DEMONSTRATING POSITIVE OBLIGATIONS: CHILDREN’S RIGHTS AND PEACEFUL PROTEST IN INTERNATIONAL LAW

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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 Rights that 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 lightweight 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. CHILD. RTS. 619, 630 (2010).

1. See, e.g., Damon Barrett & Philip E. Veerman, Article 33: Protection from Narcotic Drugs and Psychotropic Substances, in A COMMENTARY ON THE UNITED NATIONS CONVENTION ON DRUGS...
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. 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. During the First Intifada in the Occupied Palestinian Territories, children mobilized in demonstrations, contributing to the description of the uprising as “truly a popular rebellion.”

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. 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. They have protested against social and economic inequality more generally, as exemplified by the “Occupy” movement. Perhaps most strikingly, children have been involved in the uprisings in the Arab world since 2011. Their activities,

ON THE RIGHTS OF THE CHILD xiii (Andr é Alen et al. eds., 2007) (Dr. Dainius Puras commenting that the examination of the right of children to freedom of association has been particularly neglected).

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.


8. See The Demographics of Occupy Wall Street: By the Numbers, WEEK (Oct. 20, 2011), http://theweek.com/article/index/220529/the-demographics-of-occupy-wall-street-by-the-numbers (surveys of the Occupy Wall Street protestors, for example, revealed that 26.7% were enrolled in school).

at times, have played a pivotal role in the initiation of such movements.\(^{10}\)

Yet, children also have particular vulnerabilities that render their involvement in protest both dangerous and controversial. Considering these groundbreaking 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 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 basis with adults.\(^{11}\) Whilst this approach is commendable, the Committee has not adequately elucidated the positive obligations owed to children for their special vulnerabilities.

The European Court of Human Rights appears to be the sole human rights court at the regional level in which matters relating to children and protest have been considered. In the recent U.K. Castle judgment,\(^{12}\) which likewise seems to be the only recent

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domestic law case relating directly to the treatment of children in the context of mass demonstration, the containment (kettling) of protesting children in uncomfortable conditions for a number of hours was held not to have constituted a breach of duty. From a children’s rights perspective, this decision is objectionable on numerous levels. States should have positive obligations under both the European Convention on Human Rights (ECHR) and 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 possess and the contribution they can make to their societies.

II. RIGHTS, PROTEST, AND INTERNATIONAL HUMAN RIGHTS LAW

The lack of analysis 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, 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 expression also potentially encompass protest rights. Together they are, according to

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13. This case appears to be the sole recent Anglophone domestic law case to directly involve children and protest.
14. Castle & Others, EWHC 2317 [53].
16. The European Court of Human Rights (ECtHR) made an explicit link between the right to freedom of assembly and the right to freedom of expression. See Ziliberberg v. Moldova, App. No. 61821/00, para. 2 (May 4, 2004), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-238889 (“[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.”).
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.
Scheinin, “the core in the category of political rights.” 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 Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights, and the ECHR.

The right to freedom of assembly includes the right of groups to engage in “protest.” 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. 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.” There are, however, many other forms of resistance that could be classified as “protest”
activities, such as walkouts, sit-ins, and boycotts. These types of peaceful protest aim to communicate in a highly visible manner and display force while avoiding violence. 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.

The importance of protest for individuals and for democracy generally has long been recognized, as demonstrated by the inclusion of the right to freedom of assembly and freedom of association in numerous international instruments. The degree of acceptance of the importance of protest at the 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.

The Arab Spring demonstrations in 2011 provided strong evidence of the change that protest can make for peoples' rights and interests, but it also brought attention to the dangers that protestors can face at the hands of state authorities. In light of these events, which received global interest, there has been a reassertion at the international level of the vital nature of protest for democ-

27. See ADAM ROBERTS & TIMOTHY GARTON, CIVIL RESISTANCE AND POWER POLITICS, 2–4, 13, 25 (2009). For consideration of the difficulties generally in defining “protest” for the purpose of legal analysis, see Mead, supranote 15, at 347.


29. DAVID MEAD, THE NEW LAW OF PEACEFUL PROTEST 6–8 (2010) (explaining that protest can have a functional value for democracy, but can also have intrinsic value for the right of an individual).

30. See supra text accompanying notes 17–22.

31. Fenwick, supra note 24, at 737 (explaining that in the United Kingdom, “the groups tend to be made up of various disparate elements, including peaceful protesters and hard-core activists”).


racy 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 acknowledged in a recent resolution on The Rights to Freedom of Peaceful Assembly and of Association 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 addressed in 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 express political opinions, amongst other things.39 Protest has been described as being as important to a democratic society as


37. Summary of the HRC Panel Discussion, supra note 34, para. 13.

38. Id.

voting, since “[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 generally lack 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 interests. The phenomenon of child workers forming their own organizations has been


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, 271 (David Keane & Yvonne McDermott eds., 2012) (noting voting age of eighteen as common practice and confirmed by international human rights law).


43. See JOHN SANTROCK, A TOPICAL APPROACH TO LIFESPAN DEVELOPMENT 251–32 (2008) (explaining how at around eleven years of age, children begin thinking in more logical, abstract ways).

44. See Roberta Bosisio, “Right” and “Not Right”: Representations of Justice in Young People, 15 CHILDHOOD 276, 290–91 (2008) (“[Y]oung people are social actors who possess the reasoning skills to face even complex questions of justice and moral issues with regard to situations affecting their everyday life, as well as more complex situations that are not part of their experience.”).


46. In one Austrian study, for example, the vast majority of children expressed that they wished for greater participation in local matters. GERISON LANSDOWN, UNICEF, THE EVOLVING CAPACITIES OF THE CHILD 62 (2005) (citing research finding ninety-three percent of youths wanted to be informed about new projects in the community and sixty-five percent wanted youth consulting hours with politicians).
documented, and the contribution of such groups to social transformations in their localities has also been highlighted.\(^\text{47}\) 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.\(^\text{48}\) Children have much to offer social justice movements in order to progress both their own interests as well as those of their communities.

### III. Children and Protest

The category referred to as “children,” ranges from infants to individuals of seventeen years.\(^\text{49}\) Children of all ages can feature in protests. Some, likely younger children, will have been brought there by parents. Others, likely adolescents, will protest to have their own voices heard. 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”\(^\text{50}\) and the principle that children’s capacities increase as they develop, and thus so does the ability of a child to exercise her own rights.\(^\text{51}\)

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.\(^\text{52}\) Nevertheless, this Article primarily addresses the right to protest for older children with the ability to form views,\(^\text{53}\) who have attended a protest to make a point. As


\(^{48}\) See id.

\(^{49}\) The Convention on the Rights of the Child (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.” Convention on the Rights of the Child, art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

\(^{50}\) Id. art. 5.


\(^{52}\) Lansdown, “Evolving Capacities Explained,” supra note 51, at 8.

