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The UN Convention on the Rights of Persons with Disabilities and its interpretation

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Abstract

This paper explores the United Nations Convention on the Rights of Persons with Disabilities (CRPD) from a phenomenological perspective. It argues for complementing the predominant juridical approach to the CRPD with attention to the extra-juridical dimension of the constitution of its meaning. The core argument is that disabled people's collectives should be recognised and admitted as important stakeholders and contributors in the community of interpretation that gives the CRPD its meaning. After briefly introducing the CRPD, the first part of the paper highlights the ubiquity of interpretation and the limits of its juridical regulation. The second part explores some extra-juridical factors that influence the interpretation of the CRPD. Two cases are considered: the socially embedded materiality of the interpretive work of the CRPD Committee; and the politics of interpretation inherent in the CRPD's translation between languages. The latter is backed up by comparing the English, French, Russian and Bulgarian versions of several CRPD provisions. In conclusion, some methodological and programmatic inferences are drawn from the analysis. In particular, it is argued that disabled people's civic self-organising is indispensable for sustaining the interpretation of the CRPD along transformative and emancipatory lines.

Key words: Convention on the Rights of Persons with Disabilities, human rights, phenomenology, translation.

Introduction

So far, the analyses of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) have been dominated by juridical commentary. The papers collected in the volume under the editorship of Arnardóttir and Quinn (2009) might serve as an authoritative example. Legal expertise has led the way in thinking about the treaty, informed mainly by readings of international and national regulations and court decisions. Indispensable in its own right, this focus on legality has nevertheless left important issues related to the meaning of the CRPD unexplored. Proceeding from the presumption that the interpretation of legal instruments such as the CRPD has an irreducible extra-juridical dimension, in this paper I will seek to complement the juridical approach to the CRPD with a phenomenologically informed study of the constitution of its meaning. I regard phenomenology as a method of inquiry that focuses on the details of everyday practices in order to uncover general regularities, including those concerning meaning.

The initial stimulus came from critical disability scholarship. In her analysis of the US disability rights legislation Marta Russell (2002) highlights the inefficiency of positive provisions in a system that promotes *laissez faire* and deregulation. Furthermore, the interpretation of rights is said to be influenced by the material and/or symbolic inequalities that permeate society. Some groups wield more economic, social and cultural power than others because of their positions defined along axes such as class, ethnicity, gender, and disability. Those with more power are more likely to influence interpretation, to 'bend' it in accordance with their own positions. This social and political aspect can remain inconspicuous, which on its behalf serves to maintain the *status quo* of power inequalities. One strategy to keep the politics of interpretation covered up is by uncritically regarding meaning as *fixed* or *pre-given*; another strategy is to represent the procedures involved

in interpreting as *neutral* or *immaterial*. But even in cases when neutrality of procedure can be taken at face value, the *access* to it might still be problematic:

Civil rights, for instance, are based on the premise that the individual citizen is an equal actor in the judicial process with the legal power to redress injustice through court challenges to discrimination, but what if the individual, due to her class position, lacks the money to hire an attorney, or has not the education or circumstance to secure those rights? (Russell, 2002, p. 122)

This critical reasoning has made some materialistically-inclined disability scholars to doubt the possibility of redressing disability-related injustices through recourse to purely legal means (Barnes and Oliver, 1995; Oliver and Barnes, 2006). The historical-materialist analysis is usually deployed on the *macro-level* of the social, political and economic organisation of society. It regards the situation of disabled people in terms of oppression and traces it to issues such as ideology, relations of production, structural unemployment, class exploitation, conflict of interests, and so forth. To approach disability in these terms is politically poignant and analytically relevant, yet not without its limitations and risks. In its extreme versions, the materialist critique is predated by determinism and reductionism, whose corollaries are reified analytical categories, exclusionary identity politics that imposes rigid divisions between ‘us’ and ‘them’, and insufficient reflexivity. Such issues can effectively be addressed without abandoning the critical project by complementing it with analyses deployed on the *micro-level*. In disability studies, scholars such as Paterson and Hughes (1999) have convincingly demonstrated how critical reasoning can be combined with phenomenologically informed attention to detail.

Following this methodological thread, I would like to propose an analysis of the CRPD that attends to the extra-judicial details of the way its meaning is achieved. On the one hand, the *ends* of my analysis will be similar to the ones pursued by Russell (2002) – to highlight the irreducibility of the social and political (i.e., extra-judicial) dimension of meaning so that the gap between abstract liberal rights and concrete inequalities experienced by disabled people can effectively be bridged. This, I will suggest, requires the active involvement in the interpretation of disability rights on behalf of organisationally and conceptually strong disabled people’s collectives. By the latter I mean, first and foremost, non-governmental, non-profit organisations of disabled people working for social change in the disability area. I do not exclude informal civil society groups and networks, neither do I underestimate the role of publicly active individuals, yet I take formal organisations to be better positioned in terms of legitimacy and bargaining power. My core argument is that such disabled people’s collectives should be recognised and admitted as important stakeholders and contributors in the community of interpretation that gives the CRPD its meaning.

