



COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: UN Convention on the Rights of the Child

CANBERRA

Wednesday, 3 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Mr Tony Smith
Senator Neal	Mr Truss
Senator O'Chee	Mr Tuckey

For inquiry into and report on:

1. the domestic ramifications of Australia having ratified the Convention;
2. Federal and State progress in complying with the Convention;
3. the difficulties and concerns arising from implementation in its current form;
4. possible inconsistencies between domestic jurisdictions and the need for agreed national standards;
5. the need for a mechanism to promote, monitor and report publicly on compliance and to implement public consultation processes;
6. the adequacy of the administrative, legislative and legal infrastructure in addressing the needs of children;
7. the adequacy of programs and services of special importance to children; and
8. any further action required in relation to the Convention.

CONDITION OF DISTRIBUTION

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WITNESSES

**KOLOSOV, Professor Yuri, Vice-Chairperson, UN Committee on the Rights
of the Child, Palace of Nations, Geneva, Switzerland 1524**

**MASON, Miss Sandra Prunella, Chairperson, UN Committee on the Rights of
the Child, Palace of Nations, Geneva, Switzerland 1524**

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Present

Mr Taylor (Chairman)

Senator Abetz

Mr Bartlett

Senator Cooney

Mr Hardgrave

Senator Neal

Mr McClelland

Mr Tony Smith

The committee met at 7.48 a.m.

Mr Taylor took the chair.

KOLOSOV, Professor Yuri, Vice-Chairperson, UN Committee on the Rights of the Child, Palace of Nations, Geneva, Switzerland

MASON, Miss Sandra Prunella, Chairperson, UN Committee on the Rights of the Child, Palace of Nations, Geneva, Switzerland

CHAIRMAN—Thank you for coming this morning and for agreeing to give some evidence on the official record for the inquiry. This committee is inquiring into Australia's post-ratification progress on the United Nations Convention on the Rights of the Child and exploring many issues in relation to that ratification process. I wonder if you would tell us a little about the composition and processes of your committee.

Miss Mason—As you know, the UN Committee on the Rights of the Child was formed in 1991 after the adoption of the convention by the UN General Assembly in 1990. The convention establishes a committee which is supposed to look into, and examine the progress of, any country which has ratified that convention.

The committee comprises 10 persons who are supposed to represent the geographical distribution of the world and the international community. Currently, the members of the committee come from Burkina Faso, Brazil, the Russian Federation, Israel, Italy, Indonesia, Lebanon, Sweden and Barbados, which is where I am from.

The initial committee was elected, as I said, in 1991. At that time, five of us were elected for a period of four years and the other five for a period of two years. Consequently, every two years there are elections to the UN Committee on the Rights of the Child. Each country which has ratified the convention has the right to proffer a national of their country as a candidate for the committee. I was elected in 1991. My colleague was also elected in 1991. Our mandate ran until 1995, when we again contested the elections and were elected for a further period. Our second mandate concludes in February 1999.

The Committee on the Rights of the Child sits in Geneva three times a year: in January, in May-June and in September-October. It sits for four weeks at a time. The first three weeks are for what we call the formal session and the final week is for the pre-session. During the three weeks of the formal session we consider the reports that are submitted by the various states parties of the convention—the progress that they have made in fulfilling the obligations under the Convention on the Rights of the Child—and we seek to comprehensively understand the situation of children in those countries. Hence, the reports must advise the committee of any factors and difficulties that that country might be experiencing in relation to the Convention on the Rights of the Child.

During the session for the consideration of the report of any country, we like to ask that the delegation be headed by someone in a fairly senior position within that country and within that government. It should also possibly include persons at the level of delivery

of services—for example, in the ministry of education, the ministry of health, the social services department and any other relevant persons—because it is a sort of on-the-spot committee. The reporting process is not to be regarded as a formal bureaucratic process because it is a continuing process. The countries are supposed to submit a report two years after ratification of the convention and every five years after that. It is a continuing process of what is happening in any country in relation to the Convention on the Rights of the Child.

CHAIRMAN—In relation to Australia's progress report, albeit that it was a couple of years late, we would be interested in hearing from you how other countries have fared in relation to submitting their progress reports—whether they were late, whether they were extensive and, in particular, what your initial reactions were both to the Australian official report and to the alternative DCI report.

Miss Mason—To answer the first question, currently the convention has been ratified by 191 out of 193 countries in the world. To date, only the United States of America, which has signed that convention, and Somalia have not ratified the convention.

Since the committee meets only three times a year, we are totally voluntary persons acting in a personal capacity—I should have said that earlier. Although we are nationals of our countries we do not, as I like to say, carry any political baggage from our homes to the meeting room. We sit there and we have not got a mandate from anyone apart from the Convention on the Rights of the Child. We are totally accountable only to the children of the world. As a result, there are lots of reports that are due. The reports are meant to be submitted to the committee two years after ratification by that country.