\(^{53}\) See Lansdown, supra note 46, at 3 (recognizing that children gain competencies at different rates); Roger A. Hart, Children’s Participation: From Tokenism to Citizen, INNOCENTI ESSAYS No. 45 (UNICEF Mar. 1992) (noting most examples of effective youth radicalism involved older teenagers and young adults). Whether their parents will give them permission is, of course, another matter altogether, and one which is beyond the scope of this
noted above, these individuals will likely be adolescents, 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.

As noted above, the right to freedom of assembly is well established in international human rights law. The right’s explicit inclusion 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 unit,57 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,

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54. See Bosisio, supra note 44, at 290, who emphasizes children’s awareness 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 generally Reed Larson & Suzanne Wilson, Adolescence Across Place and Time: Globalization and the Changing Pathways to Adulthood, in HANDBOOK ADOLESCENT PSYCHOL. 299–330 (Richard Lerner & Laurence Steinberg eds., 2004) (describing changing views of adolescence around the world).

55. See discussion infra Part V. Additionally, Article 15 of the CRC stipulates as follows:

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 . . . , the protection of public health or morals or the protection of the rights and freedoms of others.

CRC supra note 49, art. 15.

56. CRC, supra note 49, art. 14.

57. See, e.g., Bruce Hafen & Jonathan Hafen, Abandoning Children to Their Rights, 55 FIRST THINGS 18, 24 (1995) (“[T]he 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,” and states that parents are to provide “appropriate direction and guidance in the exercise by the child of the rights.” CRC, supra note 49, pmbl., art. 5.

59. See Daly, supra note 41, at 271 (noting that research indicates adolescents are greatly underestimated); Aoife Daly, Considered or Merely Heard? The Views of the Young Children in Hague Convention Cases in Ireland, 12 IS. J. Fam. L. 16, 16 (2009) (suggesting 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 in according minority status to those less than eighteen years old 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, 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 likely to be less developed cognitively; however, there are inherent problems in viewing children through the prism of 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.” Similarly, 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—because 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 are smaller in stature than adults, at least until their adolescence years, and may therefore be more vulnerable in the context of violent protests. 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.

Theories that attempt to broaden the notion of citizenship have developed as the philosophy regarding children’s “participation” rights has evolved. 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

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65. However, Mead points out that, for the purpose of the European Convention on Human Rights (“ECHR”), if a demonstration becomes violent, it does not follow that those present lose the protection of that Convention. See Mead, supra note 29, at 67–68 (“Case law is clear: what matters is the intention of [the protest’s] organisers and participants.”).

66. For example, Turkey has been criticized for setting the minimum age at nineteen. See Comm. on Rights. of the Child, Concluding Observations: Turkey, para. 38, U.N. Doc. CRC/C/TUR/CO/2-3 (July 20, 2012) [hereinafter Concluding Observations: Turkey].

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 to recognize the interdependence of human beings and to value children as the human beings they are in the present, not just as future adults.70 Children should not continue solely as a group different from adults, but instead as a group with a “central component in society.”71 In the context of protest, children should be seen as a group with as much interest in protest as adults, but one with particular needs that must be met to allow them to exercise the right.

IV. 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 Part considers the potential dangers of protest for children, including the physical dangers and 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 not 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

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


70. Id.

71. Id.

72. See generally 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) (arguing that the treatment of children as possessors of rights can be reconciled with the need for adults to act in the children’s best interests).

73. See Lansdown, supra note 46, at 3.
circumstances because they are generally smaller in stature. This raises the argument that the need for special protection for children should be included in 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.”

Although the authors were referring to violent demonstrations, the same can be said for the increasingly important arena of peaceful protests. Even 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 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.”

This has certainly appeared to be a feature of violence occurring in Syria between 2011 and 2013. The report of a U.N. commission of inquiry, established in 2011 by the Human Rights Council, appears to document a phenomenon of children targeted for violence by security forces. The commission reported that security forces killed and injured children at numerous demonstrations. The commission also found widespread reports of torture of children in custody, as well as sexual abuse of boys in front of adult prisoners. 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. 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 to further the inter-

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77. Id.

78. Id. at 14 (reporting that by November 2011, an estimated 256 children had been killed by security forces).

79. Id. at 15.

80. VAN BUEREN, supra note 75.
ests 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 are used as tools to evoke emotions and to shock. For example, in 1989, parents brought children to an anti-abortion rally outside of a family-planning clinic in the United States.\footnote{Mary Lou Fulton, \textit{Children Join Peaceful Protest Against Abortion}, \textit{L.A. Times} (Aug. 11, 1989), http://articles.latimes.com/1989-08-11/local/me-321_1_peaceful-protest.} Though an article did not mention the ages of the children, it did note the presence of a baby.\footnote{Id.} 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.\footnote{Id.} 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.”\footnote{Id.}

To contextualize this difficult scenario, it is useful to consider Hart’s “ladder of participation.”\footnote{Hart, supra note 53, at 9–10.} This denotes degrees to which children’s participation may influence certain matters affecting them.\footnote{Id. at 8.} The spectrum ranges from “manipulation” (which does not constitute genuine participation) right up to instances of children sharing decision-making with adults.\footnote{Id. at 9.} Hart states that manipulation may involve instances of preschoolers carrying placards when they do not understand the issue.\footnote{Id.} According to Hart, adults feel that the ends justify the means, as the issue affects children.\footnote{Id.} This may be misguided rather than manipulative, according to Hart.\footnote{Id.} “Social mobilization” of children, such as 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 chil-
children nevertheless, particularly when the issue concerns children, is understood by them, and is deemed by them to be important.\footnote{Id. at 10.}

The cultural context must also be examined to determine whether such examples are genuine participation, and Hart opines that there can be a continuum, ranging “from regime-instigated to voluntary activity.”\footnote{Id.} 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.\footnote{Id.} 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 that 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.\footnote{Mahamadou Sawaneh, Children’s Rallies: Controversial New Protests in Syria, FRANCE 24 (Sept. 6 2011), http://observers.france24.com/content/20110906-syria-homs-controversial-new-protests-syria-children-rallies.} The pattern of arrest and torture of children by the regime clearly renders this activity dangerous for children.\footnote{Id.} Whether adults encouraged children to engage in children-only protests was unclear.\footnote{Id.} It is possible that anti-regime adults may have manipulated children into action to gain headlines and provoke further sympathy. Yet, the children began to protest when the traditional public celebrations to mark the end of Ramadan, which are particular to children, were forbidden,\footnote{Id.} which indicates 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 assuming, 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 matters affecting

\footnote{Id. at 10.} \footnote{Id.} \footnote{Id.} \footnote{Mahamadou Sawaneh, Children’s Rallies: Controversial New Protests in Syria, FRANCE 24 (Sept. 6 2011), http://observers.france24.com/content/20110906-syria-homs-controversial-new-protests-syria-children-rallies.}
them is recognized by Article 12 of the CRC,\textsuperscript{98} and reflected in the increasing numbers of national Youth Parliaments\textsuperscript{99} and other initiatives engaging children to contribute their views in political matters. Adults can also be manipulated by third parties to protest, yet we would not seek to prevent adult participation on this basis. Children, like adults, are influenced by various organizations, communities, and neighborhoods, and they are “enmeshed in a web of potential political and civic influences.”\textsuperscript{100} These tactics of manipulation suggest that adults have an ambivalent attitude toward the validity of the involvement of children in protests.\textsuperscript{101}

