

ORIGINAL ARTICLE

Article 33 of the Convention on the Rights of the Child: The Journey from Drafting History to the Concluding Observations of the Committee on the Rights of the Child

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ABSTRACT

Article 33 of the United Nations Convention on the Rights of the Child (CRC) is an important international legal instrument that obligates States Parties to protect children and youth from involvement with illicit drugs and the drug trade. This article provides an analysis of the drafting history of article 33 to the evolving interpretations of its terms in the Concluding Observations of the Committee on the Rights of the Child. It reveals a clear connection to the right to health as well as a dynamic interpretation of the article by the Committee. To improve the Committee's Concluding Observations moving forward, a General Comment on the article is recommended.

Introduction

Children may become involved with drugs and the drug trade for many reasons and in many different ways. For instance, they may be involved in production, trafficking or sale. They may be using drugs or may have parents with drug dependence problems. In this context, article 33 of the United Nations Convention on the Rights of the Child (CRC) is an important international legal instrument that obligates States Parties to protect children and youth from involvement with illicit drugs and the drug trade.

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Article 33 requires 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.¹

It has been more than twenty years since the adoption of the CRC. The following discussion, therefore, provides an analysis of the evolving interpretations of article 33 as understood by the Committee on the Rights of the Child. Under article 43(1) of the CRC, the Committee holds responsibility for ‘examining the progress made by States Parties in achieving the realization of the obligations undertaken in the...Convention’. Therefore, the Committee has a capacity to declare whether a State Party to the CRC has fulfilled its obligations.²

The discussion starts with the drafting of article 33 and proceeds to the recommendations of the Committee on the Rights of the Child, focusing on its Concluding Observations on States Parties’ periodic reports. This process should help in understanding article 33, which represents a current gap in the literature on the Convention.

The drafting history of article 33

The initial Polish draft for a Convention on the Rights of the Child, submitted in 1978, did not include an article on drug use or the drug trade.³ The issue did not appear until a later proposal came from China in 1982 for the addition of the phrase ‘(d) preventing and prohibiting the child from using drugs’ to article 12 of the revised Polish draft.⁴ Article 12 was concerned with infant mortality rate, medical assistance and health care of children, and some health rights of expectant and working mothers.

In 1984 the International Federation of Women in Legal Careers also proposed the inclusion of a new article concerned with ‘sources of serious damage to children’s health other than

¹ Convention on the Rights of the Child (20 November 1989) UNTS 1577, p.3, art. 33.

² The Committee on the Rights of the Child was established to monitor the implementation of the Convention and, later, the two Optional Protocols to the Convention: one on the involvement of children in armed conflict, and one on the sale of children, child prostitution and child pornography. A third has now been adopted on a communications procedure. It is among a group of treaty bodies established by human rights treaties within the United Nations system. For further reading see D. J. Harris, *Cases and Materials on International Law* (7th edition), Sweet and Maxwell, London, 2010, pp. 546–562.

³ Office of the High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child: Part II*, United Nations, 2007, p. 709.

⁴ ‘1982 report of the Working Group to the Commission on Human Rights’, UN Doc. No. E/CN.4/1983/30/Add.1, para. 118. Cited in *ibid*, p. 709.

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disease and malnutrition.⁵ These sources included, among others, drugs. The proposal read:

The States Parties to the present Convention undertake: ...

*3. To take all necessary scientific, technical, educational, and remedial measures for the national and international combating of drug abuse and, in particular, the use by children of drugs of whatever kind.*⁶

Noticeably, none of the proposals submitted to the Working Group up to 1984 dealt with the problem of drug use in isolation. The issue entered into the CRC deliberations very much as a component of health concerns.

In 1985, however, China submitted a proposal for a new article that read: ‘The States Parties to the present Convention shall take measures to prevent and prohibit children from taking drugs.’⁷ This paved the way for a specific article on drugs.

The main breakthrough came in 1986, only three years before the adoption of the CRC by the United Nations General Assembly. The Working Group had before it a proposal for a separate article 18 *bis* on ‘drug abuse’, which was also submitted by China. The proposal read:

1. The States Parties to the Present Convention shall take all appropriate legislative, administrative, social and educational measures to prevent and prohibit a child from taking narcotic drugs as defined in the relevant international conventions. The competent national authorities should investigate cases of drug abuse by a child and timely medical treatment should be provided for the child so that he or she may be assured prompt rehabilitation and healthy growth.

*2. The States Parties to the present Convention shall take legislative and administrative measures to prevent and prohibit trafficking in narcotic drugs by a child. The States Parties should, in accordance with their national legislation, apply sanctions, including appropriate criminal punishment, to anyone who uses or incites a child to become involved in various forms of drug trafficking.*⁸

5 International Federation of Women in Legal Careers, UN Doc. No. E/CN.4/1984/WG.1/WP.4. Cited in Office of the High Commissioner for Human Rights (n 3) p. 709.

6 *ibid.*, p. 710.

7 ‘1985 report of the Working Group to the Commission on Human Rights’ UN Doc No E/CN.4/1985/64, annex II. Cited in Office of the High Commissioner for Human Rights (n 3) p. 710.

8 ‘1986 report of the Working Group to the Commission on Human Rights’, UN Doc. No. E/CN.4/1986/39, para. 77. Cited in Office of the High Commissioner for Human Rights (n 3) pp. 710—711.

