



# **The Protection of Children from Illicit Drugs – A Minimum Human Rights Standard**

**A Child-Centered vs. a User-Centered Drug Policy**

**Stephan Dahlgren & Roxana Stere**



Fri Förlag in cooperation with World Federation Against Drugs and  
the Swedish Society for Sobriety and Social Upbringing

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## The Authors

**Stephan Dahlgren** is a Swedish lawyer who has been working for international organizations on human rights, children's rights, and home affairs since 1994. He worked with UNICEF from 1994 to 2000 in New York, Kathmandu, and Zambia. He was the Head of Child Protection for UNICEF Zambia, where he planned and implemented the national programme on community based responses to children who had lost their parents due to AIDS.

**Roxana Stere** is a Romanian PhD student in political science at the SNSPA University in Bucharest. Obtained a Masters degree in political PR at the same University. She currently works on the production of TV programmes for children at Fast Productions SRL in Bucharest.

Spellings of words may vary because quotations are taken directly from their respective sources. Spelling throughout the text otherwise is in the style of American English.

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# Foreword

This book is a major landmark in human rights and international drug policy. Authors Roxana Stere and Stephan Dahlgren examine the universal human rights objective of protecting children from drug use, production, and trafficking as stipulated by the UN Convention on the Rights of the Child (CRC), the only core human rights treaty that specifically deals with the issue of illicit drugs. Following a detailed legal analysis, the authors conclude that in order to conform to the minimum standard set out in CRC Article 33, States Parties must adopt national drug policies directly promoting “a drug-free society”, in order to create the protective environment for children that CRC prescribes. Drug policies have to be child-centered and focused on achieving this goal.

The authors also examine how key UN agencies have failed to support CRC Article 33, documenting inadequate and disappointing results in recent years. Several UN agencies have departed from the goal of protecting children from drug use, production and trafficking. Instead of promoting the minimum standard contained in CRC Article 33, these UN entities have undermined it. Their policies explicitly support the decriminalization of drug use, even when it exposes children to what the International Labour Organization Convention 182 calls “the worst forms of child labour.” They reject child-centered policies that ensure that children do not get in contact with drugs. These policies instead depict drug users of all ages, including children, as victims whose drug use must be protected, under the extra-legal concept of “harm reduction.”

To understand the importance of this book

you must recognize the enormity and the newness of the threat of drug abuse in the world today. The modern drug abuse epidemic is rooted in the cultural changes that have swept the world beginning in the mid 1960s. Since then, for the first time, entire populations – especially children and adolescents – have been exposed to a large and still growing list of powerful drugs of abuse. These drugs are now commonly consumed by highly potent routes of administration (snorting, smoking, and injecting). The global drug epidemic is fueled by changes in the world culture that have encouraged wider latitude of individual choices in behavior, by increased globalization of drug trafficking, and by increased tolerance of drug use. The 200 million people in the world now estimated to use illegal drugs each year are but a faint hint of the potential for the use of these powerful drugs. The challenge of drug policy today is to find cost-effective strategies that are consistent with existing laws and values to limit the nonmedical use of drugs, and thus the harm that drug use causes. The search for new and improved drug prevention and treatment strategies is one of the great challenges of the 21st century.

To think clearly about choices in drug policy, we need a historical perspective on the events that have shaped contemporary philosophies about what to do in the face of dramatic increases in drug use. The two poles of global drug policy are clearly articulated in the strikingly different works of American sociologist Alfred Lindesmith and Swedish psychiatrist Nils Bejerot.

Alfred Lindesmith sought to separate the

criminal justice system from drug policy by “medicalizing” drug use. He advocated the adoption of the then-popular “British System” for treating heroin addiction by having physicians “prescribe” heroin and other abused drugs to addicts. This approach was enthusiastically implemented in Sweden when the country was hit by an unprecedented epidemic of intravenous amphetamine and heroin use.

Following Lindesmith’s vision, from 1965-1967, Swedish physicians prescribed drugs to addicts with the twin goals of gradually weaning them off the drugs and separating them from traffickers who would introduce them to other drugs and who exploited their dependence. Nils Bejerot, then working for the Stockholm police, carefully observed the results of this “harm reduction” approach to drug use: Swedish addicts did not stop using drugs when given to them by physicians. Rather, the addicts kept using the drugs at even higher doses. In addition, they spread their addiction by selling their prescribed drugs to others in the community. This well-meaning approach to drug use created an entirely new and far larger source of drugs in Stockholm, increasing the addicted population.

Bejerot spent two decades overcoming the determined resistance to the clear, easily understood reality that resulted from the British System advocated by Lindesmith. Based on this experience, Bejerot championed drug-free treatment linked to strong law enforcement against both drug traffickers and drug users. He found that when drug addicts were confronted with prison as an alternative to treatment, most of them stopped using drugs and that the force of the criminal law was essential to getting, and keeping, many addicts in substance abuse treatment.

During this time Sweden had a vital alcohol temperance movement, tracing its roots back to the last decades of the 19th century, a movement many Swedes identified with that of the labor union movement with which it was

paired. The alcohol temperance movement joined forces with the growing number of Swedes looking for a better drug policy. The new drug policy adopted in Sweden held individuals responsible for their drug use with increased enforcement of drug laws coupled with modest punishments for small crimes related to drug use and possession. Swedish law placed a strong focus on increasing drug abuse treatment. As a result of this drug policy evolution, it became un-Swedish to use drugs. In the heart of Sweden, the world’s ultimate liberal welfare state, sprang up the modern alternative to “harm reduction.” Today Sweden has one of the lowest prevalence rates of drug use, including among youth, in the developed world.

All “harm reduction” ideas, inspired by Alfred Lindesmith, are characterized by tolerating nonmedical drug use while trying to mitigate some of the negative consequences of that drug use. These policies reject the role of the criminal justice system in drug treatment and prevention. The new balanced and restrictive drug policies that contrast with “harm reduction” are built on the foundation of keeping nonmedical drug use and sales illegal and on promoting the drug-free standard. These new drug policies are based on the ideas of Nils Bejerot.

The internationally well-respected 12-step fellowships of Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) have concluded based on decades of experience that “cutting down” drug use is a futile goal for addicted people. Only sustained abstinence provides stability for the addict. Abstinence includes all nonmedical drug use including alcohol, not just abstaining from a single primary drug of abuse. In other words, an alcoholic needs to stop using marijuana and a heroin addict needs to stop drinking to be in recovery. The new goal of treatment is “recovery” which requires abstinence from alcohol and other drug use and meaningful character development. Recovery goes even further than

abstinence to the fulfillment of higher goals of healthy participation in family and in community life.

This groundbreaking book, *The Protection of Children from Illicit Drugs – A Minimum Human Rights Standard A Child-Centered vs. a User-Centered Drug Policy*, takes on this life-and-death drug policy battle in the context of the United Nations' conventions by focusing on children, the most vulnerable segment of the population at the most common age of onset of addiction. The serious and often long-term negative physical and mental health effects of participation in drug use, production, and trafficking by children are vast. These negative effects extend beyond their own drug use. Children are first uniquely vulnerable to the devastating effects of drug use by their parents and other caregivers, including neglect and abuse. Modern brain research has confirmed the special vulnerability of the child's brain to drug use which is commonly associated with prolonged, often lifelong, drug use and to negative effects on learning, education and employment. Article 33 of the CRC is a clarion call to the international community to rally around the goal of protecting children from drugs, including keeping them drug-free, as a vital, central human right.

CRC Article 33 responds to this four-decade old drug policy battle. It has its roots in the rights of the child and in the human rights that are the heart of the United Nations. The rights of children to be protected from drugs as exemplified in CRC Article 33 is today being largely ignored in the drug policy debate

inspired by the call for "harm reduction", which supports and tolerates continued drug use while seeking to mitigate one or another of the myriad of ill effects of drug use.

Stephan Dahlgren and Roxana Stere are ardent supporters of rule of law. They see the creation and the existence of the United Nations as an act of enlightenment in human history. They are alarmed by the failure today of several UN agencies to meet a minimum human rights standard for children. Their alarm has been the motivating factor for this book. Dahlgren and Stere provide clear and much-needed direction for the tremendous potential effect of non-governmental organizations in the current policy debate. The foundation of this new direction is in the noble aspirations of the United Nations and other international entities that relate to drug control and human rights. They insist, based on the law, that in any drug policy discussion, children's rights to be protected from drug use, production, and trafficking must be the first priority.

I am honored to play a small part in the promotion of this book.

*Robert L. DuPont, M.D.*

President, Institute for Behavior and Health, Inc. (1978-present)

Founding Director, National Institute on Drug Abuse (1973-1978)

Former U.S. White House Drug Chief (1973–1978)



# Introduction

The recreational use of narcotic drugs and psychotropic substances is a matter on which all of us have opinions based on our cultural, social and/or moral background. Often, illicit drug consumption is perceived as a matter of personal choice over one's own body or life. But contrary to piercing or tattooing, which are exclusively the subject of a person's privacy/autonomy, illicit drug consumption causes noteworthy harm to drug users and significant harm to those around them. Drug use generates medical, social, economical, and security related problems, to name just a few of the consequences of this phenomenon. It is for these reasons that, for more than a century, the issues of production, distribution and possession/consumption of such substances are the objects of legal regulation at both international and national levels.

Today, the internationally applicable control measures dealing with narcotic drugs and psychotropic substances are codified in international law by three mutually supportive and complementary conventions: the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The international community reached an agreement that identifies children as the most vulnerable group in society in relation to the use, production and trafficking of these substances and addressed these concerns in Article 33 of the Convention on the Rights of the Child,<sup>1</sup> the only international human rights instrument to mention

illicit drugs and psychotropic substances in the whole human rights regime. In 1999, the International Labour Organization (ILO) defined in Convention 182 "the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties"<sup>2</sup> as one of the worst forms of child labour and called for immediate action to be taken towards the prohibition and elimination of these worst forms of child labour. Although these instruments belong to different branches of international law, they should be deemed as a package working in unity towards common goals: to protect children from the array of harms associated with illicit drugs and to protect human health by preventing illicit use and drug dependence while ensuring the availability of narcotic drugs and psychotropic substances for medical and scientific purposes. It should be noted that these five conventions have the highest level of ratification within their regime and also within the whole range of international law instruments. It is also noteworthy that CRC is the most widely accepted international human rights instrument and that no country has made any reservation against the provisions stipulated by CRC Article 33.

According to the present legal architecture, it defies logic to argue that the interest of adults to consume drugs should prevail over the interest of children to be protected from the use of narcotic drugs and psychotropic substances and to be protected from involvement in their production and trafficking. Nonetheless, prioritizing drug users' interest and describing this

group as the most vulnerable in society has become the mainstream rhetoric of the last few years in the ongoing discussion concerning human rights and drug policy.

For more than twenty years, the United Nations Children's Fund (UNICEF), the world's most visible advocate for children rights and needs, has ignored or even avoided any involvement with CRC Article 33. Moreover, in 2010 UNICEF signed a report requesting the removal of punitive laws for drug use<sup>3</sup> without giving any due attention to, or explanation of, how such an approach conforms to the children's rights doctrine. Nor was there any explanation of how this approach would affect the involvement of children in the illicit production and trafficking of narcotic drugs and psychotropic substances.

Furthermore, several other UN entities which have a direct or adjacent mandate in relation to the two spheres of international law (human rights and international drug control), including the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime (UNODC), the World Health Organization (WHO) and the Joint United Nations Programme on HIV and AIDS (UNAIDS), consistently and completely ignore the only human rights provision addressing illicit drugs in any of the international human rights instruments. Instead, these organizations exclusively focus on the rights of drug users.

The most problematic aspect in this context is that for more than 20 years, the Committee on the Rights of the Child (the body of independent experts that monitors the implementation of the Convention on the Rights of the Child by States Parties) had never discussed in a comprehensive way, the meaning and the implications of Article 33, in order to facilitate a better understanding of content and implications. Moreover, for 20 years, the Committee has issued nearly identical, seemingly disinterested and brief concluding observations on state reports' of issues related to CRC Article 33

without regard to the scope of drug use among the child population in any given country.

It is remarkable that the Committee on the Rights of the Child repeatedly emphasized that children's rights are "indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein", yet decided after more than 20 years of historical inertia in relation to CRC Article 33 to physically disjoint this special protection measure by splitting it in two parts, in its general reporting guidelines issued in 2010. In CRC/C/58/Rev.2, the Committee made the unprecedented decision to cancel the philosophy of a provision by reducing Article 33's value as a special protection measure to merely half of the article, namely the part that reads: "to prevent the use of children in the illicit production and trafficking of such substances", whereas the first part of Article 33 that reads: "to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties" is reduced and placed under cluster 6: *Disability, basic health and welfare*.<sup>4</sup> It is difficult to identify the logical reason for such a decision. It is clear from the *Legislative History of the Convention on the Rights of the Child* that Article 33 is a special protection measure and that the idea of including it under the health cluster was not accepted at the time when the CRC was drafted.<sup>5</sup> For more than 20 years, Article 33 belonged to cluster VIII *Special protection measures*, subsection (c) *Children in situations of exploitation, including physical and psychological recovery and social reintegration* being accompanied by: Article 32, economic exploitation, including child labour; Article 34, sexual exploitation and sexual abuse; Article 35, sale, trafficking and abduction; Article 36, other forms of exploitation, et cetera. Even the physical position of this article in the Convention text suggests this basic interpretation of the whole Article 33 as a special protection measure.

Under CRC Article 44, States Parties assent to submit regular reports to the Committee on the measures they have adopted to put the Convention into effect and on the progress in the enjoyment of children's rights in their respective countries. Like any other human rights treaty body, the Committee on the Rights of the Child adopts guidelines on the form and content of reports in order to assist States Parties with the preparation of their reports. The purpose of these guidelines is to help States Parties through the complex reporting process and to place "emphasis on concrete implementation measures which would make a reality of the principles and provisions of the Convention."<sup>6</sup> However, if we consider the post-November 2010 pattern of States Parties reporting and the comments some Member States shared with us, the cleaving of Article 33 is deemed highly illogical and confusing. Therefore during 2011–2012 the vast majority of States Parties have continued to report on Article 33 under the special protection measures section, not under the health cluster. Moreover, it is also highly questionable that this partition makes the provisions stipulated by CRC Article 33 a reality. One year later, the same Committee decided to uncritically and indefinitely recommend "harm reduction" for children in its concluding observations for Ukraine, adopted at its 1611th meeting, held on 3 February 2011. Even if the Committee on the Rights of the Child decided to place these recommendations under the cluster of basic health and welfare and talked about a broad range of "evidence-based measures in line with the Convention", it is highly unclear if recommending undefined "harm reduction" services for children will conform with the requirements of CRC Article 33, namely "to protect children from the illicit use of narcotic drugs and psychotropic substances". Hence, it would be of interest to know which so-called "harm reduction" services the Committee deems as appropriate

for children? Should these services include sterile injecting equipment and the prescription of opioid substitution therapy? Or should they include drug consumption rooms and pill testing? Or policy change and justice system reform as a step towards the decriminalization or legalization of nonmedical/recreational drug use?

Against this background, this publication reminds stakeholders that children have rights and that these rights have to be respected. It also attempts to point out that solemn declarations like: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Rights of the Child honourably, faithfully, impartially and conscientiously",<sup>7</sup> or that "mankind owes to the Child the best that it has to give",<sup>8</sup> that "the rights of the child should be a priority in the United Nations system-wide action on human rights"<sup>9</sup> must go beyond the rhetorical stage and become reality.

Meanwhile, the following reports and appeals from children are just a few of the many sobering and mortifying reminders of why CRC Article 33 exists and why it must be respected:

"I just came out of school. I can't take this any more. My dad locks himself in his room and ignores everyone. I think he has started taking drugs again. My mum is not coping either; she is smoking more and not eating. I'm having to help Mum to look after my brother and sister. I am worried. I can't concentrate on my work. I want to do well at school. Some of the boys are calling me names."

Child aged 12<sup>10</sup>

"My dad is smoking weed and gets angry. When I come home from school, there is no food for me. He has threatened to hit me and once he locked me in a cupboard. I am scared to tell anyone."

Child aged 14<sup>11</sup>

“I am at home alone now. My dad keeps touching me in my private parts and my bum. My dad is always taking drugs. If I tell anyone, he said he will kill me. I don’t go to school. I stay all day in my room until Dad does what he does.”

Child aged 14<sup>12</sup>

“My dad is beating me and my younger brother. Dad injects something into his arm and shouts at me and beats me. My brother and I have bruises. My teachers see this and when they ask, I tell them I had a fall.”

Child aged 9<sup>13</sup>

“I want to run away from home. Both my parents use drugs and alcohol and they fight. My mum brings men home all the time. I really hate their way of living and would like to get away. I did try to get away with my sister but my sister is partly disabled so she couldn’t keep up and we came back home. I am really unhappy to be left alone in the house all night.”

Child aged 14<sup>14</sup>

“I live with my mum and her boyfriend. They both take drugs. I am worried they might die. My mum makes tea and then smokes drugs. She shouts at me. I feed my baby sister. I see my dad every two months and he takes drugs.”

Child, age unknown<sup>15</sup>

“In a way, I wanted my mum to go back to prison, because she was clean [drug free] for a few weeks when she came out of prison.”

Child between 12 and 18 years<sup>16</sup>

“Yes, I take ecstasy, pills and smoke weed. I tried weed [cannabis] for the first time when I was 10, when I started smoking. My friend owed me [money]. His mother was selling weed, pills and ecstasy, and he returned me weed instead of money. I don’t smoke alone, only when with friends.”

Child aged 16<sup>17</sup>

“Me and my friend came to an apartment, there were boys. She started to inject, and I tried as well. Just for fun. I was allowed not to pay, he gave my money back. I just said I wanted to.”

Child aged 15<sup>18</sup>



# I. The Right of Children to Protection from Narcotic Drugs and Psychotropic Substances

In the last decade, there has been an increased tendency to adopt the language of human rights in the context of the international drug policy. While such an undertaking should be deemed constructive, based on the premise that every policy area, covered by international law would benefit from a human rights scrutiny, it can be noted that a remarkable feature of this particular human rights discourse is the glaring absence of reflection on children's rights. The omission of the Convention on the Rights of the Child (CRC) in this discourse, the only international human rights instrument to contain an explicit provision on illicit drugs, is not only difficult to justify, but also undermines the human rights credibility of the messenger.

This publication primarily deals with the apparently forgotten, or possibly suppressed, minimum standard in the field of human rights: Article 33 in the Convention on the Rights of the Child. We have attempted to find an explanation as to why the discussions on the application of human rights to the international drug control policy avoid exactly this instrument and how a human rights based drug policy in conformity with international law should be configured.

Article 33 is very clearly worded. It is also specifically set in the context of the existing international drug control system, to which it makes direct reference. Therefore, from a human rights point of view the illicit consumption of drugs is far from being a victimless crime or solely a matter of privacy.

Protecting children from illicit drug use and from involvement in the production and trafficking of such substances, is a core concern of the most ratified of all human rights instruments. Moreover, Article 33 belongs to the CRC's cluster of special protection measures alongside issues such as: economic exploitation of the child; the sale of or traffic of children, recruitment of child soldiers, child sexual exploitation and sexual abuse, et cetera. The existence of this specific provision in this particular human rights instrument clearly indicates that an agreement was reached at the international level concerning children's particular vulnerability in relation to narcotic drugs and psychotropic substances. Therefore, drug control is an area where CRC and the principle of the best interest of the child have to be considered as starting points in policy-making. Ergo, prevention and protection from illicit drugs are not only imperatives for the States Parties to the CRC, but values in themselves, as with any other CRC child protection measure.

## I.1. International Law

International law is an extremely broad and complex field of study that has stimulated a large corpus of literature and "is ordinarily defined as the body of legal rules which applies between sovereign states *inter se* and other entities possessing international personality."<sup>1</sup> It is usually divided into two branches: public international law and private international law.

The present publication deals with the area of public international law. Public international law covers a wide spectrum of matters, ranging from the right of states to go to war, disarmament, treatment of war prisoners, diplomatic and consular relations, international trade and development, environment, outer space, and biological diversity, to human rights. An extensive discussion on this topic is outside the scope of this publication but in the following sub-chapter we will summarily clarify a few of the concepts relevant to the subject at stake.

Treaties are the primary source of international law, and in the post-war era “treaties have assumed a clear prominence as the primary source of law-making on the international plane.”<sup>2</sup> The Statute of the International Court of Justice<sup>3</sup> outlines in Article 38 the recognized sources of international law to be applied by the Court in settling legal disputes submitted to it by states. The first to be mentioned are international treaties.<sup>4</sup> This is logical, since preference of other sources would clearly give arbitrary and unforeseeable parameters to the content of international law and essentially turn law into politics. “By entering into written agreements (treaties) states avoid difficulties inherent in customary international law.”<sup>5</sup> In the treaty-based legal system, sovereign states are deemed as equal partners capable of negotiating and accepting the principles and rules considered desirable and conducive to improved international cooperation in various areas of concern, or denouncing instruments considered undesirable or obsolete. This system provides a higher level of foreseeability, as States Parties “should be able to rely on performance of the treaties by other parties.”<sup>6</sup> Treaties are legally binding only for the states which express their consent to be bound<sup>7</sup>; they do not create obligations or rights for third states without their explicit consent, as per principle *pacta tertiis nec nocent nec prosunt*.<sup>8</sup> The existence of this rule in inter-

national law was never called into question.<sup>9</sup> Regarding this principle, the International Law Commission stated that “the justification for the rule does not rest simply on this general concept of the law of contract but on the sovereignty and independence of States.”<sup>10</sup> The *pacta tertiis* rule is codified in the Convention on the Law of Treaties of 1969.<sup>11</sup>

These are just few reasons why in the aftermath of World War II the number of multilateral treaties proliferates and continues to grow steadily.<sup>12</sup> “Increasingly, bilateral and multilateral written agreements are used for the creation of new international legal standards. For political reasons, states are... less willing to rely upon customary international law for the regulation of legal matters. New technology and growing international exchange have established the need for an ever more precise and flexible international law – a need not satisfactory met by customary law. In many fields of activity, we can seriously question whether the creation of a rule of custom is at all possible. Considering also that the number of states capable of drafting and concluding treaties seem to be growing, it is not surprising that treaties are concluded far more frequently than ever before.”<sup>13</sup>

International law literature frequently distinguishes between hard law and “soft law”. Hard law (multilateral treaties) is always legally binding upon States Parties, whereas “soft law” (e.g. declarations, resolutions, guidelines of conduct, et cetera) is not. As indicated by some authors, the instruments belonging to the “soft law” category “are neither strictly binding norms of law, nor completely irrelevant political maximus, and operate in a grey zone between law and politics.”<sup>14</sup> However, “soft law” instruments can sometimes be useful, especially in areas where there are no hard law instruments, in those cases where “the choice would not have been between a binding and non-binding text, but between a non-binding text and no text at all.”<sup>15</sup>

The preeminence of treaties is hardly a surprise. Treaties are adopted after a drafting process that often takes several years to complete. After the adoption, the highest political authority in each country may decide to ratify the treaty. “The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.”<sup>16</sup> This is another process which can take several more years. States have the option to accept a treaty while making reservations<sup>17</sup> on specific provisions which they do not want to assume or which they consider incompatible with their national legislation, as long as these reservations are not incompatible with the object and the purpose of the instrument.<sup>18</sup> The contracting states may make a reservation when signing, ratifying, accepting, approving or acceding to a treaty.<sup>19</sup> It is difficult to think about a more thorough procedure for assuming responsibility towards a legal text.<sup>20</sup> It would defy comprehension to imagine how a ratifying state could, at the end of this process, decide that it is not bound to it, that “the treaty does not mean what it says”, or “is not in our national interests to honor what we have ratified”, as this would undermine the very idea of international law as law. As the Vienna Convention on the Law of the Treaties Article 27 stipulates, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty...”<sup>21</sup>

### 1.1.1. The 1969 Vienna Convention on the Law of Treaties

The interpretation of treaties is subject to a specific instrument: the 1969 Vienna Convention on the Law of Treaties (VCLT).<sup>22</sup> The adoption of what is called the “treaty on treaties” has an undeniable importance as it symbolizes the end result of a decades-long effort to codify in law an internationally accepted grammar for treaty interpretation. VCLT lays

the ground rules for how treaties are to be applied and interpreted. According to VCLT Article 2(1) (a) treaties are defined as an: “international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”<sup>23</sup>

A fundamental principle of international law is the obligation to act in good faith, which is expressed by the principle *pacta sunt servanda*<sup>24</sup>, enshrined in VCLT Article 26, which stipulates that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”<sup>25</sup> As stated by the International Law Commission the *pacta* principle “is the fundamental principle of the law of treaties. Its importance is underlined by the fact that it is enshrined in the Preamble to the Charter of the United Nations. As to the Charter itself, paragraph 2 of Article 2 expressly provides that Members are to ‘fulfil in good faith the obligations assumed by them in accordance with the present Charter’.”<sup>26</sup> The Commission specified that the obligation to perform a treaty in good faith implies, *inter alia*, the duty parties have “to abstain from acts calculated to frustrate the object and purpose of the treaty.”<sup>27</sup> Another clear reference to this principle is made in VCLT Article 31, which provides that treaties have to be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty.

The 1969 Vienna Convention covers a large range of topics, including: conclusion and entry into force of treaties; observance, application and interpretation of treaties; amendments and modification of treaties; invalidity, termination and suspension of the operation of treaties; consequence of the invalidity, termination and suspension of the operation of treaties; et cetera. In its Part III, which addresses the issue of observance, application and interpretation of treaties, VCLT esta-

blishes, among other things, the rights and obligations of States Parties to successive treaties relating to the same subject-matter. It also indicates, as a rule applicable for the situations where there exist more than a single rule to be considered for a certain situation, that a newer text goes before an older text, as per principle: *lex posterior derogat priori*.<sup>28</sup> This supplements another rule which provides that special law trumps general law, according to the principle: *lex specialis derogat lex generalis*.

Treaties require the prospective agreement among a large number of states. Given their differences in socioeconomics, history, religion, culture, et cetera, this means that the world community, if successful, will substantially agree on the smallest common denominator - a minimum standard. In the tangled drafting process, some treaty provisions may have had the full backing of the drafters, and therefore have been expressed very clearly, whereas other provisions may have been contested during the drafting process, and therefore subjected to a muddy compromise where their eventual wording is unclear. Standard legal methodology would compel the interpretation of all treaties' provisions as per their wording, as stipulated by VCLT Article 31. The same provision also underlines that the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes, any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. In cases where a provision is ambiguous or obscure, or when interpretation according to Article 31 leads to absurd or unreasonable meaning, Article 32 VCLT indicates the need to recourse to supplementary means of interpretation.

In international law, there are several branches including environmental law, trade law, human rights law, et cetera. In the following section we will briefly discuss general human

rights law before moving on to children rights, one of the fields within human rights law.

## 1.2. Human Rights Law

The establishment and development of the international human rights regime, on the foundations of the UN Charter and of the Universal Declaration of Human Rights (UDHR), is one of the biggest successes and innovations of the international community under the auspices of the United Nations through the establishment of a comprehensive body of human rights law.

At present, the United Nations High Commissioner for Human Rights lists the following treaties as the nine core human rights instruments:<sup>29</sup>

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 21 Dec 1965;
- International Covenant on Civil and Political Rights (ICCPR), 16 Dec 1966;
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 Dec 1966;<sup>30</sup>
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10 Dec 1984;
- Convention on the Rights of the Child (CRC), 20 Nov 1989;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (ICRMW), 18 Dec 1990;
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 20 Dec 2006;
- Convention on the Rights of Persons with Disabilities (CRPD), 13 Dec 2006.

All of these instruments stipulate obligations which their States Parties are bound to respect.



### ***Human Rights = Minimum Standards***

The most important characteristic of human rights law is that it establishes minimum standards, which must be upheld. A State Party can go further than the treaty stipulation in order to protect people, provide social rights, et cetera, but it cannot do less than the treaty requires. This is said with the caveat that human rights law sometimes considers the resource aspect, whereby poorer countries shall implement provisions to the maximum extent of available resources.

The Convention on the Rights of the Child is hard law and is the core human rights instrument with the highest ratification number of all instruments (193 of 195 UN Member States).<sup>31</sup> It is also the only core human rights instrument which addresses narcotic drugs.<sup>32</sup>

Therefore, it seems inevitable that one must start with the Convention on the Rights of the Child when dissecting the issue of illicit drugs and human rights. Any other approach would stray away from treating human rights as minimum standards, reversing law into politics.

### **1.3. Children's Right to be Protected from Illicit Drugs, as per the Convention on the Rights of the Child (CRC)**

#### **1.3.1. About Children Rights Law**

The fulcrum of international children rights law is the Convention on the Rights of the Child (CRC). The CRC was unanimously adopted by the UN General Assembly on 20 November 1989 and immediately became a major success in terms of ratifications. The instrument already entered into force on 2 September 1990. Within only six years,<sup>33</sup> 190 out of the then 192 United Nations Member States had ratified the CRC. Today the number stands at 193 out of 195.<sup>34</sup> The only two states that have not ratified this treaty are Somalia

and the United States of America. This makes CRC the hard law instrument of almost universal reach and the most widely ratified international convention of all.

### ***Children's rights before the adoption of the Convention on the Rights of the Child***

Prior to the adoption of the Convention on the Rights of the Child, children's rights were addressed in several other international instruments. The history of the efforts to acquire international recognition of the special needs and vulnerability of children as human beings goes back to the Geneva Declaration of the Rights of the Child adopted on 26 September 1924 by the League of Nations, the predecessor of the United Nations. This document states "that mankind owes to the Child the best that it has to give".<sup>35</sup> The Universal Declaration of Human Rights from 1948 implicitly addresses children in all its provisions and specifically stipulates in Article 25 (2) that children must be given special assistance and care.<sup>36</sup> In 1959, the General Assembly adopted the United Nations Declaration of the Rights of the Child, a legally non-binding instrument, comprising 10 principles, of which many are similar to present provisions in the CRC.

The International Covenant on Civil and Political Rights<sup>37</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>38</sup> adopted in 1966, implicitly cover children and address the special rights of children in several of their provisions. The 1979 Convention on the Elimination of All Forms of Discrimination Against Women provides protection for maternity, the human rights of girls, and has few provisions referring to all children, irrespective of their gender.<sup>39</sup>

The efforts of the child rights movement to establish a comprehensive and legally binding instrument which specifically addresses children's special status and makes children subject in law continued. In 1978, Poland proposed a draft text for a convention on the rights of the

child based on the 1959 Declaration. In 1979, the UN Commission on Human Rights initiated the process, which after a decade led to the adoption of the Convention on the Rights of the Child. This instrument was a quantum leap for children's rights in terms of legal status, solidity and detail.

### *The Convention on the Rights of the Child*

The Convention on the Rights of the Child somewhat mirrors some of the broad human rights instruments<sup>40</sup> in that it comprises a similar general rights catalogue. CRC has a total of 54 Articles, whereof 42 are substantial and 12 procedural. 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/minimum standards for children on the basis of their special needs, and put these rights together in one legally binding instrument.

In Article 1, the CRC defines the child as every human being below the age of eighteen.

In practice, the CRC was divided into several clusters: General Principles; Civil Rights and Freedoms; Family Environment and Care; Basic Health and Welfare; Education, Leisure and Cultural Activities; and, Special Protection Measures. Many of these rights are worded the same of children as for adults. The most striking differences with previous human rights Conventions is the principle of the best interest of the child (Article 3), which is *prima facie* elevating children's interests above human rights interests for adults in all actions concerning children. Another particularity of this instrument is the cluster of eleven articles on special protection measures for children, which calls on States Parties to proactively ensure that children shall not engage or be involved in high-risk activities or suffer the effects thereof, including illicit drug use, labour exploitation, sexual exploitation, recruitment into armed forces, et cetera. Also, "The convention is innovative in establishing the right of

children to be actors in their own development and to participate in decisions affecting their own lives and their communities and societies. This constitutes a legal revolution because the child is no longer an 'object', a tool in the hands of the parent, but a 'subject' in law."<sup>41</sup>

At present the CRC has two optional protocols: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in May 2000 (which entered into force in January 2002), and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, also adopted in May 2000, (which came into force in February 2002).

The CRC, as with the other eight human rights treaties, creates legal obligations for the State Parties to implement, protect and promote the rights of the child at the national level. The accession, ratification or acceptance of the legal instrument compels the State Parties to implement its provisions.

A similar solution for monitoring adherence has been applied to the Convention on the Rights of the Child in line with other human rights conventions: the setting up of an independent monitoring body. In accordance with article 43 of the Convention, the Committee on the Rights of the Child was set up in 1991 and its members began their term of office on 1 March of the same year.

As for the other human rights conventions, State Parties should benefit of the treaty body's support, advice and assistance in meeting their international obligations. The mandate of the Committee on the Rights of the Child is stipulated in articles 43, 44 and 45 of the CRC.

### **1.3.2. CRC Article 33**

#### ***CRC Article 33:***

States Parties shall take all appropriate measures, including legislative, administra-

tive, 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.

### **1.3.3.A Closer Examination of Article 33**

As previously discussed, international treaties are minimum rules in every sense of the word: they set out the minimum obligatory standards to which States Parties must adhere; they also reflect the smallest common denominator which is agreed upon by 195 countries in the world when drawing up a treaty text. Sometimes this process can result in the lack of a precise agreement, with no or unclear provisions as a consequence. CRC Article 33 is not bereft of these shortcomings. It is designed for a clear purpose and written in an explicit language, which refers back to definitions in already existing treaties. Article 33 is one the most explicit of all special protection provisions in CRC. It should also be noted that no State Party to CRC has expressly made a reservation against Article 33.<sup>42</sup>

### **1.3.4. The Thrust of Article 33**

Article 33 sets out to protect/prevent children from three things:

1. Illicit use of narcotic drugs and psychotropic substances (protection);
2. Participation in production of illicit drugs and psychotropic substances (prevention);
3. Participation in trafficking of illicit drugs and psychotropic substances (prevention).

#### **1.3.4.1. Protection from illicit use (Article 33 Part 1)**

The word “protect” is used in several other Articles in the Convention on the Rights of the Child, including the special protection measures. Looking at all special protection provi-

sions, it appears that a key element of protection is to mandatorily prevent the threat to children set out in the special protection measures articles.

There can be little doubt that the legislator (the CRC drafters) intended that, for active protection provisions in CRC, States Parties must ensure that each of the threats depicted will be eliminated, and that the policy ambition of States Parties must be phrased accordingly.

The term “illicit use” is a link to the language in existing UN drug-related treaties. The *Legislative History of the Convention on the Rights of the Child* indicates that the final wording emerged after the draft of Article 33 was submitted in 1988 for technical review to the United Nations Narcotic Drug Division, to the World Health Organization (WHO), and to UNICEF.<sup>43</sup>

The UN Narcotic Drug Division suggested that the word “illicit” should be used instead of “illegal”, so as to conform to the international legal framework on narcotic drugs and psychotropic substances. In the drug-related conventions, “illicit” refers to the purpose of “use”. “Use” becomes illicit as soon as it is for anything other than medical or scientific purposes. The twin aims of the UN drug conventions are to combat non-medical use, namely illicit use, while also ensuring medical and scientific access to controlled substances: the licit use.

CRC Article 33 sets out to protect children from “use”. Looking back at the drafting process of the Convention on the Rights of the Child, it can be noted that the word “abuse” was used in the Article 33 draft text until 1986, when it was replaced with “use”.<sup>44</sup>

As stipulated by Article 31 of the Vienna Convention on the Law of Treaties, legal interpretation of treaty texts shall be done through the “ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Some treaties include a

section, an Article, with legal definitions which clarify the special meaning of certain terms. In this context, we should note that the Convention on the Rights of the Child does not provide any special list of definitions relevant to the language of Article 33; therefore, we should apply the rule of ordinary meaning. The terms “use” and “abuse” have different ordinary meanings. In terms of drugs, “abuse” has a more complex meaning than “use”; as qualitative indicators would be needed to establish “abuse”, whereas “abuse” would only apply after some stages of “use”. It seems that the European Union uses somewhat complex indicators when they are talking about “problematic use”.<sup>45</sup> “Use” of drugs on the other hand is straightforward, whereby one or more instances of illicit drug consumption constitutes “use”.

Therefore, Article 33, by its very wording, sets out to protect children from any use of illicit drugs. There is consistency between this aim and the description of drugs in the preambles of the UN drug conventions, where drugs are, *inter alia*, described as an evil to the individual and to mankind, and their objective to set out rigorous measures to restrict the use of such substances to medical and scientific purposes.

In conclusion, the meaning of Article 33 Part 1, by its wording, is that States Parties have to take all measures deemed appropriate, including legislative, administrative, social, and educational measures, to ensure that children do not use any illicit drugs. The Convention on the Rights of the Child clearly signals an anti-drug stance. Ratifying states should pick up on this ambition when undertaking the above mentioned measures. Policy-making should be clearly articulated in favour of this protection goal. An enabling environment for children shall be created where they are not put at risk of drug consumption. By extension, it would also be of grave concern if parents or friends were engaged with illicit drugs.

### *Prevention from Involvement in the Production and Trafficking of Illicit Drugs (Article 33 Part 2)*

The word “prevent” is, in the special protection context, to be understood as the obligation for States Parties to ensure that children will never be involved with the illicit production or trafficking of drugs. This reading conforms to how “prevent” is understood in corresponding special protection articles in the CRC.

Illicit production and trafficking of drugs are closely tied together. The gravity of the involvement of children in such activities is not only reflected in Article 33 of the Convention on the Rights of the Child, but also in the 1999 International Labour Organization (ILO) Convention No.182 on the Worst Forms of Child Labour, Article 3(c).<sup>46</sup> ILO Convention 182 has had a pace of ratification unequalled in the history of international labour standards, with 100 ratifications in 2001 and 174 ratifications to date.<sup>47</sup>

CRC Article 33 instructs States Parties to take all measures to prevent the involvement of children in the illicit production and trafficking of narcotic drugs and psychotropic substances. ILO Convention 182, in Article 6 (1) states: “Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.” Article 7 (2) calls for the following measures from States Parties:

- “(a) prevent the engagement of children in the worst forms of child labour;
- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- (d) identify and reach out to children at special risk; and
- (e) take account of the special situation of girls.”



In Recommendation 190, issued in 1999 by the General Conference of the International Labour Organization, States Parties are recommended, among other things, to cooperate at international level to ensure the elimination and prohibition of the worst forms of child labour as a matter of urgency by, *inter alia*, detecting and prosecuting those involved in the use, procuring or offering of children for illicit activities and registering perpetrators of such offences.<sup>48</sup> It also requests, in paragraph 12, that “Members should provide that the following worst forms of child labour are criminal offences:...(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties...”<sup>49</sup>

Another international law instrument which deems the involvement of children in the production and trafficking of illicit drugs as an issue of grave concern is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Article 3(5) includes a non-exhaustive list of factual circumstances which makes the commission of the offences stipulated in paragraph 1 of Article 3 “particularly serious”. This list includes on position (f) “the victimization or use of minors”. Article 3(7) asks, *inter alia*, States Parties to ensure that their courts and competent authorities take in consideration “the serious nature” of circumstances listed in paragraph (5) when deciding on the early release or parole of the offender.

These three instruments, which are the most widely ratified within their regime, and even within the whole range of international law instruments, clearly indicate that the issue of children and illicit drugs is of high importance. Hence, societal policy-making in ratifying states needs to clearly articulate the ambition and the direction towards the elimination and prevention of the involvement of children in any activities related to illicit drugs.

## Other Parts of Article 33

### 1. “Appropriate measures”

CRC Article 33 provides in its introductory part that: “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures...” Even if the Committee on the Rights of the Child has never issued its interpretation on the content of Article 33 in the form of a General Comment, we can look at how the treaty body interpreted the introductory part of the Article 19 which is quite similar.<sup>50</sup> The Committee published, in April 2011, Commentary 13 on “*The right of the child to freedom from all forms of violence*” which elaborates on Article 19 CRC. In Part IV of this Commentary, the treaty body provides a legal analysis of Article 19 indicating, among other things, that States Parties should interpret “shall take...” and “all appropriate legislative, administrative, social and educational measures” as follows: “‘Shall take’ is a term which leaves no leeway for the discretion of States parties. Accordingly, States parties are under strict obligation to undertake ‘all appropriate measures’ to fully implement this right for all children.”<sup>51</sup> Therefore, we see no reason why this part should not have an identical interpretation in the case of Article 33. Regarding the term “all appropriate measures”, it is obvious that the actual measures to be taken by the States Parties are of different nature as they address phenomena which are related, (as indicated by the “*United Nations Secretary-General’s Study on Violence against Children*”<sup>52</sup> and by the WHO Fact sheet N°150)<sup>53</sup> but nonetheless different. Nevertheless, the Committee indicates some general direction on how the term “appropriate” should be interpreted. Hence, the term “appropriate” “refers to the broad range of measures cutting across all sectors of Government, which must be used and be effective in order to prevent and respond to all forms of violence. ‘Appropriate’ cannot be interpreted to mean acceptance of some forms of violence.”<sup>54</sup>

Similarly, in the context of Article 33 “appropriate” would refer to a complex and multi-sectoral set of measures which would prevent and protect children from illicit drugs use and involvement in the production and trafficking of such substance and cannot be interpreted to mean the normalization or acceptance of these phenomena.

## ***II. “Relevant International Treaties”***

The reference in CRC Article 33 to “relevant international treaties” concerns the international drug conventions and notably the 1988 Convention, as described below.

The “*Legislative History of the Convention on the Rights of the Child*” mentions in this context the Single Convention of Narcotic Drugs of 1961 and the Convention of Psychotropic Substances of 1971, as these were the only relevant international treaties in force during the drafting process of Article 33. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances entered into force in November 1990. Article 41 of the Convention on the Rights of the Child stipulates that “the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State party; or (b) International law in force for that State.” The 1988 Convention is such an example, as it refers to children in its preamble and in Article 3(5) sub-paragraphs (f) and (g). It is also an international law instrument more conducive to the realization of Article 33. Therefore, we have to consider all three drug-related treaties as being the relevant legal framework in the context of this provision of the Convention on the Rights of the Child. Likewise, the ILO Convention 182 addresses the same issue.

We have noted when reading papers from civil society organizations on the issue of drugs and human rights, that a political argument has for several years been pursued to the effect

that the three international drug conventions stand in contradiction to human rights. This is a quite remarkable conclusion, since the human rights hard law makes direct reference to these conventions, and the conventions reflect the same language and scope as CRC Article 33. We note that this civil society argument has throughout the years been made in a vacuum of analysis of Article 33. What has surprised us, however, is not that a civil society actor may want to change existing human rights law to fit their political agenda by circumventing existing human rights provisions. The surprise lies in the uncritical, acceptance by the United Nations Office on Drugs and Crime (UNODC), following lobbying by these civil society groups, of the proposed non-legal axiom that drug conventions stand in contradiction to human rights.<sup>55</sup>

### ***The link between CRC Article 33 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988***

It may be noted that CRC Article 33 closely follows what has been stated in the preamble of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988.

With one year between the adoption of these two instruments, the Convention on the Rights of the Child in 1989 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988, they were drafted and finalized almost in parallel. They also both entered into force in 1990, CRC on 2 September 1990 and the drug convention on 11 November 1990. There was a horizontal exchange between drafters of the two instruments. As mentioned, before finalizing Article 33, the CRC drafters consulted with the United Nations Narcotic Drugs Division, the predecessor of UNODC, for technical review. The final wording of the Article 33 text was adopted by CRC drafters in line with

#### CRC Article 33

“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.”

#### 1988 UN Drug Convention, Preamble

“Deeply concerned... particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution, and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity...”<sup>56</sup>

suggestions from the UN Drugs Division, as noted in the *Legislative History of the Convention on the Rights of the Child*.<sup>57</sup> Hence, the similarities in wording and intent in the two conventions do not come as a surprise. The drug conventions set out to ensure no illicit use and to combat illicit production and trafficking. The Convention on the Rights of the Child explicitly makes these three issues a mandatory special protection concern for children by all ratifying States Parties.

Legally, there is a strong link between CRC and the UN drug conventions, as directly referenced in CRC Article 33. The UN drug conventions are to be considered as a companion instruments to CRC Article 33, in the same way as the Riyadh Guidelines<sup>58</sup> and the Beijing Rules<sup>59</sup> shall be considered when weighing policy measures regarding juvenile justice issues as per CRC Articles 37 and 40.<sup>60</sup>

## 1.4. Special Protection Measures

The Committee on the Rights of the Child issues Reporting Guidelines for States Parties to the Convention on the Rights of the Child. These guidelines aim to enable a more structured discussion between the Committee and the State Parties, organizing the Convention’s provisions into eight sections. Under these sections, the articles are classified according to their content and in a logical order. The Committee has repeatedly underlined that this categorization is not a hierarchical one, equal importance being attached to all the rights recognized by the Convention.”<sup>61</sup> The Convention’s articles are grouped in eight categories:

- I. General Measures of Implementation;
- II. Definition of the Child;
- III. General Principles;
- IV. Civil Rights and Freedoms;
- V. Family Environment and Alternative Care;
- VI. Basic Health and Welfare;
- VII. Education, Leisure and Cultural Activities;
- VIII. Special Protection Measures.

The special protection measures cluster includes eleven CRC articles, containing provisions concerning exploitative child labour, sexual exploitation and abuse of children, recruitment of child soldiers, and illicit drug use/production/trafficking, et cetera.

Special protection measures focus on situations where children are particularly vulnerable and compels States Parties to remove the threat to children and holistically address the child’s well-being, including rehabilitation and reintegration.

UNICEF’s 2008 Child Protection Strategy very clearly states that the key strategy element with regard to special protection is prevention, indicating that “successful child protection begins with prevention”.<sup>62</sup> Legislative/enforcement efforts and efforts to raise awareness should be, in tandem, at the forefront of

national child protection. The vision of UNICEF is to create a protective environment where the child's protection rights are respected, and "where laws, services, behaviours and practices minimize children's vulnerability."<sup>63</sup> In short, international and national policy-making must be child-centered and focus on the substantial protection rights.

Environments where illicit drug use is accepted, or where exploitative child labour is seen as inevitable, are inconsistent with the explicit protection standards and increase children's vulnerabilities in this regard.

Special protection provisions are to be seen as values in themselves, as they have been created to identify intolerable situations which need to be removed. It is not enough to resort only to mainstream and reactive measures such as health, education, et cetera. If mainstream intervention was enough, there would have been no need for lawmakers to insert special protection provisions into the CRC. It is not enough for a State Party to turn a blind eye to child prostitution and consider this solely as a health issue, or to limit its intervention to some kind of "harm reduction". The State Party must be proactive, and create an environment where such transgressions are not accepted and where conditions for children's lives are such that the risks to children are minimized, preferably reduced to zero. Child protection issues, including those related to illicit drugs, are not a matter of "personal choice" or "privacy" for the rest of the society, nor should they be considered as "victimless crimes". However, it should be noted that the child exposed to illicit drug use and/or the child involved in the production and trafficking of illicit drugs has to be considered as victim not as a transgressor,

as in other special protections measures cases. As stipulated by CRC Article 39, a provision applicable for other special protection measures, "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

The following table lists the CRC special protection rights. Common points among special protection provisions include:

- Most special protection rights are adjoined to supporting international instruments/companion pieces (see the right hand column in the table on page 23) which provide more detail on the specific issue (*lex specialis* and "soft law" instruments) ;
- The language is similar between the provisions (see middle column); and,
- Similar formulations (forms) are used for describing the degree to which the State Party must get involved in addressing the protection issue.

