
**THE RIGHT OF CHILDREN TO BE PROTECTED FROM
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES**

A HUMAN RIGHT/INTERNATIONAL LAW PERSPECTIVE

Stephan Dahlgren and Roxana Stere
May 2010

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1. Introduction

The only explicit statement about narcotic and psychotropic drugs (henceforth drugs) in any core United Nations Human Rights Convention is Article 33 in the 1989 Convention on the Rights of the Child (CRC). Protection against drugs is hence unquestionably a human rights issue. Protecting children from illicit use/production/trafficking of drugs is not an option for States Parties to the CRC. It is an obligation. Since CRC is more or less universally ratified the obligation is universal.

This paper is looking at children's right to protection from drugs from an international law/human rights point of view. The paper is anchored in the most ratified of all human rights treaties – The Convention on the Rights of the Child (CRC).

The paper will be looking at the texts of relevant instrument – and not just singular Articles but the instrument as such – as well as relevant material from other legal sources, such as Treaty Monitoring Bodies and Travaux Préparatoires (Preparatory works).

The paper will take a human rights approach to the issue of children and drugs. It will start with a broad overview over international law and human rights law. It will thereafter explain about the legal requirements regarding protecting children from drugs in the context of the Convention on the Rights of the Child. On basis of facts presented the paper will end up with a section of conclusions and options for reinforcing the protection of children against drugs.

The language in CRC Article 33 is very straightforward:

CRC Article 33 states that ***“States Parties shall take all appropriate measures, including legislative, administrative, and educational measures to protect children from the illicit use of narcotic drugs and psychotropic substances, as defined in relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”***

This statement shall be read and understood alongside the overarching principle in CRC Article 3:

CRC Article 3 states that "In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."

Therefore, not only is the obligation of States Parties to protect children from drugs a human rights imperative; it is a human rights imperative that should be given *primary* consideration. The child's interest to protection from illicit use/production/trafficking of drugs shall always be the starting point for discussing drug policy. The perspective shall be child centred, as opposed to adult centred, or user centred.

2. Background

International Law

International Law is making a distinction between hard law and soft law. Hard law is legally binding upon States. Soft law is not binding. Generally accepted hard law comprises mainly United Nations Conventions/Covenants (Treaties) and Security Council Resolutions¹. Soft law comprises e.g. General Assembly resolutions and International Declarations².

¹ An enumeration of legal sources in international law can be found in Article 38 of the Statute of the International Court of Justice

² The terms used are simple accepted conventions for describing and differentiating a variety of binding and non-binding instruments. A broader distinction to include international customs etc is beyond the scope of the present paper.

The treaties are valid as per their wording under the principle *pacta sunt servanda*³. One main difference between the two is that treaties are subject to a drafting process, which requires a near consensus on all countries involved. This process can be very long. For the Convention on the Rights of the Child (CRC) the drafting process took 9 years. At the end of the drafting process the proposed instrument is submitted to the General Assembly for a vote. If this vote is successful the ratification procedure is starting. This means that UN member states will first sign the new instrument, and later confirm that they undertake to be bound to it, by ratification. The ratification process usually takes several years to complete since countries need to align their legislation before ratifying. The ratification, usually carried out by signature of Head of State (President or Prime Minister), is the final step, whereby the ratifying country has voluntarily undertaken to be legally bound by the text in the treaty. It is hard to think about a more thorough procedure. In some cases a ratifying country is making one or several reservations against specific provisions in the instrument, to which the State does not want to be bound. The legal commitment is then considered to be the instrument minus the reservation⁴.

This paper will in the following be discussing the Convention on the Rights of the Child and its Article 33. It is now worth noting that no country has expressly made a reservation against Article 33 in CRC. Afghanistan, Mauretania, Saudi Arabia, and Iran have made a general reservation against all Articles if these should come into conflict with Sharia law.

The elaborate procedure for assuming legal responsibility in hard law contrasts sharply with soft law. In the latter case the “law” can be created through an in-promptu vote in the General Assembly, or at a Global Conference. States are in these votes often not represented by Head of State, but rather by its UN Ambassador or Head of Delegation etc⁵.

