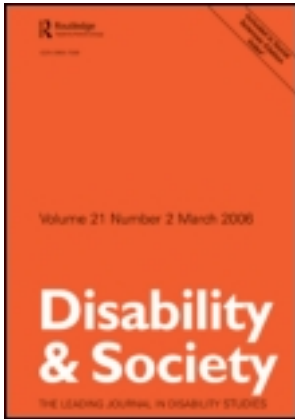


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### Hidden contradictions and conditionality: conceptualisations of inclusive education in international human rights law

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## **Hidden contradictions and conditionality: conceptualisations of inclusive education in international human rights law**

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The nature of education that children with disabilities should receive has been subject to much debate. This article critically assesses the ways in which the international human rights framework has conceptualised 'inclusive education'. It argues that the right to education for children with disabilities in international law is constitutive of hidden contradictions and conditionality. This is most evident with respect to conceptualisations of 'inclusion' and 'support', and their respective emphases upon the extent of individual impairment or 'deficit' rather than upon the extent of institutional or structural deficit. It is vital that the new Committee on the Rights of Persons with Disabilities pays close attention to the utilisation of these concepts lest the Convention on the Rights of Persons with Disabilities further legitimises the 'special needs' educational discourse to which children with disabilities have been subject.

**Keywords:** rights of children with disabilities; inclusive education; international law

### **Points of interest**

- This article looks at what international law has said about the right to education for disabled children and whether they should be educated in special schools or mainstream schools.
- Different countries have different views on what 'inclusion' means for disabled children and what inclusive education looks like.
- International law has not given countries a clear message about the best way to educate disabled children.
- It is hoped that the new United Nations Convention on the Rights of Persons with Disabilities will provide an opportunity for positive change and for disabled people's voices to be heard about how they want to be educated.

### **Introduction**

The importance of education as a right in and of itself, and as a 'passkey' (United Nations 2001a) to the enjoyment of other rights and freedoms, is clearly established in international human rights law. The right to education for everyone is also a fea-

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ture of regional human rights instruments and domestic law. In 1954 the US Supreme Court, in a landmark decision affirming the discriminatory nature of racial segregation in schools, asserted: 'it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education' (*Brown v Board of Education* 1954). Over 50 years later, the educational segregation of many children with disabilities in special schools remains common practice. The individualised discourse upon which 'special' education is predominantly based plays a crucial role in constructing and sustaining exclusionary practices, and in perpetuating the 'otherness' of children with disabilities both within and outside the education system (Runswick-Cole and Hodge 2009). Nor are concepts of 'integration' and 'inclusion' problem free, each having been attributed different meanings in their implicit and explicit forms (Armstrong, Armstrong, and Spandagou 2010; Slee 2006). The largely unproblematised manner in which segregative and superficially inclusive practices have persisted across UN Member States raises the question of the extent to which the international human rights framework has itself socialised States to such behaviour. Indeed, 'unless disabled children ... are treated with respect by the legislation governing their educational rights, those involved in their education will not be encouraged to do the same' (Fortin 2005, 378).

The role of international human rights law as a framework for action and in presenting a set of standards against which States can assess and amend existing educational practices is crucial. Goodman and Jinks have highlighted the ways in which the international human rights framework can play a crucial persuasive role by convincing state actors of the 'truth, validity, or appropriateness of a norm, belief or practice' and by inducing behavioural change through processes of socialisation and acculturation (Goodman and Jinks 2004, 635). Whilst critical analysis of the concepts of 'integration' and 'inclusion' are not new in themselves, their exploration in the context of international human rights law has received scant attention. It is the latter which is the focus of this article. The way(s) in which international law conceptualises integration and inclusion has significant implications for influencing States to 'right' or 'wrong' behaviour in this regard, not least in establishing what constitutes un/acceptable educational practice. The legitimating role of human rights discourse is of particular significance for children with disabilities and for whom substantive and 'linguistic variety' (United Nations 1999b, 13) with respect to the ways in which children with disabilities should be educated, and their educability more generally, has been particularly pertinent.