The *means* of my analysis, on the other hand, will be different from the ones applied by historical materialists. Instead of tracing interpretation back to class divisions, conflict of interests and relations of production, I will attempt to phenomenologically trace it back ‘to the things themselves’. The idea has its origins in Husserl’s philosophy and is subsequently developed by phenomenologists such as Heidegger (1962, pp. 49-50). The crucial point is that ‘entities are constituted – allowed to show themselves as they are in themselves – when they have a place in a whole context of relations to other worldly entities and human activities’ (Wrathall, 2006, p. 33). The phenomenological call to return ‘to the things themselves’ encourages one to explore this meaning-engendering context, which does not mean to find grounds for meaning in a domain extrinsic to it but to affirm the primacy of interpretation by uncovering its workings. As Gadamer

(1984, p. 317), the leading proponent of hermeneutic phenomenology, puts it: ‘We are always taking something *as* something. That is the primordial givenness of our world orientation, and we cannot reduce it to anything simpler or more immediate.’ From such a perspective, what is originally given is meaning, not meaningless reality.

This is my methodological point of departure. On the following pages I will briefly introduce the CRPD. Then, I will explore its significance as a ‘paradigm shift’ in the disability area. It will be argued that such a shift is best grasped through the phenomenological notion of ‘being-in-the-world’ (Heidegger, 1962). This will prepare the ground for discussing the ubiquity of interpretation of human rights provisions and the limits of regulating it through purely juridical means. In the second part of the paper, I will explore the extra-judicial dimension of the treaty’s interpretation by highlighting its socially embedded materiality and by discussing issues related to its translation between languages. I will specifically look at two Bulgarian versions of the CRPD, using the English version as a reference but also consulting the French and the Russian versions. The conclusion will present some tentative methodological and programmatic inferences to be drawn from the analysis and will also reiterate the core argument of the paper about the importance of disabled people’s collectives for the interpretation of the CRPD.

The Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is an international legally binding human rights instrument of the United Nations (UN). It was unanimously adopted, together with its Optional Protocol, by the UN General Assembly on 13 December 2006 and was opened for signature on 30 March 2007. Following its twentieth ratification, it came into force on 3 May

2008. Since then, the treaty has promptly gained international recognition with a rapidly increasing number of ratifications. All this suggests that, first, the CRPD is still in its early stages of realisation, and second, that it is quickly gaining acceptance (at least formally) as *the* legal standard in the disability area all over the world. These two facts alone should suffice to attract the attention of disability studies scholarship, but there is more to make the study of the CRPD timely.

According to the UN website (www.un.org/disabilities), the CRPD has broken a number of records. Its negotiations were the fastest in the history of the UN human rights treaties. They were conducted between 2002 and 2006, within eight sessions of an Ad Hoc Committee established by the General Assembly. In addition, the number of signatories on the first day of the CRPD's opening for signature was the highest in UN history – 82 (with 44 signatories of the Optional Protocol). These figures suggest a significant consensus on the disability-related definitions, problems, and solutions put forward by the CRPD. It seems that the ground for such a consensus had been consolidated by the long-lasting efforts of the UN to promote the human rights of disabled people¹ – the CRPD is an heir of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted in 1993. But it should also be reminded that the consensus over the CRPD is built upon decades of sustained activism on behalf of disabled people's organisations (Traustadóttir, 2009), which supports the core argument of this paper about the important role of the civil society actors for the constitution of the CRPD's meaning. The drafting of the document has been assessed as open and participatory, with disability rights organisations actively involved in all of its stages (Moriarity and Dew, 2011).

¹ I prefer the term 'disabled people' to 'people/persons with disabilities' for reasons similar to the ones put forward by Oliver (1990, p. xiii). CRPD uses 'persons with disabilities'. This confounds the issue but whenever possible, I will stick to 'disabled people'.

Unlike the aforementioned UN Standard Rules, the CRPD is legally binding. It is also argued that the CRPD does not create new rights but clarifies the application of the existing human rights provisions in the context of disability (Arnardóttir and Quinn, 2009, p. xvii; EFC, 2010, pp. 22-3). Upon ratifying the document, the States Parties are obliged to amend their legislation and to implement disability-related policies in compliance with the provisions of the CRPD; ratifying the Optional Protocol brings about the possibility for individual or collective complaints on issues covered by the CRPD. It seems clear that in the coming years and possibly decades the CRPD will significantly shape disability thinking and policy worldwide. Moreover, such influence is expected to bring about a *radical change* in the domain of disability.

The paradigm shift

The CRPD is praised as representing a ‘paradigm shift’ (Arnardóttir and Quinn, 2009, p. xvii; Harpur, 2012; Moriarity and Dew, 2011, pp. 686-7). Such a shift is concerned with nothing less than a transformation of the very understanding of disabled people’s *way of being* – in other words, it has profound existential-ontological consequences. The UN website states that the document:

takes to a new height the movement from viewing persons with disabilities as “objects” of charity, medical treatment and social protection towards viewing persons with disabilities as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society. (<http://www.un.org/disabilities/default.asp?navid=14&pid=150>)

A fundamental philosophical dichotomy – the subject/object distinction – is recruited in order to interpret ‘the movement’ that the CRPD has taken to a ‘new height’. The three practices highlighted with regard to the objectifying framework are charity, medical treatment and social protection. They correspond to the apparatuses of personal tragedy, medicalisation, and paternalism that have received much critical attention from disability scholars and activists over the last four decades (to mention just a few prominent British examples: Finkelstein, 1980; Oliver, 1990, 1996; UPIAS, 1976). On the other hand, the new understanding of disabled people’s way of being – as subjects of rights rather than as objects of charity, treatment and protection – is clearly informed by an emphasis on *individual autonomy*. Indeed, the first of the general principles enshrined by the CRPD in its Article 3 reads: ‘Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons’.