Clearly, however, there are instances where children simply cannot grasp the issues that 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.”\textsuperscript{102} Decoration, like manipulation, does not constitute genuine participation.\textsuperscript{103} 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.”\textsuperscript{104} This does not constitute manipulation because adults do not attempt to falsely portray the children involved as the instigators.\textsuperscript{105} It does potentially use children as tools, however, in an attempt to further the cause of

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  \item 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.” CRC, \textit{supra} note 49, art. 12(1).
  \item O’Ttoole and 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 stakeholders.” Therese O’Ttoole & Richard Gale, \textit{Participative Governance and Youth Inclusion: The Case of Youth Parliaments}, Conference on Theorising Children’s Participation: International and Interdisciplinary Perspectives, University of Edinburgh 2 (Sept. 4–6, 2006).
  \item 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. Elizabeth Such, Oliver Walker & Robert Walker, \textit{Anti-War Children: Representation of Youth Protests Against the Second Iraq War in the British National Press}, 12 CHILDHOOD 301, 302 (2005).
  \item Hart, \textit{supra} note 53, at 9.
  \item Id.
  \item Id.
  \item Id.
\end{itemize}
adults.\textsuperscript{106} 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.\textsuperscript{107} Further, parents have the right to include their children in a protest as an educational cultural exercise.\textsuperscript{108} Nevertheless, possibly a more straightforward and pertinent 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, often in 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.\textsuperscript{109} Van Bueren makes the point that “without de jure recognition of their citizenship responsibilities, children become more vulnerable and not less.”\textsuperscript{110} She points to the example of child-headed households such as the households run by chil-

\begin{footnotes}
\item[106.] \textit{Id.}
\item[108.] It is regularly reported that protests include “families.” \textit{See, e.g.,} Anti-Cuts March: Tens of Thousands at London Protest, BBC News (Mar. 26, 2011, 8:09 PM), http://www.bbc.co.uk/news/uk-12864353. Of course, when the issue in question is specific to children, it is even more likely that children will be present. \textit{See, e.g.,} Over 200 Take Part in Protest Over Crumlin Hospital Cuts, PEOPLE BEFORE PROFIT ALLIANCE (May 23, 2009, 9:28 PM), http://www.peoplebeforeprofit.ie/node/129.
\item[110.] Van Bueren, \textit{supra} note 64, at 31.
\end{footnotes}
dren orphaned by AIDS in South Africa, and the clear barrier that these households face where policy dictates that social security payments are not made to children. 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. The ill-fated Kony 2012 campaign highlighted that young people can mobilize in enormous numbers on social issues, and that social media can be a powerful tool for this purpose. 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 computer with others of similar interests and consequently encounter social and political issues. In the United States, exposure to information online has been associated positively with political participation. Such engagement indicates a re-emergence of political

111. 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., Children’s Inst., Child-Headed Households in South Africa: A Statistical Brief 1 (2005). See also Liebel, supra note 47, at 270 (explaining that working children lack the rights to, among other things, open bank accounts and sign contracts).

112. See Meintjes et al., supra note 111, at 3.

113. Such et al., supra note 101, at 304.


activism and democratic participation, equipping a new generation with the capacity for effecting societal change.  

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. High school and university students have reportedly been the most vocal and successful, conducting extensive on-line campaigns for social change. By the end of 2011, public opinion support for the movement stood at seventy-nine percent. This indicates the success that young people can have, and the efficacy of social media as a tool to achieve change.

The value of participation as a learning experience during childhood and adolescence is gaining increased recognition. 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 so. 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. The U.N. Committee on the Rights of the Child, the monitoring body for the CRC, opined that “children could not be expected to mature into full members of society if they lacked the experience of participation in school and community life.”

The ability of young people to get involved in activism on a matter of importance to them was strongly emphasized during the

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, 7 INT’L J. APPLIED PSYCHOANALYTICAL STUD. 94, 95 (2010).


119. Valenzuela et al., supra note 118, at 47.

120. Id.


123. Id.; see also Hart, supra note 53, at 35.

124. Comm. on the Rights of the Child: Republic of Korea, supra note 121, para. 50.
2006 immigrant rights demonstrations and boycotts in the United States. Getrich interviewed teenagers who had organized and marched in protests in opposition to proposed laws that would have had a detrimental effect on themselves, family, and friends. They had “strong opinions,” which they were eager to express. Getrich argued that it was a very formative experience for these teenagers, and that it resulted in a feeling of belonging in their society. 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.

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. Hart also emphasizes the potential community organization benefits of children’s participation, stating the following:

“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.

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. Getrich raises the hypothesis 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

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125. Irene Bloemraad & Christine Trost, It’s a Family Affair: Inter-generational Mobiliza-

126. Getrich, supra note 6, at 534.  
127. Id. at 535.  
128. Id. at 551.  
129. Id. at 533.  
130. Hart, supra note 53, at 34.  
131. Id. at 35.  
for this demographic." There are, therefore, solid utilitarian reasons for encouraging and facilitating children to take interest in social issues, including through protest.

V. 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. The evolution in protest has involved a number of factors relevant to children’s rights. One factor has been an increase in protest in states like Syria with regimes unafraid to target children. 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. Additionally, the increase in protest has led to developments in policing techniques, such as “kettling,” that affect protesting children acutely.

The uprisings in the Arab world, which primarily began with demonstrations, are perhaps the most visible example of the 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. These civil uprisings, which shared techniques of protests, demonstrations, and rallies, have ultimately lead to the ousting of leaders in Egypt, Libya, Tunisia, and Yemen. There are numerous reasons behind these uprisings; however, a notable demographic feature is the

133. Getrich, supra note 6, at 551.
135. Id.
137. See discussion infra Part VIII.
138. See discussion infra Part IX (discussing Castle & Others v. Commissioner of Police for the Metropolis).
140. See generally Ottaway & Hamzawy, supra note 134 (discussing the increase in protests, strikes, demonstrations, and other forms of social protest in the Arab world).
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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 refer to the Arab Spring as "Youth Quake."

These young people were dissatisfied, but also well educated with access to social media. These factors contributed to the spread of the dynamic of protest across the region. That the Syrian uprising was sparked by children spray-painting slogans reveals that it is not only university students involved in protest, but school children as well.

It is not just the Arab world that has seen an increased resort to protest. In 2009, before the Arab Spring, Dalton argued that, whilst protest was once considered unconventional in many "western" countries, petitions and protests could be seen to rival the more traditional activity of electoral campaigning. Dalton also claimed that longitudinal research pointed to an increase in levels of protest, even in nations that were developing economically and politically. Moreover, the 2003 attack on Iraq, as well as anti-globalization movements, have also contributed to greater visibility of mass protest.