³ United Nations Vienna Convention on the Law of Treaties 1969, Article 26 *Pacta sunt servanda* means “an agreement should be honoured”.

⁴ United Nations Vienna Convention on the Law of Treaties 1969, Article 21

⁵ In doctrine it has also been expressed that vague provisions in Treaties might be reduced to soft law, since they are not creating any clear obligations on the State Party.

The Convention on the Rights of the Child (CRC) is hard law, as are the Narcotics Conventions from 1961, 1971, and 1988. But only CRC is core human rights law, as will be seen in the following chapter.

Human Rights Law

International Law entails many types of Conventions, from Nuclear Safety and Biological Diversity, to International Trade and Development. Only a minority of these Conventions can be considered Human Rights Law. A litmus test for what shall and shall not be considered as human rights law is the listing done by the United Nations High Commissioner for Human Rights. At present the Commissioner is listing the following instruments as the nine core human rights instruments.⁶

- International Convention on the Elimination of All Forms of Racial Discrimination - ICERD (1965)
- International Covenant on Social, Economic, and Cultural rights – ICCPR (1966)
- International Covenant on Civil and Political rights – ICESCR (1966)
- Convention on Elimination of all forms of Discrimination Against Women – CEDAW (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – CAT (1984)
- Convention on the Rights of the Child – CRC (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – ICRMW (1990)
- International Convention for the Protection of All Persons from Enforced Disappearance – CPAED (2006)
- Convention on the Rights of People with Disabilities – CRPD (2006)

Of all above mentioned human rights instruments the Convention on the Rights of the Child (CRC) is the most widely ratified^{7 8}, meaning that it has the strongest

⁶ Listing of the Nine Core Conventions, as per OHCHR website April 2010, see <http://www2.ohchr.org/english/law/>

⁷ CRC had 193 ratifications in April 2010 – only Somalia and United States had not ratified CRC

claim of any Treaty to be considered a “universally ratified” instrument. It is also the only core human rights treaty which is explicitly addressing narcotic drugs⁹, setting out to protect children from illicit drug use and production/trafficking.

International Narcotics Legislation

The International Narcotics Legislation is mainly made up of the three UN Conventions from 1961 (Single Convention on Narcotic Drugs)¹⁰, 1971 (Convention on Psychotropic Substances), and 1988 (Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances).

- The 1961 Convention sets out that “the possession, use, trade in, distribution, import, export, manufacture and the production of drugs is exclusively limited to medical and scientific purposes”. Penal cooperation is to be established so as to ensure that drugs are only used licitly (for prescribed medical purposes).
- The 1971 Convention resembles closely the 1961 Convention, whilst establishing an international control system for Psychotropic Substances.
- The 1988 Convention reflects the response of the international community to increasing illicit cultivation, production, manufacture, and trafficking activities.

In summary the International Narcotics Legislation is drawing a line between licit (medical) and illicit (non-medical) use, and sets out measures for prevention of illicit use, including penal measures. The preamble to the 1961 Convention is stating that the parties to the Convention are “Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind”.

⁸ Ratification numbers of the Nine Core Conventions, see:
<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

⁹ CRC Article 33

¹⁰ As amended 1972

3. Children's Rights

The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly 20 November 1989¹¹ and entered into force 2 September 1990. CRC is the first international instrument to explicitly recognize children as social actors and active holders of their own rights. CRC somewhat mirrors the broader Human Rights instruments already existing (The 1966 Covenants and the Womens Rights Convention, CEDAW) in that it comprises a general rights catalogue for its clients. However, the purpose of the CRC was not to affirm that children have the same rights as adults. The purpose was to legislate on rights for children on basis of the special needs for children, and put these together in one instrument. The section on special protection for children is one of the child centered advancements made in CRC.

