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### Aiming for Inclusive Sport: the Legal and Practical Implications of the United Nation's Disability Convention for Sport, Recreation and Leisure for People with Disabilities

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#### ABSTRACT

Although sport and disability are not new subjects to the United Nations, the Convention

on the rights of Persons with Disabilities serves as the first legally binding instrument for protecting those with disabilities in the sporting realm. Article 30.5 is specifically devoted to addressing the rights of people with disabilities in the sport, recreation, play and leisure realms. The Convention requires all countries ratifying it to take proactive measures, including changes and/or additions to policy and legislation to enable individuals with disabilities to realize their human rights in the sporting realm. The paper discusses relevant United Nations instruments in existence before the Convention and addresses the difference between prior instruments and the new Convention. An analysis of Article 30.5 and relevant other Articles of the Convention is offered. Practical applications of the Article in the field are provided, as are suggestions on how it can be used to as a tool for implementation, development and the securing of rights in the sporting realm for people with disabilities.

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## KEYWORDS

Convention on the Rights of Persons with Disabilities  
- Disability - Sport - United Nations - International  
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## INTRODUCTION

Sport (which throughout this paper denotes all levels of recreation, play, and leisure) is often viewed as a luxury (U.N. Task Force Report, 2003, p.1). 'Sport' conjures images of professional players who get paid millions to play in front of millions, and this glamour, at the most basic level, sport embodies many of the same rights such as freedom of movement, freedom to gather and play, and leisure. Sport provides a tool to achieve vital human development goals such as psychological and physical rehabilitation. In addition, it is a tool for social mobilization (U.N. Task Force Report, 2003, p. 2-3) by providing a space where relationship building can occur amongst teammates and adversaries alike.

Many people do not realize that the benefits of participation in sport are more crucial to those with disabilities than those without. Those without disabilities may be able to access sport to a greater extent, but those with disabilities are often denied the benefits sport brings. The tools that sport offers are even more important.

For example, many people with disabilities throughout the educational system, or if they do have access, are often excluded from their peers (Degener and Quinn, 2002, p.1). However, the atmosphere of sport, where one learns teamwork, communication, leadership, cooperation and respect, offers persons with disabilities an opportunity where they can develop these vital skills – skills that are important for contributing members of society (U.N. Task Force Report, 2003). Sport also acts as an inexpensive form of physical therapy for people with physical disabilities who need to retain as much strength as possible (Roy, 2006). Without this exercise, many individuals with disabilities experience atrophying muscles, losing what little amount of strength they have (Cooper, 1999). Sport is also a powerful psychological resource for those who are recently disabled, perhaps through war or other trauma. In the sport realm, they might gain a sense of normalcy when they can still score a goal, albeit differently.

Recently, the United Nations underscored the importance of sport for persons with disabilities by adopting the Convention on the Rights of Persons with Disabilities, Article 30(5) of which specifically protects the rights of persons with disabilities to actively participate in sport, recreation, play, and leisure (United Nations, 2006). The adoption of the United Nations Convention on the Rights of Persons with Disabilities (hereafter 'the Convention') was a historic and legally binding international Convention specifically protecting the rights of persons with disabilities, as well as, the first International Human Rights Convention of the 21<sup>st</sup> century (United Nations, 2006). On March 30<sup>th</sup>, 2007, the United States signed and ratified this Convention; by May of that year there were 113 signatories. The adoption of the Convention was the culmination of five years of negotiations by delegations (the term used to refer to U.N. country representatives) from 113 countries and advocates across the world. This Convention potentially affects the lives of over 650 million people living with disabilities across the world (United Nations, 2006). The remainder of this paper will provide a review of the Convention addressing disability in sport prior to the Disability Convention and its implications and applications.

