

Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law*

Abstract:

Recently there has been a significant increase in the involvement of children and young people in protests across the globe. As a result of this increase, children have directly influenced political change but have also faced threats to their safety. This raises distinct children's rights issues, and the trends identified necessitate both conceptualizing protest involvement from a children's rights perspective, and critically examining the manner in which the law—at both a national and international level—has approached the involvement of children in such activities. This Article examines the positive obligations of States and argues that children should be recognized as a distinct, valid, and sometimes vulnerable group that has the right to protest and the right to be facilitated in doing so.

I. Introduction

International civil and political rights relating to 'autonomy' remain relatively unexamined in their application to children.¹ This is particularly so for the right to freedom of assembly in general and for the right to engage in peaceful protest in particular.² 'Children'—defined here as those under the age of eighteen—are notable for their minority status even though the spectrum ranges from infants to young adults.³ Despite this status, they have long been involved in peaceful protest. Strikes by school children featured prominently in the struggle against apartheid in South Africa.⁴ During the First Intifada in the Occupied Palestinian

* Dr. Aoife Daly is a lecturer at the School of Law and Director of Academic Studies at the Human Rights Centre at the University of Essex. She has worked and researched widely on human rights issues, in particular on children's rights. She has held a number of N.G.O. and academic positions and has worked for the Children's Research Centre in Trinity College Dublin, Amnesty International (as an Executive Committee member) and Save the Children U.K. She has a Ph.D. in international human rights law from Trinity College Dublin (2011), an LL.M. in the same from the Irish Centre for Human Rights, National University of Ireland Galway (2003), and a B.A. in applied psychology from University College Cork (2002). The author would like to thank Prof. David Mead, Dr. Clara Sandoval, Prof. Maurice Sunkin and Dr. Nyongesa Michael Wabwile for their comments.

¹ Rights which involve children participating in matters affecting them are often referred to as 'participation rights'. Such rights are often neglected by commentators, international human rights monitoring bodies, and others due to traditional notions of children as helpless and vulnerable. I prefer the term 'autonomy rights' here, as the term 'participation' is open to criticism. Quennerstedt argues that 'participation' is "a light-weight version" of the more high-status framework of civil and political rights generally used in human rights law. Ann Quennerstedt, *Children, but not really Humans? Critical Reflections on the Hampering Effect of the "3 p's"*, 18 Int'l J. of Child. Rts. 619 (2010), at 630.

² See e.g. the comment of Dainius Puras that examination of the right of children to freedom of association has been particularly neglected. Damon Barrett and Philip Veerman, *Article 33: Protection from Narcotic Drugs and Psychotropic Substances*, in A Commentary on the United Nations Convention on the Rights of the Child, xiii (André Alen et. al. eds., 2007).

³ Those under age eighteen will hereafter be referred to collectively as 'children' although admittedly not all individuals under age eighteen would identify with this term.

⁴ See South African History Online, *Youth and the National Liberation Movement*, available at <http://www.sahistory.org.za/20th-century-south-africa/youth-and-national-liberation-struggle-1894-1994> (last visited May 17, 2012).

Territories, children mobilized in demonstrations, contributing to the description of the uprising as a “truly a popular rebellion.”⁵ This trend has greatly increased in recent years—the involvement of children in a number of modern protest movements has been strikingly evident. In the 2006 immigrant rights protests in the United States, young people engaged in huge numbers, organizing and orchestrating protests and walkouts.⁶ More recent global developments have put the matter of protest to the forefront of human rights and political discourse. Children have been heavily involved in current protests against cuts in social expenditure, for example the 2010 protest against increases in university fees in England.⁷ They have protested against social and economic inequality more generally, for example through the ‘Occupy’ movement.⁸ Perhaps most strikingly, children have been involved in the uprisings in the Arab world since 2011.⁹ Their activities have, at times, played a pivotal role in the initiation of such movements.¹⁰ Yet, children also have particular vulnerabilities which render their involvement in protest both dangerous and controversial. Considering these ground-breaking developments, the global nature of these phenomena, and the unique position of children both legally and socially, the relevant international human rights law framework as it currently applies to children and protest is a key area of research.

This Article addresses the international human rights framework and the involvement of children in peaceful protest, envisaged primarily in the form of demonstration. Many children hold views about social and political issues and may wish to engage in protest. This Article considers the conceptualization of children in this context and challenges the assumptions of predictable arguments that may be used to exclude them. Protest appears to be on the increase, and children are likely to be involved now more than ever. This Article also highlights that protest can be risky and that children as a group can face threats from authorities. The manner in which the law has approached the involvement of children in protest, both at domestic and regional or international levels, is also critically considered. Particular analysis is provided on the comments of the U.N. Committee on the Rights of the Child, which indicates that, although the Committee has not significantly progressed understanding of obligations to children (which is perhaps unsurprising, because of the nature of the state reporting process to the Committee), the Committee has, at the very least, emphasized a presumption in favor of the right of children to enjoy protest rights on an equal

⁵ Anne Marie Baylouny, *The Palestinian Intifada*, in *The International Encyclopedia of Peace* (Nigel Young ed., 2010), available at <http://faculty.nps.edu/ambaylou/home.htm> (last visited Oct. 17, 2012).

⁶ Christina M. Getrich, *Negotiating Boundaries of Social Belonging: Second-Generation Mexican Youth and the Immigrant Rights Protests of 2006*, 52 *Am. Behav. Sci.* 533, 534 (2008).

⁷ Peter Walker et. al., *Student Protests: School’s Out Across the UK as Children take to the Streets*, *Guar.* Nov. 24, 2010, available at <http://www.guardian.co.uk/education/2010/nov/24/student-protests-school-children-streets#start-of-comments> (last visited May 17, 2012).

⁸ Surveys of the Occupy Wall Street protestors, for example, revealed that 26.7% were enrolled in school. See *The Week Staff, The Demographics of Occupy Wall Street: By Numbers*, Oct. 20, 2011, available at <http://theweek.com/article/index/220529/the-demographics-of-occupy-wall-street-by-the-numbers> (last visited Mar. 31, 2013).

⁹ Protests in Syria were sparked in 2011 by the arrest and torture of young boys for spray-painting anti-regime graffiti. See *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. G.A. Hum. Rts. Cl., 17th Sess., 8, U.N. Doc. A/HRC/S-17/2/Add.1 (2011) and Human Rights Watch, “*We’ve Never Seen Such Horror*”: *Crimes Against Humanity by Syrian Security Forces* (2011), 1.

¹⁰ *Id.*

basis with adults.¹¹ Whilst this approach is commendable, the positive obligations owed to children because of their special vulnerabilities have not been adequately elucidated by the Committee.

The European Court of Human Rights appears to be the sole human rights court at regional level in which matters relating to children and protest have been considered. Therefore, analysis of this jurisprudence is provided. The recent UK *Castle* judgment,¹² which likewise seems to be the only recent domestic law case relating directly to the treatment of children in the context of mass demonstration,¹³ is examined in detail. In *Castle*, the containment ('kettling') of protesting children in uncomfortable conditions for a number of hours was held not to have constituted a breach by the authorities of their duties.¹⁴ This Article argues that the decision is questionable from a children's rights perspective on a number of levels. It is then argued that states have positive obligations, under both the European Convention on Human Rights (ECHR) and in accordance with international standards generally, to take special measures for children who wish to engage in protest. States must facilitate their right to protest, but also take special measures (e.g. advance planning and training of police) in order to account for their potential vulnerabilities. These obligations need to be given greater attention at the international level in order to be adequately applied in domestic cases such as *Castle*.

This Article provides the first comprehensive analysis of international human rights law standards in the context of children and peaceful protest. Assumptions about childhood are challenged, and the Article questions whether the current legal approach is sufficient. The Article argues for greater attention to the positive obligations of states, in order to acknowledge the rights that children have as well as the contribution which children can and do make to their societies.

II. Rights, Protest, and International Human Rights Law

The lack of analysis to date of the protest rights of children as a group is striking considering the vital nature of protest. Although historically there has been no positive right to protest,¹⁵ protection of peaceful protest is found within various human rights and freedoms, most notably the right to freedom of assembly. The rights to freedom of association and to freedom of expression¹⁶ also potentially encompass protest rights.¹⁷ Together they are,

¹¹ Concluding Observations: Japan, *adopted* 26 Feb. 2004, U.N. GAOR, Comm. on Rts. of the Child, 35th Sess., ¶ 29-30, U.N. Doc. CRC/C/15/Add.231 (2004).

¹² *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin).

¹³ It is difficult to assert this conclusively, but it appears at least to be the sole Anglophone domestic law case in recent times which directly involved children and protest.

¹⁴ *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin).

¹⁵ David Mead, *The Right to Peaceful Protest under the European Convention on Human Rights - A Content Study of Strasbourg Case Law*, 4 Eur. J. Hum. R. L. 345, 347 (2007).

¹⁶ In *Ziliberberg v. Moldova*, App. No 61821/00 Eur. Ct. H. R. (4 May 2004), ¶ 2, the European Court of Human Rights made an explicit link between the right to freedom of assembly and the right to freedom of expression: "[T]he right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society."

according to Scheinin, “the core in the category of political rights.”¹⁸ States have a responsibility to uphold the right to freedom of assembly under a number of different international instruments including the Universal Declaration of Human Rights¹⁹ the International Covenant on Civil and Political Rights,²⁰ the African Charter on Human and Peoples’ Rights,²¹ the American Convention on Human Rights,²² and the ECHR.²³ The right to freedom of assembly includes the right of groups to engage in ‘protest’.²⁴ The most familiar mode of protest is arguably demonstration-like activity. For example, the recent demonstrations in the Arab world (popularly referred to as the “Arab Spring”), received extensive coverage and resulted in significant political change in the region.²⁵ Jayawickrama defines a demonstration as “a form of assembly whose objective is to convey to the person or authority for whom a communication is intended the feelings of the group so demonstrating.”²⁶ There are, however, many other forms of resistance which could be classified as ‘protest’ activities, such as walk-outs, sit-ins, and boycotts.²⁷ These types of peaceful protest aim to communicate in a highly visible manner and to display force while avoiding violence.²⁸ Protest aims to bring about change through peaceful means, and therefore it can be vital for the health of a democracy and consequently for the upholding of human rights. It can also be crucial for promoting the interests of, and achieving change for, particular groups of people.

¹⁷ The right to freedom of association is usually included in the provision for freedom of assembly, however the drafters of the International Covenant on Civil and Political Rights (ICCPR) saw fit to separate out the two principles for the purpose of that document. See Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 482-483 (2nd ed. 2005) and Martin Scheinin, *Article 20*, in *The Universal Declaration of Human Rights: A Commentary* 417-429 (Asbjorn Eide et al. eds., 1999).

¹⁸ Martin Scheinin, *supra* note 17, at 417.

¹⁹ Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, art. 20, U.N. Doc. A/RES/3/217A (1948).

²⁰ International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., at 52, arts. 21 and 22, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976)

²¹ Organization of African Unity, *African Charter on Human and Peoples' Rights ("Banjul Charter")*, *adopted* 27 June 1981, art. 10, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (*entered into force* 21 Oct. 1986). The right to free association and freedom of peaceful assembly is also enshrined in Article 8 of the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

²² American Convention on Human Rights, *signed* 22 Nov. 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, O.A.S. Doc. OEA/ser.L/V/II.23, doc. 21, art. 15 (*entered into force* 18 July 1978).

²³ Article 11.

²⁴ Fenwick makes the point that in the case of certain types of protest, such as physically blocking machinery, the ‘assembly’ element may not be important and the activity may instead be categorized as freedom of expression. Helen Fenwick, *Marginalising Human Rights: Breach of the Peace, “Kettling”, the Human Rights Act and Public Protest*, 4 Pub. L. 737, 739 (2009).

²⁵ See e.g. Magid Shihade *et al.*, *The Season of Revolution: The Arab Spring and European Mobilizations*, 4 Interface 16 (2012).

²⁶ Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* 725 (2002). The terms ‘protest’ and ‘demonstration’ are also sometimes used interchangeably. Gelber defines a protest as “a politically expressible, collective gathering in a public place.” Katherine Gelber, *The Right to Protest and Australian Political Culture*. Paper presented at *Conference of the Australian Political Studies Association* (28-30 Sep. 2009) available at <http://ssis.arts.unsw.edu.au/staff/katharine-gelber-1109.html> (last visited 27 July 2012).

²⁷ See Adam Roberts & Timothy Garton, *Civil Resistance and Power Politics*, 2-4 (2009). For consideration of the difficulties generally in defining ‘protest’ for the purpose of legal analysis, see Mead, *supra* note 15, at 347.

²⁸ Jayawickrama, *supra* note 26.

The importance of protest for individuals and for democracy generally has long been recognized,²⁹ as demonstrated by the inclusion of the right to freedom of assembly and freedom of association in numerous international instruments.³⁰ The degree of acceptance of the importance of protest at international level, however, belies the fact that protest creates public order challenges for authorities. Protest frequently involves extremely large crowds of people from very different groups, some of whom may not intend to protest peacefully. In some of these instances, conflict with authorities is inevitable.³¹

The Arab Spring demonstrations from 2011 provided strong evidence of the change that protest can make for peoples' rights and interests,³² but it also brought attention to the dangers which protestors can face at the hands of state authorities.³³ In light of these events, which received global interest, there has been a reassertion at international level of the vital nature of protest for democracy and human rights. The uprisings generated the recent U.N. Human Rights Council Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests at which delegates emphasized that “[g]uaranteeing human rights in the context of peaceful protests was at the essence of democratic participation” and that violence against protestors is a direct threat to democracy and potentially to international peace and security.³⁴ The U.N. Human Rights Council has referred in a recent resolution on The Rights to Freedom of Peaceful Assembly and of Association to the vital role of the right to freedom of association to the full enjoyment of all other rights.³⁵ Reflecting the growing recognition of the importance of protest as a human right, the mandate of the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association was established in 2010.³⁶ As the Special Rapporteur stated in

²⁹ Mead outlines that protest can have a functional value for democracy, but can also have intrinsic value as the right of an individual. David Mead, *The New Law of Peaceful Protest*, 6-8 (2010).

³⁰ See above at p.4.

³¹ Fenwick makes the point that in the UK “...the groups tend to be made up of various disparate elements, including peaceful protesters and hard-core activists.” Fenwick, *supra* note 24, at 737.

³² For research indicating the effectiveness of protest, see e.g. Erik Johnson, *Social Movement Size, Organizational Diversity and the Making of Federal Law*, 86 *Social Forces* 967 (2008), Jon Agnone, *Amplifying Public Opinion: The Policy Impact of the U.S. Environmental Movement*, 85 *Social Forces* 1593 (2007), and Erik Johnson *et. al.*, *Where and How Do Movements Matter? The United States Environmental Movement and Congressional Hearings and Laws, 1961-1990*, Paper presented at American Sociological Association 101st Annual Meetings 2006, Montréal, Canada (Aug. 11-14, 2006) available at

http://www.unc.edu/~fbaum/teaching/PLSC541_Fall06/Johnson_Agnone_McCarthy_March_2006.pdf (last visited Feb. 27 2012).

³³ See e.g. Human Rights Watch, *Egypt: Documented Death Toll from Protests Tops 300*, Feb. 8, 2011, available at <http://www.hrw.org/news/2011/02/08/egypt-documented-death-toll-protests-tops-300> (last visited March 31, 2013).

³⁴ *Summary of the Human Rights Council Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests prepared by the Office of the United Nations High Commissioner for Human Rights, adopted 19 December 2011*, U.N. Hum. R. C., 19th Sess., U.N. Doc. A/HRC/19/40 (2011), at para. 45.

