

Using Sport as a Muscle for Integration: The Legal Rights of Athletes with Disabilities to Participate in Recreational and Sporting Opportunities

A project of the Northeastern Center for the Study of Sport in Society and Northeastern School of Law (USA)¹

I. Factual Overview of the Problem

After World War II Stroke Mendeville Hospital in England was filled with veterans who had spinal cord injuries.² Many of these people thought their lives were over. They had visions of returning home to spend their days locked up in a room with little outside contact with the world because, after all, this is what happened to most people who were disabled. You rarely saw them on the streets and then only to give them pity for their inability. They were confronted with questions of how they would function in society with their disability. However, these perceptions and expectations of themselves gradually changed when a neurosurgeon named Ludwig Guttmann started organizing sporting activities for his mobility impaired patients. While competing with each other not only were these disabled veterans able to gain a sense of belonging, but they also began to recognize that they did not have to spend their days cut off from civilization. Instead, they saw that they had something to contribute to the society that threatened to shut them away. But most importantly, they also began to witness people's changing perceptions of them.

The purpose of this document is to propose a concentrated effort to appeal to the member states of the United Nations that it is important to create not only a Convention on Human Rights for Persons with Disabilities, but also to create, within this legally binding treaty, provisions aimed at enforcing equal sporting opportunities for people with disabilities. The introduction to the United Nations Standard Rules on the equalization of

Opportunities for Persons with Disabilities states the problem well: “Ignorance, neglect, superstition and fear are social factors that throughout the history of disability have isolated persons with disabilities and delayed their development.”³ Equal sporting opportunities embody the powerful ability to remedy this.

Persons with disabilities make up one of the largest minorities in the world. It is estimated that there are over 600 million people living with disabilities.⁴ However, many are being excluded or segregated from the society in which they live.⁵ They often are invisible, treated as mere *objects* of protection and assistance rather than *subjects* that have rights.⁶ Many find it impossible to gain an education with their non-disabled peers, to get a job, or to participate in cultural activities such as sport. This exclusion is often a result based on false presumptions.⁷ Individuals with disabilities are often viewed as being frail and not physically or mentally capable of participating, a perception that was similar to the one cast on women before they began the long process of proving these perceptions wrong, especially in the sporting realm.⁸

Sport is a vehicle for integration. And because this vehicle is so pervasive in societies throughout the world, it is a powerful vehicle. Sport has traditionally served as a socialization process where individuals assimilate or adopt the values of a given society, largely because sport is a “‘cultural phenom’ that is often viewed as a product and reflection of society.”⁹ Sport is also a means of gaining acceptance. When individuals with disabilities are allowed to participate in sport, they are put into an arena which changes the focus from “disability” to “ability.”¹⁰ We focus on the *ability* of an athlete to score a goal, or his or her ability to block a shot. We do not focus on the fact that their bodies differ from “normal” standards set by society. The athletic realm gives a

tool to athletes with disabilities to change the attitudes not only of society, but also of themselves from a perception of frailness to that of being physically and mentally capable.¹¹

Athletic participation by individuals with disabilities is not completely absent. The Paralympic games have grown rapidly from 400 athletes in Rome in 1960 to 3,843 in the Sydney 2000 Paralympics.¹² However, despite these positive statistics, there still remains a huge lack of sporting opportunities and legal structures to protect and ensure these opportunities. Even among the more developed nations such as the United States, Australia, or the United Kingdom the progress has been slow and there still remains a huge imbalance in sporting opportunities for persons with disabilities versus those with no disabilities. Despite the fact that these more developed countries have disability laws on their books, many of them fail to directly address, and therefore remedy, inequalities found in the sporting realm. In the United States, there is frequently a lack of organized sport programs, early informal experiences in sport, role models, access to coaches and training programs, as well as access to sporting facilities. Further, few U.S. universities extend athletic scholarships to disabled athletes.¹³ Another problem that has frequently been encountered is that when interest groups attempt to claim these inequalities in the United States, Australia and all over the world, they have no statistical evidence to back their assertions.