## THE STATUS OF DISABILITY IN SPORT AT THE UNITED CONVENTION

Disability and sport are not foreign issues to the United Nations. The United Nations Economic and Social Council adopted the International Charter on Physical Education and Sport in 1978 [<http://www.unesco.org/education/information/nfsunesco%221978%20UNESCO%20charter%20on%20sports%20education%22>]. This charter explicitly states that 'The education and sport is a fundamental human right for all'. Article I, the charter delineated that this right extended to youth, the elderly and those with disabilities. In 1982 the World Programme of Action Concerning Disabled Persons' [<http://www.un.org/esa/socdev/enable/dissref>], 'The Standard Rules on the Equalization of Opportunities' [<http://www.un.org/esa/socdev/enable/dissref00.htm>], 'Articles that recognized people with disabilities' right to

On November 17, 2003 the United Nations declared 2003 through General Assembly Resolution 58/5. Although a few organization of events surrounding the U.N. Year of Sport governmental organizations, such as the International Paralympics and Northeastern University's Center for the Sport succeed in bringing disability sport into the consciousness and the newly created U.N. Office of Sport and Development collaborating with Northeastern University to create a part 30.5 of the Disability Convention.

## THE LEGAL IMPLICATIONS OF THE CONVENTION

With all this activity, one may ask why the Convention is not legally binding international law. Existing international law legally binding such as the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (CESCR), theoretically extend to those with disabilities, regardless of sex, race, or national origin. However, as its statements made on the adoption of the Convention reality...has not followed the theory. The existing human rights have fallen far short in their protection of the human rights are guaranteed to persons with disabilities' (<http://www.un.org/esa/socdev/enable/con>). For example, Theresa Degener and Gerard Quinn's paper (2003) examined reports submitted by State Delegates of women in their country (as required under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in order to monitor the progress or status of women with disabilities. This despite the fact that under General Recommendation 18 are expected to provide information on the situation of women. Specifically, Degener and Quinn stated that 'ideally this information on the situation of women with disabilities under CEDAW), including their current de facto and de jure situation to enhance their status, progress made and difficulties and challenges. However, none of the countries which submitted reports to the CEDAW committee met the reporting guidelines as specified in Recommendation 18. The authors further noted that in 1998 the CEDAW committee tended to ask for additional information on women with disabilities only when the country volunteered to provide information on citizens with disabilities. This is significant because State mechanisms used to compel countries into compliance with CEDAW. However, if the country failed to give any information

disabilities, the committee did not follow-up and inquire in their country.

In addition, the right or deprivation of rights that people is unlike those addressed in past conventions. People with a unique kind of discrimination which differs from discrimination minorities experience. This is because people with disabilities need measures to enable them to enjoy their human rights. For example, a deaf individual requires access to the school as well as an interpreter in order to enjoy that same right. Another example is those with mobility disabilities to enjoy the basic right to travel. They need communities to remove architectural barriers and provide ramps in order for them to truly experience the same freedom of movement as their able-bodied peers.

However, many scholars will argue that labeling any international Convention as 'legally binding' is somewhat of a misnomer (Watson, 1999). In theory, a legally binding Convention can be taken to a country, individual, or organization in court to enforce the Convention. However, in reality, human rights Conventions are not enforceable through dispute resolution in the courts, making court actions of little practical use (Alston & Steiner, 2000; Watson, 1999, p. 10).

Theoretically a Convention may be enforced on three levels: international, regional, or national. At the international level several barriers prevent it from being enforced. First, it is a horizontal system, where there is no court with compulsory jurisdiction, but rather 'only primary rules of law' (legislative, adjudicative, and enforcement procedures) (Alston & Steiner, 2000). In addition, only states may bring actions against other states at the International Court of Justice. Individuals or non-profit organizations cannot sue to enforce at this level. It is also highly unlikely for a state to sue another state for enforcing the right to sport for citizens of other countries. Most countries understandably reserve such actions for more serious human rights violations such as torture or genocide despite the fact that a core principle of human rights is that all human rights are equal.

Regional human rights systems, such as the European Convention on Human Rights, the Inter-American Commission on Human Rights, or the African Commission on Human Rights, have been labeled by scholars as far more effective than the international level. (Magnarella, 2004, p. 74). This is because of their vertical structure rather than the horizontal structure that the international system employs. For example, the European Union and the Council of Europe have legislative, executive and judicial organs. In addition they accept interstate and *individual* complaints.

At the national level, the Disability Convention, like all human rights treaties, requires that States Parties 'take all appropriate measures to eliminate discrimination against persons with disabilities,' (Article 1) and to 'refrain from engaging in any act or practice that is inconsistent with the Convention and to ensure that public authorities and institutions comply with the present Convention,' (Article 4(d)).