This overarching emphasis on individuals as right-holders and autonomous decision-makers should be put in the wider context of the CRPD’s provisions though. At least some of the measures envisioned to promote subject-hood are unequivocally *positive* – the most widely discussed example being the provision of reasonable accommodation. Accordingly, it is often underlined that the CRPD covers both sets of rights – civil and political, on the one hand, and economic, social and cultural, on the other:

In truth, all persons (whether disabled or not) depend on social supports at least at some point in their lives (especially when young or at the onset of old age) to make freedom and choice a reality. This underlying reality is simply more obvious in the case of persons with disabilities (though not for all of them). If one sought tangible proof of the interconnectedness of both sets of rights [i.e., civil and political, on the one hand, and economic, social and cultural, on the other] then *disability is the obvious example*. It is

plainly not enough to enact anti-discrimination laws to break down arbitrary barriers. It is also necessary to assist people in getting past those barriers. *The deeper paradox – one that obtains for all persons – is that personal freedom ultimately relies on social solidarity.* (Arnardóttir and Quinn, 2009, p. xviii, emphases added)

This comprehensiveness of the CRPD exceeds the classical liberal focus on autonomy and ‘negative liberty’ (Berlin, 1969). More importantly though, the model of agency promoted by the CRPD is actually much more *distributed* than a straightforward reading of the principle of individual autonomy would readily admit:

The vision of rights embodied in the Convention is thus based upon the recognition that individuals with disabilities are not self-sufficient monist entities, but rather depend upon collective social action to make provision for their basic rights. The Convention therefore articulates a very different vision of rights from that embedded in the US Constitution, for example, where individual rights are primarily conceived as imposing negative constraints upon the state in order to maximise individual autonomy. (O’Cinnende, 2009, p. 164)

This distributed or contextualised understanding of agency is easily discernible in Article 12 concerning ‘legal capacity’, in Article 19 concerning ‘independent living’, and at the places where ‘peer support’ is promoted. In other words, the understanding of human being that is enshrined by the CRPD is much more complex than the traditional philosophical subject/object distinction would suggest. Taking such complexity on board is inevitable whenever one wants to address both ‘subjectivity’ and ‘objectivity’ seriously. My contention is that the phenomenological contextualisation of human existence, aptly captured by the notion of ‘being-in-the-world’ (Heidegger 1962, pp. 78-90), would provide for a more fruitful point of departure in disclosing the

full scope of the CRPD's meaning and significance. The analytical value of this approach has already been emphasised elsewhere in exploring national and international regulations and practices concerning personal assistance (Mladenov, 2012).

It is important to underline that the perspective informed by the phenomenological notion of 'being-in-the-world' does not undermine agency – rather, it highlights the social and material conditions that make agency possible. It is telling that, besides the *individualist* emphasis on subjectivity, autonomy, informed consent, and sovereign decision-making, the paradigm shift promoted by the CRPD is also explained through a *context-oriented* reference to the social model of disability. To this end, for example, the guidance for monitoring the CRPD, issued by the UN Office of the High Commissioner for Human Rights (2010, p. 9), cites from Michael Oliver's (1990) *The Politics of Disablement*. The social model is used to highlight the contextual factors that constitute disability – the so-called 'barriers' to participation – and also to substantiate the necessity to shift the focus of interventions from the individual towards his/her envioning world. Yet unlike 'individual autonomy' and its cognates, the social model is not explicitly mentioned in the CRPD. Instead, it is used as an *interpretive device* in commentaries and guidelines that seek to clarify the meaning of the CRPD's principles and provisions (examples abound). Importantly, this interpretive device emerged out of the organised movement of disabled people for social change, which, again, supports the core argument of this paper about the pivotal role of civil society in the constitution of the CRPD's meaning:

The politics of the disability rights movement has its roots in a family of social explanations of disability which have been developed by disability studies scholars and activists. This new social-contextual understanding of disability, most commonly referred to as "the social

model,” has created a new vision of disability and has influenced policy making at local and international levels. (Traustadóttir, 2009, p. 3)

I will now explore briefly the juridical dimension of the CRPD’s interpretation. Then, I will proceed with the exploration of the CRPD’s extra-juridical dimension and, more specifically, with highlighting the role of disabled people’s collectives in interpreting the document.

