

## ONLINE GAMING AND SUSTAINABILITY: A SOCIAL CHALLENGE FOR INTERNATIONAL HUMAN RIGHTS LAW

**Giorgia Bevilacqua**

Researcher in International Law, Università degli Studi della Campania Luigi Vanvitelli.  
[giorgia.bevilacqua@unicampania.it](mailto:giorgia.bevilacqua@unicampania.it)

### **Abstract**

The booming phenomenon of electronic sports (esports) is, in principle, a powerful tool for inclusion, good health, and well-being. It is clear that platforms like Twitch are nowadays a crucial setting for socialization. It has also been demonstrated that online competitive gaming may help people to develop analytical and intellectual skills, spatial coordination, and teamwork. In practice, however, the idea of an inclusive, safe and healthy esports ecosystem is not yet a reality. Hence, against this epochal expansion of sport into virtual space, especially during the covid-19 pandemic, this paper aims to approach a number of legal issues surrounding social sustainability in the online gaming context and the path towards the possible recognition of the right to play videogames and e-sports in international human rights law.

### **1. Introduction: approaching the evolving concept of gaming**

In the last seventy years the way that millions of children and adolescents around the world play has undergone significant changes. Specifically, we refer to an on-going evolutionary process that began towards the end of the first half of the twentieth century, when an outline of the first videogame in history was registered in the United States Patent and Trademark Office. This was an epochal event. Though that particular project may not have been successful, from that moment on the way children and adolescents worldwide played would change radically. For many of them, indeed, games would become synonymous with videogames. But even the concept of a videogame itself was destined to undergo considerable transformations brought about by astonishingly innovative technologies.

The first videogames, it might be recalled, were very simple, and consisted essentially of electronic devices that simulated games or sports competitions on a TV screen or a specially made monitor. A few decades later, in the 1980s and 1990s, more complex devices were made, giving us the first handheld devices, and the first consoles. Among the most famous of these – and more advanced versions remain common – we may nostalgically remember the Nintendo and PlayStation.

The gaming industry, and with it the lives of millions of young people around the world, would be upended a few years later by the arrival of the Internet. During the 1990s, when the Internet was created, the authors of the Declaration of the Independence of Cyberspace declared the birth of a new universe, a free space that would resist the application of borders and all forms of territorial boundary.<sup>1</sup> The consequences this would have on the gaming sector can easily be imagined. While the first videogames could only be played by a single player (in front of a computer) or, at most, a limited number of players (determined by the number of joysticks attached to the console), the Internet ensured that newer games could be played by an undefined number of competitors, so long as they were connected to the Web. Parallel

---

<sup>1</sup> See J.P. BARLOW, *A Declaration of the Independence of Cyberspace*, Davos, Switzerland: 1996, available at [http://w2.eff.org/Censorship/Internet\\_censorship\\_bills/barlow0296.declaration](http://w2.eff.org/Censorship/Internet_censorship_bills/barlow0296.declaration).

to these developments in games themselves, the creation of the Internet allowed people to create forums, messaging platforms, and other channels of communication, through which it became possible to enter into contact and interact digitally with players all over the real world. More than a simple hobby, the new platforms in which one played on the Web have become tools of socialization and entertainment, online games rooms, where one may meet friends as well as complete strangers, and play, ask for advice, and perhaps buy tickets for concerts and matches. In effect, these are parallel virtual spaces in which young people of the digital age develop a genuine sense of community and belonging.

It is no coincidence that it was also in the 1990s that the term “Metaverse” was used for the first time. Famously its origins date to 1992, when Neil Stephenson coined the neologism in his cyberpunk novel, *Snow Crash*,<sup>2</sup> using it to describe a three-dimensional virtual world inhabited by digital replicas of human beings, better known as “avatars”. While even now there is no univocal definition of the Metaverse (or Metaverses),<sup>3</sup> it is clear that within this area of cyberspace, in which various interactive virtual spaces converge, users will be able to undertake a number of things, including social, cultural and work activities, as well as games and recreational activities, of course.<sup>4</sup> In this respect, and merely by way of illustration, we might recall *Second Life*, a role-playing game consisting of a virtual world, released by Linden Lab in 2003. Users could enter this space via an avatar and explore scenarios created by other users, or create scenarios themselves. Fortnite, Roblox and Minecraft, well-known videogames played today by tens of millions of children and adolescents, also take place in platforms that are autonomous and not totally immersive, and are usually considered as precursors of the imminent Metaverse.