We conclude that the matter of illicit drugs is a protection measure which States Parties must take as seriously as any other special protection matter, including the thorough and exact implementation of companion legislation/*lex specialis*. Hence, the full implementation of the UN drug conventions is indispensable for prevention and the creation of a protective environment against illicit drugs.

## CRC special protection rights

| CRC article | Issue Refugee                        | Direct protection objective; Forum/ measure/objective:   | Companion instruments   |
|-------------|--------------------------------------|--|---|
| Art.22      | children                             | To ensure that refugee children or children seeking refugee status are protected in their irregular circumstances.<br>Form/Measures: “...take appropriate measures to ... receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments...” | “refugee in accordance with applicable international...law”<br>1951 Convention Relating to the Status of Refugees, etc.   |
| Art.32      | Exploitative child labour            | Direct prevention/protection objective:<br>To ensure that children are not being economically exploited and subjected to hazardous work. Minimum limits for age and working conditions required.<br>Form/Measures described:<br>“Take legislative, administrative, social and educational measures...”   | “having regard to relevant provisions of other international instruments”<br>ILO Conventions: e.g. ILO Convention No. 182 on the Worst Forms of Child Labour (1999), etc. |
| Art.33      | Illicit Drugs                        | Direct prevention/protection objective:<br>Children shall not use illicit drugs or be involved in production or trafficking thereof.<br><br>Form/Measures described: “...take all appropriate measures, including legislative, administrative, social and educational measures, to protect children, and prevent...”   | “narcotic/psychotropic substances as defined in the relevant international treaties”<br>The three drug conventions 1961, 1971, and 1988; ILO Convention No. 182, etc.     |
| Art. 34     | Sexual exploitation and sexual abuse | Direct prevention/protection objective:<br>Children shall not be, with or without consent, involved in prostitution, pornography, or other aspects of sexual exploitation and abuse.<br>Form/Measures described: “...take all appropriate national, bilateral and multilateral measures to prevent...”   | “take all multilateral measures”<br>ILO Convention No.182; UN (Palermo) Protocol to Prevent, Suppress and Punish Trafficking (2000).                                      |
| Art. 35     | Sale, trafficking and abduction      | Direct prevention/protection objective:<br>Children shall not be subject to abduction/ sale/trafficking of children for any purpose or in any form.<br>Form/Measures described: “...take all appropriate national, bilateral and   | See above.<br>Palermo Protocol;<br>UN Convention on Transnational Organized Crime, (2000), etc.   |



|         |  |  |   |
|---------|--|--|---|
|         |  | <i>multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”</i>  |   |
| Art. 36 | <b>Other forms of exploitation</b>                             | Direct protection objective: Protect children from other forms of exploitation prejudicial to the child’s welfare.<br>Form/Measures described: “... <i>shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare...</i> ”  | General clause.   |
| Art. 37 | <b>Torture, degrading treatment and deprivation of liberty</b> | Direct protection objective: Ensure that children are not tortured, treated in a degrading manner, or unlawfully or arbitrarily deprived of their liberty.<br><br>Form/Measures described:<br>b) “ <i>arrest, detention or imprisonment... shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;</i> ”<br>c) “ <i>Every child deprived of liberty shall be treated with humanity and respect ...</i> ” | No direct reference to other instruments in this Article.<br>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT (1994);<br>UN Guidelines on the Prevention of Juvenile Delinquency: the “Riyadh Guidelines” (1990), etc. |
| Art. 38 | <b>Children in armed conflict</b>                              | Direct protection objective: Ensure that children younger than 15 are not recruited into armed forces/used as combatants.<br>Ensure humanitarian law in war situations.<br>Form/Measures described: <i>take all feasible measures to ensure protection and care of children who are affected by an armed conflict.</i> ”   | “ <i>Ensure respect for international humanitarian law.</i> ”<br><br>International Humanitarian Law including the four Geneva Conventions.  |
| Art. 39 | <b>Rehabilitation of child victims</b>                         | Direct protection objective: Ensure rehabilitation of child victims and that the recovery and reintegration take place in an environment which fosters the health, self-respect and dignity of the child.<br>Form/Measures described: “... <i>shall take all appropriate measures to promote physical and psychological recovery and social reintegration...</i> ”   | No direct reference to other international law.   |
| Art. 40 | <b>Juvenile justice</b>  | Direct protection objective: Ensure that children alleged as, accused of, or recognized as having infringed the penal law are treated by the justice system in a way that is consistent with the child’s age, and make sure  | No direct reference to other international law instruments in this Article.   |

|        |                            |   |   |
|--------|----------------------------|---|---|
|        |                            | that rehabilitation and reintegration is considered from the beginning.<br>Form/Measures described: <i>“treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”</i>   | Beijing Rules and Riyadh Guidelines explicitly referred in the preamble to CRC.   |
| Art.30 | <b>Indigenous children</b> | Direct protection objective: To ensure that a child belonging to an ethnic/religious/linguistic minority is not denied right to enjoy his/her culture, religion, language etc.<br>Measure/form described: <i>“..shall not be denied theright, in community with other members of his or her group...”</i> | No direct reference to other international law instruments in this Article.<br><br>ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (1989); International Labour Convention (ILO) on the Rights of Indigenous, Tribal and Semi-Tribal Populations in Independent Countries, No. 107 (1957);<br>United Nations Declaration on the Rights of Indigenous Peoples (2007). |

## 1.5. The Principles of CRC

Upon the 1991 adoption of Reporting Guidelines for States Parties, the Committee on the Rights of the Child outlined that four of the CRC Articles were to be seen as cross-cutting principles, which should permeate the implementation of every right of the Convention. The four principles of the Convention on the Rights of the Child are:

- **Non-discrimination (Article 2):** The Convention applies to all children, whatever their gender, race, religion, language, origin, disability or any other characteristic. Application of the Convention on the Rights of the Child rights must be non-discriminatory.
- **Best interests of the child (Article 3):** The best interests of children must be a primary consideration in all decision-making that may affect them. Societal policy making shall be child-centered insofar that the best interests of the child are firstly and routinely considered as regards all types of policy-making. Of particular importance here will be to ensure that all rights provisions in CRC are seen as a societal priority.
- **Right to life, survival and development (Article 6):** Children have the right to life, survival and development.
- **Participation (Article 12):** When adults are making decisions that affect children, the child should be consulted and have their views seriously taken into account. As explained by UNICEF, this principle does not give children authority over adults but gives them the right to participate in decision-making processes that affect their lives, taking in consideration the level of child's maturity.

The principles of non-discrimination and right to life were enshrined in the 1966 Covenants.<sup>64</sup> The elevation of the provisions on the best interests of the child and children's participation to general principles of the Convention on the Rights of the Child, alongside those previously mentioned, are some of the innovations of this instrument. The Committee on the Rights of the Child has, from the beginning emphasized the importance of the best interests principle in policy-making.<sup>65</sup>

| I.5.1. Practical Examples on how the Four CRC Principles Affect a Protection Right   |   |
|--|---|
| Example: CRC Article 32 Child Labour   | For the purposes of this publication: CRC Article 33 Children and Illicit Drugs   |
| <p>1. Non-discrimination: Exploited children must be afforded equal protection, and care if necessary, regardless of their gender, ethnicity, nationality etc. Prevention measures shall likewise not exclude any group of children;</p> <p>2. Best interests: Plans for new legislation or other policy measures in the area of e.g. work shall be child-centered. The first question to be asked is: What will be in the best interests of children? (If it is suggested that it is “good for children to work” it has to be explained how this conforms with CRC Article 32);</p> <p>3. Right to life: Work that is exploitative to the point of threatening a child’s life should receive a stricter criminal classification;</p> <p>4. Participation: When drawing up new legislation or policy measures on child labour children’s views shall be taken in consideration. Meaningful participation shall be facilitated.</p> | <p>1. Non-discrimination: All children shall be afforded equal protection against taking up illicit drug use, or being enrolled in production and trafficking thereof (legislation, law enforcement, education, treatment, rehabilitation);</p> <p>2. Best interests: National drug policy shall be child-centered, giving primary consideration to the protection afforded by CRC Article 33 (e.g. if it is suggested that so called “harm reduction” shall be the primary focus for national drug policy then it will have to be defined and described how it conforms with the child protection requirements in CRC Article 33);</p> <p>3. Right to life: Drugs that are mortally dangerous will receive a stricter criminal classification;</p> <p>4. Participation: When drawing up programmes in terms of prevention or rehabilitation the views of the children shall be heard. Meaningful participation shall be facilitated.</p> |

### I.5.2. The Best interests of the Child (Article 3)

As mentioned above, Article 3 of the Convention on the Rights of the Child is one of the four guiding principles of the CRC. “Although none of the four principles is more important than any of the other three, it may be argued that the recognition of the child’s best interest underpins all the other provisions in the Convention.”<sup>66</sup> The best interests principle is also the principle with the broadest, most far reaching and most dynamic scope of all the four principles. It would have been viewed as a portal paragraph to CRC, even

without the formal elevation to a principle by the Committee.

The best interests principle is not a freeform exercise, but has to be oriented toward existing child rights articles.<sup>67</sup>

Article 3 requires that the best interests of the child be a primary consideration in all actions concerning children. It is not limited to actions directly targeting children, but it is relevant for all actions which may have a direct or indirect impact on the child.<sup>68</sup>

Practically, the imperative that child rights shall be a primary consideration means that state policy-making shall be child-centred.

As indicated by UNICEF, the best interests principle is applicable in three main ways:

1. It supports a child-centred approach in actions and decisions affecting children.
2. Serving as a mediating principle, it can help to resolve confusion between different rights.
3. The best interests principle provides a basis for evaluating the laws and practices of States Parties with regard to the protection provided to children... The best interests principle has been invoked to argue that basic services for children must be protected at all times, including during wars or periods of structural adjustment and other economic reforms.<sup>69</sup>

#### **1.5.2.1. Child-Centered Drug Policy**

As noted above, the best interests principle compels child-centered policies. Children's interests and concerns shall be a primary consideration in relation to other (e.g. adult) interests, as per the Convention on the Rights of the Child. Hence, when developing national drug policies or drug laws, the human rights aspect is, by and large, synonymous with the CRC, as this is the only human rights instrument where illicit drugs are mentioned and includes the best interests principle. The concrete benchmark for human rights-oriented policy in this regard is CRC Article 33. Upon drafting a national drug policy, the reference point shall be how the policy protects children from illicit drug use/production/trafficking. This point shall be examined again when the drafting is finalized, but before having been adopted. If it can be explained how the primary thrust of the national policy is to secure protection as per Article 33, then the policy document can be signed off. If not, then it should be revised.

#### **1.5.2.2. Adult User-Centered Drug Policy**

As previously noted, the best interests of the child shall be "a primary consideration". The

primacy of the child's interests, as related to relevant special protection Article 33, shall be the assumption. It is worth noting that in the drafting of CRC the formulation "a primary consideration" became the legal text after it had replaced an earlier draft which talked about "the paramount consideration";<sup>70</sup> hence, the final Article 3 text is less absolute than the previous version. If a strong/emergency interest is at hand, the State Party could consider giving primacy to a different entry point; hence, a reversed perspective on the drug issue could be to ignore the child's interests and instead give primacy to adult users interests. Such a state policy would go against the CRC, unless there are very compelling reasons at hand. It is extremely difficult to see what arguments can be made, as society stands to gain nothing from the recreational or addictive use of illicit drugs. A classic example of an interest that could out-weigh the best interest of the child is freedom of speech (for adults). However, adult recreational drug use or possession has none of the qualities of freedom of speech.

### **1.6. A Human Rights Approach to Illicit Drugs – Operationalizing Special Protection at International and National Levels**

In this final sub-chapter, we will look at an example of practical advice on special protection measures using UNICEF's Child Protection Strategy from 2008 and define a base template for a human rights approach to be applied by national and international policy-makers in the field of illicit drugs.

By doing this, we hope to be both transparent and precise, allowing for the same consistency when dealing with CRC Article 33 as with the other active child protection measures.

We are keenly aware that policy-makers could ultimately opt for using another policy



template for illicit drugs issues. If so, it is up to them to explain what analysis has been done and how it conforms to the relevant human rights minimum standard. If this is not done, the policy can hardly be called human rights-based.

### 1.6.1. UNICEF 2008 Child Protection Strategy

As we could not find a position issued by the Committee on the Rights of the Child which discusses in general CRC special protection measures, we examined UNICEF's Child Protection Strategy. This is a generic Strategy for all child protection issues in composite. We will draw on the generic findings and see how these apply to policy-making on the issue of illicit drugs, an issue on which UNICEF has been remarkably silent.

It should be clarified that UNICEF is in itself

not a maker of hard law, and that the Child Protection Strategy is not a hard law instrument, but merely an attempt from UNICEF to operationalize the implementation of all special protection provisions.

UNICEF's Board adopted its first Child Protection Strategy in 1996, thereby shifting from a needs-based to a rights-based approach for UNICEF policy involvement in this field.<sup>71</sup> This Strategy has thereafter been regularly updated. The latest update is from 5 June 2008.

A document of Child Protection Strategy type can provide generic examples on methodology for a rights-based approach, provided that it is in line with the laws it purports to represent. Here follows some key assertions from the Strategy, which we will later analyze in the specific context of illicit drugs, with the aim of establishing building blocks for a human-rights approach to illicit drugs.

#### UNICEF Child Protection Strategy

##### Introductory statements:

- **Article 1** "UNICEF activities are guided by the existing international normative framework for the rights of the child..."
- **Article 2** "The vision and approach of UNICEF is to create a protective environment, where girls and boys are free from exploitation... and where laws, services, behaviours and practices minimize children's vulnerability, address known risk factors, and strengthen children's own resilience. This approach is human rights-based, and emphasizes prevention as well as the accountability of governments..."<sup>72</sup>
- **Article 3** "Successful child protection begins with prevention."<sup>73</sup>

##### Key elements for creating a "Protective Environment Framework" (CPS section II):

1. Governmental commitment to fulfilling protection rights.
2. Legislation and enforcement (an adequate legislative framework, its consistent implementation, accountability and a lack of impunity).
3. Attitudes, traditions, customs, behaviour, and practices.
4. Open discussions, including the engagement of media and civil society.
5. Children's life skills, knowledge and participation.
6. Capacity of those in contact with the child.
7. Basic and targeted services.
8. Monitoring and oversight.

## **Assessment in context of special protection in regard to illicit drugs:**

### **Article 1 “Guided by the normative framework for the rights of the child”**

This Child Protection Strategy guideline compels policy-makers to observe relevant instruments and provisions, internalize the substantive protection Article (in this case CRC Article 33), and not to lose focus of the minimum standard that is to be upheld: that children shall never use illicit drugs or take part in illicit production and trafficking of such substances. The first question to be asked when creating an overall national drug strategy must be, “Does this conform to CRC Article 33?” Such mainstreaming of protection rights is essential for the creation of a protective environment. The Child Protection Strategy Article 6 underlines this when it states “All programmes and actions for the benefit of children’s health, education, participation or for addressing the impact of HIV and AIDS should likewise be designed so as to strengthen protection, and must never undermine it.”<sup>74</sup>

### **Article 2 “Creating a protective environment”**

A protection response must be holistic and encompass an umbrella of other Articles in CRC, ensuring that the protection minimum standard is upheld and that the message it conveys is supportive of the child. The UNICEF-commissioned *Implementation Handbook for the Convention on the Rights of the Child* provides a generic example of seven articles and one Optional Protocol, of importance when implementing CRC Article 33, ranging from media to health.<sup>75</sup> Addressing those matters shall, in composite, assist with ensuring the protection of the minimum standard in CRC Article 33. Ensuring the protection/prevention provided for in CRC Article 33 shall in return help achieve high health standards among children, reduce overall risk

behavior, facilitate good conditions for education, et cetera. A protective environment is, according to UNICEF’s Child Protection Strategy, facilitated by the subsequent points.

### **Article 3 Start with prevention**

Prevention is a logical and multi-layered starting point. The first line of prevention is the dissemination of a value message, including legal review and enforcement, thus generally deterring specific practices, defining the victim (the child) and the perpetrator (the adult transgressor of special protection provisions), and empowering bystanders to take a position against violations against children’s special protection rights. However, secondary and tertiary prevention is also called for, including measures such as social improvement and targeted services.

### **Point 1 “Protective Environment Framework”**

#### **“Governmental commitment to fulfilling protection rights”**

Laws on paper risk being dead letters unless they are backed up by a substantial governmental commitment for enforcement. A general policy declaration or mission statement needs to be issued by the government to demonstrate which direction they intend to take and to assume accountability. Such a declaration must be clear. Corresponding normative review needs to be completed and the necessary resources allocated. For example, UNAIDS has proposed a goal of zero new HIV cases globally. While this may seem difficult to reach, or possibly even utopian in the short-term, it is a goal that is well-suited to lead the work in this field, as it clearly indicates the direction needed to be taken. Similarly, in the field of drugs, on the basis of minimum human right standards, it would seem that the most conducive policy would be the creation of “a drug-free society”, something that UNODC has proposed in the past. Legal revi-

sions are needed if current laws do not conform to the new human (child-) rights orientation of drug policy. Enforcement and related services must be trained, resourced, and instructed accordingly.

**Point 3 “Protective Environment Framework”**

**Attitudes and behavior**

Operationalising Article 33: The ethical message shall be absolutely clear so as to ensure that children know their rights and that adults foster a value acceptance regarding the protection rights. The society and the child shall understand that the child is the prospective victim, whether in the role of trafficker, producer, user, or child of a parent who is using illicit drugs. The desired attitude change objective must be that no one shall look the other way if these breaches of children’s rights are taking place in their vicinity.

**Point 4 “Protective Environment Framework”**

**“Media and civil society”**

Operationalising Article 33: There is an overall societal interest that media is free to report as they please. Nonetheless, efforts are generally made so that mass media conforms to the existing human rights framework and pays active interest to the same. The approach from the media on CRC Article 33 should be no different than it is on CRC Article 32, 34, et cetera.

**Point 5 “Protective Environment Framework”**

**“Children’s life skills, knowledge and participation”**

All children shall be “as actors in their own protection through use of knowledge of their protection rights and ways of avoiding and responding to risks.”<sup>76</sup> Children shall be involved in the process of designing preventive and rehabilitation programmes.

**Point 6 “Protective Environment**

**Framework” Those in contact with children**

A cornerstone of child protection is to ensure that people in close contact with children (e.g. caregivers and teachers) are fully prepared for assuming their responsibility of protecting the children’s rights as per CRC Article 33.

**Point 7 “Protective Environment Framework”**

**“Basic and targeted services”**

States Parties shall provide basic and targeted services (e.g. health, education) as per general child rights provisions, both to ensure that children do not become involved with illicit drugs and to ensure that children who are involved with illicit drugs are provided with all possibilities for rehabilitation and reintegration. Children who are illicit drug users from problematic and deprived upbringings are being doubly deprived of living a dignified life. Special attention must be paid to these children.

**Point 8 “Protective Environment Framework”**

**“Monitoring and oversight”**

Several layers of monitoring are needed, including monitoring children with drug problems and their life situation in order to provide for targeted measures. Also of high importance is the monitoring of the basic willingness of the society to reject illicit drugs through measures including lifetime prevalence surveys, as this is the thermometer for the societal conditions for establishing an environment where drugs are not welcome.

## 1.7. Conclusions

### A Human Rights Approach to Illicit Drugs is a Child Rights Approach to Illicit Drugs

Bearing in mind the above dissected legal standards and UNICEF's Child Protection Strategy, we suggest the following basic framework as minimum priorities for a human rights approach to policymaking regarding illicit drugs:

1. **Human rights focus:** CRC Article 33 is a minimum standard to be upheld at all times and the starting point for approaching the issue of human rights and illicit drugs.
2. **Human rights context:** A holistic approach is called for when implementing special protection rights. The four CRC principles need to be considered. However, the direction/purpose of the effort must be to facilitate implementation of the particular special protection right in question.
3. **Child-centred policy-making:** Policy-makers must constantly be reminded about the primary consideration of children and their rights, as per CRC best interests principle (Article 3). The following questions should be the first to be asked by drug policy-makers: "Is this in the best interests of the child – Is this in conformity with CRC Article 33?"
4. **Prevention key:** Prevention is the starting point on which national and international drug policy shall be anchored.
5. **The child is the victim:** Any child/the child who is using illicit drugs/ the child whose parents are using illicit drugs/ the child involved in illicit trafficking or production of such substances must be seen as a *prima facie* victim. Policy shall be clear on this. The adult illicit drug trafficker, producer, and user shall not be awarded such status.
6. **Clarity:** The core policy message must be clear and unambiguously in support of children's rights, as per Article 33. An ambiguous message undermines the minimum protection standards for children. The core policy message must be known among all stakeholders, including the children.
7. **Implement supporting obligations:** Policymakers shall examine and ensure that supporting international legislation, the UN drug conventions and ILO Convention 182 are fully implemented.
8. **Bad image of illicit drugs:** There is no question as per international law that illicit drugs shall have a bad image. Attempts to romanticize or trivialize illicit drugs shall be rebutted. Mass media shall be made partners in this pursuit.
9. **International equity concerns:** Special consideration shall be given to equity concerns regarding rich and poor countries. Whilst there is an obligation for poor countries to curb production and trafficking, the obligation of rich countries to curb the demand for illicit drugs is far greater. The adult recreational drug user is the human rights violator that is driving the wheel of the worst forms of child labour. Drug policy is an international solidarity matter.
10. **General human rights applies to perpetrators:** General obligations regarding policy measures for criminalization can never be allowed to violate human rights provisions. For example, no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment; every person has a right to due process, et cetera. But perpetrators' minimum rights cannot be the primary concern for policy-making. The victims' rights have to come first. In the case of illicit drugs, the child is the explicit *prima facie* victim.

## 2. Non-Governmental Organizations and Other Relevant Actors

Over the last decade, an assortment of non-governmental organizations (NGOs) and other similar actors have been pursuing a policy agenda involving the international law/human rights/drug control nexus. During the same period, this issue has been a non-priority for most UN bodies. Therefore, many of the advancements made in policy thinking and policy articulation in this field have come from NGOs and similar actors.<sup>1</sup>

This chapter examines a stream of reports and papers developed by NGOs and other relevant actors concerning international law, human rights and drug control policy in order to establish some main lines of current policy influence from such actors and their validity with regard to international law instruments.

The selected reports and papers discussed in this chapter were published between 1999 and 2010, a period of time that is illustrative for the purposes of this publication. A study from 1996 determined that “little has been written about drug use and human rights”<sup>2</sup>. Subsequently, a report from 2008 produced by several organizations indicated that “ten years later campaigning NGOs... are now finally invoking human rights norms in their work.”<sup>3</sup> A *prima facie* assumption is that the period after 1999 has, among some NGOs, been formative for the debate on international drug control/international law/human rights.

### 2.1. NGOs and Other Relevant Actors Active on the Issues of Drug Policy and Human Rights

The involvement of civil society, in its various organizational forms, in international affairs is not a new phenomenon; its involvement has, however, varied over time in its robustness, coordination and visibility. In the last few decades there has been a rapid proliferation of civil society organizations (NGOs) and an increase in the ability of these organizations to make their voices heard on the global scene, partly due to the development of new information and communication technologies. Official estimates indicate the existence of more than 250,000 NGOs operating across national state borders in 2003, representing a 43% increase since the 1990s.<sup>4</sup> But numbers are not everything; what counts is their acceptance as representatives of the world's people and as an alternative source of power, hence, their political relevance. Therefore, one could reasonably state that in the last few decades NGOs' involvement in global affairs has become a basic fibre in the fabric of contemporary life. Many decisions and initiatives affecting our existence are owed to civil society initiatives, advocacy, lobbying and pressure.

Joseph Nye, Jr. noted: “Many NGOs claim to act as a ‘global conscience,’ representing broad public interests beyond the purview of individual states. They develop new norms by directly pressing governments and businesses



to change policies, and indirectly by altering public perceptions of what governments and firms should do. NGOs do not have coercive 'hard' power, but they often enjoy considerable 'soft' power - the ability to get the outcomes they want through attraction rather than compulsion. Because they attract followers, governments must take them into account both as allies and adversaries."<sup>5</sup> However, governments are not the sole targets of NGO activism. It is the intention of some NGOs to change policies, laws and cultural understandings at the global level. Therefore they also target the United Nations as it "represents the only recognized worldwide governance body mandated to address global issues. To the degree that global civil society actors wish to change world affairs, it makes sense for them to target the UN as a main player-both as an arena where states make decisions and as a semi-autonomous secretariat carrying out operations."<sup>6</sup>

In general, the progressive involvement of transnational civil society actors<sup>7</sup> in international law and policymaking is regarded as beneficial, not only because of its "thickening" effect, as it contributes to the diversification of the range of actors active in international affairs, but also because it is assumed that these actors by their nature tend to allow for more direct citizen participation.<sup>8</sup> Therefore, their involvement lends itself to higher accountability to global governance mechanisms. Some transnational NGOs have noticeable and well-earned public credibility, especially the ones assuming human rights portfolios. Some are considered highly impartial experts capable of bringing to the table and advocating for vital issues. Several such organizations are espoused by the mass media and consequently large segments of the public trust and accept their campaigns or opinions.

It is now common knowledge that some NGOs are better resourced than many national states; they can exhort governments and inter-

national organizations to follow specific agendas. However, their credibility and goodwill, democratic legitimacy, representation, and accountability cannot be treated as *faits accomplis*.

The issues of civil society accountability and the democratizing potential of its involvement in global affairs have generated a large amount of literature, both critical and appreciative. This publication does not take a position on these issues in either direction; rather, our basic assumption is that many NGOs carry the flag they wish. In the end they are accountable to their financial contributors, to their members and to the other NGOs in their network. Their responsibility in relation to those whose interest they claim to represent is a hypothetical one, as it is difficult to imagine that "clients" such as children, poor farmers, people living with HIV/AIDS, et cetera, would rally and protest against an NGO speaking in their names.

This chapter attempts to assess the rhetoric involved by some of these organizations on the issues of international drug control, human rights and international law, the agendas they try to advance, and the relationships between these organizations and the UN. One of the end aims of this publication is to eventually show that the "soft" power that NGOs and similar actors can exercise may convince certain UN entities to assume campaigns without due critical resistance.

The importance of NGOs' input, experience and cooperation is acknowledged and therefore stipulated in Article 71 Charter of the United Nations.<sup>9</sup> Subsequently, the significance of the partnership between civil society and the UN, especially at national and international levels, was demonstrated by the admittance of NGOs' participation at UN treaty drafting procedures and was underlined in conventions' texts<sup>10</sup>, treaty bodies' practice<sup>11</sup>, resolutions<sup>12</sup>, reports<sup>13</sup>, declarations, programmes, et cetera.

The proliferation of civil society organizations and their acceptance within the UN system is illustrated by the increasing numbers of NGOs with consultative status. In 1946, the Economic and Social Council (ECOSOC) granted consultative status to 41 NGOs. By 1992, more than 700 NGOs had attained consultative status. The number has been steadily increasing ever since to almost 3,400 organizations today.<sup>14</sup>

The UN system, with its various bodies and agencies, consistently and indisputably benefited from and valued the experiences, advice and activities of civil society in assessing and addressing various problems, whether related to human rights and/or drug control issues. This type of expertise is encouraged and often stimulated by the UN. For example, UNODC stresses “the need to promote strong partnerships with civil society organizations in dealing with the complex problems of drug abuse and crime which undermine the fabric of society. The active involvement of civil society and non-governmental organizations (NGOs) is essential in helping UNODC carry out its global mandates.”<sup>15</sup> Similar statements have been made by other UN bodies and agencies.

However, the legal interpretation and the very implementation of international treaties by the UN should always stem from the instruments themselves and must follow the legal mechanisms. External pressure, emotional appeals, massmedia campaigns, et cetera, from NGOs or any other actors should not justify legal misinterpretations, alterations of instruments or bypassing of legal provisions. No law is written in stone. State Parties always have legal mechanisms to modify ill-fitting instruments. State Parties may propose amendments/modifications to different provisions within a treaty; they can revise or denounce a convention according to its specific provisions.<sup>16</sup> There are also clear provisions for termination and suspension of an international treaty.<sup>17</sup> Neither civil society nor profi-

cient individuals can or should suggest any alternative route to the legal one in making changes to the interpretation or implementation of a treaty. Any exception to the rule of law would have significant consequences, and may include setting a precedent which would put the entire international legal architecture at risk.

Upon analysis of the relatively recent UN exclusively drug user centered discourse, on the relationship between human rights and the drug control regime, it appears that the new tone used when discussing this subject has not been initiated by an introspective process from within the UN organizations. Rather, this is by dint of an increasing pressure from outside, more specifically from NGOs focused on the specific tandem of drug control-human rights. Hence, what was once upon a time a “small vocal minority” has lately become an agenda setter for the UN. The linguistic and logical similarities are obvious. As long as the same way of reasoning, the same methodologies, the use of the same references, and even more perilously, the same omissions of relevant instruments, are easily identifiable in both cases, it becomes difficult to deny or ignore the influence that certain NGOs are exerting on UN agencies.

Therefore, a review of NGOs’ positions might further illuminate how to understand policy development among UN agencies and bodies. This chapter focuses on NGOs and entities who advocate for *removal of punitive laws, policy change, and justice system reform* in relation to the international drug conventions, for the creation of *enabling legal environments* for drug users. Some of them believe that the society at large and the stakeholders have to “empower and listen to those who use drugs... in all aspects of decision and policymaking, planning and implementation”<sup>18</sup> and consider that “imprisoning drug users is an abuse of human rights and a threat to public health”<sup>19</sup>. This type of rhetoric seems to be assumed by

some UN entities literally or in varying degrees.

### **Selection criteria**

Using the Google web search engine for word combinations such as *NGO+drugs+human rights*, we got about 53,800,000 results encompassing a vast array of items from organizations' web sites, to newspaper articles, to policy papers, et cetera. Subsequently, we focused on a number of NGOs<sup>20</sup> who proclaimed to have a mandate related to drug control policy and international law/human rights, to work on this issue and others who made episodic statements on this matter. We also looked at papers written on this topic by authors who are not necessarily affiliated to a specific organization, but who are often quoted by NGOs and set influential starting points for drug legalization/decriminalization/de-penalization strategies. Particular attention has been given to those papers/reports which were also cited in UN papers or reports.

The review covers 20 organizations. This chapter focuses on NGOs and other entities that:

- Clearly articulate a standpoint, preferably through a policy paper, on human rights and drugs, and if possible, discusses children rights;
- Have an international orientation, addressing international norms in their discourse or otherwise addressing themselves internationally;
- Are influential and highly visible as human rights defenders due to their portfolios, achievements, history, size, et cetera, and are involved in the international drug control debate. Some examples on this category are: the International Federation of Red Cross and Red Crescent Societies (IFRC), Human Rights Watch (HRW), Open Society Foundations (OFS), et cetera.

A list of the discussed organizations is provided in the end of this chapter.<sup>21</sup>

## **2.2. Assessing Civil Society 1999–2010**

This chapter dissects and comments on some of the arguments given by NGOs and other relevant actors, that are advanced in papers/reports on drugs/human rights/international law published from 1999 to 2010. It focuses on those that seem to be the most influential, and hence, are often quoted by the anti-prohibitionist camp or by the UN's papers.

The selection offered here is by no means exhaustive. Its purpose is to provide the reader with a "taste" of the way NGOs reason in relation to drugs and human rights and to indicate some themes later found in the UN bodies' recent discourse.

We divided the authors/sources of published papers supported or quoted by these NGOs, into three categories according to the area on which they focus their arguments, noting that in the more recent papers/reports these categories often aggregate:

***I. The international law group*** – Authors who are examining different provisions of international law and recommend States Parties various escape routes from legally binding agreements they have signed and ratified, namely the three drug conventions,<sup>22</sup> or promote a rebellion against the present legal establishment. This camp does not generally resort to human rights instruments. Hence, no discussion related to children rights is to be expected.

***II. The human rights group*** – Authors who deploy a human rights discourse with a clear purpose of challenging the validity of present international drug control legislation, with particular attention to its demand side.<sup>23</sup> They either contort the existing provisions of the human rights conventions, giving them a partisan interpretation, or purely devise custom-made new rights to fit a segment of

population depicted as the primary victims of the present legal setting: the drug users. They ignore existing rights, notably Article 33 of the Convention on the Rights of the Child, with the intention of reorganizing the perception of whom shall be considered a victim (any adult drug user) whilst forgetting about children's special protection rights in this regard.

**III. The children rights group** – This is an extremely small group of authors, closely related to the human rights group. These authors made their initial appearance more recently on the international stage. In general their strategy is the admittance of the existence of the single human right provision addressing narcotic drugs in any of the international human rights instruments, respectively CRC Article 33, and its relevance for drug policy, but make it look like something completely different by giving it a limited interpretation or a completely partisan one, departing from the ordinary meaning of the provision.

#### **I. The international law group:**

As mentioned above, this category of authors, whether directly affiliated to an NGO or not, considers that the present international drug control regime regulated by the three drug-related treaties<sup>24</sup> is undoubtedly a prohibitionist one and a bitter pill to swallow for states that might contemplate legalization of any drugs, or the adoption of measures to decriminalize<sup>25</sup> or de-penalize<sup>26</sup> consumption of illicit drugs, or implement the so-called “harm reduction” programmes.<sup>27</sup> The development of such policies is considered, from a legal point of view, to be jeopardised by the entrance into force of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. This instrument directly addresses in its penal provisions the demand side of the drug problem in Article 3 paragraph 2. For example, Krzysztof Krajewski<sup>28</sup> admits bluntly: “This provision seems absolutely clear,

closing the ‘loophole’ existing from the prohibitionist point of view under earlier conventions, that consumption and consumers must be criminalised.”<sup>29</sup> Therefore the 1988 Convention becomes the main object of discontentment and repudiation in the majority of papers belonging to this category of authors.

None of the papers or reports belonging to this group addresses the supply side of the drug problem or tries to assess the consequences of de-penalisation or decriminalization of illicit drugs for the production, manufacture and distribution of these substances.

These authors do not deploy human rights arguments, but instead draw escape routes from the international drug convention on the international law map by indicating how States Parties may be able to bypass instruments they have ratified. Hence their tone is “secular” and practical in this road map towards, ultimately, *de facto*<sup>30</sup> or *de jure*<sup>31</sup> legalization of drugs.

Some papers follow an intricate trajectory, often starting with exploring the informal solutions for departing from the conventions letter while still simulating some kind of compliance with the spirit of international law by exploiting the loopholes in the treaties. As often these paths have proved to be either dead ends or just short-term palliatives, the next routes considered and debated are the legal ones. Hence, few authors examine the formal ways of amending<sup>32</sup> or modifying<sup>33</sup> treaties’ provisions, treaty revision<sup>34</sup>, denunciation or termination, exploring a number of issues to be considered when discussing possible withdrawal from one or all of the UN drug control conventions.

These possibilities are provided for in the three drug conventions. The provisions for amendments are to be found in Article 47 of the Single Convention of 1961, Article 30 Convention on Psychotropic Substances of 1971 and Article 31 United Nations Convention against Illicit Traffic in Narcotic Drugs

and Psychotropic Substances of 1988.<sup>35</sup> Provisions for denunciation and termination of the treaties are stipulated in Article 46 of the 1961 Convention, Article 29 of the 1971 Convention and Article 30 of the 1988 Convention.<sup>36</sup> Unlike the previous instruments, namely the 1961 and 1971 Conventions, the 1988 Convention has no termination clause. This means that, as rightly pointed out by David Bewley-Taylor<sup>37</sup> and Fazey et al<sup>38</sup>, according to Article 55 of the Vienna Convention on the Law of Treaties (VCLT)<sup>39</sup> the 1988 Convention will remain in force even if it has only one single State Party. This feature of the 1988 Convention is the object of great distress in the anti-prohibitionist camp. However, the absence of a termination clause is obviously intentional. This is exactly the form in which the 1988 Convention was ratified by 188 States Parties.<sup>40</sup>

The examination of the legal routes often amounts to just to a theoretic exercise in these papers and it is quickly abandoned in favor of the informal solutions. For example, Krzysztof Krajewski states in his paper from 1999<sup>41</sup> that from a legal point of view, “the UN conventions impose very serious limitations on the signatories’ development of unique national drug policies. The chances of changing this situation, repealing or substantially amending these conventions are extremely slim.”<sup>42</sup> He concludes that, “Unfortunately, implementation of more rational drug policies, including not only legalization but also decriminalization, would probably require amending the 1988 Convention, repealing Article 3 paragraph 2. As mentioned before, such an amendment will doubtfully occur anytime in the near future.”<sup>43</sup> David Bewley-Taylor<sup>44</sup> discusses in greater details in his 2003 paper *Challenging the UN drug control conventions: problems and possibilities* the two possible alternatives, modification and amendment<sup>45</sup>, and soon comes to the conclusion that “difficulties beset the options available to create more room for manoeuvre within the current regime. Any

attempts to modify or amend any of the Conventions would certainly run up against opposition from the prohibition-oriented group who could easily work the provisions of the treaties to block any progress. In order to circumvent such stasis, Parties may wish to consider withdrawing from the treaties.”<sup>46</sup> While debating denunciation procedures he concludes that this option is theoretically plausible but practically “highly improbable that the denunciation route could be employed to formally terminate the treaties.”<sup>47</sup> According to Bewley-Taylor, getting 140 countries (the number of Parties in 2002) to denounce the Single Convention seems an implausible scenario. Similar conclusions are reached by Bewley-Taylor, Cindy Fazey, and Tim Boekhout van Solinge in their paper *The Mechanics and Dynamics of the UN System for International Drug Control*, published in 2003. They also consider that Parties incur “enormous difficulties” in their attempts to modify or amend the drug conventions; hence the way to go is withdrawal from the treaties. But according to these author’s assessment, “while the prospects for treaty termination may be limited, states may wish to use denunciation to extricate themselves from the current system”<sup>48</sup>. This possibility is also deemed as highly problematic as “Open defection from the drug prohibition regime would... have severe consequences: it would place the defecting country in the category of a pariah ‘narcostate,’ generate material repercussions in the form of economic sanctions and aid cut offs, and damage the country’s moral standing in the international community.”<sup>49</sup> Henceforward, States Parties are advised to “simply ignore the treaties or certain parts of them”<sup>50</sup>; “to more actively pursue the quiet path... interpreting the ambiguities within the Conventions in the light of their own needs... especially in relation to the de-penalization of possession of illicit drugs and the use of controlled drugs for medicinal reasons”;<sup>51</sup> ignore the International



Narcotics Control Board (INCB) advice; create a group of like-minded states who can rage against the present drug control regime and its UN machinery, and to pressure itself and initiate a regime change.

The latitude within the drug treaties or the room for manoeuvre within the current regime is trawled through the three drug conventions, the general features of international law and the various provisions of the Vienna Convention on the Law of Treaties (VCLT).<sup>52</sup>

Some such examples are:

### **1. The vagueness of the drug conventions**

An indicated escape route, or “loophole” exploitable in the advantage of the states wishing to depart from the present drug control regime is that the international drug conventions “are formulated in a very broad, even vague manner.”<sup>53</sup> For example, Krzysztof Krajewski explains the vagueness of the conventions’ provisions as the result of the State Parties’ negotiations while adopting the instruments and of the need to accommodate different legal systems. But in this regard there are no differences between the three UN drug conventions and other conventions between states. The Vienna Convention on the Law of Treaties, the instrument that codifies the rules that guide treaty relations between states, in Article 2(1) (a) explains that “‘treaty’ means an international agreement concluded between States in written form and governed by international law... whatever its particular designation”.<sup>54</sup> Hence any treaty implies a clear and voluntary intention to establish legal relations and is a result of negotiations and bargaining procedures, a compromise between states. Treaties create legally binding rights and duties for the contracting parties and remain the most important means of regulating international relations.

All conventions pass through the processes of adoption; “the formal act by which the form

and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule.”<sup>55</sup>

If we are to apply Krajewski’s logic, the whole international system would become a legal minefield, providing no accountability or foreseeability for the States Parties.

### **2. The non self-executing nature of the conventions**

According to David Bewley-Taylor, “room for interpretation” is to be found in the fact that the conventions are not of self-executing nature<sup>56</sup> and because “often vocal in its criticism of national policy, the INCB, as the body responsible for overseeing the operation of the treaties, has no formal power to enforce the implementation of the Convention provisions, nor has the Board the formal power to punish parties for non-compliance.”<sup>57</sup> This gives, according to the author, States Parties freedom in formulating domestic policies against the INCB’s advice.

The author appears not to have taken into account the fact that none of the UN treaties is self-executing and that none of the monitoring bodies has the ability to literally punish countries for non-compliance. This feature of international law often stimulates debates and even contestations related to the real legal value of international law as law. This is contrasted to the assumption that at the national level the

law is enforced. But as pointed out by Martin Dixon, “It might be that the assumed certainty of enforcement of national law masks its true basis and, in the same way, enforcement may be irrelevant to the binding quality of the international law. For example, a better view of national law may be that it is ‘law’ not because it will be enforced, but because it is generally accepted as such by the community to whom it is addressed: the local population. The national society recognizes that there must be some rules governing its life, so long as these come into existence in the manner accepted as authoritative... they are binding. In other words, the validity of ‘law’ may depend on the way it is created, that being the method regarded as authoritative by the legal subjects to whom it is addressed. The fact of enforcement may be a reason why individuals obey the law (and that is not certain), but it is not the reason why it is actually law. In international law, then, the fact that rules come into being in the manner accepted and recognized by the states as authoritative... is enough to ensure that ‘law’ exists... While international law has never been wholly dependent on a system of institutionalized enforcement, the absence of a ‘police force’ or compulsory court of general competence does not mean that international law is impotent.”<sup>58</sup>

This is the very nature of the international law and this is the place where “good faith” should apply. States are trusted to honor the agreement made by signing/ratifying the instrument.

It is absolutely clear that an international police directly enforcing these formal agreements will not be established anytime soon, neither for the international drug control treaties nor for the other instruments.

### **3. Article 31 of the Vienna Convention on the Law of Treaties**

Another escape route or way to find “some room for interpretation at the national level”<sup>59</sup>

is found in the context of Article 31 VCLT, which compels countries “to interpret treaties in good faith, respect the ‘object and purpose’ of the Conventions and thus, within the context of this discussion, adhere to the standards and norms of the global drug control regime.”<sup>60</sup>

It is true that the principles of treaty interpretation are rather complicated matters; this is why a good deal of texts has been devoted to this topic. However, when discussing the subject of treaty interpretation, VCLT Articles 31 and 32 are the first places where clarification is to be found. Therefore, we should throw a glance at VCLT Article 31 to estimate the proportions of the so-called “room for interpretation” permissible in the context of the drug conventions.

As indicated by the International Law Commission, the attempt to “isolate and codify the comparatively few general principles which appear to constitute general rules for the interpretation of treaties” was not an easy task but an extremely important one; “the Commission considered that there were cogent reasons why it should be attempted. First, the interpretation of treaties in good faith and according to law is essential if the *pacta sunt servanda* rule is to have any real meaning. Secondly, having regard to the divergent opinions concerning methods of interpretation, it seemed desirable that the Commission should take a clear position in regard to the role of the text in treaty interpretation.”<sup>61</sup> The Commission further elaborated: “When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.”<sup>62</sup> However, “extensive” or “liberal” interpretation, in the sense of an interpretation going beyond what is expressed or necessarily implied in the terms of the treaty, is described by the same source as being highly avoidable. The Commission actually

tried to discourage any “attempts to extend the meaning of treaties illegitimately on the basis of the so-called principle of ‘effective interpretation.’”<sup>63</sup> The same view was expressed by the International Court of Justice, which emphasized that the adoption of “an interpretation which ran counter to the clear meaning of the terms would not be to interpret but to revise the treaty.”<sup>64</sup>

The International Law Commission elaborated in relation to VCLT Article 31<sup>65</sup> as follows: “The first – interpretation in good faith – flows directly from the rule *pacta sunt servanda*. The second principle is the very essence of the textual approach: the parties are to be presumed to have that intention which appears from the ordinary meaning of the terms used by them. The third principle is one both of common sense and good faith; the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty and in the light of its object and purpose.” These principles have repeatedly been affirmed by the Court. The present Court in its Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* said:

“The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter.

In addition, the Permanent Court, in an early Advisory Opinion, stressed that the context is not merely the article or section of the treaty in which the term occurs, but the treaty as a whole:

‘In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be deter-

mined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense.”<sup>66</sup>

In this context, it is difficult to understand how “room for interpretation”, in the sense of adopting a lax policy in relation to recreational drug consumption, is to be found in VCLT Article 31 and how VCLT Article 31 is to sustain such a position.

Authors like David Bewley-Taylor also overlook the sources VCLT Art. 31 indicates as recommendable to resort to for the purpose of the interpretation of a treaty. As stipulated by VCLT Article 31, “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”,<sup>67</sup> and “the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.”<sup>68</sup>

It should be illustrative to look at the preambles of the drug conventions to understand their spirit, to cast an appropriate light on the object and purpose of these instruments. As stated by the International Law Commission, it is a fact that “the preamble forms part of a treaty for purposes of interpretation is too well settled to require comment.”<sup>69</sup> The same source elaborated in relation to the preamble of a treaty that “the Court has more than once had recourse to the statement of the object and purpose of the treaty in the preamble in order to interpret a particular provision.”<sup>70</sup>

The Single Convention’s Preamble states:

“*The Parties,*

*Concerned* with the health and welfare of mankind,

*Recognizing* that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

*Recognizing* that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,

*Conscious* of their duty to prevent and combat this evil,

*Considering* that effective measures against abuse of narcotic drugs require coordinated and universal action...<sup>71</sup>

The 1971 Convention's Preamble affirms:

*"The Parties,*

*Being concerned* with the health and welfare of mankind,

*Noting* with concern the public health and social problems resulting from the abuse of certain psychotropic substances,

*Determined* to prevent and combat abuse of such substances and the illicit traffic, to which it gives rise,

*Considering* that rigorous measures are necessary to restrict the use of such substances to legitimate purposes,

*Recognizing* that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted,

*Believing* that effective measures against abuse of such substances require co-ordination and universal action,"<sup>72</sup>

And finally, the 1988 Convention's Preamble enunciates as follows:

*"Deeply concerned* by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

*Deeply concerned* also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the

fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

*Recognizing* the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

*Recognizing* also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,"

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

*Determined* to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

*Desiring* to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,"<sup>73</sup>

These preambles do not leave many options in relation to the recreational/non-medical and non-scientific use of narcotic drugs and psychotropic substances for the States Parties. Hence it will be difficult to consider decriminalization or de-penalization/*de facto* legalisation as viable options under the present legal setting without giving them, and especially to '88 convention Article 3(2), an interpretation which runs counter to the clear meaning of the terms involved.