³⁵ *The Rights to Freedom of Peaceful Assembly and of Association, adopted 27 September 2010*, U.N. Hum. R. C., 15th Sess., U.N. Doc. A/HRC/15/L.23 (2010), at 1.

³⁶ The role of the Special Rapporteur is to examine issues relating to freedom of peaceful assembly and of association and to provide independent reports to the Human Rights Council of the U.N. See the website of the Office of the UN High Commissioner for Human Rights, *Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, available at

the recent Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, protest is a means through which citizens can peacefully direct government attention to their issues.³⁷ Because of the potential for protest as a peaceful alternative to violent means, the Rapporteur asserts, “[p]eaceful protest must thus be protected, and protected robustly.”³⁸

Protest is potentially as useful a tool for advancing the rights of children as it is for promoting those of other groups. In 2005, the then Human Rights Commission recognized that freedom of assembly and association provide people with vital opportunities to, amongst other things, express political opinions.³⁹ Protest has been described as being as important to a democratic society as voting, as “[b]oth are routes by which ideas can be promoted and debated.”⁴⁰ It can then be argued that protest is particularly important for children, who are, for the most part, without the right to vote,⁴¹ and therefore have fewer avenues than adults through which to assert their interests.

The Human Rights Council has emphasized that not only do individuals have a right to protest, but they also have a duty to strive for human rights.⁴² Children and young people are well placed to do this because they can be acutely aware of human rights issues and intensely interested in social justice. Even young children may be capable of thinking logically and seeing things from the perspective of others, and the increased awareness of social issues of children, at least from the age of eleven, is well documented.⁴³ Recent research points to the abilities of children from fourteen to seventeen years of age to reason in a sophisticated manner on complex questions relating to moral issues.⁴⁴ Children consistently express that they wish to have greater participation in political matters,⁴⁵ which is one of the reasons why Austria, for example, extended the right to vote to young people sixteen years and older.⁴⁶ Moreover, there are already examples of children organizing in order to further their own

<http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx> (last visited March 31, 2013).

³⁷ *Summary of the Human Rights Council Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests prepared by the Office of the United Nations High Commissioner for Human Rights, adopted 19 December 2011, U.N. Hum. R. C., 19th Sess., U.N. Doc. A/HRC/19/40 (2011), at para. 13.*

³⁸ *Id.*

³⁹ *Promoting the Rights to Peaceful Assembly and Association: Human Rights Resolution 2005/37, adopted 19 April 2005, U.N. C. Hum. R., 57th Sess., U.N. Doc. E/CN.4/2005/L.10/Add.11 (2005), at 1.*

⁴⁰ “Foreword” in Tom Wainwright *et al.*, *The Protest Handbook* v (2012).

⁴¹ A handful of states have introduced the right to vote starting at age sixteen. See Aoife Daly, “Under-18s and the Right to Vote” in *The Challenge of Human Rights: Past, Present and Future* 268 (Keane and McDermott eds., 2012).

⁴² *Agenda Item 3, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, adopted 27 September 2010, U.N. Hum. R. C., 15th Sess., U.N. Doc. A/HRC/15/L.23 (2010), at 1.*

⁴³ John Santrock, *A Topical Approach to Lifespan Development*, 221 (2008).

⁴⁴ Roberta Bosisio “*Right*” and “*Not Right*”: *Representations of Justice in Young People* 15 Ch. 290 (2008).

⁴⁵ See e.g. Bob Franklin, *Right to Vote: Children’s Rights means Citizen’s Rights*, in *Measuring Maturity: Understanding Children’s ‘Evolving Capacities’* 16-17 (Children’s Rights Information Network, 2009).

⁴⁶ In one Austrian study, for example, the vast majority of children expressed that they wished for greater participation in local matters. Unpublished report, Riepl and Riegler, *Graz: Kommunale Beratungsstelle für Kinder und Jugendinitiativen* (1997). Cited in Gerison Lansdown, *The Evolving Capacities of the Child*, 5 (2005).

interests. The phenomenon of child workers forming their own organizations has been documented, and the contribution of such groups to social transformations in their localities has also been highlighted.⁴⁷ In some areas, the members of these groups get involved in neighborhood initiatives to improve living conditions, and are accepted as useful partners in this exercise.⁴⁸ Children have much to offer social justice movements in order to progress both their own interests as well as those of their communities generally.

II. Children and Protest

The category referred to as ‘children’, i.e. all those under eighteen, ranges from infants right up to individuals of seventeen years.⁴⁹ Children of all ages can feature in protests. Some, likely younger children, will have been brought there by parents. Others, likely adolescents, will have come to have their own voices heard as individuals. Because of the spectrum of ages and abilities of children, it is difficult to generalize about particular groups. The U.N. Convention on the Rights of the Child (CRC), for example, does not categorize children by age, but instead recognizes the notion of the “evolving capacities of the child”,⁵⁰ the principle that children’s capacities increase as they develop, and so too, therefore, does the ability of a child to exercise her own rights as opposed to adults exercising rights on her behalf.⁵¹ Understandings of children’s capacities, maturity, and roles in society vary greatly across cultures and sub-cultures and are not always measured by age alone.⁵² Nevertheless, this Article primarily considers the right to protest for older children who have the ability to form views,⁵³ and have attended a protest because they wish to make a point about the issue in question. As noted above, these individuals will likely be adolescents,⁵⁴ however, this is not to assert that it might never be appropriate for younger children to form views and attend a protest as well. It seems particularly important to avoid setting a minimum age below which children should not attend protests because of the lack of attention children’s autonomy rights traditionally receive, primarily due to often mistaken assumptions that children will not, cannot, or should not exercise these rights. For many children the reality is very different, and they have both the desire and the ability to exercise such rights.

⁴⁷ See Manfred Liebel, *Working Children as Social Subjects: The Contribution of Working Children's Organizations to Social Transformations*, 10 Ch. 265, 280 (2003).

⁴⁸ *Id.*

⁴⁹ The CRC states in Article 1 that “[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

⁵⁰ CRC, Article 5.

⁵¹ See Lansdown, *supra* note 46, and Gerison Lansdown, ‘Evolving Capacities’ Explained, in *Measuring Maturity: Understanding Children’s ‘Evolving Capacities’ 7-9* (Children’s Rights Information Network, 2009).

⁵² Lansdown, *supra* note 51, at 8.

⁵³ See further Lansdown, *supra* note 46, and Roger Hart, *Children's Participation: From Tokenism to Citizen* (1992), examined below at Section 3.2. Whether their parents will give them permission is, of course, another matter altogether, and one which is beyond the scope of this Article. The CRC recognizes that parents have primary responsibility for guiding children in the exercise of their rights, in accordance with the evolving capacities of the child (see e.g. Article 5).

⁵⁴ See above references to Bosisio, *supra* note 44, who emphasizes the awareness of children about social issues, at least from age eleven. This roughly corresponds with the onset of puberty and the accompanying (relative) independence of that stage of development. For analysis of the diversity of ‘adolescences’ see Reed Larson & Suzanne Wilson, *Adolescence across Place and Time: Globalization and the Changing Pathways to Adulthood*, in *Handbook of Adolescent Psychology* 299-330 (Richard Lerner and Laurence Steinberg, 2004).

As noted above, the right to freedom of assembly is well-established in international human rights law. The right as it is included in other instruments could be argued to apply to children, yet the explicit inclusion of the right in Article 15⁵⁵ of the CRC⁵⁶ has provided welcome clarification that such a right does indeed exist for this group. However, the lack of attention accorded to Article 15 or any of the autonomy rights in the CRC has been strongly related to fears of undermining the family unit⁵⁷ despite the obvious support for parents and families in that instrument.⁵⁸ It has also been due to notions about children’s capacities.⁵⁹ It has been argued that, while some of these assumptions are logical, many others are unjustly discriminatory.⁶⁰ There are clearly times when children cannot engage in the exercise of certain civil and political rights—for example, an infant cannot vote or instruct counsel. Yet, there are other instances where the question of whether children should be excluded from exercising autonomy rights is far less clear-cut. The blanket approach of the law to minority status for those under eighteen years creates an assumption of exclusion from certain activities for this group, even when this approach contradicts principles in other areas. James and James have long highlighted the “ambivalence” with which society approaches the matter of children and their capacities.⁶¹ On the one hand children are held responsible for crimes from the age of ten in some jurisdictions, and yet at the same age are considered too vulnerable or unreliable to participate in family law proceedings regarding their own interests.⁶²

It is indeed the case that the capacities of children can differ from those of adults, but it is no longer acceptable to exclude all children from exercising autonomy rights on this basis. Children are often less experienced than adults and are likely to be less developed cognitively; however, there are inherent problems in viewing children through the prism of

⁵⁵ See further below at Section 5. Article 15 stipulates:

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.

⁵⁶ Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., art. 14, ¶ (1), U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3 (*entered into force* 2 Sept. 1990) [hereinafter CRC].

⁵⁷ See e.g. Bruce Hafen & Jonathan Hafen, *Abandoning Children to their Rights* 55 *Fir. Th.* 18 (1995). The authors state that “the CRC is flawed by attitudes about autonomy that are ill-suited for children in any nation.”

⁵⁸ The CRC describes the family as “the fundamental group of society” (Preamble) and states that parents are to provide “appropriate direction and guidance in the exercise by the child of the rights” in the CRC (Article 5).

⁵⁹ See Daly *supra* note 41; Daly, *Considered or Merely Heard? The Views of the Young Children in Hague Convention Cases in Ireland*, 12 *Ir. J. Fam. L.* 16 (2009); Michael Freeman, *Review Essay: What’s Right with Rights for Children* 2 *Int’l J. of L. in Cxt.* 89 (2006); Gerison Lansdown, *The Evolving Capacities of the Child* (2005).

⁶⁰ *Id.*

⁶¹ Allison James, *To Be (Come) or Not to Be (Come): Understanding Children’s Citizenship*, 633 *Annals Am. Acad. Pol. & Soc. Sci.* 167, 173 (2011). See also Allison James & Adrian James, *Constructing Childhood: Theory, Policy and Social Practice* (2004) and Adrian James, *Children, the UNCRC and Family Law in England and Wales* 46 *Fam. Ct. Rev.* 1 (2008).

⁶² *Id.*

adult ‘competence’.⁶³ By doing this, we lose much of the lived experience of childhood and the conceptualization of children’s interests as they see them. Although adults may genuinely intend to further children’s rights, they cannot claim to speak conclusively for children and young people, because they are not a member of that group. Therefore, autonomy rights for children are vital—they recognize that children can and should speak for themselves. Protest is, of course, an important means of ‘speaking’ for oneself. Although children’s capacities are still evolving, they should not necessarily be excluded from protest. Flekkoy and Kaufman contend that if competency were the sole determinant of citizenship, “many adults would also be excluded.”⁶⁴ By the same token, many adults would find themselves excluded if the right to engage in peaceful protest were based on competency.

Although the differences between adults and children must be acknowledged, they should not be overestimated. There is an inherent problem in how we see children as ‘other’—as different from adults—as this makes it very convenient to exclude children from mainstream society. This problem is as applicable to protest as it is to other areas, such as voting. It is undeniable, however, that children will have particular needs in the context of protest that are different to those of adults. Children will, at least until their adolescence years, be smaller in stature than adults, and may therefore be more vulnerable in the context of violent protests.⁶⁵ Children have, in general, less life experience which may also render them more vulnerable and open to exploitation in certain scenarios. Moreover, their minority status may raise particularly difficult issues: children who wish to protest may be constrained by issues relating to parental consent, school guidelines, and minimum ages. For example, some states have established a minimum age below which one may not organize a protest.⁶⁶

Theories which attempt to broaden the notion of citizenship have developed as the thinking regarding children’s ‘participation’ rights has evolved.⁶⁷ These theories can be useful for conceptualizing a right to peaceful protest for children. Citizenship theories “need to be sufficiently flexible to encompass child development rather than competency.”⁶⁸ Cockburn rejects the ‘adult’ model of citizenship for children and argues instead for a new type of citizenship which can *accommodate* the special position of children rather than using it as a basis for exclusion.⁶⁹ This model involves a re-conceptualization of citizenship in order to recognize the interdependence of human beings and to value children as the human beings

⁶³ James, *supra* note 62, at 170-171.

⁶⁴ Malfred Grude Flekkoy and Natalie Hevener Kaufman, *The Participation Rights of the Child: Rights and Responsibilities in Family and Society* (1997). Cited in Geraldine Van Bueren, *Multigenerational Citizenship: The Importance of Recognizing Children as National and International Citizens*, 633 *Annals Am. Acad. Pol. & Soc. Sci.* 30, 33 (2011).

⁶⁵ Mead makes the point, however, that for the purpose of the European Convention on Human Rights, if a demonstration becomes violent, it does not follow that those present lose the protection of that Convention. Mead, note 29, at 67.

⁶⁶ For example, Turkey has been criticized for setting the minimum age at nineteen. See Concluding Observations: Turkey, *adopted* 20 Jul. 2012, U.N. GAOR, Comm. on Rts. of the Child, 60th Sess., ¶ 38, U.N. Doc. CRC/C/R/CO/2-3 (2012), considered further below.

⁶⁷ See Jeremy Roche, *Children: Rights, Participation and Citizenship* 6 Ch. 475 (1999).

⁶⁸ Van Bueren, *supra* note 64, at 33.

⁶⁹ Tom Cockburn, *Children and Citizenship in Britain*, 5 Ch. 99, 113 (1998).

they are in the present, not just as future adults.⁷⁰ Children should not be seen solely as a group which is different to adults but instead as a group which has a “central component in society.”⁷¹ In the context of protest, children should not be seen solely as a group with the right to protest as adults do. Instead, they should be seen as a group with as much interest in protest as adults, but one which may have particular needs which must be met to allow them to exercise the right.

III. Risks for Children in the Context of Protest

In the modern, liberal context of the geographic ‘West’, children are primarily conceptualized as vulnerable, helpless, and incapable.⁷² This notion of children is changing within disciplines such as psychology and law as it is increasingly recognized that children have been underestimated in their capacities.⁷³ This new conceptualization of children has started to permeate popular notions about their abilities. As noted above, however, there is no doubt that children have specific vulnerabilities due to the physical differences between children and adults, as well as the less developed capacities that children may have compared to adults. This section considers the potential dangers of protest for children, including the physical dangers as well as the risk that children could be manipulated into protest activity. It also explores the argument that children should be shielded from the adult world and that they should not be involved in protest.

A. Risks to Children’s Physical Safety

It is inescapable that protests can involve a risk of violence. As noted above, children may be at greater risk than adults in such circumstances because they are generally smaller in stature. This raises the argument that the need for special protection for children should be factored into laws and guidance relating to protests. Veerman and Levine state that in the context of violent protests, “[m]inors taking part in violent demonstrations (as in the Palestinian uprising) need to be protected differently from adults.”⁷⁴ Although the authors were referring to violent demonstrations, the same can be said for the increasingly important arena of peaceful protests. Even originally benign protests can turn dangerous, and the special needs of children should be addressed to account for this scenario.

Another point relating to the dangers posed by protest is that, during times of unrest in a society, children can become particular targets for groups looking to perpetrate violence on a population. Van Bueren theorizes that the phenomenon of targeting children may be used as a tool to subjugate communities, “creating general unease.”⁷⁵ This has certainly appeared to

⁷⁰ *Id.*

⁷¹ *Id.* at 114.

⁷² See e.g. John Eekelaar, *The Interests of the Child and the Child’s Wishes: The Role of Dynamic Self-Determinism*, 8 Int’l J. L. Pol’y & Fam. 42 (1994).

