

The Untapped Digital Potential of the Convention on the Rights of the Child

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Introduction

The right to freedom of expression is protected in many international and regional treaties and international instruments.¹ These treaties are applicable to children in their capacity as being part of ‘everyone’. The Convention on the Rights of the Child (hereafter: ‘the Convention’) protects the child’s right to free expression which is firmly-rooted throughout the whole of the Convention. The protection of the child’s right to freedom of expression in particular can be seen as reaffirming that

¹ *Inter alia* Article 19 of the Universal Declaration of Human Rights, Article 19 of the Convention on Political and Civil Rights, Article 9 of the African Charter on Human and Peoples’ Rights, Article 10 of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights.

this general right to freedom of expression also applies to children but also introduces added specificities.

The purpose of this paper is to explore the work done by the monitoring body of the Convention, the Committee on the Rights of the Child (hereafter: 'the Committee'), with regard to the promotion of the child's right to freedom of expression and the use of the Internet. First the Convention and the Committee are introduced. Second, the right to freedom of expression as enshrined in the Convention and its scope will be analyzed. The Committee's interpretation of that right in relation to the Internet is also explored. Finally, this paper explains the untapped potential of relevant Convention provisions and the use of the Internet to advance the child's right to freedom of expression.

1. Convention on the Rights of the Child and the Committee on the Rights of the Child

1.1 Convention on the Rights of the Child

The Convention was adopted on 20 November 1989 and entered into force on 2 September 1990. It sets out the civil, political, economic, social and cultural rights of the child.² Except for the United States and Somalia, all United Nations members have ratified the Convention which makes it the most widely ratified human rights convention.³ It is also the first binding instrument in international law that deals with the rights of children. The Convention comes with two optional protocols: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,⁴ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁵

² Article 1 of the Convention defines a child as a human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

³ The United States Supreme Court, however, has mentioned the Convention *inter alia* in a case concerning capital punishment for crimes committed by juveniles in *Donald P. Roper, Superintendent, Potosi Correctional Center, Petitioner v. Christopher Simmons*, 543 U.S. 551 (2005).

⁴ Adopted on 25 May 2000 and entered into force on 18 January 2002.

⁵ Adopted on 25 May 2000 and entered into force on 12 February 2002.

1.2 Committee on the Rights of the Child

Article 43 of the Convention establishes the Committee on the Rights of the Child as the monitoring body of the Convention. The Committee currently has eighteen members.⁶ Article 43(2) of the Convention provides that members of the Committee ought to be “experts of high moral standing and recognized competence in the field covered by this Convention”. Article 43(2) of the Convention thus demands specific expertise, whereas several other treaties stipulate only general expertise in the fields of human rights.⁷ The Committee examines the progress made by the States Parties in achieving the realization of the obligations undertaken in the Convention on the basis of reports submitted by the States Parties.⁸

The Committee draws up concluding observations on the basis of the country reports. These concluding observations reflect the main points of discussion and indicate the issues that require follow-up by the States Parties. The concluding observations in some cases include concrete suggestions and proposals to catalyse the realizations of the obligations that are laid down in the Convention.

2. Freedom of expression and the Committee

The child’s right to freedom of expression is firmly-rooted throughout the whole of the Convention. Articles 12, 13 and 17 of the Convention all shape the child’s right to freedom of expression. Article 12 of the Convention provides children with the right to express their views freely in all matters affecting the child. Article 13 of the Convention provides children with a general right to freedom of expression. According to the Committee, Article 12 and Article 13 of the Convention both envisage full participation of children in society.⁹ Article 17 of the Convention emphasizes the important role the mass media play in providing children with access to information.

⁶ Article 43(2) of the Convention. The committee initially had 10 members, but this number was raised by means of resolution 50/155 of 21 December 1995 which approved the amendment to Article 43, paragraph 2, of the Convention replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002.

⁷ For instance, members of the Committee on Economic, Social and Cultural Rights and members of the Committee Against Torture are required to be experts in the general field of human rights.

⁸ Article 44 (1) of the Convention provides that “States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights: (a) Within two years of the entry into force of the Convention for the State Party concerned; (b) Thereafter every five years”. General guidelines for initial reports can be found in UN Doc. CRC/C/5, general guidelines for periodic reporting can be found in UN Doc. CRC/C/58.