Notwithstanding all these facts, authors like David Bewley-Taylor still consider that "This situation certainly leaves some room for interpretation at the national level and consequently presents signatory nations with a degree of freedom when formulating domestic policies. Such a situation explains the variations that exist within Europe today, including

the de facto legalisation of personal cannabis possession in a number of countries.”<sup>74</sup>

#### **4. The fundamental changes of circumstances, *clausula rebus sic stantibus***

Another suggested solution is to push for reinterpretation or even termination of treaties on the grounds of fundamental changes of circumstances. Bewley-Taylor suggests that, “Bearing in mind the dramatic changes in the nature and extent of the drug problem since the 1960s, this doctrine of *rebus sic stantibus* could probably be applied to the drug treaties.”<sup>75</sup> This is actually another dead end in relation to the prescription of the doctrine of *rebus sic stantibus*<sup>76</sup> and its applicability in relation to the drug conventions. Aside from its complete inappropriateness as per VCLT Article 62,<sup>77</sup> even at theoretical level, this clause is extremely limited scope in international law practice and it is of a rather controversial nature. For example, the International Court of Justice ruled that “the stability of treaty relations requires that the plea of fundamental changes of circumstances be applied only in exceptional cases.”<sup>78</sup>

Other papers suggest that the drug conventions are too old and they fail to acknowledge the reality in relation to the HIV/AIDS epidemic. This argument is flawed, as the last drug convention was adopted in 1988, a time when HIV was by no means a negligible phenomenon. We should also mention in this context that all three drug conventions provide for treatment as an alternative or in addition to conviction or punishment, aftercare, rehabilitation or social reintegration of the user/offender.<sup>79</sup>

Finally, in relation to the prescription of the doctrine of *rebus sic stantibus* and its applicability in relation to the drug conventions in the context of the HIV/AIDS epidemic, Fazey et al. in discussing *Possibilities for changing the current treaties – Disregarding the Treaties* admits that: “the selective application of such a

principle would call into question the validity of many and varied conventions. Furthermore, since the treaties fulfill an important role in the control of licit pharmaceuticals any withdrawal from the international treaty system would certainly be problematic.”<sup>80</sup>

Although this strategy is a legal dead end, it is still pursued and promoted, not just by some NGOs, but more recently and surprisingly by some UN agencies and bodies. One remarkable example in this regard is UNODC. In 2008 the Executive Director, Antonio Maria Costa, suggested that the three drug conventions are obsolete and that the changed circumstances have to be considered in answering any question about implementation of the international drug control system in the 21st century. Clearly, we must humanize our drug control regime which appears too many to be to depersonalized and detached from their day-to-day lives.”<sup>81</sup>

However, considering the controversial, convoluted and compound nature of the HIV/AIDS argument, we have decided to address this issue in a separate study.

## **II. The human rights group:**

The human rights political agenda could be described as one of the biggest successes of the last 60 years. From few documents with limited legal effect,<sup>82</sup> there is today a substantial array of international human rights instruments, bodies, institutions, tribunals and courts which monitor and implement this regime. As mentioned above, an impressive number of NGOs act as watchdogs for this regime.

Progressively, the language of human rights has become a source of power and authority. Today an allegation that a state, a leader or a regime is violating human rights is one of the gravest to be associated with. But like other sources of power, the power of the language of human rights is exposed to abuses. We can also see inappropriate uses of human rights discourse where the language of human rights



is employed to attain political ends that are contrary to the wording of human rights law. As previously discussed, every human rights campaign has to be validated by existing hard law instruments. Ultimately, we have to acknowledge that human rights are not about people's feelings, intentions or wishes; they are laws codified in international legal instruments.

In general, the sources<sup>83</sup> addressing the relationship between the human rights regime and the international drug control regime tend to group. According to our survey, it is very seldom that a human rights/drug control paper is issued by one author or one single organization.<sup>84</sup> It is a guessing game as to whether a pooling of intellectual expertise is the reason for this collaboration or if it is a strategy to gain authority, influence and attention. For the citizen or the politician who is not directly concerned with drug control policy, a list of names of authors or organizations will pass unnoticed; however, attaching names like Human Rights Watch or a UN Special Rapporteur (e.g. the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment or the Special Rapporteur on health) guarantees better credibility and exposure. But this is not the only strategy involved. These organizations' game plan seems extremely well devised; they merge and divide according to the task and aim. Their numbers impromptu mushroom and they produce whatever thoroughbred or crossbreed is needed in a specific context, from youth organizations and pro-marijuana parents' grassroots networks, to every entity imaginable. Many documents have been issued by the unholy trinity of Harm Reduction International/International Harm Reduction Association, Open Society Institute and Human Rights Watch, but when influence is to be gained by using a larger number of voices, they will separately issue reports or papers. As mentioned in the beginning of this chapter, by using the

Google web search engine for word combinations such as *NGO+drugs+human rights*, we obtained an impressive number of results. However, even if the number and geographical coverage of NGOs and entities dealing with human rights and drug policy appears overwhelming, in our final analysis, the arguments and the style of these publications indicate few instances of pre-eminence and *éminence grise*, often stemming from the United Kingdom.

Often these papers/reports label the international drug control regime, regulated by the three drug conventions, as "overwhelmingly prohibitionist"<sup>85</sup>, moralistic, demonizing and dehumanizing of people who use drugs, aggravating discrimination against people who use drugs and generating widespread serious human rights violations.<sup>86</sup> The same regime is described as leading to "the denial of human rights to people who use drugs."<sup>87</sup> The current approach in international drug policy is equated with the "war on drugs", even though none of these papers define the concept of "war on drugs" or describes in detail what this approach entails. The drug control regime is deplored for the alleged human rights abuses it provokes and for worsening national and international security and development.<sup>88</sup>

Some of these papers state that the international drug conventions have been developed, interpreted and implemented "in a vacuum from human rights law."<sup>89</sup> This situation is seen as possible because the human rights machinery mostly ignored the issue of drug control. This is deemed as being at odds with the obligation imposed to UN structures and its Member States by the Charter of the United Nations to promote, encourage and observe universal "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>90</sup> The next step in some of these papers is to state the existence of a conflict between the two regimes (human rights and drug control) and to invoke Article 103 of the UN

Charter to assess the primacy of human rights within the United Nations system.<sup>91</sup> For example, the 2009 HRW, IHRA and Canadian HIV/AIDS Legal Network's Report: *Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy*, published by Beckley Foundation Drug Policy Programme (BFDPP), states: "While the human rights norms are absent from the preambles of the three UN drug control treaties, this does not mean the UN narcotics control regime is free to operate without complying with human rights law... More importantly, however, the UN, its agencies and member states are bound by their overarching obligations under articles 1, 55 and 56 of the Charter of the United Nations to promote 'universal respect for, and observance of, human rights and fundamental freedoms'. Under article 103 of the Charter, 'In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.' This means that international treaties on narcotics control must be interpreted so as to comply with the overarching duty to respect and observe human rights."<sup>92</sup>

However, without denying the relevance of human rights for the drug control regime, as for any other international legal sphere, we have to admit that the issue of UN Charter Article 103 is by no means as straightforward as these authors<sup>93</sup> wish and suggest. For example, the Koskeniemi Report of the Study Group of the International Law Commission *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*<sup>94</sup> (hereafter Koskeniemi Fragmentation of International Law Report) states: "Much of the concern over the fragmentation of international law emerges from the awareness of the 'horizontal' nature of the international legal system. The rules and prin-

ciples of international law are not in a hierarchical relationship to each other... This is a key difference between international and domestic legal systems. Whereas domestic law is organized in a strictly hierarchical way, with the constitution regulating the operation of the system at the highest level, there is no such formal constitution in international law and, consequently, no *general* order of precedence between international legal rules... There is an important practice that gives effect to the informal sense that some norms are more important than other norms and that in cases of conflict, those important norms should be given effect to. In the absence of a general theory about where to derive this sense of importance, practice has developed a vocabulary that gives expression to something like an informal hierarchy in international law... namely Article 103 of the United Nations Charter, the concepts of peremptory norms (*jus cogens*) and obligations *erga omnes*."<sup>95</sup> The Study Group of the International Law Commission elaborated in the Fragmentation Report A/CN.4/L.702,<sup>96</sup> "International law is a legal system. Its rules and principles (i.e. its norms) act in relation to and should be interpreted against the background of other rules and principles. As a legal system, international law is not a random collection of such norms. There are meaningful relationships between them. Norms may thus exist at higher and lower hierarchical levels, their formulation may involve greater or lesser generality and specificity and their validity may date back to earlier or later moments in time."<sup>97</sup>

Regarding UN Charter Article 103 we have to acknowledge that its primacy is expressly mentioned under article 30 (1) VCLT.<sup>98</sup> However, as indicated by Koskeniemi Fragmentation of International Law Report, Article 103 does not stipulate that the UN Charter prevails, but refers to obligations under the Charter,<sup>99</sup> more specifically, as Humphrey Waldock put it, "the very language of Article

103 makes it clear that it presumes the priority of the Charter, not the *invalidity* of treaties conflicting with it.”<sup>100</sup> The Koskenniemi Fragmentation of International Law Report further elaborates: “A clear-cut answer to this question (priority or invalidity?) cannot be received from the text of Article 103. Yet the word ‘prevail’ does not grammatically imply that the lower-ranking provision would become automatically null and void, or even suspended. The State is merely prohibited from fulfilling an obligation arising under that other norm. Article 103 says literally that in case of a conflict, the State in question should fulfil its obligation under the Charter and perform its duties under other agreements in as far as compatible with obligations under the Charter.”<sup>101</sup>

Returning to the arguments advanced by various authors<sup>102</sup> in relation to the human rights and international drug regimes and their relation to UN Charter Article 103, we should consider UN Charter Articles which establish states’ obligations under the this instrument. Article 1 deals with the Purposes of UN<sup>103</sup> and Article 2 establishes the Principles members have to apply, in pursuit of the Purposes stated in Article 1.<sup>104</sup> As discussed in Chapter 1, the preamble is also a useful tool in understanding the object and purposes of an instrument, in this case the UN Charter.<sup>105</sup> Taking into consideration all these elements, we cannot reach the same conclusion as the mentioned authors.<sup>106</sup> The international drug control policy, even if not specifically named as such, falls under “international problems of an economic, social character” mentioned by Article 1(3). Moreover, both the preamble and Article 2 state the importance of acting in good faith and respecting “obligations arising from treaties,” issues that these authors completely ignore when describing three widely ratified international instruments as obsolete and encouraging States Parties to bypass them on ideological reasons.

In this context we should remember that the two articles of the Charter,<sup>107</sup> which are mainly invoked in relation to human rights, also mention the achievement of “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character”<sup>108</sup> as one of the purposes of the United Nation, as per Article 1. UN Charter Article 55 stipulates that UN should promote: “(b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation.”<sup>109</sup> Barrett and Nowak mention this fact in their 2009 paper as follows: “during the San Francisco Conference it was made clear that drug control was a subset of ‘international economic, social, health and related problems’ contained in Article 55, and for which the UN had competence to consider. Today we refer to this as the development pillar of the UN.”<sup>110</sup> The international drug control policy attempts to deal exactly with such problems. Hence it would be difficult to consider under the UN Charter the existence of a conflict between these two regimes<sup>111</sup> and to solve the issue through Article 103, as long as the UN Charter itself does not define any internal hierarchy.

The limited jurisprudence related to UN Charter Article 103 fails to confirm the theory that in the event of a conflict between the obligations of the Members of the United Nations under the Charter, human rights might prevail. For example, in the 2005 *Al-Jedda* Case,<sup>112</sup> where the claimant – an Iraqi/British citizen – had been detained by British forces in Iraq for 10 months without being charged, the High Court of Justice in Britain delivered its judgment affirming the superiority of Security Council resolutions over Britain’s human rights obligations: “Firstly, the Court tested the legality of the claimant’s detention against what it called ‘the context of international human rights law’... the Court added, nevertheless, that a hierarchy was also implicated: [f]or the purposes of restoring and maintaining that

peace and security without which there can be no human rights within Iraq, the Security Council has authorized such detention as is necessary for imperative reasons of security in accordance with Article 78 of Geneva IV... Secondly, the Court, discussing the relationship between the Charter of the United Nations and all other treaty obligations, concluded that Article 103 of the Charter of the United Nations embraces also resolutions of the Security Council and that actions taken in pursuance of them prevail over other treaty obligations - even of human rights character.”<sup>113</sup>

However, even if no element suggests the conclusion reached by these authors<sup>114</sup>, we should note that the same argument referring to UN Charter Article 103 was repeatedly used by UNODC in their reports<sup>115</sup>, including the Organization’s most comprehensive paper discussing human rights and drug policy.<sup>116</sup>

Another argument sustaining the conflict between human rights and international drug control/primacy of human rights idea, according to some of these authors, is found in the resolutions adopted yearly by the General Assembly entitled *International cooperation against the world drug problem*, which in recent years requested that drug control “must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action on human rights, and, in particular, with full respect for the sovereignty and territorial integrity of States, for the principle of non-intervention in the internal affairs of States and for all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect.”<sup>117</sup> Still, these papers concerned with human rights/drug control ignore the paragraphs of the same resolutions which state that the General Assembly is gravely concerned that “the world drug problem continues to consti-

tute a serious threat to public health and safety and the well-being of humanity, in particular children and young people and their families, and to the national security and sovereignty of States, and that it undermines socio-economic and political stability and sustainable development.”<sup>118</sup> Also ignored is the fact that these resolutions welcome Member States’ efforts to comply with the three drug conventions. Hence, the stated conflict between the two regimes does not result from these resolutions.

Moreover, as mentioned above, the same General Assembly resolutions request that drug control must be carried out in full conformity with the Vienna Declaration and the Programme of Action on Human Rights<sup>119</sup>, adopted in June 1993, which specifically asks that “the rights of the child should be a priority in the United Nations system-wide action on human rights”.<sup>120</sup> This paragraph of the Vienna Declaration is completely ignored even by the authors who specifically quote this instrument. For example, Barrett and Nowak cite Vienna Declaration and Programme of Action of 1993 to underline that *Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments*<sup>121</sup> but neglect to mention the emphasis that this Declaration puts on children’s rights.

Another fact never discussed in relation to these General Assembly resolutions on “*International Cooperation against the World Drug Problem*” is that the latest such document, A/RES/65/233, states the deep concern about the need “to take all appropriate measures, including legislative, administrative, social and educational measures, to protect children against the illicit use of narcotic drugs and psychotropic substances as defined in the relevant treaties, and to prevent the use of children in the illicit production of an trafficking in such substances”.<sup>122</sup> This paragraph replicates the language of CRC Article 33, a provision that is largely avoided and

ignored in all papers dealing with human rights and international drug control. The exception is again the Barrett and Nowak 2009 paper which acknowledges that this is “the only UN human rights treaty to deal specifically with the issue” but discusses it in less than a sentence<sup>123</sup>, clearly showing that the authors believe that any other human rights instrument is of greater relevance for drug control policy. The authors state that “Meanwhile, in the sixty years since the adoption of the Universal Declaration, international human rights law has developed to pursue the health and ‘well being’ of everyone without discrimination”<sup>124</sup> but propose a discriminatory selection of human rights, excluding any focus on children’s rights and the interests of members of the larger population that do not qualify as drug users.

Some of these papers begin by stating that a conflict of ideologies exists between the human rights and drug control regimes. For example, Barrett and Nowak consider that “Unlike human rights law, which focuses to a large extent on the protection of the most vulnerable, the drug conventions criminalise specifically vulnerable groups. They criminalise people who use drugs...”<sup>125</sup> In the 2008 report by Barrett et al. regarding the international human rights system, it is stated that “In addition to the specific protections and freedoms set out in each human rights treaty, a number of key principles run throughout the conventions that are of considerable relevance to international drug control.”<sup>126</sup> These listed principles are: non-discrimination, protecting the most vulnerable, and empowerment. On the other hand, the international drug control regime is seen as discriminatory against people who use drugs; as failing to protect the most vulnerable groups, including local farming communities and drug users; and ignoring the involvement of communities affected by drug use, production and trafficking in designing policies.<sup>127</sup> Still, none of the characteristics

enumerated above, such as drug use, production or trafficking of drugs, are immutable characteristics that can make the case for direct discrimination. It is rather unusual to raise concern over discrimination and empowerment on instruments comprising penal provisions against that specific activity. It would be like complaining that the UN Convention against Corruption discriminates against corrupt people. Moreover, it is difficult to credit the assumption that drug users constitute the most vulnerable group in the society. Some drug-using individuals are children, women, elderly people, and people with disabilities or who belong to a certain race or ethnicity<sup>128</sup>, et cetera, but this cannot lead to the conclusion that all drug users constitute the most vulnerable group in society. Clearly most people who have a lifetime prevalence of illicit drug use do not develop a substance use disorder (i.e. abuse or dependence). According to Anand Grover, the UN Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, “drug use is not a medical condition and does not necessarily imply dependence. Indeed the majority of people who use drugs do not become dependent and do not require any treatment.”<sup>129</sup> Hence it is difficult to see the reason for which the drug users’ category should be described as primary victims or particularly vulnerable?

Many of the papers at hand count on the imprecise usage of terms avoiding distinctions between: drug users, injecting drug users (IDU), drug dependant people, and even people living with HIV/AIDS. For example, the Beckley Foundation report *Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy* while discussing the principle of non-discrimination, explains that states are requested to avoid discrimination against individuals or groups on clearly described grounds and the basis of “other status”, which includes health status,



including HIV status. The paper extends this provision and discusses discrimination against drug users. However, the two groups of people living with HIV and drug users are distinct and cannot be equated. As above mentioned, in the words of the UN Special Rapporteur on the right to health, drug use is not a medical condition and does not require treatment. Hence, in which way does drug use qualify as other/health status to be discriminated against?

Another eloquent example of a document that interchangeably uses these terms is the 2010 Health Advocacy Report issued by International Federation of Red Cross and Red Crescent Societies (IFRC) titled *Out of harm's way – Injecting drug users and harm reduction*. The Report advocates strongly for “harm reduction” and underscores the link between “harm reduction” and human rights. The paper pro-claims to be human rights-based in an axiomatic way, without linking statements to concrete human rights provisions. As stated, the intent of this report is to “remind governments and National Societies of the obligation to respect the human rights of injecting drug users at risk of, or living with, HIV”<sup>130</sup>; however, the paper interchangeably talks about “injecting drug use”, “drug use”, and “drug users”, advocating for decriminalization of drug use in all forms. In the same text IFRC goes further and recommends that “All stakeholders need to empower and listen to those who use drugs: Their voices need to be heard and their participation – in all aspects of decision and policymaking, planning and implementation – is absolutely critical.”<sup>131</sup>

A number of human rights papers and reports devoted to casting a light on human rights abuses committed “in the name of drug policy”.<sup>132</sup> Some of these have undeniable merits, indicating severe problems in the justice or medical systems of certain countries. Without trying to minimize such concerns, one should admit that these are not generalized practices and that they often happen in

countries with precarious records on justice, law enforcement, and human rights.<sup>133</sup> Contrary to what some of these papers suggest, the *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* underlines, while discussing Article 3 concerning offences and sanctions: “While it is important to stress that the Convention seeks to establish a common minimum standard for implementation, there is nothing to prevent parties from adopting stricter measures than those mandated by the text should they think to do, subject always to the requirement that such initiatives are consistent with applicable norms of public international law, in particular norms protecting human rights.”<sup>134</sup> Hence, one can agree with some of these papers that the UN bodies in charge of drug control could do much more to condemn such abuses and to advise States Parties in their implementation of the drug conventions, but they cannot logically conclude that the whole international drug control system is complacent and compromised. None of the drug conventions prescribe the measures applied in these cases.

A centrepiece of many of these papers is the right to health, referring mainly to Article 12 of the International Covenant on Economic, Social and Cultural Rights. Often present in these papers are statements such as: “Individuals who use drugs do not forfeit the right to the highest attainable standard of health.... the rhetoric of drug control has often been used to undermine the right to health, particularly in the area of the prevention of blood-borne diseases such as HIV and hepatitis C virus (HCV), both of which are easily transmitted by unsafe injecting drug practices such as the sharing of syringes”.<sup>135</sup> The refusal of some countries to implement “harm reduction” interventions is often seen as a violation of the right to health.

As indicated in the literature, the right to health stems primarily, but not exclusively<sup>136</sup>,

from Article 12 of the International Covenant on Economic, Social and Cultural Rights and is one of the most ambiguous and debated human rights provisions.<sup>137</sup> General Comment No. 14 issued by the UN Committee on Economic, Social, and Cultural Rights (CESCR) in 2000 constitutes the most comprehensive and reliable interpretation on the right to health. This document makes reference to drugs several times. For example, paragraph 15 discusses ICESCR Article 12.2(b) considering that this provision “also... discourages... the use of tobacco, drugs and other harmful substances”. Paragraph 51 elaborates on “violations of the obligation to protect”, considering that this follows from the failure of a State to... “discourage production, marketing and consumption of tobacco, narcotics and other harmful substances...”<sup>138</sup> Paragraph 4 elaborates on “the highest attainable standard of physical and mental health” which cannot be purely equated with the right to health care, but which includes “a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health”.<sup>139</sup> Given such statements, it is difficult to understand how the philosophy of “harm reduction” can be equated with the right to the highest attainable standard of physical and mental health, or can be considered as fully compliant with the requirements of this human right especially when those defining features are, according to the International Harm Reduction Association (IHRA)<sup>140</sup>, focused on the prevention of harm, rather than on the prevention of drug use itself, and the focus on people unable or unwilling to stop their drug use. As explained in an IFRC paper, “While many governments, organizations and individuals would like to see a society free of drugs, the aim of harm reduction programming lies elsewhere.”<sup>141</sup> The question is how can we reconcile the disinterest in prevention of illicit drug use or in reducing consumption

of such substances with discouragement of drug use/consumption recommended in the ICESCR under the right to health?

In many of these papers, “harm reduction” becomes the measuring stick for assessing success in drug policy and compliance with human rights. UN bodies are judged in relation to their indulgence or promotion of such policies. Such an approach is highly problematic. Except for the fundamental difference in philosophy that “harm reduction” promotes in comparison to the drug control regime and even with regard to the right to health, the existing disinterest in defining “harm reduction” makes it difficult to be assumed as a piece of the drug policy or as a means of protecting human rights. While some papers offer examples of “harm reduction interventions”, such as needle and syringe exchange programs, opioid substitution therapy, overdose prevention, drug consumption rooms, route transition interventions and outreach and peer education,<sup>142</sup> others go much further to include policy change and justice system reform as an integral component of “harm reduction”.<sup>143</sup>

A set of papers were devoted to the International Narcotics Control Board (INCB) position on “harm reduction”. INCB is “the independent and quasi judicial control organ monitoring the implementation of UN Drug Control Conventions.”<sup>144</sup> During 2007–2008, several organizations published papers on this issue. The content of these papers is very similar and actually often amounts to an ambush over INCB in relation to its reticence in promoting “harm reduction”. These papers quote each other to prove a general state of discontent with the activity of the Board. For example, Damon Barrett’s paper from 2008<sup>145</sup> states that “the Board’s performance has been widely criticized” quoting J. Csete and D. Wolfe’s paper from 2007, *Closed to Reason: The International Narcotics Control Board and HIV/AIDS*, and D. Bewley-Taylor and M.

Trace's report, *The International Narcotic Control Board: Watchdog or Guardian of the UN Drug Control Conventions*?<sup>146</sup> Using the same references, Barrett also states that "INCB has become a dangerous entity...promoting rigid interpretations of their (the drug conventions) many articles... adherence to outdated procedures...a major international obstacle to the implementation of HIV prevention and harm reduction programmes."<sup>147</sup> The above mentioned paper from 2007 authored by J. Csete and D. Wolfe<sup>148</sup> implies, in a quite aggressive way, that the spread of HIV/AIDS is somehow the Board's fault, by being an obstacle to prevent HIV and drug dependence, by not responding favorably to scientific and legal opinions, and by promoting or tolerating "law enforcement patterns that accelerate HIV transmission and represent clear human rights violations."<sup>149</sup> All these papers ignore the simple fact that drug consumption prevention has a beneficial effect in relation to HIV/AIDS and this is a clear part of the Board's function, as stipulated by Article 9 of the Single Convention of 1961. Recently, even UNAIDS stated in relation to the drug problem in its latest Political Declaration on HIV/AIDS adopted by the General Assembly, 10 June 2011: "Note with alarm the rise in the incidence of HIV among people who inject drugs and that, despite continuing increased efforts by all relevant stakeholders, the drug problem continues to constitute a serious threat to, among other things, public health and safety and the well-being of humanity, in particular children and young people and their families, and recognize that much more needs to be done to effectively combat the world drug problem."<sup>150</sup>

In 2008, the Transnational Institute (TNI) published the paper entitled *The INCB on Harm Reduction. Catching Up, or Holding Back?* in which the treaty body is admonished for being too cautious in relation to "harm reduction" and its recommendations to countries to ensure that sterile syringe programs are carried

out in compliance with the provisions of the international drug control conventions. Moreover, the same source is obviously revolted by the INCB's lack of recommendations on needle exchange services for drug offenders in prison, despite its call for provision of adequate services for this group. The TNI paper deems it as odd that the treaty body calls instead "on governments to ensure that access to illicit drugs in prisons is terminated"<sup>151</sup>, even if the INCB position in this regard is perfectly logical in the context of the drug conventions and especially of the Article 3 (5) (g) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988.

INCB is criticized for issues such as lack of transparency and lack of legal expertise.<sup>152</sup> The treaty body is often accused of operating outside its mandate. We also learned, by inculcation, that INCB is "out of step" with the rest of the UN on HIV/AIDS and "harm reduction".<sup>153</sup> Overall, the storm against INCB looks less like a critique than a campaign to erode adherence to INCB. As stated by Bewley-Taylor, et al., what is proposed is the "softening the predominantly prohibitionist interpretation of the Conventions adopted by the core triangle of the UNDCP, CND and INCB and bring them into line with other UN bodies like UNAIDS who do engage with harm reduction strategies."<sup>154</sup>

There is of course nothing wrong with criticizing a treaty monitoring body. There surely has to be accountability, but there is a difference between constructive criticism and bullying. Criticism of a court is democratically relevant, while the bullying of a court risks undercutting the rule of law. We note that many arguments against INCB are illogical, for example, the argument that INCB follows the law too strictly. Any monitoring body like INCB or court has, as its only task, to independently assess that existing norms have been followed, not to change the law or to make new

law. Also, the NGOs' arguments in relation to the INCB are often self-contradictory. INCB is accused of mission creep/expanding and at the same time accused of being too rigid/reducing its reach, arguing that it does not adequately address human rights, public health<sup>155</sup> and, as mentioned above, does not promote "harm reduction".

In the same context, a few of the papers devote space to the European Union, framing this unique and hybrid type of regional organization<sup>156</sup> as a preferential interpreter of international law. The argument made is that INCB is in a difficult position since its interpretation of the drug conventions, and notably on "harm reduction"<sup>157</sup>, is not conforming to that of European Union (i.e. a global standard is not conforming to a regional standard).<sup>158</sup> In 2003, at the time one of those comments was made, the EU comprised circa 7% of the ratifying states to the drug conventions.<sup>159</sup> Hence, the suggestion is that INCB and implicitly 93% of ratifying states shall come to heel with the EU. If the authors of these papers aspire to further pursue this argument, it may be better to base this type of argument on Article 38 (c) of the Statute for the International Court of Justice which enumerates as one of the sources of international law: "the general principles of law recognized by civilized nations".<sup>160</sup> In the sentiment of George Orwell: all states are equal, but some are more equal than other.

### III. The children rights group

When there is only one provision mentioning "drugs" in any UN core human rights instrument, as is the case with CRC Article 33, it should be assumed that human rights discussions on drugs will start with this provision, and that the child protection aspect will be highlighted. Not all the documents investigated in this chapter discuss human rights so they cannot all be faulted. However, those which do address human rights must be judged on their comprehension of CRC Article

33. The result is hardly encouraging. To somehow paraphrase Professor Paul Hunt's statement from 2008:<sup>161</sup> the papers examined have created parallel universes between human rights and children's rights.

The children rights group as described here, greatly overlaps with the human rights group and their contribution to the debate is rather limited. Therefore the discussion here revolves around two papers and three PowerPoint presentations on the issue of children's rights and illicit drugs.

The Harm Reduction and Human Rights Programme (HR2) of the International Harm Reduction Association/ Harm Reduction International published three PowerPoint presentations on children's rights and drugs, acknowledging the existence of CRC Art. 33, and addressing this provision: *Harm Reduction, Substitution Treatment and the UN Convention on the Rights of the Child* from 2007, *Appropriate Measures? Drugs, Children and Human Rights* from 2008 and *Drugs and the UN Convention on the Rights of the Child: Unpacking Article 33* from 2010.<sup>162</sup> Given the form of these presentations and the fact that we could find no further elaboration, we consider that an extensive discussion about them is impossible without extensive guesswork. However, a few lines of reasoning can be distinguished and deserve attention.

In the 2007 Bucharest presentation<sup>163</sup> the starting point for the discussion is neither the child nor the minimum standards set in the Convention on the Rights of the Child, but instead an agenda to support some form of so-called "harm reduction". The second slide sets out the key concern of the authors: the "Unwillingness of parents and government officials to admit that young people use drugs".<sup>164</sup> The assessment is not child-centred and gives no consideration to what Article 33 actually states, notably that all children shall be protected from illicit drug use and their involvement in production/trafficking shall be

prevented. The authors show no concern for the fact that children are taking drugs, or that they are used in production or trafficking thereof. Rick Lines and Damon Barrett are only interested in that “harm reduction” can be provided to anyone using drugs. We shall note that no definition of “harm reduction” is provided. However, the presentation’s conclusion is that “Denial of harm reduction programmes and services to children and young people, including substitution treatment, violates the Convention on the Rights of the Child.”<sup>165</sup>

The reductionist interpretation of CRC Article 33 continues in the London 2008 presentation.<sup>166</sup> Here, Damon Barrett discovered a new angle, namely to isolate “appropriate measures” from the rest of CRC Article 33. The author suggests that the core message of CRC Article 33 is that no inappropriate measures can be allowed. The presentation does not discuss Article 33 *per se*, but only the “appropriate measures” in the first part, leaving out any reflection on what the child shall be protected against and what should be prevented (use of illicit drugs and their use in the illicit production and trafficking of such substances), or what means/measures are appropriate to protect/prevent these phenomena. By giving preference to form before content, the presentation reduces and undermines the scope of the minimum protection level offered by CRC Article 33. The presentation is also discriminatory in that it only considers children who use drugs, ignoring all others directly impacted by drug use.

Only in its third attempt, the Bogota 2010 presentation,<sup>167</sup> does the International Harm Reduction Association/International Centre on Human Rights and Drug Policy manage to go beyond fully obscuring the text of CRC Article 33. The author briefly admits that there is a text in CRC Article 33 which calls for prevention. However, the author immediately turns his attention on how to limit the scope of

Article 33 as much as possible. The first suggestion is that children’s involvement in drug production/trafficking would be less problematic if drugs were not criminalized. A later section of the presentation raises the issue of “children as a justification” for a tough drug policy.<sup>168</sup> However, neither in this presentation nor in other cases where this statement is made, the author indicates any palpable examples of the states which use CRC Art 33 as justification for abusive measures in drug control policy.

It is explained by the author that the 2010 presentation “sets out the simplistic messages that surround article 33 of the CRC (the only provision in any of the UN human rights treaties to refer to drugs) that tend to limit the article to prevention and to visions of a ‘drug free world.’”<sup>169</sup> One of the two examples provided to illustrate the simplicity of such messages is a slide stating that “Children have a right to a drug free world.”<sup>170</sup> This slide is a capture from one of the 30-second animated videos illustrating the rights spelled out in the Convention of the Rights of the Child in a child-friendly way, namely the cartoon dealing with Article 33.<sup>171</sup> These cartoons, commissioned by UNICEF for the 20th anniversary of the CRC and carrying UNICEF’s logo, were aimed at making children familiar with the rights stipulated by this instrument.<sup>172</sup> Hence, simplicity was exactly the intention of the artists who made this video.

When reading the three presentations in succession it appears that the authors have good knowledge of international law and human rights law, but they are not interested in upholding the law as it is written. The “loop-holes approach” in these papers resembles in methodology the Krzysztof Krajewski’s paper from 1999,<sup>173</sup> which was discussed at the beginning of this chapter. The rationale for the three PowerPoint presentations is not to affirm existing human rights, but rather to establish flanking protection when trying to normalize



drug use, and to set out a drug policy in the interest of “people who do not want to stop using drugs”. In short, these presentations are a far cry from the minimum standard in CRC Article 33, child centered drug policies and overall elements for child protection, as set out in the 2008 UNICEF Child Protection Strategy.

As discussed in the first chapter of this publication, protection against drug use and prevention of children involvement in drug trafficking and production belongs to the same cluster of protections alongside those from child sexual abuse and exploitation; child economic exploitation, including child labour; sale, trafficking and abduction of children and other forms of exploitation.<sup>174</sup> In all these areas, prevention shall be a primary policy measure. As mentioned above, almost all papers discussed failed to even mention CRC Article 33 and when it was finally brought up, it was done so in a sketchy form.<sup>175</sup> In fact, it is often reduced to “all appropriate measures... to protect children”, which is considered by the author as the real qualifiers in the Article 33 text, as in his opinion “protecting children from the illicit use of... and preventing their use in the illicit production and trafficking of such substances” are far too general to be directives. If we should apply the same logic to some of the special protection measures, for example Articles 22, 32, 34, 35, 38 and 39, we are left with a lot of appropriate measures and plenty of “protection” without knowing what for and against what. The same provision “shall take all appropriate measures... to protect children” is to be found in a rather similar form at least 13 times (+2) in CRC Articles.<sup>176</sup>

In summary, these three PowerPoint presentations on children’s rights and drugs further underscore that these NGOs’ interest is not human rights. The issue is promoting anti-prohibitionism and so-called “harm reduction”. CRC Article 33 is treated not like a minimum human rights standard but as a problem around which one must navigate.

Special attention should be given to the paper published in 2010 by the Children Rights Information Network (CRIN): *Children and drug use*.<sup>177</sup> CRIN is the one of the largest networks of child rights organizations that works to improve the lives of children and to “envision a world in which every child enjoys all of the human rights promised by the United Nations, regional organizations, and national governments alike.”<sup>178</sup> The un-authored CRIN paper is just a collage of statements and quotations from International Harm Reduction Association (IHRA), Human Rights Watch, Open Society Institute and authors associated with these organizations. The main purpose of this paper is to lobby for the de-criminalization of illicit drugs and expansion of “harm reduction” interventions. CRC Article 33 is once again reduced to “appropriate measures”. The only comments made on this provision of the Convention on the Rights of the Child are two citations from IHRA: “The crucial question is: What do we mean by appropriate? The IHRA suggest that zero tolerance, ‘just say no’ campaigns, random school drug testing and school exclusions, and the denial of harm reduction services for those under 18, are all examples of inappropriate measures.”<sup>179</sup> Instead of explaining what right to protection the child has and what it means, the paper attributes IHRA the status of a legal source and axiomatically states what IHRA consider it not to mean.

The CRIN paper concludes with the following: “Children of drug-using parents are more likely to be involved in crime, have behavioural problems and display mental health difficulties. Psychosocial and environmental risk factors associated with parental drug use further compound children’s vulnerability. These vulnerabilities ‘may arise as the result of fetal exposure to alcohol and drugs, poor or inconsistent parenting, a chaotic environment and/or financial challenges as a result of parental substance use, increased risk of child

neglect or abuse, trauma, parental separation and risks associated with early exposure to alcohol and drug use.”<sup>180</sup> No comments, assessment or discussion are made on this topic and its relation to CRC Article 33, to other articles of the CRC, or to the international drug policy. The only effort made by CRIN is to link this statement to its source.<sup>181</sup>

For a global network for children’s rights whose “inspiration is the United Nations Convention on the Rights of the Child (CRC), which we use to bring children’s rights to the top of the international agenda”,<sup>182</sup> it would be expected that a paper addressing children and drug use would start by addressing what CRC Article 33 actually stipulates and paying due attention to the issue it mentions only at the end: the way children’s lives and health are affected by drug-using parents. This is especially important because similar conclusions can be found in the *United Nations Secretary-General’s Study on Violence against Children*<sup>183</sup> and in WHO factsheet N°150 on child maltreatment, from 2010.<sup>184</sup>

The most comprehensive paper on drugs and children’s rights was published in the *International Journal on Human Rights and Drug Policy*, vol. 1, 2010 and was authored by Damon Barrett and Philip E. Veerman: *Children who use Drugs: The Need for More Clarity on State Obligations in International Law*. The authors acknowledge the relationship between and the relevance of the drug conventions for Article 33 of the Convention on the Rights of the Child and the extremely limited attention the last provision has received. Still, the paper fails to address the relevance of CRC Article 33 for the international drug regime. However, the main point of this paper is that all of these instruments are obsolete in the time span from their adoption to the present time because “much has changed in relation to trends and patterns of drug use and drug dependence among children and young people... Many drugs now used by children

and young people did not exist in 1988. Far fewer children and young people were using drugs, and drugs had not become such a visible aspect of adolescents’ lives. Today’s world for children is very different in myriad ways. When the Convention on the Rights of the Child was adopted, the internet was still an experiment. Today various ‘legal highs’ may be purchased online. For the most part, however, the drug conventions and the Convention on the Rights of the Child remain stuck in the past, due to a lack of analysis of their meaning for children and young people who use drugs in the 21st Century.”<sup>185</sup>

The authors suggest a more updated image of childhood, where most young people are not problematic drugs users but recreational or experimental ones; their illicit drug use is transitional and does not imply health harms. Hence, drug consumption is normalized; it is considered a fact of life. Therefore, the appropriate answer in relation to this would be promotion of “harm reduction”, without any clear specification on which such measures they consider as appropriate in relation to children, and decriminalization of drug consumption. The authors justify such a conclusion by considering that the Convention on the Rights of the Child does not directly address the issue of treatment for children who are drug dependent and the limited and unspecific references to treatment in the three drug conventions. Regarding the first of these issues, it is surprising that the authors of the paper succeeded in reviewing the entire Convention on the Rights of the Child but missed Article 39 which is closely related to all special protection provisions in CRC, including Article 33, and which provides for: “all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take

place in an environment which fosters the health, self-respect and dignity of the child.”<sup>186</sup> In relation to the second complaint on the lack of specificity in the drug conventions’ provisions on treatment of drug dependent people, it might be considered that this feature is not thus formed in order to justify abuses but because it deems treatment as an evolving concept. Hence, if the drug conventions were very prescriptive and descriptive on this very issue, the instruments would become obsolete shortly after their adoption.

Moreover, accepting Barrett and Veerman’s methodology could alter or render any CRC special protection void. For example, one may state, by paraphrasing the two authors and replacing the word “drugs” with “sex”, that the Convention on the Rights is outmoded, as much has changed in relation to children and young people’s sexuality or in the way they perceive sexuality. One or two decades ago sex had not become such a visible aspect of adolescents’ lives. As Barrett and Veerman state, “Today’s world for children is very different in myriad ways. When the Convention on the Rights of the Child was adopted, the internet was still an experiment.”<sup>187</sup> Due to Internet and media exposure, children and adolescents have today a different perception of sex and sexual experimentation. Nowadays children may access or offer pornographic materials online. “For the most part, however, the Convention on the Rights of the Child remains stuck in the past, due to a lack of analysis of its meaning for children and young people” regarding sexuality in the 21st century. Hence, using this logic, one might also propose a reformulation, if not a radical dismissal, of CRC Article 34 on child sexual exploitation and sexual abuse. Similar claims can be made in relation to other CRC articles and the only result of such an approach would be to expose millions of children to exploitation and abuse, or at the very best, react *ex post* after children become victims.

## 2.3. Other Issues

In the following chapter, we are going to indicate a number of other issues of a more general nature, often arising in some of the NGOs papers that are relevant for this debate:

### 1. The ideal of a drug-free society

Many papers stand out against the aspiration of a drug-free world either as expressed in the slogan of the 1998 UN General Assembly Special Session: “A Drug-Free World: We Can Do It.”, or as a general philosophy behind the drug control regime. This concept is regarded as an “unrealistic proposition”<sup>188</sup>, “dangerous utopia”<sup>189</sup> et cetera. As a Transform Drug Policy Foundation paper from 2007 framed it: “There is a well-recognised five-stage process that many go through in response to receiving catastrophic news – Denial, Anger, Bargaining, Depression, and Acceptance. In this case, the catastrophe is the realisation that a ‘drug-free world’ is not going to happen and, worse, that our seemingly intractable ‘drug problem’ is to a large extent a self-inflicted nightmare. Modern policy making is frozen in the opening stages of denial and anger, creating a climate that is intensely hostile to attempts to adjust to the new environment and reinvest in the new reality.”<sup>190</sup> Hence, as long as the long-term goal is considered utopian, this can justify an informal departure of States Parties from the prohibitionist-based UN drug conventions towards “more reasonable/pragmatic” policies and solutions which are suggested in a more or less legalistic way.

For example, the British “centre of expertise on drugs and drugs law”<sup>191</sup> Release does not even pretend to try to conform to any rules or laws and states: “Rather than committing ourselves to the fantasy of a drug-free world, something that never has existed and never will, we should educate and regulate to restrict their negative effects. Whether this happens through a reinterpretation and reconfiguration

of the present structure, or requires a more radical overhauling of institutional and juridical arrangements, remains to be seen.”<sup>192</sup> Another example is Krajewski’s suggestion to accept drugs as a part of everyday life because “society will never be completely drug-free”<sup>193</sup> and to take what he calls “the middle of the road approach”, meaning advocate for depenalisation or decriminalization of drugs and ultimately legalisation. These solutions would allow societies to treat the demand side of the drug problem as a purely social or medical problem, and in this context “harm reduction”<sup>194</sup> can take its place, as crown jewellery of demand related policy.

These types of approaches are presented as realistic or pragmatic thinking to be contrasted to utopian aims. In this way, they could be considered sensible if things are to be judged in absolute terms, but not if we were to apply a similar logic to goals such as eradication of extreme poverty and hunger, achievement of universal primary education, abolishment of human slavery, discrimination, corruption, et cetera. We could easily regard these goals as utopian and abandon them for more pragmatic solutions. According to this philosophy, one can state that poverty, hunger, inequity in education, slavery, discrimination, et cetera, belong to a Darwinian world, and that they are part of human nature, and that they have been and always will exist; therefore, we should not bother about them. If we continue with this line of thinking, the only solution to these problems might be to find some forms of “harm reduction” for the poor, abused, discriminated people and never aspire or try to make any fundamental changes.

Nevertheless, the achievement of a “drug-free society” is an aspiration and the only reasonable one in the context of the present international legal framework. As long as the UN drug conventions impose the limitation “exclusively to medical and scientific purposes the production, manufacture, export, import,

distribution of, trade in, use and possession of drugs”<sup>195</sup>; CRC Article 33 requests States Parties “to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances”<sup>196</sup> and International Labour Organization Convention 182 defines “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties”<sup>197</sup> as one of the worst forms of child labour, a “drug-free world” is the appropriate goal.

## **2. Drug use as self-destructive behaviour, comparing drug use to suicide**

Illicit drug consumption is sometimes considered as a subject of person’s privacy/autonomy and subject to protection of individual existence. For example, Manfred Nowak considers the prohibition or penalization of acts, that in principle, only concern the individual, such as committing suicide, using drugs or refusing to wear safety helmets or seat belts, falls under the right to personal self-determination,<sup>198</sup> and therefore accounts to interference with a person’s autonomy. Consequently, it is sometimes argued that people have a right to use drugs as long as it does not harm others or create hazards for society because something which does not harm others should not be deemed criminal.

The question is whether or not drug consumption constitutes an activity that does not harm people around the user. Some legal instruments, including the three drug conventions, the Convention on the Rights of the Child, and the ILO Convention 182, clearly do not view drug consumption as an activity harmful only to the drug user but rather one that causes significant harm to others and to society. Different positions are articulated by civil society actors.

Krajewski, for example, does not deny the negative social implications of illicit drug consumption, but he deems it just as self-harm. Therefore, he suggests the principle that “self-destructive behavior shall not be subject to punishment is a plausible constitutional argument which can excuse States from imposing criminal sanctions on drug use. Criminal law protects certain ‘legal values’ against encroachments by third parties, but not against those who have right to dispose of those values.”<sup>199</sup> He draws a parallel between drug consumption and suicide, considering that both can be regarded only as grave social/medical problems. Hence, in his vision a reasonable drug policy may “decriminalise an activity that endangers or destroys one’s own health while deeming it a social or medical problem.”<sup>200</sup>

An important reality that this argument overlooks is the fact that suicide is not related to the worst forms of child labour as indicated by ILO Convention 182; nor is it related to child maltreatment, abuse and neglect, unlike drug use which is a risk factor for these problems, among others, as indicated by WHO’s fact sheet N°150 from 2010.<sup>201</sup> Moreover, unlike suicide, drug use does not generate “an estimated \$320 billion annually”<sup>202</sup> in global criminal proceeds, and is not linked to organized crime, corruption, et cetera.

However, even Krajewski concludes that this principle is not always deemed as constitutional;<sup>203</sup> therefore it might not be the optimal solution to be used when pressing/lobbying for drug consumption decriminalization.

#### **List of NGOs and similar entities considered:**

1. **Human Rights Watch (HRW)** – “one of the world’s leading independent organizations dedicated to defending and protecting human rights”;<sup>204</sup>
2. **International AIDS Society (IAS)** – “the

world’s leading independent association of HIV professionals”.<sup>205</sup> The International AIDS Conferences are convened by this association;<sup>206</sup>

3. **Drug Policy Alliance (DPA)** – the US “leading organization promoting alternatives to the drug war”;<sup>207</sup>
4. **Beckley Foundation (BF)** – research and Advocacy Institute, “a charitable trust that promotes the scientific investigation of consciousness and its modulation from a multidisciplinary perspective”;<sup>208</sup>
5. **Harm Reduction International** formerly known as the **International Harm Reduction Association (IHRA)** – “one of the leading international non-governmental organizations promoting”<sup>209</sup> harm reduction policies and practices;
6. **International Centre for Human Rights and Drug Policy (ICHRDP)** – Organization for production/dissemination of articles and reports/ the centre publishes and disseminates “original, peer-reviewed research on drug issues as they relate to international human rights law, international humanitarian law, international criminal law and public international law”;<sup>210</sup>
7. **International Drug Policy Consortium (IDPC)** – “a global network of 66 NGOs and professional networks that specialize in issues related to the production and use of controlled drugs”;<sup>211</sup>
8. **Open Society Foundations/Institute (OSI)** – international private operating and grant-making foundation;
9. **Hungarian Civil Liberties Union (HCLU)** – “a non-profit human rights watchdog NGO”;<sup>212</sup>
10. **Release: Drugs, The Law & Human Rights** – UK Drugs Policy Campaigner/Manager of IDPC (above)/ “the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals” and “campaigns for changes to UK drug



policy”.<sup>213</sup> The charity has hosted since April 2008 International Drug Policy Consortium<sup>214</sup> (above);

11. **Transform Drug Policy Foundation** – a charitable think tank dealing with UK and international drug policy;
12. **Asian Harm Reduction Network (AHRN)** – network of organizations involved in harm reduction in Asia;
13. **Canadian HIV/AIDS Legal Network** – “advocacy organization working on the legal and human rights issues raised by HIV/AIDS”;<sup>215</sup>
14. **Eurasian Harm Reduction Network (EHRN)** – regional network of organizations involved in harm reduction in Eastern Europe/Near Asia;
15. **Latin American Initiative on Drugs and Democracy** – an association of high profile individuals from Latin America;
16. **Caribbean Drug Research Institute (CDARI)** – “a private nonprofit research institution whose mission is to provide unbiased scientific research in the field of public health and medical consequences of drug use in order to promote evidence based public policy formation.”;<sup>216</sup>
17. **Reference Group to the United Nations on HIV and Injecting Drug Use** – advisory group to “UNODC, WHO, UNAIDS Secretariat and relevant UNAIDS co-sponsors, as well as other members of the Interagency Task Team on injecting drug use, on effective approaches to HIV/AIDS prevention and care among injecting drug users”;<sup>217</sup>
18. **Transnational Institute (TNI)** – an international think tank providing “intellectual support to movements struggling for a more democratic, equitable and environmentally sustainable world”;<sup>218</sup>
19. **Child Rights Information Network (CRIN)** – global child rights network;
20. **International Red Cross and Red Crescent Movement** – “world’s largest humanitarian organization.”<sup>219</sup>

## 2.4. Conclusions

The papers/reports reviewed in this chapter seem to agree that the three UN drug conventions are prohibitionist in spirit and wording. In Krajewski’s words, “there shall be no doubt that the purpose of these Conventions is to introduce some sort of a global prohibition.”<sup>220</sup> Almost all reviewed actors/NGOs seem to perceive this characteristic of the drug control regime as being a hindrance to human rights.