Athletes with disabilities also lack media exposure. For example, when Jean Driscoll won the Boston Marathon a record 8th time in the wheelchair division, she was not featured on the cover of *Runners World* magazine with the able-bodied winners, but instead was hidden discreetly in the back of the magazine.¹⁴

Advocating for equal opportunities in sport is difficult because we are advocating for a positive right, something that often requires a country to affirmatively act. Among the underdeveloped nations, where two out of three people with disabilities live, this problem is also compounded by the fact that these nations often do not have the economic resources available to them for creating these programs and undertaking measures to make existing facilities accessible. Further, it is harder for these countries to provide individuals with disabilities with the technical devices they need to compete, such as wheelchairs or prosthetics.

II. The Movement Towards a Legally Binding Treaty

The year 1981, known as the *International Year of Disabled Persons*, marked the beginning of the disability rights movement towards “Full Participation and Equality”.¹⁵ As a result of efforts throughout the year, the World Programme of Action Concerning Disabled Persons was formed, which was charged with “setting guidelines for a world strategy to promote equality and full participation by persons with disabilities in social life and development”.¹⁶

In 1987 it was recommended that a convention for disability rights be formed.¹⁷ However, this convention never came into existence largely because many felt as if existing human rights documents already guaranteed persons with disabilities rights to equality.¹⁸ The next major movement was the creation of an ad-hoc committee for the Human Rights of Persons with Disabilities, consisting of an “open-ended group of government experts funded by voluntary contributions.”¹⁹ This is currently the primary

committee charged with overseeing the United Nations efforts in the disability rights realm.²⁰

In 1993 the General Assembly adopted the *Standard Rules on the Equalization of Opportunities for People with Disabilities*.²¹ These standard rules specifically address the right of persons with disabilities to participate in recreation and sports.²² Rule 11 addresses the need for equal opportunities in recreation and sport; the need for accessible facilities; the need for organizations involved in providing sporting and recreation activities to open their services to all and be accessible to all; the need for existing sports organizations to include persons with disabilities; the need for state support; the need for access to training and instruction; and the need to consult with disability organizations to undertake this integration.²³

However, although these rules have exciting potential, and available data suggests that they garner widespread support from member states, they are not legally binding.²⁴ As a result, in order to enforce rights for people with disabilities, one must turn to existing legal instruments that often are not focused on the rights of people with disabilities and often fail to explicitly mention that their document is intended to cover persons with disabilities.²⁵

III. Existing Legal Structures

There are several legally binding treaties at the international level where a right to participate in recreational and sporting opportunities can be inferred. Although it is possible for the right to be inferred from the broad language of these treaties, many

problems exist which prevent these rights from being recognized and enforced at the international level.

First, the *Universal Declaration of Human Rights* (UDHR) recognizes that “everyone is entitled to the “right to rest and leisure...without distinction of any kind, such as ... status.”²⁶ Although this is not legally binding, it is known as the United Nation’s Bill of Rights and thus is regarded as having special status and is often referenced by many courts.

One of the most significant is the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR). Similar to the UDHR, the ICESCR starts with a general provision stating that the “rights enunciated in the ... Covenant will be exercised without discrimination of any kind [such as]... status.”²⁷ Although disability is not explicitly stated in these documents, it can be imputed under “other status”.

The ICESCR provides that “State parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular ... Rest, [and] leisure.”²⁸ Although the terms “rest and leisure” should be interpreted to include the right to participate in sporting opportunities, potential interpretation problems arise in this provision because this right to rest and leisure is enumerated with reference to the working context. Thus, a state party could argue that this is merely recognizing that people have the right of time off from work.

Article 12 (1) of the ICESCR provides that, “States Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Guttman demonstrated the importance that sporting and recreational opportunities play in creating better physical and mental health.

However, again there exists the potential downfall that many nations may interpret this provision as merely access to health care services.

The ICESCR also recognizes the right of “everyone to take part in cultural life”.²⁹ However, this is dependent on the ability of nation states to recognize that sports are an important part of culture. And thus, excluding individuals with disabilities from this important cultural aspect will violate this provision.