⁹ UN Doc. CRC/C/57, para. 67 (Concluding observations: Nigeria 1996).

Several arguments are often put forward to justify the principle of freedom of expression.¹⁰ The argument from democracy and participation in public affairs holds a prominent place in the Convention which is best reflected by Article 12 of the Convention providing children with the right to express their views freely in all matters affecting them. Besides the argument from participation, the Committee has emphasized that the child's right to freedom of expression and participatory rights are beneficial for the child to reach maturity.¹¹

2.1 Article 13 – The child's right to freedom of expression

Article 13 of the Convention confirms that the right to freedom of expression also applies to children. The article reads:

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.

As to children, the Committee emphasizes that it is not enough that important principles like freedom of expression are reflected in constitutions as applying to 'everyone'. In its guidelines for periodic reporting, the Committee notes that "States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37 (a), are recognized by law *specifically in relation to children*".¹²

2.1.1 Positive obligation

Article 13 of the Convention protects the child's *freedom* to express his or her opinions. However, children require a positive obligation to be placed on states to fully enjoy their right to freedom of expression.¹³ The assertion that the child's right to freedom of expression implies a positive obligation for the States Parties to actively enable children to enjoy their right to freedom of expression is supported by an analysis of concluding observations by the Committee: "Regarding the implementation of article 13 of the Convention, the Committee is concerned about the *insufficient measures undertaken* by the State Party to promote children's right to participation

¹⁰ E.g. Eric Barendt, *Freedom of Speech*, New York: Oxford University Press 2005, p. 6.

¹¹ UN Doc. CRC/C/43/3, para. 987 (Day of General Discussion on the Right of the Child to be Heard 2006).

¹² Emphasis added. UN Doc. CRC/C/58, para. 48.

¹³ Geraldine van Bueren, *Child rights in Europe*, Strasbourg: Council of Europe Publishing 2007, p. 82.

within the family, at school, and in society in general".¹⁴ Another example of Article 13 of the Convention imposing a positive obligation to promote child participation and to guarantee effective enjoyment of the right to freedom of expression can be found in the concluding observations on Mexico:

With regard to the State Party's initiatives to promote children's participatory rights, the Committee is of the opinion that these efforts need to be improved and strengthened. In the light of articles 12, 13, 14 and 15 of the Convention, the Committee recommends that further *measures be undertaken to promote the participation of children in the family, at school and in other social institutions, as well as to guarantee their effective enjoyment of the fundamental freedoms, including those of opinion, expression and association.*¹⁵

2.1.2 The right to seek, receive and impart information and the media

Article 13 of the Convention provides that the child's right to freedom of expression includes the right to freedom to seek, receive and impart information and ideas of all kinds. The Committee has also emphasized this in its concluding observations.¹⁶ The right to seek, receive and impart information and ideas of all kinds is considered an important pre-requisite to fully realise participation of children in society,¹⁷ and implies both a passive and an active approach by States Parties. On the one hand, States Parties are required to refrain from interfering with the free process of seeking, receiving and imparting information. On the other hand, States Parties are required to actively enable children to receive and impart information.

Children have the right to seek, receive and impart information regardless of frontiers and either orally, in writing or in print, in the form of art, or through any other media of the child's choice. There are two important aspects to this right to seek, receive and impart information. First, the right to seek, receive and impart information is regardless of frontiers. Children should be able to gather information beyond national borders. Second, the right to seek, receive and impart information is not restricted to certain media types. Children are free to choose a media type.

¹⁴ UN Doc. CRC/C/79 para. 40 (Concluding observations: Hungary 1998). See also in particular with regard to Article 13 of the Convention: UN Doc. CRC/C/146 para. 112 (Concluding observations: Albania 2005).

¹⁵ Emphasis added. UN Doc. CRC/C/90, para. 178 (Concluding observations: Mexico 1999).

¹⁶ UN Doc. CRC/C/118, para. 283 (Concluding observations: Tunisia 2002) and UN Doc. CRC/C/44/3, para. 508 (Concluding observations: Malaysia 2008).

¹⁷ UN Doc. CRC/C/43/3, para. 995 (Day of General Discussion on the Right of the Child to be Heard 2006).