However, if a country is intent on violating human rights, it is difficult to establish an effective system of enforcement at the national level. Unscrupulous states tend to act in their own self-interest. For example, the United States explains:

In the clear case, the right to political participation declared in Article 25 will hardly be vindicated by a court within an authoritarian regime. If a state violated many provisions of that Covenant. It remains non-compliant.

be vindicated in most cases through paths and strategic legal system.

Another example is the United States' sly steps to bypass preventing them from providing 'security assistance ... to which engages in a consistent pattern of gross violations of recognized human rights' (the Foreign Assistance Act, Signed in 1961). Yet the U.S. tends to grant China, who has a high its most favored trading partner status (Magnarella, 200

With these limitations in mind, the goals of a human rights on (i) articulating the rights unique to the population and (ii) acting as a catalyst for action (whether through willin governmental organizations or nongovernmental organi national 'benchmarks' and devising appropriate mechan accountability, and providing a means of vindication for groups at the national level; and (iii) holding states acc level through the examination of committee reports (Als

In order to draft the Disability Convention top academic analysts gathered biannually in New York City for over five and delineate the human rights envisioned in the Convention significant because many governments, organizations a world had not examined disability through a rights-based lens. As a result, these conversations have brought people with disabilities into the public's consciousness.

As a result of the Convention, many governments, NGOs encouraged to focus on disability. This has led to earmarked and increased research and statistical gathering related encourages governments who otherwise may be slow or adverse) to change to enact laws or start taking other s compliance with the Convention. In addition, under Article mandated to 'take all appropriate measures to eliminate of disability by any person, organization or private enter indirectly covers not only the actions of the States, but enterprises, individuals and organizations.

Finally and perhaps most importantly, the Convention created Rights of Persons with Disabilities to monitor the Convention charged with collecting and reviewing comprehensive reports (third goal of the Convention) submitted by States Parties effect to its obligations under the ...Convention and on the regard' (Article 35.1). These reports under the Disability undertaken at least every four years (Article 35.1). After make general recommendations to the party that submit If a State party fails to submit a report, the Committee r examination of the country's status of compliance with the Further, these reports are to be made 'widely available countries' (Article 36.4).

The optional protocol of the Disability Convention, which or not sign, created something never before drafted into rights instrument – the ability for individuals to gain red violated. Previously, the human rights enforcement system bring actions against other states. This was seen as one enforcement of international human rights obligation was ineffective or non-existent (Colwill, 1993).

If a country signing the Convention fails to abide by it, c accurately portraying the situation of persons with disab

reality, there are typically two recourses. The first is public practices in an attempt to cause public outrage and pressure for change (Reilly, 1997). The second is having non-governmental organizations (NGOs) submit their own 'shadow reports', which are by independent investigators who gather information on the status of countries. Governments often exclude.

A few additional things to note about the Convention's I

\* Article 4.4 ensures that if there is a national, local or regional law that imposes more stringent standards than the Convention, that law supercedes the Convention. Thus, if a national disability law provides for more individuals than those covered by the Convention, nothing prevents a country from doing so.

\* Article 5.4 states that 'Specific measures which accelerate or achieve de facto equality of persons shall not be considered discrimination under the terms of this Convention.' This means that if countries, individuals, educational institutions, or other organs want to take measures that may favor athletes with disabilities, they are not in violation of the Convention.

\* The Convention is subject to amendment and States Parties signing onto the Convention have the option to 'opt out' of certain provisions of the Convention. Thus, they could elect to opt out of the entire Convention except for Article 30.5. As a result, the Convention and leisure would be protected only to the extent that they do not overlap with that context.

## INTERPRETING THE CONVENTION IN THE CONTEXT OF INDIVIDUALS WITH DISABILITIES

In interpreting the Convention text, this paper will refer to the Convention text, draft texts of the Convention, various applicable laws, and comments made during the course of the meeting. These sources are not officially recorded for legal support. Some of the Convention text's application must be based on custom rather than legal precedent. Additionally, due to the limited length, this analysis serves only as a broad overview of the Convention.