⁷³ See Lansdown, *supra* note 46.

⁷⁴ Philip Veerman and Hephzibah Levine, *Protecting Palestinian Intifada Children: Peaceful Demonstrations, Child Soldiers or Child Martyrs?* 9 Int’l J. Child. Rts. 71, 71 (2001).

⁷⁵ Geraldine Van Bueren, *The International Law on the Rights of the Child* xx (1998).

be a feature of violence occurring in Syria between 2011–2013.⁷⁶ The report of a U.N. commission of inquiry, established in 2011 by the Human Rights Council, appears to document a phenomenon of children being targeted for violence by security forces.⁷⁷ It was reported to the commission that children had been killed and injured by security forces at numerous demonstrations.⁷⁸ The commission also found widespread reports of torture of children in custody, as well as sexual abuse of boys in front of adult prisoners.⁷⁹ The Syrian situation demonstrates the trend highlighted by Van Bueren of the use of children as tools to harm adults, in this case, adults of a resistant population.⁸⁰ It also points to the need to consider the particular vulnerabilities of children during demonstrations.

B. The Risk that Children Could be Manipulated

The risk that children can be manipulated for the purpose of protest could possibly be a concern. Older children could be encouraged by adults to take part in protests in order to further the interests of those adults. Some groups may find it useful, for example, to include children in order to increase the numbers participating in a protest. Children can and are used as tools to evoke emotions and to shock. For example, in 1989, parents brought children to an anti-abortion rally outside a family-planning clinic in the United States.⁸¹ Though the Article did not mention the ages of the children, it did note the presence of a baby.⁸² A pro-choice demonstrator remarked that including children as protesters was “manipulative and abusive” and that the children were probably not old enough to understand the relevant issues.⁸³ Defending their presence, the organizer of the protest stated that “[m]any of the children know their parents have been active in picketing, and the desire of a lot of children was to participate.”⁸⁴

To contextualize this difficult scenario, it is useful to consider Hart’s “ladder of participation”.⁸⁵ This denotes degrees to which children’s participation may affect certain matters affecting them.⁸⁶ The spectrum ranges from “manipulation” (which does not constitute genuine participation) right up to instances of children sharing decision-making with adults.⁸⁷ Hart states that manipulation may involve instances of pre-schoolers carrying

⁷⁶ See e.g. *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* and Human Rights Watch *supra* note 10.

⁷⁷ *Id.*

⁷⁸ *Id.*, at 14. It is reported by the commission that by November 2011 an estimated 256 children had been killed by security forces.

⁷⁹ *Id.* at 15.

⁸⁰ Van Bueren, *supra* note 75.

⁸¹ Mary Lou Fulton, *Children Join Peaceful Protest against Abortion*, *Times*, Aug. 11 1989, available at http://articles.latimes.com/1989-08-11/local/me-321_1_peaceful-protest (last visited Dec. 17, 2012).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 15.

⁸⁵ Hart, *supra* note 53.

⁸⁶ *Id.*

⁸⁷ *Id.*, at 9. The “Rungs” on the ladder as follows; Rung 1: Children are manipulated; Rung 2: Children are ‘decoration’; Rung 3: Children are involved in a tokenistic way; Rung 4: Children are ‘assigned and informed’; Rung 5: Children are ‘consulted and informed’; Rung 6: Adult-initiated, shared decisions with children; Rung 7: Children lead and initiate action; Rung 8: Children and adults share decision-making.

placards when they do not understand the issue.⁸⁸ According to Hart, adults feel that the ends justify the means, as the issue impacts children.⁸⁹ This may be misguided rather than manipulative, according to Hart.⁹⁰ “Social mobilization” of children, such as children engaging in marches, however, has the potential to facilitate genuine participation. Hart writes that although it is easy to dismiss such marches as non-participation even where children are sent by adults to march “[s]uch events may have considerable merit for the children nevertheless, particularly when the issue concerns children, is understood by them, and is deemed by them to be important.”⁹¹ The cultural context must also be examined in order to determine whether such examples are genuine participation, and Hart opines that there can be a continuum, ranging “from regime-instigated to voluntary activity.”⁹² According to Hart, boy scouts being sent out to clean up after an event would not be genuine participation; however, if they had been taught about the effects of pollution, had views on it, and actually wished to do it, then this could be categorized as genuine participation.⁹³ Applying this theory to the abortion rally scenario, the type of participation children engage in depends on the context of that rally for an individual child. If the child was familiar with the issues, felt strongly about them, and actually wished to accompany her parents, then this could constitute genuine participation.

Another challenging example which raises questions about the voluntariness of children’s participation in protest arises in the context of Syria. In 2011, children were reported to be engaging in children-only protests against the regime.⁹⁴ The pattern of arrest and torture of children by the regime clearly renders this activity dangerous for children. Whether adults encouraged children to engage in children-only protests was unclear.⁹⁵ It is possible that anti-regime adults may have manipulated children into action in an attempt to gain headlines and to provoke further sympathy for their cause by purposely placing children in danger, yet the children apparently began to protest when the traditional public celebrations to mark the end of Ramadan, which are particular to children, were forbidden,⁹⁶ indicating that they were protesting about an issue directly relating to them. If the children felt that it was in their interests to protest and understood the risks they were taking, then arguably this could constitute genuine participation, at least within the framework of Hart’s ‘Ladder’.

It is easy to overstate the argument that the involvement of children in protest constitutes adult manipulation. The growing recognition that children may have views on various

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 10.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Mahamadou Sawaneh, *Children’s Rallies: Controversial New Protests in Syria*, France 24, Sep. 6 2011, available at <http://observers.france24.com/content/20110906-syria-homs-controversial-new-protests-syria-children-rallies> (last visited May 17, 2012).

⁹⁵ *Id.*

⁹⁶ *Id.*

matters affecting them is recognized by Article 12 of the CRC⁹⁷ and reflected in the increasing numbers of national Youth Parliaments⁹⁸ and other initiatives supporting children to contribute their views in political matters. Adults too can be manipulated by third parties to protest in the interests of those parties, yet we would not seek to prevent adult participation on this basis. Children, like adults, are influenced by various organizations as well as their communities and neighborhoods, and they are “enmeshed in a web of potential political and civic influences.”⁹⁹ Moreover, it is clear that adults have an ambivalent attitude toward the validity of the involvement of children in protests. Recent research on the involvement of young people in protests against the Iraq war highlighted that the approval of the media of young people’s right to protest depended on the stance of the particular newspaper towards the war.¹⁰⁰

Clearly, however, there are instances where children simply cannot grasp the issues which are the subject of protest. The baby reported at the abortion rally in 1989, for example, would not have been capable of comprehending anything about that matter. Whether or not parents should bring small children to protests is contentious. At Rung 2 of Hart’s ladder, children are “decoration.”¹⁰¹ Decoration, like “manipulation”, is held by Hart not to constitute genuine participation.¹⁰² Hart explains that this stage involves “those frequent occasions when children are given T-shirts related to some cause, and may sing or dance at an event in such dress, but have little idea of what it is all about.”¹⁰³ This does not constitute manipulation because adults do not attempt to falsely portray the children involved as the instigators. It does, however, potentially use children as tools in an attempt to further the cause of adults.¹⁰⁴ This said, it can be argued that the visible presence of infants normalizes their existence beyond the interests of the adults that have brought them there, and to explicitly exclude infants would exclude them from public space.¹⁰⁵ It must also be considered that parents have the right to include their children in a protest as an educational and/or cultural exercise.¹⁰⁶ Nevertheless, possibly a more straight-forward and pertinent

⁹⁷ Article 12(1) stipulates that “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.”

⁹⁸ O’Toole & Gale refer to a “movement towards the inclusion of, and consultation with, children and young people in policy-making institutions and processes, based on the recognition that they constitute important and distinctive rights-bearers and stake-holders.” Therese O’Toole & Richard Gale, *Participative Governance and Youth Inclusion: The Case of Youth Parliaments*, Conference on Theorising Children’s Participation: International and Interdisciplinary Perspectives, University of Edinburgh (4-6 Sep. 2006).

⁹⁹ Irene Bloemraad & Christine Trost, *It’s a Family Affair: Intergenerational Mobilization in the Spring 2006 Protests*, 52 *Am. Behav. Sci.* 507, 512 (2008).

¹⁰⁰ Elizabeth Such *et. al.*, *Anti-War Children: Representation of Youth Protests against the Second Iraq War in the British National Press*, 12 *Childhood* 301, 302 (2005).

¹⁰¹ Hart, *supra* note 53, at 9.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See below Section entitled “The Case Law of the European Convention on Human Rights” for consideration of The Case of the Christian Democratic People’s Party v. Moldova (No.2), App. No. 28793/02, Eur. Ct. H. R. (14 Feb. 2006), in which the European Court of Human Rights upheld the right of children to be present at a rally.

¹⁰⁶ It is regularly reported that protests include “families” see e.g. *Anti-Cuts March: Tens of Thousands at London Protest*, BBC News Website, Mar. 27 2011, available at <http://www.bbc.co.uk/news/uk-12864353> (last

issue for current discussion, is the involvement of children who have the capacity to understand and to form views to some degree about the social or political matters involved.

C. Protecting Children from Adult Issues?

Considering the contentious issues discussed above, it is understandable that adults may have a desire to ‘protect’ children from involvement in protest. Some may take issue with facilitating children to be involved in what could be considered adult issues of policy and politics, yet, the dangers of excluding children must also be considered. We expect adults, such as parents’ and children’s rights groups, to campaign for children’s issues on behalf of children. It is arguable, however, that they are not sufficiently successful. The neglect of children’s interests is evident in a broad number of areas—children are far more likely than adults to live in poverty, for example.¹⁰⁷ Van Bueren makes the point that “without de jure recognition of their citizenship responsibilities, children become more vulnerable and not less.”¹⁰⁸ She points to the example of child-headed households such as the households run by children orphaned by AIDS in South Africa,¹⁰⁹ and the clear barrier that these households face where policy dictates that social security payments are not made to children.¹¹⁰ This example of children assuming responsibilities yet not the corresponding rights indicates that many are capable of, and should be acknowledged as having, the cognitive capacity for mobilization to assert collective child-oriented interests.

Moreover, the phenomenon of modern technology has created a backdrop whereby children have easy access to information and are therefore less likely to remain unaware of local and global politics and events.¹¹¹ The ill-fated Kony 2012 campaign highlighted that young people can be mobilized in enormous numbers on social issues, and that social media can be

visited Dec. 17, 2012). For an example where the presence of families appeared to contribute to a “good natured” atmosphere; see also Ralph Riegel and Breda Heffernan, *Hundreds March in Protest against Cuts*, Independent, Nov. 5 2012, available at <http://www.independent.ie/national-news/hundreds-march-in-protest-against-cuts-3282211.html> (last visited Dec. 21, 2012). Of course, when the issue in question is specific to children, it is even more likely that children will be present. See e.g. *Over 200 take part in Protest over Crumlin Hospital Cuts*, People Before Profit Website, May 23 2009, available at <http://www.peoplebeforeprofit.ie/node/129> (last visited Jan. 4, 2013).

¹⁰⁷ See e.g. U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, Current Population Reports, Series P60-243, 15 (2012). There are numerous other examples where one could argue that adult interests supersede those of children. One is that in the United States, spending on the elderly was 7.5% of GDP between 1975 and 1990, while spending on children was just 2%. See Francis Scrag, *Children and Democracy: Theory and Policy*, 3 Pol. Phil. & E. 365, 375, cited in Andrew Rehfield, *The Child as Democratic Citizen*, 633 Annals Am. Acad. Pol. & Soc. Sci. 141, 156 (2011).

¹⁰⁸ Geraldine Van Bueren, *Multigenerational Citizenship: The Importance of Recognizing Children as National and International Citizens*, 633 Annals Am. Acad. Pol. & Soc. Sci. 30, 31 (2011).

¹⁰⁹ The 2006 General Household Survey in South Africa indicated that 0.67% of children live in child-headed Households, constituting approximately 122,000 of the 18.2 million children of South Africa. See Helen Meintjes *et. al.*, *Child-Headed Households in South Africa: A Statistical Brief*, 1 (2005). See also Liebel’s points about the lack of rights for working children in the Global South to, amongst other things, open bank accounts and sign contracts. Liebel, *supra* note 47, at 270.

¹¹⁰ See Meintjes *et. al.*, *supra* note 109, at 3.

¹¹¹ Such *et. al.*, *supra* note 100, at 304.

a powerful tool for this purpose.¹¹² In spite of the fear, often evoked by the media, about the dangers of the internet for children, the medium presents huge opportunities for children's civil and political rights. It facilitates them in breaking from their traditional confinement in the private sphere by allowing them to engage from a home PC with others with similar interests and consequently encounter social and political issues.¹¹³ In the United States, exposure to information online has been associated positively with political participation.¹¹⁴ Such engagement indicates a re-emergence of political activism and democratic participation, equipping a new generation with the capacity for effecting societal change.¹¹⁵ Examples of broader social justice campaigns are also starting to emerge. In 2011 there was widespread activism in Chile to demand reform in education and energy policies.¹¹⁶ High school and university students have reportedly been the most vocal and successful, conducting extensive on-line campaigns for social change.¹¹⁷ By the end of 2011 public opinion support for the movement stood at 79%. This indicates the success that young people can have, and the efficacy of social media as a tool to achieve change.¹¹⁸

The value of participation as a learning experience during childhood and adolescence is gaining increased recognition.¹¹⁹ Children will not become competent to participate in public life overnight once they reach the age of eighteen. Therefore, they should have opportunities to engage during their childhood years in order to learn how to do so¹²⁰ Arguably, participation will not only teach them that they have rights, but it will also help them to understand that these rights may have to be restricted because of conflicts with the rights of others.¹²¹ The U.N. Committee on the Rights of the Child, the monitoring body for the CRC, has opined that "children cannot be expected to mature into full members of society if they lack the experience of participation in school and community life."¹²² The ability of young people to get involved in activism on a matter of importance to them was strongly

¹¹² This was a campaign in 2012 where a group called Invisible Children aimed to make Ugandan militia leader Joseph Kony, indicted by the International Criminal Court, globally known in order to have him arrested. After a film by the group went viral on YouTube, the group came under much criticism about their approach to the issue and their use of funds. Ultimately, the 'day of action' which had been planned had a very low turnout.

¹¹³ See e.g. in the U.S. context Homero Gil de Zúñiga, & Sebastian Valenzuela, *The Mediating Path to a Stronger Citizenship: Online and Offline Networks, Weak Ties and Civic Engagement*, 38 Com. Res., 397 (2011).

¹¹⁴ Shelley Boulianne, *Does Internet use Affect Engagement? A Meta-Analysis of Research*, 26 Pol. Cm. 193 (2009). The on-line activism of children in protest of the Digital Millennium Copyright Act (1998), for example, which sought to eradicate free access to music online, has been documented. See Kathryn Montgomery, *Generation Digital: Politics, Commerce, and Childhood in the Age of the Internet* (2010).

¹¹⁵ Montgomery, *supra* note 114.

¹¹⁶ See Sebastian Valenzuela, Arturo Arriagada & Andres Scherman, *The Social Media Basis of Youth Protest Behavior: The Case of Chile*, 62 J. Com. 299 (2012). See also Simon O'Rourke, *Empowering Protest through Social Media*. Paper presented at 2nd International Cyber Resilience Conference (Aug. 1-2 2011) available at <http://igneous.scis.ecu.edu.au/proceedings/2011/icr/ICR2011.pdf#page=52> (last visited Jul. 27 2012).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ See e.g. Committee on the Rights of the Child, *Summary Record regarding the Republic of Korea*, Jan. 26 1996, CRC/C/SR.277 at para. 50, cited in Sylvie Langlaude, *On How to Build a Positive Understanding of the Child's Right to Freedom of Expression*, 10 Hum. Rts. L. Rev. 33, 53 (2010).