This article explores the right to education for children with disabilities under international human rights law. It discusses the ways in which human rights law has conceptualised inclusive education, and critically assesses the extent to which the international human rights community has challenged or perpetuated the location of children with disabilities within a deficit-based 'special needs' framework with respect to education. Particular attention is paid to the UN Convention on the Rights of the Child 1989 (CRC), including the Concluding Observations of the Committee on the Rights of the Child to the most recent periodic reports of the 27 EU Member States, and the more recent UN Convention on the Rights of Persons with Disabilities 2006 (CRPD). Widely hailed as reflective of a 'paradigm shift' in rights discourse for people with disabilities, the article examines whether this is an accurate reflection of the CRPD with respect to education. The article concludes with some critical reflections on the ways in which the international human rights framework can itself become part of the problem rather than the solution. It sug-

gests that the recent emphasis on ‘inclusion’ within human rights law is somewhat misleading and, in its current form(s), represents little more than reconstituted and institutionalised conceptions of integration and normalisation. Thus, the legitimating role of human rights law risks becoming something of a double-edged sword when its articulation of the prescribed and proscribed becomes characterised by ‘hidden contradictions’ (Shildrick 2005, 9) and conditionality, and whereby practices of ‘inclusion’ are grounded in the taken for granted rules of a non-disabled arbitrary for whom the phrase ‘Welcome into *my* world’ is intransigent. The terms ‘disability’ and ‘disabilities’ as used in this article refer to the range of oppressive practices and barriers by which an individual is disabled by society. This includes attitudinal, physical, environmental, social and economic barriers and encompasses institutional and systemic forms of discrimination (for example, Barnes 1991; Finkelstein 1980; Oliver 1990, 1996). Tensions between the phrases ‘disabled people’ and ‘people with disabilities’ in this context are respectfully recognised and acknowledged. The decision to use ‘people with disabilities’, however, is reflective of the international legal context upon which this article focuses, and the formalised usage and adoption of the term in international legal documents including the CRPD.

### **Distinguishing between integration and inclusion**

The disempowering effects of segregated education such as isolation, stigma, low self-esteem, and restricted access to the full range of educational opportunities are well documented (for example, Armstrong and Barton 1999; Barnes, Mercer, and Shakespeare 2002; Judge 2003; Oliver 1996; Rieser 2000). A segregated system, in essence, reflects the experiences and views of a majority non-disabled population for whom impairment or disability in its individualised form is considered undesirable, and a hindrance to the educational and economic development of the majority. As such, segregation is understood as a ‘fundamental part of the discriminatory process’ (Barnes 1991, 42), ‘transplant[ing] the failings of mass education into the minds and bodies of disabled children’ (Goodley 2010, 138). The move from segregation towards integration, and more recently inclusion, has not been without difficulty: the two terms have been, and continue to be, used interchangeably without due recognition of their distinctiveness (Armstrong, Armstrong, and Spandagou 2010; Connor and Ferri 2007). Simply because the numbers of children with disabilities attending mainstream schools has been increasing, and has been subsequently labelled ‘inclusive practice’, does not mean that the disabled child has full access to the curriculum or is fully included in all aspects of school life. Rather, segregation can take on invisible forms (Riddell 2007), with many disabled children ‘expected to fit into existing schooling arrangements’ (Goodley 2010, 141). Practices of integration can thus be understood as little more than a form of mere assimilation.

In contrast, inclusion ‘necessitates the removal of the material, ideological, political and economic barriers that legitimate and reproduce in equality and discrimination in the lives of disabled people’ (Barton and Armstrong 2001, 214) According to this view, an identification of barriers within the school’s environment, teaching and learning strategies, and attitudes that prevent the full participation of children with disabilities, will also be required.

The definition and applicability within international law of terms such as ‘integration’ and ‘inclusion’ has particular implications in determining the nature of edu-

cational rights that children with disabilities can claim. Clearly, an international framework that seeks to challenge disabling practices as defined by a social model of disability (for example, Finkelstein 1980, 1993; Barnes 1991; Oliver 1990, 1996) has the potential to be much more empowering and far-reaching than that which seeks to 'cure' and 'rehabilitate' children with disabilities to a 'normal' state. Likewise for an international framework that codifies a substantive right to inclusive education rather than segregation or mere assimilation. However, when used synonymously to refer to little more than integration, the concept of inclusion risks becoming misleading, ideologically meaningless and riddled with ambiguities; reminiscent of a sheep in lion's clothing. Just as the 'context of education policy creates the conditions for exclusion that militate against ... inclusive' education (Slee 2001, 172), so too does the international human rights framework risk doing the same. The way in which inclusion is conceptualised also has particular implications for the extent of obligations placed upon States Parties and state actors as duty bearers under international human rights law, and in determining which and what kind of practices might constitute a human rights violation. As Mutua observes, there is a danger that '[o]nce a claim achieves the status of a human right, it acquires the aura of irreversibility, irrevocability, timelessness, and universal validity' (2007, 558). Thus, the role of the international human rights regime in defining and articulating the prescribed and proscribed through the legitimisation of human rights claims takes on particular importance in shaping the educational experiences of children with disabilities at national level.

