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# Language in international treaties: linguistic and cultural challenges in translating and implementing international multilingual treaties

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*Existing research on international human rights law has neglected the issues raised by the domestic translation of multilingual treaties and their implications for implementation. This article addresses that gap. It explores the challenges a central concept to an international multilingual treaty, the UN Convention on the Rights of Persons with Disabilities (CRPD), presented to States Parties when interpreting and translating the CRPD's novel central concept of disability (Article 1) and the implications this had for the implementation of the CRPD. The CRPD has been described as representing a 'paradigm shift' in thinking about disability in international human rights law. At the heart of this shift is a new understanding of the concept of disability. It moves away from a traditional conceptualisation situated in a medical discourse, towards a concept situated in a social contextual discourse, which views persons with disabilities as subjects with human rights equal to all persons. Little research has explored how the CRPD's central concept translates beyond the anglophone world. This article employs a distinctive approach to legal translation as a cross-cultural transfer or interaction of discourses. It develops a detailed case study of Cyprus based on primary empirical work (semi-structured interviews and document analysis), it then compares the challenges faced by Cyprus with the experiences of Greece and Bulgaria, and then considers these in relation to Iceland's experiences. This article reveals linguistic and cultural challenges and shows their significance for the implementation of the CRPD. It highlights the risks of domestic misinterpretation and mistranslation and identifies three critical factors to reduce these risks for international multilingual treaties. This article contributes to our understanding of the significance of domestic translation of international multilingual treaties and the implications of this for treaty implementation and helps to open a new research agenda around this.*

**Keywords:** *multilingual treaties, human rights, translation, implementation, CRPD, Article 1, disability.*

## 1 INTRODUCTION

This article applies a distinctive approach to the domestic legal translation of an international multilingual treaty. It analyses an example of a 'paradigm shift' in an international multilingual treaty through a detailed, original, and empirically grounded case study of a non-anglophone country considered in context to three other non-anglophone countries. It contributes both to our knowledge and understanding of the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD),<sup>1</sup> and to our knowledge on how concepts which are central to international multilingual human rights treaties may or may not face linguistic, conceptual, and cultural challenges in translation, and the implications these challenges may have for the operationalisation and implementation of treaties. It thus also illustrates broader points about the translation and implementation of international multilingual treaties. The majority of the States Parties to the CRPD are non-anglophone and it is important to take into account how the CRPD's concept of disability, which is central to the CRPD's interpretation, interacts with domestic conceptual, linguistic, and cultural contexts. The CRPD was adopted in 2006. This article is,

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<sup>1</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

therefore, overdue, relevant to international audiences, directly addresses challenges non-anglophone States Parties may face, and addresses a gap in the literature.

The relationship between international multilingual treaties and their domestic implementation is complex. In the area of human rights treaties, studies have focused on: why some States choose to ratify international human rights treaties and the domestic consequences of ratification;<sup>2</sup> the conditions under which human rights treaties' norms are internalised in domestic practices and implemented through a 'socialization process';<sup>3</sup> the conditions within which States are likely to adhere to human rights treaties provisions through social mechanisms;<sup>4</sup> and how human rights law is appropriated, 'translated' (adjusted) and remade into the local through the 'process of vernacularization'.<sup>5</sup> However, none of these address the issue of the translation of international multilingual human rights treaties in the domestic context and the implications this may have for implementation. The UN multilingual human rights treaties are only available in the six UN official languages,<sup>6</sup> and there are 193 UN Member States with official and unofficial State languages. International multilingual treaties require translation before they can be domestically implemented.

Translation focuses on transforming the original text into an, as far as possible, equivalent text; however, translation studies have found that 'a satisfactory translation of all the legal terms of one text from one context to another is at times impossible',<sup>7</sup> and that in some situations the use of a particular term instead of another, may lead to 'ambiguity and misinterpretation'.<sup>8</sup> Further, legal translation may form part of domestic power games in a State.<sup>9</sup> This could have implications for international multilingual treaty implementation.

The CRPD<sup>10</sup> is an example of an international multilingual treaty available in the six UN official languages. It has been ratified by 186 States Parties and the European Union (EU).<sup>11</sup> A very large number of States Parties have needed to translate the CRPD into their official and unofficial languages, have used it in the legislative screening process for their domestic legislation and policies before ratification, and will continue to use it post-ratification for the ongoing development of domestic law and policy.<sup>12</sup> Nevertheless, evidence shows that States Parties have faced challenges in operationalising and implementing a central concept to this treaty: the CRPD's concept of disability.<sup>13</sup>

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<sup>2</sup> Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (CUP, Cambridge 2009).

<sup>3</sup> Thomas Risse, Stephen C Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (CUP, Cambridge 1999).

<sup>4</sup> Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (OUP, Oxford 2013).

<sup>5</sup> Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press, Chicago 2005) 219.

<sup>6</sup> Arabic, Chinese, English, French, Russian and Spanish.

<sup>7</sup> Maurizio Gotti, 'Globalizing Trends in Legal Discourse' in Frances Olsen, Alexander Lorz and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Macmillan, London 2009) 55, 56.

<sup>8</sup> *Ibid* 57.

<sup>9</sup> See José Lambert, 'The Status and Position of Legal Translation: A Chapter in the Discursive Construction of Societies' in Frances Olsen, Alexander Lorz and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Macmillan, London 2009) 76, 77–95.

<sup>10</sup> CRPD (n 1).

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid* art 4.

<sup>13</sup> *Ibid* art 1, para 2 and preambular para (e). See European Foundation Centre (EFC), 'Study on Challenges and Good Practices in the Implementation of the UN Convention on the Rights of Persons with Disabilities' (EFC Final Report for the DG Employment, Social Affairs and Equal Opportunities of the European Commission, February 2010); UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Cyprus' (8 May 2017) UN Doc CRPD/C/CYP/CO/1; UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Bulgaria' (22 October 2018) UN Doc CRPD/C/BGR/CO/1; UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Greece' (29 October 2019) UN Doc CRPD/C/GRC/CO/1. See also Theresia Degener, 'Disability in a Human Rights Context' (2016) 5 *Laws* 1, 1–3.

The CRPD<sup>14</sup> has been described as representing a ‘paradigm shift’ in thinking about disability in international human rights law.<sup>15</sup> This description is used to communicate that the ‘pre-CRPD paradigm’ of international human rights law had been ineffective in the protection of persons with disabilities’ human rights, and that what was required was not merely a tinkering around the edges of existing international human rights law instruments but a fundamental shift in their underlying norms and epistemology.<sup>16</sup> It is also used in recognition that the CRPD may be viewed as disruptive and may involve an intellectual battle for the new paradigm’s acceptance, necessitating the ‘reconstruction of the field from new fundamentals’ and changing ‘some of the field’s most elementary theoretical generalizations as well as many of its paradigm methods and applications’.<sup>17</sup> A shift in paradigm, however, is only achieved through an epistemological break with the old paradigm.<sup>18</sup>

Critical to this epistemological break in the international human rights law field is the CRPD’s concept of ‘disability’.<sup>19</sup> This new understanding of the concept of disability<sup>20</sup> moves away from a traditional conceptualisation of disability situated in a medical discourse towards a concept of disability situated in a social contextual discourse.<sup>21</sup> This conceptualises disability as ‘the societal response to impairment’ and ‘social oppression’ and makes a distinction between ‘impairment’ (the biological) on the one hand and ‘disability’ (the societal) on the other hand.<sup>22</sup> It is in sharp contrast with more traditional conceptions of disability, such as the medical model of disability. The central thrust of the social model of disability is that it is society which *disables* persons who have impairments.<sup>23</sup> A linguistic and conceptual tool to the social model of disability is the distinction between the terms of ‘impairment’ and ‘disability’:

Impairment is defined in individual and biological terms. Disability is defined as a social creation. Disability is what makes impairment a problem. For social modelists, social barriers and social oppression constitute disability.<sup>24</sup>

Before the CRPD, the medical model of disability dominated the domestic and legal sphere. It focused on, and reduced disability to, the impairment a person may have: disability was viewed as a ‘problem’ that was located *in* the individual who was deemed by society in need to be ‘cured’ or ‘fixed’.<sup>25</sup> Situated in that medical discourse, medical approaches, treatments, and experts

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<sup>14</sup> CRPD (n 1).

<sup>15</sup> Gerard Quinn and Oddný Mjöll Arnardóttir, ‘Introduction’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers, Leiden 2009) xv, xvii. See also Lana Moriarity and Kevin Dew, ‘The United Nations Convention on the Rights of Persons with Disabilities and Participation in Aotearoa New Zealand’ (2011) 26 *Disability and Society* 683; Paul Harpur, ‘Embracing the New Disability Rights Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities’ (2012) 27 *Disability and Society* 1.

<sup>16</sup> See Rosemary Kayess and Phillip French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 *Human Rights Law Review* 1, 3; Arlene S Kanter, *The Development of Disability Rights Under International Law: From Charity to Human Rights* (Routledge, Abingdon 2015) 46; Lucy Series, ‘Disability and Human Rights’ in Nick Watson and Simo Vehmas (eds), *Routledge Handbook of Disability Studies* (2nd edn, Routledge, Abingdon 2019) 76.

<sup>17</sup> Thomas S Kuhn, *The Structure of Scientific Revolutions* (4th edn, University of Chicago Press, Chicago 2012) 85.

<sup>18</sup> *Ibid.*

<sup>19</sup> CRPD (n 1) art 1 and preambular para (e).

<sup>20</sup> Mladenov has argued that this concept serves as ‘a pivotal point of reference for the whole conceptual edifice of the CRPD’ in Teodor Mladenov, ‘The UN Convention on the Rights of Persons with Disabilities and its Interpretation’ (2013) 7 *ALTER European Journal of Disability Research* 69, 78. See Harpur (n 15).

<sup>21</sup> See Rannveig Traustadóttir, ‘Disability Studies, the Social Model and Legal Developments’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives* (Martinus Nijhoff Publishers, Leiden 2009) 3.

<sup>22</sup> Jan Walmsley, ‘Research and Emancipation – Prospects and Problems’ in Gordon Grant and others (eds), *Learning Disability - A Life Cycle Approach to Valuing People* (Open University Press, Maidenhead 2005) 724; Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (SAGE Publications, Los Angeles 2011) 22.

<sup>23</sup> Gordon Grant and others (eds), *Learning Disability – A Life Cycle Approach to Valuing People* (Open University Press, Maidenhead 2005) 79; Traustadóttir (n 21) 3.

<sup>24</sup> Tom Shakespeare, *Disability Rights and Wrongs* (1st edn, Routledge, London 2006) 34.

<sup>25</sup> See Walmsley (n 22) 489; Kayess and French (n 16) 5–6; Traustadóttir (n 21) 5; Jan Grue, *Disability and Discourse Analysis* (Ashgate, Farnham 2015) 37.

dominated the concept of disability.<sup>26</sup> This resulted in persons with disabilities being subject to discrimination, marginalisation, exclusion, isolation and oppression; and in the denial of peoples' agency and right to self-determination.<sup>27</sup> In contrast, the CRPD rejects a conceptualisation of disability grounded exclusively in a medical discourse. It shifts focus towards attitudinal, environmental, and societal barriers, such as legal and social structures, processes and infrastructure. The CRPD's concept of disability explicitly recognises and reaffirms that all persons with disabilities are human rights holders, and that human rights are not dependent upon physical or mental health status.<sup>28</sup> In turn, the CRPD's concept of disability is powerful for international human rights law.<sup>29</sup>

A particular value system underpins and was enshrined in the text of the CRPD;<sup>30</sup> however, 'values and value systems are inevitably but often unconsciously related with translations and with the reshuffling of value systems'.<sup>31</sup> The significance of the CRPD's concept of disability is highlighted by the fact that it is situated in Article 1 'Purpose' of the Convention.<sup>32</sup> It is, therefore, imperative that the CRPD's concept of disability is not misinterpreted or mistranslated. However, the concept of disability is one of the hardest concepts to conceptualise.<sup>33</sup> Further, the CRPD's concept of disability cannot be summed up simply and straightforwardly. In turn, States Parties may experience challenges in interpreting and translating it conceptually and linguistically. The adoption of the CRPD was the culmination of a unique, participatory and collaborative drafting and negotiation process over five years, with discussion on the concept of disability being one of the most challenging points in the negotiations.<sup>34</sup>

This article identifies and explores the challenges the CRPD's concept of disability may present to States Parties when interpreting and translating it. For example, an issue that may pose a challenge to some States Parties is the 'subtle' and 'not always acknowledged' distinction between the two terms of 'disability' and 'impairment',<sup>35</sup> particularly as literature suggests that the Nordic languages may find the distinction, as made in the United Kingdom (UK) context (where the social model of disability initially developed), between impairment and disability difficult to translate.<sup>36</sup> This problem is significant because it has implications for how States Parties navigate these challenges, including for the operationalisation and implementation of the CRPD.