The juridical dimension of interpretation

International law posits its own guidelines for interpretation. The Vienna Convention on the Law of Treaties (VCLT), adopted in 1969 and in force since 1980, provides the general framework for the operation of international legal instruments such as the CRPD. Its Articles 31-33 set the meta-rules for interpretation of such treaties. According to Article 31, interpretation should be honest (‘in good faith’) and should be guided by the ‘ordinary meaning’ of the terms, circumscribed by their own context and the object and purpose of the treaty. It is also recognised that this context is not bounded but extends beyond the text of the treaty and includes, *inter alia*, reservations and interpretive declarations formulated by the parties to the treaty. Moreover, when the meaning remains ‘ambiguous or obscure’, interpretation may recourse to ‘preparatory work of the treaty and the circumstances of its conclusion’ (Article 32). Finally, in cases when the text is recognised as authentic in two or more languages, the Vienna Convention regards these versions as ‘equally authoritative’ (Article 33). If, upon comparison, differences of meaning between or among the authentic texts are disclosed, then ‘the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted’ (Article 33, paragraph 4). The significance

of this provision will become clear below, when discussing different language versions of the CRPD.

Articles 31-33 of the VCLT disclose that the legislator explicitly recognises and strives to regulate issues related to interpretation, including those that arise with regard to translation of international treaties. The extent to which such juridical meta-rules can effectively arrest the dynamics of meaning and cope with ‘ambiguity and obscurity’ is a matter that needs to be resolved on a case by case basis. Notwithstanding concrete cases though, interpretation always involves a social and political aspect that cannot be effaced through purely juridical means. Historically, the separation of legality from power had a positive function in emancipating humanity from arbitrary command. Classical liberal thinkers of the seventeenth and eighteenth centuries such as Locke and Montesquieu insisted on the generality, abstractness and universality of the law in order to counter the arbitrariness and localness of monarchic power (Habermas, 1993, pp. 53-4). Yet the irreducible hermeneutic dimension of legality that stems from the law’s embeddedness in language and communication has always complicated these principles (*cf.* Gadamer, 1984, p. 315). The social and political dynamics of interpretation exceeds the scope of instruments such as the Vienna Convention that attempt to regulate it. It should also be reminded that the VCLT itself comes with a long list of interpretive declarations and reservations on behalf of its States Parties that reframe the meaning of its provisions in numerous ways (the list is available online at: <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXIII/XXIII-1.en.pdf>).

Thus meta-rules *themselves* remain open to the interpretive contingencies they seek to eliminate.

Such stipulations are not meant to undermine the ‘rule of law’. Rather, the contrary is the case. Echoing the foregoing discussion of ‘individual autonomy’, the point is to contextualise legality

and thus to gain a more active and responsible relationship to it. As already argued in the introduction of this paper, meaning – even the meaning of legal provisions or, perhaps, *especially* this meaning (for it is unavoidably linguistic) – requires ongoing care on behalf of those concerned; it is never simply and factually given. Two examples related to the CRPD will illustrate this point. The interpretive declarations in relation to ‘legal capacity’ (Article 12) that some states have already submitted or might be expected to submit were aptly regarded by some legal experts as ‘challenges’ that would most probably hinder the implementation of the CRPD (EFC, 2010, p. 10). The same report states that EU members have interpreted key concepts such as ‘discrimination’ and ‘reasonable accommodation’ in an ‘inconsistent’ manner (EFC, 2010, p. 11; for a list of interpretive declarations and reservations made by the State Parties upon ratification, formal confirmation or accession to the CRPD see: <http://www.un.org/disabilities/default.asp?id=475>).

The solutions to these interpretive problems are sought in the letter of the CRPD itself:

If the wording of EU or national legislation is open to more than one *interpretation*, the EU and Member States should adhere, as far as possible, to the interpretation that renders the provision most consistent with the UN CRPD. Therefore, all EU and national governmental institutions, including the judiciary (EU and national Courts), should apply EU and national law in a manner that is most consistent with the UN CRPD. (EFC, 2010, pp. 15-16)

Yet the letter of the CRPD *in itself* is not enough to secure its meaning – Gerard Quinn (2009, p. 217) makes a similar point, linking it to the insights of Legal Realism. It is reports such as the one just cited (EFC, 2010) that actually take care of the interpretation of the CRPD, as well as the active involvement of disabled people’s organisations in all the stages of the CRPD’s development and implementation. In a number of areas crucial for disability equality – for example, with regard to ‘reasonable accommodation’, ‘independent living’, or ‘legal capacity’ – the CRPD can only *invite*

certain responses and *open up* possibilities for the deployment of certain meanings and practices, but it cannot *determine* these responses, meanings and practices. Neither is it possible to fix them through legal instruments such as the VCLT. This last point calls for an account of the extra-judicial dimension of interpretation.

The extra-judicial dimension of interpretation

Besides the juridical dimension, the interpretation of legal instruments such as the CRPD has an *irreducible* extra-judicial dimension. This means that no system of legal provisions and/or practices, no matter how comprehensive, can fix and secure, once and for all, the meaning of the key terms of the CRPD. The extra-judicial dimension of interpretation becomes evident when one considers the socially embedded materiality of interpretation; it also comes clearly into view when one attends to translation between languages. In this section, I begin with providing a brief example for the former. Afterwards, I discuss some interpretive issues arising when one compares different language versions of the CRPD. These considerations are not meant to be exhaustive but are intended as *illustrations* whose aim is to indicate possible directions for future research.