The Committee on the Rights of the Child

The same solution for monitoring adherence has been applied for CRC as for other human rights treaties; the setting up of a Treaty Monitoring Body. Such a body is foreseen in CRC Art. 43, which stipulates the establishment of "the Committee on the Rights of the Child". The Committee was set up in 1991, and comprises now 18 international experts on children's rights, elected every four years. The Committee is examining progress made by States Parties, and provides States Parties with advice on how to interpret and apply the Treaty.

The Committee calls all States Parties to report in writing (State Party Report) on progress on implementation of CRC on a periodical basis, every five years. Following the reception of the State Party Report and a hearing the Committee issues a written conclusion ("Concluding Observations"), where positive and negative findings are summed up and recommendations are issued.

¹¹ UNGA Res A/RES/44/25

The Committee is yearly issuing written reports on general thematic findings (“General Comments” and “General Discussions”), where it seeks to synthesise findings as per thematic areas.

The explanatory statements from a Treaty Monitoring Body carry legal weight, contrary to statements from e.g. UN Agencies or NGO's. The Treaty Monitoring Body is building up jurisprudence for the concerned Treaty¹².

The Structure of CRC – as per the Reporting Guidelines from the Committee on the Rights of the Child

The text of CRC does not contain any headings, other than “Part 1“ and “Part 2“. Literature on CRC has attempted to group the provisions in order to provide an easier overview, but these attempts have been inconsistent¹³. Instead the most authoritative attempt to explain the Convention has been made by the Committee on the Rights of the Child.

The Committees Reporting Guidelines to States Parties is dividing the rights in CRC into different groupings:

- Civic Rights and Freedoms (Name and Nationality, Preservation of Identity, Freedom of Expression etc)
- Family Environment and Care (Parental guidance, Family reunification, Adoption etc)
- Basic Health and Welfare (Right to Health and Health Service, Social Services etc)
- Education, Leisure and Cultural Activities (Right to Education etc)
- **Special Protection Measures** (Children in Armed Conflict, Children in Conflict with the Justice System, Trafficked or Abducted Children, Sexually Exploited and Abused Children, Economically Exploited Children including Child Labourers,

¹² The Treaty Monitoring Body has a mandate to clarify the law, but not to invent new law.

¹³ Lawrence J. Leblanc “The Convention on the Rights of the Child”, University of Nebraska Press (1995)

Children and Drugs, Refugee Children, Recovery and Reintegration, Indigenous Children, Street Children)

What does it mean when an issue is a special protection measure?

CRC has 54 Articles. Of these 11 are Special Protection Articles, covering children in especially difficult situations where special protection measures are called for.¹⁴ Children and drugs are one of those 11 situations (see above for the others).

Special protection Articles are targeting children in especially threatening situations (exploitation, war, danger, prison, marginalisation etc). Overall the ambition shall be to eradicate these situations. Children shall not be recruited into armed forces. Children shall not be involved in pornography. Children shall not be illicitly using drugs, or involved with production and trafficking thereof. Prevention is the frontline for child protection¹⁵.

Looking at the cross section of special protection provisions in CRC it can generally be concluded that the protection issue has importance in itself. The right to protection from drugs is not a sub-category to the rights to life, health or education etc. Protection from drugs could and should indeed be discussed in relation to other issues in order to ensure holistic solutions¹⁶. But at the end of the day the call for special protection of children requires the creation of enabling and protective environments for children, which eliminates the threats, depicted in the special protection Articles¹⁷. When discussing protection provisions such as child pornography, or children in armed forces

¹⁴ Special Protection Articles defined as per Guidelines for States Parties Reporting to the Committee on the Rights of the Child <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm#a2>

¹⁵ UNICEF 2009 Child Protection Strategy states in Para. 3 that “Successful child protection begins with prevention.” Para. 2 states that the approach shall be human rights based.

¹⁶ UNICEF's Implementation Handbook on the Convention on the Rights of the Child (2002) is outlining the following other CRC Articles to be key when addressing Article 33: The four principles, Article 17 (mass media), Article 19 (protection from maltreatment by parents and other carers, Article 24 (health and health services), Article 29 (education to prepare the child for a responsible life in society), Article 32 (protection from hazardous and exploitative work), Article 37 (protection for children deprived of liberty), Article 39 (rehabilitative care).