### **Approaches to inclusion in international human rights law**

The right to education for children with disabilities has been addressed directly and indirectly by 'soft' (i.e. non-binding) and binding international law. While the Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1993 and the Salamanca Statement 1994 have asserted an explicit right to education for children with disabilities, as soft law these were morally rather than legally binding upon States. A general right to education for everyone was proclaimed by Article 26 of the Universal Declaration on Human Rights in 1948. This was reaffirmed and made binding by Article 13(1) of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and Articles 28 and 29 of the CRC. Children with disabilities are not expressly referred to in the text of Article 13 of the ICESCR or Articles 28 and 29 of the CRC. However, their explicit entitlement to this right has been made clear by their respective monitoring bodies; the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child in their General Comments. In addition, the CRC, for the first time in international law, prohibited discrimination on the grounds of disability and included an article specific to children with disabilities. Not only do children with disabilities have the right to receive an education without discrimination and to express their views on educational matters affecting them, but to be provided with assistance to ensure that access to such education is 'effective'. The provision and extent of this assistance is, however, heavily dependent upon the availability of resources.

International law in its various forms has sought to address the question of educational placement for children with disabilities. Its success in effectively doing so is questionable and, it is argued, constitutive of hidden contradictions and *conditional inclusion*; that is, the burden of change continues to be placed upon children

with disabilities, their ‘ability’ to adjust to naturalised pedagogies, to ‘cope’ and overcome their impairment to become ‘one of us’ as opposed to a somewhat burdensome ‘minority of one’. There is a danger that discourses of *conditional inclusion*, as framed by international law, will contribute to hiding enduring problems and processes of exclusion within States instead of highlighting and challenging them. Rule 6 of the 1993 Standard Rules calls upon States to accommodate children with disabilities within ‘integrated settings’ and to ensure that the education of children with disabilities is ‘an integral part of the educational system’. In so doing, adequate accessibility and support services should be provided. The Rules also allow for special education to be considered ‘in situations where the general school system does not yet adequately meet the needs of all persons with disabilities’. Segregated education is here viewed as a temporary measure, aimed at ‘preparing children with disabilities for education in the general school system’. This sense of ‘preparing’ children with disabilities as a prerequisite for their general inclusion is indicative of an underlying assumption of needing to ‘restore’ the child to a level of ‘normality’ that enables them to readily adapt and ‘fit in’ to the mainstream education system, subsequently ‘allowing’ their educational rights to be more effectively realised. In so doing, special education is framed as a mechanism for advancing the goal of inclusion (Armstrong, Armstrong, and Spandagou 2010, 32). It is debateable whether inclusive education can be fully realised whilst the option to segregate remains (Kenworthy and Whittaker 2000).

The Standard Rules were followed by the UNESCO Salamanca Statement and Framework for Action on Special Needs Education in 1994. This Statement calls upon governments to adopt the principle of inclusive education, enrolling all children in regular schools ‘unless there are compelling reasons for doing otherwise’ (Salamanca Statement 1994, Section 3); for example, ‘when it is required for the welfare of the child or that of other children’. It is interesting to note that nowhere in international law is the education of children *without* disabilities subject to the welfare of children *with* disabilities. The Statement and its Framework for Action is further peppered by the interchangeable use of ‘integration’ and ‘inclusion’, and the ‘special needs’ of children with disabilities. Whilst the dominant discourse of the time, the continued usage of the latter in international law has served only to mask ‘a practice of stratification which continues to determine children’s educational careers by assigning to them an identity defined by an administrative label’ (Skidmore 2004, 5).

