theory and so much more needs to be applied. But in the long term, fruits might be enjoyed. Perhaps it is premature to determine, but according to the available statistics, there's been no improvement in the quality of life of Canadian children - day care, child care, poverty level have all increased. But it's too early to determine what the long term ramifications will be.

An official of a specialized agency puts it this way:

It is difficult to know. We should even put it [the question] this way, has the convention made any difference to the government? How many of our top officials know its contents? Put it in the context of the cutbacks. Do they have the welfare of children in mind? So many people are not even aware of its existence ... We should, however, bear in mind that the convention is a long term project. It is not a quick fix thing, it will take time to realize all its goals.

Another said, "[F]or the curriculum in schools, it is starting to take root. Teachers are beginning to pay more attention to it. We have sold a lot of books [on the convention]..." In the view of one respondent:

I am not aware of any differences the convention has made in the life of children in this country. But some legislation has changed, there's more discussion of children's issues and more and more NGOs are getting involved. In fact, the convention has engendered more lobbying for children's issues. It has great potential for positive effects.

A government official agrees with the previous respondent, "I don't know, but the convention is a positive thing ...". The next respondent's views were not any different:

Yes and no. If we look at the statistics, the answer is no. On the other hand, it is yes, there's been an impact, it's just a matter of time. In the long term, it has beneficial effects especially regarding youth participation, legislation and social

services. But we can already see the beginnings of these - the Children's Bureau programs and funding for initiatives on child rights.

Even though she agrees with the others that the Convention has not yet made an impact on the well-being of children in this country, this respondent was more critical of the federal government:

It has two dimensions. Canada is a common law country and so international agreements do not automatically become part of domestic law ... So the Convention is not part of Canadian domestic law. The convention was ratified by a Cabinet Document, signed by the Governor-General. But it doesn't have the same weight as a Resolution of the House of Commons in its legal application. However, the other dimension is the Canadian government has to implement Article 4 [implementation by states]. The convention is not part of Canadian domestic law. But it doesn't end there. Article 4 demands the government of Canada to give it legal effect. So they could do so. There's a need to have a legislative regulatory implementation. It doesn't stop with ratification. We have for so long presented ourselves as the nice guy, we have presented ourselves as saints and so we can attack others. It gets to a point, and I think it is getting to that point for Canada when we have to show the federal government is not living up to its standards.

One conclusion which could safely be drawn here is that whereas respondents think the convention has great potential in influencing the quality of life of Canadian children, that has not as yet manifested itself. So what are some of the problems currently facing Canadian children?

MAJOR PROBLEMS FACING CANADIAN CHILDREN

Some answers surface as one reviews the role of NGOs interested in children's issues. As mentioned earlier, one of the good things about the UNCRC is that it created a role for

NGOs in all issues pertaining to it. In Canada, NGOs have readily seized this opportunity and are now using the Convention as one of their most important tools to draw attention to children's issues in the country. Reports by NGOs and specialized agencies such as UNICEF have been more apt to draw attention to problems facing Canadian children than those by the government. Hence, this thesis will now turn to reports by Canadian NGOs on children's problems in this country, UNICEF's *The Progress of Nations* reports, and other sources on the attempts to amend the Youth Offenders Act.

Campaign 2000⁶⁷

In a unanimous resolution on November 24, 1989, and in the context of the passing of the UNCRC, the Canadian House of Commons resolved to seek to achieve the goal of eliminating poverty among Canadian children by the year 2000. Exactly two years later, on November 24, 1991, the National and Community Partners of Campaign 2000 declared their commitment to promote and secure the full implementation of this resolution by the House of Commons. Thus, Campaign 2000 is essentially a national movement of about 50 NGOs across the country to build awareness and support for ending child poverty in Canada by the year 2000. On November 24, 1995, the sixth anniversary of the House resolution, Metro Campaign 2000 took the unprecedented step of holding Community Hearings in Metropolitan

⁶⁷ This section relies on information from Campaign 2000's latest report to the UN Committee on the Rights of the Child: *Canada, Child Poverty & The U.N. Convention on the Rights of the Child: A Report to the UN Committee On the Rights of the Child*, Geneva, March, 1996

Toronto on child poverty before a panel from UNICEF with the aim of delivering the concerns, thus expressed, to the UN Committee on the Rights of the Child⁶⁸

The main highlights of the report on the Hearings, which was presented to the UN Committee on the Rights of the Child could be summed up in Campaign 2000's *Child Poverty in Canada: Report Card 1995* and Metro Campaign 2000's *Child Poverty in Metropolitan Toronto: Report Card 1995*. The latter will be presented when discussing children's problems at the provincial level.

⁶⁸ See *Globe and Mail*, "Rights Violated" Saturday, November 25, 1995, p.A10; *Toronto Star*, "One in three Metro Kids on Welfare, report says" November 24, 1995; *Globe and Mail*, "Child Poverty still problem, group reminds Ottawa", November 23, 1995; *Globe and Mail*, "Thousands rally to support day care", November 25, 1995 (national news section)]

Table 1

Child Poverty in Canada: Report Card 1995

Report Card Summary

Report Card 1995 documents changes since 1989 in the indicators and consequences of poverty. Every effort has been made to ensure that this information is accurate using the most recent government data and information

Key

Improvement	+
Situation Worse	-
No Change	NC

Changes Since 1989

Number of poor children

Increased 55% -

Two-parent family poverty

Increased 48% -

Single-parent family poverty

Increased 13% -

Children in families experiencing long-term unemployment

Increased 54% -

Children in families needing social assistance

Increased 69% -

Children in working poor families

Increased 37% -

Median family income

Decreased \$5000 -

Families with incomes of less than \$40,000

Increased 26% -

Consequences For Children

Housing

Increase of 51% in children living in unaffordable rental housing -

Infant Mortality

Improved 29% over 1986 +

Poor children are still 1.6 times as likely to die in infancy as those in wealthy neighborhoods -

Communities with Food Banks

Increased 187% -

School Drop-out

Decreased 182% +

Teen Suicide	
<i>Canada has the third worst rate of teen suicide of twenty-three industrialized countries.</i>	-
<i>Federal Government Support To Low And Modest Income Families With Children</i>	
Job Creation	
<i>Net Increase of 206,000 jobs</i>	+
Decrease of 87,000 full time jobs	-
<i>82% increase in number of involuntary part-time jobs</i>	-
<i>Child Care</i>	
Federal spending for regulated child care capped	NC
<i>Child Support</i>	
No child support guidelines in place	NC
<i>Child Tax Benefit</i>	
Value Decreasing	-
Fewer modest income families will qualify	-
Government spending prevented more child poverty	+
Federal transfers for health, post-secondary education, and social assistance decreased \$3 billion in 1995/96 budget	-
<i>Canada's Record Compared To Other Industrialized Countries</i>	
Expenditures on income security	
<i>Canada spends less than OECD average</i>	-
Canada compared to nine other countries:	
Poverty rate for couples with children	
<i>Canada is second worst</i>	-
Poverty rates for lone-parent households	
<i>Canada is third worst</i>	-

Source: Metro Campaign 2000 *Canada, Child Poverty & The UN Convention on the Rights of the Child: A Report to the UN Committee on the Rights of the Child*, Toronto, March 1996, section C.

The Report Card 1995 sought to answer specific questions, among them: (i) what changes have occurred for children in modest and low income families since 1989; (ii) what are the consequences for children; (iii) what is Canada's record of support to children compared to other industrialized countries; and (iv) what has the federal government done to help low and modest income families with children? The answers which it provides, as shown in the

summary in Table 1 are quite clear. Lots of changes have occurred for children in modest and low income families since 1989 but the sum of it all is that Canadian children have become poorer and their situation worse than before. Except for improvements in Infant Mortality rates and School Drop-out rates, in all other areas such as housing and teen suicide, Canadian children experienced a worsening in their lives. Worse of all, the 187% increase in Food Banks in the country testify to the number of Canadians, including children, who do not have sufficient food to eat. Yet, the federal government's efforts to support low and modest income families with children have either been the same or shown a decrease in the amount of support. The only positive thing which appears in the Report Card is that but for government spending, the child poverty level Canadian children are currently experiencing could have been worse. It is, then, not surprising that compared to its fellow industrialized countries, Canada is not among the best in its record of support for children.

It should be noted, however, that this is not the first report that Campaign 2000 has submitted to the UN Committee on the Rights of the Child. The Child Poverty Action Group of Campaign 2000 on May 19, 1995 addressed a letter to the Committee in response to the First Canadian Report on the Convention. In this letter, Campaign 2000 stated clearly its concerns about the increasing child poverty, which affects 1 in 5 Canadian children. Emphasis was also given to Bill C-76 and the new Canada Health and Social Transfer (CHST), which removes most standards and conditions from programs previously funded under the Canada Assistance Plan (CAP) such as welfare, child care and children's services and Child Tax Benefits, the partial indexing of which results in the real value of child benefits

falling steadily over the coming years. Campaign 2000 is, however, not the only Canadian NGO which openly expresses its concern about the plight of Canadian children.

Canadian Coalition on the Rights of the Child:

The Coalition, like Campaign 2000 has been unequivocal in its expression of concern about children's issues both in Canada and internationally. It comprises more than 50 national and international NGOs, which have come together to protect and promote the rights of children at home and abroad. Apart from the issue of child poverty, which we will not go into again because of the details we have already seen above, it also criticized the First Canadian Report on several other grounds including⁶⁹:

- (a) The Canadian Action Plan and Report failed to set clear and measurable goals for implementing the Convention on the Rights of the Child
- (b) The juvenile justice system, which has not seen any overall improvement in law or administration as a result of the Convention.
- (c) Internationally, the Coalition's report criticized Canada's foreign policy for lacking a clear statement of direction, especially with respect to children. Besides, the amount of foreign aid has fallen in recent years and also shifted from meeting basic needs toward supporting infrastructure programs.