All reviewed papers adopt a martyred tone in relation to the restrictive nature of the international drug control regime. Authors seem motivated to pursue an alteration of the present legal situation, to milk the hypothetical *latitude within the drug treaties, loopholes*,<sup>221</sup> or the *room for manoeuvre within the current regime*<sup>222</sup>, or to ignite a regime change using informal means. The drug conventions are deplored for being *prohibitionist, moralistic*, and more recently, *without a human face*, and *contrary to human rights*. The main point of contention is Article 3(2)<sup>223</sup> in the 1988 Convention and the obligation it imposes to ratifying states to criminalize possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal use.

The reviewed papers indicate an organic, evolving strategy rather than a fixed one. The haphazard path this evolution has taken points to bottom line opportunism in furthering anti-prohibition. As soon as one actor or NGO has an ingenious idea, it becomes contagious, as others are willing to take this on or to further develop and promote it.

The international drug laws are being discarded as being incompatible with human rights law, even if none of the human rights conventions indicate *ad litteram* this path. New rights, belonging to no treaty, are devised and demanded, such as the right to “harm reduction”, “methadone as a human right”,<sup>224</sup> et cetera. The existing human rights are customized to fit a new category which is depicted as

the most vulnerable: the drug users. Hence, the drug users are awarded a special status on the basis of a preference for or habit of using drugs.<sup>225</sup> Appeals are made for the creation of enabling legal environments for drug users, indicating that the society and the stakeholders have to “empower and listen to those who use drugs... in all aspects of decision and policy-making, planning and implementation”<sup>226</sup>.

Moreover, the human rights conventions and provisions favouring a child-centered perspective, contrary to a user-centered focus, are neglected, ignored or reduced. Article 33 of the Convention on the Rights of the Child is largely left outside from the discussion on human rights. At the best, children’s vulnerabi-

lity is defined exclusively in relation to their controlled substances user status and their incapacity to access services for adult drug users who are unable or unwilling to stop their illicit drug consumption, where the focus of such services is not the prevention of drug use itself, but the given precedence to people who continue to use drugs.<sup>227</sup> Hence, illicit drug consumption becomes the exclusive criterion for establishing children’s vulnerability.

For these NGOs, international standards can be helpful or can be in the way of drug policy changes. The main principle is that the end justifies the means; their political agenda trumps the law.

### 3. United Nations Entities

The subject of the present publication is the relation between human rights and the international drug control regimes, thus United Nations is the locus, where one must look for guidance and expertise.

The legal aspects of the relation between these two spheres of international law have been discussed in the previous chapters. Having established that the law is the first and fundamental step in policy-making, the next step is implementation on the ground. Ideally, implementation moves via jurisprudence from international monitoring bodies (in this case the Committee on the Rights of the Child and the International Narcotics Control Board) to policy/programmatic advice from United Nations bodies, to national level implementation. However, the Committee on the Rights of the Child was virtually silent on this issue for 20 years, save for the laconic and detached concluding observations related to CRC Article 33 on State Parties reports. The INCB has mentioned CRC Article 33 but a few times; however, the Board never issued a comprehensive position on this provision, possibly because they have, misguidedly, been awaiting input from the Committee. We therefore examine reflections and policy articulations in this field among UN agencies and similar bodies.

Our central interest is how various UN entities, having a direct or adjacent mandate in relation with these two spheres of international law, discuss and translate into policies and programmes the only provision in any human rights instrument referring to drugs, namely Article 33 of the Convention of the Rights of

the Child. This chapter also examines how various UN entities generally relate human rights provisions to drug control.

In order to assess drug/human rights policy developments within the United Nations, a number of papers and statements issued by five UN entities from 1998 to 2010 discussing human rights/drugs control policy, and related issues, were examined. The UN entities were selected on the following basis:

1. Their direct mandate on children's rights: United Nations Children's Fund (UNICEF) (covers drug usage under the sphere of children's rights).<sup>1</sup>
2. Their direct mandate on drug control and on human rights: United Nations Office on Drugs and Crime (UNODC);<sup>2</sup> World Health Organization (WHO);<sup>3</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>4</sup>
3. Their public rhetoric about drugs and human rights: Joint United Nations Programme on HIV and AIDS (UNAIDS).<sup>5</sup>

#### 3.1. United Nations Children's Fund – UNICEF

##### 3.1.1. Background

The United Nations International Children's Emergency Fund (UNICEF) was established on 11 December 1946 by the UN General Assembly (UNGA), in accordance with Article

55 of the Charter of the United Nations.<sup>6</sup> This followed the United Nations Relief and Rehabilitation Administration (UNRRA) decision to call off its activities in the summer of the same year. Therefore, UNRRA's remaining assets were transferred to UNICEF, which was given the task of providing relief to children affected by World War II. The UN General Assembly attributed to the new agency a non-political mandate, stipulating that assistance should be provided, without discrimination, to the individuals most in need. UNICEF's initial activities were envisaged for three or four years, but in 1950 the General Assembly decided by resolution 417(V) to extend the agency's existence, orienting it towards long-term assistance for children in Africa, Asia and Latin America, to meet the "emergency and long-range needs of children and their continuing needs particularly in under-developed countries."<sup>7</sup> Three years later, on 6 October 1953, the General Assembly adopted unanimously resolution 802 (VII) which gave the organization a permanent character in the UN system under the current name: The United Nations Children's Fund, while maintaining its original acronym: UNICEF.

For more than 60 years UNICEF has been, and continues to be, the world's most prominent advocate for children's rights and needs. Currently, it is active in 191 countries and territories through country programmes and its 36 National Committees and has approximately 11,000 staff working worldwide. The Fund's headquarters is in New York, but most of UNICEF's work is done in the field.<sup>8</sup> The organization has seven regional offices<sup>9</sup> which provide technical assistance to the country offices. It also has a research centre, Innocenti Research Centre in Florence, Italy, established in 1988 with the aim of enhancing international knowledge of children's rights and promoting the implementation of the Convention on the Rights of the Child at national level. Innocenti Research Centre also "helps to

promote a new global ethic for children based on their fundamental human rights."<sup>10</sup> UNICEF also has two regional offices, one in Tokyo, Japan and the other in Brussels, Belgium, which inter alia ensure the relations with policymakers and assist with fundraising, and a Supply Division based in Copenhagen, Denmark.

As a subsidiary body of the General Assembly, UNICEF reports to the UN General Assembly (UNGA) through the Economic and Social Council of the United Nations. Its governing body is the Executive Board as established by the General Assembly in 1946, but its present features were decided upon in resolution 48/162 of the General Assembly, December 1993. At present, the Board has 36 members elected for a three years mandate by the UN Economic and Social Council (ECOSOC), representing the five regional groups of Member States at the United Nations. The Executive Board puts into operation policies developed by the General Assembly and, under the coordination and guidance received from the Economic and Social Council, supervises UNICEF activities and strategies and their coherence and compliance with the overall policy guidance established by the General Assembly and the Economic and Social Council; the Board approves the organization's policies, country programmes and budgets and recommends new initiatives to the Economic and Social Council and, through the Council, to the General Assembly as necessary.<sup>11</sup> The same body elects, in consultation with the United Nations Secretary General, the organization's Executive Director. The Board receives information from, and gives guidance to, the UNICEF Executive Director on the activities of the organization.

UNICEF is financed completely by voluntary funds. Governments contribute two-thirds of the Fund's resources while private groups and approximately 6 million individual

donors provide the rest through National Committees. In 2008/2009 UNICEF's total budget was around \$10.3 billion USD.<sup>12</sup>

### **3.1.2. UNICEF's Mandate and Mission Statement**

According to the mission statement adopted by the Fund's Executive Board in the January 1996<sup>13</sup> session, and acting on the mandate received from United Nations General Assembly, UNICEF advocates "for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential."<sup>14</sup> Under the guidance of the Convention on the Rights of the Child, UNICEF "strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children"<sup>15</sup> and places a special emphasis on children's survival and basic needs, protection and development as inherent to human progress. The organization continues to put effort into mobilizing political will and material resources in aiding developing countries to establish eligible policies and deliver services to children and their families. Special attention is given to protect the most vulnerable children: victims of war, extreme poverty, all forms of violence and exploitation and those with disabilities. The Fund continues its historic mandate of involvement in emergencies "providing life-saving assistance to children affected by disasters, and to protecting their rights in any circumstances, no matter how difficult."<sup>16</sup> UNICEF also continues to follow its non-discriminatory philosophy always prioritizing "the most disadvantaged children and the countries in greatest need."<sup>17</sup>

### **3.1.3. UNICEF and Human Rights**

Human rights constitute the foundation of UNICEF's work. The Fund assumed, as the ultimate aim of its activities, the realization of the rights of children and women as stipulated in the Convention on the Rights of the Child and the Convention on the Elimination of All

Forms of Discrimination against Women.<sup>18</sup>

Whenever UNICEF discusses its vision on the Convention on the Rights of the Child, the organization underlines the non-optional and non-negotiable nature of the instrument's provisions for the states which ratify this convention and the obligation to abstain from any action which might violate or prevent the enjoyment of all these rights by all children. UNICEF has made it clear that all rights are equally important for the development of the child and that the principle of best interest of the child should always be a guiding reference in all policy areas affecting children's lives. UNICEF has repeatedly stressed that states alone cannot ensure the realization of children's rights and that responsibilities and duties in this regard are also attributed to parents, the extended family and to the society at large.

UNICEF's work is also informed by the Vienna Declaration and Programme of Action adopted in June 1993 which specifically stipulates that "the rights of the child should be a priority in the United Nations system-wide action on human rights".<sup>19</sup>

### **3.1.4. UNICEF on Child Protection**

Around the world, hundreds millions of children are exposed to violence, exploitation and abuse including the worst forms of child labour.<sup>20</sup> These issues remain highly pressing as "there is significant evidence that violence, exploitation and abuse can affect the child's physical and mental health in the short and longer term, impairing their ability to learn and socialize, and impacting their transition to adulthood with adverse consequences later in life."<sup>21</sup> Unfortunately, no country has succeeded in completely eradicating these phenomena and all have an obligation under the Convention of the Rights of the Child and other international instruments to focus their efforts in this direction. At the global level, there is the expectation that UNICEF takes the



leadership in child protection. As expected, the Fund assumed it as one of its focus areas and committed itself to prioritizing child protection in every part of the world.

As discussed in Chapter 1, the most recent UNICEF Child Protection Strategy was adopted by its Executive Board in June 2008. The Strategy “defines the contribution of UNICEF to national and international efforts to fulfill children’s rights to protection and to achieve the Millennium Development Goals”.<sup>22</sup> This document is of interest for the present discussion as it illustrates the way UNICEF addresses child protection.

UNICEF’s approach and vision is to create protective environments that are conducive to the survival, development, and well-being of children through prevention and to respond to violence, exploitation, and abuse against children by promoting laws, services, social norms, and practices which minimize children’s vulnerability, address risk factors, and enhance children’s resilience.<sup>23</sup> The document places great emphasis on prevention, reasoning that this is the starting point for successful child protection, and on legal frameworks that put an end to impunity and give children access to justice. It states, “Strong child protection provides a bulwark against the web of risks and vulnerabilities underlying many forms of harm and abuse: sexual abuse and exploitation; trafficking; hazardous labour; violence; living or working on the streets; the impact of armed conflict, including children’s exploitation by armed forces and groups; harmful practices such as female genital mutilation/cutting (FGM/C) and child marriage; lack of access to justice; and unnecessary institutionalization, among others. A protective environment for children boosts development progress, and improves the health, education and well-being of children and their evolving capacities to be parents, citizens and productive members of society. Harmful and abusive practices against children, on the other hand, exacerbate

poverty, social exclusion and HIV, and increase the likelihood that successive generations will face similar risks.”<sup>24</sup> As previously noted, the aim of the Strategy is to “reduce children’s exposure to harm by accelerating actions that strengthen the protective environment for children in all settings...All programmes and actions for the benefit of children’s health, education, participation or for addressing the impact of HIV and AIDS should likewise be designed so as to strengthen protection, and must never undermine it.”<sup>25</sup>

In order to be effective, in UNICEF’s vision and according to its experience, child protection has to be included in all sectors and needs a large involvement and partnership at every level of society, including children’s participation.

The UNICEF Strategy draws on the Protective Environment Framework (PEF), established in the 2002 UNICEF Operational Guidance Note, indicating eight elements which work independently or collectively to ensure child protection. Among these elements is governmental commitment to ensure children protection according to their rights; adoption of a legislative framework and its implementation; promotion and adoption of social norms and traditions that denounce injurious practices and support child protection; open discussions; children’s involvement, et cetera.<sup>26</sup>

In this Strategy, UNICEF departed from a project-centered approach and adopted a systemic approach.

The Strategy puts emphasis on following up the 2006 *Study on Violence against Children* and supports the incorporation of concrete recommendations outlined in the Study.

The 2010 Thematic Report on *Child Protection from Violence, Exploitation and Abuse* states that the UNICEF Child Protection Strategy is based on two main pillars applicable in all contexts, including emergencies: “1) strengthening child protection systems – including laws,

policies, regulations and services across all social sectors, especially social welfare, education, health, security and justice; and 2) supporting the social changes that strengthen the protection of children from violence, exploitation and abuse.”<sup>27</sup>

### 3.1.5. UNICEF on Human Rights and Drugs

UNICEF is the most visible promoter of children’s rights. The Fund has more than 60 years of experience in advocacy on behalf of children and a worldwide presence. It was deeply involved in the drafting process of the Convention on the Rights of the Child and subsequently in promoting its ratification. With this background and as the organization that continues to assist countries in the implementation of this instrument, UNICEF is well placed to take the lead and translate into practical advice the right of children to be protected from narcotic drugs and psychotropic substances, as it already has a track record on the other special protection measures covered by the CRC.

Looking at the papers issued by UNICEF and by the Innocenti Research Centre, we were unable to find any dedicated involvement with CRC Article 33. The most extensive commentary we could find is in *Implementation Handbook for the Convention on the Rights of the Child* by Rachel Hodgkin and Peter Newell, which discusses every article of the Convention, including statements by the Committee on the Rights of the Child, sections from CRC Travaux Préparatoires, and other international instruments. The book also includes an implementation checklist, lists specific issues in the implementation of every article and places them in the context of the Convention’s principles, and enumerates the related articles. The book carries UNICEF’s logo and notes that the material of the book was commissioned by the Fund but includes a disclaimer stating that its content does not necessarily reflect UNICEF’s

views or policies. Hence, it is difficult to attribute the position of the authors of this book to UNICEF and to discuss it as the Fund’s official view on this specific issue.

### 3.1.6. Assessment

UNICEF’s full commitment to the Convention on the Rights of the Child is clearly articulated in the organization’s mission statement. As the leading agency for children within the United Nations system, UNICEF has the expertise, geographical coverage, authority, credibility and the financial independence to substantially contribute to its credo: to act “to uphold the Convention on the Rights of the Child”<sup>28</sup>, to build “a world where the rights of every child are realized”<sup>29</sup> and to promote child special protection rights including their right to be protected from illicit use of narcotic drugs and psychotropic substances and prevented from being involved in the illicit production and trafficking of such substances.

With this background, it is notable that UNICEF has not taken any initiative to address Article 33 of the Convention of the Rights of the Child in the 20-plus years since the UN General Assembly adopted this instrument. In fact, UNICEF has never issued any designated policy paper on this special protection provision. According to our information, UNICEF does not have at its headquarters a focal point on CRC Article 33. In its 2008 Child Protection Strategy the drug issue is not mentioned, even though in paragraph 4 of this document nearly all the other special protection measures are listed. As previously mentioned, UNICEF’s Child Protection Strategy is informed by the 2006 *Study on Violence against Children* and supports the incorporation of concrete recommendations from the Study. This Study indicates, *inter alia*, parents’ or caregivers’ substance abuse as one of the factors contributing to violence against children and furthermore states that childhood experience of violence leads to drug abuse;<sup>30</sup> yet UNICEF

decided to remain silent on this issue.

Given the clearly limited capacity at the Committee on the Rights of the Child on CRC Article 33 issues, as manifested by the flat concluding observations and the absence of any thematic discussion on this topic, UNICEF could assist in overcoming this major shortcoming. The unfortunate consequence of UNICEF's silence and avoidance of this issue results in others setting an agenda that is neither conducive to CRC Article 33's preventive and protective spirit nor to the principle that the best interests of the child shall be a primary consideration in all areas affecting a child's life. This is indeed regrettable, as UNICEF has already done much towards conceptualising child protection, the results of which could be applied directly to the drug issue.

The number of children negatively affected by drugs (i.e. using drugs, involved in the production and trafficking of these substances, and/or exposed to various forms of violence due to substance use by their parents or caregivers), even if never properly quantified, cannot be so insignificant that the human rights provision directly addressing this issue should continue to be ignored. On the contrary, it is more likely to be expected that this would be among the biggest of all special protection concerns in terms of the number of children affected.

Moreover, it is difficult to understand the decision of UNICEF Executive Director Anthony Lake to sign the 2010 Progress report *Towards universal access: Scaling up priority HIV/AIDS interventions in the health sector*<sup>31</sup> which requests the removal of punitive laws for drug use,<sup>32</sup> advocating in ambiguous language for decriminalization or legalization of drugs. Such a position goes against UNICEF's children's rights mandate, its own mission statement, and against its Child Protection Strategy, which clearly states that AIDS response cannot be allowed to undermine child protection.<sup>33</sup>

Article 33 of the Convention of the Rights of the Child is a special protection issue that has to be given due consideration and, as with other child protection articles, must remain intact until States Parties formally decide otherwise.

## 3.2. United Nations Office on Drugs and Crime – UNODC

### 3.2.1. Background

The United Nations Office on Drugs and Crime (UNODC) was established on 1 October 2002. Prior to this date, the Office was called United Nations Office for Drug Control and Crime Prevention and was created in 1997 through the merger between the United Nations International Drug Control Program (UNDCP) and the Crime Prevention and Criminal Justice Division. UNDCP was established by the General Assembly in December 1990 to coordinate and lead all United Nations drug control activities.

UNODC defines itself as “the UN's centre for the fight against ‘uncivil society’”,<sup>34</sup> or as the “global leader in the struggle against illicit drugs and international crime, and the lead United Nations entity for delivering legal and technical assistance to prevent terrorism”.<sup>35</sup>

The normative instruments guiding UNODC's work are the three drug conventions, the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the UN Convention against Transnational Organized Crime, the terrorism related instruments, and their respective protocols.

UNODC's work programme is based on three pillars: “field-based technical cooperation projects to enhance the capacity of Member States to counteract illicit drugs, crime and terrorism; research and analytical work to increase knowledge and understanding of drugs and crime issues and expand the

evidence base for policy and operational decisions; normative work to assist States in the ratification and implementation of the relevant international treaties, the development of domestic legislation on drugs, crime and terrorism, and the provision of secretariat and substantive services to the treaty-based and governing bodies.”<sup>36</sup>

In 1999, UNODC became a co-sponsor of UNAIDS. With this background, the organization was mandated to assist states in providing preventive, treatment, and care services for vulnerable groups such as injecting drug users,<sup>37</sup> victims of, or people vulnerable to, human trafficking and prisoners. UNODC is deeply involved in advocacy, legislative and policy development, design and promotion of interventions and programmes endorsed by the Commission on Narcotic Drugs, the UNAIDS Programme Coordination Board, and the Economic and Social Council and support of the stakeholders. The aim in this regard is to contribute to halting and reversing the AIDS epidemic and the realization of the Millennium Development Goals.

The agency also assists the Commission on Narcotic Drugs, the International Narcotics Control Board and the Commission on Crime Prevention and Criminal Justice in performing their treaty-based functions, by providing them with secretariat and substantial services.

UNODC has its headquarters in Vienna, Austria, and operates in more than 150 countries around the world through its network of 54 field, liaison and project offices. UNODC is headed by an Executive Director who is appointed by the UN Secretary General.

The organization has approximately 1500 employees worldwide.<sup>38</sup> The total UNODC budget for the biennium 2010-2011 amounted to US\$ 468.3 million.<sup>39</sup> The organization is highly dependent on voluntary contributions in fulfilling its activities.<sup>40</sup>

### 3.2.2. UNODC's Mandate and Mission Statement

On its webpage, UNODC provides an extremely broad description of its mandate: “to assist Member States in their struggle against illicit drugs, crime and terrorism.”<sup>41</sup> A more comprehensive description is found in the *United Nations Secretary General Bulletin* published in 2004 which addresses the organization of the United Nations Office on Drugs and Crime. This document stipulates that UNODC implements in an integrated manner the United Nations drug and crime programmes, “addressing the interrelated issues of drug control, crime prevention and international terrorism in the context of sustainable development and human security.”

<sup>42</sup> With regard to the drug programme, UNODC:

“(a) Serves as the central drug control entity with exclusive responsibility for coordinating and providing effective leadership for all United Nations drug control activities and serves as the repository of technical expertise in international drug control for the Secretariat of the United Nations, including the regional commissions, and other United Nations organs, as well as Member States, and in this capacity advises them on questions of international and national drug control;

(b) Acts on behalf of the Secretary-General in fulfilling his or her responsibilities under the terms of international treaties and resolutions of United Nations organs relating to international drug control;

(c) Provides substantive services to the General Assembly, the Economic and Social Council and committees and conferences dealing with drug control matters.”<sup>43</sup>

A further elaboration of UNODC's mandate in relation to drug prevention and health is provided in the 2010 publication, *UNODC*

*Service & Tools. Practical Solutions to Global Threats to Justice, Security and Health*, where it is stated that the Office's efforts on drug prevention, rehabilitation and treatment are focused on reducing vulnerability among risk groups such as women, youth, prisoners, people who have been trafficked or are vulnerable to human trafficking and people living with HIV/AIDS. As the guardian of the *Standard Minimum Rules for the Treatment of Prisoners*, UNODC assists states in providing universal access to health care, including HIV prevention and treatment services, for people in closed settings.

A clearly articulated mission statement for the whole organization proved difficult to find. The closest statement we encountered is in the UNODC's Strategy for 2008-2011 which stated that: "UNODC is committed to achieving security and justice for all, making the world safer from drugs, crime and terrorism."<sup>44</sup>

### 3.2.3. UNODC's Policies and Discourse on Human Rights and Drugs

#### 1998–2007

A significant moment for the international community in relation to the drug control regime was the 20th Special Session of the UN's General Assembly on Countering the World Drug Problem Together (UNGASS), held in New York in June 1998, ten years after the adoption of the 1988 Convention. As an important element of the international drug control machinery, UNDCP, the predecessor of UNODC, was instrumental for organizing the 1998 UNGASS.

Under the slogan "A drug-free world, we can do it", the main documents and speeches of this Special Session stressed the destructive effect of drugs for all sectors of society, for the health, well-being and dignity of all human-kind, as well as stressing its relation with crime. Commitments and declarations were made to give special consideration to the needs of

young people.<sup>45</sup> A balanced and comprehensive approach between demand and supply reduction was promoted, in full conformity with the purposes and principles of the Charter of the United Nations and international law and all human rights and fundamental freedoms.<sup>46</sup> Some documents stressed the need to provide treatment, rehabilitation and social reintegration to restore dignity and hope to children, youth, women and men who have become drug abusers. In its closing statement, the Executive Director of the United Nations International Drug Control Program described the drug problem as a deadly disease which can be cured through the unceasing involvement and commitment of the international community and stressed that the "concepts of tolerance and solidarity for human rights are precious and we must remain vigilant in their defence. This is particularly true for the victims of drug abuse".<sup>47</sup>

For the next ten years, the references to human rights in the context of drug control in UNODC's documents were almost non-existent. We could not find any papers which discussed, advised, or translated the human rights requirements of the UNGASS Session, nor the ones stated in the General Assembly annual resolutions on *International Cooperation against the World Drug Problem* from 1999 onwards.

In 1998, the General Assembly gave UNODC the mandate to publish "comprehensive and balanced information about the world drug problem."<sup>48</sup> The *Global Illicit Drug Trends* published by UNODC from 1999 to 2004 was a technical compilation of information providing many facts and figures in relation to drug supply and demand and the global illicit drug markets. In 2004, UNODC changed the title *Global Illicit Drug Trends* to *World Drug Report* and improved the analytical content of the publication. However, none of these reports made any analysis or statement in relation to human rights.



## 2007–2010

UNODC published a series of papers in preparation for the 2009 United Nations General Assembly Special Session on Drugs or related to the 100 years celebration of the international drug control. Within these documents, we found a number of references to human rights which deserve attention.

In March, 2008, UNODC Executive Director Antonio Maria Costa issued a Report entitled *Making drug control 'fit for purpose': Building on the UNGASS decade* as a contribution to the review of the 20th special Session of the General Assembly on behalf of the Commission on Narcotic Drugs. In this paper it is stated that a powerful characteristic of the international drug control system is the obligation it imposes on the States Parties to bring their national laws in line with the instruments' provisions. This feature narrows the room for maneuver by individual countries, protecting the multilateral system from its biggest vulnerability, whereby: "a unilateral action by a single State Party may compromise the integrity of the entire system."<sup>49</sup> The Report 2008 states that the international drug control system's prime aim to limit the use of the listed psychoactive substances to medical and scientific purposes has not been realized, but that the drug problem had been contained to less than 5% of the adult population. A key part of the paper reveals and discusses the five "unintended consequences" of international drug control policy:

1. A huge criminal black market that now thrives in order to get prohibited substances from producers to consumers.
2. Policy displacement. Public health, which is clearly the first principle of drug control, needs a lot of resources, yet the funds are in many cases redirected into public security and the law enforcement that underpins it.
3. Geographical displacement. Success in

controlling the supply of illicit opium in China in the middle of the 20th century, for example, displaced the problem to the Golden Triangle of southeast Asia.

4. Substance displacement. When the use of one drug was controlled, suppliers and users moved on to another drug.
5. The way we perceive and deal with the users of illicit drugs. A system appears to have been created in which those who fall into the web of addiction find themselves excluded and marginalized from the social mainstream, tainted with a moral stigma, and often unable to find treatment even when motivated to obtain and participate in it.

In this context, in the UNODC Executive Director's opinion, it is important to admit that the drug control system based on the 1961 Single Convention is outdated and incapable of dealing with the big changes which directly influence the drug problem and the way it is experienced, perceived or resolved,<sup>50</sup> concluding that "we must humanize our drug control regime which appears to many to be too depersonalized and detached from their day-to-day lives."<sup>51</sup> Thus, the way forward in the next ten years should be guided by three essential undertakings: 1) to reaffirm the basic principles; 2) to improve the drug control system performances; and, 3) to confront and eliminate the unintended consequences of past policies. The basic principles are enunciated: the multilateral principle and the public health principle, without any explanation as to where these principles derive or a clear definition of them. As to whether there is a need to mitigate the unintended consequences of past policies, there are three areas on which, according to Executive Director Costa, "there is sufficient international consensus to go forward in refining the control system and making it more 'fit for purpose'"<sup>52</sup>: crime prevention, "harm reduction", and human rights.

The human rights section of the Report is rather modest. Instead of looking at where drugs are referred to in human rights conventions, or displaying a vision on how human rights would be better served by the drug control regime and vice versa, the paper invokes Article 103 of the Charter of United Nations to demonstrate that this instrument takes precedence over all other instruments and therefore the drug conventions “must be implemented in line with the obligations inscribed in the Charter. Among those obligations are the commitments of signatories to protect human rights and fundamental freedoms.”<sup>53</sup> The Report also mentions the Universal Declaration of Human Rights and its Article 25 as further proof that the implementation of the drug conventions must respect the right to health and human rights in general. The section concludes: “The issue of human rights, the protection of which is a growing international movement, is now also becoming salient in the implementation of certain drug control measures.”<sup>54</sup> The example discussed here is the death penalty for drug offences, which is still an issue on which UN Member States have polarized opinions.

In the 2008 *World Drug Report's* Preface we are informed by the UNODC Executive Director Antonio Maria Costa that international drug control is an “undeniable success” story, at least concerning its demand reduction side, especially if we are to compare the level of usage of narcotic drugs and psychotropic substance to that of tobacco and alcohol and the number of deaths caused by these substances. The Report indicates that there are three areas requiring further attention: public health, crime prevention, and human rights. Public health as the “first principle of drug control- should be brought back to centre stage.”<sup>55</sup> Hence, a better equilibrium should exist between law enforcement and public health policies and more resources have to be allocated for the treatment of drug dependent

people and prevention of drug use, as well as working towards the reduction of the adverse health and social consequences of drug abuse. In relation to the third area of concern, the *World Drug Report* states that protection of public security and public health “should be done in a way that upholds human rights and human dignity.”<sup>56</sup> However, surprisingly for a UN agency whose mandate includes the provision of advice and assistance to Member States on the drug control instruments implementation and monitoring this process, in 2008 its Executive Director considered the 60th anniversary of the Universal Declaration of Human Rights to be a salutary reminder of the existence of the right to life and the right to a fair trial, concluding that “Although drugs kill, we should not kill because of drugs. As we move forward, human rights should be a part of drug control.”<sup>57</sup>

One year later, in the 2009 *World Drug Report*, UNODC appeared to be surprised by the fact that in certain countries in the world “drug enforcement has been used as a pretext to wage war on marginalized communities, resulting in serious human rights violations. Some countries even impose the death penalty for drug offences, contrary to Article 3 of the Universal Declaration of Human Rights.”<sup>58</sup> This time the source of revelation is the report *Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy* published by the Beckley Foundation in 2008.

Unless Executive Director Costa and his staff were shielded entirely from the world, it is difficult to believe that UNODC was unaware, right up until 2008-2009, of the human rights violations related to drug control in some Member States and that some countries “even impose the death penalty for drug offences, contrary to Article 3 of the Universal Declaration of Human Rights.”<sup>59</sup> Back in 1982, the Human Rights Committee issued General Comment No. 06 on the right to life

(International Covenant on Civil and Political Rights Article 6) stating that “While it follows from Article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally, they are obliged to limit its use and, in particular, to abolish it for other than the ‘most serious crimes’”<sup>60</sup> where “the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”<sup>61</sup> The same Committee also repeatedly pointed out that drug offences do not qualify as “most serious crimes” for which the death penalty may be imposed.<sup>62</sup> The question is why UNODC decided to remain silent and not to voice their concerns regarding human rights violations before 2009?

Under the second chapter of the 2009 Report, *Confronting Unintended Consequences: Drug Control and the Criminal Black Market*, UNODC provides an extensive discussion on the issues of legalization and the decriminalization of drug consumption/possession.

For the March 2010 session of the United Nations Commission on Narcotic Drugs (CND), UNODC’s Executive Director Costa presented his 22 page note *Drug control, crime prevention and criminal justice: A human rights perspective*. UNODC confirmed that this is currently the most articulate document on drug control and human rights and also the first UNODC in-depth attempt to address this type of reflection.

The note’s cover summary states that “While drug addiction, organized crime and terrorism undermine a host of human rights, responses to these problems can only be effective where they respect and restore the rights of those who are most vulnerable, while treating those accused of criminal offences in a just, fair and humane manner. The present note illustrates how drug control can be better synchronized with the need to protect human rights.”<sup>63</sup> The first part of this statement remains in the axiomatic stage and no explanation is given to in-

dicate the way in which drug addiction undermines many human rights.

The note contains four chapters and a conclusion.

The first/background chapter starts by presenting the three interlinked and mutually reinforcing pillars of the United Nations – peace and security, development, and human rights – and underlines that respect for the rule of law is central to the realization of the three pillars. It discusses in general the human rights obligations of the United Nations system and of the Member States under Articles 1, 55, 56 of the Charter of UN and under the international human rights instruments, and the necessity to integrate the promotion and protection of human rights into national policies and mainstream them throughout the UN system according to the *2005 World Summit Outcome*. The paper repeatedly talks about the demanding task of adapting the criminal justice system to human rights requirements, considering it as one of the “greatest challenges to the enjoyment of human rights”<sup>64</sup> and declaring that: “Too often, law enforcement and criminal justice systems themselves perpetrate human rights abuses and exclude and marginalize from society those who most need treatment and rehabilitation.”<sup>65</sup> It emphasizes that by placing human rights at the core of drug control, crime prevention, and criminal justice, an appropriate and coherent response to these challenges will follow. The overall ambition of the paper is not only to indicate how policies related to drugs, crime, and terrorism should respect human rights, but to substantially contribute to “their positive fulfillment.”<sup>66</sup>

The second chapter is devoted to the issue of criminal justice and human rights. The first sub-chapter addresses the issues of human rights, criminal law and sentencing and it broadly discusses the limits of criminal law in the context of human rights. It also indicates the special focus placed by the international human rights law on vulnerable groups, speci-

fying that “those accused of criminal offences, those in prison, victims of trafficking, people suffering from health disorders, people who are drug dependent and broad groups such as women and children, all have particular vulnerabilities that human rights law aims to protect.”<sup>67</sup> In relation to drug control, it explains that children who use drugs have to be treated as victims according to the protective spirit of the Convention of the Rights of the Child. It states that according to the International Guidelines on HIV and Human Rights, a similar situation applies to people vulnerable to HIV/AIDS, more specifically to drug injectors, in relation to whom states should adopt needle and syringe exchange programmes, treatment, and HIV-related care. While specifying that such positions should not be understood as a human rights backing of a right to abuse drugs, the paper addresses issues such as proportionality in establishing penalties, the necessity to use imprisonment as a last resort penalty and the need to consider rehabilitation of the offender as the first option, the obligation to provide drug dependence treatment in prison, and the inapplicability of the death penalty for drug-related offences as per International Covenant on Civil and Political Rights. It is stated that “In the case of drug laws in particular, obligations to establish offences under the international drug conventions must be fulfilled while at the same time respecting a range of rights, including the right to health, to the protection of the child, to private and family life, to non discrimination, to the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and the right not to be subjected to arbitrary arrest or detention.”<sup>68</sup>

The second sub-chapter is dedicated to human rights and due process. The paper explains that according to human rights law, no end could justify abusive means, a principle of high importance in relation to the criminal justice system. Hence, this part refers to issues

including equality before the law, the accountability of the law, fairness in the application of the law, legal certainty, avoidance of arbitrariness and procedural, legal transparency, human rights provisions related to the accused person, and practices which violate human rights standards (e.g. extra-judicial killings, imprisonment without trial, denial of basic needs such as food, forced labour, practices that amount to torture, et cetera). The paper also underlines that UNODC’s criminal justice technical assistance programmes “must directly support Member States to respect, protect and fulfill relevant human rights in the development of criminal laws, criminal penalties and criminal justice processes.”<sup>69</sup>

The third chapter mainly discusses the right to the highest attainable standard of physical and mental health in relation to the drug conventions and the right to development in the context of the response to drugs, crime, and terrorism. Most of this chapter is devoted to the right to health of people who are drug dependent, of drug injectors in relation to HIV/AIDS, and of drug users deprived of liberty. It also dedicates a paragraph to the obligation to provide essential medicines as a provision inherent to the right to health which intersects with the drug conventions.

The last chapter lays out concrete proposals for the future mainstreaming of human rights in the work of the UNODC.

### 3.2.4. Assessment

UNODC has, under the 2008–2010 stewardship from Executive Director Costa, distanced itself from its mandate, related to the three UN drug conventions, and by extension to CRC Article 33.

UNODC and its predecessors were set up under the auspices of the UN drug conventions. These conventions discuss, in their respective preambles, illicit drugs in the following terms: “a duty to prevent and combat this evil”<sup>70</sup>; “considering that rigorous meas-

ures are necessary to restrict the use of such substances to legitimate purposes”<sup>71</sup>; “deeply concerned by the magnitude of illicit production of/demand for/traffic in illicit drugs...which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural, and political foundations of society...concerned also by...the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution, and trade in illicit drugs...which entails a danger of incalculable gravity.”<sup>72</sup> On the basis of the spirit of the preambles, a legally binding framework has been set up in these conventions which, *inter alia*, stipulate that every ratifying state must:

- criminalize illicit production;
- criminalize illicit trafficking/trade;
- criminalize possession of illicit drugs for personal use.

The three drug conventions, which make up the historical and logical mandates for UNODC<sup>73</sup>, were rebutted as “old” in Executive Director Costa’s note for CND 2008 *Making drug control ‘fit for purpose’: Building on the UNGASS decade*.

While appreciating UNODC’s initiative to get involved in the human rights debate, it is difficult to understand the logic of their approach to this issue. The reason for the issuance in 2010 of the Executive Director’s Note *Drug control, crime prevention and criminal justice: A human rights perspective* is highly unclear. Why did UNODC wait until 2010 to clarify their position on human rights? The only explanation we could find in the content of the note is in paragraph 50 where it is stated that, “As the risk of human rights violations in the name of action against drugs and crime increases, so it is ever more crucial that UNODC promotes a holistic approach to its fundamental obligations in the areas of security, development and human rights.”<sup>74</sup> The paper itself does not indicate how, nor in rela-

tion to what period, is there an increase in human right violations in the name of drug control, but it makes reference to the 2009 Report<sup>75</sup> by the Executive Director for the CND<sup>76</sup>, which apparently illuminates the issue. In the 2009 Report, the issue of human rights is represented in four paragraphs: one related to the need to base drug and crime control on human rights and another stating that drug users should not be criminalized as they already are at the fringes of society and that, because of their health condition, “they should go to rehab, not to jail. If removed from life-saving health and social services, they will hurt themselves and society via crime and blood-borne diseases.”<sup>77</sup> It is specified that “drug criminals” constitute a different category which should face justice, but “extra-judicial killings of suspected traffickers and capital punishment for drug offenders are not right. *Although drugs and crime kill, governments should not kill because of them.* Yet, modern society is running into two different, converging trends. First, the efforts to control drugs and the violence they sow have been misused to roll back civil rights gains. Second, desperate for security, citizens have relented to relinquishing a growing share of their rights: *eye for an eye* seems to be the refrain. It is up to states to show restraint, finding alternative ways to address the drug and crime problems. Political and administrative incompetence cannot be mistakenly used to justify human right violations: above all, governments must oppose this frightening cycle.”<sup>78</sup> It is difficult to understand from this discourse the logical consequence to the 2010 Note. Is it clear that getting involved later is better than not getting involved at all, yet the question remains: why did UNODC wait until this time to discuss human rights?

Another problem we encounter in trying to see the logic behind UNODC’s approach to human rights is related to its declared role as guardian of the drug and crime related treaties



and protocols, the main promoter of legal assistance of the UN standards on crime prevention and criminal justice and as a part of the UN Secretariat which has “an obligation to promote and protect human rights guarantees in the implementation of its mandate and in its activities and programmes in practice.”<sup>79</sup> None of the human rights instruments, principles or standards, including the ones referring to the administration of the criminal justice system, is particularly new. The same applies for the provisions of the drug convention on treatment for drug addiction, or for the one stipulating that “Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence..., measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.”<sup>80</sup> Obviously, UNODC’s post-2010 plans to prioritize human rights in their future work are of interest, but it is also important to know why it avoided such a debate in the past. During this time, UNODC has had the mandate to provide advice and assistance to Member States in the effective implementation of drug conventions and the application of relevant standards and norms, including human rights. It is remarkable that UNODC decided to wait until various human rights instruments reached their 60th anniversary to remember they exist. By applying the same procedure to the Convention on the Rights of the Child and to Article 33, this instrument would have to wait another 38 years until it would be taken into consideration that all children have a right to protection/prevention from the illicit use/production/trafficking of illicit drugs and that this is a highly relevant provision for drug control policy.

Metaphorically speaking, in UNODC Executive Director Costa’s kitchen, the drug conventions are like fish in that they tend to expire quickly, whereas the human rights treaties are like wine, as they have to mature for

many years in order to be taken in consideration.

Probably the most important question is why UNODC decided to exclusively focus its human rights discourse on drug users? Looking at UNODC’s mandate and its “unique” position, it is definitely insufficient to make axiomatic statements such as drug addiction “undermines a host of human rights”<sup>81</sup> or “illicit drug trafficking and trafficking in persons frequently lead to serious human rights violations”<sup>82</sup> without a clear intention to give more attention to, and to provide a comprehensive view on, these matters. Moreover, it is difficult to understand why in its human rights discourse UNODC never paid any attention to the unique human rights provision directly addressing drugs, namely Article 33 of the Convention of the Rights of the Child, demanding that all children should be protected from the illicit use of narcotic drugs and psychotropic substances and prevented from being involved in the illicit production and trafficking of such substances. The *2005 World Summit Outcome*, to which UNODC often refers when talking about its duty on integrating human rights in its work, clearly states the commitment to create “a world fit for future generations, which takes into account the best interest of the child.”<sup>83</sup> Even if it was difficult to argue that this principle does not have a direct application and high relevance for drug control policy, we could not find any reflection or prioritization of the best interests of the child in any of the UNODC’s undertakings on human rights. On the contrary, the only paper that mentions CRC Article 33 in a meager fashion is the 2010 Note, *Drug control, crime prevention and criminal justice: A human rights perspective*.

The most striking feature of the 2010 Executive Director’s note is how it has placed its human rights onus: 11 out of 61 paragraphs underscore the importance of the right to health for people affected by drug addiction

and for drug abusers; ten other paragraphs talk about the right to due process; and nine paragraphs talk about criminal procedures and sentencing. Only one single paragraph<sup>84</sup> in what is UNODC's most complex paper devoted to human rights, talks about children's rights. In short, rights relevant to the adult user of drugs outnumber the child's right to protection by 30 to 1. From a human rights point of view, it is very problematic that the policy in UNODC's 2010 Note is discriminatory, excluding all children who do not use drugs from protection. It is also reductive in that it refrains from talking about the right to protection for children in production and trafficking, or at risk thereof, and deliberately misrepresents the scope of protection by stating that CRC Article 33 has a "strong focus on protection rather than punishment"<sup>85</sup>, pretending that we are talking about child offenders, case addressed by CRC Articles 37 and 40. None of the special protection provisions in CRC<sup>86</sup> is directed against children when it comes to criminalization.

We could see, beginning in 2008, a clear tendency of UNODC to directly advocate for the decriminalization of drug consumption, or more precisely the decriminalization of drug possession for personal use. This "solution" is often presented as the appropriate way to respect human rights within drug control policy. Still, we have not seen any due reflection on how this approach will serve the right of every child to be protected from illicit use of narcotic drugs and psychotropic substances and prevent the involvement of children in the production and trafficking of such substances.

Why UNODC decided to abandon its previous vision and aspiration towards a drug-free world and adopted exclusively a drug user-centered rhetoric is highly unclear. This is, at present, a guessing game. A possible indication can be found in the organization's funding pattern. For example, the Transnational Institute (TNI) mentions in its publication *10 Years*

*of TNI Drugs & Democracy Programme 1998–2008*, the replacement of the United States by the European Union as a major donor of the UNODC, which led to the prioritization of the issues related to HIV/AIDS and harm reduction in the international drug control policy. Hence, according to TNI, "A clear paradigm shift from zero-tolerance to pragmatism has taken place in international drug control."<sup>87</sup> This might be the reason why lately, on the UNODC's web site and documents, the Office's mandate in relation to HIV/AIDS is clearer than its duties in relation to the drug conventions, especially to reducing drug demand.

The same can explain, but cannot justify, the stated UNODC intention to avoid "extreme" positions and occupy the centre, "proverbial 'middle ground' – which is wide enough to accommodate all of us and solid enough to bear our weight as we step forward into the next decade."<sup>88</sup> In this context it is of relevance how UNODC defines the "extremes". In the 2009 opening statement of the Commission on Narcotic Drugs at its 52nd session, the UNODC Executive Director clarified these extreme positions as: "(a) criminalization of drug users and (b) legalization of its use".<sup>89</sup> According to Article 3 (2) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, "each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption";<sup>90</sup> specifying in paragraph 4(d) that: "Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of the article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender."<sup>91</sup> It would be of

interest to know how UNODC concluded that adherence to 1988 convention Article 3(2), a provision contained in a convention ratified by 188 states and on which there were extremely few reservations,<sup>92</sup> is an extreme position and if this position would correspond to the interpretation in good faith as essential in international law.

In regards to this last point, it is also pertinent to note that two years earlier, in 2007, in the UNODC's publication *Sweden's Successful Drug Policy: A Review of the Evidence*, the same Executive Director, Mr. Costa, displayed great enthusiasm for Swedish drug policy, concluding that "It is my firm belief that the generally positive situation of Sweden is a result of the policy that has been applied to address the problem. The achievements of Sweden are further proof that, ultimately, each Government is responsible for the size of the drug problem in its country. Societies often have the drug problem they deserve."<sup>93</sup> The remarkable fact here is that Sweden is actually one of the few countries where not just drug possession but drug consumption/use *per se* is criminalized. Hence, according to Mr. Costa's logic Sweden fell from being an example of excellent drug policy to an extremist country, without making any substantial changes in its national legislation.

In 2008, UNODC underlined the importance of the multilateral principle. The 2009 *Political Declaration* asserted "that the world drug problem is most effectively addressed in a multilateral setting and that the three international drug control conventions and other relevant international instruments remain the cornerstone of the international drug control system."<sup>94</sup> In this context, we should ask ourselves how helpful is UNODC's recent criticism of two of the three drug conventions, one for being obsolete and the other for sustaining extreme positions?