The child's freedom to seek, receive and impart information and ideas of all kinds is closely related to Article 17 of the Convention. Article 17 of the Convention emphasises the important function performed by the mass media: "States *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".¹⁸ Article 17 of the Convention is thus an order directed at the States Parties to provide for a diverse supply of information. In 1996 the Committee acknowledged in a report on the Day of General Discussion on The Child and the Media, that the media is important for offering children the possibility of expressing themselves.¹⁹

However, the Convention lacks a definition of 'mass media'. The Committee also leaves us wondering with regard to its conception of 'mass media'. The Committee seems to consider only traditional media when talking of mass media as it distinguishes mass media from the Internet in at least three of its concluding observations.²⁰

2.1.3 Restrictions

Article 13 of the Convention begins with setting out the right to freedom of expression ("The child shall have the right to freedom of expression"). The second paragraph of this article provides that "the exercise of this right may be subject to certain restrictions". These restrictions need to be provided by law and need to be necessary for either the respect of the rights or reputations of others, or the protection of national security or of public order (*ordre public*), or of public health or morals. Article 13 of the Convention thus follows the structure of many comparable provisions in other international human rights treaties where first a freedom is established and then allowed restrictions of that freedom are set out.

Limitations of the right to freedom of expression on which the Committee has taken a critical stance include: stringent registration and licensing requirements for the media and publications,²¹ strict administrative control of student councils and school regulations,²² closing down of Internet chat rooms,²³ and disproportionate use of force by police authorities.²⁴ The Committee has also stated in

¹⁸ Emphasis added.

¹⁹ UN Doc. CRC/C/50, p. 81 (Day of General Discussion on the Child and the Media 1996).

²⁰ UN Doc. CRC/C/146, para. 253 (Concluding observations: Austria 2005) and UN Doc. CRC/C/150, para. 697 (Concluding observations: Costa Rica 2005) and UN Doc. CRC/C/41/3 (Concluding observations: Thailand 2006).

²¹ UN Doc. CRC/C/111, para. 560 (Concluding observations: Uzbekistan 2001).

²² UN Doc. CRC/C/124, para. 114 (Concluding observations: Republic of Korea 2003).

²³ UN Doc. CRC/C/124, para. 114 (Concluding observations: Republic of Korea 2003).

²⁴ UN Doc. CRC/C/146, para. 330 (Concluding observations: Belize 2005).

its concluding observations on the Republic of Korea that it “is concerned at the limitations on students’ freedom of expression and association due to *strict administrative control of student councils and school regulations* that limit or prohibit outside political activities of students in elementary and secondary schools”.²⁵

With regard to Internet access in Uzbekistan, the Committee has noted the following:

*In the light of article 13 (the child’s right to seek, receive and impart information) and article 17 of the Convention (the right of access to information, including information and material from a diversity of cultural, national and international sources), the Committee is concerned that stringent registration and licensing requirements for the media and publications, as well as restrictions on Internet access, do not comply with article 13, paragraph 2, of the Convention.*²⁶

The Committee acknowledges that the restriction on Internet access may not comply with Article 13, paragraph 2 of the Convention. Therefore, restriction of Internet access could be an impermissible restriction of the child’s right to freedom of expression.

The right to seek, receive and impart information is limited when information is injurious to the well-being of the child. The Committee regularly recommends States Parties to protect children from either ‘injurious’ or ‘harmful’ information.²⁷ Article 17(e) of the Convention provides that States Parties are encouraged to develop 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 of the Convention. This means that States Parties have to strike a balance between protecting children from harmful information and the child’s right to freedom of expression including the right to seek, receive and impart information. The Committee considers

²⁵ Emphasis added. UN Doc. CRC/C/124, para. 114 (Concluding observations: Republic of Korea 2003).

²⁶ Emphasis added. UN Doc. CRC/C/111, para. 560 (Concluding observations: Uzbekistan 2001).

²⁷ See for instance: UN Doc. CRC/C/62, para. 113 (Concluding observations: Panama 1997).

pornography and ‘violence’ or ‘brutal violence’ as either injurious²⁸ or harmful information.²⁹ Since 2005, the Committee also regards ‘racism’ as harmful information.³⁰

3.1 Article 12 – Respect for the views of the child

Article 12 of the Convention reads:

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.