The ICESCR also calls for equality in the educational realm. Specifically, Article 13 states,

“State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations... and further the activities of the United Nations for the maintenance of peace.”³⁰

Again the potential power of this provision is dependent on the ability of States Parties to recognize that to which the provision extends. States Parties need to know that the provision of equal sports and recreational opportunities to persons with disabilities within the educational realm is necessary in order to comply with this provision. Not only is physical education a necessary component of a child’s education in most countries, but the goal to direct education toward “the full development of the human personality and the sense of its dignity” cannot be accomplished without involvement in sports. Further, allowing disabled athletes to participate alongside non-disabled athletes does exactly what the next phrase asks of States Parties - it strengthens the respect for human rights (i.e. disability rights) and fundamental freedoms (i.e. the freedom to play).³¹ An

integrated athletic setting enables disabled athletes to gain respect, understanding and tolerance from their non-disabled peers (as does exposure of non-disabled individuals to sporting competitions solely for persons with disabilities). Again, however, the lack of explicit enumeration of the right to participate equally in athletic opportunities by persons with disabilities, leaves open the question of whether States Parties will recognize the connection between these ambiguous and broad provisions and the right of sporting opportunities for individuals with disabilities.

Another important international legal instrument is the *Convention on the Rights of the Child* (CRC). The CRC stands out among the several international legal documents because it specifically provides that States Parties to the covenant shall not discriminate on the basis of disability.³² Article 23 of the CRC holds, “States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” Article 31 of the covenant recognizes the right of the child to “engage in play and recreational activities”. However, although the phrase “Active participation in the community” arguably includes the right to play and the right to recreational opportunities is later enumerated, the covenant fails to provide a nexus between the two and again leaves it up to the States Parties to draw this nexus.³³

Further, disability laws on the national level do not make up for the lack of legally binding international structures.³⁴ Although there was growth in the 1990’s when forty nations enacted disability laws, there still remains 149 nation members without disability laws.³⁵ Further, only _ of these laws are based on the structural equality concept that society has to change in order to integrate these individuals with disabilities.³⁶

The most comprehensive laws are found in Australia, Canada, Hong Kong, the Philippines, United Kingdom, and the United States.³⁷ However, the right to sporting opportunities is specifically mentioned only in Australia and Hong Kong disability laws.³⁸ Costa Rica also provides explicit protections for sporting opportunities.³⁹ Although these are positive steps, they are too few in number.

Recently the United States Supreme Court ruled on PGA Tour Inc. v. Martin, deciding that Martin who suffered from a circulatory disorder in his right leg had the right to drive a golf cart despite competition rules that stated no competitor was allowed to do so.⁴⁰ The Court reasoned that allowing Martin the use of a golf cart did not substantially alter the game. However, despite this positive ruling, the United States Supreme Court carefully limited it to the specific circumstances of Martin's case. Thus, its impetus went little beyond Casey Martin's own rights to get a golf cart in PGA events.

Further, there still exist nations whose courts are so ignorant concerning the status and capabilities of persons with disabilities that they decide cases such as the Bundesverfassungsgericht decision.⁴¹ In Bundesverfassungsgericht, the German court denied a girl who used a wheelchair, access to the "normal" school and instead forced her to attend a special school for children with disabilities, reasoning segregated education is not discrimination because it is "separate but equal".⁴²

Thus, it is apparent as Mexico aptly pointed out in the preamble of its draft proposal for a convention on disabilities that existing legal instruments have not been enough to "eradicate violations and discrimination against persons with disabilities in different parts of the world"⁴³ Breslin and Yee, two well-known scholars in the field of

international disability rights note that the existing state of international law addressing disability rights is that of a “toothless tiger”.⁴⁴ They state that a new treaty would,

“Legitimize claims for additional attention and resources from the human rights division of the United Nations, governments, and other organizations; ...[it] would provide an opportunity to both add specific content to the human rights of persons with disabilities and address hitherto unexplored areas... [it] would give disability rights organizations a specific tool for promoting human rights for persons with disabilities in domestic contexts and to their own governments ... [and it] would be a catalyst for empowering and mobilizing the global disability rights movement.”⁴⁵

Indeed rights are not static; the strategy to create change is to further define certain rights.

As addressed by the introduction, this convention on rights for persons with disabilities needs to include a provision for equal sporting opportunities. Indeed when the women’s rights movement finally won support for the creation of a convention addressing their needs, they made sure to ensure equal sporting opportunities.⁴⁶

It is encouraging that Mexico’s draft convention concerning disability rights includes a provision for sporting opportunities.⁴⁷ Specifically, Article 16 of the draft proposal states,

“States Parties shall ensure that persons with disabilities have access to and the enjoyment of: (a) Recreational, cultural, and sports activities through adaptations which facilitate them the use of related facilities and services. (b) Their integration into routine sports activities and national as well as international competitions (c) A system of scholarships or special incentives for cultural, artistic, and sport activities.