In relation to his 2008 statement that the UN drug conventions are fossilized and that

they need to be humanized/changed, the former UNODC Executive Director, Mr. Antonio Maria Costa said in his 2011 meeting with the Home Affairs Sub-Committee of the House of Lords Select Committee on the European Union that it is neither the UNODC nor its Executive Director's mandate or authority to assess how old the UN drug conventions are nor to change them. To quote his own words: "Conventions are only changed by Governments, period. Nothing else. The UNODC is only the notary, so to speak, in terms of helping countries to implement the conventions... but Governments – who are the only ones responsible – have shown no appetite (to change the conventions) so the question is not on the table as far as I can tell."<sup>95</sup>

However, on the positive side, UNODC has produced a human rights and drugs paper. This is a paper which now needs fundamental revision to ensure standard human rights methodology and a child-centered focus for drug issues. UNODC also has a new Executive Director, Mr. Yury Fedotov, who could correct the policy missteps and the freewheeling politicized approach that began under the previous leadership.

### 3.3. World Health Organization – WHO

#### 3.3.1. Background

The World Health Organization (WHO) was set up in 1948 in accordance with Article 57 of the United Nations Charter. It is one of the oldest UN specialized agencies and the coordinating authority for health issues within the United Nations system. It has the responsibility "for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends."<sup>96</sup>

The World Health Assembly is the supreme decision-making body for WHO and it comprises delegates from all 193 Member States. This body decides the policies, supervises the financial issues of the organization, and appoints its Director-General on the nomination of the Executive Board. It also considers reports of the Executive Board, the 34 member body which gives effect to the decisions and policies of the Health Assembly, advises it and facilitates its work.

WHO is headquartered in Geneva, Switzerland and has 147 country offices and six regional offices working under notable autonomy. WHO has a staff of over 8,000 health and other experts and support staff working at the headquarters and in the field.

The WHO is financed by contributions from Member States and donors. The 2010 annual budget for WHO totalled \$4.5 billion USD.<sup>97</sup>

### **3.3.2.WHO's Mandate and Mission Statement**

As stipulated in the Article 1 of its Constitution, the objective of the World Health Organization is the attainment by all peoples of the highest possible level of health. Article 2 lists 22 functions for the organization in order to achieve this objective. Examples include to coordinate the international health work; to assist Governments; to provide assistance in emergencies; to stimulate and advance work to eradicate epidemic, endemic and other diseases; to promote, in co-operation with other specialized agencies where necessary, the improvement of nutrition, housing, sanitation, recreation, economic or working conditions and other aspects of environmental hygiene; to propose conventions, agreements and regulations in health matters; to promote maternal and child health and welfare, et cetera.

### **3.3.3.WHO and Human Rights**

The relationship of the World Health Organi-

zation to human rights is an obvious one. In the preamble of the organization's Constitution, established in conformity to the Charter of the United Nations, nine principles "basic to the happiness, harmonious relations and security of all peoples"<sup>98</sup> are enumerated. One principle states that "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."<sup>99</sup> Another principle asserts that "Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development."<sup>100</sup> The connection between the protection and promotion of health and the realization of other human rights is undeniable; hence, starting with the 1948 Universal Declaration of Human Rights, the right to health has been stipulated in several human rights conventions.<sup>101</sup> As the authority on this matter, WHO provides expertise to the human rights mechanism in relation to the right to health.

WHO has an essential role in providing intellectual, technical and political leadership in the field of health and human rights. In 1997, the Organization conducted an internal review of its activities relevant to health and human rights and identified four departments that treated specific human rights instruments as integral to their programmes: disabilities; reproductive and women's health; complex emergencies; and child and adolescent health.<sup>102</sup>

Since then, WHO has placed increased emphasis on operationalizing human rights principles in health development programming as well as in humanitarian work, and each regional office and each cluster at Headquarters now has programmes or projects that apply a human rights-based approach.

The organization also established a focal point for human rights: the Health and Human Rights Unit, which is housed in the

Department of Ethics, Equity, Trade and Human Rights in the Cluster of Innovation, Information, Evidence and Research (IER/ETH).

In relation to human rights and health, WHO focuses on three areas:

- Strengthening the capacity of WHO and its Member States to integrate human rights based approaches to health;
- Advancing the right to health in international law and international development processes; and,
- Advocating for health related human rights.<sup>103</sup>

### 3.3.4. WHO's Policies on Human Rights and Drugs

WHO is well placed to address and provide guidance on how human rights apply to drug control and how different approaches in this field would be conducive to healthier environments for children and for the population in general. The Organization has a clear mandate under the international drugs convention and has the ability to assess the health implications of drug policies.

Article 3 of the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and Article 2 and 3 of the 1971 United Nations Convention on Psychotropic Substances, specifically assigns responsibilities to the World Health Organization in providing technical advice on substances scheduling. The Organization studies the dependence-producing properties of different substances and their therapeutic properties and makes recommendations to the Commission on Narcotic Drugs on control measures.

As the coordinating authority for health within the United Nations system, WHO has a certain capacity to encourage and assist the development of preventive, treatment and rehabilitation programmes; to pursue relevant knowledge in the field of drug dependence; to

develop effective approaches to the treatment of drug dependence and rehabilitation programmes, and to strengthen the capacity of primary health care to respond to drug-related health problems. In the last ten years, WHO has published, alone or together with other UN agencies (e.g. UNODC, UNAIDS), a series of papers related to the management of substance abuse. In 2010, it issued its first global report detailing the prevention and treatment resources currently in use to respond to these health concerns, entitled, *ATLAS on Resources for the Prevention and Treatment of Substance Use Disorders*. Other publications relate to primary prevention of substance abuse, opioid dependence treatment, management of opioid dependence and HIV/AIDS prevention, treatment for amphetamine-related disorders, pharmacological treatment of cocaine dependence, opioid overdose, drug injecting and HIV infection, cannabis use and its health effects, health implications of drug use, et cetera.

In our research we could not find any dedicated and comprehensive WHO position on human rights and drugs, but some of the above-mentioned publications dealing with specific issues made reference to human rights. Several such papers are focused on the issue of drug dependence treatment. For example, two discussion papers belonging to this category were produced in collaboration with UNODC: *Principles of Drug Dependence Treatment* in 2008 and *From coercion to cohesion Treating drug dependence through health care, not punishment* in 2009. The discussion paper from 2008 considers drug use and drug dependence to be public health, socio-economic development, and security problems affecting all countries and stresses the importance of drug treatment within demand reduction strategies. It recommends abandoning sanction-oriented approaches which deem drug dependence simply as a social problem or a “self-acquired disease”, based on individual free choice which leads to the stigmatization



and discrimination and instead proposes the adoption of a health-oriented approach where drug dependence is “considered a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease”.<sup>104</sup> The paper lists nine key principles applicable to drug dependence treatment. The fourth principle directly addresses human rights and states that “Drug dependence treatment services should comply with human rights obligations and recognize the inherent dignity of all individuals. This includes responding to the right to enjoy the highest attainable standard of health and well-being, and ensuring non-discrimination.”<sup>105</sup> The paper enumerates as components of Principle 4 regarding Drug Dependence Treatment, Human Rights, and Patient Dignity: non-discrimination of people based on their past or present drug use, insisting on the application of the same ethical standards of treatment as for other medical conditions; access to treatment and care services, including preventive measures at all stages of the disease and for everyone including patients who do not want to stop drug use, people relapsing into the condition and people in prisons. It also stipulates that treatment should not be compulsory, except in well-defined crisis situations, but that it should be offered as an alternative to penal sanctions as a choice and provided without discrimination: “the human rights of people with drug dependence should never be restricted on the grounds of treatment and rehabilitation. Inhumane or degrading practices and punishment should never be a part of treatment of drug dependence.”<sup>106</sup>

The 2009 discussion paper considers the shift from a sanction-oriented approach to a health-oriented one in the context of the drug conventions provisions, notably Article 38 of the 1961 Convention and Article 14(4) of the 1988 Convention, in relation to drug dependence and drug use. Such a change of direction is deemed as perfectly legitimate under the

international drug regime. The paper advocates the abandonment of imprisonment for both categories of drug dependents and drug users, considering that severe penalties for drug use and related crime “resulted in large numbers of people in prisons, compulsory treatment centers, or labour camps without significant long term impact on drug use, drug dependence or drug-related crime in the community and are in contradiction with human rights”.<sup>107</sup> These policies increase the risk of HIV, hepatitis, and tuberculosis for the people in closed setting and for the entire community. Instead, treatment, education, and care should be offered as an alternative to criminal justice sanctions and treatment should be “provided in ways that do not violate the rights of drug users who should be allowed to decide whether they want to be involved in treatment and to choose the form of treatment that they receive.”<sup>108</sup> Human rights are mentioned also in the context of long-term treatment without explicit consent. The paper describes how evidence-informed treatment would ideally look.

Another paper touching on human rights and drugs was published by the Western Pacific Regional Office of the WHO in 2009 and is entitled, *Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: an application of selected human rights principles*. Although this paper did not intend to discuss drug policy and human rights, it aimed “to use some key human rights principles as a lens through which to assess and document the situation in the compulsory drug treatment centers in a constructive way”.<sup>109</sup> The paper discusses the health risks faced by people who use drugs and specifically injecting drugs in general and in relation to HIV, and promotes “harm reduction” initiatives. The publication provides an open description of this approach as follows: “Harm reduction aims to reduce the negative health consequences associated with risky

behaviours related to injecting drug use, without necessarily affecting the underlying drug use. Interventions related to harm reduction may include the dissemination of information on how to reduce risks associated with drug use, the provision of services which increase the safety of PWUD [persons who use drugs], such as needle and syringe programmes, condom distribution, and the treatment of AIDS. They may also include a range of drug dependence treatment options, such as opioid substitution maintenance therapy. Harm reduction also seeks to identify and advocate modifications in laws, policies and regulations in different countries.”<sup>110</sup> As indicated in the title, the paper mainly refers to the situation in countries like: Cambodia, China, Malaysia and Viet Nam and to treatment provided in the compulsory drug treatment centers and the lack of HIV services in these settings. The framework for analysis is guided by the principles of availability, accessibility, acceptability and quality applicable to health services, facilities and goods identified by the Committee on Economic, Social and Cultural Rights in its Commentary 14 from 2000 on the rights to the highest attainable standard of health as per Article 12 of the International Covenant on Economic, Social and Cultural Rights. The drug conventions are regarded as obsolete and in need of revision as the 1961 and the 1971 instruments predate the HIV/AIDS epidemic and the 1988 one preclude the “explosive global growth of injection drug use.”<sup>111</sup>

The recommendations for governments issued in this paper suggest the need to revise the national legal frameworks in relation to drug use and consequently to treat the issue of illicit use exclusively in medical terms, removing the criminal penalties related to this conduct. It also indicates the need, in countries like Malaysia, Viet Nam, and Cambodia, to provide educational campaigns “addressed to the overall population to fight stigma and

discrimination towards PWUD.”<sup>112</sup>

### 3.3.5. Assessment

Through its mandate, WHO is well-placed to articulate a consistent discourse on the issue of drug control and human rights. The organization has its own Constitution which allows a good basis for independence, accountability and sense of direction. The aim of the organization, as stipulated in this document, is the attainment by all peoples of the highest possible level of health, where health is defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>113</sup> Its Constitution places a great emphasis on the healthy development of the child and in relation to this aspect it is to be expected that WHO must strongly take into account the Convention on the Rights of the Child. The Organization has dedicated and substantial budgets for activities such as promotion of health and development, prevention or reducing risk factors for health conditions associated with use of tobacco, alcohol, drugs and other psychoactive substances, unhealthy diets, physical inactivity and unsafe sex<sup>114</sup>, and addressing the underlying social and economic determinants of health through policies and programmes that enhance health equity and integrate pro-poor, gender responsive, and human rights-based approaches.<sup>115</sup> Therefore, WHO can substantially contribute to the existing debate on drug policy and human rights by issuing a position and recommendations reflecting the interests of the society at large and taking in consideration the best interest of the child and the child’s right to protection from illicit drugs and psychotropic substances.

Instead, we encounter a unilateral discourse focused on the needs and rights of the drug users and people who are drug dependent. WHO has the mandate to address the issues related to the treatment of drug disorders and to advise on best practices and human rights

requirements in this regard; however, the exclusive focus on drug users excludes/ignores important categories of populations and their right to protection from such substances.

For example, WHO issued in 2010 together with United Nations Children's Fund (UNICEF), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Population Fund (UNFPA), United Nations Development Programme (UNDP), Joint United Nations Programme on HIV and AIDS (UNAIDS), World Food Programme (WFP) and the World Bank, the fourth edition of its publication focused on the safety and well-being of children and based on the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. *Facts for Life* includes a chapter on child protection centered on "the vulnerabilities of children and the actions needed to ensure that they grow up in supportive environments in the home, school and community."<sup>116</sup> Here, the publication addresses *inter alia* the right of children to be protected from hazardous work or the worst forms of child labour such as slavery, forced labour, drug production, or trafficking. In relation to these labours, the paper states: "*These are illegal*. Children must be removed immediately from such situations and, if it is in their best interest, reintegrated into their families and communities."<sup>117</sup> It also considers it a necessity to inform children and adolescents about the dangers of leaving home and becoming involved in work that might place them in high-risk situations such as prostitution and drug trafficking. The publication does not mention the right of children to be protected from the illicit use of narcotic drugs and psychotropic substances. As this provision is conducive to both the safety and well being of children, it is advisable for WHO and the other organizations to consider it in the next edition.

It is imperative that WHO develops a comprehensive position which links its vision of drug users with the human rights imperative to protect children from involvement in the production and trafficking of drugs.

WHO Fact Sheet N°150 from August 2010<sup>118</sup> identifies, *inter alia*, drug use as a characteristic of parents or caregivers which may increase the risk of child maltreatment. The same Fact Sheet indicates the creation of a vicious circle where, as adults, maltreated or abused children "are at increased risk for behavioural, physical and mental health problems such as"<sup>119</sup>, going on to list, among other severe consequences, drug use. Similar findings are displayed in the study published in 2006 by World Health Organization and International Society for Prevention of Child Abuse and Neglect entitled, *Preventing child maltreatment: a guide to taking action and generating evidence*. A comprehensive position of WHO on this issue and recommendations on the appropriate ways to reduce this type of risk factors would certainly correspond to the organization's mandate and would be of high interest as worldwide "approximately 20% of women and 5–10% of men report being sexually abused as children, while 25–50% of all children report being physically abused."<sup>120</sup>

### 3.4. Office of the United Nations High Commissioner for Human Rights – OHCHR

#### 3.4.1. Background<sup>121</sup>

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is the global authority on human rights being responsible for the protection and the promotion of human rights established under the international human rights instruments. The Office coordinates the human rights activities throughout the United Nations system. OHCHR is part of the Secretariat of the United

Nations and is headed by the High Commissioner for Human Rights, a position created in 1993 by the General Assembly, following the Member States' decision at the 1993 World Conference on Human Rights to create a solid and visible human rights institution.

The High Commissioner for Human Rights is "the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General."<sup>122</sup> The High Commissioner is appointed by the United Nations Secretary General and is approved by the UN General Assembly. At present, the post is held by Navanethem (Navi) Pillay from South Africa; who has headed the Office since September 2008.

OHCHR maintains direct contact with governments, national legal authorities and institutions, NGOs and civil society organizations, international and regional organizations, and the United Nations system assisting them in the promotion and protection of human rights in accordance with international law norms.

As the centerpiece of the United Nations human rights machinery, OHCHR supports the Human Rights Council and its Special Procedures<sup>123</sup> and the international human rights treaty bodies established to monitor State Parties' compliance with the respective instruments and to assist them in the implementation of conventions on their territories. The Office also promotes the right to development, coordinates United Nations human rights education and public information activities, and strengthens and mainstreams human rights across the United Nations system.

Aside from its headquarters in Geneva, Switzerland, OHCHR has a liaison office at the United Nations in New York, United States, ten country offices<sup>124</sup>, two stand-alone offices, in Kosovo and the occupied Palestinian territory, and 12 regional offices and centres.<sup>125</sup> At the end of 2009, the Office had 982 members of

staff, of whom almost half were based in the field; 50 % work in Geneva, and 2 % in New York. The Office also supports human rights officers in UN peace missions and human rights advisers in UN country teams.

OHCHR receives one third of its funding from the United Nations regular budget; the remaining two thirds are provided through voluntary contributions from Member States and other donors such as intergovernmental organizations, NGOs, foundations, various companies and private individuals. The estimated total budget for 2010-2011 has been set at \$407.4 million USD.

### 3.4.2. OHCHR's Mandate and Mission Statement

The Office of the United Nations High Commissioner for Human Rights is guided in its work by the mandate provided by the General Assembly in resolution 48/141 from December 1993, the Charter of the United Nations, the Universal Declaration of Human Rights and the international human rights instruments, the Vienna Declaration and Programme of Action the 1993 World Conference on Human Rights, and the *2005 World Summit Outcome Document*.<sup>126</sup>

According to the Resolution A/RES/48/141, Article 3, United Nations High Commissioner for Human Rights shall:

- a) "Function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of States and to promote the universal respect for and observance of all human rights..."
- b) "Be guided by the recognition that all human rights... are universal, indivisible, interdependent and interrelated..."
- c) "...promoting a balanced and sustainable development for all people..."

Article 4 stipulates the United Nations High Commissioner for Human Rights' responsibilities:

- a) To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;
- b) Accomplish the tasks assigned by UN competent bodies and to make to them recommendations for the improvement, promotion and protection of all human rights;
- c) Promotion and protection of the right to development;
- d) Provide advisory services and technical and financial assistance in the field of human rights;
- e) Coordinate the UN education and public information services in the field of human rights;
- f) Play an active role in removing current obstacles for full realization of all human rights and prevent the continuation of human rights violations;
- g) Engage in dialogue with all Governments to secure respect for all human rights;
- h) Stimulate international cooperation in promotion and protection of human rights;
- i) Co-ordinate human rights protection and promotion activities throughout the UN system;
- j) Modulate the UN human rights machinery to improve its efficiency and effectiveness;
- k) Supervise the Centre for Human Rights.<sup>127</sup>

The mission of the Office of the United Nations High Commissioner for Human Rights is to work for the protection of all human rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

In carrying out its mission OHCHR shall:

- Give priority to addressing the most pressing human rights violations, both acute and chronic, particularly those that put life in imminent peril;

- Focus attention on those who are at risk and vulnerable on multiple fronts;
- Pay equal attention to the realization of civil, cultural, economic, political, and social rights, including the right to development; and
- Measure the impact of its work through the substantive benefit that is accrued, through it, to individuals around the world.<sup>128</sup>

### 3.4.3. OHCHR's Policy and Discourse on Human Rights and Drug Control

OHCHR has, as one of its essential tasks to "mainstream human rights within the United Nations, which means injecting a human rights perspective into all United Nations programmes."<sup>129</sup> International drug control is one of the important areas of concern for the UN and one which would clearly need guidance in relation to human rights standards, yet we could not find drugs or drug control listed among the circa 50 human rights "issues"<sup>130</sup> on the OHCHR web site home page, nor any policy papers directly addressing this issue. Moreover, we were informally informed that this area is not a priority for the Office.

Against this background, we consider relevant the statement made by the UN High Commissioner for Human Rights, Navi Pillay, on 10 March 2009, prior to the landmark session of the United Nations Commission on Narcotic Drugs in 2009, which reviewed the progress made in the decade since the Special Session of the United Nations General Assembly (UNGASS) 1998 and the 100 years anniversary of international drug control. The High Commissioner started her short statement by evoking the commitment made in the *UNGASS 1998 Political Declaration* to respect human rights in countering the world drug problem and stressed that ten years later it is opportune to "again underscore what States' human rights obligations demand of drug control regimes."<sup>131</sup> According to Mrs. Pillay:



“Individuals who use drugs do not forfeit their human rights... Too often, drug users suffer discrimination, are forced to accept treatment, marginalized and often harmed by approaches which over-emphasize criminalization and punishment while under-emphasizing harm reduction and respect for human rights. This is despite the longstanding evidence that a harm reduction approach is the most effective way of protecting rights...”<sup>132</sup>

#### 3.4.4. Assessment

The Office of the United Nations High Commissioner for Human Rights, according to its mandate, could play an essential role in informing the international drug control policy on human rights minimum standards. As noted throughout this chapter, several UN agencies indicated interest and issued various statements on this matter, including the yearly UN General Assembly resolutions regarding international cooperation against the world drug problem which state a commitment to human rights in this area. Hence, guidance on this topic from OHCHR would be extremely useful. It is therefore remarkable that this issue does not appear on the Office’s top-50 priority list, nor has it gained more attention over time.

The figures from the 2007 European School Survey Project on Alcohol and Other Drugs (ESPAD) demonstrates the risk of illicit drug use, with 18% of 15–16 year-old European children reporting a lifetime use of illicit drugs.<sup>133</sup> And this is just a regional estimation covering 35 European countries. If we were to add to this figure the number of children exposed to neglect and abuse due to drug use by their parents or caregivers and the children, mainly in poorer countries, engaged in illicit production and trafficking of drugs, one of “the most hazardous forms of child labour”, as per ILO Convention 182, it is hard to understand how the drug issue was never a priority for OHCHR. OHCHR engagement on this issue would certainly match with their Mission Statement

to focus on the most vulnerable in society.

As previously indicated, the High Commissioner decided in 2009 to issue a statement focused exclusively on drug users. As no policy paper or report accompanied this statement, we have for several months sought the High Commissioner or an officer in the High Commissioner’s staff who can explain what human rights analysis underpinned this assessment. Our attempts to get a clear idea were left unanswered. Hence, one is left with an almost unique intervention of OHCHR into the international drug policy where the right of the child to be protected from illicit drugs, in accordance with CRC Article 33, and stated obligation to “discourage production, marketing and consumption of... narcotics and other harmful substances...”<sup>134</sup> as per Article 12 of the International Covenant on Economic, Social and Cultural Rights (CESCR), are completely ignored. Despite its closing sentence which underlines that “We must ensure at all times that every individual’s inalienable rights are respected, protected and fulfilled”<sup>135</sup>, the whole statement is concentrated on the drug users.

It is difficult to understand how an exclusive focus on drug users is the total obligation of “States’ human rights obligations demand of drug control regimes”.<sup>136</sup> Such a statement implies the awarding of “victim status” to any drug user on the “merit” of using drugs and the disregarding of any other category, including children. It consequently proposes user-centered international and national drug control policies. Moreover, the High Commissioner states that a “harm reduction approach is the most effective way of protecting rights”<sup>137</sup> as it alleviates suffering and reduces incidence of HIV. As discussed in the previous chapter, equating human rights protection with “harm reduction” can be highly problematic, particularly when there is no interest in defining what “harm reduction” is and a general tendency is to extend its meaning. It is

most likely to be confusing for states to be told by the High Commissioner that human rights are best served by an approach that disregards the prevention of drug use itself when under the (CESCR) General Comment No. 14 on the right to the highest attainable standard of physical and mental health, the same states are told that the failure to discourage drug use is a violation of the obligation to protect.<sup>138</sup>

Left as it is, without any explanation, the 2009 statement by the UN High Commissioner for Human Rights is a “blank cheque” given to those who advocate for decriminalization, depenalization, or legalization of illicit drug consumption. Not surprisingly, it was intensively quoted by the anti-prohibitionist camp and became a strong advocacy tool.

### **3.5. The Joint United Nations Programme on HIV and AIDS – UNAIDS**

#### **3.5.1. Background**

The Joint United Nations Programme on HIV and AIDS (UNAIDS) was established on 26 July 1994 by Resolution 1994/24 of the Economic and Social Council “to provide global leadership in response to the epidemic”<sup>139</sup> and became operational on 1 January 1996. From inception, the organization has been a joint UN partnership, the inter-agency cooperation has been considered essential for ensuring the mobilization of resources and the effective implementation of a coordinated programme of activities throughout the United Nations system. The programme was to gain from the experience of its original six co-sponsors: United Nations Development Programme, the United Nations Children’s Fund, the United Nations Population Fund, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the World Bank. At present UNAIDS has ten co-sponsors.<sup>140</sup>

The work of UNAIDS is guided by a Programme Coordinating Board (PCB) which serves as its governing body. The PCB includes representatives of 22 governments from all regions of the world, the ten UNAIDS co-sponsors, and five nongovernmental organizations (NGOs), including associations of people living with HIV. UNAIDS leadership is innovative as it is the first United Nations programme to include NGOs in its governing body.

The Executive Cabinet of UNAIDS Secretariat is a forum for high level decision making on strategic issues facing the organization. The Executive Cabinet is composed of the Executive Director, the Deputy Executive Directors of the Programme branch and the Management and External Relations branch, and the Director of the Executive Office. The Executive Director is appointed by the United Nations Secretary General upon the recommendation of the co-sponsors. Beginning in January 2009, Michel Sidibé from Mali has been the Executive Director of UNAIDS.

The Programme headquarter is in Geneva, Switzerland, and it has three liaison offices in Brussels, Addis Ababa and Washington D.C.

The Unified Budget and Workplan for the 2010–2011 biennium was \$484.8 million USD.

#### **3.5.2. UNAIDS’ Mandate and Mission Statement**

According to ECOSOC Resolution 1994/24 from 1994, the objectives of the Programme are to:

- (a) Provide global leadership in response to the epidemic;
- (b) Achieve and promote global consensus on policy and programmatic approaches;
- (c) Strengthen the capacity of the United Nations system to monitor trends and ensure that appropriate and effective policies and strategies are implemented at the country level;
- (d) Strengthen the capacity of national Governments to develop comprehensive

- national strategies and implement effective HIV/AIDS activities at the country level;
- (e) Promote broad-based political and social mobilization to prevent and respond to HIV/AIDS within countries, ensuring that national responses involve a wide range of sectors and institutions;
  - (f) Advocate greater political commitment in responding to the epidemic at the global and country levels, including the mobilization and allocation of adequate resources for HIV/AIDS-related activities.<sup>141</sup>

The latest UNAIDS' mission statement adopted by the Programme Coordinating Board at its 26th meeting in June 2010 is to lead and inspire the world in achieving universal access to HIV prevention, treatment, care and support by:

- **uniting** the efforts of the United Nations System, civil society, national governments, the private sector, global institutions and people living with and most affected by HIV;
- **speaking out** in solidarity with the people most affected by HIV in defence of human dignity, human rights and gender equality;
- **mobilizing** political, technical, scientific and financial resources and holding ourselves and others accountable for results;
- **empowering** agents of change with strategic information and evidence to influence and ensure that resources are targeted where they deliver the greatest impact and bring about a prevention revolution; and,
- **supporting** inclusive country leadership for sustainable responses that are integral to and integrated with national health and development efforts.<sup>142</sup>

### 3.5.3. UNAIDS and Human Rights

In general, UNAIDS uses extensive human rights rhetoric. According to the Programme's vision "Leveraging the AIDS response, UNAIDS works to build political action and to promote the rights of all people for better

results for global health and development."<sup>143</sup>

The apparent focal point for human rights at UNAIDS is the Prevention, Vulnerability and Rights Division which has as one of its tasks the development of global policies which should lead to the reduction of HIV infections and advance and protect human rights in response to AIDS, address the vulnerability of women, girls and sexual minorities, and increase programme efficiency at all levels through systems integration. This Division's web site has a sub-section on 'human rights and law'<sup>144</sup>, which contains two documents:

- 1) *Mapping of restrictions on the entry, stay and residence of people living with HIV;*
- 2) *International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version.*

In the context of the present discussion, our assessment is that the second paper is the most relevant and comprehensive reflection on UNAIDS's thinking on human rights. The publication was issued by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS and it consolidates the previous versions of the guidelines. As stated, the aim of the publication is to assist states in translating the international human rights norms into practical observance in the context of HIV, considering that an effective response to the epidemic "requires the implementation of all human rights, civil and political, economic, social and cultural, and fundamental freedoms of all people, in accordance with existing international human rights standards"<sup>145</sup> and that the full respect for human rights reduces the number of HIV infections and helps people living with HIV to better cope with their situation. It also clarifies that a "rights-based, effective response to the HIV epidemic involves establishing appropriate governmental institutional responsibilities, implementing law reform and support services and promoting a supportive environment for groups vulnerable to HIV and for those living

with HIV”<sup>146</sup> and that in the context of HIV, international human rights norms and pragmatic public health goals require states to consider measures that may be controversial, particularly regarding the status of women and children, sex workers, injecting drug users and men having sex with men.

Guidelines 1–12 are general in nature and not prescriptive of outcome. Some examples: Guideline 1 (G1) suggests that states shall establish an effective national framework for their response to HIV; G3 suggests that states shall review public health laws to conform with human rights standards; G4 suggests that states shall review and reform criminal laws in order to ensure that these are in line with human rights standards. G7 suggests that states shall educate people affected by HIV on their rights; G8 suggests that states shall promote a supportive and enabling environment for women, children and other vulnerable groups. G11 suggest that states shall ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights.

Further down in the paper, in paragraph 102, there is a list of 18 human rights principles relevant to HIV/AIDS. Paragraph 103 states that “Particular attention should be paid to human rights of children and women.”<sup>147</sup>

Two paragraphs are allocated to children’s rights. The first talks, in general, about children’s rights under the international instruments and the second paragraph states that many of the rights provided for children in the Convention of the Rights of the Child are relevant for HIV prevention, care and support and goes on to enumerate such rights. It is surprising that the right to protection from illicit drugs as per CRC Article 33 is not deemed at all relevant in this regard and hence, is not mentioned in this context.

#### 3.5.4. UNAIDS’s Policies on Human Rights and Drugs

As mentioned above, in the context of the

*International Guidelines on HIV/AIDS and Human Rights* 2006, even if the issue of drug control is not directly addressed, the philosophy of UNAIDS permeates the text on several occasions. The document considers that an appropriate and human rights informed response to HIV/AIDS would imply legal reforms, establishment of enabling environments and the provision of services for vulnerable groups which include, *inter alia*, drug injectors. Guideline 4 details the need for states to review and reform their criminal laws and specifies, among other things, that national penal laws should not impede the adoption of measures taken “to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider: the authorization or legalization and promotion of needle and syringe exchange programmes; the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.”<sup>148</sup>

The UNAIDS Strategy 2011–2015 *Getting to Zero*, adopted by the Programme Committee Board in December 2010, focuses on three clear visions and goals, two of which specifically mention drug users. The first of these is zero new infections, which aims, amongst other things, to prevent all new infections amongst drug users. The second is zero discrimination, aiming, *inter alia*, to simultaneously reduce by half the number of countries with punitive laws and practices concerned with HIV transmission, sex work, drug use or homosexuality, that block effective responses. UNAIDS details its position considering that “Punitive laws, policies, practices, stigma and discrimination can block effective responses to HIV by driving people away from HIV services. They can reduce an individual’s ability to avoid HIV as well as impact people living with HIV.”<sup>149</sup> In the same way, law enforcement may drive drug users away from HIV services.

In our research we could not find any specific

paper to illustrate the UNAIDS position on children, illicit drugs, and human rights.

### **3.5.5. Positions of UNAIDS Executive Director**

#### **I. UNAIDS Executive Director Michael Sidibé's exchange of letters with members of International Drug Policy Consortium (IDPC) following a speech given at the III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow<sup>150</sup>**

UNAIDS Executive Director Sidibé was a featured speaker at the III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow, in October 2009. This speech led to a letter of reaction written on “behalf of advocates for harm reduction and the human rights of people who use drugs in Eastern Europe and Central Asia”<sup>151</sup> signed by representatives of NGOs affiliated to International Drug Policy Consortium including Eurasian Harm Reduction Network, Open Society Institute, Canadian HIV/AIDS Legal Network, Hungarian Civil Liberties Union, et al.<sup>152</sup>

#### **The speech**

In his Moscow speech UNAIDS Executive Director stated, among others, “Let me be clear about the United Nations position on drug use. We are completely against drug use and legalization of drugs. We consider that it is the duty of each country to prevent its population from starting drug use and to fight illicit drug trafficking... Harm reduction has nothing to do with the legalization of drugs. Harm reduction is a set of services for drug users that have proven many times over to be safe and effective... I urge each country in the region to define, within its legislation, the harm reduction package it needs, just like China has done with great success.”<sup>153</sup>

#### **NGOs Letter (rebuttal) to UNAIDS Executive Director Michael Sidibé on 5 November 2009**

A letter was issued in the name of “harm

reduction” advocates and defenders of the human rights of drug users,<sup>154</sup> asking for clarification on UNAIDS’ position on human rights and drug use, indicating several problematic elements in the Moscow speech of the UNAIDS Executive Director:

1. His statement that the UN is “completely against drug use and legalization of drugs”;
2. His urging of each country in the region to “define within its legislation the harm reduction package it needs, just like China has done with great success”;
3. His “repeated praise of the leadership and progress of the Russian government in the fight against AIDS”.<sup>155</sup>

According to these advocates, these statements are contrary to previous positions articulated by UNAIDS and threaten to derail the efforts to remove the punitive laws related to drug use.

The NGOs letter elaborates on each of the elements: On the issue of UN being “completely against drugs and legalization of drugs... is to our knowledge without basis in UN policy and seems inconsistent with the philosophy of harm reduction that you alluded to in your speech. Harm reduction recognizes that many people either cannot or will not stop using drugs and therefore seeks to minimize the harms related to drug use. It prioritizes protection of the dignity and health of people who use drugs over efforts to prohibit all drug use. By contrast, your statement comes dangerously close to stigmatizing all people who use drugs as a population that the United Nations is ‘against.’”<sup>156</sup>

With regard to urging countries to define within their legislation the harm reduction packages needed, it states that “Unqualified deference to existing legislation undermines...and hinders the efforts of other UN agencies and civil society to reform these laws on the ground. In future speeches in the region, and communications with officials there and elsewhere, we urge you to articulate



the need and urgency for legal reform aligned with HIV prevention and treatment for people who use drugs.”<sup>157</sup>

**Reply letter from Director Sidibé to the letter above, 9 November 2009**<sup>158</sup>

In his letter addressed to the “harm reduction” advocates and defenders of the human rights of drug users,<sup>159</sup> UNAIDS Executive Director Sidibé aimed to clarify that “My remarks clearly emphasized the unequivocal commitment of the United Nations to the universality of human rights and to effective harm reduction programmes as essential components of the response to HIV... It is important to make a clear distinction between ‘decriminalization’ of drug users and ‘legalization of illicit drug use’. In my Moscow remarks, I expressed this distinction clearly... I want to underline that ...UNAIDS is unequivocal in our call for the decriminalization of people who use drugs.”<sup>160</sup>

In context of the critique of his China remark Director Sidibé stated, “I use this opportunity to reaffirm the UNAIDS position on harm reduction – the full package of harm reduction services should be implemented in countries where HIV is transmitted through sharing of contaminated injecting equipment. Harm reduction has to be supported by national legislation to be implemented safely and with efficacy.”<sup>161</sup>

Concerning the issue of future opportunities, Executive Director Sidibé stated that “The upcoming milestones of the 53rd Session of the Commission on Narcotic Drugs in Vienna, the Harm Reduction 2010 Conference in Liverpool and the XVIII International AIDS Conference in Vienna present us with concrete opportunities to work together towards much needed progress.”<sup>162</sup>

**UNAIDS Executive Director’s position on illicit drug consumption decriminalization at the International AIDS Conference 2010**

UNAIDS Executive Director Michel Sidibé

participated in the XVIII International AIDS Conference in Vienna 2010. The organisers of this Conference issued the so-called *Vienna Declaration*, demanding a review of current drug policies and the decriminalisation of all drug users. In an article from the publication *The Body*, there are some quotes from Mr. Sidibé’s position on criminalization, deemed as the most important and urgent theme to address. In one picture, taken at the Vienna meeting, Mr. Sidibé is seen holding up his hand, voting for the following statement on the board in his background “We resolve that harmful laws that criminalise sex work, drug use, drug possession, homosexuality and same-sex relationships, and HIV transmission must be repealed and must not be replaced with a regulatory system that is equally prejudicial. Not only do these laws lead to serious human rights abuses, but they grievously hamper access to HIV services.”<sup>163</sup>

**3.5.6. Assessment**

UNAIDS is the newest of the UN bodies examined in this chapter. The organisation has grown quickly in terms of visibility and seemingly also in funding.

UNAIDS has a more focused mandate than the other UN entities discussed elsewhere in this chapter, since it concerns only one disease. However, within that confinement, the mandate of the Programme is quite broad and encompasses a complex range of interventions. This leaves UNAIDS freedom in devising responses, which basically should only be curtailed by existing UN hard law.

The UNAIDS mandate does not address human rights or other overall international law, but it must be a basic assumption for all UN entities that they are democratically bound by hard law emanating from the UN Member States. Against this background, UNAIDS is failing in its mandate in terms of human rights and overall compliance with international law when it seeks to put the interests of any drug

user – injecting or not, addict or not – ahead of an explicit protection provision for the most vulnerable group of all, namely children.

UNAIDS has a clear vision: “Zero new HIV infections, zero AIDS deaths, zero discrimination.”<sup>164</sup> UNAIDS “zero vision” is a useful policy goal, regardless of whether it is 100% realistic in the short-, medium-, or even long-term. It is useful since it expresses a value that sets the course for the ship, and from which coherent sub-policies can be devised. The assumption of such an aspiration is no different from a same policy goal on racism, corruption, or illicit drug use.

So, turning to the issue of drugs: Could UNAIDS be a partner in the overall UN drug policy goal on zero illicit drug use? No non-drug user will wake up one morning with physiological needs indicating that “Today I have to smoke cannabis” (or consume any other drug of abuse). Virtually all people will wake up at some point in their lives with sexual urgings. From this point of view, it must be much easier to bring drug use to zero, than it is to bring HIV infection to zero, which is primarily spread through sexual transmission. That is, unless we deliberately decide to create and recognize the value of a culture of drug use. Such a position would seem to be as absurd as the idea of valuing the fact that we actually have a number of people affected by a serious disease such as AIDS.

Seemingly, all of the “harm reduction” organizations partnering with UNAIDS would fully disagree with the goal of zero drug use. It seems clear that with regards to the approach to drug policy, the UNAIDS Executive Director Michel Sidibé and the organization’s human rights chief Susan Timberlake have decided to uncritically side with these NGOs instead of closely examining the human rights instruments, notably the Convention on the Rights of the Child. Protecting children from any drug use is not optional; it is a human rights obligation and a minimum standard for 193 States

Parties and for the UN overall, yet UNAIDS has decided to make this provision optional.

UNAIDS’s overall collaboration with anti-prohibitionist NGOs, and Director Sidibé’s endorsement of the overall decriminalization of drug use and a user-centred approach, seem to go against almost every point of UNAIDS’s own mission statement:

Point 1. Addressing people most affected by AIDS: Those most affected by AIDS are poor children in Africa who have lost their parents or at risk of losing them due to AIDS. The decriminalization of drugs seems likely to add another burden to their lives: with one example being their possible recruitment in the production or trafficking of cannabis in order to facilitate the recreational use. The consequences of decriminalization are that the drug users are protected and awarded a victim status whereas the risks children are exposed to increases in drug availability and use. The added social burden in a society where any adult can now possess/consume drugs with impunity is hardly consistent with addressing those most affected, namely children. Hence, UNAIDS’s user-centred, decriminalization approach goes against their own mission statement to address those most affected.

Point 2. Human dignity and human rights: Many studies indicate drug use by parents or caregivers as one of the risk factors for child maltreatment and/or show how children in these circumstances go to extreme lengths to protect their drug-using parents and cover up for them, forcing even very young children into pre-mature adulthood. This type of experiences cannot be deemed as contributing to the dignity of the child. The pivotal human rights issue concerning drugs, CRC Article 33, has been discussed *in extenso* above. UNAIDS has paid no attention to this minimum standard in either its papers or its public performances. This became particularly clear in the written answer from UNAIDS Human Rights Chief Ms. Susan Timberlake to our question of how

the organisation is approaching child rights standards. Mrs. Timberlake's long answer completely avoided addressing what the right concerns, namely protection from drug use, and to whom it belongs, respectively to all children, and instead discussed all drug users and children who use drugs. Hence, UNAIDS user-centered, decriminalization approach goes against their mission statements commitment to dignity and human rights.

Point 3. Mobilizing scientific resources to be accountable for results: UNAIDS has no studies to show that decriminalization and a user-centered approach reduce the lifetime prevalence of drug use among children or reduce the number of children involved in drug production or trafficking. From a scientific point of view, the policy suggestions made by UNAIDS seem not to conform to the accountability criteria, but rather to have been induced by external agenda setters.

Points 4 and 5. Empowerment to bring about a prevention revolution and sustainable responses: In the past, UNAIDS talked about the injecting drug user; now the policy focus is any drug user, injecting or not, addict or not. The UNAIDS-led path of decriminalization empowers recreational drug users in providing them freedom to use drugs and giving them protected status. This empowerment seems to go directly against the tandem of CRC's imperative to empower children's rights and the UN drug conventions imperative regarding no non-medical drug use. This was, seemingly by mistake, admitted by Executive Director Sidibé in his Moscow speech when he stated that the UN is "completely against drug use and legalization of drugs."<sup>165</sup> But confronted by anti-prohibitionist NGOs, UNAIDS Executive Director Michel Sidibé changed his position and so this brief flicker of enlightenment was quickly extinguished. UNAIDS has clearly made overall prevention against drug use by children a non-issue and does not follow UNICEF's policy guidance that HIV/AIDS

interventions must not undermine child protection. By working this way, UNAIDS seems to, apart from denying children the right to protection as per CRC Article 33, also facilitate increased acceptance of drug use. Since injection drug use is one of the drivers of HIV, it seems that this is not a sustainable strategy and is not preventing either drug use or the spread of HIV.

In summary, UNAIDS auditors should give the grade "C" to the current leadership's policy choices, in relation to the UNAIDS mandate/vision/mission statement regarding human rights.

The UNAIDS decision to devise human rights guidelines in 2006, together with OHCHR, is a commendable initiative. But on the issue of drugs this initiative was all form and no content. The purpose of the guidelines is to assist states in creating a positive, rights-based response to HIV that is consistent with human rights and fundamental freedoms. The drug control issue is not mentioned in any of the 12 guidelines, but children are: Guideline 8 calls for the creation of an enabling environment for children. Further down it is stated that particular attention is to be paid to women and children. In general the Guidelines' statements about children are in line with child rights doctrine, but in reality UNAIDS seems not to have given these commitments a second thought:

- In what way does drug consumption and decriminalization create an enabling environment where all children are protected against drug use, production, and trafficking? Would the issue of protection not require the reverse of this policy-making? Criminalization would likely be one of the first measures to be introduced in order to facilitate protection and to send out a supporting signal that society is standing on the side of all children in this regard and would help parents educate their children to abstain from drug use.

- In what way is particular attention paid to children when UNAIDS, throughout their papers and statements and even in answer to direct questions, proposes that the adult drug user be the centre of attention for drug policy-making, and be seen as the primary victim?

One would think that Executive Director Sidibé, a former UNICEF official, could not reasonably be unaware of paragraph 6 in UNICEF's Child Protection Strategy, which states "This strategy aims to reduce children's exposure to harm by accelerating actions that strengthen the protective environment for children in all settings... All programmes and actions for the benefit of children's health, education, participation or for addressing the impact of HIV and AIDS should likewise be designed so as to strengthen protection, and must never undermine it."<sup>166</sup> In short, child protection standards, including CRC Article 33, should pre-vail when designing HIV/AIDS policy.

**UNAIDS leadership letter exchange with NGOs related to International Drug Policy Consortium (IDPC), following Executive Director Sidibé's Moscow speech, 2009**

The letter exchange between UNAIDS Executive Director Michel Sidibé and the representatives of some "harm reduction" NGOs is a clear illustration on how special interest groups are given a free rein to push policy through UN figureheads.

The 2009, Moscow speech by UNAIDS Executive Director Sidibé should have come across as unremarkable. Mr. Sidibé was merely stating what has already been stipulated in widely ratified UN hard law,<sup>167</sup> more precisely that UN is "completely against drug use and legalization of drugs. We consider that it is the duty of each country to prevent its population from starting drug use and to fight illicit drug trafficking."<sup>168</sup> His speech was neither innova-

tive nor passionate. The controversial element in the Moscow speech could instead be, from an international law/human rights point of view, the assumption that states have a legal obligation to implement "harm reduction" programmes or interventions. "Harm reduction" is not part of any international hard law instrument; for example, the International Narcotics Control Board has been reticent in relation to this approach because it does not have a firm definition.<sup>169</sup>

If anyone had reason to complain about the Moscow speech, it would be the stakeholders of existing international law, notably states who have adopted the present international legislation, and children who are explicitly subject to protection by the same legislation. It is therefore surprising that the reaction came from the "harm reduction" movement. For the last group, clearly a broad endorsement of "harm reduction" was not enough.

In the forceful "harm reduction" NGOs representatives' letter, which is extremely meticulous on linguistic nuances, Mr. Sidibé was asked to retract his comments. The letter alleged that it was wrong to say that UN was against drugs use if Director Sidibé did not at the same time say that he was for decriminalization of this conduct. This clearly loops the logic on why a convention is asking for criminalization in the first place. Would a State Party, having signed up to criminalize corruption and making it a crime in national law, be adhering to the corruption convention if it later issued an order to de facto decriminalize all civil servants taking bribes? Even Professor Krzysztof Krajewski is in his 1999 paper reached a similar conclusion, considering that "in order to retain the 'spirit' of the conventions, it is better to de-penalise rather than decriminalize... Although the practical effects of both approaches seem usually to be identical, decriminalization may be more prone to charges of violating the 1988 convention."<sup>170</sup>

Those writing on "behalf of advocates for

harm reduction and the human rights of people who use drugs”<sup>171</sup> also stressed that it was wrong to say that the UN was against drug use, as this was “inconsistent with the philosophy of harm reduction”<sup>172</sup> and it was “stigmatizing all people who use drugs as a population that the United Nations is ‘against.’”<sup>173</sup> These NGOs make it very clear that drug users are not only addicts, but anyone who does not want to stop using drugs. Furthermore, it was wrong to say that countries could develop their own “harm reduction” packages, within their national legislation.

In short, the letter suggests that there is a fixed and accepted definition of “harm reduction” which includes being neutral to drug use. Any drug user – addict or recreational – is to be considered as a victim. Decriminalization shall be a mandatory policy, contrary to 1988 Drug Convention Article 3 (2), to CRC Article 33 and to the ILO Convention 182 on the Worst Forms of Child Labour.<sup>174</sup> It is nothing short of remarkable that the Head of a UN entity, Mr. Sidibé, shall be expected to back up this position before UN Member States, a position which runs totally contrary to the present international legal framework.<sup>175</sup>

One would expect that a UN entity chief concerned with his trustworthiness, the integrity of his organisation, the fidelity to his mandate, which includes international law, and human rights as stipulated by hard law instruments, would be less than pleased with an extortion attempt like this.

However, Executive Director Sidibé’s reaction is surprising. Firstly he clearly has made the answering of this letter a high priority. Having just returned from Moscow, he immediately authored a three page reply with a high level of detail and intricate discourse. Secondly, he took no issue with the above assertions of the NGOs, saying instead – against semantics and logic – that in Moscow he underlined the commitment to “harm reduction” programmes, and made a clear distinction

between legalization and de-criminalization. Mr. Sidibé also underlined his commitment to the “full package of harm reduction measures”, and undertakes to collaborate with the NGOs on upcoming meetings, including the Harm Reduction Conference in Liverpool, and the International AIDS Conference in Vienna.

