Maarit Ruuhonen

A REVIEW OF THE RIGHT TO COMMUNICATE: POSSIBILITIES OF COMMUNICATION RIGHTS IN AN INFORMATION SOCIETY

University of Tampere
International School of Social Sciences
Master's Programme on Information Society
Department of Journalism and Mass Communication
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This thesis explores the concept of the right to communicate and provides an update on its development. The concept was first introduced in 1969 by arguing that there is a need for a new human right to communicate. Since then, academics, professionals and politicians have attempted to provide a definition and a declaration for the concept. This has proved an arduous task and even today there is little agreement on how the right to communicate is to be understood.

The aim of this study is to explore the different definitions of the right to communicate since the emergence of the concept and bring the debate to the 21st century. The concept has become a debated issue again in connection to the development of an information society. The framework of the study is human rights and international law.

It was found in this study that the framework of the debate has changed, but its surrounding issues and controversies remain. Essentially, the idea that a new human right should be added to the existing catalogue of human rights provokes the underlying, often oppositional viewpoints of the relation of the right to communicate to freedom of expression which is seen, particularly by the press freedom community as an absolute freedom that should not be limited. Furthermore, a strong view is advocated that because even the existing information rights are not fully realized, a new right should not be developed. An analysis of how the issue of communication rights was approached in the World Summit on the Information Society suggests that on certain controversial issues, the debate has not moved beyond the previous debate on NWICO in the 1980s even if the framework of the debate is different with the prospect of globalisation, global civil society and information society.

The right to communicate is a topical issue because of growing unease about widening digital divide, concentration of media ownership and generally the democratic deficit in the social structures which the emergence of the Internet has highlighted. The setting for the development of a human right to communicate is promising: the evolving relationship between sovereignty and human rights, and the developments in international law together with the increasing civil society action, suggest that the right to communicate is a concept in progress. However, to reach a consensus on an international statement on communication rights is very difficult as this study indicates. Furthermore, an agreement or even a declaration does not guarantee realisation. Therefore, a firm basis that a right to communicate is a matter of international law, not a mere moral claim, needs to be established in the future.

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1. INTRODUCTION

A need for a new human right to communicate has been expressed already in 1969 by Jean d'Arcy, a French media expert, who asserted that the existing framework of information rights is too narrow in scope to fully accommodate for the emergence of new communications technologies. Today, the development in the information and communication technologies field is rapid and an information revolution, even the emergence of an information society is heralded. Yet, it could be argued that the framework of international human rights law and information rights have not changed significantly since the Universal Declaration of Human Rights was drafted in 1948. Clearly, it is time to review the effectiveness of the framework of information rights when an assertion is made that a time of an information society is upon us.

Currently, communication rights as opposed to information rights are a highly topical issue and additionally a matter of great controversy. However, since information and communication seems to play an ever increasingly key role in today's societies, the possibilities for improving the existing framework of information rights by including new communication rights need to be explored. This thesis serves as a mere example of the 'tip of the iceberg' in terms of an exploration into complexity of communication rights and international law. Certainly, the problem with this kind of study is the selection of literature and material; most chapters and some sub-chapters in this study could in themselves constitute a master's thesis. However, the aim of this study is to paint an overall picture of the issues raised. Therefore, it was necessary to include wide topics.

To this end, this study explores the existing framework of human rights and international law, firstly on a general level and secondly, in relation to information rights. An understanding of the development of human rights and international law is essential before conclusions can be drawn on today's developments. Hence, an integral part of this study is to explore the changing conception of universal human rights and their relation to sovereignty which may have implications on not only human rights in general but also in terms of developing a new human right to communicate.

After establishing the existing framework of human rights and information rights, an exploration into a possible shift of paradigm is made, specifically the shift from information rights to communication rights is identified. Furthermore, a shift of paradigm is searched in the field of communication theory and research. Essentially, the relationship between information and communication is clarified and the basis of a right to communicate is explored.

The aim of this study is to bring the concept of right to communicate into the 21st century by asking the following research questions:

- What is the current framework of international information rights?
- What developments are there in international law and human rights law that may concern the development of a new human right to communicate?
- What is the relationship between the concept of information society and the right to communicate?

In order to answer these research questions and to provide an update on the right to communicate, an excursion is made into the concepts that have framed the debate in communication research recently, i.e. globalisation, global civil society and information society. Furthermore, recent efforts to promote the right to communicate are discussed and analysed with an emphasis on the ongoing World Summit on Information Society.

The chapters are organised so that the framework of human rights and information rights are discussed in chapters two and three. Chapter four concentrates on the shift from information rights to communication rights. Finally, in chapter five, the debate on information society is discussed in relation to the right to communicate.

2. HUMAN RIGHTS

2.1. Origins and definitions

Ideas about human rights originate as far back as societies do. Nevertheless, the origins of human rights remain a controversial issue. However, it is generally agreed upon that early human rights thought can be derived from religious humanism, stoicism, and natural rights theorists of the antiquity and that these moral and humanistic ideas have influenced our understanding of human rights. To see human rights as mechanism to realise human dignity is a more recent development.

By definition, people possess human rights merely because they are human beings. In the English language the word "right" has many meanings of which two are of relevance to the definition of human rights: "right" as correct or demanded, i.e. it refers to moral righteousness, and "right" as entitlement of a person. The understanding of "right" as a question of morality and righteousness is what is found in the texts of early Western tradition in the political and moral discourse. The best known theory has been the theory of natural law which presupposes that there is an objective moral law. The natural law in this sense was a standard for evaluating human practices. (Howard and Donnely 1987)

Early ideas of natural law have been traced to go back as far as Cicero (106-43 BC) who advocated the idea of "citizens of the whole universe, as it were a single city", a law that transcends civil laws. Even before Cicero, influence on the human rights tradition can be discovered in the writings of Plato and Aristotle. St Thomas Aquinas's (1225-1274) theory of natural law was the most developed: it brought together Christian doctrine and the theories of the classical writers such as Aristotle. The ideas of natural law are influential even today. Natural law confers citizens an ability to hold states accountable for their actions if they go against these objective principles of justice based on natural law. However, by interpreting the early natural law theory it is possible that while states may be guilty of moral crimes, citizens' rights have not been violated. (Howard and Donnely 1987, 2)

Historically, natural law was not connected to natural rights. In the absence of natural rights against government, citizens remained powerless. Only more recently have some writers, particularly Jaques Maritain (1947), made the connection of natural law and natural rights. The idea of rights as entitlements and as a constraint on states is relatively recent. John Locke is one of the writers in the modern era who have written an explicit theory of natural rights in conjunction with theory of natural law in *Second Treatise of Government* (1688). Locke represents liberal tradition of human rights which emphasised securing individuals' right to property, political representation and equality before the law. Another influential thinker was Thomas Hobbes who defined rights in terms of natural right to life and security. Thomas Paine is also among those influential writers and wrote *The Rights of Man* (1792) in which he argues that natural rights belong to man prior to civil society. In the time of American and French revolutions the discourse was concentrated on ideas of natural rights and "rights of man". Locke's and Paine's influence is immense, not least because they also influenced the writing of Thomas Jefferson who wrote the United States Declaration of Independence (1776). To follow was the French Declaration of the Rights of Man and Citizen (1789). This is the legacy of the Enlightenment on human rights. Later on an alternative conception of human rights was developed as an opposing view to that of liberalism. The main influence against the pursuit of property rights and capitalism came from socialist thinking, which suggested that rights should include universal right to health care and education, universal voting right etc. The bourgeois character of "rights of man" was also criticised. The best known representative of this view was Karl Marx (1818-1883).

There has been criticism and scepticism regarding the concept of human rights, particularly from those who reject the philosophical foundations and presuppositions of human rights. For instance, utilitarians have criticised the concept of the "rights of man" as being too vague to derive justification of rights. According to utilitarians positive legal rights are the only justifiable rights. Conservatives, on the other hand, argued that meaningful rights can only be protected within national context and legal orders. On a more general level, the appropriateness of Western derived concepts have been questioned. Moreover, the practical limitations have been seen as source of criticism in that national level of enforcement of law remains an obstruction of realisation of universal human rights. (Beetham 1995, 2-9) Beetham summarises the long history of criticism as "universalism required by human rights is philosophically insecure, morally

problematic and politically impractical" (ibid., 3). The opposing views can be distinguished as being relativist and universalist.

Relativists argue that moral judgements cannot be universally valid because every culture has its own set of beliefs, values and morality. This view implies cultural relativism. Particularly, the Western origin of human rights is seen as problematic for those who hold the relativist view. Universalists, on the other hand, hold that some moral judgements apply universally and human rights can transcend cultural differences. Those who hold this view argue that it does not matter where the origins of human rights are to be found, but that nevertheless human dignity is a universal right.

The field of human rights theory has been dominated by the debate between relativists and universalists and there is no agreement as of yet. Michael Goodhart argues that this essentialist framework is an "intellectual cage". He argues that

> *Caught between universalism and relativism, torn by apparent need to choose between communal values and freedom and equality for all, people find themselves equally incapable of resolving the debate or leaving it behind.* (Goodhart 2003, 964)

Goodhart is advocating a more pragmatic and practical view on human rights; he argues that universal human rights are a tool for effective resistance of globalisation. This issue will be dealt with later on in this chapter. However, it would be useful now to look into already established human rights declarations and treaties, the concrete milestones in the human rights history.

2.2. The United Nations and human rights

The United Nations (UN) has been involved in the promotion and protection of human rights since the end of the Second World War. The founding idea of the UN was that the harrowing events of The Second World War must be prevented in the future. The founding nations began their task in 1945, and the United Nations Charter became the formal and authoritative expression to the human rights movement (Steiner and Alston 1996, 118). Three years later, the General Assembly announced the Universal Declaration of Human Rights, an elaboration of the references to human rights in the Charter. The Universal Declaration was the cornerstone of the beginning of the

recognition and articulation of the human rights and freedoms of individuals. The fundamental rights and freedoms became considered as universal in that they were and still are applicable to every individual regardless of background or location. Steiner and Alston suggest that the UDHR even nowadays "retains its symbolism, rhetorical force and significance in the human rights movement" (ibid., 120).

The UN instruments are commonly referred to as The Bill of Human Rights. The Bill of Human Rights consists of three parts: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights.

2.2.1. Universal Declaration of Human Rights (UDHR)

In 1948, the then 58 Member States adopted the UDHR, which was the culmination of international cooperation and consensus of the time. For the first time various religious and cultural backgrounds, ideologies and political systems came together in sharing a vision of a more just world. It is believed that the success of the UDHR can be seen in that it is universally accepted. Today, it is the best known human rights document and has been translated into 250 languages.

The UDHR consists of 30 articles that cover various aspects of human rights. The first two articles define the universal foundation of human rights; the shared essence of human dignity being the basis of equality and human rights belonging to all humanity being the basis of universality. It is articulated in Article 1 that human rights are a birthright of every person and Article 2 articulates a life free from discrimination.

The cluster of Articles 3-21 talks about civil and political rights that are the entitlement of everyone, setting forth the right to life, liberty and personal security.

Articles 22-27 talk about the economic, social and cultural rights. Particularly Article 22 sets forth that every person has the right to social security; economic, social and cultural rights are essential to the dignity and development of persons. The rest of the articles elaborate on economic rights such as work and standard of living.

Articles 28-30 establish a protective framework for the universal enjoyment of human rights. Article 28 is about recognition of international order that provides the basis of realisation of universal human rights. Article 29 talks about the corresponding

obligations to the community. Article 30 is about the protection of the declaration from interpretation and outside interference.

2.2.2. The International Covenant on Civil and Political Rights

This treaty was adopted by the UN General Assembly in 1966 and entry into force was 1976. It consists of important additional points to the UDHR, particularly the recognition that members of ethnic, religious or linguistic minorities enjoy the rights in front of states (Article 27). Other points that are elaborated in the covenant that are not in the UDHR include persons who are deprived of liberty right to be treated with humanity and respect for the dignity of the human person, right of every child to acquire nationality. This treaty proclaims that it takes immediate effect and states have to take whatever measures to ensure compliance. The implementation is monitored by a Human Rights Committee that examines reports "on the measures they have adopted which give effect to the rights recognised (in the covenant) and on progress made in the enjoyment of these rights" (Article 40/1). In addition, interstate complaint machinery is provided in the Covenant. However, this system on interstate level is weak, not the least because states that have ratified the treaty do not necessarily need to accept the Committees jurisdiction on interstate complaints.

2.2.4. The International Covenant on Economic, Social and Cultural Rights

The Covenant was adopted by the UN General Assembly in December 1966 and entry into force was 1976. It has been ratified by more than 80 countries since. For those who have ratified the treaty, it is legally binding. This treaty has more comprehensive details of economic, social and cultural rights, but is following the UDHR. It recognises the rights to work, favourable work conditions, social security, living standards, education and taking part in cultural life. The obligations that it makes for the states that have ratified this treaty are not immediate: it talks about steps "to the maximum of its available resources" and "progressively the full realisation" of the rights because it requires substantial economic resources to realise these rights and therefore is not seen as viable to expect immediate effect. The methods of implementation rest on this fact and the Covenant does not establish any interstate or individual complaints system.

2.3. Regional Treaties

In addition to the Universal Human Rights system, regional systems have been established to promote and protect human rights. Regional systems have their own institutions and structures. The whole complexity between universal and regional human rights arrangements will not be discussed in this chapter as it seems sufficient for the purposes of this thesis only to be aware of them. The major systems are Inter-American, European and African systems. In addition to these three there is a dormant Arab system and a proposal for an Asian system. The regional systems on the whole derive from the universal (UN) system even though they have their own distinctive institutions and processes. According to Steiner and Alston "…the regional arrangements add in important ways to knowledge derived from the UN and UN-related treaties…" (1996, 563). Therefore it is useful to briefly introduce them.

2.3.1. The Inter-American system

The Organisation of American States (OAS) protects and promotes human rights in this region. There are two distinct legal sources in the Inter-American system: one that has evolved from the Charter of the OAS and the other is from the American Convention on Human Rights. The OAS Charter was opened for signature in Bogota, Columbia in 1948 and entry into force was 1951. It was amended in 1967 to include important human rights changes; it took in effect in 1970. OAS Charter has been signed by 35 Inter-American States, including the United States.

The American Declaration of the Rights and Duties of Man was proclaimed in 1948 and much of it is similar to the UDHR. The American Convention on Human Rights was opened to signature on 1969 in San Jose, Costa Rica. It entered into force in 1978 and has been ratified by 20 OAS Member States. The Convention catalogues broad civil and political rights. In the Inter-American system the Commission has a significant role.

2.3.2. The European system

The Council of Europe established the European System for Protection Human Rights. There are two treaties as the legal source: the European Convention of Human Rights and the European Social Charter. The Convention catalogues basic civil and political

rights and the Charter economic and social rights. They have separate institutional framework.

The Convention was signed on 1950 and entry into force was 1953. The European Convention was drafted after the UDHR when it became apparent that it would take a long time for the UDHR to become legally binding because it was lacking instruments that would have ensured compliance. The European Convention is seen as the most advanced and effective compared to any other systems. The enforcement is on national and international level and the interstate complaints system is such that those who have ratified the Convention accept the jurisdiction of the Convention on interstate complaints.

European Social Charter was drafted to complement the Convention on Economic and Social Rights. It was opened to signature in 1961 and entered into force in 1965.

2.3.3. The African system

The African Charter on Human and Peoples' Rights was adopted by the Organisation of African Unity in 1981. The Charter came into force in 1986 and has been ratified by over 30 states. The differences between the African Charter compared to European and American conventions on human rights include that the African Charter establishes not only rights but also duties, establishes difference between individual and peoples rights, and it protects not only civil and political rights but also economic, social and cultural rights. It has been influenced by UN human rights instruments. However, the African system is the least developed institutionally compared to the other systems.

2.4. International law

2.4.1. Historical background

The beginning of history of international law, or rather the international system, has usually been assigned to the Peace of Westphalia in 1648 which ended Europe's Wars of Religion. Before the Peace of Westphalia, the international system covered only the areas of Christianity, and rules and norms where established by the Catholic Church and the pope. It has been argued that the international system has remained mostly unchanged from that the Peace of Westphalia in 1648 until the Second World War.

Since the Second World War, the growth of international institutions has been the key development. (Antola 1992, 12-13)

Historically, international law is based on two key features. Firstly, the international rules and principles were based on Western view and are Eurocentric; they rely on Christian ideology and free market paradigm (that all states are legally equal and free to pursue their own interests regardless of economic or social imbalance). Secondly, the international rules and principles were framed by the Great Powers or middle-sized states (mainly those with colonial empires) who elaborated the rules to serve their own interests. (Cassese 2001, 27)

Starting from the Peace of Westphalia begins the time of classical international law or what Georges Abi-Saab describes as "law of coexistence", while from the drafting of the UN Charter begins "law of co-operation" in international law (Abi-Saab 1998, 1). Since the end of the cold war and at the time of drafting of the UN Charter, peace became the main goal of the international community and thus began the time of co-operation.

2.4.2. The nature of international legal subjects

The key feature of international law is that the regulations in the international framework are most commonly aimed at states rather than individuals. States are considered the main actors in the international arena and therefore are the main legal subjects of international law. However, within states individuals are the main legal subjects and private associations etc. are only secondary. In the international community, however, states are the principle subjects and the individuals' role is very limited, due to individuals' lack of access to instruments of power. In essence, the world community consists of sovereign states in which human beings play an insignificant role. However, a new feature of modern international law is the recognition of new subjects i.e. international organisations, individuals and national liberation movements although it is still arguable that individuals cannot be regarded as having the legal status of international subjects because individuals remain exclusively under the control of states. (Cassese 2001, 3-4)

2.4.3. Decentralization

In contrast to the national legal systems which are well developed and the organisational structure is enabling, in the international community power is fragmented and dispersed and there is no clear power structure. Cassese contends that

> *The relations between States of comprising the international community remain largely horizontal. No vertical structure has as yet crystallised, as is instead the rule within the domestic systems of States.* (Cassese 2001, 5)

This, according to Cassese, means that the situation is "unsatisfactory" with reference to globalisation, and more particularly in this context, the emergence of global governance. He argues that global governance is incapable of resolving problems at the global level with the factual situation being such that permanent power structures are absent. In order for international rules to become meaningful, they should be incorporated into national laws; to apply international law within a state, the law will be made into municipal law. In practice, this means that international rules are dependent on the cooperation of national legal systems. (ibid., 6)

2.4.4. Freedom of action

In international law its subjects enjoy relatively substantial freedom of action. In traditional international law, according to Cassese, the subjects' freedom of action was "untrammelled" although in modern international law some restrictions have been established (2001, 10). Since the beginning, the key feature has been that international community cannot interfere with the internal political organisation of the states. Particularly pronounced has been the states' freedom on deciding on foreign policy matters. Moreover, it has been completely at the discretion of states whether to enter into international agreements or not. Cassese argues that the "legal order adopted a laissez-faire attitude, thereby leaving an enormous field of action to states" (ibid., 11). However, he also points out that this is purely from a legal point of view. In reality, states freedom is reduced by power politics, economic and social considerations etc.