In this evolving context, it is to be noted that online social gaming can also be highly competitive, in which case it is referred to as electronic sports (hereafter e-sports). Historically, the phenomenon of e-sports has lagged in the United States, trailing behind Asian countries, and later Europe. Now, though, it is growing rapidly around the entire world, engaging ever more individuals, both as players and as viewers. In practice, both players and viewers meet in person or online, and take part in worldwide competitions, individually or as a team, in which they may win significant prizes.

It is obvious, accordingly, that the most recent transformations of the concept of a game are ensuring the transferal of a series of activities – ludic and recreational – into one or more parallel virtual spaces, which are increasingly immersive and interconnected. In this regard, as early as 2013 the United Nations Committee on the Rights of the Child (hereafter the “Committee”) highlighted the following: “Children in all regions of the world are spending increasing periods of time engaged in play, recreational, cultural and artistic activities, both as consumers and creators, via various digital platforms and media”.<sup>5</sup> Given this unavoidable state of affairs, we wish to highlight the fact that the transferal of these activities into the virtual world may have significant implications in the real world, to the point that, less than ten years later, in a new General Comment on children’s rights in relation to the digital environment, we read that “[...] digital technologies [are] vital to their current lives and to their future”.<sup>6</sup>

Against this backdrop, with this paper we aim to investigate the social sustainability of contemporary gaming through the perspective of international human rights law. To this end, we will preliminarily investigate the main emerging issues concerning the social sustainability of videogames and e-sports (Section 2). Secondly, we will further investigate the possibility of applying to the gaming environment the rules and the general principles that already exist in the context of international human rights mechanisms.

---

<sup>2</sup> See *Metaverso*, in *Enciclopedia online*, available at <https://www.treccani.it/enciclopedia/metaverso>.

<sup>3</sup> See L. FLORIDI, *Metaverse: A Matter of Experience*, in *Philosophy & Technology*, 2022.

<sup>4</sup> See S. VOSLOO, *The Metaverse, Extended Reality and Children, 10 Things You Need to Know*, 1 May 2023, available at <https://www.unicef.org/globalinsight/stories/metaverse-and-children>.

<sup>5</sup> Committee on the Rights of the Child, General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), UN Doc. CRC/C/GC/17, 17 April 2013, p. 45.

<sup>6</sup> With these words the Committee summarized the results that had emerged from interviews carried out with an international sample of 709 children and adolescents from twenty-eight countries in various parts of the world. See Committee on the Rights of the Child, General comment No. 25 (2021) on children’s rights in relation to the digital environment, UN Doc. CRC/C/GC/25, 2 March 2021, p. 2.

While looking at both binding and non-binding legal instruments, as have been made previously in the context of traditional sport, we will seek to determine whether existing human rights provisions may be extensively interpreted in order to ensure essential protection and safeguards to players and viewers of videogames and e-sports, and, accordingly, to ensure social sustainability (Section 3). Thirdly, since online gaming has opened an important avenue to a multitude of new actors, it will be crucial to explore whether or to what extent international organisation, federations, as well as private industry may play a role in the social sustainability of gaming (Section 4).

## **2. The challenging relationship between online gaming and social sustainability: the challenge**

As videogames and e-sports become increasingly popular around the world, the legal issues surrounding their sustainability have started to present a major challenge.<sup>7</sup> The concept of “sustainable development”, as formulated by the Brundtland Commission, has only recently entered everyday usage, through the adoption of the United Nations (UN) 2030 Agenda in 2015.<sup>8</sup> As is well known, this document describes 17 Sustainable Development Goals (SDGs), ranging from ending poverty to improving health and education, reducing inequality, spurring economic growth, tackling climate change, and working to preserve our oceans and forests. Of the three strongly interlinked pillars of sustainable development – economic, social and environmental – we will focus here on the social pillar, and specifically on the social sustainability of e-sports. The key concepts of social sustainability have in turn been principally divided into the macro and micro levels. Whereas the former level refers to physical well-being and humans’ basic needs, the latter refers to quality of life and equity, including social and cultural life, integration, diversity, communication and participation, social amenity, and security.<sup>9</sup>