¹⁷ UNICEF 2009 Child Protection Strategy, Chapter 2: “Securing the protective environment”

there should be no leeway from the very clear protection goal. The main objective should not be to accept the situation and strive to make child pornography/armed forces more child friendly. The objective shall be zero prevalence of the situation. Policies, legislation, law enforcement, and services shall follow suit. Very active prevention measures are called for in child protection.

Principles of CRC

One of the first things the Committee on the Rights of the Child did was to elevate four of the provisions of the CRC as being more than just provisions. They were being declared to be “principles”. This was later manifested in the Reporting Guidelines for States Parties. The four principles are:

- Non-Discrimination (Art. 2);
- The Best Interest of the Child (Art. 3);
- Right to Life (Art. 6), and
- Participation (Art. 12)

Implementation of any of the substantial provisions of the Convention (Health, Education, Protection from Sexual Exploitation, Drugs etc) shall be permeated by these principles.

For understanding the child's right to protection in a broader context one of these principles has a particular far reaching effect: The Best Interest Principle.

The Best Interest of the Child

Even without the elevation, by the Committee, of Article 3 of the CRC to a principle, it is clear when reading this provision that it has the character of a portal paragraph in CRC.

Article 3 comprises a general clause, namely that “...in all actions concerning children, whether undertaken by public or private social welfare institution, court of law, administrative authorities, or legislative bodies, the best interest of the child shall be a primary consideration”.

The Committee on the Rights of the Child has consistently been raising the issue of the best interest of the child with reporting States Parties. This has concerned general issues¹⁸, methodological issues¹⁹, integration²⁰, budgetary allocation, and calls for legislation²¹. In short: The best interest principle shall be considered across the board in decision making.

Whenever the society is deciding on legislation, or other policy the best interest of the child shall be considered, and not only on an equal footing with other interest, but it shall be a primary consideration. In its Reporting Guidelines, and in examination of States Parties Reports the Committee on the Rights of the Child has emphasized that consideration of the best interest of the child should be built in to national plans and policy for children and into the workings of Parliament and Government, nationally and locally. As such the best interest principle compels a child centred approach²².

The best interest of the child may not prevail in all situations²³, but it requires strong arguments to the contrary to topple its “primary” status; the freedom of speech or information is a strong and legitimate civic interest, and might prevail in most situations unless there is a strong child interest at hand, such as child pornography. An assumed right to take illegal drugs as a matter of self expression or privacy would by comparison have almost zero civic interest, and would lose in a contest with any child rights provision.

¹⁸ “the best interest of the child must be a guiding principle in application of the Convention” - Concluding Observations for Mexico 1994

¹⁹ “value of adopting a comprehensive approach to the implementation of the rights of the child which is both effective and consistent with the provisions and..particularly the best interest principle..” - Concluding Observations for France

²⁰ “the Committee welcomes..list of issues concerning implementation of best interest principle and encourages the State Party to continue to integrate the principle into all legislative and administrative practices.. – Concluding Observations for FYROM

²¹ A multitude of countries have received this rebuke regarding budget and legislation, e.g. Sweden and Germany.

²² See further examples on the best interest principles in Annex 1

²³ The wording in Article 3 is “a primary consideration”, which was a change from an earlier draft which suggested “a paramount consideration” (the latter wording obviously stronger than the former)

Article 33 in the Convention on the Rights of the Child (CRC) – Protecting children from drugs

The Article stipulates that “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

In short the Article is calling for comprehensive measures to protect the children from use, production, or trafficking. It refers back to existing UN instruments on drugs.