It is clear to a reader of this exchange that there is a 180 degree discrepancy between what Director Sidibé said in Moscow and what he said in his letter addressed to the representatives of “advocates for harm reduction and the human rights of people who use drugs.”<sup>176</sup> The NGOs representatives’ letter, and its formulations, allows few conclusions other than that of Mr. Sidibé who considered that it was necessary to put his credibility on the line, possibly hoping that no one outside the NGOs would read this exchange, especially not a very significant UN Member State. UNAIDS Executive Director Sidibé deceived either the “friends and colleagues”<sup>177</sup> who took part at the EECAAC 2009 Conference in Moscow or the NGOs representatives’ “colleagues”<sup>178</sup> who asked for explanations of his Moscow speech. However, we should note that the answer to the NGOs letter was the more recent one.

It is also interesting to reflect on the anatomy of the pressure in the NGOs’ letter. Clearly these NGOs took it for granted that they would have the gravity to press a UN Executive Director to recant and counter international law. One is left with the impression from the NGO letter and from Mr. Sidibé’s reply that the copying of this letter to the UNAIDS Reference Group on AIDS and Human Rights might have added to this pressure.

Overall, this exchange shows a remarkable state of play where a small group of NGOs can use a head of a UN body as their private mouthpiece for disassembling international law, including human rights law.

We note that UNAIDS Executive Director Sidibé made good on his reply letter’s promise



of future collaboration, since he publicly backed up the *AIDS 2010 Vienna Declaration*, demanding decriminalization of any drug user.<sup>179</sup>

However, it is noteworthy, on the positive side that, as mentioned in the previous chapter, in its latest Political Declaration on HIV/AIDS adopted by the General Assembly on 10 June 2011, UNAIDS seems to have returned to the letter of the international law instruments stating in relation to the drug problem the following: “Note with alarm the rise in the incidence of HIV among people who inject drugs and that, despite continuing increased efforts by all relevant stakeholders, the drug problem continues to constitute a serious threat to, among other things, public health and safety and the well-being of humanity, in particular children and young people and their families, and recognize that much more needs to be done to effectively combat the world drug problem.”<sup>180</sup>

### 3.6. Conclusions

#### **UN Entities are lacking consideration for children rights when discussing drug policy**

Only one of the five UN entities examined had a designated paper on human rights and drug control, respectively UNODC. The 2010 UNODC’s paper<sup>181</sup> is also the only one that mentions Article 33 of the Convention of the Rights of the Child, but it treats this human rights provision in a extremely limited fashion devoting it just one of its 61 paragraphs.

When we approached these UN entities directly it appeared either: a) They had no knowledgeable focal point on the drugs/human rights nexus (OHCHR, UNICEF, WHO), or that b) The focal point was lacking knowledge/interest in children rights (UNODC and UNAIDS). Hence, all examined UN agencies policy reflections are flawed with regard to the only human rights provision concerned with drugs, CRC Article 33, and to

the most ratified of all human rights instruments: the Convention on the Rights of the Child.

#### **While the human rights-based approach is calling for a child-centered philosophy, UN entities are promoting a drug user centered philosophy**

The above-noted lack of knowledge on children’s rights created analytical shortcomings when the discussed UN agencies took positions in drug-related matters. The positions taken tended to treat all users (people affected by drug addiction or not) as victims, and contributed to legitimizing an activity – drug usage – that international law instruments such as the Convention on the Rights of the Child and the drug conventions have clearly cast as being illicit.

At the same time, the above-mentioned UN agencies made no reflection on assessing how all children shall be protected from drug use, production, or trafficking, for example by generally treating drug use among adults as an illicit activity. UNODC opted to only discuss children who are using drugs. In short, in contradiction to CRC Article 3 a user-centered perspective was being promoted among these UN entities, instead of a child-centered perspective. This is comparable to a policy suggestion that the rights of an adult child pornography consumer should be considered ahead of the right of children to be protected from sexual exploitation, in the context of CRC Article 34.

Overall, the UN entities fail to appreciate the imperative to treat CRC Article 33 as a minimum human rights standard. This is of concern not only with regard to Article 33, but to all human rights instruments. If these agencies/bodies do not apply a systematic rights-based approach when dealing with human rights issues, the rights will cease to be minimum standards, and will become instead political tools of convenience.

## Final Conclusions

Laws are not perfect instruments. The simple fact that we have certain legal provisions regulating specific areas of human life does not guarantee that there are not going to be flaws, problems or shortcomings. Existing laws must be implemented and observed, but even so, weaknesses and discrepancies might well exist. Legal systems, including the international one, are not like Moses' Tablets of Stone; they are flexible in order to allow refinements. Laws can be abrogated; treaties' provisions can be amended; conventions can be revised, terminated or suspended. New laws and treaties may be adopted to fit new realities or problems. For all these adaptations, there are firm legal mechanisms and this is why bypassing or ignoring legal instruments should never be contemplated by States Parties as a viable option without consideration of the further consequences for the whole international legal architecture. Moreover, we should never lose sight of the fact that the absence of law could lead to nothing but chaos. If certain legal provisions exist, they have to be considered when designing policies, proposing programmes, or constructing discourses in the areas addressed by these laws. The law should be the basis for all policy-making and human rights must be treated as minimum standards and not as political expediences.

All these basic and commonsensical principles have been progressively abjured while discussing drug policy and human rights. It is difficult to think of another policy area where legal principles are as severely under siege, even by entities mandated to observe the existing

laws. In fact, there is no other legal/political sphere where prestigious professors in international law/human rights and UN Special Rapporteurs admonish the international community to "forget about laws, be pragmatic".<sup>1</sup>

Indeed, there might not be any other area where human rights rhetoric is used to demonize moral, when the very concept of rights and implicitly the foundation of human rights are a moral ones. As Profesor Louis Henkin, a founding father of the study of human rights law, put it: "Rights is a philosophical, ethical, and legal term. A right is a moral/legal claim *as of right*, not by grace, or love, or charity. For our purposes, a right is a claim upon society, which has a legal, moral obligation to honor the claim, to respect it, to ensure it, to help realize it."<sup>2</sup>

This publication is a search for answers. We have tried to understand why the present relevant laws and provisions are avoided when human rights and drug policy are discussed. We must ask why, instead of applying existing law, there is a larger interest in proposing new informal settings defined as "pragmatic" or "evidence-based" (where the actual evidence is almost never provided) which often collide with the legal framework? At present there exists a complex array of legal instruments, from conventions to "soft law" norms, related to both branches of international law (human rights and international drug control) and to their cohabitation. These instruments cover almost all aspects of the matter of application of human rights norms to drug policy and

allow the adoption of perfectly legal and appropriate measures.

If all these instruments, or at least the fundamental and legally binding ones, had been considered when addressing human rights and drug policy, then publications like this would be unnecessary. In the present publication we have tried to demonstrate that minimum standards are not being observed in either in the active sense, by considering them as starting points for policy-making or discussion, nor in the passive sense, by enunciating the reasons why they are deemed as irrelevant and therefore ignored. In Chapters 1-3, we indicated that the Convention on the Rights of the Child Article 33, the only UN human rights convention specifically dealing with illicit drugs, is the very provision that is ignored or, at best, mutilated by various civil society organizations and even by UN entities. Different propositions have been advanced in relation to drug policy and human rights, many displaying a remarkable lack of concern about the legal obligation to protect children from illicit drugs or in relation to the possible consequences of such propositions on children's lives. This trend runs contrary to the fact that CRC is a legally binding international instrument. Moreover, it is the convention with the widest number of ratifications, which was established specifically to enshrine in law the fact that children have certain rights and that they are not just objects of charity whose interests can be randomly deprioritized by other interests. This is exactly why the "best interests" principle exists and it only refers to children whenever it is included in any human rights convention.

Regarding international human rights norms and their application in the context of the international drug control policy, we could identify a whole spectrum of positions and opinions which severely depart from legality or good sense. The legal consequences of these positions vary greatly. An ascending scale of immediate legal consequences of these posi-

tions, from the least harmful to the gravest and most harmful position, might look like this:

On the lower end of the scale we have various authors like Dr. Erik van Ree who demands the addition of an Article 31, stating that "Everyone has the right to use psychotropic substances of one's own choice",<sup>3</sup> to the Universal Declaration of Human Rights. He asserts, "Human rights concern forms of behaviour which we regard as positive and enriching for our lives to such a degree, that we experience it as a violation of our personal dignity when we are forced to give them up. Drug use belongs in that category. Instead of being included in the category of murder and rape, drugs should be appreciated as a cultural asset, similar to religion and art. Despite the possibility of abuse, drugs provide its users with access to a unique inner field of experience, that would remain closed for ever without them."<sup>4</sup> This type of assertion indicates not just a deep misunderstanding of the philosophy and the context in which the Declaration of Human Rights was adopted in 1948, but also a misunderstanding of human rights laws in general. However, this is simply the opinion of a private individual, without any immediate or direct legal implication. For the sake of debate, we may accept it and treat it for what it is: as a matter of private opinion.

Ascending on this scale to the second step, it is far more troubling when renowned NGOs and humanitarian organizations, like Human Rights Watch (HRW) and International Federation of Red Cross and Red Crescent Societies (IFRC), launch abundant and persuasive campaigns that exclusively promote drug users' interests by extensively using the language of human rights. For example, IFRC recommended in its 2010 Report, that "All stakeholders need to empower and listen to those who use drugs: Their voices need to be heard and their participation – in all aspects of decision and policymaking, planning and implementation – is absolutely critical."<sup>5</sup>

It might be the first time in human rights history that NGOs, including human rights “defenders”, have deliberately worked to actively sideline a human rights provision, namely CRC Article 33. The end goal of this undertaking is the replacement of the mandated vulnerable group (all children) with a special interest group (any drug user, recreational or addict) as victims, suggesting that breaking the law (e.g. possession for personal use, penalized according to the 1988 Convention Article 3(2)) is the constitutive element for defining victim status.

The group of authors and NGOs discussed in Chapter 2 is far from being homogenous, yet certain common goals or denominators can be identified in their arguments. For example, the intention to shed or invalidate the international drug control regime, to make drug consumption seem like an accepted behaviour, normalizing this conduct and to elevate the interests of drug users over other categories, including children. Drug users are thereby released of any personal or social responsibility and the whole of society is held accountable and is deemed culpable for the inconveniences this group might experience in their lives. According to these positions, the drug users have to be protected not only from the harmful physical and mental health risks of the illicit drugs they decide to ingest or inject, but also from the harm arising from drug control policies, a unique concept which makes the existence of legal regulations look completely illogical. Moreover, this “obligation” to prioritize and protect the illicit drug users has been envisaged in such a way that nobody intervenes in the users’ private sphere or exercises any constriction over their free choice to illicitly consume drugs. Even if there are three international conventions aimed, *inter alia*, at restricting the illicit consumption of narcotic drugs and psychotropic substances and various national laws and policies branching from this international obligation, the unwillingness to

stop drug use is deemed as a perfectly legal option for the user.

During the past decade, a complex set of knowledge related to drug policy has been developed and advanced by certain individuals and NGOs. This “knowledge kit” focuses on how to avoid legal obligations, bypass legal provisions, dismiss treaty body advice, effectively use human rights language to advance certain interests and values (some running against human right law), and use language in general to induce certain ideas. These arguments and discourses have been refined over time to become omnipresent and highly persuasive today. Recently these ideas have been transposed into educational material and they are handed over to the next generation at the Summer Course (CEU), of Budapest Central European University: “Human Rights and Drug Policy”, organized in cooperation with the Open Society Institute. The cadre of teachers at this course is a who’s-who of the authors discussed in Chapter 2 (as far as can be noted, no pro-UN drug conventions speakers/faculty members were invited, indicating an ideological stance by CEU).<sup>6</sup>

At the next, the third step of seriousness, it is of more concern to have one of the largest networks of child rights organizations, Children Rights Information Network (CRIN), advocating for drug use decriminalization without taking into consideration that children have a legal right to protection from the illicit use of narcotic drugs and psychotropic substances and from getting involved in the illicit production and trafficking of such substances, as stipulated by the Article 33 of the Convention on the Rights of the Child.

On the fourth step of the scale, the perturbation increases exponentially as we are approaching the UN. Professor Manfred Nowak,<sup>7</sup> during the time when he was acting as UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, advised the international

community to “forget about laws, be pragmatic”.<sup>8</sup> While one should note that some aims invoked in this context, like that of preventing HIV and other diseases, are undeniably important, it is nevertheless astounding that a professor in human rights law invites us to “forget about laws”, abandon moral and be “pragmatic”. Should one conclude from this advice that the aim always justifies the means, even to the extent of ignoring international law, or human rights provisions? Professor Nowak’s assertion begs several questions: Who is the person with the authority to define which areas should be considered in such terms, or define the borders of the so-called “pragmatism”? Is such an approach not to be considered a threat to the human rights regime in its entirety? Could we not comprehend the torture that regrettably happened in Guantánamo Bay and other similar places as based on an almost identical logic as the one proposed by Professor Nowak, where people forgot about laws and morals and acted pragmatically in response to a “security threat”? What other human rights violations could inevitably follow such an approach? It seems aberrant that Professor Nowak, who issued reports condemning the use of torture at the detention facilities at Guantánamo Bay, is the same person proposing such an approach in another policy area, which could well be seen to justify or lead to the same effects as the ones he condemned.

It is also highly problematic to have had Anand Grover, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, issue a report which advocated for the decriminalization of drug use and the legalization of illicit drugs<sup>9</sup>, while giving no consideration as to how such solutions would affect children and their rights, even if according to his mandate he is asked to pay special attention to the needs of children.<sup>10</sup> Moreover, this report is informative because it

clearly indicates that the ultimate goal of this type of engagement is not the decriminalization of drug use/possession but the overall legalization of drugs. The report shows that promotion and imposition of “harm reduction” and decriminalization for drug use is clearly not the end station, but the penultimate stop on the journey towards the final destination, which is the legalization of illicit drugs; hence, the complete demolition of the international drug control regime and bastardisation of children’s rights.

Mr. Grover’s incursion into drug policy becomes even more obstinate if we are to consider his more informal views on this issue. In his hour-long discussion the day after his presentation at the UN, on 26 October 2010 at George Soros’ Open Society Institute in New York<sup>11</sup>, Mr. Grover made it clear that he favors the legalization of drugs on ideological grounds, apparently without regard for the public health or public safety implications of such an action. According to common logic, if the rates of HIV/AIDS decrease any place in the world we should consider it as positive news. Paradoxically, these sentiments are not shared by some of the main players in the field of human rights, such as the UN Health Rapporteur Anand Grover. Asked in October 2010 if the political space to discuss drug decriminalization exists, Mr. Grover’s expressed his regret that HIV incidence is decreasing, stating “I am sorry to say that the political space is dwindling, because HIV was a big space and HIV is actually, you know, the incidence of HIV is coming down in Asia, we are losing that space and that is the problem...That is a space still open. How long it will be open? We don’t know.”<sup>12</sup> This statement indicates that Mr. Grover, the UN Special Rapporteur on health, is unconcerned about the 30 million people living with HIV worldwide, including 2.5 million children under 15 years, and that they are considered by him just as simply pawns or a manoeuvre mass for



achieving different agendas, including illicit drug use decriminalization or legalization.

Ascending to the fifth step on the scale of seriousness, the whole picture becomes fundamentally different when such approaches come from within the UN system. UN agencies and bodies embody the international legal order. Although with no lawmaking capabilities, people and governments around the world will often perceive UN agencies' views and actions as manifestations of the international legal order. What the UN does and the positions that it articulates can influence opinion in many countries. Therefore, from the fifth stage upwards, the consequences of these positions become more relevant.

It might also be the first time in human rights history that UN bodies have been avoiding their homework for more than two decades (i.e. study and suggest policies to support CRC Article 33), but instead have remained inert, allowing themselves to be progressively overtaken by the "human rights" rhetoric of certain NGOs which propose an exclusive drug user-centered focus.

In Chapter 3, we indicated the uncritical acceptance of this drug user-centered approach and the dismissive attitude towards the rights of the child displayed by several UN entities, including the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime (UNODC), World Health Organization (WHO) and the Joint United Nations Programme on HIV and AIDS (UNAIDS).

As the starting point of this publication, we posit the fundamental need to promote, protect and respect children's rights. Therefore it is appropriate that the last two stages of severity are reserved for the two UN entities which are specifically mandated to ensure the promotion, protection and observance of children's rights.

Therefore UNICEF, is on the sixth step on the scale. For over 20 years, UNICEF has had

no initiative or vision in relation to the special protection measure of CRC Article 33, and instead has continuously avoided it. More recently, in 2010, UNICEF decided to blend into the scenery and advocate for the removal of punitive laws for drug use<sup>13</sup> without giving any due attention or explanation as to how such an approach conforms to the children rights doctrine or how it is going to influence the involvement of children in the illicit production and trafficking of narcotic drugs and psychotropic substances. UNICEF's 2010 position is part of a recent trend that is likely to continue or even progress with the naming of Craig McClure as Chief of its HIV/AIDS section in December 2011. Although Mr. McClure has extensive expertise related to HIV/AIDS, he also has an extremely clear vision in relation to drug policy which appears to be as far as it gets from being child-centered. In a "blistering speech, full of righteous indignation", at the International Harm Reduction Conference in Bangkok (23 April 2009), Craig McClure, Executive Director of the International AIDS Society,<sup>14</sup> made the following statement: "My first observation is how all of us continue to talk about people who use drugs as 'other'. We use terms like 'drug abuser', 'drug user' and even 'person who uses drugs' as if some of us do not use drugs. But which one of us does not use a drug that alters our mood, our consciousness of pain, our physical or emotional state? A joint, a dab of speed, a line of coke, a tab of ecstasy, a shot of heroin. Even the last three Presidents of the United States between them have admitted using some of these. A pint of beer, a glass of wine, a shot of whisky. A cigarette. A cup of coffee or tea. A pain relieving medication, an anti-depressant, a valium, a sleeping pill. We are all people who use drugs. Our refusal to acknowledge this is all about our fear that 'we' might become, or be seen as, one of 'them'."<sup>15</sup>

While noting that Mr. McClure's assertion has certain common points with the Release's

2010 campaign *Nice People Take Drugs*,<sup>16</sup> it is superfluous even to start detailing the legal imprecision and implications of such a statement or to mention that according to the 1988 Convention Article 3(1, c, iii), “Publicly inciting or inducing others, by any means...to use narcotic drugs or psychotropic substances illicitly”<sup>17</sup> is a criminal offence.<sup>18</sup> However, we would like to point out the inappropriateness of such a philosophy for somebody who is dealing with children’s needs and rights and should therefore make sure that “All programmes and actions for the benefit of children’s health, education, participation or for addressing the impact of HIV and AIDS should likewise be designed so as to strengthen protection, and must never undermine it.”<sup>19</sup> Telling children that it is just normal to have a “a joint, a dab of speed, a line of coke, a tab of ecstasy, a shot of heroin”<sup>20</sup> as “all of ‘us’ are doing” and that “we” should indulge “our normality” while increasing the number of children that are recruited into drug production and trafficking to fuel “our normality”, will be neither beneficial to children’s health and education, nor conform with the child rights doctrine, as per the Convention on the Rights of the Child.

This brings us to the seventh step, the highest and most serious breach of duty: the Committee on the Rights of the Child, the very treaty body for the Convention on the Rights of the Child. The Committee has been more or less silent on the matter of children’s right to be protected from narcotic drugs and psychotropic substances for over 20 years, save for the laconic and detached concluding observations related to CRC Article 33 on State Parties reports and the two stupefying decisions taken in 2010 and 2011: the mutilation of CRC Article 33<sup>21</sup> and the recommendation of indefinable “harm reduction” for children without any further elaboration on this concept.<sup>22</sup>

Looking at the latest developments in this

field, we can see that a general trend has emerged where children’s right to protection from illicit drugs is treated as the lowest cast of human rights, deserving neither lip service, nor any intellectual effort.

At present, according to official estimations, there is an alarming figure of 210 million persons who use illicit drugs each year<sup>23</sup> out of the 7 billion<sup>24</sup> global population. However, for the 97% of the world population who do not use, and are not involved in the production and distribution of drugs,<sup>25</sup> drug policy may not be an obvious priority. Despite the fact that drug policy has deeper implications that directly affect all of us, for example, in our access to medicine, many people would feel unconcerned about recent policy shifts in drug policy or by the changing rhetoric involved in this area. Nevertheless, if we are to accept the replacement of present laws with lax concepts and “pragmatism” in one area of policy, other areas of perceived greater concern may be targeted with similar approaches. If we are to transplant this type of rhetoric, as indicated in this publication, into another aspect of life to which we feel much closer, we might have to accept a solution we are not at all prepared for. Allow this trend to establish a precedent in one area and tomorrow we might have similar campaigns on sexual abuse, human trafficking, discrimination, corruption, et cetera, or any domain you might care about, where laws are forgotten, morality is ridiculed, the perpetrator’s “rights” are elevated over the victims’ rights, and the penalized conduct is normalized and deemed as a matter of personal choice.

Obviously, if human rights violations occur in the field of drug control they should be revealed, addressed and remedied according to the existing law. In this regard, any intervention coming from the UN system or from civil society organizations is salutary.

Laws, as imperfect as they may be, are the only source of accountability and foresee-

ability. Henceforth, LET US NOT FORGET ABOUT LAWS. Let us apply the law and work within the existing legal framework to ensure that the rights of the victims and the perpetrators are respected.

Even if international drug policy is wounded by episodic, sparse and sometimes severe human rights violations, we should note that

these violations are not prescribed by the legal instruments, on the contrary. The solution is not to amputate the whole limb but to treat the wounds. “Medicines”, or “treatment” methods, exist. We have nine core human rights treaties and a great number of additional non-binding instruments adopted over time. Therefore LET US IMPLEMENT THE LAWS.

# Notes

## Introduction

<sup>1</sup> Convention on the Rights of the Child is the most ratified human rights instrument and the only one in this regime addressing illicit drugs. Article 33 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 the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

<sup>2</sup> International Labour Organization Convention 182 of 1999, Article 3(c).

<sup>3</sup> WHO, UNICEF, UNAIDS, *Towards universal access: Scaling up priority HIV/AIDS interventions in the health sector*, 28 September 2010, 106.

<sup>4</sup> Committee on the Rights of the Child, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child*, adopted by the Committee at its fifty-fifth session (13 September–1 October 2010), (CRC/C/58/Rev.2) and *Annex to the General Guidelines Regarding the Form and Contents of Periodic Reports to Be Submitted By States Parties under Article 44, Paragraph 1 (B), of the Convention*, 1 October 2010.

<sup>5</sup> The idea of including the issue of illicit drug use, addressed at present by Article 33, in the Convention on the Rights of the Child was originally proposed by the Chinese delegation, as sub-paragraph (d) of Article 12 on the right to health: “preventing and prohibiting the child from using drugs.” In 1984 the International Federation of Women in Legal Careers proposed “that a new article concerning sources of serious damage to children’s health other than disease and malnutrition, namely: domestic violence; use of drugs of whatever kind; harmful labour; traditional practices affecting health” should be included in the Convention. From 1984 to 1989, when the text was adopted, the issue of illicit drug use has been an integral part of this distinct Article, no. 18 then and no. 33 at present.

Office for United Nations High Commissioner for Human Rights, *Legislative History of the CRC*, Volume II, United Nations, New York and Geneva, 2007, 709–712.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Fact Sheet No. 10 (Rev. 1), *The Rights of the Child*, 6.  
<http://www.ohchr.org/Documents/Publications/FactSheet10Rev.1.en.pdf>.

<sup>7</sup> “Upon assuming his or her duties, each member of the Committee shall make the following solemn declaration in open Committee”. Rule 15, Committee on the Rights of

the Child, Rules of procedure (Provisional rules of procedure adopted by the Committee at its 22nd meeting (first session) and revised by the Committee at its thirty-third and fifty-fifth sessions, respectively), CRC/C/4/Rev.2, 2 December 2010

<sup>8</sup> Geneva Declaration of the Rights of the Child, 1924.

<sup>9</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, paragraph 21.

<sup>10</sup> National Society for the Prevention of Cruelty to Children (NSPCC), ChildLine Casenotes, A series of reports on issues facing children today, Children talking to ChildLine about parental alcohol and drug misuse [http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse\\_wdf78112.pdf](http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse_wdf78112.pdf).

<sup>11</sup> National Society for the Prevention of Cruelty to Children (NSPCC), ChildLine Casenotes, A series of reports on issues facing children today, Children talking to ChildLine about parental alcohol and drug misuse. [http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse\\_wdf78112.pdf](http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse_wdf78112.pdf).

<sup>12</sup> National Society for the Prevention of Cruelty to Children (NSPCC), ChildLine Casenotes, A series of reports on issues facing children today, Children talking to ChildLine about parental alcohol and drug misuse. [http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse\\_wdf78112.pdf](http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse_wdf78112.pdf).

<sup>13</sup> National Society for the Prevention of Cruelty to Children (NSPCC), ChildLine Casenotes, A series of reports on issues facing children today, Children talking to ChildLine about parental alcohol and drug misuse. [http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse\\_wdf78112.pdf](http://www.nspcc.org.uk/inform/publications/casenotes/clcasenoteparentalalcoholdrugabuse_wdf78112.pdf).

<sup>14</sup> The Institute of Alcohol Studies, “More than 100 children a week contact ChildLine with worries about their parents’ drinking or drug use”, Issue No 2 2010, [http://www.ias.org.uk/resources/publications/alcoholalert/alert201002/al201002\\_p154a.html](http://www.ias.org.uk/resources/publications/alcoholalert/alert201002/al201002_p154a.html).

<sup>15</sup> The Institute of Alcohol Studies, “More than 100 children a week contact ChildLine with worries about their parents’ drinking or drug use”, Issue No 2 2010, [http://www.ias.org.uk/resources/publications/alcoholalert/alert201002/al201002\\_p154a.html](http://www.ias.org.uk/resources/publications/alcoholalert/alert201002/al201002_p154a.html).

<sup>16</sup> The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Thematic papers “Children’s voices. Experiences and perceptions of European children on drug and alcohol issues”, Lisbon, May 2010, p. 14, <http://www.emcdda.europa.eu/publications/thematic-papers/childrens-voices>.

<sup>17</sup> The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Thematic papers “Children’s voices. Experiences and perceptions of European children on drug and alcohol issues”, Lisbon, May 2010, p. 24,

<http://www.emcdda.europa.eu/publications/thematic-papers/childrens-voices>.

<sup>18</sup> The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Thematic papers "Children's voices. Experiences and perceptions of European children on drug and alcohol issues", Lisbon, May 2010, p.22, <http://www.emcdda.europa.eu/publications/thematic-papers/childrens-voices>.

## 1. The Right of Children to Protection from Narcotic Drugs and Psychotropic Substances

<sup>1</sup> Nagendra Singh, *The UN and the Development of International Law*, in Adam Roberts, Benedict Kingsbury ed., *United Nations, divided world: the UN's roles in international relations*, second edition, Oxford University Press, 2000, 384.

<sup>2</sup> For example: Australian Government, Department of Foreign Affairs and Trade (DFAT), Chris Moraitis, International Legal Division, *Treaties in the Global Environment. Sources of International Law – The Place of Treaties*, November 17, 2004.

"Since WWII, treaties have assumed a clear prominence as the primary source of law-making on the international plane. Especially multilateral treaties... With the increased focus on relations between States that comes with globalisation, there has been greater pressure and demand to codify rules obtaining between those States. This codification has been done mainly through treaties because they are a relatively simple, clear and quick way of crystallizing existing international rules and developing new ones. Indeed, it is now commonplace for legal scholars to classify those treaties which lay down universal (or even fairly general) rules governing international society as 'law-making' or 'normative' treaties... So-called 'normative treaties' are:

- characterised metaphorically as 'international legislation', and
- extolled as necessary to accommodate the urgent dynamics that are transforming international relations."

[http://www.dfat.gov.au/treaties/workshops/treaties\\_global/moraitis.html](http://www.dfat.gov.au/treaties/workshops/treaties_global/moraitis.html).

<sup>3</sup> The Statute of the International Court of Justice is annexed to the United Nation Charter.

<sup>4</sup> According to Article 38(1) of the Statute of the International Court of Justice:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general

practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

<sup>5</sup> Ulf Linderfalk, *On the Interpretation of Treaties. The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties*, Law and Philosophy Library 83, Springer Publishers, 2007.

(Editor's note: parenthesis in the quote added here for clarification.)

<sup>6</sup> Malcolm D. Evans ed. "International Law", Second Edition, Oxford University Press, 2006, p.119.

<sup>7</sup> "In order to become a party to a multilateral treaty, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by the treaty. A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The most common ways, as discussed below, are: (a) Definitive signature; (b) Ratification; (c) Acceptance or approval; and (d) Accession." UN Treaty Section of the Office of Legal Affairs, *Treaty Handbook*, United Nations, 2006, paragraph 3.3.1, 8.

<sup>8</sup> This rule is derived from Roman law in the form of the maxim *pacta tertiis nec nocent nec prosunt*—agreements neither impose obligations nor confer rights upon third parties.

<sup>9</sup> As explained by Malgosia Fitzmaurice, this rule "has been recognised in states' practice as fundamental, and its existence has never been questioned. For states non-parties to a treaty, the treaty is *res inter alios acta*." Malgosia Fitzmaurice, *Third Parties and the Law of Treaties*, *Max Planck Yearbook of United Nations Law*, Volume 6, 2002, 37.

*Res inter alios acta* or in complete version *Res inter alios acta alteri nocere non debet* is translated as: "Things done between strangers ought not to injure those who are not parties to them". Henry Campbell Black, ed., *Black's Law Dictionary*, second ed, St. Paul, West Publishing Co., 1995, 1024.

<sup>10</sup> "Draft Articles on the Law of Treaties with commentaries 1966". Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session, *Yearbook of the International Law Commission*, 1966, Vol. II, Section 4: *Treaties and third States*, 226.

<sup>11</sup> This rule is expressed in the Art. 34 of the Vienna Convention on the Law of Treaties, 1969.

VCLT Articles 34-38 refer to the issue of third states.

<sup>12</sup> There are over 500 major multilateral instruments deposited with the Secretary-General of the United



Nations (as of 1 January 2009).

[http://treaties.un.org/Pages/Overview.aspx?path=overview/overview/page1\\_en.xml](http://treaties.un.org/Pages/Overview.aspx?path=overview/overview/page1_en.xml).

<sup>13</sup> Ulf Linderfalk, *On the Interpretation of Treaties. The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties*, Law and Philosophy Library 83, Springer Publishers, 2007, 1.

<sup>14</sup> Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th rev. ed., Routledge, 1997, 54.

<sup>15</sup> Malcolm D. Evans ed., *International Law*, second ed., Oxford University Press, 2006, 183.

<sup>16</sup> See [http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml#ratification](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#ratification).

It is also important to distinguish between ratification at international level and ratification at national level.

"Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a treaty, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions before it expresses consent to be bound internationally."

UN Treaty Section of the Office of Legal Affairs, *Treaty Handbook*, United Nations, 2006, paragraph 3.3.2, 9.

<sup>17</sup> According to VCLT Art. 2(1,d) "'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Reservations are different from interpretative declarations.

<sup>18</sup> Some treaties, such as The Rome Statute of the International Criminal Court, 1998; the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994, treaties specifically prohibit reservations, but this has to be stipulated by the treaty itself.

However, specific rules applicable to reservations are provided for in the Art. 19- 23 VCLT.

<sup>19</sup> Art. 19 Formulation of reservations, Vienna Convention on the Law of Treaties, 1969.

<sup>20</sup> See Annex I.

<sup>21</sup> Art. 27 Internal law and observance of treaties, Vienna Convention on the Law of Treaties, 1969.

<sup>22</sup> 1969 Vienna Convention on the Law of Treaties concerns treaties concluded among states. It was Signed in Vienna on 23 May 1969 and entered into force on 27 January 1980.

<sup>23</sup> Art 2 (1) (a), *Use of terms*, Vienna Convention on the Law of Treaties, 1969.

<sup>24</sup> Latin: "agreements must be kept". The *pacta* principle is considered to represent the principle of sanctity of contracts. As Anthony Aust put it "The *pacta sunt servanda* rule embodies an elementary and universally agreed principle fundamental to all legal systems

(*General Principles of Law*). Although its *good faith* (*bona fide*) element runs through many aspects of international law—and the legal effect of certain unilateral statements rests on good faith—it is of prime importance for the stability of treaty relations (*treaties*). The oft-quoted Latin phrase means no more than that agreements which are legally binding must be performed. The third preamble to the *Vienna Convention on the Law of Treaties (1969)* ('VCLT') notes that 'the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognised'. In its final report and set of draft articles with commentary on draft Art. 23 VCLT (later Art. 26 VCLT), in para. 1 the *International Law Commission (ILC)* saw the phrase as representing 'the fundamental principle of the law of treaties'."

Anthony Aust, *Pacta Sunt Servanda*, Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2011. [http://ilmc.univie.ac.at/uploads/media/pacta\\_sunt\\_servanda\\_aust.pdf](http://ilmc.univie.ac.at/uploads/media/pacta_sunt_servanda_aust.pdf).

<sup>25</sup> Art. 26 "*Pacta sunt servanda*", Vienna Convention on the Law of Treaties, 1969.

<sup>26</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 211.

<sup>27</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 211.

<sup>28</sup> Art. 30 *Application of successive treaties relating to the same subject matter*, Vienna Convention on the Law of Treaties, 1969.

<sup>29</sup> Listing of the nine core conventions, as per OHCHR website, see: <http://www2.ohchr.org/english/law/>.

<sup>30</sup> The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, together with the two Covenants from 1966 and their Optional Protocols are the three components of the International Bill of Human Rights.

<sup>31</sup> Ratification numbers of the Nine Core Conventions, see: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

<sup>32</sup> Article 33 of the Convention on the Rights of the Child.

<sup>33</sup> This pace was unprecedented. By comparison the major 1966 Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights took ten years to even get the minimum amount of ratifications (35) to enter into force.

<sup>34</sup> Convention on the Rights of the Child, New York, 20 November 1989, status as at 2011. Signatories : 140. Parties : 193,

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en).

<sup>35</sup> Geneva Declaration of the Rights of the Child, 1924.

<sup>36</sup> Article 25 (2) of the Universal Declaration of Human Rights states that: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

<sup>37</sup> For example International Covenant on Civil and Political Rights provides in Art. 24: "1. Every child shall have, without any discrimination... the right to such measures of protection as are required by his status as a minor; on the part of his family, society and the State.; 2. Every child shall be registered immediately after birth and shall have a name; 3. Every child has the right to acquire a nationality."

Also Art. 6(5) stipulates that "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age..." Art. 10 (2) (b) provides that "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."

<sup>38</sup> The International Covenant on Economic, Social and Cultural Rights Art. 10 stipulates that: "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination... Children and young persons should be protected from economic and social exploitation..."; Art. 12 on the right to the highest attainable standard of physical and mental health states that the steps States parties have to take for the full realization of this right shall include, inter alia, those necessary for: a) "The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child".

<sup>39</sup> For example Art. 5(b) indicates the need to recognize "of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases." Art. 16 deals with the betrothal and the marriage of a child.

<sup>40</sup> The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights from 1966.

<sup>41</sup> Thomas G. Weiss, Sam Daws ed., *The Oxford Handbook on the United Nations*, Oxford University Press, 2009, 513.

<sup>42</sup> Some States Parties as: Iran, Kuwait, Mauritania,

Qatar, Saudi Arabia and Syria made reservations on all provisions of the Convention on the Rights of the Child that are incompatible with the laws of Islamic Shari'a. However, this general reservation is not affecting Article 33 CRC. According to our knowledge under the Shari'a law it is made clear that "God has permitted that sound intellect and knowledge be promoted, and forbidden that which corrupts or weakens it, such as alcohol and drugs. He has also imposed preventative punishments in order that people stay away from them, because a sound intellect is the basis of the moral responsibility that humans were given."

[http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia\\_1.shtml](http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml).

The Qur'an- 5. The Feast (Al- Ma'ida)-90 reads: "you who believe, intoxicants...are repugnant acts- Satan's doing- shun them so that you may prosper. 91. With intoxicants and gambling, Satan seeks only to incite enmity and hatred among you, and to stop you remembering God and prayer. Will you not give them up?"

<sup>43</sup> Office for United Nations High Commissioner for Human Rights, *Legislative History of the CRC*, Volume I, 709-711.

<sup>44</sup> Office for United Nations High Commissioner for Human Rights, *Legislative History of the CRC*, Volume I, 709-711, section C point 4 ff.

<sup>45</sup> European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is using five key indicators "for providing factual, objective, reliable and comparable information on drugs and drug addiction at European level". EMCDDA's first indicator is based on General Population Surveys, and includes questions about lifetime prevalence of drugs use (one or more times). EMCDDA's second indicator concerns "problematic use". Problem drug use is defined as 'injecting drug use or long-duration/regular use of opioids, cocaine and/or amphetamines'. By ordinary wording, in the EU context, "abuse" would pertain to problematic use, whereas "use" would pertain to anything less than that, from lifetime use and onwards.

<sup>46</sup> Art. 3 of the ILO Convention 182, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms Of Child Labour, defines the term "the worst forms of child labour".

It might be worth noting the company of Article 3 (c): Article 3 (a) concerns child slavery, sale and trafficking of children, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; Article 3 (b) concerns child prostitution/pornography; Article 3 (d) is a general clause for work of equal threat to children's health, safety, and morals.

<sup>47</sup> <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C182>.

<sup>48</sup> R 190 Worst Forms of Child Labour Recommendation, 1999, paragraph 11.

<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190>.

<sup>49</sup> R190 Worst Forms of Child Labour

Recommendation, 1999, paragraph 12.

<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190>.

<sup>50</sup> Article 19 paragraph 1 provides: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect...” Article 33 states: “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect...”

<sup>51</sup> General Comment No. 13 (2011) on article 19: The right of the child to freedom from all forms of violence, CRC/C/GC/13, 17 February 2011, paragraph 37.

<sup>52</sup> Paulo Sérgio Pinheiro, Independent Expert for the United Nations, Secretary-General’s Study on Violence against Children, *World Report on Violence against Children*, 2006. The Study indicates parents or caregivers substance abuse as one of the factors contributing to violence against children, p. 66 and 68. It also indicates that childhood experience of violence leads to drug abuse, 64-65.

<sup>53</sup> Similar findings are indicated in the WHO Fact sheet N° 150, August 2010, Child maltreatment. <http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.

<sup>54</sup> General Comment No. 13 (2011) on article 19: The right of the child to freedom from all forms of violence, CRC/C/GC/13, 17 February 2011, paragraph 39.

<sup>55</sup> The respective Notes from the UNODC Executive Director to the CND issued in 2008 and in 2010.

<sup>56</sup> The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988, preamble.

<sup>57</sup> Office for United Nations High Commissioner for Human Rights; *Legislative History of the Convention on the Rights of the Child*, Volume I, 709-11, sections D and E, 711.

<sup>58</sup> UN Guidelines on the Prevention of Juvenile Delinquency: the “Riyadh Guidelines”, 1990.

<sup>59</sup> UN Minimum Rules for the Administration of Juvenile Justice: the “Beijing Rules”, 1985.

<sup>60</sup> CRC Article 40 is referring to “relevant provisions of international instruments” – CRC Article 33 is referring to “illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties”.

<sup>61</sup> General Guidelines Regarding the Form and Content of Initial Reports to be submitted by States Parties under Article 44, Paragraph 1 (a) of The Convention, CRC/C/5, 30 October 1991, paragraph 8.

<sup>62</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008,

paragraph 3.

<sup>63</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 2.

<sup>64</sup> ICCPR Art. 2 (non-discrimination), and Art. 6 (right to life).

<sup>65</sup> United Nations Blue Book Series Vol VII; “*The United Nations and Human Rights*”, p. 83.

<sup>66</sup> Michael Freeman, *A commentary on the United Nations Convention on the Rights of the Child. Article 3 – The Best Interest of the Child*, Martinus Nijhoff Publishers, 2007, 1.

<sup>67</sup> Michael Freeman, *A commentary on the United Nations Convention on the Rights of the Child. Article 3 – The Best Interest of the Child*, Martinus Nijhoff Publishers, 2007, 5 “The best interest principle in Article 3 (1) must be seen as both informed by and constrained by the rights, and the other principles provided for by the Convention”.

<sup>68</sup> European Training and Research Centre for Human Rights and Democracy, *Understanding Human Rights*, 2006, 238.

<sup>69</sup> UNICEF, *Human rights for children and women: How UNICEF helps make them a reality*, 1999, 9.

<sup>70</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, 1998, 40.

<sup>71</sup> The Policy being replaced was called “Children in Especially Difficult Circumstances”.

<sup>72</sup> United Nations Children’s Fund, *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 2.

<sup>73</sup> United Nations Children’s Fund, *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 3.

<sup>74</sup> United Nations Children’s Fund, *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 6.

<sup>75</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF Regional Office for Europe, Geneva, 2007, 512.

More specifically the following Articles are of prima facie concern in context with CRC Article 33: 17 Mass media; 19 Protection from maltreatment by parents; 24 Health; 29 Education; 32 Hazardous work; 37 Juvenile Justice; 39 Rehabilitation and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography .

<sup>76</sup> United Nations Children’s Fund, *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, 4, point 5.

## 2. Non Governmental Organizations and Other Relevant Actors

<sup>1</sup> The term “other relevant actors/entities” is used in the present publication to mean individuals, associations of individuals, charitable trusts, think-tanks, caucuses, networks of NGOs, different types foundations, centre of expertise, research institutions, international movements, etc, dealing with issues related to drug policy and human rights at transnational level.

<sup>2</sup> N. Gilmore, ‘Drug use and human rights: privacy, vulnerability, disability, and human rights infringements’, *Journal of Contemporary Health Law Policy*, Spring 1996; 12(2):355-447 in Damon Barrett, Rick Lines Senior, Rebecca Schleifer, Richard Elliott & Dave Bewley-Taylor, ‘Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy’, Report produced by The Beckley Foundation Drug Policy Programme in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), 2008, 11.

<sup>3</sup> Damon Barrett, Rick Lines Senior, Rebecca Schleifer, Richard Elliott & Dave Bewley-Taylor, ‘Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy’, Report produced by The Beckley Foundation Drug Policy Programme in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), 2008.

<sup>4</sup> Thomas G Weiss and Sam Daws ed., *The Oxford Handbook on the United Nations*, Oxford University Press, USA, January 15 2009, 256. According to UNDP, nearly one fifth of the international NGOs were already formed in the 1990s. United Nations Development Programme, *Human Development Report 2002*, 5.

<sup>5</sup> Joseph S. Nye Jr., ‘The Rising Power of NGO’s’, *Project Syndicate*, June 2004. <http://www.project-syndicate.org/commentary/nye10/English>.

<sup>6</sup> Thomas G Weiss and Sam Daws ed., *The Oxford Handbook on the United Nations*, Oxford University Press, USA, January 15 2009, 256.

<sup>7</sup> The term transnational actors is used to represent the broad range of actors that organise and operate across state borders, including non-governmental organisations (NGOs), advocacy networks, social movements, party associations, philanthropic foundations, and transnational corporations (TNCs). Anders Uhlin, Jonas Tallberg, Magdalena Bexell, ‘Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors’, *Global Governance*, January 2010, 81.

<sup>8</sup> Magdalena Bexell, Jonas Tallberg, and Anders Uhlin, ‘Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors’, *Global Governance: A Review of Multilateralism and International Organizations*: January-March 2010, Vol. 16, No. 1, 81-101.

<sup>9</sup> Charter of the United Nations, CHAPTER X: The Economic and Social Council, article 71 stipulates that: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.”

<sup>10</sup> For example: the International Convention for the Protection of All Persons from Enforced Disappearance, article 28(1).

<sup>11</sup> For example, the Committee on the Rights of the Child established a tight cooperation with the civil society, it encourages NGOs and NHRIs to submit reports, documentation or other information to gain better knowledge on how the Convention is being implemented in a particular territory, to participate at the pre-sessional working group’s private meetings, to request consultations with the treaty body etc.

<sup>12</sup> The first landmark ECOSOC resolution governing the formal relationship between the Council and its associated NGOs was Resolution 1296 (XLIV) of 1968, which set up the system through which the consultative relationship was utilized. As NGO participation has increased exponentially since the consultative relationship was established, the Council decided to review its procedures for consultation, resulting in Resolution 1996/31 of 1996, which revamped the system for ECOSOC-NGO consultation, setting forth both the requirements for obtaining and maintaining consultative status, and the privileges afforded to affiliated NGOs. NGOs and the UN Fact Sheet. <http://www.unaosa.org/Document.Doc?id=89>.

<sup>13</sup> For example in 2002 UN Secretary General stated in his report to the General Assembly ‘Strengthening of the United Nations: an agenda for further change’ his intention to establish a panel of eminent persons to review the relationship between the United Nations and civil society. As this met the agreement of the General Assembly, in February 2003 the Secretary General appointed the Panel of Eminent Persons on United Nations–Civil Society Relations, chaired by Fernando Henrique Cardoso, the former president of Brazil. This resulted in the so-called the Cardoso report- officially entitled “We the peoples: civil society, the United Nations and Global Governance” - submitted in 2004. The purpose of this document was to “review the guidelines and practices regarding civil society’s relations with the United Nations in order to formulate recommendations for enhancing such

interaction.” UN document A/58.817.

<sup>14</sup> Introduction to ECOSOC Consultative Status  
<http://esango.un.org/paperless/Web?page=static&content=intro>

<sup>15</sup> UNODC's web page: <http://www.unodc.org/unodc/en/ngos/index.html?ref=menuaside>

<sup>16</sup> The issue of treaty amendments and modification of treaties is detailed in the 1969 Vienna Convention on the Law of Treaties (VCLT), provides in its Part IV the general rules for amendments and modification of treaties, Art. 39-41.

<sup>17</sup> These rules are established in Art. 54-59 VCLT.

<sup>18</sup> International Federation of Red Cross and Red Crescent Societies (IFRC): *Out of harm's way. Injecting drug users and harm reduction*. Advocacy Report prepared by Getachew Gizaw, Paul Conneally, Patrick Couteau, Shannon Frame, Sadia Kaenzig, Patricia Leidl and Marie-Françoise Bore, December 2010.  
<http://www.ifrc.org/Global/Publications/Health/Harm-reduction-report-EN.pdf>.

<sup>19</sup> International Federation of Red Cross and Red Crescent Societies (IFRC): *Out of harm's way. Injecting drug users and harm reduction*. Advocacy Report prepared by Getachew Gizaw, Paul Conneally, Patrick Couteau, Shannon Frame, Sadia Kaenzig, Patricia Leidl and Marie-Françoise Bore, December 2010.  
<http://www.ifrc.org/Global/Publications/Health/Harm-reduction-report-EN.pdf>.

<sup>20</sup> The list comprises different types of organizations: NGOs, associations of professionals/researchers/politicians and public figures, charitable trusts, think-tanks, networks of NGOs, humanitarian organizations, etc.

<sup>21</sup> We should note that from the twenty organizations listed just few have papers relevant for the present discussion.

<sup>22</sup> Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, Convention on Psychotropic Substances of 1971 and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

<sup>23</sup> The term demand reduction is used in the international drug conventions related to the aim of reducing consumer demand for controlled substances. It is used for policies and programmes which endeavour to reduce the desire and preparedness to obtain and use illegal drugs. They are various methods how the demand for drugs can be attenuated. It is a major component of drug policy together with supply reduction. United Nations Office for Drug Control and Crime Prevention Studies on Drugs and Crime (2000) – *Demand Reduction. A Glossary of Terms*.

