



---

Summer 5-6-2022

## The right of access to sport and recreation for disabled persons under international law: What does it really entail?

Illias Bantekas

*Hamad bin Khalifa University (Qatar Foundation),*

Follow this and additional works at: <https://digitalcommons.lmu.edu/ilr>



Part of the [Entertainment, Arts, and Sports Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Illias Bantekas, *The right of access to sport and recreation for disabled persons under international law: What does it really entail?*, 45 Loy. L.A. Int'l & Comp. L. Rev. 1 (2022).

Available at: <https://digitalcommons.lmu.edu/ilr/vol45/iss3/1>

This Article is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles International and Comparative Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact [digitalcommons@lmu.edu](mailto:digitalcommons@lmu.edu).

# The right of access to sport and recreation for disabled persons under international law: What does it really entail?

BY ILIAS BANTEKAS\*

I.	INTRODUCTION.....	2
II.	WHAT DO THE CRPD <i>TRAVAUX</i> AND ITS PREDECESSORS REVEAL ABOUT DISABLED SPORT? .....	11
III.	THE MEANING OF “SPORTING ACTIVITIES” IN THE CRPD.....	28
IV.	“LEISURE AND RECREATION” AS NECESSARY COROLLARIES OF THE RIGHT TO ACCESS SPORTS AND SPORTING ACTIVITIES .....	30
V.	THE OBLIGATION TO PROMOTE THE PARTICIPATION OF DISABLED PERSONS IN MAINSTREAM SPORTING ACTIVITIES.....	32
	<i>A. Adapted physical activity</i> .....	35
VI.	THE RIGHT TO ORGANIZE, DEVELOP AND PARTICIPATE IN DISABILITY-SPECIFIC SPORTING AND RECREATIONAL ACTIVITIES ...	37
VII.	EQUAL ACCESS OF DISABLED CHILDREN TO PLAY, RECREATION AND LEISURE AND SPORTING ACTIVITIES .....	39
VIII.	EQUAL ACCESS OF DISABLED CHILDREN TO PLAY, RECREATION AND LEISURE AND SPORTING ACTIVITIES .....	45
IX.	RIGHT OF ACCESS TO SERVICES FROM THOSE INVOLVED IN THE ORGANIZATION OF RECREATIONAL, TOURISM, LEISURE AND SPORTING ACTIVITIES .....	47
X.	CONCLUSION.....	52

*Abstract:* The Convention on the Rights of Persons with Disability (CRDP) sets out the right of access to sport and recreation for disabled persons. Even so, this was never articulated in a manner whereby access to sport (and by extension to recreation) is a justiciable right. The only obligation on States parties is to make sporting activities available, chiefly through the mobilization of accessibility and without discrimination. Such expressed equality is of little to no value. This is because States do not have an obligation, under available treaty and customary law, to avail non-disabled persons on their territory of a right to sport or

recreation. As a result, the non-disabled population may engage in sporting activities at its own cost and at the discretion of the State, just as non-disabled persons. While this may seemingly satisfy equality requirements, many impairments require specific coaching or rehabilitation in order for disabled persons to exercise. Hence, whereas accessibility with respect to sporting activities may suffice for non-disabled persons, this is not the case for those disabled persons who require appropriate coaching, adaptations and rehabilitation, or where discrimination is intersectional.

## I. INTRODUCTION

The right to participate in sport, leisure and recreation, while taken for granted by non-disabled persons, requires a plethora of positive measures that enhance or facilitate access thereto in respect of disabled persons.<sup>1</sup> Without such adaptive measures disabled persons are effectively denied access, which in turn ensures social exclusion, lack of access to the educational capacity offered by these entitlements, as well as the attendant quality of life inherent in the enjoyment of recreation, sport, leisure and culture.<sup>2</sup> *Accessibility* is a recurring phrase in the UN Convention on the Rights of Persons with Disability (CRPD) and is in fact one of its key pillars. Overall, the CRPD requires formal equality with non-disabled persons with the aim of equalizing opportunities and substantive equality, which may be achieved through positive discrimination, where necessary.<sup>3</sup>

---

\*Professor of Law, Hamad bin Khalifa University (Qatar Foundation), College of Law, and Adjunct Professor of Law, Georgetown University, Edmund A Walsh, School of Foreign Service.

1. See Eli A. Wolff et al., *Understanding the Right to Sport in the United Nations Convention on the Rights of Persons with Disabilities, Sport in the United Nations Convention on the Rights of Persons with Disabilities*, IDISWG, 32 (2007), [http://www.pacific.ohchr.org/docs/UN\\_Sport\\_Disability\\_Booklet.pdf](http://www.pacific.ohchr.org/docs/UN_Sport_Disability_Booklet.pdf).

2. See Lucy Pasha-Robinson, *Half of Children with Disabilities do not Feel Comfortable Taking Part in Sport, Study Finds*, THE INDEPENDENT (July 17 2017), [www.independent.co.uk/news/uk/home-news/children-disabilities-comfortable-taking-part-sport-variety-charity-study-finds-a7843956.html](http://www.independent.co.uk/news/uk/home-news/children-disabilities-comfortable-taking-part-sport-variety-charity-study-finds-a7843956.html) (finding that a major obstacle was social stigma). This was exactly one of the strongest advocates in favor of the right of access to sports for disabled persons – the Sport for Development and Peace International Working Group (SDP IWG), an inter-governmental policy initiative promoting the integration of Sport for Development and Peace (SDP) policy – emphasized that said access is powerful in removing stigma and discrimination. See also SPORT FOR DEV. & PEACE INT’L WORKING GROUP, *HARNESSING THE POWER OF SPORT FOR DEVELOPMENT AND PEACE: RECOMMENDATIONS TO GOVERNMENT* 171 (2008).

3. Comm. On the Rts. Of Persons with Disabilities, General Comment on Equality and Non-Discrimination (Article 5), ¶¶ 9, 40, 54, 60, 65, 73, 74 (Aug. 31, 2017); Janet E. Lord & Rebecca Brown, *The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities*, in *CRITICAL PERSPS. ON HUM. RTS. AND DISABILITY L.* (Marshia Rioux et al., eds., 2011).

Article 30(5) CRPD is a broad provision articulating the right of access to sport and recreation for disabled persons and is very much the subject matter of this article.<sup>4</sup> The biggest flaw in paragraph 5 of article 30 CRPD is that access to sport (and by extension to recreation) was not articulated as a justiciable right.<sup>5</sup> The only obligation on States parties is to make sporting activities available, chiefly through the mobilization of accessibility and without discrimination. The equality proviso in the chapeau is, unfortunately, of zero value at present. This is because States do not have an obligation, under available treaty and customary law, to avail non-disabled persons on their territory of a right to sport or recreation. As a result, the non-disabled population may engage in sporting activities at its own cost and at the discretion of the State. The State, of course, may not discriminate against its non-disabled population in the provision of sporting resources. The implications for disabled persons are significant, because States are under no obligation to grant a right to sport to their disabled population also.<sup>6</sup> While this may seemingly satisfy equality requirements<sup>7</sup>, many impairments require specific coaching or rehabilitation in order for the disabled person to exercise.<sup>8</sup> Hence, whereas accessibility with respect to sporting activities may suffice for non-disabled persons (e.g., availability of sporting venues), this is not the case for those disabled persons who require appropriate coaching, adaptations and rehabilitation, or where discrimination is intersectional.<sup>9</sup> This flaw in

---

4. Convention on the Rights of Persons with Disabilities (CRPD), at Article 30(5) (Dec. 13, 2006) <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>.

5. See generally Michale J. Dennis & David P. Stewart, *Justiciability of Economic, Social and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health?*, 98 AM. J. INT'L L. 462 (taking a narrow view, arguing that a claim should be considered justiciable only where its adjudication contributes to a practical result that is susceptible to implementation). The UN Committee on Economic, Social and Cultural Rights (CESCR) routinely criticizes countries that fail to make ICESCR rights justiciable and which further place limitations on the exercise of socio-economic rights. See Comm. On Econ., Soc. And Cultural Rights, Concluding Observations on the Second to Fourth Periodic Reports of Vietnam, ¶¶ 7-9, U.N. Doc. E/C.12/VNM/CO/2-4 (Dec. 15, 2014).

6. In the case of Iran, the CRPD Committee pointed out that the absence of disaggregated data about girls and boys with disabilities' access to health, education, an adequate standard of living, including social protection, and enjoyment of sports, leisure and cultural activities did not allow authorities and civil society to take appropriate remedial measures. Comm. On the Rts. Of Persons with Disabilities, Concluding Observations on the Initial Report of Iran, ¶ 16(d), U.N. Doc. CRPD/C/IRN/CO/1 (May 10, 2017).

7. Jarlath Clifford, *Equality* in OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 420 (Dinah Shelton ed., 2013).

8. See Maureen A. Weston, *The International Right to Sport for People with Disabilities* 28 MARQUETTE SPORTS L.J. 1 (2017) [hereinafter *International Right to Sport*].

9. Intersectional discrimination against disabled women and girls is persistent. The CRPD Committee's General Comment No. 3 provides that measures are required, in addition to other

paragraph 5 was overlooked by most countries (probably intentionally) but also by Non-Governmental Organizations (NGOs) and (National Human Rights Institutions) NHRIs.

One should not lose sight of the fact that one of the biggest problems with the application and enforcement of article 30(5) CRPD is that most countries, especially in the developed world, see access to recreation, leisure and sport as a luxury.<sup>10</sup> It is not afforded to the poor, whether disabled or not and people in the lower strata of poor societies make no pertinent demands. For the reasons stated in the previous paragraph, the equality proviso in article 30(5) is of no assistance to disabled persons in poor countries, particularly given the curtailment of socio-economic rights in the CRPD on the basis progressive realization.<sup>11</sup>

It may be surprising to learn that about 1 billion persons in the world are disabled. This means that one in seven persons has some form of disability; yet, disabled persons are often invisible and societies share fixed perceptions about the role and capabilities of disabled persons, without really knowing much about their capabilities or their aspirations. Before discussing the existence of a right to sport or of access to sport, the starting point for this discussion should be the common understanding by non-disabled persons' of the very concept of "disability."<sup>12</sup> From a legal point of view, article 1(2) CRPD defines persons with disabilities as including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."<sup>13</sup>

This definition is in stark contrast to the traditional understanding of disability through the existence of an impairment, whether physical, sensory, intellectual or mental. Such a perception of disability is clearly predicated on a medical observation, with its emphasis on impairment. This medical approach to disability was dominant until recently and is still espoused in several countries, despite the advent of the CRPD in 2006, which dismisses it altogether.<sup>14</sup>

---

fields, in the areas of health, participation in sports, culture and politics. Comm. On the Rts. Of Persons with Disabilities, General Comment No. 3 on Article 6: Women and Girls with Disabilities, ¶ 21, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016).

10. Janet E. Lord & Michael A. Stein, *Social Rights and The Relational Value of the Rights to Participation in Sport, Recreation, and Play*, 27 B.U. INT'L L.J. 249 (2009).

11. See Maureen A. Weston, *The Intersection of Sports and Disability: Analyzing Reasonable Accommodations for Athletes with Disabilities*, 50 ST. LOUIS U. L.J. 13 (2005).

12. See for a more elaborate discussion of the various disability models, Ilias Bantekas, *The Rights of Disabled Children under International Law*, 49 N. KY. L. REV. (forthcoming).

13. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 4 at Article 1(2).

14. See generally JAN GRUE, *DISABILITY AND DISCOURSE ANALYSIS* (1st ed. 2015).

The medical model of disability focused exclusively on “within-individual” (biological, physical and psychological) factors that constitute an impairment.<sup>15</sup> However, a thorough understanding of disability involves a systemic understanding at both individual and social level, which goes beyond the sub-individual level. Reducing disability experience to impairment (loss or diminution of anatomical structure or physiological function or function of the mental-nervous system) leaves aside the experience of disabled people such as their engagement in social activities, the social roles they play, and the social relationships they form, as well as the social struggle for transforming disability services in a disability-friendly social world.<sup>16</sup> This represents a more general view than social constructionism. In the medical model, individuals are viewed as a body part or function, and this can lead to objectification. The objectification of a condition prevents one from seeing the whole person in its environment, and significant parts of personhood, developmental history, experiences and expectations are ignored. This can devalue persons with disabilities and may also involve paternalism. Furthermore, applying a medical perspective to any undesirable phenomenon can lead to a broader undue medicalization.<sup>17</sup>

A great deal of problems people with disabilities, especially those with body-related disabilities (including physical and sensory disabilities), encounter are generated by the built environment, social attitudes and prejudices rather than by their physical limitations.<sup>18</sup> The concern with this paternalistic and medical-centric approach was central in the early mobilization of disability movement, as expressed in the following passage from the Policy Statement of the Union of the Physically Impaired Against Segregation (UPIAS, 1974/1976):

Both inside and outside institutions, the traditional way of dealing with disabled people has been for doctors and other professionals to decide what is best for us. It is of course a fact that we sometimes require skilled medical help to treat our physical impairments - operations, drugs

---

15. MICHAEL OLIVER, UNDERSTANDING DISABILITY: FROM THEORY TO PRACTICE (1<sup>st</sup> ed. 1996); MICHAEL OLIVER, THE POLITICS OF DISABLEMENT (1<sup>st</sup> ed. 1990); see also Dimitris Anastasiou & James M. Kauffman, *A Social Constructionist Approach to Disability: Implications for Special Education*, 77 EXCEPTIONAL CHILDREN 367; Dimitris Anastasiou & James M. Kauffman, *The Social Model of Disability: Dichotomy between Impairment and Disability*, 38 J. MED. & PHIL. 441 (2013); TOM SHAKESPEARE, DISABILITY RIGHTS AND WRONGS (Routledge, 1<sup>st</sup> ed. 2006); Michael A. Stein, *Disability Human Rights*, 95 CAL. L. REV. 75 (2007).

16. Peter Townsend, *Elderly People with Disabilities*, in DISABILITY IN BRITAIN: A MANIFESTO OF RTS. (Alan Walker & Peter Townsend eds., 1981).