*Article 30.5, 'Participation in Cultural Life, Recreation, Leisure and Sport'*  
The text governing physical activity in Article 30.5 reads:

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:

1. To encourage and promote the participation, to the maximum possible extent, of persons with disabilities in mainstream activities at all levels;
2. To ensure that persons with disabilities have the opportunity to organize, develop and participate in disability-specific recreational activities and, to this end, encourage the development, on an equal basis with others, of appropriate recreational and resources;
3. To ensure that persons with disabilities have access to recreational and tourism venues;
4. To ensure that children with disabilities have the opportunity to play and participate in recreational, leisure and sporting activities;

other children to participation in play, recreating sporting activities, including those activities

5. To ensure that persons with disabilities have access to leisure and sporting activity from those involved in the organization of recreation and sporting activity

During the last two Ad hoc sessions of the Convention, the preamble from, 'States Parties *recognize the right* of persons with disabilities to participate on an equal basis with others...' (emphasis added) to '*with a view to* ensuring that persons with disabilities to participate on an equal basis with others...' of a comment made by the European Union during the 6th session of the European Union stated:

There is no express 'right' to recreational, leisure and sporting activities [Committee on Economic Social and Cultural Rights]. The current para 4 is ambiguous on this point and should be amended. The current wording may have been based on CEDAW Article 10(g), which states that as a matter of equality between women and men and non-discrimination (Rehabilitation International, 2005).

The Report of the Ad hoc Committee (2005) in its sixth session expressed general support to amend the chapeau to make it clear that it should refer to an existing right to participate in sport and leisure activities. The summaries of the discussion on the floor do not reflect this. The European Union is the only documented State Party that made reference to this (Rehabilitation International, 2005).

This statement is also wrong. The CESCR in Article 7 specifically states that 'to the present Covenant recognize the right of everyone to the highest attainable standard of physical and mental health' and Article 12 of the CESCR also recognizes the 'right of everyone to take part in cultural activities, which includes sport. In addition, Article 12 of the CESCR discusses the 'right to the highest attainable standard of physical and mental health' and Article 13 of the CESCR states that 'education directed to the full development of the human personality and of its dignity.' As discussed above, sport is vital to this development. The CESCR states: 'all peoples have the right to self-determination. They [have the right to] freely ... pursue their economic, social and cultural development.' The Convention on the Rights of the Child recognizes a child's right to play. Access to play is articulated in the preamble of Article 30.5 should reflect that this is a right to play.

In addition, sport has been recognized as a human right in various international instruments since 1978 (although these are not considered binding). The UNESCO International Charter on Physical Education and Sport states that one of the essential conditions for the effective exercise of the right to the highest attainable standard of physical and mental health everyone should be free to develop and preserve his or her physical, mental and moral powers, and that access to physical education and sport should be assured and guaranteed for all human beings' (UNESCO, 1978, <http://www.unesco.org/education/nfsunesco/pdf/SPORTCHARTER.pdf>).

The United Nations Inter-Agency Task Force on Sport for Development report states (2003, pp.1-4), 'Access to and participation in sport and physical activity is essential for individuals of all ages to lead healthy and active lives.'

The fact that these instruments are not legally binding does not mean they have no persuasive weight in determining whether something is a human right. The interpretation and application of certain provisions of the Convention have at times been resorted to as orientation for the interpretation of other – usually newer – human rights instruments.

1987). 'The fact that many recognized human rights have elaboration so as to render them justiciable does not mean that they do not exist: enforceability is not to be confounded with right' (Eide, 1989).

Thus, even though the preamble of Article 30.5 was characterized as not a human right, the overwhelming evidence through the preamble's credibility to the assertion that people with disabilities can participate in sport, recreation, leisure, and play and that this was a goal of the drafters of the text. One way to clarify this would be to refer to the issue before the International Court of Justice via advisory opinion.

An additional 'mistake' by the drafters to the preamble was to not apply the preamble to *all* levels of physical activity addressed in the United Nations recognizes four levels of physical activity and sport. The U.N. Task Force (2003, p. 2) report defines physical activity, especially among children, is any physical activity that is often unstructured and free from adult direction. Recreation and play, and generally entails physically active leisure activities. Recreation in sub-clause (c) is also a subset of physical activity not addressed in the preamble of Article 30.5. Although delegations repeatedly requested the drafters needed to create a uniform text, extending the levels of physical activity, the drafters failed to do so. During the drafting process, there was no articulated reason for failing to do so. Further, based on side meetings and discussions, it seems that the drafters saw simplicity. The drafters did not like the awkwardness of 'recreation and leisure' multiple times throughout the text.