With this dichotomy in mind, videogames and e-sports may fall first and foremost within the micro-level category of social sustainability. As seen above, they are a crucial setting for online socialization, across platforms as diverse as YouTube, WeChat, Facebook, Twitter, Discord, and above all Twitch. As recently stressed in a European Parliament (EP) Resolution, “videogaming and e-sports have significant social and cultural potential to connect [individuals] of all ages, genders and backgrounds, including older people and people with disabilities”.<sup>10</sup> Specifically, almost anyone can interact, play, stream or organize tournaments. The skills required to perform in video games do not discriminate against people based on their gender or skin colour. This is because the matching system inherent to video games does not allow players to know what other players look like in real life. In this way, discrimination on the basis of physical appearance, such as racial or ethnic discrimination, is avoided to a certain extent. Moreover, the inclusion of people with disabilities is generally possible in e-sports, as these seldom require a player to be able to perform at peak level with his/her entire body.<sup>11</sup>

Nevertheless, the fact that contemporary online gaming may offer in principle a primary route towards, for instance, SDG 3 on Good Health and Well-being,<sup>12</sup> is not the same as saying it is socially sustainable.<sup>13</sup> Pursuant to the aforementioned EP Resolution, the videogame industry employed approximately 98,000

---

<sup>7</sup> On sustainability in e-sports, see A.G. NYSTRÖM, B. MCCAULEY, J. MACEY, T. M. SCHOLZ, N. BESOMBES, J. CESTINO, J. HILTSCHER, S. ORME, R. RUMBLE, M. TÖRHÖNEN, *Current Issues of Sustainability in Esports*, in *International Journal of Esports*, 2022, p. 1 ss.; T. M. SCHOLZ, *Deciphering the World of eSports*, in *International Journal on Media Management*, 2020, p. 1 ff.

<sup>8</sup> United Nations General Assembly, *Transforming our World: The 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1, adopted on 21 October 2015, available at [sustainabledevelopment.un.org](http://sustainabledevelopment.un.org).

<sup>9</sup> For doctrine on the concept of sustainability in international law, see S. MARCHISIO, *Il diritto internazionale dell’ambiente*, in G. Cordini, P. Fois, S. Marchisio (eds.), *Diritto ambientale. Profili internazionali europei e comparati*, Torino, 2017, pp. 1-20.

<sup>10</sup> European Parliament (Committee on Culture and Education), Report on esports and video games (2022/2027(INI)), p. 14.

<sup>11</sup> See T. M. SCHOLZ, N. NOTHELFER, *Research for CULT Committee, Esports – European Parliament*, in *Policy Department for Structural and Cohesion Policies*, Brussels, 2022, p. 38 ff.

<sup>12</sup> On the SDGs mentioned in the 2030 Agenda for Sustainable Development, cit.

<sup>13</sup> In this respect, see A. Tjøndal, *Social Issues in Esports*, 2022.

people in Europe in 2020, of whom only an estimated 20% were women.<sup>14</sup> As seen, the technical barriers are low and it is usually possible for anyone to take part in virtual competitions. However, there are underlying social barriers that ensure that e-sports – at least at the highest professional level – mainly involve white or Asian men. Furthermore, moving from the micro to the macro level, players and viewers, especially minors, are often exposed to a number of issues that are typical of digitalized assets. Revealing the dark side of the gaming ecosystem, the World Health Organisation (WHO) has warned about the mental and physical issues that derive from competitive online gaming, and explained that intensive video gaming can lead to addiction and toxic behaviours. On this basis, in 2018 an addictive gaming disorder was included in the 11<sup>th</sup> revision of the International Classification of Diseases.<sup>15</sup>

This latest development is crucial for the aims of our analysis, just as it was beforehand for the aims of the Superior Court of Quebec, which in its decision on 7 December 2022, in the case of *F.N. v. Epic Games Canada*, approved a class action against a well-known videogame developer.<sup>16</sup> The defendant company, the Canadian branch of the American group Epic Games Inc., is famous above all for Fortnite Battle Royale (hereafter “Fortnite”), which is currently one of the most popular videogames in the world. According to the plaintiffs, however, Fortnite owes its popularity to the game’s ability to cause significant collateral effects comparable to those provoked by psychotropic substances.<sup>17</sup> For younger users especially, the need to play Fortnite overrides all other personal, family, social, and educational activities. This videogame, in other words, creates pathological addiction, as introduced by the World Health Organization in the latest version of its list of global diseases. And, although the American developer astutely defended itself by arguing that addictive online gaming is not defined as a disease by the scientific community of Quebec, and that the causal link between the use of games and addiction has not been demonstrated, Canadian judges nonetheless considered it plausible that Fortnite was a game produced and put on the market without adequate warnings about its risks and the potential for damage to the health of its young users.