A close reading of Article 33 gives at hand the following:

1. **Article 33 is designed for one specific topic (drugs), and written in a very clear language.** Overall, the clarity of Article 33 indicate that there was unity among participating states-drafters that children must be protected against drugs, and also agreement on the caliber of protection to be offered.
2. The Article is in its first part **concerned with “illicit use”**. It is here to be noted that the Article is not talking about “risk usage”/“problematic usage”/“abuse”, or any other qualitative term. For the right to protection it is sufficient that the use is *illicit*²⁴. By this wording one or more times use qualifies as illicit use, and is thus relevant for the protection offered by the first part of this Article²⁵.
3. The Article is in its second part concerned with **usage of children in illicit production and trafficking of drugs**. I.e. licit production does not fall under this Article. At its 87th session in 1999 the General Conference of the International Labour Organisation adopted the Worst Forms of Child Labour Convention (no

²⁴ The Preparatory Works to CRC (“Legislative History on the Convention on the Rights of the Child” p.709-711, published by Office for United Nations High Commissioner for Human Rights), shows that in the drafting process it was discussed to use the term “abuse”, but in the end “illicit use” was being used, as advised by UN Narcotic Drugs Division. Also WHO are in the Preparatory Works commenting that they are concerned with “illegal use, as per the UN Conventions on Drugs”.

²⁵ It is therefore a drifting on the wording when the Committee on the Rights of the Child Guidelines for States Parties Reports talks about “abuse”, as this is a qualitative term.

182). Among the worst forms of child labour is included the involvement of children in illicit activities for production and trafficking of drugs.

4. The Article requires the State Party to “take all appropriate measures”. This means that more than one measure is foreseen. **A comprehensive multi-sectoral effort is called for.** An important issue here is where a multi-sectoral effort is leading to? Having several players involved, of which some are undermining the child’s right to protection against drugs, does not make for either “protecting children“, or “taking appropriate measures”. A serious multi-sectoral effort is only possible if underpinned by an articulated framework (policy), which is signalling the intention and ambition of the State Party. This ambition has to be in line with Article 33.
5. Application of Article 33 shall also be permeated by the key principle in the above mentioned Article 3 “The best interest of the child”. The primacy of children’s interests means that **general drug policy making shall be child centred.** Authorities shall primarily ask the question “how will this impact on children’s right to protection from drugs“.
6. The wording of Article 33 allows for a scope of protection that **also covers the situation where the drug user is not the child, but e.g. his/her parent**²⁶. States Parties should strongly prevent that such situations emerge.

²⁶ UNICEF’s Implementation Handbook for the CRC (2002) is noting that “Parents dependent on drugs may have babies with consequent physical or intellectual disabilities, or have babies born with a drug addiction (p.498). In this respect the CRC provides that “the child by reason of his physical or mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth“. Drug abuse by parents or other family members may also result in children being neglected or harmed. The Committee on the Rights of the Child have in their Concluding Observations on Swedens fourth State Party Report (2009) stated that they are concerned about the big quantity of children who are suffering the consequences of drug usage among their parents (para. 48).

CRC Articles affiliated to Article 33 – Holistic rights context for protecting children against drugs²⁷

The clustering of relevant Articles for ensuring comprehensive and well targeted policy response to a human rights issue is a well established practice. The UNICEF Implementation Handbook for the Convention on the Rights of the Child is indicating the following Articles to be of particular interest as supportive framework to Article 33 (besides the four principles, which shall always be considered):

- Article 17: Mass media
- Article 19: Protection from maltreatment by parents or other caregivers
- Article 24: Health and health services
- Article 29: Education to prepare children for a responsible life in a free society
- Article 32: Protection from hazardous and exploitative work
- Article 37: Protection for children deprived of liberty
- Article 39: Rehabilitative care

4. Conclusions

- **Article 33: The scope of protection I – Strict criteria: “*illicit use*” by children**

CRC Article 33 obliges States Parties to address “*illicit use*” of drugs (a quantitative approach). This is a sharp wording, which allows more extensive protection for children, than if the wording would have been “*abuse*” or “*problematic use*” (a qualitative approach). An approach which only seeks to address “problematic drug use” seems not to adhere to the protection level that Article 33 sets out, and thereby it is going below the minimum standards in CRC. By analogy: Can one be concerned with only “problematic child pornography” or

²⁷ Selection of Articles as per UNICEF Implementation Handbook for CRC (2002), p. 453

“problematic child trafficking“ etc? The answer must be no. States Parties must create an enabling environment for protecting children from illicitly using drugs. For this to happen the most conducive policy goal is to ensure a drug free society.