The NGO Ad Hoc Group, set up to contribute to the negotiations, also submitted a proposal, but it was the Chinese version that was brought into consideration.⁹ It is worth mentioning at this stage that the Chinese proposal included a statement not on the *protection* of the child from illicit use of narcotic drugs, as found now in article 33, but on the *prevention* and *prohibition* of the child from taking narcotic drugs.

The Working Group's discussions on the Chinese proposal included, for instance, a requirement from the observer for the Netherlands that some clarifications be made to the term 'narcotic drugs' and whether it included all kinds of drugs.¹⁰ He also suggested that 'in the first sentence for paragraph 1, the phrase "to prevent and prohibit a child from *taking* narcotic drugs" should read: "to protect children from the *abuse* of narcotic and psychotropic substances"' (emphasis added).¹¹ Arguably, this implies that the observer for the Netherlands was of the view that taking illicit drugs was less of a concern than the 'abuse' of those drugs. Today, we might refer to this as the distinction between 'recreational' or 'experimental' and 'problematic' use.

The representative of the German Democratic Republic suggested the addition of the term 'dangerous' after the term 'abuse of', essentially proposing that the article should read 'to protect children from the *abuse of dangerous* narcotic and psychotropic substances' (emphasis added). An inevitable question in this regard would be whether the German representative was suggesting that States be more lenient to the use of non-dangerous narcotic and psychotropic substances, and that the child did not need to be prevented or prohibited from taking them (although which substances might be considered dangerous, and which might not, was not elaborated upon). In this context, the representative of the United States proposed that the article should include reference to alcohol, a suggestion which was not taken up.¹²

During the drafting of the CRC, and for the sake of obtaining a compromise text, sub-Working Groups were established.¹³ In the case of article 33, the small drafting party was constituted by the delegations of China, Canada, the German Democratic Republic, the

9 UN Doc. No. E/CN.4/1986/WG.1/WP.1, p. 31. Cited in Office of the High Commissioner for Human Rights (n 3) p. 710. The NGO Ad Hoc Group was an informal group of NGOs that came together during the drafting of the CRC to unify their efforts for the drafting and adoption of the CRC.

10 '1986 report of the Working Group to the Commission on Human Rights', UN Doc. No. E/CN.4/1986/39, para. 78. Cited in Office of the High Commissioner for Human Rights (n 3) p. 711.

11 *ibid.*

12 *ibid.*, para 81; see also G. Van Bueren, *The International Law on the Rights of the Child*, The Hague, Martinus Nijhoff, 1998, p. 313.

13 As Cohen puts it in her writing about the drafting process of the CRC, 'As the Convention was being drafted and there appeared to be serious disagreements over the text of an article, it was the practice of the Chairman of the Working Group to assign the problem text to a small drafting party... Usually they were successful in hammering out a compromise text and it would be quickly adopted by the Working Group. This was not true during the "second reading," which gave rise to many disputes'. C. Cohen, 'Drafting of the United Nations Convention on the Rights of the Child: Challenges and Achievements', in E. Verhellen (ed.), *Understanding Children's Rights*, Ghent Papers on Children's Rights, University of Ghent, 1996, pp. 343–344.

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Netherlands and the United Kingdom. The group came up with the following consolidated text,

States Parties to the Present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances.¹⁴ (Emphasis added.)

This version is close to the wording of the current article 33 and, unlike the original Chinese proposal, which focused solely on preventing and prohibiting children from taking narcotic drugs, the new text clearly adopted a protective approach towards children. This was a step towards a broader approach to dealing with the matter.

During the technical review in 1988 and the second reading of the Convention, the revision of article 18 *bis* required the replacement of some words and the deletion of others. For example, the term ‘illegal’ was replaced with ‘illicit’ to reflect the wording of the UN drugs conventions. This led to the adoption of the present article 33.

The proposal and the adoption of article 33 came at a very late stage in the drafting of the CRC, which took ten years to complete. Given that the Convention was adopted in 1989, and the main proposal from China arrived only in 1986, it is likely that the drafters did not spend much time on article 33 as compared with some other provisions.

We may conclude this section with some observations. First, it should be noted that the drafting history of article 33 reveals a close relationship with the right of the child to health. This is represented by the nature of the proposals submitted to the Working Group before the adoption of the final text. The 1986 Chinese proposal also included the suggestion that ‘timely medical treatment should be provided for the child so that he or she may be assured prompt rehabilitation and healthy growth.’¹⁵

Second, as regards the nature of the ‘illicit drugs and psychotropic substances’, the comments made by the observer of the Netherlands and the representative of the United States, as noted above, were significant. The drafting history also reveals that no precise definition was given for ‘illicit drugs and psychotropic substances’, and that reference was

¹⁴ ‘1986 report of the Working Group to the Commission on Human Rights’, UN Doc. No. E/CN.4/1986/39, para. 82. Cited in Office of the High Commissioner for Human Rights (n 3) p. 711.

¹⁵ *ibid*, para 77.

made only to the ‘relevant international treaties’.

Third, it is possible to argue that the discussions and suggestions during the drafting of the article opened the door for broader, more holistic interpretations of the concept of ‘protection’. As noted above, the Netherlands argued for the replacement of both the words ‘prevent’ and ‘prohibit’ with the word ‘protect’. A logical question in this context would be, ‘How did the Committee interpret the concept of protection under article 33?’ The following discussion will focus on the interpretations of the Committee on the Rights of the Child and examines whether the Committee has departed from the understandings that were dominant during the drafting of article 33.