In moving beyond the preamble, the reader will notice that the text of Article 30.5 addresses the two different realms in which people with disabilities participate in physical activity— in the 'mainstream' and in 'allied sports.' Mainstream physical activity describes when people with disabilities participate with others who do not necessarily have a disability; the sport is designed for those with disabilities (Roy, 2004). An example is a deaf athlete competing with other athletes who are not necessarily deaf. Disability-specific sport, on the other hand, means that individuals with disabilities compete with other individuals with similar disabilities (Roy, 2004). In this realm the sport is designed for those with a specific disability. An example is wheelchair basketball where all participants use a wheelchair to compete. Disability-specific sport would also include 'allied sports.' In allied sport, the sport is still designed for those with disabilities. However, those without disabilities are also competing, and the sport is not specifically imposed on those with disabilities. For example, a deaf athlete competes in wheelchair basketball by using a wheelchair, but does not have any limitation of movement. The reason disability-specific sport needs to be addressed separately is that different protections are needed in the different realms (Roy, 2004).

In the mainstream, the main problems are the attitudes that prevent people with disabilities from being judged, recognized, and valued at a level similar to their able-bodied peers (Roy, 2004). Coaches will assume that a deaf athlete has to be placed in the backcourt because they believe s/he will never be effective on the court, which is often important to the game. The coaches fail to realize that they are not able to effectively adapt their play to ensure optimal communication and understanding with their teammates, albeit via means such as sign language. For example is a coach who believes that a deaf athlete will never be as good as a hearing athlete because s/he lacks the ability to communicate. The deaf athlete, even though the deaf athlete's field performance is often better than without disabilities.



Note that in subsection (a) the action verbs, 'encourage' and 'ensure', are much weaker than the action verb of 'ensure' in the remainder of the text. Although participation in mainstream sport is a goal of the Convention, subsection (a) recognizes that some accommodations may not happen within sport. There are instances where athletes are unable to integrate with athletes who do not have similar disabilities because it results in a fundamental alteration of the sport. For example, a wheelchair athlete participating in the contact sport of basketball; the wheelchair athlete's participation would be unsafe because the sport would most likely result in injury to able-bodied athletes. The metal of the wheelchair the disabled athlete must use.

It appears that the phrase 'to the fullest extent possible' is intended to encourage governments to also take *affirmative measures* to encourage people with disabilities to participate in mainstream sport that do not require a fundamental alteration of the sport or safety risks. These measures include:

- giving reasonable accommodations to disabled athletes; and
- providing interpreters for the deaf to enable them to communicate and benefit from their coach;

- allowing a golfer who is unable to walk long distances to use a cart despite rules that all golfers must walk;

- taking measures to eliminate stereotypes held by the general public (such as club owners); or

- allowing a wheelchair track athlete to compete (on a separate basis) with able-bodied track athletes and other wheelchair athletes to create a competition for wheelchair athletes in the wheelchair.

The use of the word 'promote' denotes steps taken to a person's participation in the mainstream athletic realm. Countries should be actively encouraging participation in the mainstream athletic realm. Countries should enact policies and notices delineating that *all* participants are not discriminated against on the basis of disability. It has been held in *McFadden v Cousin et al*, [April 14, 2006 case # 1:D6-CV-2006-0001] that a school had no defense, they may have been in court meeting the possible legal ramifications (e.g. negligence) of placing a person with a disability in a mainstream setting with able-bodied athletes. Thus, one way of encouraging participation in the mainstream is to enact laws insulating people with disabilities from actions taken to accommodate people with disabilities in the mainstream.

Subsection (b) of Article 30.5 addresses disability-specific sport. State governments are charged with ensuring that people with disabilities have the ability to 'organize, develop and participate in disability-specific sport' is important for a number of reasons. For people with disabilities, it provides a place where they can participate in sport. For others, it provides an opportunity to learn from those with similar disabilities and life experiences. The phrase 'equal basis with others' is used to reflect the inescapable reality that disability in general (and disability in general) sometimes different levels of equality.

Subsection (b) requires recreational centers, gyms and other facilities to be open to hosting people with disabilities. This arguably requires accessible transportation to be available for people with disabilities to develop and participate in disability-specific sport.