In order to explore this problem, this article draws on translation studies literature and employs a distinctive approach to legal translation as a cross-cultural transfer or interaction of

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<sup>26</sup> Shakespeare (n 24). Grue (n 25) 36.

<sup>27</sup> See Gerard Quinn and Theresia Degener, *Human Rights and Disability: The current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (United Nations, Geneva 2002) 16; Kayess and French (n 16) 6; Frederic Megret, 'The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?' (2008) 30 *Human Rights Quarterly* 494, 500; Grue (n 25) 59; Kanter (n 16) 46.

<sup>28</sup> See CRPD (n 1) preambular paras (b), (c), (e), arts 1, 12; Theresia Degener, '10 Years of Convention on the Rights of Persons with Disabilities' (2017) 35 *Netherlands Quarterly of Human Rights* 152, 154.

<sup>29</sup> CRPD (n 1) art 1.

<sup>30</sup> See CRPD (n 1) preambular paras (a)–(y), arts 1–9; Gerard Quinn, 'Resisting the Temptation of Elegance: Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviours?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities* (Martinus Nijhoff Publishers, Leiden 2009) 215; Jackie Leach Scully, 'The Convention on the Rights of Persons with Disabilities and Cultural Understandings of Disability' in Joel Anderson and Jos Philips (eds), *Disability and Universal Human Rights: Legal, Ethical, and Conceptual Implications of the Convention on the Rights of Persons with Disabilities* (Netherlands Institute of Human Rights, Utrecht 2012) 71.

<sup>31</sup> Lambert (n 9) 90.

<sup>32</sup> CRPD (n 1) art 1.

<sup>33</sup> Goodley (n 22) 28.

<sup>34</sup> See UN Department of Public Information, 'Disability Convention Drafting Committee Discusses International Monitoring, International Cooperation, Definition of Disability' (15 August 2006) <<https://press.un.org/en/2006/soc4709.doc.htm>> accessed 24 August 2023; Anna Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' (2007) 34 *Syracuse Journal of International Law and Commerce* 563; Emily Kakoullis and Yoshikazu Ikehara, 'Art. 1 Purpose' in Ilias Bantekas, Michael A Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (OUP, Oxford 2018) 35.

<sup>35</sup> EFC (n 13) 42.

<sup>36</sup> See Shakespeare (n 24); Anna Lawson and Angharad E Beckett, 'The Social and Human Rights Models of Disability: Towards a Complementarity Thesis' (2021) 25 *The International Journal of Human Rights* 348.

discourses.<sup>37</sup> As highlighted above, the CRPD represents a ‘paradigm shift’ in thinking about disability in international human rights law, and at the heart of this shift is the CRPD’s concept of disability. The particular approach to legal translation employed here recognises that the translation process for the CRPD may have implications for the translated concept of disability. This is a novel analysis which draws on this particular approach to legal translation and applies it to the area of domestic implementation of UN international human rights law.

Research into the translation of the text of the CRPD into non-UN, official, and unofficial, States Parties’ languages has received very little attention.<sup>38</sup> This article intends to redress the balance. It builds on literature on the CRPD’s concept of disability,<sup>39</sup> and takes the existing discussion further as it examines discourses that shaped the CRPD’s concept of disability. It then uses primary empirical data (semi-structured interviews and documents) to explore the challenges the concept has posed to some States Parties. The CRPD seeks to effect a cultural transformation in the way persons with disabilities are viewed and treated in societies around the world through the UN human rights law framework.<sup>40</sup> This article, in exploring the challenges posed to States Parties by the CRPD’s concept of disability and the implications of this, is also able to contribute to the assessment as to whether the CRPD has achieved the cultural transformation it was anticipated to effect. For example, Michael Stein and Janet Lord have argued that the CRPD ‘has the potential to legislate a belief change regarding persons with disabilities by better informing societies about persons with disabilities’.<sup>41</sup> Whereas reservedly, Gerard Quinn has warned that, ‘[o]ne must resist ... the easy assumption that words alone will bring about the kind of change needed’<sup>42</sup> and had argued that there is ‘no guarantee that the new values (really old values but novel in their application to disability)’ embedded in the text of the CRPD would be both internalised and operationalised.<sup>43</sup> This article, therefore, also contributes to our knowledge and understanding on the CRPD’s translation, operationalisation, and implementation.

The remainder of this article is divided into six sections. In the next section the analytical framework and methods employed are set out (Section 2). The CRPD’s concept of disability, including the discourses that underpin it and its centrality to the CRPD, are then examined (Section 3). In Section 4, Cyprus’ experience of translating the CRPD’s concept of disability is used as a case study to explore and identify the challenges faced in interpreting and translating the concept, and the implications this had for the operationalisation and implementation of the CRPD. Section 5 compares the challenges faced by Cyprus with the experiences of Greece and Bulgaria in translating the CRPD’s concept of disability, and then considers these in relation to Iceland’s experience. Section 6 discusses the wider implications beyond the case study of Cyprus and experiences of other States Parties to provide insights into the translation and implementation for international multilingual treaties. Lastly, conclusions will be presented.

## 2 ANALYTICAL APPROACH AND METHODS

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<sup>37</sup> Lambert (n 9); Agnieszka Doczekalska, ‘Drafting or Translation – Production of Multilingual Legal Texts’ in Frances Olsen, Alexander Lorz and Dieter Stein (eds), *Translation Issues in Language and Law* (Palgrave Macmillan, London 2009) 116, 120–121.

<sup>38</sup> With the exception of Riku-Heikki Virtanen, *The Survey on the Ratification Processes of the Convention on the Rights of Persons with Disabilities in Seven States* (The Center for Human Rights of Persons with Disabilities, Vaasa 2008); Mladenov (n 20).

<sup>39</sup> See eg Lisa Waddington, ‘A New Era in Human Rights Protection in the European Community: The Implications of the United Nations’ Convention on the Rights of Persons with Disabilities for the European Community’ (2007) Maastricht University Faculty of Law Working Paper 1; Kayess and French (n 16); Lawson (n 34); Traustadóttir (n 21); Raymond Lang et al, ‘Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations’ (2011) 5 *European Journal of Disability Research* 206; Harpur (n 15); Kanter (n 16); Kakoullis and Ikehara (n 34); Lawson and Beckett (n 36).

<sup>40</sup> CRPD (n 1) art 8(1)(a); Kanter (n 16) 2; Scully (n 30) 72.

<sup>41</sup> Michael A Stein and Janet E Lord, ‘Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers, Leiden 2009) 17, 32.

<sup>42</sup> Quinn (n 30) 216.

<sup>43</sup> *Ibid.*

Translation is an activity whereby a text is transformed; terms and phrases are taken from one language and translated into another to produce a translated text.<sup>44</sup> The theory and approach employed informs the meaning ascribed to the term ‘translation’.<sup>45</sup> Traditionally, the dominant approach to legal translation was one that viewed translation as an interlingual ‘mechanical process of transcoding one language into another’,<sup>46</sup> as a tool or technical service, and in ‘a strongly reductionist way’.<sup>47</sup> However, linguistic descriptions define persons and order the world in particular ways which, by implication, prohibit or allow persons to exercise power or things to be done.<sup>48</sup> Further, linguistic descriptors are not available in all socio-cultural-historical contexts.<sup>49</sup> Therefore, an issue with the traditional approach to translation is that translation cannot be reduced to mere language only,<sup>50</sup> because cultural aspects comprise important factors in the interpretation and construction of legal discourse.<sup>51</sup>

Within the discipline of translation studies, a shift in theory and approach towards translation has developed which approaches the issue of legal translation as a cross-cultural transfer<sup>52</sup> or interaction of discourses, and which recognises that ‘translation often plays an active and organizational role in the planning of societies’.<sup>53</sup> This latter approach recognises that law is a particular type of institutional discourse, and that legal translation ‘may be part of pre-planned power games, it may also become part of power games afterwards, and nothing excludes that power games evolve differently from their initial conceptualization’.<sup>54</sup> This has implications for the CRPD because its translation may form part of power games during a State’s ratification process, and/or after, during its implementation, and the monitoring of its implementation. This approach recognises that the translation of the text of the CRPD may have implications for the translated concept of disability. This is because at no point does the translated text of the CRPD eliminate the possibility that the translated concept of disability may evolve differently from its conceptualisation in the UN English language text of the CRPD. There is a danger that, through power games during the domestic translation, the CRPD’s concept of disability could evolve to a conceptualisation closer, for example, to a medical discourse of disability.

This article uses as a case study the experience of the translation of the CRPD’s concept of disability in Cyprus. Cyprus was initially largely unfamiliar with this concept of disability. Cyprus is an EU and Council of Europe Member State; it was formerly under British rule and became an independent country in 1960. It is thus familiar with the English language. The methods used were semi-structured interviews and document analysis. The interviews were conducted between 2011 and 2012 with 23 key players involved in the Cypriot ratification and translation process for the CRPD, such as Government ministries and bodies and disabled people’s organisations (DPOs).<sup>55</sup> Key documents on the translation process for the CRPD were analysed, including correspondence between government departments and DPOs, and legislation. These interviews were essential to this research as they informed understanding and contextualisation of the CRPD’s translation. I am half-English and half-Cypriot, familiar with the Cypriot cultural context, and bilingual in English and Greek, and thus uniquely positioned to carry out the research.

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<sup>44</sup> Roger T Bell, *Translation and Translating: Theory and Practice* (Longman Group, London 1991) 4-6.

<sup>45</sup> Doczekalska (n 37) 118.

<sup>46</sup> Ibid 120.

<sup>47</sup> Lambert (n 9) 76.

<sup>48</sup> See Vivien Burr, *Social Constructionism* (Routledge, London 2004) 89.

<sup>49</sup> Ibid.

<sup>50</sup> Lambert (n 9).

<sup>51</sup> Gotti (n 7).

<sup>52</sup> Doczekalska (n 37).

<sup>53</sup> Lambert (n 9) 77.

<sup>54</sup> Ibid 80.

<sup>55</sup> The mentioned semi-structured interviews included the following institutions and organisations: Ministry of Labour and Social Insurance (MLSI), Department of Social Inclusion for Persons with Disabilities (DSIPD), Law Commission, Legal Service, Ombudsperson’s Office, Parliamentarians, Cypriot Confederation of Organisations of the Disabled (CCOD), Pan-Cyprian Organisation of the Blind (POB), Organisation of the Paraplegics of Cyprus, European Social Forum of Cyprus, Committee for the Protection of Persons with Mental Retardation, Theotokos Foundation, Employers and Industrialists Federation, Cyprus Workers Confederation, and Pan-Cyprian Federation of Labour.