⁶⁹ Canadian Coalition for the Rights of Children, *UN Convention on the Rights of the Child: The Canadian NGO Response*, September, 1994

Inter-Church Committee for Refugees:

This is an:

...ecumenical coalition of ten national Christian churches, with the mandate to coordinate and support the member churches in their work with refugees. The Committee realizes this mandate principally through the monitoring and analysis of Canadian government and international policy developments with respect to refugees.⁷⁰

It was also critical to the First Canadian Report to the Committee with respect to issues affecting refugees and other immigrants (non-citizens) in Canada. According to their report, despite the Canadian Charter on Rights and Freedoms, the rights of refugees and other non-Canadian citizens are not respected by immigration authorities. Further, the report noted that family considerations are not applied in cases involving immigrants especially in cases of expulsion and family reunion. To add insult to injury, immigration officials are not even aware of the existence of the Convention, let alone implement it in regards to immigrants. Consequently, immigrant children are denied the benefits of the CRC.

Discussion

That the UN Committee on the Rights of the Child took these Canadian NGOs criticisms seriously, could be seen in its concluding observations after considering Canada's First Report⁷¹. Most of the issues the Committee listed as being their principal concern with respect to the situation of children in Canada were those mentioned by the NGOs above: child

⁷⁰ Inter-Church Committee for Refugees, *Brief to the Committee on the Rights of the Child on the Situation of Children of Non-citizens in Canada* November 1994, p.1

⁷¹ UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention Concluding observations of the Committee on the Rights of the Child: Canada* CRC/C/15/Add.37, 20 June 1995.

poverty, the rights of immigrant children, child abuse and violence, teenage suicide and aboriginal families (1994: 2-4). Among the Committee's recommendations were the integration of the convention into the curricula for professional groups dealing with children such as judges, lawyers, immigration officers, peace-keepers and teachers. Also listed, was the need to take immediate steps to tackle the problem of child poverty and to use the principles and provisions of the Convention as a framework for the program of international development assistance. These were some of the recommendations made by one or the other of the Canadian NGOs.

The Committee on the Rights of the Child, as noted earlier, is somehow seen as an international "Supreme Court" on children's issues. It arrived at its conclusions only after they had vigorously questioned and given the delegation, which presented Canada's report, the opportunity to respond to the criticisms and concerns at four meetings.⁷² Consequently, it could be said that the case of the Canadian NGOs has been substantiated. Secondly, it is worth taking into consideration the fact that such UN Committees are very cautious in their use of language, particularly with respect to industrialized countries, their main financiers.⁷³ Hence, to come up with such critical observations against Canada, the leader of human rights in the international arena, is something to ponder over. As seen earlier, it seems the

⁷² See "Summary Record of the 214th, 215th, 216th and 217th Meetings" of the Committee on the Rights of the Child, CRC/C/SR.214, 30 May 1995; CRC/C/SR.215, 1 June 1995; CRC/C/SR.216, 1 June 1995; and CRC/C/SR.217, 1 June 1995

⁷³ Mr. Thomas Hammarberg, a member of the Committee on the Rights of the Child, was reported as stating at a Seminar that the Committee emphasizes its independence and neutrality and avoids an accusatory style. Since all implementation activity has to be undertaken at state or sub-state level, persuasion is the Committee's most practicable strategy. Statement in Maggie Black, *Monitoring the Rights of Children: Summary Report of Innocenti Global Seminar, 23 May - 1 June 1994, Florence, Italy* UNICEF International Child Development Centre, Florence, Italy, 1994, p.18

international community is at the dawn of the era when UN Committees are getting tough on industrialized countries.

What is yet to be seen is the Committee's response to the latest report sent to it by Campaign 2000. According to Article 44, the first report is expected within two years upon the entry into force of the Convention for the State Party concerned and, thereafter, every five years. It is just about two years since the first reports (by both Canada and the NGOs) were sent to the Committee and one wonders at the provisions of the Convention under which Campaign 2000's second report has been sent. Though it should be stated that this does not in any way reduce the validity of the issues therein presented.

YOUNG OFFENDERS ACT (YOA)

Another sore spot in the issue of Canada and its implementation of the UNCRC is Bill C-37 which amended the Criminal Code and the Young Offenders Act (YOA), the principal piece of legislation governing youth justice in this country. The main provisions of Bill C-37, which came into force on December 1, 1995, are as follows: (i) increase sentences for youths convicted of first and second degree murder from the current maximum of five years to ten and seven years, respectively, (ii) require 16 and 17-year-olds charged with serious personal injury offenses, be transferred to adult court, unless the youth can demonstrate that public protection and rehabilitation can be achieved in the youth justice system, (iii) extend the time that 16 and 17-year-old offenders convicted of murder in adult court must serve before consideration for parole, (iv) improve information-sharing between professional and selected

members of the public when public safety is at risk and (v) provide for rehabilitation and treatment of young offenders in the community under appropriate circumstances⁷⁴

Supporters of the CRC have been one of the most vehement critics of this piece of legislation. Even before this new Bill, two reservations were made when Canada ratified the Convention. One was on Article 37(c), which states, among others, that "... a child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...". This has been an issue of great concern to child advocates using the Convention. Thus, Bill C-37 was seen as a further retrogression of Canada in the issue of children before the penal system. Senator Pearson was one of the most vocal critiques of this new bill. Her first action on the issue was to set in motion a private comparative study on the YOA, Bill C-37 and the UNCRC⁷⁵. The findings of this research constituted the basis of her contributions when the Bill was discussed by the Standing Senate Committee on Legal and Constitutional Affairs on May 4, 1995. The "flags that the went up" from the analysis, according to the Honorable Senator, were primarily the issues of presumptive transfer and its implications, and privacy. Apart from opening the door for more youths to be transferred to adult facilities, the onus is now on the youth to prove that his retention in the youth facility is in his own interest and not a threat to the public safety. Further, "the child's defense lawyer must reveal

⁷⁴ The Senate of Canada *Children and the Hill: The Pearson Report* (Senator Pearson's Report on legislation of concern to children in Parliament and federal government initiatives and programs for children) Reports # 2, Fall 1995 and # 3, Winter 1996]

⁷⁵ Senator Pearson's Office *Comparative Analysis of the YOA, Bill C-37 and the UNCRC*, April 27, 1995

to the judge some of the case that will be used later". This is seen as an "aberration ... of the presumption of innocence"⁷⁶.

Also, the question of transfer brings in more complications which may possibly result in delays even though the Convention requires the shortest possible delay. The question of transfer also raises the issue of "reverse onus", whereby it is not the defendant who has to prove why he/she should not be transferred. Also, is the issue of privacy arises because of the sharing of information, particularly with schools, which it is feared might not be done in the child's best interest. In another speech before the same Committee on June 21, 1995, Senator Pearson again criticized Bill C-37 as concentrating too much on rehabilitation instead of on primary and secondary prevention and argued strongly for more resources to carry out primary prevention at the community level⁷⁷. Another Senator drew attention to the fact that since the next stage of the reform of the YOA is the evaluation stage, then the Bill C-37 amendments amount to taking action before seeing the results of analysis and evaluation⁷⁸. This question should then be posed, what were the motivations for the Bill C-37 amendments to the YOA?

Some think Bill C-37 was passed by the government just to satisfy law-and-order groups agitating for more punitive measures against juvenile offenders. According to Lynne

⁷⁶ Senate of Canada, *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs: Eighth Proceedins on: Examination of Bill C-37, an Act to amend the Young Offenders Act and the Criminal Code*, Thursday, May 4, 1995, Issue No. 30, pp. 6-7

⁷⁷ Hansard, *Debates of the Senate* 1st Session, 35th Parliament, Volume 135, No. 99, pp. 1859-1861

⁷⁸ The Bill C-37 amendments constitute the first phase of a two-phase strategy undertaken by the federal government to reform the youth justice system. The second phase consists of a comprehensive review of the youth justice system, youth offending, and the operation an implementation of the YOA by the House of Commons Standing Committee on Justice and Legal Affairs, See *Children and the Hill*, no.3 Winter 1996

Melcombe (1995)⁷⁹, law and order groups such as Crime, Responsibility , and Youth (CRY), Tri-City Citizens for Justice and Youth are “sweeping the country, focusing on heinous acts of youthful violence and demanding that governments curtail youth crime by legislating get-tough reforms to the YOA”(p. 9). Their message is “[Y]outh homicide rates are spiraling out of control. Under the YOA, fewer kids are doing time for crime. Incarceration is an effective crime deterrent “(p.9). The public has bought this message to the extent that “citizen groups, police officers, and federal Reform politicians have joined the fray”. According to Melcombe, it was pressure from citizen groups across the country which was largely responsible for Justice Minister Allan Rock’s introduction of Bill C-37.

Drawing on recent research published in the July 1994 issue of the *Canadian Journal of Criminology*, which was devoted to evaluating ten years of implementing the YOA, Melcombe notes that the law-and-order groups’ message is false:

Youth homicide rates have been constant for 20 years. Youth custody rates have doubled since 1986, when the YOA was fully phased in, replacing the 1908 Juvenile Delinquency Act. And research shows unequivocally that increased incarceration leads to more - not less - crime (p.9).

Still, it is not hard to understand the actions of these law and order groups. CRY is led by Chuck Cadman whose son, Jesse, was murdered by three youths aged 16, 19, and 20. This incident actually led to the formation of CRY. Tri-City Citizens for Justice and Youth was formed after a 31 year-old man from Coquitlam, Graham Niven, was kicked to death by two youths aged 15 and 18. As Melcombe put it, these people have lost someone dear, they want justice, and they feel that the YOA deprives them of that. Steve Carpenter, who became very

⁷⁹ Lynne Melcombe “A question of Balance: Law and order groups’ simplistic solutions won’t solve the complex issue of youth crime” in *Georgia Straight*, March 10-17, 1995 pp. 9-11, 13-14

popular in the media, started campaigning for more punitive measures against criminals after her daughter, Melanie, was kidnapped and murdered. So desire for justice, based on a motive of revenge or as a result of fear, were the main causes for the Bill C-37 amendments to the YOA.