This proposal is positive because it advocates that not only the persons with disabilities have these *rights*, but that the countries have *duties* to ensure these rights. Further, the proposal recognizes that athletic or sporting opportunities may frequently be provided by

non-state actors, thus the provision seems to cover state enforcement of these non-state actors, similar to CEDAW.

IV. Plans for Additional Fact-finding/Monitoring

One of the biggest problems encountered in the disability movement, especially within the sporting realm, is the inability to point to concrete statistics that provide evidence for the assertions that equal sporting opportunities are lacking at the international level.⁴⁸ However, this lack of statistical guidance is not without reason.

One statistical problem that was identified by the United Nations Statistical Division's report, "Guidelines and Principles for the Development of Disability Statistics", was that of varying definitions of "disability" across nation states.⁴⁹ Thus, although statistics may be collected in each nation, it is difficult to draw comparisons among nations.⁵⁰ One solution that this NGO should look into is advocating for an international definition of "disability" for statistic collecting purposes (and possibly *sporting* statistic collecting purposes).⁵¹

Statistic collection is also hampered by "screens".⁵² For example, in the United States, the Equal Employment Opportunity Commission (EEOC) does not have the legal tools to compel employees to report their disability because of concerns of confidentiality. Thus, efforts should be directed at helping countries get beyond these screens to collect the statistics they need.

Further, many countries have few economic resources and find it hard to justify spending money on the collection of sporting statistics. Some countries lack the technology to collect the statistics. As a result, steps should be undertaken not only to ensure that a fact-finding/monitoring mechanism to collect statistics on sporting

opportunities is included in the convention, but also to enable developing countries who lack the technology to develop these statistics.⁵³

Organizations should consider focusing statistic collection on two potential areas: the education realm and the mental health realm. Educational institutions are more likely to have an individual disclose the presence of a disability, largely because the educational institution will be in the process of trying to accommodate the student. Further, the United Nations has stated that education (along with employment) will be an initial focus for data collection.⁵⁴

The mental health realm is another potential focus largely because of its ability to “shock the conscience”. Hopefully a focus here will produce effects similar to the women’s movement, which used violence against women to move their issues to center stage. The fact that many individuals are treated like research animals, locked up in mental institutions, often never getting the opportunity to go outside and get physical activity, should produce an effect that embarrasses nations.

Another strategy is to examine conditions in one country with advanced disability rights laws and policy for individuals with disabilities to participate in sport and then examine individuals in another country with the same types of disabilities who do not have the benefit of advanced disability policy decisions (i.e. sporting opportunities). A comparison of the two will highlight the impact that sporting opportunities have on persons with disabilities. Individual stories relating the impact that sports have had on these individuals lives should be highly publicized.

Finally the production of “disability report cards” that investigate the sporting conditions and opportunities in certain countries and give them grades as a result of this

investigation should be encouraged. The Northeastern Center for Sport has begun this effort. The report cards will need to be highly publicized to spur countries into action to remedy their sub-standard conditions.⁵⁵

V. Strategies for Developing Public Awareness and Obtaining Outside Funding for the Project

A main target area is to increase public exposure to the amazing feats and abilities of athletes with disabilities. For example, Artemis Joukowsky has published a book entitled, “Raising the Bar” which features pictures of athletes with disabilities in action. Similar projects need to be encouraged. However, a problem that is frequently encountered when these groundbreaking books are published, is that they are rarely placed on the display shelves at the bookstores and sometimes even have to be special ordered. Many times, too, it is hard to find companies willing to publish the books. Thus, even though there is existing media highlighting disability sport, many people are unaware of it. It may be strategic to set up a publishing company specifically for this purpose; one that is willing to embark on media campaigns advertising their books. The internet should also be utilized as a medium through which exposure should be made.⁵⁶

Another main goal for developing public awareness on issues of disability and sport is to ensure the increase of *mainstream* media. For example, in the United States, athletes with disabilities are getting some exposure but the articles on these athletes are frequently placed in the lifestyle section, not the sporting section, of the newspaper. In order to truly gain acceptance that these are athletes competing with their natural gifts just as able-bodied athletes, their stories need to be recognized on the same page as those of able-bodied athletes.