The challenges faced by Cyprus were then compared with the experiences of another two States Parties, to examine the case study's findings in the light of other States Parties' experiences of translation to further inform the analysis. The EU ratified the CRPD in 2011 and prepared its own official EU language translations of the CRPD, therefore other EU Member States were sought. The EU Member States of Greece and Bulgaria were chosen. Greece was chosen because it shares the same official language (Greek) and cultural similarities with Cyprus. Bulgaria was chosen because there was some available work on the CRPD's translation by the bilingual (Bulgarian and English) scholar Teodor Mladenov, thus documents and secondary data on the Bulgarian context<sup>56</sup> were available. The challenges Greece and Bulgaria, respectively, faced in interpreting and translating the CRPD's concept of disability into Greece's official language (Greek), and into Bulgaria's official language (Bulgarian), as well as the EU official translations are examined. The experiences of Cyprus, Greece, Bulgaria and the EU, are then considered with Iceland's experience of translating the CRPD's concept of disability into the Icelandic language. Iceland was chosen because literature suggests Nordic languages may find the distinction between the English language terms of 'impairment' and 'disability' difficult to translate.<sup>57</sup>

### 3 THE CRPD'S CONCEPT OF DISABILITY

#### 3.1 Drafting and negotiating the CRPD and the concept of disability

The CRPD's drafting and negotiation process shaped the concept of disability adopted. Traditionally and historically, the drafting and negotiation for UN human rights conventions would take place between the Member States' delegations with the convention's target group largely excluded from the drafting process.<sup>58</sup> However, for the drafting of the CRPD and in the context of the historical exclusion of persons with disabilities from decisions that affect them, the International Disability Movement united around the mantra *Nothing About Us Without Us!*. Intense lobbying by DPOs and non-governmental organisations (NGOs) took place at the first session, with the implication that it was decided that DPO and NGO representatives would be allowed to attend future Ad Hoc Committee sessions.<sup>59</sup> This was a significant development as it meant that the target group of the CRPD was enabled to directly contribute to the drafting and negotiations, including with implications for what would become the concept of disability in the CRPD.<sup>60</sup>

During the eight sessions for the drafting and negotiating the text of the CRPD, many definitions of disability were put forward by States and organisations with observer status.<sup>61</sup> In view of international and intercultural communication, multilingual legal texts incorporate elements from various cultures,<sup>62</sup> and are underpinned by linguistic and sociocultural strategies.<sup>63</sup> A plethora of conceptual approaches to, and models of, disability informed the drafting and negotiations for the concept. These, in turn, were informed by States' delegations, DPOs, NGOs and national human rights institutions (NHRIs) from around the world with different cultural backgrounds and terminology, which came together resulting in the woven conceptualisation of disability that was then crystallised in the text of the CRPD. Participants both drew on domestic approaches to, and models of, disability, and were involved in constructing a discourse on the concept of disability that could be worked with at the international level in drafting and

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<sup>56</sup> Mladenov (n 20) 77–80.

<sup>57</sup> See, Shakespeare (n 24); Lawson and Beckett (n 36) 354.

<sup>58</sup> Janet E Lord, David Suozzi and Allyn Taylor, 'Lessons from the Experience of UN Convention on the Rights of Persons with Disabilities: Addressing the Democratic Deficit in Global Health Governance' (2010) 38 *Journal of Law, Medicine and Ethics* 564, 567.

<sup>59</sup> United Nations General Assembly, 'Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' (2002) UN Doc A/57/357; Lawson (n 34) 588.

<sup>60</sup> Kakoullis and Ikehara (n 34) 39.

<sup>61</sup> *Ibid* 40–47.

<sup>62</sup> Doczekalska (n 37) 118.

<sup>63</sup> *Ibid* 116–133; Lambert (n 9) 76–95.



negotiating the text of the CRPD. International legal discourse is an area where intercultural elements may be investigated because language is marked in both its cultural content and in the range of linguistic terms available in that language.<sup>64</sup> Persons involved in cross-cultural communication construct discourse to suit the communicative needs of an international audience, with the implication of a new common framework of values and shared behaviours.<sup>65</sup>

The CRPD's concept of disability was one of the 'most difficult' points debated as the decision firstly, on whether to *include* a definition of 'disability' or of 'persons with disabilities'; and secondly, if so, its *content* were 'among the most controversial' points.<sup>66</sup> One point that those involved in the drafting did share consensus on 'was overall agreement that the medical model of disability definitely was not the right path'.<sup>67</sup> A compromise was eventually arrived at for the CRPD to include a *description* of persons with disabilities in the second paragraph of Article 1, as a concept of disability needed to be included in the CRPD to ensure the human rights protection of its target group.<sup>68</sup>

### 3.2 The text of the CRPD's concept of disability

The text of the CRPD's concept of disability is found in Article 1, second paragraph:

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.<sup>69</sup>

It was also explicitly recognised that the concept of disability is an evolving concept. This found expression in preambular paragraph (e):

Recognizing 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.<sup>70</sup>

The ensuing concept of disability is the product of rich international and intercultural debate and compromise. It is not the most straightforward concept to navigate as a result of the muddled terminology it employs, nor is it wholly coherent in its discourse. For example, from a disability studies perspective, it is important to consider that the CRPD is a negotiated international law treaty and that it is not a document that aims to develop a theoretical explanation of disability. Nevertheless, from a legal studies perspective, the CRPD's concept of disability is there to guide in interpreting, operationalising, and implementing the Convention. Critically the CRPD explicitly rejects a conceptualisation of disability grounded exclusively in the medical model of disability and/or a bio-medical discourse,<sup>71</sup> and rejects the World Health Organisation's (WHO) International Classification of Functioning Disability and Health (ICF).<sup>72</sup>

The CRPD's concept of disability is the driving force to its 'paradigm shift'. It is imperative that we become better acquainted with this concept of disability if we are to enable and facilitate the successful interpretation, operationalisation and implementation of the CRPD. Contextualising the process within which the text of the CRPD was created enables us to understand the discourses that shaped it.

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<sup>64</sup> Gotti (n 7).

<sup>65</sup> Ibid.

<sup>66</sup> UN Department of Public Information (n 34); Kayess and French (n 16) 23; Lawson (n 34) 607.

<sup>67</sup> Degener (n 13) 3.

<sup>68</sup> Kakoullis and Ikehara (n 34) 48.

<sup>69</sup> CRPD (n 1) art 1 para 2.

<sup>70</sup> Ibid preambular para (e).

<sup>71</sup> Degener explains that '...the medical model served as a deterrent. While there was often no consensus among stakeholders which way to go in terms of drafting the text of the convention, there was overall agreement that the medical model of disability was definitely not the right path'. Degener (n 13) 3.

<sup>72</sup> Kayess and French (n 16) 25; Kakoullis and Ikehara (n 34) 37.

### 3.3 Discourses that shaped the CRPD's concept of disability

The concept of disability in the CRPD is a slightly muddled weave and not an orderly tapestry. This section untangles the discourses that shaped it to enable understanding and aid interpretation of the concept. The first influence is the ('non-radical') social model of disability.<sup>73</sup> As previously mentioned, the social model of disability was initially developed in the UK (in the English language). It has been referred to as the British (orthodox) social model of disability,<sup>74</sup> but the use of it has spread to other countries.<sup>75</sup> It was subsequently popularised and internationalised, and its use became prevalent in disability rights advocacy, including in the drafting and negotiations for the CRPD.<sup>76</sup> In turn, the CRPD is underpinned by a non-radical social model of disability.<sup>77</sup> Its preambular paragraph (e) explains that the concept of disability results from the *interaction* between persons with *impairments*, on the one hand, and attitudinal and environmental *barriers* on the other hand, that hinders their participation in society. Article 1 explains who the target group of the Convention is: persons with disabilities, which include persons who have long-term *impairments*, which in *interaction* with various *barriers*, hinder their participation in society. These two provisions refer to the interaction between persons with, or who have, impairments, and the barriers that hinder their participation in society: (an explicit distinction is made between the terms of 'disability' and 'impairment'). The view that the CRPD is underpinned by the social model of disability is shared by many scholars.<sup>78</sup> Nevertheless, to consider the CRPD's concept of disability as underpinned exclusively by the social model of disability would be to ignore the remaining text in Article 1 and preambular paragraph (e) and the overall language the CRPD employs.<sup>79</sup> This is because from a social model of disability perspective, the language of 'persons with disabilities' is at odds; rather, situated within a dominant social model of disability discourse, the term 'disabled people' would be used to reflect the perspective that it is the societal barriers and oppression that *disable* persons with impairments.

The second influence is Person (or People) First Language. It was developed in the United States (US) (also in the English language), to correct for where persons with disabilities were historically labelled differently to persons without disabilities.<sup>80</sup> Person First Language is located in identity politics in which groups of persons with a particular shared identity,<sup>81</sup> here disability identity, form political alliances, as opposed to traditional party politics. It places emphasis on the significance of language, attitudes, and ideas.<sup>82</sup> Person First Language is expressed in the form in which a noun referring to a person(/s) precedes a term referring to a disability (or an impairment category),<sup>83</sup> and it positions the person *before* their disability.<sup>84</sup> Using for example the terms: 'person/s with a/ disability/ies'. In contrast to the social model of disability, it makes no distinction between the two terms 'disability' and 'impairment', nor does it view disability as 'disablement'. The CRPD employs Person First Language. The phrase 'persons with disabilities' peppers the CRPD text, including its title.<sup>85</sup>

The third influence is the inclusion of indicative examples of impairment category groups. These are listed in Article 1 which states: 'include those who have long-term physical, mental,

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<sup>73</sup> Harpur (n 15) 3, 4.

<sup>74</sup> See for eg Tom Shakespeare and Nicholas Watson, 'The Social Model of Disability: An Outdated Ideology?' (2002) 2 *Research in Social Science and Disability* 9; Shakespeare (n 24).

<sup>75</sup> Traustadóttir (n 21) 4.

<sup>76</sup> Kayess and French (n 16) 6-7; Lawson and Beckett (n 36) 363.

<sup>77</sup> Harpur (n 15) 3.

<sup>78</sup> See Waddington (n 39) 10; Kayess and French (n 16) 24; Michael A Stein and Janet E Lord, 'Jacobus tenBroek, Participatory Justice, and the UN Convention on the Rights of Persons with Disabilities' (2008) 13 *Texas Journal on Civil Liberties and Civil Rights* 167, 170-174; Lang et al (n 39); Kanter (n 16) 8.

<sup>79</sup> CRPD (n 1).

<sup>80</sup> Lawson (n 34) 594. See also Tanya Titchkosky, 'Disability: A Rose by Any Other Name? "People-first" language in Canadian Society' (2001) 38 *Canadian Review of Sociology and Anthropology* 125, 129.

<sup>81</sup> For example, a shared cultural, ethnic, social, racial or religious identity.

<sup>82</sup> Simo Vehmas, 'Dimensions of Disability' (2004) 13 *Cambridge Quarterly of Healthcare Ethics* 34, 34-37.

<sup>83</sup> Morton Ann Gernsbacher, 'Editorial Perspective: The Use of Person-First Language in Scholarly Writing may Accentuate Stigma' (2017) 58 *Journal of Child Psychology and Psychiatry* 859.

<sup>84</sup> Lawson (n 34) 572; Goodley (n 22) 31.