17. *Id.*

18. SHAKESPEARE, *supra* note 15; JENNY MORRIS, PRIDE AGAINST PREJUDICE: A PERSONAL POLITICS OF DISABILITY PAPERBACK 11 (The Women’s Press 1991).

and nursing care. We may also need therapists to help restore or maintain physical function, and to advise us on aids to independence and mobility. But the imposition of medical authority, and of a medical definition of our problems of living in society, have to be resisted strongly. First and foremost we are people, not “patients,” “cases,” “spastics,” the “deaf,” “the blind,” “wheelchairs,” or “the sick.” Our Union rejects entirely any idea of medical or other experts having the right to tell us how we should live, or withholding information from us, or [making] decisions behind our backs.<sup>19</sup>

The inability of the medical model of disability to reflect and encapsulate the disability phenomenon in all its manifestations and contours may be practically illustrated. A person restricted to a wheelchair because of a physical impairment to his or her legs cannot even undertake menial tasks in an urban environment that offers no, or little, wheelchair accessibility. However, if the urban environment were to adapt to wheelchair users through the design of accessible buildings, vehicles and other infrastructure, as well as the development of information technology (IT) accessibility, the physical impairment becomes far less important. Imagine now a non-disabled person living in a world of tall buildings with no lifts or stairs (only ropes to climb) or books and journals available only in Braille. This would be a very difficult world even for the fittest, and life would be a constant struggle.<sup>20</sup>

Disability organizations and advocates, therefore, have long campaigned for a move away from perceiving disability through the lens of impairment (the medical model) to a model whereby physical, virtual and other environments diminish, wholly or partly, the disadvantages of impairment and in turn enable disabled persons to an equality of opportunities with their non-disabled counterparts. Despite several other milestones, it was the adoption of the CRPD that both highlighted and signaled the death of the medical model.

For the benefit of the uninitiated reader, it should be emphasized that the CRPD rests on several pillars, some of which are unique to human rights treaty-making. The first is the universal introduction of a social or human rights model of disability, in which the focus is on the creation of enabling environments.<sup>21</sup> Secondly, disability rights in the CRPD are not

---

19. *Policy Statement*, UNION OF THE PHYSICALLY IMPAIRED AGAINST SEGREGATION (amended Aug. 9, 1976), <http://www.disability-studies.leeds.ac.uk/files/library/UPIAS-UPIAS.pdf> [hereinafter UPIAS].

20. See Jan Walmsley, *Research and Emancipation – Prospects and Problems*, in *LEARNING DISABILITY – A LIFE CYCLE APPROACH TO VALUING PEOPLE* (Gordon Grant et al. eds., 2005).

21. Theresa Degener, *Disability in a Human Rights Context*, *LAWS* 2016, 5, 35, <https://www.doi.org/10.3390/laws5030035>; Theresa Degener, *A Human Rights Model of*

new rights, but existing rights as adapted and adjusted to creating enabling environments.<sup>22</sup> Thirdly, and in order to realize the first and second pillars, it is imperative that disabled persons enjoy unlimited accessibility. Accessibility, both physical and virtual in public and private spaces is enshrined in article 9 CRPD and is integral to de facto equality and the pursuit of independent living, among others. In fact, with a view to streamlining accessibility into all walks of life, article 4(1)(f) CRPD obliges States to construct, design and adapt all objects, services, materials and buildings on the basis of a universal design.<sup>23</sup> Article 2 CRPD defines universal design as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.”<sup>24</sup> “‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”<sup>25</sup> Fourthly, it is not only imperative that disabled persons are not discriminated against non-disabled persons, but that they enjoy de facto equality against non-disabled persons, as well as equality of opportunity. Given the absence of generally enabling environments, de facto equality requires that States take all appropriate measures to ensure the availability of reasonable accommodation. Fifth, the CRPD demands respect for the dignity of disabled persons, as well as individual autonomy to decide all matters concerning their person and life choices. This also includes full and effective participation and inclusion in society (article 3 CRPD), as well as the right to independent living (article 19 CRPD). This is crucial, because under the medical model intellectually and mentally impaired persons were not considered as being able to decide on matters pertaining to their person, nor live or reside outside an institutional setting. Institutionalization and absence of legal capacity have been two of the most persistent obstacles to the full realization of disability rights. In the view of the UN Committee on the Rights of Persons with Disabilities, article 12 CRPD dismisses the application of limited or reduced capacity and introduces what it terms “universal legal capacity,” whereby States are not permitted to limit

---

*Disability*, in ROUTLEDGE HANDBOOK OF DISABILITY LAW AND HUMAN RIGHTS 31 (Peter Blanck & Eilinion Flynn eds., 2017).

22. Rosemary Kayess & Paul French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 HUM. RTS. L. REV. 1 (2008).

23. Off. of the U.N. High Comm’r for Hum. Rts., Rep. on the Work of Its Thirty-Fourth Session, ¶ 17, U.N. Doc. A/HRC/34/26 (Dec. 9, 2016).

24. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 4 at Article 2.

25. *Id.*; See also Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Azerbaijan, ¶ 41, U.N. Doc. CRPD/C/AZE/CO/1 (May 12, 2014).

on grounds of disability or mental incapacity.<sup>26</sup> The implication is that all forms of substitute decision-making are unlawful under the CRPD. This is a radical proposition and has given rise to heated debates, but without failure the CRPD Committee, in its review of State reports, has condemned overt and disguised practices that fetter the freedom of disabled persons to decide on matters of personal concern, or practices that effectively strip persons with disabilities of individual freedoms (such as the right to found a family or the right to vote).<sup>27</sup> Sixth, far from attracting pity and despair, given appropriate enabling environments, persons with disabilities can and do flourish in all ways of life and hence it is important that all the stigma associated with disability be eliminated, whether by celebrating the contribution and diversity of disabled persons or by educating society as a whole (article 8 CRPD).<sup>28</sup> The awareness-raising obligation contained in the CRPD is innovative and a unique feature of the CRPD.

Turning back to the more specific subject matter of this paper, article 30(5) CRPD introduces the right of access to sport for disabled persons. It reads as follows:

With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

- a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

---

26. Comm. on the Rts. of Persons with Disabilities, General Comment No. 1 (2014) on Article 12: Equal Recognition Before the Law, U.N. Doc. CRPD/C/GC/1 (May 19, 2014) [hereinafter General Comment No. 1]; Amita Dhanda, *Universal Legal Capacity as a Universal Human Right*, in MENTAL HEALTH AND HUM. RTS.: VISION, PRAXIS, AND COURAGE (Michael Dudley et al. eds., 2012); Elionoir Flynn & A. Arstein-Kerslake, *Legislating Personhood: Realising the Right to Support in Exercising Legal Capacity*, 10 INT'L J. L. CONTEXT 81 (2014).

27. See General Comment No. 1, *supra* note 26; see also Lucy Series, *Legal Capacity and Participation in Litigation: Recent Developments in the European Court of Human Rights*, 4 EUR. Y.B. DISABILITY L. 103 (2015).

28. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 4 at Article 8.

- d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
- e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.<sup>29</sup>

Paragraph 5 is one of five themes encompassed in article 30 CRPD, the others being the right of access to culture, creativity and artistic potential, cultural materials without intellectual property hindrances and recognition of cultural and linguistic identity. Paragraph 5 dilutes access to sport by fusing it with the right to leisure and recreation, which while complementary and over-arching, may be also be confusing. During the negotiation for the CRPD, and particularly article 30 thereof, the EU emphasized that there is no such thing as a right to sport.<sup>30</sup> In equal measure, developed States generally deny the existence of a right to development under which States are obliged to offer to all (whether in their territory or third States) a decent standard of living, despite obligations assumed under the Millennium Development Goals (MDGs) or the Sustainable Development Goals (SDGs). Hence, unlike other provisions in the CRPD, paragraph 5 of article 30 does not create rights to recreation, leisure and sport, but merely an obligation on States parties to “take appropriate measures” to enable disabled persons to “participate” in such activities. The two key obligations on States parties are, therefore, accessibility and availability to these activities.<sup>31</sup> Article 30(5) CRPD is hardly a stand-alone provision and should be read in conjunction with articles 4 and 9 CRPD, which discuss parties’ general obligations, as well as the range of options encompassed within the notion of accessibility.<sup>32</sup> Accessibility to

---

29. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 4 at Article 30(5).

30. *See Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities*, Daily Summary of Discussions at the Sixth Session (Aug. 10, 2005), <http://www.un.org/esa/socdev/enable/rights/ahc6sum10aug.htm>.

31. This is in stark contrast with Art 1(1) of the UNESCO Charter of Physical Education, Physical Activity and Sport, which states that: “Every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis.”

32. *See generally* Comm. on the Rts. of Persons with Disabilities, General Comment No. 2 (2014) on Article 9: Accessibility, U.N. Doc. CRPC/C/GC/2 (May 22, 2014) [hereinafter General Comment No. 2]. Unfortunately, General Comment No. 2 is not very enlightening as concerns the

sporting and recreational venues is typically associated with the adaptation of existing facilities,<sup>33</sup> but the obligation encompassed in article 30(5) is much broader in nature as will be demonstrated below. Some disability-related laws express a similar restrictive view of “the right to sport and recreation” and thus reject a rights-based approach to recreation, leisure and sport. The United States Americans with Disabilities Act (ADA), for example, refers to several “major life activities” for disabled people, which are subject to disability rights protection. U.S. courts have generally shown reluctance to see sport and recreation as major life activities.<sup>34</sup>

Although there is a clear correlation between the right to the highest attainable standard of healthcare<sup>35</sup> (as enshrined in article 25 CRPD and article 12 International Covenant on Economic, Social and Cultural Rights (ICESCR)) and physical exercise, play and recreation, a rights-based connection between the two has not been made in the CRPD or the ICESCR.<sup>36</sup> Even so, given that some degree of physical exercise is an essential ingredient of a healthy life,<sup>37</sup> it is absurd that a right to physical exercise (even if not a full-fledged right to sport) should not be encompassed within article 25 CRPD. The CRPD Committee and States parties

accessibility-related obligations contained in Art 30(5) CRPD and simply mentions this provision without any commentary.

33. Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Ecuador, ¶¶ 46-47, U.N. Doc. CRPD/C/ECU/CO/1 (Oct. 27, 2014).

34. See *Kiphart v. Saturn Corp.*, 74 F. Supp. 2d 769, 774 (1999); *Buskirk v. Apollo Metals*, 116 F. Supp. 2d 591, 598 (2000); see also Janet E. Lord & Michael A. Stein, *Social Rights and the Relational Value of the Rights to Participate in Sport, Recreation and Play*, 27 B.U. INT'L L.J. 249, 252 (2009).

35. The EU Parliament has long emphasized that sport is a crucial factor ‘for improving the quality of life, self-esteem, independence and social integration of people with disabilities’. Communication from the Commission of the European Communities to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Concerning the Situation of Disabled People in the Enlarged European Union: The European Action Plan 2006-2007, COM (2005) 604 final (Nov. 28, 2005). This was not iterated in the EU Commission’s Progress Report on the implementation of the European Disability Strategy (2010 - 2020). Progress Report on the Implementation of the European Disability Strategy, SWD (2017) 29 final (Feb. 2, 2017).

36. See Comm. on Econ., Soc. and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health (Article 12), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

37. See e.g., Jacqueline Center et al., *People with Mental Retardation Have an Increased Prevalence of Osteoporosis: A Population Study*, 103 AM. J. MENTAL RETARDATION 19-28 (1998); Catherine P. Coyle & Mayra Santiago, *Aerobic Exercise Training and Depressive Symptomatology in Adults with Physical Disability*, 76 ARCHIVES PHYSICAL MED. & REHAB. 647 (1995); Sandra L. Gibbons & Frank B. Bushakra, *Effects of Special Olympics Participation on the Perceived Competence and Social Acceptance of Mentally Retarded Children*, 6 ADAPTED PHYSICAL ACTIVITY Q. 40 (1989).

should consider a viable business case by, for example, an assessment of the costs to their health care systems by the absence of a right to physical exercise and recreation for both disabled and non-disabled persons.

This article is mapped out as follows: Part II traces the relevant discussions during the negotiations for the CRPD as these concern sports and recreation. Parts III and IV examine the legal meaning of “sporting and recreational activities” as these are reflected in the CRPD. Recreation, as already explained, is an extension of the right to access sport for disabled persons. Moreover, sport is not only a form of physical activity, but also as a social and cultural activity. Part V deals with the obligation of States to enable disabled participation in mainstream sports activities. Part VI discusses the right to organize, develop and participate in disability-specific sporting and recreational activities. Part VII begins to explore the recreational dimension of sport, by examining the right of access to sporting, recreational and tourism venues. From there, Part VIII naturally leads to the right of equal access of disabled children to play, recreation and leisure and sporting activities and the right of access to services from those involved in the organization of recreational, tourism, leisure and sporting activities in Part IX.

## II. WHAT DO THE CRPD TRAVAUX AND ITS PREDECESSORS REVEAL ABOUT DISABLED SPORT?

The forerunner to article 30 is found in rules 10 and 11 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.<sup>38</sup> The forerunner to the Standard Rules was, however, the World Programme of Action Concerning Disabled Persons,<sup>39</sup> which contained much of the language and concepts later incorporated in the Standard Rules. Rule 10 of the Standard Rules, entitled “Culture” reads as follows:

States will ensure that persons with disabilities are integrated into and can participate in cultural activities on an equal basis.

1. States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. Examples of such activities are dance, music, literature, theatre, plastic arts, painting and sculpture. Particularly in developing countries,

---

38. G.A. Res. 48/96, annex, Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Mar. 4, 1994).

39. G.A. Res. 37/52, World Programme of Action Concerning Disabled Persons (Dec. 3, 1982).

emphasis should be placed on traditional and contemporary art forms, such as puppetry, recitation and story-telling.

2. States should promote the accessibility to and availability of places for cultural performances and services, such as theatres, museums, cinemas and libraries, to persons with disabilities.

3. States should initiate the development and use of special technical arrangements to make literature, films and theatre accessible to persons with disabilities.<sup>40</sup>

It is clear that much of the phraseology and ideas behind paragraphs (1) and (2) of article 30 CRPD have been borrowed or significantly influenced by rule 10 of the Standard Rules. Rule 11 sets out the framework for the “right” of disabled persons to sport and recreation (including tourism and other leisure-related activities) under the following terms:

States will take measures to ensure that persons with disabilities have equal opportunities for recreation and sports.

1. States should initiate measures to make places for recreation and sports, hotels, beaches, sports arenas, gym halls, etc., accessible to persons with disabilities. Such measures should encompass support for staff in recreation and sports programmes, including projects to develop methods of accessibility, and participation, information and training programmes.

2. Tourist authorities, travel agencies, hotels, voluntary organizations and others involved in organizing recreational activities or travel opportunities should offer their services to all, taking into account the special needs of persons with disabilities. Suitable training should be provided to assist that process.

3. Sports organizations should be encouraged to develop opportunities for participation by persons with disabilities in sports activities. In some cases, accessibility measures could be enough to open up opportunities for participation. In other cases, special arrangements or special games would be needed. States should support the participation of persons with disabilities in national and international events.

4. Persons with disabilities participating in sports activities should have access to instruction and training of the same quality as other participants.

---

40. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, at Rule 10 (Mar. 4, 1994) <https://www.un.org/disabilities/documents/gadocs/standardrules.pdf>.