The second part of subsection (b) discusses appropriate

and was written to give people with disabilities on how to adapt sport and also to give them access to order to compete. Significantly, during the drafting process 'same' with 'appropriate,' again recognizing that people different resources, coaching, and training to achieve equality (Report, 3<sup>rd</sup> Session). Too often people with disabilities are because the coaches, although knowledgeable about all knowledgeable about adapting sport for people with disabilities often suffer from inferior coaching. This and should be interpreted as calling for the creation of text on how to adapt sport for people with disabilities. It also made available to these athletes to enable them to compete often not needed by able-bodied athletes such as a wheelchair is three times the size of a normal one. Unfortunately, the word 'encourage' was inserted into the second part of this subsection have been done because States Parties are conscious of many countries. To 'ensure' here would have enormous ramifications.

Subsection (c) of Article 30.5 focuses on guaranteeing that people have access to sport, recreation and tourism venues. Although qualified, it should be interpreted to mean *equivalent access*. The Disability Convention, which discusses accessibility, supports mandating States to provide '...access, on an equal basis in the environment...' For instance, a stadium provides spectators for competitions held there. To offer a person with a disability a viewing section is not equivalent access. Instead, seating should be available at various vantage points, enabling an equal experience to those without disabilities. Another example is Braille signs to enable those with visual disabilities to navigate

Note that tourism is included here. Tourism was included and viewed as a subset of leisure. Further, tourism is often included (see Amman Declaration on Peace Through Tourism, 2002) and should be interpreted as ensuring, *inter alia*, interpretative guides, or ensuring that any text used is also available to people with disabilities.

It is important to ensure that subsection (c) is not interpreted as stadiums, the traditional 'sport venue,' but also to place people in school yard, the public park and national monuments. It should be interpreted not only as the initial access of gaining entry but also ensuring for example, that workout areas have space big enough that a wheelchair can maneuver through and access the area.

Subsection (d) addresses children with disabilities. Here children are explicitly protected. Initially the language only protected children in the school system (Report of the Ad Hoc Committee, third session, sixth session, the drafters changed the language to encompass all realms, realizing the self-defeating measure of limiting participation to a place where many children with disabilities are absent. Children with disabilities fail to receive even the most basic access to recreation is in physical education class or play in the streets (Long 1999). It is especially important for children with disabilities because early access to skills early on ensures their successful and active participation in recreation.

Finally, subsection (e) of Article 30.5 ensures that people have access to services from those involved in organizing physical activity and tourism industry. For example, a tourist agency cannot refuse service to a person with a disability because of his/her disability. It also means that people with disabilities, for example, then people with disabilities can access these services. Thus, it calls for State Parties to ensure that people with disabilities have access to these services.

disabilities are not discriminated against by those involv having to do with physical activity.

### *BEYOND ARTICLE 30.5: THE IMPLICATIONS OF OTHER ART CONVENTION FOR SPORT*

Although the Convention text outside of Article 30.5 doe physical activity, it provides guidance on how to apply th in 30.5 and has important implications for the sport real overview of the pertinent principles and their applicator

#### *'Purpose' and 'Disability' Defined*

Article 1 states that the purpose of the Convention 'is to ensure the full and equal enjoyment of all human rights by all persons with disabilities, and to promote respect f defines 'Persons with Disabilities' as including 'those wh mental, intellectual or sensory impairments which in inte may hinder their full and effective participation in societ others'.

#### *Non-Discrimination and Reasonable Accommoda*

Nondiscrimination is a guiding principle of the Conventior defines 'discrimination on the basis of disability' as:

Any distinction, exclusion or restriction on the bas has the purpose or effect of impairing or nullifying enjoyment or exercise, on an equal basis with oth and fundamental freedoms... It includes all forms ( including denial of reasonable accommodation.

'Reasonable accommodation' is defined as 'necessary ar and adjustments not imposing a disproportionate or un a particular case, to ensure to persons with disabilities t an equal basis with others of all human rights' (Article 2 requires State Parties to 'take all appropriate steps to e accommodation is provided,' (Article 5.3).