The Committee on the Rights of the Child and article 33

Article 43(1) of the CRC establishes the Committee on the Rights of the Child to supervise and monitor its implementation.¹⁶ The Committee also plays a role in the development of normative guidance and interpretation of the CRC. Its interpretations and recommendations can be found in two types of documents.¹⁷ The first are the documents that the Committee specifically issues for explanation and interpretation, such as ‘General Comments’ or the ‘Report and Recommendations’ that are based on the days of general discussion. Second are the ‘Concluding Observations’ made in response to State Parties’ periodic reports.¹⁸

The Committee has not issued a specific General Comment nor held a general day of discussion on article 33. It has referred to the issue of children and drugs in other General Comments, for example those on adolescent health¹⁹ and on HIV/AIDS,²⁰ again rooting the issue of drugs in a health context. Discussion of those General Comments is available elsewhere.²¹ The present discussion focuses on the Concluding Observations of the Committee, in order to provide analysis of the Committee’s views over time in response to State reports.

¹⁶ The first members of the Committee were elected in 1991. They are elected ‘for a term of four years by States Parties in accordance with article 43 of the Convention on the Rights of the Child. Members serve in their personal capacity and may be re-elected if nominated.’

¹⁷ The UN General Assembly adopted on 19 December 2011 the Optional Protocol to the Convention on the Rights of the Child on a complaints mechanism for violations of children’s rights. The optional protocol opened for signature on 28 February 2012. The coming into force of the protocol should provide more sources for finding the Committee’s interpretations.

¹⁸ D. Weissbrodt, J. C. Hansen and N. H. Nesbitt, ‘The Role of the Committee on the Rights of the Child in Interpreting and Developing International Humanitarian Law’, *Harvard Human Rights Journal*, 2011, vol. 24, p. 147.

¹⁹ Committee on the Rights of the Child, ‘General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child’ (1 July 2003) UN Doc. No. CRC/GC/2003/4.

²⁰ Committee on the Rights of the Child, ‘General Comment No. 3: HIV/AIDS and the rights of the child’ (17 March 2003) UN Doc. No. CRC/GC/2003/3.

²¹ See Damon Barrett and Philip E. Veerman, *A Commentary on the UN Convention on the Rights of the Child - Article 33: Protection from Narcotic Drugs and Psychotropic Substances*, Martinus Nijhoff, 2012.

Special protection rights and article 33

Under article 44 of the Convention, States Parties accept the duty to submit regular reports to the Committee on the steps they have taken to put the Convention into effect, and on the progress in the enjoyment of children's rights in their jurisdictions. The first initial reports were due in September 1992. Prior to this, the Committee adopted guidelines to help States Parties in writing and structuring their reports.²² Governments are recommended to prepare their reports according to these guidelines. The first guidelines recommended that the report should indicate 'factors and difficulties' encountered by the State in the implementation of the Convention, in other words, that the report should be problem-oriented and self-critical.²³

In 2005, when the Committee issued its guidelines on the form and content of periodic reports, article 33 was classified under the heading 'special protection measures', alongside other issues including child labour and economic exploitation.²⁴ The Committee requested that States Parties 'provide relevant information on measures taken to protect...Children in situations of...Drug abuse (art. 33)'.²⁵ However, in its new 2010 guidelines, the Committee puts only the aspects of article 33 dealing with the prevention of the use of children in the illicit production and trafficking of substances under this sub-heading.²⁶ Under this 'cluster' of rights – which includes articles 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40 – the Committee requests States Parties

to provide relevant information on measures taken to protect:

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration:

(ii) Use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances (art. 33)²⁷

22 The Committee adopted the first 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 on 15 October 1991. In 1996 the Committee adopted 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. These were updated in 2005 and again in 2010.

23 The Committee has been very strict in requiring the States Parties to follow the guidelines. For instance, after the submission of its initial report, the Committee asked the Republic of Tanzania to resubmit a comprehensive revised initial report following the guidelines for the submission of State Party reports. The revised initial report was resubmitted five years after the original report. Committee on the Rights of the Child, 'Concluding Observations: United Republic of Tanzania' (9 July 2001) UN Doc. No. CRC/C/15/Add.156.

24 Committee on the Rights of the Child, 'General guidelines regarding the form and content of periodic reports' (29 November 2005) UN Doc. No. CRC/C/58/Rev.1, p. 8.

25 *ibid.*, para. 38 (C) (ii).

26 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' (23 November 2010) UN Doc. No. UN/CRC/58/Rev.2, para. 39(c).

27 *ibid.*

Under this sub-heading, half of article 33 has been grouped with the rights of refugee children, the rights of indigenous children, the protection of children from economic and sexual exploitation, and the prevention of the abduction of, the sale of or traffic in children. It is clear, therefore, that the Committee views the use of children in illicit production and trafficking of narcotic drugs and psychotropic substances as a form of exploitation.

The Committee explains that the clustering approach is taken with ‘a view to assisting States parties in the preparation of their reports.’²⁸ Importantly, the Committee also adds that the clustering approach ‘reflects the holistic perspective on children’s rights taken by the Convention: i.e. that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.’²⁹

For example, the Committee links the rights of children deprived of their liberty with their rights under article 33. Article 37(c) on the deprivation of children of their liberty makes explicit reference to the child’s dignity and reads, ‘Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.’³⁰ In its Concluding Observations on Cambodia in 2011, the Committee speaks about the inhumane treatment of children in drug rehabilitation centres, where the human dignity of the child has been infringed.