To date, we have looked at about 80 reports. Because we sit for only such short periods and there are so many countries which have ratified, for all intents and purposes all of the countries which have ratified the convention, up to about August 1995, should have submitted their reports. Even if they did, the committee would not have had enough time to look at them. Although we do not encourage countries to submit their reports late, we have not been sanctioning any country for late submission.

The reason why I say 'sanctioning any country' is that the committee, at its first session, drew up its own rules of procedure. In those rules of procedure we made provision for the committee considering a report of a country which had not actually physically submitted a report. We have a system where we send reminders through our secretariat to countries which are late in reporting. But because of our burgeoning workload we have not been exercising any sanctions in terms of looking at the situation of any country without a report; we have enough waiting in the wings. In fact, our list goes up to the year 2000. As I said, although we do not encourage late submission, we are not too harsh on countries which have not submitted.

In relation to Australia's report, since it comes up for discussion in another couple

of weeks, I do not know that I would want to proffer any specific suggestion or anything in relation to that because, as you would expect, it is a committee's report and not the report only of the chairperson. We would all have to analyse it, which we have already done. We have to now sit in a public session where everybody is looking on, look at the report and make any suggestions or recommendations about it. What I can say is that it is a very thick report, certainly the biggest one that we have received to date. It extends to over 400 pages and it takes a lot of going through. However, in spite of that, I do not think that we have been fazed by the size of it because Australia is a large continent and the information would be commensurate with the size of the country. We look forward to looking at that report in the coming days.

Mr McCLELLAND—You would be aware that the controversy concerning the convention primarily concerns clauses 12 to 16. Indeed, some evidence has related to clause 19, which I think relates to physical harm of children, in terms of what restrictions it may place on disciplining children. But it is primarily clauses 12 to 16, and the concerns of some people who have given evidence are that those clauses emphasise or stress children's rights ahead of parental rights and responsibilities. What is the approach of your committee when considering these reports in the context of that relationship between parents' roles and children's roles?

Miss Mason—My colleague and I are here in equal capacity, so I will let him respond to that and I will supplement if necessary.

Prof. Kolosov—First of all, it is not the committee's approach, it is the convention's approach. The convention was drafted with the active participation of the state of Australia. In articles 12 to 16 the convention recognises the right of parents and legal guardians to guide the child. It recognises the right of every child to express his or her own opinion, which is to be given due weight by the parents and legal guardians and by the respective authorities—either the courts or administrative authorities. But all that, which is reflected in article 12, should be in a manner consistent with the procedural rules of national law so there is no limitation of either national legislation or national traditions with regard to bringing up and educating children.

The convention, at the same time, reflects the very minimum. There is nothing in the convention about, say, corporal punishment, but there are provisions in a couple of articles that every child should be treated in a manner not contrary to the dignity of the young person, human dignity. The physical integrity of the child is protected by the convention and it depends on the interpretation. What about corporal punishment, for example? Some believe that slight smacking is admissible; others believe that it is not admissible at all.

Recently, in the United States of America, there was a study undertaken of about 800 cases. This was reported in the *International Herald Tribune*. They came to the conclusion that even slight physical punishment is harmful to the future character of a

person. Anyhow, all that depends on the interpretation. The committee members believe that corporal punishment should not be part of the education of a child.

The family plays an important role in the bringing up of children. There is nothing in the convention which contradicts the interests of both the child, as a subject of his or her own rights, and the family, a part of which every child is.

Mr McCLELLAND—Is there anything to supplement that answer?

Miss Mason—Perhaps we can go back to what my colleague referred to as a history of the convention. As you would know, the convention took 10 years to draft. During that 10 years, Australia, like a number of other countries in the world, participated in the drafting. The convention is a result of consensus and compromise between the various traditions, the various customs, the various religions, the various political systems within the world, and it reflects that approach. The convention does not attempt at any time—it was not intended—to abrogate the rights of parents. It was not intended to be an alternative to parents and their authority. In fact, in article 5 it underlines the responsibilities not only of parents but of the extended family; it underlines the responsibility of the school, the community and the government in the provision of guidance and direction to children, according to their evolving capacities.

It recognises that, while the child, being a subject of human rights, like any other person—an adult, in other words—is intended to be able to give voice to his opinions according to his age and maturity, it does not say that a child has the right to talk when he feels like it or that the child has a right to talk back to his parents and demand things. It just says that the child is like any other human being, who has will and reason which God left free. I know that, although Australia is a secular society, most people believe in a God, however, you perceive him or perceive it to be. Your will and reason were left free.