<sup>85</sup> CRPD (n 1).

intellectual or sensory impairments'.<sup>86</sup> This, at first, may appear at odds from a social model of disability perspective, as it could be considered unnecessary to list impairment category groups. However, the importance of its inclusion is understood when viewed from the CRPD's drafting process context. It was informed by several conceptual approaches to disability, including that it was deemed necessary to include a non-exhaustive list of impairment category groups so to ensure that States Parties to the CRPD offer human rights protection to all persons with impairments. This is because there was a real concern that some persons would otherwise be excluded from domestically receiving CRPD protection.<sup>87</sup>

Lastly, is the influence of the minority rights group approach. The minority rights approach was developed in North America and focuses on the relationship between the minority group, here persons with disabilities, and other groups.<sup>88</sup> It views persons with disabilities as a disadvantaged and oppressed minority group that have been denied their rights and face discrimination and social exclusion.<sup>89</sup> It does not share the distinction between 'disability' and 'impairment' in the same way that the social model of disability does; although, like the social model, it places emphasis on barriers.<sup>90</sup> Through the minority rights approach, the discrimination, oppression, and prejudice persons with disabilities may face is to be fought using civil rights legislation.<sup>91</sup>

The CRPD is anchored in a concept of disability woven from a number of discourses: the social model of disability, Person First Language, impairment category groups, and the minority rights group approach. When analysed in terms of their component parts, it may first appear as a slightly muddled weave. Yet, arguably this conceptualisation unites and transcends disparate models and approaches to disability used by different disability movements that were involved in drafting the multilingual legal text of the UN CRPD, and creates a new concept of disability which the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) refers to as the 'human rights-based approach to disability',<sup>92</sup> or the 'human rights model of disability'.<sup>93</sup>

### 3.4 The centrality of the concept of disability to the CRPD

As discussed above, the CRPD's concept of disability is at the heart of the 'paradigm shift' reflected in the CRPD. Further, it has significant implications for the operationalisation and implementation of the CRPD as it reframes how we view human rights violations to prevent persons with disabilities' human rights from being violated, and reconceptualises how disability is viewed in ways that can be used by persons with disabilities to exercise power including to exercise their legal capacity.<sup>94</sup> In particular, the significance of the CRPD's concept of disability being situated in Article 1 – Purpose,<sup>95</sup> cannot be understated. Firstly, Article 1 provides a framework for the teleological interpretation of the CRPD's provisions.<sup>96</sup> Secondly, no State Party to the CRPD can formulate a reservation that is incompatible with the treaty's object and purpose,<sup>97</sup> which in the case of the CRPD extends to the concept of disability as it is found in Article 1.<sup>98</sup> Further, the CRPD promotes the shift in the way persons with disabilities are to be viewed and treated, more actively than other human rights treaties, because it also has a provision

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<sup>86</sup> Ibid art 1 para 2.

<sup>87</sup> Kakoullis and Ikehara (n 34) 44. See also Lawson (n 34) 593.

<sup>88</sup> Kanter (n 16) 6, 37.

<sup>89</sup> Vehmas (n 82) 36–37; Shakespeare (n 24) 103–104; Traustadóttir (n 21); Goodley (n 22) 63; Kanter (n 16) 29.

<sup>90</sup> Shakespeare (n 24) 102; Traustadóttir (n 21) 4.

<sup>91</sup> Shakespeare (n 24); Traustadóttir (n 21) 14; Kanter (n 16) 38.

<sup>92</sup> UN Committee on the Rights of Persons with Disabilities CRPD/C/CYP/CO/1 (n 13) para 5, 6; UN Committee on the Rights of Persons with Disabilities CRPD/C/GRC/CO/1 (n 13) para 5.

<sup>93</sup> UN Committee on the Rights of Persons with Disabilities CRPD/C/BGR/CO/1 (n 13) paras 10, 14, 52, 60, 70.

<sup>94</sup> CRPD (n 1) art 12.

<sup>95</sup> Ibid art 1.

<sup>96</sup> Kakoullis and Ikehara (n 34) 36.

<sup>97</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 19(c).

<sup>98</sup> Stein and Lord (n 41) 25; Kakoullis and Ikehara (n 34) 36.

on awareness-raising (Article 8).<sup>99</sup> This includes for States Parties to the CRPD to combat stereotypes and prejudices through measures such as, public awareness campaigns and in encouraging the media to portray persons with disabilities in line with the CRPD's concept of disability.<sup>100</sup> The CRPD's concept of disability is central to the interpretation, operationalisation, and implementation of the Convention.

#### 4 THE CRPD'S CONCEPT OF DISABILITY: THE CYPRIOT EXPERIENCE

This section examines the Cypriot experience of translating the CRPD's concept of disability. 42 of the 193 UN Member States took part in the drafting and negotiation process for the CRPD.<sup>101</sup> One State that did not participate was the Republic of Cyprus. Although not directly involved in the drafting and negotiation process, Cyprus is an EU Member State, and the EU was involved in the process.<sup>102</sup> The EU and Cyprus signed the CRPD in 2007. The EU ratified the CRPD in 2010 and urged its Member States to follow. Cyprus ratified it a year after the EU in 2011 four years after it signed it.<sup>103</sup> Subsequent to the EU signing and ratifying the CRPD, it organised Work Forums for the implementation of the CRPD. The umbrella DPO the Cypriot Confederation of Organisations of the Disabled (Cypriot Confederation/CCOD) was unable to attend the CRPD's drafting and negotiations,<sup>104</sup> but it and some of its members were in regular communication with the European Disability Forum and other DPOs which participated in the CRPD negotiations,<sup>105</sup> and it attended some of the EU's (post-CRPD) Work Forums.

Six years after Cyprus ratified the CRPD, the UN CRPD Committee in its Concluding Observations on Cyprus' initial State Report 'note[d] with concern' that Cyprus' domestic legislation had not incorporated a 'human rights-approach to disability' in line with Article 1 of the CRPD,<sup>106</sup> and 'urge[d] [Cyprus] to adopt and implement a human rights-approach to disability and to review all laws and policies accordingly...'.<sup>107</sup> Nevertheless, it was not until 10 years after Cyprus ratified the CRPD and four years after the CRPD Committee's Concluding Observations that the Cypriot Government amended the definition of disability in its main disability law.<sup>108</sup> By 2023, it has yet to make changes to its official translation of the CRPD.

##### 4.1 Challenges the Cypriot Context faced in interpreting the CRPD's concept of disability

The CRPD needed to be translated from the official UN English language version to a translation in Cyprus' official Greek language.<sup>109</sup> The Cypriot context is familiar with the English language because Cyprus used to be a British colony until 1960 when it became an independent State. However, the models and approaches that underpin the concept of disability integral to the CRPD's 'paradigm shift' were initially largely unfamiliar to the Cypriot context. Cyprus, including its Disability Movement, was in a different position to some other States undergoing the ratification process for the CRPD. The Disability Movement in different countries has undergone changes in similar ways to the feminist movement, with literature in the UK and US having identified three 'waves' to the disability movement in those countries: during the 'first

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<sup>99</sup> CRPD (n 1) art 8(1)(a).

<sup>100</sup> Ibid arts 8(1)(b), 8(2)(a), 8(2)(c).

<sup>101</sup> Arlene S Kanter, 'The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities' (2006-2007) 34 *Syracuse Journal of International Law and Commerce* 287, 289.

<sup>102</sup> Waddington (n 39) 2.

<sup>103</sup> Law No 8(III) of 2011 ratifying the Convention on the Rights of Persons with Disabilities and related Matters (CY).

<sup>104</sup> This was due to lack of funding. Interview with the former President, CCOD (Nicosia, Cyprus, 9 April 2012).

<sup>105</sup> Ibid. See also interview with the President, POB (Nicosia, Cyprus, 29 September 2011).

<sup>106</sup> UN Committee on the Rights of Persons with Disabilities CRPD/C/CYP/CO/1 (n 13) para 5.

<sup>107</sup> Ibid para 6.

<sup>108</sup> Law No 8(III) (n 103).

<sup>109</sup> The Republic of Cyprus's official languages are Greek and Turkish, however, since 1964 Cypriot legislation is only published in the Greek language. See the Constitution of the Republic of Cyprus (art 3); Interview with Officer #1, Legal Services (Nicosia, Cyprus, 20 September 2011); Interview with Law Commissioner, Law Commission (Nicosia, 4 April 2012).

wave' (early twentieth century), the field of disability was dominated by the medical profession.<sup>110</sup> During the 'second wave' (mid twentieth century), persons with disabilities were viewed as 'objects' to be 'fixed' and pitied and as 'victims' deserving of charity.<sup>111</sup> During the 'third wave' (1970s and 1980s), both families and professionals came to recognise that persons with intellectual disabilities could speak for themselves.<sup>112</sup> Subsequently, further changes took place, such as the development of the independent living movement, civil rights protection, and the development of the self-advocacy movement.<sup>113</sup> Cyprus' experiences share some similarities with the UK and US's experiences but also some notable differences: Cyprus did not experience an industrial revolution and only became an independent State in 1960, factors which had an impact on persons with disabilities' lives and the disability movement. Cypriot DPOs were at a different point in the early twenty-first century regarding their journey and development of models and theorisations of disability.

In the 1990s and early 2000s in Cyprus, disability was viewed as a medical, charity and social welfare issue but not as a human rights issue.<sup>114</sup> Although a shift had begun in the language the umbrella DPO the Cypriot Confederation was using, away from the objectification of persons with disabilities reflected in the dominant phrase 'the disabled',<sup>115</sup> towards the advocacy of the phrase 'persons with disabilities'.<sup>116</sup> The Cypriot Disability Movement was at its infancy in developing a 'collective disability identity',<sup>117</sup> in contrast to States such as the UK and US. Rather, it had developed 'individual impairment group identities' and was grounded in a medical discourse of disability.<sup>118</sup> This impacted the work of DPOs, there was still focus on individual impairment categories, as opposed to collectively advocating for disabled persons' human rights. In contrast to other States' experiences, such as the UK (social model of disability) or North America (minority rights approach), no specific conceptual approach to disability was developed, nor was the conceptualisation of disability discussed within the Cypriot Disability Movement, leaving it 'theoretically disarmed and vulnerable to dangers'.<sup>119</sup>

It was within this cultural and linguistic context that the Cypriot context and the UN CRPD text came to meet. The social model of disability was not in circulation; rather, the dominant conceptions of disability were grounded in the institutions of medicine, charity, and social welfare.<sup>120</sup> A human rights approach to disability was at its infancy, with no circulation of the minority rights group approach to disability, and so was situated in the 'pre-CRPD human rights paradigm'. The only approaches that shared some familiarity, were impairment group categories and the rudimentary beginnings of the use of Person First Language. The CRPD's concept of disability thus presented the Cypriot context with the need for an epistemological break with the dominant discourses on disability in circulation in Cyprus.

## 4.2 Challenges the Cypriot context faced in translating the CRPD's concept of disability

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<sup>110</sup> Michael Wehmeyer, Hank Bersani Jr and Ray Gagne, 'Riding the Third Wave: Self-Determination and Self-Advocacy in the 21st Century' (2000) 15 *Focus on Autism and Other Developmental Disabilities* 106.

<sup>111</sup> *Ibid* 107.

<sup>112</sup> *Ibid*.

<sup>113</sup> *Ibid* 108.

<sup>114</sup> See eg Helen Phtiaka 'Disability, Human Rights and Education in Cyprus' in Felicity Armstrong and Len Barton (eds), *Disability, Human rights and Education: Cross Cultural Perspectives* (Open University Press, Buckingham 1999) 176; Helen Phtiaka, 'The Power to Exclude: Facing the Challenge of Inclusive Education in Cyprus' (2003) 40 *International Journal of Contemporary Sociology* 139; Simoni Symeonidou, 'Trapped in our Past: The Price we have to Pay for our Cultural Disability Inheritance' (2009) 13 *International Journal of Inclusive Education* 565; Simoni Symeonidou, 'The Experience of Disability Activism Through the Development of the Disability Movement: How do Disabled Activists Find their Way in Politics?' (2009) 11 *Scandinavian Journal of Disability Research* 17; Michael Demosthenous, *A Critique on the Classification System of Disability and Functionality* (Parga, Nicosia 2013) [author's translation].

<sup>115</sup> In the Greek language: *οι ανάπηροι*.

<sup>116</sup> In the Greek language: *άτομα με αναπηρίες*.

<sup>117</sup> Symeonidou (2009) (n 114) 23.

<sup>118</sup> *Ibid* 25.

<sup>119</sup> Demosthenous (n 114) 24 [author's translation].

<sup>120</sup> Phtiaka (1999) (n 114) 178-184; Symeonidou (n 114) 17-18.