In the aforementioned Canadian verdict, however, the vital importance of gaming in the lives of children and young people matters also from another perspective. On closer inspection, the judges of the Superior Court hint at, *inter alia*, the violation of a fundamental right, namely the right to life, safety, and physical and mental inviolability, as proclaimed in Article 1 of the Quebec Charter of human rights and freedoms.<sup>18</sup> The human rights perspective is of great importance in the subsequent reflections on the relationship between contemporary gaming and its social sustainability.

### **3. The path towards recognition of the right to play videogames and e-sports**

Against this epochal shift of gaming into the digital dimension, and starting from the fact that videogames and e-sports are played and watched in a virtual space, but generate significant real-life effects in the wider world, we will investigate whether international human rights mechanisms may offer adequate

---

<sup>14</sup> European Parliament Resolution, cit.

<sup>15</sup> The International Classification of Diseases (ICD) provides a common language that allows health professionals to share standardized information across the world. It is the foundation for identifying health trends and statistics worldwide, containing around 17,000 unique codes for injuries, diseases and causes of death, underpinned by more than 120,000 codable terms. See A. Brunier, *ICD-11 is now officially in effect for the national and international recording and reporting of causes of illness, death - and more.*, ICD-11 2022 Release, 11 February 2022, available at: [www.who.int](http://www.who.int). On gaming disorder, see N. DARVESH, A. RADHAKHRISN, C.C. LACHANCE, V. NINCIC, J.P. SHARPE, M. GHASSEMI, S.E. STRAUS, A.C. TRICCO, *Exploring the prevalence of gaming disorder and Internet gaming disorder: a rapid scoping review*, in *Syst. Rev.*, 2020, pp. 1-10.

<sup>16</sup> Cour Supérieure (Quebec), *F.N. v. Epic Games Canada*, 7 December 2022, No. 500-06-001024-195, available at [www.cbc.ca](http://www.cbc.ca). For a first preliminary comment, see *Fortnite Addiction Class Action Approved by Quebec Superior Court*, in *Litigation & Dispute Resolution Bulletin*, 23 January 2023, available at <https://www.fasken.com/en/knowledge/2023/01/23-fortnite-addiction-class-action-approved-by-quebec-superior-court>.

<sup>17</sup> Cour Supérieure (Quebec), cit., p. 10.

<sup>18</sup> *Charte des droits et libertés de la personne*, adopted by the National Assembly of Québec in 1975. The Charter is available at <https://www.legisquebec.gouv.qc.ca/fr/document/lc/C-12>.

protection and safeguards to ensure inclusiveness, good health and well-being in the current gaming system. In particular, it is worth investigating whether, from the perspective of international human rights law, both videogames and e-sports could receive a certain degree of legal protection, and, if that is the case, what the routes for that would be, and to what extent they would be protected. To that end, it is particularly useful to look at the interpretative route previously used to recognize the right to play traditional sport.

First of all, beginning with the perspective of the 1948 Universal Declaration of Human Rights (UDHR),<sup>19</sup> Art. 24 UDHR stipulates that “[e]veryone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”.<sup>20</sup> Even though there is no explicit reference to sport, this article is often used to affirm the existence of a fundamental right to play sport. And, in effect, “rest” and “leisure” may include very wide categories of activities, which may reasonably include sport too.<sup>21</sup> In addition to its wide formulation, what leads part of the doctrine to extensively interpret the right to “leisure” is its position within the Declaration. Namely, this right follows Art. 23 UDHR, which is dedicated to the right to work. Article 24 UDHR presents the inverse side of the right to work, and highlights the importance of not being overworked.<sup>22</sup> This owes much to the contributions made by Latin American states to the drafting process between 1946 and 1948. In the mid-1940s, almost all states in that region had democratic governments, and their constitutions were well-endowed with social and economic rights. Thanks to these historical developments, clearly aimed at improving the quality of people’s everyday lives, the Universal Declaration states that everyone has a right to leisure, and thus a right to engage in sports activities during one’s free time. Moreover, nothing prevents us from extending the protection deriving from this right of the Declaration to new forms of leisure. Should we accept this extensive interpretation, in light of the developments in the progress of modern digital societies, and thus, in light of the current shift of leisure to the virtual dimension, we can additionally accept a right to engage in videogames and e-sports. In other words, modern forms of gaming may also fall within the wider category of leisure, and specifically online leisure.