¹²⁰ Roberta Bosisio, *Children's Right to be Heard: What Children Think*, 20 Int. J. Child. R. 141, 144 (2012).

¹²¹ *Id.* See also Hart, *supra* note 87, at 35.

¹²² Committee on the Rights of the Child, *supra* note 119.

emphasized during the 2006 immigrant rights demonstrations and boycotts in the United States.¹²³ Getrich interviewed teenagers who had organized and marched in protests in order to oppose proposed laws that would have had a detrimental effect on themselves, family and friends.¹²⁴ They had “strong opinions”¹²⁵ which they were eager to express. Getrich determined that it was a very formative experience for these teenagers, and that it resulted in a feeling of belonging in their society.¹²⁶ Not only did the teenagers find that the protests raised awareness of issues of vital importance to them, but also that the protests affirmed their identities.¹²⁷

The value to society generally is also potentially significant where children engage in protest. Hart makes the point that children, particularly teenagers, “struggle to find meaningful roles in society”, and suggests that if they are unable to find roles that facilitate responsibility, they may be more likely to find roles that promote irresponsibility.¹²⁸ Hart also emphasizes the potential community organization benefits of children’s participation, stating that:

‘Communities’, in the broadest sense of the word, are constructed. To support children or youth in working together is, by definition, to be engaged in community development. Through positive group experiences children discover that organizing can work in their self-interest. Such mutual self-interest is probably the strongest base for cultural and political organization.¹²⁹

It is also likely that those who have engaged in protest will take more of an interest in their communities and in democratic processes later in life.¹³⁰ Getrich raises the possibility that, in the context of the Latino protests, “the teens’ activism in the realm of nonelectoral politics will translate into an increase in voting rates for this demographic.”¹³¹ There are, therefore, solid utilitarian reasons for encouraging and facilitating children to take interest in social issues, including through protest.

¹²³ Irene Bloemraad and Christine Trost, *It’s a Family Affair: Intergenerational Mobilization in the Spring 2006 Protests*, 52 *Am. Behav. Sci.* 507, 507 (2008). The demonstrations were organized in response to proposed legislation known as [H.R. 4437](#), which would have increased penalties for illegal immigrants, classifying such immigrants and anyone who had helped them to enter or remain in the United States as felons. See Civil Rights Monitor, *The Immigration Debate: H.R. 4437, S. 2454, and S. 2611*, available at <http://www.civilrights.org/monitor/fall2006/art2p1.html> (last visited Apr. 2, 2013).

¹²⁴ Christina M. Getrich, *supra* note 6, at 534.

¹²⁵ *Id.* at 535.

¹²⁶ *Id.* at 551.

¹²⁷ *Id.* at 533.

¹²⁸ Hart, *supra* note 87, at 34.

¹²⁹ *Id.* at 35.

¹³⁰ See points made by Fiona Blacke in Local Government Group, *Re-engaging Young People in Voting: Learning from the Evidence*, 4 (2011).

¹³¹ Christina M. Getrich, *supra* note 6, at 551.

IV. The Recent Evolution of Protest

The use of traditional mass protest appears to have increased in recent years as a tool to achieve social change.¹³² The evolution in protest has involved a number of factors which are relevant to children's rights. One factor has been an increase in protest in states like Syria which have regimes unafraid to target children.¹³³ Another factor is that there appears to be an increase in protest relating to issues affecting children more than other groups, such as cuts to education budgets.¹³⁴ Additionally, the increase in protest has led to developments in policing techniques, such as 'kettling',¹³⁵ that affect protesting children particularly acutely.¹³⁶

The uprisings in the Arab world, which primarily began with demonstrations, are perhaps the most visible example of increased resort to protest. On January 14, 2011, after four weeks of demonstrations in Tunisia against the ruling regime, Dictator Ben Ali fled the country, igniting the Arab Spring—an era of protest and political change across the Arab region.¹³⁷ These civil uprisings, which have shared techniques of protests, demonstrations, and rallies, have ultimately led to the ousting of dictators in Egypt, Libya, Tunisia, and Yemen.¹³⁸ There are numerous reasons for these uprisings; however, a notable demographic feature of these uprisings has been the presence of a large number of dissatisfied young people (both over and under the age of eighteen) amongst the populations in question, prompting some commentators to go so far as to refer to the Arab Spring as "Youthquake."¹³⁹ These young people were dissatisfied, but they were also well-educated and had access to social media.¹⁴⁰ These factors contributed to the spread of the dynamic of protest across the region. That the Syria uprising was sparked by children spray-painting slogans¹⁴¹ shows that it is not only university students involved in protest, but school children as well.

¹³² See e.g. Russell Dalton *et al.*, *The Individual-Institutional Nexus of Protest Behaviour*, 1, B. J. Pol. S., 51, 72 (2009), Shihade *et al.* *supra* note 25 and Marina Ottaway & Amr Hamzawy, *Protest Movements and Political Change in the Arab World* (2011) available at http://carnegieendowment.org/files/OttawayHamzawy_Outlook_Jan11_ProtestMovements.pdf (last visited Feb. 27 2012).

¹³³ *Id.*

¹³⁴ See e.g. Hannah Richardson, *The Students who Cut Class to Protect Education*, BBC News Online, Nov. 30, 2010, available at <http://www.bbc.co.uk/news/education-11870363> (last visited Sep. 10 2012) and Paul Owen, *Students Protest at Demo 2012- As it Happened*, Guar, Nov. 21, 2012, available at <http://www.guardian.co.uk/education/2012/nov/21/student-protests-demo-2012-live-blog> (last visited Apr. 2 2013).

¹³⁵ See further below at Section 8.

¹³⁶ The effects of kettling on children are evident from the facts of the case of *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin), considered below.

¹³⁷ Bridget Johnson, *Results of the Arab Spring*, About.com World News, available at <http://worldnews.about.com/od/middleeast/tp/Results-Of-The-Arab-Spring.htm> (last visited Apr. 2 2013).

¹³⁸ Ottaway & Hamzawy, *supra* note 132.

¹³⁹ See e.g. Mohammad Al-Momani, *The Arab "Youth Quake": Implications on Democratization and Stability*, 3 Md. Et. L. & Gov. 159 (2011).

¹⁴⁰ See e.g. Merlyna Lim, *Clicks, Cabs, and Coffee Houses: Social Media and Oppositional Movements in Egypt, 2004-2011*, 62 J. of Communication 231 (2012) and Sean Aday *et al.*, *New Media and Conflict after the Arab Spring* (United States Institute of Peace, 2012).

¹⁴¹ See *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, *supra* note 10 and Human Rights Watch, *supra* note 10.

It is not just the Arab world which has seen an increased resort to protest. In 2009, before the Arab Spring, Dalton *et. al.* argued that, whilst protest was once considered unconventional, in many ‘Western’ countries petitions and protests could be seen to rival the perhaps more traditional activity of electoral campaigning.¹⁴² The authors also claimed at that time that longitudinal research pointed to an increase in levels of protest, even in nations which were developing economically and politically.¹⁴³ Moreover, the 2003 attack on Iraq¹⁴⁴ as well as anti-globalization movements, have also contributed to greater visibility of mass protest.¹⁴⁵ Unfortunately, alongside what may be the ‘normalization’ of protest, there has arguably been an increase in controversial policing of protest. In the Global North, the phenomenon and discourse of protest has also become more contested, and protest has become more criminalized and less attractive.¹⁴⁶ Klein points to a measurable increase in the United States in the severity of the security tactics used by authorities in order to counter protests at recent summits.¹⁴⁷ She argues that the increase in violent policing has resulted in a situation where such violence is no longer a rare event but an expected outcome, and she suggests that tactics such as pre-emptive arrests and the indiscriminate use of pepper spray and tear gas have criminalized legitimate dissent.¹⁴⁸ The increase in heavy-handed tactics has not been confined solely to the United States. The G20 summit in Canada in 2010 resulted in the mass arrest and detention of over 1,100 people, 800 of whom were never charged with an offense.¹⁴⁹ They were arrested for ‘breach of the peace’, a law inherited by Canada from English common law.¹⁵⁰

In England and Wales, this doctrine has been referred to as being so broad and imprecise that “it provides the police with such wide powers to use against protesters as to render the statutory frameworks almost redundant.”¹⁵¹ There has been an increase in litigation relating to protest in England and Wales, with a notable criminalization of various forms of dissent.¹⁵² The protection of the right to freedom of speech in England and Wales is not as strong as in the United States, where even expression constituting hate speech is usually protected by the First Amendment to the U.S Constitution, forming part of “the highest rung of its hierarchy of values”.¹⁵³ This legacy has consequently led to a number of cases in which the free speech

¹⁴² Dalton *et. al.* *supra* note 132, at 51.

¹⁴³ *Id.*

¹⁴⁴ See Joris Verhulst, *February 15, 2003: The World Says No to War*, in *Demonstrations against the War on Iraq 1* (Stefaan Walgrave & Dieter Rucht eds., 2010).

¹⁴⁵ Fenwick, *supra* note 24, at 737.

¹⁴⁶ Naomi Klein, *Fences and Windows: Dispatches from the Front Lines of the Globalization Debate* (2002).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Debra Parkes & Meaghan Daniel, *Political Protest, Mass Arrests, and Mass Detention: Fundamental Freedoms and (Un)Common Criminals*, 22 *J. of Prs. on Pr.* 155, 155 (2011). This law is enshrined in Sections 30 and 31 of the Canadian *Criminal Code*, R.S.C. 1985, c. C.46.

¹⁵⁰ *Id.*

¹⁵¹ Helen Fenwick & Gavin Phillipson, *The Human Rights Act, Public Protest and Judicial Activism*, in *Free to Protest: Constituent Power and Street Demonstration* 189, 190 (Andras Saja ed., 2008).

¹⁵² *Id.* at 189.

¹⁵³ Steven Adamczyk, *First Amendment Free Speech and the Public University*, 1 (2011). The Supreme Court has generally invalidated laws which have attempted to ban “hate speech” on the basis that such laws constitute

of school children has been upheld by U.S courts; the most famous case upholding the right to wear armbands protesting the Vietnam war.¹⁵⁴ In England and Wales however, provisions such as Section 5 of the Public Order Act 1986, which states that an offense can be committed where one engages in threatening, abusive, or insulting words or behavior that is likely to cause harassment, alarm, or distress, have been fiercely criticized.¹⁵⁵ Another highly contentious issue is the increasing use globally by police of ‘containment’, or ‘kettling’¹⁵⁶, whereby protestors (and potentially bystanders) are confined in a limited area by using extensive cordons of police officers, often in very uncomfortable conditions for hours at a time.¹⁵⁷

Recent striking developments in the area of protest have involved increasingly draconian measures in the Global North and youth-lead uprisings in the Arab world. As involvement of children has increased, so too have difficulties for these children.¹⁵⁸ It is, therefore, important to examine whether international standards are sufficient to account for the particular needs of children in the context of protest.

V. Protest and the U.N. Convention on the Rights of the Child

A. *The Text of Article 15 of the U.N. Convention on the Rights of the Child*

an infringement on First Amendment rights. See e.g. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992).

¹⁵⁴ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 US 503 (1969). For a comprehensive overview of cases involving free speech of school students, see Nadine Strossen, *Keeping the Constitution Inside the Schoolhouse Gate: Students’ Rights Thirty Years after Tinker v. Des Moines Independent Community School District* 48 Drake L. Rev. 445 (2000). Chemerinsky argues, however, that there has been a notable retreat from the *Tinker* decision in subsequent cases. For example in *Poling v. Murphy*, 872 F.2d 757 (6th Cir. 1989) the Sixth Circuit failed to even speak of the importance of the need to protect the free speech of students, a crucial consideration in the Supreme Court decision in *Tinker* (*Tinker*, ¶ 506-514). *Poling* concerned the disciplining of a student who had been campaigning against, as he saw it, the “iron grip” of school administrators. Erwin Chemerinsky, *Students Do Leave their First Amendment Rights at the Schoolhouse Gates: What’s Left of Tinker?* 48 Drake L. Rev. 527, 544 (2000).

¹⁵⁵ There have been a number of controversial incidences where the provision was used. A student was charged under this provision, for example, after asking a police officer if he knew that his horse was “gay”. He was reported to have spent a night in prison before the charges were dropped. See BBC News Online, *Law Banning Insulting Words and Behaviour “Has to End”* May 15, 2012, available at <http://www.bbc.co.uk/news/uk-politics-18084081> (last visited Jul. 27, 2012), BBC News Online, *“Gay” Police Horse Case Dropped* Jan. 12, 2006, available at:

http://news.bbc.co.uk/2/hi/uk_news/england/oxfordshire/4606022.stm (last visited Jul. 27, 2012), and Pat Strickland, *“Insulting Words or Behaviour”*: Section 5 of the Public Order Act 1986 (2012).

¹⁵⁶ The tactic has been used in a number of states to control protests. For the UK context see Fenwick, *supra* note 24, Musab Younis, *London Tuition Fee Protest*, 3 Interface: J. Soc. Mvts. 172 (2011). In the context of Canada see Parkes & Daniel, *supra* note 150. In the United States, authorities have used netting to contain protestors, see Matt Wells, *Police Crack Down on “Occupy Wall Street”* The Guardian News Blog, Sep. 25, 2011, available at <http://www.guardian.co.uk/world/blog/2011/sep/25/occupywallstreet-occupy-wall-street-protests> (last visited Jul. 27, 2012).

¹⁵⁷ See further below at Section 8.

¹⁵⁸ See e.g. *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* and Human Rights Watch *supra* note 10.

As noted above,¹⁵⁹ the main international and regional human rights treaties relating to civil and political rights contain a number of provisions on the right to freedom of assembly and of association. Theoretically these apply to children as they do to adults, however the minority status of children leaves somewhat of a grey area when it comes to those provisions usually considered ‘adult’. This was one of the main reasons for drafting the CRC, which was ground-breaking for explicitly including for the first time in international law autonomy rights specific to children.¹⁶⁰ The primary construction of such rights for children is contained in Article 12, which stipulates that children should be heard in all matters affecting them.¹⁶¹ This is a far-reaching right which should be implemented in a variety of contexts, such as the family, school, and the courts.¹⁶² It is also a child-specific provision in that there is an assumption that adults will generally have the freedom to make their own decisions as well as decisions for children, but that children should therefore be heard when this is the case. The CRC also includes, however, provisions specifically mirroring those of the International Covenant on Civil and Political Rights (ICCPR) relating to freedoms common to adults. These include the right to freedom of expression (Article 13 CRC), freedom of thought, conscience and religion (Article 14 CRC), and the right to freedom of association and to freedom of peaceful assembly (Article 15 CRC). Article 15 stipulates that:

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.¹⁶³

The text of Article 15(1) is similar to equivalent provisions in other instruments. The primary difference between the CRC right and the ICCPR right is that the ICCPR separates out assembly and association.¹⁶⁴ This is a point that was noted by the CRC drafters, who acknowledged that the reason for this separation – i.e. the matter of joining trade unions – did not need to be addressed by the CRC.¹⁶⁵ Similarly, the CRC Article 15 is almost identical to

¹⁵⁹ See above at II.