Therefore, the convention sought to state that you do not wait until this person becomes 18 years, when the constitution of any particular government hands on a platter to this 18-year-old certain civic and other responsibilities, rights and duties, to allow that person to exercise them. It says that, as that child progresses towards this magical age of 18, he or she must be accorded respect; he must be accorded due dignity in order to give vent to his or her opinions. All the members of the committee are parents themselves—I myself am a parent—and all of us give our children the right to give vent to his or her expressions at some times.

You can think of it in terms of whether the child wants to have orange juice instead of cornflakes in the morning to, say, a 16-year-old or a 17-year-old who feels that he or she should go to a particular disco or do some such thing, but you, as the parent, have the right to look into this particular circumstance of that event and help the child to make up his or her mind whether it is the appropriate thing to do at the appropriate time. At no time does the convention seek to allow the child to take the place of the parent or

to rule his own life, as we say in the Caribbean.

Senator ABETZ—I want to ask a number of questions. Yesterday, I think you said, during the private session—I just want to get this on the public record; correct me if I am wrong—that children can tell us best what is good for them. Is that a comment that you would agree with?

Prof. Kolosov—I think children have the right to say what is good or what is bad for them. We must not forget that the convention protects the rights of every person under the age of 18, unless the majority is attained earlier in accordance with the national legislation. In most countries, as well as in Australia, young persons attain partial legal capacity at much earlier ages. For example, the age of sexual consent is lower than 18. The age of the right of a person for contractual labour or work is lower than 18. The age of criminal responsibility is lower than 18. How, then, recognising international legislation for certain rights—not full but partial legal capacity—of young persons, younger than 18 years old, can we not take into account a consideration of their opinion? If a person of 15 or 16 years old is criminally responsible, cannot he or she explain an opinion with regard to the acts which are incriminated to him or her?

Senator ABETZ—I understand that. What about the expression of opinion that the children are best suited to tell us what is good for them?

Miss Mason—If I may look at it from a different perspective: part of the reason why we are finding such great difficulty in grappling with the principles and the tenets of the convention is that we, as adults, have forgotten or choose to forget that we were children ourselves. I think that if we can start off from that premise we can appreciate this whole concept of rights. You went through the stage when you were a child yourself and you wanted to express your opinion or to do something. Certainly, I grew up in the age when we were seen and not heard. I am still trying to determine whether that was a good thing or a bad thing, because I was very shy and introverted and I would not open my mouth to speak if you banded me on the back of my head.

I compare that with my son, who is 10 years old and has an opinion on everything. It allows me, as a parent, to cope with him, simply because he affords me, firstly, the opportunity of knowing what he is thinking, how he is thinking, what he is learning on the outside, et cetera. It also affords me opportunities in a different facet of my life, say in dealing with children in juvenile court—how I would handle them.

It is children who tell us how they feel and we will best know how to cope with them. I spent 14 years in the juvenile court and, if I dare say it and be presumptuous and arrogant enough, I was a damned good juvenile court judge. It was because I listened. Because I listened I was able to find out how best to deal with the situation, how best to deal with the child himself, how best to deal with the parent within that whole set-up.

In terms of children knowing in most instances what is best for them, if you need to make a determination, you just sit and listen to what the child has to say. I could use perhaps another personal example. I go about the country making a lot of speeches and addresses. Once I was asked to give a feature address to a graduating class of 16-year-olds. I wrote what I thought was a damned good speech. I dressed up and went down and gave my speech and everybody politely clapped at the end.

The next morning I gave this speech to my 16-year-old niece to read. I saw her feeling proud of her aunt as she read but, as she got close to the end, she fell off the bed laughing. Affronted by her reaction, I said, 'What is wrong with you?' She said, 'Hey, you were going hip until you reached here. You said that Madonna said this when, in fact, it was Cyndi Lauper.' I said, 'So what is the difference?' She said, 'How do you mean what is the difference?'

Immediately that brought home to me that here I was trying to be sort of in their milieu, without really understanding that these two persons are completely different persons and personalities. That might not be illustrative. But next time I wanted to talk to 16-year-olds about any topic, I sought her opinion, or any time I wanted to discuss anything of a certain type, I spoke to my son. Children are the best ones to afford us that opportunity to assist them in whatever we are doing. We just have to be honest in terms of our dealings with children.

Senator ABETZ—Dealing with the convention and the general principles of it, does the convention express minimum standards or does it express some ideal to which everybody ought to be aspiring?

Miss Mason—As I said earlier, the convention was as a result of compromise. It took 10 years for these discussants to reach some sort of consensus on various things. The convention reflects what we call basic minimum standards. It tries to be all things to all people at only a minimum level. How you deal with it and interpret it is entirely up to your own specifications within your own context. Of course, the United Nations Committee on the Rights of the Child are the guardians of those minimum standards. According to the tenets, principles and provisions, if the committee is not of the opinion that those minimum basic standards have been reached, you will be advised.

