The State of the Right to Communicate

Cees J. Hamelink
University of Amsterdam, The Netherlands

Julia Hoffmann
University of Amsterdam, The Netherlands

Abstract

In this article we first present the historical development of the right to communicate as first internationally expressed in a call for a New World Information and Communication Order. Subsequently, we focus on its revival during the United Nations World Summit on the Information Society, which we argue to have missed the historical chance to give new momentum to the debate, while global developments have all but intensified the need for communication processes to be recognized as a human need and to be firmly protected.
We conclude with the key controversial questions surrounding the concept of a "right to communicate" in order to point to some of the most problematic issues which have yet to be resolved and identify the position of such a right within the logic of the contemporary human rights edifice. Finally, we propose a new approach to the debate, which could contribute to fine-tuning its further development and avoiding some of the historical deadlocks, which have resulted from an overly politicized discussion during the early years.

***Keywords*:** Right to Communicate; Communication Rights; NWICO; WSIS.

Introduction

The "right to communicate" as such does not exist as a provision of international law. Nonetheless, it has sparked heated debates ever since Jean d'Arcy first uttered those three words in 1969. In the years of debate that followed, UNESCO came to be the forum of one of the great show-downs on the Cold War front when the US and the UK quit their membership in the aftermath of the MacBride Commission (1980) and the acronym "R2C" vanished from the agenda of international politics to be mentioned mostly only in low voice and off the record to avoid ideological fault lines breaking open again. The World Summit of the Information Society (WSIS) in 2003/2005, hosted, this time by the International Telecommunication Union (ITU), has given renewed impetus to the debate, if with a strategic shift to "communication rights" as the central concept.

The Call for a New World Information and Communication Order (NWICO)

Jean d'Arcy had advocated a new right in an article on "Direct broadcast satellites and the right to communicate" in which he criticized existing rules that were supposed to address communication processes for their limited focus on content rather than process. New technological developments surrounding direct broadcast satellites had led him to envision new opportunities for interactive, participatory communication which required the recognition of a right of everyone to take part in communication and design policies and laws accordingly.

It was within the International Institute of Communication (ICC) that the discussion about such a right to communicate initially developed (Birdsall, McIver & Rasmussen, 2002).[1]

During the 1970s UNESCO was to take up the issue. The context in which the debate must be set is the process of decolonization which had brought about a new alliance of former colonies that came together in the Non-Aligned Movement (NAM). Beyond the two ideological camps in the Cold War, those countries subsequently brought their own agenda of post-colonial independence into international politics.[2]

After the launch of Sputnik in 1957 the potential of the new technology for international communication and their potential impact on the cultural development even of remote regions soon became apparent. Concerns about cultural sovereignty were quickly linked to existing human rights provisions[3], which refer to economic, social and cultural rights.

In addition to the North-South imbalance of control concerning broadcasting, newly independent countries also pointed to their relative lack of mass communication resources. Hence, in 1961, the General Assembly of the United Nations passed a resolution acknowledging that "Communication by means of satellite should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis" (Hamelink 1994, p. 67).

During a seminar organized by the non-aligned countries in Tunis in 1975, the call for a New International Information Order (NIIO) was formulated (Lee, 2004). Later, as Mansell and Nordenstreng explain, "the NIIO echoing the anti-imperialist drive of the South and the state-sovereignty approach of the East was replaced with a less controversial […] NWICO" (2007, p. 23). The central argument on the side of the non-aligned countries aimed at what was criticized as a continuation of imperialism by other means: patterns of information flows clearly still mirrored a centre-periphery power relationship concerning content as well as infrastructure. Independence would have to be translated into participation in international communication and sovereignty to include cultural and social aspects, which were conceived to be threatened by the entrance of too much foreign content (Cambridge, 2007; Thussu, 2000). In order to address this inequality, an alternative to the freedom of information was needed since the latter was seen as an aid for those in power to maintain hegemony in a one-way process of information transmission (McIver & Birdsall, 2002).

In its 18th session the UNESCO General Conference affirmed "that all individuals should have equal opportunities to participate actively in the means of communication and to benefit from such means while preserving the right to protection against their abuses". The same year as the meeting of non-aligned countries had taken place, UNESCO's General Conference authorized the then director-general "to undertake a review of the main problems of communication in contemporary society seen against the background of technological progress and contemporary developments in international relations" (Lee, 2004, p. 7).