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. Klein points to a measurable increase in the United States in the severity of the security tactics used by authorities to counter protests at recent summits. She argues that the increase in violent policing has resulted in a situation where such violence is no longer a rare event.

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144. Dalton et al., supra note 134, at 71.
145. Id.
146. See Joris Verhulst, February 15, 2003: The World Says No to War, in The World Says No to War: Demonstrations Against the War on Iraq 1 (Stefaan Walgrave & Dieter Rucht eds., 2010).
147. Fenwick, supra note 24, at 737.
149. Id.
but an expected outcome, and she suggests that tactics such as preemptive arrests and the indiscriminate use of pepper spray and tear gas have criminalized legitimate dissent.  

The increase in heavy-handed tactics has not been confined solely to the United States. The 2010 G20 summit in Canada resulted in the mass arrest and detention of over 1,100 people, 800 of whom were never charged with an offense. Police cited a “breach of the peace,” a law inherited by Canada from English common law. 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.” There has been an increase in litigation relating to protest in England and Wales, with a notable criminalization of various forms of dissent. 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, “the highest rung of its hierarchy of values.” This legacy has consequently led to a number of cases in which U.S. courts have upheld the free speech of school children: the most famous case upheld the right to wear armbands protesting the Vietnam War.

150. Id. at 132.


152. Id.


154. Id. at 189.


156. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 503 (1969). For a comprehensive overview of cases involving free speech of school students, see generally 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). But see Erwin Chemerinsky, Students Do Leave Their First Amendment Rights at the Schoolhouse Gates: What’s Left of Tinker?, 48 DRAKE L. REV. 527, 530, 544 (2000) (arguing that there has been a notable retreat from the Tinker decision, including in Poling v. Murphy, 872 F.2d 757 (6th Cir. 1989), where the Sixth Circuit failed to mention the importance of the need to protect the free speech of students in a case involving the discipline of a student campaigning against “the iron grip” of school administrators, although protection of students’ free speech was a crucial consideration in Tinker).
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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. Another highly contentious issue is the global increase in the police’s use of “containment,” or “kettling,” 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.

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

VI. 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

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 and adults; however, the minority status of children leaves somewhat of a grey area when it comes to those provisions usually interpreted as “adult.” This was one of the

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157. 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.” Reportedly, he was arrested after refusing to pay a fine. See Law Banning Insulting Words and Behaviour “Has to End”, BBC News (May 15, 2012, 6:09 AM), http://www.bbc.co.uk/news/uk-politics-18084081; “Gay” Police Horse Case Dropped, BBC NEWS (Jan. 12, 2006, 1:14 PM), http://news.bbc.co.uk/2/hi/uk_news/england/oxfordshire/4606022.stm; PAT STRICKLAND, “INSULTING WORDS OR BEHAVIOUR”: SECTION 5 OF THE PUBLIC ORDER ACT 1986 2 (2012).

158. The tactic has been used in a number of states to control protests. For the U.K. context, see Fenwick, supra note 24, at 738; Musab Younis, British Tuition Fee Protest, November 9, 2010, London, 3 INTERFACE 172, 173 (2011). In the context of Canada, see Parkes & Daniel, supra note 151. In the United States, authorities have used netting to contain protestors. See Matt Wells, Police Crack Down on “Occupy Wall Street”, GUARDIAN (Sept. 25, 2011, 1:04 AM), http://www.guardian.co.uk/world/blog/2011/sep/25/occupywallstreet-occupy-wall-street-protests.

159. See discussion infra Part VIII.

160. See, e.g., Rep. of the Syrian Arab Republic, supra note 9, paras. 69–74; HUM. RTS. WATCH, supra note 9, at 1.

161. See discussion supra Part II.
The main reasons for drafting the CRC, which was groundbreaking for explicitly including autonomy rights specific to children.\textsuperscript{162} 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.\textsuperscript{163} This is a far-reaching right, which should be implemented in a variety of contexts, such as family, school, and the courts.\textsuperscript{164} 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.\textsuperscript{165} These include the right to freedom of expression (Article 13 CRC), freedom of thought, freedom of conscience and religion (Article 14 CRC), and freedom of association and peaceful assembly (Article 15 CRC).\textsuperscript{166} Article 15 stipulates as follows:

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.\textsuperscript{167}

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 assembly from association.\textsuperscript{168} This was noted by the CRC drafters, who acknowledged that the reason for this separation—the matter of joining

\textsuperscript{162} Although earlier instruments included numerous 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 to provide a comprehensive list of rights alongside principles of interpretation specific to the status of childhood. See Van Bueren, supra note 75, at 7.

\textsuperscript{163} See CRC, supra note 49, art. 12(1).


\textsuperscript{165} Compare, e.g., CRC, supra note 49, art. 13 (“The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”), with ICCPR, supra note 20, art. 19 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

\textsuperscript{166} Compare CRC, supra note 49, arts. 13–15, with ICCPR, supra note 20, arts. 18–19, 21–22.

\textsuperscript{167} CRC, supra note 49, art. 15.

\textsuperscript{168} CRC, supra note 49, arts. 21–22. On the topic of the division of assembly and association, see generally Nowak, supra note 17, at 370–90.
trade unions—did not need to be addressed by the CRC.\textsuperscript{169} Similarly, CRC Article 15 is almost identical to 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.”\textsuperscript{170}

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.\textsuperscript{171} The drafters of the CRC were determined not to impose restrictions in this provision that did not exist in equivalent international treaties.\textsuperscript{172} For example, a proposal that the right 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.\textsuperscript{173} 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 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.”\textsuperscript{174}

The text of Article 15 of the CRC, therefore, can be reasonably interpreted to provide children with the right to freedom of assembly and association to the same extent as adults. 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.\textsuperscript{175} It is neces-

\textsuperscript{170} ECHR, supra note 23, art. 11.
\textsuperscript{171} CRC, supra note 49, art. 15 (“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 . . . , the protection of public health or morals or the protection of the rights and freedoms of others.”); ICCPR, supra note 20, art. 21 (“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right 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 . . . , the protection of public health or morals or the protection of the rights and freedoms of others.”).
\textsuperscript{172} Detrick, et al., supra note 169, at 252–53.
\textsuperscript{173} Id.
\textsuperscript{174} ECHR, supra note 23, art. 11.
\textsuperscript{175} See discussion supra Part II, illustrating that children often have particular vulnerabilities that distinguish them from adults.

sary, 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.\textsuperscript{176} 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.\textsuperscript{177} The Committee regularly makes concluding observations on state reports,\textsuperscript{178} providing an amount of useful clarification on the provisions of the CRC. The comments are nevertheless disparate, sometimes inconsistent, and consequently do not constitute a thorough analysis of Article 15.\textsuperscript{179} Many of the concluding observations do not reference 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.\textsuperscript{180} These documents are certainly of immense value for the purposes of providing guidance on how to implement a particular right.\textsuperscript{181} It must also be highlighted that standards emphasized by the Committee, which already have binding status in other instruments such as the ICCPR, will be binding, of course, as a matter of international law.