¹⁶⁰ Although earlier instruments had included a number of child-specific provisions (e.g. the right to registration of one’s birth enshrined in Article 24.2 of the ICCPR), the CRC was the first instrument which provided a comprehensive list of rights together with principles of interpretation specific to the status of childhood. See Van Bueren, *supra* note 64,

¹⁶¹ See above *supra* note 97.

¹⁶² See Committee on the Rights of the Child, *General Comment No. 12: The Right to be Heard* (1 July 2009) CRC/C/GC/12.

¹⁶³ Article 15 CRC.

¹⁶⁴ See Articles 21 and 22 respectively. On the topic of the division of assembly and association see further Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* 481 (2nd ed. 2005).

¹⁶⁵ It was, however, acknowledged that “older children” do have a right to join trade unions. Travaux Préparatoires of the Convention on the Rights of the Child, *Considerations of 1988 Working Group*, E/CN.4/1988/28, ¶ 47. Accessed in Sharon Detrick, Jaap Doek & Nigel Cantwell, *The Convention on the Rights of the Child: A Guide to the Travaux Préparatoires* 253 (1992).

the ECHR right enshrined in Article 11, save for the difference that the ECHR right adds “including the right to form and to join trade unions for the protection of his interests.”¹⁶⁶

The conditions on the right contained in Article 15(2) are also identical to those contained in Article 21 of the ICCPR regarding the right of peaceful assembly. The drafters of the CRC were determined not to impose restrictions in this provision that did not exist in equivalent international treaties.¹⁶⁷ For example, a proposal that the right could be restricted in the interest of “morals” was rejected on the basis that it was incompatible with Article 22 of the ICCPR (the right to freedom of association), and also that it would be operating from the assumption of children acting against their own interests.¹⁶⁸ It is also largely identical to the ECHR restrictions in Article 11 (the right to freedom of assembly and association), differing where the wording in the ECHR further specifies that “[t]his article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”¹⁶⁹

The text of Article 15 of the CRC, therefore, permits the reader to reasonably conclude that children are to enjoy the right to freedom of assembly and association to the extent that adults do. However, the need to protect children—perhaps best encapsulated by the “best interest” principle enshrined in Article 3 of the CRC—means that in practice it is likely that there will be special considerations when it comes to the enjoyment of these rights by children.¹⁷⁰ It is necessary therefore to examine whether the U.N. Committee on the Rights of the Child has progressed in its understanding of the nature of Article 15 of the CRC and whether there are any distinctions between children and adults in this regard.

B. Comments of the Committee on the Rights of the Child

State parties are required to submit reports to the Committee on the Rights of the Child every five years.¹⁷¹ The Committee stipulated in its reporting guidelines that the report should contain the category “civil rights and freedoms”, and Article 15 is included in this category.¹⁷² The Committee regularly makes concluding observations on state reports,¹⁷³ providing an amount of useful clarification on the provisions of the CRC. The comments are nevertheless disparate, are sometimes inconsistent, and consequently do not constitute a thorough analysis of Article 15.¹⁷⁴ Many of the concluding observations do not reference

¹⁶⁶ Article 11 ECHR.

¹⁶⁷ Travaux Préparatoires of the Convention on the Rights of the Child, ¶ 52. Accessed in Detrick, Doek & Cantwell, *supra* note 165, at 253.

¹⁶⁸ *Id.*

¹⁶⁹ Article 11 ECHR.

¹⁷⁰ As illustrated in Section 2, children often have particular vulnerabilities which distinguish them from adults.

¹⁷¹ Article 44 CRC.

¹⁷² This category includes Articles 7, 8, 13-17 and 37a of the CRC. *General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties*, adopted 11 Oct. 1996, U.N. GAOR, Comm. on Rts. of the Child, 13th Sess., ¶ 5, U.N. Doc. CRC/C/58 (1996).

¹⁷³ See Van Bueren, *supra* note 75.

¹⁷⁴ See e.g. Aoife Daly, *Hearing Children in Law: Implementing the International Law Right of Children to be Heard in Proceedings Affecting them* (forthcoming 2014) and Sylvie Langlaude, *supra* note 122, at 47.

Article 15. Moreover, the comments are not generally considered to be binding on States Parties to the CRC, although it is arguable that states are obliged to consider the concluding observations of the Committee when interpreting an article of the CRC.¹⁷⁵ These documents are certainly of immense value for the purposes of providing guidance on how to implement a particular right.¹⁷⁶ It must also be highlighted that standards emphasized by the Committee, which already have binding status in other instruments such as the ICCPR, will, of course, be themselves binding as a matter of international law.

1. Committee Concern Regarding Legislative Obstacles

States Parties to the CRC have an obligation to ensure that legislation is in conformity with that instrument.¹⁷⁷ An examination of recent concluding observations of the Committee establishes that the Committee has given some attention to legislative obstacles to Article 15 at domestic level. The Committee noted restrictions, for example, on the right to freedom of association in the case of Vietnam,¹⁷⁸ and urged the state to “amend its legislation, *inter alia*, by expediting the adoption of the Law on Associations.”¹⁷⁹ In the case of Cuba, the Committee referenced specific provisions in the constitution of that state which restrict freedom of expression and freedom of assembly and of association, urging reform of those provisions.¹⁸⁰ The prohibition on children demonstrating or forming associations in Ukraine was also noted in the concluding observations of the Committee, and the Committee called upon Ukraine to reform relevant laws.¹⁸¹ The Committee expressed concern at legislation in Costa Rica restricting the right to freedom of association of children for political purposes.¹⁸²

In the case of Turkey, the Committee also highlighted legislative obstacles to the right; for example, nineteen is the minimum age for organizing outdoor meetings, and there are

¹⁷⁵ This point is made by Jean Zermatten, *General Measures of Implementation of the CRC and the Need for System Reform*. Paper presented at Convention on the Rights of the Child: From Moral Imperatives to Legal Obligations, Geneva (Nov. 12-13 2009).

¹⁷⁶ The ability of the Committee to provide authoritative interpretations of CRC provisions will greatly increase once the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure enters into force. Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure *adopted* 19 Dec. 2011, G.A. Res. 66/138, U.N. GAOR, 17th Sess., U.N. Doc A/RES/66/138 (2011).

¹⁷⁷ Article 4 of the CRC stipulates that “States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.”

¹⁷⁸ Concluding Observations: Vietnam, *adopted* 15 Jun. 2012, U.N. GAOR, Comm. on Rts. of the Child, 60th Sess., ¶ 41, U.N. Doc. CRC/C/VNM/CO/3-4 (2012).

¹⁷⁹ *Id.* ¶ 42.

¹⁸⁰ Concluding Observations: Cuba, *adopted* 20 Jun. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., ¶ 32-33, U.N. Doc. CRC/C/CUB/CO 2 (2011). Article 53 of the constitution of Cuba states that “[c]itizens recognize freedom of speech and press conform to the needs of the state” and Article 62 provides that “[n]o recognized freedoms can be exercised against the constitution or the law, nor against the decision of the Cuban people to build socialism and communism.” The Committee notes with approval, however, that it is possible for children to form associations in Cuba.

¹⁸¹ Concluding Observations: Ukraine, *adopted* 21 Apr. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., ¶ 39-40, U.N. Doc. CRC/C/UKR/CO/3-4 (2011).

¹⁸² Concluding Observations: Costa Rica, *adopted* 21 Sep. 2005, U.N. GAOR, Comm. on Rts. of the Child, 39th Sess., ¶ 23, U.N. Doc. CRC/C/15/Add.266 (2005).

extensive bureaucratic procedures faced by those wishing to establish an association.¹⁸³ The Committee recommended that Turkey amend its legislation “to remove the remaining obstacles to these rights, including the minimum age for forming an organizational committee for outdoor meetings.”¹⁸⁴ The Committee further made reference to freedoms of the minority Kurdish group in Turkey, expressing “deep concern about the reports of ill-treatment and torture of children, especially Kurdish children who have been involved in political assemblies and activities, in prisons, police stations, vehicles and on the streets.”¹⁸⁵ In 2001 the Committee also questioned Turkey about similar reports regarding Kurdish children,¹⁸⁶ however, the concluding observations made reference only to issues relating to “freedom of expression.”¹⁸⁷ Therefore, this extended reference to “political assemblies and activities” in the 2012 concluding observations appears to constitute an evolution from the brief reference made in the 2001 report.

The comments of the Committee on the report of Belarus provides further evidence that the Committee has, at times, been consistent in raising the issue of Article 15 with states who have continuously performed poorly with regard to that right. Belarus was questioned by the Committee in relation to its Second Report in 2002.¹⁸⁸ In that report, the Committee had recommended that Belarus fully guarantee to all children the rights to freedom of expression, freedom of association and peaceful assembly, and access to appropriate information, emphasizing Articles 13, 15, and 17 of the CRC.¹⁸⁹ In the 2011 state report of Belarus, the Committee expressed concern about the detention of teenagers during demonstrations at the time of the presidential elections in December 2010.¹⁹⁰ The Committee restated its 2002 recommendation to Belarus, recommending the state fully guarantee relevant rights, but, as with the case of the concluding recommendations in Turkey, the Committee went beyond this in the 2011 report on Belarus, referencing relevant national legislation in Belarus as well as demonstrating an understanding of the particular background to the protest.¹⁹¹ This perhaps indicates closer analysis of the issue than in 2002, possibly due either to the continuing nature of the problem in Belarus, or an increased focus on protest in later reports, or both.

2. The Arab Spring- Obligations to Protect and to Educate Officials

¹⁸³ Concluding Observations: Turkey, *adopted* 20 Jul. 2012, U.N. GAOR, Comm. on Rts. of the Child, 60th Sess., ¶ 38, U.N. Doc. CRC/C/R/CO/2-3 (2012).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* ¶ 39.

¹⁸⁶ Summary Record of the 701st Meeting: Turkey, *held* 29 May 2001, Comm. on Rts. of the Child, 27th Sess., ¶ 63, U.N. Doc. CRC/C/SR.701 (2001).

¹⁸⁷ Concluding Observations: Turkey, *adopted* 9 Jul. 2001, U.N. GAOR, Comm. on Rts. of the Child, 60th Sess., ¶ 7, U.N. Doc. CRC/C/15/Add.152 (2001).

¹⁸⁸ Summary Record of the 786th Meeting: Belarus, *held* 24 Jul. 2002, Comm. on Rts. of the Child, ¶ 62, U.N. Doc. CRC/C/SR.786 (2002).

¹⁸⁹ Concluding Observations: Belarus, *adopted* 13 Jun. 2002, U.N. GAOR, Comm. on Rts. of the Child, 30th Sess., ¶ 34, U.N. Doc. CRC/C/15/Add.180 (2002).

¹⁹⁰ Concluding Observations: Belarus, *adopted* 8 Apr. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., ¶ 36, U.N. Doc. CRC/C/BLR/CO/3-4 (2011).

¹⁹¹ *Id.* ¶ 35.

In recent reports, the Committee made particular reference to Arab Spring-related protest in the case of both Bahrain and Syria. In the Committee's concluding observations on the report of Bahrain it stated that the rights to freedom of assembly and of association "are not always respected, including during the recent events of 2011, particularly for children" and urged Bahrain to take all measures to ensure the implementation of these rights.¹⁹² In the case of Syria, the Committee noted that the right to freedom of association and to assembly was not respected in the state in practice.¹⁹³ The obligation to protect the right to life is a long-established principle of international human rights law,¹⁹⁴ so it is unsurprising that the Committee would call attention to the obligation to protect children's safety in Syria where security forces killed children during the Arab Spring.¹⁹⁵ The Committee criticized Syria for relying "on the parents to protect their children during demonstrations . . ."¹⁹⁶ This is a significant point highlighting that states, not just parents, have obligations towards the safety of children exposed to or involved in protests. The Committee expressed particular concern for the arrest and detention of the school children accused of painting anti-Government graffiti in March 2011 in Dara'a,¹⁹⁷ urging Syria in strong language "[t]o take all necessary measures to ensure the full effective implementation by all, including parents, teachers and security forces, of the rights to freedom of expression and freedom of association and peaceful assembly, in accordance with articles 13 and 15 of the Convention."¹⁹⁸

This points to potential obligations of states to educate state officials and employees with regard to the right of children to protest, including education on how to achieve "implementation", (i.e. how to facilitate children to engage in protest). The Committee also expressed deep concern about the detention of children in connection with the protests, as well as reports of the deaths of some of these children whilst in custody, and strongly urged Syria to release such children immediately and unconditionally.¹⁹⁹

3. Identifying Further Positive Obligations Associated with Article 15

The Committee has emphasized both the positive obligation that states have to ensure their legislation is compatible with freedom of assembly and association, and the obligation to protect children's safety in protest. These obligations have already been long established

¹⁹² Concluding Observations: Bahrain, *adopted* 17 Jun. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., ¶ 40-41, U.N. Doc. CRC/C/BHR/CO 2-3 (2011). The Committee also noted with concern reports alleging the use of torture, including torture of children, "during the recent political events." ¶ 42.

¹⁹³ Concluding Observations: Syria, *adopted* 8 Feb. 2012, U.N. GAOR, Comm. on Rts. of the Child, 58th Sess., ¶ 46, U.N. Doc. CRC/C/SYR/CO 3-4 (2012).

¹⁹⁴ See e.g. *Suarez de Guerrero v. Colombia*, Communication No. 45/1979, *adopted* 31 Mar. 1982, U.N. GAOR, Hum. Rts. Comm., 37th Sess., U.N. Doc. A/37/40 (1982), an early HRC case in which Colombia was found in breach of the obligation to refrain from arbitrary deprivation of life.

¹⁹⁵ See e.g. *supra* note 10.

¹⁹⁶ Concluding Observations: Syria, *supra* note 193, ¶ 46.

¹⁹⁷ *Id.* ¶ 47.

¹⁹⁸ *Id.* Article 13 enshrines the right of children to freedom of expression. The Committee also expressed concern at the effects of government censorship of the media on the right of children to freedom of information. *Id.* ¶ 48-49.

¹⁹⁹ *Id.* ¶ 50-52.

through interpretation of ICCPR rights.²⁰⁰ However, the Committee has, in recent reports, provided guidance on the right of children to freedom of assembly and association, which appears to progress understanding of Article 15.²⁰¹ It was noted in 2012 that in Myanmar children have little opportunity to exercise their right to association save through government-controlled NGOs.²⁰² The Committee recommended that, *inter alia*, Myanmar take measures “to encourage children to form associations on their own initiative.”²⁰³ This points to a positive obligation to ‘encourage’ children in this regard, and to ensure that opportunities are not solely government-related,²⁰⁴ presumably because of the conflict of interest which can exist when initiatives are funded or run by the government. Interestingly, the Committee had also questioned Myanmar in 1997 on the matter of the prohibition of gatherings of more than five people in public, and the consequences which that may have for the freedom of expression of children.²⁰⁵ It was then recommended in the concluding observations of 1997 that Myanmar take “all necessary measures” in order to ensure conformity with, *inter alia*, freedom of association under the CRC.²⁰⁶ Taken together with the focus of the Committee on the matter in the 2012 report, it appears to constitute another example of the consistency of the Committee in its focus on Article 15 in a state which has demonstrated unwillingness to facilitate it.

In another progressive step, the Committee considered the issue of the potential for conflict between the views of parents and those of children in its consideration of the second report of

²⁰⁰ See e.g. Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002, *adopted* 20 Jul. 2005, U.N. GAOR, Hum. Rts. Comm., 84th Sess., U.N. Doc. CCPR/C/84/D/1119/2002 (2005) and Kivenmaa v. Finland, Communication No. 412/1990, *adopted* 4 Jun. 1995, U.N. GAOR, Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/C/50/D/412/1990 (1994), in which the Human Rights Committee (HRC) held that prosecutions breached the ICCPR right to freedom of assembly. See also Suarez de Guerrero v. Colombia, *supra* note 194.