An International Commission for the Study of Communication Problems was established, chaired by Sean MacBride (referred to as Mac Bride Commission).[4] After a meeting of Experts on the Right to Communicate, numerous conferences and thorough research, the Commission published its final report named *Many Voices, One World: Communication and Society Today and Tomorrow*, in which it concluded that recognizing the right to communicate as an individual and social right "promises to advance the democratization of

communication" (International Commission for the Study of Communication Problems, 1980, as cited in Hamelink, 2003, p. 157). The report also detailed a number of recommendations including number 54 in which it calls for an expansion of rights:

> Communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication - all elements of a new concept, the right to communicate.
>
> (MacBride Report, 1980, p. 265)

In a resolution in 1980, the UNESCO General Conference subsequently referred to a "right of the public, of ethnic and social groups and of individuals to have access to information sources and to participate actively in the communication process" (Hamelink, 2003, p. 158). The UNESCO General Conference in Paris of 1983 adopted resolution 3.2 on the right to communicate (idem), which stated "that the aim is not to substitute the notion of the right to communicate for any rights already recognized by the international community, but to increase their scope with regard to individuals and the groups they form, particularly in view of the new possibilities of active communication and dialogue between cultures that are opened up by advances in the media" (UNESCO, 1983). Despite the endorsement of the findings of the MacBride Commission, however, "the veneer of agreement was thin; instead of bringing the sides together, the process merely exposed the gulf between them and entrenched the positions" (Alegre & Ó'Siochrú, 2005).

Supporters of the new order, including many members of the Non-Aligned Movement, were met with fierce resistance by mostly the United States and some other Western countries. The right to communicate eventually became the victim of ferocious ideological disputes, mutual distrust and incidental uprisings of paranoia which eventually made it impossible to consider the merits of all arguments in a rational manner. Whatever the reading of events one considers; the result was a clear victory of Western interests. The political debate about a NWICO – and the related call for the recognition of a right to communicate – effectively ended when in 1984 the USA, the UK and Singapore withdrew from membership of UNESCO (Lee, 2004, p. 8).

After this escalation, the right to communicate quickly disappeared into oblivion. Strategically, UNESCO moved away from its South-East outlook to do its "utmost to appeal to the West" (Mansell & Nordenstreng, 2007, p. 23) and abandoned its efforts to come closer to a formulation of a right to communicate.[5] As Hamelink (2003) observes, by the early 90s the right to communicate had virtually disappeared from the UNESCO agenda. The NWICO came to be seen as politically incorrect and a taboo[6] within UNESCO (Mansell & Nordenstreng, 2007) and with d'Arcy's death in 1983 the discussion about a right to communicate also ceased within the ICC (Birdsall, McIver & Rasmussen, 2002).

WSIS and CRIS: Picking Up the Thread?

The early experience of watching the idea of a right to communicate drowning in the political quagmire within UNESCO before it could be calmly thought through and freely deliberated upon brought many of its proponents to believe that it could not be states or industry, but civil society which could proceed with the necessary debate that had so abruptly been aborted.[7]

A growing number of NGOs (ranging from trade unions to faith-based organizations to human rights advocates) have emerged since the end of the political debate that are concerned about one or more of the issues that relate to the right to communicate, often due to new technological developments such as the coming of the internet. The emergence of the technology seemingly heralded a new age of global connectivity, interactivity and empowerment and claims for new human rights to go with it soon resembled and reinforced those made during the 1970s. While not all of them relate their work to the older debates the growing awareness of problems such as the "digital divide" has started to provide some common ground again. Even though many factors still impede radical change[8], the *potential* of the new technology remains rather breathtaking while it is undoubtedly at least partly a conscious decision about how to make use of it. This latter point is of specific relevance for proponents of a right to communicate, who warn of technological determinism and point to the urgency of sound policy and law-making to fully make use of possible benefits and minimize potential abuse.[9] The decision in 2001 to convene a UN World Summit, which was to deal with "the information society" (WSIS) was yet another event that triggered broader cooperation and exchange between concerned actors.

So even though the debate around a NWICO died out within UNESCO, by the same token that it had led to an escalation of the ideological battles within international politics the ideal of a right to communicate continues to inspire activists and scholars alike to argue for a human rights-based approach to communication processes. One of the most important initiatives that explicitly picked up the concept was the Campaign for Communication Rights in the Information Society (CRIS), which was founded on the eve of WSIS.[10] An alliance of NGOs had collaborated in order to

> use the right to communicate to enhance other human rights and to strengthen the social, economic and cultural lives of people and communities. In this respect the Information Society should be based on principles of transparency, diversity, participation, social and economic justice, inspired by equitable gender, cultural and regional perspectives.
>
> (Lee, 2004, p. 9)

More than twenty years after the escalation of the debate within UNESCO, proponents of the right to communicate now hoped for a revival of a human rights perspective on communication processes. After all, since then, trends in international communication such as increasing concentration, privatization and commercialization had not done much to address the needs and problems that underlie the original call for the right to communicate.[11] So, after the debate about a NWICO had gotten stuck in the quicksand of ideological polarization the problems underlying the earlier arguments for re-thinking the justness of the distribution of "hard" and "soft" power in the world of communication had barely changed (Mansell & Nordenstrang, 2007; Mastrini & de Charras, 2005).

