Tell me! The right of the child to information
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Chapter 5

The right to information in the Convention on the Rights of the Child

No clearly defined right to information is found in juridical literature. Nevertheless, everyone seems to have some sort of understanding about what it could mean. However, this interpretation is naturally coloured by the context in which one lives and works, one’s story of life. In the field of health care, doctors think of the patient’s right to obtain information on the diagnosis of his disease and the proposed treatment. The works council thinks of its right to certain information from management. A journalist thinks of his right to information from a governmental body. A tax-payer thinks of his right to information on his personal records, held by various institutions. A citizen thinks of his right to be informed about costs and benefits of public services. The divorced parent thinks of his right to information about the development of his child. An adopted child wants to have information about his biological parents and family. A refugee child wants to have information concerning the whereabouts of his parents and family. A handicapped child wants to have information about where he can play outdoors.

Traces of a right to information

In general, when speaking about the right to information, the response is often ‘What kind of information?’ All the examples mentioned above show a special situation in which specific information is sought or required. Yet, in spite of the vastness and vagueness of the term ‘information’, is a general right to information for the individual human being protected by international law? And, will it be possible to find traces of this right in the Convention on the Rights of the Child? These questions will subsequently be dealt with and form the central subject of this chapter.

Development of a concept: a right to information

Attention will first be drawn to the concept of a right to information and its development. The underlying question remains to what extent the child’s information process, as described in the Chapters 2 and 3, is protected by law, but as almost nothing has been written on this subject one has to go back to two more preliminary questions. The first one is whether and how, in general, the communication process, of which the information process forms a part, is protected by law. The second question is whether and how the right to information is related to such protection. From that concept one may than draw conclusions, relevant to the further tracing of a right to information in the Convention on the Rights of the Child.
In general, the protection of communication processes is related to the freedom of expression. In many comments on the freedom of expression or information, observers have pointed to the double character of this freedom in various ways. An early example is the commentary by Pinto: ‘La liberté d’expression des idées et des faits est un des fondements de l’ordre démocratique. Elle permet le plein développement des œuvres scientifiques et artistiques. Elle facilite l’épanouissement de la personnalité de chacun. Mais elle recèle des forces dangereuses. Elle pervertit au lieu d’élever. Elle inspire un commerce médiocre, abêtissant. Elle menace la moralité acceptée, détruit la paix sociale. On conçoit la complexité d’un système juridique appelé à concilier des intérêts aussi contradictoires.’

Another example of the freedom of expression’s double character is found in the following, also French, commentary: ‘On peut entendre par le droit de l’information l’ensemble des règles juridiques applicables à l’information au double sens actif et passif, c’est-à-dire à la fois à la diffusion de l’information et à la réception de celle-ci par ses destinataires.’ In this view, the information is considered as a unilateral process, whereby the message goes from the informer to the informed, the latter ‘undergoing’ the information. The freedom of information also has a double meaning; it is the freedom to inform, which means to diffuse the informative message, but also the freedom to determine the contents of the message. The other side is the freedom to be informed, which means to receive informative messages without impediment. A distinction has to be made between the freedom of information and the right to information. The latter forms a continuation of the former: ‘Vis-à-vis du public, ce droit consiste à reconnaître aux individus, non plus seulement la liberté de recevoir l’information existante, mais également l’aptitude juridique à bénéficier d’une information effective et – conformément à la notion même d’information – objective.’

Others have pointed to the difficulty in guaranteeing a right to information without compromising the freedom of expression. As Voyenne describes: a delicate task because the means of expression are not equally distributed: ‘Crier avec ses seuls poumons ou disposer des amplificateurs électroniques n’a pas du tout les mêmes effets; publier un bulletin à cinquante exemplaires ou un quotidien lu par quelques millions de personnes sont de situations identiques au regard de la loi mais qui n’ont à peu près rien en commun.’

The right to information can also be defended by stating that every human being has a right to know, for the simple reason that without knowledge he is not a human being. ‘Au-delà des anecdotes, nous tentons indéniment de découvrir une histoire, c’est-à-dire une réponse à nos questions, à notre unique question. Ce qui concerne l’un d’entre nous, concerne chacun de nous. Il n’est pas d’ébranlement, si infime et apparemment dérisoire soit-il, qui de proche en proche n’affecte la totalité non seulement des consciences mais de l’Être.’

If nowadays participation is the fashion, without information there will be no participation, it will be a farce, one more. The press does not speak about anything

else besides that which happened to others. As a consequence, what comes from the people belongs to the people and has to return to them. The whole of the public has a right to the whole of information, more than any other riches, but such property is only returned indirectly through the organs of information, and these organs are controlled by a few. Moreover, the press is also a form of merchandise. In an attempt to discern between freedom of the press and freedom of opinion, Voyenne demands that the press becomes an institute of facts, not of opinions. The press should disseminate the opinions of others, and if possible make a synthetic interpretation. Opinions are myriad, but the truth is the same for everyone. Objectivity is required.

'C'est dire que l'objectivité n'est jamais un point de départ, ni même une conclusion, mais un appel ou, si l'on préfère, une intention. (...) Certes, toute observation est relative à un observateur, mais l'objectivité n'est pas dans les choses: elle est uniquement dans l'attitude d'esprit de cet observateur.' An objective attitude cannot be achieved through pure receptiveness, passively watching things happen, but is to be understood as a creation, a supremely controlled activity, a choice in itself. To inform itself in order to understand that is the choice the press has to make. Voyenne considers the press to be still too much of an instrument of opinion and not of information as it should be, for information is a common good. The press does not have a copyright on news, as he states. Information is a public service like education and transport. Therefore, the press should not be the monopoly or property of anyone. However, the law of supply and demand is not able to mechanically assure the people's needs. Therefore, human rights strive to assure the social counterpart of the traditional freedom of expression, which is the right to information. This right offers effective access to sources. In the past two centuries, the accent has been on free expression and less on access to sources. Voyenne considers the Universal Declaration as the official birth-certificate of the right to information, even if article 19 on the right to seek, receive and impart information is not yet labelling the right by its name.

In an elaboration of the freedom of expression as enshrined in the First Amendment of the United States Constitution, Emerson has estimated the values to be protected. He states that the function of freedom of expression in a democratic society has been developed over a period of three hundred years. The values sought by society in protecting and maintaining the right to freedom of expression may be grouped into four broad categories: (1) as means of ensuring individual self-fulfilment; (2) as a means of attaining the truth; (3) as a method of securing people's participation in society, including political decision making; and, (4) to maintain the balance between stability and change in the society. Some elements are relevant in the light of a right to information. The first category points to the value for the individual of the individual process, namely the realisation of character and potentials as a human being. Attaining the truth, the second category, includes the value of advancing knowledge and discovering truth, for example by means of Socratic dialogue. In fact, it regards a continuous process of open discussion. The third category is concerned with the principle of democracy that all persons participate in common deci-

5. Idem, p. 110.
ions, and rejects the idea that special competence is required. The other elements mentioned are more related to the social aspects of the freedom of expression. Emerson envisages the far-reaching consequences: 'The theory of expression involves more than a technique for arriving at better social judgments through democratic procedures. It comprehends a vision of society, a faith and a whole way of life.'

A broad approach is also envisaged by Gornig in his analysis of the various forms and related freedoms of information: opinion, expression, information, press, and broadcasting. He finally concludes: 'Alle Freiheitsrechte lassen sich reduzieren auf die Freiheit der Äußerung jedes Gedankeninhalts mit Hilfe jedes denkbaren Mediums und der Freiheit des Empfangs jeder Information mit Hilfe jedes denkbaren Medium. Nur mit diesem Verständnis der Freiheiten wird man dem naturrechtlichen Hintergrund der Äußerungs- und Informationsfreiheit gerecht. Abzulehnen sind daher Ansichten die bereits den Schutzbereich der Freiheiten durch qualitative Merkmale einzuschränken versuchen. Eine Unterscheidung zwischen Presse- und Rundfunkfreiheit (...) ist nicht mehr erforderlich. Beide Freiheiten lassen sich daher unter dem Begriff Medienfreiheit zusammenfassen und garantieren die aktive wie die passive Freiheitsbetätigung. Damit kommt die bislang suspendierte aktive Rundfunkfreiheit natürlicher Personen wider zum Tragen. (...) Da die Informationsfreiheit nur die Wahrnehmung von Wahrnehmbarem und den Zugang zu Zugänglichem garantiert, nicht jedoch die Wahrnehmbarmachung und die Zugänglichmachung, bedarf dieses Freiheitsrecht zur größeren Effektivität einer Ergänzung durch Normen, die den freien Informationsfluß garantieren. Das Prinzip des "free flow of information", das heute von den westlichen Staaten als Völkerrechtsprinzip erkannt wird, tritt damit auf völkerrechtlicher Ebene neben die bloße Informationsfreiheit garantierenden Normen.' Furthermore, Gornig concludes: 'Die schönsten Konventionen, Erklärungen und Verfassungen, die in den edelsten und erhabensten Worten die Respektierung der Menschenrechten und Grundfreiheiten garantieren, haben aber nur einen geringen Wert, solange sie nicht mit einem echten Kontrollsystem versehen sind, das einen wirksamen Schutz der anerkannten Rechte verbürgt.'

According to Gornig, a right to information cannot be derived from the passive freedom of information. At least, the bearer of this right cannot claim that the state, political parties, churches, unions, public authorities and other social groups are obliged to inform the public. Such a claim can hardly be imagined without further legal specification as to the content and limits, the active and passive aspects of its legitimation and the means of fulfilment. It therefore falls outside the scope of the traditional freedom. For this reason, for example, the German Constitution limits the freedom of information to the freedom 'sich aus allgemein zugänglichen Quellen zu unterrichten' (Article 5 (1) GG). Taking the view that information is all that is com-

municated to others, a limitation on the concept of the freedom of information to certain types of information, would contradict the very meaning of the word. The freedom of information would lose its value when the legislator or the executive could freely decide whether a source of information was freely accessible. In principle, all sources of information which should serve as individual and public information, are allowed. Gornig discerns individual and public sources of information. 'Eine individuelle Informationsquelle ist jede Wahrnehmung eines Einzelnen, die seiner Information dienen kann. Die Information kann unmittelbar von Mensch zu Mensch in einem Gespräch oder einem Brief ausgetauscht werden, sie kann aber auch in einer unmittelbare auf den einzelnen wirkenden Erscheinung liegen. Die individuellen Informationsquellen sind im Vergleich zu den öffentlichen in der Quantität oftmals unbedeutend, in der Qualität unzureichend und ungenau. Sie erlangen jedoch die höchste Aktualität, sobald die öffentlichen Informationsquellen versagen.' The public sources of information are all those from which the citizen can educate and teach himself: newspapers, magazines, books, audiovisual materials, radio, television, regardless whether it is a private or governmental source of information. All these are considered as generally accessible sources.

The so-called passive freedom of information also includes an active and passive aspect, as explained: 'Aktive Informationsfreiheit ist der Vorgang, sich die Kenntnisnahme einer bestimmten Information zu verschaffen; passive Informationsfreiheit, wenn man die Information auf sich zukommen läßt.' The active side comes close to the concept of information seeking. The passive freedom of information provides only a claim of access and perception of what is accessible and perceptible. There is no claim to the publication of a manuscript, to a sufficient number of magazines and books, or the showing of a film, or the broadcast of a programme. However, there is a claim to freedom of information, to buy a book or to visit an exhibition, or to watch the broadcast programme. As a result, the state is not encroaching on the individual's right to freedom of information when it does release or limits the number of books published, tapes recorded or radio shows broadcast.

The freedom of expression and the passive freedom of information are only to a certain extent reciprocal because the passive freedom of information does not only include the objects which are perceived in the exercise of the freedom of expression, but also extends to all the phenomena and occurrences which are perceptibly executed. The passive freedom of information therefore emphasises that everyone may educate himself in all possible areas from generally accessible sources, without interference from the state.

When one considers the various elements of the communication process, as presented in the models in Chapter 3, and the various approaches of the legal framework one may perceive a need for a schematic overview to summarise what parts of the communication process are protected by law. In the classical interpretation of hu-

human rights, this protection refers mainly to protection from interference by the state. In the advanced interpretation of human rights, a positive obligation of the state is gradually recognised, also in case of the traditional human rights. The third aspect of such protection is formed by the obligation of others not to interfere.

The protection of the whole communication process can be described as the freedom of communication. This is the freedom of every human being to communicate, to give and receive information, or in communicational terms: to send and receive messages. The following are the main elements which can be discerned as being protected by the law: the freedom to express; and, the freedom to receive. When one first considers the freedom of expression, three aspects can be discerned: (1) freedom in the sense of a classical human right which means that the state has to refrain from interference; and not impede an individual in expressing his thoughts; (2) the social implication, the positive obligation of the state, to ensure that an individual can freely express himself without fear of being arrested or attacked by the public; and, (3) the protection from interference by others, the obligation of others to refrain from interference.

When one considers the other part of the freedom of communication, one can also discern three aspects of protection in the freedom to receive. It is noteworthy that the freedom of reception hardly seems to be used as a term. The first aspect is again that the state should protect the freedom to receive messages, by refraining from interference. It should not interfere in the reception of programmes. The second aspect, as might already be clear, seeks to protect the social implications. In other words, the state has a positive obligation to see to it that every individual can receive messages, by creating an infrastructure and a climate in which the exchange of messages is supported. In addition to its positive obligations, the state itself must, in general terms, supply information. The third aspect concerns the protection of the freedom to receive messages. This protection requires a twofold obligation on the part of others to not interfere in the process of receiving, and also to supply information.

This scheme of the freedom of communication, presented in Figure 5 was composed by Schuijt.\(^{12}\) It has also to be noted that Schuijt limits his definition of the freedom of communication to public communication. Therefore, he relates the individual communication to the means by which it is done, namely, the press, broadcast or other media. As Schuijt is focusing on the work of journalists, he discerns two forms of freedom of communication, the individual freedom of communication, as described above, and the institutional freedom of communication, which is the freedom of the media. This latter freedom includes the freedom of the press, the freedom of broadcasting, and the freedom of other media. The freedom of the press is the oldest expression.

In the same way as the scheme for the individual freedom of communication is elaborated, the protection of the institutional freedom shows the various aspects mentioned. Yet, one term is especially well-known and developed: the institutional freedom to receive is called the freedom to seek or to gather information. With re-

Freedom of expression

Individual freedom of communication

Freedom of reception

Freedom of communication

Institutional freedom of communication
(press, broadcast, other media)

Freedom of reception and freedom of gathering

Figure 5: Survey of the Freedom of Communication

garded to the work of the media, this freedom is considered to be the core of the media activities, since a journalist's main job is gathering information from various sources and using his own ways of finding such sources and using them.

Consideration of this scheme leads to the question of where the right to information comes into it. One could consider the following aspects to refer to a right to information: (1) the obligation of the state to take measures in protecting the freedom to receive information; (2) the obligation of the state to supply information; and, (3) the obligation of others to supply information.

As will be shown in the historical overview, the right to information has hardly been identified as an individual right, but mainly as a right of the press. Especially in the relationship between the press and the state, the freedom to seek information has been interpreted by the media as an obligation of the state to supply the information required. In other words, the right to information has been closely related to a right of the press vis-à-vis the state, and to the obligation of the state to supply required information. In only a few cases, a right to information has been related to the right of the public in general to receive information. Even in that case, the individual freedom to receive, the individual right to information, is not considered. It is only in recent times that attempts have been made to obtain recognition of a general right to information of the individual.13 Gradually, a right to information is recognised in special situations, for example, when an individual wants to have access to files held by the state, especially when such files contain his own private information.

Additional help for understanding the complexity and interrelationship of rights and freedoms concerned with information may be derived from a report by Bullinger who has set up a scheme, presented in Figure 6, to clarify some terms with applications in Europe and the United States.14 He starts from the freedom of expression, as contained in international documents like the Universal Declaration, which consists of: (1) the freedom to hold opinions; (2) the freedom to impart, which is: to disseminate information and ideas; and, (3) the freedom to receive informations15 and ideas. The freedom to impart information and ideas can either be done by personal means of dissemination or by means of access to the media. Especially for minority groups, the state has a duty to affirm real conditions for the exercise of their rights in this field, e.g. facilitating their newspapers and publications, and providing for time-sharing broadcasting. Bullinger clarifies the freedom to receive information by referring to 'which is often, as in the Federal Republic of Germany, Austria and Switzerland called 'freedom of information'. He discerns at least two aspects of this freedom: (a) the freedom to take notice of information and ideas; and, (b) the freedom to seek informations and ideas. The freedom to receive includes all information which is in fact available, provided that it is destined to, or by its nature open to, the public.

13 Meij, J. de, De vrijheid en verantwoordelijkheid van de pers, Utrecht, 1975, p. 73.
15 The use of 'informations' is probably due to the German background of the author: 'Informationen', or the references to French texts.
**Freedom of Expression**

1. Freedom to hold opinion

2. Freedom to impart (disseminate) information and ideas
   - by means of access to mass media
   - by personal means of dissemination

3. Freedom to receive information and ideas (which is often, as in Germany, Austria and Switzerland called 'freedom of information')
   - a. Freedom to take notice of information and ideas
   - (possible extension to:)
   - b. Freedom to seek information and ideas
   - c. Right to information
      - (see: US 'freedom of information' Act)

1. Right to be informed (by government, mass media)

2. Access to government and administration records or other information

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**Figure 6: Survey of the Freedom of Expression**

Referring to the European Convention, Bullinger expresses: ‘Article 10 does not only protect the opening of eyes and ears, but also the active seeking of information and ideas.’ In his view a new element might be the extension to (c) a right to information, in the sense of the US Freedom of Information Act. This right to information has two implications: (1) the right to be informed, by government and mass media; and, (2) access to government and administration records or other informations. Such a right to information is not guaranteed in the [European] Convention and the traditional constitutions of member states, ‘in the sense that anyone would have an enforceable right to be generally informed by government and mass media and to have on request access to government or administrative information. An effective freedom of expression by print or electronic mass media might, however, require that government does not withhold from journalists information which is not kept secret. Individual freedom to receive information and ideas, even understood as giving a right to be objectively informed by government or mass media, cannot replace freedom to impart information and ideas in its essential democratic function.’

The elaboration of these schemes relates mostly to citizens; no mention has been made of children. Therefore, one has to reflect on what changes might be needed to make the concept of the freedom of communication applicable to the situation of children. One point, as seen in the previous chapters, is that the freedom of communication for children must cover both private and public communication. As the child grows up, private communication is the first environment for the child to develop himself.

The second point is that in describing the protection of the child’s freedom of communication, the role of the parents cannot be overlooked. Their special position cannot simply be included in the obligations of others. If the idea is considered that the child-parent relationship is based on rights and obligations, then the child’s freedom also has to be protected from interference by parents. Moreover, in the same way as there are exceptions to the obligation of non-interference by the state, there are exceptions to the non-interference by parents. However, such equation of totally different situations is not permissible.

**Historical development**

In order to find some historical roots to the right to information, one has to go back to possible earlier concepts in the field of communication. These can be found in relation to, for example, the press. Since the invention of the printing press, which suddenly made it possible to communicate simultaneously with a large number of people, a struggle has taken place to protect the freedom of that communication by legal standards relating to the press. Freedom of expression gradually became a right, not only for the few, but for every human being. As is stated in article 11 of the *Déclaration des Droits de l’Homme et du Citoyen*:

La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.

In the United States the relation to free speech and the press is also clear in the Bill of Rights adopted in 1791:

Article 1
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

At the end of the nineteenth century, the principle of freedom of the press had been accepted nearly all over the world. A further step took place when, as Eek remarked, 'the concept of the Press freedom [was] significantly relabelled “freedom of information”.'17 The right to information seems closely linked to the central concept of freedom of information. In his sometimes courageous search for the origins of the freedom of information, De Meij notes that this concept cannot be found in legal texts or publications before the Second World War. Even the concepts of freedom of expression and freedom of the press have only recently found recognition in international law.18

It seems to have been President Roosevelt who used the term for the first time as a unifying term for both the freedom of speech and of expression. During the war the United States developed many activities using the freedom of information as a slogan to counteract false information and propaganda, but also to respond to the strong pressure of American press bureaus wishing to expand. The United States was definitely prepared to play a leader's role after the war, by means of effective propaganda, for which a positive image was necessary. These mixed political and commercial motives have driven the United States to be the motor of the concept of freedom of information. This concept, however, does not have so much to do with the first use of the term in the sense of freedom of expression, but instead with the freedom of journalists, or the mass media in general, to seek and gather information, mainly news, in order to inform the public. Journalists should be able to freely move around, both at home and abroad, and not be discriminated against when they seek information. They should also be allowed to transmit their findings without censorship across borders. It was argued that such freedom of information was necessary, as reliable information about other nations, other people, would support common understanding and promote world peace. As the expansion motive possibly became

too obvious, the term 'the right to know' was used instead.\(^{19}\) This referred not to the journalists but to the general public, which had a right to unbiased news.

In the international meetings and the preparation of the United Nations, some elements of the freedom of information can be traced. The Inter-American Juridical Committee set up a Draft Declaration of the International Rights and Duties of Man, which included an article on the right to freedom of speech and of expression. In article 3, it is stated:

Every person has the right to freedom of speech and of expression. This right includes freedom to form and to hold opinions and to give expression to them in private and in public, and to publish them in written or print form.

The right to freedom of speech and of expression extends to the use of whatever means of communication are available: freedom to use the postal service, the public utilities of telegraph, telephone and radio communication; freedom to use the graphic arts, the theatre, the cinema and other agencies for the dissemination of ideas.

The right to freedom of speech and of expression includes freedom of access to the sources of information, both domestic and foreign.

The right to freedom of speech and of expression includes the special and highly privileged right to freedom of the press.(...)

Apart from the almost charming list of means of communication, which nowadays would be impossible to describe, as it will be outdated by the time it is printed or published on the Internet, it is remarkable that the details of this right include the freedom of access to sources, stressing the international character of information, and also recognising it as a right of everyone. The lobby for the freedom of information continued during and after the creation of the United Nations. At the first meeting of the General Assembly of the United Nations, a Resolution was accepted which puts freedom of information at the core of the United Nations' work:

Freedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated. (...)
Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters.
Freedom of information requires as an indispensable element the willingness and the capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent; (...)


\(^{21}\) UN General Assembly Resolution 59, I, 1946.
The Resolution proposed to organise a world conference on the freedom of information. The definition is clearly pointing to a right of journalists.\textsuperscript{22} In the international meetings of various groups in these early years of the United Nations, however, other aspects or interpretations of the freedom to information were also heard. For example, the right of the individual to information which is as broad and as reliable as possible. As presented by India: ‘The ideal of freedom of access of the individual to information and opinions by all methods of communication...’\textsuperscript{23} More positive effects of the freedom to information were also expected in another sense. As Mrs. Roosevelt stated in the Economic and Social Council: ‘We felt that freedom of information ... was the one and absolute necessity to really drafting a Bill of Human Rights, because it is only the free information of what happens to people throughout the world, which can form a basis for public opinion. And it is public opinion which will really make it possible to enforce any Bill of Human Rights, and no Bill of Human Rights will be worth anything unless it is enforced.’\textsuperscript{24} In short, the freedom of information is closely related to the implementation of human rights.

In the many different wordings of the freedom of information one also finds the trace of the individual right to information, although not mentioned as such, expressed by the representative of the United Kingdom: ‘Every person shall be free to receive and disseminate information of all kinds, including both facts and critical comment by books, newspapers or oral instruction and by the medium of all lawfully operated devices.’\textsuperscript{25}

The United Nations Conference on Freedom of Information in the spring of 1948 was the culminating point of the various concepts of the freedom of information as described above: in the broad sense as the freedom of expression; in the narrow sense as the freedom of gathering information; in the sense as the right to information, including access to sources, seen from the perspective of the receiver of information, either the individual or the public as a whole; and, in the sense of the freedom of the press. For example, as expressed by the Dutch delegation, the freedom of information means: ‘that freedom of information is an individual right, connected with an individual responsibility and that this right finds its general limit in the Charter of the United Nations itself; that, in clearer words, nobody is entitled to use his freedom of information in such a manner as to endanger peace and security and undermine, or aim at the destruction of, the fundamental rights and freedoms to which the United Nations is dedicated.’\textsuperscript{26}

In spite of the difficulties in overcoming the obvious differences in political systems and attitudes towards communication at the international level, the enthusiasm to achieve something resulted in three draft conventions, aiming ‘to imple-

\textsuperscript{22} In fact, to avoid confusion, the ‘freedom of reporting’ would in such cases have been a better expression than the more general expression ‘freedom of information’.

\textsuperscript{23} Cited in E/CN.4/Sub.1/38, p. 9.

\textsuperscript{24} Cited in E/CN.4/Sub.1/38, p. 5.

\textsuperscript{25} E/CN.4/Sub.1/32, p. 19.

ment the right of the peoples to be fully informed, to sharpen the sense of responsibility of the various media of information and to promote the peace and welfare of mankind by means of the free interchange of information and opinion.27 One of the draft conventions concerned the freedom of information, and was aimed at achieving a common standard of national law in the field of information and was clearly meant as a contract between states. For example, it was formulated in article 1(d):

Each Contracting State shall permit the nationals of other Contracting States as much freedom to seek information as its grants to its own nationals.

Following the text one also finds a reference in article 2(d) to the duties and responsibilities related to the freedom of information which gives an indication of restrictions to the freedom of information, and the grounds for state interference in the form of penalties and liabilities, in case of 'expressions which are obscene or which are dangerous for youth and expressed in publications intended for them.'28

The right to information was also expressed in a new meeting on the Draft Convention on Freedom of Information, held in 1959. Article 1(a) was finally agreed upon and reads:

Each Contracting State undertakes to respect and protect the right of every person to have at his disposal diverse sources of information.29

To the various complications of the drafting process of the Convention belongs a proposal introduced by the United States, for a Declaration on the Freedom of Information, which was aimed at 'the right of the individual to seek the truth'. After Franco-Dutch amendments, focusing on a narrow interpretation of the freedom of information, for example, wishing to leaving aside references to free exchange of ideas, the text as adopted provides:

(...) Whereas newspapers, periodicals, books, radio, television, films and other media of information can play an important role in enabling people to acquire the knowledge of public affairs necessary for the discharge of their responsibilities as citizens, and in shaping attitudes of peoples and nations to each other, and therefore bear a great responsibility for conveying accurate information (...) proclaims this Declaration on Freedom of Information in proof of its determination that all peoples should fully enjoy free interchange of information and access to all media of expression.

Article 1
The right to know and the right freely to seek the truth are inalienable and fundamental rights of man. Everyone has the right, individually and collectively to seek, receive and impart information.

Article 2
All governments should pursue policies under which the free flow of information, within countries and across frontiers, will be protected. The right to seek and to transmit information should be assured in order to enable the public to ascertain facts and appraise events.

Article 3
Media of information should be employed in the service of the people. No Government or public or private body or interests should exercise such control over media for disseminating information as to prevent the existence of a diversity of sources of information, or to deprive the individual of free access to such sources. The development of independent national media of information should be encouraged. (...)

Article 4
Those who disseminate information must strive in good faith to ensure the accuracy of the facts reported and respect the rights and the dignity of nations, and of groups and individuals without distinction as to race, nationality or creed.

Both the draft Convention and the draft Declaration were on the agenda from 1962 until 1980 without any further result. As De Meij notes, it was understandable that agreement on the freedom of information was difficult to achieve as this human right is closely related to the political and social structure of states. Besides, the discussions within the United Nations not only aimed at a common standard, but also at a guarantee for the free flow of information. Even within Europe, this proved to be difficult. In later discussions within the United Nations, for example, on article 19 of the Draft Covenant on Civil and Political Rights, the freedom of opinion and of expression were often summarised in one term and referred to as the freedom of information.

At a Unesco seminar in Rome, various definitions of the freedom of information were expressed: the right of the public to be informed in an accurate and objective manner and to obtain from information media adequate information on current affairs. The state had a duty to ensure that information media remained in the hands of people (not of private capital) and were used for the benefit of society as a whole. Other speakers acknowledged the public interest-aspect but translated this into the

32. Avoiding all difficulties with proper terms, a watchdog organisation focusing on censorship as a impediment to the freedom of expression, has simply called itself: ARTICLE 19. It publishes world reports on the state of the art concerning Information, Freedom and Censorship.
widest possible range of publications, as there was no monopoly on the truth. Freedom of information should therefore be understood essentially as the freedom of everyone to express opinions and to seek and publish information. In this interpretation the state had only a negative duty: to refrain from interference with the activities of the media. 33

The role of the government in providing information on its own decisions and policies was emphasised by stressing the right of the people to be apprised as fully as possible of the activities and intentions of their representatives, and that the Government had a corresponding duty to provide such information. However, with respect to access to official reports, the focus was only on the information personnel again. Another role of the Government was emphasised, based on the view that information media had the duty not only to publish accurate news, but also to educate the public, upholding the code of good moral conduct and a proper sense of civic responsibility. 'Special efforts should be made through information media to direct the enthusiasm and energy of youth towards socially desirable goals. These educational functions were of the greatest importance in the fields of radio and television, in view of the strong impact of those media on the public.' 34 These expressions clearly came from socialist countries, but the Western speakers admitted that children and young persons particularly should be protected against the harmful influence of certain publications. However, a proper education and family upbringing was considered the best protection in this respect. As an example of positive measures, education by radio and television was mentioned. Negative measures were demonstrated by France, which had a control Commission, composed inter alia of judges of children's courts, which supervised publications for persons under eighteen years of age, and gave advice to publishers. 35

The distinction made between 'to gather', and 'to seek' information, which already had raised a controversy in 1951 is noteworthy. To gather was considered to be a weaker term, only referring to collecting the materials offered; whereas, to seek information from whatever sources implied a much more positive and independent action by the journalist or correspondent.

In the discussion, the question was taken up on how to ensure that information media should use their power, on the whole, in such a way as to enhance human dignity and promote the progress of society. It was regarded as desirable that media should not overlook the educational aspects of information. The audience should not be approached as a passive and unintelligent mass. The reader should not be a passive consumer of information. He should constantly compare the contents of various publications, based on his own independent opinion as to the respective value of these publications, and make a choice between them. Through letters to the editor and similar practices, readers should also be encouraged to make known to information media their views on matters of public interest. The aim should be the greatest

34. ST/TAO/HR.20, p. 15-16.
possible participation of the public in the activities of information media, so that the work in this field should increasingly become a community enterprise.\textsuperscript{36}

At the occasion of this Unesco seminar, Pope Paul VI pleaded for the individual’s right to information. Such had been done by his predecessor John XXIII in the Encyclical \textit{Pacem in terris}, paragraph 12: every human being has the right to be informed truthfully. Pope Paul VI pointed to the important role of the person who disseminates the information. ‘From this purpose of information – to help man better to guide his destiny and that of the human community – derive the moral laws the respect of which is the surest guarantee of the proper exercise of this right. Information must be true and honest, it must be a faithful recorder of events, in order to fulfill its social role; and this can be so only if the persons who disseminate information constantly endeavour to be objective. In other words, information must above all be truthful. (...) In respecting others and their interests, information must also – and perhaps to an even greater degree – respect the common good. Who would dare to maintain that all information, whatever it may be, is equally beneficial or harmless at all times and among all groups? Think, for example, of that particularly sensitive and vulnerable sector, the young! These limitations must be placed on the exercise of information for the sake of its own dignity, not through bans arbitrarily imposed from outside, but by virtue of the requirements of its noble social mission.’\textsuperscript{37}

Returning to the original question on the roots of the freedom of information, De Meij shows that two concepts of the freedom of information circulated at that time: the narrow concept, a concept apart from the freedom of expression, introduced by the United States on the freedom of the media to gather information, and the broader concept which includes the freedom of expression, advocated by among others the United Kingdom. Gradually, this broader concept gained acceptance within the United Nations and became the leading interpretation. In this concept, the freedom to seek information is included in the definition. De Meij concludes that finally the freedom of information can be considered as equal to the freedom of expression in the broad sense, thus the classical freedom of expression, the freedom of the media to seek and impart information and the citizen’s right to information.\textsuperscript{38} This broader concept pervades the activities and texts of the United Nations. According to De Meij, the long and intensive debate has also resulted in the rise of a general right to information of every human being, as a continuation of the right to education, which can be considered as a vague social human right.\textsuperscript{39} At first instance, such a right is not immediately related to a duty of the state to provide information. Later developments have even here introduced a duty of the state to supply information, although within certain limits.

\textsuperscript{37} ST/TAO/HR.20, p. 43-44.
In the European Declaration on the Mass Media, adopted on 23 January 1970, the right of freedom to seek, receive, impart, publish and distribute information and ideas finds a corresponding duty of the state to make available information on matters of general interest, within reasonable limits, and a duty of the mass media to give complete and general information on public affairs.\(^4\) A further elaboration can be found in Recommendation (77)31: 'Protection of the individual in relation to the acts of administrative authorities', Annex article II:

At his request, the person concerned is informed, before an administrative act is taken, by appropriate means, of all available factors relevant to the taking of that act.

Access to government files was also a topic in Recommendation 854 (1979) by the Consultative Assembly, comprising the right to seek and receive information from government agencies and departments, and the right to inspect and correct personal files. This recommendation also included a provision on the right to seek information in the European Convention. The Legal Affairs Committee considered this recommendation in September 1983, but rejected it on the ground that the right to receive information included the right to seek information.

The Resolution of the Committee of Ministers adopted in 1981 on 'Access to Information held by Public Authorities' proclaims:

I Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.

II Effective and appropriate means shall be provided to ensure access to information.

When applying restrictions, due regard shall be paid 'to the specific interest of an individual in information held by the public authorities which concerns him personally.'(article V)\(^4\)

At the European Conference of Ministers on Human Rights, 19-20 March 1985, held at Vienna, a Declaration on Human Rights in the World at Large was adopted, including resolution 2 on the role of the Council of Europe in the further realisations of human rights. Article 2 reads:

In particular, attention should be given to access to information by the individual within the framework of an open information policy in the public sector (...)\(^4\)

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4. Res. 428 (1970), Article 3(A); and, Recommendation 582 Consultative Assembly: article 8(e)(i) in the same sense.
41. R(81)9, Resolution of the Council of Ministers, Council of Europe.
Such formulations show an increasing concern for the rights of the individual to have access to sources of information, and the need for a more open – nowadays one might say transparent – information policy of governments. 'A law which allows as much information to be available to the citizen as is compatible with good government not only fulfils the principles on which the freedom of information movement was built but becomes an important cornerstone for democracy itself', as Riley explains. 43 This open attitude of the state towards its citizens was long ago already acknowledged by the first Swedish Press Law of 1766 (Tryckfrihetsförordningen). Sweden has maintained as a fundamental principle of law that official documents, with as few exceptions as possible, shall be open to the public. Every citizen or alien has a right to see official documents and to have, upon payment of a fixed fee, copies provided to him. There is no obligation to give reasons for his request or to show that he has a legal interest in seeing the documents. Specifications of restrictions are contained in the Secrecy Act 1980 (Sekreteresslagen). Restrictions are related to the interests of, for example, international relations, financial policy and individual's privacy. Secrecy is also a principle to be maintained between authorities. The general tendency is that publicity shall prevail when the exercise of public authority is in issue, while the presumption for secrecy prevails in cases where the privacy of the individual is concerned. 44 Transparency of government has also expressively been described as 'a government working effectively in a goldfish bowl', though this situation will only gradually be achieved. 45

De Meij seems to consider the duty of the government to make its activities and arguments public, as fundamental to a democratic state system. From this principle, he derives two formulations of human rights: the freedom of information in the narrow sense, which is the freedom of the media to seek information; and, the citizen's right to information, the freedom to receive information. Both freedoms taken together are important for the individual as a right to study or to go in any subject that attracts his attention. 46

An exception to the lack of attention for the individual's right to information might be offered by a Dutch report on the freedom of information, prepared for the Department of Foreign Affairs. This report included a promise by the Advisory Commission to pay extra attention to the position of the citizen as he gradually becomes the passive receiver of increasing flows of information. The freedom of information is considered as a human right with independent significance, namely as a guarantee for individual choice. Such a guarantee supports individual creativity, freedom and independence, by also guaranteeing the freedom to seek alternative

44 Idem, p. 6-9.
possibilities. 'The active seeking of information is essential for the independent development of the human being and for his participation in society.'

Three aspects of the citizen's freedom to seek information can be discerned: the free and unhindered exercise of the right; the prevention of illegitimate obstacles between the citizen and the sources of information; and, the situation in which only a duty to provide information can make the exercise of the right effective.

The general conditions necessary for the exercise of this right, especially with respect to developing countries are the absence of illiteracy and a low degree of education and poverty; and, technical and economic development. The Commission also points to the technological developments in the field of telematics, which should work to the benefit of the citizen. For example, technical regulation should not form an obstacle to the use of media, or offer the possibility to control the content of the information sought. The applied technique should not play a role in the exercise of the right to seek. In principle, it is of no importance for the information-seeking citizen to buy a newspaper, to turn on the radio or television, or to use a terminal to search a database: the message sought is of equal importance to him. Other impediments can be found in restrictions for copyright reasons and related subjects.

The exercise of the right to seek is in some cases only significant when the right is complemented by a duty to provide the searched information. This applies in general to government and private institutions. The government should apply the principle of openness to its activities and documents. If the citizen is to maintain his independence vis-à-vis the government, he should have a right of access to governmental information: access to his personal data; access to information fundamental to governmental decisions which concern him; and, access to other governmental information. Several international guidelines support this right of the citizen to access to governmental sources, including the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted in 1981.

In the field of the citizen's right to access to other governmental information, conferences have been held and recommendations adopted. In 1982, a Declaration on the Freedom of Expression and Information was adopted by the Committee of Ministers. It is noteworthy that the freedom of expression and information is taken as the central expression. In paragraph 4, the perspective of information is stressed:

Considering that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community.

Although the element of personal development is not totally absent, the adjectives are more related to a society than to an individual. To individual development belong such terms as physical, mental, psychical well-being. Other important elements in this declaration are: the variety of media, plurality of sources, allowing plurality of ideas and opinions; and, the role of technology which should serve to further the right to express, to seek, to receive and to impart information and ideas, whatever their source. It is noteworthy that the further elaboration is devoted to the mass media. Paragraph II (c) states as one of the objectives:

The pursuit of an open information policy in the public sector including access to information, in order to enhance the individual’s understanding of, and his ability to discuss freely political, social, economic and cultural matters.

Although this formulation hardly seems to apply to children, states should cooperate in order to ‘defend the right of everyone to the exercise of the freedom of expression and information’, and to promote, through teaching and education, the effective exercise of the freedom of expression and information.  

With regard to the right of information held by private institutions, a citizen should have access to his own personal data held by the private institution; and, he should have access to information of general importance and interest, for example in the field of environment and health.

It is not clear what type of private institutions the commission had in mind. It might be private research institutions, as the commission was also concerned with the right of scientists to information.

In a more provocative way, the non-governmental organisation, ARTICLE 19, clarifies what the essence of the right to information is: ‘The right to be informed is equally a feature of freedom of expression. Chernobyl and earlier nuclear accidents and the spread of AIDS throughout the world have contributed to the realization that full freedom of information is not a luxury but may be literally a matter of life and death. The denial of information vital to health, such as arises from the dumping of unlabelled pesticides and pharmaceuticals in the developing world, for example, is censorship to be opposed, just as much as the more classical manifestations of censorship in book banning, radio jamming or the destruction of the printing presses. In the name of state secrecy or national security, people everywhere are routinely denied access to information they have a right and need to know.’

A more recent international study on the right to information was made by Loukaides, who seems to equate the right with the freedom of expression but in discussing the scope of the right he puts the right to obtain information first. He notes that ‘[t]he meaning and scope of this right has received judicial interpretation and has also been elaborated in legal writings. However, it is still in the process of further evo-

50. Paragraph III (a) and (b) of the Declaration on the Freedom of Expression and information, adopted by the Committee of Ministers, Council of Europe, 29 April 1982, DH-MM(88)2, p. 52.


lution in the light of technical developments and relevant changing conditions.\textsuperscript{53} He constructs the right to information as embracing the following essential rights and freedoms: (1) The right of every person to get information on any matter of his choice from general sources of information either directly or through the press and the other mass media of communication without state interference. (2) Freedom of access to private sources of information without obstruction by state authorities. (3) Freedom of access to state sources of information in respect of matters of general interest. (4) Freedom to seek, receive and impart information by any means without alteration of its contents by state organs and regardless of frontiers. This right precludes censorship, except for limited justified restrictions. (5) Freedom to establish news agencies without prior license.

The right to information requires a free flow of information to the public in general. Freedom of information covers every mode of expression. Not only is the content of information protected, but so are also the means of transmission or reception, since any restriction imposed on the means necessarily interferes with the right to receive information.

Based on the literature and jurisprudence of the European Convention, Loukaides also concludes that 'the right to information entails unobstructed access to all mass media of communication and this includes the possibility of individuals having the benefit of the services of radio and television stations without excessive financial burden as well as the possibility of having newspapers, radio and television sets, antennas etc. at accessible prices which, it is submitted, allows the fixing by the state of maximum prices for newspapers etc. so as to avoid excessive financial burdens on readers, viewers and listeners to an extent that will substantially obstruct their right for pluralistic information.'\textsuperscript{54}

The right to information is at the same time an individual right and a collective right; the latter in the sense that the public as a whole has a right to be informed freely by the mass media. This collective right has been mentioned in several cases by the European Court of Human Rights.\textsuperscript{55} This right does not include a general and unlimited right, either for individuals or organised groups, to have access to radio-televisi on broadcasting in order to express their views, but broadcasting time should be equally distributed to similar groups or parties. In general, the media should serve the public's right to information. They form the means for the free flow of information, and can therefore not be subjected to a monopoly. The requirement of pluralism in sources of information, permitting the reflection of diversity of ideas and opinions is another element acknowledged and protected by the European Convention.\textsuperscript{56} Loukaides considers the right to receive information as a corollary of the right to freedom of expression. The word 'receive' should in this case also be under-


\textsuperscript{54} Idem, p. 10.


stood as obtaining of information and the provision to persons of relevant information. The state should have an obligation to impart information in areas of public interest to the press and others with legitimate interest in such matters. Besides, individuals should also have a right of access to information which concerns them. He concludes that the freedom of information is adequately safeguarded in many international instruments, but the situation with regard to realisation of this freedom is far from satisfactory.

It is doubtful whether it is still accurate to relate the freedom of information to the freedom of expression. In a concise analysis, Maheu argues that it is an error to continue to regard the freedom of information as an extension of the freedom of expression. Economic and technical realities involve the adoption of an entirely different viewpoint. Information is only to a limited degree an expression of opinion but is essentially the pre-conditioning of opinion. The condition or exploitation of mass opinion and mass behaviour is a major industry. Neither ethics nor politics can disregard this formidable mechanism. The task is to humanise it. Information must be a right (hence, a duty too) and that right must belong to those whose thought is at stake. The point of view is, therefore, not the interests or prejudices of those who control the production of information, but the human dignity of those who are justified in expecting of it the means of free thought. Information then becomes a social function in the service of intellectual emancipation.

The right to information is a natural extension of the right to education and that very fact makes it possible to define its concrete content. The characteristic of information is its availability. The proclamation of the right to education does not ipso facto mean that the child has a right to learn anything, at any age, anyhow. It only means that it is the duty of adults to give a child the knowledge necessary for his development in the light of his needs (and capabilities) at his age. A right is no more than an instrument for building up man in man’s mind, and related to needs, which means the needs of human development, and not of self-interest or passion. The right to information as a principle is not limited from the outside, but by self-imposed restraint inherent in liberty. This sense of responsibility makes the expression of free opinion take note of the historical and sociological background against which it stands. It also shows respect for the liberty of others. Such responsibility decides the extent to which the right to the expression of opinion is valid. Every citizen is a judge of himself. And, he has the right, and the duty, at all times, to judge his judge.