<sup>24</sup> Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, Convention on Psychotropic Substances of 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic

Substances of 1988.

<sup>25</sup> Broadly speaking, decriminalization means in general terms the removal of the criminal penalties.

<sup>26</sup> Generally speaking, de-penalisation would correspond to the reduction of the penalties severity.

<sup>27</sup> We should note that to date it does not exist any clear and generally accepted definition of “harm reduction”.

<sup>28</sup> Krzysztof Krajewski is Professor in Criminology at Jagiellonian University, Krakow, President of the Polish Criminological Association, member of the Advisory Group to the International Harm Reduction Development, a drug policy program of the Open Society Institute and elected member of the Criminological Scientific Council (PC-CSC), European Committee on Crime Problems (CDPC) of the Council of Europe, et cetera. For more details see:  
<http://www.law.uj.edu.pl/users/kryminol/english/pracownicy2.html>

<sup>29</sup> Krzysztof Krajewski. ‘How flexible are the United Nations drug conventions?’, *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338, 333.

<sup>30</sup> In law, it often means “in practice but not necessarily ordained by law” or “in practice or actuality, but not officially established.” A practice may exist *de facto*, where for example the people obey a contract as though there were a law enforcing it, yet there is no such law.

<sup>31</sup> *De jure* is an expression that means “concerning law”, as contrasted with *de facto*, which means “concerning fact”. In a legal context, *de jure* is also translated as “concerning law”, having complied with all the requirements imposed by law.

The terms *de jure* and *de facto* are used instead of “in law” and “in practice”, respectively, when one is describing political or legal situations.

<sup>32</sup> “The term ‘amendment’ refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Many multilateral treaties lay down specific requirements to be satisfied for amendments to be adopted. In the absence of such provisions, amendments require the consent of all the parties.” [Art. 40, Vienna Convention of the Law of Treaties 1969].

[http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml#amendment](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#amendment)

<sup>33</sup> “The term ‘modification’ refers to the variation of certain treaty provisions only as between particular parties of a treaty, while in their relation to the other parties the original treaty provisions remain applicable. If the treaty is silent on modifications, they are allowed only if the modifications do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and the purpose of the



treaty.” [Art.41, Vienna Convention on the Law of Treaties 1969].

[http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml#modification](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#modification)

<sup>34</sup> “Revision has basically the same meaning as amendment. However, some treaties provide for a revision additional to an amendment (i.e., Article 109 of the Charter of the United Nations). In that case, the term ‘revision’ refers to an overriding adoption of the treaty to changed circumstances, whereas the term ‘amendment’ refers only to a change of singular provisions.”

[http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml#revision](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#revision)

<sup>35</sup> The amendment procedures indicated in the Art. 47 of the Single Convention and Art. 30 of the ‘71 Convention are not exclusive. Article 62, paragraph 3 of the United Nations Charter stipulates another possibility which is not mentioned in the text of the instruments namely the Economic and Social Council can submit intended amendments to the UN General Assembly for deliberation and hypothetical adoption. However, this issue is not discussed in the reviewed papers, hence it does not make the object of the present study.

<sup>36</sup> According to the *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, paragraph 30.1 “Article 30 is a simplified version of the articles on denunciation contained in articles 46 and 29 respectively of the 1961 and the 1971 Conventions. Those conventions, unlike the present one, did not permit any denunciation until two years had expired from the date on which they came into force”, 409.

<sup>37</sup> David R. Bewley-Taylor, ‘Challenging the UN drug control conventions: problems and possibilities’, *International Journal of Drug Policy* 14 (2003) 171/179, p. 176.

<sup>38</sup> David R. Bewley-Taylor, Cindy S. J. Fazey and Tim Boekhout van Solinge: *The Mechanisms and Dynamics of the UN System for International Drug Control*, March 14 2003, 22.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>39</sup> Vienna Convention on the Law of Treaties, 1969, Art. 55 *Reduction of the parties to a multilateral treaty below the number necessary for its entry into force.* “Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.”

<sup>40</sup> UNTC.

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=VI-19&chapter=6&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=VI-19&chapter=6&lang=en).

<sup>41</sup> Krzysztof Krajewski, ‘How flexible are the United Nations drug conventions?’, *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338.

<sup>42</sup> Krzysztof Krajewski, ‘How flexible are the United Nations drug conventions?’, *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338, 329.

<sup>43</sup> Krzysztof Krajewski, ‘How flexible are the United Nations drug conventions?’, *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338, 337.

<sup>44</sup> The author is currently on the editorial boards of the *International Journal of Drug Policy* and the *Human Rights Journal*. He is also member of the International Advisory Committee of the International Centre on Human Rights and Drug policy and a technical Advisor to the International Centre for Science in Drug Policy. For further details see:

<http://www.swan.ac.uk/staff/academic/ArtsHumanities/taylordavid/>.

<sup>45</sup> He explains the two concepts as: “Modification refers to a possible alteration in the regime through the re-scheduling of a drug, that is to say moving it from one to another of the 1961 and 1971 Convention schedules or the 1988 Convention tables, or through the deletion of a drug from a schedule/schedules or table/tables altogether. Amendment refers to the formal alteration of treaty provisions, namely a convention article, which affects all the Parties.” David R. Bewley-Taylor, ‘Challenging the UN drug control conventions: problems and possibilities’, *International Journal of Drug Policy* 14 (2003) 171/179, 174.

<sup>46</sup> David R. Bewley-Taylor, ‘Challenging the UN drug control conventions: problems and possibilities’, *International Journal of Drug Policy* 14 (2003) 171/179, 176.

<sup>47</sup> David R. Bewley-Taylor, ‘Challenging the UN drug control conventions: problems and possibilities’, *International Journal of Drug Policy* 14 (2003) 171/179, 176.

<sup>48</sup> David R. Bewley-Taylor, Cindy S. J. Fazey and Tim Boekhout van Solinge, ‘The Mechanisms and Dynamics of the UN System for International Drug Control’, March 14 2003, 22.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>49</sup> Peter Andreas, *When Policies Collide: Market Reform, Market Prohibition, and the Narcotization of the Mexican Economy*, in H. R. Friman and P. Andreas, eds., *The Illicit Global Economy and State Power*, 127-128, Lanham, Boulder, New York and Oxford, Rowman and Littlefield Publishers, Inc, 1999 in David R. Bewley-Taylor, Cindy S. J. Fazey and Tim Boekhout van Solinge, ‘The Mechanisms and Dynamics of the UN System for International Drug Control’, March 14 2003, 22.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>50</sup> David R. Bewley-Taylor, ‘Challenging the UN drug control conventions: problems and possibilities’, *International Journal of Drug Policy* 14, 2003, 171/179, 177. David R. Bewley-Taylor, Cindy S. J. Fazey and Tim Boekhout van Solinge, ‘The Mechanisms and Dynamics of the UN System for International Drug Control’,

March 14 2003, 24.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>51</sup> David R. Bewley-Taylor, Cindy S. J. Fazey and Tim Boekhout van Solinge, 'The Mechanisms and Dynamics of the UN System for International Drug Control', March 14 2003, 24.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>52</sup> Vienna Convention on the Law of Treaties, 1969.

<sup>53</sup> Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 330.

<sup>54</sup> Vienna Convention on the Law of Treaties, 1969.

<sup>55</sup> United Nations Treaty Collection, Vienna Convention of the Law of Treaties 1969, Art 9.

<sup>56</sup> The issue of the non self-executing nature of the international drug conventions is also raised by Krzysztof Krajewski, who mentions that "we must recognise that none of the UN drug conventions are 'self-executing' treaties or treaties of direct applicability. They are all 'executory' treaties, or treaties of indirect applicability, which means that the provisions of the treaties are implemented only by incorporating them into domestic law."

Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 331.

<sup>57</sup> David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, 173.

<sup>58</sup> Martin Dixon, *Textbook on International Law*, Sixth Edition, Oxford University Press, USA, August, 2007, 6.

<sup>59</sup> David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, 173.

<sup>60</sup> David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, 173.

<sup>61</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 219.

<sup>62</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft

articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 219.

<sup>63</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 219.

<sup>64</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 219.

<sup>65</sup> In the 'Draft Articles on the Law of Treaties with commentaries 1966', what is today VCLT Article 31 was addressed at that time under Article 27.

<sup>66</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 220-221.

<sup>67</sup> Vienna Convention on the Law of Treaties, 1969.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES, SECTION 3. INTERPRETATION OF TREATIES, Article 31 *General rule of interpretation, paragraph 1*: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

<sup>68</sup> Vienna Convention on the Law of Treaties, 1969.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES, SECTION 3. INTERPRETATION OF TREATIES, Article 31 *General rule of interpretation, paragraph 2*.

<sup>69</sup> International Law Commission, 'Draft Articles on the Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 221.

<sup>70</sup> International Law Commission, 'Draft Articles on the

Law of Treaties with commentaries 1966', Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 38). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1966*, vol. II, United Nations, 2005, 221.

<sup>71</sup> Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961.

<sup>72</sup> The Convention on psychotropic substances, Vienna, 21 February 1971.

<sup>73</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988.

<sup>74</sup> David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, 173.

<sup>75</sup> David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, 177.

<sup>76</sup> *Clausula rebus sic stantibus* (Latin: "things standing thus") is a legal doctrine in public international law, which stipulates that, where there has been a fundamental change of circumstances, a party may withdraw from or terminate the treaty in question. Hence the instrument becomes inapplicable. This doctrine is provided for in Article 62 of the Vienna Convention on the Law of Treaties 1969. As explained by ICJ in the *Fisheries Jurisdiction Case (United Kingdom v. Iceland)*, I. C. J. Reports 1973, p. 63, para. 36: "Article 62 of the Vienna Convention on the Law of Treaties, . . . may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances".

<sup>77</sup> According to Article 62 VCLT: "1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach

by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty."

<sup>78</sup> "A fundamental change of circumstances must have been unforeseen; the existence of the circumstances at the time of the Treaty's conclusion must have constituted an essential basis of the consent of the parties to be bound by the Treaty.

The negative and conditional wording of Article 62 of the Vienna Convention on the Law of Treaties is a clear indication moreover that the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases", *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*. Judgement, ICJ Reports 1997, paragraph 104.

<http://www.icj-cij.org/docket/files/92/7375.pdf>.

See Malcolm D. Evans, ed., *International Law*, Second edition, Oxford University Press, 2006, 212.

<sup>79</sup> Art. 3(4-d) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

<sup>80</sup> David R. Bewley-Taylor B. Sc (Econ), PhD & Professor Cindy S. J. Fazey B. Sc. (Soc), PhD with Tim Boekhout van Solinge, 'The Mechanics and Dynamics of the UN System for International Drug Control', 14 March 2003, 24.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>81</sup> "One of the reasons why we are unable to deal with the unintended consequences is the cumbersome nature of any big multilateral system and the inertia it adopts over time. The three drug conventions were developed over three decades, from the 1960s to the 1980s. The foundation of the whole system is clearly the 1961 Convention: it came into effect in 1964, nearly half a century ago. This fact is too often forgotten. It is easy forget such things and to ignore the truism that times have changed, when there is a clamour for change, but no clear view or agreement on what to change or how to change it. There is often comfort in the status quo; not necessarily because it is in itself desirable, but because there is no way of predicting what the future state of affairs will be.

Some headway can be made by considering what has changed in our world in the last half century – since the 1961 Convention was adopted... New health crises, exemplified by the HIV/AIDS epidemic, are being superimposed on top of older health problems we have not yet solved... Each of these big changes (and the list above is not meant to be exhaustive) has a direct bearing on the drug problem and how it is experienced, perceived or resolved. These changed circumstances

will therefore have to be considered in answering any question about implementation of the international drug control system in the 21st century. Clearly, we must humanize our drug control regime which appears too many to be too depersonalized and detached from their day-to-day lives.” “Making drug control ‘fit for purpose’: Building on the UNGASS decade” Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly, Thematic debate on the follow-up to the twentieth special session of the General Assembly: general overview and progress achieved by Governments in meeting the goals and targets for the years 2003 and 2008 set out in the Political Declaration adopted by the Assembly at its twentieth special session, Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, Item 3 of the provisional agenda.

<sup>82</sup> They were very few documents preceding the Charter of United Nations, signed in San Francisco on 26 June 1945, which mentioned in a form or other could be linked to human rights but which did not provided protection in the real sense: the Treaty of Vienna from 1815 which formally prohibited slave trade and the General Act of Brussels; the first Geneva Convention from 1864 which protected the wounded and ill persons in time of war; the Covenant of the League of Nations from 1919 which stressed the principle of primacy of human dignity over States’ interests in several areas; and the Constitution of the International Labour Organization from 1919 which discusses the dignity of workers and the Declaration of Philadelphia from 1944 which become part of the ILO Constitution. The United Nations and Human Rights 1945-1995, The United Nations Blue Books Series, vol. VII, New York, 1995, 5-6.

<sup>83</sup> Sometimes the authors of some papers are not indicated; instead the policy papers represent the position of one or several organizations.

<sup>84</sup> For example: ‘Thematic Briefings on Human Rights and Drug Policy’ was produced by Harm Reduction International, Open Society Institute, Human Rights Watch and the Canadian HIV/AIDS Legal Network, 26 October 2010.

<http://www.ihra.net/contents/804>;

‘Ten Reasons Why Human Rights is an Issue for the Commission on Narcotic Drugs’ issued by Harm Reduction International with Human Rights Watch and Open Society Institute.

[http://www.ihra.net/files/2010/06/17/2009-](http://www.ihra.net/files/2010/06/17/2009-03_TenReasons-HumanRights_CND.pdf)

[03\\_TenReasons-HumanRights\\_CND.pdf](http://www.ihra.net/files/2010/06/17/2009-03_TenReasons-HumanRights_CND.pdf);

‘Ten Reasons Why the Human Rights Council Must Address Drug Policy’ issued by Harm Reduction International with Human Rights Watch and Open Society Institute.

[http://www.ihra.net/files/2010/06/17/2009-](http://www.ihra.net/files/2010/06/17/2009-03_TenReasons-DrugPolicy_HumanRightsCouncil.pdf)

[03\\_TenReasons-DrugPolicy\\_HumanRightsCouncil.pdf](http://www.ihra.net/files/2010/06/17/2009-03_TenReasons-DrugPolicy_HumanRightsCouncil.pdf);

Damon Barrett and Manfred Nowak, ‘The United Nations and Drug Policy: Towards a Human Rights Based Approach’, published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009.

International Harm Reduction Association and Human Rights Watch, ‘A Reference Guide to Human Rights and Drug Policy’, March 2009.

<http://www.ihra.net/files/2010/06/01/BuildingConsensus.pdf>; et cetera.

<sup>85</sup> Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, ‘Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy’, a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN). March 2008, 3.

<sup>86</sup> Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, ‘Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy’, a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN). March 2008, 1.

<sup>87</sup> Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor ‘Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy’, a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN). March 2008, 1.

<sup>88</sup> Damon Barrett and Manfred Nowak, ‘The United Nations and Drug Policy: Towards a Human Rights Based Approach’, published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009.

<sup>89</sup> Damon Barrett and Manfred Nowak, ‘The United Nations and Drug Policy: Towards a Human Rights Based Approach’, published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009.

<sup>90</sup> Charter of the United Nations Art. I and Art. 55.

<sup>91</sup> See for example: International Drug Policy Consortium (IDPC), ‘Drug Policy Guide’, 1 March 2010, 1.2. Ensuring compliance with fundamental rights and freedoms, 6, footnote 10 ; Damon Barrett, ‘Security,



development and human rights: Normative, legal and policy challenges for the international drug control system', *International Journal of Drug Policy* (2010) doi:10.1016/j.drugpo.2010.01.005, Introduction, 1; Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 1 and 12; Vienna NGO Committee on Drugs (VNGOC), 'An overview of the United Nations Drug Control System', prepared by David Bewley-Taylor of Swansea University and was peer-reviewed by several independent experts. The overview formed part of the background material for the Regional Consultations organised as part of "Beyond 2008", 8; Canadian HIV/AIDS Legal Network, Richard Pearshouse – primary author, Richard Elliott and Joanne Csete – text of legal provisions and prefatory notes, and reviewed, research assistance was provided by Tim Franklin, Sarom Bahk, Katie Gibson and Sara Kushner, *Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS. Criminal law issues*, 2006, Human rights obligations, 13; etc.

<sup>92</sup> Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 1 and 12.

<sup>93</sup> International Drug Policy Consortium (IDPC), 'Drug Policy Guide', 1 March 2010, 1.2. Ensuring compliance with fundamental rights and freedoms, 6, footnote 10; Damon Barrett, 'Security, development and human rights: Normative, legal and policy challenges for the international drug control system', *International Journal of Drug Policy* (2010) doi:10.1016/j.drugpo.2010.01.005, Introduction, 1; Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 1 and 12; Vienna NGO Committee on Drugs (VNGOC), 'An overview of the United Nations Drug Control System', prepared by David Bewley-Taylor of Swansea University and was peer-reviewed by several independent experts. The

overview formed part of the background material for the Regional Consultations organised as part of "Beyond 2008", 8; Canadian HIV/AIDS Legal Network, Richard Pearshouse – primary author, Richard Elliott and Joanne Csete – text of legal provisions and prefatory notes, and reviewed, research assistance was provided by Tim Franklin, Sarom Bahk, Katie Gibson and Sara Kushner, *Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS. Criminal law issues*, 2006, Human rights obligations, 13; etc.

<sup>94</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006.

<sup>95</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006, paragraphs 324 and 324.

<sup>96</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission', UN Doc A/CN.4/L.702, 18 July 2006. (Hereafter *Fragmentation Report A/CN.4/L.702*).

<sup>97</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission', UN Doc A/CN.4/L.702, 18 July 2006, paragraphs 14(1).

<sup>98</sup> VCLT Article 30 *Application of successive treaties relating to the same subject matter*, paragraph 1 stipulates: "Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs."

<sup>99</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006, paragraph 331.

<sup>100</sup> Sir Humphrey Waldock, Third Report, *Yearbook ... 1964* vol. II, 36. In International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006, paragraph 333, and footnote 453.

<sup>101</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification*



and Expansion of International Law, Report of the Study Group of the International Law Commission, finalized by Martti Koskeniemi, A/CN.4/L.682, 13 April 2006, paragraph 334.

<sup>102</sup> International Drug Policy Consortium (IDPC), 'Drug Policy Guide', 1 March 2010, 1.2. Ensuring compliance with fundamental rights and freedoms, 6, footnote 10 ; Damon Barrett, 'Security, development and human rights: Normative, legal and policy challenges for the international drug control system', *International Journal of Drug Policy* (2010) doi:10.1016/j.drugpo.2010.01.005, Introduction, 1; Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 1 and 12; Vienna NGO Committee on Drugs (VNGOC), 'An overview of the United Nations Drug Control System', prepared by David Bewley-Taylor of Swansea University and was peer-reviewed by several independent experts. The overview formed part of the background material for the Regional Consultations organised as part of "Beyond 2008", 8; Canadian HIV/AIDS Legal Network, Richard Pearshouse - primary author; Richard Elliott and Joanne Csete - text of legal provisions and prefatory notes, and reviewed, research assistance was provided by Tim Franklin, Sarom Bahk, Katie Gibson and Sara Kushner, *Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS. Criminal law issues*, 2006, Human rights obligations, 13; etc.

- <sup>103</sup> "1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
  3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
  4. To be a centre for harmonizing the actions of nations in the attainment of these common ends."

<sup>104</sup> "The Organization and its Members, in pursuit of the

Purposes stated in Article I, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

<sup>105</sup> PREAMBLE

WE THE PEOPLES OF THE UNITED NATIONS  
DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the

institution of methods, that armed force shall not be used, save in the common interest, and

- to employ international machinery for the promotion of the economic and social advancement of all peoples.

<sup>106</sup> International Drug Policy Consortium (IDPC), 'Drug Policy Guide', 1 March 2010, 1.2. Ensuring compliance with fundamental rights and freedoms, 6, footnote 10 ; Damon Barrett, 'Security, development and human rights: Normative, legal and policy challenges for the international drug control system', *International Journal of Drug Policy* (2010) doi:10.1016/j.drugpo.2010.01.005, Introduction, 1; Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 1 and 12; Vienna NGO Committee on Drugs (VNGOC), 'An overview of the United Nations Drug Control System', prepared by David Bewley-Taylor of Swansea University and was peer-reviewed by several independent experts. The overview formed part of the background material for the Regional Consultations organised as part of "Beyond 2008", 8; Canadian HIV/AIDS Legal Network, Richard Pearshouse - primary author; Richard Elliott and Joanne Csete - text of legal provisions and prefatory notes, and reviewed, research assistance was provided by Tim Franklin, Sarom Bahk, Katie Gibson and Sara Kushner, *Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS. Criminal law issues*, 2006, Human rights obligations, 13; etc.

<sup>107</sup> Actually they are three relevant articles of the UN Charter in relation to human rights: Articles 1, 55, 56. However for the present discussion we mentioned just Article 1 and 55 as Article 56 UN Charter is related to Article 55 and stipulates: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

<sup>108</sup> Article 1 (3) of the Charter of the United Nations.

<sup>109</sup> Article 55(b) of the Charter of the United Nations.

<sup>110</sup> Damon Barrett and Manfred Nowak, 'The United Nations and Drug Policy: Towards a Human Rights Based Approach', published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, 11.

<sup>111</sup> Actually Article 1 (3) of the UN Charter, which establishes the Purposes of the United Nations, mentions both areas under the same paragraph: "To achieve international co-operation in solving international problems of an economic, social, cultural,

or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion..."

<sup>112</sup> The Queen (on the application of Hilal Abdul-Razzaq Ali Al-Jedda) v. Secretary of State for Defence, Judgment of 12 August 2005, Case No. CO/3673/2005, [2005] EWHC 1809 (Admin).

<sup>113</sup> The Queen (on the application of Hilal Abdul-Razzaq Ali Al-Jedda) v. Secretary of State for Defence, Judgment of 12 August 2005, Case No. CO/3673/2005, [2005] EWHC 1809 (Admin), paras. 94 et seq; *ibid.*, para. 108; and para. 112 of the judgment in The Queen (on the application of Hilal Abdul-Razzaq Ali Al-Jedda) v. Secretary of State for Defence, *supra* note 459. In International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, finalized by Martti Koskeniemi, A/CN.4/L.682, 13 April 2006, paragraphs 336, 337 and 338.

<sup>114</sup> International Drug Policy Consortium (IDPC), 'Drug Policy Guide', 1 March 2010, 1.2. Ensuring compliance with fundamental rights and freedoms, 6, footnote 10 ; Damon Barrett, 'Security, development and human rights: Normative, legal and policy challenges for the international drug control system', *International Journal of Drug Policy* (2010) doi:10.1016/j.drugpo.2010.01.005, Introduction, 1; Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 1 and 12; Vienna NGO Committee on Drugs (VNGOC), 'An overview of the United Nations Drug Control System', prepared by David Bewley-Taylor of Swansea University and was peer-reviewed by several independent experts. The overview formed part of the background material for the Regional Consultations organised as part of "Beyond 2008", 8; Canadian HIV/AIDS Legal Network, Richard Pearshouse - primary author; Richard Elliott and Joanne Csete - text of legal provisions and prefatory notes, and reviewed, research assistance was provided by Tim Franklin, Sarom Bahk, Katie Gibson and Sara Kushner, *Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS. Criminal law issues*, 2006, Human rights obligations, 13; etc.

<sup>115</sup> See for example: UNODC, Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly, 'Making drug control 'fit for purpose': Building on the UNGASS

decade', Commission on Narcotic Drugs, Fifty-first session, Vienna 10-14 March 2008, 7 March 2008, 19.

<sup>116</sup> UNODC, Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, paragraph 8, endnote 11.

<sup>117</sup> Resolution adopted by the General Assembly, International cooperation against the world drug problem, UN Doc. A/RES/65/233, April 2011, p.3-4. This statement is found in previous documents, for example, UN Doc. A/RES/64/182, March 2010, para 2; UN Doc. A/RES/63/197, March 2009, paragraph 1; etc.

<sup>118</sup> Resolution adopted by the General Assembly, International cooperation against the world drug problem, UN Doc. A/RES/65/233, April 2011, p.2. This statement is found in previous documents, for example, UN Doc. A/RES/64/182, March 2010, p. 1; UN Doc. A/RES/63/197, March 2009, p. 1; etc.

<sup>119</sup> Resolution adopted by the General Assembly, International cooperation against the world drug problem, UN Doc. A/RES/65/233, April 2011, p.3-4. This statement is found in previous documents, for example, UN Doc. A/RES/64/182, March 2010, para 2; UN Doc. A/RES/63/197, March 2009, para. 1; etc.

<sup>120</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, para. 21.

<sup>121</sup> Damon Barrett and Manfred Nowak, 'The United Nations and Drug Policy: Towards a Human Rights Based Approach', published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, 9.

<sup>122</sup> Resolution adopted by the General Assembly, International cooperation against the world drug problem, UN Doc. A/RES/65/233, April 2011, p.2.

<sup>123</sup> Damon Barrett and Manfred Nowak 2009 paper discuss in 28 pages human rights and drug control but mentions one time CRC Article 33 to establish that "Indeed, 'appropriate measures' is the very wording used in article 33 of the Convention on the Rights of the Child, the only UN human rights treaty to deal specifically with the issue. It is therefore useful to consider, as examples, some of the human rights issues outlined above to address the question of appropriateness."

Damon Barrett and Manfred Nowak, 'The United Nations and Drug Policy: Towards a Human Rights Based Approach', published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, 14.

<sup>124</sup> Damon Barrett and Manfred Nowak, 'The United

*Nations and Drug Policy: Towards a Human Rights Based Approach*', published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, 12.

<sup>125</sup> Damon Barrett and Manfred Nowak, 'The United Nations and Drug Policy: Towards a Human Rights Based Approach', published in *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, 8.

<sup>126</sup> Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008, 5.

<sup>127</sup> See for example Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN), March 2008.

<sup>128</sup> These are immutable characteristics.

<sup>129</sup> Anand Grover, the UN Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health "It is important that drug use and drug dependence are not conflated: drug dependence is considered a chronic, relapsing disorder involving altered brain function that may require medical treatment, ideally utilizing a 'biopsychosocial' approach. By contrast, drug use is not a medical condition and does not necessarily imply dependence. Indeed the majority of people who use drugs do not become dependent and do not require any treatment." Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

*Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/65/255, 6 August 2010, paragraph 7, 5. <http://idpc.net/sites/default/files/library/Right%20to%20highest%20standard%20of%20health.pdf>.

<sup>130</sup> International Federation of Red Cross and Red Crescent Societies (IFRC) Health Advocacy Report, *Out of harm's way – Injecting drug users and harm reduction*, December 2010.

<sup>131</sup> International Federation of Red Cross and Red Crescent Societies (IFRC) Health Advocacy Report, *Out of harm's way – Injecting drug users and harm reduction*,

December 2010, 3.

<sup>132</sup> Human Rights Watch published for many years reports on human rights issues related to the justice system or the medical one in certain countries.

<http://www.hrw.org/en/publications>.

Other papers like Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN). March 2008 also quote such cases.

<sup>133</sup> Similar conclusions are reached by Saul Takahashi in his paper 'Drug Control, Human Rights, and the Right to the Highest Attainable Standard of Health: By No Means Straightforward Issues', *Human Rights Quarterly*, Volume 31, Number 3, August 2009, 754.

<sup>134</sup> Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, United Nations, New York, 1998. Para. 3.3. No emphasis on the original text.

<sup>135</sup> Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN). March 2008, 32.

<sup>136</sup> They are other international human rights instruments comprising articles referring to health, for example: Article 25 (1), Universal Declaration of Human Rights; Article 5 (e/iv), International Convention on the Elimination of All Forms of Racial Discrimination; Article 24, Convention on the Rights of the Child; Article 12, Convention on the Elimination of All Forms of Discrimination against Women; Articles 28, 43 and 45, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Art. 25 Convention on the Rights of Persons with Disabilities etc.

<sup>137</sup> Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights- General Comment No. 14 (2000) -The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights. Twenty-second session Geneva, 25 April-12 May 2000. E/C.12/2000/4.

<sup>138</sup> Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights- General Comment No. 14 (2000) – The right to the highest attainable standard of health

(article 12 of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights. Twenty-second session Geneva, 25 April-12 May 2000. E/C.12/2000/4.

<sup>139</sup> Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights- General Comment No. 14 (2000) -The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights. Twenty-second session Geneva, 25 April-12 May 2000. E/C.12/2000/4.

<sup>140</sup> <http://www.ihra.net/what-is-harm-reduction>

<sup>141</sup> International Federation of Red Cross and Red Crescent Societies (IFRC) Health Advocacy Report, *Out of harm's way – Injecting drug users and harm reduction*, December 2010, 16.

<sup>142</sup> See for example Open Society Foundations, the International Harm Reduction Association, Human Rights Watch, and the Canadian HIV/AIDS Legal Network, 'Human Rights and Drug Policy. Briefings for the UN Commission on Narcotic Drugs', December 2010.

<sup>143</sup> International Federation of Red Cross and Red Crescent Societies (IFRC) Health Advocacy Report, *Out of harm's way – Injecting drug users and harm reduction*, December 2010, 3.

<sup>144</sup> International Narcotics Control Board (INCB), *Mandate and Functions*.  
<http://www.incb.org/incb/mandate.html>.

<sup>145</sup> Harm Reduction International's HR2, 'Unique in International Relations?: A Comparison of the International Narcotics Control Board and the UN Human Rights Treaty Bodies', February 2008.  
<http://www.ihra.net/files/2010/06/16/Barrett-UniqueinInternationalRelations.pdf>.

<sup>146</sup> Harm Reduction International's HR2, 'Unique in International Relations?: A Comparison of the International Narcotics Control Board and the UN Human Rights Treaty Bodies', February 2008, 7.  
<http://www.ihra.net/files/2010/06/16/Barrett-UniqueinInternationalRelations.pdf>.

<sup>147</sup> Harm Reduction International's HR2, 'Unique in International Relations?: A Comparison of the International Narcotics Control Board and the UN Human Rights Treaty Bodies', February 2008, 8.  
<http://www.ihra.net/files/2010/06/16/Barrett-UniqueinInternationalRelations.pdf>.

<sup>148</sup> J. Csete and D. Wolfe, 'Closed to Reason: The International Narcotics Control Board and HIV/AIDS', Canadian HIV/AIDS Legal Network/ International Harm Reduction Development, February 2007.

<sup>149</sup> J. Csete and D. Wolfe, 'Closed to Reason: The International Narcotics Control Board and HIV/AIDS', Canadian HIV/AIDS Legal Network/ International Harm Reduction Development, February 2007, 1.

<sup>150</sup> Political Declaration on HIV/AIDS adopted by the General Assembly, 10 June 2011, paragraph 26.  
[http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610\\_UN\\_A-RES-65-277\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610_UN_A-RES-65-277_en.pdf).

<sup>151</sup> Transnational Institute, Drugs and Democracy, 'The INCB on Harm Reduction. Catching Up, or Holding Back?', 2008.  
[http://www.ungassondrugs.org/index.php?option=com\\_content&task=view&id=163&Itemid=83](http://www.ungassondrugs.org/index.php?option=com_content&task=view&id=163&Itemid=83).

IDPC reported on the 2010 CND that "there was a frisson of tension during the meeting with NGOs on the issue of harm reduction, with Professor Atasoy (the President of the INCB at that time) responding to concerns about the Board's consistently reserved attitude to the approach with a complaint that there was no clear definition of it." International Drug Policy Consortium, 'The 2010 Commission on Narcotic Drugs – report of proceedings', April 2010.  
<http://www.idpc.net/sites/default/files/library/CND%20Proceedings%202010%20final.pdf>.

<sup>152</sup> See for example: J. Csete and D. Wolfe, 'Closed to Reason: The International Narcotics Control Board and HIV/AIDS', Canadian HIV/AIDS Legal Network/ International Harm Reduction Development, February 2007.

<sup>153</sup> Almost every paper discussed and many others coming from this category of NGOs use this sintagma in relation with the INCB. For example: Joanne Csete, Executive Director, Canadian HIV/AIDS Legal Network and Daniel Wolfe, Deputy Director, International Harm Reduction Development Program, Open Society Institute, 'Dangerously Out of Step The International Narcotics Control Board and HIV/AIDS'.  
<http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1190>;

Tom Blickman, 'INCB out of step with the United Nations', Transnational Institute Drugs and Democracy Programme, June 3, 2008.

<http://www.druglawreform.info/en/weblog/item/2026-incb-out-of-step-with-the-united-nations>;

Damon Barrett, Rick Lines, Rebecca Schleifer, Richard Elliott and Dave Bewley-Taylor, 'Recalibrating the Regime: The Need for a Human Rights-Based Approach to International Drug Policy', a Beckley Foundation Drug Policy Programme (BFDPP) Report produced in partnership with the International Harm Reduction Association (IHRA), Human Rights Watch (HRW), and the Canadian HIV/AIDS Legal Network (CHALN). March 2008;

The Canadian HIV/AIDS Legal Network, 'Latest Report From United Nations Drug Control Body Misses the Mark. INCB's policy prescriptions are misguided and dangerous', News Release, March 4, 2008.

<http://www.aidslaw.ca/publications/interfaces/downloadDocumentFile.php?ref=836>;

Damon Barrett, 'Unique in International Relations? A Comparison of the International Narcotics Control Board and the UN Human Rights Treaty Bodies', Harm Reduction International, February 1, 2008,  
<http://www.ihra.net/files/2010/06/16/Barrett-UniqueinInternationalRelations.pdf>, etc.

<sup>154</sup> David R. Bewley-Taylor B. Sc (Econ), PhD & Professor Cindy S. J. Fazey B. Sc. (Soc), PhD with Tim Boekhout van Solinge, 'The Mechanics and Dynamics of the UN System for International Drug Control', 14 March 2003.

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>155</sup> The issue of right to health as per Article 12 ICESCR should be, according to the discussed NGOs, interpreted in a preferential manner according to their reading.

<sup>156</sup> European Union is "a unique economic and political partnership between 27 democratic European countries."

[http://europa.eu/abc/panorama/index\\_en.htm](http://europa.eu/abc/panorama/index_en.htm).

<sup>157</sup> INCB position on the harm reduction issue was stated in many reports as: "harm reduction programmes could play a part in a comprehensive drug demand reduction strategy but drawing attention to the fact that harm reduction programmes could not be considered substitutes for demand reduction programmes." It stressed in relation to "any prophylactic measures (like needle/syringe exchange or distribution programmes) should not promote and/or facilitate drug abuse." In relation to drug injection rooms "The Board has stated on a number of occasions, including its recent Annual Reports, that the operation of such facilities remains a source of grave concern. The Board reiterates that they violate the provisions of the international drug control conventions." As the INCB made it clear that "The implementation of substitution and maintenance treatments "does not constitute any breach of treaty provisions, whatever substance may be used for such treatment in line with established national sound medical practice."

[http://www.incb.org/pdf/e/press/2004/press\\_release\\_2004-03-03\\_4.pdf](http://www.incb.org/pdf/e/press/2004/press_release_2004-03-03_4.pdf).

<sup>158</sup> David R. Bewley-Taylor B. Sc (Econ), PhD & Professor Cindy S. J. Fazey B. Sc. (Soc), PhD with Tim Boekhout van Solinge, 'The Mechanics and Dynamics of the UN System for International Drug Control', 14 March 2003, 18-19. "a harm reduction approach has recently also been acknowledged at the EU level... Making specific reference to reducing the harm associated with intravenous drug use the European Union Strategy on Drugs (2000-2004) states as one of its targets to 'reduce substantially over five years the incidence of drug related health damage (HIV, hepatitis B and C, TBC etc) and the number of drug related deaths.' (Jelsma et al, 2003)



Such a situation consequently makes the INCB position upon harm reduction measures like injecting rooms problematic.”

[http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf).

<sup>159</sup> Neither then nor now did EU have a unanimous position on harm reduction.

<sup>160</sup> The Statute of the International Court of Justice, annexed to the Charter of the United Nations, Chapter li – Competence of the Court, Article 38:

*1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:*

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
- b. international custom, as evidence of a general practice accepted as law;*
- c. the general principles of law recognized by civilized nations;*
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*

The emphasis is added by the authors of the present book.

<sup>161</sup> Paul Hunt, *Human Rights, Health and Harm Reduction: States' Amnesia and Parallel Universes*, speech delivered at the 19th International Harm Reduction Conference, Barcelona, May 2008.

<sup>162</sup> It appears from the text that these presentations were made in Bucharest, London, and Bogota.

<sup>163</sup> Rick Lines & Damon Barrett, HR2 - Harm Reduction & Human Rights Programme, International Harm Reduction Association, Counting Lives 2 – Substitution Treatment, *'Harm Reduction, Substitution Treatment and the UN Convention on the Rights of the Child'*, Bucharest, Romania, 4 December 2007.

<http://www.ihra.net/files/2010/06/21/LinesBarrett-CountingLives2.pdf>.

<sup>164</sup> Rick Lines & Damon Barrett, HR2 - Harm Reduction & Human Rights Programme, International Harm Reduction Association, Counting Lives 2 – Substitution Treatment, *'Harm Reduction, Substitution Treatment and the UN Convention on the Rights of the Child'*, Bucharest, Romania, 4 December 2007, slide 4.

<http://www.ihra.net/files/2010/06/21/LinesBarrett-CountingLives2.pdf>.

<sup>165</sup> Rick Lines & Damon Barrett, HR2 - Harm Reduction & Human Rights Programme, International Harm Reduction Association, Counting Lives 2 – Substitution Treatment, *'Harm Reduction, Substitution Treatment and the UN Convention on the Rights of the Child'*, Bucharest, Romania, 4 December 2007, slide 19.

<http://www.ihra.net/files/2010/06/21/LinesBarrett-CountingLives2.pdf>.

<sup>166</sup> Damon Barrett Human Rights Analyst, IHRA,

Release Conference, *'Appropriate Measures? Drugs, Children and Human Rights'*, London, September 2008. <http://www.ihra.net/files/2010/06/21/BarrettAppropriateMeasures.pdf>.

<sup>167</sup> Damon Barrett, Project Director, International Centre on Human Rights and Drug Policy, *'Drugs and the UN Convention on the Rights of the Child: Unpacking Article 33'*, Bogota, Colombia, November 2010. <http://www.humanrightsanddrugs.org/wp-content/uploads/2011/02/Colombia-dissecting-the-CRC-Nov-2010.pdf>.

This presentation is a part of a seminar co-sponsored by the Universidad de los Andes, the International Centre on Human Rights and Drug Policy and Human Rights Watch.

<sup>168</sup> Damon Barrett, Project Director, International Centre on Human Rights and Drug Policy, *'Drugs and the UN Convention on the Rights of the Child: Unpacking Article 33'*, Bogota, Colombia, November 2010, slide 16. <http://www.humanrightsanddrugs.org/wp-content/uploads/2011/02/Colombia-dissecting-the-CRC-Nov-2010.pdf>.

<sup>169</sup> <http://www.humanrightsanddrugs.org/category/issues/children-youth/page/2/>.

<sup>170</sup> Damon Barrett, Project Director, International Centre on Human Rights and Drug Policy, *'Drugs and the UN Convention on the Rights of the Child: Unpacking Article 33'*, Bogota, Colombia, November 2010, slide 3. <http://www.humanrightsanddrugs.org/wp-content/uploads/2011/02/Colombia-dissecting-the-CRC-Nov-2010.pdf>.

<sup>171</sup> [http://www.unicef.org/rightsite/433\\_articles2.php?id=6#video](http://www.unicef.org/rightsite/433_articles2.php?id=6#video).

<sup>172</sup> [http://www.unicef.org/rightsite/433\\_articles2.php?id=6#video](http://www.unicef.org/rightsite/433_articles2.php?id=6#video).

<sup>173</sup> Krzysztof Krajewski, *'How flexible are the United Nations drug conventions?'*, *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338.

<sup>174</sup> As per articles: 34, 32, 35 and 36 of the Convention on the Rights of the Child. The same forms of exploitations are mentioned together with forced or compulsory recruitment of children for use in armed conflict as the “the worst forms of child labour” in Article 3 of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>175</sup> Damon Barrett, *'Drugs and the UN Convention on the Rights of the Child: Unpacking Article 33'*, (slides format), presentation at the Universidad de los Andes in Bogota, Colombia, 2010.

<http://www.humanrightsanddrugs.org/?tag=drugs>

<sup>176</sup> Article 19 has an almost identical provision with art 33: “shall take all appropriate legislative, administrative, social and educational measures to protect”. In art 33 case the provision reads: “shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect...and to protect”,

being somehow more comprehensive as it indicates that other measures should be taken except the legislative, administrative, social and educational ones and also the intention to prevent. Anyhow, article 2 CRC has a similar provision: "shall take all appropriate measures to ensure that the child is protected against"; article 4: "shall undertake all appropriate ... measures for..."; art 21(d): "Take all appropriate measures to ensure..."; art 22(1): "shall take appropriate measures to ensure"; art 24(3): "shall take all ... appropriate measures ... to abolishing"; art 27(3) "shall take appropriate measures to assist" and in paragraph (4): "shall take all appropriate measures to secure"; art 28(2): "shall take all appropriate measures to ensure"; art 32(2): "shall take legislative, administrative, social and educational measures to ensure"; art 34: "States Parties undertake to protect the child... For these purposes, States Parties shall in particular take all appropriate... measures to prevent"; art 35: "shall take all appropriate ... measures to prevent" and art 39: "shall take all appropriate measures to promote". Article 11 talks about "shall take measures to combat" and article 26 stipulates: "shall take the necessary measures". If we are to give credit to Barrett's theory this is the way how the Convention on the Rights of the Child should look at its essence.

<sup>177</sup> According to CRIN this paper was published to mark the International Day against Drug Abuse and Illicit Trafficking on 26 June 2010 by shedding a light on and examining "the impact of global and national drug policies on children's rights."

<http://www.crin.org/resources/infodetail.asp?id=22817>.

<sup>178</sup> CRIN web page:

<http://www.crin.org/about/index.asp>.

<sup>179</sup> CRIN, *Children and drug use*, 30/06/2010.

<http://www.crin.org/resources/infodetail.asp?id=22817>.

<sup>180</sup> CRIN, *Children and drug use*, 30/06/2010,.

<http://www.crin.org/resources/infodetail.asp?id=22817>.

<sup>181</sup> *Children of Substance Abusers: COSA Resource List*, Compiled by: Rivka Greenberg, Ph.D., Annabelle Bonifacio, M.S.W., and Deborah Werner, M.A. and Submitted by: JBS International, Inc., and Center for Children and Family Futures, Inc. Submitted to: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment, 2008.

<http://womenandchildren.treatment.org/documents/cosa-resource-508v.pdf> in CRIN, *Children and drug use*, 30/06/2010.

<http://www.crin.org/resources/infodetail.asp?id=22817>.

<sup>182</sup> About CRIN, *Our Mission*.

<http://www.crin.org/about/index.asp>.

<sup>183</sup> Paulo Sérgio Pinheiro, Independent Expert for the United Nations, Secretary-General's Study on Violence against Children, "World Report on Violence against Children", 2006. The Study indicates parents or

caregivers substance abuse as one of the factors contributing to violence against children, p. 66 and 68. It also indicates that childhood experience of violence leads to drug abuse, p. 64-65.

<sup>184</sup> WHO Child maltreatment, Fact sheet N° 150, August 2010.

<http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.

<sup>185</sup> D. Barrett & P. Veerman, 'Children who use Drugs: The Need for More Clarity on State Obligations in International Law', *International Journal on Human Rights and Drug Policy*, Vol 1, 2010, 65-66.

<http://www.humanrightsanddrugs.org/2011/04/drugs-and-the-rights-of-the-child/>

<sup>186</sup> Article 39, Convention on the Rights of the Child.

<sup>187</sup> D. Barrett & P. Veerman, 'Children who use Drugs: The Need for More Clarity on State Obligations in International Law', *International Journal on Human Rights and Drug Policy*, Vol. 1, 2010, 65-66.

<http://www.humanrightsanddrugs.org/2011/04/drugs-and-the-rights-of-the-child/>

<sup>188</sup> David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, 178.

<sup>189</sup> Hungarian Civil Liberties Union- A Drug Free World – Could We Do It? July 23, 2008.

<http://drogriporter.hu/en/node/1039>

<sup>190</sup> Transform Drug Policy Foundation, "After the War on Drugs. Tools for the debate", 2007.

[http://www.tdpf.org.uk/Tools\\_For\\_The%20Debate.pdf](http://www.tdpf.org.uk/Tools_For_The%20Debate.pdf)

<sup>191</sup> Release's Mission & Vision.

<http://www.release.org.uk/about/mission-vision>.

<sup>192</sup> Release's Mission & Vision.

<http://www.release.org.uk/about/mission-vision>.

<sup>193</sup> Krzysztof Krajewski, "How flexible are the United Nations drug conventions?", *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338, 329.

<sup>194</sup> We should note that Krajewski provides no definition for "harm reduction" or what these strategies imply. Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol. 10, No. 4, (1999), str. 329 – 338.

<sup>195</sup> Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, Art. 4(c).

<sup>196</sup> Convention on the Rights of the Child, 1989.

<sup>197</sup> Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO Convention 182, 1999, Art. 3(c).

<sup>198</sup> Nowak, Manfred, *Civil and Political Rights*, in Human Rights: Concepts and Standards, ed. Symonides, Janusz, UNESCO Publishing, 2000, 88. In Merle Anouk de Vries, *A Human Rights-based Approach to the International Drug Policy*, University of Vienna LL.M. International Legal Studies, Master Thesis, 01-09-2008, p. 36.