So civil society was greatly encouraged by then UN Secretary-General Kofi Annan's announcement that this time, the World Summit was to be truly participatory and include not only the usual government representatives, but also business and – for the first time – civil society as partners on the same eye height (Padovani & Nordenstreng, 2005).

The trauma of ideological escalation seemed to have abided somewhat and when then, at the dawn of a World Summit, even Kofi Annan announced that "millions of people in the poorest countries are still excluded from the *right to communicate*, increasingly seen as a fundamental

human right" while the European Commission asserted that "the Summit should reinforce the *right to communicate* and to access information and knowledge" (as cited in Alegre & Ó"Siochrú, 2005, *emphasis added*), hopes were set high that this time around, the hour was ripe for the international community to go beyond old fault lines, finally address persisting injustices and introduce a perspective on information and communication that would go beyond market logic and profitability.

What Happened During WSIS?

When the first part[12] of the World Summit took place in December 2003, this time hosted by the International Telecommunication Union (ITU) instead of UNESCO[13], the US had just rejoined UNESCO (in 2003). During the preparations for the Summit the "right to communicate" resurfaced and became the centre of a heated debate during the preparatory conference (Prepcom II) in February 2003 at Geneva. The renewed attention for the right to communicate was largely caused by the emerging reality of global interactive technologies and the expansion of societal networking. These developments seemed to call even more urgently than at the time of d'Arcy's writing for a shift from the prevailing distribution paradigm to an interaction paradigm. This shift would require a form of human rights protection for the reality of communication as conversation.

In this spirit a draft declaration on the right to communicate was proposed by representatives of civil society as a discussion document. Against this draft text representatives of the World Press Freedom Committee protested that a right to communicate would serve the purpose of muzzling the freedom of the media. This opposition was inspired by the fear that a right to communicate would re-vive the 1970s Third World aspirations to create a new world information and communication order. Also from within the human rights community the draft declaration was so forcefully attacked that CRIS movement decided to put the right to communicate (temporarily) on the backburner. Instead the movement focussed on the more acceptable, although also contested, notion of communication rights. During the Summit in December 2003 a Declaration on Communication Rights was presented to and adopted by individuals and organisations present at the Communication Rights conference convened by CRIS.

No Reference in the Official Final Declaration

In the end, talk about relevant principles such as inclusion or participation remained limited to references to deliberately undefined standards, rendered inconsequential due to a lack of contextualization in existing governance structures concerning media and telecommunication as well as the lack of consensus on their implementation (Hamelink, 2004*a*). After distilling eleven key principles from the WSIS Declaration, Pekari concludes that: evidently, these eleven key principles have a certain focus on ICTs and reflect an almost naïve belief in their benefits, especially with regard to the digital divide [...], the focus on ICTs also raises the question if the concept of the information society reflected in the WSIS Declaration is not too technologically deterministic, neglecting other aspects. . . [such as] the future role of human rights.

(2004, p. 5)

Those who had hoped for the inclusion of communication rights into the discussion and outcome of WSIS were clearly disappointed and lamented the preference for technology over

people, short-sighted economic concerns over communication process and a lack of context to include cultural and socio-political dimensions of the digital divide and its related problems (Cunningham, 2005, p. 19). Eventually, Mr. Annan's initiative to put the right to communicate on the official agenda again failed and there was no mention of it in any of the official WSIS documents – nor in the declarations nor in the action plans.

The Controversies/Questions

After the stormy early years, debate about the idea of a right to communicate (or its relative "communication rights") has kept going among its proponents and critics. Many controversies and open questions remain, which will have to be addressed if the debate is to advance. We will highlight but a few prominent ones below. These concern the substance of the right as well as its nature and scope.

Content

When one has a passing look through all the different enumerations, grids and lists that have addressed the right to communicate (or communication rights) and aimed at breaking it down into components, the possibilities seem endless and not always overlapping (see for example, CRIS, 2005; Hamelink, 2003; Harms 2002). Prominently, obviously, it is the different processes of information exchange that are at the core of the right. Still, the arguments quickly evolve to include enabling circumstances, such as access to resources or pluralism of information sources and sometimes go on to refer to a more generally conducive environment including the free sharing of knowledge, culture or literacy and education. So, the issue of where to draw the line to delineate the core of the communication process that should be addressed by the right to communicate discourse is a major challenge for any research that aims at clarifying the relevant domains of enquiry.

If there is a common denominator to most of the existing work on the topic, it would be that the content and reach of the right or rights that are formulated go far beyond what is addressed by the traditional freedom of expression. Mostly, the arguments build forth on the recognition that certain minimum enabling conditions are necessary to give meaning to any freedom.[14] So, despite of the numerous efforts to clarify the content and delineate more clearly the boundaries of the discourse, there is an impasse that has persisted to this day, when it comes to finding a "definition embracing both universality and legalistic precision" (Birdsall, 2006).