²⁰¹ E.g. Summary Record of the 359th Meeting : Myanmar, *held* 21 Mar. 1997, Comm. on Rts. of the Child, 14th Sess., ¶ 23, U.N. Doc. CRC/C/SR.359 (2002) and Concluding Observations: Myanmar, *adopted* 14 Mar. 2012, U.N. GAOR, Comm. on Rts. of the Child, 59th Sess., ¶ 47-48, U.N. Doc. CRC/C/MMR/CO/3-4 (2012).

²⁰² Concluding Observations: Myanmar, *adopted* 14 Mar. 2012, U.N. GAOR, Comm. on Rts. of the Child, 59th Sess., ¶ 47-48, U.N. Doc. CRC/C/MMR/CO/3-4 (2012). The Committee was undoubtedly inclined to make these recommendations as a result of the shadow report of Child Rights Forum of Burma, *The Plight of Children under Military Rule in Burma*, 37 (2011).

²⁰³ Concluding Observations: Myanmar, *adopted* 14 Mar. 2012, U.N. GAOR, Comm. on Rts. of the Child, 59th Sess., ¶ 47-48, U.N. Doc. CRC/C/MMR/CO/3-4 (2012).

²⁰⁴ The Committee also recommended in its concluding observations in the state report of the Dominican Republic that the state “continue” to assist children to establish organizations to further their own interests. Concluding Observations: Dominican Republic, *adopted* 11 Feb. 2008, U.N. GAOR, Comm. on Rts. of the Child, 47th Sess., ¶ 34, U.N. Doc., CRC/C/DOM/CO/2 (2008). This positive comment was presumably in response to the statement in the state report that “(t)he State, the family and society must create and foster opportunities for the participation of all children and adolescents and their associations.” State Report to the UN Committee on the Rights of the Child: Dominican Republic, *adopted* 11 Feb. 2008, U.N. GAOR, Comm. on Rts. of the Child, 47th Sess., ¶ 327, U.N. Doc., CRC/C/DOM/2 (2008).

²⁰⁵ Summary Record of the 359th Meeting : Myanmar, *held* 21 Mar. 1997, Comm. on Rts. of the Child, 14th Sess., ¶ 23, U.N. Doc. CRC/C/SR.359 (2002). There was no reference, however, to this matter in the concluding observations in relation to the second report of Myanmar. Concluding Observations: Myanmar, *adopted* 30 Jun. 2004, U.N. GAOR, Comm. on Rts. of the Child, 36th Sess., U.N. Doc. CRC/C/15/Add.237 (2004).

²⁰⁶ Concluding Observations: Myanmar, *adopted* 24 Jan. 1997, U.N. GAOR, Comm. on Rts. of the Child, 14th Sess., ¶ 28, U.N. Doc. CRC/C/15/Add.69 (1997). The Committee had expressed concern that “laws relating to freedom of expression and association . . . raise doubts as to their conformity with the provisions of the Convention.” *Id.* ¶ 8. CRC/C/15/Add.69 (1997).

Japan in 2004.²⁰⁷ The Committee expressed concern that children required parental consent to become members of an association, and recommended that Japan review relevant legislation in order to implement CRC standards.²⁰⁸ Though its language could have been stronger, the Committee appears to be making the point that it is contrary to the CRC to require children to obtain parental consent before joining an association. Although the Committee did not specify mass protest in this context, the standard should be the same for children who wish to partake in a particular protest, that is, they should not be required by law to seek parental consent.²⁰⁹

4. The Committee's Contribution

Recent events such as the Arab Spring demonstrations have brought the issues of children and protest to the attention of the Committee. The increase is not, perhaps, as great as could be expected or desired, considering recent global events whereby children and young people have been extensively involved in protest. It must be considered that since the reporting process is a lengthy one, with state reports sometimes taking years to draft, information from the state itself may not always be current. It is also possible that civil society organizations are failing to focus on the right, and much of the information on which the Committee's comments are based is provided by such organizations in shadow reports. Nevertheless, it is expected that the Committee would pay particular attention to states where protest has been prominent. It is particularly notable that the Committee did not take the opportunity to examine the state report of Egypt in July 2011, in order to comment on the right to freedom of assembly in that state in the wake of the Arab Spring uprising earlier that year.²¹⁰ Children were detained and abused during those protests.²¹¹ Yet the Committee gave recommendations in relation to the treatment of children in recent demonstrations after considering the state reports of Syria and Bahrain,²¹² perhaps demonstrating an inconsistent approach.

The Committee has been criticized for not taking enough of the opportunities provided to it to examine child-specific aspects of civil rights, and freedoms and to accordingly build a strong and consistent jurisprudence elucidating the area.²¹³ Based on an examination of recent reports it is clear, however, that the Committee is tending to make occasional reference to state practice regarding Article 15 and other articles related to protest. The Committee has

²⁰⁷ Concluding Observations: Japan, *adopted* 26 Feb. 2004, U.N. GAOR, Comm. on Rts. of the Child, 35th Sess., ¶ 29-30, U.N. Doc. CRC/C/15/Add.231 (2004).

²⁰⁸ *Id.*

²⁰⁹ This would not, of course, prevent parents from setting their own rules for their children (note in particular Article 5 of the CRC). It would simply require that the law not specify that children require parental permission to attend a protest, something which could theoretically criminalize children by making protesting without permission a criminal offence.

²¹⁰ Concluding Observations: Egypt, *adopted* 15 Jul. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., U.N. Doc. CRC/C/EGY/CO/3-4 (2011). The document makes reference to the freedom of association of NGOs to register and operate (¶ 29-30), but there is no mention of the uprising or of children in particular.

²¹¹ See e.g. Human Rights Watch, Country Summary: Egypt 2 (2012).

²¹² *Supra* note 192 and 193.

²¹³ See e.g. Sylvie Langlaude, *supra* note 122, at 47.

also been consistent in commenting on violations of Article 15 in the cases of Myanmar, Belarus and Turkey.²¹⁴ Some progressive interpretations of Article 15 are being provided. For example, the Committee has emphasized the positive obligation of states to facilitate children in exercising freedom of assembly and association,²¹⁵ the obligation to ensure that officials implement children's protest rights (which logically implies that officials must be educated on this),²¹⁶ and the obligation to refrain from considering the safety of children at demonstrations to be a matter solely for parents.²¹⁷ The Committee has also included recommendations for some (but not all) states where the well-being of children during political demonstrations has been at issue, such as in Syria and Bahrain.²¹⁸

A notable feature of the comments of the Committee is that the monitoring body has not emphasized the dangers of protest for children because of their status, nor has it sought to limit the right for children on this or any other basis. This indicates a presumption in favor of children enjoying the right to protest on an equal basis with adults. This inclination is further consolidated by the Committee's suggestion that Japan was not fully compliant with the CRC in legally requiring children to have parental permission to join associations.²¹⁹ This vindication of children's freedom rights is to be welcomed, and is consistent with the intention of the drafters of Article 15, who sought to avoid placing restrictions on the right for children that did not apply to adults.²²⁰ Yet, the Committee has failed to place sufficient emphasis on the fact that children are particularly vulnerable in protest. State obligations to protect children's safety in protest have been highlighted.²²¹ However, for the reasons outlined above,²²² children, compared to adults, can be at particular risk in the context of protest, and the Committee has not acknowledged this in its comments. The Committee could have, for example, expanded on the instruction to Syria to take all measures to ensure implementation of the right by authorities.²²³ The Committee could have specified the need to ensure that authorities explicitly considered children's vulnerabilities when planning crowd control techniques. Strong guidance on this point would undoubtedly be of value for the

²¹⁴ Concluding Observations: Myanmar, *adopted* 24 Jan. 1997, U.N. GAOR, Comm. on Rts. of the Child, 14th Sess., ¶ 28, U.N. Doc. CRC/C/15/Add.69 (1997), Concluding Observations: Belarus, *adopted* 8 Apr. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., ¶ 35, U.N. Doc. CRC/C/BLR/CO/3-4 (2011) and Concluding Observations: Turkey, *adopted* 20 Jul. 2012, U.N. GAOR, Comm. on Rts. of the Child, 60th Sess., ¶ 39, U.N. Doc. CRC/C/R/CO/2-3 (2012).

²¹⁵ Concluding Observations: Myanmar, *adopted* 14 Mar. 2012, U.N. GAOR, Comm. on Rts. of the Child, 59th Sess., ¶ 47-48, U.N. Doc. CRC/C/MMR/CO/3-4 (2012).

²¹⁶ Concluding Observations: Syria, *adopted* 8 Feb. 2012, U.N. GAOR, Comm. on Rts. of the Child, 58th Sess., ¶ 47, U.N. Doc. CRC/C/SYR/CO 3-4 (2012).

²¹⁷ *Id.*

²¹⁸ *Id.* and Concluding Observations: Bahrain, *adopted* 17 Jun. 2011, U.N. GAOR, Comm. on Rts. of the Child, 57th Sess., ¶ 40-41, U.N. Doc. CRC/C/BHR/CO 2-3 (2011).

²¹⁹ Concluding Observations: Japan, *adopted* 26 Feb. 2004, U.N. GAOR, Comm. on Rts. of the Child, 35th Sess., ¶ 29-30, U.N. Doc. CRC/C/15/Add.231 (2004).

²²⁰ See *supra* note 168.

²²¹ See e.g. *supra* note 196.

²²² See Section 2.

²²³ *Supra* note 196.

purpose of clarifying the nature of state obligations, at the very least to ensure clear guidance for domestic courts when called upon to determine relevant issues.²²⁴

The nature of the reporting process, where a broad range of rights are considered in brief, leads to little meaningful focus on the right itself. Therefore, understanding of the nature of Article 15 has not been extensively developed by the Committee. The lack of emphasis in shadow reports may also be partly responsible for this lack of understanding. This lacuna may also point to a need for the Committee to request further information from states about children's freedom rights generally, and those relating to protest in particular. Hopefully the individual complaints procedure for the CRC will result in further consideration of autonomy rights for children, including matters relating to protest, once Optional Protocol No.3, which provides for an individual complaints mechanism for CRC rights, enters into force.²²⁵

VI. Children, Protest and Positive Obligations

It is important to examine issues regarding children and protest not only in the context of the CRC but also within the broader framework of state obligations owed to children under international human rights law. A prominent model²²⁶ is the tripartite approach of 'respect, protect, fulfil',²²⁷ which acknowledges a sliding scale between negative and positive obligations while avoiding a problematic dichotomy between the two.²²⁸ While often referred to in the context of economic, social and cultural rights, the framework is also widely held to apply equally to civil and political rights.²²⁹

Eide described the first category of state obligations as follows: "The obligation to *respect* requires the State, and thereby all its organs and agents, to abstain from doing anything that violates the integrity of the individual or infringes on her or his freedom."²³⁰ The requirement that states ensure that their officials abstain from killing and torturing children involved in protest, as is currently occurring in Syria, clearly falls under this heading.²³¹ Of

²²⁴ As a consideration of this point, note the *Castle* case (below at Section 8), in which authorities specifically did not consider children's vulnerabilities in this context. *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin).

²²⁵ See Yanghee Lee, *Communications procedure under the Convention on the Rights of the Child: 3rd Optional Protocol*, 18 Int'l. J. Ch. R. (2010).

²²⁶ See Sandra Liebenberg, *Adjudicating the Positive Duties Imposed by Economic, Social and Cultural Rights*, 15 Interights Bulletin 109, 109 (2005) and Victor Dankwa *et al.*, "Commentary on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights" in Theo van Boven *et al.* (eds.), *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1998).

²²⁷ This model is based on the theory proposed by Henry Shue in *Basic Rights: Subsistence, Affluence and US Foreign Policy* (1980), and further developed by Asbjorn Eide, in the article *Realization of Social and Economic Rights and the Minimum Threshold Approach* 10 Hum. Rts. L. J. 35 (1989). See Ida Elisabeth Koch, *Dichotomies, Trichotomies or Waves of Duties?* 5 Hum. Rts. L. Rev. 81, 84 (2005).

²²⁸ See Koch, *supra* note 227, at 82.

²²⁹ See e.g. Maria Green, *What we Talk about when we Talk about Indicators: Current Approaches to Human Rights Measurements*, 23 Hum. Rts. Q. 1062, 1074 (2001) and Victor Dankwa *et al.*, *supra* note 226.

²³⁰ Eide, *supra* note 227, at 37. See further Koch, *supra* note 227.

²³¹ One could also argue that it would require that states refrain from setting age limits below which children legally require the consent of parents in order to join an association. The Committee on the Rights of the Child expressed concern at such legislation in its Concluding Observations on Japan. See above *supra* note 208.

the second requirement, Eide states; “The obligation to *protect* requires from the State and its agents the measures necessary to prevent other individuals or groups from violating the integrity, freedom of action or other human rights of the individual . . . ”²³² This means that the state would also be obliged to ensure protection of protesting children from third parties. For example, states may have to ensure that rallies of child workers are not attacked by gang masters and their associates.²³³ The final obligation, according to Eide’s model, is the obligation to *fulfil*, which “requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts.”²³⁴ The obligation to fulfil requires the state to take positive action towards full realization of rights, including appropriate legislative, judicial, budgetary, and other measures.²³⁵ This reflects the concept of ‘positive obligations’ which has been long-established in international human rights law. It is this aspect of state obligations which appears to require the greatest emphasis in light of recent developments regarding children and protest, due to children’s vulnerabilities.

Positive obligations are inherent within international and regional human rights law instruments covering civil and political rights. References to the obligation to protect children are also found in those instruments. The ICCPR right to freedom of assembly attempts to facilitate a democratic aim “in the process of forming, expressing and implementing political opinions”,²³⁶ placing states under a stronger positive obligation to facilitate freedom of assembly than that for civil rights relating to private interests.²³⁷ Nowak suggests that these duties may include the free use of rooms in which to assemble, redirection of traffic, or police protection.²³⁸ That instrument also stipulates that every child has the right to measures of protection “as are required by his status as a minor,”²³⁹ and therefore positive duties toward children and protest on the basis of their status will require those which facilitate children to engage in protest where they wish to do so.

A number of points can also be made about the responsibility to fulfil positive obligations and the status of children under the CRC. The Article 15 CRC right to freedom of assembly and association is to be interpreted together with Article 3 of the CRC, the obligation that

²³² *Id.*

²³³ Gang masters have organized attacks on those, for example, attempting to rescue child laborers, see e.g. Gordon Brown, *The Delhi 14*, The Huffington Post Blog, May 12 2012, *available at* http://www.huffingtonpost.com/gordon-brown/child-labor-trafficking_b_2245536.html (last visited Jan. 10, 2013). Furthermore, Iqbal Masih, an escaped child laborer who became a prominent activist and speaker on the issue, was murdered at age twelve. Celek writes that “[a]ccording to local sources, Iqbal was murdered by the Carpet Manufacturers and Exporters Association, a group that greatly benefits from having child laborers in their factories.” Bozena Celek, *The International Response to Child Labor in the Developing World: Why Are We Ineffective?* 11 *Geo. J. Poverty Law & Pol’y* 87 (2004). Celek cites Mary E. Williams ed., *Child Labor and Sweatshops* 7 (1999).

²³⁴ Eide, *supra* note 227, at 37. See further Koch, *supra* note 227.

²³⁵ See Koch, *supra* note 227, at 82.

²³⁶ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 481 (2nd ed. 2005).

²³⁷ *Id.* at 482.

