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Introduction

On one level the United Nations Convention on the Rights of the Child is one of the United Nations great success stories. Currently the Treaty Section of the Foreign and Commonwealth Office indicates that over 170 countries have signed the Treaty and over 125 countries have ratified the Convention. However some major countries, including the United States have still to sign the Convention. The purpose of this paper is to explore the declarations, reservations and objections of State Parties who have signed or ratified the United Nations Convention on the Rights of the Child to try to determine whether, behind the apparent unity of the principles enshrined in the Convention, tensions remain about the scope of the proper protection to be accorded by International Law to children. So far only 26 of the 54 Articles are without specific reservations or declarations entered with respect to them to refine or restrict the signatories obligations. The number may even be further reduced by some of the general reservations entered by some State Parties. Many of the provisions to which there are no reservations are procedural, including the monitoring provisions which are crucial to the Convention’s success. Whilst the Convention in Article 51 explicitly permits the making of reservations, provided that the reservations are compatible with the aims and purposes of the Convention, a certain tension remains. As a matter of politics the aim is obviously to persuade as many nations to sign as possible.

1 Shortened form of a paper first presented at the 8th Conference of the International Society of Family Law, Cardiff, July 1994.
2 The United Nations Treaty Series indicated that on December 31st 1992 there had been over 133 signatories and 127 ratifications and accessions. Counting numbers, however, is a difficult process as a number of countries such as the former U.S.S.R., the former Yugoslavia and Czechoslovakia have split into smaller independent countries and Germany is now unified. The 1993 figures should be available from the U.N. in the Autumn.
3 See Table 2, post.
4 See for example the last 10 Articles.
5 Presumably the Convention aims at protecting the basic human rights of the world’s children – see the words of the Former Secretary General, Javier Perez de Cuellar spoken at the United Nations 20th November 1989.
At the same time some nations feel that certain Articles are incompatible with their constitutions, which to some extent embody the identity of the nation. Even more problematic are the reservations entered into by some nations on the basis of protecting general provisions of their domestic law. Given these tensions it is perhaps not surprising that there have been objections by a number of State Parties to those countries who have entered reservations to the Convention on the basis of provisions of their domestic law. The number of these objections is not inconsiderable.6

Thus, whilst a superficial reading of the Convention suggests that the main rights and freedoms of the child are protected by the Convention, a detailed reading of the articles and reservations and declarations introduces a note of caution. If no less than 28 of the 54 Articles included in the Convention are qualified or restricted in some way by one or more countries, the case for careful monitoring7 the detailed operation of the fundamental rights enshrined in the Convention in accordance with Articles 42–45 seems irresistible.

In the interest of space only limited examples can be given. But way of example, the rights under Articles 13 and 14 on a child’s freedom of thought and expression, and the child’s right to education under Article 28 raise the problem of the proper balance between parental and children’s rights in a particularly acute way. For many children their views on the question of the most appropriate education for them can be as important in their everyday lives and in determining their welfare as their views on their adoption or with which parent they will live. The importance of children’s knowledge of their identity and background has been known for 20 years,8 yet how many countries’ laws reflect this?

The success or failure of the Convention may ultimately depend on our long term commitment (and Conventions of this kind require long term rather than short term commitment) to ensuring that the detail of implementation in domestic law measures up to the lofty aspirations of the Convention. This cautionary note should not be taken as one of undue pessimism. The aspirational character of the Convention appeals to many laypeople who are not always aware of the fact that in most countries the Convention does not have direct application in domestic law and needs implementation into the technical language of domestic law to be effective. Nevertheless it is this appeal to the aspirations of the leaders of opinion and the public at large that will be the catalyst to ensuring that implementation occurs at the local level and that the monitoring provisions will draw to the attention of Governments cases in which implementation has not yet occurred.

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6 See Table 4, post.
7 This may be especially important in countries like the U.K. in which International Conventions do not have direct application as part of domestic law.
8 For example it is over 20 years since Triseliotis’s famous work on adoption In search of Origins (1973 R.K.P.) was published.
9 Taken from the United Nations Multilateral Treaty Series as at December 31st 1992.