The translation of the CRPD from the UN English text to the Greek language was not a straightforward journey. Several translation processes took place, and a number of translated versions were produced.<sup>121</sup> Initially, no action was taken by the Cypriot Government, so the Cypriot Confederation decided to prepare its own translation and assign the task to its President, who was also a lawyer.<sup>122</sup> By that point, the EU Commission had also prepared EU official language versions of the CRPD, including in the Greek language, but the Confederation decided it did not want to use that translation because it considered that it ‘did not convey so strongly the letter of the Convention’.<sup>123</sup> Another further translation process, a transnational translation cooperation process between Cyprus and Greece, was thus initiated by the two umbrella DPOs: the Cypriot Confederation and the Greek National Confederation of Persons with Disabilities. They decided to join forces concerning the CRPD’s translation, ‘so that a unitary and uniform translation in the Greek language could be achieved’,<sup>124</sup> and invited their respective States’ Ministries to join. This resulted in an initial joint meeting for the translation. However, different States’ priorities and timeframes had the implication that the transnational translation cooperation process did not result in a completed translation. Following the collapse of the transnational cooperation process, the Cypriot Ministry of Labour took up the Cypriot Confederation on its initiative to translate the text of the CRPD. Nevertheless, before Cyprus ratified the CRPD, a further, and final, translation was carried out by the Office of the Law Commission (Commission), as it held competency for the official translation. The Ministry of Labour’s Department of Social Inclusion for Persons with Disabilities and the Confederation were consulted by the Commission, but the Commission exercised power over the final translation.<sup>125</sup> This translated text became the Cypriot Government’s official Greek language version of the CRPD.

The examination of the Cypriot official translation revealed challenges in translating the CRPD’s concept of disability into the Greek language. Translated preambular paragraph (e) reads:

*Recognizing that disability forms an evolving concept and that disability arises from the interaction between persons with disabilities and the attitudinal barriers and the environmental barriers that hinder their full and effective participation in society on an equal basis with others.*<sup>126</sup>

Translated Article 1, second paragraph 2 reads:

The persons with disabilities include those persons that have long-term physical, mental, intellectual or sensory disorders which during their interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.<sup>127</sup>

Overall, these two provisions are a good translation, save for the absence of a critical term in both paragraphs: ‘impairments’. There was no challenge in translating the English term ‘disability’ or ‘disabilities’, as there was a readily available linguistic term in the Greek language that holds the same meaning (*αναπηρία, αναπηρίες*). However, there was an absence of a linguistic term that held the same meaning in the Greek language for the English language term ‘impairments’. This

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<sup>121</sup> Interview with CCOD President (n 104); Interview with POB President (n 105); Interview with Director, DSIPD (Nicosia, Cyprus, 19 September 2011); Interview with Law Commissioner (n 109); Interview with Officer, Law Commission (Nicosia, Cyprus, 9 April 2012); Interview with Minister, Ministry of Labour (Nicosia, Cyprus, 2 April 2012).

<sup>122</sup> Interview with CCOD President (n 104); Interview with POB President (n 105).

<sup>123</sup> Interview with CCOD President (n 104); Interview with POB President (n 105).

<sup>124</sup> Letter from the CCOD to the Minister of Labour and Social Insurance (18 May 2007) 2 [author’s translation].

<sup>125</sup> Interview with CCOD President (n 104); Interview with POB President (n 105); Interview with DSIPD Director (n 121); Interview with Law Commissioner (n 109); Interview with Law Commission Officer (n 121).

<sup>126</sup> The official text in the Greek language: *Αναγνωρίζοντας ότι η αναπηρία αποτελεί εξελισσόμενη έννοια και ότι η αναπηρία προκύπτει από την αλληλεπίδραση μεταξύ ατόμων με αναπηρίες και των εμποδίων συμπεριφοράς και των περιβαλλοντικών εμποδίων που παρεμποδίζουν την πλήρη και αποτελεσματική συμμετοχή τους στην κοινωνία σε ίση βάση με άλλους*. See Law No 8(III) (n 103) Part II, Preamble, para (e) [author’s translation].

<sup>127</sup> The official text in the Greek language: *Τα άτομα με αναπηρίες περιλαμβάνουν εκείνα τα άτομα τα οποία έχουν μακροχρόνιες σωματικές, πνευματικές, διανοητικές ή αισθητηριακές διαταραχές οι οποίες, κατά την αλληλεπίδρασή τους με διάφορα εμπόδια, δυνατόν να εμποδίσουν την πλήρη και αποτελεσματική συμμετοχή τους στην κοινωνία σε ίση βάση με άλλους*. See Law No 8(III) (n 103) art 3, Part II, art 1, para 2 [author’s translation].

challenge was approached by the English term ‘impairments’ being translated into different terms in the Greek translation.

Translated preambular paragraph (e) reads ‘persons with disabilities’<sup>128</sup> instead of the English language term ‘impairments’.<sup>129</sup> The linguistic distinction between the two terms ‘disabilities’ and ‘impairments’ is not made; rather, they are conflated, which prevents them from being differentiated. The result is that the translated preambular paragraph fails to conceptually reflect the social model of disability and prevents its interpretation through the social model prism.

Translated Article 1 tries to rise to the linguistic challenge of distinguishing between the terms ‘disability’ and ‘impairments’ and reads ‘disorders’<sup>130</sup> instead of the English term ‘impairments’.<sup>131</sup> This term carries the meaning of ‘disorder, disturbance’,<sup>132</sup> ‘anomaly, disruption, ... an anomaly in the normal functioning of a living organism’,<sup>133</sup> and ‘[a]n illness that disrupts normal physical or mental functions’.<sup>134</sup> This translated term enables a *degree* of distinction between the two terms as it is linguistically closer in meaning to the English term ‘impairments’: it relates to biological functioning, and it is closer conceptually to the social model of disability. However, it is questionable whether it satisfactorily conceptually reflects the social model of disability and allows interpretation of the translated provision through the social model prism. In particular, the term ‘disorders’ is not used consistently throughout the translated text; that is, preambular paragraph (e) uses the term ‘disabilities’, which adds to the confusion in interpreting the translated CRPD text through the social model prism.

This analysis shows that the official Cypriot Greek language translation of these two paragraphs does not reflect the CRPD’s concept of disability or convey the social model perspective in the UN official English language version. It reveals that, in addition to the absence of the English linguistic term ‘impairments’ to hold the same meaning in the Greek language, the translation was shaped by different approaches to how disability was viewed, including the absence of the social model of disability discourse in operation in the Cypriot context. These discourses had the effect that the resultant translated concept of disability evolved differently, from its conceptualisation in the UN original English language CRPD text, during the Cypriot translation process.

#### 4.2.1 Discourses that shaped the translation of the CRPD’s concept of disability

The Commission consulted both the Department of Social Inclusion for Persons with Disabilities and the Cypriot Confederation in the final translation process. A main consideration which informed the Confederation’s position was to ensure movement away from the objectification of persons with disabilities (‘the disabled’):

[W]e had a few conflicts because [the Office of Law Commission] started from the beginning. ... they started to ask but ‘persons with disabilities’ [*this was said in the English language*], we shall translate this as ‘[the] disabled’. And such things. Thus, there another fight was needed.<sup>135</sup>

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<sup>128</sup> In the Greek language: *ατόμων με αναπηρίες* [author’s translation].

<sup>129</sup> CRPD (n 1) preambular para (e).

<sup>130</sup> In the Greek language: *διαταραχές* [author’s translation].

<sup>131</sup> CRPD (n 1) art 1.

<sup>132</sup> In the Greek language: *διαταραχές*. See Harry T Hionides, *Collins Contemporary Greek Dictionary Greek-English English-Greek* (Collins, London 1977) 251; D N Stavropoulos, *Oxford GREEK – ENGLISH Learner’s Dictionary* (OUP, Oxford 2008) 230.

<sup>133</sup> In the Greek language: *διασάλευση, ανωμαλία, αταξία, ... ανωμαλία στην κανονική λειτουργία ζωικού οργανισμού*. See V Mandala, G Geralis and A Anagnostou, *Greek Dictionary Grammar – Interpretation – Etymology – Primary Names* (Tegopoulos-Fytrakis) 201.

<sup>134</sup> Oxford Dictionaries, ‘Dictionary – Thesaurus and Grammar’ (Oxford Languages), <[www.oxforddictionaries.com](http://www.oxforddictionaries.com)> accessed 1 August 2015.

<sup>135</sup> The original text in the Greek language: *Εκεί είχαμε λίγες συγκρούσεις διότι άρχισαν από την αρχή. Ας πούμε άρχισαν να ρωτούν μα ‘persons with disabilities’ να το μεταφράσουμε ‘ανάπηροι’. Και τέτοια πράγματα. Οπότε εκεί χρειάστηκε άλλος αγώνας*. Interview with CCOD President (n 104) [author’s translation].

The Confederation (operating in the absence of the social model of disability) wanted to ensure that persons with disabilities were reflected as persons with disabilities and not as ‘objects’ or ‘incapacitated’. This then informed the Law Commission’s final translation:

E.g., the [term] ‘person with disability’ [*this was said in the English language*], it is ‘person with a disability’ ‘person with incapacity’ ... verbally that is how it is attributed. [But] we followed the one which the [Confederation] asked us to, the one which they adopt as [the] translation of the relevant word ... We have accepted basically the attribution in the Greek [language of] technical terms. Terms that are directly related to the subject [matter] of the Convention, they are, anything related to persons with disabilities.<sup>136</sup>

Another significant factor in shaping the translated CRPD’s concept of disability was the way in which the social model of disability was understood – it was interpreted to hold a different meaning. The social model of disability was interpreted by the Confederation to mean ‘social rights’ in the context of economic, social and cultural human rights:

The social model of disability are the social rights that persons with disabilities have and which the Cypriot Republic now recognises. The medical model is the model which recognises the person with a disability as a patient. Whereupon the social model is based on the rights of persons with a disability. Whereas the medical model is based on charity, in the approach that these persons are patients, they cannot do something [we must] help them. Whereas the persons with disabilities what they are asking for is to be given the opportunities to participate, to be socially integrated and not to be isolated. That is when there are rights, when the state takes care for their inclusion/integration, through rights the persons can work, they can offer, they can actively contribute to society.<sup>137</sup>

With the human rights approach to disability at its infancy in the Cypriot context, the social model of disability was interpreted by the Confederation to mean ‘social human rights’ for persons with disabilities, which in turn informed the translation process. At this final stage of the translation process, the social model was not in circulation amongst the stakeholders directly involved in the final translation.

There was, however, a minority interpretation of the social model of disability that did reflect the social model. This position was held by one of the Confederation’s member-DPOs which was not directly involved in the final translation: ‘Person with a disability’ is, the interaction of the person with the environment and the barriers that are put in place by the environment’.<sup>138</sup> This position held would come to be significant in informing the translated concept’s interpretation a few years later, after the ratification process, when the Confederation would be involved in preparing the Alternative Report for the CRPD Committee. This minority interpretation also illustrates that due to the linguistic absence of a term for ‘impairments’, the term ‘disability’ was used (instead of the term ‘impairment’) when the social model of disability was expressed.

Another shaping factor was that despite the task of translating the CRPD’s concept of disability, significantly the CRPD’s conceptualisation of disability was not discussed during the translation process and the translation process was not used as a ‘space’ to encourage discussion on the concept of disability in the Cypriot context:

The definition [of disability] is very general, it was not discussed at all, it was general the definition [of disability]. Because that is how it had to be translated. That is how it was from the United Nations, thus that is how we had to translate it, although we as the CCOD [Cypriot Confederation of Organisations of the Disabled] prefer more specific definitions, that is to name the disability. But because that is how the initial text was, we could not change the definition, it had to be translated as it was in the initial text. Although the definition is general.<sup>139</sup>

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<sup>136</sup> Interview with Law Commission Officer (n 121) [author’s translation].

<sup>137</sup> Interview with Officer, CCOD (Nicosia, Cyprus, 22 September 2011) [author’s translation].