At present, the classical interpretation of international law remains nearest to reality, although some progress has been made since the end of the First World War. Firstly, most states are affected by international treaties and thereby their domestic legal systems are impinged upon. Secondly, the increasing number of legal restrictions on the

right to use force has decreased the level of freedom of states. Thirdly, it was established in the 1960s that some general principles or norms have greater legal force than others, peremptory rules, or what are called *jus cogens* (ibid., 11-12). *Jus cogens* means that some fundamental rules of customary international law cannot be modified by a treaty.

2.4.5. Coexistence of traditional and modern features of international law

In international law the old and new patterns, traditional and modern, coexist today. According to Martin Wight (1994, 274), these can be distinguished as *Grotian* and *Kantian* models. The traditional Grotian model is based on a statist worldview, where sovereign states pursue their own interest and where individuals are not considered as subjects of international law. The modern Kantian model on the other hand is based on a cosmopolitan, universalistic worldview, where mankind can form a community and trans-national solidarity is one of its basic elements. It is arguable today that states have lost their absolute control over individuals and also that states have lost some of their powers to international organisations. In reality, however, individuals' procedural international rights and obligations are very limited; even though individuals may hold international legal status, their legal capacity is limited.

According to Cassese, developments in international law, although there have been significant changes after 1945, have not replaced the old Grotian framework. Cassese argues that the new legal institutions appear to have been superimposed on the old system (2001, 18).

2.5. Sovereignty

2.5.1. Theory of sovereignty

Sovereignty is an idea and institution that has been developed in connection to the evolution of the modern state and development of centralised authority. The concept was introduced to legitimise the rise of centralised and absolutist state in 16th and 17th century Europe. A key event in the rise of sovereignty as well as international law was the Peace of Westphalia, which can be linked to the rise of the notion of nation state. The rise of nation state again was connected to the emergence of capitalism. Another

important factor was the demarcation of natural law (*jus gentium*) from divine law. Sovereignty was based on the idea that states are sovereign from any outside power, of which divine power had prior to the event of Peace of Westphalia been the source of rules and laws.

Sovereignty is a concept that entails ideas on how political power is or should be exercised and is linked to space and geopolitics. The concept is also inherently linked to notions of national interest, national independence and national security (Camilleri & Falk 1992, 11). Boundaries are essential to the concept of sovereignty; whether they are territorial, cultural (sameness vs. otherness) or conceptual. Sovereignty is a concept deeply rooted in the Western experience.

The question is whether sovereignty, and its conception of how power is exercised, is still applicable in contemporary world and societies. One of the challenges that modern states in the context of sovereignty have had to face is the expanding role of international law and international organisations; the freedom of action of states has been restricted. International law and domestic law are interwoven and it is not always so obvious how domestic law is above international law. For state sovereignty it means that one of its most important premises is obsolete. On the other hand, one could argue that to enter international treaties is itself an act of exercising sovereignty and therefore any restrictions that international law poses to states are voluntary. In this argument international law is seen as weak and ineffective.

The modern world is increasingly integrated and at the same time the trend has been decentralisation of authority and fragmentation of society (Camilleri & Falk 1992, 38).
The state has become only one actor among many: subnational, transnational and supranational actors have become a reality. Camilleri & Falk contend that "international and transnational interaction is central to the organisation and distribution of economic and political power" (ibid., 39). Moreover, they talk about "the end of sovereignty" of today.

Financial globalisation is one of the most important factors that have contributed to the challenge that the sovereign state has had to face in the modern era according to Eric Helleiner (1999, 138). Financial trading is not restricted to borders and seems to take

place increasingly in the cyberspace. Helleiner's conclusion is, however, that the erosion of territoriality of finance is not enough to prove that "post-Westphalian" world order is emerging (ibid., 154).

Steven Krasner (1999, 35) is among those who argue that globalisation has not changed state authority qualitatively or transformed sovereignty. Krasner identifies four different meanings of sovereignty. Those are:

- Independence sovereignty, controlling activities within and across borders
- Domestic sovereignty, organisation of authority
- Westphalian sovereignty, exclusion of external authority
- International legal sovereignty, recognition of one state by another

Krasner argues that in the past the state authority has been subjected to similar challenges and therefore contemporary challenges that are attributed to globalisation are not qualitatively different to those in the past. Moreover, he points out that losing control over certain some activities does not mean that authority structures will necessarily be changed as well. (ibid., 37)

2.5.2. The UN and the principle of sovereignty

Traditional international law was based on the notion of sovereign states, whereby rules were established to protect the sovereignty of states and their formal equality in law (Cassese 2001, 88). This same principle was applied to the UN Charter: Article 2.1. refers to "sovereign equality of all its Members". In 1970, this statement was taken even further, to include non-members as well. This is a fundamental principle underlying international relations. According to Cassese (ibid., 89-90), sovereignty entails these rights:

- The power to wield authority over all individuals living in the territory
- The power to freely use and dispose of the territory under the state’s jurisdiction and perform activities deemed necessary or beneficial to the population living there
- The right that no other state intrude in the state’s territory

- The right to immunity for state representatives acting in their official capacity
- The right to immunity from jurisdiction of foreign courts for acts or actions performed by the state in its sovereign capacity, and for execution measures taken against the use or planned use of public property or assets for the discharge of public functions
- The right to respect for life and property of the state's nationals and state officials abroad

Some commentators hold the view that the structure of the UN and the treaties system in themselves reinforce the sovereignty of states. One argument is that what seems like weakening control of the state due to international treaty obligations is actually the opposite in the case of international cooperation which is based on the principle of international recognition and therefore reinstates state sovereignty.

From the point of view of international law, on the other hand, international agreements may not undermine sovereignty at all, but have the opposite effect. As Krasner puts it:

> *…these agreements enhance rather than undermine sovereignty. Indeed, the agreements would be impossible in the first place if states did not mutually recognize their capacity to enter into them.* (Krasner 1999, 49)

Krasner's point is that while tensions between "norms and behaviour" may have been highlighted by globalisation, this does not mean that international system is facing major transformation as states have always been subjected to scrutiny of external viewers.

Another way of criticising international law from UN perspective is to point out the weaknesses of international treaties and conventions. Tom Campbell (1986) is among those who represent this view. Campbell talks about the UDHR, which is not legally binding as it is a declaration rather than a treaty. Therefore, even when it is adopted, it is a "hortatory, aspirational and recommendatory" rather than a formal legally binding document as opposed to the covenants which are legally binding treaties when signed. However, it is solely governments that have the capability to enforce international conventions on human rights which brings us back to the state sovereignty. Campbell

argues that there is a general weakness in terms of enforcement of international human rights law: Campbell points out that it is a "system of law which leaves declarations and covenants to be applied at the discretion of the states whose behaviour they are designed to regulate" (ibid., 4). Moreover, Campbell argues that human rights carry a great rhetorical force, but at the level of legislation universal human rights are weak. He states that when it comes to "making legislative provision for the favoured objectives, then the idea of universal, inalienable and indefeasible rights offers depressingly little guidance" (ibid., 1).

It seems that Campbell is very sceptical of the success of the UN in international law. However, as we shall see next, human rights have had a definite impact on international law, which is more than a mere rhetorical force.

2.5.3. Impact of human rights on international law and sovereignty

Traditional international law has been influenced by human rights doctrine. Cassese argues that human rights doctrine has

> *Contributed to the shift the world community from a reciprocity-based bundle of legal relations, geared to the 'private' pursuit of self-interest, and ultimately blind to collective needs, to a community hinging on a core of fundamental values, strengthened by emergence of community obligations and community rights and the gradual shaping of public interests.* (Cassese 2001, 372)

The strengthening of the human rights paradigm itself is a new development in the international order. Cassese's point highlights how this paradigm has changed the emphasis of international law towards a more Kantian model.

Moreover, one might argue that modern international law has broken through national sovereignty. The human rights norms, which have become nearly universally accepted and deterritorialized, seem to yield the national sovereignty principle. It is a fact that some human rights agreements have little impact on the states that signed it, but on the other hand, some agreements will have more of an effect. For instance, as Krasner notes, the European Human Rights Convention that established the European Court on Human Rights also gave individuals access to the Court (1999, 47). This is a new development; traditionally individuals did not have the legal status of subjects in

international law. Krasner argues that it is exactly this individuals' access to the Court that is a clear challenge to the Westphalian sovereignty.

International, universal human rights can also be seen as a challenge to domestic jurisdiction and have consequences on sovereignty from another perspective. Allan Rosas is among those who argue that the Westphalian system is disintegrating and therefore universal human rights may play a crucial role in the changing conception of state. Rosas (1995) talks about the Westphalian system which is traditionally based on the doctrine of liberal theory of autonomous states where the concept of equality and justice "have been strongly linked to the contexts of nation states" (ibid., 63). Rosas points out that what traditionally was part of the constitutional power has been transferred to international community level and the sovereign power of the state is disintegrating. Rosas does not exclude the possibility that human rights regimes may indeed strengthen the legitimacy of the state and that the state will play an important role in the "creation, application, interpretation and implementation" of laws and policies. However, he argues that because the conception of state and the Westphalian system is changing, and the core of human rights (with reference to UDHR) are an "anathema" to the Westphalian system, human rights will play a crucial role in this shift of paradigm. (ibid., 74)

Without making an absolute judgement on the extent to which the Westphalian system is disintegrating, conclusions about the impact of human rights on international law can be drawn. It is true that traditionally international law has been based on the notion of sovereign, independent states. Most important point is that since the development of modern international law to the direction of recognising individuals as subjects of international law, it clearly indicates that the state does not hold absolute power over its citizens. The state can be held internationally responsible for acts against its citizens in its territory. In theory, human rights law can protect individuals against excesses of states, though in practice the mechanisms may not be as far developed as possible or desired. If anything, this shows that states cannot be considered as supreme or ungovernable. Another point is that, as Martin Dixon argues, when states' conduct can be called "unlawful" or "illegal", it is the most powerful criticism and therefore is an important factor. The power of human rights law should not be underestimated, because even in its abstract form, it can restrict states conduct. (Dixon 1990, 309-311)

However, it is not difficult to see why some remain sceptical on the effectiveness of human rights law, when the protection of individuals in human rights violations is "an exception rather than the rule" (ibid., 309). Martin Dixon reminds us that it is not surprising that this is the case; after all, the basic principle of protecting human rights is a relatively new development. Only since 1945 has there been any recognition of individuals as the subjects of international law; earlier only states were considered the subjects of rights and duties. Dixon's point is that even this change of emphasis should be considered as a significant development. He argues that those who underestimate force of UDHR, because it did not take immediate effect as it did not establish full implementation procedures, fail to recognise the "dynamic effect" the Declaration has produced for human rights law. Even the fact that the UDHR was adopted and that there was consensus among states on what kinds of human rights should be protected was a step forward. Moreover, UDHR gave impetus for development of customary law and further treaty regimes on human rights, such as what became the Vienna Declaration in 1993. (ibid., 311)

2.5.4. Difference of human rights law from other international law

Rules of international law are derived from either treaty or custom. Human rights law is no exception. Human rights law, however, entails another dimension and that is what Dixon calls *inspiration* (1990, 307). Within this inspiration are concepts such as *morality, justice, ethics* and *dignity of mankind*. From the perspective of international law, it is essential to differentiate between *substantive* rules of law and rules of *morality*. The rules of morality are of utmost importance, but rights that are enforced and will include legal mechanisms, should have the quality of a legal rule. In international law, the right must be a legal obligation and not only a moral principle (ibid., 308). It becomes clear when looking into the generations of human rights how this principle operates.

2.6. Generations of rights

It has become "routine" to talk about human right is terms of *generations* of human rights (Tomuschat 2003, 24). The generations model describes the development of the human rights as products of their time. A model has been advanced which captures three generations of human rights which are influenced by the themes of the French

Revolution. The first generation is that of *liberte,* i.e. civil and political rights; the second generation, *egalite,* is of economic, social and cultural rights; and the third generation, *fraternite,*is of solidarity or collective rights. This model is simplified and does not intend to suggest that the developments follow an absolute, linear historical path. The generations of human rights are overlapping and interdependent.

2.6.1. Civil and political rights

The first generation of human rights are connected to 17th and 18th century reformist theories, related to the English, American and French Revolutions. The philosophical foundations lie in liberal individualism which is related to the rise of capitalism of the time. The first generation of human rights perceives rights in terms of negative rights, "freedom from" as opposed to positive "rights to" conception. The emphasis is on abstention over intervention of government. The main tenet of the first generation of human rights was originally the right to own property, which is inherently connected to the interests driving the French and American revolutions and the rise of capitalism. The notion of liberty, protecting the individual against abuse of political authority, is the core idea behind the first generation human rights. Essentially the first generation of human rights is a Western liberal conception, celebrating individualism in the fashion of John Locke and Thomas Hobbes. In the UDHR the articles belonging to this generation are 2-21. First generation rights are the core of most human rights treaties drafted.

2.6.2. Economic, social and cultural rights

The second generation of human rights are connected to the 19th century socialist tradition and its critical view of capitalist development. The second generation of human rights derive from criticism of the conception of individual liberty which allowed exploitation of the working classes, even legitimised this practice. The second generation of human rights as a counterpoint to the civil and political rights emphasised state intervention to secure rights in a positive conception, "rights to", such as protection against ill health, poor housing, etc. The core idea behind the second generation of human rights is social equality. However, there is no agreement on the ways and means of implementing the second generation human rights. Moreover, it has been pointed out that the second generation rights are more "context-dependent" than first generation rights. Therefore, some states (such as the US) do not guarantee the second generation rights at a constitutional level. (Tomuschat 2003, 26-28)

2.6.3. Solidarity/Collective rights

The third generation of human rights, i.e. solidarity or collective rights are the most recent in the history of the human rights tradition and are connected to the end of the 20th century both rise and decline of the nation state. There are six rights that are identified in this generation of rights. The first three are connected to the idea of demand for global redistribution of power and wealth and the emergence of Third World nationalism: the right to political, economic, social, and cultural self determination; the right to economic and social development; and the right to participate in and benefit from "the common heritage of mankind". The other three rights of this generation, the rights to peace, healthy and sustainable environment and humanitarian disaster relief, are connected to the idea of lessening importance, the inefficiency, of the nation state in respect to these critical issues. All of the third generation rights are collective rights with an appeal to common efforts of nations and peoples. However, they also have an individual dimension in that even though securing a "new international economic order" is a collective right of countries and peoples, it is also an individuals right to benefit from developmental policy towards this aim. An important point about the third generation of human rights is that they are more aspirational than justifiable and therefore they have remained contested and ambiguous. None of the third generation rights have been affirmed as a legal instrument; they have been incorporated into resolutions of the General Assembly and state conferences, but have not reached the stage of an international treaty (Tomuschat 2003, 24). The uncertainties that surround the third generation rights are who holds these rights, who bears the responsibility and what is the actual content of these rights (ibid., 51).

2.6.4. Discrepancy between the generations of rights

It has been argued that civil and political rights have been treated as more important "real" rights of individuals. Cassese for instance states that "more space and importance are allotted to civil and political rights than to economic, social and cultural rights" with reference to the UDHR (1992, 31). Not only critics of the human rights recognise this problem: also in the Vienna conference of 1993, the UN acknowledged that "despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights" (UN Doc.E/C.12/1992/2, 83). David Beetham (1995) argues that the reason for this disparity can be found in the language of "rights".

Beetham points out that because the UDHR and the Covenants have been criticised as being merely aspirations rather that rights as *entitlements* the disparity is continuing. He contends that for entitlement to be a human right, it must satisfy number of conditions. These conditions are: it (right) must be fundamental and universal, definable in justifiable form, it must be clear whose duty it is to implement the right and the responsible agency must have the capacity to fulfil its obligation. Critics argue that the rights in the Covenants do not satisfy these conditions (Beetham 1995, 41-42). Beetham, however, shows against the critics that as far as economic and social rights are concerned they can be practicable in that the duties can indeed be assignable and minimum agenda of basic rights can be defined and justified (ibid., 59). The problem is that it seems that the economic and social rights can only be realised with considerable redistribution of resources and therefore the language of economic and social rights is that of realising them within "available resources" etc. This, according to Beetham, is due to institutional, intellectual and political factors. (ibid., 43)

It is quite obvious that as long as the second generation of rights are contested, the third generation rights are that even more so. In international law rights must have the quality of legal obligation. It has been argued that the third generation rights lack this dimension. According to Martin Dixon, international lawyers would claim that group rights are only rights in a moral or philosophical sense and do not connote legal obligations (1990, 312). Considering the fact that many states do not recognise the legal quality of some of the second generation rights, third generation rights are likely to remain contested. This goes back to Dixon's previous point that there is a need to "differentiate between human rights susceptible of vindication as a matter of international law and those human rights that exist for the moment in the realm of morality and humanity" (ibid.).

2.7. Globalisation: A challenge for human rights

It has been argued that globalisation can pose a threat to human rights. The era of globalisation has brought about shrinking of the public sector through increasing deregulation and privatisation and cuts in social spending. Liberalisation (or neoliberalism) on a more general level has become the norm in adapting to the pressures

of global market capitalism. Michael Goodhart contends that "while there is no consensus among scholars that there are any such things as universal human rights, there is nonetheless widespread agreement that globalisation poses a universal threat to human rights" (2003, 936). The underlying theoretical or philosophical problems are set aside and the threat of globalisation is receiving attention. Goodhart argues that

> *…the universality of capitalism today requires that one think about the universality of human rights as a question of effectiveness in achieving particular values rather than as a question of validity or of authenticity.* (ibid., 959)

Globalisation forces are having an effect in Western and non-Western countries alike. Goodhart has pointed out that if the human debate is dominated by the universality versus cultural relativism and that the cultural differences are overestimated, it is possible to underestimate the potential of human rights as a tool to against threats brought on by globalisation. Goodhart poignantly states:

> *…in the developed and developing worlds alike neoliberalism is eroding social and economic protections and threatening human rights. The essentialist framework obfuscates this commonality with claims about Western versus nonWestern and individual versus communal values, making it difficult to recognise neoliberalism as a threat to values like social welfare and community cohesion wherever and in whatever form they are realised*. (ibid., 961)

Goodhart is bringing forward a pragmatic and practical approach to human rights as opposed to the "intellectual cage" of the philosophy and theoretical foundations of the human rights debate that has dominated in the past.

Another important point is brought forward by Cassese. From the point of view of international law he asserts that

> *Law provides helpful instruments, institutions and conceptual equipment. What is often missing is the political will of powerful States - too often bent on the pursuit of short-term interests, and frequently excessively self-centred-to use those tools*. (Cassese 2001, 418)

This point serves as a reminder of why the human rights framework is essential.