The conservatism of the right to ‘inclusive’ education in *binding* international law, prior to the CRPD, can be inferred from the work of the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. While both the ICESCR and the CRC are themselves silent on the issue, their respective monitoring bodies have, albeit to varying degrees, elaborated upon the educational rights of adults and children with disabilities in their General Comments. The Committee on Economic, Social and Cultural Rights has affirmed that educational institutions and programmes for everyone should be available, accessible, acceptable and adaptable, and that the prohibition against discrimination applies ‘fully and immediately to all aspects of education’ (United Nations 1999a, 31). This would appear to offer much potential for effectively realising the educational rights of children with disabilities. However, this oft-cited 4-A Schema has not been utilised with respect to the education of children with disabilities. Its 1994 General

Comment on people with disabilities pays scant attention to educational rights, simply referring to the Standard Rules and stating that:

In order to implement such an approach, States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. (United Nations 1994, 35)

There is no requirement for the curriculum to be adapted for children with disabilities other than for support to be provided to enable children with disabilities to access *an already existing curriculum* and pre-existing educational practices more generally. That such support should be aimed at 'bringing persons with disabilities *up to*' the same level of education as their non-disabled peers places the onus upon children with disabilities to overcome individual 'deficits'. The educational system itself escapes problematisation.

The elaboration of the right to education by the Committee on the Rights of the Child would appear to have positive implications for the educational rights and placement of children with disabilities. In its first General Comment, on the aims of education, the Committee recognised the pervasive discrimination experienced by children with disabilities in educational settings and stipulated that the right to education for all children is not only a matter of access, but also of content, educational processes, pedagogical methods, and the environment in which education takes place (United Nations 2001b). Also, 'approaches which do no more than seek to superimpose the aims and values of education on the existing system without encouraging any deeper changes are clearly inadequate' (United Nations 2001b, 18). Significantly, debate during the Day of General Discussion held by the Committee on the Rights of the Child on the rights of children with disabilities highlighted the distinction between concepts of integration and inclusion, recognising that 'policies of integration tended to seek to change the child in order to fit into the school. Inclusion, on the other hand, sought to change the school environment in order to meet the needs of the disabled child' (United Nations 1997).

The Committee on the Rights of the Child has paid attention to issues of educational placement in its General Comment on children with disabilities, clearly stating that 'inclusive education should be the goal' (United Nations 2006, 66). However, it adopts a rather contradictory and somewhat confusing approach to inclusion. Its conceptualisation as a 'goal' rather than a 'right' is itself problematic. The Committee goes on to emphasise that:

the extent of inclusion within the general education system may vary ... Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular classroom with varying degree of inclusion, including a certain portion of special education. (United Nations 2006, 66)

The latter is a clear example of the way in which the concept of inclusion can become heavily diluted, and its 'original reformist intent' seriously undermined (Slee 2006, 113). It is clear that the Committee's understanding is extremely broad and subsequently lacking. Inclusion here appears to be an all-encompassing concept. The feasibility and extent of inclusion is presented here as being primarily determined by the individual child. Of course it would undoubtedly be inappropriate for any child to be educated in a system where his or her needs are not being met.

What is at issue here is the extent to which less than full forms of inclusion become legitimised and accepted because of the extent of an individual child's impairment and the challenges that child poses, and not because of the inadequacy of the pre-existing educational system. This flawed approach has been highlighted more generally by commentators such as Kenworthy and Whittaker (2000) and Rioux (2007) who have observed that, more often than not, the onus remains on the individual child to fit within the existing education system rather than *vice versa*. Thus the disabled child becomes understood in international law as the barrier to their own educational inclusion. Whilst stipulating that 'inclusion should not be understood nor practiced as simply integrating children into the regular system regardless of their challenges and needs', the elasticity which the Committee attaches to 'inclusion' renders it largely meaningless.

The issue of educational placement arises in the Committee's Concluding Observations to 17 of the 27 EU Member States. Despite the Committee's apparent recognition of the distinction between 'inclusion' and 'integration' during the Day of General Discussion, and their conceptual development within academic literature more generally, this has not been consistently adhered to in its Concluding Observations. For example, in its 2003 response to Cyprus, the Committee expressed concern about the broad scope of special schools for children with 'physical, mental or emotional needs' that 'is not conducive to the integration of those children into mainstream schools' (United Nations 2003a, 51). In the same year the Committee welcomed the efforts of the Czech Republic in integrating children with disabilities into mainstream education and welcomed the 'widespread inclusion of children with disabilities in mainstream schools' in Italy (United Nations 2003b, 8g). The Committee also recommended that children with disabilities were integrated in mainstream schools in its responses to reports by Estonia, Greece, Latvia, Poland, Portugal, and Malta. Of particular interest is the Committee's response to Luxembourg's second report in 2005, in which it challenged the exclusion of children with behavioural and/or learning disabilities from mainstream schools and their placement in 'facilities for mentally and physically disabled children' (United Nations 2005, 48-9). However, it made no attempt to challenge segregated forms of education for children with mental and physical disabilities, sending a message to the State Party that such practices remain acceptable.