<sup>138</sup> Interview with POB President (n 105) [author’s translation].

<sup>139</sup> Interview with CCOD Officer (n 137) [author’s translation].



The Cypriot Confederation was not alone in its approach towards the concept of disability. The Department of Social Inclusion for Persons with Disabilities also considered the concept to be very broad:

[T]he definition of disability it is a fact that it is very broad in the Convention, very, very broad, it also includes the chronic illnesses. We in Cyprus the definition that we have, the general [definition] of disability, which is in The Persons with Disabilities Law [of 2000] is also general.<sup>140</sup>

Even during the ratification process for the CRPD, the dominant conceptualisation of disability in Cyprus was firmly grounded in a medical model of disability discourse. The enactment of the Convention on the Rights of Persons with Disabilities and Related Matters (Ratification) Law of 2011<sup>141</sup> crystallised the CRPD's translated concept of disability into Cypriot law.

### 4.3 Implications from the translation for the operationalisation and implementation of the CRPD

The CRPD's translated concept of disability and its interpretation influenced the domestic legislative screening process. The CRPD provides States with a framework through which they must undertake a comprehensive review (screening process) of their existing domestic legislation during their ratification process to determine to what extent their legislation is consistent with the CRPD's principles, values and provisions.<sup>142</sup> The screening process has the effect of the State self-assessing whether its legislation and policies are in compliance with the CRPD's provisions. The outcome of the Cypriot screening process was that domestic law was evaluated as being CRPD compliant: 'there was no conflict'<sup>143</sup> between domestic Cypriot law and the CRPD; national laws and regulations were consistent with the CRPD.<sup>144</sup>

The assessment included the Persons with Disabilities Law of 2000<sup>145</sup> despite that its definition of disability reads:

'[D]isability' in relation to a person means any form of deficiency or disadvantage which causes permanent or indeterminate duration physical, intellectual or psychological limitation to the person, which taking into consideration the person's [medical] history and other personal details reduces substantially or precludes the possibility of performing one or more activities or functions which are considered normal and substantial ....<sup>146</sup>

This definition is situated within a medical model of disability and deficit discourse. It focuses on the 'deficiency or disadvantage' a person may have that causes a 'physical, intellectual or psychological limitation to the person' and reduces or precludes the person from performing activities or functions considered 'normal and substantial'.<sup>147</sup> In turn, the definition equates the terms 'disability' with 'impairment', does not make a distinction between the two, and locates the 'problem' in the individual. In view of the purpose of the screening process against the CRPD, the 2000 definition does not comply with the CRPD's concept of disability. It is also another illustration of the absence of a linguistic term for the English term 'impairment' as it uses the

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<sup>140</sup> Interview with DSIPD Director (n 121) [author's translation].

<sup>141</sup> Law No 8(III) (n 103).

<sup>142</sup> CRPD (n 1) art 4; Andrew Byrnes and others (eds), *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol* (SRO-Kundig, Geneva 2007) 1, 71; Janet E Lord and Michael A Stein, 'The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities' (2008) 83 *Washington Law Review* 449, 451.

<sup>143</sup> Interview with DSIPD Director (n 121).

<sup>144</sup> By 2014 this was stated in the following online source: ANED, 'DOTCOM: The Disability Online Tool of the Commission' (Academic Network of European Disability Experts) <[www.disability-europe.net/dotcom](http://www.disability-europe.net/dotcom)> accessed 1 August 2014.

<sup>145</sup> High Level Group on Disability, 'Second Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (European Commission HLGD 2009).

<sup>146</sup> Law N° 127(I) of 2000 to Make Provisions for Persons with Disabilities (CY) art 2 [author's translation].

<sup>147</sup> *Ibid* [author's translation].

terms ‘deficiency’, ‘disadvantage’, and physical, intellectual or psychological ‘limitation’. Despite the purpose of the screening process, the 2000 definition of disability was not identified as an issue, and by implication it was not raised by the stakeholders: there was no epistemological break from the dominant discourses on disability in circulation in Cyprus.

#### 4.3.1. Navigating the challenges presented by the CRPD’s concept of disability

[T]he reception process [to the translated text] is never simple, it is never static; it may change after several months or years, often under the impact of particular cultural or linguistic (or political) events.<sup>148</sup>

The Cypriot context navigated the challenges presented by the CRPD’s concept of disability over the ratification process<sup>149</sup> and into the CRPD’s implementation in a variety of ways. The understanding and interpretation of the CRPD’s translated concept of disability did not remain static but was impacted by particular events. Initially, the medical model of disability discourse that had dominated the ratification process continued to dominate the CRPD’s implementation process as illustrated by Cyprus’ Initial State Report submitted in 2013:

The definition of disability according to the general disability law being the Persons with Disabilities Laws 2000–2007 reports that “disability” has the meaning of any form of inadequacy or impairment which causes permanent or for an unspecified duration of time physical, intellectual or mental restriction to the person, and taking into account the history and other personal data of the individual, reduces significantly or excludes the possibility of execution of one or more activities or functions that are considered normal and significant for the quality of life of every person of the same age who does not experience the same inadequacy or impairment. The abovementioned definition is generally used where other specific definitions of disability do not exist.<sup>150</sup>

Despite Cyprus having undergone a four-year ratification process for the CRPD, including a translation and legislative screening process, the ‘pre-CRPD paradigm’ dominated the concept of disability in Cypriot law. In response, the CRPD Committee in 2016 asked Cyprus to describe the measures taken to ensure that ‘the understanding and scope of disability’ within domestic legislation was in line with the CRPD’s ‘human rights model of disability’.<sup>151</sup> The Cypriot Government responded that new laws and policies ‘take into account the scope of disability within the framework of CRPD and ensure that the definition of ‘persons with disabilities’ is in line with the Convention’, but also that the ‘CRPD definition is the basis to build upon and combine necessary adjustments according to the scope and targeting of specific new laws/schemes/programs and government policy in the specific field’.<sup>152</sup> Its position remained firmly grounded in a medical model of disability discourse and also operated from a charity model of disability, illustrated by a film it produced.<sup>153</sup>

The Government’s position was in contrast to the position the Cypriot Confederation was now operating from (now under different leadership). The Confederation had moved away from a medical model of disability position it had previously operated from and now highlighted to the CRPD Committee the dominance of the medical model of disability in Cypriot legislation:

[T]he Cyprus Government is still reluctant to adopt, amend and implement legislation in line with the CRPD. A great majority of the legal framework remains in many respects incompatible with

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<sup>148</sup> Lambert (n 9) 89.

<sup>149</sup> From 2007 to 2011.

<sup>150</sup> UN Committee on the Rights of Persons with Disabilities, ‘Initial Report of State Party due in 2013 (February 2015) UN Doc CRPD/C/CYP/1 para 20.

<sup>151</sup> UN Committee on the Rights of Persons with Disabilities, ‘List of Issues in Relation to the Initial Report of Cyprus’ (6 October 2016) UN Doc CRPD/C/CYP/Q/1 para 2.

<sup>152</sup> UN Committee on the Rights of Persons with Disabilities, ‘List of Issues in Relation to the Initial Report of Cyprus, Addendum, Replies of Cyprus to the List of Issues’ (6 January 2017) UN Doc CRPD/C/CYP/Q/1/Add.1 para 3.

<sup>153</sup> PanCyprian Alliance for Disability (PAD), ‘Alternative Report’ (PAD 2016) 13.

the CRPD. Even in the case of recently adopted laws the definition of “persons with disabilities” provided is not in line with the CRPD ... we see that no serious efforts have been made so far by the State in order to incorporate CRPD’s definition of disability into Cyprus legislation. Even the basic Law of Persons with Disabilities 2000 ... still contains definitions and many other provisions that are not in line with the CRPD’s provisions.<sup>154</sup>

Persons with disabilities are still treated as individuals with functional limitations instead of persons who have impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.<sup>155</sup>

This position reflects an epistemological break with the old paradigm. A shift away from the medical model towards the social model of disability. The PanCyprian Alliance also highlighted to the Committee the domestic co-optation of the language of ‘rights’ in campaigns underpinned by the charity model of disability.<sup>156</sup> Another significant issue of concern that arose during both the ratification process and during the reporting cycle to the Committee was that the Cypriot Government operationalised and implemented WHO’s ICF,<sup>157</sup> which is rejected by the CRPD.<sup>158</sup>

The reception process to the translated concept of disability was also influenced by the Cypriot independent monitoring mechanism<sup>159</sup> under Article 33(2) of the CRPD.<sup>160</sup> The Cypriot monitoring mechanism expressed concern to the CRPD Committee as to how the concept of disability was being interpreted in the Cypriot context and echoed the Pan-Cyprian Alliance’s concerns regarding the dominance of the medical model of disability post-ratification:

The non-uniform understanding of the CRPD amongst ... the public authorities involved - especially with regards to ... the human rights model ... is quite worrying.<sup>161</sup>

More specifically, although the *Law for Persons with Disabilities* was amended twice after the ratification of the CRPD ... such amendments did not lead to the adoption of the CRPD’s concept of disability in substitution of the medical model definition.<sup>162</sup>

The human rights approach is neither directly nor indirectly mentioned as a guiding principle, anywhere in the [State Report] or the [National Disability Action Plan].<sup>163</sup>

Another event that was to have an impact, were the findings by the European Parliament Directorate General (EPDG). Following the EU’s ratification of the CRPD, the Court of Justice of the European Union (CJEU) adopted the CRPD’s concept of disability.<sup>164</sup> The EPDG in 2014, compared the 2000 definition of disability in the Cypriot Persons with Disabilities Law with CJEU case law and found it did not comply:

[T]he definition in the Cypriot law falls short of incorporating the juxtaposition of the *impairment* with the *barriers* that impede effective participation; instead, the definition of the Cypriot law requires disabilities to cause permanent or indefinite limitations when examined in relation to a person’s background and other personal data, but not when examined in relation to external factors such as structural barriers.<sup>165</sup>

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<sup>154</sup> PAD, ‘Submission in Response to the List of Issues’ (PAD 2017) 6.

<sup>155</sup> Ibid 7.

<sup>156</sup> Ibid 13.

<sup>157</sup> Simoni Symeonidou, ‘Issues related to the International Classification of Functioning, Disability and Health (ICF) and its Adaptation and Adoption in Cyprus’ (Report submitted to the CCOD, 2012) [author’s translation]; PAD (n 153); PAD (n 154); Independent Authority for the Promotion of the Rights of Persons with Disabilities (IAPRPD), ‘Independent Written Contribution to the UN Committee on the Rights of Persons with Disabilities Following the Publication of the List of Issues’ (IAPRPD 2016–2017).

<sup>158</sup> Kayess and French (n 16) 25; Kakoullis and Ikehara (n 34) 37.

<sup>159</sup> The Cypriot independent monitoring mechanism designated under Article 33(2) of the CRPD is the Independent Authority for the Promotion of the Rights of Persons with Disabilities.

<sup>160</sup> IAPRPD (n 157).

<sup>161</sup> Ibid para 1.

<sup>162</sup> Ibid para 3.

<sup>163</sup> Ibid para 6(c).

<sup>164</sup> See Corina Demetriou, ‘Country Report on Cyprus for the Study on Member States’ Policies for Children with Disabilities, Study for the LIBE Committee’ (European Parliament Directorate-General for Internal Policies, Policy Department for Citizens’ Rights and Constitutional Affairs, December 2014).

<sup>165</sup> Ibid 21–22.