38. The Committee expresses deep concern about allegations that children and adolescent addicted to drugs, children with mental disabilities and children in street situations have been subjected to torture and ill-treatment, including widespread beatings, whippings and administration of electric shock in drug rehabilitation and youth centres where some of them had been forcibly placed.

39. The Committee urges the State party to:

a) Ensure that children in any form of arbitrary detention, whether in drug treatment and rehabilitation, social rehabilitation or any other type of Government-run centre are released without delay

b) Ensure prompt investigation into allegations of ill treatment and torture of children in those centers and that perpetrators are brought to justice.’³¹

²⁸ Committee on the Rights of the Child, (n 24) para. 3.

²⁹ *ibid.*

³⁰ Convention on the Rights of the Child (n 1) art. 37(c).

³¹ Committee on the Rights of the Child, ‘Concluding Observations: Cambodia’ (20 June 2011) UN Doc. No. CRC/C/KHM/CO/2, para. 39.

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The 'special protection measures' in this context means that any form of arbitrary detention – whether in drug treatment and rehabilitation, social rehabilitation or other types of government-run centre – should not be allowed. Furthermore, the 'special protection measures' also mean that children who are already in arbitrary detention should be 'released without delay'.³² The 'special protection measures' also refuse any infringement to the child's dignity. Barrett and Veerman point out that this is the Committee on the Rights of the Child's 'strongest statement yet on the abuse of children in the name of drug treatment'.³³ Another example for linking the articles under the 'special protection measures' can be found in the link between article 33 and the article on the prevention of trafficking in children, as in the Committee's Concluding Observations on Aruba when it noted its concern 'that children are vulnerable to trafficking for the purposes of drug trafficking or sexual exploitation, including through tourism'.³⁴

According to the Committee, the concept of 'special protection' is broad. It includes for example, that States Parties are expected to provide information 'including physical and psychological recovery and social reintegration'.³⁵ Provision of specific information requires the State Party to focus on the child's environment and his or her family, which plays an important role in the child's life. In its Concluding Observations to the initial report of Nicaragua for instance, the Committee pointed out the importance of strengthening and supporting 'the vital role of the family and community in order to help eliminate the social conditions leading to such problems as delinquency, crime and drug addiction and to assist the families and communities facing such problems'.³⁶

Article 33 as a basic health and welfare right: the obligation to provide

In the 2010 guidelines for periodic reporting, the first part of article 33 dealing with protection from illicit drug use appears under the heading 'Disability, basic health and welfare (alongside articles 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) and 33)', as opposed to special protection measures.³⁷ As such, it has been grouped with the right to life, survival and development; to an adequate standard of living; to benefit from social security and, of course, the right to health and health services (article 24). The guidelines require that

³² *ibid.*

³³ Barrett and Veerman (n 21), para. 27.

³⁴ Committee on the Rights of the Child 'Concluding Observations: Netherlands and Aruba' (26 February 2004) UN Doc. No. CRC/C/15/Add.227, para. 56.

³⁵ Committee on the Rights of the Child (n 26) para. 39(c).

³⁶ Committee on the Rights of the Child, 'Concluding Observations: Nicaragua' (20 June 1995) UN Doc. No. CRC/C/15/Add.36, para. 39.

³⁷ Committee on the Rights of the Child (n 26) p. 7.

34. States parties should provide relevant and updated information in respect of:

(f) Measures to protect children from substance abuse (art. 33).³⁸

With the partial exclusion of article 6 (the right to life, survival and development), provision is an important feature of this group of articles. This means that the Committee interprets the obligation of the State Party to protect children from the illicit use of narcotic drugs and psychotropic substances as an obligation to *provide* related health and social services. From these observations, one can conclude that the Committee regards provision as a major factor in the protection of children from the illicit use of narcotic drugs.

The Committee has advised States Parties to provide ‘specialized and youth-friendly drug-dependence treatment and harm-reduction services for children and young people’.³⁹ The Committee has also supported educational measures to protect children, noting that ‘it is further recommended that programmes be introduced within the school environment to educate children about the harmful effects of narcotic drugs and psychotropic substances’.⁴⁰ The Committee also speaks about ‘Providing children with accurate and objective information about the harmful consequences of substance abuse’,⁴¹ and ‘Considering children and adolescents affected by the use of drugs and harmful substances, as victims, including by providing them with easily accessible drug abuse treatment and social reintegration’.⁴²

The Committee is clear that such services should be free of charge to make them accessible.

*While noting...the increased number of treatment and social reintegration services for children, the Committee...is concerned about the fact that children, who voluntarily seek treatment in drug recovery and reintegration centres, are often asked to pay for treatment causing insurmountable obstacles to children of limited means and denying their access to treatment and reintegration.*⁴³

Such services should also be acceptable, with the Committee emphasising ‘community-based drug treatment’ as opposed to closed institutional settings.⁴⁴

38 *ibid*, paras. 33 and 34(f).

39 Committee on the Rights of the Child, ‘Concluding Observations: Ukraine’ (21 April 2011) UN Doc. No. CRC/C/UKR/CO/3-4, para. 61(a).

40 Committee on the Rights of the Child, ‘Concluding Observations: Mali’ (2 November 1999) UN Doc. No. CRC/C/15/Add.113, para. 34.

41 Committee on the Rights of the Child, ‘Concluding Observations: Mexico’ (2 June 2006) UN Doc. No. CRC/C/MEX/CO/3, para. 67(b).