A somewhat more positive approach can be discerned in the Committee's Concluding Observations to EU Member States from 2006. In its Concluding Observations to Lithuania (2006), Hungary (2006), the United Kingdom (2008), Romania (2009) and Belgium (2010) we can see a much more consistent general approach to 'inclusion' and calls for States Parties to ensure inclusive education for children with disabilities in mainstream settings. This is perhaps a result of the Committee's General Comment on children with disabilities, which was adopted in 2006, as well as a nod to the CRPD that was adopted in December 2006, and to which the Committee made reference. However, given the diluted approach to inclusion taken in the latter Comment, the strength of this message remains unclear, and there is a danger that the Committee becomes blinkered by and perpetuates mere integration. Attention to the qualitative aspects of education has received only scant attention throughout its Concluding Observations. For example, in 2003 the Committee called upon Estonia to remove physical barriers to enable effective access of children with disabilities to schools, but did not pay attention to the range of other barriers prohibiting inclusion and participation. Other responses have focused only on



the need for teaching staff to receive adequate training. Nowhere in its Concluding Observations has any attention been granted to, for example, the design of the curriculum, disabling rules and procedures, communication issues, classroom materials and the provision of resources in accessible formats. Whilst the Committee cannot possibly address all issues in its Concluding Observations, the limited approach it has adopted is disappointing and renders invisible the plethora of barriers experienced by children with disabilities in the educational system. This weak concept of inclusion perpetuated by the Committee risks masking and legitimating a multitude of sins.

### **New directions? The CRPD**

The CRPD and its Optional Protocol was adopted by the General Assembly of the United Nations on 13 December 2006. It opened for signature on 30 March 2007 and came into force on 3 May 2008. The first textual explication of both adults and children with disabilities in an international human rights treaty, the CRPD has been variously hailed as ‘ground breaking’ (Waddington 2008, 111), ‘historic and path-breaking’ (Melish 2007, 37), and the ‘dawn of a new era’ (United Nations Secretary General 2006). It is safe to say that the CRPD has generated extremely high expectations of urgent and effective redress for the human rights violations experienced by people with disabilities across the world. To say that the issue of educational placement was a source of debate in the drafting process is something of an understatement. Each stage of the negotiations elicited extensive reactions from States Parties and civil society, and it was not until the final session in 2006 that the draft began to resemble its final form. Different approaches were identified by members of the Ad Hoc Committee in delineating the relationship between ‘special’ education and mainstream education. Some members of the Ad Hoc Committee considered that the education of children with disabilities in the general education system should be the rule while others thought that ‘specialist’ education services should not only be provided where the general education system was inadequate but made available at all times without a presumption that one approach was more desirable than the other.

Article 24 of the CRPD establishes the right to education for all persons with disabilities without discrimination and on the basis of equal opportunity. It builds upon the ICESCR and the CRC by setting out in detail the actions States Parties need to take in order to ensure this right for children (and adults) with disabilities. As such, it encompasses both positive and negative duties. Although children with disabilities were implicitly covered by the right to education in other treaties, their textual invisibility has proved problematic and they have instead had to rely on the observations and statements of treaty monitoring bodies for clarification on the content of this right. The formal and detailed articulation of a right to education for children with disabilities herein is thus significant and would appear to be far-reaching. Significantly, it requires States Parties to ensure an ‘inclusive education system at all levels’. The aims of an inclusive education system are threefold; firstly, the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; secondly, the development by people with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; and, finally, to enable people with disabilities to participate effectively in