From a slightly different perspective, online social gaming may also receive protection from the subsequent International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>23</sup> whose Art. 12 stipulates that “the States Parties [...] recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.<sup>24</sup> Rather than being a residual right, here sport acts as a tool to further physical and mental well-being. According to Art. 12 ICSECR, states should acknowledge the importance of holistic approaches to health and well-being through regular physical activity, including sport and recreation, in order to prevent and control diseases, and promote healthy lifestyles. And, whereas the Universal Declaration mentioned above is, in principle, soft-law, the Covenant provisions are legally binding.<sup>25</sup> Accordingly, State Parties to this Covenant have a positive obligation to implement national

---

<sup>19</sup> Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 with Resolution 217 A, UN Doc. A/810 (1948), p. 71, preamble. The text of the Declaration is available at: [www.un.org](http://www.un.org). In general on the Universal Declaration, see C. FOCARELLI, *La persona umana nel diritto internazionale*, Bologna, 2013, p. 76 ff.

<sup>20</sup> UDHR, art. 24.

<sup>21</sup> On the possible recognition of the fundamental right to play sport, see E. GREPPI, *Lo Sport e i diritti umani*, in *Diritto internazionale dello sport*, Torino, 2013, p. 147 ff.; M.C. VITUCCI, *La tutela dei diritti umani nello sport e la promozione di essi attraverso lo sport*, in *Rivista della Facoltà di Scienze motorie dell'Università degli Studi di Palermo*, 2008, pp. 73-84.

<sup>22</sup> High Commissioner for Human Rights, *Article 24: Right to Rest and Leisure*, in 30 Article on the 30 Articles – The Universal Declaration of Human Rights at 70: Still Working to Ensure Freedom, Equality and Dignity for All, 2018, available at: [www.standup4humanrights.org](http://www.standup4humanrights.org).

<sup>23</sup> International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution 2200A (XXI), on 16 December 1966, entry into force on 3 January 1976. In general, on the International Covenant, see C. FOCARELLI, cit., p. 78 ss. With specific respect to art. 12 and its role for mental and physical health, see. E. GREPPI, cit., and M. C. VITUCCI, cit.

<sup>24</sup> ICESCR, Art. 12.

<sup>25</sup> C. FOCARELLI, cit.

measures to ensure “the highest attainable standard of physical and mental health”.<sup>26</sup> Interestingly, in the context of traditional sport, the same approach is also followed in a number of Declarations of the UN General Assembly.<sup>27</sup> More recently, the General Assembly has expressly recognized the contribution of sport to the realization of the 2030 Agenda for Sustainable Development,<sup>28</sup> and proclaimed that it is a real enabler of sustainable development.<sup>29</sup> In the same vein, and, even though neither the Covenant nor the General Assembly declarations refer to e-sports, the functional role of these in good health and well-being has been expressly illustrated in other official global contexts. For instance, during the Mental Health Day initiative promoted by the WHO on 10 October 2022, the world’s e-sports community focused the discussion on a long list of benefits from gaming and e-sports, including healthy brain stimulation, combatting loneliness, and helping people to develop coping mechanisms for difficult situations.<sup>30</sup>

In the case of children, we may rely on a specific instrument, the Convention on the Rights of the Child (CRC),<sup>31</sup> which provides children with a right to culture, leisure and play under Art. 31. These three elements are closely interlinked and together are considered essential conditions for the well-being and development of children. Given the rich content of Art. 31 CRC it seems valid to suppose that the meaning of the three interlinked elements – culture, leisure and play – also encompasses gaming in the virtual space. As has been seen since the introduction of this paper, the shift of these activities from real life to virtual space is even more marked among children. Such a shift had already been clearly recognised by the UN Committee in its 2013 general comment.<sup>32</sup> And the connection of the three elements appears even clearer in the digital space, especially with respect to the micro level of social sustainability. As illustrated, various gaming platforms are used to play e-sports, and at the same time, they are used as a space for socialization, and for many children foster a real sense of “community” and “belonging”. If used properly, online gaming also has other benefits, such as facilitating creativity, imagination and self-confidence. Furthermore, as children learn by doing, play contributes to all aspects of their learning and education.<sup>33</sup> Remarkably, with specific respect to online leisure in relation to culture and education, the aforementioned EP Resolution states that when primary school teachers have used videogames in the classroom they have frequently observed better levels of concentration, as well as a significant improvement in several key skills, such as problem-solving and analytical, social and intellectual skills, spatial coordination, and teamwork.<sup>34</sup>

In short, there are various human rights routes that could lead to recognition of the existence of a modern right to play videogames and e-sports as such, and as a powerful tool for inclusion, good health and well-being. After all, our interpretation does not seem to contradict the essential structure and nature of human rights provisions, which, as we have seen, usually present a very wide and flexible formulation that can

---

<sup>26</sup> ICESCR, Art. 12, cit.