The 2000 definition of disability remained unchanged throughout both the CRPD's ratification process and its implementation, despite concerns expressed by the EU, the Cypriot monitoring mechanism, and the Cypriot Confederation. Eventually, fourteen years following Cyprus' signature of the CRPD and ten years after its ratification, some domestic legislative change took place in early 2021 when the Government came to amend the 2000 definition to reflect the social model of disability:

'[D]isability' in relation to a person means any form of long-term physical, mental, intellectual or sensory disorders which, during their interaction with different barriers, may hinder the full and effective participation of the person in society on an equal basis with others.<sup>166</sup>

Nevertheless, although this definition largely reflects the CRPD's concept of disability, it falls prey to the same challenges in translating the CRPD's concept of disability discussed above: the language employed in the new definition is almost verbatim of the terminology employed in translated Article 1 of the CRPD. Like that translation, the challenge of translating the English term 'impairments' was approached by employing the term 'disorders'.<sup>167</sup>

This section showed how the stakeholders operating from different positions over different times had navigated the challenges presented by the CRPD's concept of disability and the implications this had. The Cypriot Government was firmly grounded within the 'pre-CRPD paradigm', with the implications that during this time it operationalised and implemented the WHO's ICF, and no changes to the definition of disability in domestic law were made until fourteen, and ten, years after the CRPD was respectively signed and ratified, despite pressure being exerted by the UN CRPD Committee, the EU, and the Confederation. In contrast, the Confederation did not operate from the same static position but moved, reflecting a fluid integration process for the CRPD's concept of disability towards the 'CRPD paradigm'. The Cypriot independent monitoring mechanism, not involved in the translation but involved in the monitoring of the CRPD, also operated from the 'CRPD paradigm'.

## 5 THE CRPD'S CONCEPT OF DISABILITY: CHALLENGES STATES PARTIES FACED IN TRANSLATION

This section compares the challenges faced by Cyprus with the experiences of Greece and Bulgaria in translating the CRPD's concept of disability and then considers these in relation to Iceland's experience. Greece and Bulgaria signed the CRPD in 2007, and following the EU ratifying it in 2010, both also ratified it in 2012. Seven years after Greece ratified it, the CRPD Committee, in its Concluding Observations (2019) on Greece's Initial State Report, expressed its concern over the absence of 'a harmonized human rights-based approach to disability', and that 'elements of the medical model of disability' are present in its legislative framework,<sup>168</sup> and recommended Greece fully integrate the 'human rights model of disability' into its legislative framework. Six years after Bulgaria ratified the CRPD, the Committee, in its Concluding Observations (2018) on Bulgaria's Initial State Report, noted with concern that 'medical and charity approaches to disability still prevail' in its legislation, definitions of disability are not in line with the CRPD,<sup>169</sup> and recommended it undertook a review of its legislation to ensure it is compliant with 'the human rights model of disability'.<sup>170</sup> A further issue of concern for the

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<sup>166</sup> The original text reads: 'αναπηρία' σε σχέση με άτομο σημαίνει οποιαδήποτε μορφής μακροχρόνιες σωματικές, πνευματικές, διανοητικές ή αισθητηριακές διαταραχές οι οποίες, κατά την αλληλεπίδραση τους με διάφορα εμπόδια, δυνατόν να εμποδίσουν την πλήρη και αποτελεσματική συμμετοχή του ατόμου αυτού στην κοινωνία σε ίση βάση με άλλους. Law No 56(I) of 2021 that Amends the Persons with Disabilities Laws of 2000 until 2017 (CY), art 2 [author's translation].

<sup>167</sup> In the Greek language: διαταραχές [author's translation].

<sup>168</sup> UN Committee on the Rights of Persons with Disabilities CRPD/C/GRC/CO/1 (n 13) para 5.

<sup>169</sup> UN Committee on the Rights of Persons with Disabilities CRPD/C/BGR/CO/1 (n 13) para 9.

<sup>170</sup> Ibid para 10.

Committee were both Greece and Bulgaria's assessments of disability. In its recommendations, the Committee made explicit reference, respectively, to the need for Greece's disability assessment mechanism, and Bulgaria's disability assessment policy and procedure, to be compliant with the CRPD's 'human rights model of disability'.<sup>171</sup> It is of significant concern that since signing and ratifying the CRPD, States Parties like Cyprus,<sup>172</sup> Greece,<sup>173</sup> and Bulgaria<sup>174</sup> have operationalised the WHO's ICF, which is rejected by the CRPD.<sup>175</sup>

The previous section revealed that a factor which played a significant role in the construction of the translated CRPD's concept of disability and was a significant challenge to translate was the distinction between the English language terms of 'disability' and 'impairment', a distinction essential to the social model of disability prism and an element critical to the CRPD's concept of disability. This section reveals that this linguistic challenge was not unique to the Cypriot context or the Greek language. Greece, Bulgaria, and the EU all respectively experienced challenges in translating the English language term 'impairments', as there was an absence of a linguistic term that held the same meaning in the Greek and Bulgarian languages for the English language term 'impairments', and in translating the CRPD's concept of disability into the Greek and Bulgarian languages. In contrast, like Cyprus, they did not experience challenges in translating the English language term 'disability',<sup>176</sup> as there were readily available linguistic terms in the Greek and Bulgarian languages that held the same meaning and were used in the translations.

The examination of the official translated texts revealed that the challenge was approached by the English language term 'impairments' being translated into a variety of terms in the two languages:

- 'disabilities' (Greek language, EU translation);<sup>177</sup>
- 'disability' (Bulgarian language, Bulgarian translation);<sup>178</sup>
- 'impaired physical functions' (Bulgarian language, EU translation);<sup>179</sup>
- 'reduced capabilities' (Greek language, EU translation);<sup>180</sup>
- 'deficiency' (Bulgarian language, Bulgarian and EU translations);<sup>181</sup>
- 'hindered persons' (Greek language, Greek translation);<sup>182</sup> and
- 'obstacles' (Greek language, Greek translation).<sup>183</sup>

As discussed above, Cyprus used the terms 'disabilities', and 'disorders', respectively, for the English term 'impairments'. Like Cyprus, the EU and Bulgaria also used the terms 'disabilities' and 'disability', respectively, in their translations. Although the term 'disorders' used by Cyprus

<sup>171</sup> Ibid; UN Committee on the Rights of Persons with Disabilities CRPD/C/GRC/CO/1 (n 13) para 5.

<sup>172</sup> Symeonidou (n 157) [author's translation].

<sup>173</sup> Ministry of Health, 'Disability Card / Functionality – The New System of Classification and Assessment of Disability' (Hellenic Republic, 9 February 2011) <<https://www.moh.gov.gr/articles/social-solidarity/domes-kai-drasesis-koinwnikhs-allhleggyhs/atoma-me-anaphries/164-folder-xrhsimoi-syndesmoi-folder-prokhyrkeis-anakoinwseis-folder-domes-kai-drasesis-koinwnikhs-allhleggyhs-briskeste-edw-arxikh-selida-rarr-koinwnikh-allhleggyh-rarr-domes-kai-drasesis-koinwnikhs-allhleggyhs-rarr-atoma-me-anaphries-rarr-karta-leitoyrgikoth>> accessed 31 July 2021 [author's translation].

<sup>174</sup> Bulgarian Government, 'National Strategy for Persons with Disabilities 2016-2020' (Bulgarian Government 2020).

<sup>175</sup> Kayess and French (n 16) 25; Kakoullis and Ikehara (n 34) 37.

<sup>176</sup> Or its plural: 'disabilities'.

<sup>177</sup> In the Greek language: *απηρίες*. Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the UN CRPD (2010) OJ L 23/35 (EL) art 1, para 2 [author's translation].

<sup>178</sup> In the Bulgarian language: *uvrezhdane*. CRPD (n 1) preambular para (e). Mladenov (n 20) 78.

<sup>179</sup> In the Bulgarian language: *narusheni fizicheski funktsii*. CRPD (n 1) preambular para (e). Mladenov (n 20) 78.

<sup>180</sup> In the Greek language: *μειωμένες δυνατότητες*. CRPD (n 1) preambular para (e). Council Decision 2010/48/EC (n 177) [author's translation].

<sup>181</sup> In the Bulgarian language: *nedostatachnost*. CRPD (n 1) art 1, para 2. Council Decision 2010/48/EC (n 177); Mladenov (n 20) 79.

<sup>182</sup> In the Greek language: *εμποδιζόμενων προσώπων*. CRPD (n 1) preambular para (e). Hellenic Parliament, 'Plenary Minutes, XIIV Term of the Parliamentary Republic's Presiding Session III, Sitting RKTH' (Hellenic Parliament, 10 April 2012) 9372 <<https://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?sessionRecord=1c048afaf72c-4823-af87-08d4aa656ce9>> accessed: 30 July 2021) [author's translation].

<sup>183</sup> In the Greek language: *εμπόδια*. CRPD (n 1) art 1, para 2. Hellenic Parliament (n 182) 9376 [author's translation].

was not used in other translations, the phrase ‘impaired physical functions’ was used by the EU in its Bulgarian translation. The term ‘reduced capabilities’ was used by the EU in its Greek translation, and the term ‘deficiency’ was used by both the EU and Bulgaria in their Bulgarian translations. Whereas Greece took a wholly different approach to that of Cyprus, the EU, and Bulgaria, and used the terms ‘hindered persons’ and ‘obstacles’.

The phrase ‘impaired physical functions’ achieves the distinction between ‘disability’ and ‘impairment’ but to a *degree*: it is related to the English term ‘impairments’ as it is a biological phrase, but by employing ‘impaired *physical* functions’ it renders the conceptual interpretation of the social model of disability problematic because Article 1 makes explicit reference to intellectual, mental and sensory impairments, and not only to physical impairments. This translation also focuses on the *functions* persons can perform. Therefore, the phrase limits the applicability of the translated concept to only persons with impaired *physical functions*, and it does not conceptually reflect the social model of disability as it does not extend to persons with intellectual, mental, and sensory impairments. The terms ‘reduced capabilities’ and ‘deficiency’ try to capture the linguistic distinction between the terms ‘disability’ and ‘impairments’, but are situated in a deficit discourse and are not necessarily linguistically close to the English term ‘impairments’. The terms ‘hindered’ and ‘obstacles’ neither carry the same meaning as the English term ‘impairments’ nor have a linguistic relation to a biological term. The resulting translated sentences, ‘hindered persons that face obstacles’ and ‘persons who have obstacles’, are not clear in meaning, are peculiar, do not conceptually convey the social model of disability or allow interpretation of the translated provisions through the social model prism. Nevertheless, when viewed alongside the challenges in translating the term ‘impairments’, experienced by both Cyprus and the EU in the Greek language, and by Bulgaria in the Bulgarian language, suggests that the Greek context was more strongly informed by the social model of disability discourse, than the Cypriot and Bulgarian, and at pains to reflect the social model of disability in its translation of the CRPD’s concept of disability. It is further observed that in none of these official language translations were these variations in terms used consistently across the two respective provisions (preamble paragraph e, and Article 1, second paragraph), which further perpetuates confusion in trying to interpret the translated concept of disability through the social model prism.

This analysis demonstrates that the English language term ‘impairments’ presented challenges to the three States Parties and the EU in translation, and that the distinction between the terms ‘disability’ and ‘impairment’, essential to the social model of disability conceptualisation, was not made in these five Greek and Bulgarian official language translations. The result is that none of these translated provisions examined succeeded in conveying the social model of disability prism, critical to the CRPD’s concept of disability. This finding reveals the challenge to translating the CRPD’s concept of disability is the linguistic absence of the English language term ‘impairments’ in States Parties to the CRPD.

In contrast to the translation experiences of Cyprus, Greece, Bulgaria, and the EU across the Bulgarian and Greek language contexts, significantly, another State Party Iceland did not experience an issue in translating the CRPD’s concept of disability into the Icelandic language. This was because Iceland was able to use linguistic terms in the Icelandic language that carry the same meaning as the English language terms ‘disability’ and ‘impairments’ to reflect the distinction necessary to the social model of disability, as the Icelandic terms for ‘disability’<sup>184</sup> and ‘impairment’<sup>185</sup> were used. The Icelandic translation also goes a step further in reflecting the social model of disability and uses the term ‘disabled people’ when translating ‘people with disabilities’, as those who advised on the translation, operating from a social model of disability position, argued that it was the logical approach as disabled people could not ‘have’ disability, instead they were *disabled* by the interaction with society if they had impairments.<sup>186</sup> It is significant, nevertheless, that despite Iceland’s success in reflecting the social model of disability perspective in its translated text, the social model of disability has not gained traction in its circulation in Iceland, with many people still being unaware of the distinction between ‘disability’

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<sup>184</sup> In the Icelandic language: *fötlan*. Email from Professor Rannveig Traustadóttir to author (20 April 2021).