42 *ibid*, para. 67(c).

43 Committee on the Rights of the Child, ‘Concluding Observations: Philippines’ (21 September 2005) UN Doc. No. CRC/C/15/Add.259, para. 81.; see also R. Hodgkin and P. Newell, *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 509.

44 ‘Concluding Observations: Cambodia’ (n 34) para. 56(b); see also Committee on the Rights of the Child, ‘Concluding Observations: Nepal’ (21 September 2005) UN Doc. No. CRC/C/15/Add.261, para. 63.; ‘Concluding Observations: Mexico’ (n 41) para. 67(d).

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While these examples speak about the provision of a particular form of service, effective protection also requires systematic actions (policy responses). ‘The Committee has urged many countries to take systematic action to protect children from drugs, including developing action plans in cooperation with the United Nations Office of Drugs and Crime (UNODC)...and other international organizations.’⁴⁵ In this context the protection of children from the effects of parental drug use have also been stressed by the Committee.⁴⁶

The obligation to protect

Protection includes various elements which can be discerned from the Concluding Observations of the Committee.

Efforts to prevent children from using drugs should start at an early age. As noted by Hodgkin and Newell, ‘The early identification of drug abuse and early intervention is essential to prevent youth to progress from occasional to dependent or more harmful forms of drug abuse.’⁴⁷ The obligation to prevent initiation of drug use has been recognised in multiple Concluding Observations.⁴⁸

Indeed, the Committee’s recommendations reveal that prevention as a step towards protection is a concept that it has used not only in relation to article 33, but also separately with regard to other articles, such as article 19 (concerned with the freedom of children from all forms of violence): Emphasis on general (primary) and targeted (secondary) prevention must remain paramount at all times in the development and implementation of child protection systems. Preventive measures offer the greatest return in the long term.⁴⁹

The Committee has been less clear on effective forms of prevention, but is consistent that States should protect children at school. This is based on the understanding that sometimes schools represent a place where the early initiation into drug use starts,⁵⁰ on the prominence of school-based drugs education and prevention programmes and on the preventive role of school retention (in terms of initiation into drug use and other issues such as early pregnancies).

45 Hodgkin and Newell (n 43) p. 506.

46 See Committee on the Rights of the Child, ‘General Comment No. 7, Implementing child rights in early childhood’ (20 September 2006) UN Doc. No. CRC/C/GC/7/Rev.1, para. 36(f); ‘Concluding Observations: Norway’ (21 September 2005) UN Doc. No. CRC/C/15/Add.263, para. 43.

47 Hodgkin and Newell (n 43) p. 505.

48 For example, Committee on the Rights of the Child, ‘Concluding Observations: Papua New Guinea’ (26 February 2004) UN Doc. No. CRC/C/15/ADD.229, para. 62.; ‘Concluding Observations: Nigeria’ (13 April 2005) UN Doc. No. CRC/C/15/Add.257, para. 68.

49 Committee on the Rights of the Child, ‘General Comment No. 13, The right of the child to freedom from all forms of violence’ (18 April 2011) UN Doc. No. CRC/C/GC/13, para. 46.

50 Committee on the Rights of the Child, ‘Concluding Observations: Brazil’ (3 November 2004) UN Doc. No. CRC/C/15/Add.241, para. 66.

In addition, the Committee suggests that State Parties could improve their efforts on the protection of children from using drugs via awareness-raising. States Parties should provide children with accurate and objective information about the harmful consequences of substance abuse.⁵¹ In this context, the Committee could also encourage States Parties to assess the effectiveness of the population-wide awareness campaigns and whether such awareness-raising campaigns should be targeted.

Discussion on the actual substances covered by article 33 will be dealt with later. For now it is sufficient to note that prevention of alcohol and tobacco use has been a consistent feature of the Committee's recommendations. The Committee has pointed out that it 'is deeply concerned at the very high proportion of and early initiation age of tobacco and alcohol use among children, related in part to the ineffectiveness and weak enforcement of existing legislation prohibiting the sale of cigarettes and alcohol to children'.⁵²

The Committee also takes into account cultural factors and prevailing views in society and the need for community-based awareness-raising. For instance, in its Concluding Observation to the second periodic report of Spain, the Committee noted 'with concern the number of children and adolescents addicted to drugs, in particular synthetic drugs, alcohol and smoking, and the fact that consumption of alcohol and tobacco is socially accepted and not perceived as a risk'.⁵³ Accordingly, the Committee recommended that the State Party 'Enforce existing programmes, such as the National Drug Plan for 2002-2008 and those at Autonomous Community level, with a focus on preventive action and awareness raising on the danger of synthetic drugs, alcohol and tobacco'.⁵⁴

The Committee makes it clear that the State Party should ensure that the preventive law is effective. In its Concluding Observations to Nepal, for example, the Committee stated, 'While noting that the Alcohol Act prohibits the selling of alcohol to children aged 16 years or below, the Committee expresses concern that the Act carries no penalty in case of violation, and that legislation prohibiting the use of alcohol by minors is generally ineffectively implemented'.⁵⁵ It also expressed concern at the absence of specific legislation prohibiting the 'sale, use and trafficking of controlled substances by children',⁵⁶ urging the State Party 'to ensure effective implementation of all legislation prohibiting alcohol and

51 'Concluding Observations: Ukraine' (n 39) para. 67(b); See also 'Concluding Observations: Lao People's Democratic Republic' (8 April 2011) UN Doc. No. CRC/C/LAO/CO/2, para. 59.