One potential focus could be an effort to give extensive media coverage to elite athletes with disabilities competing in the mainstream, among able-bodied athletes.⁵⁷ This will help demonstrate their ability to compete at similar levels and help strike down false stereotypes. Another potential avenue for raising public awareness and gaining funding is to work on raising the prominence of the Paralympics. If the Paralympics can continue to grow and garner even more exposure, then countries will exhibit their natural inclination to compete and start undertaking programs to develop elite athletes to participate in these games.

NGO's should also continue to work with entities such as ESPN, Nike, and *Sports Illustrated* to include athletes with disabilities in their media coverage. For example, the Northeastern Center for Sport in Society recently worked with ESPN to include an ESPY award for an athlete with a disability.⁵⁸

The academic realm should also be targeted. Sport psychology programs should include sections on disability sport. Sports Law classes should include case law that governs disability sport. Law review contests on the topic of disability sport should be developed to encourage students and professors to undertake research projects in this important realm.

To develop funding, NGO's should identify organizations that would have an interest in supporting the expansion of disability sport. For example, Nike or Reebok would have a substantial interest because with this expansion comes an increase in consumers of their products. Persons with disabilities make up one of the largest minorities with 600 million or more people. If a company like Nike helps get these people involved in sport, the economic benefit will be huge. Similarly if *Sports Illustrated* or other similar magazines

start including articles on athletes with disabilities, not only will it expose the mainstream to disability sport, but it will also market its magazine to a larger audience. Further, the company's involvement in the movement will increase its reputation because it has undertaken this humanitarian effort to expand the sporting realm to individuals with disabilities.

Other organizations to target are organizations that fight societal problems that sport helps to combat, such as anti-tobacco interest groups. For example, tobacco organizations provide support to the Right to Play, an organization that uses sport to enhance life in underdeveloped countries, because they recognize the importance athletic participation plays in lowering the likelihood that a person will smoke.⁵⁹ Further, organizations concerned with health or rehabilitation would be potential sponsors.

Another strategy is to enforce existing laws in countries, so as to bring cases to the courts. For example, in the United States, the PGA Tour Inc. v. Martin case received media attention merely as a result of the case being brought to trial. This media attention made a larger number of people aware of the various barriers people with disabilities face in trying to obtain sporting opportunities. It also made them aware of disabled individual's ability to compete alongside able-bodied athletes.

Finally, NGO's should urge relevant bodies when they undertake to have either a national or international "year of the disabled" to include as a part of this effort, the participation of persons with disabilities in athletics. These international "Years of the Disabled" have in the past energized NGO's and have helped to develop the necessary links of NGO's formerly working on a *national* basis to develop efforts on an *international* scale.⁶⁰

IV. Conclusion

Individuals with disabilities have long been fighting to be recognized as equal. As history has proven, this societal integration and acceptance, as well as understanding, does not come automatically. However, a tool to work towards this has been identified in sport. It is a tool to chip away, remold, and grind into people's minds that individuals with disabilities belong, and belong on an *equal* basis. It is strongly urged that NGO's and the United Nations recognize this and utilize this powerful tool.

¹ Written by Elise C. Roy, J. D. 2003, Northeastern University School of Law. This paper was originally submitted as a student paper for a course on International Human Rights Law at Northeastern University. I would like to thank Professor Hope Lewis for her guidance throughout the creation of the paper. I would also like to thank Eli Wolff for his valuable insight and contributions.

² <http://www.internationalgames.net/topics/elite.htm> (last visited May 16, 2003).

³ <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited May 16, 2003).

⁴ <http://www.unhchr.ch/disability/intro.htm> (last visited May 16, 2003).

⁵ <http://www.unhchr.ch/disability/intro.htm> (last visited May 16, 2003).

⁶ <http://www.unhchr.ch/disability/intro.htm> (last visited May 16, 2003).

⁷ Mary Lou Breslin and Silvia Yee, *Disability Rights Law and Policy*, Transnational Publishers, p. 5 (2002).

⁸ Karen DePauw and Susan Gavron, "*Disability and Sport*", Human Kinetics, at 9 (1995).

⁹ Karen DePauw and Susan Gavron, "*Disability and Sport*", Human Kinetics, at 10 (1995).

¹⁰ Karen DePauw and Susan Gavron, "*Disability and Sport*", Human Kinetics, at 10 (1995).