The socially embedded materiality of interpretation

The socially embedded materiality of interpretation is traceable on the micro-level by highlighting the networks of heterogeneous (human and non-human, material and ideal) entities involved in interpreting. The recognition of these ‘assemblages’ (Latour, 2005) is important because it suggests that, while human-related, interpretation is never totally human-centred or human-controlled. As far as the CRPD is concerned, a fecund area for tracing the socially embedded materiality of

interpretation is the functioning of the Committee on the Rights of Persons with Disabilities. This is an UN-level body but similar enquiries could focus on national bodies set up within the framework of the CRPD.

Presently, the Committee consists of eighteen experts who monitor the implementation of the CRPD by considering national reports submitted at regular intervals by the States Parties (the Committee's work is presented online at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>). According to Article 36, paragraph 1 of the CRPD, '[e]ach report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned'. This means that the main task of the Committee is to *interpret* the national reports in the light of the provisions made by the CRPD (themselves subject to interpretation). What does this formidable work of interpreting involve? A recent draft resolution of the UN General Assembly, dated 9 November 2011 (A/C.3/66/L.29/Rev.1), provides some hints. It states that 'document and translation costs for the reports of States parties constitute the largest part of the budget for the Committee' (p. 1). An additional issue identified by the resolution is that 'the Committee currently meets for only two sessions of one week per year' (p. 1). Addressing these issues, the General Assembly invites 'States parties to adhere to the page limit established by the Committee for reports of States parties, and notes that this would reduce the operating costs of the Committee' (p. 2). Also, the General Assembly extends the working time of the Committee to three weeks per year, providing for 'an additional week of meeting time per year to be used consecutive to an existing regular session, bearing in mind the requirements of the Committee for reasonable accommodation' (p. 2).

All this indicates that (and how) the interpretative work of the Committee is socially and materially mediated. In order to be considered by the Committee (that is, in order to be *interpreted*), national CRPD reports have to be translated, which incurs translation costs in need of approval by the General Assembly. Further, the members of the Committee need to meet – clearly, the amount and quality of their ‘meeting time’ has impact on the quality of their findings and recommendations. In addition, in order to be manageable, the reports of the States Parties need to adhere to a prescribed page limit; the volume of the reports is also bound to the operating costs for the working of the Committee. Last but not least, the Committee requires ‘reasonable accommodation’, a fact that introduces a whole new aspect of socially embedded materiality into the considerations of its interpretive work. The report on the status of the CRPD, presented by the UN Secretary-General before the General Assembly on 7 July 2011 (A/66/121), states:

Among its major decisions, the Committee requested that measures be taken to ensure that all persons with disabilities have full access to meetings of human rights bodies. The Committee also requested that all aspects of accessibility should be taken into account, including training, the provision of documents in Braille and easy-to-read and comprehensible formats, the provision of sign-language interpretation and other appropriate forms of support, as well as relevant information and communications technologies and systems. (pp. 4-5)

This statement is made immediately after reporting on the ‘days of general discussion’ held by the Committee in 2009 and 2010. Thus the Committee’s work highlights issues of material accessibility not only due to its thematic focus, but also due to the physical presence of disabled people, be it Committee members or other people attending the open events held by it – a fact that, again, testifies to the importance of participation of disabled people in working out of the CRPD’s

meaning. Besides architectural adaptation, these demands of accessibility include the need to transform the written word into alternative systems of signification and to provide appropriate information and communication support. Disability tends *of itself* to illuminate social-material ‘assemblages’ that mediate human agency, as has already been pointed out by disability scholars such as Schillmeier (2010). This fact has important implications for human rights legislation because it highlights the need to bridge the gap between ‘negative’ and ‘positive’ liberties (*cf.* Koch, 2009, pp. 70-72). In the case of the CRPD, it has also been reflected in its contextualised understanding of human being, as discussed above.

Interpretation and translation

The ubiquity and embeddedness of interpretation can also be demonstrated with regard to translation between languages. Proceeding from the presumption that *every translation is an instance of interpretation* (Müller, 2007), I would like to highlight some of the interpretive issues arising between and among different language versions of the CRPD. Article 50 – the last article of the treaty – enlists as ‘authentic’ versions of the CRPD those written in Arabic, Chinese, English, French, Russian and Spanish. In accordance with the Vienna Convention (discussed above), the UN provides the following disclaimer with regard to the translations of the CRPD available on the UN website:

The non-official versions of the Convention are provided by other sources and are for informational purposes only; they do not constitute endorsement of, or an approval by, the United Nations of any of the text or products, services, or opinions of the organization or individual. The United Nations bears no responsibility for the accuracy, legality or content

of their statements and opinions.

(<http://www.un.org/disabilities/default.asp?navid=14&pid=150>)

Two questions ensue, as far as the constitution of meaning and the work of interpretation are concerned. First, what are the relationships among the authentic versions of the CRPD? Second, what are the relationships among the authentic versions and those in other languages? Comprehensive answers to these questions exceed the confines of this study. I will limit myself to providing a few examples, utilising the languages I have command of. Among the non-authentic versions of the CRPD I will specifically focus on the Bulgarian ones, drawing on my native-speaker competence and my professional knowledge of the Bulgarian disability policy context. The discussion of the CRPD's translation in its relation to the document's interpretation will add another case in support of the thesis that disabled people and their civil society organisations are key stakeholders in the constitution of the meaning of this international treaty.