Whose Right?

When the debate about the NWICO entered the international political fora, the right to communicate quickly became almost exclusively interpreted, depending on one's perspective, as a sword or shield in the hands of nation-states to either force entry into foreign markets for one's information products (as was feared for by those states sceptical of American cultural dominance) or to censor foreign inflow of information (as was assumed on the part of Western nations and the dominant media industries they hosted).[15] The emphasis on the implications of recognizing a right to communicate for collective actors such as communities or indeed whole states, however, may have muddied the waters by triggering overly fearful reflexes.

Certainly, taking a human rights perspective on communication is also apt to address global inequalities and to apply to collectives in addition to individuals. However, it would be rather paradoxical to start with considerations of the implications of a human right for the rights of sovereign nation-states in their international relations. In fact, human rights seem to be the altogether wrong category to apply to those issues at the level of international relations, since those are clearly regulated by different branches of international law. Human rights law is concerned with human beings – individuals as well as groups – whereas states are an altogether different category of legal entities, *against* which this set of rights was first pronounced.

So, even if the beginning of the debate may have been overshadowed by a concentration on state actors, the root of the right to communicate should be remembered to lie in arguments concerning human dignity. The next question to address then would have to be whether the right to communicate should be understood as an individual or a collective right or whether it entails a set of rights consisting of both.[16]

Against Whom?

Addressees of human rights articles are states, not private entities. Human rights were meant to be a protection against state authority, since proportionate to its powers the potential of violations by the state is great. This may seem as a contradiction to the concept of a right to communicate, since it implies certain standards to which private entities would have to adhere.[17] For example, the right implies access – to infrastructure as well as content. At a first glance, this may be of more relevance to media policy makers than media professionals.[18]

In a more indirect way, however, access to the media may also mean that journalists would have to change the way they work in order to include more marginalized groups in society "behind and in front of the camera".[19] There is a justified suspicion concerning governmental interference with media content – on the other hand, there already is wide consensus on the fact that certain content considered harmful (such as pornographic material that could harm young viewers or certain types of speeches that are considered to incite hate) can and ought to be addressed. Also, states may well play a role not necessarily by means of restriction but could extend support for the production and distribution of alternative material. This may be considered a task which public service broadcasting would probably be most eligible to fulfil. Ultimately, democratization of public communication is the declared aim of proponents of a right to communicate (see *inter alia* Lee, 2004, Kuhlen, 2003) since it is expected to lead to a "distribution of communication power from the few to the many. From the elite to the grassroots" (Traber, 1999, p. 8).

The question, if it is then realistic or in fact desirable that governments are the sole addressees of human rights provisions, as is the case today, thus still remains relevant. Despite reasonable concerns against the application of human rights to relations between private entities[20] there are also reasonable arguments in favour of at least considering an alternative reading. When one looks at the actors that violate human rights, certainly, states remain top of the list, were it only because of their (theoretical) monopoly on coercion. Still, the decisions and choices of private actors can directly affect human rights. Even ARTICLE 19, which is clearly opposed to expanding the right to communicate beyond existing provisions, recognizes a need to include private actors when considering the effectiveness of certain human rights.[21] This goes even more so at a time when many domains of social life that have formerly been run by the state are in the process of being privatized.

Positive obligations

Much of the argument for a right to communicate has been based on the inadequacy of mere negative protection rights when it comes to communication. Existing provisions such as on the freedom of expression would only contain a certain degree of freedom from governmental interference, but no enforceable entitlement, a positive right, to request state intervention in order to enable the effective exercise of those freedoms. When taking a closer look at the legal texts and, maybe even more importantly, the developments in judicial interpretation, it soon becomes apparent that the criticism is not (anymore) entirely warranted.

Perhaps least surprisingly, second generation[22] rights such as those pertaining to the protection of cultural rights, contain so-called positive obligations.[23] But also, first generation rights such as the freedom of expression and the right to private life have been interpreted to imply certain obligations by states to ensure their effectiveness by taking positive action such as measures to ensure a pluralistic media landscape in order to ensure the effectiveness of a public right to receive information from a variety of different sources.[24]

Codification

The above already hinted at the possibly most controversial issue that has led to the most widespread misinterpretations, legitimate criticisms and virulent clashes. Should a new right or a new set of rights be codified in legal documents such as international treaties or domestic law?