- **Article 33: The scope of protection II – Production/Trafficking by children**

The second part of Article 33 seeks to prevent and protect children from getting involved in the worst form of exploitative child labour (drug production and trafficking), as per ILO's 1999 Convention. With ILO's classification it is obvious that this is among the most pressing needs for protection for children, and thereby preventive measures must address perpetrators both in the production and in the consumer end.

- **Special protection: Drug protection a value in itself**

The fact that Article 33 is one of the special protection articles in the CRC means that it represents a *value* that shall be upheld. The child shall be protected from drugs. This can be compared to right not to be subject to discrimination. Policy making that is not embracing this value is not consistent with CRC.

- **The best interest of the child calls for a child centred drug policy – not a user centred drug policy (Article 3)**

The best interest principle has far reaching implications since it goes beyond the child-only realm. The best interest of the child shall be a primary consideration in all policy making that affects children, even in areas which at first might seem to have nothing to do with children. In the field of drugs policy the question “how does this affect children’s right to protection from drugs” shall be mainstreamed. It shall be the starting point for all drug related discussions. Before stipulating e.g. that “Health is the priority for drug policy” decision makers shall ask themselves: Is this the best way to ensure that children are protected against illicit use/production/trafficking of drugs? If the answer is no the policy has to be re-thought.

- **Prevention – The child centred policy cornerstone**

UNICEF's Child Protection Strategy 2009 sets prevention as the first priority for child protection. This analysis seems correct from a child rights point of view.

Prevention shall be the first priority in drug policy. Society shall make it difficult to illicitly use drugs, and work to ensure an attitude of non-acceptance of drug taking. It is difficult to see how a first priority of health or harm reduction can meet the requirements for protection as set out in Article 33. Health has an important role to play in drug policy. But the starting point in a child centred policy must be prevention.

- **The issue of “victim“ from a child rights point of view**

In unsuccessful circumstances a child right is either “not met“ or “violated“. If the right is violated there will be a victim (the child) and a perpetrator (the drug seller or the drug user). It is important to offer support to the victim, and to recognise his or her status as a victim, and treat him/her accordingly. (Much has been learnt about this as concerns child trafficking²⁸). It is also important to identify the perpetrator. In the context of human rights it must be considered that the recreational user is a perpetrator, whom is violating all aspects of Article 33. The only possible user-victim should be clinical addicts. The child whom has to endure a parent using drugs is a victim. A child coerced or tricked into producing or trafficking drugs is also a victim. To hang the victim label on those undermining Article 33 is to disrespect the child and his/her right to protection.

- **Article 17: Mass media**

Freedom of speech is a value of such importance that it can challenge the best interest of the child. Media has a valid claim to be free. Society has historically gained from free media. Nonetheless, media has an important role to play in child protection. The print and news media has a value in itself for making information available and promoting discussion about any topic, including

²⁸ As manifested in the United Nations Palermo Protocol (2000)

(controversial) topics such as legalisation of drugs. This role does not apply with equal importance for entertainment such as films, entertainment TV programmes, or advertising. It has therefore been disappointing to see how drug use has been “normalised” in recent years in films and TV programmes, and glamourised in advertising²⁹. Guidelines or at least a reaction by national authorities is called for in the entertainment area. However, the ultimate reactee should not be the state but parents and individuals in society.

- **Article 19: Parental and caregivers responsibility**

This is a very central child rights issue, as it affects the most basic security for the child. Manuals have been written by e.g. UNODC³⁰ about how parents should act if their child is taking drugs. Much less has been said about where the child should turn if the unthinkable happens; the parent takes drugs. The protection of the child in this context deserves very strong consideration and preparations. What has been said above about victimisation is particularly important.

- **Article 24: Health and health services**

From a human rights point of view even a society that good-faithedly works to be drug free is likely to have needs for treatment, and should respond to these. However, it deserves again to be underlined, in context of what has been said about the first priority for drug policy and victimisation above, that a policy that puts reactive health before prevention seems to be user centred and out of step with Article 33.