5. Organizers of sports and recreation should consult with organizations of persons with disabilities when developing their services for persons with disabilities.<sup>41</sup>

The range of access and participation rights encompassed under article 30 CRPD have also been articulated in several human rights instruments, some directly, others indirectly. Articles 27(1) and 24 Universal Declaration of Human Rights (UDHR) address the right to participate in culture and the right to leisure and rest respectively.<sup>42</sup> Article 15(1)(a) of the ICESCR grants to everyone the right to take part in cultural life. In equal manner, article 5(e)(vi) Committee on the Elimination of Racial Discrimination (CERD) states that:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to...guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... (e) Economic, social and cultural rights, in particular: (vi) The right to equal participation in cultural activities.<sup>43</sup>

Article 13(c) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) emphasizes that:

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (c) The right to participate in recreational activities, sports and all aspects of cultural life.<sup>44</sup>

Unlike the previous instruments, which do not articulate a right to sport or leisure, article 31 Convention on the Rights of the Child (CRC) similarly enunciates that:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child

---

41. *Id.* at Rule 11.

42. U.N. Universal Declaration of Human Rights, at Articles 27(1) and 24 (Dec. 10, 1948), <https://www.un.org/sites/un2.un.org/files/udhr.pdf>.

43. U.N. International Convention on the Elimination of All Forms of Racial Discrimination, at Article 5(e)(vi) (Dec. 21, 1965), <https://www.ohchr.org/sites/default/files/cerd.pdf>.

44. U.N. Convention on the Elimination of All Forms of Discrimination against Women New York, at Article 13(c) (Dec. 18, 1979), <https://www.ohchr.org/sites/default/files/cedaw.pdf>.

to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.<sup>45</sup>

As already explained, there is feeble reference to the range of rights encompassed under article 30 CRPD in relation to non-disabled persons, let alone their disabled counterparts. The few available references are not particularly illuminating but reinforce the notion that the pertinent rights are couched in terms of access and participation only. General Comment No. 5 by the CESCR on persons with disabilities articulated the point that:

The right to full participation in cultural and recreational life for persons with disabilities further requires that communication barriers be eliminated to the greatest extent possible. Useful measures in this regard might include ‘the use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, [and] adapted television and theatre for deaf persons’.<sup>46</sup>

From a broader human rights perspective, the right of access to culture, sport, leisure and recreation form an integral part of the right to development and the associated concept of “wellbeing.”<sup>47</sup> The first ever United Nations Development Programme (UNDP) Human Development Report approached human development and poverty not from the perspective of a country’s gross domestic product (GDP), but through the notion of human wellbeing, which it defined as enlarging peoples’ choices, chief among these being the ability to lead a long and healthy life, be educated and to enjoy a decent standard of living. The report noted that although income helps formulate human choices it is merely a *means* and not an *end*. It distinguished between two sides of human development: “the formation of human capabilities, such as improved health or knowledge . . . and the use that people make of their capabilities, for work

---

45. U.N. Convention on the Rights of the Child, at Article 31 (Nov. 20, 1989), <https://www.ohchr.org/sites/default/files/crc.pdf>.

46. Comm. on Econ., Soc. And Cultural Rts., General Comment No. 5: Persons with Disabilities, ¶ 37, U.N. Doc. E/1995/22 (Dec. 9, 1994) [hereinafter General Comment No. 5].

47. Amartya Sen, *Capability and Well-Being*, in QUALITY OF LIFE 30 (Martha Nussbaum & Amartya Sen eds., 1993) (distinguishing between capabilities and wellbeing). Sen’s capabilities approach demonstrates that wellbeing differs from welfare in that the latter concerns prosperity in terms of material needs. He measures the developmental progress of states by reference to the capabilities of their citizens (capabilities approach) and distinguishes between positive and negative freedoms.

or leisure.”<sup>48</sup> It identified three key indicators that may be used to measure human development, namely longevity, knowledge and decent living standards.<sup>49</sup> Wellbeing and decent living standards are inextricably linked to the right of access to culture, leisure, sport and recreation. The poor and destitute, whether disabled or not, cannot enjoy these rights and hence their lives are not enriched by wellbeing.<sup>50</sup>

The first sessions of the Ad Hoc Committee drafting the CRPD (Ad Hoc Committee) demonstrate that although there was some appreciation of cultural rights (including leisure and sport) in existing instruments, this was not a priority for the drafters or the various delegations. This, to some degree, may be attributed to the relatively poor elaboration of cultural rights (in the broad sense) by human rights treaty bodies and hence its application to the disability context was not straightforward. Moreover, the issue of resources was always going to be central to such a discussion and in any event, the first sessions of the Ad Hoc Committee were pre-occupied with much more central issues, such as the definition of disability, the nature of disability rights, legal capacity, enablement and accessibility, to name a few. Not surprisingly, there was no mention in the Mexican Draft of a right to sport, leisure or recreational activities in the form of a distinct article.<sup>51</sup>

---

48. UNITED NATIONS DEV. PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 10 (1990) (Oxford Univ. Press 1990).

49. *Id.* at 11.

50. The contemporary view rejects money-centric definitions of poverty. Instead, it emphasizes the link between development and freedom, in which case poverty is “understood as the deprivation of basic capabilities rather than merely as lack of income on its own”. Hum. Rts. Council, Implementation of Human Rights Council Resolution 6/13 Entitled “The Social Forum”, ¶ 12, U.N. Doc. A/HRC/SF/2008/2 (Aug. 06, 2008). The CESCR has defined poverty as “a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.” Comm. on Econ., Soc. And Cultural Rts., Substantive Issues Arising in the Implementation of the International Covenant of Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights, ¶ 8, U.N. Doc. E/C.12/2001/10 (May 10, 2001) [hereinafter Substantive Issues]. A non-money-centric definition is also offered by the EU’s European Consensus on Development, 2006 O.J. (C 46) 11, which notes among other things that poverty “includes all the areas in which people of either gender are deprived and perceived as incapacitated in different societies and local contexts.”

51. Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities: Working Paper by Mexico, U.N. Doc. A/AC.265/WP.1 (Aug. 9, 2002); Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities: Position Paper by the European Union. U.N. Doc. A/AC.265/WP.2 (July 31, 2002); Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Human Rights of

At the second session, a number of reports were submitted by the UN Secretary-General. Although these did not directly refer to the range of rights encompassed under article 30, the discussion on enablement and capacities was no doubt the platform and the setting of the theoretical framework upon which socio-economic rights for disabled persons were meant to rest.<sup>52</sup> Some views by governments exhibited an inclination for the advancement of cultural rights for disabled persons.<sup>53</sup> In other documents, some reliance was placed on instruments that contained a range of cultural rights, such as the ICESCR and the so-called Quito Seminar,<sup>54</sup> which referred to disabled persons' participation in cultural life.<sup>55</sup> There was no reference to culture in the Bangkok recommendations, but the language of "inclusion," "participation," "accessibility," and "wellbeing," among others, as well as references to the ICESCR, clearly showed that cultural rights were encompassed within the emerging framework.<sup>56</sup>

---

Persons with Disabilities, U.N. Doc. A/AC.265/CRP.2 (July 10, 2002); Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Report of the United Nations Consultative Expert Group Meeting on International Norms and Standards for Persons with Disabilities, U.N. Doc. A/AC.265/CRP.4 (Feb. 9, 2001) [hereinafter International Norms and Standards for Persons with Disabilities].

52. See e.g., International Norms and Standards for Persons with Disabilities, *supra* note 51; Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Report of the Secretary-General on an Overview of Issues and Trends Related to the Advancement of Persons with Disabilities, U.N. Doc. A/AC.265/2003/2 (2003); see also Danish Inst. of Hum. Rts., Letter Dated May 26, 2003 from the Executive Director of the Danish Institute for Human Rights to the Secretary of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, U.N. Doc. A/AC.265/CRP.9 (May 26, 2003).

53. Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Note by the Secretary-General Transmitting Views Submitted by Governments, Intergovernmental Organizations and United Nations Bodies Concerning a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, ¶ 28, U.N. Doc. A/AC.265/2003/4 (2003) (with Hungary referring to its domestic legislation in this respect).

54. See Letter Dated May 23, 2003 from the Permanent Representative of Ecuador to the United Nations Addressed to the Secretary of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, U.N. Doc. A/AC.265/CRP.8 (Apr. 11, 2003).

55. Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Compilation of Proposals for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, add. 1, U.N. Doc. A/AC.265/CRP.13 (2003); Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, International Convention on the Full Enjoyment of All Human Rights and Fundamental Freedoms by Persons with Disabilities, U.N. Doc. A/AC.265/2003/CRP.13/Add.2 (2003) (referencing an obligation on States to take appropriate measures so that disabled persons can enjoy access to "cultural fields" on an equal footing with other persons).

56. "Bangkok recommendations on the elaboration of a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities -

Even so, given that the notion of cultural rights was (and still is) rather foggy as concerns non-disabled persons, mere references to culture did not necessarily mean that delegates understood the precise scope and meaning of the term in the disability context. Significantly, Venezuela's draft convention proposal included an article 18, which is one of the early forerunners to the current version of article 30. It read:

States parties recognize the right of persons with disabilities to participate fully in social, cultural, sports and recreational activities. To this end they shall adopt the following measures:

- Include in national laws, regulations and quality standards the obligation to provide adapted facilities to afford persons with disabilities access to and use of facilities and services in educational, social, cultural, artistic, sports and recreational centres;
- Encourage national sports organizations to promote and generate programmes which facilitate the integration of persons with disabilities into their routine activities and national and international competitions;
- Promote the establishment of scholarship programmes and special incentives to facilitate access by persons with disabilities to artistic and sports activities;
- Hold systematic consultations with organizations of persons with disabilities concerning the creation and development of social, cultural, artistic, sports and recreational programmes;
- Encourage persons with disabilities to exercise the right to use public spaces of a social, cultural, sports and recreational character.<sup>57</sup>

Otherwise, reference, both indirect and direct, was made to the broader concept of "accessibility" in the Standard Rules,

---

outcome of an expert group meeting and seminar held in Bangkok at the headquarters of the Economic and Social Commission for Asia and the Pacific from 2 to 4 June 2003." Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Bangkok Recommendations on the Elaboration of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, U.N. Doc. A/AC.265/CRP.10 (2003) [hereinafter Bangkok Recommendations]; Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Beirut Declaration and Recommendations on the Elaboration of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, U.N. Doc. A/AC.265/CRP.12 (2003).

57. Annex to the Letter dated June 18, 2003 from the Deputy Permanent Representative of Venezuela to the United Nations Addressed to the Secretary of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of Rights and Dignity of Persons with Disabilities, U.N. Doc. A/AC.265/2003/WP.1 (2003).

whereby rules 10 and 11 concern access to culture and sports and recreation respectively, as already explained.<sup>58</sup>

The Working Group, which was established by the Ad Hoc Committee convened in January 2004 and produced the first draft of the convention and elements thereof. This was preceded by the Chair's own draft. The Chair's draft article 27 was not far off from the current conception of article 30. It read as follows:

1. States Parties recognize the right of all persons with disabilities to take part in cultural life and shall take all necessary measures to ensure that persons with disabilities:

(a) have the opportunity to utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community; and

(b) enjoy access to literature in a range of accessible formats, including in electronic text, Braille, and on audio tape, and through the captioning of television programs, movies, theatre etc; and

(c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas and libraries and the hospitality industry.

2. States Parties shall take all necessary steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

3. Persons who are deaf shall be entitled to recognition and support of their specific cultural and linguistic identity.

4. States Parties recognize the right of all persons with disabilities to take part in leisure activities, including sporting activities, and shall take all necessary measures to ensure that persons with disabilities:

(a) have the equal opportunity to organize and participate in sporting activities and to receive quality instruction and training as is available to other participants;

---

58. Cynthia D. Waddell, Address to the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities Concerning Critical Issues From a Disability Perspective: Accessibility (June 7, 2003) (transcript available at <http://www.un.org/esa/socdev/enable/rights/panelcwaddell.htm>).

- (b) have effective access to sporting venues, as well as to other recreational activities; and
- (c) have access to services from those involved in the organization of sporting or leisure activities.<sup>59</sup>

A similar provision was proposed by China under article 10 of its own proposed draft, as follows:

States Parties recognize the rights of persons with disabilities to full participation in social, cultural, sports and recreation life, and shall take measures, especially:

To guarantee all kinds of public facilities and venues of culture, arts, recreation, tourism and sports open to persons with disabilities; abolish any discriminatory practices;

To provide accessible facilities and services for persons with disabilities through building non-handicapping environment,

To encourage and promote persons with disabilities to participate in cultural, arts and sports activities and in national and international tournaments specially organized for persons with disabilities;

To support special arts of persons with disabilities to tap with their potentiality in area of arts;

To establish research funds and incentive policies of culture, arts, tourism and sports for persons with disabilities.<sup>60</sup>

The Indian draft, on the other hand, split the various components of article 30 into several articles. In particular, article 8(c), concerning the right to participation, required States parties to: Promote the participation of persons with disabilities in any field of their choice, including sports, culture and recreation.

Article 10, which was entitled “right to education and cultural life” made provision for access to sport and leisure of disabled persons as follows:

---

59. Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Chair’s Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities (Dec. 2003).

60. Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, A Proposed Draft Text by China (2004), <http://www.un.org/esa/socdev/enable/rights/wgcontrib-china.htm>.

(f) State Parties shall provide for recreational, cultural, and sports activities through adaptations which facilitate their use.

(g) State Parties shall set in place, a system of scholarships or special incentives for cultural, artistic, and sports activities.

(i) State Parties shall recognize the right of all persons with disabilities to take part in leisure activities, including sporting activities, and shall take all necessary measures to ensure that persons with disabilities:

a. Have the equal opportunity to organize and participate in sporting activities and to receive quality instruction and training as is available to other participants;

b. Have effective access to sporting venues, as well as to other recreational activities; and

c. Have access to services from those involved in the organization of sporting or leisure activities.<sup>61</sup>

New Zealand also offered a draft text, but this did not contain draft articles as such, but set out the conceptual framework and the key rights and principles underpinning it. The right to recreation was specifically spelt out.<sup>62</sup> The International Disability Alliance (IDA) statement to the Working Group focused on cultural rights but intertwined these with the devaluing of disabled culture. However, it situated the right to culture for disabled persons within the range of proposed socio-economic rights.<sup>63</sup> The World Blind Union made an interesting proposal that elaborated significantly on the meaning of access to culture for disabled persons, particularly the blind. Paragraph 5.10, entitled “right to culture and leisure” thus read:

- The right to full access to all cultural, leisure and sporting activities, facilities and equipment, including participation and spectating

---

61. Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Draft Convention – India (2004), <http://www.un.org/esa/socdev/enable/rights/wgcontrib-india.htm>.

62. Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, A Proposed Draft Text by New Zealand (2004), <http://www.un.org/esa/socdev/enable/rights/wgcontrib-NewZealand.htm>.

63. Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Contribution by International Disability Alliance Towards a UN Disability Convention (Mar. 2, 2003), <http://www.un.org/ga/president/63/statements/ga231208.shtml>.