Two Bulgarian versions

At the time of writing this text (March 2012), two different versions of the Bulgarian translation of the CRPD were publicly available. One was accompanying the Decision of the Bulgarian Council of Ministers, number 967 from 30 December 2011 (available online at: pris.government.bg), that recommended to the Bulgarian National Assembly to ratify the CRPD (the Optional Protocol was not included). Following the submission of this Decision, the CRPD was unanimously ratified, without reservations, by the National Assembly on 26 January 2012 and the law for its ratification was promulgated in the *State Gazette*, number 12 from 10 February 2012. I will refer to the Bulgarian translation of the CRPD that accompanied this process of ratification as 'translation B'.

The other Bulgarian translation – what I will accordingly refer to as ‘translation A’ – was part of an earlier ratification process. It was annexed to the Decision of the Council of the European Union for the conclusion of the CRPD, dated 26 November 2009 (2010/48/EC), that was promulgated in the *Official Journal of the European Union* on 27 January 2010 (available online at: eur-lex.europa.eu).

Translation B is an edited version of translation A. The edits that transformed translation A into translation B were taken on board after a consultative process organised by the Bulgarian government that involved a number of civil society organisations, including organisations of disabled people. Thus the edits illuminate the social and political dynamics of interpretation and the role of the civil society actors in its unfolding. I will return to this point in my discussion of Article 19 of the CRPD.

Defining disability: preambular paragraph (e) and Article 1

According to authoritative interpretations, the CRPD does not provide a definition of disability but rather ‘guidance’ that is intended to clarify the CRPD’s application (UN Office of the High Commissioner for Human Rights, 2010, p. 15). This guidance is contained in the preambular paragraph (e) and in Article 1 of the CRPD. Nevertheless, it seems legitimate to regard these two statements as definitions, albeit tentative ones, for at least two reasons. First, they serve as a pivotal point of reference for the whole conceptual edifice of the CRPD. Second, even if in theory they are not regarded as definitions, in practice they will most probably be used as such by policy-makers and advocates alike.

The preambular paragraph (e) of the English version of the CRPD states:

that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

The first thing to notice is that, following the ‘social model of disability’ (UN Office of the High Commissioner for Human Rights, 2010, pp. 8-9), the English version distinguishes between ‘disability’ and ‘impairment’. This distinction is regarded as of utmost importance, because it goes to the heart of the ‘paradigm shift’ of the CRPD:

The *challenge*, when applying the paradigm shift at domestic level, is the subtle, and not always acknowledged, difference between the terms “impairment” and “disability”. The notion of “disability” used in the UN CRPD focuses on barriers, which may hinder full and effective participation in society on an equal basis with others, and not on individual impairments. This is particularly important for the application of certain rights, such as legal capacity (Article 12 UN CRPD). (EFC, 2010, p. 42)

The two Bulgarian translations take up this challenge of differentiating between ‘impairment’ and ‘disability’ with varying degrees of success. Translation B erases the distinction by rendering both ‘disability’ and ‘impairment’ with the same word – *uvrezhdane* (that would be translated back to English as ‘disability’). Translation A copes with the challenge by rendering ‘disability’ as *uvrezhdane* and ‘impairments’ as *narusheni fizicheski funktsii* (‘impaired physical functions’). Indeed, reducing ‘impairments’ to ‘physical functions’ may create another problem if it is taken to exclude mental and intellectual differences, explicitly enlisted among ‘impairments’ in Article 1 of the CRPD. Nevertheless, on this point translation A seems less problematic than translation B.

Further, in the English version of the preambular paragraph (e), the third person singular of the verb ‘hinder’ (indicated by the suffix -s: ‘hinders’) suggests that it is the *interaction* between the person with impairments and the attitudinal and environmental barriers that prevents disabled people from equal participation in society – rather than the barriers themselves. This subtle difference becomes conspicuous when the English version is compared with, for example, the French one: *le handicap résulte de l’interaction entre des personnes présentant des incapacités et les barrières comportementales et environnementales qui font obstacle à leur pleine et effective participation à la société*. The third person plural of the verb *faire* – i.e., *font* – indicates that the French version identifies the barriers themselves (*les barrières*) as hindering participation – rather than the interaction between the persons with impairments and the barriers, as is in the English version. Both Bulgarian translations B and A concur with the French version on this point. (Another one of the authentic versions that I checked – the Russian one – concurs with the English version.)

The aforementioned issues do not arise when considering Article 1 of the CRPD – the other place in the CRPD where the meaning of ‘disability’ is explicitly addressed, this time through a tentative definition of ‘persons with disabilities’. According to the English version of Article 1:

Persons with disabilities include 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.

The text suggests that what ‘may hinder’ disabled people’s participation in society are *impairments-in-their-interaction-with-environmental-barriers*. Article 1 makes it impossible to disentangle the interactional ensemble that is identified as preventing disabled people from

participating – hence my hyphenation. Notwithstanding the relatively stronger emphasis on the role of ‘impairments’ here in comparison with the preambular paragraph (e), the English version remains consistent in its interpretation of the hindrances to participation. At this point, the French and the two Bulgarian versions concur with the English one. It should also be added that in Article 1, both Bulgarian translations A and B distinguish between ‘disability’ and ‘impairment’ by rendering these terms, accordingly, as *uvrezhdane* (‘disability’), and *nedostatachnost* (‘deficiency’).