It is the questions of whether introducing a positive, codified new right would undermine existing rights, which has over and again resurfaced in the debate. The World Press Freedom Committee, established in the course of the debate about a NWICO, has always argued that the codification of a right to communicate would eventually undermine the universal claim of the right to freedom of expression, as codified in Article (19) of the *Universal Declaration of Human Rights*, since it was “very likely to become a collective *substitutive* right” (Kuhlen, 2003, p. 2, *emphasis added*). This, in turn is considered as a dangerous path, since it could open up the door for state control over who would be allowed to communicate – also the argument in favour of defending cultural autonomy by restricting the import of foreign cultural goods could not weight up against this danger. Also today, potential government abuse ranks high among the criticisms.[25]

However, many of the concerns that have been brought forward against the right to communicate are in fact shared by its advocates, even if they do not agree in their analyses of the negative consequences of the introduction of such a right.[26] Also d’Arcy repeatedly emphasised that his idea never was meant to imply the abolition of existing rights and freedoms.

Rather than replace existing rights, the point of the “right to communicate” is to address the omissions in current protection and “correct for” inequalities in power. This could mean formulating an additional right, but might as well be realized by emphasizing the interdependence of current rights and criticize their interpretation as too narrow to cover all relevant processes to protect communication from hegemony and interference. The real problem may turn out not to be the lack of a new right, but the lack of considering existing rights in all relevant areas of law and policy.[27]

Where to Move From Here?

A meaningful approach to thinking about the right to communicate may come from reflections on the right to health. In a series of legal instruments international law provides for a basic human right to health. Most prominently in the *International Covenant on Economic, Social and Cultural Rights* (1966) Article (12), formulated this as "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The right to health should be seen in the light of the description of health as provided by the constitution of the World Health organization (WHO): "a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity" (WHO, 1946). This right obviously makes little sense in its literal sense. No one can have a legal right to good health and claim the parallel state obligation to provide this. Good health is among others related to genetic factors that states have little influence upon. The right to health is therefore usually seen as the entitlement to good and adequate health care, or in other words to an environment which enables the attainment of the highest standard of health.

Parallel to the way in which the right to health is framed as entitlement to an enabling environment, a similar conception can be argued for communication. The right to communicate would then be framed as the entitlement to an environment that enables people to enjoy communication in the interactive sense that d'Arcy wrote about: communication in the sense of talking with others and listening to others. This communication is clearly rather different from the modality of communication that dominates most people's daily lives. Much of people's daily communication is interactive only in a shallow sense and is mainly tactical in nature. People ask questions, give directions, provide encouragement or mete out punishment, express praise or indignation, shout and babble. "Tactical communication" does little to bring about mutual understanding; it often contributes to misunderstanding and misinterpretation, to the confirmation of stereotypical images and firmly held assumptions about other people's minds.

Genuine interactive communication should be understood as "relational communication". Most people – with only few exceptions – live in communities. For these communities to be sustainable people need to share language in conversation in order to understand each other. Mutual understanding is not possible without "relational communication". This becomes even more critical as communities – through changes in global demographics – evolve into multi-cultural and multi-religious communities. Lest these new communities get entangled in violent and possibly lethal conflict, the freedom of their members to engage in genuine dialogue is vitally important. "Relational communication" is the essential response to the intensification of conflicts around the world between people of different origin, religious values, cultural practices and languages. It is a crucial instrument in the realization of human security.

"Relational communication" refers to interactions in which others are seen as unique individuals with faces, stories, experiences, in which others are goals and not instruments and through which we want to understand who this other is – even if he/she is a terrorist. This kind of communication requires – much like health – an "enabling environment". Relational communication implies that people do not just talk *to* others but talk *with* each other and in this interaction feel free to say what they think and thus speak up. Relational communication also implies that people listen to each other. Not merely in the defensive sense in order to be

prepared for rebuttal but with empathy and reflexivity in order to be able to see reality from a different perspective.

The key dimensions of the enabling environment for relational communication are trust and skills. For people to really speak up and talk with others about their thoughts they need to feel secure. This requires an environment in which people can trust that their interactions are not monitored by third parties. It would seem plausible that under the conditions Armand Mattelart describes in his book on global surveillance (Mattelart, 2008) people are not enabled to realize relational communication. National measures (such as the US Patriot Act) and international instruments (such as the surveillance network Echelon) do not create a social climate that encourages people to freely speak up.

Participation in relational communication is an engagement with a very difficult mode of human communication. It requires the skills to question one's own judgments and assumptions, to reflectively and actively listen and to be silent. For the training of such skills public resources need to be allocated to formal and informal educational institutions. Additionally to the dimensions of trust and skills, other requirements would include a pluralism of information media, broad access to information sources and the inclusion of all individuals and groups that are commonly excluded from societal debate and dialogue.