- The right to accessible television broadcasting, including audio description of programmes, audio sub-titling of foreign language programmes and other descriptive video services
- The right to access public library services, including provision of books and information services in accessible formats, such as Braille, audio, large print and electronic computer disks.<sup>64</sup>

The Working Group's draft article 24 at the beginning of the third session was warmly received by participating States, disabled persons' organizations, and NHRIs. As will become evident, there were some issues of contention, chiefly as concerned the role of existing intellectual property rules on the right of access to culture, but other than that it was not doubted that the right in question chiefly concerned a broad undertaking of accessibility. Despite the heavily bracketed version at the end of the third session, draft article 24 captured the bulk of the issues now encompassed in article 30 of the CRPD. It read as follows:

1. States Parties recognise the right of all persons with disabilities to take part in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

a) have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community;

b) enjoy access to literature and other cultural materials in all accessible formats, including in electronic text, sign language and Braille, and in audio and multi-media formats;

c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats, including captioning and sign language;

d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the hospitality industry, and, as far as possible, enjoy access to monuments and sites of national cultural importance;

2. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

---

64. Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Contribution by World Blind Union (Feb. 2003), <http://www.un.org/esa/socdev/enable/rights/wgcontrib-wbu.htm>.

3. Persons who are deaf shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity.

4. States Parties recognise the right of persons with disabilities, on an equal basis with others, to participate in recreational, leisure and sporting activities and shall take appropriate measures to:

a) encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at regional, national and international levels;

b) ensure that persons with disabilities have an opportunity to organise and participate in sporting activities and to receive the same instruction, training and resources in support that is available to other participants;

c) ensure that persons with disabilities have access to sporting and recreational venues, and that children with disabilities have equal access to participating in sporting activities with the education system;

d) ensure that persons with disabilities have access to services from those involved in the organisation of recreational, leisure and sporting activities.<sup>65</sup>

As with other substantive rights, there was some debate as to whether the place of draft article 24 was within another accessibility-related article, rather than as a stand-alone provision.<sup>66</sup> There was also some debate about the phrasing “on an equal basis with others.” Some delegations argued that draft article 24 should instead include an obligation on States parties to remove discriminatory barriers, both environmental and societal, to the enjoyment of these rights. Other members expressed the view that “on an equal basis with others” should be retained, because sporting, recreational and leisure organizations and facilities were often within the private sector.<sup>67</sup> Overall, there was general support for this provision.

As regards sports, in particular, Landmine Survivors Network (LSN) suggested that:

---

65. Rep. of the Working Group to the Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, U.N. Doc. A/AC.265/2004/WG.1, annex 1 (Jan. 27, 2004).

66. *Id.* at 31, n.109.

67. *Id.* at 31, n.110.

(1) International sport activities for the disabled and non-disabled should be merged; discrimination should not be justified by the fact that disabled athletes also compete among themselves. The national teams should be composed of both sectors in one tournament with separate events. This, was argued, would help to raise awareness and help remove stereotyping regarding the capabilities of people with disabilities and help promote the sports of people with disabilities (equally echoed by China); (2) Disabled children should not be prevented from participating in sports and cultural activities in school; (3) Countries should take positive measures to attract PWD to participate in sports; (4) Sport clubs should have special activities for the disabled, even if they cater to the non-disabled. There should not be separate clubs for the disabled and non-disabled.<sup>68</sup>

China took this further by arguing that States parties should “ensure disabled participation in cultural life and leisure (e.g., Special Olympics) and should provide support for such activities.”<sup>69</sup>

By the end of the third session, a heavily bracketed draft article 24 emerged. If it was not already over-loaded with many disparate concepts, the Holy See further suggested that it deal with religion. As a result, it was articulated as follows:

1. [States Parties recognize the right of all persons with disabilities to take part in cultural life, (creating them the facilities for the enjoyment of — Chile) — New Zealand] [and (States parties shall respect and promote the right to all persons with disabilities to engage in cultural, artistic, recreational and leisure activity. In order to promote and protect the realization of this right States Parties — New Zealand) shall take all appropriate (and progressive — China) measures to ensure (including by way of legislation to the maximum extent that is reasonable — Israel) that persons with disabilities — EU] (and shall promote appropriate measures for persons with disabilities to — EU, Canada):

(b) [Enjoy access (at the least cost — Morocco) [to (literature and other cultural materials in all accessible formats, including (inter alia — Colombia) in electronic text, sign language and Braille, and in audio and (free — Yemen) multimedia formats — New Zealand] (on an equal basis to all cultural materials and activities — New Zealand) — Jordan] (Enjoy equitable access to and participation in cultural and sports material, activities, services and facilities — Jordan);

---

68. *Id.*

69. *Id.*

[[c) [Enjoy access to (international and regional — Yemen) television programmes, films, theatre and other cultural activities, in all accessible formats, including captioning and sign language — New Zealand] (Have the opportunity to participate in all cultural, artistic and sporting activities of their choice at local, regional, national and international levels — New Zealand); — EU

[4. [States Parties recognize the right of persons with disabilities, [on an [equal — South Africa] (equitable — South Africa) basis with others,<sup>113</sup> — Mexico, Guatemala] (in conditions of equity with other persons — Mexico) to participate in [recreational — Yemen], leisure and sporting activities (including tourism — Costa Rica) and shall take appropriate measures to — EU] (do all of the following, to the maximum extent that is reasonable — Israel) (With a view to enabling persons with disabilities to participate on an equal basis as others in recreational, leisure (activities, physical culture and sports — Mexico) and [sporting activities — Mexico] (to promote a healthy lifestyle — South Africa), States Parties shall take appropriate measures to — EU):

(a) [Encourage — South Africa, Namibia] (Ensure — South Africa, Namibia) and promote the (full — South Africa) participation, [to the fullest extent possible — South Africa], of persons with disabilities in [mainstream — China, Costa Rica, Namibia] (integrated — Namibia) [sporting activities — Mexico] (physical culture and sports — Mexico) at (club, — South Africa) (local, — Namibia) regional, national and international levels (, and promote sporting activities tailored to the needs of persons with disabilities as well as disability- specific sports — Republic of Korea);

(b) Ensure that persons with disabilities have an opportunity to organize and participate in sporting (recreational and leisure — South Africa) activities and [to receive [the same — Mexico, South Africa, Costa Rica, Uganda, Namibia] (the necessary — Uganda, Namibia) (the appropriate — Costa Rica) instruction, training and (equitable — South Africa) resources in support [that is available to other participants — Mexico, Costa Rica] (in conditions of equity with other participants — Mexico) — EU] (encourage the provision of appropriate instruction, training and support — EU);

[(c) Ensure that (all — Mexico) persons with disabilities have access to [sporting and recreational venues, [and that [children — Chile] (pupils — Chile) with disabilities have equal access to

participating in sporting activities with the education system — Mexico, Costa Rica] (to qualified and specialized children — Bahrain) (to participate in sporting activities in conditions of equity within the education system, including children with disabilities — Mexico); (the physical environment for practising sporting and recreational activities, including facilities and venues for such practices — Costa Rica).

(c tris) Ensure that children with disabilities have equal access to participating in sporting and recreational activities, including those in the educational system — Costa Rica)

[(d) Ensure that persons with disabilities have (equal — South Africa) access to services from those involved in the organization of recreational, (and — Mexico) leisure (tourism — Israel) [and sporting — Mexico] (physical culture and sports — Mexico) activities. — EU] — New Zealand, Jordan, Costa Rica]

((d bis) Ensure equitable access to government and private funding for persons with disabilities to facilitate full participation in sporting, recreational and leisure activities and organization.

Encourage all public media to provide appropriate and equitable coverage of the achievement of persons with disabilities in sports, recreational and leisure activities, as well as the availability of such activities to all persons with disabilities — South Africa)

((e) Ensure that persons with disabilities subject to multiple forms of discrimination, such as women and refugees have access to sports, recreation and leisure activities — Namibia)

((e) Promote the development, import and/or exchange of sporting equipment taking into account the different types of disabilities and the different sports — Colombia)

(Develop the sportive potential of persons with disabilities, promoting sports, massive, competitive, of high performance and age-ranged along all the groups and places of each national territory.

Promote training in educators and trainers which carry out sports and recreation programmes, for the adequate inclusion and attention of persons with disabilities in those programmes. — Chile)

(5. States Parties shall take all appropriate steps to remove discriminatory societal barriers to the enjoyment of all the rights in this article — Uganda).<sup>70</sup>

At the fourth session there was no discussion of draft article 24 or of the issues encompassed within that provision. The Ad Hoc Committee focused on all the articles before this one and on international cooperation. The same was true as regards the fifth session of the Ad Hoc Committee.

One of the key issues that emerged from the discussions during the sixth session is the sense that what ultimately became article 30 CPRD contains many disparate issues that could potentially be contained in stand-alone articles; culture and sport were the dominant ones. Moreover, there was a clear overlap with other provisions, particularly since access to information and literature (in respect of the right of access to culture) was already a significant right in its own respect (draft article 13).<sup>71</sup> The UK, speaking on behalf of the EU, was against listing accessible formats in the convention as this ran the risk of not being exhaustive. It was also opposed to listing specific impairments, arguing that if ‘hearing-impaired and deaf people feel that their needs are not met, this needs to be addressed, without resorting to a separate paragraph’ (with New Zealand concurring). The EU also maintained that “there is no express ‘right’ to recreational, leisure and sporting activities in the CESCO.” It argued that the language in the chapeau of draft paragraph 4 was ambiguous on this point and should be amended accordingly. This was accordingly carried through to the report of the Ad Hoc Committee.<sup>72</sup> Australia further made the point that it supported: “the inclusion of ‘on an equal basis’” because this anticipates an inclusive environment for PWD ... [further supporting] ... mainstreaming sporting activities at the regional, national and international level tailored to the needs of PWD. It opposed the South African proposal to replace “encourage” with “ensure” as participation should not be considered mandatory. It preferred the EU’s proposal for paragraph 4(b) as it better reflects the opportunity to provide other

---

70. Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Rep. on the Work of Its Third Session, U.N. Doc. A/AC.265/2004/5, at 66-69 (June 9, 2004).

71. See Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Daily Summary of Discussions at the Sixth Session (Aug. 10, 2005), <http://www.un.org/esa/socdev/enable/rights/ahc6sum10aug.htm> [hereinafter Dignity of Persons with Disabilities].

72. Ad Hoc Comm. on a Comprehensive and Integral Int’l Convention on Prot. and Promotion of the Rts. and Dignity of Pers. with Disabilities, Rep. on the Work of Its Sixth Session, ¶ 143, U.N. Doc. A/60/266 (Aug. 17, 2005) [hereinafter Ad Hoc Committee Sixth Session Report].

targeted, specific and perhaps additional initiatives for PWD. This is not a matter of parity with able-bodied persons, as the existing WG wording implies, as the nature and scope of support required differs from that for able-bodied persons.<sup>73</sup> Overall, there was agreement that the concept of “culture” should be broad enough to include “sport” (New Zealand, Norway). Australia, the EU, New Zealand and China made express reference to the progressive realization of cultural rights and this did not seem to be a contentious issue during the debates at the sixth session.

The Chair highlighted that the term “enrichment of their community” in paragraph 1(a), which was queried by a number of delegations, was derived from Rule 10 (1) of the Standard Rules (on culture). With the exception of Kenya and Sudan, all other State delegations strongly opposed the inclusion of any sort of religious right in draft article 24, as this was viewed as a freedom that was contained elsewhere in the convention.

The *travaux* reflect the complexities associated with the right of access to sport, recreation and culture for disabled persons and despite the seeming undoubted nature of this right, much was still debated. This complexity was not resolved and ultimately the final version of article 30(5) was convoluted. Instead of emphasizing that sport was a necessary corollary of the right to health and as such improve the lives of persons with disabilities, reference to resource constraints intensified the debate that disability-related sports are a burden on the State. This discussion should be read in conjunction with the much broader and far more complex date on disability education. Ultimately, although access to education and sports are inter-related this is not obvious in articles 24 and 30(5) of the CRPD.<sup>74</sup>

### III. THE MEANING OF “SPORTING ACTIVITIES” IN THE CRPD

Just like the concepts of “recreation” and “leisure,” which will be examined in the next Part, the CRPD Committee has not offered any clues or guidance as to the scope or meaning of “sporting activities.” The chapeau of article 30(5) CRPD evinces no intention, whether in the text itself or on the basis of the *travaux*, to treat “sport” any different from “leisure” and “recreation.” In this sense, sport is a form of leisure<sup>75</sup> but also leads to better educational, developmental and health outcomes<sup>75</sup>, and UNGA has

---

73. Dignity of Persons with Disabilities, *supra* note 71.

74. See Gauthier de Beco, *The Right to Inclusive Education: Why is there so Much Opposition to its Implementation?*, 14 INT’L J. L. CONTEXT 396 (2018).

75. Human Rights Council Res. 26/L.29, U.N. Doc. A/HRC/26/L.29, at ¶ 3 (June 23, 2014).

specifically acknowledged its wellbeing potential for disabled persons.<sup>76</sup> It is not a right as such in the CRPD, but the responsibility of the State is engaged to ensure that persons with disabilities have access to sporting activities equally with non-disabled persons. This obligation was articulated in rule 11 of the Standard Rules, as well as in its forerunners, as already explained in the Background in the beginning of this chapter. Other inter-governmental efforts have equally taken place with regard to sport-related accessibility. In 1966 the Council of Europe adopted a policy entitled “Sport for All,” in which it declared that “every individual shall have the right to participate in sport.” This culminated into two important recommendations, namely: Recommendation R (86) 18 on the “European Charter on Sport for All: Disabled Persons” and Recommendation R (92) 6 on a “Coherent Policy for People with Disabilities.” The latter was effectively a blue print for accessibility in public and private spaces, including significant elements of universal design. The former is the Council of Europe’s Charter for Sports.

In 1978, UNESCO adopted an International Charter of Physical Education and Sport (as revised in 2015), which stated that every person has the right to physical education, physical activity and sport, including disabled persons (article 1(1)). The right to promote participation and access to sporting-related activities is further expressly provided in several multilateral treaties, applicable to all persons (article 13(c) CEDAW), including also specifically to disabled persons, as is the case with article 15(3) of the revised European Social Charter.

It is perhaps important to set out the parameters of the term “sport” because this may become the subject of contention. Here are some examples why a boundary is necessary. Is consensual dueling and boxing a sport?<sup>77</sup> Is spectatorship a sporting activity? Are chess, backgammon and racecar driving sports? Answers to these questions are crucial, because if the above activities constitute sporting and recreational activities, States parties must provide access to these “sporting activities.” The European Sports Charter,<sup>78</sup> adopted by the Council of Europe, defines “sport” in article 2(1)(a) as “all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness

---

76. G.A. Res. 67/17, ¶ 4 (Dec. 11, 2012), “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: sport and healthy lifestyles as contributing factors.”