3. FREEDOM OF INFORMATION

The character of freedom of speech has raised many philosophical and political issues. A controversy which has dominated the debate for a long time is that of whether freedom of speech is a negative freedom from state control or whether it is a positive freedom or right. It is sometimes argued that the only "real" freedom is such whereby all individuals have the economic and social opportunity to participate in a community and exercise their civic rights. Mostly, however, freedom of speech is put forward as a defence in fear of governmental regulation (Barendt 1985, 78). In general terms, there are two strands of justifying freedom of speech: instrumental, which emphasises individuals' freedom of speech as achieving common good, and constitutive, which argues that freedom of speech is a moral end in itself (Kortteinen 1996, 39).

3.1. Theories of freedom of speech

3.1.1. Search for truth

One of the key arguments historically for freedom of speech is to say that open discussion or debate will lead to the discovery of truth. The underlying fear is that if freedom of speech is restricted, society will not discover facts and true judgements. This argument is connected to John Milton in the early 17th century and later on to John Stuart Mill (1859). There are numerous interpretations of this argument, but some underlying assumptions can be identified. Firstly, truth is seen as fundamentally positive and good for the development of society and, moreover, truth is autonomous. Secondly, and Mill's theory in particular, it is based on the assumption that certain beliefs will be discovered to be true if the opposing assumptions are also discussed. Thirdly, one key element of this argument for free speech is that generally it is possible to distinguish truth from falsehood.

Freedom of speech as search for truth theory has been criticised from different perspectives. For example, the assumption that publishing true statements is necessarily public good does not apply in all situations. In some cases it is better to protect other

values such as privacy. Another criticism of Mill's argument in particular is that he placed too much importance on intellectual discussion and debate of individuals on public affairs, and does not consider the possibility that political discourse may not always be rational. Mill's argument is that even false speech must not be restricted, because the discovery of truth relies on hearing also the opposing side. There is a fear that "inflammatory" speech may cause the government to restrict speech in order to avoid disorder, which is a possibility that is not considered by Mill. Moreover, Mill's theory is not applicable to all types of expression. (Barendt 1985, 8-11)

3.1.2. Self-fulfilment

Another argument for the importance of free speech is to say that it is essential to the individuals' self-development and self-fulfilment; to restrict free speech is to deny individuals right to self-development and growth of the individual's personality. A person's development intellectually and spiritually needs public discussion and being face to face with opposing, alternative views of others; in this process free speech is obviously the prerequisite. The argument is that it is individual's right to have freedom of speech even though it may be harmful to the development of society. It is arguable whether this argument implies that freedom of speech is good in itself or whether it is connected to human dignity. To criticise this argument one may question the importance of freedom of speech for individuals' self-development or fulfilment and ask why freedom of speech has particularly important value over such basic needs as education. It is of course a factor that freedom of speech is a negative freedom against the state and education is a positive (freedom to) right. Another criticism against this argument is that not to restrict free speech may generally go against respect for human dignity such as, for example, in the case of obscenity. Moreover, the argument does not seem to apply to free speech as disclosure of information in the sense that even if freedom of speech is considered important to individuals self-development or human dignity, it is not so in the case of news and information: the self-fulfilment theory hardly applies to the press and other media. (Barendt 1985, 14-18)

3.1.3. Citizen participation in a democracy

This is the most attractive theory of freedom of speech in the Western democracies. It argues that to protect freedom of speech is crucial in that people need to understand political issues so that they can participate effectively in democracy. Freedom of

expression is seen as essential in the formation of public opinion on political issues. This argument is forceful and, according to Barendt (1985, 20), it is easy to see why it is so in that it is less abstract and philosophical argument than those of truth and self-fulfilment He also argues that even though some objections against the democracy theory can be raised, it is nevertheless most influential theory in the development of 20th century laws for freedom of speech (ibid., 23).

The key functions of the freedom of speech in a democracy are, firstly, to secure the democratic decision-making process and, secondly, to secure individuals freedom of expression. (Kortteinen 1996, 32). However, additionally the following functions of freedom of speech have been identified (ibid., 33):

- participation in society: the possibility of individual to actively participate in a society as opposed to a passive role. The citizen participation in public debate serves a function in their self fulfilment;
- finding political "truth": freedom to form an opinion and its popularity will guarantee the truthfulness of that opinion;
- majority principle: freedom of expression secures that political decision-making will be based on a general public opinion;
- restricting corruption: the right to criticise government and political leadership is beneficial in restricting corruption of governments, and
- maintaining social order: in the long run openness will lead to a stable societal development. Free speech prevents disturbances that threaten the stability of societies.

3.2. The development of freedom of speech into a human right

When talking about freedom of speech censorship goes hand in hand with it. Censorship was already taken to be a common practice in ancient Rome in the name of guarding public good and morality.

In 1450, when Johan Gutenberg invented the printing press, freedom of speech became a real issue. Gutenberg's printing press gave the possibility of duplicating and distributing ideas and information in written form for masses nationally and internationally. The Catholic Church became aware of the possibility that this new

potential might undermine their absolute power by distributing "truth" that had been, prior to the advent of the printing press, controlled exclusively by the Church and the ruling elite. The concern over loosing control of the power structure lead to taking control of the printing press and political censorship was introduced: nothing could be printed without the permission. Freedom of speech was restricted on political and ideological grounds.

John Milton was among the most influential writers who challenged the system of censorship; an idea that was introduced in his famous book Aeropagitica. He argued for freedom of expression on the grounds of it being a natural human right of every individual. Milton argued that this right extends to the printing press, that publication of ideas and information is a right, a mere extension of freedom of speech. Milton was aware of the fact that this freedom may be misused. In this vein, Milton suggested that individuals' freedom of speech is absolute, and that the governments' and parliaments' role is to set a political framework in which the common interest of the society and individual will be secured. (Kleinwächter 1999, 93)

It becomes clear, especially after the next chapter, that whenever the principles underlying the freedom of speech are debated, they seem to clash. Individual right to freedom of speech (or expression) is always emphasised, but so is the states' right to restrict freedom of speech on certain grounds. According to Juhani Kortteinen, this reflects the fact that there are two philosophical traditions which live side by side: the Aristotelic tradition, which emphasises common good, and the modern tradition, which emphasises the autonomy of an individual and the individuals' rights and freedoms (1996, 35). Another factor in the debate on freedom of speech has been the East-West division: the freedom of speech debate was historically connected to the Cold War perception of Western freedom of speech vs. Eastern censorship. This ideological difference had a major impact on the development of freedom of speech as a human right.

3.3. Generations of human rights and freedom of speech

Another way of looking at the development of freedom of speech or expression is to refer to the generations of human rights in connection to technological advancement. It

has been argued that the communication rights and regulations reflect the development of communication technology (Kleinwächter 1999).

The beginning of the freedom of expression and the need for it arose in the advent of the printing press. The first generation communication rights were political and civil rights. The classical conception of freedom of speech meant freedom from censorship.

The second generation of human rights in the 20th century defined freedom of expression in a wider framework. The concern of the second generation of human rights was social inequality. With reference to freedom of expression this meant the inequality between educated and non-educated people; freedom of expression had no meaning to those who could not read and write.

The third generation of communication rights included a collective dimension into the freedom of expression, which emerged at the time when satellites were invented. The debate on communication rights concentrated on "two-way flow of communication", access and participation. This debate, however, took the traditional notion of sovereignty for granted. Therefore, Kleinwächter suggests that there may be a fourth generation of rights for the age of global networks and cyberspace. (ibid., 92)

3.4. Universal standards: From freedom of speech to freedom of information

The universal standards for freedom of opinion and expression are not easily defined, because they can be considered as a cluster of rights. They can either be divided into many separate rights or they can be related to some other rights that are conditioned by freedom of opinion and expression (Dimitrijevic 1990, 58). The human rights instruments, both national and international, differentiate between rights to freedom of thought, conscience and religion. Universally accepted international standards of freedom of opinion and expression are found in the UDHR. Freedom of information is understood, first and foremost, as a right to access information which is held by public bodies, although the right goes beyond accessing information (Mendel 1993, v).

3.4.1. The Universal Declaration of Human Rights

The UDHR of 1948 provides the most widely accepted definition of freedom of information in its Article 19. It reads as follows:

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

Rather than being referred to as freedom of speech, Article 19 is about freedom of information. It defines four different freedoms that are universal and deterritorialised. These are:

- freedom to hold opinions without interference;
- freedom to seek information;
- freedom to receive information and ideas;
- freedom to impart information and ideas.

Article 19 does not pose any limitations to these rights and freedoms. However, duties are assigned for the individual in the Article 29 of the Declaration which defines individuals' duties towards the community and which applies to all other rights defined in the Declaration. The limitations are (Dimitrijevic 1990, 61) :

- they must be determined by law;
- their purpose can only be the securing of due recognition and respect for the human rights and freedoms of others and the meeting of just requirements of morality, public order and the general welfare in a democratic society;
- no right or freedom may be exercised contrary to the purposes and principles of the United Nations

Moreover, these duties are intended to not only towards the national community but also towards international order.

3.4.2. The International Covenant on Civil and Political Rights

The Covenant of 1966, as part of the International Bill of Rights, also establishes a standard for freedom of information and therefore elevates these rights into being legally binding to those who ratified the treaty. There is not a great deal of difference between the rights and freedoms provided by the UDHR. Particularly the positive dimension is very similar by definition. The freedoms articulated in the Covenant are in Articles 19 and 20, as compiled by Dimitrijevic (1990, 61):

- to hold opinions without interference;
- to seek information;
- to receive information and ideas;
- to impart information and ideas;
- to choose the medium through which to use one's freedom;
- there are no territorial limits to this freedom

The freedom of opinion is absolute in the Covenant and there are no limitations or restrictions. However, freedom of expression has specific duties and responsibilities corresponding to its rights. The conditions for restrictions are (ibid.):

- that the restriction is provided by law
- that the restriction is to protect the rights and the interests of the community in general, for instance for national security and public order
- that universal interests are not jeopardized by the misuse of the freedom

Dimitrijevic asserts that the main difference between the UDHR and the Covenant is that the Covenant articulates an absolute and unlimited freedom of opinion. Additionally, choice of medium of freedom of expression is defined and therefore the "richness" of freedom of expression is considered. However, the negative aspect of the Covenant in comparison with the UDHR is that the restrictions posed are more specific, such as the articulation of national security as a factor. Moreover, Article 20 has been contested by many states in the West particularly because of its prohibition of propaganda for war. Article 20 reads as follows:

1. *Any propaganda for war shall be prohibited by law.*
2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.*

This article has been criticised to restrict freedom of expression for an unduly cause and, what is more, it is seen as contradictory to the constitutional, legal and traditional rules of states that guarantee freedom of speech. (ibid., 61-62)

3.4.3. The European Convention on Human Rights

Article 10 in the European Convention deals with freedom of opinion and expression. There are some differences between the European Convention and the universal standard. Firstly, there is no specific right for seeking information. Secondly, all media are not described as equal and the possibility of licensing is maintained. Thirdly, there is nothing corresponding to Article 20 in the European Covenant. The restrictions on the freedom of expression are linked to a standard of "democratic society". (Dimitrijevic 1990, 63)

3.4.4. The American Convention on Human Rights

In the American Convention, Article 13 deals with the issue of freedom of expression. It has more similarities with the Covenant than the European Convention. In the American Convention *opinion* is referred to as *thought* and expression is included in thought, even when it comes to restrictions. Moreover, the American Convention talks about *indirect impediments* (Article 13, paragraph 3) to freedom of expression, which are controversial elsewhere. (Dimitrijevic 1990, 64)

3.4.5. The African Charter on Human Rights

The Article 9 in the African Charter describes the freedom of expression as follows:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

The emphasis in the African Charter is on receiving information. It also includes the right to learning how to read and write. This reflects the difference between African and other Third World countries to developed countries: one of the most pressing obstacles to exercising freedom of speech is the lack of education. Additionally, the African tradition is based on a strong culture of oral transmission of information. (Kortteinen 1996, 58)

3.4.6. Other instruments

In addition to the regional and UN instruments on freedom of information, there have been number of organisations of the international community working on declarations, recommendations and resolutions on freedom of information. One of the most influential and active organisation in this field has been The United Nations Educational, Scientific and Cultural Organization (UNESCO). These international instruments are not legally binding, but are recommendatory. When counted, these international instruments are in the tens (full inventory in Nordenstreng 1984, 154-161). However, due to limitations of time and space only the most comprehensive of these Declarations will be discussed, that is the Mass Media Declaration of UNESCO.

3.5. The mass media and international instruments

There are a number of different instruments that have a reference, direct or indirect, to mass media performance. By mass media is meant "all media of mass communication, printed and electronic, as well as all types of information transmitted (news, documentaries, entertainment etc.)" (Nordenstreng 1984, 154).

It has been argued that international law sets a significant standard for the mass media performance. Because the instruments are so many, multiple and multifaceted, i.e. with direct or indirect references to the mass media, Nordenstreng (1979, 156-157) provides an inventory of these instruments by broad topics and themes under which these instruments fall. They are the following:

1. peace and security;
2. war propaganda;
3. friendship, international understanding, and cooperation;

4. objectivity, veracity and honesty of information;
5. racial equality/discrimination;
6. other duties and responsibilities concerning contents, and;
7. free flow of information

This table indicates that there are clearly standards which the international law sets for the performance of the mass media: 1-4 directly to international relations including international instruments, and 5-6 on a national level. Theme 7, according to Nordenstreng, is not specified as more central than the other themes, and furthermore, is not an unlimited freedom but rather subordinate to obligations such as promotion of peace, etc. (1984, 157). However, this should not be considered to imply censorship on behalf of the state.

Another comprehensive and exhaustive review of the international instruments in relation to mass communication is provided by Hamelink (1994, 136-185).

In general, it can be said that the state is responsible for the media performance under international law. Moreover, the media should also have a positive impact in the field of information in that promotion of peace and international understanding (amongst other things) are considered to be a responsibility.

3.5.1. The Mass Media Declaration of UNESCO

A landmark international instrument is the Mass Media Declaration of UNESCO of 1978, 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. This is most comprehensive and covers the seven important issues in one package. It has been referred to as a "summary" of freedoms and duties of the media in international law. (Nordenstreng, Hannikainen & Kleinwaechter 1992, 66)

The Mass Media Declaration defines the role of international news media in world affairs. It is recognition of the central role that the media can play in issues such as

world peace and racialism as are already noted in the title of the Declaration. The Declaration states (p. 271):

> *The strengthening of peace, international security and co-operation and the lessening of international tensions are the common concern of all nations. The mass media can make substantial contribution towards achieving these goals.*

As the mass media could have such an important role, the Mass Media Declaration was intended as a normative Declaration on the media function.

The long debate, from 1970 to 1978, on the Mass Media Declaration debate began after UNESCO's draft resolution, which "forbid the use of information media for propaganda on behalf of war, racialism and hatred amongst nations" (16th General Conference) in the 1970. This resolution changed before it was adopted into "encouragement" rather than "forbidding", in other words into a positive formulation of the Declaration. It had to be modified because the original form was too limiting to the Western states' interpretation on freedom of press and information; Western states could not agree on any reference to governmental influence on media content. (Weyl 1993, 51)

Underlying the difficulty on agreement was the fact that media function could not be agreed upon. There were two opposing views on what media function is supposed to be. One was that the mass media's function is to serve the state by directly influencing their audience. This view has been referred to as "state information sovereignty" where the state is considered to have absolute control over information (among other things). (ibid., 51)

The other view was that the mass media's function is to stay separate from the state in order for the public to be properly informed on matters of public affairs, which enables the democratic process. This view relies on "the free and unobstructed flow of news and ideas within state and across borders" - a paradigm in the fashion that is identified in the Article 19 of the UDHR and CCPR. These two fundamentally different views on the nature of the mass media and its function have set the tone in the history of the Mass Media Declaration. Moreover, the fundamental difference of these viewpoints reflects how arduous the process of formulating the Mass Media Declaration that would be

applicable universally was, and the achievement that the actual adoption of the Declaration was.

The Mass Media Declaration includes these points: recognition of freedom of expression as a fundamental human right; support for public access to diverse sources of information; emphasis on journalists' full access to information and ability to report with freedom of safety. The Declaration announces the need for better-balanced flows of information among developing countries, and between them and the developing nations. Greater sharing of communication facilities and training programmes for the journalists of the developing countries is urged. The last article, the most controversial one, is a call for the member states to support the Mass Media Declaration in connection to UDHR and CCPR, which goes against some states conception of media that is independent from state control. (Sussman 1993, 69)

The achievements of the Mass Media Declaration are that it represents a moral and ethical stand even if without a legal obligation; it places the mass media within the general framework of international law; and it broadly defines the tasks, rights, and responsibilities of the mass media (Nordenstreng 1993, 62). Other important points of the Declaration include that the focus is on the *content* of the media; that it was a catalyst for a more general movement towards *international relations*; and that it represents a set of *established principles* that have existed in the international community for decades. (ibid., 63)

The same criticisms have been made about the Mass Media Declaration as on the UN Declarations in general, that it is not legally binding and therefore is not effective in terms of international law. Again the same counter arguments can be brought forward about the significance of Declarations. Firstly, they present or pronounce a political will towards a goal from the part of states. Secondly, they raise awareness; in this case, the Mass Media Declarations mobilised awareness of the need of developing countries to improve the media situation. Thirdly, the Declaration is an important way of representing a moral and ethical code. Furthermore, Declarations are an important way of declaring approval for the development customary international law and *opinio juris.*

However, since the adoption of the Mass Media Declaration by consensus, the treatment it has been given by different governments differs. Its implementation was not what was desired. Moreover, media professionals' awareness of the Mass Media Declaration has not been what it should have produced. Moreover, as Francis Kasoma (1993) points out, reporting on African affairs has remained biased in the Western media in that reporting mainly consists of "bad news" from Africa. Additionally, the ability of Africa to inform nationally and internationally still suffers from constraints for various reasons, not the least because of financial and technological constraints. On a general level, as Kasoma argues, the Mass Media Declaration has not been " the magic wand" that it was hoped to be. (1993, 77-81)

3.5.2. Concept of NWICO

The Mass Media Declaration is part of a wider debate: a *new order* in information and communication. The debate began in the early 1970s and the key force behind it was the movement of the non-aligned nations representing the Third World or the developing South; it was called the Non-Aligned Movement (NAM). Prior to that the role of the mass media in international spheres had been on the agenda since the first International Telecommunication Convention in 1865 and later on in 1920 the topic was addressed in the negotiations, which lead to the Geneva Convention Concerning the Use of Broadcasting in the Cause of Peace of 1936. Furthermore, communication problems were addressed in 1948 by the UN Conference on Freedom of Information. (Gerbner et al. 1993)

The debate on new information order coincided with the time of rapid development of the communications technology and there was talk about the emerging "information age" in which information could be considered a key source of power and wealth. It also coincided with the decolonisation process of the developing countries. In 1973 there was a NAM summit in Algiers where a resolution calling for a "new international economic order" was adopted. The UN General Assembly also supported the resolution later on. Another resolution was given in 1976 in Tunis which called for "decolonization of information" referring to the colonial past and there was talk about a "new order in information matters" which later on developed into the form of "New International Information Order" (NIIO) and in the future evolved into "New World Information and Communication Order" (NWICO).