\textsuperscript{176} CRC, \textit{supra} note 49, art. 44.

\textsuperscript{177} This category includes Articles 7, 8, 13–17 and 37a of the CRC. Comm. on Rights of the Child: General Guidelines Regarding the Form and Contents of Periodic Reports to Be Submitted by States Parties Under Article 44, Paragraph 1(b) of the Convention, U.N. GAOR, 13th Sess., para. 5, U.N. Doc. CRC/C/58 (Oct. 11, 1996).


\textsuperscript{179} \textit{See, e.g., Sylvie Langlaude, On How to Build a Positive Understanding of the Child’s Right to Freedom of Evidence, 10 Hum. Rts. L. Rev. 33, 47 (2010).}

\textsuperscript{180} \textit{U. BRISTOL & ARTS & HUMAN. RES. COUNCIL, IMPLEMENTATION OF U.N. TREATY BODY CONCLUDING OBSERVATIONS: THE ROLE OF NATIONAL AND REGIONAL MECHANISMS IN EUROPE 1 (2009).}

\textsuperscript{181} 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. \textit{See G.A. Res. 66/138, art. 10, para. 5, U.N. Doc. A/RES/66/138 (Jan. 27, 2012).}
1. Committee Concern Regarding Legislative Obstacles

States Parties to the CRC have an obligation to ensure that legislation is in conformity with that instrument.\(^\text{182}\) An examination of recent concluding observations of the Committee establishes that the Committee has given some attention to legislative obstacles to Article 15 at the domestic level. The Committee noted restrictions, for example, on the right to freedom of association in the case of Vietnam,\(^\text{183}\) and urged the state to “amend its legislation, \textit{inter alia}, by expediting the adoption of the Law on Associations.”\(^\text{184}\) In the case of Cuba, the Committee referenced specific provisions in the constitution of that state that restrict freedom of expression, freedom of assembly, and freedom of association, urging reform of those provisions.\(^\text{185}\) 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.\(^\text{186}\) The Committee also expressed concern at legislation in Costa Rica restricting the right to freedom of association of children for political purposes.\(^\text{187}\)

In the case of Turkey, the Committee highlighted legislative obstacles to the right. For example, nineteen is the minimum age for organizing outdoor meetings, and there are extensive bureaucratic procedures faced by those wishing to establish an association.\(^\text{188}\) The Committee recommended that Turkey amend its legislation “to remove the remaining obstacles to these rights, including the minimum age for forming an organizational commit-

\(^\text{182}\) Article 4 of the CRC stipulates, “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.” CRC, \textit{supra} note 49, art. 4.


\(^\text{184}\) Id. para. 42.

\(^\text{185}\) Comm. on the Rights of the Child, Concluding Observations: Cuba, paras. 32–33, U.N. Doc. CRC/C/CUB/CO 2 (June 20, 2011) [hereinafter Concluding Observations: Cuba]; \textit{see} Constitución Política de la República de Cuba [Constitution] Feb. 24, 1976, art. 53 (“Citizens have freedom of speech and of the press in keeping with the objectives of socialist society.”); \textit{id}. art. 62 (“None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to 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. \textit{See} Concluding Observations: Cuba, \textit{supra}, para. 32.


\(^\text{188}\) Concluding Observations: Turkey, \textit{supra} note 66, para. 38.
tee for outdoor meetings.” 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.” In 2001, the Committee also questioned Turkey about similar reports regarding Kurdish children; however, the concluding observations referred only to issues relating to “freedom of expression.” 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 on that right. The Committee questioned Belarus as to its Second Report in 2002. In that report, the Committee 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. 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. 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. This

189. Id. para. 39
190. Id. para. 42.
196. Id. para. 35.
perhaps indicates closer analysis of the issue than in 2002, possibly due 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

In recent reports, the Committee made particular reference to Arab Spring-related protests in 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 in 2011, particularly for children,” and urged Bahrain to take all measures to ensure the implementation of these rights. In the case of Syria, the Committee noted that, in practice, the right to freedom of association and assembly was not respected in the state.

The obligation to protect the right to life is a long-established principle of international human rights law, so it is unsurprising that the Committee would emphasize the obligation to protect children’s safety in Syria, where security forces killed children during the Arab Spring. The Committee criticized Syria for relying “on the parents to protect their children during demonstrations.” Significantly, this highlighted 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, urging Syria “to 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


202. Id. para. 47.
peaceful assembly, in accordance with articles 13 and 15 of the Convention.”

This points to potential obligations of states to educate state officials and employees about the right of children to protest, including education on how to achieve “implementation”—the facilitation of children to engage in protest. The Committee also expressed deep concern about the detention of children in connection with the protests and reports of the deaths of some of these children whilst in custody, and strongly urged Syria to release such children immediately and unconditionally.

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 were long established through interpretation of ICCPR rights. In recent reports, however, the Committee has provided guidance on the right of children to freedom of assembly and association, which appears to progress understanding of Article 15. In 2012, the Committee noted that children in Myanmar have little opportunity to exercise their right to association except through “Government-controlled NGOs.” The Committee recommended that Myanmar take measures “to encourage children to form associations on their own ini-

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203. 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. paras. 48–49.

204. Id. paras. 50–52.


208. Concluding Observations: Myanmar 2012, supra note 207, paras. 47–48. The Committee’s observations reflect the types of accounts that appear in the CRC Shadow
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This points to a positive obligation to “encourage” children in this regard, and to ensure that opportunities are not solely government-related, presumably because of a conflict of interest that 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 that may have for the freedom of expression of children. It was then recommended in the concluding observations of 1997 that Myanmar take “all necessary measures” in order to ensure conformity with the freedom of association under the CRC. Alongside the Committee’s focus on the matter in the 2012 report, this exemplifies the consistency of the Committee in its focus on Article 15 in a state that 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 Japan in 2004. The Committee expressed concern that children required parental consent to become members of an association, and recommended that Japan review relevant legislation to implement CRC standards. 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.215

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 where chil-
dren and young people have been immersed in protest. Since the 
reporting process is a lengthy one, with state reports sometimes 
takings 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 anticipated that 
the Committee would pay particular attention to states where pro-
test has been prominent. It is particularly notable that the Com-
mittee did not take the opportunity to examine the state report of 
Egypt in July 2011 to comment on the right to freedom of assembly 
in the wake of the Arab Spring uprising earlier that year.216 Children 
were detained and abused during those protests.217 Yet, the 
Committee gave recommendations in relation to the treatment of 
children after considering the state reports of Syria and Bahrain,218 
perhaps demonstrating an inconsistent approach.

The Committee has been criticized for not taking the opportuni-
ties to examine child-specific aspects of civil rights and freedoms to 
build a strong and consistent jurisprudence elucidating the area.219 
Based on an examination of recent reports, it is clear that the Com-
mittee is starting to make occasional reference to state practice 
regarding Article 15 and other articles related to protest.