77. In the common law, boxing is a genuine exception to the rule that consent is ineffective in the case of deliberately inflicted injuries. It attracts a special privilege in that even acts intended to cause serious injury can be consented to. *See* R v. Barnes [2004] EWCA (Crim) 3246 (Eng.).

78. Comm. of Ministers, *Recommendation No. R(92) 13 REV of the Comm. of Ministers to Member States on the Revised European Sports Charter*, annex, 752nd meeting (May 16, 2001).

and mental well-being, forming social relationships or obtaining results in competition at all levels.”

Clearly, sport is viewed in the Charter not only as a form of physical activity, but also as a social and cultural activity.<sup>79</sup> It includes both professional and amateur sports, whether at club level or individual/spontaneous. As regards the chapeau of article 30(5) CRPD, given the existence of “recreation” and “leisure” alongside “sporting” activities, one must assume that “sport” does not encompass non-physical, yet recreational, activities related to sporting events, such as spectatorship,<sup>80</sup> participation in fan clubs, sponsorship, or other similar peripheral activities. In any event, these are covered by the terms “recreation” and “leisure” and spectatorship is generally encompassed under paragraph 5(c) of article 30.

#### IV. “LEISURE AND RECREATION” AS NECESSARY COROLLARIES OF THE RIGHT TO ACCESS SPORTS AND SPORTING ACTIVITIES

These concepts may seem self-evident but in fact their lay definition is not necessarily the same as that associated with their legal counterpart.<sup>81</sup> Article 24 UDHR notes that “everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”<sup>82</sup> It should be emphasized that article 24 UDHR follows the provision on the right to work and consequently rest and leisure are associated with the right to work, despite the use of the word “everyone”. “Everyone” in the context of the UDHR does not refer to all persons, but to those in employment. As a result, the rights in article 24 UDHR are only available to employed persons and not also to those out of employment.<sup>83</sup> This result is further confirmed in article 7(d) ICESCR, where in the context of the right to work, parties are obliged to ensure: “Rest, leisure and reasonable limitation of working hours and periodic

---

79. See NIGEL THOMAS & ANDY SMITH, *DISABILITY, SPORT AND SOCIETY: AN INTRODUCTION* (2008).

80. See Comm. on the Rts. of Pers. with Disabilities, Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland, ¶¶ 62-63, U.N. Doc. CRPD/C/GBR/CO/1 (Oct. 3, 2017) (requesting the UK to adopt a concrete action plan to address the “low level of accessibility to sports stadiums with individual seating for persons with disabilities and their families, friends and personal assistants”).

81. See David L. Richards & Benjamin Carbonetti, *Worth What We Decide: A Defense of the Right to Leisure*, 17 INT’L J. HUM. RTS. 329 (2013); Cara Aitchison, *From Leisure and Disability to Disability Leisure: Developing Data, Definitions and Discourses*, 18 DISABILITY & SOC’Y 955 (2008); Jerome Singleton & Simon Darcy, *Cultural Rights, Disability, Inclusion and Citizenship: Moving Beyond Leisure in Isolation*, 16 ANNALS LEISURE RESEARCH 183 (2013).

82. U.N. Universal Declaration of Human Rights, *supra* note 42, at Article 24.

83. Matthias Risse, *A Right to Work? A Right to Leisure? Labor Rights as Human Right*, 3 L. & ETHICS HUM. RTS. 1 (2003).

holidays with pay, as well as remuneration for public holidays”. Leisure studies experts argue that the right to leisure in the UDHR comprises three distinct sub-rights, namely the right to rest (article 24), the right to cultural participation (article 27(1)) and the right to travel (article 13). The right to leisure articulated in articles 27(1) and 13 UDHR applies to everyone irrespective of being in employment or not.<sup>84</sup>

The chapeau of paragraph 5 of article 30 CRPD is not restricted to after-work-related leisure and recreation as it is not associated with the right of disabled persons to work.<sup>85</sup> Such rest and leisure is implicit in article 27(1)(b) CRPD, where it speaks of “just and favourable conditions of work.” Article 30 is a stand-alone provision that is linked chiefly, but not exclusively, to accessibility and enabling environments (article 9 CRPD). Moreover, there is nothing in the *travaux* to suggest that the participants in the Ad Hoc Committee meetings stipulated a construction of “leisure” and “recreation” similar to that in the UDHR or the ICESCR. It is safe to argue that under article 30(5) CRPD all disabled persons, whether employed or not, enjoy access to leisure and recreation in equal manner as persons without disabilities.

The purposes of “leisure” and “recreation” go beyond mere time off work. The 2000 Charter for Leisure, adopted by the World Leisure Organization, a global NGO with consultative status at United Nations Economic and Social Council (ECOSOC), states that: “Individuals can use leisure opportunities for self-fulfillment, developing personal relationships, improving social integration, developing communities and cultural identity as well as promoting international understanding and co-operation and enhancing quality of life.”<sup>86</sup> The promotion of leisure-related activities works both ways, as it provides sustainable employment and enhances development.<sup>87</sup> Although a definition of “leisure” and “recreation” may turn out to be pedantic, article 1 of the 2008 Quebec Declaration adopted by the World Leisure Organization during the tenth World Leisure Conference, emphasizes that the right to leisure is characterized by:

---

84. Anthony J. Veale, *Human Rights, Leisure and Leisure Studies*, 57 WORLD LEISURE J. 249 (2015).

85. Convention on the Elimination of All Forms of Discrimination Against Women, art. 13(c), Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

86. See Anne Hubbard, *The Major Life Activity of Belonging*, 39 WAKE FOREST L. REV. 217, 267 (2004) (arguing that sport, recreation and play are essential for the “major life activity of belonging”).

87. UNESCO, *The Hangzhou Declaration: Placing Culture at the Heart of Sustainable Development Policies*, Doc. CLT- 2013/WS/16 (May 17, 2013).

- a free personal or group quest for satisfaction, pleasure, discovery and socialization in a leisurely fashion;
- experiences of well-being and harmony with oneself, others and nature;
- healthy lifestyles directly related to the physical and social well-being of individuals and communities
- the effects of cultural, social and economic development on society;
- accessibility by the greatest number of people.<sup>88</sup>

This is a broad enough compilation of elements that links fundamental socio-economic as well as civil and political rights to “wellbeing”<sup>89</sup> as the key principle underlying the right to development.<sup>90</sup> It is clear that disabled persons cannot enjoy access to leisure and recreation in the sense described without positive actions on the part of States. In fulfilling this obligation, which in turn nurtures both body and spirit, States must take action not only in spheres within the public domain (e.g., schools, cultural and natural sites) but also buildings and sites controlled and operated by private entities, such as sporting stadiums. The obligations of private parties are analyzed further in the context of paragraph 5(e) of article 30.

#### V. THE OBLIGATION TO PROMOTE THE PARTICIPATION OF DISABLED PERSONS IN MAINSTREAM SPORTING ACTIVITIES

Paragraph 5(a) of article 30 CRPD at first glance seems like a mere continuation (as articulated in the chapeau) of the right of access and participation in sporting activities. However, it goes well beyond the chapeau in requiring States to encourage and promote participation in “mainstream sporting activities at all levels.”<sup>91</sup> This latter phrase requires some qualification and distinction from the mere right of access to sport. Non-disabled persons participate in sports and where they can advance to more

---

88. *World Leisure Conference 2008*, WORLD LEISURE ORGANIZATION, [http://www.loisirquebec2008.com/mondial2008\\_en\\_fichiers/loisir\\_en.asp](http://www.loisirquebec2008.com/mondial2008_en_fichiers/loisir_en.asp).

89. See Rodney Peffer, *A Defense of Rights to Well-Being*, 8 PHIL. & PUB. AFFS. 65 (1978) (who while supportive argued, almost forty years ago, that its laughable to suggest such a right to persons living in poverty).

90. The first UNDP Human Development Report distinguished between two sides of human development: “the formation of human capabilities, such as improved health or knowledge . . . and the use that people make of their capabilities, for work or leisure.” UNITED NATIONS DEV. PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 10 (Oxford Univ. Press 1990).

91. See Kjersti Skarstad & Michael A. Stein, *Mainstreaming Disability in the United Nations Treaty Bodies*, 17 J. HUM. RTS. 1 (2018).

competitive levels they are usually provided with the means and opportunities to achieve some degree of professional status. This competitive level of sportsmanship is made available either through public funding (typically for sports that do not attract significant private sponsorship or fee-paying spectators) or private clubs and other private sponsors. The equality proviso in the chapeau is very much relevant in this respect, because States parties are obliged to elevate disabled sporting activities to similar competitive levels, both nationally and internationally. If public funding is available for a particular non-disabled sporting activity, similar funding should be made available for its disabled counterpart.<sup>92</sup> The obligation articulated in paragraph 5(a) entails that States parties must support elite disabled athletes to compete in international competitions if they are doing so in respect of non-disabled athletes.<sup>93</sup>

Resource constraint is clearly an unjustifiable claim where funding is available for non-disabled athletes. In equal measure, States parties commit themselves to take all possible measures to ensure disabled persons have access to structures (e.g., standing or ad hoc tournaments) that allow them to compete at all levels.<sup>94</sup> This may be achieved by the setting up of dedicated disabled sport federations, the training of appropriate coaching staff, access to adapted physical activity, and others. Top flight disabled sporting participation will certainly require a significant degree of awareness raising in order to raise the profile of disabled sports.<sup>95</sup> Besides advertising, this may also be achieved through subsidized tickets at venues, tax exemptions for disabled sporting federations, dedication of airtime on private and public media outlets to publicize disabled sports and others.

Reference to mainstream sporting activities does not mean that disabled persons should compete in sporting events alongside their non-disabled counterparts. If that were so, then amateur athletes would be entitled to compete in competitions alongside professional athletes. Rather, the term “mainstream” refers to participation in sports and events that are available to non-disabled athletes, subject to appropriate adaptation, as

---

92. Convention on the Rts. of Pers. with Disabilities, Concluding Observations on the Initial Rep. of Mold., U.N. Doc CRPD/C/MDA/CO/1, at 54-55 (2017).

93. Convention on the Rts. of Pers. with Disabilities, Concluding Observations on the Initial Rep. of Plurinational State Bol., U.N. Doc CRPD/C/BOL/CO/1, at 67(a) (2016).

94. See *IPC Accessibility Guide: An Inclusive Approach to the Olympic & Paralympic Games*, International Paralympic Committee, 230 (Sept. 2015) [https://www.paralympic.org/sites/default/files/document/160307102314920\\_IPC+Accessibility+Guide.pdf](https://www.paralympic.org/sites/default/files/document/160307102314920_IPC+Accessibility+Guide.pdf) [hereinafter *IPC Accessibility Guide*].

95. See Daniel Tindall, *Creating Disability Awareness through Sport: Exploring the Participation, Attitude and Perception of post-Primary Female Students in Ireland*, 32 IRISH EDUC. STUDIES 457 (2013).

will be explained in the next Part, although the exclusion of a disabled athlete with performances similar to non-disabled top-flight athletes from non-disabled events would amount to discrimination. No doubt, disabled persons' organizations have, and do, establish activities that are not mainstream, as is the case with several sports set up in connection with the Special Olympics. In practice, disabled participation in competitive sports is meaningful only if persons with similar types and degrees of disability compete against each other. To this end, the International Paralympic Committee (IPC) has authored an "Athlete Classification Code," as revised in 2015.<sup>96</sup>

What is yet unclear is whether a disabled person with prosthetics can and/or should be declassified as an athlete entitled to partake in disabled events and thus become eligible to compete with disabled competitors.<sup>97</sup> The appellate division of the Court of Arbitration for Sport (CAS) overturned an award at first instance, which ruled that a prosthetic limb gave a disabled athlete an (artificial) competitive advantage over other athletes. The appellate division argued that "if the device provided more disadvantages than advantages it could not reasonably be said to provide an advantage over other athletes, because the user was actually at a competitive disadvantage." On the balance of probabilities, "there was not sufficient evidence of any metabolic advantage in favour of a double amputee using the prosthetic."<sup>98</sup> The tribunal concluded, however, by saying that since Pistorius was the only runner, disabled or otherwise, to run as fast with the prosthetics in question, the ruling does not grant a blanket license to other single or double amputees to compete in IAAF-sanctioned events using *Cheetah Flex-Foot* prosthetics, or indeed any other type of prosthesis. Each amputee athlete must collaborate with the International Association of Athletics Federations (IAAF) to have his or her eligibility under Rule 144.2(e), as interpreted by this Panel, established on an individual basis.<sup>99</sup>

The award seems to suggest that disabled athletes are not automatically entitled to participate in competitions for non-disabled athletes without permission from the governing body of the sporting association in question, irrespective if the disabled athlete competes at a level equal or even higher to non-disabled athletes.<sup>100</sup> This conclusion is wrong, as

---

96. INT'L PARALYMPIC COMM. ATHLETE CLASSIFICATION CODE (July 2015).

97. See DAVID T. MITCHELL & SHARON L. SNYDER, NARRATIVE PROSTHESIS: DISABILITY AND THE DEPENDENCIES OF DISCOURSE (Univ. Mich. Press 2000).

98. Recent Case, *Pistorius v. Int'l Ass'n Athletics Fed'n, CAS 2008/A/1480, paras. 47-50 (2008)*, 3 AUSTL. & N.Z. SPORTS L.J. 145 (2008) [hereinafter *Pistorius Case*].

99. *Id.* ¶ 55.

100. See Amanda H. Booher, *Defining Pistorius*, 31 DISABILITY STUD. QUARTERLY 1 (2011).

non-permission is not something that is open to the discretion of sporting associations because as has already been emphasized, the enforcement of equality and non-discrimination burdens also non-State entities. Although similar cases will be rare, there may well exist sports where certain impairments do not inhibit a disabled athlete to compete against his or her non-disabled counterparts at the highest level of the game. The admission of Pistorius (and a few others before him) to non-disabled international sporting events clearly suggests, as a general rule, that a disabled person may participate in non-disabled sporting events, including the Olympics, as long as they are not making use of enhancement devices that give a distinct competitive advantage over other competitors.