- **Article 29: Education to prepare children for a responsible life**

Education is central in order to allow the child to develop and also to understand his/her rights, as well as being able to meaningfully participate³¹ in decisions regarding his/her situation. In line with what has been said above regarding

²⁹ e.g. Herbalifes usage of the Hemp plant in advertisement

³⁰ UNODC “Family skills training in drug abuse prevention” (2009)

³¹ CRC Article 12

Article 33 and Special Protection it is important for the school to equip the child with knowledge and values about drugs. A child without values in this regard is more likely to infringe on another child's right to protection against drugs.

- **Article 32: Protection from hazardous and exploitative work**

The 1999 ILO Convention on the Worst Forms of Child Labour was a timely follow up to CRC, and allows a further legal guidance and imperative to eradicate children's involvement in production and trafficking of drugs. It deserves to again be underlined that this is a child rights violation, and some of the key facilitators are the recreational drug users.

- **Article 37: Juvenile justice**

Article 37 in CRC is further underpinned by more detailed international legislation on juvenile justice in the Beijing Rules and the Riyadh Guidelines. The basic premise is that even though a child can be a perpetrator all efforts shall be made to divert him/her away from institutional sentences, and if this is not possible the sentence shall be for the shortest possible time and in a child/youth facility. This applies for drug crimes as well as for other crimes.

- **Article 39: Rehabilitative care**

See comment above regarding Article 24.

- **Willingness of the international community to offer protection against drugs for children 1989-2010**

Since the adoption of CRC 1989, Article 33 has been one of the most ignored Articles, and a meaningful debate on the rights aspect of protection against drugs has been stifled. It is time to end this inertia and put Article 33 (alongside Article 3) in the centre for drug policy making and advice at international as well as on national level.

5. Options for some key stakeholders

- **Committee on the Rights of the Child**

1. The Committee has weakened the protection offered to children in Article 33 by exchanging the stricter wording “illicit use“ with the looser expression “abuse“ in their Guidelines for States Parties Reporting. The Guidelines could be corrected to reflect the legal protection actually offered by Article 33.
2. As has been said in the text above it is understood that the Committee on the Rights of the Child is monitoring a very broad instrument, and not everything can be done at one time. However, after 18 years of yearly thematic reports from the Committee it is now high time for such a report with regard to children’s protection from drugs. Such a discussion could take its starting point in e.g. the ESPAD studies.
3. A quick scan of States Parties Reports and Concluding Observations indicate that the States reporting detail is waning and the Committees Observations are very general. More pointed observations, in the mode of INCB, would be of use for guiding States Parties on the protection of children.

- **International Narcotics Control Board (INCB)**

1. INCB could in their Annual Reports reflect the new paradigm for drugs protection that has been introduced with the Convention on the Rights of the Child. CRC, as a more recent instrument than the 1961, 71, and 88 Narcotics Conventions, and with higher ratification figures, and as a *lex specialis* for children, should strongly influence how the Narcotics Conventions are to be understood.

- **United Nations Office on Drugs and Crime (UNODC)**

1. UNODC could reflect on their most recent “health first” principle for drugs policy in the light of children’s rights and the call for prevention as a priority (see above)

- **UNICEF**

1. In the wake of the ratification success with the CRC UNICEF adopted a child protection policy in 1996. A Child Protection section was set up at Head Quarters level. Dedicated sub policies were adopted to thematic special protection areas as per CRC, but not for drugs. It is noted that not everything can be done at once. However, also 14 years after the 1996 Child Protection Policy UNICEF does not have a dedicated Head Quarters Officer on Protection of Children against Illicit Drug Use, Production, and Trafficking. UNICEF could appoint such an officer to lead on a child rights approach towards drugs.
2. UNICEF still has no dedicated policy on Article 33, whilst all other special protection areas are covered with position papers since more than 10 years. UNICEF could develop and adopt a dedicated position paper for drugs.
3. UNICEF’s overall Protection Policy from 2009 does not mention children and drugs. UNICEF could correct this omission in the next version of this paper.