<sup>185</sup> In the Icelandic language: *skerðingar*. Ibid.

<sup>186</sup> Ibid.

and ‘impairment’: ‘[s]till, some people say ‘people with disabilities’ in Icelandic. Lots of people are unaware of the distinction’.<sup>187</sup> Before the CRPD, the social model of disability was not in circulation in the Icelandic context, a similarity shared with the Cypriot context. The Icelandic experience further demonstrates how critical to the translation and integration process for the CRPD’s concept of disability are the domestic disability discourses in circulation that shape the translation process.

## 6 DISCUSSION OF FINDINGS

This article used the Cypriot experience of translating the CRPD’s central concept of disability as a case study to explore the challenges Cyprus faced in interpreting and translating the concept and implications this may have had for the operationalisation and implementation of the CRPD. It then compared the Cypriot translation experience with the experiences of Greece, Bulgaria, and Iceland. This section discusses the findings and wider implications beyond the case study and experiences of other States Parties and provides insights into the translation and implementation for international multilingual treaties.

The analysis of the case study found that the translation of the CRPD’s concept of disability was shaped by the absence of a linguistic term in the Greek language for the English language term ‘impairments’, and by discourses on disability which did not include the social model of disability. The result was that the translated Cypriot Greek language CRPD’s concept of disability evolved differently from the original UN English language version and did not reflect the epistemological break the CRPD seeks to achieve. This, in turn, had implications for the implementation of the CRPD in Cyprus, in which governmental policy operated within the ‘pre-CRPD paradigm’ and had not implemented the CRPD’s human rights approach to disability.

The Cypriot experience was then compared with the experiences of Greece and Bulgaria in translating the CRPD’s concept of disability and then considered in relation to the experience of Iceland. Firstly, the analysis found that the translation of the concept was shaped by the absence of a linguistic term in both the Greek and Bulgarian languages for the English term ‘impairments’, with the result that none of these five<sup>188</sup> language translations succeeded in conveying the social model of disability prism critical to the CRPD’s concept of disability. Secondly, it found that the absence of circulation of the social model of disability discourse in both Cyprus and Iceland impacted on their translation and integration processes for the CRPD’s concept of disability.

Significantly, the findings of this study identified three critical factors that inform the successful domestic translation and integration for the CRPD’s concept of disability. First, the successful interpretation of the concept, situated within the CRPD’s ‘paradigm shift’. Second, that there are readily available linguistic terms which hold the same meaning as the term ‘impairment’. Third, that the discourses on disability in circulation domestically are familiar with the social model of disability, critical to the CRPD’s concept of disability. These findings confirm that some concepts can influence the integration process. These provide a clearer understanding on the perception and reception process for translated international multilingual legal texts.

In the area of legal translation, reference was earlier made to how traditionally the dominant approach to legal translation was that of a ‘technical’ process of transcoding or attributing words from one language into another but how there had been a shift in approach in translation studies to viewing legal translation as a cross-cultural transfer or organisation of discourses.<sup>189</sup> This case study provides a salient example of a translation process where its stakeholders viewed the translation they were involved in within the former approach, that of attributing words from one language into another,<sup>190</sup> but which was shaped by particular discourses. This article thus contributes a case study to the translation studies literature in the context of domestic legal translation for an international multilingual legal text, which exhibits

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<sup>187</sup> Ibid.

<sup>188</sup> Cypriot, Greek, Bulgarian, EU Greek and EU Bulgarian official translations.

<sup>189</sup> Lambert (n 9); Doczekalska (n 37).

<sup>190</sup> ‘... verbally that is how it is attributed’. Interview with Law Commission Officer (n 121).

the significant impact of both linguistic terms and cultural influences in the construction of the resultant translated legal discourse.

Further, the findings of this study confirm, and build on José Lambert's findings on legal translation.<sup>191</sup> He found that the perception and reception process for a translated text is usually different 'from country/language to country/language' and that some concepts may influence the integration process.<sup>192</sup> The findings in this study confirm this and explain *why* the resulting translated text may differ from country/language to country/language: in the situation of the absence of a linguistic description. They also go further and explain why the translated legal text may differ from country to country even where the same language is spoken. These findings illustrate that the translated text's integration process may vary even where the required linguistic terms are present because translation is shaped by the discourses in operation. This has the effect that the resultant translated concepts can evolve differently from their original conceptualisations in a legal text.

The findings of this study also contribute to our knowledge on translation of the CRPD text which previously received very limited attention.<sup>193</sup> For example, Mladenov used the CRPD's translation to emphasise that domestic DPOs should be stakeholders in domestically constituting the CRPD's meaning.<sup>194</sup> This article builds on this as it identified key challenges to domestically interpreting and translating the CRPD's concept of disability, even where domestic DPOs were involved. It also identifies a critical role for international DPOs that were involved in the CRPD negotiations: to work with national umbrella DPOs on the significance of the CRPD's concept of disability, in interpreting, translating, operationalising and implementing its provisions.

Earlier on, the article cautioned that through power games during domestic translation, the CRPD's concept of disability could evolve with implications for the implementation of the CRPD. The study's findings illustrate that a dangerous implication can flow from misinterpretation and mistranslation of the CRPD's concept of disability: it found that some States Parties operationalised and/or implemented disability assessment mechanisms that are not compliant with the CRPD's concept of disability. In view of the centrality of the CRPD's concept of disability to the CRPD and Article 1's significance in providing a framework for the teleological interpretation of the CRPD's provisions and this study's findings, there is a need for the UN CRPD Committee to develop a general comment on Article 1, which domestic translators, legislators, and policymakers can use when engaged in 'disability mainstreaming'.<sup>195</sup>

The findings of this study also engage in the assessment of whether the CRPD has achieved the cultural transformation it was anticipated to achieve. Earlier, reference was made to Stein and Lord who argued that the CRPD has the potential to legislate a 'belief change' concerning persons with disabilities,<sup>196</sup> and to Quinn who warned that words alone are unlikely to bring about the change required and there is no guarantee that the 'new' values embedded in the CRPD would be internalised and operationalised.<sup>197</sup> The present contribution engages with these arguments. Firstly, it demonstrates that essential to legislating the CRPD's intended 'belief change' is the successful understanding, interpretation and translation of the CRPD's concept of disability. Secondly, it illustrates how the words in the text of the CRPD alone are not sufficient to achieve the operationalisation of the values embedded in it, and to realise the epistemological break it seeks to effect.

In the area of international multilingual human rights treaties and their implementation, literature on the domestic impact of international norms converges around the proposition that 'international norms are more likely to be implemented and complied with in the domestic context, if they resonate or fit with existing collective understandings embedded in domestic

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<sup>191</sup> Lambert (n 9).

<sup>192</sup> Ibid 89.

<sup>193</sup> Virtanen (n 38); Mladenov (n 20).

<sup>194</sup> Mladenov (n 20) 81.

<sup>195</sup> Anna Lawson, 'Disability Law as an Academic Discipline: Towards Cohesion and Mainstreaming?' (2020) 47 *Journal of Law and Society* 558, 567. See also CRPD (n 1) art 4.

<sup>196</sup> Stein and Lord (n 41) 32.

<sup>197</sup> Quinn (n 30) 216.



institutions and political cultures'.<sup>198</sup> The findings of this study provide insights into the relationship between international treaty norms and domestic contexts, as they identified three critical factors in aiding international treaty translation and integration, and implementation. Existing literature on how human rights law is appropriated, 'translated' (adjusted), and remade into the vernacular, focused on the interface between international and local activism and found that intermediaries (activists) play a critical role in 'transplanting' institutions and programmes and 'translating' (adjusting) these to local settings.<sup>199</sup> However, it does not address the issue of how intermediaries (activists) interpret the provisions of the human rights treaty they work with or the issue of translating the treaty text from its original UN language version into official/unofficial local language translations. The findings of this study present a more nuanced understanding of domestic interpretation and translation of international human rights treaties' texts and the implications that flow from it.

These findings have wider implications for the domestic translation and implementation of international multilingual treaties. Three critical factors have been identified to reduce the risk of misinterpretation and mistranslation of international multilingual treaties. First, in the domestic translation of international multilingual treaties, particular attention should be given to key concepts that impact on the values embedded in the treaty. Second, an assessment should be made as to whether linguistic terms, which hold the same meaning to terms critical to key concepts in the treaty text, are readily available in the recipient language. Where such terms are not readily available, those working on the translation should both return to the treaty's *travaux préparatoires*, and consult domestically in order to identify alternative linguistic terms that could be used in the translation and which do not risk producing a mistranslated text and/or misinterpretation. Third, the domestic bodies involved in the treaty's implementation should seek to understand the dominant discourses in operation domestically on the treaty's target group or subject, and, accordingly, should take appropriate active measures to assist in the domestic interpretation and integration of the translated text.

## 7 CONCLUSION

Existing research on international human rights law has neglected the issues raised by the domestic translation of multilingual treaties and their implications for implementation. This article addresses this gap. Based on primary empirical work, it used the Cypriot experience of translating a central provision to an international multilingual treaty, the CRPD, which incorporates elements from various cultures and is underpinned by linguistic socio-cultural strategies, to explore the Cypriot translation and implications this had for the implementation of the CRPD. It then compared the Cypriot experience with the translation experiences of Greece and Bulgaria and then considered these in relation to the experience of Iceland. The article then identified the challenges in interpreting and translating the CRPD's concept of disability these States Parties experienced and the implications this had for the treaty's implementation.

This analysis revealed linguistic and cultural challenges and showed their significance for the operationalisation and implementation of the CRPD. This article demonstrated how the terminology employed, and the discourses informing domestic translation, have the power to generate a legal discourse that influences public perceptions, law, and policy. It also has a broader significance for our understanding of international multilingual treaties, highlighting the risks of domestic misinterpretation and mistranslation. This article seeks to raise awareness of these challenges, and it identified three critical factors to both reduce the risk of misinterpretation and mistranslation of multilingual international treaties, and to increase the chance of the successful integration, implementation, and operationalisation of translated multilingual treaty texts. This

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<sup>198</sup> Thomas Risse and Stephen C Ropp, 'International Human Rights Norms and Domestic Change: Conclusions', in Thomas Risse, Stephen C Ropp, and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (CUP, Cambridge 1999) 234, 271.

<sup>199</sup> See Merry (n 5) 134.

article therefore contributes to our understanding on the significance of the domestic translation of international multilingual treaties and the implications of this for treaty implementation.

The work of the Disability Movement reached its apex in achieving UN human rights treaty status for the protection of persons with disabilities human rights. Understanding of the changes that the CRPD's concept of disability is at risk of during States Parties' translation processes, and the factors influencing that process, should assist the UN CRPD Committee, States Parties, NHRIs, international, and domestic DPOs in facilitating the successful operationalisation and implementation of the CRPD's 'paradigm shift' in States Parties' domestic contexts. This article also identified a critical role for international DPOs involved in the CRPD negotiations to work with national umbrella DPOs on interpreting and translating the CRPD's concept of disability, and it calls for the UN CRPD Committee to develop a general comment on Article 1.

This article has shown how the domestic translation of international multilingual human rights treaties affects their implementation, revealing linguistic and cultural challenges in interpretation and translation. These findings have drawn attention to that the domestic translation of international multilingual treaties is a site of power games and discursive struggles through which resultant translated concepts can evolve differently from their original treaty text conceptualisations, and which in turn can have implications for treaty implementation. This article helps to open a new research agenda around the significance of domestic translation of international multilingual treaties and its implications for treaty implementation.