Article 12 of the Convention contains one of the four general principles of the Convention.³¹ The other three general principles of the Conventions are laid down in Articles 2, 3 and 6 of the Convention. These articles concern non-discrimination, the protection of the best interest of the child and the right to life. In a report on the Day of General Discussion on The Right of the Child to be Heard, the Committee stated with regard to Article 12 of the Convention as a general principle that “this means that the implementation of article 12 is an integral part of the implementation of the other articles of the Convention, as well as a free-standing right of the child”.³² Participation is the key issue of Article 12 of the Convention. Although the this term is not used in Article 12 of the Convention, the Committee notes that “this term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults

²⁸ UN Doc. CRC/C/73, para. 119 (Concluding observations: Federated States of Micronesia 1998); UN Doc. CRC/C/84, para. 141 (Concluding observations: Sweden 1999); UN Doc. CRC/C/87, para. 80 (Concluding observations: St. Kitts and Nevis 1999) and CRC C/97, para. 108 (Concluding observations: Georgia 2000).

²⁹ UN Doc. CRC/C/97, para. 366 (Concluding observations: Cambodia 2000); UN Doc. CRC/C/100, para. 518 (Concluding observations: Marshall Islands 2000); UN Doc. CRC/C/103, para. 279 (Concluding observations: Lithuania 2001) and UN Doc. CRC/C/140 para. 606 (Concluding observations: Democratic People’s Republic of Korea 2004).

³⁰ UN Doc. CRC/C/146, para. 113 (Concluding observations: Albania 2005); UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005); UN Doc. CRC/C/146, para. 253 (Concluding observations: Austria 2005); CRC/C/153 para. 58 (Concluding observations: Australia 2006) CRC/C/153 para. 426 (Concluding observations: Finland 2006); UN Doc. CRC/C/41/3 para. 554 (Concluding observations: Lithuania 2006) and UN Doc. CRC/C/41/3 para. 625 (Concluding observations: Azerbaijan 2006).

³¹ This is acknowledged in most Concluding observations and reaffirmed in: UN Doc. CRC/C/43/3, para. 982 (Day of General Discussion on the Right of the Child to be Heard 2006).

³² UN Doc. CRC/C/43/3, para. 982 (Day of General Discussion on the Right of the Child to be Heard 2006).

based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes”.³³ It is important to note that children are not obligated to express their views. States Parties have to ensure that children receive all necessary information and advice to make a decision in favour of their best interests.³⁴

3.1.1 Matters affecting the child

Article 12 of the Convention is not clear about what matters affect the child and when the child is free to express its views. The second paragraph of Article 12 of the Convention indicates that children shall have the “opportunity to be heard in any judicial and administrative proceedings affecting the child”. This may suggest that Article 12 of the Convention should be narrowly interpreted as providing children with a right to participation only in formal procedures, e.g. adoption or a legal separation of parents. But the opposite is true: children ought to be active participants in society generally.³⁵ Besides the judicial and administrative proceedings mentioned in Article 12(2) of the Convention, the Committee has made clear that participation should also take place at home and in families,³⁶ in schools,³⁷ in care institutions,³⁸ social institutions,³⁹ in social life,⁴⁰ (traditional) communities,⁴¹ in decision-making processes,⁴² in policy development,⁴³ in

³³ UN Doc. CRC/C/GC/12, para. 3 (General Comment No. 12, 2009).

³⁴ UN Doc. CRC/C/GC/12, para. 16 (General Comment No. 12, 2009).

³⁵ UN Doc. CRC/C/43/3, para. 1001 (Day of General Discussion on the Right of the Child to be Heard 2006).

³⁶ UN Doc. CRC/C/43/3, para. 1000 (Day of General Discussion on the Right of the Child to be Heard 2006).

³⁷ UN Doc. CRC/C/43/3, para. 1003 (Day of General Discussion on the Right of the Child to be Heard 2006).