The question of principles leads us on to a decision that the committee came to. It is not really enshrined within the convention, but during our first session, the committee came up with what we called basic and general principles, which allowed us to focus on, and countries to focus in and factor in, these principles. These principles are the principle of non-discrimination, which is pervasive; the principle of the best interests of the child, which still is in the stage of being determined and discussed; the principle of the child's right to survival and development. The last principle is in article 12: the principle of the child's right to express his or her opinions.

CHAIRMAN—In the Australian setting, from the evidence that we have taken, it

seems to me—and I suspect the committee—that this convention means different things to different people. Would you concede that that could be a domestic interpretation?

Prof. Kolosov—Yes. The convention is an umbrella convention because the actual implementation of human rights becomes the national legislation. For my country, the convention becomes a part of the national legal system. But, in all cases, the provisions of the convention require transformation into the national legislation in accordance with the constitutions and laws and may add to the freedom of expression, for example.

Article 13 is very important in this respect. The right of expression is not in the interest of the child himself or herself; it is in the interest of the community or the nation. How can we imagine that a person who is not accustomed to expressing his or her view until the age of 18 and then overnight, after their 18th birthday, can suddenly take very serious decisions? The freedom of expression is not only a freedom of a child but also a responsibility.

In article 13 it is clearly stated that this freedom may be subject to limitations which may be necessary for the respect of the rights and reputations of others and for the national security or public order. So a child must be taught to express their opinion, their view, gradually in accordance with the maturity of the child.

It is impossible to imagine that any person in society under 18, who has no right to express his opinion, overnight, the next morning, can not only express his opinion but go and participate in the elections. So it is very important. It is important not only for the child but also for the society itself because we are going up to the next generation. That is the importance of these articles relating to the freedom of expression.

Miss Mason—If I may be permitted to add an addendum to that, we recognise that children are human beings and therefore entitled to human rights. The rights that Australia seems to be experiencing difficulty with are in relation to articles 12 to 16 and are no higher standards than those guaranteed under most constitutions everywhere in the world for citizens of their countries.

As Yuri says, most of these civil rights and freedoms are guaranteed to everyone and there is always the proviso that it does not interfere with the rights of other persons in these same capacities—the right to freedom of expression. For an adult, freedom of expression is guaranteed provided it is within the confines of the laws relating to libel and slander, et cetera. So an adult is allowed freedom of expression but is not allowed to slander anyone or libel anyone. The child is allowed to speak, but with those same provisos and also within the parameters that are set by the parents, legal guardians or schools, et cetera.

CHAIRMAN—Senator Abetz, you can have one more and then we will go to Senator Neal. Regrettably, I have to go to another meeting. That is what life in this place

is all about. I really do thank you for coming along yesterday and today. I will see you in a few weeks time.

Senator ABETZ—I have a list of questions which I would like to—

ACTING CHAIRMAN (Mr McClelland)—I think the chairman indicated that you could have one more. Then we will give everyone else a turn and come back to you depending on the time. So pick your best one now.

Senator ABETZ—You tell us that corporal punishment, for example, is not specifically referred to in the convention, yet in the list of questions asked of Australia we have been asked about corporal punishment. We have been told also that abortion is not covered in the convention, yet as I understand it your committee asked questions of the Russian Federation about the rate of abortion in that country. What is the basis of the questions that you ask of countries if you are asking questions about issues that the committee recognises are not covered by the convention? What is your jurisdiction? What is your capacity to delve into those areas?

Prof. Kolosov—This is the problem of interpretation since the formulations of the convention are very broad. It is a matter of interpretation. A legally binding interpretation can be made only by the states parties themselves. If it comes to a conflict between, say, the international community and the position of a given state party, then the issues would be raised at a meeting of states parties. The interpretation of that meeting which is adopted by a two-thirds majority will be legally binding for all party states. Otherwise, all other interpretations are of an academic nature.

The committee, consisting of experts in these fields, has the right to make its own interpretation, but in my view it is not legally binding. This is the opinion of the experts in the committee. We, the committee members, believe that corporal punishment contradicts the duty of states parties and, to protect the physical integrity of a child and to respect his dignity, this is our interpretation.

If a state body has a different interpretation, it may report to the committee that corporal punishment is in accordance with the cultural traditions of the society and it is not physically injurious—that is, it does not cause harm to the health of a child. If it is a custom or tradition, there may be a dispute between the delegation and the committee members, but the committee may not issue an order to the state party to adopt special legislation prohibiting corporal punishment in a normal human way, so to say. This is the subject of interpretation.

On the issue of abortion, for example, the committee members believe that it is harmful to the health of a girl child and early pregnancies are a problem in many countries. Early pregnancies very often prevent girl children from going to school. Early pregnancies are not conducive to the child's care or to the health of the babies of young

girls if the pregnancy is too early. It prevents the girl child from active participation in the life of society.