<sup>27</sup> See, for instance, United Nations General Assembly, Sport as a Means to Promote Education, Health, Development and Peace, UN Doc. A/RES/58/5, adopted on 3 November 2003; in the same vein, to strengthen the concept that sport as a means to promote education, health, development and peace, see also its Decision to proclaim in 2005 the International Year for Sport and Physical Education, and its Resolutions 60/1, adopted on 16 September 2005, 60/9, adopted on 3 November 2005, 61/10, adopted on 3 November 2006, 62/271, adopted on 23 July 2008, 63/135, adopted on 11 December 2008, 65/4, adopted on 18 October 2010, 67/17, adopted on 28 November 2012, 69/6, adopted on 31 October 2014.

<sup>28</sup> UN General Assembly Resolution (2015), cit.

<sup>29</sup> UN General Assembly, *Sport as an Enabler of Sustainable Development*, UN Doc. A/RES/73/24, adopted on 3 December 2018.

<sup>30</sup> Global Esports Federation Supports WHO to Raise Awareness on World Mental Health Day 2022, available at [www.globalesports.org](http://www.globalesports.org).

<sup>31</sup> Convention on the Rights of the Child, adopted by General Assembly Resolution 44/25, on 20 November 1989, entry into force: 2 September 1990. For doctrine, see N. Lott, *The Right of the Child to Play - From Conception to Implementation*, 2023.

<sup>32</sup> CRC Committee, General comment No. 17, cit.

<sup>33</sup> See V. VERDOODT, *Esports and the Platforming of Child’s Play During Covid-19*, in *The International Journal of Children’s Rights*, 2021, p. 496 tt.

<sup>34</sup> EP Resolution, cit.

easily be adapted to further socio-economic developments, such as the current inevitable shift of leisure activities to virtual space. Moreover, this interpretation, based on the analysis of the function of both sport and contemporary gaming, may lead to the recognition of additional protection deriving from human rights and fundamental freedoms that are strongly interconnected with the right to play (offline and) online, including, for instance, the right to life, security, and psycho-physical integration, as was recalled by the aforementioned Canadian Court. Furthermore, and merely by way of illustration, we may refer to the regulations protecting the right to private and family life, as found in various national and international treaties on human rights. It is perhaps well known that the digital platforms used for ludic and recreational activities may expose their users to a series of risks associated with the massive harvesting of their personal data. That is because in immersive virtual environments the data of large numbers of children and adolescents may be gathered through particularly invasive mechanisms, such as facial recognition, visual contact, and heart rate measurement.<sup>35</sup>

#### **4. The importance of soft-law instruments**

Over the last two decades, a number of different non-state actors have started to engage in gaming regulation. This has achieved interesting results in terms of social sustainability, and has been brought about through the work of global federations, acting autonomously and in cooperation with human rights organizations, such as the Council of Europe and the United Nations International Children's Emergency Fund (UNICEF). The latter, in turn, has acted in close cooperation with the gaming industry too.

Following the trend of traditional sporting and Olympic institutions, several e-sports organizations have tried to establish themselves. In general terms, they have all pursued the same objective: to be the governing body of e-sports worldwide. Looking in particular at the organizations that have contributed to the social sustainability of the online gaming ecosystem, the International Esports Federation, founded in 2008, claimed that, among other roles, it would create "disciplines and regulations, alongside the stakeholders of the ecosystem, for a fair and clean competitive space for Esports". In 2016 the Esports Integrity Commission (ESIC) was also set up, tasking itself with taking responsibility for the disruption, prevention, investigation and prosecution of all forms of cheating in e-sports, including, but not limited to, match manipulation and doping. The ESIC's mission, in particular, is to be recognized as the guardian of the integrity of e-sports, and is focused on protecting the integrity of the e-sports landscape. This is achieved primarily via the ESIC's five key elements: its Principles, Code of Ethics, Code of Conduct, Anti-Corruption Code and Anti-Doping Code, all of which serve to help prevent, detect and sanction instances of manipulation of e-sports competitions. While the ESIC's operations are limited by its reliance on the various stakeholders (such as teams and tournament organizers) that voluntarily sign up to the ESIC's integrity program, e-sports sustainability has acquired additional importance, even at the IOC level. In 2017 the IOC stated that e-sports – in order to be recognized as a sport – should be consistent with Olympic values,<sup>36</sup> which, as is well-known, are based on the principles of peace, fair play and fair contest, with the view to creating a peaceful society with less violence and greater cooperation.<sup>37</sup> Consistently, in accordance, with the aims of the global e-sports federation, it encourages the development, organization and delivery of e-sports worldwide, and preserves the right of every individual to participate in e-sports as a sport, without unlawful discrimination of any kind, and undertaken in the spirit of friendship, solidarity and fair play.<sup>38</sup>