52 'Concluding Observations: Ukraine' (n 39) para. 60.

53 Committee on the Rights of the Child, 'Concluding Observations: Spain' (13 June 2002) UN Doc. No. CRC/C/15/Add.185, para. 38.

54 *ibid.*, para. 39(a).

55 'Concluding Observations: Nepal' (n 44) para. 83.

56 *ibid.*, para 84.

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substance use by children.⁵⁷ The question in this context should be how would such laws be evaluated for their effectiveness?

The Committee has asked States Parties to make sure that their criminal laws do not impede access to specialised and youth-friendly drug-dependence treatment and harm-reduction services, including that States amend their laws that criminalise children for possession of drugs.⁵⁸ According to the Committee, mere possession of drugs should not lead to the criminalisation of children.⁵⁹ For the Committee, the decriminalisation of children, who are 'drug abusers' is a step towards their protection.⁶⁰

Protection of children from substance use requires the adoption of preventive measures at the home level as well. Parties involved with children's rights should be 'concerned about the harmful effects of alcohol and substance consumption by parents on the physical, emotional and psychological development and well-being of children in the State Party'.⁶¹ In this regard, the Committee points out that the awareness-raising step could be directed at the parents and carers as well as the children. The State Party is expected to ensure 'that parents are educated, through, inter alia, awareness-raising campaigns, on the harmful effects of parents' use of alcohol and controlled substances on the development and well-being of children'.⁶² Barrett and Veerman point out that

[I]nformation on drugs should be 'accurate and objective'...This is not just about prevention, but also young people currently using drugs, or currently in possession of them. The right information about a certain drug or psychotropic substance can prevent a lot of harm. The CRC Committee recently recommended that Finland work with mass media to 'ensure their contribution to healthy lifestyles and consumption patterns by children and adolescents'.(footnotes omitted)⁶³

While the Committee has had fewer occasions to address the drug trade, it is clear that protection also requires the strengthening of existing measures to prevent drugs and other substances from being produced in the State Party and from entering it.⁶⁴

57 *ibid.*

58 'Concluding Observations: Ukraine' (n 39) para. 61(a) and (b).

59 *ibid.*, para. 61(b).

60 See Committee on the Rights of the Child, 'Concluding Observations: Armenia' (26 February 2004) UN Doc. No. CRC/C/15/Add.225, paras. 62–63.

61 'Concluding Observations: Nepal' (n 44) para. 83.

62 *ibid.*, para. 84.

63 Barrett and Veerman (n 21) para. 47.

64 'Concluding Observations: Mexico' (n 41) para. 67(a).

The holistic approach

The Committee on the Rights of the Child has identified the 'holistic approach' as being essential in the implementation of the entire Convention. As noted in its Concluding Observations on Cuba in 1997,

The Committee encourages the State party to pursue the efforts required to ensure a holistic approach to the implementation of the Convention, which reaffirms that the rights of the child are indivisible, interdependent and interrelated and that the rights of the child should be addressed in an integrated manner.⁶⁵

The holistic approach requires that the articles of the Convention are not to be treated individually. This applies equally to article 33. For instance, the holistic approach obligates the State Parties to the CRC to use the support of the media in providing information for children on the dangers of drugs. As pointed out by Van Bueren,

Article 17 provides that States Parties should ensure that children have access to information and material from the mass media aimed at the promotion of the child's physical and mental health. This is a sufficiently broad provision to incorporate the use of the media for providing information for children on the dangers inherent in substance abuse.⁶⁶

This approach applies to article 33 in its capacity as both a basic health and welfare right and as a special protection right (i.e. both drug use and the drug trade). Indeed, the Committee on the Rights of the Child uses the concept of the holistic approach to protect several categories of children from drug-related harm. For example, street children who are involved with drugs may be addressed under a number of articles of the CRC, such as article 27 and article 33. It is worth noting that a holistic approach towards the problem of street children has also been supported by the Human Rights Council, which urged States

[T]o ensure a holistic child rights ... response to the phenomenon of children working and/or living on the street, within the context of comprehensive domestic child protection strategies, with realistic and time-bound targets and sufficient financial and human resources for their implementation, including arrangements

⁶⁵ Committee on the Rights of the Child, 'Concluding Observations: Cuba' (18 June 1997) UN Doc. No. CRC/C/15/Add.72, para. 34.

⁶⁶ Van Bueren (n 12) p. 313.

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*for the monitoring and regular review of action taken.*⁶⁷

The Committee has made clear the requirement for State Parties to spot and predict the dangers to the lives of street children, including the ways in which drug use can contribute to street involvement (and vice versa),⁶⁸ street children's involvement in the drug trade⁶⁹ and conflict with the law.⁷⁰ In the context of Ukraine, the Committee expressed its concerns.

*The Committee is deeply concerned at the high number of children in street situations, which the State party acknowledges as an 'acute' problem...It is seriously concerned at reports of their vulnerability to health-related risks, including in relation to substance and drug abuse, such as HIV/AIDS and police violence. In this respect, the Committee is concerned at the limited availability and accessibility of social services for the protection and social reintegration of children in street situations, including the...information that no full-fledged network of rehabilitation centres for children abusing drugs exists.*⁷¹

Obviously, the holistic approach also applies to illicit drug use, production and trafficking among other categories of children as well, and not only street children. Examples include 'children in prison, children left behind by migrating parents'.⁷² The Committee also links article 33 with the rights of former combatant children.⁷³ However, the question remains as to whether other examples could also include children who are not necessarily at risk, but the majority of children who experiment or use drugs recreationally.