³⁸ UN Doc. CRC/C/80 para. 170 (Concluding observations: Thailand 1998); UN Doc. CRC/C/84 para. 76 (Concluding observations: Belize 1999); UN Doc. CRC/C/94 para. 398 (Concluding observations: Grenada 2000); UN Doc. CRC/C/97 para. 105 (Concluding observations: Georgia 2000); UN Doc. CRC/C/97 para. 478 (Concluding observations: Suriname 2000); UN Doc. CRC/C/100 para. 253 (Concluding observations: United Kingdom of Britain and Northern Ireland – Overseas territories 2000); UN Doc. CRC/C/103 para. 337 (Concluding observations: Lesotho 2001); UN Doc. CRC/C/108 para. 385 (Concluding observations: United Republic of Tanzania 2001); UN Doc. CRC/C/124, para. 357 (Concluding observations: Czech Republic 2003); UN Doc. CRC/C/132, para. 50 (Concluding observations: Eritrea 2003); UN Doc. CRC/C/132, para. 178 (Concluding observations: Zambia 2003); UN Doc. CRC/C/133, para. 538 (Concluding observations: Georgia 2004); UN Doc. CRC/C/137, para. 56 (Concluding observations: Indonesia 2004); UN Doc. CRC/C/143, para. 340 (Concluding observations: Equatorial Guinea 2005) and UN Doc. CRC/C/48/3, para. 27 (Concluding observations: Bulgaria 2009).

³⁹ UN Doc. CRC/C/90 para. 211 (Concluding observations: Mali 1999); UN Doc. CRC/C/94 para. 154 (Concluding observations: Sierra Leone 2000) and UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000).

⁴⁰ UN Doc. CRC/C/67 para. 63 (Concluding observations: Ethiopia 1997); UN Doc. CRC/C/67 para. 194 (Concluding observations: Syrian Arab Republic 1997); UN Doc. CRC/C/84 para. 117 (Concluding observations: Honduras 1999) and UN Doc. CRC/C/100 para. 513 (Concluding observations: Marshall Islands 2000).

⁴¹ UN Doc. CRC/C/87 para. 79 (Concluding observations: St. Kitts and Nevis 1999); UN Doc. CRC/C/94 para. 398 (Concluding observations: Grenada 2000); UN Doc. CRC/C/97 para. 424 (Concluding observations: Malta 2000); UN Doc. CRC/C/97 para. 478 (Concluding observations: Suriname 2000); UN Doc. CRC/C/100 para. 253 (Concluding observations: United Kingdom of Britain and Northern Ireland – Overseas territories 2000); UN Doc. CRC/C/100 para. 622 (Concluding observations: The Comores 2000); UN Doc. CRC/C/103 para. 455 (Concluding observations: Palau 2001); UN Doc. CRC/C/108 para. 385 (Concluding observations: United Republic of Tanzania 2001); UN Doc. CRC/C/111 para. 427 (Concluding observations: Gambia 2001); CRC/C/114 para. 409 (Concluding observations: Malawi 2002); UN Doc. CRC/C/132, para. 50 (Concluding observations: Eritrea 2003); UN Doc. CRC/C/132, para. 178 (Concluding observations: Zambia 2003); UN Doc. CRC/C/133, para. 203 (Concluding observations: Pakistan 2004); UN Doc. CRC/C/133, para. 468

political activities,⁴⁴ in society at large⁴⁵ and all spheres that affect children's lives.⁴⁶ An analysis of the Committee's concluding observations leads to the conclusion that the Committee has stretched the scope of Article 12 of the Convention over time by generalising ('society at large' and 'all spheres that affect children's lives') the relationships in which Article 12 of the Convention should be complied with. Article 12(2) of the Convention should thus be understood as a particularization of the general right of the child to freely express his or her views as enshrined in Article 12(1) of the Convention, which does not rule out a broad interpretation of the right of the child to freely express his or her views. The drafting history of Article 12 of the Convention also gives evidence in support of the former. The Polish proposal of the Convention contained only the word "matters", not "all matters". The word "all" was added on initiative of the United States delegation to ensure that the child's right to express his or her views were to be subjected to the limits of a list, as contained in the Polish proposal.⁴⁷

3.1.2 Children need to have their views taken into account

States Parties have to assure to the child who is capable of forming his or her own views the right to express those views freely. The Convention here focuses on the child who is capable of forming his or her own views. This part of Article 12 of the Convention can be seen as a limitation of the right of

(Concluding observations: Bangladesh 2004); UN Doc. CRC/C/137, para. 56 (Concluding observations: Indonesia 2004); UN Doc. CRC/C/143, para. 340 (Concluding observations: Equatorial Guinea 2005); UN Doc. CRC/C/143, para. 484 (Concluding observations: Antigua and Barbuda 2005) and UN Doc. CRC/C/48/3, para. 27 (Concluding observations: Bulgaria 2009).