The issues underlying the debates were concentrated on the "information flow", which seemed to flow one-way, from rich to poor countries, because of the domination of multinational media companies, which were based in affluent nations only. This disparity was one of the key elements in the discussions and set the tone for the developing countries. Another dimension of this debate was the *cultural colonialism* which the developing countries suffered from. The underlying fear behind all these issues was that the developing countries would not succeed in economic and political development without cultural development and development of nationally competent structure of communication.

The free flow of information paradigm was developed by the Western nations and the US after the Second World War. The doctrine relied on the idea that free flow of information was a "means of promoting peace and understanding and spreading technical advances" and was connected to "the western ideas of freedom of the press and libertarian principles" (MacBride and Roach 1993, 5). The critics pointed out that this doctrine lead to domination of communication markets and Western ideology and additionally serving the interests only of the powerful and affluent nations. The nonaligned countries called for a free and *balanced* flow of information. At this stage, it seemed that the free and balanced flow of information doctrine was incommensurable with the Western idea of freedom of information, because it was interpreted to entail controlling or limiting the flow of information, totally antithetical to the Western doctrine.

In the mid 1970s the issue of democratization and decolonization was tackled in meetings. The national communication systems were seen in need for development into more just, equal, fair and balanced. The key problems that were identified in lacking from the point of view of developing countries were (Kleinwächter 1993, 13-14):

1. *The big gap in the world-wide distribution of the means of communication*
2. *The imbalance in the world-wide information flow*
3. *The one-sided and distorted coverage of the developing world by the dominating Western mass media*

The period of debates and resolutions from 1970 to 1980 has been referred to as the period of the "rise of the concept of the new order".

3.5.3. MacBride Report

After the UNESCO General Conference in 1976 in Nairobi, a 16-person commission was appointed to study "the totality of communication problems in modern societies" and "within the perspective of a new international economic order". To head this Commission was appointed Sean Macbride. The work began in the late 1977 and consisted of 2 years of fact-gathering, meetings and debate. In the UNESCO General Conference in 1980 in Belgrade, the Commission submitted its final report, now known as the MacBride Report, which was an important study on problems of global communication. The title of the report was "Many Voices, One World: Towards a new more just and more efficient world information and communication order". UNESCO's position as supporting the new *information and communication order* was galvanised. Additionally, in this General Conference the International Programme for the Development of Communication (IPDC) was established which was assigned to implement many of the objectives which had been discussed in the NWICO debate.

The MacBride Commission (the International Commission for the Study of Communication Problems) released an interim report in 1978. This report became controversial, obviously because the interim report had the tone of "anti-Western rhetoric", according to Galtung and Vincent (1992, 86). The concerns which arose were connected to the fear of government intervention, and the possibility of licensing journalists. The concerns were the same as with the NWICO debate more generally. Many in the West contested strongly.

The final report was considered of great importance when it first appeared. The report makes all together 82 recommendations on a number of communication issues such as strengthening cultural identity, technological challenge, responsibility of journalists etc. and further, identifies issues that need further study.

However, because of the controversy of the interim report, the final report is a compromise report, which also had toned down the "anti-Western rhetoric". The "free

and balanced flow of information" concept did not appear in that form. It was modified into "a free flow and wider and better balanced dissemination of information" in order to achieve "a new, more just and more effective world information and communication order". (Galtung and Vincent 1992, 87)

The final report of the MacBride Commission has been criticised since its submission in Belgrade in 1980. The issues that have caused criticism are that, firstly, the report is too vague and takes the "middle road" between controversial issues. Secondly, the report has been viewed as too general as it did not make enough practical implementation programs that would make the change happen. For example, the report did not address the problems of telecommunications infrastructure among other pressing issues.

Another crucial criticism on the Report is provided by Nordenstreng (1980, 8-16). He argued that the MacBride Report was an ahistorical study and therefore is lacking in in-depth analysis which leaves the report hollow in substance. In essence, the study was left without a "real world history" which meant that the history of communications was not connected to fundamental social and global developments (ibid., 9). The approach in the report was political even though its intention when the Commission was established was to conduct an analytical study of the communication problems. According to this criticism the Commission, although established because of the 1978 Mass Media Declaration, which states the important role the mass media may play in *strengthening peace, international security and co-operation*, the final report of the Commission served only to undermine the Declaration in its eclectic, ahistorical, ahumanistic approach.

The General Conference of UNESCO did not enact most of the recommendations that the MacBride Report made (Galtung and Vincent 1992, 87). Moreover, the IPCD, which had been charged to implement the NWICO objectives, suffered from lack of funds and therefore was unable to realise the objectives that had been set. (ibid., 88)

3.5.4. After MacBride

From 1980 starts the period of "the decline of the concept of NWICO". The Western countries became mistrustful of the concept of NWICO because of the aforementioned fear of the Western nations, that the freedom of the press would be put under

restrictions, boosted by coming into power of the Reagan Administration in the US. It went as far as the US withdrawing its membership of the UNESCO in 1981. The US government was against any plan that might limit or regulate the distribution of news and ideas. Oddly, none of the NWICO resolutions or the Mass Media Declaration included any articles that had any indication of censorship or imposing regulations on the Western mass media. Moreover, the MacBride Report rejected the idea of a licensing system, which had been debated before. The decline of the NWICO may have therefore been more of a reflection of the changing political climate and "politization" of the international debate on information. In the early 1980s the nonaligned countries were not as unified a force as they had previously been due to economic recession. Another crucial factor for the decline of the concept was the breakdown of communism in 1989. Moreover, in the developed countries the trend of deregulation of the information media and generally, a trend towards privatisation had become the increasingly the norm.

The 1990's have seen a renewed interest in the concept of NWICO. Although UNESCO withdrew its support for the research and other activities in connection to the NWICO and started to consider a "new strategy" during the beginning of the 1990's, the NWICO remained in the debate without UNESCO having a central role. Major outside, non-governmental interest has continued the NWICO debate. Already in the 1980s, at a Consultative Club meeting in Baghdad in 1982, a coalition of international and regional organisations of working journalists expressed support for the concept of NWICO and argued that the concept does not necessarily imply governental censorship or licensing journalists. The NGOs did not suffer from the same political pressures as governmental bodies and therefore were more outspoken and uncomprominsing. Hence, the NGOs have been in a key position in promoting the issues of the NWICO. Moreover, a general trend away from govermental activities towards civil society action could be detected already at this stage not only in the issues of NWICO but in other matters as well (Nordenstreng 1999, 262).

The MacBride Round Table meetings became the central platform for discussion on issues of NWICO. The first MacBride Round Table was held in Harare in 1989 where the principles of NWICO were reiterated. The second one was in Prague in 1990 and there it was concluded that the debate has changed its platform to the professional

organisations, communication researchers and grassroots movements that represent ordinary people, the civil society. Moreover, in 1991 in Istanbul, another MacBride Round Table expressed a concern, which seemed to be growing among many, on the "rapidly increasing concentration, homogenisation, commercialisation, and militarisation of national and world cultures". It was pointed how the problems in the MacBride Report were still present and, indeed, the monopoly of the global conglomerates affected "selection, production and marketing of information". (Vincent, Nordenstreng and Traber 1999)

The media mergers of the late 1980s and 1990s renewed the concern over many of the issues raised previously in the NWICO debate. Galtung and Vincent (1992, 98) talk about the future of NWICO and conclude that its failure previously can be accounted to two points: firstly, that the sharp outline of the problem was never solved in the debate and, secondly, the NWICO was never merged to the debate an investigation of economic concerns and, thirdly, because an equitable solution was not found to the problem of imbalanced information flow. Galtung and Vincent reiterate the renewed interest in NWICO from outside UNESCO from 1990 onwards (ibid., 100-102).

Another way of explaining the situation in the 1990s is to say that the concept of NWICO as such and the ideas of the MacBride Report may have been dead, but the debate was still going on. Rather, the debate took another direction, where globalisation was increasingly the framework (Nordernstreng 1999, 264), which explains the extinction of concept of NWICO itself but affirms the continuing debate on the issues surrounding problems in international communication.

4. FROM FREEDOM OF INFORMATION TO RIGHT TO COMMUNICATE

4.1. Origins

Jean d'Arcy (1913-1983) was the first to articulate the concept of right to communicate. D'arcy, a French media expert and also a key figure internationally on the debate about the media, was a founding member of the International Broadcast Institute, which later became the International Institution of Communications (IIC). He was the Director of Programmes at the French television in the 1950s, which at the time was a new medium. In 1954 he helped to set up Eurovision and was its vice-president until 1961 when he moved on to the UN. D'Arcy was the Director of the UN's Radio and Visual Services Division from 1961 until 1971. Thereafter, between 1972-1981 he was a member of the High Council that regulated audio-visual arena in France. From 1966 onwards, D'Arcy participated in the planning of the IIC and from 1975 he was the President of the IIC. D'Arcy served as the President of the IIC until his death and was actively involved in different right to communicate activities as a spokesperson, participant and facilitator. (Winsbury and Fazal 1994)

D'Arcy's argument on the need for a right to communicate was based on his view that at all times of human history; the communication technology had "conditioned" the formulation of law and organisation of social structures. He argued that *all social organisation rests upon communication among its constituent parts*. Therefore he asserted

> *The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information, first laid down (in 1948) in Article 19. This is the right of man to communicate.* (d'Arcy 1969, 14-18)

Moreover, he argued that "all beings are dependent upon communication with their kind". There is tension between these two forces and this is the key to successive freedoms; the tension between individuals need to communicate and societal need to establish its own channels of communication. (d'Arcy 1973, 46)

D'Arcy argued that the developments in the communication field were of such magnitude that the need for new communication rights should be recognised. The right to information as already stipulated in the Universal Declaration on Human Rights reflects the development of a certain stage in development of communications technology. d'Arcy talks about "communications explosion" of his time; he goes as far as saying that "today we live a revolution of communications" (ibid., 47). He is talking about the possibilities of communications technology and, on the other hand, is concerned about the underdevelopment in some parts of the world. D'Arcy argues that the underdevelopment in communications may be the underlying cause of underdevelopment more generally.

D'Arcy talks about the "age of communication" that was upon his time. He argues that there has been a shift from a *period of scarcity* to *period of abundance*. However, he contends that this shift has not taken place in the thinking and reasoning of people who still live the age of scarcity. D'Arcy is calling for a radical change in mentality, in order to make the best use of the communication and will give a man and nation a freedom to communicate. (ibid., 48)

D'Arcy makes several points about the world communication in his time. Firstly, he talks about the monopolies on telecommunications (either state or commercial monopolies) and the result that they have on denying individuals right to communicate by excluding them from the instruments of communication. Secondly, he talks about communications and control, the need for a new form of government, which "no longer derives its power from the refusal or the control of communications" (ibid., 49). Indeed, d'Arcy goes further and contends "let us not try to fit new tools into old structures. We must try and devise new structures based upon a new philosophy" (ibid., 50). Thirdly, he talks about new technology and its connection to the "end of nationally closed societies" (ibid., 51). This also implies to him the end of the supremacy of national mass media. He already at this stage talked about taking the media at the human level, i.e. what he calls "group-media". Moreover, d'Arcy, talks about the raised education level, "whole peoples have tasted the fruits of knowledge", and the possibility of formation of international public opinion due to the information tools that had been developed. (ibid., 52)

D'Arcy also refers to how historically the development of freedoms in the information field has been connected to technological advancement. He says that it took three hundred years since Gutenberg developed the printing press until the corresponding freedom of expression emerged. It took thirty years since the emergence of the mass media until in the UDHR there was defined individuals' right to information. The right to communicate, according to d'Arcy, is due since our communications technology has advanced greatly. The problems to tackle are the declaration and conventions of the UN, access and participation, the multilateral flow of information and the preservation of the cultural heritage. (ibid.)

4.2. The emergence and development of the right to communicate

Harms, Richstad and Kie (1977) provide a full account of the emergence of the right to communicate from 1970 till 1975. They talk about the three stages in which the concept was developed and events and activities that took place: the *pioneer efforts, organising activities* and *projects and programs*.

Prior to the pioneer efforts, in the late 1960, the old traditions of communication met with the two-way, interaction, participatory communication and the developing of the communications technology. The key event was when man landed on the moon, and all people around the world could watch this beginning of the new era at home. This was the event when communications technology became into a turning point and talk of right to communicate began.

4.2.1. Pioneer efforts

The pioneer efforts concentrate on the time between 1970-1973 . The key event of this stage was of course d'Arcy's paper which he presented at the EBU Review in 1969. This paper contains the same issues that were presented in the previous chapter. Harms et al. consider this as a significant contribution in that it goes beyond the traditional freedom of information, press and speech rights formulation. Moreover, it inspired more work on the subject of right to communicate (ibid., 114). Another pioneer effort was the Telecommission study in Canada and the comprehensive report it produced called "Instant World" in 1971. In Instant World is described how in a democratic society,

freedom of knowledge and speech are essential. The dimensions of right to communicate are "the rights to hear and be heard, to inform and to be informed, together may be regarded as the essential components of right to communicate". Moreover, it established that realisation of right to communicate is desirable in democratic society.

Another key event in the pioneer efforts was the International Broadcast Institute's (IBI) Nicosia meeting in 1973 which was the formal beginning of work and study for the right to communicate. D'Arcy was again the main contributor in this meeting, where preliminary discussions on the concept of right to communicate took place. D'Arcy was the keynote speaker in the Nicosia meeting and his contribution great in that he had introduced the new concept.

Some other meetings and seminars were also held during the period of pioneer efforts. However, let us move on to the organising activities.

4.2.2. Organising activities

The organising activities concentrate on the time between 1974 and 1975. The activities began in a meeting of Stan Harms and Jim Richstad with Lloyd Sommerlad, who was Chief of UNESCO's Division of Communication Research and Policies, in Honolulu in 1973. This meeting lead to the beginning of the involvement of IBI and UNESCO in the development of the new concept. UNESCO's involvement in the early 1970s was to study the causes of imbalance of world's communications and they had given resources for this study. As already discussed in the previous chapter UNESCO tried to achieve an international agreement on creation of *free flow of information* and later *free and balanced flow of information* which lead to the ideological problems as identified before. However, the end result in the aforementioned meeting was a draft of UNESCO resolution and a description of right to communicate, and later, a major conference on right to communicate. This was the period when institutional support was established.

The draft resolution was prepared by Harms and Richstad in 1973. The paper included a framework for the right to communicate and its key aspects (Harms et al. 1977, 119-120). The main points this paper brings forth are:

- communication is a basic human process for local communities but also for the emerging world community. Communication flows back and forth through every social institution and hence is essential for human development
- in the "communication era" the technological changes offer wide distribution and interactivity and thus demand a broader right to communicate which extends beyond Article 19 (of the UDHR)
- a comprehensive, multicultural right to communicate needs to be conceptualised.
- communication resources should be grounded on a two-way, interactive, participatory process
- due to flood of information, it should be organised, localised, individualised, easily and inexpensively available and responsive to human needs
- special concerns include right of privacy, cultural preservation and diversity and information overload. Balance in flow of information is needed.
- world scale communication is needed due to mutual problems of our interdependent world

This draft resolution guided work toward IBI meeting in Mexico City in 1974. In the same year, Sweden introduced a draft on the new concept in the 18th General Conference of UNESCO. The Swedish delegation called for a study on the right to communicate and the concept of active participation in the communication process. At this stage Amadou-Mathar M'Bow, UNESCO Director-General, wrote a letter to Member States and UNESCO National Commissions in which he discussed the "demand for a profound study of what is being called the Right to Communicate" (ibid., 124). Additionally there was mentioned that the new concept on communication "should be a two-way process involving the right to inform as well as right to be informed- a dialogue between people and a free and balanced flow of information between nations." (ibid.)

Some further points were added along the way, which include the recognition of the new international economic order, but also as crucial to the development, the social aspect; placing the human being in the centre of development was recognised as a fundamental principle (ibid., 125). In 1976 UNESCO set up an informal working group, which developed an outline for a report that was later on, in the 19th General Conference in 1976, submitted.

The first description of the right to communicate was discussed in IBI Working Committee in Cologne in 1975. The description they adopted was:

> *Everyone has the right to communicate. It is a basic human need and is the foundation of all social organisation. It belongs to individuals and communities, between and among each other. This right has been long recognised internationally and the exercise of it needs constantly to evolve and expand. Taking account of changes in society and developments in technology, adequate resources-human, economic and technological-should be made available to all mankind for fulfilment of the need for interactive participatory communication and implementation of that right.*

This description was considered provocative at the time. It identified communication as a *basic human need* on which *all social organization* rests and furthermore, articulates that everyone has the right to communicate, both on individual and community level. In the sentence right to communicate "has been long recognised internationally" is linked all past efforts on freedom of speech, information, press etc. Other key points, according to Harms et al, were: "the recognition of changes in society, the need for adequate resources if the right is to have meaning", and the basic concept of communication as an "interactive and participatory process" (1977, 131).

4.2.3. Projetcs, programmes and prospects

The third stage in the evolving concept of right to communicate Harms et al. identify the projects and programmes stage in 1975. This stage was initiated in the IBI meeting in Cologne in which the description of right to communicate was adopted and the study of the subject was urged. It had been recognised during the course of development of the concept that it involved several separate dimensions. Those were firstly, that there was a gap between the theory and practice. Secondly, different societies look at the questions from different viewpoints. Thirdly, right to communicate could be studied at

various levels. There was agreement that right to communicate needed multicultural approach (Harms et al. 1977, 131).

The projects that were initiated include collecting and bringing together essays on right to communicate, which had been written by authors around the world. These essays included a wide range of thought on the topic and brought forward an excitement that right to communicate had meaning. Another project was the Policy Dialogue Project in Hawaii. In addition, UNESCO initiated programs on right to communicate, and also, IBI remained involved at this stage.