However, as stated earlier, both the message and solutions of these groups are based on inaccuracies and misperceptions. This is what brings the irony into this whole Bill C-37 issue. The research and analysis of the youth justice system is being done after the amendments, based on false information, have already been effected. As stated earlier, Bill C-37 came into effect on December 1, 1995. Thus, even though the Bill gained routine approval in the Senate, the Standing Senate Committee on Legal and Constitutional Affairs in its report on Bill C-37 stated⁸⁰:

Several witnesses maintained that the legitimate public concerns about youth violence must be met with accurate information about actual crime rates and about the operation of the youth justice system. Your Committee believes that common misperceptions concerning the incidence of violent youth crime, in particular, as well as the range of legal consequences, serve neither young persons nor the public at large. Those misperceptions may foster unfounded fears and demands for increasingly punitive measures that may do little to address the actual causes of violent youth crime ...

Finally, Bill C-37 proposes fundamental changes to the YOA, in advance of a second or later phase of study that would assess the adequacy of the legislative scheme. Like many witnesses who appeared on Bill C-37, some Committee members question the wisdom of this reaction to public concerns prior to a broad-based review that may or may not justify some of the measures proposed in Bill C-37. In effect, the Senate is being asked to support reform that may further erode the spirit and purpose of the YOA, in the absence of a full and meaningful evaluation of the existing system. Consequently, your Committee seeks a moratorium on further amendments to the YOA, pending the Minister of Justice's promised second phase review so that Parliament is not, once again, faced with a piece-meal approach to legislative reform with little or no knowledge of the need for or possible of proposed changes.

⁸⁰ The Senate of Canada *The Standing Senate Committee on Legal and Constitutional Affairs, Eleventh Report*, Tuesday June 20, 1995 found in *The Pearson Report*, no.2, Fall 1995.]

NATIVE CHILDREN

Four Native councils/groups - Assembly of First Nations, Native Council of Canada, Native Women's Association of Canada and Metis National Council - also wrote their own reports on Canada's response to the UN Convention⁸¹. These are four separate but very similar reports except for the Assembly of First Nation's Report, which differs only in its presentation of a comprehensive national plan for the solution of the problems. All the reports agree that very little has been done for native children as a result of Canada's ratification of the Convention. According to the Metis National Council, their "... citizens have not [even] been informed about the Convention or its contents ..."⁸². Consequently, the situation of native children has not been impacted by the Convention. Aboriginal children fare worse in all children's data in the country: they have the highest rates for mortality, poverty, suicide, street children, fetal alcohol syndrome, drug abuse, violence, school drop out and the worse rates for all other social indicators. So bad is the situation that the Metis National Council (MNC) stated:

Conditions in most Northern communities disgrace Canada because those communities lack even the most basic needs such as adequate food, clothing, and shelter. Consequently, our children and Elders suffer diseases that could easily be prevented if there was (sic) appropriate resources to meet their basic needs. Too often, those same communities are powerless to respond to disease and illness because of inadequate and inappropriate resources (MNC, 1993, p.14)

⁸¹ Metis National Council *Report on the United Nations Convention on the Rights of the Child*, June 24, 1993; Jim Albert, *Report by the Native Council of Canada on Canada's Response to the UN Convention the Rights of the Child*, The Native Council of Canada, July 1993; Teressa Nahanee, *Convention on the Rights of the Child: 1993 Report of the Native Women's Association of Canada*, Native Women's Association of Canada, May 12, 1993 and Office of the National Chief, Assembly of First Nations, *National Strategy on First Nations Child and Family Wellness*, First Nations and Family Services Representatives, March 1993.

⁸² Metis National Council *Report on the United Nations Convention on the Rights of the Child*, June 24, 1993, p.2

All the other Canadian NGO reports considered above, except the one from the Inter-Church Committee for Refugees, which did not deal with native issues, agreed with the assertions of the Native groups. Even though the CCRC report did not address concerns of Aboriginal Canadians, it went out of its way to point out “the gravity of the problems facing Aboriginal children, especially with respect to poverty, poor health, drug abuse, domestic violence and suicide”. The report stated that Aboriginal children experience a “... disproportionate incidence of problems ... relative to other Canadian children” (CCRC, Report to the UN Committee on the Rights of the Child, 1994, p.1).

As noted previously, Campaign 2000’s second report to the UN Committee on the Rights of the Child consisted of its own reports on poverty and as well as submissions made at the Community Hearing it organized. One of the submissions was by Kenn Richard, Executive Director of the Native Child and Family Services of Toronto and Director, Defense of Children International (Canada). His submission contains relevant statistics which give a sharper picture of the native children’s situation:

... the Native population is extremely young. 58% of Native people are under age twenty four and almost 40% are under 15 years old ... Today in Metro Toronto a Native child has the greatest chance of being removed from her home by the state than any other child. She is five times more likely to die before the age of 16 and has 9 times the suicide rate of the national average for the age group 10 to 14. She is not likely to finish school and her brother, according to the Federal government’s own Human Rights Agency, has a greater chance of going to jail than in graduating from a university. In one study, from Saskatchewan, a Native boy turning sixteen in 1976 had a 70% chance of at least one stay in jail by the age 25. In Metro Toronto, Native youth represent 20% of the street youth population despite being less than 2% of the over-all youth population.⁸³

⁸³ Kenn Richard “Perspectives on Urban Native Child Poverty, Policy Developments, and Children’s Rights.” in Metro Campaign 2000 Report to the UN Committee on the Rights of the Child, p. J. Richard acknowledges that his statistics were gleaned from a number of sources most notably from an unpublished document by Prof. Wayne Warry titled “Ontario’s First People: Native Children” commissioned by the Child, Youth, and Family Policy Research Center, n.d.

Table 2, below, shows yet another set of statistics which show the reduced life-chances for aboriginal children. Though most of it applies to all Natives, it does not exclude children. As the quote above, from Ken Richard, indicates, 58% of the Native population is under age 24 and almost 40% are under 15 years old.

Table 2
First Nations Versus Canada: A Statistical Comparison

Life Expectancy At Birth

Status Indian male	62 years (1981)
Canadian male	72 years (1981)
Status Indian female	69 years (1981)
Canadian female	79 years (1981)
Inuit	
Labrador	60 years (1971 -1980)
Northern Quebec	62 years (1971 -1981)
Northwestern Territories	66 years (1978 -1982)

Infant Mortality rate (per 1,000 births)

Status Indians	22 (1981)	17 (1986)
Inuit	38 (1981)	28 (1986)
All Canadians	10 (1981)	8 (1986)

*Dwellings Without Central Heating (%
Of Total Dwellings) - 1986*

Status Indians (on reserve)	28%
Status Indians (off reserve)	9%
Inuit	17%
Canada	5%

Employed

Status Indians (on reserve)	28%
Status Indians (off reserve)	37%
Inuit	40%
Metis	39%
Canada	60%

Income from government transfer

*payments (such as family allowance,
unemployment and cash welfare)*

Status Indians (on reserve)	39% (1980)	48% (1985)
Status Indians (off reserve)	25% (1980)	41% (1985)
Inuit	22% (1980)	26% (1985)
Canada	16% (1980)	20% (1985)

*Selected Causes of Death (per 100,000
population)*

Accidents, poisoning and violence:

Status Indians	248 (1976)	174 (1983)
All Canadians	67 (1976)	58 (1983)

Infections and parasitic diseases:

Status Indians	18 (1976)	7 (1983)
All Canadians	4 (1976)	4 (1983)

Suicide:

Status Indians	43 (1981)	34 (1986)
Inuit (NWT)	38 (1981)	54 (1983)
All Canadians	14 (1981)	15 (1986)

Violent Deaths:

Status Indians	157 (1986)
Inuit (NWT)	173 (1986)
All Canadians	54 (1986)

Source: Zimmerman 1992, pp. 412-414.⁸⁴

The House of Commons Standing Committee on Health in a report, *Towards Holistic Wellness: The Aboriginal Peoples*, tabled on July 4, 1995, found that in spite of numerous studies and government strategies, Aboriginal people continue to be one of the most needy populations in the country.⁸⁵ The report on Aboriginal Justice, recently released by the Royal Commission on Aboriginal People, catalogues, also, the desolate situation of Aboriginal

⁸⁴ Susan Zimmerman, "'The revolving door of Despair': Aboriginal involvement in the Criminal Justice System", in *University of British Columbia Law Review* Special Edition on Aboriginal Justice 1992, pp. 367-426. Zimmerman acknowledges in a footnote that these statistics were taken from *Unfinished Business: An Agenda for All Canadians in the 1990s - Second Report of the Standing Committee on Aboriginal Affairs*, March 1990, Appendix C and footnotes thereto.

⁸⁵ *Children and the Hill: The Pearson Report*, nr. 2, Fall 1995

children.⁸⁶ Clearly, the conditions of the Native population are about the worst in the country.

What this tells us is the big disparity between social groups in Canada and goes a long way to prove that all is not well with Canadian children, even though a few may have their basic survival needs catered for well above the national average. In conclusion, we turn again to Kenn Richard:

[T]he above flies in the face of the UN report that states that Canada is, in reference to quality of life measures, one of the best places to live in the world. Life for the Native child relates more closely to children in the developing world than to any North American ideal (1995, p. J).

Like the Brighter Futures and Child Development Initiative programs, it is too early to determine the impact all the recent Native children specific initiatives announced by the federal government will have on the situation of native children. The above information, as dismal as it is, presents their current situation. The reports of all the Native groups⁸⁷ lamented the government's decision to either cut or withdraw its funding for the publication of Native newspapers, which promoted Native culture and language. Culture and language represent one component of the Head Start Initiative, and might have a much more impact if this decision is rescinded. But to echo Kenn Richard's concerns about this program, the question could be asked, can one or just a couple of programs substantially alter the current reality of Aboriginal children?