The briefly sketched historical development of the concept of a right to information leads to the conclusion that in the arguments for a right to information both of the individual and the public, one finds mainly references to the individual and the public as citizens. Their right to information is related to forming opinions on actual social and political matters and participating in the democratic process. With few exceptions, one seldom finds a clear reference to a right to information related to the development of a human being. Such would be a general right to information of the

individual, to inform himself by generally available sources, for his own sake and interest, as an acknowledgment of his responsibility for his own life and development, thus apart from other, outside motives, such as society's need for informed citizens.

Such a general right to information will necessarily also apply to children. In the case of children, the invisibility of the general fundamental right to information, is more disastrous, as they still have difficulties in being accepted as human beings, and even more as citizens. The core proof of citizenship is often the right to vote, a right which is denied to children.

In legal literature, the right to information is mostly related to the relationship between the individual and the state, focusing on information to be provided by the state. In the case of children, the relationship to parents is the first and foremost relationship in which important information is provided. Within certain limits, one could state that parents have an obligation to provide information, in fact all information which is necessary in the process of the child's development.

Explicit and implicit formulations of a right to information
In the previous chapters, information has been related to a child's development. Information plays a significant role in the process of developing a personality and in the process of social participation. After tracing the concept of the right to information and its historical development, attention is now drawn to the Convention on the Rights of the Child. The following part of the research is devoted to tracing a right to information in the Convention. The first question is concerned with the way in which a right to information is formulated in the Convention. The second question is whether and how the Convention recognises the significance of information for human development. From this analysis the right to information is elaborated further.

Terminology
Tracing a right to information can start by looking at all articles which mention 'information'. This gives a first indication. However, in surveying the Convention not all articles mentioning 'information' relate to a right of the child to information. Some articles also include parents or family members, or speak of 'all interested parties'. Furthermore, one could state that articles on information referring to the state or the Committee on the Rights of the Child should be excluded. Nevertheless, one has to be cautious here. An obligation for a state to give information could be regarded as a right of a child to receive information. A more difficult point is the case when parents have a right to information. Is this a right in their function as parents or 'in loco parentis'?

Another point to be discerned is how a right to information is formulated. One possibility is a very explicit formulation of a right to information, for example the right to seek, receive and impart information, and the right of access to information. The articles 13 and 17 provide the most explicit and general formulations. Another possibility is the formulation of an explicit right to information in specific situations, mostly related to a specific aim. Situations in which the child needs specific information arise with respect to adoption and divorce; and, in cases of refugees, detained
and handicapped children. A right to information on health and nutrition, and on educational and vocational information form another type of specific rights to information. These rights can be found in the articles 21, 22, 23, 24, 28 and 40, but will only briefly be discussed, with exception of article 28 on the right to education. This right is considered most important and as such will be treated more extensively. See Figure 7 on page 212 for an overview of the Convention’s references to a right to information.

As has been elaborated before, see Chapter 1, the leitmotif of the study concerns information in its relation to the human task to live as an authentic human being. The educational process of parents bringing up a child is crucial to such a development. Therefore, tracing a right to information should not stop at the literal wording of ‘information’ but instead it should also have an eye for more implicit formulations of a right to information. Moreover, certain rights cannot have meaning or cannot be exercised without having a right to information. As such, a right to information is presumed to be implied in the formulated right. An example is article 14 on the freedom of thought, conscience and religion. It would be impossible to exercise such a freedom without having information on the various religions or on different ideas about moral questions, supporting the development of conscience. One could also say that a right to information is instrumental to exercising another right. In its most extreme form: a right to information about rights is necessary to exercise rights. One could almost think of a circular problem as the question remains how to obtain information about the right to information about rights, etc.

In the following section these two forms of the right to information, explicit and implicit, will be discerned. The articles 13 and 17 will be studied as explicit formulations of the right to information. The implicit formulations of the right to information will be studied with reference to the distinction between information relevant to the development of the personality, and information relevant to social participation. The connotation of an ‘authentic human being’ will serve as an interpretation principle.

A thorough study of all articles referring to a right to information would include a large variety of sources. A study of the legislative history would help to trace the considerations of the various wordings of a particular provision or the political idea it seeks to protect. A comparison with similar provisions in other treaties and human rights instruments is a source for interpreting the development of a human right and the width of its formulation. Commentaries on the articles of the Convention form another source for study and interpretation. As many human rights have a longer
### Bearers of rights and responsibilities

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**Figure 7:** Survey of references to a right to information in the Convention on the Rights of the Child

Source: This table is based on a similar approach by Barsh who made a table on the bearers of rights and responsibilities under the Draft Convention with regard to the nuclear and extended family: Barsh, R., The draft convention on the rights of the child. A case of Eurocentrism in standard setting, in: Nordic Journal of International Law, Vol. 58, 1989, p. 28.
history, commentaries in juridical literature on various doctrines may contribute to the understanding and interpretation of the provisions in the Convention. As the Convention on the Rights of the Child is a recent treaty, little can be found in jurisprudence which serves interpretation. However, case-law relating to existing similar provisions may serve as a basis of orientation. Other sources of interpretation can be found in the reservations of certain articles in the Convention made by ratifying states. In the states reports which have to be submitted to the Committee on the Rights of the Child, further information can be found on the application of the provisions in the Convention. The commentaries of the Committee are a final source of interpretation as the Committee monitors the implementation of the Convention.

It will be clear from this enunciation of at least eight types of sources that it is impossible to use them all in extenso when treating even the implicit formulations of the right to information. Discussion of the various formulations of the right to information will necessarily be limited to the most relevant sources.

**Interpretations**

A law or convention will mean little unless it is interpreted and applied in an actual situation by a competent authority. Such an authority could be an arbitration panel, an administrative body or other body. The important feature is that this body has the authority to interpret the text of the legal material. In case of the Convention on the Rights of the Child, the Committee on the Rights of the Child can be considered as the authoritative source for interpreting the Convention.

A different type of authority in interpreting legal texts can be found in the field of legal science. In this field, specialists in international law, human rights and children’s rights can give an authoritative interpretation of the Convention. Such interpretation does not necessarily correspond with the views of the Committee. The Committee consists of ten experts of high moral standing and recognised competence in the field. They are not necessarily all jurists. Nevertheless, the practice of the Committee may very well influence the development of scientific (legal) interpretation and *vice versa*. A third type of authority in interpreting the Convention can be found in the jurisprudence and as developed by judges on the national and international level. These courts include regional human rights organs, like the European Commission and Court of Human Rights.

Interpretations of the Convention are important for different reasons. They give a key to the necessary implementation in the states which have ratified the Convention. Interpretation shows the standard which has been reached by the Convention in the field of children’s rights and against which states reports will be measured and discussed. Interpretation also shows the development of human rights instruments and the possibilities for using these instruments in creating better conditions for human beings, particularly children. The subject of children’s rights may also form a new field of multidisciplinary research, needing contributions from various disciplines for a balanced interpretation.59

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An interpretation should be based on a reasonable and logical approach, taking account of the practicability of the provisions. The legislative history of the text can contribute to such an interpretation since it reveals what the drafters had in mind and how the drafting process took place. Apart from these 'Travaux Préparatoires', another support for interpretation can also be found in parts of the text which have been taken from or are similar to existing treaties, which already have an accepted meaning. Such reference to existing legal precedents can be particularly interesting when these contain human rights in general, without specification for children.

In the case of the Convention on the Rights of the Child, there is a somewhat complicated history related to the text. Apart from the historical roots dating back to the discussion on the Declaration on the Rights of the Child, the complicated negotiating process took place during the ten drafting years, in which delegations from very different backgrounds took part. An extra complicating factor was that rights which were already contained in other international human rights treaties and instruments were discussed anew and reinterpreted by the Working Group of the Convention.

Another element which has made the final text difficult is the working methods used. In 1984, the delegation of the United Kingdom drew the attention to the difficulties it had with some of the articles already adopted, notably those on nationality and immigration. Nevertheless, it supported the efforts to achieve consensus, but ‘thought it important that all states, including those which had not participated in the Working Group, should have an opportunity to consider and comment on those articles after the current drafting exercise was concluded.’ The British representative foresaw the risk of possible reservations and declarations by the United Kingdom. The Netherlands believed that a convention would only be effective if it were broadly acceptable to a number of states, thereby supporting the former proposal to offer an opportunity for comment on the draft before it was submitted to the Commission on Human Rights. When finally, in 1988, the first draft of the Convention was completed, the Working Group requested that the Secretary-General conduct a ‘technical review’ of the Convention, whereafter the text would be distributed for a second reading by the delegations meeting in the Working Group. Comments and recommendations for textual alterations were submitted by various branches of the United Nations during the technical review. To these comments input from delegations and non-governmental delegations was added, resulting in extensive alterations being made in the first reading of the text.

The last-minute participation of various delegations also created a new range of proposals and alternatives. Due to the target of having the Convention adopted in the year of the tenth anniversary of the Year of the Child, some human rights protections are missing, e.g. protection against medical experiments, and an incomplete section on implementation were the result of this rushed work. On the whole, the final text, consisting of 54 articles of which 41 are substantive became much broader than the initial draft Poland proposed, containing ten substantive articles, and in lat-

er drafts twenty human rights for children. The final text also reflects the idea which developed during the drafting process of giving legal force to a whole catalogue of children's rights.

As has been demonstrated, it is difficult to obtain the documents used in the drafting process of the Convention. In the compiled Travaux Préparatoires, the documents of the technical review cannot be found, although they could clarify the outcome of some discussions on formulations.62

Alston also points out that the value of the Travaux seems to be overestimated for several reasons, including the attention raised by the NGO's for the drafting process, the interest of the general public and the rapid signing and ratifying process in the international community. The records do not sufficiently reflect the discussions in the ad hoc working groups. He suggests that for the interpretation of the Convention's provisions it would be more useful to consult the jurisprudence that has been developed in relation to comparable provisions of other international human rights instruments. This sounds plausible, in general, but the difficulty arises where the Convention contains new articles, which cannot be found in other instruments and about which no jurisprudence has yet been developed. Such is partly the case for the right to information.

Before presenting a legislative history of the provisions in the Convention related to the right to information, it should be borne in mind that the Convention is a treaty containing obligations for states parties. The strength of these obligations can be analysed with the help of some key formulations. States parties are, inter alia obliged 'to ensure', 'to respect' or 'to recognize' a certain right of children. The first term is the strongest as it points to a guarantee and a result. An obligation 'to respect' demands effort but is not as strongly affirmative in the result. The duty 'to recognize' points to an affirmation which may involve certain measures to be taken, but not much beyond that. When one counts these obligatory words in the Convention their frequency varies from 32 times for 'ensure' to 10 times for 'respect' and 'recognize' each.

In such a linguistic approach, as presented by Cohen, a hierarchy of obligations can be set up with stronger and weaker formulations.63 The strongest are statements like: 'Every child has...', followed by: 'shall ensure, ensure, shall respect, respect, undertake to respect, shall recognize and recognize.' The formulations with 'shall' all include the obligation to act, a must, for example, in: shall promote, shall protect, shall pursue, shall encourage.


The previous Declaration of 1959 contains more statements such as: 'the child has', 'the child is entitled to' than the Convention. In linguistic wording the Declaration seems to be stronger. To some extent the same parallel can be seen between, the Covenant on Civil and Political Rights and the Universal Declaration on Human Rights, the latter being more powerful in its formulations. The Covenant contains only one statement, notably the recognition of a person before the law (article 16), a central notion of human equality. Regardless of the stronger linguistic formulations, the strength of an obligation is first of all based on the binding force of the treaty itself.

Nevertheless, in the Convention, the spirit of statement-formulation from these sources is visible in, inter alia, article 7 on the registration of identity or article 13 on the right to freedom of expression. The weakness of a statement-formulation might be that it is not always clear on whom an obligation is put. In general, this will be the parents, according to article 18, but this is not always the case and the state is also obliged to support instead or additionally (article 3).

In many articles, a formulation of a right is followed by a description of the state’s obligation. In such descriptions, the term 'appropriate' is often (43 times) used. This type of formulation gives the impression that there is a measurable standard, however, imprecise. The term was the result of compromise, or is used as a practical device, leaving flexibility in time and place for implementation, see articles 4, 23(4), 24(4) and 28(4). Such flexibility or progressive implementation is understandable from the state’s point of view, but is not necessarily to the advantage of children, to say the least, as the margin of appreciation with respect to time and place is left to the state.

**The significance of information for human development**

Chapter 2 demonstrated the role information plays in the development of the child, and how this takes different forms at the various stages of development. It is important to know whether such knowledge is taken into account in international human rights instruments, especially in such a specific treaty as the Convention on the Rights of the Child. As a result, more refined questions can be put forward: Does the Convention contain any traces of this awareness? Is the role of information in a child’s development acknowledged and if so, in what way?

**Human development**

The importance of human development is abundantly recognised in the Convention. The Preamble shows the core of the heritage in this field, referring to a variety of concepts such as: ‘development and education in conditions of peace and security’, development as distinct from well-being; ‘recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding’; and, stressing in a rather novel manner, the ‘importance of the traditions and cultural values of each people for the protection and harmonious development of the child’.

The concept of development is somewhat refined in the general articles about the relationship between parents and children, but in more specific cases and fields. In the case of handicapped children – the Convention uses the word ‘disabled’ – states have to fulfil their obligations ‘in a manner conducive to the child’s achieving the
fullest possible social integration and individual development, including his or her cultural and spiritual development' (article 23).64

The many aspects of development, including physical, mental, spiritual, moral and social, are mentioned in several contexts. The conditions and standards of living should be adequate for all these aspects of development (article 27). The aim of education is directed at 'the development of the child’s personality, talents and mental and physical abilities to their fullest potential' (article 29). Closely related to this provision is the child’s access to information and materials, ‘especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health’ (article 17). In the field of labour, the child has a right to protection from economic exploitation which is likely ‘to be harmful to the child’s health or physical, mental, spiritual, moral or social development’ (article 32).

**Evolving capacities**

As stated above, the Convention takes up the psychological knowledge of a child’s development by referring to the child’s ‘evolving capacities’. Flekkøy, a psychologist, devoted a whole chapter of her dissertation to this point and writes: ‘In the United Nations Convention on the Rights of the Child, the concept of “the evolving capacities of the child” is apparent. In particular in connection with the child’s right to partake in decision-making, questions are raised concerning whether or not the child has the competence for making decisions, at which developmental stage the child has adequate maturity to make which type of decision. This question is often connected with the idea that there is a need to protect children from too much responsibility, from decisions that are too difficult, or from consequences of unwise decisions. This idea is only legitimate in so far as there is a real need for protection or consideration of the child.’65

A concrete example of integrated psychological knowledge in the Convention is the way in which children are guided by their parents as stated in article 5:

**Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

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This general approach to the child’s upbringing is repeated notably in respect of the child’s right to freedom of thought, conscience and religion (article 14). Reference is made to maturity and the capability of the child to form his own views, in article 12:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The maturity of a child also plays a role in the application of penal law where the Convention prescribes the need for ‘a minimum age below which children shall be presumed not to have the capacity to infringe the penal law’ (article 40).

These short examples make clear that the Convention pays attention to the development of the child, partly in the more traditional way based on competence, but at least it acknowledges that a child indeed has views and opinions. It is striking that very few age limits are used in the Convention, apart from defining a child as ‘every human person below the age of eighteen years’ (article 1). In such an international convention, agreement on age limits is perhaps difficult to achieve. This difficulty arose in the setting of an age limit for children taking part in armed conflicts (article 38). The various attempts to exclude children from taking part in armed conflicts, which included proposing that even when recruitment could take place at age fifteen, actual and direct taking part in hostilities should not happen before the age of eighteen, formed the ingredients of the ‘most hotly-debated question of the drafting process’.

A second argument could be that discussions on developmental psychology have tended to stress the character of development as a process. Although various stages can be discerned, they are probably less fixed and universal than was supposed by their inventor Piaget. The whole process of development differs from individual to individual and cannot be related to absolute age limits. Age limits form at best an indication for a general expectation related to capacities and maturity.

Another argument could be that setting an age limit on certain rights is contradictory to the spirit of the human rights concept itself, as human rights are thought to be applicable to all human beings. An age limit in a human rights treaty for children would then provide less protection than was afforded in global human rights instruments. So what could be the point of setting age limits at all?

On the other hand, the lack of clear formulations with respect to application and implementation leaves too large a margin of appreciation for parents, adults and the state, in which to offer less protection than was envisaged. This is in fact the case in


the field of employment, as the Convention does not fix a minimum age for admission to employment, thus offering less protection than the international standard set by the ILO Convention no. 138, which is fifteen years. Such a lack of clarity is even more disastrous in the case of children, as they may have difficulties in speaking up for themselves, or being recognised by adults as a competent partner or at least as a bearer of rights.

**Role of information**

The role which information plays for children, especially in their development can be traced in several articles in which the Convention refers to information and knowledge. In specific circumstances information can help to give a child comfort and the necessary feeling of security. A child wants to know and be cared for by his parents. This right is ensured in article 7. Knowing his parents may under some circumstances, for example adoption, mean knowing at least who they are. Normally, children live with their parents and this is supported by the Convention, stressing the importance of the family as the fundamental group in society and requiring at least a family environment for harmonious development, as stated in the Preamble.

In some cases, for example as envisaged in article 9, it might be better to separate the child from (one of) the parents, in cases of abuse or neglect, or when parents divorce and a decision has to be taken about where the child is going to live. All interested parties – including the child – must be given the opportunity to participate in the proceedings and make their views known. The child also has the right to keep and maintain personal relations and direct contact with both parents on a regular basis. Such contact would include the obligation that the child is regularly informed by his parents and informs them about his life.

In the case where the separation is the result of an action initiated by the state, for example, in the case of detention, imprisonment, exile, deportation or death of one or both parents, the state has a duty to provide the child with essential information concerning the whereabouts of the absent parent(s), but it is added: ‘unless the provision of the information would be detrimental to the well-being of the child’. This article is not solely devoted to a right of the child, but is also valuable in case the child is the object of state action. A member of the family also has a right to be informed by the state about absent member(s) of the family. Contact with family through correspondence and visits is also ensured in case the child himself is deprived of his liberty, in case of arrest, detention or imprisonment (article 37 (c)).

Information plays a special role in improving living conditions by parents and children themselves. Such is recognised in article 24(2)(e), where states parties shall take appropriate measures

**to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents.**
Guidance for parents and family planning education are added as instruments of preventive health care. The formulation makes clear that information and education on health and development alone are not enough, but that the state has an express duty to support parents and children in the use of such basic knowledge.

An early example of the child’s right to information in the field of health can be traced in UN activities. In the UN Report of the Working Party on Youth and Population, the role of information is mentioned explicitly: ‘Every individual has the right to exercise a freedom of choice in his or her family based on adequate information and services. Youth has a particular need to be informed and to have access to services. Family planning services should be provided to all members of the community, married and unmarried, male or female, young and old. These services should be provided as far as possible free of charge through family health and welfare centres.’ In the field of communication, youth organisations should, apart from promoting voluntary work in the fields of population planning etc., also hold ‘campaigns promoting youth involvement in other areas of development concerns such as literacy, public health, vocational training, and environment.”68

A different type of information and guidance is envisaged in the field of education. As stated in article 28(1)(b), states parties

shall make educational and vocational information and guidance accessible to all children.

Children should have information about where they can attend school, what studies are open to their capabilities and what vocational training is available.

The striking characteristic of the remaining rights, which contain reference to a child’s right to information, is their rather novel appearance in an international treaty on human rights. They somehow seem to fit in a convention specific to children’s rights. These rights are also interrelated and have much to do with children’s participation in society. The first one is, however, a classical one contained in article 13, the right to freedom of expression which includes

freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

There are no age limits or other limits imposed on this right, except for the restrictions – also present in similar provisions in other treaties – which are

provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (ordre public), or of public health or morals.

Although the International Covenant on Civil and Political Rights already states that one can choose the form of media one wishes to use for expressing oneself, the express mention of the child’s choice of media deserves specific attention because non-verbal expression might be natural for younger children still developing their speech abilities, as mentioned in Chapter 2. This freedom of media choice can have interesting consequences, given the variety of communication means that are invented and pushed on the market today in many parts of the world.

Another right related to the role of information is found in article 17, which is merely devoted to the child’s right to have access to information, and could be called a second core article on a child’s right to information. It concentrates on the role of the mass media. The media should be encouraged by the states parties to ‘disseminate information and material of social and cultural benefit to the child and in accordance with the spirit’ of the aims of education set forth in article 29. Other elements in this ‘information-article’ are the encouragement of the production and dissemination of children’s books and the attention to linguistic needs of minority groups. It is also noteworthy that the article ends with a protective provision to encourage ‘the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being’.

Strictly speaking the word ‘information’ is not mentioned in article 12, but ‘views’ is the keyword: a child has the right to form and to express views in all matters affecting him. In judicial and administrative proceedings, the opportunity to express views is offered by the right to be heard. In the case of adults, it is common that they have a say and are heard with respect to their own cases; in the case of a child an express provision is required, as some adults might forget to treat them as human beings with an opinion of their own.

Another area in which a child might express himself is religion. The child has the right to freedom of thought, conscience and religion and also to manifest his religion or belief, which is protected in article 14. In addition, with specific reference to children, it is added that parents have the rights and duty to provide direction to the child. As mentioned before, the free choice of religion was a hotly debated subject during the drafting process.

In case of juvenile justice, the child should be informed promptly and directly of the charges against him or her, pursuant to article 40(2)(b)(ii). Although this provision does not say that the information should be in detail and in a language understandable to the child, as is provided for in article 14(3) of the International Covenant on Civil and Political Rights, it is obvious that the provision only makes sense when children can understand the nature of the charges against them. Thus, the state should not only use a language which the child can understand, but also communicate the information in a manner which a child is capable of understanding.

The provision that children should be informed of the rights of the Convention is contained in article 42. This article is in fact already in the implementation part of the Convention. In that part, reference is often made to the information which has to be

provided to the Committee, in order to offer 'a comprehensive understanding of the implementation of the Convention in the country concerned' (article 44). The organisation of the information-flow to the Committee has led to the introduction of guidelines and other provisions, to make the monitoring process function smoothly.  

In a different way 'information' turns up in the Convention as a necessary tool for the state or appropriate authorities. A 'basis of pertinent and reliable information' is required for authorities to decide on matters of adoption, and also in the verification of informed consent of the persons concerned (article 21). In the case of a refugee child the state has – as it considers appropriate – to cooperate with the efforts of international organisations to trace the parents or other members of the family 'to obtain information necessary for reunification with his or her family' (article 22).

Information also plays a role in the mutual support states parties have pledged themselves to in the Convention. Such international cooperation, necessary 'for improving the living conditions of children in every country' is mentioned as an obligation for the implementation of the rights enshrined in the Convention, especially economic, social and cultural rights (article 4). International cooperation is further expressly mentioned in the field of health care and care for disabled children (articles 24, 23). It should also be implemented in the field of education:

**Article 28**

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

The frequent reference to obligations of the states parties under international law, in the field of preventing statelessness of children, and drug abuse; supporting refugee work, employment, humanitarian law in armed conflicts; and, the requirements for due process of law, also creates implicit obligations to provide and exchange information.

The special relationship between the state, international cooperation and the provision of information is contained in article 17. The state has to ensure the child’s access to information from a diversity of national and international sources, and shall encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources.

In this case, the state has to encourage others to cooperate internationally. At the same time, the state has to create conditions which make this international cooperation and exchange possible.

70. More elaborated in Chapter 6 at 'Monitoring Mechanism', p. 376.
As becomes clear from this exercise, the Convention pays particular attention to the development of the child. The notion of the evolving capacities of the child is remarkably present in the direction and guidance parents should give to their children and the way in which parents, the state and others should deal with children's views: to give them due weight in accordance with the age and the maturity of the child. In several provisions the prerequisite of appropriateness of measures also refers to the notion of a developing child. Likewise the Convention also pays attention to the role of information in the developmental process, as it refers to knowledge, education, expression and participation. The combination of these two elements, information and development, is most prominent in the articles 13 and 17 on the child's freedom of expression and his access to information. There are, however, other rights which should be studied in relation to information and development. Figure 8 gives a summary of the Convention's articles involved.

Upbringing by parents
During a child's upbringing, parents inform him about the many aspects of life. The Convention recognises this responsibility of parents in several articles, of which article 18 is most central. It states:

Article 18
1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

The primary responsibility which parents have in the upbringing of the child, is to be that child's first and main source of information. Their responsibility for the child's development includes responsibility for other sources of information which the child encounters or is confronted with. As demonstrated in Chapter 2, the relationship between child and his parents is a crucial one with regard to information. In this crucial relationship, the right to information is primordial and fundamental. The Convention formulates this right of the child as a responsibility of parents.

The formula of the 'best interests of the child' is related to the basic concern of parents. In other circumstances, all actions concerning children undertaken by public or private institutions and authorities, must take as a primary consideration the best interests of the child pursuant to article 3. This is a weaker formulation than Principle 2 in the Declaration of the Rights of the Child 1959 which states that in the
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The numbers refer to the articles in the Convention on the Rights of the Child.

Figure 8: Survey of explicit and implicit formulations of the right to information related to the development of the child’s personality and his social participation.
enactment of laws for the purpose of protecting the child and giving him opportunities to develop in good health and with dignity, the best interests of the child shall be the paramount consideration.71

Significantly, article 3 provides for the equality of parents as regards the upbringing of children and the use of the word 'responsibilities' refers to duties rather than to rights in the process of upbringing. This is, however, not the case in all articles regarding the relationship between parents and children, see article 14. This may partly be due to the various contributions in the drafting process.

In the first Polish draft of 1978, the protective and careful attitude of the Declaration of the Rights of the Child was dominant:

Article 6
The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to the children without a family and to those without adequate means of support. Payment of State and other assistance toward the maintenance of children of large families is desirable.

Article 7(2) contains an additional requirement that the best interests of the child shall be the guiding principle of those responsible for his education and guidance and that responsibility lies in the first place with the child's parents.72 In the comments, some more modern thoughts on parenthood were aired, such as the equality of parents, also in cases in which the child is separated from his parents. The child should have the chance to preserve ties with both parents. Suggestions were put forward on the necessary provisions to support parents: economic arrangements for all families, family counselling, domestic services and day care facilities. In general, there was a tendency, as the International Council of Women put it, of 'providing the child with optimum conditions for the harmonious development of his personality but the juxtaposition, in one and the same article of the Convention, of love and family allowances is not felicitous. There seems to be a problem of drafting, if not of substance.'73

A clear substantial difference became noticeable in the comment on the primary responsibility of parents. Some comments would like to add the state and society as well, and use the principle of 'best interests of the child' with regard to all people responsible for education. Again, the International Council of Women made a clear

71. In a revised version of the Considerations of the Working Group in 1989, a phrase is added referring to article 3 stating 'noting that other instruments making the interests of the child the primary consideration were directed to more limited circumstances than those provided for in this paragraph.' E/CN.4/WG.1/L.4/Corr.3, para. 118, p. 2.
73. E/CN.4/1324, p. 36.
statement: 'It seems to us that paragraph 2, which is presented as a "sub-article", does not go far enough and weakens the last preambular paragraph, "Proclaiming that mankind owes to the child the best it has to give". While it might be difficult to introduce such a formula into the text of a convention, we should like it to be said that every adult is responsible for the children with whom he comes into contact, in the widest sense of the word: in our opinion, no adult has the right to offend or neglect a child: the child must be respected.'

Most of the discussion continued not on the child but on the relationship between parents and their position vis-à-vis the state. With references to article 16 of the Convention on the Elimination of All Forms of Discrimination, different interpretations were given with regard to the equal responsibility of parents: it 'concerned equality of men and women only as to legal rights and responsibilities of parenthood, not the daily routine parental responsibilities. It was asserted that the concept of common responsibility of men and women in the upbringing and development of children expressed in article 5(B) of that Convention was more appropriate in this context than equality, since each family allocates parental responsibilities differently, and it is no concern to the state how this is done, except in child support or other extreme cases.' In the further discussion, the term 'common responsibilities' was dealt with. It was also explained that the wording of the paragraph served 'to protect parents against excessive intervention of the state and also to indicate that parents cannot expect the state always to intervene, because the upbringing and development of their child is their primary responsibility.' Consensus was achieved on the following compromise:

Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.

The discussion then turned to the intended support of the state for parents. The issue concerned how the state could be prevented from granting unwanted assistance to parents and guardians in the performance of their duties as well as from interfer-

Article 16 d: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of children shall be paramount.
 Article 5 b: States Parties shall take all appropriate measures: to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is primordial consideration in all cases.
76. E/CN.4/L.1571, para. 91.
77. E/CN.4/L.1571, para. 50.
ing in family life. It was agreed that states should provide financial or other material assistance and counselling where appropriate. Such deliberation led to an agreed proposal from the United States:

For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States Parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child-rearing responsibilities and shall ensure the development of institutions for the care of children.78

Apart from this institutional state assistance, the attention was drawn to the facilities needed for working mothers. In the light of the previous equality discussion, the phrase was replaced by ‘working parents’. In the further discussions, the right of children of working parents to attend institutions for child care was prone to several proposals, which partly reflected the non-existence of such facilities and services in many developing countries. Nevertheless, attention was paid both to the duty of the state to take appropriate measures and to ensure an adequate standard.79 The latter was formulated in a fourth paragraph, which was later transferred to the general provisions in article 3:

Article 3(3)
States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

A point of discussion was the definition of ‘parents’, as in certain cultures other family members customarily share responsibility for the child’s upbringing. As a result, the term ‘parents’ should include, where appropriate, other family members or guardians with de facto responsibility for the care and upbringing of the child.80 In the final formulation, these recommendations were not accepted, not even a final proposal of the Soviet Union to include ‘others responsible for the child’. At the suggestion of the Netherlands, only legal guardians were included. Another noteworthy suggestion of the Netherlands, to delete the whole paragraph 3 about the state’s duty to take appropriate measures for child care services and facilities, was opposed by some delegations and withdrawn.

The United States took the opportunity to put forward that ‘the way in which paragraph 1 had been formulated to create responsibilities for private individuals was rather strange for an international covenant which, after all, could only create binding obligations for ratifying Governments.’81 This remark reflects a well-known

doctrine held in the United States. Nevertheless, the self-executing force of treaties has been accepted in most countries: 'The doctrine is widely accepted that international law limits states but little with respect to deprivations which they impose upon their own nationals. This consequence is a common derivation from the nineteenth century myth that international law is concerned only with the relations of states. Even customary international law, however, offered some alleviation in doctrines of humanitarian intervention and many treaties have imposed special regimes for the protection of individuals against their own states. One of the principle purposes of the human rights program in the United Nations is of course to increase the protection of the individual against all states, including his or her own.'

A Moroccan comment which noted that joint and similar responsibility of the two parents ran counter to Moroccan civil law, and that the granting of rights to the child could in no way mean upsetting the normal rules of the civil law, shows the cultural differences in national legislation and the difficulty of achieving an international standard of human rights. The equal rights of men and women appear in the second paragraph of the United Nations Charter, as the Branch for the Advancement of Women pointed out in its commentary, and this principle should be emphasised in the Convention: ‘This suggestion finds its own justification from the impact of the effects in practice of certain legislation which does not grant both parents equal responsibility vis-à-vis the child, when the parent, by his or her behaviour implicitly rejects such responsibility.’

Another aspect of parents' responsibility is their responsibility for the child's education and for the upbringing of the child with respect for his right to freedom of religion. These are more specific responsibilities which have often drawn special attention: education and religion are often intertwined. The role of parents in the choice of education and religion and the interest of the state to have a well-educated generation in the future have been the subject of various discussions, which show a particular development when one considers the formulations in different human rights treaties and instruments.

In 1948, the balance between parents and the state in this respect was as the Universal Declaration of Human Rights, article 26(3), states:

Parents have a prior right to choose the kind of education that shall be given to their children.

This prior right means that parents have a prior right in relation to the state, not to the child. This latter aspect was not yet considered. This priority principle was further elaborated in both Covenants:

International Covenant on Economic, Social and Cultural Rights, article 13(3) 
The States Parties to the present Covenant undertake to have respect for the 
liberty of the parents and, when applicable, legal guardians, to choose for their 
children schools, other than those established by the public authorities, which 
conform to such minimum educational standards as may be laid down or ap-
proved by the State to ensure the religious and moral education of their chil-
dren in conformity with their own convictions.

and:

International Covenant on Civil and Political Rights, article 18(4) 
The States Parties to the present Covenant undertake to have respect for the 
liberty of parents and, when applicable, legal guardians to ensure the religious 
and moral education of their children in conformity with their own convic-
tions.

The formulations show that parents enjoy the liberty of choice in the religious and 
moral education of their children. It also goes without saying that they educate their 
children in conformity with their own convictions. This formulation is under-
standable when one regards the choice of education as a case between parents and the 
state. From that point of view, the parents’ choice clearly has to be respected by the 
state. However, in these formulations the notion of the child as an individual with a 
conviction of his own and the ability to make choices is absent. In the same way, the 
right to education is hardly formulated as a positive right of the child in the Europe-
ian context:

European Convention on Human Rights, article 2 Protocol 1 
No person shall be denied the right to education. In the exercise of any func-
tions which it assumes in relation to education and to teaching, the State shall 
respect the right of the parents to ensure such education and teaching in con-
formity with their own religious and philosophical convictions.

The Unesco Convention against Discrimination in Education (1960) makes even 
more clear that it is the parents who choose for their children:

Article 5
1 The States parties to this convention agree that: (...
   b) It is essential to respect the liberty of parents and, where applicable, of le-
gal guardians, firstly to choose for their children institutions other than 
those maintained by the public authorities but conforming to such mini-
imum education standards as may be laid down or approved by the compe-
tent authorities and, secondly, to ensure in a manner consistent with the pro-
cedures followed in the State for the application of its legislation, the reli-
gious and moral education for the children in conformity with their own con-
stitutions; and no person or group should be compelled to receive religious 
instruction inconsistent with his or their convictions;
The relationship between parents and children in religious matters will be treated further when considering the Convention’s provisions in article 14, p. 312-323.

A further indication about the way in which a child should and could be informed by his parents can be found in article 5 of the Convention, on parental guidance, as mentioned above. This article makes strong reference to the parental responsibility to adapt themselves in their education to the abilities of the child and to take notice of the child’s development. When the child grows older less direction is needed, and it is only needed for certain aspects. Guidance takes on a different form because upbringing is a dynamic process which does not allow for static methods and fixed rules.

The background to this provision, first discussed in 1987 and adopted in 1988, contains some proposals submitted to the Working Group in 1981 and 1984. A Danish contribution puts the roles of parents and state in this way: ‘Parents or other guardians have the main responsibility for the child. Every State Party has, however, the responsibility to satisfy the needs of the child and to ensure the child the rights set forth in this Convention.’ The wording ‘however’ shows that there is a certain opposition between the roles of the parents and the state with regard to the upbringing of the child.

The international NGO Ad Hoc Group underlined the relationship between the protection of the child’s interests and the protection of the child’s natural family, and considered the family unit as provider of the most suitable environment for the child’s emotional, physical, moral and social development. Their proposal stated that ‘the responsibility of parents is to do everything in their power to ensure their children’s well-being and harmonious development. Parents shall participate in all decision-making and orientation with regard to their children’s education and future’. This formulation makes clear that the primary concern is of the state’s interfering in the decisions of the parents. No formulation is included stating that children shall participate in this decision making. Such a provision, however, can be found in a general sense, in article 12. The word ‘participate’ is a rather weak formulation and was, after discussion, replaced by a stronger formulation on responsibilities, rights and duties of parents. The observer for Canada analysed the situation clearly when a proposal was put forward, similar to article 23 of the International Covenant on Civil and Political Rights, seeking to protect the family: ‘Because article 23 was intended to protect the family from the state, incorporation of such a provision in a convention on the rights of the child must also ensure that the rights of the child would not be left solely to the wishes of the family, without any protection whatsoever from the state; in other words, in protecting the family from the state, the family must not be given arbitrary control over the child. Any protection from the state given to the family must be equally balanced with the protection of the child within the family.’

85. HR/(XXXVII)/WG.1/WP.21.
Another contribution stated that parents should have due regard for the importance of allowing the child to develop the skills and knowledge required for an independent adulthood. Such a formulation reveals that the development of one's skills is considered as a favour from one's parents, and that the development of the child is regarded with respect to independent adulthood, leaving unsaid what value childhood could have in itself.

The concern that certain formulations would affect the rights of parents was frequently expressed during the drafting process and therefore it was proposed that nothing in the Convention shall affect the right and duty of parents to provide direction to the child. This negative formulation was, however, not accepted and a positive formulation of the state's duty to respect the rights of parents was adopted. This concern has remained when one considers the declarations and reservations which states have made on this aspect at the time of ratification. There was also confusion over the terms used, for example, "parents and legal guardians". This was solved in the Technical Review by referring to the extended family or community as provided for by local custom.

In the relationship of parents and children, a proposal suggested paying attention to the child's duty to respect his parents and to give them assistance in case of need. This proposal from Senegal met with some comments: the duty to respect parents was more a moral obligation than a legal one; in practical terms, it would be hardly possible for states to report on their compliance with such a provision. Some delegations supported the inclusion of duties in the Convention, as in other treaties rights were accompanied by corresponding duties. A solution was then found to incorporate the proposal in the provision on the objectives of education, article 29. This solution makes clear that the provisions of article 29 refer to education, in general, not only to institutional education, but also the educational situation at home.

A further indication of the relationship between parents and children, which involves a right to information can be found in article 27 which provides a standard of living for the child:

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. 

It is made very clear that parents have the primary responsibility to create good living conditions to enable the child to develop in all aspects. Mental, spiritual and moral aspects are explicitly included in these living conditions, which clarifies that it is not enough to provide the child with food, clothes and a house. Nevertheless, the supplementary duty of the state to support parents focuses particularly on material assistance with regard to nutrition, clothing and housing.

The basis of the article is found in Principle 2 of the Declaration of the Rights of the Child which speaks of ‘conditions of freedom and dignity’. In the early comments, the Food and Agricultural Organization (FAO) remarked that no mention was made of the emotional development of the child. Apparently, this was supposed to be covered by moral and spiritual development. Unesco pleaded to include: ‘cultural development with due regard for national and regional realities’. In the further discussions, these elements were not taken up, the attention was mostly drawn to specific cases of a single parent, deprived families, absence of one parent, lack of parental care and extreme poverty, which called for special support from the state. The poor material circumstances in many developing countries were another point of concern. Proposals were made to include a provision of children’s programmes on behalf of the poorest populations in all countries.

During the discussions in 1985, several difficulties came up again. One of them was the position of persons other than the parents who are responsible for the development of the child. This means those who take a position vis-à-vis the child as an important or alternative source of information. Such responsibility requires regulation. This time, however, the Dutch proposal to include legal guardians was not adopted, because guardianship differed greatly from country to country, an inconsistency which has remained in the final text. Another point was the range of the state’s efforts to support parents. Various escape clauses were introduced by the United States, supported by the United Kingdom: appropriate measures should be in accordance with national conditions and within the means of the state. The reference to the national resources available makes it rather easy to repel claims from pressure groups to provide more material assistance. It is remarkable that these limitations to the rights of the child initially came from Western affluent societies. In response, Unicef referred to the parallel articles 2 and 11 in the International Covenant on Economic, Social and Cultural Rights requiring the states parties to take appropriate steps to the maximum of their available resources, and commented in the Technical Review: ‘Thus the phrase “within their means” constitutes a diminution of the more exacting standard contained in the Covenant. Similarly, the phrase “in accordance with national conditions” would appear to be unnecessary given the use of

the word "appropriate" in describing the type of "measures" to be taken. If, however, the reference to "national conditions" is considered to import a broader qualification, then it would also bring about a diminution in the standard already provided for in the Covenant. Consideration might thus be given to deleting the phrase "in accordance with national conditions and within their means" and adding after the words "appropriate measure" the phrase "to the maximum of their available resources".93 This proposal was not accepted, although a similar provision has been taken up in article 4 which states that in regard to economic, social and cultural rights, states parties shall undertake such measures to the maximum extent of their available resources. The provision in article 27 seems therefore inconsistent with this general clause, which stresses extended efforts on the part of the state.

It is noteworthy that in the whole discussion on the task of parents to educate their children in a healthy environment, no attention is paid to the supportive additional or substitutional role of the state to provide for the less materialistic aspects of the child's environment, including the mental climate and its psychological effects on the child. The information that parents, with the best of convictions, give to their children can be counteracted by messages from the media or other social institutions. This conflict can create a confusing context in which the child has to find his way, not knowing who are the reliable signposts.

In general, one can conclude that the privacy of the family is a realm into which the state cannot enter. In order to protect the rights of the child, issues arise in which state responsibility has to be balanced against the privacy of individual family members. Parental decision making powers are no longer unrestricted: the child has a say as well, regardless of age, taking into account his evolving capacities. "Hence the family is gradually being recast and the incorporation of "guidance" as well as "direction" reinforces the development of the concept of the parent as the enabler rather than as sanctioner. The international protection of children's civil rights now touches the core of family life. The exercise of parental rights and responsibilities in specific circumstances can therefore be subject of review by children where it falls within the responsibilities of the state, such as in the hospitalisation of children."94

**Research on the explicit right to information (articles 13 and 17)**

In the primary analysis of the Convention, two articles showed an explicit formulation of a right to information: article 13 and article 17. Article 13 stands in the grand tradition of human rights, formulating a fundamental civil right: the freedom of expression. Taken together with the Preamble of the Universal Declaration, proclaiming the freedom of speech, this right is considered by Bryson as the right to information: 'Ce sont là des affirmations précises du droit à l'information, qui ne laissent place à aucune ambiguïté; et toujours dans ce même texte fondamental, on trouve

nombre d'autres allusions implicites à ce droit que possède tout homme, en tout
pays.95 This reference to implicit formulations should also be noted.

The inclusion of information is not left to the wise who needs only a word, but ex-
plicitly mentioned in article 13. In fact, the article describes the whole process of in-
formation: to seek, receive and impart information and ideas of all kinds. As to the
context of the process, frontiers should be no obstacle to this process of information.
Even the forms in which the information and ideas are sought, received and impart-
ed are explicitly mentioned: either orally, in writing or in print, in the form of art, or
through any other media of the child’s choice. In the terms of communication sci-
ence, one would speak of a freedom of choice of both channels and messages. No
specific adaptation from the general human rights provision to the situation of the
child has been made in the Convention. The word ‘everyone’ is simply replaced by
‘child’. A question which could arise is whether the drafters considered this provision
with regard to children of different abilities, interests and in different circumstances.
Furthermore, the choice of media may be only applicable in the process of expression
of ideas or is it also relevant to the case of seeking and receiving. In other words: does
the child have a say in the whole process of information, including its conditions?

In article 17, the child has an explicit right of access to information. In the context
of the mass media, more qualifications are given to this process of information.
These qualifications require a diversity of sources, both national and international,
and that the information have a positive and healthy aim. The whole process of in-
formation is related to the child’s education and development in the broadest sense.
The article is often referred to as protecting the right of access to appropriate informa-
tion. Although the article clearly declares that the child has access to information,
the following paragraphs of the article concentrate on the provision of information
and especially the instrumental way to achieve the provision of appropriate informa-
tion, namely by means of the mass media. The availability of information is
sought to be safeguarded by encouragement of the production and international
cooperation in production, and the exchange and dissemination of information. Pro-
duction and dissemination of children’s books is especially mentioned.