¹¹ Indeed the 5 Rings program developed by the organization called the Right to Play, articulates the power of sport. The program was developed by an organization called The Right to Play and focuses on healthy child development. Each of the five rings symbolizes an aspect of healthy child development: mind, spirit, body, social cooperation and health. Specific play activities are developed to promote each aspect of development.

- The Red Mind Ring represents cognitive and intellectual development. This includes a child's perception of the world and of themselves; the capacity to learn and build knowledge; and their ability to gain awareness and insight.
- The Black Body Ring represents physical development, including a child's awareness and understanding of their body.
- The Yellow Spirit Ring represents emotional development, relating to the feelings such as joy and happiness, self esteem, confidence and a sense of hope and optimism.
- The Green Health Ring represents the World Health Organization's definition of health: "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity."
- The Blue Peace Ring represents social development, in terms of a child's relationship with their peers, family, community and environment

<http://www.righttoplay.com/ourprograms.asp> (last visited May 16, 2003).

¹² "*Paralympic Games*", www.paralympic.org (last visited May 16, 2003).

¹³ Feminist Majority Foundation, *Sports and the Disabled*, <http://www.feminist.org/sports/disability.html>

¹⁴ Testimony of Jean Driscoll, Disability in Sport Symposium, "*The Boston Marathon: Paving the Path for Inclusion*," April 18, 2003.

¹⁵ <http://www.unhchr.ch/disability/intro.htm> (last visited May 16, 2003).

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- ¹⁶ <http://www.unhchr.ch/disability/intro.htm> (last visited May 16, 2003).
- ¹⁷ <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited May 16, 2003).
- ¹⁸ <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited May 16, 2003).
- ¹⁹ <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited May 16, 2003).
- ²⁰ <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited May 16, 2003).
- ²¹ 48th Session, Resolution 48/96, <http://www.un.org/esa/socdev/enable/dissre00.htm> (last visited May 16, 2003).
- ²² United Nations, Standard Rules on the Equalization of Opportunities for People with Disabilities, Rule 11.
- ²³ Specifically, Rule 11 provides, (1) states will take measures to ensure that persons with disabilities have equal opportunities for recreation and sports. (2) states should initiate measures to make places for recreation and sports, hotels, beaches, sports arenas, gym halls, etc accessible to persons with disabilities... (3) 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. (4) Sports organizations should be encouraged to develop opportunities for participation by persons with disabilities in sports activities... States should support the participation of persons with disabilities in national and international events. (5) Persons with disabilities participating in sports activities should have access to instruction and training of the same quality as other participants (6) Organizers of sports and recreation should consult with organizations of persons with disabilities when developing their services for persons with disabilities.” <http://www.un.org/esa/socdev/enable/dissre01.htm> (last visited May 16, 2003).
- ²⁴ Review and Appraisal of the World Programme of Action Concerning Disabled Persons: Report of the Secretary-General. A/58/61-E/2003/5 (2003) p. 3.
- ²⁵ Although United Nation resolutions have stated that persons with disabilities come under their mandates. Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, United Nations, at 37 (2002).
- ²⁶ Universal Declaration of Human Rights, Article 22.
- ²⁷ ICESCR, Article 2 (2).
- ²⁸ ICESCR, Article 7(d).
- ²⁹ ICESCR Article 15.
- ³⁰ ICESCR Article 13.
- ³¹ Note, that it may be impossible to create a completely integrated setting at all levels of play and with all persons with disabilities to participate. However, it is possible to integrate persons with disabilities to a degree. More so at the lower levels, where skill is not a factor.
- ³² CRC, Article 2.
- ³³ It should be noted that regional charters also touch on the ability of people with disabilities to participate in sport. For example, the American Convention on Human Rights provides, “everyone has the right to associate freely for ... cultural, sports, or other purposes.” Article 16: (1).
- ³⁴ Mary Lou Breslin and Silvia Yee, “*Disability Rights and Policy: International and National Perspectives*,” Transnational Publishers, at 10 (2002).
- ³⁵ Mary Lou Breslin and Silvia Yee, “*Disability Rights and Policy: International and National Perspectives*,” Transnational Publishers, at 19 (2002).
- ³⁶ Mary Lou Breslin and Silvia Yee, “*Disability Rights and Policy: International and National Perspectives*,” Transnational Publishers, at 26 (2002).
- ³⁷ International Rights of Persons with Disabilities. 36
- ³⁸ Id. at 36.
- ³⁹ Id.
- ⁴⁰ PGA Tour Inc. v. Martin, 532 U.S. 661, 661 (2001).
- ⁴¹ Bundesverfassungsgericht, decision of October 1996-1 BvR 1308/96 (Case No.), *Juristen Zeitung* 1073 (1996).
- ⁴² Id.
- ⁴³ *Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities*: Working Paper by Mexico (I).
- ⁴⁴ Mary Lou Breslin and Silvia Yee, “*Disability Rights and Policy: International and National Perspectives*,” Transnational Publishers, at 18 (2002).