The proposal for the entitlement to an "enabling environment" raises the question whether this can be an enforceable and justiciable right. This may be an obvious and yet wrong question. Human rights are not necessarily the same as rights in positive law. They primarily reflect moral aspirations about the ways people should live together. Some of these aspirations will be transformed into positive legal obligations others may not. In all cases they provide essential guides for future shaping of the national and international social order. In this context a reference to Article (28) in the *Universal Declaration of Human Rights* seems pertinent. The article states "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". The records of the discussions on this article (in the drafting group of the UN Commission on Human Rights, 1948) show that this right was not seen as a justiciable right for individuals but as an acknowledgement of the view that the enjoyment of human rights does depend upon the quality of social and international relations (Eide, 1992, p. 435). The recognition of this rather abstract principle did have far-reaching consequences in the practice of world politics. It did inspire political measures in such field as decolonisation, racial discrimination and social development.

In a similar sense the adoption of the right to communicate could be seen as an inspiration for the international community to promote and protect the extension of the classical claims to freedom of communication from tactical communication to relational communication.

In order to move ahead, as suggested above, there will be the urgent need for more academic research on the various questions that we posed and on the dimensions of the enabling environment. Equally, there will be the need for the continuation and even intensification of the activist movement that was mobilised around the WSIS. The future realisation of the right to communicate requires the combined efforts of communication scientists and communication activists.

Notes:

[1] As Dakroury (2006) has argued, the notion of a right to communicate had appeared earlier in the Canadian context.

[2] The Western understanding of freedom of expression was clearly not shared by many of those new UN member states, who were critical of what they perceived as a continuation of colonialism in Western dominance of global information flows and media monopolies. Thus, for them, the right to communicate was a "means for development and independence, a rationale for their national identity" (Kuhlen, 2003, p. 2).

[3] E.g. Article (22) of the *Universal Declaration of Human Rights* (UDHR) reads: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

[4] Simultaneously, the introduction of an international fund to facilitate the development of media and communication infrastructure in developing countries was discussed as a measure to prevent future deadlock. However, this so-called "Marshall Plan for Telecommunications" failed to gain the necessary financial support (Mansell & Nordenstrang, 2007, p. 23). The establishment of a commission can be seen as a compromise after there had been political deadlock around a draft declaration on "fundamental principles concerning the contribution of the mass media to strengthening peace and international understanding, to the promotion of human rights and to countering racialism, apartheid and incitement to war" containing references to state responsibility for the media. Perhaps more cynically, the establishment of the MacBride commission can even be seen as "the basis of a manoeuvre to play down the anti-imperialist momentum of the Non-Aligned Movement's advocacy of a new international economic order and to neutralize attempts designed to enable the United Nations system to set standards for the mass media" (Ibid, p. 22).

[5] In 1988, the MacBride Report went out of print. UNESCO decided not to have it republished. It took private initiatives to have it republished later Eventually the World Association of Christian Communication (WACC) did and subsequently set up an alliance of NGOs to lobby at the International Telecommunication Union to include civil society in its decision-making process (Lee, 2004, p. 9). In 2004, Rowman & Littlefield republished it acknowledging its importance for current debates (Mansell & Nordenstreng, 2006).

[6] As Kuhlen reminds us, the "struggle over the r2c [right to communicate] was a shock, and the shock was so lasting that even today the mention of the r2c leads to an almost automatic, categorical refusal to include phrases to do with "communication" or "communicate" in official political documents" (Kuhlen, 2003, p. 1).

[7] The annual meetings of journalists and academics in the form of the Mac Bride Round Table was one of those initiatives, which continued throughout 1999 (Alegre & Ó"Siochrú, 2005**).**

[8] E.g. the lack of access, skills or inclination to use ICT on the side of public authorities and large segments of the citizenry are factors that still impede a deep change in political culture.

[9] So whereas the internet has brought universal connectivity into the realm of possibility, technology also brought about previously unthinkable opportunities for activities such as data-mining and its potential abuse or scams such as *phishing*. Satellites have enabled truly international communication on a mass scale and have all but extinguished the problem of scarcity, while at the same time the new possibilities have also revolutionized the means of spying and surveillance in ways previously only confined to the imagination of visionaries such as George Orwell.

[10] Remarkably, not even when it became the topic of a World Summit was the concept clarified in any systematic, meaningful way.

[11] On the contrary, the application of the international free trade rules to cultural products and the strengthening of the intellectual property rights regime was widely seen as a further threat to cultural sovereignty and access to knowledge of the least powerful.

[12] The second part of the Summit took place in November 2005 in Tunis. The choice of the venue had led to widespread criticism given Tunisia's human rights record and led to a boycott by some civil society participants.

[13] Even though UNESCO had led efforts to draw renewed attention to the legal, social and ethical dimensions of the "information society", the organization does not come up in the early documents concerning the WSIS (Mansell & Nordenstreng, 2007). As they further explain, ITU was at the time eager to reposition itself as an organization with the capacities to shape international communication after telecommunication policy had long been craven by privatization and liberalization policies.