In 1978 there was a UNESCO expert seminar on the right to communicate which took place in Stockholm. The emphasis was on identifying the components that the right to communicate would include. They were the right to participate, right to access to communication resources and information right more generally. The agreement was made in the meeting that "social groups ought to have the rights of access and participation in the communication process" and that "special attention should be paid to various minorities, national, ethnic, religious and linguistic, in this regard" (Fisher 1982, 43). Furthermore, there was an agreement that "the development of the necessary new structures within the communication resource-poor communities would require international cooperation and a more balanced exchange of hardware and software, reducing the gap between the resource-rich and resource-poor communities" (ibid., 44)

Another expert seminar was held on the right to communicate in Manila in 1979. The focus of this seminar was on the international dimension. There it was proposed that the right to communicate is both an individual and a social right , and that it should be included in UDHR as a fundamental human right. Moreover, it should assign duties and responsibilities for individuals, groups and nations. Also allocation of resources was again mentioned. (Hamelink 1994, 295)

In 1983 Jean d'Arcy wrote that concept of the right to communicate "is no longer in the making; it has arrived" (xxi). As proof he is referring to the UNESCO Status Report No. 94 which was published the year before. Therefore he was calling upon a time for action and practical initiatives to develop right to communicate. For the international communication, the two major contributions that had been brought forward by this time

were The Mass Media Declaration (which did not, however, make a direct reference to the right to communicate), and the MacBride Report.

4.2.4. MacBride Report

Fisher and Harms (1983) contend that only after the MacBride report was issued in 1980, did the right to communicate "emerge from the confines of academic study" and it became a serious consideration both nationally and internationally. The consensus that had been reached in the studies in the period of formulating the concept, organising activities and further initiation of projects, was that "existing formulations of communication rights and freedoms were no longer sufficient (if they ever were) to satisfy human needs and thus protect human rights". (Fisher and Harms 1983, 3)

One of the relevant chapters in the MacBride report was about democratization of communication, which also includes a discussion on the possible extension to already established instruments, what is referred to as "the right to communicate". The problem was identified as being that the already established formulations only consider the content of communication and thus concentrating on message being available for all. As Fisher and Harms (1983, 8) put it: "it is the information itself which is protected". This placed emphasis on one-way flow of information from few to many. Moreover, the MacBride Report articulates an emphasis on human rights. The Report reads as follows:

> *Freedom of speech, of the press, of information and of assembly are vital for the realization of human rights. Extension of these communication freedoms to a broader individual and collective right to communicate is an evolving principle in the democratization process.* (ibid., 265)

Further, it states that the defence of human rights is one of the most essential tasks of the media. The right to communicate was not a fully established concept at this stage and therefore the MacBride Commission talks about what the right to communicate entails for the democratization of society and point to the direction of further study on the matter. In the final report the Commission recommends:

> *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…we suggest all the implications of the right to communicate be further explored.* (ibid., 265)

Further, the report urges the study of the implications of the right to communicate of the "new era of social rights". The concept of right to communicate was not entirely agreed upon. However, an idea of what the right to communicate implies is given in the following statement:

> *Communication, nowadays, is a matter of human rights. But it is increasingly interpreted as the right to communicate, going beyond the right to receive communication or to be given information. Communications is thus seen as a democratic and balanced dialogue. The idea of dialogue, in contrast to monologue, is at heart of much contemporary thinking, which is leading towards a process of developing a new area of social rights.* (1980, 172)

Desmond Fisher (1983, 7) has explored the problems identified in the MacBride Report. Firstly he talks about the general problems in making communication freedoms universal. First problem that is identified is that a great number of the world's states do not accept the already articulated universal human rights (UDHR). Moreover, in some countries the communication freedoms are theoretical, made so by inadequate infrastructure. Further, in countries where international instruments are recognised and accepted, the freedoms should constantly be monitored against "political, commercial and economic pressures" and, additionally, they should be extended to cope with technological development. These aforementioned problems, according to Fisher, are only an illustration of a much bigger problem which has required a more radical approach. The problems identified with the existing formulations in this view are that they:

- lack philosophical basis
- are incomplete, incoherent and insufficiently integrated
- confuse communications freedoms at various levels
- do not provide a framework within which a hierarchy of communication rights, freedoms and entitlement of different degrees can be constructed
- do not take into account opportunities which new technologies offer
- do not meet the different needs of people who live in an age of information revolution

- do not state a fundamental principle from which new communications freedoms could be derived in the future (in light of possible changes in technology)

These problems were also acknowledged by the MacBride Commission. Since the MacBride Commission recommended exploration of the implications of the right to communicate, by 1983 the study had greatly intensified and the aforementioned shortcomings of the already established instruments were taken into account in the development of the right to communicate.

However, the MacBride Commission could not unanimously agree on the absolute content of the right to communicate. Fisher argues that the right to communicate thus "exists only in conceptual form" and that the report was a compromise (1983, 14). In the final Report the Commission states:

> *The concept of the right to communicate has yet to receive its final form and its full content…Once its potential applications have been explored, both UNESCO and in the numerous NGO's concerned, the international community will have to decide what intrinsic value such a concept possesses. It will be required to recognize-or not- the existence of a possible new human right, one to be added to, not substituted for, those already been declared…*(1980, 173).

According to the MacBride Commission, this approach "promises to advance democratization of communication on all levels- international, national, local and individual"(ibid.).

4.2.5. Other efforts

After the Belgrade Resolution, which confirmed the concept of right to communicate as "respect for the 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 1994, 297), there was a UNESCO General Conference in Paris in 1983. Another resolution was adopted on the right to communicate. This resolution reaffirms that none of the already existing instruments or rights should be replaced. Rather, increasing the scope of the old rights is requested with reference to the new

possibilities to dialogue and active communication offered by advancement in the media.

In 1985, a status report was prepared on the right to communicate. This report was drawn up by the UNESCO consultants. The conclusion made in the report was that during the past decade of debate, meetings, reports etc. no consensus had been reached on the right to communicate. With this bleak view, the consultants did manage to identify some key issues with reference to the right to communicate (Hamelink 1994, 297). These were:

- how to describe or define it
- how, once the aforementioned task is completed, is it to be implemented
- what is the relationship of it to some other concepts such as NWICO

Since the 1985 status report, the right to communicate had virtually vanished from the agenda of UNESCO. In its plan for 1990-1995 the right to communicate was no longer a crucial concept. It may have been mentioned in some reports, but operational action had been terminated.

However, the right to communicate remained an issue in the MacBride Round Tables for some time to come. For instance in Prague in 1990, a statement was made as follows:

> *In the era in search of greater democracy and respect for human rights, the right to communicate should be promoted as one of the fundamental principles of a democratic order. The right to communicate is, in the words of Sean MacBride, 'the very foundation of other human rights'* (Vincent, Nordenstreng, Traber 1999).

4.2.6. Criticism

During the development of the concept of right to communicate it has been subject of criticism. One of the key objections that has been raised throughout the course of evolution of the concept has been to argue that "communication is so integral a part of

human condition that it is philosophically unnecessary and perhaps wrong to describe it as a human right" (Fisher 1982, 41).

Another objection against it has been that powerful groups in society may misuse it. Hedebro has argued that

> *The right to communicate is not a concept leading toward change; it is an attempt to give groups working for liberation a feeling of being taken seriously, while in practice the right to communicate will be used to preserve the present order in the world and to stabilize it even further.* (Hedebro 1982, 68)

Fisher is among those who have looked into the opposition of the right to communicate. He points out an interesting fact that criticism against the concept has been made from different ideological backgrounds. For instance, the concept of right to communicate has been seen as connected to the NWICO and therefore Western nations have mistrusted it due to the same reason as they did the NWICO, namely the fear of government regulation over the freedom of expression. On the other hand, criticism has come from the Third World and some socialist countries on the grounds that right to communicate may be a way of justifying the continuing imbalance of flow of information. Additionally, there was a fear that Western values would prevail in the status of domination due to unrestricted importation of western technology and information. (Fisher 1982, 34)

One of the members of the MacBride Commission, S. Losev, also objected to the right to communicate on the grounds that it is not internationally accepted right and therefore it should not be discussed in such length. (Hamelink 1994, 300)

4.3. The right to communicate and international law

When debating on the right to communicate, as Fisher (1983, 14) has pointed out, an ideological division is present. The key disagreement is on whether right to communicate can be part of international public law or whether it can only be "juridically valid" under nations' own domestic laws. It has been argued that if the right to communicate were enshrined in national legislation, it would then be easier to be developed into international law. However, there are major difficulties in trying to

enshrine the right to communicate in international law. At the time of the development of the concept of the right to communicate the problems identified were (Fisher 1982, 30):

- The division of the world as antagonistic camps: divisions East-West and North-South make it difficult to have a coherent statement of international law in issues that are political. Freedom of information is classified as a highly political realm.
- The status of international forums in which individuals can challenge the national laws are not developed enough i.e. the individual can only be a subject of international law in a very limited way
- The right to communicate was not seen as a generally accepted principle

In addition to these obstacles, some practical problems could be identified such as education gap and the imbalance of communications technology between rich and poor which means that the right to communicate could never ensure making the gap smaller. Indeed, it may make it wider. However, not all agree that the right to communicate should directly mean sharing communication technology or resources. The right to communicate as an individual's right is a basic right which is more fundamental than sharing resources. Although it would not be a direct obligation, more equitable sharing of communication resources could be stressed but be left out from the actual definition of the right to communicate (ibid., 33). But let us now concentrate on the issues surrounding the right to communicate and international law.

4.3.1. Deconstructing the content of the right to communicate

Fisher (1983, 14-16) provides an account on how the concept of fundamental human right can be deconstructed in thinking about the right to communicate.

Fundamental - some rights are considered fundamental because denying them would be offending against natural justice. These rights include right to life, right to liberty etc. Some rights can be restricted under some circumstances and are therefore not considered fundamental. Freedom of speech for example falls traditionally under this category. However, Fisher argues, that right to communicate is far more basic a concept than already established communication freedoms. Moreover, if it were to be

accepted as such, it would be a fundamental human right. The distinction to be made is that right to communicate is absolute and the other freedoms (press, information, etc.) in this area would be derived from it and can be restricted under the special circumstances and internationally agreed standard.

Human - Human needs give rise to human rights. Human need is to communicate otherwise man cannot reach his full potential. Society also requires communication; communities cannot exist without communication. Hence, communication is a basic human need and freedom to communicate is a basic human right i.e. fundamental human right.

Right - the word 'right' has two meanings: a moral concept about justice and legal concept about law. In the context of right to communicate the former meaning is sought, and right to communicate is not seen as a legal provision. It is a fundamental, intrinsic value that a human withholds. Right to communicate should be expressed in the form of a law in order for it to be recognised as a fundamental human right.

4.3.2. Rights and freedoms

The distinction between rights and freedoms is essential when formulating the concept of right to communicate. The distinction between these two is essential as it determines the legal standing of a human right in both the national and international legal systems.
The concept of a right itself connotes two meanings, those of a law or justice. Right as only a law refers to the competence on the state. On the other hand, as a fundamental entitlement on the basis of being a human being, changes the understanding of the right in that if it is a fundamental right of the individual, the state cannot restrict the right under any circumstances. (Fisher 1982, 18)

Right implies "a norm which derives from the intrinsic nature of the subject (individual) and imposes on other individuals the positive obligation to respect it and provide the freedoms for its exercise" (Fisher 1983, 17). Accordingly, it is society that is responsible for securing the right.

Freedom, on the other hand, lacks "the positive and imperative connotation" of a right. An individual can be seen as able to function without it. There is no obligation of other

individuals to promote the exercise of a freedom, but they do have the obligation not to obstruct its exercise. In the context of right to communicate, Fisher contends that the right to communicate itself is a basic right under which the freedoms are placed. Freedom of information, expression etc. would not be fundamental human rights such as the right to communicate, but would be freedoms and entitlements deriving from it (ibid., 17). Right to communicate is more fundamental a concept than *freedom to communicate* (Fisher 1982, 19). Fisher says that there seems to be a general agreement, that the right to communicate should be an "umbrella concept" which includes a number of rights and freedoms (ibid.). Another way of putting it going towards definition of the right to communicate is to talk about "hierarchical approach" which is more widely supported by international jurists. Recognising two categories of human right, i.e. primary and secondary rights, would place universal right to communicate as a primary right from which secondary rights can be derived. The key difference is that the secondary rights could be limited or restricted, such as freedom of speech, as they are not considered absolute. Therefore the exercise of the universal human right would be in practice through the secondary rights. The exercise of the freedoms may also carry duties and responsibilities. Another important reason for the support for the hierarchical approach is this: a concern has been voiced about the status of the right to communicate if it were made into a statement after all the conflicting views had been solved. There is a possibility that the right to communicate might then be too "vague and generalised" that it could lack practical value. Therefore if it were adopted as such, the states could act as they wished and would not be bound in any practical way. Therefore the hierarchical approach has the benefit of providing the distinction between primary and secondary rights, which is more likely to produce a right to communicate with practical value. (ibid., 29)

One of the most obvious problems in terms of the definition of the right to communicate is the underlying ideological and political difference of opinion about what is the locus of human rights. The conflict arises from the argument whether the individual or the state would be the legal subject of the right to communicate. Generally, there is an agreement that the individual and the community are the key subjects of the right to communicate. The conflicting view is which one is the highest in order or are they equal (Fisher 1982, 24). As an example, the MacBride Report does not separate the individual's right and the right of society. In the report it is stated that "communication

is a basic individual right, as well as a collective one required by all communities and nations"(1980, 253). Fisher, on the other hand, places individual at the locus of the right to communicate and as the legal subject. He argues that individuals' right is fundamental where as societies rights "spring from it" (1982, 24).

Aldo Armando Cocca is a jurist who has contributed to the debate on right to communicate from the legal perspective. In 1983 he wrote that the key issue establishing whether freedom of information is a legal principle, and at the international level, if it is a principle of international law. According to Cocca, there was no uniform opinion that would establish freedom of information the status of a legal principle of international law. Moreover, he contended that the concept of freedom of information is not universally recognised. (1983, 27)

However, Cocca argued that the large number of UN instruments create a "universal conscience" which would convert freedom of information into a principle of international law. This statement is also supported by Tony Mendel's (2003, iii-vii) recent work. He has argued that great advances in the acceptance of freedom of information as a legal principle have been made in the past ten years: there has been a trend towards legal recognition of the freedom of expression around the globe and, significantly, in the newly democratic countries.

A point which Cocca makes with reference to the right to communicate is that "Man- par excellence- is its subject" (1983, 28). From man the right to communicate would pass on to the community and from community to human kind, which Cocca believes to be the ultimate subject of right to communicate. He contends

> *This right of man, with its predominant charge of subjectivity, allows the framing of a concept for today and tomorrow, for it is not linked to the state of technology or the changes of government.* (Cocca 1983, 31)

Cocca's view is that to clarify the concept of right to communicate it should be established where the right is vested- in the individual, in the community or in the state or somewhere else.

Another crucial point that Cocca makes is that the concept of international law itself has gone through a transformation in recent years. He is referring to what was discussed in chapter one that an individual has a legal status in international law. Moreover, since 1967, another subject in the legal sense that is emerging is Mankind or Humankind. According to Fisher (1982, 27) Cocca's idea that humankind could be at the locus of the right to communicate, would possibly solve the problem of which is highest in the order, individual or society, because it seems to accommodate for both. Therefore, the right to communicate is connected to the third generation, collective rights.

In addition to these points, the international humanitarian law is changing the scope of international law in that it involves more duties from states than it gives rights to their benefit. All these changes have occurred since the adoption of the Universal Declaration of Human Right in 1948 (ibid., 33). Cocca firmly believes that the right to communicate is "a fundamental human right which meets a universal social necessity" (ibid., 24).

Iuri Kolossov (1983) is another author who has discussed the right to communicate from the perspective of international law. Kolossov agrees with Cocca in saying that freedom of information has not developed into "a generally- recognized, operative mode of conduct". More than anything, progressive development of international positive law is in demand, specifically, with regards of mass information. (ibid., 113)

Kolossov argues that the right to communicate should include rights and obligations of not only individuals but also of the mass media. He points out that traditionally, individuals do not hold right or obligations in this field in that international law, particularly with reference to the ICCPR, which assigns right and duties to the states only. Individuals are only subject of laws of the state where they are domiciled in this matter. This leads Kolossov to conclude that "the right to communicate partakes of the nature of national law" juridically and that it is not part of the existing international law and cannot be used as a concept of international law. Kolossov argues that a more appropriate definition of right to communicate would be "the right to inform". (ibid., 114)

Another problem that has been identified about the concept of right to communicate from the point of view of international law is that the concept itself is not suitable for

legal action. Pomorski has pointed out that the concept of free flow is more suitable in this sense. Therefore, to replace the concept of freedom of information and free flow of information is complicated from the legal perspective and international recognition may be delayed. (Fisher 1982, 14)

Another disagreement is that some argue that the existing communications freedoms should be enforced and fully implemented before talking about adding to these rights and freedoms. The opposing view would be that these already existing rights and freedoms are inadequate and too narrow in scope in any case and therefore right to communicate as a fundamental human right should be promoted.

4.4. Communication theory: A shift in paradigm

One way of looking at the development towards the right to communicate is to look at the changes in terms of evolution of communication theory and research. Communication theory has evolved in many respects, but this chapter aims to introduce some aspects that are relevant and reflect the development also in connection to the right to communicate.

One of the criticisms of those who support the right to communicate and wish to expand on the already existing rights and international instruments, particularly with regards to UDHR and ICCPR, is that those instruments were drafted at a time with a narrow focus. The narrow focus was due to the concentration on quantitative measurement of communication resources rather than concentrating on the process of communication or the message itself. (Fisher 1982, 10)

Moreover, at the time when the Article 19 of the UDHR was drafted the emphasis was on the fear of overt governmental manipulation of information or propaganda and the instruments reflect this. Denis McQuail notes that nowadays there is not so much need for *close supervision* and regulation of the media, which were brought about by the concerns raised by earlier media research. McQuail states that these concerns "stemmed from the wish to assert collective control over newly developed media, to protect vulnerable individuals and to limit the power of private capital" (2000, 33).

In mass media research also, traditionally, media effects were considered to follow a linear path. Developments in the mass communication theory and research have changed this view radically.

4.4.1. Early research and dominant paradigm

The underlying assumption of the early dominant paradigm was that there is a normally functioning *good society*. The characteristics of this good society would be that it is democratic, liberal, pluralistic and orderly. Mass medias' function was judged by this model. Moreover, the media research in the development of the media in the Third World had the underlying assumption that convergence to the essentially Western model would follow. In the case of early international communication research, the model was seen to be under threat of the *alternative* model, which was totalitarian model, where the mass media were a tool of suppressing democracy. (McQuail 2000, 45)

Earlier mass communication theory also assumed an instrumental view of the media-state relations; the mass media were seen merely an instrument of the state, which would without proper restrictions function as a propaganda machine of the state. Additionally, it was simply assumed that the media could have direct influence on public opinion. This explains why in the UDHR, for example, emphasis was placed on the information itself.

The dominant paradigms framework for analysing the media was functionalist, influenced by Lasswell (1948). He was the first to express the functions of communication in society. Another influential theory was Shannon and Weaver's (1949) theory on transmission of information. The transmission model was not directly connected to the mass media, but was a way of understanding communication process nonetheless.