⁸⁶ Royal Commission on Aboriginal Peoples *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, February 1996.

⁸⁷ See footnote 53

PROBLEMS AT THE PROVINCIAL LEVEL

NGOs at the provincial level have also been active in drawing attention to the problems of children. In B.C., they have, additionally, been active in finding ways and means of tackling some of these problems. One of the numerous NGOs who distinguished themselves in this respect, is the Society for Children and Youth of B.C. (SCY). The Society is “an organization of volunteers from a wide variety of fields such as Law, Health, Education, Child Development, Social Services, Urban Design and Planning, Recreation and Business” whose purpose is “to advocate for the well-being of children and youth in B.C.”⁸⁸. Formed in 1974, before the idea of the Convention, the SCY, in the words of the Executive Director, Valerie Fronczek, “found the Convention as a useful advocacy tool for children and adopted it for its work”. Among some of their activities using the Convention are the Rights Awareness Project (RAP) and Legal Research/Education. The RAP is a two-year project aimed at promoting awareness of the UN Convention in British Columbia. Phase I of this project started with a survey of 750 child and youth serving organizations in B.C. to get a sense of the level of awareness of and use of the Convention.

The results showed that the CRC is relatively unknown in B.C., even to those serving children, youth and families. Only 17% of the organizations surveyed had copies of the Convention prior to the survey, 68% did not, and 15% were unsure if they had copies of the Convention. Indeed, if “many service providers are not even aware of the Convention, if others know about the Convention but don’t have copies of it, they obviously can’t be using

⁸⁸ *Society for Children and Youth of B.C.*, an information brochure of the SCY

the Convention as a framework for their work”⁸⁹. As the survey concluded, it “appears that the Convention, in its over five years of existence, has not been widely disseminated or publicized in B.C.” (SCY, Rights Awareness Project, 1995, p.2).

The SCY has subsequently developed kits for the promotion and implementation of the Convention focusing on the four areas indicated in the survey process as needing more attention: child abuse and neglect, juvenile justice, children’s play and recreation and the child’s right to be heard. Phase II of the RAP started in 1996 with one of the most important aspects being the conduction of an analysis of legislation governing services to children and its compliance with the Convention. The purpose of this analysis is to research and analyze the legal rights of children in British Columbia, and make this information accessible to service providers in key sectors of the child serving system. This is still in progress and like all the other ventures by the federal and provincial governments and other NGOs, their impact on the well-being of children can only be measured with time.

The successful attempt of B.C. in passing two pieces of legislation, Bills 45 and 46, which were heavily influenced by the Convention was described earlier. However, not all children’s issues, nor for that matter Native children’s issues in B.C., can be completely resolved by two pieces of legislation. In the first place, these two pieces of legislation benefit mainly children in designated services⁹⁰ than any others. What about other children not in such a situation? The Ombudsman’s office is quite concerned about this limited jurisdiction of the Child Advocate describing it as “counterproductive to the intent and spirit of the child

⁸⁹ SCY Rights Awareness Project *Awareness and use of the CRC among child and youth serving organizations in B.C.*, July 1995, p. 2

⁹⁰ That is children in care of the state. Such services are administered by the Ministry of Social Services.

advocacy legislation and incompatible with what is meant by an independent officer”.⁹¹ With respect to Aboriginal children, for example, whatever solutions these legislative initiatives may provide constitute only the tip of the iceberg in regard to the stark realities facing them. As noted earlier, the B.C. Report, *Liberating Our Children Liberating Our Nation* documents these so well. However, the influence of the Convention on these two B.C. legislations mark a very good beginning for the Convention in B.C. It should also be stated that having a good piece of legislation is one thing and putting it into practice is another. Assessments over the next couple of years would have more to say about the practical benefits children in B.C. have derived from these pieces of legislation and the offices created as a result.

The B.C. Office of the Ombudsman has also championed the cause of children. This study has already described some of their efforts in the successful passage of Bills 45 and 46. The Ombudsman’s Office has, however, not rested on its oars because of these successes. As far back as November 1990, the Ombudsman’s Office released *Public Report No. 22 - Public Services to Children, Youth and their Families in British Columbia: the Need for Integration*, which highlights some of the peculiar problems faced by children and families of B.C. in their effort to avail themselves of provincial services for children⁹². The fragmentation of children’s services among several ministries; the lack of integrated service planning; and the frustrations many families, young people and service providers experience when they attempt to put together an integrated service plan, were the main problems highlighted. The government responded by establishing the Child and Youth Secretariat, a committee of deputy

⁹¹ Ombudsreport, Annual Report of the Ombudsman, 1994, p.3

⁹² Annual Report of the Ombudsman, 1992, pp. 101-102; and 1994, p. 11

ministers and staff from those ministries that provide the majority of services for children, youth and their families, to review their services. Yet still, these services remain fragmented.

The Ombudsman has since then, in her annual reports, not ceased to draw the government's attention to the need for, what it terms, a "one-stop shopping" for children's services.

The report of the Gove Inquiry into Child Protection in British Columbia is another indication that in spite of all the efforts being made in the Province to implement the Convention, all is not well with B.C.'s children. The Honorable Judge Thomas Gove was appointed as Commissioner to inquire into, report and make recommendations on the adequacy of services, policies and practices of the Ministry of Social Services in the area of child protection. This inquiry was initiated with specific reference to Matthew John Vaudreuil, a five and a half year old boy who died in Vancouver on July 9, 1992 and whose mother, Verna Vaudreuil, two years later pled guilty to his manslaughter. The two-volume report⁹³ gave a devastating account of child protection in B.C. The Inquiry concluded that even though the Ministry's services were to be provided to Matthew, the services were instead provided to his mother and that the other inadequacies in the Ministry's child protection system contributed to Matthew's death. Besides, the Inquiry found that Matthew's story was not unique, but common to other B.C. children. Like the annual reports of the Ombudsman, the Inquiry also complained about the fragmented and uncoordinated nature of B.C.'s child protection system. The major aim of the CRC is for states to put children at the center of their priorities. In this regard, the findings of the Gove report do not give a good testimony of B.C.'s effort to protect its children.

⁹³ Report of the Gove Inquiry into Child Protection in British Columbia, Volume 1, *Matthew's Story*; and Volume 2, *Matthew's Legacy*, November 1995

It is, however, not only Canadian organizations which have focused on children's problems in this country. Besides the Committee on the Rights of the Child, UNICEF has also given some attention to problems facing children in this country. In *The Progress of Nations* report, UNICEF significantly corroborates the concerns of Canadian groups about children's problems in the country. Further, the Canadian NGO statistics as seen earlier are better understood when put in the Context of statistics from Canada's peers in the industrialized world. *The Progress of Nations* report offers the opportunity for such a comparison.

THE PROGRESS OF NATIONS: CANADA AND ITS PEERS

In chapter two, UNICEF's *The Progress of Nations* report was discussed extensively. In this section, some of the aspects of *The Progress of Nations* reports which apply specifically to Canada will be highlighted. On the whole, Canada, like most other industrialized nations, does not fare badly on the various indicators of survival, nutrition, health, education, family planning and progress for women. Table 3 shows Canada's performance on selected social indicators. For most of these, Canada performs better than the World Summit target and far better than the

Table 3
Canada's Performance on Selected Social Indicators

	Survival U5MR (per 1000 live births)	Health % of children vaccinated against measles	Education % of children reaching grade five	Progress of Women % of married women who use family planning
Canada	8	85	96	73
Group Average	11	80	96	72
Canada's Rank in Group	4	19	10	12
World Summit Goal	70	90*	80	100^
World Average	97	77	68	57

*The World Summit target is 90% reduction in measles cases and 95% reduction in measles deaths.

^ Family Planing education and services made available to all couples.

Source: UNICEF *The Progress of Nations* New York, 1993, 1994, 1995

World average. Polio has been eradicated. In terms of Under Five Mortality Rate (U5MR), Canada attained the World Summit year 2000 goal of a rate of 70 per 1000 as far back as 1950. Today in Canada, there is hardly any difference between the number of male and female children who attend school. In fact, as Table 4 shows, Canada's performance even exceeds the rate expected of it. That is, its National Performance Gap (NPG) for U5MR in 1993 was +4 and for the percentage of children reaching grade 5 in 1991, it was +1.

Table 4**Canada's National Performance Gap (NPG) (Survival and Education)**

GNP per capita \$1993	Survival			Education		
	U5MR(per 1000 live births)			% of Children reaching Grade 5		
	Actual	Expected	Difference	Actual	Expected	Difference
20670	8	12	+4	NA	NA	NA
per capita \$1991						
21260	8	9	+1	96	95	+1

Source: UNICEF *The Progress of Nations* New York, 1993 and 1995

DISCUSSION

On the whole, Canada, like most other industrialized nations, does not fare badly on the various indicators of survival, nutrition, health, education, family planning and progress for women. Canada's performance in relation to the various indicators is so good that it is little wonder that the State of the World's Children's Report for 1995 that Canada is the best place to live in the world in reference to the quality of life measures.

The big question, however, is do such national averages reflect the actual situation of all children in Canada? The study did not investigate the regional and gender disparities involved because of the constraints of this study. However, Table 1 indicate, most of the children's problems listed characterize people from poor families, representing the lowest socio-economic stratum in Canada. The most severely affected in this class are single mothers with children. Perhaps, the most disadvantaged social group in Canada, however, are First Nations people, including their children. For any quality of life indicator one can think of, the First

Nations and their children, have rates which are several times worse than the rest of the country.