⁴⁵ Mary Lou Breslin and Silvia Yee, “*Disability Rights and Policy: International and National Perspectives*,” Transnational Publishers, at 18 (2002).

⁴⁶ Article 10 G of CEDAW specifically states, “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure, on a basis of equality men and women: (g) The same opportunities to participate actively in sports and physical education.” (note, it would be helpful to examine the evolution of including sporting opportunities within the covenant further and compare it with the movement within the disability realm).

⁴⁷ Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities: Working Paper by Mexico.

⁴⁸ It should be noted that there are different forms of statistical collection that need to be undertaken. For example, statistics need to be gathered on the number of mainstream organizations (i.e. the United States Soccer Federation) that include disability specific competition realms or the number of mainstream organizations that have individuals with disabilities competing on teams that are not disability-specific. Statistics should also be collected on the number of accessible facilities that a city or country offers or on the number of scholarships given out to athletes with disabilities or athletic awards given to athletes with disabilities.

⁴⁹ <http://unstats.un.org/unsd/disability> (last visited May 16, 2003).

⁵⁰ <http://unstats.un.org/unsd/disability> (last visited May 16, 2003).

⁵¹ *Note* it will be important to make it clear that we are not advocating for a international definition that gets accepted at all levels. This would be too hard to define and advocate for. Instead, it should focus on a definition merely for statistic collecting purposes and if possible, one focused specifically on collecting sporting statistics.

⁵² General Assembly Economic and Social Council, *Review and Appraisal of the World Programme of Action Concerning Disabled Persons: Report of the Secretary-General*, A/58/61-E/2003/5, at 8 (December 26, 2002).

⁵³ For example, create a campaign to deliver the necessary computers, etc.

⁵⁴ General Assembly Economic and Social Council, *Review and Appraisal of the World Programme of Action Concerning Disabled Persons: Report of the Secretary-General*, A/58/61-E/2003/5, at 9 (December 26, 2002).

⁵⁵ Please note that the standard rules also proposes the following monitoring mechanism which we should argue to be integrated into the convention:

- shall identify obstacles and suggest suitable measures
- recognize the economic social, and cultural features existing in individual states.
- Appointment of a Special Rapporteur
- Creation of a panel of experts that review, advise and provide feedback and suggestions on the promotion, implementation and monitoring of the rules
- Special Rapporteur shall seek to establish a direct dialogue with the states and local non-governmental organizations, seeking their views and comments on any information intended to be included in the reports.
- Special Rapporteur shall Prepare reports for submission to the Commission on Social Development
- States should encourage national coordinating committees to participate in the implementation and monitoring
- Establish a working group to examine the Special Rapporteur’s report and make recommendations on how to improve the application of the Rules.

⁵⁶ Maybe the internet could also be used as a test site to prove that people are interested in the sporting accomplishments of persons with disabilities. It would be a prime place because of the fact that companies largely do not have to pay publishing costs. Also, it may be worthy to have search engines recognize the web site for the sport itself, not for the fact that it is a *disabled* sport.

⁵⁷ For example, Marla Runyan who finished fifth in the Boston Marathon, and first among the United States women.

⁵⁸ ESPY awards are awards that recognize various athletic accomplishments. Examples of awards are “Best Female Soccer Player”, “Best Team”, “Best Olympian”. For further information see <http://msn.espn.go.com/espy2002/s/02nomineesindex.html> (last visited June 10, 2003).

⁵⁹ <http://www.righttoplay.com/fundraising.asp> (last visited May 16, 2003).

⁶⁰ Mary Lou Breslin and Silvia Yee, “Disability Rights and Policy: International and National Perspectives,” Transnational Publishers, at 99 (2002).