Since the development of these influential theories at the time, the mass media research was mainly concerned with media effects and especially the effects of mass communication. McQuail (2000, 47) refers to the "linear causal approach", which was dominant in the communication research at the time. Research concentrated on

measuring effects which seemed a relevant and practical way of going about communication research. Quantitative approach was assumed.

4.4.2. Alternative paradigm

An alternative paradigm has emerged in opposition to the early dominant paradigm. For the past fifty years it has been clear that the mass media do not have direct effects such as the dominant paradigm and the research in that framework tried to show. The transmission model has been rejected as deterministic and mechanistic (McQuail 2000, 48). Powerful media approach and the transmission model have been rejected on the basis of empirical evidence.

The alternative paradigm has a different underlying view of what society is like; the liberal - capitalist order is not accepted and ideology of pluralism is rejected. The alternative view is "idealist" even "utopian" ideology. (ibid., 49)

The alternative paradigm has been promoted internationally. The main components of the alternative paradigm, according to McQuail, are that (1) it offers a more sophisticated notion of ideology in media content, which enables researchers to *decode* the ideological messages and (2) the notion of fixed meanings in media content is rejected and is replaced by an *active audience*. (ibid., 50)

A radical departure from the transmission model of communication has been made. One aspect of this departure is reflected in the idea which is in decline, that the media can transmit neutral, objective information independent of value judgements. Moreover, the media effects theory has radically altered the view of the mass media- audience relationship in that audiences have a new role; passive role of the audience has been rejected. Greg Philo for instance points out that "media power does not exist in a vacuum, and audience reception is not an isolated encounter between individual and message" (1999, 20). Therefore, the audience is an active participant in decoding messages from the media and giving meaning to those messages. This approach has been referred to as *reception approach* which locates the "attribution and construction of meaning" with the receiver. This approach views the media messages as open and *polysemic* which means that the interpretation of the message is left to the receives in his/her context and culture. (McQuail 2000, 56)

Another aspect of the alternative paradigm is that there is a preference towards cultural theory as opposed to earlier political-economic theories. It also has meant an orientation towards qualitative research. Thus the perspective is interpretative. Moreover, the alternative paradigm has offered a non-deterministic view of media technology and messages. This has meant an important new way of thinking about the communication between the developed world and the Third World. Importantly, it allows us to think in terms of economic and cultural domination as opposed to the previous thinking where it was a matter of transferring development and democracy to the less progressed countries (ibid.)

Mowlana (1986, 211-213) has argued that the concentration in research previously has been on "communications revolution" i.e. *the spread of technology, systems innovation, and the speed and quantity of messages*. Mowlana, however, contends that the real revolution is in the sphere of *communication* as opposed to *communications*. *Communication* is rather the satisfactory human interaction than the advancement in technological innovation. *Communications* is the means and *communication* is sharing and trust. What needs to emphasised in international and human relations is the cultural dimension not necessary political, economic or technological as has been in the past. What is called upon is a reorientation communication studies which aims at directing "the machinery of communication to explore human growth and potential" (ibid., 213).

4.4.3. Four models of communication

The dominant paradigm has not been rejected totally. Rather, the competing paradigms only show that there is no "unified science of communication" (McQuail 2000, 52). Several accounts on communication have followed. McQuails account will be presented here, but for example Peters (1999) has provided an alternative.

McQuail (2000, 52-59) talks about four different models of the process of public communication which have overlapping qualities from the dominant and alternative paradigms. McQuail has provided a useful summary.

Transmission model: As mentioned before, this model is based on Lasswell's (1948) theory on communication where the sender or source of the message determines its content. Another more developed version of the transmission model was provided by

Westley and MacLean (1957). Their model had three essential features. Firstly, it emphasised that mass communicators have *selecting* role; secondly, audience interest determines the selection; and thirdly, communication does not necessarily have a certain purpose or goal. The process of communication is not, therefore, linear nor is it as deterministic such as the Lasswell model suggested, because feedback from the audience is in an important role. In this model, the mass media are neutral and open providing a societal service. It is only applicable in a free-market media system, but is a useful model in explaining some media and some functions, namely, the news media and advertising.

Ritual or expressive model: The transmission model does not adequately represent some media activities and cannot explain the diverse processes of communication mainly because communication is understood as transmission, which in turn leaves communication instrumental, one-directional and implies a cause and effect relation. Carey (1975) provided an alternative model, which embraced other dimension to the communication process such as sharing, participation, association, fellowship etc. This implies that the relationship between the sender and the receiver is not instrumental. Rather, *the pleasure of reception* plays as big a part as any useful purpose. Ritual communication may not be seen as instrumental but this does not mean that communication in this perspective does not have societal consequences; the ritual communication can function as integrating force and affect social relationships.

Publicity model: This model captures another dimension of mass communication, that the catching visual attention is one of the mass medias roles. The catching of attention on the other hand, has an economic purpose, audience revenue which in turn allows selling the attention of the audience to the advertisers. Media audience is seen as a group of spectators rather than receivers of information or participants in the process of communication. This does not imply that receivers are necessarily passive, but they are seen as morally neutral and that they do not necessarily create a meaning. The wanted effect of the media is persuasion and selling. The substance of the message itself is in a secondary role: the presentation is more important. The key features in the process of communication are seen as competitiveness and detachment/objectivity and this model particularly applies to commercial media institutions.

Reception model: This is a critical approach to the aforementioned model. Its origins are in discourse analysis, semiology and critical theory. The key feature of this model is that it challenged the tradition of communication research as empirical audience or media effects research because this tradition did not give a role for the audience as giving meaning to messages. This process is referred to as *encoding* and *decoding* of messages. Stuart Hall (1980) has formulated this model. He considers any media text as a *meaningful discourse*. The audience decodes the messages. Two conclusions follow. Firstly, communicators encode messages according to ideological or institutional purposes or what can be called giving *a preferred reading* to the media message (nowadays it may be called *spin*). Secondly, the receiver decodes the message, but may not accept the given meaning and may even read it oppositionally, depending on the receivers own outlook. This reception model brings forward several principles such as polysemic media content, existence of communities that interpret the media messages, and that the receiver is in the key role in determining the meaning of the messages. Another key issue that this model highlights that media power can be somewhat deceptive: what may seem as media power (effect) is not necessarily so if the audience determines the meaning.

The four models of communication show that any one definition of mass communication would prove incomplete. What is clear, however, is that nowadays technology provides an opportunity for communication that is moving away from one-way flow and mass way of perceiving it. Moreover, there is a trend moving away from centralization of society (McQuail 2000, 58). Communication theory has accounted for these changes. However, the dominant paradigm that was prevalent in previous times is still applicable today in the sense, that the media is believed to have a power to manipulate the masses. Moreover, it is believed that the media have a role in the organization of national and global society (ibid., 60). The call for right to communicate coincides with this belief. But what is important in this shift of paradigm is the realisation of the importance of a qualitative rather than quantitative approach in communication research.

5. INFORMATION SOCIETY AND THE RIGHT TO COMMUNICATE

At the time when d'Arcy started the debate on the need for a human right to communicate such phenomena as mobile phones, the World Wide Web (WWW) and the Internet were unknown; the technological advancement and *the technological revolution* of his time was limited to the emergence of satellites and cable. In the 1990s and after, yet another revolution is heralded, the move from a fordist to post-fordist era and what some describe an information society. Concepts such as globalisation, global economy and post-national governance became the themes in the debate in the 1990s.

5.1. Conceptions of contemporary society

5.1.1. Globalisation

Globalisation has become one of the key concepts since the 1990s. The concept has been said to encompass economic, political, cultural and social dimensions which all are affected by the ever-increasing interconnectedness of the globe and cross-border flows of information, ideas, capital etc. Particular emphasis is placed on the role that transnational and multinational corporations play in the global arena. The conventional wisdom of the globalisation theories holds that a global economy has emerged which is run by the (uncontrollable) market forces and competetiveness in the global market is a necessary condition for survival in the new global era. Of course, the driving force behind globalisation has been said to be information and communications technologies (ICTs).

Globalisation and intensification of communication through ICTs has not produced a democratic global village. For instance, the development of the global economy has not brought forward a reduction of marginalisation or deprivation. The internationalisation and transnational economic activity seem to concentrate on certain areas, which means that the global economy not truly global; the development has been uneven and asymmetrical. Economic globalisation has been limited to the "core" or the "triad" i.e.

America, Europe and Japan. Boyer and Drache (1996, 2) have pointed out this *intense triadization* in which 85% of foreign investment stays within the triad. Hence it is difficult to maintain simplistically that we live in the era of a global economy. Rather, the conventional wisdom of the globalisation theories is undermined from this perspective.

Another key tenet of the globalisation thesis is that governments are powerless in the era of global market forces. The international capital flows and deregulated financial markets render the state powerless, or so is assumed. The economy is no longer governable in the traditional sense because of the dissolving of national borders. The role reserved for the nation state in the era of globalisation is to step back and set the market forces free. In effect, political dimension of globalisation is subordinate to the global economy. Moreover, the conventional wisdom holds a deterministic view, that globalisation is inevitable. Therefore, sovereignty of the nation state did not stand a chance against forces of globalisation. However, it is difficult to maintain that the nation state is now doomed to be irrelevant and powerless. Rather, it has been a political choice made by governments to regulate for deregulation than an inevitable process of globalisation. Therefore, it has been argued that globalisation has a strong connection to neo-liberalism. Hirst and Thompson (1996) have argued that nation states cannot play the part of victims of globalisation because the nation states themselves have actively participated in shaping and determining the scope and reach of globalisation.

The changing role of the nation state, rather than its complete demise, is currently an issue that needs further examination. Certainly the nation state has been challenged, internally and externally, by supranational, transnational and subnational actors in the international arena. Jon Pierre (2000, 1-10) has also pointed out that another potent challenge for the nation state is policy networks which are not necessarily controlled by the state. However, he also argues perhaps we are encountering rather a transformation of the traditional notion of the nation state than a decline of the state. The conventional wisdom of the globalisation theories in essence underestimates the role of the nation state. The notion of globalisation fails from this perspective. When thinking about the role of the nation state it is important to keep in mind that the welfare state is inherently linked to it. Furthermore, citizenship has remained territorially based. Although forms of post-national membership have emerged, it is premature, though it may be desirable,

to talk about post-national citizenship as a meaningful concept. A further point is that the nation state has remained powerful as the guarantor of human rights and is therefore significant now and in the future.

Post-national governance approach emphasises that governing is increasingly a shared operation between a number of societal actors and power is dispersed. The multiple levels of governance include subnational, national, transnational and supranational. Additionally, formal authority is being challenged by informal authorities which are located in civil society, non-governmental organisations (NGOs) and quasi-autonomous organisations. Non-state actors have become increasingly important. However, the rise of network governance has brought about a renewed concern on questions such as political accountability and legitimacy. It is increasingly difficult to assign responsibility or accountability on any actor. In that sense the classical model of nation state seemed to have an advantage: democratic participation and representation had institutional channels and political accountability was clearly a matter that the nation state had to concern itself with. According to David Held (1995) the meaning and nature of power, authority and accountability need re-examining. Moreover, he argues that the meaning and place of democratic politics as well as the contending models of democracy need to be "rethought in relation to overlapping local, national, regional and global structures" (ibid., 21-23). Held advocates international cosmopolitan democracy, which would transcend nations and states claims and extend them to a "universal community" (ibid., 233).

5.1.2. Current issues in world communication

Globalisation has also become visible in mass communication. The aforementioned themes of globalisation theories have also dominated in the study of communication. In international communication the questions on the impact of globalisation forces on the state sovereignty have framed the debate. The issue of sovereignty became a topic already in the end of 1970s, but renewed interest in it was raised with the advent of digital technologies and the intensification of media and telecommunications conglomeration in the 1990s which was seen as the latest attack on sovereignty of the state. Communication sovereignty i.e. the states exercise of authority over flows of ideas and information inside their territory has become an issue with the dissolving

borders and the problem of trying to control these elusive borders. (Harris and Waisbord 2001, viii)

The globalisation in the media has been welcomed by some and on the other hand, been the source of critique for others. For those who believe that the effects have been positive, the new possibilities offered by cross-border technologies, i.e. that people all around the world can better and faster access to increasing amount of information, may even enhance the democracy where the new technologies enable bypassing governmental control. The new technologies therefore are seen to serve to undermine authoritarian control of information that states once enjoyed. Hence, information democracy means that individuals have access to the new technologies and vast amount of information which yields governmental controls. The Internet, in particular, is seen as the key source of horizontal communication and global networking which would enable new relationships on the local and global level. For those who view the globalisation of the media negative argue that these promises of the democratizing element are "unconvincing and alarming" (ibid., ix). The corporate control of the media and the increasing concentration of media ownership due to liberalization and deregulation hardly can have a democratizing effect. In democratic theories the media is still assigned an important role, even a duty, to provide information for the citizens so that democratic participation and governance are achieved. Therefore the analysis and critique of media performance is much dominated by this premise (ibid., xii). According to Golding and Harris (1997, 7-8) the notion of globalisation has not enabled grasping of the "bigger picture" because the social scientific perspective is lacking in the debate on communications, media and globalisation.

Issues in world communication that have emerged out of the globalisation debate have been identified by Hamelink (2002). He discusses the concern which has been raised in connection with globalisation and the effects of emerging global economy which has been expressed in recent global civil protests. At the locus is the conflict between the two opposing political agendas of globalisation, i.e.the neo-liberal and the humanitarian. In relation to world communication the key issue areas are the following from the point of view of the humanitarian agenda (ibid., 252-253).

Access. Promoting democratic participation of citizens through communication infrastructure should be the emphasis and literacy needs special attention. The concern is that people are merely seen as consumers and the access to communication infrastructure is only important in terms of participation in consumer society.

Knowledge. Knowledge is perceived as a public good and should, therefore, not be owned solely by private parties. However, on the neo-liberal agenda, knowledge is perceived as a commodity and, therefore, property rights are enforced.

Global Advertising. The humanitarian approach is against commercial exploitation of the public space and further, is concerned with the ecological implications of the consumer society and the widening gap between the rich and the poor.

Privacy. Protection of individuals' privacy is emphasised by the humanitarian approach. The growing collection of data in terms of *client profiles* for marketing purposes has raised the concern for the protection of personal information.

Intellectual Property Rights. Protecting the interests of communal property of cultural resources and the resources in the public domain against the exploitation of private companies to whose interest is to enforce protection of intellectual property rights is a key issue from the humanitarian point of view.

Trade in Culture. Protecting cultural autonomy and local public space is on the humanitarian agenda. The import and export of cultural products should be exempted from international trade law.

Concentration. Global mergers raise concern because of the fear of limiting diversity and loss of professional autonomy. The business interest for mergers is strong in order to secure a dominating position in the world market.

The Commons. Common assets such as the airwaves (or the Internet) should not be given away for the private parties. The humanitarian approach looks at these assets as part of the public property and should be protected as such.

These issues areas illustrate why a humanitarian approach should be advocated; the interests of the citizens should not be trammeled over by the corporate interests. The civil society has played a key role in the articulation of humanitarian perspective.

5.1.3. Global Civil Society

In a recent book John Keane (2003) has provided a fruitful approach to the developments in today's world and presents an idea which embraces many of the

contemporary issues such as globalisation on global governance. Keane's key idea is that global civil society is a concept which can challenge the "normative silence or confusion within much of the contemporary literature on globalisation and global governance" (2003, xi). The concept of global civil society has attracted support all around the world and has become one of the leading frameworks for expressing concern over the effects of globalisation and more precisely, its discontents; fear of terrorism, bigotry, nationalism, social injustice, hunger etc. are all present day reality and further, the unaccountable governmental and corporate powers seem to trammel the democratic ways of life. A question to be asked is whether the global civil society can help to redefine universal rights, duties and responsibilities of all peoples across borders (ibid., xiii). Moreover, what needs to be addressed is whether a global civil society can be politically and legally secured. The issue is significant as Keane points out that global civil society is a "precondition of the democratisation of the emerging global order" (ibid.). The concept of global civil society itself may be elusive, versatile and heterogeneous but this should not prevent it from being useful. It includes the non-governmental social sphere, which is becoming increasingly pronounced.

Another concept that Keane puts forward is *cosmocracy* which entails multi-level governance in a dynamic polity which falls between the Westphalian model and a unitary world government model (ibid., 98). Accounting for the diversity of actors and the multi-level governance approach is important as it is viewed increasingly that civil institutions can limit governments and governmental institutions and the emergent global civil society has the potential of playing an important role in defining what kind of future we are planning. Civil society itself is not a recent phenomenon. However, as will be discussed later on, the civil society is certainly becoming more visible in recent times as the example of WSIS will show.

5.2. Information Society

The revolution that is being heralded currently is that the quantity of information in today’s societies has lead to a shift from an industrial society to an information society. Information as the distinguishing feature of our society is the key tenet of the theories of the information society. The origins of the theories of information society are most commonly connected to the work of Daniel Bell (1973) on post-industrial society and

another important figure has been Yoneji Masuda (1990) among many writers on information society.

There are a number of different definitions of what the information society in essence is. The criteria for identifying a new type of society have included technological, economic, occupational, spatial and cultural dimensions. For instance, the technological approach emphasises the effect that new technologies, namely the ICTs, on societal change. The economic approach emphasises that information activities have an economic worth and an information society is such that most of the economic activity is in the informational sector. Occupation approach emphasises the role of the information workers; in an information society most workers are information workers. Spatial approach tells us that information networks are the distinguishing feature of an information society; the social organisation has been affected by the compression of space-time and networks are managed on a global scale. Cultural approach maintains that information has had a profound effect on people's every day lives; growth of signification in the contemporary culture is in the key role.

The information society theories usually emphasise one of these features. All of them have in common that they argue that a qualitatively new type of society has emerged from the quantitative change in the amount of information available (Webster 2002, 11-22). The normative implication of the theories of information society has been argued to be that technological progress will lead to a "qualitative improvement to human life" and that "material growth and human growth are interrelated" (Hamelink 1986, 12).

Manuel Castells wrote a seminal trilogy, *The Information Age* (1996-98) and is one of the most influential writers and authoritative commentators of our day. Castells is among those who announce the emergence of a *new economy* as well as an *information age* and ultimately a new type of society due to development of new technologies, ICTs and information networks. Castells rejects the actual concept of information society and replaces it with the concept of information age. Castells talks about *informational capitalism*, which is not restricted to time or space, as the distinguishing feature of today's society. What Castells calls *the network society* has not only emerged due to process of globalisation. Rather, the *information revolution* has collided with capitalism and the growth of networks has changed the organisation of the network society. One of

the effects of the networks has been the debureaucratisation of affairs. Moreover, he asserts that "the logic of the network is more powerful than the powers in the network" (ibid., 193). Adaptability and the speed of response to the global market are of essence. Castells is among those who take technological approach, but in addition to that, also an occupational approach as he talks about *informational labour* and how informational workers have become the key force in the society. Moreover, he talks about *informational cities*.