These comments are not intended as critiques of particular language versions of the CRPD, although such criticisms are possible and, in some cases, desirable. For example, as early as in 2008, issues were reported in relation to the Hungarian and the German versions of the text (Virtanen, 2008). In the case of the latter, Virtanen (2008, p. 35) more specifically pointed out that ‘[t]he German Disability Council is trying to lobby changes in the translation because there are mistakes in the German translation. For example, the word *inclusion* in the context of education has been translated as *Integration* instead of *Inklusion*.’² A similar intervention on behalf of a civil society organisation of disabled people in the CRPD’s translation will be discussed below, with regard to the translation of Article 19. Yet rather than criticise different language versions of the CRPD, here my aim was to emphasise the ambiguities that persist even in highly codified juridical contexts and that become conspicuous when comparing different language versions of the same text. It would be misleading to regard such ambiguities as *mere* ‘errors’ or ‘inconsistencies’ that can be rectified once and for all. Rather, they should be regarded as invitations for social and

² The German disabled people’s organisation *Netzwerk Artikel 3* has developed and promoted a ‘shadow’ version of the official German translation of CRPD and its Optional Protocol, available online at: http://www.netzwerk-artikel-3.de/dokumente/doc_download/1-schattenubersetzung-un-konvention. The edits proposed by *Netzwerk Artikel 3* are highlighted in the text.

political engagement with ostensibly self-enclosed and expert-dominated domains of meaning. The CRPD itself embraces this spirit of civic involvement in its Article 4(3) that states:

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

Independent living: Article 19

Article 19 of the CRPD concerns issues related to independent living, community services, personal assistance and, by implication, deinstitutionalisation. The significance of these concepts for disability equality cannot be overstated. They constitute the main preoccupation of international organisations of disabled people such as the European Network on Independent Living (www.enil.eu) and the Independent Living Institute (www.independentliving.org). On the national level, Centres for Independent Living – organisations run and controlled by disabled people – focus exclusively on the issues circumscribed by these concepts (Barnes, 2007).

The English title of Article 19 is ‘Living independently and being included in the community’. Bulgarian translation A renders ‘living independently’ as *samostoyatelen zhivot*, but the word *samostoyatelen* is much closer to the English ‘selfstanding’ or ‘autonomous’ than to ‘independent’ – hence, *samostoyatelen zhivot* would be translated back to English as ‘selfstanding living’ or ‘autonomous living’. This makes translation A problematic from the perspective of the Independent Living philosophy, as will be explained below. A similar problem can be discerned in the French and the Russian versions as well, where ‘living independently’ is rendered as *autonomie de vie*

(‘autonomy of living’) and *samostoyatel’nyi obraz zhizni* (‘selfstanding / autonomous way of living’) respectively. It should be noted that there are other provisions of the CRPD where both the French and the Russian versions render ‘independence’ differently. For example, in the preambular paragraph (n) the English ‘autonomy and independence’ corresponds in the French version to *autonomie et ... indépendance* and in the Russian to *samostoyatel’nost’ i nezavisimost’* – i.e., the French and Russian words or their cognates used in Article 19 to refer to ‘independent’ are used here to refer to ‘autonomy’. (In the preambular paragraph (n) both Bulgarian translations A and B render the English ‘autonomy and independence’ as *samostoyatelnost i nezavisimost.*)

What is the problem with rendering ‘independent’ as ‘selfstanding / autonomous’ – or with obliterating the difference between the two concepts? From the perspective of the Independent Living philosophy (Morris, 2004), the concept of ‘independent living’ does not imply coping without assistance, as might be suggested by terms such as ‘selfstanding’ and ‘autonomous’. Instead, ‘independent living’ requires the assistance to be organised in such a ways so that the person who utilises it is enabled to exercise choice and control over his or her everyday activities. This point is deemed sufficiently important to be highlighted on the homepage of the Independent Living Institute website:

Independent Living is a philosophy and a movement of people with disabilities who work for self-determination, equal opportunities and self-respect. Independent Living does not mean that we want to do everything by ourselves and do not need anybody or that we want to live in isolation. Independent Living means that we demand the same choices and control in our every-day lives that our non-disabled brothers and sisters, neighbors and friends take for granted. We want to grow up in our families, go to the neighborhood school, use the

same bus as our neighbors, work in jobs that are in line with our education and interests, and start families of our own. (www.independentliving.org)

This statement clarifies the significance of insisting on ‘independent’ instead of ‘selfstanding’ or ‘autonomous’. Proceeding from similar presumptions, the Center for Independent Living – Sofia (www.cil.bg) – a non-governmental organisation of disabled people, chief proponent of the Independent Living philosophy in Bulgaria – insisted for changes in the Bulgarian translation A of the CRPD before its ratification by the Bulgarian National Assembly. As a result of this advocacy, in the ensuing translation B ‘living independently’ was rendered as *nezavisim zivot* (‘independent living’). The same advocacy efforts resulted in some other important changes in Article 19, for example the substitution of *sluzhbi za sotsialno podpomagane* (‘offices for social assistance’, Bulgarian translation A) with *uslugi za podkrepa v obshtnostta* (‘services for support in the community’, Bulgarian translation B) in its paragraph (b), corresponding to the English ‘community support services’. The motivation for these changes stems from concerns similar to those mentioned above.