- <sup>199</sup> Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 335.
- <sup>200</sup> Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 336.
- <sup>201</sup> World Health Organization- Child maltreatment, Fact sheet N°150, August 2010.  
<http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.
- <sup>202</sup> Yuri Fedotov, UNODC Director-General/Executive Director 'Integrating Crime Prevention and Criminal Justice into the Global Security and Development Agenda', speech at the Commission on Crime Prevention & Criminal Justice 20th Session Vienna, 11 April 2011.  
<http://www.unodc.org/unodc/en/about-unodc/speeches/2011/April/2011-04-11-crime-commission-opening.html>.  
Probably the figures were different back in 1999 but this fact has no relevance.
- <sup>203</sup> Krajewski also cites the German Constitutional Tribunal 'cannabis decision' from 1994 and a similar decision from the Colombian Constitutional Court, also in 1994. Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 336.
- <sup>204</sup> <http://www.hrw.org/en/about>.
- <sup>205</sup> About the IAS.  
<http://www.iasociety.org/AboutIAS.aspx>
- <sup>206</sup> The XVIII International AIDS Conference (AIDS 2010) Vienna, July 2010; XVII International AIDS Conference (AIDS 2008), Mexico City; the XVI International AIDS Conference (AIDS 2006), Toronto; XV International AIDS Conference (AIDS 2004), Bangkok; 14th International AIDS Conference, Barcelona, 2002; 12th International AIDS Conference, Geneva, 1998; 13th International AIDS Conference, Durban, 2000; 11th International AIDS Conference, Vancouver, 1996; 10th International AIDS Conference, Yokohama, 1994; etc. Since 2001 it has organised also the IAS Conference on HIV Pathogenesis and Treatment.  
<http://www.iasociety.org/Default.aspx?pagelid=79>.
- <sup>207</sup> <http://www.drugpolicy.org/about/>.
- <sup>208</sup> <http://www.beckleyfoundation.org/2010/10/19/about-intro/>.
- <sup>209</sup> <http://www.ihra.net/about>
- <sup>210</sup> [http://www.humanrightsanddrugs.org/?page\\_id=12](http://www.humanrightsanddrugs.org/?page_id=12)
- <sup>211</sup> <http://www.idpc.net/about>
- <sup>212</sup> <http://tasz.hu/en/about-us>
- <sup>213</sup> <http://www.release.org.uk/about/mission-vision>
- <sup>214</sup> <http://www.idpc.net/about/governance>
- <sup>215</sup> [http://www.aidslaw.ca/EN/about\\_us/index.htm](http://www.aidslaw.ca/EN/about_us/index.htm)
- <sup>216</sup> [http://www.unodc.org/ngo/showSingleDetailed.do?req\\_org\\_uid=16418](http://www.unodc.org/ngo/showSingleDetailed.do?req_org_uid=16418)
- <sup>217</sup> <http://www.idurefgroup.org/>
- <sup>218</sup> <http://www.tni.org/page/introduction>.
- <sup>219</sup> [http://www.ifrc.org/who/index.asp?navid=03\\_01](http://www.ifrc.org/who/index.asp?navid=03_01).
- <sup>220</sup> Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 329. An identical formulation can be found in David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', Department of American Studies, University of Wales Swansea, Singleton Park, Swansea SA 2 8PP, UK, *International Journal of Drug Policy* 14 (2003) 171\_/179, 175.
- <sup>221</sup> Krajewski mentions the *latitude* existing in the legal framework of the international drug control regime for decriminalization/depensation/legalization, expressed also as *loophole* that allow decriminalization/depensation/legalization at least 13<sup>th</sup> times. Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338  
The same terminology appears in many other papers as: Bewley-Taylor, David R. and Fazey, Cindy S. J., 'The Mechanics and Dynamics of the UN System for International Drug Control', 14 March 2003, [http://www.aidslex.org/site\\_documents/J027E.pdf](http://www.aidslex.org/site_documents/J027E.pdf), in David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', Department of American Studies, University of Wales Swansea, Singleton Park, Swansea SA 2 8PP, UK, *International Journal of Drug Policy* 14 (2003) 171\_/179, etc.
- <sup>222</sup> This syntagma is to be found in several papers: David R. Bewley-Taylor, 'Challenging the UN drug control conventions: problems and possibilities', *International Journal of Drug Policy* 14 (2003) 171/179, Bewley-Taylor, David R. and Fazey, Cindy S. J., 'The Mechanics and Dynamics of the UN System for International Drug Control', 14 March 2003, etc.
- <sup>223</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
- <sup>224</sup> Kathleen Kingsbury, 'Methadone as a Human Right', *February 16, 2011*, <http://blog.soros.org/2011/02/methadone-as-a-human-right/>, <http://www.ihra.net/contents/870>.
- <sup>225</sup> We should differentiate "drug users" from "drug addicts/dependents". "Drug use" is the equivalent of drugs taking, in its variety of forms, "self-administration of a psychoactive substance" according to WHO, or "drug abuse" according to the INCB. "Drug addiction" is instead the equivalent of "drug dependence" which stands according to the WHO glossary for: "Repeated use of a psychoactive substance or substances, to the extent that the user (referred to as an addict) is periodically or chronically intoxicated, shows a compulsion to take the preferred substance (or substances), has great difficulty in voluntarily ceasing or

modifying substance use, and exhibits determination to obtain psychoactive substances by almost any means. Typically, tolerance is prominent and a withdrawal syndrome frequently occurs when substance use is interrupted. The life of the addict may be dominated by substance use to the virtual exclusion of all other activities and responsibilities. The term addiction also conveys the sense that such substance use has a detrimental effect on society, as well as on the individual... In the 1960s the World Health Organization recommended that both terms be abandoned in favour of dependence, which can exist in various degrees of severity. Addiction is not a diagnostic term in ICD-10, but continues to be very widely employed by professionals and the general public alike." "Drug dependence" is defined by WHO as: "In DSM-III-R, dependence is defined as "a cluster of cognitive, behavioural and physiologic symptoms that indicate a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences". It is roughly equivalent to the dependence syndrome of ICD-10. In the ICD-10 context, the term dependence could refer generally to any of the elements in the syndrome. The term is often used interchangeably with addiction and alcoholism..." [http://www.who.int/substance\\_abuse/terminology/who\\_lexicon/en/](http://www.who.int/substance_abuse/terminology/who_lexicon/en/).

The three drug related conventions specifically take in consideration this category of individuals who do become "addicts/dependants" offering a humane response, with provision for treatment, rehabilitation and social reintegration.

<sup>226</sup> International Federation of Red Cross and Red Crescent Societies (IFRC), *Out of harm's way. Injecting drug users and harm reduction*, advocacy Report prepared by Getachew Gizaw, Paul Conneally, Patrick Couteau, Shannon Frame, Sadia Kaenzig, Patricia Leidl and Marie-Françoise Bore, December 2010, <http://www.ifrc.org/Global/Publications/Health/Harm-reduction-report-EN.pdf>.

<sup>227</sup> See the IHRA's definition of "harm reduction" on *What is Harm Reduction? A position statement from the International Harm Reduction Association*. [http://www.ihra.net/files/2010/08/10/Briefing\\_What\\_is\\_HR\\_English.pdf](http://www.ihra.net/files/2010/08/10/Briefing_What_is_HR_English.pdf)

### 3. United Nations Entities

<sup>1</sup> "UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children." [http://www.unicef.org/about/who/index\\_mission.html](http://www.unicef.org/about/who/index_mission.html).

<sup>2</sup> "UNODC is a global leader in the fight against illicit drugs and international crime... UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism." <http://www.unodc.org/unodc/en/about-unodc/index.html>

<sup>3</sup> WHO provides technical expertise to the United Nations on the subject of drugs of abuse under the United Nations Single Convention on Narcotic Drugs (1961) and the United Nations Convention on Psychotropic Substances (1971). [http://www.who.int/medicines/areas/quality\\_safety/sub\\_under\\_int\\_control/en/index.html](http://www.who.int/medicines/areas/quality_safety/sub_under_int_control/en/index.html).

<sup>4</sup> "OHCHR represents the world's commitment to universal ideals of human dignity. We have a unique mandate from the international community to promote and protect all human rights." <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>.

<sup>5</sup> Leveraging the AIDS response, UNAIDS works to build political action and to promote the rights of all people for better results for global health and development. <http://www.unaids.org/en/aboutunaids/unaidsleadership/> UNAIDS strategy goals by 2015 includes preventing all new HIV infections among people who use drugs and reducing by half the number of countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality that block effective responses.

<http://www.unaids.org/en/strategygoalsby2015/>.

<sup>6</sup> United Nations General Assembly resolution number 57(I).

<sup>7</sup> [http://www.unicef.org/about/history/index\\_milestones\\_46\\_55.html](http://www.unicef.org/about/history/index_milestones_46_55.html).

<sup>8</sup> According to UNICEF's web site, approximately 88 per cent of the organization's posts are located in the field. [http://www.unicef.org/about/who/index\\_faq.html](http://www.unicef.org/about/who/index_faq.html).

<sup>9</sup> The Americas and Caribbean Regional Office, Panama City, Panama; Central and Eastern Europe, Commonwealth of Independent States Regional Office, Geneva, Switzerland; East Asia and the Pacific Regional Office, Bangkok, Thailand; Eastern and Southern Africa Regional Office, Nairobi, Kenya; Middle East and North Africa Regional Office, Amman, Jordan; South Asia Regional Office, Kathmandu, Nepal; and West and Central Africa Regional Office, Dakar, Senegal.



[http://www.unicef.org/about/structure/index\\_regional.html](http://www.unicef.org/about/structure/index_regional.html).

<sup>10</sup> [http://www.unicef.org/infobycountry/index\\_39912.html](http://www.unicef.org/infobycountry/index_39912.html)

<sup>11</sup> Office of the Secretary of the Executive Board “*The UNICEF Executive Board An Informal Guide*”, 2011.

<sup>12</sup> [http://www.bmz.de/en/what\\_we\\_do/approaches/multilateral\\_cooperation/players/UnitedNations/UNICEF/index.html](http://www.bmz.de/en/what_we_do/approaches/multilateral_cooperation/players/UnitedNations/UNICEF/index.html).

<sup>13</sup> Executive Board decision 1996/1 (E/ICEF/1996/12/Rev.1)

<sup>14</sup> UNICEF *Mission Statement*.

[http://www.unicef.org/media/media\\_35908.html](http://www.unicef.org/media/media_35908.html).

<sup>15</sup> UNICEF *Mission Statement*.

[http://www.unicef.org/media/media\\_35908.html](http://www.unicef.org/media/media_35908.html).

<sup>16</sup> <http://www.unicef.org/emerg/index.html>

<sup>17</sup> UNICEF *Mission Statement*.

[http://www.unicef.org/media/media\\_35908.html](http://www.unicef.org/media/media_35908.html).

<sup>18</sup> <http://www.unicef.org/rightsresults/index.html>.

<sup>19</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, paragraph 21.

<sup>20</sup> According to the ‘United Nations Secretary-General’s Study on Violence against Children’:

“Worldwide, there is a chronic lack of data on violence against children, which undermines understanding and action. The available numbers almost certainly understate the problem. For example:

-Using a range of studies and 2000 population data, WHO estimates that the prevalence of forced sexual intercourse and other forms of violence involving touch, among boys and girls under 18, is 73 million (7 per cent) and 150 million (14 per cent) respectively...  
– Each year, as many as 275 million children worldwide are estimated to witness domestic violence. This exposure has both short and long-term negative impacts on children’s development.  
– Of the estimated 218 million child labourers in 2004, 126 million were engaged in hazardous work, according to the ILO in 2006. ILO’s latest available estimates show that in 2000 5.7 million children were in forced or bonded labour, 1.8 million in prostitution and pornography, and an estimated 1.2 million children were victims of trafficking. Many more children of legal working age face violence in their workplaces from employers or co-workers.  
– Between 100 million and 140 million women and girls worldwide have undergone female genital mutilation/cutting, according to WHO.  
– WHO figures show that almost 53,000 children aged 0–17 years died in 2002 as a result of homicide.”

[http://www.unicef.org/violencestudy/presskits/2%20Study%20findings\\_Press%20kit%20EN.pdf](http://www.unicef.org/violencestudy/presskits/2%20Study%20findings_Press%20kit%20EN.pdf)

Paulo Sérgio Pinheiro Independent Expert for the United Nations Secretary-General’s Study on Violence against Children, published by the United Nations

Secretary-General’s, Geneva, Switzerland, 2006.

<sup>21</sup> UNICEF, *Child protection from violence, exploitation and abuse*.

[http://www.unicef.org/protection/57929\\_57972.html](http://www.unicef.org/protection/57929_57972.html).

<sup>22</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, Summary, 1.

<sup>23</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, paragraph 2, 1.

<sup>24</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, 2.

<sup>25</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, 2-3.

<sup>26</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, 4.

<sup>27</sup> Thematic Report 2010, ‘Child Protection from Violence, Exploitation and Abuse’.3.

[http://www.unicef.org/protection/CP\\_Thematic\\_Report\\_2010.pdf](http://www.unicef.org/protection/CP_Thematic_Report_2010.pdf).

<sup>28</sup> UNICEF, *Who we are*.

[http://www.unicef.org/about/who/index\\_introduction.html](http://www.unicef.org/about/who/index_introduction.html).

<sup>29</sup> UNICEF, *Who we are*.

[http://www.unicef.org/about/who/index\\_introduction.html](http://www.unicef.org/about/who/index_introduction.html).

<sup>30</sup> Paulo Sérgio Pinheiro, Independent Expert for the United Nations, Secretary-General’s Study on Violence against Children, ‘World Report on Violence against Children’, 2006, 66, 68 and 64-65.

<sup>31</sup> The Report is a multi UN-agency collaborative effort and is signed by the Executive Directors of: WHO, UNICEF, and UNAIDS.

<sup>32</sup> WHO, UNICEF, UNAIDS ‘Towards universal access: Scaling up priority HIV/AIDS interventions in the health sector’, 28 September 2010, 106.

<sup>33</sup> “All programmes and actions for the benefit of children’s health, education, participation or for addressing the impact of HIV and AIDS should likewise be designed so as to strengthen protection, and must never undermine it.” United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, 2-3.

<sup>34</sup> UNODC STRATEGY 2008-2011, *Towards security and justice for all: making the world safer from crime, drugs and terrorism*, UNITED NATIONS, New York, 2008, iii.

<sup>35</sup> <http://www.unodc.org/unodc/en/about-unodc/index.html>.

<sup>36</sup> <http://www.unodc.org/unodc/en/about-unodc/index.html>

<sup>37</sup> UNODC, *How UNODC deals with HIV/AIDS*, [http://www.unodc.org/documents/afghanistan/Health\\_HIV-AIDS/HIV\\_UNODC\\_2pager.pdf](http://www.unodc.org/documents/afghanistan/Health_HIV-AIDS/HIV_UNODC_2pager.pdf).

<sup>38</sup> <http://www.unodc.org/unodc/en/about-unodc/employment.html?ref=menutop>.

<sup>39</sup> This amount includes US\$ 42.6 million from the UN



regular budget (9.1 per cent).

<http://www.unodc.org/unodc/en/donors/index.html?ref=menuaside>.

<sup>40</sup> The voluntary contributions are granted by governments, UN Agencies, Inter-Governmental Organizations, International Financial Institutions (IFIs) and private donors, including private sector entities and foundations.

<http://www.unodc.org/unodc/en/donors/index.html?ref=menuaside>.

<sup>41</sup> <http://www.unodc.org/unodc/en/about-unodc/index.html>.

<sup>42</sup> Secretary General's Bulletin, *Organization of the United Nations Office on Drugs and Crime*, ST/SGB/2004/6, 15 March 2004.

<sup>43</sup> Secretary General's Bulletin, *Organization of the United Nations Office on Drugs and Crime*, ST/SGB/2004/6, 15 March 2004.

<sup>44</sup> UNODC STRATEGY 2008-2011, *Towards security and justice for all: making the world safer from crime, drugs and terrorism*, UNITED NATIONS, New York, 2008, iii.

<sup>45</sup> The Declaration on the Guiding Principles of Drug Demand Reduction mentions in its Annex Article 33 of the CRC and the need to protect children from the abuse of narcotic drugs and psychotropic substances, but without further elaboration.

<sup>46</sup> See for example the Political Declaration adopted at the 1998 Special Session.

<sup>47</sup> Closing statement to Special Session of the General Assembly on countering the drug problem together, Pino Arlacchi Under-Secretary-General, Executive Director United Nations International Drug Control Programme on behalf of the United Nations Secretary General, 8-10 June 1998.

<sup>48</sup> <http://www.unodc.org/unodc/data-and-analysis/WDR.html>

<sup>49</sup> Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 3.

<sup>50</sup> "The three drug conventions were developed over three decades, from the 1960s to the 1980s. The foundation of the whole system is clearly the 1961 Convention: it came into effect in 1964, nearly half a century ago. This fact is too often forgotten. It is easy to forget such things and to ignore the truism that times have changed, when there is a clamour for change, but no clear view or agreement on what to change or how to change it. There is often comfort in the status quo; not necessarily because it is in itself desirable, but because there is no way of predicting what the future state of affairs will be." Report by the Executive Director of the United Nations Office on Drugs and

Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 11.

<sup>51</sup> Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 12.

<sup>52</sup> Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 17.

<sup>53</sup> Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 17.

<sup>54</sup> Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly "Making drug control 'fit for purpose': Building on the UNGASS decade", Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 17.

<sup>55</sup> United Nations Office on Drugs and Crime *World Drug Report 2008*. United Nations Publication, 1.

<sup>56</sup> United Nations Office on Drugs and Crime *World Drug Report 2008*. United Nations Publication, 1.

<sup>57</sup> United Nations Office on Drugs and Crime *World Drug Report 2008*. United Nations Publication, 1.

<sup>58</sup> United Nations Office on Drugs and Crime *World Drug Report 2009*. United Nations Publication, 169.

<sup>59</sup> United Nations Office on Drugs and Crime *World Drug Report 2009*. United Nations Publication, 169.

<sup>60</sup> Human Rights Committee, *General Comment No. 06: The right to life (art. 6 : 04/30/1982)*. Sixteenth session, 1982, paragraph 6.

<sup>61</sup> Human Rights Committee, *General Comment No. 06: The right to life (art. 6): 04/30/1982*. Sixteenth session, 1982, paragraph 7.

<sup>62</sup> See for example Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the International covenant on civil and political rights*, Kuwait, CCPR/CO/69/KWT, July 2000, paragraph 8; Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the International covenant on civil*

and political rights, Thailand, CCPR/CO/84/THA, Eighty-fourth session, July 2005, paragraph 14; Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the International covenant on civil and political rights, The Sudan, CCPR/C/SDN/CO/3, Ninetieth session, July 2007, paragraph 19.

<sup>63</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 1.

<sup>64</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 4.

<sup>65</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 1.

<sup>66</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 4.

<sup>67</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 6.

<sup>68</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 8.

<sup>69</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 10.

<sup>70</sup>Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961.

<sup>71</sup>The Convention on psychotropic substances, Vienna, 21 February 1971.

<sup>72</sup>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna,

20 December 1988.

<sup>73</sup>Calling for no illicit use and criminalization of illicit production, trafficking, and possession for personal use of drugs.

<sup>74</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, paragraph 50, 12.

<sup>75</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, paragraph 50, 12.

<sup>76</sup>Report by the Executive Director of the United Nations Office on Drugs and Crime 'Organized Crime and its Threat to Security. Tackling a disturbing consequence of drug control', 1 March 2009, UN Doc. E/CN.7/2009/CRP.4-E/CN.15/2009/CRP.4.

<sup>77</sup>Report by the Executive Director of the United Nations Office on Drugs and Crime 'Organized Crime and its Threat to Security. Tackling a disturbing consequence of drug control', 1 March 2009, UN Doc. E/CN.7/2009/CRP.4-E/CN.15/2009/CRP.4, 15.

<sup>78</sup>Report by the Executive Director of the United Nations Office on Drugs and Crime 'Organized Crime and its Threat to Security. Tackling a disturbing consequence of drug control', 1 March 2009, UN Doc. E/CN.7/2009/CRP.4-E/CN.15/2009/CRP.4, 15.

<sup>79</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 13.

<sup>80</sup>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Emphasis added.

<sup>81</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, Summary, 1.

<sup>82</sup>Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, paragraph 2, 3.

<sup>83</sup>Resolution adopted by the General Assembly, 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, paragraph 12.

<sup>84</sup>Paragraph 17 of Note by the Executive Director

'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 6.

<sup>85</sup> Note by the Executive Director 'Drug control, crime prevention and criminal justice: A human rights perspective', Commission on Narcotic Drugs, Fifty-third session, Vienna, 8-12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17-21 May April 2010, 6.

<sup>86</sup> Art 32 on economic exploitation, including child labour; 33 on protection from narcotic drugs and psychotropic substance and the involvement in production and trafficking of such substances; 34 on sexual exploitation and sexual abuse; 35 on sale, trafficking and abduction; 36 on other forms of exploitation; and 38 on children in armed conflict of the Convention of the Rights of the Child.

<sup>87</sup> Transnational Institute, '10 Years TNI Drugs & Democracy Programme 1998-2008', July 2008, 33.

<sup>88</sup> Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly 'Making drug control 'fit for purpose': Building on the UNGASS decade', Commission on Narcotic Drugs, Fifty-first session, Vienna, 10-14 March 2008, 20.

<sup>89</sup> Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, High-level segment Commission on Narcotic Drugs, Vienna, 11-12 March 2009, Statement by the United Nations Under-Secretary-General and Executive Director of the United Nations Office on Drugs and Crime, Mr. Antonio Maria Costa, to the Opening of the high-level segment of the Commission on Narcotic Drugs at its fifty-second session, 3.

<sup>90</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

<sup>91</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Emphasis added.

<sup>92</sup> Bolivia and Switzerland reserved on Article 3 paragraph 2 and three countries made declarations on this provision.

<sup>93</sup> UNODC, 'Sweden's Successful Drug Policy: A Review of the Evidence', February 2007, Preface, 5.

<sup>94</sup> 2009 Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, Political Declaration, paragraph 3.

<sup>95</sup> Unrevised transcript of evidence taken before The Select Committee on the European Union Home Affairs (Sub-Committee F) Inquiry on THE EU DRUGS STRATEGY, Evidence Session No .5. Heard in Public. Questions 155 – 177, 16 NOVEMBER 2011, Witness:

Antonio Maria Costa, 18-19.

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/EU%20DS/ucEUFI61111ev5.pdf>.

<sup>96</sup> About WHO.

<http://www.who.int/about/en/>.

<sup>97</sup> World Health Organization, 'Unaudited Interim Financial Report. Financial Period 2010-2011', A64/29, 2. [http://apps.who.int/gb/ebwha/pdf\\_files/WHA64/A64\\_29-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA64/A64_29-en.pdf).

<sup>98</sup> Constitution of the World Health Organization, as adopted by the International Health Conference held in New York from 19 June to 22 July 1946.

<sup>99</sup> Constitution of the World Health Organization, as adopted by the International Health Conference held in New York from 19 June to 22 July 1946.

<sup>100</sup> Constitution of the World Health Organization, as adopted by the International Health Conference held in New York from 19 June to 22 July 1946.

<sup>101</sup> The right to health is specifically provided for in: Article 25 (1), Universal Declaration of Human Rights; Article 12, International Covenant on Economic, Social and Cultural Rights; Article 5 (e/iv), International Convention on the Elimination of All Forms of Racial Discrimination; Article 24, Convention on the Rights of the Child; Article 12, Convention on the Elimination of All Forms of Discrimination against Women; Articles 28, 43 and 45, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Art.25 Convention on the Rights of Persons with Disabilities etc.

<sup>102</sup> Health and human rights activities within WHO, 12 September 2005. [http://www.who.int/hhr/activities/Mapping%20HHRAactivities%20in%20WHO%20for%20website%2012%20Sept%202005\\_.pdf](http://www.who.int/hhr/activities/Mapping%20HHRAactivities%20in%20WHO%20for%20website%2012%20Sept%202005_.pdf).

<sup>103</sup> <http://www.who.int/hhr/en/>.

<sup>104</sup> UNODC and WHO Discussion Paper, 'Principles of Drug Dependence Treatment', March 2008, 1.

<sup>105</sup> UNODC and WHO Discussion Paper, 'Principles of Drug Dependence Treatment', March 2008, 10.

<sup>106</sup> UNODC and WHO Discussion Paper, 'Principles of Drug Dependence Treatment', March 2008, 10.

<sup>107</sup> UNODC and WHO Discussion Paper, 'From coercion to cohesion Treating drug dependence through health care, not punishment', 9.

<sup>108</sup> UNODC and WHO Discussion Paper, 'From coercion to cohesion Treating drug dependence through health care, not punishment', 5.

<sup>109</sup> WHO Western Pacific Regional Office, 'Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: an application of selected human rights principles', 2009, 1.

<sup>110</sup> WHO Western Pacific Regional Office, 'Assessment of compulsory treatment of people who use drugs in

Cambodia, China, Malaysia and Viet Nam: an application of selected human rights principles', 2009, 3.

<sup>111</sup> WHO Western Pacific Regional Office, 'Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: an application of selected human rights principles', 2009, 4.

<sup>112</sup> PWUD is the acronym for people who use drugs. WHO Western Pacific Regional Office, 'Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: an application of selected human rights principles', 2009, 35.

<sup>113</sup> Constitution of the World Health Organization, as adopted by the International Health Conference held in New York from 19 June to 22 July 1946.

<sup>114</sup> WHO Medium-Term Strategic Plan 2008-2013 Amended (Draft). The Proposed Programme Budget for 2010-2011 for this strategic objective is 161.7 US\$ million.  
[http://apps.who.int/gb/ebwha/pdf\\_files/MTSP2009/PPB3-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/MTSP2009/PPB3-en.pdf).

<sup>115</sup> WHO Medium-Term Strategic Plan 2008-2013 Amended (Draft). The Proposed Programme Budget for 2010-2011 for this strategic objective is 62.6 US\$ million.  
[http://apps.who.int/gb/ebwha/pdf\\_files/MTSP2009/PPB3-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/MTSP2009/PPB3-en.pdf)

<sup>116</sup> UNICEF, WHO, UNESCO, UNFPA, UNDP, UNAIDS, WFP and the World Bank, *Facts for Life*, 2010, iv.

<sup>117</sup> UNICEF, WHO, UNESCO, UNFPA, UNDP, UNAIDS, WFP and the World Bank, *Facts for Life* 2010, 156.

<sup>118</sup> <http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.

<sup>119</sup> WHO "Child maltreatment", Fact sheet N° 150, August 2010,  
<http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.

<sup>120</sup> WHO "Child maltreatment", Fact sheet N° 150, August 2010,  
<http://www.who.int/mediacentre/factsheets/fs150/en/index.html>.

<sup>121</sup> The information provided here was obtained from the OHCHR web page: <http://www.ohchr.org>.

<sup>122</sup> General Assembly Resolution A/RES/48/141, 20 December 1993.

<sup>123</sup> They are independent experts who play an important role in promoting and protecting human rights. They should objectively monitor and answer to allegations of human rights violations. Special Rapporteurs are the Special Procedures mandate holders.

<sup>124</sup> In 2010, OHCHR's 10 country offices were in Bolivia, Cambodia, Colombia, Guatemala, Guinea, Mauritania, Mexico, Nepal, Togo and Uganda.  
<http://www.ohchr.org/EN/Countries/Pages/CountryOfficesIndex.aspx>.

<sup>125</sup> At the end of 2010, OHCHR had 12 regional

offices/centres, in East Africa (Addis Ababa), Southern Africa (Pretoria), West Africa (Dakar), Central Africa (Yaoundé), South-East Asia (Bangkok), the Pacific (Suva), the Middle East (Beirut), Central Asia (Bishkek), Europe (Brussels), Central America (Panama City), and South America (Santiago de Chile), and South-West Asia and the Arab Region (Doha).

<http://www.ohchr.org/EN/Countries/Pages/RegionalOfficesIndex.aspx>.

<sup>126</sup> Office of the United Nations High Commissioner for Human Rights, Mandate,  
<http://www.ohchr.org/EN/AboutUs/Pages/Mandate.aspx>.

<sup>127</sup> General Assembly Resolution A/RES/48/141, 20 December 1993.

<sup>128</sup> <http://www.ohchr.org/EN/AboutUs/Pages/MissionStatement.aspx>.

<sup>129</sup> <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>.

<sup>130</sup> <http://www.ohchr.org/EN/Issues/Pages/ListOfIssues.aspx>.

<sup>131</sup> High Commissioner calls for focus on human rights and harm reduction in international drug policy, 10 March 2009,

<http://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=8554&LangID=E>.

<sup>132</sup> High Commissioner calls for focus on human rights and harm reduction in international drug policy, 10 March 2009,

<http://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=8554&LangID=E>.

<sup>133</sup> The Swedish Council for Information on Alcohol and other Drugs (CAN), The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Council of Europe, Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group). Björn Hibell, Ulf Guttormsson, Salme Ahlström, Olga Balakireva, Thoroddur Bjarnason, Anna Kokkevi, Ludwig Kraus, *The 2007 ESPAD Report Substance Use Among Students in 35 European Countries*, Stockholm February 2009,

[http://www.espad.org/documents/Espad/ESPAD\\_report\\_s/2007/The\\_2007\\_ESPAD\\_Report-FULL\\_091006.pdf](http://www.espad.org/documents/Espad/ESPAD_report_s/2007/The_2007_ESPAD_Report-FULL_091006.pdf).

<sup>134</sup> Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights- General Comment No. 14 (2000) -The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights. Twenty-second session Geneva, 25 April-12 May 2000. E/C.12/2000/4.

<sup>135</sup> High Commissioner calls for focus on human rights and harm reduction in international drug policy, 10 March 2009,

<http://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=8554&LangID=E>.

<sup>136</sup> High Commissioner calls for focus on human rights

and harm reduction in international drug policy, 10 March 2009,  
<http://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=8554&LangID=E>.

<sup>137</sup> High Commissioner calls for focus on human rights and harm reduction in international drug policy, 10 March 2009,  
<http://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=8554&LangID=E>.

<sup>138</sup> Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights- General Comment No. 14 (2000) -The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights. Twenty-second session Geneva, 25 April-12 May 2000. E/C.12/2000/4, para. 51.

<sup>139</sup> ECOSOC Resolution 1994/24, 44th plenary meeting, 26 July 1994.

<sup>140</sup> UNODC became a cosponsor in 1999, ILO in 2001, WFP in 2003 and UNHCR in 2003.

<sup>141</sup> ECOSOC Resolution 1994/24, 44th plenary meeting, 26 July 1994.

<sup>142</sup> <http://www.unaids.org/en/aboutunaids/>.

<sup>143</sup> <http://www.unaids.org/en/aboutunaids/unaidsleadership/>.

<sup>144</sup> <http://www.unaids.org/en/ourwork/programme-branch/evidencestrategyandresultsdepartment/preventionvulnerabilityandrightsddivision/>.

<sup>145</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, "International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version", 16.

<sup>146</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, "International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version", 16.

<sup>147</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, "International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version", 81.

<sup>148</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version*, 30.

<sup>149</sup> <http://www.unaids.org/en/strategygoalsby2015/punitivelaws/>.

<sup>150</sup> Michel Sidibé, Executive Director of UNAIDS, Opening Address: *Universal Access: Status of the Global Response and the Way Forward*, III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow, Russian Federation, 28 October

2009.  
[http://www.idpc.net/sites/default/files/library/20091028\\_sp\\_eecaac\\_opening\\_en.pdf](http://www.idpc.net/sites/default/files/library/20091028_sp_eecaac_opening_en.pdf).

<sup>151</sup> Harm reduction activists letter to Executive Director of UNAIDS Michel Sidibé from 5 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>152</sup> The letter is signed by: Dasha Ocheret and Shona Schonning, Eurasian Harm Reduction Network; Daniel Wolfe, Jonathan Cohen, and Kasia Malinowska-Sempruch, Open Society Institute; Anya Sarang, Andrey Rylkov Foundation; Olga Belyaeva, Ukrainian OST Patients Association; Peter Sarosi, Hungarian Civil Liberties Union; Gregory Vergus, International Treatment Preparedness Coalition in Eastern Europe and Central Asia; and Richard Elliott, Canadian HIV/AIDS Legal Network.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>153</sup> Michel Sidibé, Executive Director of UNAIDS, *Universal Access: Status of the Global Response and the Way Forward*, Opening Address at the Plenary Session I, III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow, Russian Federation, 28 October 2009.

[http://www.idpc.net/sites/default/files/library/20091028\\_sp\\_eecaac\\_opening\\_en.pdf](http://www.idpc.net/sites/default/files/library/20091028_sp_eecaac_opening_en.pdf).

<sup>154</sup> Dasha Ocheret and Shona Schonning, Eurasian Harm Reduction Network; Daniel Wolfe, Jonathan Cohen, and Kasia Malinowska-Sempruch, Open Society Institute; Anya Sarang, Andrey Rylkov Foundation; Olga Belyaeva, Ukrainian OST Patients Association; Peter Sarosi, Hungarian Civil Liberties Union; Gregory Vergus, International Treatment Preparedness Coalition in Eastern Europe and Central Asia; and Richard Elliott, Canadian HIV/AIDS Legal Network.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>155</sup> Harm reduction activists letter to Executive Director of UNAIDS Michel Sidibé from 5 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>156</sup> Harm reduction activists letter to Executive Director of UNAIDS Michel Sidibé from 5 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>157</sup> Harm reduction activists letter to Executive Director of UNAIDS Michel Sidibé from 5 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>158</sup> Executive Director of UNAIDS Michel Sidibé from 9 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC2>



009%20Reply%20from%20Sidibe.pdf.

<sup>159</sup> Dasha Ocheret and Shona Schonning, Eurasian Harm Reduction Network; Daniel Wolfe, Jonathan Cohen, and Kasia Malinowska-Sempruch, Open Society Institute; Anya Sarang, Andrey Rylkov Foundation; Olga Belyaeva, Ukrainian OST Patients Association; Peter Sarosi, Hungarian Civil Liberties Union; Gregory Vergus, International Treatment Preparedness Coalition in Eastern Europe and Central Asia; and Richard Elliott, Canadian HIV/AIDS Legal Network.

<sup>160</sup> Executive Director of UNAIDS Michel Sidibé from 9 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC2009%20Reply%20from%20Sidibe.pdf>.

<sup>161</sup> Executive Director of UNAIDS Michel Sidibé from 9 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC2009%20Reply%20from%20Sidibe.pdf>.

<sup>162</sup> Executive Director of UNAIDS Michel Sidibé from 9 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC2009%20Reply%20from%20Sidibe.pdf>.

<sup>163</sup> The Body. The Complete HIV/AIDS Resource, 'Decriminalization Works, Criminalization Doesn't': Leadership Panel, July 23, 2010,

<http://www.thebody.com/content/art57750.html>.

<sup>164</sup> UNAIDS 2011-2015 Strategy *Getting to Zero*, <http://www.unaids.org/en/strategygoalsby2015/>.

<sup>165</sup> Michel Sidibé, Executive Director of UNAIDS, *Universal Access: Status of the Global Response and the Way Forward*, Opening Address at the Plenary Session I, III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow, Russian Federation, 28 October 2009.

[http://www.idpc.net/sites/default/files/library/20091028\\_sp\\_eecaac\\_opening\\_en.pdf](http://www.idpc.net/sites/default/files/library/20091028_sp_eecaac_opening_en.pdf).

<sup>166</sup> United Nations Children's Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, p.2-3.

<sup>167</sup> For example the three Drug-related treaties: Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol; Convention on Psychotropic Substances of 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Convention on the Rights of the Child.

<sup>168</sup> Michel Sidibé, Executive Director of UNAIDS, *Universal Access: Status of the Global Response and the Way Forward*, Opening Address at the Plenary Session I, III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow, Russian Federation, 28 October 2009.

[http://www.idpc.net/sites/default/files/library/20091028\\_sp\\_eecaac\\_opening\\_en.pdf](http://www.idpc.net/sites/default/files/library/20091028_sp_eecaac_opening_en.pdf).

<sup>169</sup> As discussed in the previous chapter INCB was often criticized by various anti-prohibitionist NGOs for

its position on "harm reduction". For example in IDPC 'The 2010 Commission on Narcotic Drugs – report of proceedings', April 2010 considers important to mention that during the meeting between the INCB and NGOs "It should be noted, however, that there was a frisson of tension during the meeting with NGOs on the issue of harm reduction, with Professor Atasoy responding to concerns about the Board's consistently reserved attitude to the approach with a complaint that there was no clear definition of it. The INCB remains largely hostile..."<sup>8</sup>.

<http://www.idpc.net/sites/default/files/library/CND%20proceedings%202010%20final.pdf>.

<sup>170</sup> Krzysztof Krajewski, 'How flexible are the United Nations drug conventions?', *International Journal of Drug Policy*, vol.10, No.4, (1999), str.329 – 338, 337.

<sup>171</sup> The signatory of the letter addressed to Michel Sidibé, Executive Director of UNAIDS: Dasha Ocheret and Shona Schonning, Eurasian Harm Reduction Network; Daniel Wolfe, Jonathan Cohen, and Kasia Malinowska-Sempruch, Open Society Institute; Anya Sarang, Andrey Rylkov Foundation; Olga Belyaeva, Ukrainian OST Patients Association; Peter Sarosi, Hungarian Civil Liberties Union; Gregory Vergus, International Treatment Preparedness Coalition in Eastern Europe and Central Asia; and Richard Elliott, Canadian HIV/AIDS Legal Network.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>172</sup> Harm reduction activists letter to Executive Director of UNAIDS Michel Sidibé from 5 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>173</sup> Harm reduction activists letter to Executive Director of UNAIDS Michel Sidibé from 5 November 2009. <http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>174</sup> Decriminalization could be a free pass for all westerners to possess/use drugs whilst the production and trafficking in poor countries is still criminalized – the legalization aspect. This is likely to increase demand and thereby leading more children into production/trafficking. Our assessment – which mirrors Krajewski's fact check in 1999 – is that both of these measures are violating international law, notably the 1988 Drug Convention. However, decriminalization might, from a human rights perspective, be the worse of the two since it is there to make drug taking easier for the consumer, mainly in rich countries, whilst the producer/trafficker, mainly in poor countries, is as punishable as before. If so, why do we then at all have an international solidarity act in form of the drug conventions?

<sup>175</sup> The three Drug-related treaties: Single Convention on Narcotic Drugs of 1961 as amended by the 1972

Protocol; Convention on Psychotropic Substances of 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Convention on the Rights of the Child

<sup>176</sup> The signatory of the letter addressed to Michel Sidibé, Executive Director of UNAIDS: Dasha Ocheret and Shona Schonning, Eurasian Harm Reduction Network; Daniel Wolfe, Jonathan Cohen, and Kasia Malinowska-Sempruch, Open Society Institute; Anya Sarang, Andrey Rylkov Foundation; Olga Belyaeva, Ukrainian OST Patients Association; Peter Sarosi, Hungarian Civil Liberties Union; Gregory Vergus, International Treatment Preparedness Coalition in Eastern Europe and Central Asia; and Richard Elliott, Canadian HIV/AIDS Legal Network.

<http://www.idpc.net/sites/default/files/library/EECAAC%20letter%20to%20Sidibe.pdf>.

<sup>177</sup> Michel Sidibé, Executive Director of UNAIDS, “Universal Access: Status of the Global Response and the Way Forward”, Opening Address at the Plenary Session I, III Eastern Europe and Central Asia AIDS Conference (EECAAC 2009), Moscow, Russian Federation, 28 October 2009.

[http://www.idpc.net/sites/default/files/library/20091028\\_sp\\_eecaac\\_opening\\_en.pdf](http://www.idpc.net/sites/default/files/library/20091028_sp_eecaac_opening_en.pdf).

<sup>178</sup> Executive Director of UNAIDS Michel Sidibé from 9 November 2009.

<http://www.idpc.net/sites/default/files/library/EECAAC2009%20Reply%20from%20Sidibe.pdf>.

<sup>179</sup> *The Body*. The Complete HIV/AIDS Resource, ‘Decriminalization Works, Criminalization Doesn’t’: Leadership Panel, July 23, 2010.

<http://www.thebody.com/content/art57750.html> and <http://unaidstoday.org/?p=497>.

<sup>180</sup> Political Declaration on HIV/AIDS adopted by the General Assembly, 10 June 2011, paragraph 26. [http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610\\_UN\\_A-RES-65-277\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610_UN_A-RES-65-277_en.pdf).

<sup>181</sup> Note by the Executive Director, ‘Drug control, crime prevention and criminal justice: A human rights perspective’, Commission on Narcotic Drugs, Fifty-third session, Vienna, 8–12 March 2010 and Commission on Crime Prevention and Criminal Justice, Nineteenth session, Vienna, 17–21 May April 2010.

## Final Conclusion

<sup>1</sup> Manfred Nowak- UN Special Rapporteur on torture speaker in the panel discussion ‘What have you done for HIV/AIDS Lately? The Role of Human Rights Mechanisms in Advancing the AIDS Response’, Special Session, XVIII International AIDS Conference, July 2010, Vienna.

<http://pag.aids2010.org/session.aspx?s=618>.

Transcript provided by Kaiser Family Foundation July 20, 2010, 15-16.

<http://globalhealth.kff.org/~media/Files/AIDS%202010/Support%20Files/What%20Have%20you%20Done%20for%20AIDS%20Lately.pdf>.

<sup>2</sup> Eric Stein; Louis Henkin; Abiodun Williams; Manuel Medina Ortega; and Gabriel M. Wilner, ‘No. 2 - The Dean Rusk Lectures at the Dean Rusk Center’, 2003. *Occasional Papers Series*. Paper 1, 17.

[http://digitalcommons.law.uga.edu/rusk\\_oc/1](http://digitalcommons.law.uga.edu/rusk_oc/1).

<sup>3</sup> Erik van Ree, ‘Drugs as a human right’, *International Journal of Drug Policy* Vol. 10, Issue 2, April 1999, 89-98. <http://www.journals.elsevierhealth.com/periodicals/drugol/article/S0955-3959%2899%2900008-0/abstract#article-footnote-1>.

<sup>4</sup> Erik van Ree, ‘Drugs as a human right’, *International Journal of Drug Policy* Vol. 10, Issue 2, April 1999, 89-98. <http://www.journals.elsevierhealth.com/periodicals/drugol/article/S0955-3959%2899%2900008-0/abstract#article-footnote-1>.

<sup>5</sup> International Federation of Red Cross and Red Crescent Societies (IFRC), *Out of harm’s way. Injecting drug users and harm reduction*. Advocacy Report prepared by Getachew Gizaw, Paul Conneally, Patrick Couteau, Shannon Frame, Sadia Kaenzig, Patricia Leidl and Marie-Françoise Bore, December 2010, 3. <http://www.ifrc.org/Global/Publications/Health/Harm-reduction-report-EN.pdf>.

<sup>6</sup> For more details see: 2011 Summer Course.

<http://www.soros.org/initiatives/drugpolicy/news/ceu-summer-course-20100120>; and 2012

<http://www.summer.ceu.hu/drugpolicy-2012>.

<sup>7</sup> Professor Manfred Nowak had a mandate as Special Rapporteur from 2004 to October 2010.

<sup>8</sup> Discussing people in prison settings, HIV, drug injecting, sex and the delivery of “harm reductions” programmes such as “clean needle and syringe exchange programs, condoms, all kinds of course, also methadone, et cetera” and the reticence of many authorities or prison directors to deliver these, Professor Nowak concludes that “from a moralistic point of view, you can say you should not invite them to actually inject drugs and to have sex, but this is the reality, so let us forget about laws, be pragmatic, if you want to prevent the spread of HIV, and of course other blood-borne diseases, it is not only HIV, it is hepatitis C, it is other diseases as well.” Special Session, ‘What have you done for HIV/AIDS Lately? The Role of Human Rights

*Mechanisms in Advancing the AIDS Response*, panel discussion, XVIII International AIDS Conference, July 2010, Vienna.

<http://pag.aids2010.org/session.aspx?s=618>.

Transcript provided by Kaiser Family Foundation July 20, 2010, 15-16.

<http://globalhealth.kff.org/~media/Files/AIDS%202010/Support%20Files/What%20Have%20you%20Done%20for%20AIDS%20Lately.pdf>.

<sup>9</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc No A/65/255.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/477/91/PDF/N1047791.pdf?OpenElement>.

<sup>10</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Overview of the mandate*.

<http://www2.ohchr.org/english/issues/health/right/overview.htm>.

<sup>11</sup> The recording can be found at:

[http://www.soros.org/initiatives/health/focus/ihrd/events/grover-20101026\(Time:49:22-52:09\)](http://www.soros.org/initiatives/health/focus/ihrd/events/grover-20101026(Time:49:22-52:09)).

<sup>12</sup> Anand Grover further explains “*There is space within HIV. HIV, according to me, is space, so therefore you can talk about harm reduction, and we use it very effectively. HIV was the biggest space for so many issues. Nobody wanted to talk about harm reduction; they don’t want to talk about men having sex with men and drug users, nothing.*”

The recording can be found at:

[http://www.soros.org/initiatives/health/focus/ihrd/events/grover-20101026\(Time:49:22-52:09\)](http://www.soros.org/initiatives/health/focus/ihrd/events/grover-20101026(Time:49:22-52:09)). For more details see the op-ed titled ‘The UN Health Rapporteur’s Shocking New Clothes’, published by World Federation Against Drugs (WFAD) on 03 March 2011. <http://www.wfad.se/latest-news/1-articles/561-the-un-health-rapporteurs-shocking-new-clothes>.

<sup>13</sup> WHO, UNICEF, UNAIDS, *Towards universal access: Scaling up priority HIV/AIDS interventions in the health sector*, 28 September 2010, 106.

<sup>14</sup> Transform Drug Policy Foundation (TDPF), ‘Fear drives the global war on drugs’: AIDS leader calls for legal regulation’, April 29, 2009.

<http://transform-drugs.blogspot.com/2009/04/fear-drives-global-war-on-drugs-aids.html>.

<sup>15</sup> Transform Drug Policy Foundation (TDPF), ‘Fear drives the global war on drugs’: AIDS leader calls for legal regulation’, April 29, 2009.

<http://transform-drugs.blogspot.com/2009/04/fear-drives-global-war-on-drugs-aids.html>.

<sup>16</sup> Release, *Nice People Take Drugs*.

<http://www.release.org.uk/nice-people-take-drugs> and <http://www.release.org.uk/nice-people-take-drugs/289-drugsplayingcards>.

<sup>17</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

<sup>18</sup> As clarified by the *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* this provision covers a large spectrum of activities which glorify drug use and promote a drug culture, in a public manner.

<sup>19</sup> United Nations Children’s Fund *Child Protection Strategy*, E/ICEF/2008/5/Rev.1, Annual session 2008, 2-3.

<sup>20</sup> Transform Drug Policy Foundation (TDPF), ‘*Fear drives the global war on drugs*’: AIDS leader calls for legal regulation, April 29, 2009.

<sup>21</sup> Committee on the Rights of the Child, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, adopted by the Committee at its fifty-fifth session (13 September-1 October 2010), (CRC/C/58/Rev.2) and Annex to the General Guidelines Regarding the Form and Contents of Periodic Reports to Be Submitted By States Parties under Article 44, Paragraph 1 (B), of the Convention, 1 October 2010.

<sup>22</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Ukraine. CRC/C/UKR/CO/3-4, Fifty-sixth session, 17 January – 4 February 2011, paragraph 61, 14-15.

<sup>23</sup> UNODC, ‘World Drug Report 2011’, 9. [http://www.unodc.org/documents/data-and-analysis/WDR2011/World\\_Drug\\_Report\\_2011\\_ebook.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf).

<sup>24</sup> United Nations Population Fund (UNFPA), ‘State of world population 2011. People and possibilities in a world of 7 billion’.

<http://foweb.unfpa.org/SWP2011/reports/EN-SWOP2011-FINAL.pdf>.

<sup>25</sup> A large segment of population have no intention to illicitly use narcotic drugs or psychotropic substances or get involved in their production and trafficking.



**THIS BOOK IS A MAJOR LANDMARK** in human rights and international drug policy. Authors Roxana Stere and Stephan Dahlgren examine the universal human rights objective of protecting children from drug use, production, and trafficking as stipulated by the UN Convention on the Rights of the Child (CRC), the only core human rights treaty that specifically deals with the issue of illicit drugs. Following a detailed legal analysis the authors conclude that in order to conform to the minimum standard set out in CRC Article 33, States Parties must adopt national drug policies directly promoting “a drug-free society”, in order to create the protective environment for children that CRC prescribes. Drug policies have to be child-centered and focused on achieving this goal.

*Robert L. DuPont*

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