In parallel, and still at the international level, a notable first attempt to acknowledge the unusual impact of online gaming on players' rights was made as early as 2008, when the Council of Europe, in close

---

<sup>35</sup> See S. VOSLOO, cit.

<sup>36</sup> Olympic Movement, Esports and gaming communities meet at the Esports Forum, available at [www.olympics.com](http://www.olympics.com).

<sup>37</sup> The Olympic Charter is available at [www.olympics.com/ioc/olympic-charter](http://www.olympics.com/ioc/olympic-charter).

<sup>38</sup> There are currently eight international federations that claim to be the governing body of e-sports worldwide, including: International eSports Federation (IeSF), International Digital Sports Committee (IDSC), International Esports Committee (IEC), World E-sports Consortium (WESCO), World Esports Association (WESA), Esports World Federation (ESWF), International Esports Omnipotent Committee (IEOC), and the Global E-Sports Federation (GEF).

cooperation with the Interactive Software Federation of Europe, developed the Human Rights Guidelines for Online Games Providers.<sup>39</sup> While focusing on online games – including multiplayer games – these guidelines deliver the first human rights benchmarks for both online games providers and developers. Specifically, they recognize the primary value of games as tools for expression and communication, and stress the importance of gamers’ safety and their right to privacy and freedom of expression. Therefore, according to the Council of Europe, it is extremely important that the games industry be aware of the human rights impact that games can have on individuals, especially on children and young people. In practice, games designers and publishers should promote and facilitate gamers’ well-being, respect their fundamental rights, and regularly assess and evaluate their information policies and practices. In this regard, designers and publishers of online games are encouraged to take note of, discuss, and make their best efforts to comply with these guidelines, which must be read in conjunction with the obligations applicable to online games providers and their activities under national and international law.

Similarly, and in light of the explosion in online gaming spurred by the physical distancing measures that were implemented around the world during the first phases of the Covid-19 pandemic, in 2020 UNICEF published a salient set of Recommendations for the Online Gaming Industry on Assessing Impact on Children,<sup>40</sup> which are designed to guide and support gaming companies of all kinds through a process of incorporating children’s rights considerations into their business activities. In line with this general aim, the document is divided into various sections, each of which contains a set of recommendations regarding a specific area, such as the creation of a safe playing environment, the protection of young users from violent behavior, and the identification of appropriate publicity models. Particularly relevant to our analysis are the measures aimed at organizing modes of access and game management. To that end, as well as identifying specific mechanisms capable of limiting how much time is actually spent playing, it is necessary to take into account the opinions of both children and their parents. Furthermore, to avoid creating addiction and other forms of pathological behavior, it is extremely important that firms like Epic Games find “the right balance between providing engaging experiences and generating revenue”.<sup>41</sup> This balance appears to be a means of giving concrete shape to the parts of the Convention that require the best interests of minors to be taken into consideration, both at a very young age, when the design of a videogame can impact on a child’s cognitive, emotional and social development, and in later years, when it becomes crucial for an adolescent to interact with his/her peers outdoors. This need for balance does not entail a complete ban on producing highly engaging videogames, but rather encourages games developers to adopt farsighted company policies that reconcile the requirements of the various interested parties, and are not determined solely by the company’s need to generate profits. Moreover, to perform certain activities or gain level advancements, for instance, buying gadgets or skins that allow players to improve their performance within the game, parental permission should always be necessary. To that end, evidently, it is crucial that devices exist that are capable of verifying permission, though at the same time guaranteeing the protection of privacy and personal data.<sup>42</sup>

## Conclusions

We believe that the interpretation process analyzed in this paper may be important as a way to lead progressively to recognition of a human rights-based framework that could enable states to address the legal issues related to the social sustainability of videogames and e-sports, and thus have a direct influence both on the implementation of adequate domestic measures and on the practice of self-regulation of the various Federations currently governing in the gaming ecosystem.