Although the *Pistorius* case does not strictly fall within the remit of reasonable accommodation, *PGA Tour Inc v. Martin* does.<sup>101</sup> Martin, a professional golfer, suffered from a circulatory condition that impaired his ability to walk independently. The (Professional Golfers' Association) PGA required that all competitors walk the entire length of the golf course as part of the competition, which Martin could not do. The U.S. Supreme Court held that the ADA applied to the PGA (the organizer of professional golf tours in the USA), arguing by a majority of 7-2 that the PGA was a commercial enterprise and that it was obliged to offer reasonable accommodation not only to the spectator area of its courses, but also its actual playing fields.<sup>102</sup> It noted that walking the course was not a key aspect of the game. The IPC Accessibility Guide mentions several conditions for integration in mainstream sport activities, namely: accessible venues, adapted sport equipment, adapted sport rules, educated professionals and competition opportunities.<sup>103</sup>

#### A. Adapted physical activity

This term is not expressly articulated in paragraph 5 of article 30; yet, it is key to achieving its objectives. Adapted physical activity refers to a number of modalities, services, advocacy and empowerment systems that have been created specifically to make healthy, enjoyable physical activity accessible to all and to assure equal rights to sport instruction,

---

101. *PGA Tour, Inc. v. Martin*, 532 US 661, *aff'g* 204 F. 3d 994 (9th Cir. 2000).

102. *International Right to Sport*, *supra* note 8; Donald H. Stone, *The Same of Pleasant Diversion: Can we Level the Playing Field for the Disabled Athlete and Maintain the National Pastime in the Aftermath of PGA Tour Inc v Martin. An Empirical Study of the Disabled Athlete*, 79 ST. JOHN'S L. REV 377 (2005).

103. INT'L PARALYMPIC COMM., ACCESSIBILITY GUIDE 98 (2020).

coaching, medicine, recreation, competition and performance of persons with disabilities.<sup>104</sup> The IPC Accessibility Guide states that:

when a person (with or without an impairment) needs help in achieving their participation goals in sports, then adaptation (change strategy) is applied to one or more of the variables that may act as barriers to participation in sporting activities or success in competitive sports (e.g., rules, method of instruction, equipment, facilities, size of participating group).<sup>105</sup>

The key question here is whether adapted physical activities qualify as a form of accessibility, in which case they entail a justiciable right, or whether they fall within the weak obligation of States to “encourage” and “promote” participation in sports and recreation. The CRPD Committee needs to address this issue urgently. Most developed States, driven by the EU statement in the *travaux*,<sup>106</sup> would contend that the resources required for adapted physical activity are outside the ambit of obligations assumed by States and do not concern accessibility. This author strongly disagrees. As already stated in the Part relating to equality in the chapeau to paragraph 5, while accessibility to sporting venues may suffice for most non-disabled persons in order to participate in sport and recreation, mere accessibility to venues is meaningless for disabled persons. Accessibility to venues for disabled persons is meaningful only if they can effectively engage in a sporting activity, otherwise they are simply granted a right of entry (to a building), which renders the right to accessibility absurd. Accessibility in sport for disabled persons, therefore, requires accessibility to all those means that allow a disabled person to actually and effectively engage in a sport or other forms of recreation. Moreover, from the perspective of substantial equality, an argument can be made that disabled persons do not enjoy *de facto* accessibility to sport and recreation if not supported by adapted physical activity. Although the CRPD does not rule out the adoption of “add on” accessibility solutions if necessary, articles 4(1)(f) and 9(2)(h) CRPD would seem to indicate a preference for universal design, defined as the design of products and services to be usable

---

104. See ADAPTED PHYSICAL ACTIVITY: AN INTERDISCIPLINARY APPROACH (Gudrun Doll-Tepper et al. eds., Springer-Verlag Berlin Heidelberg reprint. 2012) (1990); SUSAN CRAWFORD IN COLLABORATION WITH THE HEALTH ACTION ZONE & HEALTH SERVICE EXECUTIVE, CORK, ADDRESSING ADAPTED PHYSICAL ACTIVITY INTERVENTIONS FOR CHILDREN AND ADULTS WITH AUTISM (copy. 2013) (2017); ADAPTED PHYSICAL EDUCATION AND SPORT (Joseph P. Winnick & David L. Porretta eds., 6th ed. 2016).

105. *IPC Accessibility Guide*, *supra* note 94, at principle 5.1.

106. Ad Hoc Committee Sixth Session Report, *supra* note 72.

by all, “to the greatest extent possible and without the need for adaptation or specialized design.”<sup>107</sup>

In practice, while adapted physical activity has allowed disabled persons to participate in sporting activities, limitations have been placed to restrict participation where the health or life of a particular individual would be in serious risk.<sup>108</sup>

## VI. THE RIGHT TO ORGANIZE, DEVELOP AND PARTICIPATE IN DISABILITY-SPECIFIC SPORTING AND RECREATIONAL ACTIVITIES

Paragraph 5(b) of article 30 sets out the right of disabled persons to organize and develop disability-specific sporting and recreational activities. If this obligation is to be construed in a meaningful way it entails that the organization and development of such activities must be undertaken by disabled people themselves or by their respective organizations. This means that national disabled sporting associations be set up and operated by disabled persons, with or in conjunction with State entities (e.g., ministry of sport), with the express consent of disabled persons’ organizations and their participation therein. In practice, national disabled sporting associations involve a combination of State-based and private entities.<sup>109</sup>

Besides domestic disabled-persons federations and sporting leagues, three major organizations have been set up at international level to advance competitive disabled athleticism. These are: (1) the International Paralympic Committee (IPC),<sup>110</sup> which was formed by national paralympic committees and several disability-specific international sports federations. It supervises and coordinates, among others, the

---

107. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 4; See David Lepofsky & Randal Graham, *Universal Design in Legislation: Eliminating Barriers for People with Disabilities*, 30 STATUTE L. REV. 97 (2009); Mary Hums et al., *Universal Design: Moving the Americans with Disabilities Act from Access to Inclusion*, 26 J. LEGAL ASPECTS SPORT 36 (2016).

108. See e.g., *Knapp v. Northwestern University (Knapp)*, 101 F.3d 473 (7th Cir. 1996) (sustaining the university’s refusal to join the college’s basketball team based on a medical determination that Knapp of an increased risk of cardiac death, even with the use of an internal defibrillator), *cert. denied*, 520 U.S. 1274 (1997).

109. See e.g., *About DSA*, DISABILITY SPORTS AUSTRALIA, <https://www.sports.org.au/about-dsa> (last visited Mar. 3, 2022); see also Laura Misener & Simon Darcy, *Managing Disability Sport: From Athletes with Disabilities to Inclusive Organisational Perspectives*, 17 SPORT MGMT. REV. 1 (2014).

110. *Who We Are*, PARALYMPIC, <https://www.paralympic.org/ipc/who-we-are> (last visited Mar. 3, 2022).

Paralympic Summer and Winter Games;<sup>111</sup> (2) the Special Olympics<sup>112</sup> and; (3) the International Committee of Sports for the Deaf, which organizes the Deaflympics.<sup>113</sup> Unlike the International Olympic Committee (IOC), which is an intergovernmental organization, the three aforementioned disabled organizations are private in nature, despite the involvement of public entities, such as national sport federations. The competitions operated by all three encompass several degrees of competitive sportsmanship and many disabled athletes are effectively professionals. However, they also supervise competitions whose aim is to foster a sport, as well as an inclusive culture for disabled persons, as well as serve as a catalyst for social change.<sup>114</sup>

The IPC Accessibility Guide has articulated key principles of access to sport. Although these are addressed to host States, they constitute an excellent blueprint for disabled and spectator access to competitive disabled-related sporting activities. Host States are, thus, required to:

- To organize, develop and participate in para sport and adapted recreational activities, and to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- To organize, develop and participate in integrated sport programmes, along with sportsmen and sportswomen without impairments, and encourage adequate level of facilities, equipment as well as information and training of instructors and trainers;
- To use existing or new sporting and recreational venues and facilities which are accessible, for training or competition;
- To attend sporting events as spectators, in a dignified way, along with their families and friends;
- To have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities;

---

111. See IAN BRITTAI, *THE PARALYMPIC GAMES EXPLAINED* (Routledge 2nd ed. 2016); KEITH GILBERT & OTTO SCHANTZ, *THE PARALYMPIC GAMES: EMPOWERMENT OR SIDESHOW?* (Meyer & Meyer 2009).

112. *About Our Mission*, SPECIAL OLYMPICS, <https://www.specialolympics.org/about/our-mission?locale=en> (last visited Mar. 3, 2022).

113. *About the ICSD*, DEAFLYMPICS, <https://www.deaflympics.com/icsd> (last visited Mar. 3, 2022).

114. See generally KAREN P. DEPAUW & SUSAN J. GAVRON, *DISABILITY AND SPORT* (Bonnie Pettifor et al. eds., 2d ed. 2005) (tracing the history, evolution and current state of disability sports).

- To ensure equal access to participation in play, recreation, and leisure and sporting activities, including those activities in the school system as regards to children with an impairment.<sup>115</sup>

States parties to the CRPD must provide appropriate instruction, training and resources. The key word here is “encourage,” which is discouraging. Although this may be meaningful as part of an inclusive physical education for disabled children, which is framed as a positive obligation for States under article 24 CRPD, this is not the case for disabled adults’ participation in sporting activities. Given the absence of a right to sport, States are under no general obligation to provide instruction, training and resources to disabled persons, unless they are already doing so in respect of non-disabled persons.

In recent years a new branch of physical education focusing on disabled sports has emerged.<sup>116</sup> This means that offering conventional instruction to disabled athletes is clearly inappropriate. At the same time, States should assimilate this branch of physical education into mainstream university curricula so that the next generations of trainers possess the right skills to train disabled athletes.<sup>117</sup>

#### VII. THE RIGHT OF ACCESS TO SPORTING, RECREATIONAL AND TOURISM VENUES

Accessibility, as already explained, is one of the key pillars of the CRPD. Without the obligation to offer accessibility all rights in the CRPD are rendered meaningless. The CRPD Committee’s General Comment No. 2 supplements the list of accessible venues and services in article 9(1)(b) CRPD by indicating that “other indoor and outdoor facilities” include:

law enforcement agencies, tribunals, prisons, social institutions, areas for social interaction and recreation, cultural, religious, political and sports activities, and shopping establishments. Other services ... include postal, banking, telecommunication and information services.<sup>118</sup>

The phrase ‘open or provided to the public’ clearly suggests that the ambit of article 9 is determined by reference to whether a facility or service is open to the public, rather by whether it is publicly or privately owned. General Comment No. 2 suggests that:

115. *IPC Accessibility Guide*, *supra* note 94, at principle 5.1.

116. See e.g., GEOFFREY Z. KOHE & DEREK M. PETERS, *HIGH PERFORMANCE DISABILITY SPORT COACHING* (1st ed. Routledge 2017).

117. See also JEFFREY J. MARTIN, *HANDBOOK OF DISABILITY SPORT AND EXERCISE PSYCHOLOGY* (Oxford Univ. Press 2018).

118. General Comment No. 2, *supra* note 32, ¶ 13.

As long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity.<sup>119</sup>

Unlike subparagraphs (a) and (b) of article 30 CRPD, which concentrate on access to participation and inclusion in sporting, recreational and leisure activities, subparagraph (c) refers to accessibility in respect of venues. It also introduces for the first time the word “tourism,” which shall be explored later. Accessibility to a venue does not concern the person engaging in the activity in question, but others, namely spectators, tourists, etc.<sup>120</sup> This subparagraph is very much implicit in the general concept of accessibility and universal design, but the drafters perhaps felt that particular reference was required to encompass all disabled persons engaged, or interested in attending sporting and recreational activities. The CRPD Committee recommended in the case of the UK that it address the “low level of accessibility to sports stadiums with individual seating for persons with disabilities and their families, friends and personal assistants.”<sup>121</sup>

One of the key players in the global tourism trade is the World Tourism Organization (WTO), an inter-governmental organization that is a specialized agency of the UN. It has paved the way for what is now widely known as accessible tourism.<sup>122</sup> The UN defines tourist activity as the economic activity aimed at satisfying the needs of those who move from their usual places of residence. More specifically tourism relates to those journeys made in our spare time, usually aiming to rest, to learn about other cultures, other ways of life, or just to have fun.<sup>123</sup> It is now

---

119. *Id.*

120. See Mark A. Conrad, *Wheeling Through Rough Terrain – The Legal Roadblocks of Disabled Access in Sports Arenas*, 8 MARQ. SPORTS L.J. 263 (1998) (examining litigation attempts to provide accessibility to stadium sightlines).

121. Comm. on the Rts. of Pers. with Disabilities, Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland, *supra* note 80.

122. Simon Darcy & Tracey Dickson, *A Whole-of-Life Approach to Tourism: The Case for Accessible Tourism Experiences*, 16 J. HOSP. & TOURISM MGMT. 32 (2009); see also DIMITRIOS BUHALIS, ET AL. EDS., *BEST PRACTICES IN ACCESSIBLE TOURISM* (1st ed. Channel View Publ's. 2012).

123. It is defined by the UN Dept on Economic and Social Affairs: as an activity of visitors, with the concept of “visitor” being that of a traveler “taking a trip to a main destination outside his/her usual environment, for less than a year, for any main purpose (business, leisure or other personal purpose) other than to be employed by a resident entity in the country or place visited”. See *International Recommendations for Tourism Statistics 2008*, United Nations Department of

generally accepted that there is a very fine line between the terms “recreation” and tourism,<sup>124</sup> so perhaps there is no pressing reason to distinguish them in the context of the CRPD. The language in paragraph 5(c) is partially derived from rules 11 and 1 of the Standard Rules (1993). The notion of tourist accessibility is, however, much broader than simply the subtotal of tourist sites. It encompasses all those phases that a disabled person must traverse in order to reach his or her ultimate destination, including the surrounding environs. Put simply, a wheelchair user in country A cannot reach a site in country B without disability-friendly air transport from A to B; disability-friendly land, sea or rail transport in B; disability-friendly accommodation and catering in B and; physical accessibility to tourist sites in B. And this is just the bare minimum. This is in line with Target 11.2 of the SDGs, which requires that States should, “By 2030, provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons.”<sup>125</sup>

The indicator for Target 11.2 measures its success by reference to the “proportion of the population that has convenient access to public transport, by sex, age and persons with disabilities.” Although tourist-related disabled access is but one aspect of Target 11.2, it is instructive of what States are required to achieve. Of equal relevance is also Target 11.7, which requires that States should, “By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities.”<sup>126</sup>

The CRPD Committee has urged States to make use of these targets and indicators in the context of article 30(5) in order to render accessible to disabled persons UNESCO World Heritage sites.<sup>127</sup>

The drive to set up a global policy platform for accessible tourism began in 1991 with the WTO’s resolution “For an Accessible Tourism

Economic and Social Affairs Statistics Division, ¶¶ 1.1-1.2, [https://instants.un.org/unused/publication/series/seriesm\\_8\\_3rev13.pdf](https://instants.un.org/unused/publication/series/seriesm_8_3rev13.pdf) (last visited Mar. 3, 2022).

124. See Maria Juul, Eur. Parl. Rsch. Service, *Tourism and the European Union: Recent Trends and Policy Developments*, at 4, (Sept. 2015).

125. U.N. Sustainable Development Goal 11.2, <https://www.unstats.un.org/sdgs/metadata/?Text=&Goal=&Target=11.2> (last visited Apr. 5, 2022).