Many will ask, 'how do we apply the principles of nondis accommodation to the mainstream sporting realm, espe where individuals are evaluated on the basis of their ab have to provide a slow runner with a head start?' Two c States under the Americans with Disabilities Act (' ADA') 1973 – the two primary disability laws in the United Sta These were *McFadden* and *Martin v. PGA Tour* [2001] 532

#### *Women with Disabilities*

Equality between men and women is also a guiding prin Article 6 highlights that women and girls with disabilities discrimination' – discrimination not only because they h because they are female. It directs States Parties to tak to ensure full development, advancement and empower

In the sporting context, this is especially important as it well as men, with disabilities have traditionally been exc (Roy, 2004). Everyone is familiar with the struggle wom to have comparable access and treatment in the sportin counterparts. Female athletes have worked hard to disr frailty, unfounded conclusions that they are not as inter religious teachings that women should not function in th way. Because of this pattern of inequality, the United N Elimination of Discrimination Against Women (' CEDAW') devoted to ensuring equality between men and women

10(g)). Inclusion to gain inclusion in the sports realm, the female has a disability. Noticing that this risk of inec in the sports realm, delegates suggested including spec within Article 30.5 (Report of the Ad Hoc Committee, thi drafters opted to create one Article that extended speci sex and applied it throughout the Convention rather the approach.

### *Mobility Aids*

The general obligations contained in Article 4, section (f delegations,

undertake or promote the research, development of...(i) Universally designed goods, services, equip [and] (ii) new technologies, including information . technologies, mobility aids, devices, assistive tech persons with disabilities, giving priority to techno cost.

In the context of physical activity for people with disabili determines if an individual with a disability is able to par large populations of people with disabilities are excluded physical activity merely because they are unable to obtai other adaptive equipment that enable them to move. For wheelchair enables a quadriplegic to compete in quad s technology, the quadriplegic would not be able to comp other sport. Although this is a high cost example and no less developed nations, the second section of Article 4 r promote the development of low cost adaptive equipme undertaken, the more likely it will lead to the developme that will help those in less developed countries gain acc

Article 20 also addresses mobility. Subsection (b) mirror while in subsection (c) the Convention mandates that S in mobility skills to persons with disabilities and to speci persons with disabilities.' These trainings are a significa development of an individual's physical skills. Sport can acting as a tool for training the mobility skills of persons (d) 'encourages entities that produce mobility aids, devi technologies to take into account all aspects of mobility Thus, advocates can use this section to urge entities inv aids to consider the fact that persons with disabilities w who often choose to participate in physical activities. Thi universally designed facilities and services. This means c recreation centers, and even playgrounds in counties w Convention must be done in a universally designed way people, regardless of disability.

### *Training of Professionals*

Article 4 also mandates that 'States Parties ... promote t and staff working with persons with disabilities in the rig Convention so as to better provide the assistance and s rights.' Examined in the sporting context this requires S training of physical education instructors and coaches in Thus it reinforces the interpretation of Article 30.5 (b) as Article 30.5 (b) addresses only the disability-specific rea mandating that mainstream coaches are also trained in with disabilities. Further, the article should be read as r services to individuals with disabilities within sport, be t services accessible.

### *International Cooperation*

The Convention embodies a spirit of international cooperation. Article 4.2 specifically mandates that States Parties 'to the maximum of its available resources and, where necessary, through international cooperation.' Thus, it recognizes that States Parties may have particular difficulty in complying with certain ideals merely because they lack the resources to do so, not necessarily intend to ignore the Convention's mandates. In addition, States Parties are encouraged to provide support to those who need it. As a result, richer countries are obligated to help the poorer countries comply with the Convention's mandates.

### *Inclusion During the Process of Inclusion*

Article 4.3 voices a theme that drove the Convention process. States Parties to 'closely consult with and actively involve persons with disabilities, through their representative organizations.' At the Convention, banners were raised and bumper stickers were used with the slogan 'Nothing about us without us.' Frequently people with disabilities have been excluded from the process of remedying their rights. However, the Convention is unique as it marked the first time non-governmental organizations had an opportunity to actively participate in the drafting process. States Parties and NGOs could address the State Delegates on the floor and officially inserting their statements into the Convention process.

This concept of inclusion is especially important in the sport. When adapting sport it is important to gain knowledge directly from people with disabilities, especially since they are the 'experts' on their condition. They may hold, albeit benevolent, but wrong, impressions as coaches and athletes. Some coaches may also be especially protective because he or she views the athletes as frail because they seem less able to protect themselves. Ensuring those who are most vulnerable are involved in the process, including at administrative level, is essential and appropriately tailored to their needs.