A possible obstacle to access to information could be the language which is used.
In this article, particular attention is paid to the linguistic needs of the child belong-
ing to a minority or indigenous group. As a result, respect is paid to cultural diver-
sity and the child’s cultural background, and also in respect to providing access to
information.

The limit on access to information is set by the need to protect the child from in-
formation and material injurious to his well-being. The question may arise with re-
gard to who is qualified to decide on the injurious character of information. Approp-
riate guidelines might offer the necessary protection. The inevitable counterpart to
this question is whether access to information can also guarantee that the child ob-
tains the information he deems necessary for himself. These questions will be taken
up in the further analysis of these two explicit formulations of the right to informa-
tion in the Convention.

Freedom of expression: Article 13

The right to freedom of expression will be mentioned several times. It is a right closely related to access to information, as described in article 17. It is also closely linked to the child's right to express views on matters affecting him in article 12, which can be seen as a specific provision on the general right to freedom of expression as contained in article 13, which reads:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others; or
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In article 13, a rather active approach is envisaged concerning information for the child. The freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds.

Legislative development

A comparison of the formulation in article 13 of the Convention with the provisions in the Universal Declaration and the Covenant on Civil and Political Rights, article 19 of both instruments, reveals that several differences are apparent. Article 19 of the Universal Declaration on Human Rights reads:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless frontiers.

The Universal Declaration speaks of the freedom of opinion and expression. The notion of freedom of opinions is not expressively stated in the Convention. The discussion on the formulation of article 12 started with the formulation of forming views and expressing opinion, of which later only the views remained. This was possibly done for reasons of consistency. There seems to be no logical reason why the wording of the right has not followed the already adopted formulation in other treaties, stating that the freedom of expression includes freedom to hold opinions. Further study of legislative history will reveal the real reason for the incomplete formulation.

A similar provision on the right to freedom of expression can be found in the International Covenant on Civil and Political Rights article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all
kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a) for the respect of the rights and reputations of others;
   b) for the protection of national security or of public order, or of public health and morals.

The provision in the Universal Declaration on the exercise of the right to freedom of expression ‘through any media’ is specified in the Covenant on Civil and Political Rights by explaining ‘either orally, in writing or print, in the form of art, or through any other media of his choice’. At that time, the development of media use had only recently begun. ‘Any other media’ will nowadays include E-mail, discussion lists on computer networks, satellite-connections and other novelties of communication technology which have yet to be invented. The formulation in the Convention has broadened the scope of possible media, by explicitly stating ‘any other media of the child’s choice’, thus recognising possible other, child-like or child-appropriate means of expression.

A similar provision on the choice of media is not found in the European Convention on Human Rights, although the freedom of expression is guaranteed in article 10:

1. Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

This provision clarifies that the right to freedom of expression shall be without interference by public authority. This standard leaves open the question of interference within the private sphere, by ‘private authorities’, circumstances especially important for children. As is clarified in the paragraph on upbringing by parents, international law has traditionally sought to safeguard the privacy of the family and has not attempted to regulate the quality of the relationships within the family, thus reinforcing national legislative approaches which treat that which occurs in private as comparatively unimportant and concerning only the family members and not soci-
ety at large. There now seems to be a growing tendency not only of state interference in family privacy based on the duty to intervene in case of a risk of child abuse, but also of the state's interest in the socialisation process within the family, as this will prelude the future participation of children in society.

In the second paragraph, certain restrictions on the exercise of the right to freedom of expression are made. These restrictions include those which are provided by law and necessary for the respect of the rights and reputations of others, the protection of national security, public order (ordre public) or public health and morals. The same phrase is used in the Covenant and the Convention. The European Convention, however, has added some qualifications: necessary in a democratic society, territorial integrity, public safety, prevention of disorder and crime, preventing disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary. This larger enumeration of qualifications for restrictions, and therefore exceptions to the non-interference of the state, offer a broader field of action for the state, but are also used as a touchstone by the Commission and Court of Human Rights in Strasbourg.

In the European Convention and the Covenant, the reason for these restrictions is explained: the exercise of the rights carries with it special duties and responsibilities. It may be therefore subject to certain restrictions. One of these restrictions is even taken up in the first paragraph of the provision in the European Convention: the licensing of broadcasting, television or cinema enterprises. The relationship between duties and responsibilities on the one hand, and restrictions in the exercise of the right to freedom of expression on the other hand, is left out in the Convention on the Rights of the Child. The reason could be that here it is clearly the child who is the sender of a message. One might have thought it going too far to speak about the duties and responsibilities of a child expressing his ideas. In fact, the jurisprudence of the European Court of Human Rights shows that the right is mostly invoked by journalists and is thought to protect them and to protect states from them at the same time. It seems that the drafters of the Convention did not think of children as having their own radio stations or theatre performances and shows, even though in the European context initiatives of young journalists are officially supported. Another reason could be that, in general, the drafters have been reluctant to take up formulations of duties of children in the Convention. The only exception is found in article 29 on the aims of education, infra.

In a comparison between article 19 of the Covenant and article 10 of the European Convention, Van Dijk says that article 19 is formulated more appropriately, in so far as the right to hold opinions without interference is worded in a separate first paragraph and it is clearly stated that the restrictions of the third paragraph are not applicable to it. The freedom to hold opinions is hardly distinguishable from the freedom of thought. He considers the freedom to hold opinions to be a de facto non-de-rogable right.

In considering the process of information, Van Dijk reflects that imparting information can still be regarded as an expression of opinion, the seeking of information

precedes the formation of an opinion by the person who seeks the information, and consequently also its expression.

The most important difference between the two formulations is that ‘article 19 mentions expressly also the right to seek information, thus constituting a stronger basis for an obligation on the part of the authorities to provide information. In the Report of the Committee of Experts, it is submitted that such a duty is not implied therein, but it is not stated what then is the content of this additional obligation.’ 97 In article 19, the phrase ‘without interference by public authority’ is lacking, and this eliminates the strongest argument against the view that the provision may also have some applicability for third parties. In other words, some Drittwirkung can be acknowledged, a subject taken up in Chapter 6.

In the legislative history of the Convention on the Rights of the Child, the reports of the Working Group show that the discussion on the right to freedom of expression started with a proposal put forward by the United States in 1985. 98 It was the intention of the United States to include civil and political rights as well as freedoms in public life in the Convention; for example, freedom from arbitrary interference with privacy, family, home or correspondence, right to petition and the right of peaceful assembly. In 1987, there was a lengthy discussion about the merits of reproducing existing provisions, but it was also felt that a provision dealing with the evolving sense of responsibility and capacities of the child would be welcome. Because so many rights were concentrated in one article, it was proposed to split the different provisions. The main response to the proposal was one of support. The idea of including civil and political rights in the draft convention to reinforce the protection of children was strongly supported by several participants. However, the legitimate rights of parents and tutors should be safeguarded, the balance between rights of children and rights of the family should be preserved and the wording of the article should be in line with the Covenants.

The motive for including civil and political rights in the Convention was explained by the United States stating that ‘the protection of children’s civil and political rights was of fundamental importance (…), particularly because the ‘child’ as defined in the draft Convention, included adolescents who had often acquired the skills needed to participate fully and effectively in society.’ 99 Further reference was made to the fundamental rights e.g. the right to freedom of religion, which had already been adopted, and the universally accepted character of the proposed rights.

A further revision of the proposal was presented in the next meeting. The United States was even more clear in the presentation of the proposed rights: ‘Children not only had the right to expect certain benefits from their Government; they also had civil and political rights to protect them from abuse of their Governments. These rights are largely the same as those enjoyed by adults, although it is generally recog-

nized that children do not have the right to vote. While children might need direction and guidance from parents or legal guardians in the exercise of these rights, this does not affect the content of the rights themselves. It was recalled that these rights protect children from action of the state and would not affect the legitimate rights of parents or legal guardians to provide direction and guidance. However, there was also the view in the Working Group that if parents should be protected from states, the child should be protected from parents.

The NGO Ad Hoc Group responded to the wish to distinguish between freedom of expression, freedom of association, freedom of peaceful assembly and protection of privacy, by offering the following alternative:

1. The states parties to the present Convention shall assure the child who is capable of forming his or her own views the right to express an opinion freely in all matters. The wishes of the child shall be given due weight in accordance with his or her age and maturity.
2. Every child shall have the right to seek, receive and impart information and ideas, either orally, in writing, in art form or in any other media of the child's choice.

In this proposal, the aspect of expression of opinions is elaborated first, but only for children capable of forming their own views. In the text of the United States' proposal, there was still a combination of the formulation that later became article 12(1), on expressing views, to which the formulation about freedom of expression was added, similar to the above alternative. It is not quite clear why in the United States' proposal the text of article 19(2) of the Covenant was taken verbatim, and why paragraph 1 on holding opinions, was left out. As a result, the observer for Finland said that criticisms could be avoided if the proposal dealt with the right to express opinion instead of the child's freedom of opinion. It was proposed to create a separate article in which the right to hold opinions and the right of expression were formulated.

The Chinese proposal went quite a bit further in the opposite direction by combining the two formulations to the effect that only a child who was capable of forming his or her own views would be assured the right to seek, receive and impart information and to express his or her opinion freely on all matters, the wishes of the child being given due weight in accordance with his age and maturity.

A drafting group then attempted to reconcile the proposals with international formulation and suggested: 'The child shall have the right to hold opinions without interference'. This created another remarkable point in the discussion in which it was proposed that the wording 'without interference' in the paragraph should be deleted, since in Spanish the word 'interferencia' meant obstacles. The result was that the whole paragraph was deleted! One has to conclude that this deletion is the very reason why there is no explicit formulation in the Convention on the child's right to hold

opinions. This is a clear example of how internationally accepted provisions like article 19 of the Covenant are modified in the Convention for rather illogical reasons.

In a later discussion, the German Democratic Republic proposed an exceptional criterion for state intervention: 'the spiritual and moral well-being of the child'. The amendment was made in view of article 20 of the Covenant on Civil and Political Rights (on protection against propaganda for war, national, racial or religious hatred etc.) The purpose was 'to cover certain dangers of violent information disseminated by the mass media.'\textsuperscript{103} The proposal got the support from China, but other participants considered it superfluous, because the matter was already dealt with in article 17. The United States said that 'such extra restrictions of freedom of expression were to be avoided; and that the restriction did not appear anywhere in the International Covenant on Civil and Political Rights and it would thus be unfair to impose it on children alone. Further, this article covered also the right of children to expression and such a restriction could be used as an excuse to curtail this right.'\textsuperscript{104} It was added that the paternalistic flavour of the amendment was against the spirit of the Convention. Several objections to the amendment were expressed. The issue was already covered by the provisions on the rights and duties of parents and on the purposes of education. Protection of children already existed in national legislation as exemplified by rules covering film classification. If the amendment was accepted then it should only refer to the case of received information. Sweden warned against the undermining of existing standards. As a result, the German Democratic Republic did not insist on the amendment.

Other small differences with article 19 in the Covenant on Civil and Political Rights relate to the word 'or' which is added between the two parts of allowed restrictions. 'For the respect and reputation of others' was changed to 'for the respect or reputation of others' thus creating separate grounds to allow restrictions, a comment made by Unicef.\textsuperscript{105}

**Implications**

Comparison of similar provisions in international treaties and other human rights instruments, and analysis of the legislative history of article 13 in the Convention on the Rights of the Child demonstrate that the child's freedom of expression is not a new right. The provision was already included in the Universal Declaration and did not make an exception for children. By taking up the freedom of expression in the Convention, attention is drawn to the fact that such freedom is a right of the child as well as of an adult. The right clearly supports the child's possibility to seek and acquire the information he wishes to receive and obtain. With the help of such information, the child can form opinions and express his ideas. The right to freedom of expression supports not only the forming of the child's personality, but also his participation in taking decisions for his own life and in society. As children lack any direct representation of their own interests in society, and frequently lack structures

\textsuperscript{105} E/CN.4/1989/WG.1/CRP.1, p. 22.
which can transfer their opinions to decision-making bodies, the freedom of expression is an important aspect of empowering children with information they need or wish to seek.

The structure of the right to freedom of expression is one in which the obligation of the state is formulated as non-interference. In the case of children, this civil right approach is not enough; to exercise rights, children often need additional support, and this is equally true for the exercise of the right to freedom of expression. Such additional assistance is not provided for in article 13. One could, however, find some support in article 4 of the Convention which provides that states shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognised in the Convention. Such measures of implementation could include the establishment of youth representative bodies, youth panels and other forms of child-oriented structures through which children can make their own contribution.

In the ratification procedure of the Convention, some countries made declarations or reservations on article 13. Poland has made a declaration on articles 12 to 16 that the rights shall be exercised with respect for parental authority in accordance with Polish customs and traditions regarding the place of the child within and outside the family. Belgium has declared that it interprets article 13 in accordance with article 10 of the European Convention on Human Rights. A reservation has been submitted by the Holy See to safeguard the primary and inalienable rights of parents in the interpretation of article 13. Such examples show that the protection of children’s rights remains a delicate task, as they require a rethinking of parental rights as independent rights. The freedom of expression, not a new right, but explicitly put in the context of the child, makes clear that a rethinking of decision making both within and outside the family is inevitable. Necessarily, the participation of children in decision making means the loss of an element of adult power and control. The benefits of children’s participation are often not noticed at first sight. Just as for adults, the freedom of expression includes the freedom to make mistakes and change ideas. Within the limits mentioned in paragraph 2, this right is not dependent upon a certain behaviour, nor is competence mentioned.

In international case-law some examples are given of the type of information involved in the freedom of expression. As was mentioned before, most journalists and publishers have invoked their right to expression. The European Commission on Human Rights has considered the Handyside case in which a publisher of The Little Red Schoolbook saw his copies seized and destroyed. The book which was intended for children of 12 years and older, was written with the assistance of children and teachers and contained factual information on sex and contraception. The United Kingdom sought to justify its infringement by arguing that it was necessary in a democratic society for the protection of morals. The Commission declared that ‘it is impossible to impose uniform standards of morality on member states’ and concluded: ‘The Commission is satisfied that the interference with the publication of the book which the applicant complains was necessary for the protection of morals of

106. CRC/C/2/Rev.5, p. 20.
young persons in a democratic society.'\textsuperscript{107} The special circumstances, including the fact that the book was freely on sale in other parts of the United Kingdom and in other European countries, were hardly discussed. In the same case, the Court admitted that the requirements of morality varied from time to time and place to place, and that the Handbook contained purely factual information which was generally correct and often useful. Nonetheless, with respect to the section on sex the Court stated that children 'at a critical stage in their development could have interpreted as an encouragement to indulge in precocious activities harmful for them or even to commit certain criminal offences.'\textsuperscript{108}

Van Dijk comments that the Court left such a wide margin of appreciation to the national authorities that an independent inquiry in fact did not take place.\textsuperscript{109} Van Bueren comments that 'the Court appeared to conceptualise the issues as the protection of children's welfare rather than their rights. If the applicant had been an older child alleging a breach of the right to receive information rather than the publisher it is possible that the Court would have considered the issue in terms of proportionality rather than margin of appreciation and the total prohibition of the book may have been regarded as disproportionate to the achieved aim.'\textsuperscript{110} There were in fact the complaints of two minors and their mother brought before the Commission whereby the children complained about intolerable restriction of their right to information (article 10) and their right to education (article 2 of the First Protocol). The complaint of the children was declared non-admissible due to the subsequent publication of a second edition in which the publisher had left out certain passages as a result of his condemnation for the first edition. As the Commission stated: 'Only 18 lines were deleted because of the criminal proceedings against the original book, the other changes were the publisher's own choice as a result of comments from readers. The information, purpose and approach of the book was not altered substantially', and concluded 'that even supposing the rights ensured by Article 10 of the Convention encompass a general right to acquaint oneself with any information or idea intended by publication for an author, there was no interference with the applicants' rights under this provision of the Convention.'\textsuperscript{111}

The right to information of the children was considered to be fulfilled by the availability of the second edition of the said publication, at least in certain parts of the United Kingdom where the first edition had been seized. Yet, the fact that others elsewhere were able to read the disputed publication was considered differently in a later case. In that case, the United Kingdom Government prevented journalists from publishing excerpts from the book \textit{Spycatcher} for reasons of national security. Ac-


cording to the Commission, the interferences were in this case not necessary in a democratic society. By the time the book was published in the United States, the confidentiality of the information would have been destroyed. As the Government had taken no steps to prevent earlier disclosure of information by the author, nor had it made any attempts to prevent the importation of *Spycatcher* into the United Kingdom, the Commission failed 'to see a pressing social need to prevent the British public from reading about something which the rest of the world were free to read by then and which concerned a matter of major interest to them.' Although one can point to differences in these cases, it remains remarkable that for information intended for children, the internationality of the market and the broader scope of morals were not taken into account before an international court. Nevertheless, the case-law shows that children have legal standing before the Strasbourg tribunals, and they can also put forward their right to freedom of expression and information.

Now, about twenty years later, there may be a different situation, as the Convention on the Rights of the Child has been adopted worldwide. There is an explicit formulation in the Convention on the child's right to seek and receive information, and, as will be treated in the next paragraph, a right of the child to access to information, which inter alia is stimulated by the distribution of books. At the same time, those who exercise their rights to freedom of expression have special responsibilities. The responsibilities of publishers justified the ban on a publication in the *Handyside* case. In other cases, the duty of the press to control politicians, or to inform the public led to the justification of publications. In case-law, other possible groups having social duties and responsibilities concerning the distribution of information and ideas are mentioned apart from journalists and publishers, including civil servants, police officers, artists and politicians. Van Dijk thinks of authors and teachers: 'It is, however, obvious that they too, have a special responsibility, both with regard to the children and with regard to the parents; the latter also in connection with the right of parents given in art. 2 of the First Protocol, to their children to be taught in


115. The European Convention speaks of 'duties and responsibilities' whereas the International Covenant on Civil and Political Rights mentions 'special duties and responsibilities'.


conformity with their own religious and philosophical conviction. (...) The mere belonging of a person to any of these categories does not yet provide a sufficient reason for a special treatment (...) There should be a relation between the special status of the person in question, the content of the opinion expressed or to be expressed, and/or the medium chosen for it. And if, for instance, a person chooses a medium for expressing his opinion which is directed particularly at children, this imposes a special responsibility on him, in particular if because of his function he enjoys specific authority among children.\footnote{Dijk, P. van, G. van Hoof, Theory and Practice of the European Convention on Human Rights, Kluwer, Deventer, 1990, p. 421.} In this context, sport-ids and popmusic-stars have a great significance for many children as objects of identification and whose expressions and life-style are imitated. The mistakes or crimes of such stars are often the object of intensive media attention. One can doubt whether awareness of special responsibilities \textit{vis-à-vis} children is always present.

Freedom of expression in schools is an area in which a child clearly has an interest. A practical question in this field is whether a child has a right to speak his mother tongue at school. The Convention on the Rights of the Child does not provide a positive obligation to ensure education in a minority or indigenous language. Nevertheless, article 30 states that a right to communicate in such a language in the community with others cannot be denied by the state. This seems to imply that children can speak their own language at school, but that lessons can be given in the official language. Such a situation can be the result of half-hearted acceptance of minority languages, more a question of financial educational policy than of a child’s right to express himself and exchange information in the way the child himself wishes to do. This dichotomy becomes even stronger when lessons in minority language are placed outside the regular school schedule.

There are other means of expression for children in a school situation. The question is whether there are more restrictions to such expression than are permitted in civic life. The regulations concerning the compulsory wearing of school uniforms and the disciplinary measures which sometimes result from it, were considered by the European Commission, who stated that the constraints imposed by school uniform rules were not so serious as to constitute an interference with the right to respect for private and family life. Freedom of expression can still be present as one can wear an item in addition to a school uniform to express an idea, if wearing the item does not cause any disruption in the school.\footnote{Application 11674/85, European Commission of Human Rights, Stevens v. United Kingdom, Decision of 3 March 1986, D&R, Vol. 46, p. 245-250.} In a case before the United States Supreme Court, a group of adults and students had decided to wear black armbands during the Christmas season as a protest against the Vietnam War. Three students of 13, 15 and 16 years of age respectively wore their black armbands in school. The school, fearing the wearing of black armbands would disrupt the school, adopted a policy which required the students wearing those armbands to remove them. The children refused and were suspended, and sent home. The Supreme Court finally decided in this case that in the absence of a finding and a showing that the expres-
sion would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school’, the expression may not be prohibited.120

The rule established in the Tinker case rests on the theory of the free marketplace of ideas: free discussion is to be allowed to the point where the work of the classroom is disrupted, just as, in the non-school world, free discussion is to be allowed until there is a probability it will bring about a grave evil. Under the criterion of ‘material and substantial interference’, the student press is, from a legal point of view, quite free. In practice, there may be self-censorship caused by fear of pressures from administrators or other authorities.121 In later judgements, the Tinker-principle has been narrowed by stating that the rights of students are not automatically coextensive with the rights of adults in other settings, and that there is a different standard for a school to refuse to lend its name and resources to the dissemination of student expression. In this view, the right to freedom of expression would not be infringed by educators exercising editorial control over the style and content of the speech in school sponsored activities provided their actions are reasonably related to legitimate pedagogical concerns.122 This judgement leaves much room in which to decide on the pedagogical ambit of, for example, school journals.

In the school context, it has been established that children have a right to access to information under the First Amendment to the United States Constitution. In this case a school board had decided to remove some books from the school library because they were considered anti-American, anti-Christian, anti-Semitic and just plain filthy. The removal was against the advice prepared by a commission of parents and teachers. Some students put forward their claim to a right to information. The Supreme Court acknowledged the freedom of discretion of the Board of Education. Books could be removed for educational and pedagogical reasons. However, ‘Our Constitution does not permit the official suppression of ideas. Thus, whether petitioners’ removal of the books from their school libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners’ actions. If the petitioners intended by their removal decision to deny correspondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioner’s decision, then petitioners have exercised their discretion in violation of the Constitution.’123 Such a formulation points again to the importance of the intentions and attitudes of adults in fulfilling the children’s right to information.

In the Convention on the Rights of the Child, the provision on the freedom of expression states that the choice of the media for expression is up to the child, thereby accepting implicitly that a child can make such choices. The provision also presupposes that there is a variety of means of expression to choose from. The article in the

Convention expressly protects the specific means by which someone, in this case a child, performs his expression. In specific contexts, judicial or administrative and medical settings, special attention has to be paid to adults’ over-reliance on the written and spoken word. The non-verbal expression in art and play of the child, though sometimes difficult to interpret, offers other possibilities, when the child cannot verbalise his ideas because of fear in an alien situation. This also applies in the case of children who are or have been in difficult or traumatic situations, like refugee children.

In some of the cases treated by the European Human Rights bodies, a distinction has been made between information and ideas as mentioned in the provision on the freedom of information. This is, for example, the case when journalists write about political issues or other matters of public interest. In the Lingens case, the expression of ideas deserves a special scope of protection. The Commission accepted that value-judgments are an essential element of the freedom of the press. The Court followed the Commission stating: 'In the Court’s view, a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof.'

The distinctions made here between information and ideas and between content and means of expression have shown their difficulties in the comments. In communication science, information is the key concept and this is the result of messages containing news, opinions, ideas, as gained by the receiver. A distinction between fiction and non-fiction is often made in literature and library science, but examples of a mixed character are not difficult to find. The solution to equate information with facts and all other expressions with ideas can be counteracted by the argument that facts as such do not exist but always require an element of selection and presentation. Even minimal wording has significance for interpretation, which cannot be evaded.

Access to information: Article 17

A second, but not secondary explicit formulation of the child’s right to information, is formed by article 17. With reference to Chapter 3, it will be interesting to know what did the drafters have in mind for these provisions; whether they had specific ideas about information or relied on a certain theory regarding information processes.

After the presentation of article 17, which is a long article, the reports of the Working Group will be analysed for possible proposals and commentaries on this article. References to related texts or sources will also be covered. Finally, commentary in the legal literature will be treated.
LEGISLATIVE DEVELOPMENT

The final formulation of article 17 which was adopted by the General Assembly on 20 November 1989 reads as follows:

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
(c) Encourage the production and dissemination of children’s books;
(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

The article shows a long range of various elements, with references to other articles, such as article 29 on the aim of education, article 13 on the right to freedom of expression and article 18 on the responsibilities of parents. At first sight, there are also a number of parties involved: the child, the state, the mass media, the parents and possibly minority groups. The legislative history of this formulation which starts with ensuring that the child has access to information is the following.

The first draft presented by Poland, consisted mostly of the principles of the Declaration of the Rights of the Child 1959, disguised in the form of articles with some extensions. There is nothing which refers to a right to information, only the general principles on education and protection from neglect, cruelty and exploitation.126

In the Report of the Secretary-General, the comments of the members states (27), UN specialised agencies (4) and non-governmental organisations (15) on the draft were collected and ordered, in general and specific comments. There is only one reference to mass media, namely in the comment of the Gulf state of Bahrain: ‘Member states should also embody these principles and make them accessible to their citizens, i.e. to fathers and mothers and to children also, because children are the fathers

and mothers of the future, in every possible field, particularly in the fields of education and mass media, e.g. the press, television and radio. ¹²７ This comment, however, seems to be an early precursor of the state's obligation to make the principles of the Convention known to adults and children, as contained in article 42. However, the combination of education and mass media as instruments to embody and make these principles accessible is noteworthy.

In a survey of the matters which should be given consideration in the drafting of the Convention, various subjects were mentioned, such as the right to life of the unborn child, the right to receive religious education, and also 'the right of students to peaceful assembly, to travel and to access to information'. ¹²⁸ As a result, in the very first meeting of the Working Group access to information was mentioned, although in relation to students. This does not make clear what kind of information was envisaged: for their studies or for their orientation in life and the world. The right of the child to be consulted in proceedings affecting his or her welfare was also mentioned at the very beginning of the drafting process.

As most states agreed with the principle of drafting a convention, Poland presented a revised draft, in fact several ones, ¹²⁹ which finally could serve as a basic text for further discussion in the Working Group in 1980. This basic working text contained twenty-eight articles, of which one is concerned with mass media, at that stage numbered Article 9:

Parents, guardians, state organs and social organizations shall protect the child against any harmful influence that mass media, and in particular the radio, film, television, printed materials and exhibitions, on account of their contents, may exert on his mental and moral development. ¹³⁰

It is unclear on which grounds, advice or comments, Poland based this article in the basic working text. The formulation clearly refers to the idea of protection. Various forms of mass media are enumerated and the effect of the mass media is related to mental and moral development. One explanation can possibly be found in a very early concern in the context of children and mass media, expressed at the regional United Nations seminar on the Rights of the Child in 1963 in Warsaw. The fifth item on the agenda was 'The right of the child to be protected against the harmful influence of certain kinds of publications, radio and television programmes, and motions pictures', presented with a background paper prepared by Unesco. During the seminar, the degree of influence of mass media, obscenity, violence and propaganda, and legal measures were discussed. This experience might have contributed to the above proposal.

¹²⁹ E/CN.4/L.1468 (report of the Open-ended Working Group), E/CN.4/L.1465/Rev.1 (Poland, revised draft resolution) and E/CN.4/L.1418 (letter by Poland), E/CN.4/L.1471 (Poland, revised draft resolution); continued by E/CN.4/L.1349 (letter by Poland) and E/CN.4/L.1513/Rev.1 (Poland, revised draft resolution).
¹³⁰ E/CN.4/11349, p. 4.
The text was adopted in 1980, but broader discussion took place in 1981. The first remark, made by Norway, is about the replacement of the word 'film' by 'recorded vision or sound'. The Holy See suggested the insertion of the words 'spiritual and social' between the words 'moral' and 'development'. Such remarks about textual improvements and not on the principle which the article seeks to protect or provide for, was common during the whole drafting process. Fundamental discussions on principles have been few, as was demonstrated earlier.

An important change in the same discussion, in 1981, took place when one speaker felt that 'the mass media does more good than harm and therefore the article should be phrased in a positive way, rather than in terms of protecting children from the mass media. states parties should ensure freedom of information, so that children can take advantage of a diversity of opinion concerning all matters.' The identity of this speaker is not revealed in the records, but his remark was serious as he said he would urge the deletion of the article unless it could be formulated 'to take a positive approach, acknowledging the educational role of the mass media, the need for reciprocity in the free flow of information across international borders, and the importance of guaranteeing children access to information from a variety of sources.' According to the records, some delegations agreed with this intervention, while another speaker insisted that the special attention of the Working Group be on the harmful influences of the mass media. Some delegations stressed that liberty, diversity and free circulation of information as well reciprocity of information between states should be recognised. Others pointed to the fact that there was no question of limiting the freedom of information, but only of the protection of children from the harmful influences of the mass media.

To facilitate further discussion an Australian representative proposed a new text:

States Parties to the present Convention shall assure to the child the right to protection from exploitation and abuse. To this end, States Parties shall encourage parents and guardians to provide their children with appropriate protection from written, printed or recorded material injurious to the health or morals of children and shall encourage the mass media to follow guidelines consistent with its responsibilities.

In this draft, the right to protection is clearly mentioned and related to protection from exploitation and abuse, a principle already formulated in the Declaration of the Rights of the Child in 1959 (Principle IX). In the chosen construction, states have the obligation to assure such protection, but they do this by encouraging others: parents and guardians, who have to provide appropriate protection. The state's role of 'encourager' also extended to the mass media, which has to follow guidelines 'consistent with its responsibilities'. The division of responsibilities between the state and the mass media is visible in this early draft.

133. E/CN.4/L.1575, para. 120.
Due to a lack of time, the Working Group postponed the discussion on article 9 and considered this proposal only in the next meeting in 1982. It was clear that the prevailing thought was still that of protection in the field of mass media; the proposals sought also to pinpoint the media’s responsibilities. In the meantime, Australia had understood and accepted the necessity of a positive wording and proposed a revised draft:

States Parties shall encourage mass media agencies to develop special programmes for the benefit of children and to design guidelines, consistent with the right to freedom of expression, to protect the child from written, printed or recorded material injurious to his physical or mental health and development, bearing in mind also that in accordance with article 8, the primary responsibility for such protection rests with the parents or guardians of the child.\textsuperscript{134}

The new elements in this draft were the special programmes which would have to be developed by the mass media. The media would also have to develop guidelines to protect the child from injurious material, but account is taken of the media’s role by stating that such guidelines would have to be consistent with the right to freedom of expression. It seems that the reference to freedom of expression is related to the media’s freedom of expression. A new element was also the reference to the primary responsibility of parents or guardians. This responsibility, however, is only seen in regard to protection, and not, with respect to encouraging or guiding the use of special programmes or to benefit from the media in general. The reaction to this revised proposal was not clear, but obviously the Soviet Union and other delegations wished to stay with the protective Polish draft of the article. As a compromise, the Soviet Union proposed the following text:

1. The States Parties to the present Convention shall encourage opinion-making quarters to disseminate information which promotes the upbringing of children in the spirit of the principles as laid down in article 16.
2. The States Parties shall also encourage parents and guardians to provide their children with appropriate protection, if, on account of its contents, the disseminated information might negatively affect the physical and moral development of the child.\textsuperscript{135}

This formulation clarifies that the provision is directed towards those who are responsible for the upbringing of children. The principles referred to in article 16 are concerned with the aim of education. The comments on this proposal show the opposing opinions in the Working Group. The urgent request to put the article in positive terms, the need for reciprocity in the free flow of information across internation-

\textsuperscript{134} E/CN.4/1982/30/Add.1, para. 35.
\textsuperscript{135} This text was contained in the document which Poland had submitted to the General Assembly to give a status report on the draft Convention. Apart from the article agreed upon by the Commission on Human Rights, there were revised texts of remaining draft articles being submitted to facilitate the drafting process. In this category one finds the twofold article 9, proposed anew by the Soviet Union.
al borders, the importance of guaranteeing children access to information from a diversity of sources and the educational role of the mass media were repeated by some delegations. In addition, the dangers of government censorship were emphasised. Other remarks were also repeated such as the extension of the endangered aspects of development and the different forms of negative influence, neglect and abuse, possibly deserving treatment in a separate article. Negative influence was termed 'such matters as apartheid, racist theories and ideologies and the like'.

For the meeting of the Working Group in 1983, two other proposals were submitted, but not considered. The proposals came from a non-governmental organisation, Bahá'í International Community, and were related to mass media (then article 9) and aims of education (referred to as article 17). The first proposal was as follows:

**Article 9**
In order to ensure to the child the enjoyment of the benefits of mass communication systems, the States Parties to the present Convention shall:

- a) encourage mass media agencies to disseminate information designed to promote the health and welfare of the child and the upbringing of the child in the spirit of article 17;
- b) encourage mass media agencies to disseminate material of social and cultural benefit to the child and, as appropriate, to develop and disseminate programmes designed to support, supplement or enhance existing programmes of education and introduce new programmes designed to expand educational opportunities to the child;
- c) encourage mass media agencies to disseminate their child-oriented programmes not only in the official language(s) of the State but also in the language(s) of the State's minority and indigenous groups;
- d) encourage international co-operation in the production, exchange and dissemination of child-oriented material from a diversity of cultural and national sources;
- e) encourage mass media agencies to develop guidelines to protect the child from written, printed, audio or visual material injurious to his physical or mental health or to his social, spiritual or moral well-being, bearing in mind that, in accordance with article 8, the primary responsibility for such protection rests with the parents or guardians of the child.

In this proposal, the structure of the final article on the child's right to information becomes visible. The article starts with the very positive attitude towards the mass media, speaking of benefits for the child. This positive approach is first of all elaborated for information directed towards the health and well-being of the child and his upbringing. The spirit of educational aims is an aspect further elaborated by Bahá'í in its second proposal. The relation as such proposed by the Soviet Union has

been included. The reference to 'material of social and cultural benefit', and the relation of educational opportunities and supportive programmes are new. Attention is also drawn to the languages of minority and indigenous groups to be used in child-oriented programmes. International cooperation is another element, elaborating the requirement of diversity of sources and the free flow of information. Only at the very end of this extended article, the other aspect of the mass media is treated: the media should develop guidelines in order to protect the child from various material injurious to the child's health and well-being. New elements proposed by Australia and the Holy See were also integrated in the proposal. The reference to the aims of education as proposed by Bahá'í, shall be dealt with later in this study.

During the session of the Working Group in 1984 this proposal was discussed together with a proposal of the Informal NGO Ad Hoc Group and a proposal from the United States, also submitted in 1983, stressing the diversity of sources, the free flow of information, the availability of information and the freedom of expression and opinion for all. In addition to this proposal, the United States stressed the necessity 'to take into account the concerns of states where the private sector was involved in the mass media and [said] it was not possible or desirable for the state to ensure or guarantee anything in that field', but that accordingly the state should and could guarantee the free flow of information.138

The original Polish draft139 stressing the negative side of mass media was still on the table, but not all delegates considered it appropriate for discussion. At the same time, the texts of the NGO’s were considered too detailed for the purposes of discussion.

With so many different proposals it was deemed necessary to elaborate a compromise text by an open, informal working party. Canada presented the result of this party, which was not very different from the earlier Bahá'í proposal, although the references to the educational role of mass media and the special programmes were deleted. This redraft was counteracted by a proposal from the Ukraine stressing 'the use of governmental bodies and private mass media agencies to develop and disseminate information designed to promote the health and welfare of the child, his social and cultural upbringing' and international cooperation, underlining information from sources compatible with the 'ideals of peace, humanism, liberty and international solidarity'. The redraft was nevertheless taken as basis for discussion:

Recognizing the important function performed by the mass media and the need to ensure that the child has access to information and material from a diversity of sources aimed at the promoting of his social, spiritual and moral well-being and physical and mental health, the States Parties to the present Convention shall:

a) encourage the mass media agencies to disseminate information of social and
   cultural benefit to the child in accordance with the spirit of the article 16;

b) encourage international co-operation in the production, exchange and dis-
   semination of such information and shall not impede the free flow of infor-
   mation across international borders;

c) encourage the mass media agencies to have particular regard to the linguist-
   ic needs of the minority groups;

d) encourage the development of voluntary guidelines for the protection of the
   child from material potentially injurious to his well-being bearing in mind
   that the primary responsibility for such protection rests with the parents or
   guardians of the child.

The different parts were subsequently discussed. Finland's proposal to restructure the
first part in the sense of a preamble, from which the articles followed was accepted.
The reference in subparagraph a to article 16 of the revised Polish draft (A/C.3/36/6)
was provisionally accepted. Due to the various drafts prepared by Poland, the num-
bers of the provisions on the right to education and the aim of education changed. In
the proposal of 1979, article 16 was devoted to the right to education which was both
free and compulsory; and, article 17 was concerned with the aim of bringing up and
educating children in order to permit their personalities to develop fully.104 In the draft
presented to the General Assembly two years later, these articles were renumbered 15
and 16.141

Sub-paragraph b brought the opposing opinions of those promoting the free flow
of information and others promoting information on ideals to the fore. One should
bear in mind, as mentioned earlier, that the Cold War made its presence felt during
the drafting of the Convention. Several attempts were made either to be more specif-
ically about the free flow of information, for example, by focusing on 'child-oriented'
material, or to loosen the guarantee of free flow of information. The delegations of
the United States and the Ukraine finally reached a compromise text by referring to
the diversity of national and international sources both in the preamble and the sub-
paragraph of the article.

A short discussion also took place with regard to subparagraph c drawing atten-
tion to the term 'minority groups', an expression deemed inappropriate for indigene-
ous populations. As a compromise, this latter term was also added. In order not to
forget that the provision was about children and the relation of the child belonging
to these groups, this reference was included at suggestion of the Netherlands.

Several aspects of the provision on protective guidelines were discussed. The for-
mulation was purposely unclear about who was supposed or obliged to formulate
guidelines. This lack of clarity made it possible to sidestep the discussion on state
versus privately organised media. The proposal that guidelines should be 'appropri-
ate' was accepted, but the inclusion of codes of conduct, proposed by the United
Kingdom was opposed by the United States.

Attempts were made to either delete the reference to the responsibilities of parents or to extend it to all who took care of children. This action was an intervention aimed at promoting the socialist approach of primary state responsibility in child care, but the reference to parents' responsibilities remained, as a provision on this matter was already adopted at an earlier stage of the drafting process.

In the adopted text, the phrase 'information and material' was repeated in the paragraph for matters of consistency. There seems to have been no further thought on the differences, similarities or overlapping of the terms. The dual term appeared first in the Canadian redraft and seems to be due to the various proposals, in which, for example, the expression 'written, printed, audio or visual material' was used.142

As the text was adopted no further discussion was necessary and the article remained as it was until 1987, when the Working Group discussed a proposal from the International Board on Books for Young People (IBBY). This proposal suggested inserting a new subparagraph devoted to books, reading and storytelling:

Encourage, at all levels, literacy and the reading habit through children's book production and dissemination, as well as the habit of storytelling.143

In this proposal, the encouragement of the habits of reading and storytelling is the focal point. The basic idea to encourage literacy was accepted by the Austrian representative, who suggested that it should be put forward in legal terms. His proposal was:

Encourage the production and dissemination of children's books.

This refinement was supported by France, Italy and the Netherlands and adopted in the Working Group by consensus.144 In the adopted subparagraph, the idea of encouragement of developing the habits of reading and storytelling is transformed into a more materialistic or concrete formulation. It is probably easier to formulate in legal terms the encouraging of the production and dissemination of books than the attitudes or habits of human beings. Nevertheless, the final purpose or the effect on children, literacy and the habit of reading has been lost.

It is quite remarkable that the idea as such was unanimously adopted and supported by consensus. One would expect that Third World countries would have raised their voice, as the proposed book and reading policy would have been an instrument in eliminating ignorance and illiteracy. Another remarkable point is that the proposal came from a rather small and unknown non-governmental organisation. One could have expected such a proposal from Unesco or from the Internation-

al Federation of Library Associations and Institutions (IFLA), but they kept silent, or silently agreed.\textsuperscript{145}

With this new subparagraph the text was adopted at the first reading,\textsuperscript{146} and ready for further technical review. Because of the chosen working method to act in great openness, there was a risk that considerations for the second reading at this stage of the drafting process would return to already accepted formulations, as new participants were getting involved. This risk became reality in the discussion on the right to information, which took place in 1988. First, a new paragraph was proposed by Venezuela aimed at protecting the child from publicity:

\begin{quote}
Any problem in which the child is involved shall be of a confidential nature, for the fundamental purpose of sparing the child publicity which might be harmful in his or her future contacts with society, so that the child's full social and individual development may become reality.\textsuperscript{147}
\end{quote}

Several participants considered the proposal not to belong to the article under discussion, 'the whole trust of which was aimed rather at the spread of information than at its limitation.' The proposal was therefore referred to a possible place within the article relating to the child's protection against all forms of discrimination, social exploitation and degradation of his dignity. Although this reference to another article is understandable, the issue remains that Venezuela was pointing at a specific form of exploitation, namely by the mass media. Nevertheless, no reference was made to the last subparagraph, dealing with appropriate guidelines for the mass media, of which the avoidance of the injurious use of publicity on a child could have been added. A notable difference is that the proposed guidelines are aiming at the content of information and material and not to the mass media processes which themselves can be injurious to the child, and interfere with his privacy.

Apart from this interference other problems had to be solved in a drafting group which was established for that purpose. Several proposals submitted were far-reaching.\textsuperscript{148} One of them was to delete all the subparagraphs in article 9 (later 17). The observer for Turkey stated 'that since the introductory part of article 9 dealt adequately with the right of children to receive information through mass media, there was no need for the subparagraphs in article 9 and that it should not be the role of this Convention to give detailed guidance as to what the states Parties should do in implementing the article.'\textsuperscript{149} This was not accepted by the drafting group or the Working Group. A second proposal to return to the text adopted at first reading was not accepted either. The situation in the Working Group must have been quite confusing at that moment.

\textsuperscript{145} IBBY has representatives in the NGO Committee's of Unicef and Unesco. The IBBY representatives to Unicef strongly advocated the inclusion of children's right to have access to books in the Convention, \textit{Focus IBBY}, 1, 1990, p. 2. See \textit{Bookbird}, Vol. 28, 1, 1990.


\textsuperscript{147} E/CN.4/1989/WG.1/WP.40.

\textsuperscript{148} E/CN.4/1989/WG.1/WP.42.

Nevertheless, the discussion continued with a third proposal which sought to replace the terms of 'minority group' and 'indigenous population'. Turkey again interfered stating that the subparagraph was not applicable as no international consensus had been reached on the definition of the term. The provisions were useless as states would have no alternative but to interpret, under the circumstances, the terms according to their national law, and would therefore risk being subjected to reservations by states. The result of the discussion was not a deletion but the adoption of the formulation 'who is indigenous', as being the most appropriate compromise.

This discussion is reminiscent of the ongoing debate in human rights, whether human rights are individual rights or can also exist for collectivities. The great exponent of this debate is 'the right to development', which is seen as a human right and invoked by Third World countries, in an attempt to claim international solidarity and an equal chance to develop. The right of people or peoples reflects the same aspiration. The solution adopted in the draft Convention was referred to the individual child including the group or origin to which he belonged.

Another proposal limited the scope of the provision in a different way. The German Democratic Republic proposed the deletion of the words 'including those' in the introductory part of the article. It seems that, at first, most speakers did not oppose this proposal until one explained that this deletion would change the whole meaning of the article and would give it a more restrictive character. The Netherlands then suggested a compromise replacing the words 'including those' by 'especially those', which was accepted.