126. U.N. Sustainable Development Goal 11.7, <https://www.unstats.un.org/sdgs/metadata/?Text=&Goal=&Target=11.7> (last visited Apr. 5, 2022).

127. Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Lithuania, U.N. Doc. CRPD/C/LTU/CO/1, at ¶¶ 59-60 (May 11, 2016).

for the Disabled in the 90s.”<sup>128</sup> This was followed in 2005 by resolution 492 (XVI)/10, on the recommendation of the WTO’s Committee of Quality and Trade Support, which culminated in a report “Towards an Accessible Tourism for All.” This set out the requirements expected of the tourist industry to accommodate and allow equal opportunities for people with limited capabilities. Following the adoption of the CRPD in 2006, the WTO’s instruments were accordingly re-adjusted. In 2009 its General Assembly adopted the “Declaration on the Facilitation of Tourist Travel.”<sup>129</sup> Its aim was to facilitate tourism travel for persons with disabilities as an essential element of any policy for the development of responsible tourism. This was to be achieved by mainstreaming disability issues as an integral part of relevant strategies of sustainable development which ensure that tourism policies and practices are inclusive of people with disabilities, giving rise to equitable and accessible tourism for all.<sup>130</sup> In 2013 the WTO adopted its “Recommendations on Accessible Tourism,” which focused on seven areas of the tourist chain, namely: a) tourism destination management; b) tourism information and advertising (preparation, information and booking); c) urban and architectural environments; d) modes of transport and stations; e) accommodation, food service and conventions; f) cultural activities (museums, theatres, cinemas, and other) and; g) other tourism activities and events.<sup>131</sup>

At the EU level, although the EU did not enjoy competence in tourism-related matters until the Lisbon Treaty, in the mid-1990s it adopted an action plan called “Accessible Tourism for All,” which led to the production of a Manual for the tourist industry, entitled “For an Accessible Europe for Tourists with Disabilities” with the aim of providing tourist operators sufficient information to offer safe and accessible services to disabled persons. The EU Commission now maintains a program on sustainable tourism, through which it chiefly commissions studies and reports related to accessible tourism (which in addition to persons with

---

128. U.N. World Tourism Org., *Creating Tourism Opportunities for Handicapped People in the Nineties*, Res. A/284 (IX) (1991) (defining disability and setting out plans of action in respect of information and tourist advertising, staff training and the requirements expected of tourist facilities so that they are accessible to people with reduced mobility).

129. U.N. World Tourism Org. Res. A/578 (XVIII) at 47 (Oct. 5-8, 2009).

130. Several initiatives have taken place at the regional level. Of the many in existence, it is worth mentioning the U.N. Econ. and Soc. Comm. for Asia and the Pacific, Bali Declaration on Sustainable Tourism Development, U.N. Doc. ST/ESCAP/2474 (2007), <http://www.ina.bnu.edu.cn/docs/20140520110130966973.pdf>.

131. U.N. World Tourism Org., *Recommendations on Accessible Tourism* (Aug. 2013), [https://www.accessibletourism.org/resources/accessibilityen\\_2013\\_unwto.pdf](https://www.accessibletourism.org/resources/accessibilityen_2013_unwto.pdf).

disabilities encompasses the elderly and families).<sup>132</sup> Given the prevalence of civil society and its concern with disability issues, as well as a vibrant tourist industry, it is not surprising that accessible tourism in the EU has largely been driven by commercial interests and entrepreneurship. A study commissioned by the EU Commission, entitled “Mapping and Performance Check of the Supply of Accessible Tourism Services” was published in 2015.<sup>133</sup> The report showed that Europe is the largest tourist destination globally. It identified 313,286 accessible tourism suppliers in EU member States. The study estimated that 9.2 per cent of the existing supply of tourism facilities and services have at least some level of provision for travelers with specific access needs. This number is based on the mapping exercise conducted through the study compared to the overall supply of tourism enterprises. The study found over 3 million tourism businesses were not prepared to adequately cater to the accessibility market. The study further found that only 17 per cent of all industry respondents that have some provisions for accessible tourism reported that they could cater to all disabilities.<sup>134</sup> The study identified, *inter alia*, the appropriate balance between covering accessibility costs with an awareness of the benefits and revenues to individual providers and the community/city in which tourist services are offered.

In the short term, this requires working with national and local destination management organizations to gather and disseminate “hard data” on return on investment. A business case template based on a set of local case studies from across the supply chain should be drawn up to demonstrate the financial and commercial advantages of investing in the accessible tourism market. This information should feed into “awareness-raising” about the accessible tourism market potential at all levels and across all sectors of the tourism industry.

Second, destination management organizations (DMOs) need to work internally to ensure there is top-down commitment from local policymakers, the tourism (and related) industries and other stakeholder organizations to market their destination from an accessibility perspective. Such marketing will require managing (with the participation of businesses) and linked databases that include information on accessibility in all parts of the service chain. This would allow customers to access

---

132. Accessible Tourism, EUR. COMM'N – INTERNAL MKT., INDUS., ENTREPRENEURSHIP AND SMES, (last visited Feb. 28, 2022), [https://www.ec.europa.eu/growth/sectors/tourism/offer/accessible-tourism\\_en](https://www.ec.europa.eu/growth/sectors/tourism/offer/accessible-tourism_en).

133. Mapping Tourism and Performance Check of the Supply of Accessible Tourism Services – Final Report (EC) 220/PP/ENT/PPA/12/6491 (Apr. 2, 2015).

134. *Id.* at 4-8.

information on the accessible offer and businesses to market themselves to this specific target market. Ideally, local and regional accessibility databases should be integrated on a unified platform such as Pantou (or a similar portal) at European level, which would be managed with a strong industry involvement and it would allow bookings to be completed directly on site. The platform would include specialised suppliers who target customers with middle to severe access requirements but would also be open to mainstream suppliers who have accessible offers and services for one or more target groups, perhaps with lesser access requirements.<sup>135</sup>

The business case for tourist accessibility is a significant tool in the hands of States parties to minimize accessibility costs, on the one hand, while investing in their infrastructure and increasing their revenues through increased tourist influxes on the other.<sup>136</sup> The business case is further enhanced by the existence of online published databases of facts and measurements related to the accessibility of tourist venues and services (chiefly in regions and countries of Europe), such as the Accessibility Information Schemes (AIS) and the European Accessible Tourism Directory (PANTOU).<sup>137</sup> The CRPD Committee should co-ordinate with Inter-Agency Support Group (IASG) for capacity building funding so as to assist countries to set up tourist accessibility action plans and long-term agendas.<sup>138</sup>

#### VIII. EQUAL ACCESS OF DISABLED CHILDREN TO PLAY, RECREATION AND LEISURE AND SPORTING ACTIVITIES

The inclusion of a sub-paragraph on children in article 30(5) CRPD is at the very least highly unfortunate. The drafters gave little consideration to the fact that this paragraph overall rejects the notion of a right to sport and simply urges States to accommodate disabled participation in sports, as well as provide a sufficient degree of accessibility. This is in contrast to article 7 CRPD, which reiterates as its guiding postulate the child's best interests principle. The best interests principle in paragraph 2

---

135. *Id.* at 13-14.

136. See Tracey J. Dickson et al., *Enhancing Destination Competitiveness Through Disability Sport Event Legacies: Developing an Interdisciplinary Typology*, 29 INT'L J. CONTEMP. HOSP. & MGMT. 924, 936 (2017).

137. PANTOU, <https://www.pantou.org/> (last visited Feb. 28, 2022).

138. Such actions will negate the need for litigation such *Botta v. Italy*, 26 Eur. Ct. H.R. 241 (1998), where a disabled applicant complained to the ECtHR that he could not access a private beach resort, although Italian law mandated such access. The applicant's claim under Art 8 (right to privacy and family life) and Art 14 ECHR (non-discrimination) failed, arguing that the right to access the beach at a location some distance from the applicant's normal place of residence did not fall within Arts 8 and 14 ECHR.

of article 7 is broader than its counterpart in article 23(2) CRPD. The latter relates to family relationships and legal capacity whereas the former refers to “all actions concerning children.”<sup>139</sup> Although the *travaux* do not enlighten us as to the precise meaning of this articulation, if article 7(2) is to distinguish itself from article 23(2) CRPD, then the best interests principle in article 7 must necessarily encompass all policies and actions adopted at State and sub-State level and not just court judgments in the narrow family law sense.<sup>140</sup> Under this light, the best interests of disabled children as an identifiable group<sup>141</sup> may require such policies and resources that are required to satisfy not only the rights under article 7 and the CRPD as a whole, but also other rights not necessarily found in the CRPD. The implementation of disabled children’s best interests requires policy action (e.g., adoption of legislation, specialized courts) as well as the provision of resources. Hence, the best interests principle should be viewed as having both a personalized and a general dimension, especially in the case of disabled children.

It is surely in the disabled child’s best interests to engage in sports and play from early childhood.<sup>142</sup> Without inclusive participation in physical and recreational activity disabled children are subjected to further social exclusion and their health is also further impaired. This is in contrast to non-disabled children in at least one way. Whereas non-participation in sport, physical exercise and recreation may lead to social exclusion for non-disabled children, they possess the opportunity to engage in some physical exercise, even if unintended (e.g., walking to school). This is not the case for the majority of disabled children. The best interests principle,

---

139. In *Glass v. United Kingdom*, App. No. 61827/00, ¶ 70 (Mar. 9, 2014), the EctHR held that the decision to impose treatment on a severely disabled child in defiance of his mother’s objections had given rise to an interference with his right to respect for his private life, and in particular his right to physical integrity. This interference, however, was in accordance with the law and the action taken by the hospital staff had pursued a legitimate aim.

140. The same phrase is used in Art 3(1) CRC. The CRC Ctee has construed it to encompass “all acts, conduct, proposals, services, procedures and other measures”. Comm. On the Rts. Of the Child, General Comment No. 14, The Right of the Child to Have His or Her Best Interests Taken as Primary Consideration (art. 3, para. 1), ¶ 17, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

141. See *id.* ¶ 23 (identifying the best interests principle as both an individual and a group right).

142. See Jane Brodin, *Play in Children with Severe Multiple Disabilities: Play with Toys: A Review*, 46 INT’L J. DISABILITY, DEV., AND EDUC. 25 (1999); Jean W. Gowen et al., *Object Play and Exploration in Children with and Without Developmental Disabilities: A Longitudinal Study*, 97 AM. J. ON MENTAL RETARDATION 21 (1992); Linda L. Hestenes & Deborah E. Carroll, *The Play of Young Children with and Without Disabilities: Individual and Environmental Influences*, 15 EARLY CHILDHOOD RSCH. Q. 229 (2002); Michael D. Malone, *Developmental Correlates of Social Engagement in Preschool Children with Mental Retardation*, 2 INT’L PLAY J. 189 (1997); Ellen M. Hamm, *Playfulness and the Environmental Support of Play in Children with and without Developmental Disabilities*, 26 OCCUPATION, PARTICIPATION AND HEALTH 88 (2006).

therefore, as enshrined in article 7 CRPD and article 3 CRC entails that the right to sport and recreational activities be conferred upon them, even if it is not so conferred upon disabled adults under article 30(5) CRPD.

Paragraph 5(d) is also in stark contrast to article 24(1) CRPD, which sets out a right to education of disabled children. As a result of this right, article 24(1)(b) CRPD demands that States ensure: “The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.”

A disabled child’s mental and physical abilities cannot be attained without some kind of physical or sporting exercise, or indeed without recreation. This is inherent in any reading of article 24(1)(b) and it is imperative that States and the CRPD Committee incorporate it into future concluding observations, as has already been done by the CRC Committee.<sup>143</sup> Paragraph 2 of article 24 CRPD goes even further and states that in realizing the right to education, States parties shall ensure:

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual’s requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.<sup>144</sup>

Quite clearly, an inclusive education for disabled children requires not simply access to sporting activities, but quintessentially a right to sport as an integral aspect of the right to an inclusive education. Paragraph 2(b)-(d) of article 24 CRPD merely elaborates on the modalities of the reasonable accommodation required to give effect to this right; it does not substitute the right to sport with reasonable accommodation.

---

143. Comm. On the Rts. Of the Child, General Comment No. 9, The Rights of Children with Disabilities, ¶¶ 20, 39, 51, U.N. Doc. CRC/C/GC/9 (Feb. 27, 2006); CRC Ctee, General Comment No. 14, The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), ¶ 19, U.N. Doc. CRC/C/GC/14 (May 29, 2013); Comm. On the Rts. Of the Child, General Comment No. 17, The Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (art. 31), ¶¶ 17, 35, 44, 50, 58, U.N. Doc. CRC/C/GC/17 (Apr. 17, 2013).

144. Convention on the Rights of Persons with Disabilities (CRPD), *supra* note 4 at Article 24, para. 2.

The last phrase in paragraph 5(d) of article 30 is an ode to poor draftsmanship. It considers that by adding the phrase: ‘including those activities in the school system’ it succeeds in covering every school-related playful, recreational or sporting activity. However, the opposite result is achieved, given that the issue is already *implicitly* addressed by article 24, as explained above. The *explicit* reference in article 30(5)(d) as to the non-rights based character of play, recreation and sport might otherwise serve as a *lex specialis* rule that supersedes the *lex generalis* statement in article 24. Fortunately, this is not the case. For one thing, the disabled child’s best interests under article 7(2) CRPD, article 3 CRC and customary international law dictates that the positive contribution of sport and recreation to a disabled child’s life renders these concrete entitlements. Secondly, the conflict between articles 24 and 30(5)(d) cannot possibly be resolved on the basis of the *lex specialis* principle, nor is the sequence of the articles a determining factor. Given the conferral of an entitlement in article 24 (right to education), in conjunction with the customary nature of the child’s best interests principle and the fact that in the *travaux* there is intention to deny a right to sport and recreation only to disabled adults, disabled children enjoy a right to sport, recreation and leisure irrespective of the language of article 30(5)(d).