a free society (CRPD, Article 24(1)). Whilst articulating the aims to which such a system should be directed, no attempt is made to explicitly define what is meant by 'inclusion' other than to state that children with disabilities should not be excluded from the general education system on the basis of disability, and that they should receive the support required within the general education system to facilitate their effective education. This would appear to signify a positive approach to inclusion; one wherein the presumption is in favour of education in mainstream settings, with the provision of support to ensure that education really is inclusive and not reduced to mere integration. No attempt was made during the negotiation process to define 'inclusion' or to include any such definition in Article 2 of the CRPD, which explicitly defines the terms 'communication', 'language', 'discrimination on the basis of disability', 'reasonable accommodation' and 'universal design' for the purposes of the Convention. The remainder of Article 24 does elaborate further on what would appear to be the prerequisites for an inclusive education system. For example, States Parties are required to ensure that 'effective individualised support measures' are provided in environments that 'maximise academic and social development, consistent with the goal of full inclusion' and for 'reasonable accommodation of the individual's requirements'. Further measures required include: facilitating the learning of Braille and alternative means of communication; the learning of sign language; and ensuring that staff in education settings receive a range of training in, for example, disability awareness and communication approaches.

It will be up to the Committee on the Rights of Persons with Disabilities to clarify the parameters of inclusion as its work progresses. By explicitly obligating States Parties to take measures in respect of the above, Article 24 goes further than either soft law and the ICESCR or the CRC, by making binding and articulating more clearly how the right to education is to be realised for children with disabilities. In this way, Article 24 becomes an 'authoritative guide for human action' (Goodman and Jinks 2004, 641). Interestingly, although the Committee on the Rights of the Child has elaborated on what *it* understands by 'inclusion', the usage of the term within the body of the CRPD appears to have induced some discomfort within the former Committee and there appears to be some implicit feeling that the CRPD potentially goes too far or places too much pressure on educational institutions to become fully inclusive. In its General Comment on the rights of children with disabilities, the Committee on the Rights of the Child noted:

[T]he explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of persons with disabilities ... However, the Committee underlines that the extent of inclusion within the general education system may vary. (United Nations 2006, 67)

It will be highly interesting to see in the coming years not only what impact the CRPD and its Committee will have in persuading and/or acculturating States Parties to inclusive educational practices – that is, in inducing *vertical internalisation of norms* – but in persuading and/or acculturating *other treaty monitoring bodies* of the value of fully inclusive educational practices – that is, in inducing *horizontal internalisation of norms*. It is important, however, not to get carried away with what would appear to be the strengths of Article 24 and the detail contained therein. The reference to 'environments which maximise academic and social development', albeit that these are consistent with the goal of full inclusion, may emerge as prob-

lematic. It appears, to some degree, to be a reconstituted version of previous provisions in, for example, the Standard Rules 1993, which called for segregated education to be considered 'in situations where the general school system does not yet adequately meet the needs of all persons with disabilities', and aimed at 'preparing children with disabilities for education in the general school system' (Rule 6, Standard Rules 1993). The language in Article 24 is interesting: it does not refer to 'inclusive environments' or state that such environments should be consistent with inclusion full stop, but rather with the *goal* of full inclusion, indicating a process *towards* inclusion. Such a provision is potentially diluting and reflective of the 'smoke and mirrors' that sometimes characterise international human rights law. Whilst the term 'special' is omitted from Article 24, extensive reference is made to 'individualised support' and not on the role of States Parties in eradicating those structural barriers that prohibit the effective participation and inclusion of children with disabilities in the mainstream education system. As such, emphasis remains on the difficulties children themselves have with legitimised practices of teaching and learning and not on the difficulties that emanate directly from the construction and naturalisation of such practices by and for a non-disabled majority. The language of support focuses on changing the individual person with a disability and assisting them to rectify or overcome perceived individual deficit. The legitimisation of such practices is indicative of the normative power of rights and their role in unwittingly perpetuating less than inclusive practice. In contrast to the alternative, the focus on functional solutions and individual support is 'safe' and 'easy'.

The CRPD cause has been taken up by the Committee on the Rights of the Child in all of its concluding observations to EU member states post 2006; post adoption of the CRPD. For example, in 2010 the Committee on the Rights of the Child welcomed Belgium's ratification of the CRPD and its Optional Protocol, and, between 2006 and 2010, called upon Bulgaria, France, Netherlands, Romania, Slovakia and the United Kingdom to ratify both the CRPD and its Optional Protocol. It could be asserted not only that the CRPD has the capacity to 'persuade' or 'acculturate' States Parties to 'perform better' (Goodman and Jinks 2004, 102) with respect to their educational endeavours, but likewise in facilitating the development or, rather the refining, of educational norms among other treaty monitoring bodies, and the Committee on the Rights of the Child in particular. The adoption of the latter's General Comment on the rights of children with disabilities in 2006, *following the final session* of CRPD negotiations, and the more consistent use of language and engagement with the right to education for children with disabilities in its Concluding Observations to EU Member States post 2006 suggest that the CRPD itself may be having a 'trickle effect' in the work of other treaty bodies. Although some differences appear to have already emerged around understandings of inclusion, for example, such differences in themselves contribute to a process of dialogue and debate in the clarification of rights content. In this sense, then, it is perhaps disappointing that Article 24 of the CRPD focuses so heavily on individualised measures of support given the opportunity for horizontal, as well as vertical, persuasion and acculturation that exists.