²³⁸ *Id.*

²³⁹ ICCPR, Article 24.

states consider the best interest of the child. Article 3 is a ‘guiding principle’ of the CRC, in that all other articles must be interpreted with it in mind.²⁴⁰ Article 3 recognizes children’s particular vulnerabilities and the fact that adults will often make decisions on behalf of children. Article 15 of the CRC, therefore, means that children have the right to protest safely and that state obligations will involve specific consideration for one’s status as a child along with the safety issues that this consideration entails. Children simultaneously need recognition of autonomy rights and protection of their vulnerabilities, and they arguably have rights under both the ICCPR and the CRC for authorities to take positive steps to vindicate their right to freedom of assembly.

As noted above, the Committee on the Rights of the Child pointed to the obligation of Syria to ensure relevant authorities implement children’s protest rights, implying the need to educate such authorities on the matter.²⁴¹ This certainly appears to fall within the responsibility to fulfil positive obligations to children. Without adequate education and training there is far less chance that authorities such as police and security forces will be aware that children have protest rights, or that they are to be considered a vulnerable group. It will be particularly important to train authorities to consider older teenagers as part of this group. Many individuals may not consider older teenagers to be ‘vulnerable’, although, as *Castle*²⁴² demonstrated, they certainly can be vulnerable in the context of certain policing techniques. Although there has not yet been a thorough examination of other international obligations specific to children’s rights relating to protest, many other relevant steps need to be taken to facilitate these rights. Obligations to children are not being met if authorities fail to plan for the presence of children at demonstrations. In demonstrations involving issues which affect children in particular, such as education cuts, authorities should plan for how to manage crowds which contain significant numbers of children. Authorities should, for example, consider whether particular crowd control techniques which may be used, such as physically extreme techniques like the use of tear gas or ‘kettling’, could disproportionately affect children. Where such training and planning is lacking, the vulnerable status of children can be overlooked and their protest rights can be harmed.

VII. Regional Level: The Case Law of the European Convention of Human Rights

The European Court of Human Rights, as the human rights monitoring body with the greatest body of jurisprudence, has the potential to progress or at least to provide insight into the rights of children to protest. The Court appears to be the only regional mechanism that has provided judgments relevant to the matter of children’s rights in relation to protest, which is why its case law receives particular attention in this Article. There have been a handful of petitions to the Inter-American Court of Human Rights (IACHR) and the African Commission on Human and People’s Rights (ACHPR) which relate to protest, however none

²⁴⁰ See Van Bueren, *supra* note 75.

²⁴¹ Concluding Observations: Syria, *adopted* 8 Feb. 2012, U.N. GAOR, Comm. on Rts. of the Child, 58th Sess., ¶ 48-49, U.N. Doc CRC/C/SYR/CO 3-4 (2012).

²⁴² *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin).

of these directly invoke children's rights.²⁴³ The European Court of Human Rights has heard a number of cases relating to protest under Article 11, the right to freedom of association and assembly,²⁴⁴ although only two cases²⁴⁵ have been considered which directly concern children's rights and protest.

In *Valsamis v. Greece*,²⁴⁶ the right to freedom of assembly and association was not directly invoked, yet the matter clearly related to the right to freedom of assembly (or perhaps more aptly, freedom *from* assembly). A twelve-year-old girl (Victoria) and her parents claimed that Greece violated Articles 3, 9, 13 and A2 of Protocol 1 of the ECHR²⁴⁷ when Victoria was suspended from school for a day for refusing to take part in a school parade celebrating the anniversary of war breaking out between Greece and Italy in 1940.²⁴⁸ The family were Jehovah's witnesses and therefore pacifist, and they claimed that the apparently militaristic nature of the parade was against their religious convictions.²⁴⁹ The Court held that the parade was not sufficiently militaristic in nature, and therefore standing alone there were no breach of Articles 3, 9, and A2 of Protocol 1. However, the Court did find a violation of Articles 9 and A2 of Protocol 1 when taken together with Article 13 because of a lack of remedy at domestic level.

It is crucial that the Court did not consider the child's separate individual complaint²⁵⁰ and failed to address the question of whether the obligation was more offensive to Victoria than her parents. Although the Court dubiously held that the parade, which was memorializing a military event, held in front of military authorities, and placed on the same day as military parades, was not militaristic enough,²⁵¹ the experience of the child seems nonetheless a

²⁴³ The case of Vélez Restrepo et al. v. Colombia, Case 864-05, Report No. 47/08, Inter-Am. C.H.R., OEA/Ser.L/V/II.130 Doc. 22, rev. 1 (2008) concerned a journalist who was attacked by Columbian security forces while filming a protest, subsequently received death threats, and argued that these matters were not properly investigated. The IACHR held that Colombia had violated a number of articles of the American Convention on Human Rights, (e.g. the right to the freedom of expression in Article 13 and the right to personal integrity in Article 5). In 2011, a joint petition was made to the African Commission on Human and People's Rights requesting that the Commission take action regarding alleged human rights abuses in Egypt following anti-government protests. See Interrights, *Request for provisional measures in terms of Rule 111 (1) of the African Commission's Rules of Procedure/Communication: The situation in Egypt*, 1 Feb. 2011, available at: <http://www.interrights.org/document/10/index.html>, last visited 25 Feb. 2013. The African Charter on the Rights and Welfare of the Child has a communications procedure, however only two petitions have been received to date, neither of which are relevant to protest (see website of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Achievements of the ACERWC*, available at <http://acerwc.org/achievements/>, last visited 25 Feb. 2013).

²⁴⁴ See David Mead, *The New Law of Peaceful Protest* (2010).

²⁴⁵ *The Case of the Christian Democratic People's Party v. Moldova* (No.2), App. No. 28793/02, Eur. Ct. H. R. (14 Feb. 2006) and *Valsamis v. Greece* App. No. 21787/94, Eur. Ct. H.R. (18 Dec. 1996).

²⁴⁶ *Valsamis v. Greece* App. No. 21787/94, Eur. Ct. H.R. (18 Dec. 1996).

²⁴⁷ Article 3 EHCR enshrines the right to freedom from torture and inhuman and degrading treatment; Article 9 concerns freedom of religion; Article 13 enshrines the right to a remedy; and Article 2 of Protocol 1 concerns the right to education.

²⁴⁸ *Valsamis v. Greece* ¶ 8.

²⁴⁹ *Id.*, ¶ 22.

²⁵⁰ See Ursula Kilkelly, *The Child and the European Convention on Human Rights* (1999). Perhaps surprisingly, only the parents claimed a violated of Article 2 of Protocol 1, the right to education. Victoria herself did not make this claim.

²⁵¹ *Id.* ¶ 9.

significant factor in considering whether there was a breach of the right to freedom of religion. Victoria would have personally been in the midst of the parade, and she experienced first-hand the punishment for choosing not to go, yet her application was held not to merit separate consideration. This omission is particularly difficult to justify considering that the Court did acknowledge that it was “surprised that pupils can be required on pain of suspension from school—even if only for a day—to parade outside the school precincts on a holiday.”²⁵² The consequences of protest for Victoria were undoubtedly more immediate and stigmatizing than they were for her parents, and this is an unfortunate judgment from a children’s rights perspective. At least in *Valsamis* the Court acknowledged the right to freedom of religion of Victoria as an individual, by deciding that the right had not been breached.

Ten years after *Valsamis*, in *Christian Democratic People's Party v. Moldova*,²⁵³ when the issue of attendance of children at a gathering arose once again, the ECHR included a direct reference to the rights of children themselves in the judgment, albeit briefly and again primarily from the perspective of parents. Furthermore, the case directly concerned *inter alia* the right of children to freedom of assembly and association. The Court found that the Moldovan government had violated Article 11 of the ECHR when a one month ban was imposed on the oppositional Christian Democratic People's Party for holding public gatherings without permission in reaction to a proposed a law mandating the teaching of Russian in Moldovan schools.²⁵⁴ The court also rejected Moldova’s claims that the presence of children at the gatherings violated Article 15 of the CRC, since the rallies were primarily public and open to anyone to attend.²⁵⁵ The Court continued:

Moreover, in the Court's view, it was rather a matter of personal choice for the parents to decide whether to allow their children to attend those gatherings and it would appear to be contrary to the parents’ and children’s freedom of assembly to prevent them from attending such events, which it must be recalled, were to protest against Government policy on schooling.²⁵⁶

The Court appeared to focus its consideration primarily on the right of parents to permit children to attend or to take children to a gathering of this kind. However, the explicit recognition of “children’s freedom of assembly” is a positive development, affirming children’s own stake in the right. Also notable is that the Court seemed to imply that it is of additional significance that the gatherings were intended to protest matters directly relevant to children (i.e. education). It is likely that this reference by the Court to children’s own rights in this context, as opposed to solely the rights of their parents, is due to the increasing

²⁵² *Id.* ¶ 31.

²⁵³ *The Case of the Christian Democratic People's Party v. Moldova (No.2)*, App. No. 28793/02, Eur. Ct. H. R. (14 Feb. 2006).

²⁵⁴ *Id.* ¶ 76.

²⁵⁵ *Id.* ¶ 74.

²⁵⁶ *Id.* In a follow-up case the Court again found against Moldova for similar violations of the rights to freedom of assembly and association of the party. *The Case of the Christian Democratic People's Party v. Moldova (No.2)*, App. No. 25196/04, Eur. Ct. H. R. (2 Feb. 2010).

prominence of the participation rights of children, as espoused by Article 12 of the CRC and other articles of that Convention relating to autonomy rights.

VIII. Domestic Level – England and Wales: The Case of *Castle*

The case of *Castle & Others v. Commissioner of Police for the Metropolis*,²⁵⁷ in which children were amongst protestors kettled for long periods of time by police,²⁵⁸ provides a striking and contemporary example of the children's rights issues which can arise in the context of mass demonstration where children's special vulnerabilities are not sufficiently taken into account by authorities. It also constitutes a disappointing judgment from a children's rights perspective, as the obligations owed to children in the context of protest were interpreted very narrowly by the court.

A. *Facts of the Castle Case*

In *Castle*, child-specific legislation was utilized in an unsuccessful attempt to argue that police had breached their duties towards children during a specific incidence of kettling.²⁵⁹ The case arose in the jurisdiction of England and Wales, which has ratified the ECHR, the ICCPR, and the CRC.²⁶⁰ On November 24, 2010, the claimants, aged sixteen and fourteen, were confined in a cordon in central London for six and a half and five hours respectively during a protest march, despite requesting permission from police to leave.²⁶¹ The march concerned proposals to increase university fees and to withdraw a financial scheme for students from low income families²⁶² and was lead primarily by university students,²⁶³ though

²⁵⁷ *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin).

²⁵⁸ In addition to the *Castle* children, there were many other reports of children being refused permission to leave. See e.g. Hannah Richardson, *The Students who Cut Class to Protect Education*, BBC News Online, Nov. 30, 2010, available at <http://www.bbc.co.uk/news/education-11870363> (last visited 10 Sep. 2012). See also reports of violence by the police towards 17 year olds who asked to leave in Musab Younis, *supra* note 156. See also Owen Bowcott, *Met Police Kettled Children as Young as 11 During Fee Protest, Court Told*, *Guardian*, Jul. 5, 2011, available at <http://www.guardian.co.uk/uk/2011/jul/05/met-police-kettling-children-high-court> (last visited Sep. 7, 2012).

²⁵⁹ *Castle & Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin).

²⁶⁰ The UK has a dualist system. See Mark Hill, *The Permissible Scope of Legal Limitations on the Freedom of Religion of Belief in the United Kingdom*, 19 *Em. Int'l. L. Rev.* 1129, 1129 (2005). The ECHR has been incorporated into the laws of England and Wales via the Human Rights Act 1998. See Hill, at 1130. The Convention on the Rights of the Child, whilst not incorporated into domestic law, has been used as a persuasive source of guidance in numerous UK cases concerning children. See e.g. *Mabon v. Mabon and Others* [2005] EWCA Civ 634; and *Re Roddy (A Minor)*; *Torbay Borough Council v. Associated Newspapers Ltd* [2003] EWHC 2927 (Fam). Although the ICCPR has not been incorporated into domestic law, it can be used by courts as a source of guidance in interpreting legislation. The UK has stated, for example, that "courts in the UK may also take account of the UK's treaty obligations—for example as an aid to interpretation of ambiguous provisions of legislation." *Replies to the List of Issues (CCPR/C/GBR/Q/6) to be taken up in Connection with the Consideration of the Sixth Periodic Report of the Government of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/6)*, U.N. GAOR, Hum. Rts. Comm., ¶ 2, U.N. Doc. CCPR/C/GBR/Q/Add.1 (2008).

²⁶¹ *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 27.

²⁶² *Id.* ¶ 2.

²⁶³ Up to 52,000 people were in attendance. Younis, *supra* note 156, at 1.

there were many children present at the protest.²⁶⁴ The day was extremely cold—temperatures were just above freezing—there was no provision of food or drink in the cordon, and toilet facilities were not provided for over four hours.²⁶⁵

The claimants were not challenging the legality of containment but instead arguing that the defendants should have identified children as a group unlikely to be violent and should have had a plan in place to release them.²⁶⁶ The claimants alleged that their confinement breached the duties of the Police Commissioner under s.11 of the Children Act 2004, which states that the police have a duty to make “arrangements to safeguard and promote” the welfare of children.²⁶⁷ They also argued that the length of time for which they were confined was unlawful.²⁶⁸ These breaches, the claimants argued, constituted violations of Articles 5 (the right to liberty and security), 8 (the right to private and family life), 10 (the right to freedom of expression), and 11 (the right to freedom of assembly and association) of the ECHR.²⁶⁹ The police argued that they had made attempts to identify vulnerable people inside the cordon during instances of unruliness and disorder, which were undeniably a challenge for police to manage.²⁷⁰

The court held that although the Police Commissioner does have a duty to children in such circumstances under s.11 of the Children Act 2004,²⁷¹ the defendant was not in breach of that duty during this event.²⁷² It was reasonable for the defendant not to make specific arrangements for children save to remind police commanders “of the need to protect the vulnerable.”²⁷³ Furthermore, the specifics of the situation and violence outside the cordon justified the duration of the containment.²⁷⁴ The court further held that s.11 of the Children Act 2004 does indeed require planning where containment is expected or used in order to ensure that children are protected,²⁷⁵ but that in this case there was no indication there would be large numbers of children and therefore specific plans to manage the presence of children were not necessary.²⁷⁶ Because the Article 5 argument failed, the court did not examine the other ECHR claims.²⁷⁷

B. Castle- Positive Obligations

²⁶⁴ Police reportedly refused to release children as young as eleven years old from the cordon, despite being shown identification proving their ages. See Bowcott, *supra* note 258.

²⁶⁵ Castle & Others v. Commissioner of Police for the Metropolis, ¶ 25.

²⁶⁶ *Id.* ¶ 34.

²⁶⁷ *Id.* ¶ 33.

²⁶⁸ *Id.* ¶ 7.

²⁶⁹ *Id.*

²⁷⁰ *Id.* ¶ 18. Such efforts included a request by police that one of the protest organizers communicate with the crowd “to inform them that vulnerable people should make themselves known to the police” (¶ 21) and use of the police helicopter (although late in the day) to scan for children in the crowd (¶ 25).

²⁷¹ *Id.* ¶ 53.

²⁷² *Id.* ¶ 70.

²⁷³ *Id.* ¶ 64.

²⁷⁴ *Id.* ¶ 70.

²⁷⁵ *Id.* ¶ 60.

²⁷⁶ *Id.* ¶ 64.