215. This, of course, would not prevent parents from setting their own rules for their 
children. CRC, supra note 49, art. 5. It would simply require that the law not specify that 
children require parental permission to attend a protest, something which could theoretically 
penalize children by making protesting without permission a criminal offense.

216. Comm. on the Rights of the Child, Concluding Observations: Egypt, paras. 29–30, 
U.N. Doc. CRC/C/EGY/CO/3-4 (July 15, 2011) [hereinafter Concluding Observations: 
Egypt]. The document refers to the freedom of association of NGOs to register and oper-
ate, but there is no mention of the uprising or of children in particular.


218. See Concluding Observations: Bahrain, supra note 197, para. 7; Concluding Observ-
ations: Syrian Arab Republic, supra note 198, paras. 46–47.

219. See, e.g., Langlaude, supra note 179, at 47.
The Committee has also been consistent in commenting on violations of Article 15 in the cases of Myanmar, Belarus, and Turkey. Here, 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, to ensure that officials implement children’s protest rights (which logically implies that officials must be educated on this), and to refrain from considering the safety of children at demonstrations to be a matter solely for parents. 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.

Notably, the Committee has neither emphasized the dangers of protest for children because of their status, nor 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. This vindication of children’s 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. 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. However, for the reasons outlined above, children, as 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 expanded on the instruction to Syria to take all measures to ensure implementation of the right by

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223. Id.
224. Id.; Concluding Observations: Bahrain, supra note 197, paras. 40–41.
226. See DETRICK ET AL., supra note 169, at 252, 255.
227. See, e.g., Concluding Observations: Syrian Arab Republic, supra note 198, para. 46.
228. See discussion supra Part II.
authorities.\textsuperscript{229} 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 valuable for the 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.\textsuperscript{230}

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, the Committee has not extensively developed understanding of the nature of Article 15. The lack of emphasis in shadow reports may also be partly responsible for this lack of understanding. This lacuna may 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. Ideally, the individual complaints procedure for the CRC will result in further consideration of autonomy rights for children, including protest matters; that is, once Optional Protocol No. 3, which provides for an individual complaints mechanism for CRC rights, enters into force.\textsuperscript{231}

\section{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 model\textsuperscript{232} is the tripartite approach of “respect, protect, fulfill,”\textsuperscript{233} which acknowledges a sliding scale between negative and positive obligations while avoiding

\begin{itemize}
\item \textsuperscript{229} Concluding Observations: Syrian Arab Republic, supra note 198, para. 46.
\item \textsuperscript{230} See discussion infra Part VIII (discussing Castle \& Others v. Commissioner of Police for the Metropolis, where authorities specifically did not consider children’s vulnerabilities in this context).
\item \textsuperscript{233} See Ida Elisabeth Koch, Dichotomies, Trichotomies or Waves of Duties?, 5 Hum. RTS. L. Rev. 81, 84 (2005) (citing this model based on the theory proposed in Henry Shue, Basic Rights: Subsistence, Affluence and U.S. Foreign Policy 52 (1980), and further developed in Asbjørn Eide, Realization of Social and Economic Rights and the Minimum Threshold Approach, 10 Hum. RTS. L. J. 35, 37 (1989)).
\end{itemize}
a problematic dichotomy between the two.\footnote{234} Although 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.\footnote{235}

Eide described the first category of state obligations as follows: “The obligation to \emph{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.”\footnote{236} 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.\footnote{237} Of the second requirement, Eide states, “The obligation to \emph{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.”\footnote{238} 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 gang masters and their associates do not attack rallies of child workers.\footnote{239} The final obligation, according to Eide’s model, is the obligation to fulfill, 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.”\footnote{240} The obligation to fulfill requires the state...
to take positive action toward full realization of rights, including appropriate legislative, judicial, and budgetary measures. This reflects the concept of “positive obligations,” which has been long established in international human rights law. Because of children’s vulnerabilities, it is this aspect of state obligations that requires the greatest emphasis after recent developments regarding children and protest.

Positive obligations are inherent within international and regional human rights law instruments covering civil and political rights. References to the obligation to protect children also are 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,” placing states under a stronger positive obligation to facilitate freedom of assembly than that for civil rights relating to private interests. Nowak suggests that these duties may include the free use of rooms in which to assemble, redirection of traffic, or police protection. That instrument also stipulates that every child has the right to measures of protection “as are required by his status as a minor.” Therefore, positive duties toward children and protest based on status will require the facilitation of children to engage in protest where they wish to do so.

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

241. See id. at 82.
242. NOWAK, supra note 17, at 370.
243. Id. at 370–71.
244. Id. at 371.
245. ICCPR, supra note 20, art. 24.
246. See CRC, supra note 49, art. 3 (establishing the general principle that, “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”).
247. Id.
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 that relevant authorities implement children’s protest rights, implying the need to educate such authorities on the matter.\(^{248}\) This certainly appears to fall within the responsibility to fulfill 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 “vulnerable.” However, as Castle demonstrated,\(^{249}\) 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 that affect children in particular, such as education cuts, authorities should plan for how to manage crowds that contain significant numbers of children. For example, authorities should consider whether particular crowd control techniques, 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 harmed.

VIII. REGIONAL LEVEL: THE CASE LAW OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS

The European Court of Human Rights (ECtHR), as the human rights monitoring body with the greatest body of jurisprudence, has the potential 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

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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 of these directly invoke children’s rights.250 The ECtHR has heard a number of cases relating to protest under Article 11, the right to freedom of association and assembly,251 although only two cases252 directly concern children’s rights and protest.

In Valsamis v. Greece, 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).253 A twelve-year-old girl (Victoria) and her parents claimed that Greece violated Articles 3, 9, 13, and Article 2 (“A2”) of Protocol 1 of the ECHR254 when Victoria was suspended from school for a day for refusing to take part in a school parade celebrating the anniversary of war between Greece and Italy in 1940.255 The family was Jehovah’s witnesses and pacifist, and they claimed that the militaristic nature of the parade was against their religious

250. See, e.g., Vélez Restrepo & Family v. Colombia, Case 864-05, Inter-Am. Comm’n H.R., Report No. 47/08, OEA/Ser.L/V/II.130 doc. 22, rev. 1 (2008) (involving a journalist attacked by Colombian security forces while filming a protest, who subsequently received death threats, and argued that these matters were not properly investigated, and holding that Colombia violated a number of articles of the American Convention on Human Rights including 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 antigovernment protests. See Letter from Helen Duffy, Litig. Dir., Interrights, to Commissioner Reine Alapini-Gansou, African Commission on Human and Peoples’ Rights (Feb. 1, 2011), available at http://www.interrights.org/document/10/index.html. 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 Achievements of the ACERWC, Ann. Comm. Experts on Rts. & Welfare Child (ACERWC), http://acerwc.org/achievements (last visited Aug. 23, 2013).