IX. RIGHT OF ACCESS TO SERVICES FROM THOSE INVOLVED IN THE ORGANIZATION OF RECREATIONAL, TOURISM, LEISURE AND SPORTING ACTIVITIES

Paragraph 5(e) of article 30 CRPD is addressed to States parties, albeit the ultimate addressees are non-State actors.<sup>145</sup> It has to be read in accordance with developments in a particular field of international law known as business and human rights. Although a significant part of recreational, sporting, leisure and tourist activities are offered by State providers, the bulk is undoubtedly privately operated. Although in other subparagraphs of article 30(5) CRPD we have discussed the benefits of making a business case for accessible tourism, all four of these activities are operated on a larger scale by small and medium enterprises (SMEs). As a result, while it may make commercial sense for a municipality to invest in accessible tourism in the long run, an SME, such as a small restaurant, or a small hotel, may see little point in accessibility-related

---

145. International Convention on the Elimination of All Forms of Racial Discrimination art. 2, ¶ 1(d), Dec. 21, 1965, T.I.A.S. No. 94-1120, 660 U.N.T.S. 195 (requiring states to take all appropriate measures to eliminate discrimination by both public and private entities, thus implicitly encompassing corporations).

expenditures.<sup>146</sup> A joint effort is therefore important where the State, which sees the larger picture,<sup>147</sup> improves accessibility in public spaces and transport, among others, thereby urging and assisting small businesses to develop individual accessibility plans, while at the same time organizing courses to train lower and senior hospitality industry personnel. Hence, the obligation in paragraph 5(e) encompasses the adoption of laws, policies and actions ensuring that the entire supply chain of the aforementioned four activities is disability-friendly. The lack of synergy between the State and the business sector, as well as the lack of the latter's understanding of the needs of the disabled tourist population is highly informative. The EU-commissioned report on accessible tourism notes that:

There is an important disconnect between the perceptions of industry and travelers. Indeed, the most frequent barriers encountered by tourists related to lack of information on accessible services and the lack of integration of accessible services across the supply chain at destination level. On the other hand, industry perceptions suggest that accommodation and information are the most accessible segments in the supply chain.<sup>148</sup>

That the obligation is addressed to States does not mean that private entities are immune from human rights obligations. Equality entails that disabled persons have access to private sporting venues and facilities<sup>149</sup> and this is true of theatres, recreational and other facilities. States must transpose article 30(5)(e) CRPD in such a way as to take appropriate measures to ensure that owners comply accordingly. That States have a responsibility to regulate multinational corporations (MNCs) and other private parties in the discharge of their human rights duties has been highlighted manifold by treaty bodies.<sup>150</sup> The UN Human Rights Committee

---

146. See *European Commission, Mapping and Performance Check of the Supply of Accessible Tourism Services Final Report* 9-10 (Apr. 2015), <http://www.accessibletourism.org/?i=enat.en-reports.1740> (identifying three key barriers preventing EU businesses from becoming increasingly accessible: infrastructure and physical barriers, financial barriers including the lack of a strong business case and knowledge and information barriers).

147. The market size for accessible tourism in 2014 in Europe amounted to over 740 million trips per year (day trips and overnight trips combined) based on analyses of the travel propensity of disabled and elderly persons in the EU Member States. *Id.* at 17.

148. *Id.* at 13.

149. European Sports Charter art. 4, ¶ 4, Sept. 24, 1992, No. R(92) 13 REV.

150. Comm. On Econ., Soc. And Cultural Rts., General Comment No. 18, The Right to Work, ¶ 35, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006); Comm. On Econ., Soc. And Cultural Rts., General Comment No. 15, The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 23, U.N. Doc. E/C.12/2002/11, (Jan. 20 2003); Comm. On Econ., Soc. And Cultural Rts., General Comment No. 5, Persons with Disabilities, ¶ 42, U.N. Doc. E/1995/22 (Dec. 9, 1994); Comm. On the Elimination of Discrimination Against Women, General

emphasized in General Comment 31 that “the positive obligations on states parties to ensure Covenant rights will only be fully discharged if individuals are protected by the state, not just against violations of Covenant rights by its agents, but also by acts committed by private persons or entities.”<sup>151</sup>

Private actors are not exempt from the range of socio-economic obligations incumbent on States. Although non-State actors are not charged with specific obligations under the ICESCR, the CRPD or general international law, to the extent that they effectively discharge economic and social rights in substitution for the State they have been viewed by most courts as legitimate duty-holders and have thus accepted the justiciability of claims brought against them. In *Etcheverry v. Omint* the applicant, who was an HIV sufferer, was originally provided membership to a private health plan by his employer. When he later became redundant he sought to continue his membership through private funds but the insurance company refused. The Argentine Supreme Court held that private health providers were under a duty to protect the right to health of their customers and that their special relationship was not simply of a contractual nature.<sup>152</sup> International bodies dealing with socio-economic rights claims but with no jurisdiction against non-State actors, such as the European Committee of Social Rights, will typically find that the State concerned has violated its obligations under the European Social Charter by failing to take action against recalcitrant private actors.<sup>153</sup> In equal measure disability discrimination suits are routinely brought against private entities by disabled persons under disability, or equality-related statutes. In most

---

Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures, ¶¶ 7, 29, 31-32 (2004); Comm. On the Elimination of Discrimination Against Women, General Recommendation No. 24, Article 12 of the Convention (Women and Health), ¶¶ 14-17, U.N. Doc. A/54/38/Rev.1, chap. I (1999); Hum. Rts. Comm., General Comment No. 28: Article 3, 68<sup>th</sup> Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 31 (Mar. 29, 2000).

151. Hum. Rts. Comm., General Comment No. 31, 80<sup>th</sup> Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.13, ¶ 8 (May 26, 2004). See *Arenz v. Germany*, U.N. Doc. CCPR/C/80/D/1138/2002, ¶ 8.5 (Mar. 24, 2004) and *Cabal & Pasini Bertran v. Australia*, U.N. Doc. CCPR/C/78/D/1020/2001, ¶ 7.2 (Aug. 7, 2003) where the HRCtee discussed the admissibility of individual communications relating to abuse by private parties.

152. *Etcheverry v. Omint Sociedad Anónima y Servicios*, I.C.J. E.34. XXXV (Mar. 13, 2001).

153. Comm. Econ. Soc. Cultural Rts., *General Comment No. 19: Article 9*, 39<sup>th</sup> Sess., U.N. Doc. E/C.12/GC/19, ¶ 65 (Feb. 4, 2008) (noting that a state violates its duty to provide social security where it fails to adequately regulate the activities of private companies that deny this entitlement to rights-holders); see also ILIAS BANTEKAS & LUTZ OETTE, INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE 838-53 (Cambridge Univ. Press 3d ed. 2000).

cases these suits argue against the lack of reasonable accommodation or accessibility.<sup>154</sup>

Besides non-discrimination, private entities have a duty of care towards disabled persons within the sphere of the services offered. This may entail a duty to offer reasonable accommodation, enhanced accessibility. Indeed, the duty itself may derive from statute or treaty. In *Stott v. Thomas Cook*,<sup>155</sup> a disabled passenger was returning home with his wife, having requested adjacent seating arrangements, as he was unable to cater for himself. This never happened and the claimant was also dropped by untrained staff while being carried to the aircraft and suffered humiliation. Although his claim for compensation failed on technical grounds, the UK Supreme Court held that the operator had failed to provide reasonable accommodation and had effectively discriminated against him, in breach of Regulation (EC) No 1107/2006 of the European Parliament and the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air. Overall, the disability experience in air transportation for disabled persons is significantly below dignified standards.<sup>156</sup> This includes not only poor seating arrangements, but issues such as lack of appropriate in-flight entertainment for people with sensory impairments.

In addition to the legal obligations enjoyed by private operators of tourist, recreational and sporting services, States parties should ensure that such operators engage in positive business and human rights practices, or corporate social responsibility (CSR). This is chiefly driven by business sense, visibility and civil society, although not always in combined manner. Among the many hundreds CSR instruments (each large company usually has its own CSR charter or statute) one may highlight

---

154. *FirstGroup PLC v. Pauley* [2017] UKSC 4 (discussing reasonable adjustments on a privately-operated bus route).

155. *Stott v. Thomas Cook Tour Operators Ltd.* [2014] UKSC 15.

156. See Matthew Kwai-Sang Yau et al., *Traveling with a Disability: More than an Access Issue*, 31 ANN. TOUR. RES. 946 (2004); Michael A Schwartz, *Propelling Aviation to New Heights: Accessibility to In-flight Entertainment for Deaf and Hard of Hearing Passengers*, 77 J. AIR L. & COM. 151 (2012). Several airline policies require persons with disabilities to travel with an accompanying person without providing them an opportunity to explain their case. This has been found to be discriminatory. See the Tribunal Grande Instance Bobigny and Paris Court of Appeal decided in *Gianmartini et al. v. Easyjet*, finding that Easyjet's policy on accompanying persons discriminated against PWDs and fined Easyjet 70,000 Euros. On December 15, 2015, the Criminal Chamber of the Court of Cassation affirmed the ruling. See Cour de cassation [Cass.] [supreme court for judicial matters] crim., Dec. 15, 2015, Bull. Crim., No. 286 (Fr.).

Social Accountability (SA) 8000,<sup>157</sup> the Caux Principles for Business,<sup>158</sup> the UN Global Compact and the OECD Guidelines for Multinational Enterprises. The UN Global Compact, for example, is comprised of ten principles premised on the International Bill of Human Rights, the Rio Declaration on Environment and Development and anti-corruption treaties.<sup>159</sup> The UN Secretary General's Special Representative on Business and Human Rights, John Ruggie, introduced three core principles on the basis of a differentiated yet complementary framework of responsibilities between MNCs and States. These consist of: (1) the State duty to protect against human rights abuses by third parties, including business; (2) the corporate responsibility to respect human rights; and (3) the need for more effective access to justice.<sup>160</sup> In 2011 these were formalized into a set of "Guiding Principles on Business and Human Rights: Implementing the UN Protect, Respect and Remedy Framework," which were endorsed by the UN Human Rights Council.<sup>161</sup>

The corporate responsibility to respect human rights is complementary to that of States. At the very least MNCs must respect domestic human rights law in their country of operation.<sup>162</sup> This entails a duty to avoid infringing the rights of others as well as addressing adverse human rights effects, in this case disability rights, caused by their operations.<sup>163</sup> The Principles clearly suggest that where domestic law falls below fundamental human rights MNCs should seek ways of honoring them.<sup>164</sup> Although MNCs are not the direct bearers of duties under international human rights law, including the rights enshrined in the CRPD, they are none the less obliged to respect disability rights to the degree that these are prejudiced by their operations and as long as they have the capacity to take

---

157. *Social Accountability 8000 International Standard*, SOCIAL ACCOUNTABILITY INTERNATIONAL (June 2014), <https://www.sa-intl.org/wp-content/uploads/2020/02/SA8000Standard2014.pdf>.

158. *Principles for Responsible Business*, CAUX ROUND TABLE FOR MORAL CAPITALISM, <https://www.cauxroundtable.org/principles/> (last visited Mar. 7, 2022).

159. *The Ten Principles of the UN Global Compact*, UNITED NATIONS GLOBAL COMPACT, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last visited Mar. 7, 2022).

160. See Rep. of the Special Representative, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008).

161. U.N. Doc. A/HRC/17/31, annex (Mar. 21, 2011).

162. See generally THE CAMBRIDGE COMPANION TO BUSINESS AND HUMAN RIGHTS (Ilias Bantekas & Michael A. Stein eds., Cambridge Univ. Press 2021).

163. U.N. *Guiding Principles on Business and Human Rights, Guiding Principle 11*, THE NAT'L ACTION PLANS ON BUS. AND HUM. RTS., <https://globalnaps.org/ungp/guiding-principle-11/> (last visited Apr. 5, 2022).

164. U.N. *Guiding Principles on Business and Human Rights, Guiding Principle 23(b)*, THE NAT'L ACTION PLANS ON BUS. AND HUM. RTS., <https://globalnaps.org/ungp/guiding-principle-23/> (last visited Apr. 5, 2022).

appropriate action.<sup>165</sup> MNCs should adopt policy commitments upon which all future internal and external company dealings must be predicated. For example, a policy commitment to respect the right of safe air travel with reasonable adjustment to disabled passengers or to work will leisure resorts offering full accessibility should be interpreted by the company's legal team and management board as prohibiting all contracts that infringe this right.<sup>166</sup>

## X. CONCLUSION

States are clearly reluctant to endorse a right to sports, whether for disabled or non-disabled persons. This is despite public campaigns to promote healthier lifestyles for all, which in turn decreases healthcare expenses and increases productivity. What is accepted, however, albeit with some degree of reluctance, is the (limited) right of access to sports and sporting activities for disabled persons. Such a right should be read in tandem with the right to recreation, which in many cases overlaps and complements the right of access to sports. This is because sport is much more than just mere physical activity, but also a social and cultural phenomenon. For many disabled persons, a sporting activity is an opportunity for friendship, association and recreation in the broader sense, particularly where their mobility is limited. In the narrow sense of accessibility, disabled sport requires significant input from the State, as well as non-State actors. It is somewhat astonishing that in a world populated by more than 1 billion disabled persons, States have not seized on the business opportunities for disabled sports and accessible sports-related tourism and recreational activities. Of course, this is hardly surprising, given the global reluctance to employ disabled persons<sup>167</sup> under the wrongful assumption that they are less skilled as compared to their non-disabled counterparts.<sup>168</sup>

With the advent of universal design and adapted physical activity mechanisms and techniques, it is now easier to design and adapt the built

---

165. See Michael A. Stein & Ilias Bantekas, *Disability Invisibility in Business and Human Rights Discourse and Corporate Practice*, 6 J. BUS. & HUM. RTS. (June 14, 2021).

166. See BANTEKAS & OETTE, *supra* note 153, at 840-46.

167. In 2009, the ILO assessed annual national GDP losses in ten developing countries, three from Asia and seven from Africa, projecting annual GDP losses ranging between 3-7 per cent. Sebastian Buckup, *The Price of Exclusion: The Economic Consequences of Excluding People with Disabilities from the World of Work*, 48 INT'L LAB. OFF. (2009), [https://www.ilo.org/wcmsp5/groups/public/—ed\\_emp/—ifp\\_skills/documents/publication/wcms\\_119305.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_emp/—ifp_skills/documents/publication/wcms_119305.pdf).

168. Stein & Bantekas, *supra* note 165.

and IT environment to the particular needs of disabled persons.<sup>169</sup> The promotion of amateur sporting activities, as well as mainstream (competitive) disabled sports will not only enrich the physical and social wellbeing of disabled persons; it will also help in resisting the stigma of disability within society, which is in the benefit of all humankind. In this sense, the right of access to sport and recreation for disabled persons is a radical proposition, even if the idea seems simple enough. It is hoped that in the not too distant future the image of a disabled sporting event will be just as popular and commonplace as a non-disabled one, in much the same way that female sporting events and athletes are now as prominent as their male counterparts. But for this eventuality to materialize, States must live up to obligations in article 30 CRPD as explained in this article.<sup>170</sup>

---

169. ACCESSIBLE TECHNOLOGY AND THE DEVELOPING WORLD (Michael A. Stein & Jonathan Lazar eds., Oxford Univ. Press 2021).

170. States parties to the CRPD must also seriously consider lifting reservations placed on the CRPD, as these have been found to impede the effective enjoyment of key rights. See Ilias Bantekas, *Reservations to the Disabilities Convention: Peer Engagement and the Value of a Clear Object and Purpose*, 33 N.Y. INT'L L. REV 61 (2020).