As explained before, the text of the first reading was sent to the Secretary-General for technical review. Other United Nations agencies could also give their amendments. At this stage an amendment of Unesco was discussed, which sought to relate the production and dissemination of children's books to 'in particular the ideals of the United Nations Charter'. This additional formulation was supported by two delegations, but most of them found the concern unnecessary as a reference was already made to article 16 (education) and was also covered in the introductory part by the reference to 'international sources of information'. The key to the proposal seems to have been to clearly prioritise certain types of children's books. In the professional language of teachers and librarians, this is called the promotion of the good book. However, the representative of Portugal stated 'that children need different books, taking into account their recreational and cultural needs'.

No further exchange of views followed.

Although no discussion on the following subject was mentioned in the records, in the text adopted at the second reading an important addition appears which was proposed in 1982 by Australia. It is the reference to the guidelines, consistent with the right to freedom of expression, which is taken up in the last subparagraph together with the responsibilities of parents:

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

A clarification on the formulation and insertion can only be found in the additional comments and explanation by the Secretariat, which pointed out that 'a conflict may arise with regard to the provisions of article 7a [right to freedom of expression] in the draft Convention and, by extension, with article 19 of the International Covenant on Civil and Political Rights inasmuch as “The protection of the child from information...potentially injurious” introduces an additional restriction to those listed in the above-mentioned articles.' It was therefore suggested to delete the word ‘- potentially’ and add the reference to the freedom of expression at the end of the sub-paragraph. With regard to the restriction, this can refer both to the position of the mass media and to the child. However, the reference to the later article 13 is clearly the right of the child. It seems therefore that a shift is made from the original reference to freedom of information of the mass media to the right to freedom of expression of the child. As such the addition could also be a slight victory for the United States who had insisted on the inclusion of classical human rights in the Convention throughout the drafting process.

From the smaller or greater conflicts of opposing opinions, which also occurred during the drafting of article 17 on the child’s right to information, it becomes clear that known political issues and controversies also extended to this field of international encounter. An example is the controversy relating to the primacy of parents or the state concerning the responsibility for the upbringing of children. Such a divergence of opinions leads to a different balance of rights and duties between children, parents and the state.

Another issue in this respect is the free flow of information, which showed diverging opinions with regard to the relationship between the state and the mass media. On the one hand, the freedom of information was related to the freedom of the market without public responsibility or state concern; on the other hand the flow of information was supposed to follow the intentions of state concern and policy.

**Different elements of article 17**

The description of the legislative history on providing a child access to information by means of the mass media, makes understandable why this provision developed into a rather lengthy article 17, in which many views and aspects had to be balanced. Article 17 contains several elements which need further investigation. These elements, indicated by: the role of the mass media; educational aims; international aspects; linguistic needs; children's books; and, protection will be treated subsequently.

**Role of the mass media**

The freedom of expression, including the right to seek, receive and impart information (article 13), is closely related, on the one hand, to the right of the child to express views, and; on the other hand, to the right of access to information, articles 12 and 17 respectively. In order to make some distinction between these interrelated articles, article 17 is also referred to as the article on mass media. Concerning the question what has to be understood by mass media, in the drafting process the term 'mass media agencies' was used. In its additional comments and clarifications, the Secretariat pointed out that this term 'may be more restrictive than was the intention of that provision inasmuch as the words “agencies” may exclude some significant
sources and means of information and material of social and cultural benefit.' The use of the term 'mass media' would be consistent with frequent references in resolutions, including the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, a declaration proclaimed by the General Conference of Unesco in 1978.

This comment demonstrates two points. The first one is that mass media refers to more than mass media agencies. It was not said what this more could be, but a wider approach is acceptable, especially as it includes significant sources of beneficial information. An additional question could be whether a social-cultural institution such as the public library can be regarded as mass media in this respect. This question was posed in the Netherlands on the occasion of the parliamentary approval of the Convention's ratification. The answer commented that 'mass media in the sense of article 17, as in normal usage, comprises more than public libraries. Included are also television, radio, video, computer programmes, newspapers, magazines, informational flyers etcetera.' Although in communication science one would make a distinction between media organisation or senders of information; the means by which this is done or the form in which a message is contained; and, the technical means and channels, the comments show that a broad approach is envisaged, including organisations which provide access to information sources and play a role in the distribution of information and material.

The second point of the secretarial comment on article 17 leads to the international approach of mass media in the context of treaties and other human rights instruments. The text of the Convention speaks of an important role of the mass media. In the discussions on the draft Convention, it is frequently emphasized that an educational role of the mass media is envisaged. For a clearer understanding of the role of mass media, it can be useful to search a bit deeper into the international concern with the mass media.

In a Round Table Meeting of Human Rights in 1965, which dealt with the relationship between mass communication media and human rights it was reported: 'Radio and television could play a decisive role in the effective implementation of the rights to information, education and culture. (It was pointed out that in the developing countries, consideration of the respective cost of investments and "profitability" of those two media often resulted in the preference being given to the former). The positive contribution of those media depended on many factors. Radio and television could be a powerful adjunct to existing methods of teaching children and adolescents and could also be used in literacy campaigns; (...) Depending on the case in point, the nature and content of the information disseminated, as well as the criteria used for its selection and presentation, could accord with the principle of the free flow of information and ideas proclaimed in the Universal Declaration or, conversely, constitute a permanent violation of the spirit and even of the letter of the Declaration.' It was even considered that the factual influence of the mass media, ei-

151. Tweede Kamer 1992-1993, 22855 (R1451), nr. 4, p. 16; nr. 6, p. 24-25.
ther direct or indirect, on attitudes, behaviour and ways of thinking would have major repercussions on the implementation and perhaps even on the actual content of many human rights.152 This report shows that many elements and approaches to mass media existed long before the drafting of the Convention on the Rights of the Child started, the key element being the responsibility of the persons selecting and disseminating information.

The role of mass media has been taken up by Unesco, as article 2 of its Constitution prescribes the states to:

a) collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image;

In order to realise its promise, Unesco organised a number of conferences on the freedom of information and supported the development of concepts and projects with various studies, as an executive organ of the United Nations. From the very beginning, Unesco was used by the United States to serve its policy to establish a free flow of information.153 This concept was an inherent part of the freedom of expression and information and contained the principle that everyone had a right to seek, receive and impart information and ideas regardless of frontiers. It is precisely the addition of 'regardless of frontiers' which puts this freedom on an international level, as such freedom cannot be guaranteed on the level of a nation-state. The general policy was, as shown by the historical development of the freedom of information, to remove barriers and obstacles for the press, and to improve technical facilities and infrastructure. No attention is paid to the mutual or reciprocal character of information, i.e. the role of the receiver in the process of communication, nor to the social and cultural consequences of such free flow of information. The dominance by the United States was perceived as arrogance and was criticised by other Western countries. When the Soviet-Union entered Unesco in 1954, it proposed a resolution on the use of mass media for promoting the ideas of peace and understanding among the peoples. The Soviet idea of freedom of information was later described, by the American Society of International Law as follows: 'According to the Soviet conception, freedom of information does not exist in the abstract but in a particular socioeconomic context. Accordingly, information should promote the development of socialism and, thus, the eventual good of the people. Information that is harmful to socialism must be banned. Information is an aspect of state policy and should be controlled by the state.'154 The history of the discussion on the proposed declaration shows that not only an East-West conflict was being fought out.

When, in 1962, the first communications satellite Telstar started its activities, the

need for international regulation in the field of communication increased and led to the Unesco Declaration on Direct Satellite Broadcasting, adopted ten years later. During that decade developing countries, several of them emancipated from their colonial status, pointed at the imbalances in international relations that allegedly enrich the North and perpetuate dependency for the South. Therefore, the original concept had to be revised to recognise a free and balanced flow of information, a term introduced at the Unesco Expert Meeting on Mass Communication and Society, in Montreal 1969. In order to enable developing countries to participate in such a more balanced flow, it was necessary that their deficiencies in communication infrastructure were made up. The information of the powerful Western media on the problems and cultures of developing countries was considered to be one-sided. The abundance of Western programmes broadcast in developing countries formed a threat to the indigenous culture. Therefore, the developing states wished to exert influence over broadcast and other information, in order to use the media for achieving necessary aims in the fields of culture, economics, social and political stability. At a special session of the United Nations General Assembly these Non-Aligned Nations advanced a demand for a New International Economic Order (NIEO) to put an end to such economic inequities. Two years later, in 1976, as a corollary to this new order, the situation in the field of international communication was also included and put forward as a demand for a New International Information Order (NIIO), stressing 'the joint responsibility of the state and its citizens to set up programmes for broad and positive means of communication within the framework of development policy'.

The relationship between the development of information media and economic and technical development had already been studied by Unesco. 'In the framework of the New International Information Order three general functions of mass media are often stressed: (1) the contribution of the mass media as information and mobilizing factor to the implementation of socio-economic development programmes; (2) the mass media as a channel of education; and (3) the role of the mass media in protecting cultural and linguistic plurality.' M'Bow, director of Unesco, addressed the Intergovernmental Conference on Communication Policies in Latin America and the Caribbean with the notion that the mass communication media serve not only to supplement traditional educational systems but also to enlarge the field of action of education especially towards groups of people, who have been previously neglected by the education system. He also made reference to the role of the mass media in the preservation of cultural traditions and identity, 'the truest form of independence'.

The growing number of developing countries urged further action in the field of international regulation. Such action was, however, difficult as three somewhat different views, based on the East-West controversy and the North-South 'dialogue', had to be taken into account. Later analysis shows that the Non-Aligned and Soviet

versions of the NIIO by and large coincide, stressing the sovereign equality of states, and non-interference in internal affairs. The Soviet approach, however, did not give priority to the NIEO and paid more attention to the notion of the content of communication, as well as the international objective of peace. In the Western, most notably, the United States’ version of the NIIO, there is no positive room for the NIEO, for the democratisation of communication at a national level, for the content of communication and its responsibility, for national law, other than the aspect of free flow. In short, the Soviet concept is based on public opinion, i.e. the ideological role of the mass media, whereas the United States focuses on international commerce.

Various attempts were undertaken to convince parties of a common universal interest. One such attempt was the effort to formulate a broader concept of the right to information, namely the right to communicate. This concept took a starting point in article 19 of the Universal Declaration and was expressed for the first time by Jean d’Arcy, director of the United Nations Communication Office, in 1969: ‘The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man’s right to information, first laid down twenty-one years ago in article 19. This is the right of man to communicate.’

The reasons that the right to information, consisting of the right to expression and opinion and the concept of the free flow of information, was considered to be obsolete were the explosion of information and media resources, the development of new technologies and the rise of the developing countries, which focused attention on the imbalance of the flows of information. Mass media information was experienced as a powerful instrument of some political and cultural elites of the Western hemisphere, a one-way process from North to South, from the centre to the periphery. So there was a demand for a multi-cultural, two-way approach, a need for a new economic and a new information order; a growing need to democratise the mass media institutions through the participation of citizens and community groups. Communications policies must be established to control and develop new technology in the interest of human rights and values. Man has at his disposal new and powerful modes of communication. They must be used to enrich his life, not dominate it. Such was the perspective offered by the concept of the right to communicate and the role of the mass media in its realisation.

In the papers, articles and meetings held about the right to communicate many lists of the components of this right were made up, all quite different. One of the main differences was the answer to the question whether it was a right of the individual, institutions or the state. Fischer enumerates the following: To the rights of the individual belonged the freedom of opinion and expression; the right to be informed; the right to inform; the right to protection of privacy; freedom of movement; and, the right of assembly. Rights of institutions consisted of access to sources of information; the freedom of opinion and expression; the right to inform; the right to publish; freedom of movement; and, maintenance of professional secrecy. The

communication rights of states in their external relationships were the right to inform; the free and balanced flow of information; preservation of cultural identity; cultural exchange; freedom of opinion and expression; the right to be informed; the right of correction; and, the right of reply.\textsuperscript{160}

Some arguments were made that all the rights and freedoms with their limitations and restrictions should be included in the definition. Others argued that there should be a simple statement of the human right, other statements about entitlements and restrictions should be left to a different forum. One of the proposed definitions was: ‘Everyone has a right to communicate. Communication is a fundamental social process which enables individuals and communities to exchange information and opinions. It is a basic human need and the foundation of all social organization. The right to communicate belongs to individuals and the communities which they compose.’\textsuperscript{161} Fischer not only wrote a report for Unesco on the right to communicate but also proposed a philosophical framework in which he considered the right to communicate as an absolute and primary right. ‘Communication is any and all means by which an individual acts and is reacted to within society. It is a fundamental human need, the basis of all social activity, and the means by which a human being realizes his potential. His dignity as a person, therefore, demands that his right to communicate be determined as universal and inalienable.’\textsuperscript{162} The right to communicate is recognised in the freedom of information, the freedom of expression and the freedom of opinion, essential norms in society. To each of these rights specified entitlements and restrictions are connected.

Zachrisson, Minister of Culture and Educational Affairs in Sweden, was the delegate who introduced the Right to Communicate Resolution into the General Conference of Unesco in 1974.\textsuperscript{163} ‘In education, science and culture the right to communicate is essential. This right is indispensable in order to accord to people their democratic rights and make it possible for everyone to exercise democratic control, and to grant all members of society participation in its development. The will of the people cannot be effectively expressed without a free public discussion and an open communication.’ In this introduction Zachrisson also speaks about the ‘uninhibited commer-cialism’: ‘Large groups of people, particularly children and young people, are exposed to the distorting effectors of low-quality products, e.g., films and books which speculate in violence. (...) The aim is to promote democratic freedom of expression and do away with the “rotten fruits” of unhampered commercialism.’\textsuperscript{164} A clear reference is made to the aim of Unesco described as building peace in the minds of men, which needs ideas firmly rooted in people themselves, in order to be able to participate in societal reforms. This presupposes knowledge, which in turn


\textsuperscript{163} Unesco 18th General Conference, Paris, October 1974, Res. 4.121. C.IV.

presupposes information. Therefore, Zachrisson makes a plea for life-long learning and cultural policies aiming at establishing fruitful relationships for people with their community. In this way, the right to communicate may help develop mutual respect and international understanding.

The discussions on the right to communicate demonstrated a confusion of terms and strategies to grant human beings fundamental tools to live as human beings. The introduction by the Swedish minister also stresses the importance of teaching human rights and of considering the right to information as a participation right. The focus on human dignity and the negative aspects and effects of mass media form a counterweight to the technical approach of the mass media’s role in society. However, the right to communicate never succeeded in taking definitive shape in the United Nations instruments, but still did not completely die. At a pre-conference to the Vienna Conference on Human Rights in 1993, an Expert Committee set out the Right to Communicate in the following words: ‘This Right to Communicate goes beyond the freedom of opinion and the press and comprises, but is not limited to, the right of individuals and groups to inform and be informed, including the general right of access to government information and information held by public authorities; the right to speak and be heard; the right to reply and to make a reply; the right to see and be seen; the right to assemble and participate in public communication; the right to free access to any and all receivers of the communications process; the right to language; the right to knowledge; as well as the right to privacy; also to be selective and to be silent. The Right to Communicate includes also a fair and equitable access to media distribution channels and to adequate resources for the satisfaction of the human need to communicate in the practice of democracy and in the exercise of any other human right and freedom.’

Another attempt to find a common ground for international regulation of information was the detente-discussions resulting in the Final Act of the Helsinki Conference, signed on 1 August 1975 by 33 European nations as well as Canada and the United States. Part three includes a declaration on guiding principles between Participating states and also a section on freedom of information. The participating states ‘make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information with other countries, and to improve the conditions under which journalists from one participating state exercise their profession in another participating state’. As Buergenthal notices: ‘Improvement in freedom of information – the most sensitive subject covered in Basket III – could not be expected to be immediate and complete. The aim was to increase the flow of information and related matters. Thus, the states express their intention gradually to increase the quantities and the number of titles of newspapers and publications imported from other states. To improve access by the public to newspapers and periodicals, they proposed to increase the number of places


where these periodicals are on sale and to increase opportunities to subscribe and to read and borrow these in libraries. These undertakings are certainly difficult to assess and sometimes ambiguous, but they nevertheless constitute entirely new elements in the East-West dialogue.\(^{167}\)

Apart from the first steps towards detente in East-West relations, a further attempt was made within the United Nations and Unesco to find a compromise on international regulation of information. One way of trying to de-politicise the discussion was the establishment of a commission of wise men – the MacBride commission – which had the task to present a comprehensive study on the problems of communication in the modern world.\(^{168}\) It was clear that all parties did not want to lose face and a compromise had to balance on a thin ideological tightrope.\(^{169}\) Such a compromise was finally found at the twentieth General Conference of Unesco in 1978, which adopted the Mass Media Declaration.

The historical development of the Mass Media Declaration reveals the various controversies and contributions during a difficult period in international relations, as described above.\(^{170}\) The General Conference of Unesco adopted at its sixteenth session in 1970, Resolution 4.301, 'deeming that information media should play an important part in furthering international understanding and co-operation in the interests of peace and human welfare'; the Conference affirmed 'the inadmissibility of using information media for propaganda on behalf of war, racialism and hatred among nations', and invited 'all states to take the necessary steps, including legislative measures, to encourage the use of information media against propaganda on behalf of war, racism and hatred among nations, and to provide Unesco with information on the subject'. A first draft of a declaration was established by Unesco consultant Professor Hilding Eek (Sweden). The group of experts pointed out the considerable difficulty in striking an appropriate balance between, on the one hand, the concept of freedom of information, and on the other, the need for a sense of responsibility to prevent abuses of this freedom. A change in the title was made from 'Draft Declaration on Fundamental Principles Governing the Use of the Mass Media' to 'Draft Declaration on Fundamental Principles on the Role of the Mass Media in Strengthening Peace and international Understanding and in Combating War Propaganda, Racism and Apartheid'. The Declaration was primarily intended as a statement of moral duties resting upon the mass media and was not intended to set out principles that would necessarily be imposed upon the mass media by legislation, a crucial distinction which pervades all discussion on mass media.

During the discussion in 1974 on the revised draft of the Declaration, a large number of delegates emphasised the vast and growing importance of the mass media in ensuring the preservation of peace and mutual understanding between peo-


170. The historical development can be found in: Historical background of the Mass Media Declaration, Unesco, Paris, n. y., (Document: New Communication Order 9); Annex I, p. 15 lists the most important documents.
Many speakers observed that the power of the mass media made it imperative that their misuse should be avoided. 'Speakers from developing countries particularly stressed the need for a multicultural flow of information. They felt that the cultural integrity of their countries required freedom from undue influence of large foreign media organizations serving private interests and often monopolistic in character. They considered that the principle of free flow of information was not being practised when countries lacked the production capacity to participate in such a flow on an equal basis.'

At the intergovernmental meeting in 1975, speakers underlined the powerful impact and the extended influence of the mass media in the modern world, the persuasive power of the media in the ideals of peace, the spiritual enrichment of peoples, their corrective influence in combating aggressive or discriminatory propaganda, their liberating and developing potential through the free exchange of information and ideas, and the opportunities they provide for the mutual appreciation of cultures. Great importance was attached to the sphere of international detente, created by the Helsinki Conference.

An important issue in the discussion was the freedom of information related to the responsibilities of the state and the media. The roles of the state and the media have to be distinguished. The state should have the means to guarantee a balanced information flow, the state having the responsibility for the structure of the mass media, not for the content.

Doubts were expressed as to the question whether the freedom of information was part of international relations, although formulations can be found in the Universal Declaration and the Constitution of Unesco. Another point was made stating that the independence of information personnel could be a safeguard against abuses and oppression, an invitation to elaborate on professional codes.

States have a right to protect their social and cultural integrity and to see that foreign values were not imposed upon them. The developing world stressed that the adoption of international standards would be ineffective unless they tended towards greater international social and economic justice. It was observed that communications technology was complex and expensive and tended to be held in monopolies and sectional interests which controlled the nature of information and access to it. A later plan of action confirmed that mass media have a responsibility for promoting among all peoples the objectives on which the new international economic order is based.

The greatest obstacle to a formulation was the ambiguity of the role devolving on the mass media in relation to other entities (states) or individuals (journalists, professional organisations). As the draft was about the 'use of the mass media', it seemed to be inevitable that the relationship between state and mass media was described and might be used to impose control by the state over the mass media. In order to reach a clear formulation the wording was changed into 'the contribution of the mass media.' The mass media were no longer seen as intermediaries in achieve-

171. Historical background of the Mass Media Declaration, Unesco, Paris, n. y., p. 3.
ing the stated objectives, with the most active role for the states, but the mass media became the primary actors.

The new draft referred more directly to the moral, social and professional responsibilities of the mass media, on the basis of the universally recognised principles of freedom of expression, information and opinion, and the firmly stated role played by the media in achieving the objectives of the Declaration. The role of the states was reformulated with the same purpose in mind and was presented in a single article which sets out very clearly how the task incumbent upon states is differentiated according to the status of the mass media, which varies from one country to another, as stated in article 10(3) and 10(4):

(...) it is necessary that the States facilitate the procurement by the mass media in the developing countries of adequate conditions and resources enabling them to gain strength and expand, and that they support co-operation by the latter both among themselves and with the mass media in developed countries.

4. Similarly, on a basis of equality of rights, mutual advantage and respect for the diversity of cultures which go to make up the common heritage of mankind, it is essential that bilateral and multilateral exchanges of information among all States, and in particular between those which have different economic and social systems, be encouraged and developed.173

In his comment on the Mass Media Declaration, Nordenstreng demonstrated the delicate balances found in the formulations. For example, the preamble and the operative articles are equally long and had equally many problems. Explicit references to the new information order have been placed in the preamble and not in the operative part. Some references to existing international regulations have been ‘forgotten’; parts of the Unesco Constitution have been placed in the forefront, for example: '[states] believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives (sixth preamble paragraph). As 'the Constitution advocates an informational role for the mass media, (...) it is perfectly in line with letter and spirit of Unesco to set normative standards for the contents of the mass media, provided that such standards are in harmony with the humanistic line advocated by the Constitution.'174

These standards, specifying the nature of information, can be found in references to value pluralism – diversity of sources, accuracy and objectivity. However, the demand for objectivity lies more upon the receivers of information than upon those the senders. The special protection for journalists is balanced by the reference to act re-


sponsibly in accordance with the principles and the spirit of the Declaration, which includes the standards mentioned above (article VIII). The strongest standard for the content of the mass media lies in the educational role with regard to young people (article V). The receivers of information should not be seen as a passive public, but encouraged to participate more actively in the production of the mass media; a step towards making mass media more democratic and open to the public (article II (2)).

Professional codes of ethics should reflect the spirit of the Declaration. Unesco has followed up this obligation with an international study in which not only the rights and protection of journalists are considered, but also their duties and responsibilities. 175 A Draft International Code of Ethics was presented as early as 1952, by the Economic and Social Council of the United Nations, stressing the constant and voluntary striving of the press personnel to maintain the highest sense of responsibility, being deeply imbued with the moral obligation to be truthful and to search for the truth in reporting, in explaining and in interpreting facts. Good faith with the public should be supported by spontaneous and immediate correction. As a positive reaction to the Mass Media Declaration, an international meeting of journalists' associations adopted a code of ethics in its Mexico Declaration of April 1980.

Nordenstreng concludes: 'All in all, the Declaration is carefully balanced between different political, professional, and even philosophical views.' But also 'that the official West was not prepared to endorse what is known as the social responsibility theory of the press, a doctrine which in fact, was born out of the libertarian tradition. Rather, the West preferred to hold fast to a conservative tradition.' 176

In short, three schools of thought on international communication are discerned which agree that international imbalances exist in information flows and technology transfer, but differ as to the sources of imbalances; the effects the media have on societies; and, the degree of willingness to alter the situation. Conservatives defend the status quo in international communication and argue against governmental control of the media. Imbalances in news flows are caused by natural characteristics of information gathering and dissemination. The adverse effects on developing nations caused by a free market of information and a free press are denied. The free flow of information is seen as a blanket solution to all information and media problems. Reformists have a broader view and do acknowledge the harmful effects of the media on less developed countries. Within the current international order, adjustments are necessary to make it more effective and equitable. Such measures can be found in covering more Third World news by means of 'developmental journalism' and by elaborating the right to communicate, stimulating news flows between developing countries and in a two-way form of give and take. A mix of governmental controls and free press institutions has to support a free and balanced flow of information. The third group is formed by the structuralists who support many of the reformist measures, but only as steps towards more fundamental changes, which are necessary to erase the imbalances caused by the West's desire to retain hegemony over former

colonised areas and to promote economic Western interests at the expense of developing nations. Licensing of journalists could serve as the first step towards international regulation and control of foreign correspondents; and, technological self-sufficiency supports the political and economic autonomy of less developed countries.\textsuperscript{177}

These schools of thought are also reflected in the attempts of the MacBride commission to find a common basis for international information exchange. The formulation of the task imposed on the commission includes references to the free and balanced flow, a new world information order and the role of communication in awakening the conscience of, and sensitising public opinion to, world problems and concerted action for solutions. At the same General Conference on which the Mass Media Declaration was adopted, the MacBride commission presented an interim report, which was discussed and adopted with the resolution to propose concrete measures for the establishment of a more just and effective world information order.\textsuperscript{178} The final report \textit{Many Voices, One World}, delivered in 1980, was adopted with the resolution on which such a new world information and communication order (NWICO) could be based. In point (xi) is mentioned:

\begin{quote}
respect for the rights of the public, of ethnic and social groups and of individuals to have access to information sources and to participate actively in the communication process.\textsuperscript{179}
\end{quote}

In general, the \textit{MacBride Report} can be considered as reformist: most of the attention is paid to creating favourable conditions for the sovereignty of developing countries in accordance with their rights to self-determination and to cultural identity. It was therefore deemed necessary and acceptable that states could take certain measures to regulate the effects of international communication.\textsuperscript{180} In his foreword, M'Bow pointed not only to the role of the media in opening up a whole range of possibilities for making formal and non-formal education generally available, bringing culture to the people at large and promoting knowledge and know-how, but also to the condition that such enrichments ‘will be realized only if the temptation to enlist mass media in the service of narrow sectarian interests and to turn to new instruments of power, justifying assaults in human dignity and aggravating the inequalities which already exist between nations and within individual nations themselves is resisted. (...) The information media can contribute to commanding respect in all quarters for human beings as individuals, with all the manifold differences they display, and to winning acceptance of the aspirations common to all peoples in place of self-centred nationalism.‘ The report enlarged the subject of information to all aspects of communication,

\textsuperscript{177} Meijer, W., \textit{Transnational Media and Third World Development}. The structure and impact of imperialism, Greenwood, New York, 1988, p. 6-11.


\textsuperscript{179} Unesco 21st General Conference, Belgrade 1981, Resolution 4/19.

\textsuperscript{180} This is one of the reasons that the report has not been welcomed by Western countries, see the comments in:

'an individual and collective activity embracing all transmission and sharing of ideas, facts and data'. The right to communicate was expressly taken up as an aspect for the democratisation of communication, one of the recommendations: 'Freedom of speech, of the press, of information and of assembly are vital for the realization of human rights. Extension of these communication freedoms to a broader individual and collective right to communicate is an evolving principle in the democratization process. Among the human rights to be emphasised are those of equality of women and between races. Defense of all human rights is one of the media’s most vital tasks.'

This formulation drew attention to the role of the media for people in situations where human rights are being violated: people who are oppressed, struggling against colonialism, religious and racial discrimination. In these examples, children are not acknowledged as an oppressed or discriminated group. Any discussion of distorted images and activities in the media fails to mention children. Nevertheless, they are not forgotten in the field of basic needs, as the commission recommends: 'The educational and informational use of communication should be given equal priority with entertainment. At the same time, education systems should prepare young people for communication activities. Introduction of pupils at primary and secondary levels to the forms and uses of the means of communication (how to read newspapers, evaluate radio and television programmes, use elementary audio-visual techniques, and apparatus) should permit the young to understand reality better and enrich their knowledge of current affairs and problems.'

Additionally, in respect of community groups, it is mentioned that education and information activities should be supported by different facilities ranging from mobile book, tape and film libraries to programmed instruction through 'schools of the air'.

Other recommendations seek to strengthen the position of the receivers by pointing to diversity and choice in the content of communication as a pre-condition for democratic participation, and by stressing their active role, which should be reflected in more newspaper space and broadcasting time for their views. Finally, the promotion of international understanding as a role of the mass media is stressed with reference to the Mass Media Declaration.

Summarising the discussion, the role of the mass media has been related to various purposes: the defense of human rights; promoting social development; a channel of education; plurality of opinions; support for international relations; and, promotion of international understanding. The main contradiction for such a role is the possible abuse by political and commercial interests, ideology domination and monopolisation of infrastructure. The position of the receivers, the public as a whole has only recently been taken into account. As far as children are concerned, they only figure in the context of the educational role of the mass media.

This historical survey shows that just before the discussion on which rights of the child should be included in the Convention took place, a long and serious debate was held on the role of the mass media. This debate had an influence on the next

round of international discussion by delegations and representatives, who work continuously within the United Nations system. Several elements in this mass media discussion have returned in the discussion on the draft Convention, including the relationship between the state and the media; the access to sources regardless of frontiers, including cultural sources, an addition from Unesco; the role of the media related to human rights; and, the ambiguity with respect to the effects of the media.

**Educational aims**

Several aspects of article 17 refer to educational aims. The first one is the reference to the qualification that information and material envisaged should be of social and cultural benefit to the child. The second qualification refers to the sources of information, especially those aimed at the social, spiritual, and moral well-being and physical and mental health. A further qualification refers to the process of dissemination of information and material in accordance with the spirit of article 29, which also deals with the aims of education. Another educational qualification is found in the linguistic needs of the child. A negative indication is given by the requirement that information should not be injurious to the child’s well-being.

This paragraph focuses on the reference in article 17(a) to article 29 as this gives the strongest indication of the required provisions.

**Article 29**

1. States Parties agree that the education of the child shall be directed to:
   (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
   (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living; the country from which he or she may originate, and for civilizations different from his or her own;
   (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
   (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

The close relationship between the right to information and the purpose of education is not surprising if one studies the Travaux Préparatoires which reveal that the actual formulation was mainly proposed by the Bahá'í International Community.

an NGO that promotes international understanding, world citizenship, stresses the importance of international and spiritual education and supports the work of the United Nations. An in a commentary on the proposal, Bahá'í clarified: 'Viewed positively, the mass media (in global terms, most notably the radio) provide the most potent means of conveying information to vast numbers of people. Appropriate information conveyed in this manner has the capacity to benefit children in a large variety of ways. Such information, disseminated in the appropriate languages, would be especially beneficial to children who live in remote rural areas and/or who are members of minority or indigenous people.'

The tasks of the media would be to disseminate information to adults concerning children's health, welfare and development; to support educational programmes; to promote the cultural heritage of the child; and, to inform the child of the wider world of which he is part.

Another proposal about the formulation of the aim of education (article 29) was put forward by Bahá'í as well. Bahá'í considers education as the most important means of improving the human condition, of safeguarding human rights and of establishing peace and justice on earth. However, such education 'cannot simply be academic education, or book-learning. The kind of education that is required is education of the character. It is not sufficient, for example, simply to tell the child that he has a duty to respect human rights. What is required is guidance and training that will develop in the child qualities that are indispensable if the child is to become a promoter and protector of human rights.'

The different elements in the aim of education reveal the catalogue of aspirations in the work within the United Nations with the Universal Declaration as its source. It should be noted that the development of the child's personality is the first aim mentioned. The various aspects of a child's development, as described in Chapter 2, can be considered to be included in the formulation of the child's personality, talents and mental and physical abilities. The formulation of development 'to their fullest potential' indicates that mainstream development with average results is insufficient. Attention has to be paid to the uniqueness of each child, which should be given all possibilities to develop. This also requires an individual approach, providing an inspiring environment and challenges for that particular child. The fullest potential of every human being in a spiritual sense is living as an authentic human being.

The development of respect for human rights and principles enshrined in the Charter of the United Nations is a logical continuation of the first paragraph. No human development is possible without respect for others and acknowledging their dignity as human beings. Such respect has to be fostered by teaching human rights and by human rights education. Some developments in this respect will follow. It

should be noted, however, that whatever programme or method of teaching human rights is used, it all boils down to the consciousness of the teacher and his awareness of human rights in human relationships and activities.

The explicit inclusion of the development of respect for the child’s parents in the aims of education was the result of the discussion on possible duties of the child with regard to his parents and the effort to safeguard parental control. The explicit formulation seems to neglect the incredible loyalty a child demonstrates towards his parents, even when they have misbehaved or put themselves in difficult situations. In general, when parents show respect for their child, there is little chance that a child will not respond to them in the same way. The reference to respect for the child’s cultural identity, language and values is important as it implies that education stimulates the desire to become acquainted with one’s cultural tradition. As such, the aim is broader than a reference to linguistic needs or the needs of minority children. The second part of the provision shows that the aim of education can only be understood and achieved from a multicultural point of view. Such an approach will only succeed if educators are deeply interested in the richnesses of each culture and demonstrate the values found in these traditions.

The development of social participation is envisaged in the next paragraph on ‘preparing the child for a responsible life in a free society’. The formulation reflects the former paradigm in which childhood was only seen as a preparation to adulthood. As has become clear from Chapter 2 and from the history of children’s rights in Chapter 4, being a child, living through the period of childhood, has a value in itself. It might even be that in respect of human development, psychologically, this period should be valued more than the period of adulthood, which socially, is valued higher than childhood. The preparation for a responsible life is not aimed at using cliches and prejudices, earning a maximum of money or trying to beat others in bloody competition. Education should, on the contrary, take place in a spirit of understanding, peace, tolerance, equality of sexes and friendship among people from different beliefs, backgrounds and nations.

The final aim of education is formulated as development of respect for the natural environment. Although one can only adhere to this intention, it has a bitter flavour as one thinks of the extent to which the natural environment has already been destroyed by adults in their struggles for economic gain. Children are highly vulnerable to the effects of environmental degradation. Their specific interests should be taken fully into account. Now it seems that awareness has increased of the role children and youth can play in sustainable development. This has been elaborated in Agenda 21, the UN Programme on environmental issues, which, with reference to the Convention on the Rights of the Child, urges countries ‘to establish a process to promote dialogue between the youth community and Government at all levels and to establish mechanisms that permit youth access to information and provide them with the opportunity to present their perspectives on government decisions, including the implementation of Agenda 21.’

Acquiring knowledge about nature and the consequences of human behaviour is one thing, being inspired by alternative or conscious behaviour of adults is another. Some traditions are less man-centred and regard the whole universe as one living cosmic system, in which all living beings deserve respect. Recent research demonstrates: 'Environmental education should not just transfer new or clarify existing norms and values, but should be a critical introduction into value-charged knowledge about the environment. Only this way of education can bring children to some kind of personal autonomy and responsibility.' 188

The aims of education have led to various approaches in research on the basis of education. In a comparison of utilitarianism and rights theories, it was demonstrated that freedom provides a better standard than happiness by which to determine what and how to teach children. A liberal educational programme based on freedom as a standard will be neutral towards many, though not all, ways of life and concrete enough to guide educators. Unlike utilitarianism, rights theories can respond cogently to the conservative claim that education must perpetuate particular societal values and prepare children for necessary social functions. Even if elementary education must discipline children, the ultimate purpose of education in a rights theory will be to equip every child with intellectual means to choose a way of life compatible with the equal freedom of others.189

In an international comparison of nations' educational systems by Thomas, the aims of education were categorised in terms of seven aspects of human development on which educational systems may focus. 'The goals are those of (1) producing good people (social/moral education), (2) preparing skilled communicators (basic education in reading, writing, speaking, listening, calculating), (3) developing well-informed people who understand the physical and social universe (liberal or general education), (4) promoting individual's physical and mental health (health and safety education), (5) developing faithful supporters of society (citizenship, civic, or political education), (6) producing efficient workers (vocational education), and (7) equipping individuals to realize their self-selected destinies (self-fulfilment education). In one way or another, every society tends to provide for all seven types. However, societies can differ on the specific objective they choose to promote within each of these types. They can also differ in regard to which agencies are held responsible for which kinds of goals. In most nations, the principal agencies are the family, the neighbourhood, the church, the formal school, community groups, apprenticeship programs, and such mass-communication media as television, radio and the press.' With regard to the impediments: 'Forces preventing societies from achieving their educational goals have included (...) conflicts among ethnic and religious groups, philosophical disagreements about the proper function of the schools, corruption among public officials and employees, personnel with too little training or dedication, the diminished attractiveness of teaching as a profession, the inadequacies of

communication and transportation facilities to serve geographically isolated segments of the population, and more.\textsuperscript{190} The non-material aspects point to the necessary qualities of authentic human beings.

Surveying the content of article 29, the aim of education has a large ambit; education is not confined to learning at school. Distinctions have to be made in achieving the aims set forth. To quote once again a commentary of Bahá'í: 'It is only through the acquisition and exercise of spiritual qualities — qualities as mercy, tolerance, honesty, trustworthiness, unselfishness, compassion and love — that the peoples of the world will finally achieve the longed-for goals towards which humanity is striving. Spiritual qualities are not innate in human beings, but every person is born with the capacity to acquire them. Those qualities must be taught, fostered and developed — and they will take the best root if they are taught from earliest childhood. It is in the Bahá'í view essential that every child receives spiritual education. Such education is not the formal, scholastic education, referred to in article 16 of the revised draft Convention — although universal compulsory education is indispensable to the progress of mankind. Nor does spiritual education mean compulsory religious education. Spiritual education is the education of the spirit — the education of the inner person — and concerns the acquisition and development of those spiritual qualities which are essential for the orderly progress of society and for the achievement of harmony and peace. The lawlessness, disorder and aggression currently afflicting world society result, not from lack of formal education or book learning, but from the lack of spiritual education. (...) We feel that a convention on the rights of the child should contain provisions specifically designed to promote the spiritual education of the child. Indeed, we would go further and say that the child has a right to be so educated, for it is only through such education that he can realize his full human potential — and it is only through such education that peace and justice can ultimately be secured for all.'\textsuperscript{191}

A number of elements enveloped in article 29 are also known from various Unesco recommendations and other texts. Unesco has from its very beginning felt responsible for drawing the attention of the youth to the promotion of peace and respect for human rights, also in relation to other projects within the United Nations system. Some examples of formulations and activities on human rights education by the United Nations and especially of Unesco, will be presented here.\textsuperscript{192}

The interest in education on human rights started in 1948 with Unesco's activities to inform teachers and schools about the Universal Declaration and the significance of the United Nations' work for the maintenance of peace. The role of youth in sus-


\textsuperscript{192} A survey of international law on youth rights can be found in Angel, W. (ed.), The International Law of Youth Rights. Source Documents and Commentary, Nijhoff, Dordrecht, 1995. Note, however, that the term 'youth' can refer to a partly older age (15-24 years) than 'child' in the Convention on the Rights of the Child.
taining the universal ideals was easily acknowledged. The Declaration on the Pro-
motion among Youth of the Ideals of Peace, Mutual Respect and Understanding
between Peoples, adopted in 1965, states in its Preamble: 'Convinced that young
people wish to have an assured future and that peace, freedom and justice are
among the chief guarantees that their desire for happiness will be fulfilled. (...) Con-
venced that the young people should know, respect and develop the cultural heri-
tage of their own country and that of all mankind.' Six principles were formulated to
support education in the spirit of high ideals, among which:

Principle 2: All means of education, including as of major importance the guid-
ance given by parents or family, instruction and information intended for the
young should foster among them the ideals of peace, humanity, liberty and na-
tional solidarity and all other ideals which help to bring peoples closer togeth-
er, and acquaint them with the role entrusted to the United Nations as a means
of preserving and maintaining peace and promoting international understand-
ning and co-operation.

Principle 3: Young people shall be brought up in the knowledge of the dignity
and equality of all men, without distinction as to race, colour, ethnic origins or
beliefs, and in respect for fundamental human rights and for the rights of peo-
pies to self-determination.

The clear emphasis on information and knowledge, also across frontiers, is a basic
characteristic of the activities of Unesco. Youth organisations were also encouraged
to promote the free exchange of ideas in the spirit of the universal principles. The
Declaration clarifies in the sixth principle: 'A major aim in educating the young shall
be to develop all their faculties and to train them to acquire higher moral qualities,
to be deeply attached to the noble ideals of peace, liberty, the dignity and equality of
all men, and imbued with respect and love for humanity and its creative achieve-
ments. To this end the family has an important role to play. Young people must be-
come conscious of their responsibilities in the world they will be called upon to
manage and should be inspired with confidence in a future of happiness for man-
kind.' Especially the acquisition of 'higher moral qualities' shows that direction is
given to the development of a child's faculties, and that these qualities do not come
about by themselves.

The concept of international understanding was further elaborated in the Recom-
mendation Concerning Education for International Understanding, Co-operation
and Peace and Education Relating to Human Rights and Fundamental Freedoms
adopted by Unesco on 9 November 1974 where it defines: 'The word "education"
implies the entire process of social life by means of which individuals and social
groups, learn to develop consciously within, and for the benefit of, national and
international communities, the whole of their personal capacities, attitudes, apti-
tudes and knowledge. This process is not limited to specific activities.' The terms

193. GA Resolution 2037 (XX), Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect
and Understanding between Peoples, 7 December 1965 (all quotations).
international understanding, cooperation and peace were considered as an indivisible whole, sometimes concentrated in the term ‘international education’.

The Recommendation refers to article 26(2) of the Universal Declaration and presupposes an active contribution from every individual in order to achieve full development of human personality and the strengthening of respect for human rights, which are necessary in solving world problems. Guiding principles of educational policy should aim at an international dimension and global perspective in education; understanding and respect for all peoples, their cultures, civilisations, values and ways of life, including domestic ethnic cultures and cultures of other nations; abilities to communicate with others, and understanding the necessity for international solidarity and cooperation; and, awareness of duties towards others, including readiness to participate in problem-solving and to develop a sense of social responsibility and of solidarity with the less privileged groups. International education should combine learning, training, information and action and help one to acquire a critical understanding of problems, to participate in free discussions, and to base value-judgements on a rational analysis of relevant facts and factors.

The Recommendation reflected the growing awareness of worldwide interdependence of peoples and nations, but also the increasing possibilities to communicate with others. Special attention was drawn to the exchange of textbooks, especially in history and geography, in order to have them examined and, if necessary, revised, to ensure that they are ‘accurate, balanced, up to date and impartial and contribute to mutual knowledge and understanding of the different peoples.'

At the event of the 30th anniversary of the Universal Declaration, Unesco organised the International Congress on Teaching of Human Rights in Vienna in 1978, the first in a series of congresses devoted to human rights education. The congress is considered a landmark stressing the indivisibility of human rights and shifting from knowledge about human rights to the fostering of the positive attitudes of tolerance, respect and solidarity.

A pre-congress seminar of NGO’s on content and methods of human rights teaching in April 1978 stressed the need for dissemination of information in understandable texts on human rights and actions to be undertaken in case of violation. The Congress voiced with regard to the idea of creating a Unesco Prize for Human Rights Teaching, the view ‘that human rights is not a discipline in which people should be instructed but a set of values based on the inherent dignity of humankind which is most effectively imparted by methods of education which adhere to the same values.’ This view marks the shift from the conception of teaching human rights to education for the exercise of, and respect for, human rights.