²⁷⁷ The Court opined that “any interference which did take place was for a legitimate reason, in accordance with the law, and proportionate to the legitimate aim of preventing an imminent breach of the peace.” *Id.* ¶ 73.

It is important to place the facts of *Castle*, as well as issues regarding children and protest more generally, in the context of state obligations owed to children as enshrined by the international human rights framework which have been discussed in detail in this Article.

The obligation to fulfil²⁷⁸ within Eide's model is particularly relevant here because of children's vulnerabilities. The *Castle* case demonstrates these vulnerabilities and highlights the impact which authorities can have on children's protest rights when they fail to implement positive obligations relating to the special status of children,²⁷⁹ a status acknowledged by the CRC,²⁸⁰ the ICCPR,²⁸¹ and elsewhere. The ECHR is perhaps the instrument of primary interest when considering positive obligations in the context of *Castle*, because the U.K. has incorporated ECHR rights into domestic law.²⁸² Though the European Court of Human Rights has not had the opportunity to examine the particular duties to children as regards protest in particular, such duties have been emphasized in numerous other ECHR cases. States have an obligation "particularly to children and other vulnerable members of society"²⁸³ to take steps to protect from ill-treatment, and special provision may have to be made in some contexts to account for children's vulnerabilities.²⁸⁴ States also have positive obligations to facilitate protest under the ECHR.²⁸⁵ Although the *Castle* judgment acknowledged the duty to children in protest, determining the limits of that duty (i.e. that there was no violation of the duty as regards the incident in question) appears flawed when analyzed from the perspective of positive obligations to children under the ECHR, as well as the international instruments noted above.

States may be required under the ECHR to take various steps to plan for demonstrations in order to preserve the right to freedom of assembly and of association.²⁸⁶ The obligation to fulfil would appear to require explicit consideration by authorities of the needs of children at a protest, as acknowledged by the court in *Castle*.²⁸⁷ The court's conclusion that explicit planning was not needed in this instance²⁸⁸ appears difficult to justify considering the protest

²⁷⁸ Eide, *supra* note 227, at 37. See further Koch, *supra* note 227.

²⁷⁹ Adam Castle later wrote "[b]ecause I was afraid of being kettled again, I didn't go to the next two demos and many children, including my fellow claimant Sam Eaton, have not gone on another protest since." Adam Castle, *Why I'm Taking the Police to Court for Kettling me*, Guar. Jul. 5, 2011, available at <http://www.guardian.co.uk/commentisfree/libertycentral/2011/jul/05/police-kettling-children> (last visited Feb. 7, 2013).

²⁸⁰ CRC, Article 3.

²⁸¹ ICCPR, Article 24.

²⁸² See Hill, *supra* note 260.

²⁸³ *Mayeka v. Belgium*, App. No. 13178/03 Eur. Ct. H. R. (12 Oct. 2006). ¶ 53. The Court has also held that children and other vulnerable individuals are particularly entitled to effective protection in the context of Article 8, the right to private and family life. See e.g. *X and Y v. the Netherlands*, App. No. 8978/80, Eur. Ct. H. R. (26 Mar. 1985) and *August v. the United Kingdom*, App. No. 36505/02, Eur. Ct. H. R. (21 January 2003).

²⁸⁴ See e.g. *T v. the United Kingdom*, App. No. 24724/94, Eur. Ct. H. R. (16 Dec. 1999), ¶ 88.

²⁸⁵ See e.g. *Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08 and 14599/09, Eur. Ct. H. R. (21 Oct. 2010).

²⁸⁶ The ECHR held in *Alekseyev v. Russia* that the Government should have taken steps to assess the risks posed should various planned gay pride marches have gone ahead before those marches were banned ostensibly due to safety issues. *Alekseyev v. Russia*, *id.*

²⁸⁷ *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 64.

²⁸⁸ *Id.*

related to an issue that affected school-age children most profoundly²⁸⁹ and the fact that there were indications of school walk-outs.²⁹⁰ So too does the court’s opinion that there had been no need to explicitly consider the specific needs of children in a situation of containment.²⁹¹ The court opined that plans to protect the vulnerable generally were sufficient,²⁹² yet an examination of the procedures used by police highlights the inadequacy of failing to consider children as a particular group. Police attempted to identify young people in school uniforms²⁹³ and “obvious small children”²⁹⁴ which would at best have located only *some* of the children present. The claimants, for example, were not in uniform²⁹⁵ and were not “small” children, which undoubtedly led to the denial of their request to leave the cordon.

The decision of the individual officer not to permit the children to leave the cordon²⁹⁶ appears to point to deficiencies in the training of police on the matter of children and protest, an obligation which the Committee on the Rights of the Child has pointed to in its comments.²⁹⁷ The police argued in *Castle* that they had met their training obligations because in general police training there are materials on identifying children’s needs as per the statutory guidance to the relevant legislation,²⁹⁸ and in police training on public order events reference is made to allowing vulnerable people to exit police containment.²⁹⁹ Police training on public order events was acknowledged, however, not to make reference to children specifically and the court noted that it should.³⁰⁰ The court did not comment on whether the failure to include reference to children in police training was relevant to whether police were adequately prepared for containment on the occasion in question. This seems unfortunate as the significance appears to be self-evident. Instructions on how and when to quickly release children from containment could be given in both tactical preparation and training. An obvious suggestion would be that police training should include instructions that persons who can produce documentation proving that they are under eighteen should be released when they so request. This presumption could be rebutted where there was reason to believe an individual would be violent, or would be in danger in the area into which they would be released. The special position of children could justify this, bearing in mind the duty to those under eighteen.³⁰¹ The *Castle* children were accompanied by their father—a journalist with a

²⁸⁹ The protest in question in *Castle* was organized because of government intentions to increase university fees and to cut an education maintenance grant. *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 2.

²⁹⁰ *Id.*, ¶ 64.

²⁹¹ *Id.*, ¶ 64.

²⁹² *Id.*

²⁹³ *Id.*, ¶ 25.

²⁹⁴ *Id.*

²⁹⁵ *Id.*, ¶ 2.

²⁹⁶ *Id.*, ¶ 27.

²⁹⁷ Concluding Observations: Syria, *adopted* 8 Feb. 2012, U.N. GAOR, Comm. on Rts. of the Child, 58th Sess., ¶ 48-49, U.N. Doc CRC/C/SYR/CO 3-4 (2012).

²⁹⁸ *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 40-41.

²⁹⁹ *Id.*, ¶ 41.

³⁰⁰ *Id.*, ¶ 65.

³⁰¹ Under the Children Act 2004. The need for this duty is illustrated by the fact that 14-year-old Rosie Castle was released alone in late evening in Central London. This is quite a different scenario to the release of an adult in this context.

press pass³⁰²—a strong indication that these young people were not going to engage in violence and that they should have been released.

The Committee on the Rights of the Child has emphasized in its comments the state obligation to ensure that legislation is in conformity with Article 15 of the CRC.³⁰³ The *Castle* case appears to highlight the inadequacy of the legislative guidance on the duty to protect children’s autonomy rights generally and their protest rights in particular. The guidance is focused almost exclusively on protection rights for children in the narrow context of the family.³⁰⁴ Reference was made by the court in *Castle* to the fact that the statutory guidance specifies that the primary role of the police’s duty to children will be in areas of, for example, protecting children in the context of domestic violence and child abuse cases.³⁰⁵ The duty to account for the welfare of a child decreases outside the area of family life.³⁰⁶ The guidance fails to acknowledge the right of children to partake in public life, an omission which seems detrimental to their right to protest. More explicit reference in the guidance to the duty to children in a public context may have persuaded the court to permit the duty to children in this case to weigh more strongly against the general duty of the police to maintain law and order.

C. Conclusions on the Castle Case

States are obliged to respect, protect, and fulfill the rights of children to engage in protest, and positive obligations are particularly relevant for children compared to other groups. In general at international level, states have “a wide discretion in the choice of the means to be used”³⁰⁷ when taking positive measures to facilitate protest. However, the safety and well-being of children is arguably of such importance that a state’s discretion should decrease when it comes to the use of tactics which are particularly harmful to children. Although this specific matter has yet to be examined at international level, the argument can be made that, considering the vital nature of protest rights and the special status of children, states have a variety of obligations in this context. In particular, states have a positive obligation which involves ensuring that legislation protects or is interpreted as protecting children’s right to protest, and that simultaneously children’s rights are specifically considered at both the planning and execution stages when protests are policed.

When considered in light of these obligations, the authorities appear to have failed to adequately vindicate children’s rights for the November 24, 2010 London march, and the High Court of England and Wales also failed to uphold those rights. That the Court

³⁰² *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 27.

³⁰³ See above *supra* note 177 and *supra* note 178.

³⁰⁴ *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 40-41. The statutory guidance to the Children Act 2004 is entitled “Every Child Matters.”

³⁰⁵ The section in question is Chapter 6.3 of “Every Child Matters”, cited in *Castle & Others v. Commissioner of Police for the Metropolis* at ¶ 38.

³⁰⁶ *Id.*, ¶ 51.

³⁰⁷ Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* 724 (2002).

recognized that the statutory duty to children applied in the context of protest was undoubtedly an achievement for children's rights. Arguably, however, the Court did not give sufficient attention to the ECHR obligation to children because of their vulnerabilities, focusing instead on the narrowly-drafted domestic statutory guidance, and deferring to the police decision not to explicitly consider children's needs in advance of this particular protest. The Court surprisingly made no reference to other international obligations, such as those under the CRC. Although the CRC has not been incorporated into the domestic law of England and Wales, it has been used as a persuasive source of guidance in numerous U.K. cases concerning children, particularly those relating to children's autonomy rights.³⁰⁸ The failure to consider it in this case seems very questionable. The Court did not take an approach to the matter in *Castle* which placed great emphasis on children's rights, refraining, for example, from taking the opportunity to examine the issue from the perspective of Article 11 of the ECHR. The approach of the court constitutes a failure in a liberal democratic state to adequately vindicate children's protest rights.

IX. Conclusions

There must be greater regard for the increasing involvement of children in protests. Children possess the same right to protest as adults under a number of different international human rights law instruments, and many children are willing and able to exercise that right. The issues about which recent protests have been held—education cuts, unemployment, inequality—are those issues which directly affect children. The technology now available to children has engaged them in protest and made for more widespread and effective movements. Yet, the approach of authoritarian regimes toward children in protest has proven highly dangerous for children's safety, sometimes resulting in torture or death for children. In democratic states increasingly repressive policing has also lead to hazards for children, such as through kettling. Law generally, and international human rights law in particular, should be used to achieve greater facilitation of children in effectively enjoying the right to protest.

The Committee on the Rights of the Child has paid some attention to the increasing connection between children and the right to protest and has on occasion provided insightful guidance on the implementation of protest rights. In addition to emphasizing the obligations on states to ensure that legislation is in conformity with that instrument,³⁰⁹ to facilitate protest, and to protect the safety of children in this context,³¹⁰ the Committee has also appeared to establish obligations to educate officials on children's protest rights,³¹¹ to encourage children to form associations,³¹² and to refrain from requiring children to seek parental consent to join associations.³¹³

³⁰⁸ See e.g. *Mabon v. Mabon and Others* [2005] EWCA Civ 634; and *Re Roddy (A Minor)*; *Torbay Borough Council v. Associated Newspapers Ltd* [2003] EWHC 2927 (Fam).

³⁰⁹ See above *supra* note 178.

³¹⁰ See above *supra* note 196.

³¹¹ *Id.*

³¹² See above *supra* note 203.

³¹³ See above *supra* note 208.

Nevertheless, the nature of the reporting process has not lent itself to in-depth consideration of the matter. The comments of the Committee on the Rights of the Child do not provide a thorough analysis and have sometimes failed to focus on children and protest, when arguably such a focus was needed.³¹⁴ The Committee has not, for example, highlighted the particular vulnerabilities of children, nor has it elucidated in any detail the positive obligations which arise from this vulnerability. This means that there is no detailed guidance at the domestic level regarding children and protest, although one can deduce that obligations exist such as planning for the presence of children at demonstrations and training officers on the specifics of these events.

General human rights monitoring mechanisms have likewise failed to provide substantial guidance. Although the European Court of Human Rights has confirmed in *Christian Democratic People's Party v. Moldova*³¹⁵ that the right to freedom of assembly and association applies to children, it has not considered in detail the matter of the rights of children to protest. None of the other international or regional mechanisms have considered the matter of children and protest. There is substantial scope for UN mechanisms to provide increased guidance in the area. The Universal Periodic Review process, for example, has accorded a significant amount of attention to children's rights issues, yet the process has rarely focused on children's freedom rights.³¹⁶ Instead, it has focused on more traditional matters such as education and violence against children.³¹⁷ Both non-governmental organizations and states could be encouraged to engage more with freedom rights generally, and rights relating to protest in particular, through this process.

There is little evidence that domestic legislation or judgments are advancing children's protest rights. In the questionable *Castle* judgment, the police were held not to have failed in their duties towards children. Yet, officers refused permission to those clearly identifiable as children to leave the cordon for up to seven hours, leaving them cold, hungry and for the most part without toilets, and ultimately released many of them alone into central London late on a Winter evening.³¹⁸ While this was a distressing scenario for the adults who were cordoned, the particular consequences for children are clear. The authorities accepted in this case that special obligations are owed to children,³¹⁹ however, that threshold was set very low indeed. It was not necessary for the police authorities to consider explicitly the needs of children in a protest regarding education, which large numbers of children were likely to attend and in which kettling would possibly be used.³²⁰ The standard set in *Castle* arguably does not appear consistent with ECHR case law on the positive duty to protect children. The

³¹⁴ See e.g. the example of Concluding Observations on Egypt, *supra* note 210.

³¹⁵ The Case of the Christian Democratic People's Party v. Moldova (No.2), App. No. 28793/02, Eur. Ct. H. R. (14 Feb. 2006).

³¹⁶ Child Rights Information Network (CRIN), Universal Periodic Review: The Status of Children's Rights, 16 (2010).

³¹⁷ *Id.*

³¹⁸ *Castle & Others v. Commissioner of Police for the Metropolis*, ¶ 27.

³¹⁹ *Id.*, ¶ 53.

³²⁰ *Id.*, ¶ 64.

standard set also appears out of line with the ICCPR, which places positive duties on states to facilitate protest.³²¹ The judgment is also not in conformity with the CRC, which explicitly enshrines the principle of the best interests of the child together with the right of children to freedom of assembly and association.³²² Perhaps if the Committee on the Rights of the Child provided more explicit guidance on the matter, the court in *Castle* would have been more inclined to uphold stronger standards for children's protest rights.

The right of children to participate in matters affecting them has become increasingly recognized, and it needs to be acknowledged that children have as much to contribute to protest movements as adults. It will not be possible to facilitate the right of children to peaceful protest unless their special vulnerabilities are adequately acknowledged. The conceptualization of positive obligations in the international human rights framework lends itself to an interpretation of the implementation of children's protest rights as requiring recognition of both children's abilities and vulnerabilities. Yet, because of the lack of attention to the area at international level to date, clear affirmation of this is lacking. As the *Castle* case demonstrates, domestic standards need to exist that require a special duty to children through adequate planning for their needs in protest. From a children's rights perspective, however, this planning should be particular to children as a group. Authorities should be required to consistently consider the needs of children in this regard, or the traditional exclusion of children from public life generally and politics in particular³²³ will persist.

³²¹ Nowak, *supra* note 236.

³²² Articles 3 and 15 of the CRC respectively.

³²³ Andrew Rehfield, *The Child as Democratic Citizen*, 633 *Annals Am. Acad. Pol. & Soc. Sci.* 141, 143 (2011).