Let me summarise the more general points on translation made so far: (a) by comparing different language versions of the CRPD, one is able to see how (b) translation is intrinsically related to interpretation, while (c) interpretation is rooted in different and sometimes conflicting understandings of disabled people’s identities, problems and their solutions. These different understandings continue to have an impact even when – as I take it to be the case with the CRPD – the juridical norm is formulated with precision, insight and sensitivity; they bend it towards diverging meanings and outcomes. The role of the Center for Independent Living – Sofia in changing the Bulgarian translation of the CRPD illustrates how the involvement of civil society

actors can have a decisive impact on the interpretation of rights provisions. After all – and as already pointed out – the CRPD is itself to a great extent a result of such an involvement of civil society in policy- and law-making.

Concluding remarks

In conclusion, I would like to draw two inferences from the foregoing analysis – a methodological and a programmatic one – as well as to rearticulate the argument highlighting the importance of disabled people’s collectives in the interpretation of the CRPD.

In terms of methodology, the analysis of the CRPD suggests that critical disability scholarship would benefit from utilising phenomenological attention to the details of meaning constitution. In phenomenology, this attention is intrinsically related to a contextualised understanding of human being, conceived as ‘being-in-the-world’. Thus the notion of ‘being-in-the-world’, used in the first part of this paper to conceptualise the CRPD’s ‘paradigm shift’ in existential-ontological terms, can also provide methodological guidance for exploring the constitution of the CRPD’s meaning. From the perspective of being-in-the-world, humans are seen as *essentially* embedded in the meaning-engendering contexts (or ‘worlds’) of their activities (Heidegger, 1962, pp. 78-90). Accordingly, ‘distributed’ aspects of human agency are emphasised, helping to overcome traditional philosophical subject/object divisions. The phenomenological approach also insists that interpretation, rather than being conceived as one human activity among others, should be promoted to the rank of ‘the basic structure of our experience of life’ (Gadamer, 1984, p. 317). As has already been argued elsewhere (Mladenov, 2011; 2012), these phenomenological insights can provide a fertile ground for innovative methodological developments within disability studies.

The second point is related to circumscribing themes for future research on the CRPD and other similar legal instruments concerning disability. The suggested area for study is the extra-judicial dimension of meaning constitution. Within it, close attention needs to be paid to the socially embedded materiality of the interpretation of legal instruments such as the CRPD, both on the international and national levels. This paper provides some preliminary clues but much more could be done. The other theme for future research is translation. Comparing different language versions of a treaty such as the CRPD is a fecund ground for analytical insights. It should be noted that issues related to national translations of the CRPD have already been highlighted by some commentators (e.g., Virtanen, 2008), but to my knowledge no systematic research in this direction has been undertaken.

The central argument of this article concerns the importance of the active participation of civil society actors in the interpretation of juridical provision such as those contained in the CRPD. The treatment of disability – and some would add, of impairment too (Hughes and Paterson, 1997; Tremain, 2002) – should not be abandoned to medical experts. Similarly, the interpretation of disability rights should not be fully conceded to legal experts – a position with which, I believe, many of the legal experts involved in the drafting and subsequent exegesis of the CRPD would agree. The CRPD Committee itself openly recognises the need for involving civil society actors in the interpretation of the CRPD – for example, by inviting submissions for comments on particular CRPD provisions, a practice that is to be commended and sustained. The most recent call addressed Article 9 of CRPD that deals with states’ obligations with regard to accessibility. In response, strong and influential disabled people’s organisations such as the European Disability Forum (www.edf-feph.org) have submitted their proposals for interpreting Article 9, highlighting subtle

but politically crucial distinctions such as the one between ‘reasonable accommodation’ and ‘general accessibility’.³

The struggle over the CRPD’s meaning(s) is yet to be deployed on the terrains of national and international lawmaking, policy planning, implementation and monitoring. Different groups will appropriate the treaty’s provisions in different ways, bending them to fit their own socio-political positions (*cf.* Quinn, 2009, pp. 216-217). Gadamer (1984, p. 315) points out that ‘[i]t is in the service of just decisions that one reinterprets the law and finds the most adequate solution of the juristic problem’. My contention is that, besides competent jurists, administrators and politicians, just decisions require active, politically engaged communities. This does not invalidate the ‘rule of law’ but highlights a crucial condition for its realisation. Applied to the domain of disability, this means that political decisions can be and remain *just* only in the vicinity of collectively organised disabled people. The forms of these collectives may vary, but they are most effective when constituted as non-governmental, non-profit organisations *of* (rather than *for*) disabled people. This does not exclude informal groups or individuals, yet the capacity of the formally constituted organisations to influence interpretation is greater, as is their legitimacy within the conventional frameworks of policy-making and policy implementation. In other words, only organisationally and conceptually strong disabled people’s collectives can further the transformative and emancipatory potential inherent in the CRPD.

Acknowledgements

³ The Committee’s call is available at: <http://www2.ohchr.org/SPdocs/CRPD/CallSubmissionsArticle9.doc>. EDF’s submission is available at: http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=29617.

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