The holistic approach aims at effectiveness in the implementation of the Convention. However, one could inquire as to whether the rights of the child included in the Convention are in danger of losing their individuality through the holistic approach. Whatever the article, however, it is clear from the Committee's jurisprudence that all must be read in the context of the general principles of the CRC: best interest of the child, non-discrimination, the right to be heard and the right to life, survival and development.⁷⁴

67 UN General Assembly, 'Rights of the child: a holistic approach to the protection and promotion of the rights of children working and/or living on the street' (22 March 2011) UN Doc. No. A/HRC/16/L.13/Rev.1, para. 2.

68 Committee on the Rights of the Child, 'Concluding Observations: Afghanistan' (8 April 2011) UN Doc. No. CRC/C/AFG/CO/1, para. 68.; See also 'Concluding Observations: Ukraine' (n 39) para. 60.

69 'Concluding Observations: Afghanistan' (n 68) para. 72.

70 *ibid.*, para. 68.

71 'Concluding Observations: Ukraine' (n 39) para. 76.

72 *Ibid.*, para 60. See also Committee on the Rights of the Child, 'Concluding Observations: Sweden' (12 June 2009) UN Doc. No. CRC/C/SWE/CO/4, para. 49.

73 Committee on the Rights of the Child, 'Concluding Observations: Sierra Leone' (24 February 2000) UN Doc. No. CRC/C/15/Add.116, paras. 83–84.

74 Committee on the Rights of the Child, 'General Comment No. 5 General Measures of Implementation of the Convention on the Rights of the Child' (27 November 2003) UN Doc. No. CRC/GC/2003/5, para. 7.

The substances covered by article 33

Another important point that was raised during the drafting history was the definition of the substances covered by article 33. Initially, article 33 makes reference to ‘the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties’. The article does not specify or name any particular item. The important treaties in this regard⁷⁵ are the 1961 Single Convention on Narcotic Drugs⁷⁶ and the 1971 Convention on Psychotropic Substances.⁷⁷ One can also add the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁷⁸ and the Framework Convention on Tobacco Control.⁷⁹ In 1998, before the existence of a considerable amount of literature by the Committee on article 33, Van Bueren argued that with regard to the first two conventions, ‘Article 33 of the Convention on the Rights of the Child does not add significantly to these treaty provisions.’⁸⁰ She continues: ‘Substance abuse refers to the misuse of a number of substances, principally tobacco, alcohol, glue and drugs. Of these substances, it is only narcotic drugs and psychotropic substances which are the express subject of a number of global treaties.’⁸¹

In their reading of article 33, Barrett and Veerman explain that the relevant international treaties refer to the subject matter from which the child should be protected. The relevant treaties are the reference point for the substances being referred to and what qualifies as an ‘illicit use’ or ‘illicit production and trafficking’ of those substances.⁸² Barrett and Veerman explain that ‘the CRC as framed permits the inclusion of new “relevant international treaties” as they are adopted or the removal of such treaties as the scope of international drug control may change’.⁸³

However, the Concluding Observations of the Committee on the Rights of the Child reveal that it adopts a dynamic interpretation of article 33, which leads to a broader understanding. Dynamic interpretation aims at expanding the scope of the interpretation and inclusion of societal changes.⁸⁴ The practice of the Committee has shown that article 33 is flexible enough to include other kinds of substances as well. The Committee on the Rights of the

75 V. Staelens, ‘Participation and Protection of Children against Substance Abuse and Trafficking and Production by Children’, in Ang F. and Others (eds.), *Participation Rights of Children*, Intersentia, Antwerp, 2006, p. 111.

76 Single Convention on Narcotic Drugs 1961 (as amended by the 1972 Protocol) (30 March 1961), UNTS vol. 520 no. 7515.

77 Convention on Psychotropic Substances (21 February 1971) UNTS vol. 1019 no. 14956.

78 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (20 December 1988) UNTS vol. 1582 no. 27627.

79 Framework Convention on Tobacco Control (Adopted unanimously by the 56th World Health Assembly on 21 May 2003). The final text is contained in World Health Assembly Resolution 56.1.

80 Van Bueren (n 12) p. 313.

81 *ibid.*

82 Barrett and Veerman (n 21) para. 93.

83 *ibid.*, para. 96.

84 See, for instance, European Court of Human Rights, Information Note on the Case-Law of the Court, August–September 2007, N° 100, Foreword by the Registrar.

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Child and the application of the CRC by States Parties has proved that other substances, such as alcohol and tobacco, are also included in article 33.⁸⁵ The Committee includes alcohol because it can alter children's state of mind and can also 'be prejudicial to health or can be addictive'.⁸⁶ For instance, in its Concluding Observations on Nepal's periodic report, the Committee made reference to alcohol.