It is at about this moment in history that Unesco also comments on the very first draft of the Convention on the Rights of the Child which should ‘place greater emphasis on the need for rapid and effective encouragement, at all levels of education,

but also outside the education system, of knowledge of human rights by children and knowledge of the rights of the child by adults. Emphasizing that better knowledge of human rights would make a vital contribution to the maintenance or establishment of peace, to economic development and to social progress in the world, the draft Convention should contain an additional article relating specifically to such instruction: “Education in human rights shall also be afforded to children and should, therefore, be given from the stage of the primary school onwards and also outside the school system, in particular in the family.” “The rights of the child shall also be taught at all levels of education as well as outside the school system, in professional, cultural or co-operative associations”.

The elaborated Plan for the Development of Teaching of Human Rights 1981-1987 suggested going beyond production and translation of textbooks and called for audio-visual material to be designed for a wide public and to aim especially at minorities and disadvantaged groups. Children also belong to the target groups of those who were most vulnerable or were the least aware of their rights. Proposals were also to be elaborated on children’s rights.

In 1983, the Intergovernmental Conference on Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms with a View to Developing a Climate of Opinion Favourable to the Strengthening of Security and Disarmament declared that universal basic literacy was the essential pre-condition for international education. Non-formal education played an important role in this education. A separate plan to develop education for international understanding, cooperation and peace was adopted.

The end of the first plan was considered at the International Congress of Human Rights Teaching, Information and Documentation in Malta, 1987. The title demonstrates that attention was increasingly drawn to the exchange of information and the production and distribution of materials of all kinds. Unesco was exhorted to expand activities in co-ordination of human rights documentation, data-bases and bibliographies. Communication and human rights was one of the themes presented in cooperation with NGO’s. The focus turned from the school as the basic educational institution to a broader field in which the role of the family was stressed. Human rights education begins in early childhood with inculcating respect for other people’s rights. The Congress was inspired by the Universal Declaration: ‘a testament which illuminates the human condition and enriches life by showing us the world as it should be: a place of humanity, freedom and learning.’

The recent trends in human rights education have been influenced by the activities of the Programme on the Elimination of Prejudice, Intolerance, Racism and Apartheid, in which the role of teachers and the identification of discriminatory ster-

197. Practical suggestions and information on implementing the Recommendation of 1974 for classroom teachers at primary and secondary levels were published in: Graves, N., O. Dunlop, J. Torney-Purta (eds.), Teaching for international understanding, peace and human rights, Unesco, Paris, 1984. It includes a part on resources and media, including libraries, but mainly meant to support the teacher, p. 190-192.
199. Idem, p. 23.
eotypes not only in textbooks but also in children’s literature are discussed. The aim is the promotion of human rights in daily life. Under the Programme of Peace, International Understanding, Human Rights and the Rights of Peoples, initiatives are focused on disadvantaged groups. Although women and young people are mentioned, most of the attention seems to be drawn to women, with the urge to break the wall of silence, especially with respect to infringements of women’s dignity. In relation to the role of youth for a better world, it was not considered enough to inculcate and transmit values. Young people should also be given a sense of responsibility for problems of contemporary society such as the effect of technological progress on human rights.200

Further initiatives in this field were taken at a Congress in Montreal in 1993, which underlined the tenet: human rights are respected inasmuch as they are known, and they are known inasmuch as they are taught. It was also stated that ‘the school today has a powerful rival when it comes to shaping the values and behaviour of children and adolescents. The mass media in general, and television in particular, weigh heavy in the balance of young people’s choice in the contemporary world, and the need for partnership between education and the media has never been greater.’201 One could comment that article 17 and article 29 should form the basis of this partnership, if this partnership is desired at all. In 1993, a World Plan of Action on Education for Human Rights and Democracy, which serves as a checklist for various activities was launched, and also the Plan of Action for the UN Decade for Human Rights Education,202 which has likewise great ambitions as stated in a Resolution of the Commission on Human Rights: ‘Convinced that human rights education, both formal and non-formal, should involve more than the provision of information and should constitute a comprehensive life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies.’203 Among the programmes adopted by the Geneva International Conference on Education for Peace, Human Rights and Democracy in 1994, figures the urge to develop the capacity of pupils to access information.

From this short history of Unesco activities in the area of human rights education, one can conclude that the focus has shifted from the school to the broader educational field, including family and non-formal education. The initial attention paid to the training of teachers should now include informing target groups on human rights like lawyers, law enforcement agencies and military personnel. Where activ-

ities are focused on youth, the importance of values in general is transmitted, including duties of world citizenship. Activities lack specific attention for children's rights themselves. A change might be forthcoming as is demonstrated by a new brochure on Unesco's Contribution to the Convention on the Rights of the Child, which enumerates the various initiatives of Unesco which can be related to the Convention. The recent cooperation of Unesco with the Committee on the Rights of the Child is noteworthy as it will focus on monitoring cooperation, by providing information concerning the educational, cultural and information situations of children. It will also focus on cooperation in education for the Convention, by providing effective education programmes, and by assisting in information and participation campaigns. 'Empowering the child through the school' is an initiative to be undertaken in Central Europe in 1996 and 1997.204

INTERNATIONAL ASPECTS

As was mentioned before, the influence of the Cold War was noticeable in the drafting process, through the opposing positions of East and West regarding the international communication. The Western push for the free flow of information was repelled by referring to the responsibilities for the protection of the child. The discussion on the national and international resources and the diversity of resources is an example of that context.

Comments have also been made about the unequal positions of developed and developing countries in implementing the Convention. These discussions have resulted in several references to international cooperation. The developing countries stimulated the discussion on a New International Economic Order, which included also a New International Information Order, as mentioned above. The idea of international cooperation does not only have a positive side. Particularly, in the field of communication, there is a not unfounded fear of cultural influence or imperialism with respect to Western or commercial values, different from the desired autochthonic values and culture. Unesco has been active in the field of cooperation, but has also experienced the pitfalls of political and economic interests.

Here again, as a background to the formulation in the Convention, traces can be found in the activities of Unesco as its fundamentally close relationship to both international cooperation and mass media are significant. The Preamble to the Constitution of Unesco, adopted on 4 November 1946, points to the intellectual aspects of establishing peace: 'Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.' The urge to provide human rights education is a valuable contribution in this respect. The Purpose of Unesco contains further elements of international exchange:

Article 1
The purpose of the Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture in

order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion by the Charter of the United Nations.

Article 2
To realize this purpose the Organization will:
(a) Collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image.

The promotion of the free flow of ideas was originally a proposal of the United States, which hoped to enlist the support and assistance of Unesco in the free flow of ideas and information.\(^{205}\) It is noteworthy that the use of mass communication is considered to be an important means of achieving international understanding and cooperation. This method is, however, closely related to further universal respect for human rights. This relationship seems to be easily forgotten on a regular basis when the free flow of information is promoted.

As was demonstrated above, the Convention mentions several times the need for international cooperation in realising the goals of the Convention. This need for cooperation was partly mentioned in response to the comments of developing countries, stating that they had other priorities and less means to fulfil their obligations. International cooperation, especially in the field of communication, also refers somewhat to the situation in which some states hardly give their people a chance to know what is going on in the outside world. Hence, the continuing pressure by the American delegation to include international sources in the formulation of article 17.

International cooperation for development is not always considered to be anything more than technical and material assistance from which developing countries might benefit. Nevertheless, development could also be looked at from the perspective of communication; communication and development can then be defined as the unfolding of knowledge, bringing about a transformation from being to becoming, a developmental process. In his approach to development, Mowlana considers the centrality of the varied world views and wonders: ‘What are the productive forces and how do they come into existence? Are they mainly economic, technological and political, or do they find their roots in some different and higher level of abstraction and reality? In short, what is the principle that governs all human relations? The field of development has not addressed this question in any depth.’\(^{206}\) He then proposes a framework for analysis with its focus on the central world view that underpins culture as an integrating element in the process of change and emphasises values and belief systems that permeate the process. Thereby development is equated


with communication and communication is development. In short, this is also a plea to go beyond the limits of discursive knowledge as transformation is not an external object but lies deep within the individual, as he draws from the various cultural traditions. From an unexpected angle, the approach developed in Chapter 1, referring to the common values in great traditions seems to be touched upon.

Unesco has focused special attention on culture as an element in international cooperation by elaborating the principles of cultural cooperation in a Declaration adopted in 1966. Some of the articles reveal the importance in the field of children’s rights, and especially their cultural rights as well:

Article 1
Each culture has a dignity and value which must be respected and preserved.

Article 4
The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:
1. To spread knowledge, to stimulate talent and to enrich cultures;
2. To (...) bring about a better understanding of each other’s way of life; (...) 
4. To enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits and to contribute to the enrichment of cultural life; (...) 

Article 7
In cultural co-operation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity.

These provisions demonstrate that international trade relations should avoid cultural discrimination. The use of aggressive trade policies which push cultural products, like films, on the foreign markets should not be undertaken lightly.

Two early instruments aiming at universal applicability and the means for stimulating the exchange of materials have been sponsored by Unesco. The Beirut Agreement for facilitating the international circulation of visual and auditory materials of an educational, scientific and cultural character was designed to remove duties, quotas, licences and other obstacles to the exchange of such materials. The second is the Florence Agreement on the importation of educational, scientific and cultural materials and grants duty-free entry under prescribed conditions, to publications and to visual and auditory materials consigned to approved institutions. The practice of world-wide acquisition and inter-library loan, and exchange of materials are based on these agreements, as is explained:


208. Both Agreements are reproduced as appendices to *Trade Barriers to Knowledge. A manual of regulations affecting educational, scientific and cultural materials*, Unesco, Paris, 1951 (Unesco Publication 847).
In addition to providing exemption from customs duties and certain other charges for the materials covered by the Agreement, contracting States undertake, unconditionally, to grant licences and/or foreign exchange for the importation of the following items:

(a) Books and publications consigned to public libraries and collections and to the libraries and collections of public educational, research or cultural institutions.\(^{209}\)

Exchanges of national literature can also facilitate the learning of foreign languages and the acquisition of knowledge about other cultures.

**Linguistic needs**

The role of language in human development and human relations is in some aspects recognised and protected by law. As is stated by Tonkin: 'The wording of Article 2 of the Universal Declaration of Human Rights, with its emphasis on linguistic equality, or the recent stress on ethnicity and cultural minorities, for example in the final act of the Conference on Security and Cooperation in Europe, indicates an increasing interest in the relationship between language and rights – not only of the individual but also of the community and the state. (...) The attention to cultural and linguistic minorities now apparent in many parts of the world constitutes an effort to preserve the rights of minorities in balance with their access to society at large.'\(^{210}\)

Recognition of ethnic minorities and indigenous people has a long history within the United Nations. The right of self-determination of peoples is a notion which has caused many discussions and fears of the disintegration of nations. A difficulty often expressed lies in the problem of granting rights to collectives, whereas human rights take the individual as the basis. This does not exclude that certain rights also refer to communities or peoples.\(^{211}\)

Recognition of such minorities includes the recognition of their cultural identity and as such it is related to cultural rights. Some of these rights will be discussed further on, when treating the role of information related to the child’s cultural identity, articles 20 and 30 of the Convention.

The Convention draws the mass media’s attention to the linguistic needs of children belonging to these groups and populations. In article 29, reference is made to the child’s development of respect for his own cultural identity, language and values. It is obvious that such respect is easier to develop when a child has the opportunity to learn his language properly, to be able to express himself and to communi-


\(^{211}\) See for an interpretation the General Comment given by the Commission on Human Rights, CCPR/C/21/Rev.1/Add.5, General Comment 23(50) on Article 27 of the International Covenant on Civil and Political Rights, 26 April 1994. Published in: NJCM-bulletin, Vol. 20, 1995, 1, p. 111-115; and the paragraph on cultural identity, p. 303-306.
cate with his immediate environment. The importance of learning a proper native language has been described in Chapter 2. When a child belongs to a minority the child has to learn his minority language by himself at home or, as the case may be, from the mass media. As mentioned before, the Convention does not establish a guarantee that a school will provide education in a minority language. The obligation for the mass media to have particular regard to linguistic needs of children of minorities, is a weak one, as it forms only a duty of the state to encourage this concern. Nevertheless, when linguistic needs and the child's right of access to information are put in the perspective of the child's development, one has to conclude that basic information must be available in a language which the child understands. This may demand extra efforts on the part of information suppliers to have information and children's books translated into various minority languages.

The presence of immigrants in many countries has increased the awareness of the linguistic needs of children. As was commented by Sweden in the beginning of the drafting process of the Convention: 'Immigrant children encounter special problems, for instance in respect of their schooling. In many cases, it is important for these children to be taught their own language and the culture and history of their country of origin. It should be further examined what rules regarding the rights of such children could be included in the convention.' The preservation of regional languages and minority languages has been taken up by the Council of Europe and has resulted in a Charter for regional languages or minority languages.

**Children's books**

As was demonstrated by the legislative history, the key-concept in this provision is the promotion of literacy and the reading habit. In the Convention, yet another reference to combatting illiteracy can be found in article 28(3):

> States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

The promotion of literacy, however, is not an activity confined to developing countries. Newcomers to Western countries often need extra attention as they have less experience with a literate society and also have to learn an extra language. Moreover, the increase in television programmes and other leisure time activities has caused a decrease in the amount of time children spend reading. This decline is even more marked after the obligatory school years. Yet, one has to distinguish between literacy in the sense of technical reading skills, and reading as a skill and a habit, also used in leisure time. Both types of promotion - literacy and reading habit - rely, however, on the availability of books for children. As noted above in the paragraph

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on children’s linguistic needs, such an availability of books in minority languages is not always obvious, as is the case in the new South-Africa with its eleven official languages.

The Convention speaks of the production and dissemination of children’s books. These are only two stages in the process of reading. The production of children’s books is often an international affair when it comes to picture books. The international production of illustrations reduces costs, although it sometimes is doubtful whether a child will recognize and feel at home in the rather neutral, international world that has been designed. The discussion on the free and balanced flow of information and the right to communicate has stressed that ‘as far as possible, books, periodicals and other educational media should be produced locally, and “content” and “form” be given importance.’ 214

The organisations involved in dissemination of children’s books include not only bookshops but also public libraries. For most children the public library is the first step towards making free choices with regard to printed information resources. The responsibility of public libraries in guiding and supporting these first steps should not be underestimated. 215 Apart from production and dissemination, a third stage should be mentioned: promotion. It is here where schools and especially libraries make enormous efforts, as books don’t open by themselves, nor do they reveal their secrets and contents when they remain unread. Reading habits, as was the intention of IBBY, can only be developed when such institutions of reading promotion are nearby, so children can easily and frequently visit them and participate in activities, which often include storytelling, another aspect of IBBY’s proposal to the Working Group on the draft Convention.

IBBY was founded in 1953 as an international network of people who are committed to bringing books and children together. IBBY adheres to the aims of the United Nations as its mission is to promote international understanding through children’s books. The idea is that books will give young people a wider knowledge of other countries, values, and traditions, and therefore help develop good will among nations and ultimately serve the cause of peace. Another aspect is the aim to give children everywhere the opportunity to have access to books with high literary and artistic standards. The ability to read and to become enthusiastic and informed readers ensures equal opportunities for all children and helps them meet the challenges of today’s society. 216

Activities of Unesco in the field of literacy started with the Mass Literacy Programmes. The Programmes were gradually more adapted to daily life and concentrated on functional literacy: the ability to read and write and the ability to make this skill beneficial to the development of the personality and the community. A clear step was taken in 1966 by proclaiming 8 September ‘International Literacy Day’. Ac-

According to Unesco's definition, every child over 15 years of age who can not read and write with understanding a short, simple text on daily life is illiterate, still about 25% of the adult world population. As the complexity of society increases higher literacy is required. Apart from illiterate adults — more often women than men — there are large numbers of children who do not attend school, most of them girls. In the International Literacy Year, 1990, basic learning needs were adopted to underline qualified education for all, and a Decade Plan of Action was launched to eradicate illiteracy, as much as possible, by the year 2000. Unesco also supports international research which deals with literacy evaluation, quality of and access to basic education.

Unesco also supports the activities of libraries through the cooperation with the International Federations of Library Associations and Institutions (IFLA), based on the Unesco Public Library Manifesto, which incorporates the aims of the United Nations in the field of libraries. IFLA uses its worldwide organisation to combat illiteracy, and to extend the library service and dissemination of books through professional networks. As such, it may serve and support the child’s right of access to information and contribute to the dissemination of books. An elaboration of these aspects will be taken up in Chapter 6 on the implementation of the child’s right to information.

Protection

The last paragraph of article 17 is, in contrast to the preceding ones which are a departure from the positive role of mass media, devoted to negative effects. Whereas the former provisions contribute to the child’s personal development and the participation of children, paragraph (e) focuses on the more well-known protective role of human rights, when it comes to children.

Several elements merit consideration. First, the relationship between the state and the media. As the previous sections have shown, there has been a strong media lobby from the very beginning, even before, in the United Nations, stressing the free flow of information and refusing any government interference whatsoever. Although the Mass Media Declaration and the MacBrige Report show some compromises, the flow as such has not been questioned on the basis of its content. It is noteworthy that in this report most attention is paid to the structuring of the flow. The injurious effects of mass media, however, are not mentioned, despite the fact that Unesco began to study child audiences at an early stage. Those studies are first of all concerned with depth and width of influences, especially on morals. In early research on international protection, more attention is paid to protection from the


ideological influence of drugs, obscenity and discriminations on the child's perception than on protection from violence in the media.220

The Convention has changed little in the relationship between the state and the media, as the state can only encourage appropriate guidelines for the protection of the child. The general protection the state offers to the child, apart from his parents, seems to yield in the field of the media. The only restriction to the activities of the media are appropriate guidelines defined by the media itself. As far as forms of self-regulation are concerned, Jones notes that 'the motives behind the setting up of any disciplinary body, and therefore the types of discipline which its establishes, are seldom altruistic. Running throughout practically all the Codes of Ethics examined, and the functioning of bodies like Media Councils whose work has been studied in detail, there is a strong thread of self-interest and of self-preservation.'221

The history of media protection shows that both adults and children have been protected from injurious publications. The introduction of a new medium causes an increase in the number of regulations and prohibitions, for example with respect to comics, film, television, video and the Internet, whereafter the protection for adults disappears but stays for children. However, the state regulations on licensing, content control, qualifications enforced by penalties tend to be replaced by self-regulation of the media industry, whereby penal law only applies in severe cases of racism, pornography and violence. Such a self-regulatory policy is defended by reference to the self-determination of citizens, making choices for themselves on what they wish to see, read, hear and experience. This kind of policy serves well the interests of an increasing media industry.

The kind of information and material that can cause negative effects on the child has been a continuous subject both within science and in international fora. As Chapter 3 has indicated, no general and immediate course of cause and effect in communication processes can be proved, as too many factors are involved. Nevertheless, even without knowing how exactly effects come into being, it cannot be denied that children react to media performance with fear, imitation of violence, distorted views and confusing concepts, all of them injurious to their well-being.222 As was pointed out at an early United Nations Seminar on this subject: 'Some speakers considered that the mass media, especially television broadcasts and films had a great influence on people generally, and that this influence was particularly strong in the case of children because of their sensitivity and lack of maturity. Others doubted whether the influence of the mass media was necessarily deep and permanent; in their view children normally developed a resistance to such media. These latter speakers agreed, however, that full account should be taken of special circumstances: for instance, the impact upon the mind of the child might be greater where new mass media were suddenly introduced on a large scale. It was said that different age groups reacted differently to such influences, and that this was a factor.

which should not be overlooked.' According to the seminar participants, publications potentially harmful to children include: obscene publications, publications which portray crime in a favourable light, which glorify war or incite to racial hatred and violent scenes on television. Anxiety and fear could be effects of publications emphasising horror and suspense. Harm in a more subtle way could be caused by publications, films and television programmes 'depicting life as a world of easy success'. The overall conclusion was that there was a need for striking a balance between the fundamental right of freedom of expression of the media and the right of the child to be protected against the harmful influence of certain kinds of publications. Also at this seminar, a difference was made between societies in which the state had a direct responsibility for the publications for children and supervised them, and other countries which split responsibilities between the state and media. The content of such discussions has continued over the years.

Most measures taken to provide protection for children from injurious material are based on limiting the availability of programmes, films etc. The severest form is prohibition of the publication. In that case, the protection of the child overrules the media's freedom of expression. However, doubts on the effectiveness of any prohibition have been expressed as publications harmful to children are so wide-spread that they can almost always be obtained by some means. Prohibition can have the effect of advertising the publication more widely. The internationalisation of media production and distribution has brought about a need for cooperation in the field of protection, as national policy on media is overtaken by the possible direct reception of foreign broadcast. The development of Internet shows that other parts of media law and the right to freedom of expression and information also have to be reconsidered. With the introduction of a medium, new measures have been taken, resulting in various regimes for the same content, depending on the medium used: the suggestive influence of and the unexpected confrontation with medium content. Consideration is also given to the fact that influences differ according to a child's development, resulting in the use of age limits. Protective measures also differ according to whether publication of materials takes place in the public or private sphere. Such division may, however, lead to different treatment of even the same medium, for example film, shown in the cinema, on television or on video. In this way, the protection fails as a child has more options to see a film, considered injurious and therefore forbidden in one regime but not in another.

In carrying out its responsibilities, the state has to respect the primary role of parents to be responsible for media use by their children. Less attention is often paid to non-interference based on respect for privacy of both child and parents. The state supports the parents by various conditioning measures, for example, supplying information, based on classification and codes, which make the selection easier and reliable; preventive measures like warnings, scheduling broadcasts at later times; and,

prohibitive measures like examination by a council of elements of violence, and pornography, and setting age limits on the viewing of cinema films, and the buying or renting of videos. The way in which such examination or censorship of films and other media takes place varies from country to country and leads to the classification of all kinds of age groups.225

As an example in Sweden shows, introduction of a new age limit of 18 years, in fact the abolition of the censorship regime for adults, means a liberalisation for adults which risks prioritising the freedom of expression for adults at the cost of children, contrary to the intention of article 17 of the Convention.226 As censorship is considered to be contrary to the media’s freedom of expression, solutions have been found by making the prior examination of publications an expressly legitimated exception to this human right with a view to young people, or by altering the control system into an a posteriori examination, like in France for the examination of violence in television programmes.227

The Convention’s provision for appropriate guidelines at the national level will also find difficulties in the application of such standards, if not all private companies will subscribe to them. Only a branch-wide approach can support the voluntary adherence to standards and will promote quality and reliable application of protective measures. Another difficulty in formulating guidelines is the quick introduction of new media in various applications, often not immediately foreseeable. Video and computer games have developed into interactive games in which the child is no longer a spectator but an active player, the violent content in effect educates the instinct to kill, albeit electronically. Such developments are far from the child’s access to information supporting his well-being or the spiritual aims, as mentioned before. Guidelines will hardly be able to follow adequately technological developments when they are and remain medium oriented. In the legal field, one tendency is to have increasingly specialised regulation, for example the new legislation in the field of copyright. The other tendency is that protection can only be offered by applying general principles, as circumstances change quickly.

After the Unesco had adopted the MacBrıde Report and recommendation on the New World Information and Communication Order, an International Program for the Development of Communication (IPDC) was established to assist developing countries in improving communication capabilities.228 At the first Intergovernmental Council, the Director-General M’Bow underlined the importance of actions to satisfy some of the most immediate needs, while avoiding ‘laying down criteria which are too rigid of which respond rather to the concerns of those who are able to assist than to the needs of those to be assisted.’229 Apart from other activities, Unesco


has in this program recently started to concentrate more on media violence and the collection of research, possibly by means of a clearinghouse. Reflecting the participatory approach, surveys of the youth’s perceptions of violence on the screen and round tables will be held where the youth can voice their own views. In 1994, at a conference in New Delhi, it was acknowledged that ‘even though current research has failed to show any direct causal relation of television violence on actual violence in society, with the exception of isolated cases, it was recognized nonetheless that television violence does inflict harmful effects on the basic social fabric of society both on individuals and communities as a whole. (...) The combined force of video games, inter-active television, violent programmes and business sponsorship was considered a formidable force to counteract. (...) Restrictive legislation or other forms of control by governments or external bodies was considered both undesirable, and ineffective in reducing or eliminating violent fare on television. A sense of conscience, self-restraint and self-regulation would be a more practical and effective approach. The television broadcasters themselves should set up guidelines and impose self-discipline to adhere to them.230

Transfrontier television is often experienced as cultural invasion and the intrusion of alien values in non-Western countries; a genuine feeling, already recognised and expressed by Mahatma Gandhi outside the Broadcasting House in Delhi: ‘I do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any one of them.’231 Developing countries expressed the fear of cultural imperialism and westernisation, in modern terms called ‘intellectual colonisation by consumerism’ and pleaded for indigenous television production. One may add that media influence and violence seem to be a neglected topic in policies for cooperation with developing countries, where such an infrastructure is planned or present.232 Only recently, media policy towards children has become the subject of NGO’s, sometimes inspired by the Convention, requesting for more and better quality of materials relevant to the child’s life situation and control on the application of codes for broadcasters, whereby it is noted that computer games and long hours in front of television sets do not allow the child to develop critical thinking.233

Another proposal in the protective field is the promotion of national public broadcasting: ‘public service broadcasters treat their audiences as human beings, private broadcasters are communicating with credit cards.’234 Between brackets one

may say that this distinction may become blurred when public broadcasters start to apply the same values and mechanisms as the private commercial sector.

In order to promote and safeguard the best intentions of public broadcasting for children, an international summit acknowledged: ‘Children are a major part of the television audience but one of the least considered other than in exploitative terms. Having no political voice they are vulnerable and it is therefore very important that their interests should be protected.’ An international charter for children’s television was launched proposing: ‘Children should have programs of quality which are made specifically for them, reflecting their particular needs, concerns interests and culture, and which do not exploit them. These programs should be aired in regular slots at a time when children are available to view. These programs should be wide ranging in terms of genre and content. Sufficient funds must be available to make these programs to the highest standard. As well as entertaining, children’s programs should promote an awareness of the wider world in parallel with the child’s own cultural background. Broadcasting and funding organisations should recognise both the importance and the vulnerability of children’s broadcasting and take steps to support and protect it.’

The Unesco-supported Conference in Lund 1995, expressly related the subject of violence on the screen to the Convention on the Rights of the Child. The Director-General of Unesco pointed out that although the importance of the free flow of ideas by word and image was its way of promoting mutual respect and understanding among people, the vast and increasing array of products was industrial, geared to the global or mass market, and was reflecting the interests of advertising and private-sector finance. The Swedish minister for culture pleaded for ‘a media ecology movement to heighten consciousness, to fight the waste and pollution which the media produce. It is indeed a question of the mental environment for our children.’

Although a clean mental environment is something different from an environment inspiring one to live as an authentic human being, the key element is that a child has a possibility to process the engulfing information for himself. This protection includes time and space not programmed and manipulated by others. Such protection obviously excludes from places for education and reflection, like schools and libraries, advertisements and other attractions by sponsors, since such publicity distracts a child from paying attention and re-balancing his energy.

Taking into account the context in which information is used, a contextual approach has been defended as being more effective in providing protection than a media-based approach. Media are often multi-media and are difficult to define. As information plays a role in a concrete context – work, personal interest, social obligation, family life – protection from injurious effects should take this context into account.

The responsibilities for such a healthy media environment lie, according to article 18 of the Convention, in the first place with the parents. The state has the role of general protection, mostly related to the application of penal law, in the case of exploitation of the child, for example in child pornography, but one can also think of more subtle exploitation of children in advertisements. On the whole the studies on the image, and distorting images, of the child in the media are few, to say the least – in contrast to the abundance of studies on the image of women in the media. Nevertheless, the child is mostly portrayed in two stereotypes, either as an innocent or a victim, or as a criminal and an actor. Children are seldom approached as subjects having their own interests and views. Their innocence is exploited in advertisements, attempting to persuade parents to respond to the manipulated wishes of their children; criminality seldom refers to the context in which such behaviour is created and promoted, e.g. lack of interesting activities, lack of attention from adults and the abundance of substituting and violent media materials. A United Nation’s resolution aimed at prevention of juvenile delinquency, pointed to the role of the mass media: ‘Mass media in general, and film and television in particular should minimize the portrayal of pornography, drugs and violence, display violence and exploitation unfavourably, avoid demeaning and degrading presentation, especially of children, women and interpersonal relations, and promote egalitarian principles and roles.’

In advertisement codes, it is sometimes forgotten that guidelines for the general public should also be applied to children, especially the younger ones. Such an application requires extra care and caution, not only when advertisements are aimed at children. Apart from protection against misleading information, which leads to the obligation of advertisers to be as precise as possible in offering commercial information, advertisement codes should also pay attention to the human dignity of the child and stress the avoidance of stereotyping, by promoting the consciousness of advertisers to be aware of the existence of human rights, applicable to children as well. In some countries, this awareness has lead to a separate code of advertising with respect to children. The application of age limits can, however, reduce the awareness for slightly older children under 18 years of age, contrary to the Convention’s obligation that all children should be protected. In the European context, a campaign has been launched by Sweden to prohibit all television advertisements directed at children. Some research shows that children are no longer always amused by advertisements, finding them boring and confusing, and causing them to pester their parents to buy things or to imitate aggressive or rude behaviour.

241. See: Kinderen en hun ongelijke strijd tegen de commercie, Consumentenbond, s-Gravenhage, 1995; the different approaches of advertisement codes in, for example, United Kingdom with a separate code and the Netherlands with only a recommendation by the Advertisement Board to be attentive to the group children of under 12 years of age, Aanbeveling Stichting Stuurgroep Reclame, NOTU Ledenbrief, October 1995.
Other activities in the field of media protection have been undertaken by the Council of Europe, which adopted several resolutions\cite{243} and stimulated various studies in the context of the Childhood Policies Project. Attention is paid to the child’s audiovisual environment, television consumption including violence on television, advertising and rules of conduct. An important notion is the interrelationship of family, school and society where television can play an integrative or fragmentative role.\cite{244}

Both the Council of Europe and the European Union are concerned with the effects of transfrontier broadcasting and have taken measures, resulting in the European Convention on Transfrontier Television which has paragraphs on the protection of children and in the same way the European Community: EC Broadcasting Directive of 3 October 1989.\cite{245} Recent EU research is focusing on the implications of the information super-highway on children.

All these initiatives may be welcomed as they show concern for the well-being of the child. However, such protective regulations can also be regarded as a cheap price to pay for continuing media production on the same grounds: nothing changes in essence. Behind the need for protection of the child, lurks the question whether an industry can continue to produce products claiming its human right of expression, when it at the same time does not show a willingness to bear the responsibility for its effects, which is always linked to the exercise of such freedom and consists first of all in respecting other human beings and the promotion of human rights. Regulations will help little without a change of conscience in the minds of the media producers and programmers which turns away from pure commercial interests, and towards serving the child in his development as a human being.

The provision of the last paragraph of article 17 requires a delicate balance between the several parties involved, which all can refer to their own protected rights. The child can refer to article 13 on the freedom of expression and the right to seek and receive information. The parents can refer to their duty and responsibility to give guidance to the child in his upbringing. The media will rely on their freedom of expression and the state will claim its power for maintenance of public order and morals.

In a comment on article 17, Bennett describes the provision as ‘the child’s right to receive information’. He questions whether there is a role for the state at all in the field of information. Going a step further, he doubts in fact whether article 17 (at that moment numbered article 9) constitutes a right: ‘The article emphasizes the child’s right of access to a balanced and healthful variety of information. However, article 9’s overemphasis on the role of the media and the state to actively influence and control information the child receives partially derails the article’s central objectives. There is a serious question whether the state should have any role in regulating the information available to children from sources outside the state itself other than the

\begin{itemize}
\item[243.] Council of Europe, Recommendations adopted by the Committee of Ministers of the Council of Europe in the media field, DH-MM (91)1, and Council of Europe, Recommendations and resolutions adopted by the Parliamentary Assembly of the Council of Europe in the media field, DH-MM(91)2.
\item[244.] See for example the report: Blin, B., *Television and Children*, Steering Committee on Social Policy, Childhood Policy Projects, Council of Europe, Strasbourg, 1994. (CDPS CP (95) 1).
\end{itemize}
prevention in paragraph 9(d) of dissemination to children of physically dangerous or emotionally injurious material.'246

This criticism makes it clear that approaching a Convention on children's rights in a traditional way, causes a lack of understanding for the specific situation of children and the difficulty of constructing rights which are more than solemn formulations. If one rejects the interdependence of civil, political, social, economic and cultural rights, and sticks to the classical former two, children will not gain much by formulations of such rights. Article 17 shows essentially the indivisibility of rights, as it relates to the classical right to the freedom of expression, to a principle of best interests in upbringing and development, and to the overall aim of human rights sprouting from the United Nations Charter and the Universal Declaration.

Research on the implicit right to information

If one starts from the perspective of the child, the right to information is an active right which supports the child's struggle to form his view of life and his role in the world. The explicitly formulated rights in the Convention on the child's right to information offer only a limited view on the essence of information for children. A search of more implicit formulations of the right to information may reveal the importance of information for both the development of the child's personality and his social participation. The role of parents with respect to their responsibility for the upbringing of the child concerns both aspects of development and has already been discussed as a paramount relationship in the field of the child's right to information. Other references to an implied right to information can be traced and are grouped according to their contribution to the child's personality or his social participation.

The implicit right to information is, for example, related to the identity of the child as an essential element of his personality. This identity not only includes a name and a nationality but also knowing one's parents and being cared for by them, as stated in article 7. The idea was to ensure the psychological stability of the child. One can also think of the child's relationship with his culture and language and other characteristics of the community to which he belongs, especially when such a community is regarded as a minority or of an indigenous origin.

Quite a number of other rights dealing with information related to the personality of the child are formulated in the Convention, although not all elaborated for the situation of the child.247 These rights include the right to express views freely in all matters affecting the child and the right to be heard in any judicial and administrative proceedings (article 12); the right to freedom of thought, conscience and religion (article 14) and the right to privacy (article 16). All these rights are closely related to the right to information. To be able to form a view, to express an opinion, or to form


a belief, the child needs information. The right to expression and opinion presupposes the right to information. For instance, in a confrontation with administrative or other authorities, a child needs to know about his rights and the consequences of communicating with these authorities. The right to privacy protects the child from interference in his private life by others and secures control of private information.

Other rights have more to do with information related to social participation. As such, one can think of the child's right to get together with other children to discuss things or to prepare activities (article 15). The information the child obtains at school is another aspect included in the right to education (article 28). Moreover, the explicit right to information refers expressly to the aim of education (article 29). To participate in cultural and artistic activities, a child will first have to know about various expressions of culture and art (article 31) or about his own, possibly, minority culture (article 30). Finally a child will not be able to respect the rights of others and to exercise his rights without having information on their existence and possible use (article 42).

**Right to information related to personality**

The development of a personality is one important aspect of the child in his process of growing up. Part of this personality is his identity. Information about one's identity is important in order to know who one is, and to whom and to what one is related, in other words, the relationships with one's parents and family and one's cultural community background. Identity can also be seen from society's point of view. An identity then gives the society's acknowledgement of a person's existence. The decisive factors which make up a person's identity vary; the psychological approach, as discussed in Chapter 2 is broader than the legal approach, which often only refers to name, nationality and family relationships. The question is whether the Convention supports the child's right to information, in this case information about his identity. Aspects of information related to identity are not only factual information on the biological parents and place and date of birth, but also the means and necessary information to preserve one's identity, and information on the cultural community to which one belongs, one's cultural identity.

The development of a personality also refers to other parts of a child's process of growing up as a human being. Such a process includes the formation of a personal view of the world and a view of oneself, also related to that world. Such a process is unthinkable without information, without contacts with other human beings in which information can be exchanged and evaluated. Such communication processes also imply the feedback of information, which is used by the child to form and re-think his views, and to develop an opinion. Forming opinions is only a part of the developmental process of the personality; it also includes expressing such opinions and having them heard. To go a step further: developing views and expressing them has little meaning if nobody listens, or if there is no possibility of self-determination, and taking decisions in one's life based on those opinions. In this context, information is at the very beginning of an ongoing communication process in which a child in a personal way determines his own life. The leading question in this section is whether the Convention recognises this role of information in the development of the personality by providing support and protection.
IDENTITY
A few articles in the Convention deal with the identity of the child; the Convention has not confined identity to a narrow legal definition, but leaves space for a broader concept. Identity includes at least a child's name, nationality and family relations. States parties recognise the child's right to a name and a nationality from birth in article 7.

Article 7
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

This provision seems to be a compilation of the third principle in the Declaration of the Rights of the Child, 1959, stating:

The child shall be entitled from his birth to a name and a nationality,

and articles 24(2) and 24(3) of the International Covenant on Civil and Political Rights:

Every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality.

The Polish draft presented in 1979 had added a second paragraph to the copied formulation of the Declaration of the Rights of the Child.

1. The child shall have the right from his birth to a name and a nationality.
2. The States Parties to the present Convention undertake to introduce into their legislation the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, the application of the proper national law would not grant him any nationality whatever.\(^{248}\)

This paragraph states that the *ius soli*-principle should be introduced into national legislation, to avoid statelessness for children. This automatic entitlement for stateless children entering the territory of a state party to the nationality of that state evoked discussion at the meeting of the Working Group in 1980, as some states had different immigration and nationality laws. The suggestion was made to bring the formulation closer to that of article 24(3) in the International Covenant on Civil and

\(^{248}\) E/CN.4/1349, p. 2.
Political Rights. As a result, a change was made from the right to nationality into the right to acquire nationality, as proposed by the United States.249

In 1980 and 1981, Australia tried to bring the article as close as possible to the general principles of the Convention on the Reduction of Statelessness of 1961, by proposing the ius soli-principle in the case, a child is not granted nationality by any other state in accordance with its laws.

The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws.

However, the delegates from states that applied the ius sanguinis-principle opposed this formulation and asked for a compromise formula in order to prevent possible reservations by states at the time of ratification.250 Bangladesh also pointed at this risk later on in 1986.251 Nevertheless, the Australian proposal was accepted, leaving the consideration of the problem to a later stage. A solution was found in 1989, when the Working Group adopted a compromise text that referred to:

the obligations of the States Parties under the relevant international instruments in this field, in particular where the child otherwise would be stateless.252

The comments in the Technical Review led to the introduction of the right to be registered, in order to bring the provision in line with the Covenant on Civil and Political Rights. The technical review also led to a paragraph about the right to respect for the child’s human, racial, national and cultural identity and dignity, and the duty to respect the human, racial, national and cultural identity and dignity of others. This latter paragraph was proposed by Unesco.253

During the Second Reading, a long and serious debate took place. Several of Islamic states proposed an amendment stating that ‘the child shall have the right from his birth to know and to belong to his parents’. The delegate of Egypt pointed out that the amendment aimed at ‘ensuring psychological stability of the child, which was of equal importance to his physical and mental growth and helped him to form his personality. In most cases the right to know his parents was quite essential to the child and equal to his right to a name or a nationality, which were only important for him at a certain age.’254 Some delegations opposed the term ‘belonging’ as the idea of property and belonging is not applicable to children. They also referred to the situation in the United States, the USSR and the German Democratic Republic whose

legislation contained exceptions concerning the right of ‘secret adoption’, that is when the adopted child does not have the right to know his natural parents. It was stated that the right to know one’s parents could not be applied in every case. A compromise text was found:

the right, as far as possible, to know and be cared for by his or her parents.

Some participants expressed the view that the words ‘as far as possible’ could give rise to an arbitrary interpretation of this article of the Convention. Alternatives were proposed like: ‘subject to the provisions of this Convention’ and ‘in the best interests of the child’ but were not accepted. Sweden said it could join the consensus on the article on the understanding that the provisions of this article should be interpreted in the best interests of the child.

The whole phrase ‘to know one’s parents’ seems mainly to focus on the cases of adoption or involuntary separation from parents. Although Portugal expressed the view ‘that the idea of “belonging” is not applicable to children and that there were situations where the right to know one’s parents could not be applied’, it is not clear from the records whether and which other situations were in mind. There is no clear evidence that delegations had thought of artificial forms of conception, leading to birth. Nevertheless, NGO groups have distributed papers concerning the influence of science and technology on human beings, which must have been known by at least some delegates.

The importance of the right to a name is that the name serves as the primary point of reference for the person himself and society. By establishing a name, references to a person’s family relationships are also established. This is more clearly expressed in the American Convention on Human Rights, which gives a right to the surnames of one or both of the child’s parents. The right to a name is especially important for children born out of wedlock, as this gives them a stronger position from which to be acknowledged in and by society. As the right to a name is mostly exercised by parents on behalf of the child, this responsibility should be fulfilled in the best interests of the child. In other words, the dignity of the child should be taken into account when parents choose a name. Case-law on the right to a name is often based on parents claiming interference with their family life, when a name is not accepted by authorities.

255. This is suggested by Van Bueren, G., The International Law on the Rights of the Child, Nijhoff, Dordrecht, 1995, p. 119, referring to informal discussions during the drafting process.

256. An early example is a paper on some recent developments in technology involving the rights of the child, and their implications, for example artificial insemination, drugs in developing countries, DNA research, and nuclear power, by the International Humanist and Ethical Union, E/CN.4/NGO/230 (1979); and a later example: statement by the World Association of Children’s Friends on the problem of genetic engineering and a proposal to forbid experiments with embryos, E/CN.4/1989/NGO/15.

257. See for a recent European case: Application 22500/93, Lassauzet and Guillot v. France; the Commission decided that the name Fleur-de-Marie was legitimately not accepted by France. The case was sent to the European Court on 20 May 1995.
The Convention enforces this provision of a right to a name by requiring immediate registration after birth, because registration is regarded as an effective method of protecting the child’s identity. Such immediate action should also prevent confusion and prevent various forms of abuse, such as abduction, kidnapping and separation from parents in situations of war and conflicts. The registration of the date of birth also serves as a fixed point from which age-related regulations can be applied, for example, reaching majority, and minimum age for labour or military service. It should be noted that the European Convention does not explicitly oblige states to provide for immediate registration, but the right to registration has been successfully invoked on the basis of the right to respect for family life, article 8(1).258

In addition to the provision of the right to a name and a nationality of article 7, another provision in the Convention should be taken into account which serves the preservation of identity:

Article 8
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 8 provides that states parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference. A novelty is the second paragraph where the states parties shall provide for appropriate assistance and protection, with a view to speedily re-establishing the identity of the child, in case a child is illegally deprived of some or all of the elements of his or her identity.

In 1985, Argentina started a discussion for a special article providing the preservation of identity to the child. The background for the proposal was the negative development of adoption practices. Stress was laid on ‘the inalienable right of the child to retain his true and genuine personal, legal and family identity.’ States should help in re-establishing this identity in case of fraudulent deprivation. Although provisions on identity and adoption procedure had already been made in the Convention (later articles 7, 9, 18 and 21), Argentina insisted on a special provision.259 There was a clear distinction between the interests of ‘North’ and ‘South’ delegates. Identity per se, so broadly stated had no place whatsoever in, for example, Canadian legislation. It remained unclear what was meant by family identity and this was later replaced by ‘family relations as recognized by law’, to be more specific and to avoid family law problems in several countries.


In 1989, discussions on some formulations were taken up again. Although the word 'illegal' seemed meaningless in, for example, the Australian context, since it was simply not possible 'legally' to deprive someone of his identity, the word was retained, 'in view of the situation in some countries'. Mexico stated that the wording should be more explicit as to the commitments made by the states under paragraph 1 and that the biological elements of the identity should also be included. This remark seems confusing as the whole issue of this article was the recognition of biological origin, recognition of blood ties. No reply to this remark is found in the report. In the comments, it is mentioned that the states were also concerned about the impact on in vitro fertilisation, although this is not clear from the reports.