254. Id. para. 18. Article 3 of the ECHR encompasses 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.

convictions.\textsuperscript{256} The Court held that the parade was not sufficiently militaristic in nature, and therefore, standing alone there was no breach of Articles 3, 9, and A2 of Protocol 1.\textsuperscript{257} However, the Court did find a violation of Articles 9 and A2 of Protocol 1 when considered with Article 13 because of a lack of remedy at the domestic level.\textsuperscript{258}

It is crucial that the Court neither considered the child’s separate individual complaint,\textsuperscript{259} nor addressed whether the obligation was more offensive to Victoria than her parents. Although the Court held that the parade, which was memorializing a military event in front of military authorities on the same day as military parades, was not militaristic enough,\textsuperscript{260} the experience of the child remains a significant factor for 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.\textsuperscript{261} This omission is particularly difficult to justify considering the Court acknowledged 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.”\textsuperscript{262} 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 \textit{Valsamis}, the Court acknowledged the right to freedom of religion of Victoria as an individual before deciding the right had not been breached.\textsuperscript{263}

Ten years after \textit{Valsamis}, in \textit{Christian Democratic People’s Party v. Moldova}, when the issue of attendance of children at a gathering arose once again, the ECtHR included a direct reference to the rights of children in the judgment, albeit briefly, and again primarily from the perspective of parents.\textsuperscript{264} Furthermore, the case

\begin{itemize}
\item \textsuperscript{256} \textit{Id.} paras. 6, 22.
\item \textsuperscript{257} \textit{Id.} para. 22.
\item \textsuperscript{258} \textit{Id.}
\item \textsuperscript{259} \textit{See Ursula Kilkeley, The Child and the European Convention on Human Rights} 75 (1999). Perhaps surprisingly, only the parents claimed a violation of Article 2 of Protocol 1, the right to education, while Victoria did not make this claim. \textit{See Valsamis v. Greece}, App. No. 21787/94, para. 22.
\item \textsuperscript{260} \textit{Valsamis v. Greece}, App. No. 21787/94, para. 9.
\item \textsuperscript{261} \textit{Id.} para. 25.
\item \textsuperscript{262} \textit{Id.} para. 31.
\item \textsuperscript{263} \textit{Id.}
\end{itemize}
directly concerned the right of children to freedom of assembly and association.\textsuperscript{265} 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.\textsuperscript{266} 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.\textsuperscript{267} The Court continued as follows:

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.\textsuperscript{268}

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 a matter directly relevant to children—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 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.

IX. DOMESTIC LEVEL—ENGLAND AND WALES:

THE CASE OF CASTLE

The case of \textit{Castle},\textsuperscript{269} in which children protestors were kettled for long periods by police,\textsuperscript{270} provides a striking and contemporary

\textsuperscript{265} Id.
\textsuperscript{266} Id. para. 76.
\textsuperscript{267} Id. para. 74.
\textsuperscript{268} 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. Christian Democratic People’s Party v. Moldova (No. 2), App. No. 25196/04 (2010) http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97049.
\textsuperscript{269} Castle & Others v. Comm’r of Police for the Metropolis, [2011] EWHC (Admin) 2317.
\textsuperscript{270} In addition to the Castle children, there were many other reports of children who were denied permission to leave. \textit{See}, e.g., Hannah Richardson, \textit{The Students Who Cut Class}
example of the children’s rights issues that 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 court narrowly interpreted the obligations owed to children in the context of protest.

A. Facts of the Castle Case

In Castle, the claimants used child-specific legislation in an unsuccessful argument that police had breached their duties towards children during a specific incidence of kettling. The case arose in the jurisdiction of England and Wales, which has ratified the ECHR, the ICCPR, and the CRC. On November 24, 2010, the claimants, aged sixteen and fourteen, were confined in a cordon in central London for six and one-half and five hours, respectively, during a protest march, despite requesting permission from police to leave. The march concerned proposals to increase university fees and to withdraw a financial scheme for students from low income families. It was led primarily by university students, though there were many children present at the protest. The day was extremely cold—temperatures were just
above freezing.\textsuperscript{277} There was no provision of food or drink in the cordon, and toilet facilities were not provided for over four hours.\textsuperscript{278}

The claimants were not challenging the legality of the containment, but instead arguing that the defendants should have identified children as unlikely to be violent and should have thus used a pre-designed plan to release them.\textsuperscript{279} The claimants alleged that their confinement breached the duties of the Police Commissioner under section 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.\textsuperscript{280} They also argued that the length of time for which they were confined was unlawful.\textsuperscript{281} These breaches, the claimants argued, constituted violations of Article 5 (the right to liberty and security), Article 8 (the right to private and family life), Article 10 (the right to freedom of expression), and Article 11 (the right to freedom of assembly and association) of the ECHR.\textsuperscript{282} The police argued that they had attempted to identify vulnerable people inside the cordon during instances of unruliness and disorder.\textsuperscript{283}

The court held that although the Police Commissioner does have a duty to children in such circumstances under section 11 of the Children Act 2004,\textsuperscript{284} the defendant was not in breach of that duty during this event.\textsuperscript{285} It was reasonable for the defendant to not make specific arrangements for children except to remind police commanders “of the need to protect the vulnerable.”\textsuperscript{286} Furthermore, the specifics of the situation and violence outside the cordon justified the duration of the containment.\textsuperscript{287} The court further held that section 11 of the Children Act 2004 does indeed require planning where containment is expected or used to protect children,\textsuperscript{288} but that in this case, there was no indication there

\textsuperscript{277.} Castle & Others, EWHC 2317 [25].
\textsuperscript{278.} Id.
\textsuperscript{279.} Id. [34].
\textsuperscript{280.} Id. [33].
\textsuperscript{281.} Id. [7].
\textsuperscript{282.} Id.
\textsuperscript{283.} 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,” id. [21], and use of the police helicopter (although late in the day) to scan for children in the crowd, id. [25].
\textsuperscript{284.} Id. [51]–[53].
\textsuperscript{285.} Id. [70].
\textsuperscript{286.} Id. [64].
\textsuperscript{287.} Id. [70].
\textsuperscript{288.} Id. [60].
would be large numbers of children, so specific plans were unnecessary. Because the Article 5 argument failed, the Court did not examine the other ECHR claims.

B. Castle: Positive Obligations

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 discussed in this Article. The obligation to fulfill within Eide’s model is particularly relevant here because of children’s vulnerabilities. The Castle case demonstrates these vulnerabilities and highlights the impact that authorities can have on children’s protest rights when they fail to implement positive obligations relating to the special status of children—a status acknowledged by the CRC and the ICCPR. The ECHR is perhaps the instrument of primary interest when considering positive obligations in the context of Castle, because the United Kingdom has incorporated ECHR rights into domestic law. Though the ECtHR has not had the opportunity to examine the duties to children regarding 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” to take steps to protect them from ill-treatment, and special provision may have to be made in some contexts to account for

289. Id. [64].

290. The Court opined, “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. [72].

291. Eide, supra note 233, at 37.

292. Adam Castle, Why I’m Taking the Police to Court for Kettling Me, GUARDIAN (July 5, 2011, 5:52 AM), http://www.guardian.co.uk/commentisfree/libertycentral/2011/jul/05/police-kettling-children (“Because 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.”).