Table 2 gives a comparative picture between the rates for the First Nations and the rest of Canada for some social indicators. As mentioned earlier, the Canadian average for U5MR has exceeded the standard expected of it, having reached the Summit year 2000 goal of a rate of 70 per 1000 in 1950. At 8 deaths per 1000 live births in 1993, Canada had a positive performance gap of +1. In 1986, the infant mortality rate for the whole of Canada was 8 per 1000 births, for Status Indians and Inuit, it was 17 and 28 respectively. For causes of deaths per 100,000 population as related to accidents, poisoning and violence, whereas the rate for the whole of Canada is 58, for Status Indians it is 174. With respect to causes of death due to infections and parasitic diseases, the rate for Canada is 58, and that of Native Indians, 7; in regards to suicide, all Canada is 15, Status Indian 34 and for the Inuit in the North Western Territories, it is 54; in terms of violent deaths, whereas all Canadians have a rate of 54, that for Status Indians is 157, and for the Inuit, it is 173. In fact, for all the social indicators, the story is the same: the plight of Natives and Native children is several times worse than for the rest of the country. In the light of all these, this study agrees with the conclusion of Kenn Richard (1995, p.J), Executive Director of the Native Child and Family Services of Toronto and Director, Defense of Children International (Canada), that life for the Native child relates more closely to children in the developing world than to any other North American ideal. Indeed, as he pointed out, the realities of native children's lives, flies in the face of the UN report that Canada is, in reference to quality of life measures, one of the best places to live in the world.

What about Canada's performance in relation to its peers, the industrialized countries?

The industrialized nations, including Canada, have their peculiar pressures which, according to *The Progress of Nations*, "devalue children" (1993:43). Prominent among children's problems listed in the industrialized countries include child poverty, so severe that the basic needs of nutrition, health care and primary education are not met, rise in school drop out rates and underperformance, physical and sexual abuse of children, teenage violence, suicide and drug abuse. In the US, child poverty has increased from 17% in 1970 to 20% in 1993. The poverty line is defined here as family income below 40% of median national income, after taking into account the effects of tax and benefit policies. As shown on Table 5, Canada, in the mid 1980s, comes second with about 10% of children below national poverty lines. This has increased to 20% in 1995, according to the Campaign 2000 figures seen earlier. In regards to teenage (15-19) suicide, *The Progress of Nations* reports that the incidence has increased significantly in Canada. Table 6 shows that Canada places second among the industrialized nations with the highest rates of 10 or more per 100,000.

Table 5
Child Poverty
Percentage Of Children Living Below The Poverty Line
In The Mid- 1980s.

	<u>% living below poverty line</u>	
United States	14.7 (1979)	20.4 (1986)
Canada	10.2 (1981)	9.3 (1987)
Australia	8.6 (1981)	9.0 (1985)
United Kingdom	NA	7.4 (1986)
France	4.7 (1979)	4.6 (1984)
Netherlands	4.0 (1983)	3.8 (1987)
Germany	1.3 (1981)	2.8 (1984)
Sweden	2.1 (1981)	1.6 (1987)

Source: *The Progress of Nations*, 1994, p.43.

Table 6
Teenage Suicide
Suicide of young people aged 15-19, annual number and
rate (per 100,000 in age group)

Current rate higher than 10

	Rate per 100,000		No.
	1970	1991	1991
New Zealand	5.8	15.7	45
Canada	7.0	13.5	253
Norway	1.3	13.4	41
United States	5.9	11.1	1979
Australia	5.5	10.5	143
Austria	13.4	10.2	52

Source: WHO unpublished data in *The Progress of Nations*, 1994, p. 43

Again, Canada and the US lead the industrialized nations in annual deaths of children and youth who are victims of murder as shown in Table 7:

Table 7
Murder
Annual deaths by homicide per 100,000
aged 15-24

	Number	<u>Rate per 100,000</u>
USA	5718	15.3
Canada	121	3.1
Italy	179	1.9
Norway	9	1.4
Spain	93	1.4
Switzerland	12	1.3
Sweden	13	1.1
Denmark	8	1.0
Netherlands	21	0.9
UK	80	0.9
France	59	0.7
Japan	73	0.4

Source: *The Progress of Nations*, 1993, p.45.

Table 8
The Aid Record
Proportions
ODA as % of donor nations' GNP,
1992 and 1993

	<u>% 1992</u>	<u>% 1993</u>
Denmark	1.04	0.97
Norway	1.11	0.89
Sweden	1.05	0.82
Netherlands	0.88	0.80
France	0.61	0.61
Canada	0.44	0.41
Belgium	0.40	0.38
Finland	0.55	0.37
Germany	0.38	0.37
Luxembourg	0.26	0.35
Portugal	0.41	0.32
Australia	0.32	0.31
Switzerland	0.46	0.31
Austria	0.32	0.30
Japan	0.32	0.29
UK	0.31	0.28
Italy	0.35	0.27
Spain	0.28	0.23
New Zealand	0.24	0.18
Ireland	0.18	0.16
United States	0.18	0.15
 Average	 0.34	 0.30

Sources: OECD, *Development Cooperation* 1994, 1995.
 GNP World Bank, *The World Bank Atlas*, 1995, 1994 in
The Progress of Nations, 1995, p.46

Part of the commitment industrialized nations made in respect of both the Summit Declarations and the UNCRC is to assist developing nations in meeting the goals contained in both documents. Besides, the industrialized nations accepted, about 25 years ago, to give aid

to the developing countries up to a target figure of 0.7% of their GNP. Such aid, commonly measured by the official development assistance (ODA), according to *The Progress of Nations* (1995:44), is both indispensable to the recipient nations as well as a barometer of international concern for poverty and development. On the average, industrialized nations cut aid down by 8% from the 1992 level, of 0.34%, which was itself less than half of the 0.7% aid target to 0.30 in 1993. Only 4 industrialized nations, the 3 Scandinavian countries and the Netherlands, met the aid target (p.46). As Table 6 shows, Canada is one of those nations which is yet to meet its aid target. Like the majority of industrialized nations, it decreased its aid from 0.44 in 1992 to 0.41 in 1993. Canada has, therefore, not fully met its international obligations to the poor of the world, just as it has not done at home.

Compared to its peers in the industrialized world, Canada is second to the US in child poverty and murder of teenagers; and second to New Zealand in teenage suicide. Canada spends less than the OECD average on income security, ranks second worst in the poverty rates for couples with children and ranks third worst on the poverty rates for lone-parent households. Hence, Canada is not among the best in its record of support for children among countries with which it shares similar socio-economic and cultural characteristics.

CHAPTER V

DISCUSSION AND CONCLUSIONS

The central research question for this thesis is: *what is the nature of Canada's response to the United Nations Convention on the Rights of the Child?* This larger question was subdivided into other related questions: (i) what role did Canada play in the creation of the Convention and why; (ii) what changes - administrative, social policy, legislative - has the CRC engendered with respect to children in this country; and (iii) have these changes made any qualitative difference in the life situation of children in Canada? In this final chapter, an attempt is made to put together the main trends that emerged from the various issues addressed in light of the perspective adopted for this study.

For purposes of analysis, a developmental approach to human rights was assumed. This approach emphasises the effective functioning of people with the aim of empowering them to realise all their human potentialities. As Julia and Herman Schwendinger (1975:137) aptly sum up, "[A] dead man can hardly realise any of his human potentialities". Consequently, the operational standards of human rights for this study are a measure of the basic necessities to ensure life and the security of person and also egalitarian principles which eschew racism (or for that matter, ethnicism, classism), sexism and poverty. This conception of human rights has been well operationalised by UNICEF in its *The Progress of Nations* Reports. UNICEF's concept of National Performance Gap (NPG), which measures performance according to ability; the method of disaggregating national statistical averages that highlights disparity between regions, gender, classes and ethnic groups; and the comparison of progress of

countries with similar social, cultural and economic circumstances, was adopted for monitoring the implementation of the Convention in Canada. From the approach of this study the key questions for data analysis were: has Canada lived up to its commitments? Has it done this to the best of its ability? Are there any regional, gender, class and ethnic differences in the enjoyment of these rights? What is Canada's performance in comparison to its peers, the industrialized countries?

Canada's role in the creation of the CRC was analysed under two separate, but related, issues. These were: (i) participation in the drafting of the Convention and (ii) ratification of the Convention in Canada.

CANADA AND THE CONVENTION: THE DRAFTING AND RATIFICATION

Much has been said about the important role Canada played in the drafting of the CRC without necessarily stating exactly what that role was⁹⁴. I decided to find out exactly what Canada did in the drafting of the Convention to earn this reputation. This is important, at least in part, because of the longer term interest of this study in the implementation of the Convention by states or agencies in the Third World. The literature⁹⁵ reveals that while the Third World

⁹⁴ At the "Stronger Children Stronger Families" Conference on the CRC at the University of Victoria, 18-23 June 1994, so much was said about this. In the literature, various reports and documents have stated this. For example in the Canadian Coalition for the Rights of Children's report on the Presidential Commission on Children's Rights Conference in 1990, *On the Right Side*, several speakers such as Mike Jupp, Nick Bala and Michelle Clarke, made this statement.

⁹⁵ Nigel Cantwell, "The Origins, Development and Significance of the United Nations Convention on the Rights of the Child" in Sharon Detick (ed.) 1992, pp. 19-30 and Cynthia Cohen "The Developing Jurisprudence of the Rights of the Child" in *St. Thomas Law Review*, Fall 1993, pp. 1-93.

countries were under-represented at the drafting stage, they were among the first to sign the Convention.

The interviews revealed that Canada played three major roles in the creation of the Convention: Canada (i) contributed ideas (ii) provided a legal-technical team and (iii) was able to convince other nations to sign or ratify the Convention through its role in the World Summit for Children.