Castells' work is immense and gives an overall account on the dynamics of today's world. However, his view has been criticised. For instance, Webster (2002, 115-123) provides a critique. Webster does not agree that an epochal change has occurred to a new era of information age. Moreover, he argues that ultimately the technological revolution described falls to technological determinism and that the concept of informational labour is too vague. Even the definition of information remains vague, according to Webster. Furthermore, he argues that informational labour is an "overstated" in Castells' work.

Another way of approaching informatisation has been provided by Jurgen Habermas. He does not herald the emergence of a new type of society or that an information revolution has occurred. Rather, he talks about the role of information in the rise and fall of the public sphere. His approach is fruitful in that an understanding of information itself is the main goal in his work. Moreover, the content i.e. quality, rather than quantity of information is the key object of study. As Webster (2002) has pointed out, social change cannot be explained in terms of quantitative measures on the increase of information. Habermas's theory on the public sphere runs a long way back. Without going into detail (and criticism) on the development of the theory of the public sphere, it can be said that a role is given for information in democracy in the public sphere. The public opinion is formed in an open debate and therefore quality, availability and communication of information are in the key role. For today's' development, Habermas asserts that the public sphere is in decline and the integrity of information should be evaluated. Information management has become every day practice for businesses, governments and politicians. The public sphere has suffered because of professionalization of *opinion management* and commercialization. Ultimately, what is threatened is democracy. (Webster 2002, 161-201.)

5.2.1. Communication in the information society

The term information society can be viewed as unfortunate, because it emphasises ICTs rather than the human experience; too often a reductionist and technologically determinist understanding of the concept of information society is assumed. Moreover, the term information society implies *a static, non-interactive* society and lacks in social dynamism (Girard and O'Siochru 2004, 1). Communication or communicating as opposed to information embraces the dynamism and interactivity between people and communities where information implies a bureaucratic and indifferent organisation. According to Antonio Pasquali, communication is related to community connoting dialogue which produces "response, reciprocity, consensus and shared decisions" (2004, 205). Pasquali contends:

> *…hence, information categorically expresses a less perfect or balanced communicating relationship than does communication, and tends to produce more verticality than equality, more subordination than reciprocity, more competitiveness than complementarity, more imperatives than indicatives, more orders than dialogue, more propaganda than persuasions.* (ibid.)

To communicate is a relationship which implies genuine dialogue between transmitter and receiver that is balanced and equal; to inform or receive information is not a dialectic relationship similar to process of communicating. Therefore the process of communicating should be at the centre of an information society. However, the current framework of human rights provisions is based solely on information, not communication as an interactive participatory process.

It has been pointed out that the current international human rights law is lacking in certain patters for the traffic of information. Four patterns have been identified: dissemination of messages, consultation of information, registration of data and exchange of information (conversation). According to Hamelink (2004, 154-155), it is the fourth pattern that is missing from the existing catalogue of human rights provisions. The emphasis is on *transfer of messages* rather than communication as conversation.

In the field of world communication in relation to development of an information society several issues need addressing, many of which do not reach negotiation tables of the official governmental and private sector. Towards the process of The World Summit

on Information Society critical issues such as the much debated intellectual property rights is one that illustrates a major conflict of interest between the private sector and the civil society. Intellectual property protection refers to the copyright, trademark, patent etc. which the industry benefits by having a monopoly over the usage and thus it is a question of high economic value. On the other hand, in an inclusive, people-centred information society knowledge sharing is viewed to be in the public interest. There is no easy way of reconciling these two standpoints, as Girard and O'Siochru point out "there is simply no balance to be struck between the protection of intellectual property and its use and knowledge sharing" (2004, 4).

Another issue that is not as visible as the issue of intellectual property rights is the question of the media in an information society. It seems that the traditional media is often left to the margins when discussing the development of information society in which the key question is new digital technologies, namely the Internet and universal access to the Internet. The essential functions of the media are under threat increasingly no because of the state control but because of corporate control and lessening diversity among other things. However, alliances between the media industry and governments (in countries such as Russia, Thailand, UK, etc.) raise concern, but are not included as issues when building an information society. On of the key questions that should be raised in connection to information society should be public service and non-commercial media, but too often it is an excluded issue. (ibid., 5)

Growing surveillance and control of electronic space is another issue which too often absent in connection to information society (ibid.). Protection of privacy is another key issue which seems incommensurable with corporate, commercial interest to collect personal data and yet, is so crucial. The lack of will in tackling these issues, which is very clear as the example of The World Summit on Information Society will reveal, indicates that the understanding of the concept of an information society is two-fold; it can be interpreted according to one's interest, either as a question of technology i.e. technical innovation and telecommunications infrastructure accordingly to the official and corporate interest or something more substantial and meaningful i.e. public, civil society interest.

There are many ways of understanding the concept of the information society and generally the concept of information society has remained highly contested within the academia because the concept is so elusive. The concept has been described in so many ways that one may question whether it is a valid concept at all. Furthermore, the concept is used without knowledge of what is actually meant by it. It has become commonplace for politicians and businessmen to take information society as a matter of a fact without clarification what the concept entails. In the academia on the other hand, it is not assumed without criticism that a new type of society has already emerged or indeed that there has been an information revolution. Perhaps Webster's concise argument that qualitative change in a society cannot be assumed through quantitative measures i.e. that increase of information means that we live in an information society, is the most forceful. Webster preferred to talk about informatisation of life (in the fashion of Habermas) which seems appropriate. However, even though the concept of the information society is under heavy criticism by academics, it has not stopped government action plans to build a 'knowledge-based economy' and have a World Summit on Information Society.

5.3. World Summit on the Information Society (WSIS)

In 1998 in Minneapolis, the International Telecommunication Union (ITU) posed a question on holding a World Summit on the Information Society and set a consultation on the matter. In 1999, the consultation reported that there was general interest on WSIS and it was decided that ITU would take the leading role in the preparations for the Summit and that the Summit was to be under the patronage of the UN Secretary-General. In 2001, the ITU council decided on the phases of the Summit which was assigned two phases; the first phase was to be held in Geneva on 10-12.12.2003 and the second phase in Tunis on 16-18.11.2005. Resolution 56/183 of the UN General Assembly placed the UN in the leading role towards the Summit with the cooperation of many organisation and partners. Contributions were encouraged from UN bodies, other intergovernmental organisations, civil society and the private sector for both the preparatory process and the WSIS. The Summit is to be held under the high patronage of Kofi Annan, UN Secretary-General, and ITU has assumed the leading managerial role in the Executive Secretariat of the Summit.

The challenge that the WSIS was to tackle is the issue of evolving global information society. The assumption is that fundamental transformation is occurring in our society: the industrial society of the 20th century is to be replaced by the information society of the 21st century. "This dynamic process promises a fundamental change in all aspects of our lives, including knowledge dissemination, social interaction, economic and business practices, political engagement, media, education, health, leisure and entertainment" is asserted on the information webpage on WSIS. Moreover, it is stated that "we are indeed in the midst of a revolution, perhaps the greatest that humanity has experienced". The hoped outcome of the WSIS is a "clear statement of political will and a concrete plan of action for achieving the goals of the Information Society, while fully reflecting all different interests at stake". Kofi Annan said on World Telecommunications day 17.05.2003 that

> *The Summit will serve as a unique platform to galvanize the international community- working in concert with governments, private business and civil society- to narrow the 'digital divide' and lay foundations of a truly inclusive global information society.*

Digital divide clearly was one of the main themes of the WSIS and itself has become one of the most often used terms in connection to the debate on the development towards an information society. Digital divide means exclusion of groups based on access and know-how of new ICTs. It is viewed increasingly that digital divide is a significant issue, particularly in relation to the Third World. However, Pippa Norris (2000, 1-22) conceives digital divide as a multidimensional phenomenon. The aspects of the concept are *global divide* which means division in Internet access between developed and developing countries, *social divide* which means division between information rich and information poor within any country and *democratic divide* which means division between those who use digital resources to participate in public life and those who do not.

5.3.1. Communication Rights in the Information Society (CRIS)

In 1996, NGOs were invited to discuss issues surrounding communication and democratisation. The invitation came from World Association of Christian Communication (WACC). The meeting resulted in the establishment of a Platform for Cooperation and Kofi Annan announced the plan for a WSIS. The platform was

renamed to The Platform for Communication Rights and was an umbrella group of international NGOs. They articulated their strategy as working for "the right to communicate to be recognised and guaranteed as fundamental to securing human rights founded on principles of genuine participation, social justice, plurality and diversity and which reflect gender, cultural and regional perspectives", with the underlying assumption that communication can contribute to the democratisation of society. Further, on the democratisation of communication structures, institutions and processes, the aim was to "defend and deepen an open public space for debate and actions that build critical understanding of the ethics of communication, democratic policy development and equitable and effective access". (Lee 2004, 11-12)

The CRIS campaign was launched in November 2001 by the Platform for Communication Rights. CRIS campaign members include organisations such as The World Association for Christian Communication (WACC) and individuals who are interested in promoting communication rights and the right to communicate. The transparency in public communication was a key concept of the CRIS campaign. In order for sustaining democracy, and protecting the public sphere and freedom of expression, particularly in connection to the mass media, censorship imposed by who own or influence the means of public communication was to be addressed. (ibid.)

CRIS Campaign has identified the issues that need addressing in the field of communication during the WSIS process. Human rights are placed in the centre of information society. The themes that CRIS put forward are (2002, 3-4):

- *Strengthening the public domain, ensuring that information and knowledge are readily available for human development, and not locked up in private hands;*
- *Ensuring affordable access to, and effective use of, electronic networks in a development context, for instance by innovative and robust regulation and public investment;*
- *Securing and extending the global commons, for both broadcast and telecommunication, to ensure this public resource is not sold to private ends;*

- *Instituting democratic and transparent governance of the information society from local to global levels;*
- *Tackling information surveillance and censorship, government or commercial;*
- *Supporting community and people-centred media, traditional and new.*

The themes that CRIS has articulated illustrate why the right to communicate has become one of the key issues once again. The right to communicate became one of the most controversial issues in the WSIS in Geneve. Following chapter will look into the development of the right to communicate, from the people's charter in 1994 towards the draft declarations for the WSIS in Geneva.

5.4. People's right to communicate

Right to communicate as a right for all people has become the basis of world communication from the human rights perspective. The people-centred approach to world communication has been greatly advanced by Cees Hamelink who became one of the key persons in the project of formulating a draft declaration on the right to communicate in the WSIS process.

The initiatives to counter the "process of disempowerment" in today's world communication should come from people, grass-roots movements, and civil society. As Hamelink has pointed out "a new paradigm for communication that facilitates self-empowerment cannot be state-centric or market-centric" (1995, 145). Furthermore, the task is assigned to global civil society. According to Hamelink, the first step towards a global civil society initiative on world communication could be the adoption of a People's Communication Charter. This Charter could be adopted by people and movements and could be the framework in which civil society operate. The Charter should be done by a process of dialogue. A draft of a People's Charter sets objectives to "contribute to a critical understanding of the significance of communication" in everyday life of individuals and peoples, articulate "a shared position on communication from the perspective of people's interests and needs" and to representing a fundamental right to communicate. (ibid., 151-163)

Moreover, in 1994 Hamelink asserted that a multilateral convention should be formulated in order to secure a basis for "people-centred political practices" in connection to world communication (1994, 300). The proposition entailed that it should be an agreement which includes both the state and the non-state actors. Hamelink proposed four categories of binding standards that the normative component of the right to communicate would be consisting of. These categories were information rights, protection rights, collective rights and participation rights (ibid., 303-311).

5.4.1. Information Rights

This category includes the right to hold opinions, the right to freedom of expression, the right to receive, seek and information and ideas, and the right to reply as the binding norms. *The right to hold opinions* is perceived as absolute.

The right to freedom of expression is developed from being emphasised as a right from governmental interference to include a private aspect as human rights includes both; in reality private parties may be able to exercise power that may be equivalent or even go beyond the power of the state. Moreover, not only is the right to freedom of expression advanced as a negative right (from interference) but also as a positive right to free speech. A freedom to communicate as a positive freedom "implies the claim right to express opinion and the related entitlement to facilities for the exercise of this right" (ibid., 304). The importance of this positive freedom applies to situations of systematic exclusion of some voices when it is not enough to have a freedom from interference for the participation of people to be fulfilled.

The right to receive information includes the right of people to receive opinions, information and ideas. This right implies that people have the right to be properly informed in matters of public interest. Information which is independent of commercial and political interests, receiving diverse information and cultural products are included in this right. Legal measures are mentioned with reference to monopolization of communication channels as they should be secured as autonomous.

The right to seek information is related to access to information that is of public interest. This is right is already protected in most Western countries. However, it is not clear how this right operates in the case of an unwilling speaker.

The right to impart information means people's access to the public media. It is based on a recognition that variety of views are required, also those of ordinary people in the

media. Prerequisite for the realisation of this right is fair and equitable access to channels of communication.

The right to reply refers to an entitlement to reply to inaccurate or offensive expressions that the general public has disseminated through public communication.

5.4.2. Protection rights

This category of the right to communicate provides binding standards in connection to privacy, discrimination, presumption of innocence, independence and deceit which aim to protect against the misuse of public communication.

The protection of privacy is already articulated in ICCPR (Article 17) as a legally binding norm of the international human rights law. However, it was not formulated directly in conjunction with public communication and its relation to the right to seek information needs to be looked into. Moreover, there seems to be more misuse of people's privacy in public communication today and there is more risk of surveillance. Right to communicate would tackle these problems at a basic level.

Presumption of innocence is included in the right to communicate because of media coverage on criminal cases. The media should maintain that a person is innocent until a court verdict states otherwise.

Discrimination against a person on the basis of race, colour, sex, language etc. in forms of communication should be protected against. There are already existing provisions for racially discriminatory communication and advocacy of religious hatred, but for other kinds of discrimination and therefore the right to communicate would elaborate on this issue. The protection against prejudice in public communication is an important normative standard of the right to communicate.

Deceit means the protection against misleading and distorted information. It also implies that the news should be accurate and impartial. There is concern that this may cause undue restriction on freedom of expression. However, this should not be the case as it could be proven in court whether an information provider has willfully provided misleading information.

Independence refers to protection of professional independence of employees of public and private communication agencies, more particularly, that there is a protection against interference from the owners of the news media.

5.4.3. Collective rights

The right to communicate is based on the notion that human rights have individual and collective dimensions. It should be taken into consideration that the international law has developed in that not only are the nation-states its subjects but that new subjects such as individuals, peoples and humankind are emerging. As it has been argued in a previous chapter, collective rights are not as well developed, nor realised as individuals or the nation-states rights, but the recognition of the emerging collective rights is enough to argue for collective rights in connection to the right to communicate; the right to communicate would be recognised as a an individual as well as a collective right because "to put the right exclusively in either category limits unduly the rights of individuals as members of a community or the rights of the collectivity" (ibid., 309). Access to public communication should be also secured on behalf of social groups such as minorities, women etc. or whatever groups that suffer from exclusion from public communication. Not only is the right to communicate an expression of the concern for access for communities, but also the right to development which means entitlement to the development of communication infrastructures, acquiring the necessary resources, sharing of knowledge and skills, provision of equitable economic opportunities and tackling inequalities in connection to world communication politics. Particularly relevant to this category is the protection against privatisation of knowledge that is common good. Moreover, the collective dimension also is relevant to cultural identity, protecting cultural and linguistic diversity and autonomy of communities.

5.4.4. Participation rights

The citizen participation in the decision-making process is recognised as a key element of the realisation of human rights. It is also pointed out that a lot of social activity is not subject of public accountability, democratic control or giving opportunity for citizens to participate in the decision-making. Furthermore, the privatisation of information and the domination of corporate interests are reducing the public space i.e. "profitability and marketability" have become the basis on which people have access to information. (ibid., 310) The right to communicate in connection to extended participation rights refers to accessible and affordable communication facilities and services and availability of communication skills i.e. it is people's right to learn the skills that are needed in order to participate in public communication and also people would become "critical users and producers" of information. A prerequisite of the participation claim is creating the

required social and economic conditions for these claims to be realised. Another aspect of the participation claim is that individuals and groups would have the opportunity to participate in "formulation, application, monitoring and reviewing" communication policies. (ibid., 311)

5.4.5. Procedures: implementation and monitoring

An integral part of the right to communicate is the establishment of *robust* enforcement procedures; all human rights are based on the possibility of redress in the event of violation of the human rights. The right to communicate is no exception in this matter. Moreover, establishment of accountability and defence against *horizontal* abuses of the rights and freedoms should be recognised as principles of the procedures (ibid., 312). On the implementation methods it is noted that effective institutional mechanisms are the only way of securing a right to communicate. Creation of an independent committee who monitor and review and an independent tribunal who look after complaints are suggested as the minimum institutional mechanisms. (ibid.)

5.5. Draft declaration on the right to communicate

Since the announcement of the WSIS several draft declarations on the right to communicate have been formulated to be presented at the Summit itself. The idea is that an internationally authoritative statement on the right to communicate could be presented. These draft declarations follow the aforementioned categories, with some exceptions and perhaps different wordings in some instances. The draft declarations have been circulating in the civil society before any of them have been published so that the end result has received many contributions from various individuals and organisations, though they have been compiled by Cees Hamelink. A particular version, of December 2002, which received much attention and criticism (specifically from ARTICLE 19, a global campaign for free expression) will be discussed below.

The draft declaration begins from the Preamble section in which recognition for the already established principles of the international law is articulated. Other important statements recognise the right to communicate as "essential to the broader cause of defending all human rights world wide" and "a foundation of all social organization"

and therefore a fundamental human right. Following points include emphasising communication as a "fundamental and interactive process" and the importance of the role of dialogue for inclusion, cooperation and solidarity. A further elaboration on the point that none of the existing rights should be substituted by the right to communicate is made. From this framework articles of the right to communicate are put forward. They are divided into six categories which are information rights, cultural rights, protection rights, participation rights, duties and responsibilities and implementation and monitoring methods. The content of the articles follows to large extent what was already discussed in the previous chapter with the exception of adding two categories, cultural rights and duties and responsibilities. The duties and responsibilities are recognised as complementing the right to communicate. A slight difference in the implementation and monitoring methods section is that it talks about creation of an international "Communication Rights Ombudsman" rather than the establishment of a committee.

5.5.1. Critique

This particular draft declaration produced criticism specifically from ARTICLE 19 which is an anti-censorship organisation or what they call "a global campaign for free expression". Their critique (2003) gives an excellent illustration on the problematic nature on formulating a right to communicate. The sources of criticism are compiled subsequently.