Surveying the Convention's provisions on the child's right to information related to his identity, several weaknesses in the formulations appear. For example, the formulation does not provide for obtaining, choosing or changing one's name. It only states that a child should have a name. Because of the incapacity of the newborn child, this right is exercised by parents on behalf of the child.

As regards the right to have a nationality, a provision is made that states parties take into account their obligations under the relevant international instruments in this field, in order to prevent children from remaining or becoming stateless. These instruments are not listed, but the fact is that the states parties can keep their nationality and immigration laws and apply either the ius sanguinis or the ius soli-principle. If a state party has not recognised certain relevant international covenants or regulations, then it has no obligations in this field. The duty, nevertheless, remains to ensure the implementation of the rights to a name and a nationality. The Universal Declaration had a stronger formulation as it simply states in article 15(1):

Everyone has the right to a nationality.

In a different international context, the right of the child to a nationality has also played a role. In the draft of the Convention on the Elimination of All Forms of Discrimination Against Women, it was stated that states parties must grant women the same rights as men to transmit their nationality to their children. Some Nordic countries pointed to the possible difficulties in interpretation: 'The child’s welfare (i.e. not being left stateless) was at stake here, not the right of the mother to transmit her nationality to the child. (...) The article should be drafted more clearly, so that it could not be construed in such a way as to give parents with different nationalities complete power of discretion over the nationalities of their children, since the question of nationality was governed by the law of the State.' The final formulation of this article 9(2) was then adapted: States Parties shall grant women equal rights with men with respect to the nationality of their children.

Weaknesses in the formulation of states' obligations can also be found in the child's right to know and be cared for by his parents. The phrase 'as far as possible' leaves states much room in which to continue practices and legislation on 'secret adoption'. A possible way to restrict the margin of appreciation of states is to use the Swedish proposal to use 'the best interests of the child' as the guiding principle of interpretation. This principle does, of course, not guarantee that the decisions taken are really the best solution for the child, but it can impede decisions and settlements of discussions between the parties involved, which are arrived at too easily. It seems hardly avoidable that the parties involved speak about the best interests of the child, meaning 'the best interests of the child in my view', because they are involved and have a relationship or obligation to the child.

A possible positive point is that the right to know one's parents is explicitly formulated. Recent case-law has already referred to this provision in the Convention, in various situations. It remains, however, unclear which situations are envisaged and whether it could be an argument to be used in the discussion about the right to know the donor in case of artificial insemination and the right of the child to inspect his own birth and social files. De Bruijn-Lückers comments on article 7 and 8 that the expression 'as far as possible' is vague and may lead to arbitrary interpretation of this right of the child. Does the provision envisage factual impossibility or can it also be used in the case of adoption or artificial insemination, when the identity of the parent(s) is known, but it is in the interests of the child not to know them? According to her it would have been better to have the phrase: 'unless it is not in the best interests of the child'. The same question of applicability in the case of adoption and genetic identity is raised with respect to article 8.

Adoption still connotes with two ideas: a solution for childless couples and a form of child care. Although the latter aspect nowadays dominates in the official policy of organisations involved, the former is seldom absent. In general, legislation still protects the parents rather than supporting the child by giving it access to information about his origins and biological parents. Most children are dependent upon their adoptive parents for the information required. They often start a search for their unknown parent(s) during a period of identity development which can turn into an identity crisis.

One could seriously wonder whether it is ever in the best interests of the child not to be informed of a secret about his own identity which often is not a secret to his immediate family. An identity is so fundamental as a starting point for harmonious development of a child that this basic need to know about one's origins should nev-

263. One example is a reference to article 7 in a case of access to files even before the Convention was ratified by the State in question: NJ 1994, 608, p. 2848-2849 (Valkenhorst II). In a second case in the Netherlands, a 9 year old boy wanted to meet his biological father, against the will of this man. The Court considered that the right to know one's parents, as far as possible, contains more than just the right to know their names, Gerechtshof Amsterdam, 19 January 1995 (438/94). The Supreme Court agreed but did not consider this provision to be a claim to such a degree, that the man could be enforced to meet the boy. HR 22 december 1995. NJ 1996, 419, p. 2233-2246; Rechtspraak van de Week, 1996, 10.

er be ignored, even if it means that an extra effort is required of adults who have freely decided for themselves to become parents in such a way. Withholding such information on biological parents violates the basic right of the child to know about his identity and ignores the evolving capacities of the child to participate in decisions affecting his life. Parents also have to be aware that the education of a child conceived by artificial insemination includes certain difficulties,\(^{265}\) in the same way as such risks are known in the case of adoption.\(^{266}\) In international law, little has been achieved to give children access to their records, in spite of the general psychological knowledge that children should be told of their adoptive state as early as possible, because discovering the truth later in life may be more damaging to the child and the family.\(^{267}\) In fact, legal measures should be taken to prevent totally cutting the blood ties a child has with his biological parents as this infringes the child’s right to know his parents, to have and preserve an identity and to have access to information which is supportive of his personal development in this respect. The access to information on a child’s identity in records is related with other rights of the child, including his right to privacy, to family life and his freedom of expression. An example of the intertwining of these rights is given in the discussion of article 16 on privacy.

If one were to give the phrase ‘as far as possible’ a child-friendly interpretation, it would mean that a child will be given all possible means to find out who his parents are. But, the wording ‘undertake to respect’ is weak. As the second paragraph states that the state shall ensure the implementation of these rights, one could expect assistance from the state, but this is only related to emergency-cases. It is not clear in the second phrase if the state has an obligation to adapt its national law to the first paragraph or that it only has to ensure the implementation of the rights in accordance with already existing national law. From the discussion in the Working Group, one could derive the argument that there was no intention to change nationality and immigration laws, so both principles for acquiring a nationality could continue to exist. However, the right to know is in fact a different right and could imply adequate change of national laws. On the whole the states parties seem to be reluctant to change laws, in response to the Convention.

This reluctance, however understandable, can be counteracted by the argument that the Convention is not only a formulation of the status quo, but also an aspiration for human life at an adequate level, protected by human rights. In a further reaching interpretation, the right to know not only concerns the information about who a child’s parents are, but should create psychological stability, as was stated in the discussions of the Working Group. Such an interpretation implies an aspect of deeper knowledge for the child about what his parents are doing, how they live, where they work, what they experience; in short, to be informed about each others’ living in open communication.


Family relations are also included in the identity to be protected. The delegation of the Netherlands pointed out that this kind of family identity does not exist everywhere, that is why the phrase ‘as recognized by law’ was added. This means that not all family-like relationships are protected. It depends on the consistency of national family law if ‘family relations’ receive a clear meaning, because family laws protect certain relations in one situation but not in others.

The phrase ‘without unlawful interference’ means that it is entirely possible that the state interferes, but that its interference should be based on law. There are no restrictions on the kind of law envisaged, e.g. public order, health etc. The only restriction can be found in article 3 of the Convention which states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, ‘the best interests of the child shall be a primary consideration’.

The phrase ‘a primary consideration’ is weaker than principle 2 in the Declaration of the Rights of the Child, which states ‘the paramount consideration’. This shift to a weaker formulation can perhaps be considered as the reverse side of the emancipation of children: they are regarded as human beings and can participate in society, on the society’s conditions, but enjoy less priority than under the protective approach.

The stronger formulation is retained in article 21 of the Convention about the system of adoption, which is understandable as in the case of adoption the child is in a very vulnerable position, and at the stage of undergoing substantive changes in identity. The paramount consideration means that especially in the case of adoption the best interests of the child count most; in other cases, there might be other considerations which have to be balanced, although primary consideration must be given to the child.268

States have to ensure alternative care in accordance with their national laws. Article 9 of the Convention regulates some aspects in the case in which the child is separated from his or her parents. Here it is clearly stated that the child has the right to maintain personal relations and direct contact with both parents. There seems to be some unnecessary differentiation in the cases of temporary separation (e.g. by social welfare authorities), permanent separation by legal termination of parental rights or adoption, and wrongful separation in case of wrongful detention of a parent or in the course of an armed conflict. The Four Directions Council, an NGO, pointed out that provisions for maintaining contact should indicate the circumstances to which they apply.269

Only in the case of article 9, it is clearly stated that ‘all interested parties shall be given an opportunity to participate in the proceedings and make their views known’. This could include the child, but seems to give rather a right to parents and others involved than to the child. The child’s rights are in any case protected in arti-

268. In the discussion during the drafting process, it was mentioned that ‘other parties might have equal or even superior legal interests in some cases (e.g., medical emergencies during childbirth). The phrase ‘a primary consideration’ was attempted not to regulate private family decisions but only official actions. The word ‘official’ was, however, deleted from the proposed text. See: E/CN.4/L.1575, para. 24-26.

 ARTICLE 12, especially the second paragraph on being heard in judicial and administrative proceedings.

In several articles the Convention pays attention to the cultural identity of the child. Some of these aspects have already been mentioned during the explanation of articles 7 and 8.

Article 17(d) is devoted to the linguistic needs of the child who belongs to a minority group or who is indigenous. The states parties should encourage the mass media to have particular regard to these needs. In the discussion on article 17, the phrase 'indigenous groups' was avoided by formulating 'who is indigenous'. The background to this is the fear that too many claims from groups would arise, and cause a split in the national entity.

The formulation in article 17 points only to an obligation of the state to encourage the mass media. States must ensure that the child has access to information, which is aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. Meeting the linguistic needs of the children could be placed in the context of giving the child continuity with respect to his process of growing up, and his native language or the language of his family or culture. There is no indication when the state has fulfilled its duties or if the mass media can be blamed for not meeting the said needs sufficiently. There is no right requiring the mass media to provide programmes in minority languages, but article 17 gives a clear indication to do so.

One also finds a reference to cultural identity in the aims of education. Article 29(c) expressly mentions the child's development of respect for his own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he originates, and for civilisations different from his own. This broad educational aim, which is recognisable in many of the United Nations activities, especially those engaged in by Unesco, shows the intention to support the child in the development of his cultural identity, and at the same time of respect for the cultures of others. It goes without saying that the values mentioned may be contradictory, especially with regard to national values, but the overall idea is one of respect and tolerance, whatever one chooses to identify oneself with. Such an attitude is, of course, not only expected from minority children or children in general, but first of all of those who are educating the child: parents and teachers.

In article 20 of the Convention, a provision is made for a child who is temporarily or permanently deprived of his family environment, or who cannot be allowed to remain in that environment in his own best interests. In this case, the child is entitled to special protection and care by the state who has to ensure alternative care. In paragraph 3, other aspects of the child's identity are recognised like the child's upbringing and the child's ethnic, religious, cultural and linguistic background. It is considered desirable that these aspects should rely on continuity.

Article 20
1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that en-
virement, shall be entitled to special protection and assistance provided by
the State.
2. States Parties shall in accordance with their national laws ensure alternative
care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law,
adoption or if necessary placement in suitable institutions for the care of
children. When considering solutions, due regard shall be paid to the desir-
ability of continuity in a child’s upbringing and to the child’s ethnic, relig-
ious, cultural and linguistic background.

This provision recognises that the continuity of other elements of a child’s identity,
such as his culture, including mother tongue and religion, is of great importance and
should be protected throughout his childhood.

The inclusion of these cultural aspects in the Convention were supported by the
United Nations Declaration on Social and Legal principles relating to the Protection
and Welfare of Children, with Special reference to Foster Placement and Adoption
Nationally and Internationally which states in article 24:

Article 24
Where the nationality of the child differs from that of the prospective adoptive
parents, all due weight shall be given to both the law of the State of which the
child is a national and the law of the State of which the prospective adoptive
parents are nationals. In this connection due regard shall be given to the child’s
cultural and religious background and interests.270

Another reference to cultural identity is found in article 30, especially devoted to the
rights of minorities and indigenous peoples.

Article 30
In those States in which ethnic, religious or linguistic minorities or persons of
indigenous origin exist, a child belonging to such a minority or who is indige-
nous shall not be denied the right, in community with other members of his or
her group, to enjoy his or her own culture, to profess and practise his or her
own religion, or to use his or her own language.

This formulation is obviously derived from article 27 of the Covenant on Civil and
Political Rights which guarantees the rights of minorities to enjoy their own culture,
to profess and practise their own religion, or to use their own language. In a General
Comment on this article, the UN Commission on Human Rights clarifies that this
right relates to rights conferred on individuals as such, thereby distinguishing the
 provision from the right to self-determination, which is a right belonging to peoples.
The provision also does not coincide with the principle of non-discrimination. ‘The
terms used in article 27 indicate that the persons designed to be protected are those

270. UN General Assembly, Resolution 41/85, 3 December 1986.
who belong to a group and who share in common a culture, a religion and/or a lan-
guage. Those terms also indicated that the individuals designed to be protected need not be citizens of the state party’, nor do they need to be permanent residents. Fur-
thermore, the existence of an ethnic, religious or linguistic minority does not depend upon a decision by the state party but requires establishment on the basis of objective
criteria. The Commission clarifies that the right protected by article 27 is distinct from
other language rights, for example, the general right to freedom of expression, which is available to all. ‘The protection of these rights [in article 27] is directed to ensure the
survival and continued development of the cultural, religious and social identity of
minorities concerned, this enriching the fabric of society as a whole.’

In the Convention on the Rights of the Child a further specification is made on
minorities: the rights of indigenous people are added. As a result, the child belong-
ing to an ethnic, religious or linguistic minority or who is indigenous shall not be de-
nied said rights. It is remarkable that the right is formulated in a negative sense: ‘-
shall not be denied’. Such has also been the formulation of the right to education in
the first Protocol to the European Convention on Human Rights. It gives the impres-
sion of permitting, without being interested, and offering no facilities to implement
the right. This approach is quite different from the current widespread proclamation
of the ‘multicultural’ society in industrialised countries.

In the above mentioned General Comment, the UN Commission on Human
Rights explains that the negative formulation does not prohibit. ‘State party is under
an obligation to ensure that the existence and the exercise of this right are protected
against their denial or violation. Positive measures of protection are, therefore, re-
quired not only against the acts of the State party itself, whether through its legisla-
tive, judicial or administrative authorities, but also against the acts of other persons
within the State party.’ In taking positive measures, ‘positive discrimination’ of
minorities is a legitimate differentiation provided that they are based on reasonable
and objective criteria.

In the case-law of the European Convention on Human Rights, a complaint about
linguistic freedom was brought before the European Commission. In the Belgian Lin-
guistic Case, the applicants argued that the right to freedom of expression included
linguistic freedom and that this linguistic freedom should be exercised by a choice of
language of instruction. However, the Commission observed that none of the articles
of the Convention explicitly guarantees linguistic freedom as such. Van Dijk agrees
with the Commission that the freedom of expression does not comprise the right to
be offered the opportunity to express one’s opinion in a language of one’s choice, as
otherwise the consequence would be the right to be taught that language. However,
he does comment that in fact article 2 of the First Protocol is at issue, not article 10.

272. CCPR/C/21/Rev.1/Add.5. General Comment 23(50) on Article 27, 26 April 1994, para. 6(1) and 6(2).
273. Application 1474/62, Inhabitants of Alsemberg and Beersel v. Belgium, Yearbook VI (1963) p. 332; and Application
274. Dijk, P. van, G. van Hoof, Theory and Practice of the European Convention on Human Rights, Kluwer, Deventer,
1990, p. 408.
According to Van Bueren, the Convention on the Rights of the Child does not alter this situation, as it merely places a negative duty on a state party not to deny the right of an indigenous child or a child belonging to a minority, in community with others, to use his or her own language. There is no positive duty on a state party to provide education in the minority or indigenous language.\textsuperscript{275}

These differences in opinion about the implications of a right are typical for social and cultural rights, as they imply an effort on the part of the state, the limits of which can never be precisely regulated, as they have to be related to the specific circumstances. Nevertheless, article 4 of the Convention gives a general clause, especially for economic, social and cultural rights, that the states parties should undertake measures to the \textit{maximum extent} of their available resources. Achievement of this standard will have to be strictly scrutinised.

Another aspect of the protection of a child’s identity can be found in article 2 which states that the rights of the child are respected and ensured by the state ‘without discrimination’. It is a novelty that this includes discrimination and punishment based on the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members. This shows that attention should be paid to the child as an independent entity, who cannot be blamed for the behaviour and way of life of his family environment. This right can be relevant for refugee children or asylum seekers. In these circumstances the child is not always considered as an individual, who merits an individual treatment of his case and who should be heard.\textsuperscript{276}

The principle of non-discrimination is a very fundamental one in human rights and has been formulated in the Universal Declaration. Article 6 states: Everyone \textit{has} the right to recognition everywhere as a person before the law. A weaker formulation is taken up in the International Covenant on Civil and Political Rights, in which article 16 reads: Everyone \textit{shall have} the right to recognition everywhere as a person before the law.

Article 2 of the Convention on the Rights of the Child clearly shows an effort to protect the child, but it does not go as far as granting the child recognition as an independent legal person before the law, as was proposed by Germany during the drafting process.

The other most important articles in the Convention that are related to the right of information contributing to the development and protection of these aspects of the child’s personality are found in the provisions on the child’s right to express his views, the right to freedom of thought, conscience and religion and the protection of privacy, respectively articles 12, 14 and 16. These rights will be treated in the following section of this chapter.


\textsuperscript{276} Extensive discussions take place in Western Europe, for example in Sweden, where the administrative procedures have led to the hiding of at least 3500 refugee children: \textit{Se mig. Hör mig.} Dokumentation från en konferens om flyktningsbarnens behov och rättigheter, Barnombudsmannen / Allmänna Barnhuset, Stockholm, 1995. The situation has been criticised by the Children’s Ombudsman with reference to the Convention: Remissyttrande över Betänkandena Effektivare styrning och rättssäkerhet i asylprocessen (SOU 1995:46). Ett samlat verksamhetsansvar för asylmätning (SOU 1995:55) och svensk flyktningspolitik i ett globalt perspektiv (SOU 1995:75), 11 January 1995, BO 9:282/95.
Expressing views: Article 12
As already mentioned, the Convention did not only repeat adopted rights from other international human rights instruments, but also introduced some new rights which reflect the progression in thinking on childhood. Article 12 can be considered as the exponent of the more modern approach of considering children as human beings with feelings and thoughts of their own, and participating and taking decisions in their own lives, in their families and beyond. The Convention acknowledges the child’s right to express views in the following way:

Article 12
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The right as such is not found in any other human rights treaty or instrument; its provision is specific to children in various aspects. The legislative history will explain some of its elements. The history of this article started with the basic text as provided in the Polish draft, at that moment numbered as article 7:

The States Parties to the present Convention shall enable the child who is capable of forming his own views the right to express his opinion in matters concerning his own person, and in particular, marriage, choice of occupation, medical treatment, education and recreation.277

The enumeration of the matters in which the child could give his opinion shows that the right is concerned with substantive decisions in human life. It is also noteworthy that recreation is not forgotten. The delegations in the Working Group, however, started to amend the proposal. It was the wish of the delegates of Australia that ‘in all such matters the wishes of the child shall be given due weight in accordance with his age and maturity.’ Denmark took as a point of departure the ‘duty and responsibility of parents or other guardians to decide in matters concerning the person of the child’, but proposed going further than the child’s mere expression of opinion, by stating that ‘the child shall as soon as possible have an influence in such matters. As the child gets older, the parents or the guardian should give him more and more responsibility for personal matters with the aim of preparing the child for the life of a grown-up.’278

The United States, always an advocate of freedom of expression, added to the list of matters concerning the child: religion, political and social belief, matters of conscience,

278. E/CN.4/L.1575, para. 75.
cultural and artistic matters, travel and place of residence and wanted the child to 'express his opinion effectively and non-violently'. However, it was felt that the right to express one’s opinion should not be subject to the confines of a list, which was therefore deleted and replaced by 'all matters' and only the term 'freely' was added.

The desirability of including provisions concerning the need to discover the best interests of children not yet capable of forming their own views was postponed for discussion at a later stage, but seems to have been forgotten. Gomien comments: 'Although logically it may make sense to confer a hearing right only on a child with such a degree of sophistication, legally it leaves less sophisticated children in limbo – no other provision of the Convention acknowledges that even very young children may have interests that require independent representation to the authorities.'

Another question taken up was how to formulate the relation between the state and the child. Should the state enable the child to express an opinion or should it assure him the right. One of the delegations pointed out that the state is under no obligation, as a matter of law, towards children: the child should have a degree of freedom comparable to that enjoyed by an individual under the Covenants and comparable instruments of law.

The proposed compromise text used 'ensure' to describe the role of the state, the adopted text uses 'assure'. No clarification is found. It was mentioned that a careful examination from a legal point of view was necessary to determine whether it might comply with the general rules relating to standing in legal and administrative proceedings.

In 1986, Bangladesh stated that the article was not sufficiently crystallised into recognisable legal categories. In the meantime, a discussion had taken place about article 3 dealing with the best interests of the child. A proposal from the United States introduced a special provision in the case of official proceedings, stating:

In all judicial and administrative proceedings affecting a child that has reached the age of reason, an opportunity for the views of the child to be heard as an independent party to the proceedings shall be provided, and those views shall be taken into consideration by the competent authorities.

The difficulty in characterising the 'age of reason' was felt by some representatives and therefore replaced by the formulation of article 7: 'capable of forming his own views'. It was noted by the NGO, the Four Directions Council, that the proposed provisions on the child’s right of self-determination, article 3 ('capable of forming his own views') and article 7 ('due weight in accordance with age and maturity'), 'are not entirely consistent, since one contemplates giving greater weight to the

wishes of older children, and the other giving weight only to the wishes of older children. The progressive formulation is probably more in keeping with respect for the child’s individuality. In addition to restating existing law (ICPR article 19.1) with regard to the freedom of expression these draft provisions clarify the child’s evolving legal identity, distinct from his parents, which is necessary as long as the Convention refers to the rights of parents as well as the rights of children.282

In 1989, the contents of article 3 which provides for ‘the opportunity for the views of the child to be heard as an independent party to (all judicial or administrative) proceedings (affecting the child)’ was transferred to article 12. It was introduced by Finland with some textual changes:

1. States Parties to the present Convention shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, through a representative or an appropriate body, in accordance with the procedural rules of national law.283

The now twofold draft article evoked some interesting remarks in the Working Group. The first point of discussion was the reference to national law. In case the child’s hearing opinion required some international legal assistance, the requesting state’s procedure should also be taken into account. The wording became ‘in a manner consistent with the procedural rules of national law’, a proposal from the Netherlands to clarify the phrase.284 Later suggestions to replace the formulation by, for example, ‘applicable rules of national law’, and ‘in accordance with procedure established by law’ were rejected. India made a declaration that it understood ‘procedural rules of international law’ had the same meaning as ‘procedures followed in the State Party for the application of its legislation’. Senegal preferred the more generic and precise French term ‘de législation nationale applicable’. One conclusion to be drawn from this discussion is that article 12 not only provides for the right to be heard in national proceedings, but also in international proceedings, and that the state shall make provision for the implementation of this right.

Another point of discussion was the phrase ‘affecting the child’. During the discussion, it was noticed that the first part of the article came close to the provision made in another article, namely the right to freedom of expression, article 13. Therefore, a specification was needed and some delegations understood it as ‘affecting the rights of the child’. But, others pointed out that matters dealt with in the Convention not covering the rights (and still affecting the children) could be endangered. The phrase remained unchanged.

It can be concluded that article 12 can be distinguished from the provision in article 13 on freedom of expression, as article 13 deals with freedom of expression in general, and article 12 only covers matters affecting the child. At the same time, the right in article 12 is limited to the child that is capable of forming his or her own views.

In his critique of the draft Convention, Bennett wonders 'whether the article is solely directed at the State, to the parents, or to all listeners. When it is mainly directed at parents how then can the State assure such a right? It will probably have implications for the family unit.' In relation to the child's right to free expression, he further regards 'the attempts to qualify the child's right based upon incapacity as redundant, and, arguably, superfluous because giving "due weight" to the speech of children, necessarily implies that States will consider the capacity of the child to form his own views.'

Secondly, he argues that a guarantee of free speech to children does not ensure that their speech will be heeded or given any weight at all. As a result, he wonders: 'Why should not children, as with all people, enjoy unfettered speech regardless of capacity?' In the same way as the Four Directions Council, Bennett points to the two different qualifiers, 'capable of forming his own views', and 'due weight in accordance with age and maturity'. He regards the second as redundant, as it 'was added apparently to contain the sweep of "all matters" that, in the Polish draft was a more limited and specific list of subjects.' His overall conclusion is that it is unclear who is to decide on the child's capacity and who is to weigh the speech. There is no provision for standards of determination on whether the child has the capacity to form his own views. What remains is the subjective determination by the one who has to take the decision: the state, parents, or all listeners.285

One of the areas in which the views of the child are gradually acknowledged is medicine. The emancipation of patients has lead to the formulation of patients rights with regard to information about diagnosis, treatment, risks, and second opinions. Informed consent is the term applied in these circumstances, where doctor and patient gradually communicate on more equal footing. This development tends to extend to children. A Charter for Children in Hospital, adopted in 1984 by the National Association for the Welfare of Children in the United Kingdom, refers to information in several respects:

In order to share in the care of their child, parents should be fully informed about ward routine and their active participation encouraged.(...)
Children and/or their parents shall have the right to information appropriate to age and understanding.
Children and/or their parents shall have the right to informed participation in all decisions involving their health care.(...)
Children shall be treated with tact and understanding and at all times their privacy shall be respected.286

The importance of information, and, hence the right to information during hospitalisation, is visible from the title of one of the rare articles on this subject: Rights of the child in hospital: right to information. Theunis states that, in principle, the supply of information is in the interest of the well-being of the child, as it heightens his feelings of security and makes the situation more controllable and predictable. Many doctors, however, sometimes wish to avoid emotional reactions and withhold information or speak rather to the parents than to the child himself. Theunis elaborates the different fields on which information should be given, different types of information, its forms and the style of informing children. The child has a right to an honest answer to his question, even in cases of incurable diseases. The information supply should correspond to his personal needs. The article concludes that the right to information implies other rights such as the right to self-determination and the right to a personal opinion.

In recent legislation, the child’s views and opinions are taken into account in medical situations. Nevertheless, informed consent of the child is only required from a certain age; for younger children the parents give their consent. Such legislation which is based on age limits is not in conformity with the principle of the Convention to take into account the evolving capacities of the child.

The right to be heard does not seem to be totally to the benefit of the child, as reference is made to the procedural rules of national law, which could require that the hearing procedure has to conform to already established routines. Such a restrictive interpretation would probably be done for reasons of efficiency.

Van Bueren comments that the second paragraph of article 12 provides children with the procedural capacity to be heard based on two qualifications: the right to be heard applies to all children who are capable of forming views and not only to children who are capable of expressing views. The reference to the procedural rules means that it is only open to the states parties to enact procedural rules as to the manner of the child’s participation, not to enact rules restricting the child’s right to be heard, as the phrase emphatically states that the child shall in particular be provided the opportunity to be heard. Any other interpretation would run counter to the freedom of expression enshrined in the article 12(1) and 13 of the Convention.

Article 12 contains no direct obligation for states or parents to inform the child, but this obligation can be implied from the responsibility for child-rearing and for appropriate guidance and direction, articles 5 and 18, already mentioned above.

The importance and novelty of the provision in article 12 can also be drawn from the way in which the Committee considers its implementation. In the guidelines prepared by the Committee for the reports to be submitted by the states parties, the provisions of the Convention are regrouped. Article 12, indicated as the principle of

respect for the views of the child, belongs to the general principles of the Convention together with the principle of non-discrimination; the principle of the best interests of the child; and, the right to life, survival and development. For the purposes of implementation and monitoring, NGO's use article 12 as a key-article to many procedures and for various areas in which the child has something to say.290

**Freedom of thought, conscience and religion: Article 14**

The idea that a child has thoughts and feelings of his own, as every other human being, and that he deserves respect, is recognised in his right to freedom of thought, conscience and religion:

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

The United States also introduced the article on the right of freedom of thought, conscience and religion. It was already presented in 1982 and contained a rather elaborated proposal. Although quite long it is worth quoting:

1. The States Parties to the present Convention shall ensure that the child has the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

2. The States Parties to the present Convention shall ensure that no child is subject to coercion which would impair his freedom to have or to adopt a religion of belief of his choice.

3. The States Parties to the present Convention shall ensure that the child's freedom to manifest his religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Convention shall ensure that the child has: a) the freedom to worship or assemble with others in connection with his religion or belief;

b) the freedom to make, to acquire and to use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
c) the freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of his religion or belief; and
d) the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.291

In this proposal, the interrelationship of the freedom of expression, of assembly and of communication is clearly present in the different parts related to religion. There was difference in opinion about the necessity of having a specific provision on religious education. Reference was made to similar provisions on the matter in the Declaration on the Elimination of All Forms of Intolerance on Religion and Belief, and to paragraph 4 of article 18 of the International Covenant on Civil and Political Rights, which could be included in the draft Convention in case one insisted on having such a right. In fact, paragraph 4 of the proposal took up provisions on educational matters from article 6 of this Declaration. Further proposals which made an explicit reference to such other human rights instruments were, nevertheless, not agreed upon.292

The main discussion focused on the position of the parents and the role of the state: was it the responsibility of the state to ensure the child the proposed right? In many countries, a child follows the religion of his parents and does not generally make a choice of his own. As a result, a compromise proposal was put forward in which the freedom to adopt a religion was left out and which included a reference to the role of parents:

States Parties to the present Convention undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.293

This text is in fact the literal wording of article 18(4) of the International Covenant. Recalling that the Covenant was adopted in 1966 would it be clear that ‘their own convictions’ refers to the parents’ not the children’s convictions? Discussion on the formulation was postponed. At the next session, a Scandinavian proposal re-introduced the child’s possibility to adopt a religion and referred to the evolving capacities of the child in the exercise of this right, which should be taken into account by both parents and the state.

Another important point was the position of the state vis-à-vis religious education or the Church. The question was whether the state ‘recognizes’, ‘recognizes and
ensures', 'shall ensure' or 'ensures' the right of the child. This point divided the group. It was difficult to accept that the state recognises and ensures the right when account had to be taken of the separation of Church and State in many countries. According to the United States' explanation, if the right of freedom to unimpeded religious beliefs was ensured, that did not mean that the state would be obliged to provide religious education. The strength of the state's obligation was finally agreed on in the wording 'shall respect', which at least is much weaker than the first proposal which had 'shall ensure'. The latter wording imposes an obligation on the state to take affirmative action to assure the right or to protect the child from violations of his rights by non-State entities, as was later noticed by Unicef in the Technical Review.294

The importance and content of such religious education hardly seem to have been discussed, but can be found in contributions from NGO's, active in this field. Not surprisingly, Bahá'í has commented on the implementation of the Declaration of 1981: 'It is the Bahá'í conviction that proper education is essential in eliminating religious prejudice and fostering true respect among all persons, whatever their religious conviction. This education must, in the Bahá'í view, foster the development of an awareness of the reality of the unity of the human race, of the superficiality of religious stereotypes, dogmas and barriers, and of the essential spiritual principles common to all the major world religions. (...) Parents must set an example for their children of the spiritual values of tolerance, love and respect for all persons, for the parents are the first teachers of the child and the earliest years of the child's life are those in which his essential personality is formed. (...) Since the fundamental teachings of all the world's religions focus upon developing tolerance, unity and respect, Bahá'ís agree that religions themselves have an important responsibility to foster an appreciation for these principles and their commonality to all religions. (...) We would like to suggest that such studies [possibly under auspices of Unesco], in seeking to develop fundamental knowledge of the world's various religions and belief systems, should also point out and explore the fundamental common values at the core of all religions. (...) Appropriate international agencies, governments and non-governmental organizations might initiate or encourage efforts to develop additional educational materials which would: explore the commonality of spiritual concepts in all human societies and in all religions; examine the different social teachings of various religions, in order to develop an appreciation for the variety of forms or religious expression; and investigate the history of religious prejudice and conflict, with a view to understanding how religious prejudice results from a tendency to dwell on outward religious differences.295

From the discussion about the various formulations, the conclusion has to be drawn that the state is obligated to ensure that the child can exercise his right without interference. This obligation cannot be said to include the obligation of the state to provide education in religion. However, a basis for some form of education on religions, beliefs and traditions might be found in the right to and general purpose of education (articles 28 and 29 of the Convention.

During the ongoing discussion, the United States continued to try to include reference to religious education in proposing 'the right to have unimpeded access to and freedom from coercion with respect to education in a matter of religion or belief'. According to the United States, ensuring access to a right, in addition to the right itself, was only necessary in cases where access was particularly relevant to the right, for example, in the case of right to health and access to health as had been considered by the Working Group. The aspect of non-coercion was withdrawn during the discussion.296

In another proposal, regarding 'unimpeded access to religious and moral education in conformity with their own convictions', the United States explained that the intent was to make it clear that the education was to be in conformity with both the parents' and the child's convictions in order to provide a buffer for the family and to prevent religious beliefs and education from being foisted on the child, possibly by state interference.297

These deliberations resulted in the following article which was agreed upon:

1. The States Parties to the present Convention shall respect the right of the child to freedom of thought, conscience and religion.
2. This right shall include in particular the freedom to have or to adopt a religion or whatsoever belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health and morals and the right to have access to education in the matter of religion and belief.
3. The States Parties shall respect the rights and duties of parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right in a manner consistent with the evolving capacities of the child.
4. The States Parties shall equally respect the liberty of the child and his parents, and where applicable, legal guardians, to ensure the religious and moral education of the child in conformity with convictions of their choice.

In this provision, the child has an unqualified right to freedom of thought, conscience and religion. This freedom includes the possibility of change of religion and the right to manifest one's religion. The limitations mentioned are the same as the provision in the International Covenant, except for the omission of 'protection of the rights and freedoms of others'; and, an elaboration of the manifestation of one's belief such as 'in worship, observance, practice and teaching' is also missing. The role of parents is described as providing direction to the child with a clear link to the evolving capacities of the child. As follows from the explanation of the United States, the religious education has to be in conformity with the convictions of both parents and child.

However, the opposition to so much freedom for the child had not subsided and the proposed article was said 'to run counter to the traditions of the major religious systems of the world and in particular to Islam. It appears to infringe upon the sanctioned practice of a child being reared in the religion of his parents.' It seemed to be in conflict with the responsibilities and duties of parents in the upbringing formulated in article 18. Morocco also commented: 'On the question of religion, the rule adopted in Moroccan legislation is that the child shall follow the religion of his father. In this case, the child does not have to choose his religion, as the religion of the State is Islam. Islam guarantees freedom of worship to members of other faiths.'

As late as the end of 1988, the discussion was taken up again because several countries said that the provisions were incompatible with their legal systems, and compromises had to be found. The NGO group intended to include some of the provisions of the above mentioned Declaration of 1981 into the Convention but did not get a chance in the heat of the debate. However, as the coordinator of the drafting group expressed: 'Despite all efforts undertaken the drafting group had been unable to reconcile the various views and positions of delegations.' This was in fact one of the few times that a drafting group did not succeed in finding a compromise text. As a result, the proposal contained at least three articles with alternative texts or proposed deletions. Nevertheless, agreement was reached on paragraph 2 of the later article 14 of the Convention on the Rights of the Child.

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

The observer for Finland said that after the adoption of this paragraph he also considered article 12 applicable to religious matters. This meant, as affirmed by the Chairman, that article 12 contained a general provision, applicable to all matters, affecting the child, including religious matters. It should be noted here that originally article 12 and 14 were proposed in one article with several paragraphs.

As no agreement could be reached on the proposal of the drafting group, and the Working Group was opposed to deleting the whole article, only the paragraphs that did not contain any new or controversial provisions were retained, which became paragraph 1 and 3 in the final formulation. In this way, the child's freedom to change his religion disappeared, as a result of a compromise to include Islamic legal systems in the provision. In response, a comment on this turn of events was expressed by the International Council of Jewish Women, with reference to the consequences: 'Does a child not have by definition the right to education, religious or oth-

erwise? His right to information is, nevertheless, firmly established in article 17 of the draft before us! Between 16 and 18 years of age, for example, is he not qualified to make choices, when in many countries he is deemed fit to go to war in full knowledge of the facts? It is significant, moreover, that the Governments which draft children of 15 are generally the same ones that refuse them autonomy of thought in matters of religion or belief. And what, in truth, does the term freedom of conscience mean if one does not have the right to adopt the religion or belief of one's choice or if one does not have the right to change it? A strange kind of freedom this would be.\(^302\)

In addition to this subject, compulsory military service is an example of the field in which young people have to make moral choices and should be informed about the possibilities of conscientious objection. This has been an item for long discussions within the UN Commission on Human Rights, which resulted in a resolution, qualifying objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion. The Resolution does not give a right to be exempted from military service.\(^303\) A similar Recommendation adopted by the Council of Europe states:

1. Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out hereafter. Such persons may be liable to perform alternative service. (...) 

3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose the state shall provide them with all relevant information directly or allow private organisations concerned to furnish that information.\(^304\)

Although this recommendation is not binding, it can be considered as an authoritative interpretation of the ambit of the freedom of conscience, which counts especially for children at the age of possible conscription for military service. A right to information on this matter as well as the right to freedom of conscience with regards to military service are explicitly acknowledged in this Council of Europe Recommendation.

After the laborious discussions in the Working Group, Sweden made the statement that it joined in the consensus on article 14 'on the understanding that the right to freedom of thought, conscience and religion, as laid down in article 18 of the Covenant on Civil and Political Rights, should include freedom to have or to adopt a religion or belief of one's choice, and freedom to manifest one's religion or belief in worship, observance, practice and teaching.'\(^305\) This consensus about the manifesta-

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304. Recommendation R(87)8, Adopted by the Committee of Ministers on 9 April 1987, para. 3.
tion of one’s belief remained uncontested. This statement demonstrated Sweden’s fear that the Convention would set forth a lower standard than the original rights protected in the Universal Declaration and the Covenant on Civil and Political Rights. The positive point of the Convention’s formulation might be that article 18(4) of the Covenant, which stressed the convictions of parents, was not repeated in the Convention. There is at least some difference between ‘providing direction’ and ‘ensuring education in conformity with their convictions’; the latter being a serious limit to the child’s freedom.306

The Holy See and Italy stated that ‘the right of parents to give their child a religious and moral education in conformity with their personal beliefs forms part of the right to manifest one’s religion and this right of religious and moral education must be respected by the States.’307 In this view, a right of the child to religion seems to exist only as far as a right of parents to provide education to the child in religious matters exists. These last statements show that the formulated article leaves quite a number of questions open to interpretation.

Although there are other human rights instruments in which the freedom of religion is formulated, they are not explicit about their applicability to children; as is the case with several civil rights. Article 18 of the Universal Declaration of Human Rights speaks of ‘everyone’ having the right to freedom of thought, conscience and religion, and clearly includes the right to change religion and the right to manifest religion in teaching, practice, worship and observance. The European Convention adds to this the limiting grounds for manifestation of one’s belief, which, except for the qualification ‘necessary in a democratic society’, can also be found in article 18 of the International Covenant on Civil and Political Rights which reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or a belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Note that the provisions are stated in a less obligatory form than the Universal Declaration, but that the article has additional paragraphs, also not found in the European Convention, on non-coercion and on the role of parents. The formulation ‘undertake to respect’ points to a rather weak state’s obligation. Furthermore, the ‘liberty’ of parents to religious education differs from a ‘right’ to educate the child in religious matters. A General Comment on children’s rights in the Covenant does not give more explanation, as it, although stating that children as individuals benefit from all of the civil rights enunciated in the Covenant, only points to the provisions where children are singled out for a different standard of protection, and not to general positive protections from which children, as other human beings, would also benefit. Article 18 includes a broader right than the right just to have a religion. For example, Belgium recognised the difference with the broader provision in article 18 of the International Covenant on Civil and Political Rights and wished to interpret article 14 in the sense that this right of the child also includes the freedom to choose a religion and the freedom to change one’s religion. The reference to the UN Declaration on the Elimination of Religious Intolerance and Discrimination, made earlier in the discussions, throws a strange light on the development of the interrelationship of child, parents and state in the field of freedom of religion. The Declaration was the result of a long discussion within Unesco which started in the sixties. Finally adopted in 1981, this Declaration makes the right of the child to freedom of religion hardly visible behind the dominance of parents rights. Article 5 elaborates several aspects, for example religious education at home, and clearly states:

1. The parents, or as the case may be, legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which the believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow man.

308. CCPR/C/21/Add 7, 5 April 1989.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief. The best interests of the child being the guiding principle.
5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

It is not difficult to understand the comment: 'While it is certainly desirable for a religion or belief to be a family matter, such emphasis on parental rights would seem to have been carried to an extreme by the Declaration. It could be said that the Declaration discriminates against children by limiting their freedom of religion or belief because of age.' The Declaration goes in fact even further than the International Covenant in parents' control over the child's religious experience, as the latter has weaker state obligations, formulated as 'undertake to have respect', and speaks of the parents' liberty, not their right to educate the child.

The Declaration can easily be regarded as a parents-based human rights instrument. It has, nevertheless, found preference among those who put legal clarity first – to the detriment of children's rights. Bennett writes: 'Thus, although the declaration protects the child's right to freedom of religion from state interference, the child's right is clearly subordinate to the right of the parents to guide the child in this area as long as that guidance does not injure the mental or physical well-being of the child. This careful delineation of the metes and bounds of potentially conflicting interests and prerogatives contrasts with the confusion in the religious freedom article in the Draft Convention. Even though the declaration is non-binding, it provides a model that the Convention drafters should examine.' And in a following note: '[This] confusion is caused by the failure to resolve conflicting interests of child, parent, family and state. The religious freedom article is an excellent example of this failure.' Although Bennett is commenting on a draft, one might doubt whether he would approve of the results in the final text.

As the European Convention contains only a specific provision on the rights of parents and not explicitly on the child's right to freedom of religion, cases have brought before the European Commission under Article 2 of the First Protocol stating:

the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

These cases concentrated on complaints of parents and children who differed in belief from what was taught at school. For example, because atheists are not an organ-

ised religion, an atheist child could not obtain an exemption from the teaching of religious studies. The European Commission acknowledged that the freedom of religion protected in article 9, affords protection against indoctrination of religion by the state, be it in education, at school or in any other activity for which the state has assumed responsibility. But, in principle, the teaching which provides information only cannot be regarded as being in conflict with the Convention or its Protocols. When the education is about religion and not in religion and when the aim of the teaching is to provide all children with factual religious knowledge, there is no breach of the freedom of religion.\textsuperscript{313}

A case on integrated and compulsory sex education in Danish State schools was reasoned along the same lines. The European Court clarified that the European Convention does not distinguish between religious instruction and other objects with regard to the state's obligations in the field of education and teaching. As the sex education was aimed at providing children with knowledge more correctly, precisely, objectively and scientifically and not at indoctrination or advocating a specific kind of sexual behaviour, no breach was found.\textsuperscript{314}

Van Dijk states that the 'freedom of religion also comprises the freedom not to take part in religious services. An obligation to that effect, for instance for children in schools or in boarding-schools (...) conflicts with article 9. Justification on the ground of "protection of public... morals" would not seem possible, since this would result in the imposition of a particular conception of morals, which would manifestly be contrary to the purport of article 9.'\textsuperscript{315} In a recent case, a pupil who was a Jehovah Witness, was punished for not having attended a memorial defile for a military event in 1940, notably on a holiday. As the defile itself was not militaristic, the Commission found no breach of article 9 or article 2 of the First Protocol, but as there had been no legal procedure there was breach of article 13.\textsuperscript{316}

One has to conclude from these comparisons that only the Convention on the Rights of the Child recognises explicitly a child's right to freedom of thought, conscience and religion. Other human rights instruments do not distinguish whether the rightholder is a child or an adult; so one can only wonder whether children were in the minds of the drafters. If so, children only figure in the role of an object for religious education, thus in the relationship of their parents and the state. The Convention on the Rights of the Child introduces explicitly the child as a subject of rights, also of the right to freedom of religion, but this freedom is more limited than for adults, as parents have rights and duties to provide direction to the child. In comparison with the general article 5 on parental responsibilities, speaking of appropriate direction and guidance, article 14 is confined to direction only. It is sug-


\textsuperscript{316} Application 21787/93, European Commission of Human Rights, Valsamis v. Greece, Decision of 29 November 1994; case was referred to the European Court on 9 September 1995.
gested that guidance, which conveys a persuasive meaning, is left out and that the partial redundance results from the determined stand of Islamic countries and the Holy See to make parents decisive in religious matters regarding the child. Note that such decisions in Islamic countries are exclusively taken by the father, not by both parents as the Convention requires.