It is, however, difficult to determine the full contribution of any particular State to the drafting of the Convention. A careful reading of the *travaux préparatoires*⁹⁶ soon reveals that the UN Working Group operated on the basis of consensus. Each article and paragraph was discussed until a position acceptable to all was reached. Consequently, it is only fair to say that the draft Convention was the product of the Working Group and not of any specific country. This suggests that the criticism that the Convention does not reflect Third World views, is more a problem of the composition of the Working Group, than the manner in which it operated. Nevertheless, the working papers also show that some state delegations were more active than others, particularly in terms of making contributions that led to the adoption of most articles in the Convention. Canada was one of the more active countries.

Canada sometimes submitted proposals independently or at other times, with other countries. Canada also supported or disagreed with proposals from other state parties and NGOs in consideration of existing Canadian law or opinion. Sections included in the Convention, for which Canada was basically responsible, are the first preambular paragraph,

⁹⁶ UN Economic and Social Council (UNECOSOC), Commission on Human Rights (CHR), 36th Session, *Question of a Convention on the Rights of the Child*, E/CN. 4/1349, 17 January 1980, and *Reports of the Working Group on a Draft Convention on the Rights of the Child*, 35th - 45th Sessions, 1979 to 1989

Article 25 (periodic review of placed children) and Article 41 (other more favorable provisions). Other Canadian proposals became the basis of discussion and the subsequent adoption of Articles (i) 23 (disabled child); (ii) 14 (freedom of religion); (iii) 19 (protection from abuse by those having care); (iv) 24 (health and access to care); (v) 31 (rest and leisure); (vi) 32 (protection from economic exploitation); (vii) 40 (treatment in penal matters); and, (viii) 44 (reports from State parties).⁹⁷

As a member of a drafting group Canada had a significant impact on the formulation, form and content of the following articles (i) 3 (best interests); (ii) 10 (family re-unification, contact with parents); (iii) 17 (mass media); (iv) 26 (social security); (v) 27 (standard of living); (vi) 33 (protection from narcotic and psychotropic substances); (vii) 43 (establishment of Committee); (viii) 45 (methods of work of Committee); and, (ix) preambular paragraph 13 (international cooperation). Canada explicitly supported for the following Articles proposed by other states: (i) 12 , paragraph 1 (right to express opinion); (ii) 22 (refugee child), (iii) 28 (education); (iii) 29 (objectives of education); (iv) 15 (freedom of association and peaceful assembly); (v) 38 (armed conflicts); (vi) 20 paragraph 3 (paying attention to the ethnic, religious, and linguistic origins of parentless children); (vii) 24 paragraphs 3 and 4 (traditional practices prejudicial to the health of children); (viii) 30 (cultural, religious and linguistics rights); (ix) 34 (protection from sexual abuse); (x) 42 (dissemination of Convention); and, (xi) 5 (parental direction). Canada also objected to the inclusion of the unborn child provision in the Convention on the grounds that it was a controversial matter. On Article 21 (adoption),

⁹⁷ UN Economic and Social Council (UNECOSOC), Commission on Human Rights (CHR), 36th Session, *Question of a Convention on the Rights of the Child*, E/CN. 4/1349, 17 January 1980, and *Reports of the Working Group on a Draft Convention on the Rights of the Child*, 35th - 45th Sessions, 1979 to 1989

Canada placed on record its understanding that due regard should be paid to the child's ethnic, religious, cultural and linguistic background.⁹⁸

It is clear from the above that Canada made a substantial contribution of ideas in the drafting of the Convention. These were, however, not just ideas from the four lawyers who represented Canada. It is established practice, in Canada, that with regard to international treaties whose implementation requires cooperation from the provinces and territories, that the provinces and territories are consulted. This is particularly so in the case of human rights treaties. At the 1975 Ministerial Conference on Human Rights a document entitled *Modalities and Mechanisms* was approved. The document provides that before Canada acceded to future international human rights covenants, there should be a process of consultation between the federal government and the provinces (McKenzie and Holmes 1990:2). In line with this practice a federal-provincial-territorial working group was established in 1982 to examine and review the provisions of the Convention on the Rights of the Child adopted by the UN Working Group and to provide advice for the Canadian delegation (Holmes 1990:19). As a member of the Canadian delegation pointed out, this working group always met before the UN drafting group meetings and developed new proposals for inclusion in the Convention.

The second major role of Canada mentioned by interviewees was the legal-technical one, the contribution of lawyers to draft the Convention. While the study did not find anything to the contrary, the way it was presented by the survey respondents, such as "Canada provided a team of lawyers who contributed to the language in which the Convention was formulated", make it sound as if there was a pool of lawyers at the disposal of the Working Group whose

⁹⁸ *ibid*

only job was to provide the legal language in which the Convention could be couched. The Working Papers do not support such a view. The proposals, which formed the basis for the discussion of each article were already formulated in legal language. The Working Group discussions then addressed the questions (i) is the idea the proposal puts forward acceptable and (ii) does the formulation of the proposal express the idea in a way acceptable to all of us?

In case of disagreement, the main means used for resolution was to form a smaller “working team” of the most vocal state delegations and ask them to reformulate the proposal in a manner acceptable to them. Even in that case, when the “working team” reports back, their formulation of the proposal is still subject to discussion by the whole Working Group. As indicated above, Canada was sometimes a member of such teams. However, that does not make Canada any more a contributor of legal knowledge than any other state delegation that was represented on the Working Group.

Another observation from reading the *travaux préparatoires* was that support or objection by state parties to contributions made by others was based mainly on how they perceived the idea as impacting on their domestic situation. This was clearly illustrated by the negotiations resulting in the subsequent adoption of Article 9, for example.⁹⁹ The point here is that in the course of drafting international conventions, national interests are put before international interests. Hence, it could be said that Canada’s contribution of ideas was an attempt to sell

⁹⁹ UNECOSOC, CHR, 38th Session, *Report of the Working Group on the Draft Convention on the Rights of the Child* E/CN.4/1982/L.41 8 March 1982, pp. 3-10, paragraphs 8-33; UNECOSOC, CHR, 39th Session, *Report of the Working Group on a Draft Convention on the Rights of the Child* E/CN. 4/1983/62, 25 March 1983, pp. 4-13, paragraphs, 8-57; UNECOSOC, CHR, 40th Session, *Report of the Working Group on a Draft Convention on the Rights of the Child*, E/CN.4/1984/71, 23 February, 1984, p. 3; UNECOSOC, CHR 45th Session, *Report of the Working Group on a Draft Convention on the Rights of the Child*, E/CN.4/1989/48, 2 March, 1989, p. 33

the Canadian perception of children's rights to the rest of the world. Indeed one interviewee, who was a member of the Canadian team on the Working Group admitted that "... we thought of it [the Convention] from a Canadian perspective ...". The contention of this thesis is that one of the strategies state parties use in order to be found as complying to international universal positions is to make sure, at the drafting stage, that a Convention does not contradict their domestic legislation or positions. Another strategy is to make formal reservations and statements of understanding at the time of ratification. As seen earlier, Canada made two reservations and one statement of understanding at the time of ratification.

Canada also made significant contributions in the form of international diplomacy in getting the much needed consensus that resulted in the ratification of the Convention. As noted earlier, without the signing and ratification of a Convention, all the ideas that were crafted by the Working group in the span of 10 years could have come to naught.

The World Summit contributed in no small measure to the ratification of the Convention by making the Convention one of its agenda issues. This led to a flurry of activities at the World Summit to sign the CRC. Today, the frenzy about the CRC has also led to the implementation of the Summit goals. Implementation of the Summit goals, which have been operationalised by UNICEF using quantifiable social indicators, is regarded as implementation of the Convention. Indeed, one interviewee quoted Jim Grant, former Executive Director of UNICEF, as saying, "there is a synergy between the two [the CRC and the World Summit]."

Canada's role in all this was the contribution of its former Prime Minister, Brian Mulroney, who co-chaired the Summit. There is a certain degree to which the success of a

conference or gathering such as a Summit can be attributed to the role of its Chairman. In effect, Canada also played a role in the diplomatic juggling that led to the overwhelming consensus with which the Convention was signed and ratified. However, it should be added that the flurry of activities to sign the Convention at the Summit, was not just because of the Summit *per se*. It was also because UNICEF had used its regional offices to work behind the scenes to gain support for the Convention. As Cynthia Cohen (1993:84-85) pointed out, there were rumors that the Third World countries, which were under-represented at the drafting stage, viewed the Convention as a treaty not reflecting their concerns. This led to fears, as the drafting of the Convention neared its completion, that the Convention might not gain wide acceptance. Consequently, UNICEF had to work behind the scenes to gain support for the Convention. Hence, the signing ceremonies that took place at the Summit were also the results of behind the scenes efforts, with the Conference only providing the opportune time and place.

Canada's Ratification Of The Convention

Canada ratified the Convention on December 11, 1991, two years after the UN had adopted it. The purpose of this section of the analysis is to see the nature of Canada's immediate response to the finished product. Having played such a significant role in the drafting process, one would have thought that the ratification would be a foregone conclusion. However, that was not the case. Indeed, while the issue of the federal political structure of Canada was identified as important in the responses from interviewees, it turned out that,

compared to other similar international documents, the CRC was ratified in a record time of two years. For example, it took Canada 10 years to give formal recognition to the Universal Declaration of Human Rights and 17 years for the Refugee Convention to be ratified (Fairweather 1990:15). As one interviewee pointed out, Canada joined the Organization of American States (OAS) five years ago and it has not yet ratified the Inter-American Convention on Human Rights. The speed of ratification is attributed to the Convention itself, which encouraged broad participation, especially of NGOs, at all its stages, and also to the fact that the world was just ready to receive such a Convention. Based on the level of involvement of NGOs in issues concerning the Convention to date, and also the high popularity of the Convention among nations of the world as shown by the rate of ratification, this study agrees with these assertions.