[14] In ARTICLE (19)'s view, for example, even based merely on the existing norms, the right to communicate could be best seen as an "umbrella term" that could entail "the right to a diverse, pluralistic media, equitable access to the means of communication, as well as to the media; the right to practice and express one's culture, including the right to use the language of one's choice; the right to participate in public decision-making processes; the right to access information, including from public bodies; the right to be free from undue restrictions on content; and privacy rights, including the right to communicate anonymously". See for example Toby Mendel's contribution, available online at (http://portal.unesco.org/ci/en/ev.php-URL_ID=9436&URL_DO=DO_TOPIC&URL_SECTION=201.html).[Retrieved on 28 July 2008]. Another much cited minimum includes the rights to "inform, be informed, active participation in communication, equitable access to infrastructure and information, privacy" (Richstad & Anderson, 1981, as cited in McIver, Bridsall & Rasmussen, 2003. p. 8).

[15] One of the reasons the US was so strongly opposed to the notion was indeed the assumption that it would be the state whose interests would be protected by the right to communicate, who was prone to abuse it to undermine established individual freedoms. This assumption was triggered by the references to communication as a collective right, which mirrors the difference in approach to the concept that comes from diverging ideas about the role of individuals in society (Cunningham, 2005).

[16] Indeed, to our knowledge, there is no definition or description of a right to communicate that would deny that individuals are the holders of its entitlements. There are, however, strong arguments to extent protection and positive action that are implied in such a right to

groups of people such as "indigenous" peoples or "the disabled", who are systematically excluded from communication processes.

[17] For examples, some advocates of the right to communicate have argued for the imposition of legal obligations on private entities such as for example the media in order to "provide the fullest possible information about local, national, and world politics; to grant access to minority voices or to contribute to social progress or cultural diversity" (Barker & Noorlender, 2003).).

[18] Nonetheless, making programmes or designing websites in a way to enable access for as an example people with visual disabilities would be a task for all media.

[19] For example, consistent stereotyped imaging of people with a disability would then be framed not as an issue of "political correctness" but rather as an infringement on the dignity of people with disabilities, who have a *right* not to be stereotyped. Interestingly, the new UN Convention on the Human Rights of People with Disabilities (2006) proscribes states to "adopt immediate, effective and appropriate measures" to "combat stereotypes, prejudices and harmful practices relating to persons with disability" (Article 8(1)(b)) including to encourage "all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention" (Article 8 (2) (c)). Also the stereotyped representation of other groups is often criticized by advocates of the right to communicate as a factor undermining this right (Hamelink, 2003). Beyond the representation of marginalized groups, also, the fact that there is imbalance between male and female actors in the news or between certain ethnic groups *inside* many newsrooms is a point in case (see e.g. Ziamou, 2001). Again, governmental interference seems undesirable since a maximum amount of independence of journalism from public authority is desirable. As Lee points out, the media are conceived of as primarily a public service, which cannot adequately be delivered if media serve their owners or the government rather than the public at large.

[20] This is called giving the right horizontal as opposed to vertical (the right of private individuals against the state) effect.

[21] "Communication is not a one-way process and the right to communicate therefore also presupposes a right to receive information, from both State and *private* sources" (2003a, *emphasis added*). This is, of course, presupposing that the private source wants to share information, since there is no right it recognized to claim access towards private sources. Article (19) itself raises a point of concern that may not have been adequately addressed so far when it states that "with the shift of power from the state to private corporations, […] it is important that these actors should also recognise at least a limited right to access information. A worrying trend is emerging whereby the development of intellectual property rights and related rights seriously limits the amount of material that is available in the public domain […] the "public domain" should be protected from being fenced off and turned into private property" (ARTICLE (19), 2003a).

[22] In legal scholarship, rights are often classified into three "generations" of rights. Those three generations differ concerning who holds those rights and certainly in their degree of enforcement and recognition within the international community. Civil and political rights (as codified in the International Covenant on Civil and Political Rights (ICCPR), 1966) are considered "first generation" rights, economic, social and cultural rights (as codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966) as

"second generation" rights and collective, or so-called solidarity rights as the "third generation. Whereas the sequence should by no means indicate a moral ranking or chronological substitution, there is a corresponding hierarchy when it comes to real-life enforcement. The first generation of rights is clearly the least controversial and best enforced category of rights in most domestic and the international legal system at large. Still, one could argue that those rights are interdependent (as had been recognized in the original *Universal Declaration*, which did not differentiate between first and second generation rights) and not mutually exclusive. In fact, many rights overlap those categories (McIver & Birdsall, 2002). It would also not be correct to divide the generations of rights according to their negative or positive character, although mostly, the first generation of rights consists of so-called negative freedoms, while the second mostly contains positive rights that express certain standards of performance of states to provide certain resources considered a minimum for a dignified standard of life.