*The Committee recommends that the State party take initiatives to combat drug and alcohol abuse by children, including through public education awareness campaigns and ensure that children who abuse alcohol and/or use drugs and other harmful substances have access to effective structures and procedures for treatment, counselling, recovery and reintegration.*⁸⁷

As article 33 refers to 'illicit use', it raises important definitional questions. For example, if in a State the age at which alcohol and tobacco may be legally consumed is 16 years, is the tobacco and alcohol use of 16 and 17 year-olds then 'licit'? This question reflects the subjective and individualistic aspects for the implementation of article 33 by States Parties, which should be governed by the general principles of the Convention.⁸⁸ Barrett and Veerman, however, argue that alcohol is not captured by article 33, stating: 'As noted...the US suggested its inclusion during the drafting process and this was not taken up. This does not mean it could not in future come under article 33. But it requires an international treaty on alcohol which at present does not exist'.⁸⁹

Barrett and Veerman also add that the Committee regularly deals with alcohol in its Concluding Observations in the context of adolescent health,⁹⁰ with the important implication that it may not be 'illicit' as such. But the Committee, in its Concluding Observations to Iceland's third and fourth periodic reports, dealt with alcohol under the heading 'Drug and substance abuse'.⁹¹ Arguably, it is the dynamic interpretation of the Convention that encouraged the Committee to take this step and not the 'relevant international treaties'. In addition, it is probably also worth highlighting the holistic approach, whereby article 33 must be read alongside, for example, article 24 on the right to health. Dynamic interpretation has, arguably, encouraged the Committee to include glue and solvents as well under article 33. For instance, in its Concluding Observations to Philippines second periodic report, the Committee expressed its deep concern 'at the massive narcotic

85 Staelens (n 75) p. 111.

86 Hodgkin and Newell (n 43) p. 503.

87 'Concluding Observations, Nepal' (n 44) para 84.

88 Hodgkin and Newell (n 43), pp. 506–507, 511.

89 Barrett and Veerman (n 21) para. 167.

90 *ibid.*, para 170.

91 Committee on the Rights of the Child, 'Concluding Observations: Iceland' (23 January 2012) UN Doc. No. CRC/C/ISL/CO/3-4, paras. 44–45.

trade in the Philippines and its adverse effects on children and adolescents. It shares the State party's concern about the high incidence of drug and substance abuse, including glue and solvent sniffing among street children.⁹² Finally, it is notable that the Committee has on occasion made reference to drugs that 'are not recognized by the society as harmful – for example quat consumption in Yemen, alcohol and tobacco in Spain or the use of drugs to control hyperactivity in Finland'.⁹³

Conclusion

It is important to study the drafting history of article 33 and the recommendations of the Committee on the Rights of the Child in order to understand and assess the progress in the interpretation of article 33 during the years that followed the adoption of the CRC and its coming into force.

Initially, the drafting history of article 33 reveals that, before the Chinese proposal on a separate article on 'drug abuse', the article had been connected to the right to health. Until 2005, when the Committee issued its guidelines for periodic reporting, the Committee classified the entirety of article 33 as a special protection right. In its 2010 guidelines for States Parties periodic reports, however, the Committee split the article and placed the part of article 33 that is concerned with the protection of children from illicit trafficking in drugs under the heading of 'Special protection measures'. The concept of special protection is broad, and the Committee adopts it in order to achieve effectiveness in the implementation of the article. The identification of the special measures involved varies from one case to another. The Committee also strengthens the special protection measures through the adoption of the concept of the holistic approach, which means that the articles of the Convention are not to be individually implemented.

As for the first part of article 33, which is concerned with the illicit use of drugs, the Committee now groups that aspect with the rights of disabled children and health and welfare rights. The Committee therefore reconnected half of article 33 again with the right to health, a reminder of the historical ties between the two rights. In this context the Committee requires the State Party to adopt preventive measures and to provide services in order to obtain effective and broad protection of children from the illicit use of drugs.

On the basis of the dynamic interpretation and the holistic approach to the articles of the

⁹² See 'Concluding Observations: Philippines' (n 43) paras. 81–82.

⁹³ Hodgkin and Newell (n 43) p. 504.; See also Committee on the Rights of the Child, 'Concluding Observations: Yemen' (21 September 2005) UN Doc. No. CRC/C/15/Add.267, para. 70, where the Committee recommended that the State Party prohibit access to quats by children.

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Convention, the Concluding Observations also reveal that the Committee is gradually broadening the list of substances that are included in the context of article 33. This includes alcohol, tobacco and solvents, which according to the drafting history of the article were not originally included. The link that the Committee made between children's drug use and the right to health has probably prompted the Committee to deal with alcohol under adolescents' right to health. However, the dynamic interpretation and the holistic approach have also encouraged the Committee to clearly consider such substances in the context of article 33, alongside article 24.

However, despite some positive aspects in the interpretations and recommendations of the Committee on the Rights of the Child with regard to article 33, more work is needed. In their commentary on article 33, Barrett and Veerman point out a number of criticisms of the work of the Committee on the Rights of the Child.

The Committee on the Rights of the Child has never held a day of general discussion on drugs or drug policies and has not adopted a General Comment on the article (various General Comments do refer to drug use ... but none on drug trafficking). The Committee's Concluding Observations on States parties' initial and periodic reports and the 'constructive dialogues' with the delegations of States parties have been inconsistent on these issues. Some Concluding Observations have been very helpful, some either very general or a simple restatement of article 33. On occasion, the Committee's recommendations have, in our opinion, been problematic.⁹⁴

It is more than twenty years since the Convention on the Rights of the Child came into force, and illicit drugs and substances are seriously affecting children. In this regard, it is high time the Committee issued a General Comment or held a day of general discussion on article 33. A clear advantage would be uniformed quality Concluding Observations from the Committee moving forward.

94 Barrett and Veerman (n 21) para. 4.