However, all was not rosy with the Canadian ratification process. The issue of Alberta's refusal to give its assent to the Convention seemed to be a sore spot and illustrates the fact that the federal/provincial/territorial consultations required¹⁰⁰ before ratification did not go smoothly. There was agreement among both interview survey respondents and documented sources on the reasons for Alberta's refusal: (i) they felt it was anti-parents' rights, especially the right to spank children (ii) children's rights are already covered by the Canadian Charter of Rights (iii) that the Convention was for only the developing countries (iv) fear of state control of the family and (v) that the issue was politicized - a powerful lobby successfully convinced the Alberta government not to give its assent.

¹⁰⁰ This is the principle of "cooperative federalism". See Barbara McKenzie and John Holmes *Reference Document on the Convention on the Rights of the Child* 1990:1-2; and John Holmes, "Canadian Ratification of International Treaties" in Canadian Council on Children and Youth *On the Right Side* 1990, pp. 18-19

Family rights, spanking, state control of the family - are issues which could be inferred from the Convention. Interviewees agree that such fears about the Convention are not unique to Albertans and that many Canadians entertain such fears. The next stage of this study, which will focus on a country from the developing world, will definitely take up these issues. Third World societies place considerable emphasis on group or family values, and the strict discipline of children, including spanking. Also, the state has little to do with and for children. Should such societies have reacted to the Convention in a similar way as Alberta? For now, however, it should be said that there are several Articles in the Convention, which could equally be said to lay emphasis on the importance of the family in the realization of children's rights, such as Articles 2,3,5,9 and 22.¹⁰¹

The idea that, in Canada's view, the Convention is meant only for developing countries was explored in the course of the interviews. The overwhelming view of respondents was an emphatic no. Most pointed to the numerous problems facing children in Canada, particularly aboriginal children. Others point out that such a view could only come from a misreading or misinterpretation of the Convention. Of course, the main concern of the Convention is for State Parties everywhere to have children as one of their highest priorities. The Convention seeks to have children given priority whichever system they find themselves in. In light of all the cutbacks and the consequent mounting problems children in Canada face, one wonders about the priority Canada has given its children.

¹⁰¹ See also, Canadian Coalition for the Rights of Children *The Importance of the Family within the UN Convention on the Rights of the Child*, Draft Position Paper, June 13, 1994

IMPLEMENTATION OF THE CONVENTION IN CANADA

The purpose of this section of the study was to find out what concrete legislative, administrative and social policy measures have been taken as a result of Canada's ratification of the Convention. Whereas most respondents agreed that not much has, as yet, been done to implement the Convention in Canada, some government officials felt everything was already in place with regards to implementation and that is why the Convention was ratified in the first place. This view seem to be reflected in Canada's First Report to the UN Committee on the Rights of the Child, *Convention on the Rights of the Child: First Report of Canada*. This is the most comprehensive report so far on Canada's implementation efforts. One striking thing about the Report is that most of the measures reported are ones which were already in place even before the UN adopted the Convention. Apart from the creation of the Children's Bureau, which some will argue was a result of the World Summit for Children and not the Convention¹⁰², and a few legislative changes, the overwhelming majority of measures reported, such as the Charter of Rights and the Canadian Human Rights Act, were in place long before Canada signed the Convention. If there was anything new in the Report, it was the *Brighter Futures Plan*¹⁰³ and *Child Development Initiative (CDI)*¹⁰⁴.

In spite of these new plans, Canada's First Report on the Convention had more to say about pre-Convention legislation, programs and policies than measures taken specifically towards implementing the Convention. It is true that the first reports of State Parties are to establish a baseline, with subsequent reports giving account of only the new measures adopted

¹⁰² The relationship between the Declaration of the World Summit and the UNCRC has been discussed elsewhere in this thesis.

¹⁰³ Government of Canada *Brighter Futures: Canada's action plan for children* May 1992

¹⁰⁴ Government of Canada *The Child Development Initiative of Brighter Futures* May 1992

since the last report. That said, however, the Guidelines did not require any State Party to preclude from its First Report any measures taken specifically in response to the Convention. Consequently, it can only be concluded that Canada's First Report was a restatement of the status quo, raising the question, did Canada need the Convention? This brings us back to the issue of Canada's motivation for playing such a leading role in creating this treaty.

The responses to this question suggest that whatever the motivation for the lead role in the creation and promotion of the convention, Canada needed the convention. The respondents saw the Convention as a necessary tool to deal with the mounting problem of children in this country. The act of ratifying the Convention puts an obligation on Canada to implement it to the benefit of its children. By 1998, when Canada presents its second report, and when the world gets ready to celebrate the ten year anniversary of the CRC, Canada should have had ample time to implement its programs. Further research will be necessary to evaluate both policy and program results at the time.

One issue which emerged in both the meeting of the UN Committee on the Rights of the Child when Canada's First Report was considered¹⁰⁵ and during the examination of Bill C-37¹⁰⁶ was whether Canada thought its role in ratifying the Convention to be primarily for the purpose of giving an example to others to follow. During the Senate Committee hearings on Bill C-37 an official of the Justice Department agreed, implicitly, that "there is a sort of "big sister" or "big brother"" attitude towards UN conventions where Canadian officials think they

¹⁰⁵ UN Committee on the Rights of the Child, *Summary Record of 214th Meeting Held at the Palais des Nations, Geneva, on Wednesday, 24 May 1995, at 10 a.m.* CRC/C/SR.214, 30 May 1995, pp.12-13, paragraphs 50-58

¹⁰⁶ Senate of Canada: *Examination of Bill C-37, An Act to amend the Young Offenders Act and the Criminal Code* Eighth Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue No. 30, Thursday, May 4, 1995

will be delivering more than they receive by way of example.¹⁰⁷ Such a confession from a senior officer of the Justice Department, seems to confirm what a couple of the interviewees said about the motivation of Canada in being part of the UNCRC - the self image abroad, to be seen as the champions and leaders of human rights, writing for others to do. There is a gap between intentions and performance.

This points to the issue of power in international relations: the psychology of having international influence as opposed to domestic performance. The data for this study could be further analyzed to bring out more on this issue. For example, the difference in the responses of government officials as opposed to all other respondents with respect to the implementation of the Convention could be assessed. Most government officials were of the opinion that Canada ratified the Convention because the conditions for implementation had already been met, and their responses appeared defensive to any contrary suggestion. Other respondents, especially NGO officials felt very comfortable discussing the failure of Canada to live up to its obligations under the Convention. Content analysis could be employed to further explore the themes that emerge from such power relations. This would be a good subject for further research.

Another area which points to a gap between the ideal and the reality of Canada's implementation of the Convention is that of the peculiar problems faced by children in Canada. No matter how effective a State Party and NGOs are in ensuring the implementation of the UNCRC, the ultimate measure of how well this was done would be how it impacts on the quality of life of children. *The Progress of Nations'* concept of National Performance

¹⁰⁷ *ibid*, p. 17

Gap, which measures performance according to ability; the method of disaggregating national statistical averages, which highlights disparity between regions, gender, classes and ethnic groups; and the comparison of progress with countries with similar social, cultural and economic circumstances, were used to assess Canada's performance in this area. Reports by NGOs and specialized agencies such as UNICEF have been more apt to draw attention to problems facing Canadian children than those by the government. Hence, this thesis relied on statistics from Canadian NGOs and UNICEF's *The Progress of Nations* reports for the analysis of this issue.

On the whole, Canada, like most other industrialized nations, does not fare badly on the various indicators of survival, nutrition, health, education, family planning and progress for women. Canada has a positive national performance gap (that is, exceeds the expected standard based on its resource ability) on indicators such as U5MR, where Canada has only 8 deaths per 1000 live births, having already attained the Summit year 2000 goal of a rate of 70 per 1000 in 1950. But do such national averages reflect the real situation of all children in Canada? This thesis did not investigate the regional and gender disparities involved. However, most of the problems of children as identified in this study characterize people from poor families, representing the lowest socio-economic stratum in Canada. The most severely affected in this class are single mothers with children. Perhaps, the most disadvantaged social group in Canada, however, are First Nations people, including their children. For any quality of life indicator one can think of, the First Nations and their children, have rates which are several times worse than the rest of the country.

As mentioned earlier, the Canadian average for U5MR has exceeded the standard expected of it, having reached the Summit year 2000 goal of a rate of 70 per 1000 in 1950. At 8 deaths per 1000 live births in 1993, Canada had a positive performance gap of +1 (*The Progress of Nations* 1993). As seen in Table 2, however, this does not reflect the actual situation of First Nation' people including their children. In 1986, the infant mortality rate for the whole of Canada was 8 per 1000 births, for Status Indians and Inuit, it was 17 and 28 respectively. For causes of deaths per 100,000 population as related to accidents, poisoning and violence, the rate for the whole of Canada is 58, for Status Indians it is 174. With respect to causes of death due to infections and parasitic diseases, the rate for Canada is 4, and that of Native Indians, 7. With regard to suicide, all of Canada is 15, Status Indian is 34 and for the Inuit in the North Western Territories, it is 54. For violent deaths, Canada has a rate of 54, that for Status Indians is 157, and for the Inuit, it is 173. In fact, for all the social indicators, the story is the same: the plight of Natives and Native children is often several times worse than for the rest of the country. In the light of all these, this study supports the conclusion of Kenn Richard (1995, p.J), Executive Director of the Native Child and Family Services of Toronto and Director, Defense of Children International (Canada), that life, on average, for the Native child relates more closely to children in the developing world than to any other North American ideal. Indeed, as he pointed out, the realities of native children's lives, flies in the face of the UN report that Canada is, in reference to quality of life measures, one of the best places to live in the world.