Given that its Committee has not yet elaborated upon the content of this right, and has produced only a handful of Concluding Observations, it remains to be seen just how narrowly or broadly the concept of inclusion will be utilised and defined. Will the Committee be critical of States Parties who insist on maintaining segregated forms of learning? Will they be consistent in their approach to inclusion or

adopt a quantitative approach to inclusion? The CRPD undoubtedly spells out the right to education for children with disabilities in international law in much greater detail than has hitherto been the case. This, alongside omission of any reference to ‘special needs’, is progress from that which has come before. It is the first time in binding international law that any reference has been made to ‘inclusion’ in a treaty text, and for this reason alone is to be welcomed. However this level of progress is somewhat diluted by continuing emphasis upon forms of support required by the individual to access existing pedagogies rather than upon barriers to inclusion erected by educational institutions and discourses themselves, which become manifest through *inter alia* disabling rules and procedures, curriculum design, and naturalised forms of expression. We must thus be mindful of the ways in which such approaches can constitute conservation strategies for a State Party, giving rise to ‘conditional inclusion’ and a conditional human rights discourse for children with disabilities more generally.

### Conclusion

That children with disabilities have a general right to education is beyond dispute. What *is* called into question is the parameters of that right; specifically, the extent to which this has been suitably clarified and consistently applied by the international human rights framework. This article has sought to problematise the individualised assumptions that have pervaded human rights discourse by questioning the legitimating practices and ‘safe’ parameters of international human rights law with respect to the right to inclusive education for children with disabilities. The form and content of the right to education accorded to children with disabilities in international law has continued to locate children with disabilities within a ‘special needs’ discourse in constituted and reconstituted forms. This has been most evident through attempts by the international human rights framework to address issues of educational placement for children with disabilities. Undoubtedly a complex and challenging issue for the Committee, not least in obtaining consensus among States Parties, the lack of clarity with which this has been addressed has created space for the legitimisation of exclusionary practices within States Parties. The language of ‘special needs’ and ‘integration’ has been a common feature of the work of the Committee on the Rights of Child. Attempts made by the Committee on the Rights of the Child to adopt a more consistent approach to ‘inclusion’ more recently have been problematic, and the term has been used to indicate practices of mere integration rather than inclusive practices *per se*. Indeed, the Committee’s attempt to establish the boundaries of ‘inclusion’ has rendered the concept largely meaningless since it is subsequently impossible to discern the extent or nature of inclusion it is referring to. There is a danger that ‘inclusion’, as utilised by the Committee on the Rights of the Child, merely becomes a new way to describe and legitimise age old norms.

International human rights law has conditionalised the right to inclusive education for children with disabilities by making inclusion contingent upon the extent of individual rather than institutional or structural deficits. These declarations of ‘inclusion’ have failed to sufficiently challenge the rules on which the immanent structures of the game are based. As such, the taken-for-granted rules and ‘ablist’ discourse upon which educational systems and institutions are based go unchallenged. In emphasising the relationship between the effective realisation of the right

to education for children with disabilities and the extent of individual impairment, there emerges the paradox that children with disabilities themselves become a *partial or indirect duty bearer*, wherein States are relieved of accountability in instances where the needs of the individual child become too challenging, expensive or ‘burdensome’. This form of domination becomes self-perpetuating and may create new patterns of participation by accepting only those children who have ‘right’ kinds of disability and are able to successfully become ‘one of us’ by conforming to normalised ideals. The international human rights framework has done little to challenge such practices. It remains to be seen just how the Committee on the Rights of Persons with Disabilities will fare with respect to the elaboration and monitoring of this right. Hopes are high and opportunities for challenging the special needs and less than inclusive discourse that has prevailed have been reignited. It is thus with a watchful eye that the activities and commentary of the Committee on the Rights of Persons with Disabilities will be followed in years to come.

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