In addition to the role of parental power, it should be observed that article 14 does not contain a paragraph on non-coercion. Does this imply 'that the Convention permits of cases when especially a small child may be forced to adopt a religion or belief chosen by his/her parents' as is concluded by Lopatka? He states that the only curtailment to such coercion is the obligation of respecting the evolving capacities of the child. He concludes: 'The Convention grants a child the right to freedom of thought, conscience and religion. It is a remarkable step forward towards general respect of a child's personality. With relation to a small child, however, this regulation practically does not work. Nevertheless, proclaiming this right is very important. (...) With relation to an older child, the above regulation has a clear meaning, since parents while providing direction have an obligation to respect the evolving capacities of the child. Conceding the right of giving direction to parents has a natural justification. Exercising this right which for parents is also a duty, should be consistent with the sense and spirit of the Convention, that aims at increasing respect of the child's autonomy and personality. A highly influensive role in this matter lies in the hands of legislature and politics of the Convention's States Parties.' This argumentation on coercion sounds a bit awkward from the person initiating and presiding over the drafting process of the Convention. Coercion of another human being seems to be the very first reaction that human rights want to forbid and erase. Even more so in the case of those human beings who are vulnerable, both physically and psychologically. 'Granting rights to children' is contrary to the whole idea of human rights for children, which considers that children have the same rights as other human beings, for the simple reason of being human beings. It would be discriminatory and dangerous to state that only older children can exercise and benefit from these rights. There is no question of 'increasing' respect, as if children have to deserve this protection. Respect has to be there from the very beginning, unrelated to age or whatsoever. That basic attitude can take different forms which will be observable in communication between children and adults.

In research on parental rights, their rights in religious contexts attract especial attention as they take on the strongest form of child-rearing rights. Dwyer has questioned the soundness of the commonly advanced justifications of parental rights and concludes that they are inconsistent with principles underlying all other individual rights recognised in society. No one should possess a right to control the life of another person no matter what reasons, religious or otherwise, he might have for want-

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ing to do so. He proposes that children's rights, rather than parental rights, serve as a basis for protecting the legal interests of children. Parents should only have a child-rearing privilege, limited to actions that do not harm the child's interests. This would foster recognition that children are distinct persons deserving of respect equal to that accorded adults, and not merely a means of fulfilling their parents' goals in life.319

Others have also supported stricter standards of parental responsibility, but have pointed to the possible double standard for parents with religious convictions. For example, Manion, surveying US case-law, wonders: 'Are parents who believe in faith healing to be held more accountable for their children's well-being than parents who are ill-informed or indifferent concerning their children's health?' According to her, the question is when a state might lawfully intervene in a matter involving the physical well-being of a child versus the freedom of the child's parents to exercise their religion, and she considers it reasonable that parental religious rights be balanced against the compelling interest the state as parens patriae has in safeguarding the physical and psychological well-being of a minor.320 This discussion, however, still pays little attention to the religious rights of the children themselves, as is the case in the majority of case-law and research on this subject. Mostly, the cases are regarded as conflicts between the state and an individual claiming religious freedom, namely a parent who wishes to educate the child according to his religious beliefs. The child's right to religious freedom is, if ever, only felt as a complication to the case, not the core of the matter. As was pointed out by Justice Douglas's dissent in a case concerning Old Amish parents wishing to withdraw their children from secondary education to enable them to remain in the religious tradition of their parents: what did it do to the free religious exercise of the young people involved. Only one of the three children in the case was ever consulted.321

Van Bueren also concludes that international law has expressly emphasised in specific areas, such as religious education, only the rights and responsibilities of parents, without appearing to consider a balance between parental rights and the rights of the child. She considers the family 'likely to become a major testing ground for the success or failure of international human rights law in the next century as the divine and the secular either clash or learn to cohabit.'322

Privacy: Article 16
The right to privacy includes several aspects which touch upon the child's right to information. As a general introduction, a clear and broad description of the right to privacy can be found in the Declaration concerning the Mass Media and Human Rights, adopted by the Council of Europe:

The right to privacy consists essentially in the right to live one’s own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection from disclosure of information given or received by the individual confidentially.\textsuperscript{323}

The relationship between privacy and information can be described as follows. Privacy means to live one’s own life with a minimum of interference. To live one’s own life refers to the way one lives and decides upon, for example, relationships with others. As a result, one can decide for oneself which sources of information are admitted and used and how this is done. To live together with a family is often not a question of choice for a child. A choice could come up when parents divorce; then the child’s views should be taken into account according to articles 9 and 12 of the Convention. The importance of belonging to a family and living undisturbed with a family, can hardly be overestimated with respect to the child’s development. A family offers the possibilities of communication in a reliable environment. The family forms a basic reservoir of sources of information on all kinds of subjects to which the child can apply. Because of the intimate relationships within the family, some information exchanged is considered confidential, something which belongs to the family or family members and should not become known to others. Otherwise one would deny respect for each other within the family.

In the same way, the intimacy of the home has to be protected from interference by others. The home is, for the child, the first environment for learning about the world around him and forms the expression of the way in which a family wishes to live. Correspondence offers the possibility for a child to come into contact with others, with other sources of information, outside the family. They can help him to compare information, to form his views, to establish relationships with others and develop his personality. Protection from interference is related to the free choice of sources of information, deemed necessary for one’s development. Further aspects of privacy are honour and reputation, which in fact refer to the information about oneself that is distributed to others. Protection means that one is in control of the information which might become available to others. This aspect is often related to as information privacy: others should not obtain knowledge about someone without one’s consent; and, the right to determine for oneself when and how and to what extent information about oneself is communicated to others. This aspect of the general right of privacy is most profoundly affected or dangerously threatened by recent developments in information technology.\textsuperscript{324} Children are not exempted from information circulating about them, on the contrary. Protection of information applies even more to information exchanged in confidence. The integrity of one’s body and psyche also belongs to one’s privacy which should be protected. Compulsory medi-


cal or psychological examination is an interference with the right to privacy. Informed consent is necessary before diagnosis and treatment can take place.

In the case of children, the interference with the right to privacy can originate not only from the state, but also from the parents. One could conclude that a child’s right to privacy needs double protection: from the state and from parents, and even from others, whether involved in education or not. The right to privacy, as a general term, is protected in the Convention on the Rights of the Child in article 16. From its legislative history, comparison with similar provisions and by implication, the relationship with the right to information becomes clear. The right to privacy was one of the proposals put forward by the United States to be included in the Convention, underlining the importance of civil and political rights for children. The final text in the Convention on the Rights of the Child reads:

Article 16
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

In this formulation, several elements are discerned which are considered to be included in the collective noun of the right to privacy, for example: family, home and correspondence but also honour and reputation. It is remarkable that the initial proposal of the United States started with giving the right of privacy to both the child and the parents:

States shall ensure that the child and his parents are not subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.325

Here the protection envisages only interferences from outside the family. Child and parents are taken as a collective entity. The proposal was not adopted as some delegates considered the provision not necessary and wanted to concentrate more on the child’s basic needs. The United States put forward other proposals in 1983 and 1985, but these were not considered. The proposal met the support of Australia and Canada in 1986, but total opposition by the USSR, while other representatives like Algeria, China, Iraq and Poland said that it would be difficult for them to accept the proposal.326 Finally, in 1987 a longer discussion took place and the Unites States was able to explain that civil and political rights were important, “because the “child”, as defined in the draft Convention, included adolescents who had often acquired the skills needed to participate fully and effectively in society”.327 Even delegations in favour of such provision for children considered it necessary to balance it with a gen-

eral provision on the evolving sense of responsibility of children. Due to these remarks and remarks of opposition, a revised text was required. During the consideration of this revised proposal the next year, a comparison was made with article 17 of the International Covenant on Civil and Political Rights which reads:

Article 17
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

The view was expressed that article 17 of the Covenant on Civil and Political Rights could not be applied to the draft Convention. The word ‘arbitrary’ was vague and subjective and should therefore be deleted. Right to privacy should be replaced by right to personal freedom. In article 17 of the Covenant on Civil and Political Rights, no mention was made of the right to privacy; the words ‘right to’ are deleted before the word ‘privacy’. ‘The right to privacy might, to some extent, impair the relationship between the parents and the child.’ Other delegations, however, were quite firm that the Convention should be in conformity with the provisions of the Covenants, due to the General Assembly Resolution 41/120 ‘Setting international standards in the field of human rights’.

Concern was expressed about the piecemeal transfer of provisions from other legal instruments to the Convention. Depending upon the way these provisions were applied, they might have repercussions on the right of the parents to guide and educate their children and consequently have repercussions on the family, the nucleus of society. The law concerning minor children was currently an independent branch of the law and it should provide specific guidance to the Working Group. In the comments, it was added that if parents should be protected from states, the child should be protected from parents. The right of the child to protection of law from interference or attacks was recognised. A safeguard clause concerning the exercise of those rights as subject to national legislation, since the latter would best protect the interests of the child, was opposed as such a reference would clearly not be in accordance with established international law.

The legislative history demonstrates that little discussion has been devoted to the practical content of a provision protecting the child’s right to privacy. The only concern was that the acknowledgement of such a right would not affect the legitimate rights of parents or legal guardians to provide direction and guidance to children. The call for a general provision on the evolving capacities of the child points to the consideration that children would only gradually enjoy the right to privacy fully.

The final formulation hardly differs from the article 17 of the International Covenant on Civil andPolitical Rights, and its precursor, article 12 in the Universal Declaration on Human Rights. Comparison with article 8 of the European Convention on Human Rights reveals more differences, as the article reads:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In the European Convention, the exceptions to non-interference by a public authority are listed, and these are well-known criteria as they appear more or less in the same way in other provisions of the European Convention, for example, article 9 on the freedom of thought, conscience and religion and article 10 on the freedom of expression. This exhaustive enumeration of the grounds of restriction affords a better protection than the Convention on the Rights of the Child, as the latter prescribes only that the interference or attacks must not be contrary to the law as it stands and not arbitrary, and that the law must afford protection against such interference or attacks.\textsuperscript{322} Article 8 also lacks the protection of honour and reputation, but these elements are mentioned as grounds for restriction of the freedom of expression in article 10(2). The relationship between privacy and freedom of expression has been established by the European Commission of Human Rights, stating that 'the concept of privacy in article 8 also includes, to a certain extent, the right to establish and maintain relations with other human beings for the fulfilment of one's personality.'\textsuperscript{333}

In the Strasbourg case-law on human rights, both children and parents have invoked article 8 to protect their private lives and family life. The latter term is an autonomous concept which must be interpreted independently of the national law of the contracting states. Family life in the Strasbourg sense considers not \textit{de jure} family life, but \textit{de facto} family life.\textsuperscript{334} The importance of family life for children is not questioned, nevertheless, the state interferes sometimes for various reasons. According to article 8(2), the grounds for interference are limited.

The application of the provisions in the European Convention are not limited to the obligation of the Members States to refrain from interference. As the Court has stated: '(...)'although the object of article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel


the state to abstain from such interference; in addition to this primarily negative undertaking there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life in the sphere of relations of individuals between themselves.  

The interpretation of article 8 by the European Commission and the European Court on Human Rights has evoked various reactions in legal literature, as article 8 directly affects national legislation, notably the sensitive area of family law. Two types of opinions can be discerned. In the view of the first group of opinions 'respect for private and family life' is a vague principle in a very generally formulated article, which offers less legal security than national legal regulations. The second group of opinions welcomes the free law-finding and dynamic interpretation of article 8 by judicial decision which enables an open system of family law. Another diversity of opinions concentrates on the appreciation of the authority of European organs and European harmonisation of legislation. To this diversity can be added the controversy over the margin of appreciation, which, especially in the case of article 8, allows national authorities to decide on the necessity of interference, thereby 'escaping' control by Strasbourg organs.

Family life can be considered as living in each others' presence, exercising parental rights and bearing primary responsibility for the well-being of the child, thereby respecting the child's own rights. The term has also been described by the European Commission: 'It should be observed at the outset that family life in the contracting states encompasses a broad range of parental rights and responsibilities in regard to care and custody of minor children.' In such definitions, the perspective of the child is often lacking. To a child family life means not only living in the presence of parents and, preferably, other members of the family, but also experiencing an intimate and reliable environment in which he can feel accepted as he is, and having ample opportunities to develop himself, in relation to others. Reciprocal communication is at the basis of such relationships in family life. Even when child and parent(s) are separated, the need for maintaining relationships through communication continues. Both want to know how the other is and feels; what the other is doing, and, what important events are taking place in the other's life.

Within the context of family law, the concept of a 'right to information' is becoming more important and is more frequently used, but this term mostly refers to a right of a parent, namely the parent not living with the child, who wants to be informed by the parent having custody and taking care of the child, on the well-being and developments of the child. This term should not be confused with the child's

right to information in the sense given in this study. The parental need for information on the child is understandable in situations of parental divorce or separation from the child, but formulated as a *right* to information, it has far-reaching consequences when third parties are involved and confronted with a duty to inform. For example, school teachers could be forced to tell about the school results and the behaviour of the child, without having the protection of a professional code as doctors and lawyers have, and being detached from their natural role as defenders of the child. Apart from the difficult position of these third parties, when one parent opposes the supply of such information to the other parent, the child himself and his privacy are involved and need protection from uncontrolled supply of information about his life.\(^{339}\) In such cases, where reciprocal claims of parents can easily override the interests of the child, it is necessary to keep to the child’s perspective, which shows that his right to information, to private life and family life are interrelated. All this seems to boil down to genuine communication, which cannot be enforced by law.

The importance of family life does not mean that the child’s private life should be equited with his family life. Within the family, the child has a right to a place of his own, to thoughts and feelings which he does not always wish to share with others, just like every other human being. Parents do not have a right to information about everything that is going on within the child. From the very beginning, the child is a ‘separate’ human being. The information he gathers in his development is processed into an individual formation of his personality and includes personal views. Early expressions of such views, for example in drama, drawings and diaries belong to the private life of children. The private life of children within the family seems necessarily to put a limit on paternal power, but, generally, this consequence has not been recognised by the Strasbourg organs. The right to family life has been invoked, for example, by parents who criticised the Swedish Anti-Spanking Law in 1979.\(^{340}\) This Law is in fact an amendment to the Parenthood and Guardianship Code and reads:

> Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subject to corporal punishment or any other humiliating treatment.\(^{341}\)

No sanctions are attached to this provision in the Parental Code. The applicants, members of a Protestant Free Church Congregation, complained about the restrictions on the corporal punishment of their children. They relied on religious doctrine invoking Biblical texts, Hebrews 12:6, and Luther’s Large Catechism. They pointed to the fact that the Central Social Council of Stockholm maintained that special efforts of information should be innovated in respect of extreme religious groups which had argued for the so-called loving chastisement as a systematic part of the upbringing of children. Such chastisement included according to the applicants


\(^{341}\) 6 kap 1 § Föräldrarbolken.
'blows, beatings, boxing the ears'. According to the Commission, the exact practical effects of the provision remained obscure. The applicants were not directly subjected to any enforcement or other procedure arising from their disagreement with the Code, which might constitute an interference with their rights. The information provided by the Swedish Government tended to confirm that this incomplete law was without any practical effect beyond that of attempting to encourage a reappraisal of the treatment of children. The Commission therefore concluded that the amendment of the Code of Parenthood did not constitute an interference amounting to lack of respect for the family lives of the applicants.342

To underline the importance of communication, it is worthwhile to quote the debate of the Swedish Parliament concerning the amendment. The few opposing members argued that the proposal was unnecessary and even dangerous because by removing the biblical right of the father to chastise his child, many well-meaning parents would be labelled criminals and many children would never learn how to behave. One of the conservative members countered the argument by saying: 'In a free democracy like our own, we use words as arguments, not blows. We talk to people not beat them. If we cannot convince our children with words, we shall never convince them with beating.'343 In this respect the several complaints before the European human rights organs regarding the legality of corporal punishment in, often English, schools are relevant. The Court referred in this respect explicitly to the Convention on the Rights of the Child which has a special provision in article 28(2), that school discipline should be administered in a manner consistent with the child's human dignity.344

Article 8 has also been invoked in a case which shows the close relationship with the right to information. Mr Gaskin complained about his being refused access to a file. At a very young age, he had come into care after the death of his mother. As he suffered from psychological problems, possibly due to his treatment in care, he wished to have access to the file in order to find information on his past. The Commission weighted the interests of confidentiality put forward by the Government against the interests of the applicant and considered 'that the absence of any procedure to balance the applicant's interest in access to the file against the claim to confidentiality by certain contributors, and the consequential automatic preference given to the contributors' interest over those of the applicant, is disproportionate to the aim pursued and cannot be said to be necessary in a democratic society.' With a deciding presidential vote, a violation of article 8 was found. The right to respect for private life also includes access to personal files.

The Commission’s remarks in this case are noteworthy as regards the role of information in one's identity and personality because the file maintained the only coherent

record of Gaskin's formative years: 'An individual's entitlement to such information relating to his or her basic identity and early life is not only of importance because of its formative implications for his or her personality. It is also by virtue of the individual's age and condition at the relevant time, information which relates to a period when the individual was particularly vulnerable as a young child and in respect of which personal memories cannot prove a reliable or adequate source of information.'

A complication detrimental to children applying for access to their files seems to be the Commission's distinction between Gaskin as a child and as an adult: 'His own claim to have access to the file must be viewed in a different light after his majority than it would have been during the period spent as a minor in the local authority's care.' Van Bueren points to the various implications of the Gaskin case. If applying as a child, this right to access to personal files would probably have been refused on the basis of age. However, in case information is stored in computerised files, the European Convention for the Protection of Individuals with regard to Automatic processing of Personal Data (1981), does not exclude children qua children. Furthermore, the established violation of the right to respect for family and private life also has implications for children on access to adoption records and for children born as a result of artificial insemination by donor (AID).

A further remark has to be made in relation to the right to receive information. In the European context, it has been clarified that 'the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart him. Article 10 does not, in circumstances such as those of the present case, confer on the individual a right of access to the register containing information on his personal situation, nor does it embody an obligation on the Government to impart such information to the individual.' In this case, the information derived from the secret police register had prevented Mr Leander from obtaining permanent employment, for reasons of security. The file served an operational or practical purpose, namely safeguarding security, in contrast with the Gaskin case, after Gaskin's majority. It seems that the right of access to files, under circumstances, is better protected by article 8, although the situation is not clear for children.

The case-law of the European Convention has been criticised for the way in which state interference in family life has been treated. According to Gomien, a difference should be made between the general regulatory police power of the state to protect the citizenry and to promote social interests, and the parens patriae power to protect individuals unable to care for themselves. The latter power can only be used in particular cases, and is only justified by the best interests of the child. In fact, this power should only be used in urgent cases. In the Strasbourg case-law, the different functions of these state powers have been confused. As a result of this confusion 'the

Commission and the Court continue to take a nineteenth century view of children as objects rather than subjects of the law, accepting without question that the many disputes under article 8 properly belong to parents and the state, but not to the child as a third and directly affected party. Although claiming a high level of interest and concern for children's rights to family life under article 8, the European Commission and the Court of Human Rights believe their claims by allowing states the freedom to exercise their * Parens patriae* powers and police powers in increasingly and potentially destructive ways. (...) In order to improve those protections [of children's rights to family life], the European Commission and Court of Human Rights must recognize the nature of the different types of state powers, the proper place of the “best interests of the child” standard in relation to those powers, and the identity of the child as the subject and not the object of the law.\(^\text{349}\)

In the context of article 8, some fundamental questions have been posed by De Langen: As family relationships come in endless varieties and are personally coloured, to what degree can they be regulated legally? To what degree is it a task of the state to meddle in family relationships and family life? Could it be that expectations are placed too high in respect to what a state can achieve with legal regulations? Can one expect more of the law than correction of the abuse of power, not only in society but also within the family?\(^\text{350}\)

In addition to De Langen’s response that the state meddles too much in family life and continues to enact more legislation instead of less in this field,\(^\text{351}\) one could argue for reliance on more vivid principles of law, which enable a balance between the interests of the various parties and between the obligations of non-interference and of care. It is clear that in the field of family law, children are gradually gaining acceptance as subjects of rights. Thereby their right to information, implicit in their right to privacy and family life, can be strengthened and this should be done in cases of severe conflict. Only in such urgent cases is interference by the state justified. In general, interference by others or a third party, always result in difficult experiences, as a separation between the interests of the child and the parents becomes more explicit. As there is little agreement in society about how family life should be – in fact one can only decide for oneself –, settlement of conflicts must rely on legal human wisdom. Such a reliance requires very qualified judges, also in a moral sense. Application of legal principles has to take place within a new paradigm, in which the child is acknowledged as a legal subject. The child who is only protected by the principle of ‘the best interests of the child’ according to others, reflects a paradigm which is no longer valid when human rights of children are acknowledged. There seems to be a fear of the ‘adultness’ of children, when they themselves protect their private life and require respect for their very being.


**Right to information related to social participation**

Information plays a crucial role in the social participation of people. This is not only true for adults but also for children. They gradually broaden their area of discovery and start to meet other people; they want to get together with friends to explore their neighbourhood or to create a space of their own, or to establish a club. They also undertake smaller and then gradually larger activities in economic life, working and buying goods. They may need licenses to go fishing, to use a radio sender or to drive a vehicle and as a result are confronted with officials. In various ways children are acquainted with life in society and learn to find their way, when they develop activities. They need information to know about their possibilities and rights; information on how proceedings work and how they can express their views, either in proceedings, an assembly, or a club.

The articles in the Convention which have the most to do with social participation are the following: the right to express views and to be heard (article 12), the right to association and assembly (article 15), the right to information (article 17), the right to education (article 28), the right to cultural participation (article 31), and the right to know about one’s rights (article 42). These rights underline the participatory approach of children and form a new branch in the development of human rights for children.

Another group of articles (articles 32-36) deals with protection of the child from exploitation, abuse and neglect. Here information plays a different role: it mainly has the function of prevention. Although undoubtly of importance for a child’s development, the implied right of information in this group of rights is beyond the scope of this chapter and study.

There is some discussion as to the nature of participation rights. Flekkøy\(^{352}\) points to the Unicef-classification and considers the following to belong to participation rights: the right to information, the freedom to express opinions and have a say in matters concerning one’s life. Further, the right, as one’s maturity increases, to increasingly participate in activities of society and to take a part in decision making in the family, in school and in the widening circle of a local community. In the elaboration of her article, Flekkøy pays most attention to decision making as the core of social participation. She also points out that in contrast to the other groups of rights (survival, protection and development) it is not so generally accepted that participation rights are rights belonging to children. Many adults seem to think that these rights must be gained or given to children.

Guggenheim composes a different combination of Convention articles in discussing the child’s access to diverse intellectual, artistic and recreational resources. He considers article 17 and 31 as the core articles. To him article 17 is inextricably linked to article 13. ‘A vital analogue of the right to freedom of expression is the right to obtain information.’\(^{353}\) In the same way, he considers article 31 to be connected to arti-

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cle 28, and to article 32 which bars exploitation of children. The consequences of this combination of articles will be discussed later, at the occasion of article 31.

Some of the articles mentioned above have been discussed in earlier paragraphs and will not be taken up again. The remaining articles concerning the child’s right to information related to social participation are: 15, 28, 31 and 42, which will be treated below.

**Freedom of association: Article 15**

The need to exchange views, to strengthen awareness, to activate others will develop in the child when he gets a chance to meet with other people, especially with other children and peers. Such opportunity offers a special way of finding and reconsidering information and views. The right to freedom of association and of peaceful assembly protects this opportunity and guarantees the non-interference of the state, apart from some exceptions. The final formulation accepted by the General Assembly reads:

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

It was not until 1985 that the first sign of the child’s right to freedom of association appeared in a general proposal from the United States to ensure children the civil and political rights and freedoms in the Convention, including the right to privacy and the right to petition for redress of grievances. As the freedoms of association and expression and the right to peaceful assembly have the same enumeration of restrictions, they were named together. The proposal was not discussed, a revised text for discussion was presented to the Working Group in 1986. This text, however, was met with opposition from East European and Islamic countries. In this proposal, the right to privacy and the right to freedom of association were still combined and in the next proposal the freedom of expression was added again.

1. States Parties to the present Convention recognize the rights of the child to freedom of expression, freedom of association and freedom of peaceful assembly.

2. States Parties recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

3. The exercise of the rights to freedom of expression, association and peaceful assembly shall be subject only to those restrictions which are provided by law and which are necessary in a democratic society in the interests of national security, public order (ordre public), the protection of public health and morals or the protection of rights and freedoms of others.

4. In no case shall the child be subjected to incarceration or other confinement for the legitimate exercise of these rights or other rights recognized in this Convention.

5. This article shall not be interpreted as affecting the lawful rights and duties of parents or legal guardians, which should be exercised in a manner consistent with the evolving capacities of the child.\(^{355}\)

The 1987 discussion has already partly been presented in the historical review of article 13, where the background of the proposal was explained by the delegation of the United States. The delegation of Australia remarked that there appeared to be confusion about the freedoms of association and expression and the right to privacy, and that no provision was made for the evolving sense of responsibility of the child. Doubts were also raised about the need to reproduce provisions already existing in international instruments. When reproduction was deemed necessary it should not be selective, but instead consistent with the existing Covenant on Civil and Political Rights. The Chinese delegation was opposed to the proposal as these freedoms 'could not be enjoyed by children in the same way as they are enjoyed by adults because the intellect of the child was not as developed as that of an adult, and therefore a child could only engage in activities commensurate with its intellect.'\(^{356}\) This attitude towards children was continued in a future discussion restricting the recognition of the child's right to the child's age and maturity. In 1988, the international NGO Ad Hoc Group presented a text which to a large extent quotes existing formulations:

1. States Parties to the present Convention recognise the rights of the child to freedom of association and freedom of peaceful assembly.

2. The exercise of these rights shall be subject only to those restrictions which are provided by law and which are necessary in a democratic society in the interests of national security, public order (ordre public), the protection of public health and morals or the protection of the rights and freedoms of others.\(^{357}\)

A revised proposal form the United States had a similar formulation, but also included a general article on the rights and duties of parents to provide direction and guidance to children. In this way, the right protected children from action of the state and would not affect the legitimate rights of parents. In the comments, the inclusion


of civil and political rights was supported, but on the condition that the rights of parents were safeguarded, the balance between rights of children and rights of the family was preserved and the wording of the article was in conformity with the Covenant. All further proposals to impose restrictions on the right, going further than the Covenant, for example, relating the exercise of the right to the best interests of the child, were consequently not accepted. Nevertheless, it was commented that this freedom should be commensurate with the age, maturity and level of the child, in the same way as the right to express opinions was treated: giving due weight in accordance with the age and maturity of the child.

The combination of both rights in one article, whereas the Covenant had two separate articles (21 and 22) was explained by the fact that in the Covenant the right of adults to join trade unions was addressed. The draft Convention did not need to address such issues; the freedom of association and of assembly did not mean any kind of associations or organisations, such as trade unions. Nevertheless, it should be recognised that older children have the right to join trade unions.

During the process of technical review, the International Labour Organisation (ILO) commented on the draft stating that the right of older children to join trade unions was contemplated, but rather as an accessory aspect and therefore not expressly mentioned as in article 22 of the International Covenant on Civil and Political Rights. The general minimum age for employment is fixed at not lower than 15 years (14 for developing countries). Children, according to the draft Convention, were workers pursuant to the ILO Convention 1948 (No. 87) and these differences might cause difficulties. These difficulties were only solved by a general safeguard clause for rights recognised in other international instruments, the present article 41 of the Convention on the Rights of the Child.

The drafting process shows that states were to some extent reluctant to take up the right to freedom of association and peaceful assembly in the Convention on the Rights of the Child. The combination with the right to freedom of expression permits these rights to provide the child with more opportunities to express his opinions, including by means of groups meetings and joint action. It is precisely the fear that these rights would be used in political areas which caused the doubts and hesitations in the discussions, and led to attempts to make the right dependent upon the competence of the child. This linkage with competency was also employed in respect of the right of the child to express his views on matters affecting him, article 12. It remains unclear whether article 15 allows children to join trade-unions.

The right to freedom of association had already appeared in the Universal Declaration stating:

Article 20
1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

This provision is further elaborated in two separate articles in the Covenant on Civil and Political Rights: article 21 recognises the right of peaceful assembly, with the well-known restrictions; and, article 22 explicitly mentions:

Article 22
1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (...)
2. Nothing in this article shall authorize States parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in the Convention.

The right to form and join a trade union is explicitly included in the right to association. At the same time, the strong position of the ILO Convention is stressed. This Convention prescribes a minimum age for employment and therefore also a minimum age for joining a trade union. This would imply, as stated in the discussion, that only children above the legal minimum age for employment have the right to join a trade union.

The actual situation in some countries is that children under this age are working, often in the poorest conditions. They would benefit greatly from forming an association which in fact is a trade union. Such child workers unions do already exist, for example, in India. This type of development can cause a dilemma for international organisations, but the views of children themselves should play a strong role.

The principle of the Universal Declaration that no one is compelled to belong to an association is not elaborated on, but the European Commission has declared ‘that the very concept of freedom of association with others also implies a “negative right” not to be compelled to join an association or a union.’ This formulation can be important when children and parents decide about the membership of the child in groups and clubs. Such decisions are choices on the possible sources of information for a child.

Cultural participation: Article 31
The possibility for a child to experience forms of communication, throughout the ages, in different layers of a society, in different cultures, is contained in his need for cultural participation. Cultural participation provides a specific way of acquiring information, information which is needed to find one’s way in life. The role of culture has been described by the Director-General of Unesco in 1973, in the following words: ‘When the individual is depersonalized by the scientific and technological

359. See the experiences of the Bal Mazdoor Union that filed a special leave petition in the Supreme Court requesting the right of children to form their unions: Panicker, R., History of Butterflies, Programme of Street and Working Children. Our experience in empowering children, New Delhi, 1996 (in press).
rationalization of labour and by the standardization of living conditions, culture offers each of us the means of recovering his identity and his capacity for creation and expression. When the new media of mass communication subject the individual to a stream of undifferentiated information and turn him into a passive spectator, culture offers each of us the means of finding his own pace in the world, appreciating what is happening, and reacting. When the pressure to consume turns the individual into a conditioned being, culture offers each of us the means of choosing, of refusing any form of subjection, of preferring reflection to reflexes. When urbanization cuts off the individual from his roots and traditions, culture means being able to re-establish links with his own particular inheritance, while gaining access to the cultural heritage of all mankind. Lastly, when man asks himself what he is doing on earth, culture can give him guidance in seeking a reply. 361

The final text in the Convention concerning cultural participation reads:

Article 31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic and leisure activity.

In the drafting of this article, most comments were expressed at the very beginning when the provision was the same as Principle 7 of the Declaration of the Rights of the Child, of which the third paragraph is devoted to leisure activities.

Principle 7
The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him on a basis of equal opportunity to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.
The child shall have full opportunity for play and recreation, which should be directed towards the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

The comments on this subject focused, inter alia, on the phrase 'should be directed to the same purposes as education', which could be interpreted as restricting the rights of the child. 'While educational games are to be encouraged, they should not be the only ones the child can play. For his full development, he also needs to involve him-

self in activities which are not necessarily part of a specific educational system', according to the comment from France, which preferred deletion of the phrase. Another comment referred to the same phrase and questioned whether 'the same purpose as education' implied the same purposes of all aspects of education, and whether education should be equated with schooling. Other interpretative problems concerned the distinction between play and recreation, as these were not seen in the same positive light by many members of the community: New Zealand foresaw considerable public debate, as well as between central government, local government and the education board on the implementation of giving full opportunity to play and recreation. A further question arose to whether full opportunity implied easy physical access, plenty of time or provisions for various ages of children. Norway broadened the right by including social activities and extended the application to children of pre-school age.

In the first draft of an envisaged larger Convention, the provision was framed in a different wording:

The child shall have the full opportunity for recreation and amusement appropriate to his age. The parents and other persons responsible for the care of the child, educational institutions and State organs shall be obliged to implement this right.

The wording 'recreation and amusement' is noteworthy, as this is quite different from the educational connotation used in the former Declaration of the Rights of the Child in 1959. In a revised Polish draft, the wording was changed into 'leisure and recreation'. An idea of protection can be found in the words 'appropriate to his age'. Noteworthy also is the fact that in this text an obligation is imposed on 'parents and other persons responsible for the care of the child, educational institutions and State organs' which are obliged to implement the right of the child. A Canadian proposal, discussed five years later, contained a further elaboration, extending the activities to cultural life:

1. Every child has the right to rest and leisure, to engage in play and recreation and to freely participate in cultural life and the arts.
2. Parents, States Parties, educational institutions and others caring for children shall take steps to implement this right, including making reasonable limitations on school and working hours.

The first paragraph gave a broader view of the protected activities and no longer used a reference to the capability of children. The age-related reference was, howev-

365. A/C.3/36/6, part II.
er, quickly re-introduced during the discussion in 1985. The second paragraph shows the link with the protection from exploitation by referring to ‘reasonable limitations on school and working hours.’ In this formulation the word ‘participation’ appears and cultural life is introduced. The proposal is weakened by the formulation ‘shall take steps to implement’ instead of ‘implement’. The Canadian proposal was combined with a proposal from the United States that replaced the second paragraph stating that:

the States Parties to the present Convention shall respect the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.367

A point that has always been very important to the United States is the idea of equal opportunities. This idea is also introduced in the right to cultural participation and was accepted by the Working Group. In the records, however, nothing can be found about the philosophical or political background of the different formulations and proposals. The only intrinsic comment on cultural rights was made by Unesco, at the earliest stage of the comments. Unesco made reference to ‘the Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It by taking up the idea of effective safeguards for free access to national and world cultures by all members of society (paragraph 4(b)), including children, and the idea of protecting and enhancing all forms of cultural expression such as national or regional languages, dialects, folk arts and traditions both past and present, and rural cultures as well as cultures of other social groups (paragraph 4(g)), particularly as essential conditions for genuine cultural development of children of all human groups. Emphasis should also be placed on two basic elements for the cultural development of the child: the achievement of conditions conducive to creative work and artistic expression, and the development of cultural education and artistic training in educational and training programmes aimed at multiplying opportunities for intellectual, manual or gestural creation (paragraphs 4(k), (m) and (n)).368

In the discussion, attempts were made to clarify and make the provisions more concrete. Cuba wanted to add ‘social activities’ to cultural life: recreation should be replaced by ‘recreational activities’. The suggestion to change the status of the formulation was quite important. Instead of making a statement about this right, the formulation was turned into an obligation for states to recognise the right of the child. Such a change was made to many provisions in the Convention.

The only fundamental discussion on the provision was put forward by Germany, that expressed its doubts about the advisability of proclaiming a universal right to leisure and recreation. The issue should be dealt with in the context of the provision for protection from economic and social exploitation. The remark was supported by Japan, which retained for itself the right to insert a reservation clause.

In his commentary on the draft Convention, Bennett notices that there is only one exception to the almost total lack of a critical approach to acceptance of rights for the Convention. This exception is the right to rest and leisure. Bennett is not convinced that the legislative approach to the creation of international norms is the best way to proceed, as this often results in vagueness, overbreadth, lack of comprehensive planning, and dilution of established rights. This last point is exemplified by the proposed right to rest and leisure. Bennett finds that the similar provisions of this right in the Universal Declaration and in the International Covenant on Economic, Social and Cultural Rights have at least some definition and purpose, because they are presenting the right as a limitation upon the demands of employment. In the draft Convention, there is no such contextual limitation and this leaves the subject to open interpretation and to being ignored.369 By formulating this provision as a right, it is equated with other rights, for example, the right to be free from torture or the right to education. This equation diminished the value of calling a concept a 'right', according to Bennett.370

In fact, the draft article was considered in combination with the article protecting children from exploitation, which was the next article in the draft. Canada did not only make a proposal for a provision on leisure, but also for a provision on protection from exploitation. The idea of limiting school and working hours in favour of rest and leisure clearly shows the interrelationship between these provisions.

Quite a different reservation was made by the Holy See, which wanted to have a relationship between the right of the child to rest and leisure, and the right of parents, in particular, to oversee and control the rest and leisure activities of their children, 'for a child could not be considered out of the context of his family environment.'

After the discussion in 1985, nothing was heard with regard to article 31 until 1989. Then the Working Group considered the proposed technical revisions.371 These revisions included a substitution of the words 'to participate freely in cultural life and the arts' by the phrase 'shall encourage the provision of appropriate and equal opportunities for these purposes' in paragraph 1. The idea behind this revision was probably to have less interpretable terms in both paragraphs, to have a similar construction of both paragraphs and to split leisure from cultural life, because the deletion of the words 'recreational and leisure' in the second paragraph was also proposed. The Working Group decided that the proposals in fact constituted substantial changes and were unacceptable. The reasons for this reaction cannot be found in the records. This seems to have been one of the rare occasions where technical revisions were not accepted.

Similar provisions of the right to cultural participation, for purposes of comparison, are found in Principle 7 in the Declaration of the Rights of the Child, which has

369. This has become true: the right is, for example, ignored in the Compendium of Van Bueren, G., The International Law on the Rights of the Child, Nijhoff, Dordrecht, 1995.
already been mentioned. Four points are remarkable: the principle speaks of 'play and recreation', which was also the starting point of the draft for the Convention. Secondly, the educational purpose is clearly stressed. This aspect cannot be found in the Convention. Nevertheless, it is quite logical that it appears in the Declaration because the first part of Principle 7 deals with the child's entitlement to receive education and the purpose of education. As a result, this combined formulation can also be a clarification of the inextricable connection between articles 31 and 28 which has been noted by, *inter alia*, Guggenheim, who pitied the poor children who were not, even in their leisure time, allowed to engage in play that was not educational. A third point to note is the responsibility which is laid in the hands of society and public authorities to endeavour to promote the enjoyment of this right to play and recreation. In Principle 7, a clear distinction is made between the responsibility for education and guidance of the child which lies in the first place with the parents, and the responsibility for play and recreation. The last point is the underlining of the basis of equal opportunity as a principle of education and personal development, which also applies in the case of play and recreation. The Universal Declaration of Human Rights already contained an article on the participation in cultural life. Article 27 states:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share the scientific advancement and its benefits.

This formulation also contains a reference to the field of scientific knowledge, which is not expressly mentioned in the Convention. The reason may be that children are not supposed to be involved in scientific work. This reasoning might hold true, but there are exceptions: children discovering archaeological objects or designing computer programmes. As a result, cultural life mentioned in the Convention, has to be understood in a wider sense which includes the sciences. The second paragraph in article 27 shows another side of the involvement in cultural life:

Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

A similar provision is not found in the Convention, but this does not mean that a child as an author is without hope. Recourse may be had to the International Covenant on Economic, Social and Cultural Rights. This Covenant elaborates the right to cultural and scientific participation and states in article 15:

1. The States Parties to the present Covenant recognize the right of everyone:
   a) to take part in cultural life;
   b) to enjoy the benefits of scientific progress and its applications;
   c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

The Covenant not only repeats the rights mentioned in the Universal Declaration, but also pays attention to the diffusion of science and culture, scientific and creative freedom and international cooperation. It is clearly stated that everyone is entitled to benefit from intellectual property protection for his creative works. There is no reason to exclude children from this provision.

The free time of the child is on the one hand limited by school and on the other hand by work. Therefore, provisions on leisure time not only relate to school but also to work. In the Convention, article 31 is followed by the provision which protects the child from economic exploitation and harmful work in article 32. Among the measures to be taken by States, there are the obligations to provide for a minimum age for employment and for appropriate regulation of the hours and conditions of employment. The Universal Declaration of Human Rights contains a statement on this subject in article 24:

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

This provision is elaborated in the International Covenant on Economic, Social and Cultural Rights which clarifies in article 7 that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular: (...)

d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as enumeration for public holidays.

A similar obligation for states parties is also contained in article 2 of the European Charter, namely to provide for reasonable daily and weekly working hours, public holidays with pay, annual holidays, and weekly rest periods. The right to rest and leisure in these articles is clearly related to work and the hours and periods of work are limited. This relation is not found in the Convention as the issues are split in at least three articles: article 31 (rest and leisure, cultural life), article 28 (education, school), and article 32 (exploitation, work). This linkage of school, free time and work probably also formed the background to the Canadian proposal to make reasonable limitations on school and working hours, discussed in the beginning of this Chapter. Such a contextual limitation would have made the right to rest and leisure more substantive and would have responded the critical note put forward by Bennett, as mentioned above. The provision as it stands now in the Convention is neither related to education nor to exploitation.

In discussing the impact of article 31 on the United States, Guggenheim stresses the importance of the interplay of laws relating to school, work and play on the pro-
tection of the rights of children. If there are no restrictions on time, place or age, young people might be employed to work many hours each day under exploitive conditions. However, 'if there are no requirements for compulsory education, young people have no commitment to be some place or to do certain things during each day which would preclude working.'

In his article, Guggenheim continues describing the relation between leisure time and the standard of living, pointing at a community service like electricity and to the fact that virtually all Americans have neighbours or friends with television sets. In schools, television has become a regular part of the curriculum. Among the community-based leisure programmes, he mentions sport activities, social gathering halls, national parks, museums and finally public libraries. Such facilities meet qualifying conditions: they are open to the public, without fee, or for a very small fee, during hours convenient to school-aged children.

Guggenheim also clarifies the distinction between school libraries and public libraries. School libraries 'are subject to greater restriction, based on content, than are public libraries, but schools are not permitted to remove books from their shelves because school officials do not approve the contents of the material contained in them.'

Another provision mentioned by Guggenheim is freedom to be on the streets. Many local communities restrict children's access to the streets to daytime hours or to specific hours, unless accompanied by an adult. This curfew is not imposed in order to limit leisure pursuits, but instead to protection children from harm. It is considered a legitimate exercise of the police power.

Certain establishments are also thought to be injurious to the well-being of children, and as a result the freedom to enter, inter alia, pool halls, dance halls, and electronic games parlours is restricted. These restrictions also make it possible to organise events like dances for 14-18 year olds, and to exclude people over 18. In this case, the right to leisure is enjoyed by the group aged 14-18, but younger children and adults are excluded of these activities. So the formulation in the Convention 'appropriate to the age of the child' has both stimulating and protective functions.

Cultural rights seem to be an often neglected type of human rights. Some would even consider these rights to merely belong to the field of cultural policy. Unesco has attempted to set up a survey model on access to and participation in cultural activities, which includes oral and other traditions more dominant in developing countries that cannot be collected in statistics. The radio, for instance, plays a far more important role in developing countries than in industrial ones. The model, which includes questions on literacy, books at home and library use, has been tested in Indonesia and Korea. The interrelationship between free time, public facilities and availability of information, has an impact on reading activities, according to the findings.