### *Public Awareness*

It is foreseeable that field workers, although able to gain knowledge and develop sport for those with disabilities, will encounter difficulties in taking individuals with a disability out of their homes and onto the fields due to a number of reasons, including discriminatory attitudes. They may view those with disabilities as an embarrassment, shut them out of their communities where they are deprived of access to their communities. They may see individuals with disabilities as tokens of bad luck and not want to associate with them for fear it will bring a bad omen. A mechanism to compel state parties to take steps towards removing barriers to their homes and onto the fields is through Article 23.3 which requires States Parties to realize these rights, and to prevent concealment, abuse, and segregation of children with disabilities. States Parties should provide early and comprehensive information, services and support to children with disabilities and their families. Thus it would require the States Parties to take proactive steps to change these attitudes whether through education or public campaigns.

Article 8.1 of the Convention complements Article 23.3 b

States Parties [to] undertake to adopt immediate appropriate measures (a) To raise awareness through education, including at the family level, regarding persons with disabilities and to foster respect for their rights and dignity; (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas

awareness of the capabilities and contributions of people with disabilities.

Note that the sport realm is an excellent arena to raise awareness and to help people with disabilities. Sport brings large groups of people together in a fun way. Further, sport itself serves as the advertisement (U.N. T 17). In the sport arena, focus shifts off of the athletes' capabilities (DePauw and Gavron, 1995). Sport also provides an opportunity to break their stereotypical beliefs about those with disabilities. Athletes constantly see those with disabilities surpassing their limitations.

### *Respect in the Educational System*

Article 8.2 (b) requires that State Parties foster, 'at all levels... an attitude of respect for the rights of persons with disabilities... those with disabilities are targeted for harassment by teachers...' Article 8.2 (c) compels States Parties to take an active role in promoting and to play an integral role in achieving these goals. Many schools have developed 'adopt a disability day' where those without disabilities spend a school day with an adopted one. For example, one child might spend a day to experience what it would be like to be blind. Another might experience a day being deaf or another may use a wheelchair. For people with disabilities seem less foreign to those without disabilities, they can assist the disabled. 'Allied sports' also are especially important to change attitudes.

### *Physical Access*

Article 9.1 provides a supplement to Article 30.5 (c), which requires that people with disabilities have access to venues. Specifically, it calls for

...access, on an equal basis with others, to the physical environment, including transportation, to information and communication technologies and systems, and to services open or provided to the public, both indoors and outdoors... These include buildings, roads, transportation and outdoor facilities.

Importantly, this section mentions access to transportation (Article 30.5 (c)). One of the hardest things a fieldworker encounters is the place of practice because they often are dealing with people who do not congregate at one location and is dependent on accessibility. Accessibility is an extremely important enabler. It requires State Parties to ensure that transportation is accessible for people with disabilities. Further, there is mention of accessibility in both indoor and outdoor activities take place outdoors. This means not only must barriers be removed but also landscaping barriers.

### *Enabling the Business of Sport*

Article 12.5 is significant to those with disabilities who work in the business or organizations. It calls on countries to ensure that people with disabilities have equal access to bank loans, mortgages and other financial services. Denying facilities on the basis of unfounded stereotypes is prohibited. This provision will help ensure this barrier to obtaining financial help is removed.

### *Statistics*

In advancing, advocating for, and achieving the ideals of the Convention, it is important to have access to statistical evidence to support the Convention. Article 31 requires States Parties to undertake statistical surveys and to formulate and implement policies to give effect to the Convention. It further establishes safeguards to ensure data is collected and used in a manner that respects the privacy of individuals.

a significant tool for the sporting realm as there is current statistics on disability in sport and without these statistics becomes difficult, if not impossible.

## CONCLUSION

The United Nations Convention on the Rights of Persons with Disabilities is an important step toward articulating and realizing the right to participate in the sporting realm across the world. However, because the rights based provision and because the right at issue is Article 30.5 will be enforced in an international court. It can be seen as an inducer and a set of standards advocates governments with to create change. The wider the Convention is interpreted for disability in sport, the better, as the Convention advocates apply it. The next step is for advocates and courts to use indicators to monitor the status of sport for individuals worldwide. From these indicators shadow reports can be produced to pressure governments into compliance with the Convention and success is achieved in bringing this powerful tool to individuals with disabilities.

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