So the committee, when discussing these issues, takes into consideration the two sides of early pregnancies—that the abortion is physically harmful and that giving birth to a child at a too early age is harmful. It is a controversial issue, but all of that is the interpretation of the respective article dealing with the health care of children and their physical integrity. Again, this is a matter of interpretation.

Senator NEAL—Earlier you said that children have the right to say what is good for them. It seemed to me that the conclusion—and perhaps I am misinterpreting—that Senator Abetz was drawing from that was that whatever the child says is good for it, goes.

Senator ABETZ—For the record I drew no conclusion. I asked them to put on record what they said yesterday.

Senator NEAL—When you say children are entitled to say what is good for them, does that automatically mean that whatever children say is good for them must occur or it is a breach of the convention?

Prof. Koroslov—No, it depends on the evolving capacity of a child. A child, for example, may have the right to contractual labour from the age of 14 or 15. I do not remember exactly what the legal age is for contractual labour in Australia. I think it is 15. If the parents of a not very well-off family say to a boy, ‘The situation is such in the family that you must go and work,’ doesn’t that boy have the right to make a choice between working in one place or another? Is it only the parents who should decide at which place the boy should go and work, if there is a choice?

But take a boy of five years old. His parents tell him, ‘You must go to bed now; it is the time.’ He says, ‘No, I don’t want to’. Of course, this opinion, in nearly every case, should not be taken into account and should not be given due weight unless there is a very serious reason. Every case is very concrete in actual life.

Senator NEAL—There are some people who have argued, in giving evidence to us, that since Australia has signed the convention there has not been a major change in the standard of care that we provide to children. Children still live in poverty, while some children are abused and mistreated. If there has not been a change in 17 years, the argument put to us is that—

Senator ABETZ—Seven years. Since 1990.

Senator NEAL—Wasn’t it 1980?

Miss Mason—The convention. I so am sorry, I thought you were talking about

your internal legislation. The convention came into operation in 1990.

Senator NEAL—Since the convention has come into play there has not been a major change in the way we treat our children. Therefore, doesn't this show that the convention is ineffective and that Australia should not participate? This is an argument that has been put to us and I would appreciate your comment on that issue.

Miss Mason—You must pardon me if I think of such an argument as specious, simply because the convention was not meant to be a magic wand that upon ratification immediately erases all the ills in your country. The convention, as we stated, presents basic standards or minimum standards that each country is expected to adhere to. In adhering to those standards it will be fulfilling the requirements.

However, the committee was put in place to assist governments in the realisation of these standards and these minimum goals, and it is done through the presentation and submission of a report. In that report we will note what progress you have achieved and what factors and difficulties prevent you from achieving those standard basic minimum goals. The members of the committee are realistic. They recognise that things like poverty, ill-health and unemployment exist in every society. They also recognise that within every country there are certain factors that are special to the country and that prevent it from realising the requirements of the convention. As a consequence, the committee looks at each country according to its own problems, according to the resources it has.

If, for argument's sake, when we consider the report of the Commonwealth of Australia and we recognise that Australia needs to do a little more to alleviate this question of poverty or the question of unemployment, we will make such recommendations. We might make recommendations, perhaps, that you set up specific mechanisms to look into the peculiar problems that you have. We might make recommendations that you will carry out a study, for example into the question of teen suicide. Have any studies been carried out into the causes of child suicide, into which particular sector of your population commit suicide, at what particular time of the year—all of these sorts of studies? We would recommend that you look more closely into the situation, but we would not say, 'Do something immediately about suicides. Do something immediately about racism. Do something immediately about' whatever it might be. That sort of gentle prodding would be evident in the recommendation that we make, but the convention was not meant to dissolve immediately all the antisocial behaviours, all the ills of any society.

We are human beings, we are not robots, and all these negative traits and behaviours will continue until the world comes to an end. So the convention is just a tool to guide governments along the path of ameliorating the conditions of children in their country.

Mr BARTLETT—You mentioned yesterday, in the private hearing, that you were looking at pursuing the possibility of having declarations and reservations withdrawn.

Could you explain why you are considering that course of action.

Prof. Kolosov—It is the tendency in the present world. When the United Nations charter was adopted, the philosophy of that document was that the future postwar international community must basically be based on the three whales or three elephants—international security; international economic, scientific and technical cooperation; and respect for human rights.

In the next several decades there was a dispute between the two friends over the third—I may say, being a former USSR citizen, between the socialist countries and the so-called capitalist or Western philosophy over whether the implementation of human rights is the purely domestic affair of each state. That was the stand of the socialist countries: albeit the existence of international treaties, the actual implementation and promotion of human rights is purely a domestic affair.