Apart from the problems exposed by the issue of disparity, industrialized nations have their peculiar pressures, which according to *The Progress of Nations*, "devalue children"

(1993:43) and of which Canada has its share. Child poverty, sexual abuse of children, teenage violence, suicide, drug abuse and the juvenile justice system are prominent among children's problems listed by Canadian NGOs. In the mid 1980s, there were about 10% of children below the national poverty line. This increased to 20% in 1995 (Campaign 2000, 1995 and *The Progress of Nations Reports*, 1993-1995). In 1970, the suicide rate for young people aged 15-19 per 100,000 in age group was 7.0; by 1991 this had increased to 13.5. In all, there were 253 teenage suicides in 1991 in the 15-19 age group (Table 6). In the period 1987 - 1990, 121 young Canadians, aged 15-24 were murdered (Table 7). The Bill C-37 amendment to the YOA, which among other things, gives longer sentences to youths convicted of first and second degree murder; requires 16 and 17-year-olds charged with serious personal injury offenses to be transferred to adult courts, with the issue of "reverse onus" this entails; and, the information sharing among professionals, are all against the spirit of the CRC.

Compared to its peers in the industrialized world, Canada is second only to the US in child poverty and murder of teenagers; and second to New Zealand in teenage suicide. Canada spends less than the OECD average on income security, ranks second worst in the poverty rates for couples with children and ranks third worst in the poverty rates for lone-parent households¹⁰⁸. Hence, Canada is not among the best in its record of support for children among countries with whom it shares similar socio-economic and cultural characteristics.

The major conclusion of this study could be summed up by the saying, "all that glitters is not gold". Canada is well respected in the international arena, particularly with respect to humanitarian issues. With that, Canada has played a leading role in the world in regard to the

¹⁰⁸ See Tables 1, and 5-8

issues of human rights and international law. It was in this vein that it made significant contributions to the creation of the CRC, ratifying it in a relatively short time of two years. Significant efforts have been made to implement the Convention as exemplified by the Brighter Futures plan, the Child Development Initiative and the Aboriginal Head Start program, not to mention the already rich culture of rights as it pertains to the Canadian society. The significance of these efforts is also underscored by the statistics on the social indicators of well-being used in this study. For most of the social indicators, Canada's performance is above average and its National Performance Gap (NPG) is positive. However, such shining national averages begin to fade when they are dis-aggregated to expose disparities among social groups and classes. The figures for Native children, for example, relate more closely to those of children in developing countries than to any North American ideal. Add to that the problems of child poverty, teenage suicide and violence, in which Canada ranks second worst among its peers in the developed world, and the glitter begins to fade, exposing the gaps between the ideal and the reality. Hence, this thesis opens up the whole issue of the desire for global influence *vis a vis* domestic performance, and the consequent effect power relations in international affairs has on human rights and general human welfare.

FUTURE PROSPECTS:

This study does not have a pessimistic outlook on the prospects of the CRC making a positive impact on the quality of life of children in Canada for several reasons. First is the issue of the government's attitude to international conventions. The good news flowing from the Justice Department's confessions about the "big sister/brother" attitude towards these conventions was the mention of a gradual change in attitude by Canadian authorities towards international conventions. It appears to be a learning, rather than a missionary, attitude. This is the situation whereby Canadian officials feel they are learning from conventions rather than being the oracle that writes them.¹⁰⁹ The three reasons offered for this change of attitude provide useful insights into some new ways of ensuring Canada's future compliance with international treaties. First, UN Committees, which are monitoring conventions with increasing frequency, are finding problems with Canada. Second, the opportunity given to NGOs to present their own views on the implementation of conventions to UN monitoring committees, arms the committees to pose more stringent questions when the representatives of Canada appear before them. Third, in the last six or seven years, Canada's appearance before these UN committees is receiving publicity in the media. Consequently, this has become a much bigger factor which Canada now considers when they develop legislation and policies.¹¹⁰

In effect, if the UN Committee on the Rights of the Child will do its job properly without favoring any countries, developed or underdeveloped; if NGOs interested in children's issues will seize the new opportunity to send accurate reports to the Committee independent of the

¹⁰⁹ Senate of Canada: *Examination of Bill C-37, An Act to amend the Young Offenders Act and the Criminal Code* Eighth Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue No. 30, Thursday, May 4, 1995, p. 18

¹¹⁰ *ibid*, p.18

State; and, if the media will be drawn into giving some publicity to these reports, then we will see more state parties, including Canada, complying more effectively with the terms of the CRC.

Canadian NGOs are demonstrating that they will not shirk their responsibilities as demonstrated by their responses to Canada's First Report to the UN Committee on the Rights of the Child and the recent public hearings held by Campaign 2000 before UN officials in Toronto. They have ably seized the new opportunity the Convention offers. The records of the four meetings that Canada's representatives had with the UN Committee, and the Committee's final observations also give indication that Canada will remain under scrutiny.

The successful implementation of a convention in any country depends on the attitude and vigilance of its people. In this regard, the majority of our interviewees do not share the "big brother/sister" or "missionary" attitude. As seen previously, they believe the Convention is equally applicable to the situation of Canadian children, and that more should be done about implementing the Convention in this country. Besides, all respondents agree the Convention has great potential for Canada. If that is any reflection of the attitude of the general Canadian population, then it offers hope for the future of the Convention in Canada.

Even though the mere fact of having more programs does not necessarily imply better conditions for children in Canada, the position taken in this study is that it is too early to determine the impact of the Brighter Futures program, the Child Development Initiative and all the other new programs initiated as a result of the Convention. Until such a time as valid analyses of these programs become available, it will be wrong to rule them out as ineffective or lacking potential.

Finally, the appointment of Landon Pearson to the Senate of Canada in 1994 should be another cause for hope. Senator Pearson regards herself as a Senator for children. A past Chairperson of both the Canadian Coalition for the Rights of Children and the Canadian Council on Children and Youth, she has a track record of working on behalf of children, both at home and at the international level. Hence, her presence in the Senate, marks a significant representation of the voice of children on Parliament Hill. So far, most of her speeches in the Senate and other activities as Senator, had concentrated on children's issues and the CRC. A strong advocate of the Convention, she was recently appointed as Advisor on Children's Rights to the Minister of Foreign Affairs, Lloyd Axworthy¹¹¹. Considering Canada's global influence, that could have benefits for all children in the world. But what can one Senator do for children? Joe Rosen's words answer this question as best as this thesis would want to: "[W]hile we need to be realistic about what one person can accomplish, we can be heartened that a committed, enthusiastic individual who sees children and child advocates as her constituency is 'working the corridors' on Parliament Hill."¹¹²

Consequently, my answer to the CCRC's question, "[W]ill it be a Brighter Future?", is yes.

¹¹¹ *Children and the Hill: The Pearson Report*, Spring 1996, no. 4

¹¹² Joe Rosen, "A Child Advocate in the Senate" in *Newsletter Society for Children and Youth of B.C. Quarterly*, Fall 1995, no. 42, p.2

APPENDIX

Interview Guide

CANADA AND THE UN CONVENTION ON THE RIGHTS OF THE CHILD: A SOCIO-LEGAL STUDY

This is a study on the response of Canada to the UN Convention on the Rights of the Child. The objective of this study is purely academic: it is to satisfy the thesis requirement for the award of an MA degree. Participation in this interview is voluntary and you can withdraw at any time. I guarantee that all responses will be treated as confidential and reported anonymously, except for those who state **explicitly** that they could be identified by name and/or position, in the thesis. Tapes on which interviews are recorded will be destroyed at the end of the research. Research results can be obtained from the School of Criminology or the University Library, Simon Fraser University. Complaints about the conduct of the research should be directed to Professor Neil Boyd, Director, School of Criminology, Simon Fraser University, Burnaby, B.C., V5A 1S6. His phone number is (604) 291-4305. Thanks for taking time from your busy schedule to grant this interview.

A. The Drafting of the Convention

1. How would you characterise Canada's contribution to the Convention? (very important, important, of little importance)
2. As evidenced by its contribution to the Convention, how would you characterise Canada's main concerns with regard to children's rights?
3. Can you identify specific parts of the Convention which resulted directly from Canada's input?

B. Ratification

1. To your knowledge ,why did Canada ratify the Convention two years after it was ratified by the UN General Assembly?
2. In your opinion, was it strange that some of the developing nations which made no input to the formulation of the Convention were among the first to ratify it?
3. Alberta is the only province in the country which has refused to ratify the Convention. What, in your opinion, are its grounds for doing so?
4. Would you say Alberta's views are representative of a large number of Canadians who never had any direct say in Canada's decision to ratify the Convention?

C. NGOs (Canadian Coalition on the Rights of the Child)

1. How would you describe the relationship between the Coalition and the government organs responsible for issues concerning the Convention?
2. What accounts for the nature of the relationship between the two?
3. Has the Coalition, in your opinion, acted as an effective watchdog over the government's role with respect to the Convention?
4. How would you characterise the Coalition's Response to Canada's First Report (1994) on the implementation of the Convention?

D. The Consequences of Ratifying the Convention

1. To your knowledge, which new laws have been passed in response to the Convention?

2. In light of the Canadian Charter of Rights and Freedoms and the YOA, would you say Canada could have done without the Convention and yet still granted its children a comparable quality of life as the Convention demands?

3. In your opinion, has the ratification of the Convention brought any significant changes to the quality of life of children in this country with regard to

- survival
- nutrition and diet
- health
- recreational services
- rights of individual personality such as the security of person
- education, etc.?

4. Are there any gender, race, class or ethnic differences concerning these?

5. How would you characterise the contribution of the Convention to the situation of minorities and other disadvantaged groups in this country?

E. The Committee on the Rights of the Child (Geneva)

1. How would you characterise the composition and functions of the Committee?

2. How would you characterise the response of the Committee to Canada's First Report (1994) on the implementation of the Convention?

F. General

1. On the whole, how would you describe the Convention with respect to the quality of life of children in this country? (very important, important, of little importance)
2. All in all, how would you rate Canada's response to the Convention? (very good, good, not good)
3. In your opinion, is Canada's response to the Convention on the Rights of the Child different from the case of other international treaties/conventions?

THANK YOU VERY MUCH!

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