293. CRC, supra note 49, art. 3.

294. ICCPR, supra note 20, art. 24.

295. See Hill, supra note 272, at 1130.

children’s vulnerabilities.\textsuperscript{297} States also have positive obligations to facilitate protest under the ECHR.\textsuperscript{298} Although the \textit{Castle} judgment acknowledged a duty to children in protest, determining the limits of that duty appears flawed when analyzed from the perspective of positive obligations to children under the ECHR and other instruments.

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 freedom of association.\textsuperscript{299} The obligation to fulfill would appear to require explicit consideration by authorities of the needs of children at a protest, as acknowledged by the court in \textit{Castle}.\textsuperscript{300} The court’s conclusion that explicit planning was not needed in this instance\textsuperscript{301} appears difficult to justify considering the protest related to an issue that affected school-age children most profoundly\textsuperscript{302} and there were indications of school walkouts.\textsuperscript{303} It is also difficult to justify the court’s opinion that there had been no need to explicitly consider the specific needs of children in a situation of containment.\textsuperscript{304} The court opined that plans to protect the vulnerable generally were sufficient,\textsuperscript{305} yet an examination of the procedures used by police highlights the inadequacy of these plans. Police attempted to identify young people in school uniforms\textsuperscript{306} and “obvious small children,”\textsuperscript{307} which would at best have located only \textit{some} of the children present. The claimants, for example, were not in uniform\textsuperscript{308} and 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 cordon\textsuperscript{309} appears to point to deficiencies in the train-
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...ing of police on the matter of children and protest—an obligation that the Committee on the Rights of the Child has pointed to in its comments. \(^{310}\) The police argued in *Castle* that they had met their training obligations because during general police training there are materials on identifying children’s needs under the statutory guidance to the relevant legislation. \(^{311}\) Also, during police training on public order events, reference is made to allowing vulnerable people to exit police containment. \(^{312}\) The court noted that this police training on public order events should refer to children specifically. \(^{313}\) 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.

It seems important from a human rights perspective that instructions on how and when to quickly release children from containment would be given in both tactical preparation and training. Police training should include instructions that persons who can produce documentation proving that they are under eighteen should be released upon request. This presumption is rebuttable where there was reason to believe an individual was violent or in danger. The special position of children could justify this, bearing in mind the duty to those under eighteen. \(^{314}\) The *Castle* children’s father—a journalist with a press pass \(^{315}\)—accompanied the children, which provided a strong indication that these young people were not going to engage in violence, and therefore, 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. \(^{316}\) 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 focuses almost exclusively on protection rights for children in the narrow context of the fam-

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311. *Castle & Others*, EWHC 2317 [40]–[41].
312. Id. [41].
313. Id. [65].
314. Children Act, 2004, c. 31 (U.K.). The need for this duty is illustrated by the fact that fourteen-year-old Rosie Castle was released alone in late evening in Central London. This is quite a different scenario than the release of an adult in this context.
315. *Castle & Others*, EWHC 2317 [27].
316. See discussion *supra* Part VI.B.
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 the context of domestic violence and child abuse cases. The duty to account for the welfare of a child decreases outside the area of family life. 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 guidance on the authorities’ duty to children during protests may have persuaded the court to enforce the duty in this case.

In general, at the international level, states have “a wide discretion in the choice of the means to be used” when taking positive measures to facilitate protest. However, the safety and well-being of children are arguably of such importance that a state’s discretion should decrease when using particularly harmful tactics on children. Although this specific matter has yet to be examined at the 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 to ensure that legislation protects or is interpreted as protecting children’s right to protest, and that children’s rights are specifically considered at both the planning and execution stages for policing protests.

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

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318. *Id.* [38] (explaining that chapter 6.3 anticipates the use of police powers to identify vulnerable children in domestic violence cases, take children into custody, protect children as witnesses or victims, and work with partner agencies to divert children from crime and educate children about substance misuse and crime prevention).

319. *Id.* [51].

consider children’s needs in advance of this particular protest.\footnote{Castle \& Others, EWHC [64].} The Court did not refer to other international obligations, such as those under the CRC. The CRC has been used as a persuasive source of guidance in numerous U.K. cases concerning children, particularly those relating to children’s autonomy rights.\footnote{See, e.g., Mabon v. Mabon \& Others, [2005] EWCA (Civ) 634 [20]; Torbay Borough Council v. Associated Newspapers Ltd., [2003] EWHC (Fam.) 2927.} The failure to consider it in this case epitomizes how \textit{Castle} did not place 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.

\section{Conclusion}

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. The issues behind recent protests—education cuts, unemployment, inequality—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, such as kettling, has increased the hazards for children. International human rights law 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 the CRC,\footnote{See supra text accompanying note 182.} to facilitate protest, and to protect the safety of children in this context,\footnote{See supra text accompanying notes 204–207.} the Committee has also appeared to establish obligations to educate officials on children’s protest rights,\footnote{Id.} to encourage children to form associations,\footnote{See supra text accompanying note 209.} and to
refrain from requiring children to seek parental consent to join associations.327

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.328 The Committee has not, for example, highlighted the particular vulnerabilities of children, nor has it elucidated in any detail the positive obligations that arise from this vulnerability. Hence, 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 ECtHR confirmed in Christian Democratic People’s Party v. Moldova that the right to freedom of assembly and association applies to children,329 it has not considered in detail the matter of the rights of children to protest. Thus, there is substantial scope for U.N. 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.330 Instead, it has focused on more traditional matters such as education and violence against children.331 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.332 Yet, officers refused permission to those clearly identifiable as children to leave the cordon for up to seven

327. See supra text accompanying notes 213–215.
328. See, e.g., Concluding Observations: Egypt, supra note 216.
331. Id.
hours, leaving them cold, hungry, and for the most part, without toilets before ultimately releasing many of them alone into central London late on a winter evening.\footnote{Id. [27].}

While this was a distressing scenario for the adults who were cordoned, the particular consequences for children are clear. The Court acknowledged that special obligations are owed to children;\footnote{Id. [64].} however, those obligations were set too low.\footnote{Id.} The standard set in \textit{Castle} arguably does not appear consistent with ECHR case law on the positive duty to protect children. The standard is out of line with the ICCPR, which places positive duties on states to facilitate protest.\footnote{NOWAK, supra note 17, at 370.} 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.\footnote{CRC, supra note 49, arts. 3, 15.} Had the Committee on the Rights of the Child provided more explicit guidance on the matter, the court in \textit{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 at the international level to date, clear affirmation of this is lacking. As the \textit{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 always consider the needs of children in this regard, or the traditional exclusion of children from public life and politics\footnote{Rehfield, supra note 109, at 143.} will persist.

\footnote{333. \textit{Id.} [27]. \footnote{334. \textit{Id.} [64]. \footnote{335. \textit{Id.} \footnote{336. NOWAK, supra note 17, at 370. \footnote{337. CRC, supra note 49, arts. 3, 15. \footnote{338. Rehfield, supra note 109, at 143.}}}}