The other two documents mentioned above are instruments of soft law, which take inspiration from international law on human rights, above all the Convention on the Rights of the Child, but whose measures are merely recommendatory. That notwithstanding, such instruments deserve, in our view, to be noted and

---

<sup>39</sup> Council of Europe, *Human Rights Guidelines for Online Games Providers*, 2008, available at [www.rm.coe.int](http://www.rm.coe.int).

<sup>40</sup> UNICEF, *Recommendations for the Online Gaming Industry on Assessing Impact on Children*, 2020, available at [www.unicef.org](http://www.unicef.org).

<sup>41</sup> UNICEF, *Recommendations*, cit., p. 8.

<sup>42</sup> UNICEF, *Recommendations*, cit., p. 17.



disseminated for a series of reasons. In the first place, they are the result of close collaboration between sector professionals and international bodies that specialize in human rights. This implies greater awareness of the real demands that need to be considered when designing games suitable for children and young people, without neglecting the needs of developers. Second, both the guidelines and the recommendations have been inspired by binding legal instruments, which they implement, to some extent, offering flexible solutions that can be directly used by firms and professionals in the social gaming industry, taking into account the technological revolution, as mentioned above, that has taken place over the last few decades. Finally, as happened in the second half of the twentieth century with the aforementioned Convention on the Rights of the Child, which basically incorporated the previous Declaration of the rights of the Child, already adopted by the UN General Assembly, the most recent instruments of soft law may come to inspire the formation of mandatory legal mechanisms. In the meantime, however, we should not undervalue the following: that while the gaming industry continues to grow, while ever larger amounts of investment flow into, for instance, the gaming Metaverse, and while European institutions promise a proposal regulating the Metaverse, the standards recommended by the Council of Europe and UNICEF already offer a tangible and immediately applicable framework for the protection of fundamental rights on existing digital platforms.

## Reference List

1. J.P. BARLOW, *A Declaration of the Independence of Cyberspace*, Davos, Switzerland: 1996.
2. N. DARVESH, A. RADHAKHRISN, C.C. LACHANCE, V. NINCIC, J.P. SHARPE, M. GHASSEMI, S.E. STRAUS, A.C. TRICCO, *Exploring the prevalence of gaming disorder and Internet gaming disorder: a rapid scoping review*, in *Syst. Rev.*, 2020.
3. L. FLORIDI, *Metaverse: A Matter of Experience*, in *Philosophy & Technology*, 2022.
4. C. FOCARELLI, *La persona umana nel diritto internazionale*, Bologna, 2013.
5. E. GREPPI, *Lo Sport e i diritti umani*, in *Diritto internazionale dello sport*, Torino, 2013.
6. S. MARCHISIO, *Il diritto internazionale dell'ambiente*, in G. Cordini, P. Fois, S. Marchisio (eds.), *Diritto ambientale. Profili internazionali europei e comparati*, Torino, 2017.
7. A.G. NYSTRÖM, B. MCCAULEY, J. MACEY, T. M. SCHOLZ, N. BESOMBES, J. CESTINO, J. HILTSCHER, S. ORME, R. RUMBLE, M. TÖRHÖNEN, *Current Issues of Sustainability in Esports*, in *International Journal of Esports*, 2022.
8. T. M. SCHOLZ, *Deciphering the World of eSports*, in *International Journal on Media Management*, 2020.
9. T. M. SCHOLZ, N. NOTHELPER, *Research for CULT Committee, Esports – European Parliament*, in *Policy Department for Structural and Cohesion Policies*, Brussels, 2022.
  - A. Tjønnedal, *Social Issues in Esports*, 2022
10. M.C. VITUCCI, *La tutela dei diritti umani nello sport e la promozione di essi attraverso lo sport*, in *Rivista della Facoltà di Scienze motorie dell'Università degli Studi di Palermo*, 2008.
11. V. VERDOODT, *Esports and the Platforming of Child's Play During Covid-19*, in *The International Journal of Children's Rights*, 2021.

12. S. VOSLOO, *The Metaverse, Extended Reality and Children, 10 Things You Need to Know*, 1 May 2023.