⁴² UN Doc. CRC/C/103 para. 337 (Concluding observations: Lesotho 2001) and UN Doc. CRC/C/124, para. 115 (Concluding observations: Republic of Korea 2003).

⁴³ UN Doc. CRC/C/137, para. 630 (Concluding observations: Japan 2004).

⁴⁴ UN Doc. CRC/C/124, para. 115 (Concluding observations: Republic of Korea 2003).

⁴⁵ UN Doc. CRC/C/73 para. 97 (Concluding observations: Ireland 1998); UN Doc. CRC/C/79 para. 38 (Concluding observations: Hungary 1998); UN Doc. CRC/C/79 para. 159 (Concluding observations: Japan 1998); UN Doc. CRC/C/80 para. 105 (Concluding observations: Bolivia 1998); UN Doc. CRC/C/84 para. 169 (Concluding observations: Yemen 1999); UN Doc. CRC/C/84 para. 115 (Concluding observations: Honduras 1999); UN Doc. CRC/C/84 para. 183 (Concluding observations: Chad 1999); UN Doc. CRC/C/94 para. 225 (Concluding observations: Costa Rica 2000); UN Doc. CRC/C/108 para. 114 (Concluding observations: Turkey 2001); UN Doc. CRC/C/118, para. 331 (Concluding observations: Switzerland 2002); UN Doc. CRC/C/121, para. 57 (Concluding observations: Argentina 2002); UN Doc. CRC/C/124, para. 167 (Concluding observations: Italy 2003); UN Doc. CRC/C/137, para. 280 (Concluding observations: Germany 2004); UN Doc. CRC/C/140, para. 188 (Concluding observations: Rwanda 2004); UN Doc. CRC/C/140, para. 331 (Concluding observations: Liberia 2004); UN Doc. CRC/C/140, para. 407 (Concluding observations: Myanmar 2004); UN Doc. CRC/C/143, para. 197 (Concluding observations: Croatia 2005); UN Doc. CRC/C/150, para. 233 (Concluding observations: Bosnia and Herzegovina 2005); UN Doc. CRC/C/150, para. 691 (Concluding observations: Costa Rica 2005) and UN Doc. CRC/C/150, para. 573 (Concluding observations: Russian Federation 2005).

⁴⁶ CRC/C/114 para. 281 (Concluding observations: Mozambique 2002); UN Doc. CRC/C/114, para. 531 (Concluding observations: Andorra 2002); UN Doc. CRC/C/118, para. 555 (Concluding observations: Switzerland 2002); UN Doc. CRC/C/146, para. 323 (Concluding observations: Belize 2005); UN Doc. CRC/C/146, para. 402 (Concluding observations: Bahamas 2005); UN Doc. CRC/C/150, para. 58 (Concluding observations: Saint Lucia 2005) and UN Doc. CRC/C/150, para. 768 (Concluding observations: Yemen 2005).

⁴⁷ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 440, para. 78-79.

the child to express his or her own views, for the scope of Article 12 of the Convention seems to be limited. The Secretariat during the drafting process of the Convention added:

“Because article 7 [*Article 12 of the Convention*] introduces a new restriction on the freedom of expression, namely, that the child be capable of forming his/her own views, there arises a possible conflict with article 7a [*Article 13 of the Convention*] which itself follows article 19, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights”⁴⁸

However, this approach underestimates the real meaning of Article 12 of the Convention. Article 12 of the Convention gives children the right to have their views taken into account because it also provides that the views of children are to be given due weight in accordance with the age and maturity of the child. The Committee often refers to Article 12 of the Convention in the context of the ‘right of the child to be *heard*’ or the ‘*respect for the views of the child*’. Article 12 of the Convention broadens the scope of the child’s right to freedom of expression by adding a right to be heard and in some situations, depending on the maturation of the child, by giving due weight to the child’s view. The Committee notes that the phrase “capable of forming his or her own views” should not be seen as a limitation.⁴⁹ With regard to the aforementioned, Geraldine van Bueren has written the following:

The duty on the State Party is to assure the right to freedom of expression in ‘all matters affecting the child’ and as a result places duties on the state in relation to matter traditionally relegated to the private sphere. In this respect articles 12 and 13 ought to be read together. Thus the right to freedom of expression enshrined in the Convention on the Rights of the Child would appear to be broader than other treaty provisions enshrining the right to freedom of expression. [...] Together Articles 5,12 and 13 of the Convention shifts the onus from what decisions children are not competent to take to how children can participate and which parts of decisions they are able to take. Underlying this change in focus is the rejection of perceptions of children as partly formed human beings and their acceptance in international law as individuals who are capable as being as rational as adults.⁵⁰

⁴⁸ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. 442.

⁴⁹ UN Doc. CRC/C/GC/12, para. 20 (General Comment No. 12, 2009).

⁵⁰ G. van Bueren, *The international law on the rights of the child*, Den Haag: Martinus Nijhoff Publishers 1998, p. 137.

4. The Committee and its perception of the Internet

The Internet brings many opportunities for the advancement of participation of children in society. For instance, social networks enable children to engage with each other and find other children to form groups with a shared interest. The story of Tess Chapin, a 15-year-old from New York, may help to illustrate this.

After coming home an hour late and under age drinking, Tess Chapin's parents grounded her for five weeks. Tess protested and put up a digital petition on Facebook. The petition promptly took off, proving that no adolescent experience, in the age of social networking, is too small to start a movement. *The New York Times* picked up on the story and wrote an article about it.⁵¹ Her story received worldwide attention and proves that children are able to reach out to the world from their bedroom by means of the Internet.

In contrast with traditional broadcasting media, the Internet is not a scarce commodity. Unlike traditional television and radio there is not a limited number of frequencies. A logical consequence is that the amount of information that can be transferred is in theory unlimited. Ideally, there are no permits needed to publish on the Internet. Also, the costs to publish information on the Internet are low. The Internet is thus a platform that enables its users to go online and disseminate information without many constraints. On the Internet many platforms that enable people to express themselves and communicate have emerged. On the information retrieval side, it is important to note that the Internet allows users to retrieve information independent of time and location. There is no need to tune into a TV channel at a set time to retrieve certain information. Most information on the Internet is also available beyond national borders. It may not be a surprise that a District Court in a leading United States case said about the Internet that it is "the most participatory form of mass speech yet developed".⁵²

When the Committee mentions the Internet in its concluding observations, it does so in the context of pornography, violence, racism or otherwise harmful content.⁵³ The concluding observations on Luxembourg in 2005 are illustrative of this tendency:

⁵¹ Susan Dominus, 'A Facebook Movement, Against Mom and Dad', *The New York Times*, January 15 2010, available at: <<http://www.nytimes.com/2010/01/16/nyregion/16bigcity.html>>.

⁵² *Reno v. American Civil Liberties Union*, 929 F Supp 824, 883 (ED Pa, 1996).

⁵³ UN Doc. CRC/C/108, para. 515 (Concluding observations: Monaco 2001); UN Doc. CRC/C/111, para. 138 (Concluding observations: Greece 2001); UN Doc. CRC/C/146, para. 49 (Concluding observations: Sweden 2005) and UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005).

The Committee recommends that the State Party continue to take all appropriate measures to effectively protect children from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet. The Committee further suggests that the State Party develop programmes and strategies to use mobile technology, video advertisements and the Internet as a means for raising awareness among both children and parents of information and material injurious to the well-being of children.⁵⁴

The Internet is regarded as a source of harmful information. Furthermore, the Internet is portrayed as a means for raising awareness among both children and parents of information and material injurious to the well-being of children. The Committee here sees the Internet as a point to multipoint medium to warn children and their parents for injurious information. The Internet is perceived as a one way street to send information from one single source to many different peers.

In the case of Maldives, the Committee was concerned about children's access to appropriate information from a diversity of sources, especially those aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health. The Committee recommended the State Party to provide children living in the atolls with access to children's books and magazines, including through online media.⁵⁵ The Committee here acknowledges the reach the Internet has to offer. However, this again is an example of the Committee considering the Internet as just a mere outlet of information and not a communicative tool or interactive environment.