[23] So, for example, the ICESCR includes obligations of states to take active measures for its promotion, as included in Article 15(2). There are, however, also explicit provisions that mention obligations to act on the part of state signatories, even when it concerns first generation rights, such as Article (2) of the ICCPR which places on states an obligation to "adopt such legislative or other measures as may be necessary to give effect to the rights recognized by the Covenant".

[24] Also ensuring equitable access to the means of communication is such a "positive obligation" of states under international law (Barker & Noorlender, 2003). This is usually translated into a duty to promote diversity and access by means of public policy, such as licensing or "universal service" requirements when it comes to telecommunication infrastructure such as enshrined e.g. in the EU Voice Telephony Directive (Directive 98/10/EC, 26 February 1998, OJ L101/24, 1 April 1998). As a consequence, any kind of media monopoly, public or private, would constitute a serious and unwarranted restriction of the freedom of expression. Concentrations in media markets can thus clearly be related to human rights requirements and the obligation of states to actively do something about it comes with it (see e.g. *Radio ABC v. Austria* (App no 19736/92) ECHR 20 October 1997). Another obligation which emanates from the guarantee of freedom of expression, which includes the right to seek and receive information, refers to the right to information. More specifically, media should be granted the greatest possible access to information so that they can report on matters of public interest, which is a central condition for democracy to flourish. If there is a positive obligation included in the freedom to seek and receive information, though, this obligation thus far does *not* imply the duty to provide specific kind of information – the "unwilling speaker" problem. Enforcing access to publicly relevant information thus remains in the realm of transparency and good governance provisions such as for example the EC Regulation 1049/2001 on public access to documents rather than human rights provisions. Also concerning the protection of private life comes with positive obligations that go beyond non-interference. International courts have stressed that the advance in technology and therewith the potential for surveillance of citizens must be equalled with rules to prevent an erosion of rights relating to the confidentiality of communication. Thus, the potentially "chilling effect" of suspicions of internet users they could be monitored is clearly recognized (see e.g. *Kruslin v. France* (App no 11801/85) ECHR 24 April 1990; *Klass and Others v. Federal Republic of Germany* (App no 5029/71) ECHR 6 September 1978).

[25] Concerning this argument, Hamelink elaborates why in fact, adopting any standard on communication going beyond the protection of free speech would be more threatening to

non-democratic governments, since "allowing people to speak freely in Hyde Park Corner poses less of a threat to governments than allowing citizens to freely communicate with each other" (Hamelink, 2003, p. 160).

[26] In fact, at least some of the more recent opposition against the introduction of a right to communicate could also be explained by a more strategic reasoning. As the IFJ argues in a statement in 2003, "the right to communicate could be a recipe for confusion and confrontation at a time when a strong consensus is building around the positive strengths of Article 19" (p. 2).

[27] As Kuhlen (2003, p. 4) aptly summarizes: "The demand for an inclusive r2c [right to communicate] is not necessarily a "declaration of war" on the existing media, political and economic systems, but it is a strong criticism of undesirable trends in the media system, such as monopolization and extreme commercialization and the manipulation of information content – a strong criticism of equally undesirable trends in politics such as the curtailment of free communication (by legal and technical mechanisms of control and surveillance) and of the increasing control over knowledge and information that tends to make it more scarce".

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About the Authors

Dr. Cees Hamelink studied philosophy and psychology in Amsterdam where he received his PhD degree in 1975 at the University of Amsterdam. He worked as journalist, policy adviser and researcher in many different institutions and countries. He founded the People's Communication Charter, was president of the International Association for Media and Communication Research, was consultant to several intergovernmental organisations and national governments and guest-lectured in some 40 countries. He is emeritus professor of international communication at the University of Amsterdam, honorary professor of the University of Queensland in Australia, Athena professor of human rights and public health at the Vrije Universiteit in Amsterdam and professor for management of information and knowledge for sustainable development at the University of Aruba. He is currently the editor-in-chief of the *International Communication Gazette*, chair of the Jan van Eyck Academy for the Arts and president of the Dutch Human Rights Federation. He published 17 books on communication issues and numerous other academic writings.

Julia Hoffmann studied Communication Science and International Relations (M.Sc., 2005, cum laude) at the Institute of Journalism and Communication Science in Hanover (Germany); Hong Kong University (China); and the University of Amsterdam (The Netherlands). She earned her second degree in International and European Law at the Amsterdam Law School (LL.M., 2007, cum laude). Since 2003, she has been working as a research and teaching assistant at the Communication Science Department of the University of Amsterdam, where she joined as a lecturer in August 2006 teaching courses on international communication, globalization, conflict and human rights. Currently, she is working on her Ph.D dissertation on the role of Communication Rights in the democratization process of the European Union.