During the last decade of this century the tendency, the trend, has been changing. At the 1993 Vienna Conference on Human Rights it was recognised unanimously by all the participants that the promotion of and respect for human rights is no longer a domestic affair of any given state. The international community as a whole is interested in the respect for and promotion of human rights in each individual state. It is a common responsibility. This is the philosophy of today, and there is no disagreement on that issue among states parties. That is why the implementation and promotion of human rights in accordance with every human rights treaty is a common concern of the international community. The fathers of the UN charter believed that, if there is no respect for human rights in a given individual state, it may be the cause of Third World disaster.

Mr BARTLETT—Earlier on, though, you said that many of the articles in the convention were a matter of interpretation, and the declaration of reservations by different countries has been one way that they have been able to interpret the convention according to their own domestic law and their own culture and society and yet still affirm the principles of the convention. Is it not likely to be a problem, then, that the removal of those declarations and reservations will make it more difficult for countries to be able to affirm the principles of a convention without necessarily conflicting with their own culture or legal system?

Prof. Kolosov—In accordance with the existing international law on treaties, the 1969 Vienna convention on the law of treaties, every sovereign state has the full right to make reservations and declarations to any multilateral international treaty. The other thing is that, at the Vienna conference of 1993, all the states were invited to withdraw their reservations made to the human rights multilateral treaties. But it was only an invitation.

The Committee on the Rights of the Child also invites. If you look at our concluding observations and recommendations, you see that we are always inviting respective governments to see whether it is feasible and it is possible to concur with that

invitation of the Vienna conference, and whether it is possible to withdraw the reservation. If not, and if that reservation does not undermine the spirit and letter, the purpose, of the convention—of coming into contractual relations with other members of the international community—then the reservation may remain, may be there. It is the full right of each sovereign state.

Mr BARTLETT—I have one other, quick question. You mentioned earlier the use of sanctions with regard to countries whose reports were not satisfactory. Could you just elaborate on what you mean by sanctions. Also, is there any concept at all of sanctions being applied where, in the view of the committee, the convention is breached in any particular country?

Prof. Kolosov—The issue of sanctions has again a long story. It is only the Security Council of the United Nations which may take decisions relating to collective sanctions against any given state. In accordance with some other international treaties, it may be the case only when there is a massive violation of fundamental human rights in the country.

There is nothing in the convention which allows any such sanctions. The committee cannot make any recommendation to that extent about sanctions. The recommendations of the committee have a political and moral effect. Of course, the recommendations of the committee addressed to a given state become part of reports of the committee to the General Assembly. They are part and parcel of the reports of the committee to the United Nations General Assembly.

Those reports go to the Secretary-General, who passes the report to the Third Committee and to the Economic and Social Council and, through it, to the UN Commission on Human Rights. So that may become an issue for discussion. But you would know the procedure in the UN Commission on Human Rights. There are no sanctions envisaged by the procedure of the commission, although it has the right to appoint a special country rapporteur to make inquiries. There is a list of states which are being kept under supervision, but it is a special procedure and it relates only to cases of gross and massive violations of human rights. I do not see anything in this convention which might so be regarded.

We have considered a report of one of the countries where the corporal punishment of children was legally established, in the form of lashes, for example. But even in that case, though it is inhumane of course, the committee did not regard that as a gross and massive violation of human rights, although we recommended to change the law, and the law, to the satisfaction of the committee, was changed in that country. In the next year the country reported to the committee for the second time. It was not regarded as a gross and massive violation which may entail so-called international sanctions.

Mr TONY SMITH—I have not read all of the response by the Attorney-General's

Department to the issues raised by the committee, but I would certainly dissociate myself from the remarks under 'government schools', the first paragraph in response to 18. I would imagine there would be a lot of members of parliament and members of the community who would as well, but that is just by way of preamble.

Miss Mason—But, of course, we do not know exactly to what you are referring.

Mr TONY SMITH—Yes, it is on the record, so maybe when you come to deliberate on these things you might be able to reflect on that in due course. I guess what you are really saying is that, while you as a committee believe that corporal punishment ought not be part of the education process, you are not saying—I just want to be absolutely clear on this—that the state should intervene in the rights of parents to choose the type of education that they feel is appropriate for the upbringing of their children, even if it includes reasonable chastisement. If you are saying that the state should intervene, then that surely would be in breach of other UN conventions in relation to the rights of parents to bring up their children and educate their children in an appropriate manner. Do you agree with that? I know it is a long question. In other words, you are not saying the state should intervene.

Prof. Kolosov—No. It is impossible to answer that question directly. Whether or not corporal punishment of children is a violation of the convention depends on whether it is injurious.

Mr TONY SMITH—That is what I am saying.

Prof. Kolosov—If the medical doctors testify that the child was injured.

Mr TONY SMITH—We have laws in this country and in Queensland, where I come from. There is a section of the criminal code which talks about defence of domestic discipline, and provided it is reasonable and appropriate, et cetera, then it is not an assault. If it is unreasonable, it is a criminal offence. Teachers have been prosecuted in the past and dealt with, as have coaches of football teams and other people who are in a parentis patriae situation with children. So we have that in our law now, and certainly in Queensland.