The analysis of article 31 demonstrates that a child’s right to participation has a lot to offer, opening up the possibility to come into contact with various sources of information and various means to express oneself. However, recognition of the right to cultural participation requires the state to make serious efforts to create conditions conducive to the effective exercise of that right. Such efforts call for a cultural policy in which democratic rights are fundamental to the promotion of full development of cultural values and the aspirations of the community, in all their abundance and diversity and for which the state puts its resources into the service of that development.

Access to Education: Article 28
As stated above, the right to education is connected to the right to rest and leisure. It is not possible to participate in cultural life without some form of education. Books have to be read. Films have to be appreciated, arts and museums require historical and philosophical knowledge. Participation in cultural life is all about making choices. Wringe discerns a group of the child’s intellectual rights which should be considered as a whole as they are interlinked: the right to education, the right to access to knowledge, and the right to freedom of expression. The ability to exercise these rights is not innate but has to be learned: in the family, among peers, and in school. What does education provide according to the Convention?

Two articles deal with education: article 28 provides a right to education, article 29 covers the purpose of education. Both articles can be useful for finding out what education contributes to the identity of the child, his development as an individual person and social being and what role the right to information plays. Article 28 is quite a long article and reads as follows:

Article 28
1. States Parties recognize the right of every child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
   a) Make primary education compulsory and available free to all;
   b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
   c) Make higher education accessible to all on the basis of capacity by every appropriate means;
   d) Make educational and vocational information and guidance available and accessible to all children;
   e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

The length of this article points to in-depth discussions which had to cover several interests. The right to education as such is not a new issue. It was considered so important that it already figures in the Universal Declaration of Human Rights. Article 26 states in its first paragraph:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

This short paragraph lists the important items of the right to education. First of all, education is a right. This applies not only to a group of people, children or adults, but is valid for all individuals. The second aspect requires that education be free, at least in the elementary and fundamental stages. This aspect aims at the desire for free universal unimpeded elementary and fundamental education. The next element states that elementary education must be compulsory. This is a difficult point to understand, because from a child’s point of view a right to education (to seek, ‘enjoy’ education) is turned into a duty to be educated (to receive education). It is often explained that the right to education can only be achieved if it is transformed into a duty of parents to send their children to school, but there remains a complicated relationship between the state, parents and children, and the school as a fourth partner. A fourth aspect is that technical and professional education are discerned from elementary education and must be generally available. This provision seeks to enable everyone to have an adequate education in order to earn a living. Finally, higher education is discerned and must be equally accessible to all on the basis of merit. This last point might call into question procedures which limit enrolment and reduce the funds available for financing studies. Most of these points have returned in the discussion on the draft of the Convention, not so much because education is a key element in the development of a child, and also in the development of a nation, but because such a right requires financial investment from the state.

A further elaboration of the right to education can be found in the International Covenant on Economic, Social and Cultural Rights (1966) which takes up the many aspects of this right in article 13.

Article 13
1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They
further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
   (a) Primary education shall be compulsory and available free to all;
   (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
   (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
   (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
   (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Compared to the clear statement in the Universal Declaration this elaboration reveals a shift in practical implications. The important point in this provision is the idea of 'progressive introduction' of the right to free secondary and higher education (para. 2(b) and (c)). This concept means that states can themselves control the pace in which such education can be offered freely, which gives more weight to the 'policy' aspect of the provision and less to the 'rights' character. The accessibility of higher education to all, on the basis of capacity is ensured. Note the shift from 'merit' to 'capacity'.

A new element provides for another type of education: fundamental education for those who have not received or completed primary education (para. 2(d)). This paragraph makes clear that the right to education is also for adults, who later in life wish to complete primary education, or wish to renew their education, as a result of the concept of 'permanent education'. In order to support an effective school career, the development of a system of schools is promoted, likewise the article promotes
the establishment of a fellowship system to support exchange and improvement of teaching staff.

During the years in which the Covenant was drafted, the importance of the family was stressed as were the rights and responsibilities of parents. According to paragraph 5, they have the option to choose private schools (para. 3 and 4). This liberty of parents to choose for their children and to ensure religious and moral education in school in accordance with their convictions are also points which have been raised in the discussion on the draft of the Convention.

Another root of the right to education can be found in the Declaration of the Rights of the Child in the first paragraph of Principle 7, which was already mentioned in relation to cultural participation:

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

In this formulation, some other points are stressed, for example: equal opportunity which means that all persons should have equal chances to develop themselves. No discrimination in offering education will be allowed. This point is the core item in the Unesco Convention against Discrimination in Education (1960) which elaborates on the notion of 'discrimination', as the deprivation of access, limitation to inferior education, separate educational systems, and incompatibility with the dignity of man. The child is also offered 'general culture', a broad term which is not often used in other international human rights instruments. More recent texts elaborate not the general, but the specific culture of indigenous people and minority groups. However, general human values, such as respect for human rights, could be considered as belonging to general culture.

The idea that children have to contribute to society is reflected in the expression 'useful membership of society'. This phrase makes it clear that education has a two-sided function: individual development and social membership. Probably because of this twofold aspect, the right to education is not only a right for the individual who can freely dispose of it, at least not in the case of a child. This right is balanced by the obligational character of the right, namely compulsory education. The right to education is in fact a right that must be exercised, otherwise the child, his parents, will have acted unlawfully.

The formulation in the European Convention is also rather remarkable. Article 2 of the First Protocol provides:

No person shall be denied the right to education.

In this provision, the individual appears to be seeking education, and the state is not allowed to refuse access to education and actual instruction.376

With respect to the provisions in the Convention on the Right of the Child, the original article in the draft reflected the responsibilities of the parents and the state. The point of the responsibility of the parents was stressed by the Netherlands in the proposal: 'The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right in a manner consistent with the evolving capacities of the child.'\textsuperscript{377} This proposal referred to the International Covenant on Economic, Social and Cultural Rights, article 13(3), but the aspect had already been mentioned in another, general article of the draft Convention. The text was with some slight revision adopted in 1985, and at the first reading in 1988, but was later deleted as article 5 was considered to cover the concerns mentioned.\textsuperscript{378}

A long discussion was held, not so much about the content of the right to education, but about the implementation of the right. In 1984, China had already mentioned that it would be necessary to add that measures to be taken shall be materialised as early as the circumstances permit. Other solutions were proposed: 'cost free education', 'as early as permitted by national resources available' or 'as early as possible'. It was not quite clear to the delegations whether their proposals were stronger or weaker than the standard already formulated in the International Covenant. 'Cost free' was considered a weaker standard by the USSR, but the opposite opinion was held by the United States. In 1986, Bangladesh asked for some recognition of the economic problems faced by developing countries in respect of realising compulsory free education as proposed by Defence for Children International. The words 'as early as possible' were at first adopted but later deleted, because 'the chapeau to the paragraph already contained a qualifying phrase.\textsuperscript{379} What is envisaged is probably: 'with a view to achieving full realization of this right'. It is not clear if this applies to the state or to the child, as he grows up and can enjoy more education.

Part of the problem was solved by introducing some measures that could be taken to make education available and accessible to every child: financial assistance, and scholarships or free education. As late as 1989, the Netherlands expressed its concern over the interpretation of the word 'free' as meaning 'free of costs'. Japan answered that its interpretation was that free education was merely given as an example of how education could be made accessible to children and not to mean that free education was a measure which states parties were obliged to adopt. The idea that higher education should be made free of cost was not supported by the Netherlands and several other countries, so it was only stated that higher education should be made accessible by every appropriate means, not by the progressive introduction of free education. Finland observed that the idea of progressive introduction was taken from the International Covenant, but that it was felt to be outdated.

Some relief was given to the developing countries by the proposal of Algeria to promote the international cooperation in matters relating to education, to implement programmes of action and to guarantee to the children of developing countries access to scientific and technical know-how and modern teaching methods; and, in

\begin{footnotes}
\item[377] E/CN.4/1985/64, para. 62.
\end{footnotes}
general to eliminate ignorance and illiteracy throughout the world. It is not clear from the final text who should be given access to scientific and technical know-how, but from the proposal it is quite clear that children themselves are concerned. Here it is obvious that part of the realisation of this right of children can only be effective, if adults, in this case teachers, provide the appropriate circumstances.

The right to education was in another aspect weakened by the formulation 'to encourage the development of different forms of secondary educations systems' instead of 'to develop'. Unesco warned the delegates that this formulation was weaker than the international standard laid down in the Unesco Convention on Discrimination in Education, but this admonition was in vain.

Another point of discussion was school discipline. In a revised Polish draft, it was stated: 'States Parties shall ensure that school discipline is administered in a manner reflective of the child's human dignity. Methods which are either physically or mentally cruel or degrading shall be prohibited.' Some delegates wished to weaken the proposal by replacing the word 'ensure' and putting 'encourage' instead. The phrase about methods was felt to be unnecessary. Sweden pointed out that degrading and cruel methods of discipline were not restricted to schools, but also relevant in other situations. Therefore, a separate paragraph or article was proposed. Due to a proposal from Unesco and the technical review, the article was strengthened by requiring consistency with the child's dignity and conformity with the present Convention. The Netherlands asked for a clarification on this last part and Canada explained that the aim of the provision was to reiterate the protection of the child guaranteed by the provisions of the Convention, in case school discipline was transformed into cruel and degrading treatment.

The difference between the right to education and the duty to attend school, is clearly demonstrated in the remarks about a paragraph which was introduced in 1989, obliging the states parties 'to take measures to encourage regular attendance at schools and the reduction of the drop-out rates.' This paragraph, was welcomed by the Netherlands, but questioned by Sweden, which feared that it could promote the punishment of children who failed to attend school regularly. Canada indicated that it was meant to promote positive measures to encourage regular attendance of school children. Nevertheless, these concerns would be met by article 39, dealing with the physical and psychological recovery of the child as a victim of punishment. The United States proposed to limit the provision to primary and secondary education, but France disagreed, stating that 'even in tertiary education there were students who dropped out for the wrong reasons and young students whose self-discipline could not be taken for granted.'

Finally, there is a paragraph in article 28 that explicitly mentions the provision of information. Article 1(d) states: 'Make educational and vocational information and guidance available and accessible to all children.' In the early drafts only the access to general and vocational secondary education was mentioned. In 1988, Venezuela

proposed a separate paragraph: 'Inform and provide vocational guidance to the child.'\textsuperscript{382} In a revised proposal, this was changed to 'educational and vocational information and guidance'. ILO was in the drafting group. No discussion on this paragraph is recorded.

The idea of vocational guidance is not new but can be found, for example, in article 9 of the European Social Charter:

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity; this assistance should be available free of charge, both to young persons, including school children, and to adults.

The remarkable point is that states are obliged to make information available and accessible to children, and that this information not only concerns vocational matters but also educational matters in general. From this paragraph, one can draw the conclusion that the right to education is also supported by a right to information about education. This provision enables children to make decisions themselves or to take part in the decision-making process about their educational and vocational aspects of life.

As Flekkøy has pointed out, decision making is very important and must be learned at an early age. 'If we try to think which personal qualities our young will need in the future, many of us will be uncertain. The world and its communities are changing so quickly that it is hard to say, for instance, what kinds of information children should be getting at school. Even computer languages taught in school today may be obsolete by the time pupils leave school. Understanding and communication, between nations, different cultures and languages is increasingly important. Precisely because the world is changing so fast, young people must be creative, flexible, imaginative, understanding, responsible, caring and sharing, optimistic and peace loving. (...) If children share decision making and responsibility, so that they feel that they can make a difference, that they can help change things, within their family, their schools and their organisations, they grow up fighting for causes and believing in a better future.'\textsuperscript{383}

De Bruijn-Lückers remarks that the freedom of parents to choose a school for their child is not explicitly mentioned in article 28, in contrast to art. 13(3) ECOSOC. She considers that this freedom, however, is protected by the general provision of article 5 of the Convention on the Rights of the Child.\textsuperscript{384} One must add that this freedom is governed by the principle of the evolving capacities of the child. Older children will have a greater say in the final decision.

\textsuperscript{382} E/CN.4/1989/WG.1/WP.22.
Knowledge of rights: Article 42

It is evident that one has to know one's rights before one can exercise them. Such a right to information about rights can be traced in article 42 of the Convention:

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

This obligation to distribute information concerning the Convention, as an integral part of the obligations imposed by the Convention is not known in existing international Conventions. It was therefore concluded, for example, in the parliamentary discussion on the Convention in Belgium: 'Le présent article 42 constitue donc une grande innovation vis-à-vis deux Parties des Nations Unies et forme un élément clé pour le respect de la Convention: la connaissance des règles de droit est en effet élémentaire pour l’application effectives de celles-ci.'\textsuperscript{385} The impulse to this innovative provision clearly came from the international NGO Ad Hoc Group, who in 1987, proposed the following text:

The States Parties to the present Convention undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike, using forms, terminology and language (including local languages) accessible to them.\textsuperscript{386}

The representative of Norway, although supporting the initiative, proposed to delete the last part, describing the means of publication. This alteration was agreed to by the delegations of Australia, Austria, Canada, the Netherlands and the United States. During the process of technical review, the Working Group insisted on retaining the word 'appropriate', referring to the means which should be used.

The provision shows that it is a duty of states to make the Convention known. Several aspects can be considered. The obligation to undertake is not the strongest formulation, but makes clear that activity is necessary. This obligation is also stressed in the wording 'active means'. The state cannot confine itself to a low profile or routine activity, it really has to make effort to ensure that the activities are effective.

Not only the provisions of the Convention as such have to be made known, but also its principles. This latter aspect has a more far-reaching connotation. It means that the fundamental concept of children's rights, the right of the child to be respected as a human being and an individual person with his own thoughts, feelings and activities can be used as a principle in all circumstances. This offers possibilities for the protection of the rights of children even in cases which are not explicitly mentioned in the Convention. The basic principles serve as an extension of the Convention beyond the formal text, giving guidance to application in daily life.

The duty to make both principles and provisions of the Convention widely known means that this knowledge must go beyond interested groups like children's

rights movements, to adults and children alike. In fact, nobody should have an excuse for not knowing about these rights, as all will probably meet children in daily life. The role of adults, when encountering children will be influenced by their knowledge of children's rights, and their own rights and responsibilities. Awareness of the rights of others is an important factor. This factor is one of the reasons that, for example in Sweden, a law which prohibits child beating, but is without sanction, still has a positive effect: adults have become aware of their behaviour because an information campaign was launched, brochures were distributed to all households and the subject was discussed at length.387

The state should not only be active but also use appropriate means. This qualification includes that in the publicity surrounding the Convention, the state has to take account of the evolving capacities of the child, language preferences and other specific characteristics of the target groups. In general, it will mean that choice of media, and other aspects of the communication process will have to be adequate and in accordance with the aim and content of the Convention.

At the final stage of the drafting process, some parallels to the need of public information on human rights might be found in other activities of the Commission on Human Rights on the basis of the indications in the Preamble and general introduction of the Universal Declaration of Human Rights which not only states that 'a common understanding of these rights and freedoms is of the greatest importance for the full realisation', but also that 'every individual and every organ of society keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.'

After 1948, attempts have been made to inform the general public of the activities of the United Nations, via education,388 NGO's and the media, and the International Year of Human Rights, 1968. Further promotion and encouragement of human rights, programmes and alternative approaches for improving the effective enjoyment of human rights were supported by the World public information campaign for human rights in 1989. 'The house of human rights needs the presence of a well-informed public opinion sensitive to the human rights issues to assure its permanence and stability.'389 In this context, the World Association for the School as an Instrument of Peace (EIP) underlined Resolution 41/130 of the General Assembly which recognises the valuable role of non-governmental organisations in the dissemination of information concerning human rights. The EIP underlined the need to make available the relevant United Nations instruments in simplified, attractive and accessible form, and recommended 'that any incitement to racial and discriminatory

388. See for an early example: Education for peace. Teaching of the purposes and principles, the structure and activities of the United Nations and the Specialized Agencies in schools and other educational institutions of Member States, United Nations, New York, 1960 (E/3322).
prejudice which inhibits and distorts children's perception should be expunged from all school textbooks; and that peace and human rights teaching as recognized *inter alia* in the Universal Declaration should be made official, in keeping with the moral commitment entered into on 10 December 1948.390

Another consequence of the provision in the Convention on the Rights of the Child is considered by Verhellen. He mentions that this provision in article 42 also includes that state reports on the implementation of the Convention (article 44) should meet the qualifications as explained above.391 This obligation would entail some translation being made available for children in order to meet their capabilities and interests and to make the Convention understandable.

In spite of new tendencies, the idea of protection as the nucleus of the Convention remained during the whole drafting process. Although Senegal was often represented and took an active part in the drafting, at the end of this process the following remark was made with regard to the title of the Convention: 'Doubt whether the present title which read "A draft convention on the rights of the child" faithfully reflected all those concerns which the delegations had when elaborating this draft'.392 Therefore, the alternative "a draft convention on the protection of the child" was proposed. This was, however, considered to be too restrictive by other delegations: the Netherlands, Norway, and Argentina. In the same session, conclusions from various regional meetings on the draft convention were presented. An example of a balanced approach can be found in the report from the Portuguese-speaking conference where it was concluded and emphasised that the child should be considered from a dual perspective: as an object of protection and as a possessor of rights.

**Conclusions**

Before drawing conclusions from this analysis of the right of the child to information, some remarks on the drafting process itself have to be made as this process is fundamental to the final formulation of the provisions and influences their interpretation. In analysing the provisions of the Convention on the child's right to information, the records of the Working Group meetings are only a limited source of information on the discussion and development of a concept of a certain right of the child. It is not always clear who has made a remark or put forward a proposal in the discussions. In cases where the suggestion of such an unknown speaker is supported by others, it is difficult to estimate the effect on the balance of forces within the Working Group. Moreover, the reports do not provide a clear picture of the considerations and motives of the participants when submitting proposals. The in-depth background of such proposals therefore often remains an open question. No references have been found to human rights theories or scientific knowledge about, for example, the influences of mass media.

This seems to justify the conclusion that the formulation of the rights of the child, as far at least as the right to information is concerned, is not founded on any clear theoretical framework. One could suppose that in drafting a Convention on the rights of the child, the drafters would have taken a thematic approach in which the subjects of children’s rights would have been discussed fundamentally with regard to content, whereafter the findings should be transformed into a textual proposal. The Working Group meetings, however, seem rather have been devoted to drawing up and editing proposed texts, whereby intrinsic discussion remained unheard or was marginalised.

The various contributions of the NGO’s, on the other hand, show more concern for intrinsic values and the relation with United Nations ideals or other human values. This concern is obvious from the contribution of the Baha’i International Community to the formulations on the role of the mass media and the aim of education.

Existing political issues and controversies did not stop at the threshold of the Working Group’s meeting rooms, but also extended to this field of international encounter. Both small and large conflicts of opposing ideologies emerged during the drafting process. Three types of controversies, which were also present in the drafting of the various articles concerned with the child’s right to information, played a clear role. The biggest controversy was based on the tension of the Cold War between East and West. It became visible during the drafting process, especially until 1985, in the discussions on the role of the state versus the role of parents, the position of mass media versus the state and the significance of economic, social and cultural rights.

The second line of controversy is the opposition between North and South, industrialised and developing countries. The issues in this discussion included adoption, the preservation of a child’s identity and international exchange and cooperation.

The third type of opposing opinions came from the differences between the Western/Christian and the Islamic approach to life issues. Examples are the discussions on the possibility of adoption and the child’s freedom of religion.

A controversy which pervaded all these demarcation lines in a different way was the protection of the unborn child. Some delegates in favour of this protection referred to the Declaration of the Rights of the Child 1959, which protected the child, before as well as after birth. This group included delegates from predominantly Roman Catholic countries and Islamic countries and the Holy See. The other group in favour of a more neutral formulation or a formulation acknowledging their abortion laws consisted of Western countries or societies with a strong population policy like the Scandinavian countries, Australia, East European countries and China.

The result of such controversies was the tendency to try to please all parties by formulating the rights and duties in a compromising way, which were rather vague and left enough room for different interpretations. As a consequence, the interests of the child, the responsibilities of parents and the role of the state are not precisely defined and leave much room for interpretation. In general, the rights of the child are protected in the Convention in the form of an obligation imposed on parents, the state or others. It is not always clear who is responsible and who has the obligation to implement and realise the right protected by the Convention, which undermines or impedes the enforceability of the right.
During the drafting process, the contributions of various participants differed greatly with respect to their legally binding character. The many compromises which resulted from the negotiations have also contributed to formulations, that are not always consistent with other articles in the Convention or with other already existing formulations of similar human rights. The technical review was only able to solve a part of these inconsistencies. On the whole, references to existing human rights treaties and instruments are few. It seems that the participants were so concerned with creating a Convention in its own right that other instruments which could have been of help, have mainly been neglected. A few references are only mentioned in the Preamble. Article 2 shows the intention of the drafters to see the Convention as an independent instrument, whereas article 41 attempts to solve the not very elegant problem where national or international law implies a higher standard that is applicable to children.

The motive to create a convention, the urge to do so within narrow time limits – at least for the last two years –, the intention to do something for the child, or to achieve something on an international level, all these aspects seem to have contributed to tip the scales in favour of feasibility at the cost of intrinsic value. These aspects have consequences for the interpretation and implementation of the Convention.

Formulations
The research on the right of the child to information started with the concept that information is essential to the development of a child. This essential value becomes clear when development is related to the concept of an authentic human being as present in the many cultural traditions. The idea is that such information is so essential that it deserves and needs legal protection, thus creating for the child a right to information.

The right to information is not a well-established right with a clear-cut definition and a long list of scientific literature and jurisprudence. It finds its roots in two concepts, also elaborated in international law: freedom of expression and the free flow of information. The first one is a classical right protecting the citizen against interference from the state; and, the second one requires the state to not inhibit but to encourage the free flow of information. It protects the media and other producers of information from interference, thereby protecting the plurality of information. Originally called the freedom of information, the right has a strong connotation with the free flow of information between states, as a result of the experiences during the Second World War. Afterwards the concept played its role in the Cold War and in the global expansion of the Western industries, which was opposed by the Third World, as they did not benefit from the internationalisation of the economy. These origins show no specific relation to children and their rights.

Another problem is the diffuse sense of the word ‘information’, and the abstract character of information. As has been demonstrated in Chapter 3, information is not a good which can be handed over to somebody else like a parcel. Information is the result of a process in which the information receiver himself is involved as an infor-

information seeker and interpreter. Information needs a concrete context in which to become useful. Hence the right to information will have more meaning, the more concrete a situation is. It is in situations in which radical changes can take place in one’s life that information counts most, and therefore deserves strong legal protection.

If one relates the right to information to fundamental human needs, this right protects the value of human life in requiring respect and support for development as an authentic human being. Such a right is also clearly related to the needs and the situation of children. This right to information as traced in the Convention on the Rights of the Child can be characterised by the following aspects.

The Convention recognises the role information plays for the development of the child. First of all the importance of the child’s physical, mental, spiritual, moral and social development is mentioned. It is stressed that a child matures and gradually acquires skills which help him to orientate in the world around him, to form views and direct his life. These evolving capacities, as the developmental process is described in the Convention, indicate the gradual competence of the child to exercise his rights. The second point is that information is related to development. The different articles in the Convention pay attention to the development of the personality of the child and his social participation. The right to information can be related to these two aspects of the developmental process. A third point is that in special situations information is mentioned as a way of helping to assure the child comfort and security, to maintain family relationships or to improve living conditions, for example, by means of health and professional education.

The fourth point is the recognition of the primary role which parents play in the upbringing of their children. Parents are the first and most important persons to provide the child with information. The role of parents in the development of the child is generally described in articles 5 and 18. Both parents have common responsibilities for the upbringing and development of the child. Their basic concern should be the best interests of the child. The way in which parents fulfil this task is further indicated by the Convention: parents should take account of the evolving capacities of the child, when giving appropriate direction and guidance. Such direction and guidance concerns the child in exercising his rights as recognised in the Convention in general. Parental direction is especially mentioned in the case of the child’s right to freedom of thought, conscience and religion.

Implicitly, these provisions require that the child is informed and has access to information in his family environment. The family environment is considered to be the natural environment for the growth and well-being of children, offering the necessary protection and assistance, in an atmosphere of happiness, love and understanding. The spirit in which children should be brought up is formed by the ideals proclaimed in the Charter of the United Nations: peace, tolerance, freedom, equality and solidarity. These aspects are also included in the aim of education elaborated in article 29 and form the context in which a child is informed by his parents in the process of growing up and being brought up. Such ideals are based on the dignity of a human being and his respect for the human dignity of others. Thereby, they do touch upon characteristics of an authentic human being, and form not only the aspirational aims of the child’s education, but, implicitly, also those of his educators.
The right to information can be traced in different ways. It can be confined to its explicit formulations in the Convention on the Rights of the Child. In that case, its main elements are the right to seek, receive and impart information and the right of access to information. Such information can relate both to the development of the child’s personality and to his social participation. These rights are protected in the Convention by articles 13 and 17 respectively.

The discussion on the drafting of article 13 shows that very little attention has been paid to the consequences of this provision for children. The conflicting provisions of the child’s right to freedom of expression and the parents’ responsibility for caring and raising the child, are a prime example. In essence, article 13 is a right *erga omnes*. However, the main concern for the state that proposed the article, the United States, seems to have been to present classical human rights as a counterweight against the economic and social rights in the Convention.

Although article 17 is sometimes identified as the central article on the child’s right to information it is not the article on the right to information, but regards only a certain aspect of the right to information, namely the role of the media. As such, the child is hardly visible in the regulations between state and the media. The right to information is concerned with a right of the child, supporting his well-being, health, personal development and participation. It is remarkable, however, that this positive support is stressed in the provision. Other aspects in this provision are the attention for linguistic needs, plurality of sources and the promotion of children’s books. In this latter part, public libraries could play a role.

The other part of article 17, protecting the child from injurious information and material, is left to the national level, not going further than the encouragement of guidelines for the media. The relation to the child’s right to freedom of expression is explicit, thereby closely linking the provisions of the articles 13 and 17. The relationship of information to principles of authentic life can be found in the reference to the aim of education.

When one considers the role of information in essential life situations, the explicit formulations of the right to information do not suffice. The rights of the child protected in crucial situations presuppose a right to information. These implicit formulations point to a broader concept of the right to information. It then includes other rights protected by the Convention, for example, the right of the child to know about his identity, his family and cultural background. The right to information is also implicit in the child’s right to form his own ideas and views about himself and the world around him. It enables him to tell others what he thinks about his situation and how he would like to decide about his life. His freedom to think for himself, to build up and use his conscience and to reflect upon life in a religious sense presupposes a right to information as a source from which he can draw the nourishment necessary to his mental and spiritual life. A child also has a right to privacy, providing, for example, the possibility to decide on the information he would like to receive and keep for himself.

Several rights protecting the right of the child to participation in society include likewise a right to information. One can refer to the provisions for education, cultural life and association in the Convention. The general assumption that one can only
exercise one’s rights if one knows them is reflected in the Convention and includes a right for the child to information about the Convention’s principles and provisions. By paying attention to the implicit formulations, the right to information obtains more relief and accounts for a broader interpretation. These provisions in the Convention refer both to implicit formulations of the right to information related to the development of the child’s personality and to his social participation.

The Convention pays attention to the development of the child’s personality. More specifically, protection is offered for the identity of the child, which is necessary for the development of his personality. This identity is formulated as including name, nationality and family relations as recognised by law. The formulation leaves room for other or additional factors of identity, for example, sex or culture. Some of these elements are taken up in separate articles, especially referring to minority groups and indigenous people. The child has a right to practice the culture, religion and language of the group to which he belongs. This right implies that he is informed about these aspects and can use such information. When the child is in alternative care, continuity in the child’s upbringing requires that his background is taken into account, and the necessary information does not stop.

The information about the child’s identity is implicitly formulated in the child’s right to know and be cared for by his parents. The origin of this formulation lies in the bad experiences some supplying states had with adoption. The right to know one’s parents or to obtain information about one’s origin is, however, not strongly enough recognised in the Convention. It still leaves room for the practice of ‘secret adoption’, and it does not explicitly mention the cases in which not adoption, but medical technology raise questions about one’s origin. The right of the child to have reliable information about his origins needs a stronger formulation than is presented in the Convention. The child’s right to identity would be strengthened most by interpreting the restrictive phrase ‘as far as possible’, as applying only to cases of factual impossibility to give information, namely with respect to foundlings, when police research has been without results. In all other cases, the child’s right to know about his origins should take precedence over the interests of others.

The right to identity, which includes the right to a nationality, is a specific subject that requires international cooperation, in order to avoid any loophole in legal protection. Nevertheless, the provision in the Convention leaves much room for states to apply their national laws and to maintain their restrictive immigration laws. The positive point is that in article 8 a state obligation is added regarding the preservation of the child’s identity. The formulation is weak stating only ‘undertake to respect’, but appropriate assistance and protection are provided for, at least in the case of illegal deprivation of identity.

Article 12 states that a child has the right to form his own views, to express them and to be heard. The child should necessarily first have gathered information before forming views is possible; in this way a right to information is implied. It seems that the right to be assured by the state starts when the child is capable of forming his own views. It is unclear who is going to decide about that capability. No age limits are specified, so the capability must be established by evidence from the very act of the child expressing his views. In regard of the growing capacities of the child, no moment can be fixed where the child has not yet or has already the capability to
form his views. In fact, children learn by doing and should not be dependent upon a
determination of capability. As a result, no child should be excluded, for example,
on the basis of age or maturity to express his views in matters affecting him.

The right to be heard should be interpreted as benefitting the child, which should
be supported by the procedural rules of national law. Age limits should be omitted.
Such procedural rules can be decisive about the way in which the child is heard: di-
rectly or through a representative or an appropriate body. One conclusion to be
drawn from the discussions is that article 12 not only provides for the right to be
heard in national proceedings, but also in international proceedings, and that the
state must make provision for the implementation of this right. Questions as to
whether a child or the judge has a choice here or how the child knows about his
right to be heard and the way in which he can exercise this right, seem implicitly to
refer to necessary information. Despite the shortcomings in the provisions, article 12
is central to the objective of self-determination. As such it is useful and applicable in
the many situations in which children find themselves and need to have their say.

Having access to information which serves as ‘food for thought’ is implied in ar-
icle 14, protecting the right of the child to freedom of thought, conscience and reli-
gion. From the drafting history of this article, the close relationship with article 12, on
forming views, is evident. The provision would support the self-determination of
the child. The late interference in the drafting process of some delegates, protesting
against the right of the child to change his religion shows, however, that the position
of parents in the guidance of religious education remains a sensitive subject. Their
responsibility to give information when performing this duty of guidance is heavy
and difficult, as the results are not always as the parents expected or intended. One
should note that the Convention speaks of rights and duties of the parents, which
would imply that parents should not refrain from direction in this matter and
should provide information, without coercing the child. Parental responsibilities
cannot include a right to control all aspects of a child’s life, as such is contradic-
tory to the perception of a child as a human being.

The right to family life and privacy, provided for in article 16, means in light of
the child’s right to information that a child has a life of his own, whether within a
complete or incomplete family. The child is protected against discrimination based
on, for example, expression or the behaviour of his family, as stated in article 2. The
honour and reputation of the child are also protected against unlawful attacks. Such
protection can be particularly important when children appear in the mass media. In
this way, a child can to a certain extent control the information which circulates
about him. His right to privacy also includes the ability to decide what information
will be communicated to others. Adults have to respect his silence and refrain from
undue questioning. When such private information is stored in files held by others,
the right of the child to information should give him access to such files, and his right
to privacy should protect him against divulgence of such information to others.

Another aspect of the right to privacy related to information refers to the child’s
right to correspondence which provides him with the opportunity to receive infor-
mation from sources other than those available at home. The right to correspond-
dence supports the right to seek, receive and impart information without interfer-
ence. In a family situation, such a right calls for reciprocal respect for one’s privacy.
The right to privacy protects the child against undue curiosity from others and permits a child to process information in his own way. There is also a common family concern about the use of mass media in the home, as this use might interfere in the family in a more unconscious way. Decisions about this interference are part of the process of the child’s upbringing by parents and his evolving capacities to decide for himself.

The role of family life is important for the development of the child, as living with others offers ample possibilities for exchange of information with close relatives. State interference in family communication is only allowed in limited cases, for example, of abuse. The private life of the child is less protected against interferences from his parents, as they have their parental responsibilities and also a right to private and family life. In the best case, the privacy rights of both are balanced.

It is remarkable that in family law, a right to information is often used as a term denoting the right of a parent, not living with the child and not having full legal authority, who wants to know about his child and seeks to be informed by the other parent or by third parties, for example, a teacher at school. The child’s perspective is not taken into account in this concept of law. The term is seldom used for cases in which the child would like to know about a parent or brothers and sisters, not living in the same family environment.

The above mentioned aspects deal mainly with the implicit formulations of the right to information related to the development of the child’s personality. The following aspects are concerned with information related to the development of the child as a social being, participating in society, and his right to information which supports this development and participation.

The importance of contact with peers and other social contacts is recognised as a right in the form of the right to freedom of association and peaceful assembly, in article 15. This right to participate in group activities provides the child with the possibility to access various sources of information and to exchange opinions on matters of mutual interest. Such a common goal could be a hobby or scouting, but also a children’s rights group or a trade union. This latter right is also internationally recognised as soon as children have reached the legal minimum age for employment. This right in combination with the right to form views and express opinions implies the possibility to process information in a group and make it known in the wider society by the protection of membership in an association.

The need for social contacts is further protected by the child’s right to cultural participation, as provided for in article 31. Most of the attention is paid to the conditions under which such participation can take place. Time and energy is needed, so there should be time to rest. Play and recreational activities should be appropriate to the age of the child; a stimulating and protective formulation not found in relation to participation in cultural life and the arts. Appropriate and equal opportunities to participate are also necessary. Such a necessity implies that a child is informed about what is available and how can one join and participate. Information provided to the child by means of cultural activities, for example, the theatre seems to be separated from the provisions concerning the mass media, although it is a form of mass communication.

Education is a prominent means of informing oneself. Education offers the possibility to learn and to gain knowledge. The right to education was introduced in the
Universal Declaration on Human Rights of 1948. During the drafting process of the
Convention, most of the time was spent on the implementation of the right, as edu-
cation should be made freely available to all. Human dignity is specifically men-
tioned and protected when school discipline is administered. This implies a certain
standard of communication about rules and sanctions, before they are applied. In
the Convention, attention is not only paid to education, in article 28, but also to its
aim in a separate article 29. This aim is also a point of reference for the mass media
in providing information. Moreover, the right to education includes a right to infor-
mation about education, although the Convention does not give details on how such
information should be provided or made accessible.

However, a general indication on how information should be made public is pro-
vided in article 42, which prescribes the state to make the principles and provisions
of the Convention widely known, by appropriate and active means, to adults and
children alike. This duty of active publication and related activities specifically men-
tions children as a target group. The Convention thereby acknowledges the impor-
tance of information for children about their rights. The requirement of appropriate
and active means points to an extra effort on the part of the state, not only in the
number of publicity activities but also in providing a variety of communication
means, so that children and adults of any age and background will find an adequate
source of information, adapted to their needs, capacities and interests. Both explicit
and implicit formulations of the right to information in the Convention, as presented
above, reveal a variety of situations in which the right to information is present and
should be applied.

Responsibilities
A next aspect of the right to information are the responsibilities of the several parties
involved. If information is considered as a supporter of the child’s development, the
forming of his personality and the socialisation process, then the provision of infor-
mation in this sense is mainly a parental task implied from their child-rearing tasks,
and the implementation of the right to information is confined to the private sphere
of the family. The various stages of development as described in Chapter 2 show,
however, that very early in a child’s life others are added to the parents’ sphere of in-
fluence on the child. These include not only brothers and sisters and other members
of the family or friends, but also mass media. At a later stage, clubs and school are
introduced and serve as providers of information. As soon as the radius of action
permits the child to leave the family sphere, mentally and/or physically, he partakes
in public life for example, in traffic, in using media, in being in hospital or attending
child-care or school. Not all of these institutions are state-owned, but mostly they
are more or less state-directed or state-regulated by some form of legislation. All
these different actors are mentioned in the Convention and are involved in the right
of the child to information. How these rights and duties have to be discerned is not
always clear in the Convention, due to the controversies and other implications of
the drafting process.

In the Convention, there are general provisions about the parents’ responsibility
for the upbringing and development of the child, which focus on the best interests of
the child as a basic concern. A more specific provision is made about the parents’
rights and duties to provide direction to the child in the exercise of his right to freedom of thought, conscience and religion. Both provisions envisage duties of parents.

The primary responsibility for the upbringing of the child lies with the parents. Such is often described as both a right and a duty. It consists of giving direction and guidance, but in a manner consistent with the evolving capacities of the child. This means that where the child matures and is gradually more capable to form his own views, the right of the parents to guide the child takes on a different, less directive form. Parents are required to pay more respect to the views of the child, especially in matters that affect him.

Apart from parents, the state has responsibilities and has several roles to play in the field of the right to information. Traditionally, two types of duties of the state are discerned: the duty to refrain from interference; and, the duty to take care that a right can be exercised. Both duties apply in the case of the right to information. A third role of the state as information supplier can be discerned. The state has also a role in the final control over the application of children’s rights. These roles are briefly explained below.

The traditional role of the state related to human rights is not to interfere with the rights of citizens and to refrain from action. Such is the case when a child seeks information and ideas, forms his views and beliefs and expresses himself. In short, when a child develops his personality with the help of information and takes part in social life. The state is not allowed to censor the information process of the child. The only restrictions to this right of the child are those which are provided for by law and are necessary for the respect of the rights or reputations of others, or the protection of national security, public order, public health and morals.

Another duty requires the state to adopt the opposite attitude, namely to act and to take care that a child can actually exercise his right to information. This duty is formulated in several ways. The first is a general obligation to take care that the child’s right to information is respected. The state has to undertake all kinds of measures for its implementation and the best interests of the child must be a primary consideration.

The second is to take care that a child can express his views. As this is especially important with regard to matters that directly affect the child, the state’s duty is explicitly mentioned to ensure that a child’s right to express his views is respected, and that his right to be heard is guaranteed in proceedings. The basic concern is that children be taken seriously.

A third duty is to ensure the child access to information. This obligation can be derived from the child’s right to seek information, and in the Convention it is especially elaborated for the information and material disseminated by the mass media. The access is mainly formulated in terms of production and dissemination. Qualitative aspects refer to the diversity of sources and the linguistic needs of the child. Children’s books are especially mentioned. This formulation presupposes that all children are able to read. Implicitly, children have a right to learn to read and become literate, as otherwise access to written information has no meaning. Participation in other forms of cultural life also requires state action.

A fourth obligation is protecting the child from injurious information. As such in-
formation is often produced by the private sector, there is a duty to regulate produc-
tion and distribution in such a way that the risk of harming the child is avoided. Ac-
cording to the Convention, the state should encourage the development of appropri-
ate guidelines. The protection of morals is often used to set limitations on the child’s
access to, for example, film or television programmes.

A fifth duty of the state is to encourage information for the benefit of the child.
The Convention refers to several aspects of the dissemination of information. These
requirements include: the diversity of national and international sources; social and
cultural benefit; the promotion of the child’s social, spiritual and moral well-being
and physical and mental health; accordance with the educational aims of the child’s
development to his fullest potential, respect for human rights and, a spirit of under-
standing and friendship. Such qualifications which relate to the information provid-
ed to the child require active measures on the part of the state.

A separate group of state duties can be discerned concentrating on the state as an in-
formation supplier. The first obligation of the state in its role as supplier of informa-
tion is to inform the child. Information about rights has to be supplied by the state
both generally and in specific circumstances, for example, when a child is put on trail, faces administrative or judicial procedures or has lost his family. Information in
a more general sense is supplied by the state for education, even if this is actually
performed by schools. Information is also provided as a means of prevention, of
drug or sex habits. Protection is provided by the state when it informs the child
about safety measures to be taken when working with heavy machines or when the
child is informed about videos with possible injurious effects.

Secondly, there is the duty of the state to inform parents. This is the case when
parents are informed about child care and education, so that they can better fulfil
their duty of child-rearing. Parents are thus mentioned as bearers of a right to infor-
mation: in the fields of health, nutrition, and accident prevention, both parents and
children are mentioned as receivers of information. Parents are also mentioned in
the case of preventive health care as receivers of guidance and family planning edu-
cation. In this way, it becomes clear that the child’s right to information is often de-
pendent on his parents. If they are not informed, do not know or understand their
duty in a child’s development, how should a child be informed about growing up?

A third duty of the state can be described as providing access to information kept
by the state. Such information does not only include all public information in official
journals, and parliamentary reports, but also information in personal records about
an individual’s residence in child care, public school or institutions for health care,
observation and treatment. Such information can be of great value to the develop-
ment of identity and personality.

A fourth obligation of the state is to generally inform everyone about the existence
of children’s rights, and also specific groups about the rights of the child in their par-
ticular field. Such specific groups can be lawyers, doctors and teachers but also par-
ents, youth leaders, programme-makers, policemen, politicians or businessmen.

In all these duties related to the right to information, the state has an overall con-
trolling function, but the state cannot act unrestrictedly. As the Convention states the
primary responsibility of the child’s upbringing lies with the parents and the rights
and responsibilities of the parents have to be respected by the state. The state has, however, the duty to support parents in their child-rearing duties. In this way, the state controls and interferes in the family environment. The state is emphatically obliged to do so in cases of child abuse or neglect. When for one reason or another the child is in the care of the state, the state has to respect the continuity of the child’s upbringing and the child’s ethnic, religious, cultural and linguistic background. The state also has to control other bodies, including social welfare institutions, courts of law, administrative or legislative authorities and to ensure that their actions are based on the best interests of the child.

The other restriction on the state action is the right of the child to form his own views and to determine his life. The child’s right to information cannot be nullified by the state’s obligation to protect and prohibit access to information. It is the obligation of the state to find ways to protect the child’s free choice without interfering or with the least interference possible.

The state is also bound by the restrictions imposed by the obligation to respect the rights of others. Such an obligation is especially envisaged in the Convention with respect to the relationship between the state and the mass media. The formulation makes clear that the state is rather powerless with regard to the mass media as the obligation to act does not include more than encouragement. This does not only apply to the envisaged ‘positive’ effect of information, but also for the known injurious effects of information. It seems that the media’s proclaimed right to freedom of expression and the free flow of information are the basis of the child’s access to information. The state can not do much more than pointing out to the mass media that their freedom of expression brings with it responsibilities with regard to content and the way in which their messages are presented to and affect the public, especially when children are a specific target group or included in the public. The positive obligations of the mass media are more strongly protected than their negative obligations, to refrain from certain expressions in respect of children.

Apart from parents and the state, others are involved in the child’s right to information. Some of them have already been mentioned: members of the extended family or community, legal guardians or substitutes for the parents, but also teachers, as providers of information in the educational process at school. Whenever an institution is mentioned, attention should focus on the persons forming that institution, as the duty to respect the rights of the child has to be actualised by them. The same is true for the duties of the mass media in producing and disseminating information to the child. Persons working in the mass media industry have a duty to conform to the qualifications of the information supplied and should be aware of the aims to which the information provided aspires.

Various forms of the right to information have to be respected by all members of the human community. The child’s right to privacy has to be respected by everyone, irrespective of his or her relationship to the child as parent, lawyer, teacher, neighbour or fellow man. In the same way, all have the duty to respect the child’s right to seek, receive and impart information. Would such a respect not include a responsibility to respond to his questions? One only has to think of the promise given at the beginning of international law on children’s rights: ‘Mankind owes to the child the best it has to give’.

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