The main difference between provisions in many international treaties and the provisions in the Convention, is that the latter is tailored to children. This differentiation evoked a profound discussion on the formulation of the child's right to freedom of expression. For instance, discussions on Article 17 of the Convention regarding the role of the mass media were characterized by a clash between two competing approaches.⁵⁶

One that supported the free flow of information and one that supported a somewhat more paternalistic approach by preferring the protection of children from harmful information. This

⁵⁴ UN Doc. CRC/C/146, para. 186 (Concluding observations: Luxembourg 2005). See also: UN Doc. CRC/C/153, para. 427 (Concluding observations: Finland 2006)

⁵⁵ UN Doc. CRC/C/45/3, para. 151 (Concluding observations: Maldives 2007).

⁵⁶ Adam Lopatka in: Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the rights of the child. Volume 1*, New York and Geneva: United Nations 2007, p. xli.

clash is also typical for discussions of Internet use by children. With regard to the Internet, the Committee seems to only focus on the paternalistic approach. Furthermore, the Committee under appreciates the Internet as a tool to advance the child's right to freedom of expression.

5 Conclusion

When Article 12 and 13 of the Convention are read together, one has to conclude that the Convention provides for an extensive right to freedom of expression. Together these articles envisage full participation of children in society. Article 12 of the Convention provides that children not only have the right to express themselves, but also, depending on their age and maturity of the child, the children's views need to be taken into account. The scope of Article 12 of the Convention and the child's right to have his or her views taken into account, has been substantially extended in the course of time.

Furthermore, the Committee acknowledges that the child's right to freedom of expression is not just a matter of refraining from interference with this freedom, but also needs a positive obligation to be placed on states. Children can only fully participate in society when states actively enable children to express themselves. The Committee has acknowledged that positive obligations need to be imposed on States Parties to safeguard the child's right to freedom of expression.

With regard to Article 17 of the Convention, the Committee emphasizes the important function the mass media plays for the freedom of speech. The Committee, however, does not seem to consider the Internet as part of the mass media and does not consider the Internet in discussions of the mass media. The Committee does not justify this crucial distinction.

The right to freedom of expression as enshrined in the Convention extends to the Internet as well as any other future medium. The Internet has lowered the traditional thresholds for self-expression and the Convention gives to the Committee many opportunities to not just focus on the dangers of the Internet, but also on the advantages for the child's right to freedom of expression. Article 13 of the Convention provides children with the right to freely express themselves, regardless of borders. Communication over the Internet is typically without boundaries. Children are able to reach out to the whole world and can gather information beyond the borders of their national states over the Internet.

The Convention recognises both the vulnerability of children in certain circumstances but also their capacities and strengths as rights holders. However, with regard to the Internet the Committee tends to focus on just one side of the coin. When the Internet is mentioned by the Committee it is mainly in the context of pornography, violence, racism or otherwise harmful or injurious content. The dangers of the Internet. The Internet could also be a tool to promote the child's right to freedom of expression. The Committee implicitly acknowledges the importance of the Internet when it considers the closing down of chat rooms in South Korea as disproportionate restriction of the child's right to freedom of speech. However, the Committee here only focuses on the aspect of restricting the right to freedom of speech, and not the way the Internet could advance the child's right to freedom of speech. Furthermore, when the Internet is considered by the Committee it is considered as a mere outlet of information. For instance, mobile technology, video advertisements and the Internet should be used a means for raising awareness among both children and parents of information and material injurious to the well-being of children.

The Committee has a proactive approach when it comes to the child's right to freedom of expression. However, the child's right to freedom of expression does not end where the analogue world transcends into the digital world. The Committee under appreciates the Internet as a way for children to express their views and to associate and assemble themselves. It is not clear why the Committee takes such a restricted view on the Internet by considering the Internet as a mere outlet and not so much as an interactive environment that facilitates two-way traffic. The dangers of the Internet should not be underestimated and the Committee does well to make sure that children are protected. However, currently the Committee does not adequately take into account the aspect of advancing freedom of expression when it discusses the Internet in its recommendations to States Parties.