Professor Kolosov, you made the point about article 12. You referred to the last few words in the nature of a proviso. I think you were arguing that those words are, in a sense, a proviso on paragraph (2) of article 12. I put to you that they do not operate as a proviso on the right to be heard. The only proviso relates to the manner in which children can be heard. In other words, they only touch upon the procedural rules of court. Do you agree with that?

Prof. Kolosov—Yes.

Mr TONY SMITH—I have a lot more questions but we are running late. I must say that many Aboriginal communities believe strongly in disciplining children, even by quite remote family members. That is part of their culture. I take a very strong view of article 24 because that provides, especially in paragraph (4), that Australia has to be more proactive in seeing that the rights of children in other countries—the basic human rights—are uplifted; such basic rights as health and clean water, a decent education, food and so forth. Have you, in your queries to Australia, raised our proactivity, or lack of proactivity, in relation to our obligations to see that those things are carried out?

Miss Mason—I do not know about my colleague but I certainly do not remember the issues that we would have raised in relation to Australia. The convention requires Australia and all the countries that are in a better position, for lack of a better word, to assist countries by way of international cooperation in the upliftment of standards so that they themselves can reach those basic minimum standards that are required by the convention. You are expected to use your resources to that end. But I do not remember what we would have raised in relation to Australia.

Mr TONY SMITH—For example, child labour: the practices of child labour are horrendous in the subcontinent. Has there been any reference made by the committee to what role Australia can play in doing something about the importation of goods which are manufactured by children from those countries?

Miss Mason—Article 4 of the convention obligates Australia to use its resources to the maximum extent possible, even in relation to international cooperation. That is an obligation that Australia has agreed to. As my colleague says, in making an interpretation of the extent of your maximum resources—even in the area of international cooperation—you can make that determination as to whether, if you discover, for argument's sake, that there is a particular retailer who is selling goods that are being made by children in the Asian subcontinent, you are going to black-list that particular merchant or retailer and lobby or do something about it. It is left to Australia in that area. If the committee is apprised of any such situation occurring and that in Australia you are getting those goods, we would draw it to your attention and make the suggestion or recommendation that you look into the situation. But the convention and the committee are not meant to be a sort of—

Mr TONY SMITH—Blunt instrument?

Miss Mason—Whatever—standing over the country with a big stick.

Senator COONEY—Or the police.

Miss Mason—Indeed, thank you very much. That is exactly what I want to say: we are not policemen. We are just trying to determine what the situation is in relation to any country.

Senator COONEY—The convention has been operating for some years now. Could you give us an impression—or even something stronger than an impression—of the effect it is having around the world? You could go on for hours, I know, but could you give us some idea of how effective this has been? Are people starting to pick up the general thrust of what the convention says?

Miss Mason—I would say, without hesitation, that the convention has produced positive reverberations throughout the world. It has allowed many countries to take an opportunity to look at their national laws and to see where there are lacunae—where they are not fulfilling the needs and wishes of people. It has afforded the opportunity to put in place, especially in relation to children, mechanisms for their protection. It has allowed countries to look at their system of education and see where it might be deficient or where more could be done for children. It has looked—and this is a very significant area—at the question of juvenile justice and exactly how the due process of law requirement is being dealt with in any particular country.

It has brought to the fore a formerly taboo subject—sex. Nobody wanted to talk about sex. Even in some of the reports it was just mentioned by the way. Because of the discussion within the committee on every country that has gone before it about the question of sex and how children are treated, what facilities are in place, general attitudes, and the question of tradition and customs in relation to the whole question of sex, it has mushroomed.

You would remember that last year it even afforded the opportunity for a worldwide congress on the question of sexual exploitation. Of course, you know sexual exploitation comes in many forms. There is the problem of paedophilia, which every country has. There is the question of sex tourism, which has become one of the most insidious forms of activity among adults in relation to children in the sex circuit. It has enabled the whole world to sit back and look at itself and see whether it is doing the right thing by children, and acknowledging the trauma and the repercussions that anything that is sexual has on the psyche of the child. It has, on the whole, allowed countries to look at the glib statement that we always make that children are the resources and the future of any country.

Prof. Kolosov—May I add briefly that it also has had an impact on the cooperation within the framework of international organisations. Organisations such as ILO, WHO, UNESCO, UNHCR, the Red Cross, many non-governmental organisations, regional organisations, OSCE and the Council of Europe, after the adoption of the convention are paying more and more attention to collecting the statistical data relating to children's rights and dissertations on children. They are thinking how to better finance the economic, social and cultural needs of children. So it has had a very positive impact on the international community through the activities of very many UN specialised agencies and regional international organisations, no doubt.