ARTICLE 19 responded to the draft declaration of December 2002 initially by arguing that it "seeks to impose a number of vague, broad restrictions on the right to freedom of expression, contrary to international law". Moreover, ARTICLE 19 asserted that the declarations left open the question on what implications the right to communicate would have and what states would need to do in order to respect the right to communicate.

The most distinct problem that ARTICLE 19 argued for was the undue restrictions on freedom of expression of which they as an example the article on protection against misleading information. ARTICLE 19 asserts that if this declaration on the right to communicate were to be accepted, it would mean the same as giving governments the license to repress critical or oppositional viewpoints.

Another source of criticism is, according to ARTICLE 19, that the declaration on right to communicate would undermine the already existing and recognised rights and human rights more generally. They argue that the additions made to the existing rights are unhelpful. Yet again the issue of freedom of expression is seen as the main reason for the argument that existing provisions would be undermined and further, that the restrictions go beyond legitimacy of international law.

A further source of criticism for ARTICLE 19 is the fact that the declaration does not adequately respond to the issue of equitable access to the media and means of communication in that only one clause refers to this issue. In their view equitable access is integral to the right to communicate and therefore should be given more attention in the declaration; the issue should be articulated in more detail and also, the concept of equitable access need further examination on how it can be promoted. This leads ARTICLE 19 to conclude that the draft declaration does not elaborate on the concepts that they perceive to be at the locus of the right to communicate and furthermore, argue that "essence" of the right to communicate is not interpreted correctly.

ARTICLE 19's standpoint is that it is unnecessary to have an international statement on the right to communicate because the clarification on the meaning of the right to communicate would not be made any clearer. Further, they argue that the implementation mechanisms for the already existing system should be developed rather than setting up new mechanism such as the Ombudsman that the draft declaration proposes. Ultimately what ARTICLE 19 is saying, is that the right to communicate already exists as an umbrella term under the already established human right framework.

The critique that ARTICLE 19 provided at the process of producing the draft declarations seemed a harsh attack when it was published, not the least because it called for others NGOs not to endorse the declaration. Some of their criticisms were of course valid. However, the forceful attack seemed inappropriate particularly because ARTICLE 19 is fighting ultimately for the same cause as the drafters of declaration although their approach may be different. Clearly the critique from ARTICLE 19 served as a reminder of how difficult a task it is to formulate a right to communicate with reference to the already existing human rights law. An examination on the events and

outcomes of the first phase of the WSIS in Geneva will result in the reiteration of the same argument.

5.6. WSIS Geneva

The first phase of the WSIS took place in Geneva in December 2003. It already became apparent in the preparations before the Summit took place that communication rights would become one of the issues surrounded by controversy. In the discussions that took place in the preparatory committees it became apparent that the right to communicate would either be completely absent or that possibly a vague compromise might be achieved. Rainer Kuhlen (2003) has looked into the issue of why communication rights remain controversial even if there is a general consensus on right to communicate being a fundamental human right. Firstly he points out that the old controversy in the fashion of NWICO became an issue of WSIS (ibid., 55). This point is further supported by the critique of ARTICLE 19. Clearly, it seems to be difficult to formulate a right to communicate with reference to freedom of expression and interpreted as freedom of the press- as the NWICO debate showed, any indication of restricting or limiting freedom of expression will result in the rejection of Western principles and therefore will not gain support from certain groups.

The second point that Kuhlen makes is that the demand for a new right, like a right to communicate, brings fear of weakening of the universality of human rights. Therefore many argue against the right to communicate and advocate reinterpretation of the existing rights, such as in the case of Article 19, instead of development of a right to communicate. Moreover, the argument runs that Article 19, if it became realised to its full potential, would also accommodate for the emergent new communications technologies and there would be no need for a right to communicate (ibid., 56). It is particularly the press freedom community who support enforcement of the already existing Article 19 and argue that this would mean bringing about right to communicate without adding a new right to the human rights catalogue.

Thirdly, Kuhlen argues that the resistance of the universal right to communicate is not surprising when considering that existing power structures and property rights might be questioned by "direct democratic, participative, and knowledge-sharing behaviours

within the communicative paradigm" that the right to communicate is the representative of. (ibid., 57)

One of the longest running problems with the right to communicate since the concept first emerged has been to provide a definition of the right to communicate. It seems that certain viewpoints that the critique of ARTICLE 19 illustrates for example, will remain incommensurable. McIver, Birdsall and Rasmussen (2004) provide an account on this matter. They contend that the early efforts that were made to provide a definition on the right to communicate failed because of the attempt to include all elements of a complex right into a single statement. It is pointed out that those who drafted the original Article 19 made a conscious effort to keep the statements of rights as concise as possible. Therefore, such an approach is suggested also to right to communicate. McIver et al. contend that "conciseness is necessary if the right is to be applied universally" (ibid., 9). On the opposition to the right to communicate the authors assert that it is not only made on the grounds of ideology but also on economic grounds. They argue that the business sector in certain countries opposes "undesirable" governmental intervention in the market that the right to communicate connotes. On the other hand, Kuhlen asserts that some economists have argued that a successful, innovative economy is dependent on free communication and knowledge-sharing (2004, 57).

As has been mentioned before the right to communicate became a controversial issue in the preparatory committee meetings and in the Summit itself even the word communication was hardly mentioned. The key debate in the Summit became *bridging the digital divide,* ensuring that everyone would be connected to the Internet, i.e. to be on-line. The creation of best possible opportunities for investment and operation of the electronic market became the key issue. What followed were negotiations between the private sector and governments to tackle the aforementioned challenge.

The civil society's priorities lay elsewhere, in broadening the agenda to discussion on issues such as human rights, open access to knowledge and information, cultural diversity etc. From the perspective of the civil society the overall assessment of the official Action Plan and Declaration reveals the that no real commitment was made nor was there a political will on behalf of governments to tackle the fundamental issues such as those articulated by the civil society. It became a battle of two opposing

positions, people-centred and market-technology centred approach. Sally Burch (2004) asserts that the civil society managed finally after a long fight have some input in the visions and principles section of the official Declaration. However, when it came to following these principles through in the policy proposals of the action plan, the principles are absent. In particular, no commitment towards establishing funding, such as the African plea for a *digital solidarity fund*, for telecommunications development in the developing countries or broadening the participation aspect of the Internet governance was made. The disappointment of the lack of commitment lead the civil society to produce their own Declaration which was titled "Shaping Information Societies for Human Needs".

In the civil society declaration the fundamental issues are addressed. It has been argued that because ITU was the organiser of the Summit it is not surprising that the framework of official debate became the questions of infrastructure and a technological orientation to information society was taken, although previously ITU has referred to a right to communicate. Nevertheless, some argued that if UNESCO had acted as a co-organiser of the WSIS the outcome would have been positively different. (Girard and O'Siochru 2004, 2-3)

The issue of communication rights is perhaps one of the most illustrative when thinking about how it seemed in the WSIS that the official circle had an altogether different debate than the civil society. Even the agreement of governments on having UDHR as the basis of the Information Society took more than a year of debating and negotiating. Article 19, freedom of expression, in particular was much discussed. It was a victory to even achieve a consensus on the acceptance of the pre-existing Article 19 and it took an inclusion of a 'qualifying clause' that some national exceptions may be allowed in order for some countries to agree on the Article 19. Even the Special Rapporteur on the Right to Freedom of Opinion and Expression of the United Nations Commission on Human Rights said that the WSIS suffered from shortcomings in terms of not only the right to freedom of opinion and expression but human rights issues more generally, which remained "largely neglected" in Geneva. The Special Rapporteur said that it was not sufficient to "merely reiterate" the already established principles on human rights; he argued that the Draft Declaration should have included human rights concepts and strategy which was absent. (UN Press Release 17.12.03)

It is clear that in this kind of milieu the right to communicate did not stand a chance. The right to communicate was a part of the initial draft Declarations but it was completely absent from the final Declaration itself because a consensus on its interpretation was not reached. As Burch (2004) points out, there were at least two interpretations of what the right to communicate implies, one where it meant universal access to telecommunications (which was for example supported by the UN Secretary-General) and another where it meant new human right and other fundamental issues that CRIS had represented.

The absence of the right to communicate from the official agenda did not mean that the issue was not debated during the Summit. CRIS organised a platform of debate, The World Forum on Communication Rights, where the issues raised by the civil society continued to be discussed. Themes such as communication in relation to poverty, copyright and trade, war and, of course, human rights were addressed. Moreover, a 'Statement on Communication Rights' was produced. In this Statement, communications rights were based on principles of *Freedom, Inclusiveness, Diversity and Participation.*

One of the key points that is articulated in the Vision and Context of the Statement was that

> *Information and communication technologies, together with the political will to implement communication rights, can provide vital new opportunities for political interaction, social and economic development, and cultural sustainability.*

The experience from the first phase of the WSIS in Geneva illustrates the importance of political will, as there seemed to be none from many governments to embrace the approach of people-centred vision where the communication rights are *driven by human need, rather than commercial or political interests* as is contended in the Statement on Communication Rights.

It is not clear as of yet what the relationship between the official Declaration and the civil society Declaration will be. Wolfgang Kleinwächter (2004) argued that the WSIS might be the beginning of *a new diplomacy*, as for the first time non-governmental

actors were directly involved in the political process. The new issue is the bottom up policy development process which is also referred to as *multi-stakeholder approach*. Kleinwächter points out about the difference between the Governmental Declaration and the Civil Society Declaration: "the first one says, what could be reached by consensus today, the second one says what should be done to meet the challenges of tomorrow" (ibid.). This was particularly evident with reference to the communication rights in the WSIS in Geneva. Even with the lowest common denominator approach of governments to reach a consensus, many of the controversial issues were postponed to be resolved in Tunis in 2005. It remains to be seen what, if any, impact (as opposed to input) the civil society declaration produced. However, the efforts of the civil society seem to be gaining momentum. This may be an important development, particularly for the efforts to formulate an international Charter on Communication Rights as is called upon in the civil society statement on Communication Rights.

6. CONCLUSIONS AND DISCUSSION

The debate on the need for adding a new human right, the right to communicate, into the existing framework of human rights and international law begun at a time when technological development and more specifically the development of satellite technology raised concern that the conception of communication in the existing rights is too narrow to accommodate for the new developments. Today, the development of information and communication technologies has become ever more sophisticated and is still being developed rapidly. Some herald that an information revolution is in progress and, furthermore, some argue that a completely new type of society, an Information Society, has emerged. Clearly, it is time to revise the existing framework of information rights which was drafted at a time when ICT was not even part of people's vocabulary. The intensification of communication has had a profound effect on societies whether or not one concurs with the theories of the information society; the most fruitful approach is to talk about informatisation of life in the 21st century. The opportunities that cross-border technologies, better and faster access to increasing amount of information, which has enabled horizontal communication and global networking, are great: even a democratising effect is anticipated. However, on the other side of the coin there is a growing concern for increasing inequality, the growing gap between *have's and have not's*, increasing concentration of ownership which is seen as an obstacle to cultural diversity and other negative effects of globalisation. In response to the fear of the discontents of globalisation civil society has become a key player in advocating the humanitarian agenda.

The revival of the debate on the right to communicate has emerged not only because of the recognition of the rapid development of ICTs, but also because of a paradigm shift in the communication research. The shift of focus to a qualitative approach in media research, instead of a quantitative approach, has produced a new perspective towards mass communication in the international arena. The demise of the linear causal approach has also meant the rejection of the direct effects model. Therefore, the crucial change of emphasis has moved from thinking about revolution in terms of

communications in the quantitative sense, towards a view whereby the means of communication are not necessarily the key to human interaction, but rather communication as sharing, and as a democratic and balanced dialogue, is. Exploring human growth and potential requires a reorientation from thinking in terms of communication as opposed to communications. At the time, when Article 19 of the UDHR was drafted, the emphasis was on information itself, rather than communication and its qualities. This serves as yet another reason to revise the already established framework of information rights.

An integral part of the development of the right to communicate is international law. International law itself has developed significantly since 1945. Perhaps the key development has been that not only are states the legal subjects of international law; new legal subjects include individuals, international organisations, and most importantly in relation to the right to communicate, mankind as a whole. It can be argued that these new subjects may only have limited legal status in the procedural sense. However, even the recognition of new subjects is significant because international law is an evolving, not static, and therefore what is a limited legal status today, may in the future be enforced more strongly. Currently in international law, both the old and the new patterns, the traditional Grotian and modern Kantian models coexist. New legal institutions have been superimposed on the traditional international law. However, the states have lost their absolute power on individuals because of the expansion of the human rights paradigm.

The expansion of human rights has had profound influence on traditional international law. The human rights doctrine has raised collective needs into the agenda of the international community; the emergence of community rights and obligations has brought forward a new emphasis. It is the strengthening of human rights paradigm which has moved the international law towards the Kantian, universalist model. Human rights norms pose the greatest challenge to the national sovereignty principle. As an example of a milestone in the challenging of Westphalian sovereignty, the European Human Rights Convention established that individuals have access to the European Court of Human Rights. The traditional international law was based on the notion of sovereign states, but new developments in international law, in particular human rights law, give individuals protection against excesses of states. However, currently this

remains more a theoretical notion as the mechanisms are not developed enough for the full realisation. This should not lead us to conclude that human rights law is totally ineffective: being able to restrict states conduct is a significant development and therefore the human rights law should not be underestimated. Moreover, the basic principle of protecting human rights is a relatively new development and therefore immediate realisation should not even be expected and as such a change of emphasis is enough to tell us that significant progress is being made.

One of the most important features from the perspective of international law is the distinction between substantive rules of law and moral rules; legality must be based on legal obligation rather than a moral principle. It is evident particularly in human rights law that extra dimensions are present; those are morality, justice or dignity of humankind and so forth. Therefore, the third generation human rights in general have been contested and claimed to be more aspirational than justifiable in that they occupy the realm of morality and humanity but are not necessarily seen as a matter of international law because they do not connote legal obligations. Furthermore, currently many states do not even recognise the legal quality of some second generation rights and a discrepancy between first generation and second generation rights is visible. Clearly, from this perspective the third generation human rights are likely to remain ambiguous and contested for some time to come. Therefore, even though the setting for the development of a new human right to communicate is promising in that human right expansion, changing relationship between sovereignty and human rights and generally the evolving of international law towards Kantian approach, many obstacles remain, not only in the adoption of a right to communicate, but also in its realisation.

Major difficulties have been identified in trying to enshrine the right to communicate in international law. Even the concept of freedom of information is not universally recognised, nor is it an operative mode of conduct, although during the past ten years, there has been a global trend towards legal recognition of the right to freedom of information. Perhaps this should not leads us to conclude that for this reason a right to communicate cannot be formulated, but should be seen as a reason why progressive development is needed in terms of communication rights in international law. However, one of the main arguments against adding a new right is that the existing framework of information rights and freedoms should be enforced rather than adding a new right

which in the worst case scenario would only serve to undermine the existing human rights. The opposing argument is that even if the existing rights are enforced, they are too narrow in scope and therefore a right to communicate should be promoted as a more fundamental concept.

Renewed interest in the issues of NWICO has been articulated since the 1990s. However, the platform has changed to professional organisations, communication researchers and grassroots movements, i.e. the civil society, and the framework of debate has been increasingly globalisation. Civil society has proved as a strong promoter of the humanitarian agenda. In world communication today, issues such as access, privacy, concentration of ownership, intellectual property rights have been voiced as raising concern over corporate domination which seems to be highlighted in recent times. In the WSIS many of the fundamental issues that needed to be addressed would have been left outside the agenda if the civil society had not stepped in. The challenge that the WSIS was to tackle, which was the issue of evolving global information society, would have been reduced to bridging the digital divide in official negotiations. However, the WSIS was, or was intended at least, as a multi-stakeholder Summit and therefore the non-governmental actors were involved in the political process (though the depth of the involvement may be questioned). This allowed the civil society to express the multiple concerns which the development of information society has produced. However, to get their voice properly heard, the civil society had to produce their own Declaration as it became apparent the official Declaration would not include many of the important issues that were raised in the negotiations, preparatory committees, prior to the Summit.

The right to communicate was one of those issues that did not get recognition in the official WSIS Declaration and, furthermore, even the word communication was hardly mentioned. The draft declarations of the right to communicate were being formulated specifically for the Summit so that an internationally authoritative statement on the right to communicate could be presented. The draft declarations in progress articulated communication as a fundamental and interactive process in which the role of dialogue for inclusion, cooperation and solidarity was recognised. Furthermore, recognition that the right to communicate is essential for defending all human rights was made. An important point was made that none of the existing rights would be substituted with the

adoption of a right to communicate. The critique that followed the draft declaration of December 2002 gave a reminder of how complicated a task formulating a right to communicate is. Perhaps the most forceful criticism was that the right to communicate would pose undue restrictions on freedom of expression. Another insightful point made was that there is still no agreement on what is the essence of the right to communicate; for some it is equitable access to the media and means of communications and for others it is something more fundamental. Moreover, in another criticism it was argued that the declaration on right to communicate would undermine human rights in general. These criticisms force us to think that an arduous task is ahead if an agreement on the right to communicate is attempted.

In the WSIS the concept of communication became one of the most controversial topics and this was already evident in the preparatory committee meetings. The controversy surrounding the negotiations of the WSIS was very similar to that of the politized debate on the NWICO in the 1980s. This may be one of the reasons why in the WSIS process the concept of right to communicate was replaced by so far less politized concept of communication rights. Still, the main obstacle for the development of communications rights is the fear that freedom of expression which entails freedom of the press would be limited. This was not the only major obstacle. The fact that it was such a difficult task to even agree on the existing information rights, Article 19 of the UDHR, shows that expanding the information rights towards communication rights is what seems nearly a mission impossible. Moreover, the lack of commitment towards establishing any economic commitments such as the digital solidarity fund indicate that what is lacking is political will. The importance of being able to agree on a declaration or statement on communication rights is that even the objectives of a statement would not be realised instantaneously, it would express political will, raise awareness of the surrounding issues, represent a moral and ethical code and, perhaps most significantly, would be a declaration of approval for the development of communication rights into customary international law.

People-centred approach to communication rights emphasises that the communication rights should be based on human need rather than commercial or political interests. The role of civil society in promoting the people-centred, humanitarian approach has become ever more pronounced and the most recent expression of this was the WSIS.

What remains yet to be seen is what impact the civil society may have in the multi-stakeholder political process; the results will hopefully be seen in Tunis in 2005 in the second phase of the WSIS.

The matter of including new communication rights, or the right to communicate, in international law is in the development stage due to the aforementioned obstacles. It seems that the moral quality of the right to communicate is more commonly agreed upon; as a moral principle the right to communicate enjoys wide acceptance. Therefore, more research is needed on the legal quality of a right to communicate. It needs to be firmly established that the right to communicate is indeed a matter of international law and not merely a moral principle before adoption of a new human right can be considered. More research from the legal perspective would clarify the exact legal implications of the right to communicate in relation to the existing legal framework.

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