Senator COONEY—Have any countries felt uncomfortable with any parts of it? Did you get any feedback that people are saying that something is a bit hard to put into operation?

ACTING CHAIRMAN—Just related to that, if you do not mind me adding to it, Barney—

Senator COONEY—In fact, you can ask it.

ACTING CHAIRMAN—No, you ask it. As an addendum to Barney's question, if a country is unhappy with it, do they have an appeal mechanism?

Miss Mason—To date, we have not. I do not know about my colleague, but I have been there for every session that there has been since 1991 and I have not got the feeling that any country has been uncomfortable with anything to do with the convention. What I certainly have recognised is that every country wants to do right by its children and every country has done something in relation to the Convention on the Rights of the Child. There is a sort of avid enthusiasm that I perceive when the various countries come in contact with the committee and we get an opportunity to discuss. Countries, after having that face to face discussion, recognise that here are 10 persons who are genuinely interested, who are not policing any state in relation to their obligations under the convention, but that there is a genuine interest to reach the same goal that those politicians, those NGOs, those people, those children within the country seek for the children of their country.

ACTING CHAIRMAN—If a country was dissatisfied or felt you had unfairly represented the true situation in your findings or your report on that country, does it have a right of review or appeal against your finding or recommendation?

Miss Mason—No. They do not really have a right of review or appeal, but what they could certainly do is write a letter to the committee and say that we misunderstood and perhaps misrepresented something in relation to our discussions. They would certainly not demand a review of the report, but they would apprise us of what they consider has been unfair.

Prof. Kolosov—The last word during the three meetings with each state party delegation belongs to the delegation. We, the committee members, make the preliminary oral concluding observations, and the very last word is pronounced by the chairperson, but that is just a couple of sentences of politeness, thanking the delegations and the interpreters and all those present. But the last word after the interventions of most or each of the committee members belongs to the head of the delegation, so there is a possibility on the spot to say that a conclusion is not quite accurate, or there is a misunderstanding. More than that—although I did not have such cases—there is always the possibility of continuing the discussion if there is a feeling that the delegation is not quite satisfied with

the result of a discussion.

Senator ABETZ—Do the reservations by Poland and the Holy See undermine the principles of the convention?

Prof. Kolosov—Do they relate to abortion?

Senator ABETZ—They are in relation to parental rights. They also made a declaration or determination that interpreted one of the preambular clauses along with one of the other clauses as meaning that abortion would not be allowed. I do not want to engage in that discussion as to their interpretation, simply their reservation.

Prof. Kolosov—We have considered the reports of both Poland and the Holy See.

Senator ABETZ—The reports or the reservations?

Prof. Kolosov—The reports. The delegations of both Poland and the Holy See appeared before the committee. It is a delicate question. It is a delicate issue closely related to the religious concepts of the Catholic church, so it was not a big issue.

Senator ABETZ—Yes, but does it undermine the principles, in your view?

Prof. Kolosov—No.

Senator ABETZ—My second question was: how many countries submitted their reports late? Put another way, how many countries submitted their reports on time?

Miss Mason—We could most easily say it was a majority.

Senator ABETZ—The majority were late?

Miss Mason—Yes.

Prof. Kolosov—I have a list. I will leave it for you. Very many countries were late. The Russian Federation is due to submit its next periodic report this coming October. There is a working group established to draft that periodic report, and I was invited once. They are lucky that one of their committee members is their national. They asked, ‘What if we submit our periodic report half a year or a year later? What would happen?’ I said, ‘Nothing would happen, but I do not advise you to postpone the submission of the report, because in a year’s time the situation of children in Russia will be still worse than it is today.’ That is the situation. Many countries submit their reports in due time, but very many countries are well behind schedule.

Senator COONEY—Did Geneva get its report in on time?

Miss Mason—Switzerland only ratified last year, so theirs will not be due for another year or so.

Senator NEAL—They prepared their report before they ratified, and now they've got some time to go.

Miss Mason—That is possible, because the initial report only looks at the status quo. It looks at the position now. It is the periodic report that will gauge what is happening and what the country has done.

ACTING CHAIRMAN—I would like to, on behalf of the chairman and members of the committee, indicate our sincere appreciation. It was really worthwhile to get evidence from the committee members and I greatly appreciate the effort you have gone to this morning to come so early in the day. We sincerely appreciate it.

Miss Mason—Certainly on behalf of my colleague and myself and the members of the committee, we appreciate this opportunity. We think it is incumbent upon us to let the whole world know what the UN Committee on the Rights of the Child does in affording you the opportunity to treat your children right. If it gives us the chance to assure the members of your community that the UN Committee on the Rights of the Child is only working in the interests of parents and children themselves and, in effect, the wider community, I am eternally grateful to you as well.

ACTING CHAIRMAN—Thank you.

Resolved (on motion by Senator Neal):

That this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 9.01 a.m.