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# Foreword: The Significance of the United Nations Convention on the Rights of Persons with Disabilities

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# Foreword: The Significance of the United Nations Convention on the Rights of Persons with Disabilities

MICHAEL WATERSTONE\*

This is an exciting and unique moment for disability law and policy worldwide. To be sure, the challenges faced globally by people with disabilities are sobering. Even without a generally agreed upon measure of what it means to have a “disability,” there is some consensus that persons with disabilities account for ten percent of the world’s population, yet comprise twenty percent of those living in poverty.<sup>1</sup> About eighty percent of these individuals with disabilities live in developing countries and face exclusion and economic and social deprivation.<sup>2</sup> Only two percent of children with disabilities in developing countries receive a formal education, and one-third of all primary school age children who are not in school have a disability.<sup>3</sup> A recent report by the World Bank and United Nations estimates that over one billion people experience disability.<sup>4</sup>

Despite arguably being the world’s largest minority group, international human rights law has not paid sufficient attention to

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1. See U.N. Secretary-General, *Realizing the Millennium Development Goals for Persons with Disabilities Through the Implementation of the World Programme of Action Concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities*, ¶ 4, U.N. Doc. A/64/180 (July 27, 2009) [hereinafter U.N. Secretary-General].

2. See U.S. AGENCY FOR INT’L DEV., *THE SECOND ANNUAL REPORT ON THE IMPLEMENTATION OF THE USAID DISABILITY POLICY 1 (2000)*; see also Michael Ashley Stein, *A Quick Overview of the United Nations Convention on the Rights of Persons with Disabilities and Its Implications for Americans with Disabilities*, 31 MENTAL & PHYSICAL DISABILITY L. REP. 679, 679 (2007).

3. See U.N. Secretary-General, *supra* note 1, ¶ 19.

4. See WORLD HEALTH ORG. & WORLD BANK, *WORLD REPORT ON DISABILITY* xi (2011).

people with disabilities. Before the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), none of the preceding seven legally enforceable United Nations human rights treaties explicitly protected people with disabilities. And although “soft laws,” such as the Standard Rules on the Equalization of Opportunities for Persons with Disabilities,<sup>5</sup> aim to provide human rights protections for people with disabilities, other human rights initiatives, such as the United Nations Millennium Development Goals, neither reference disability nor include it in their implementation.<sup>6</sup>

Seeking to fill this void, in December 2001, the United Nations established an ad hoc committee to consider enacting a human rights instrument with disability as its focus. From 2002 to 2006, the Convention was negotiated during eight sessions of the Ad Hoc Committee of the General Assembly. In December 2006, the Convention and its Optional Protocol were adopted, making it the fastest negotiated human rights treaty in UN history.<sup>7</sup> There are currently 153 signatories to the Convention (with 105 countries having ratified) and ninety signatories to the Optional Protocol (with sixty-three countries having ratified).<sup>8</sup> On its opening day, this convention had the highest number of signatories of any other opening day of a UN convention in history,<sup>9</sup> showing a worldwide need for a convention of this nature.

As the first comprehensive human rights treaty of the twenty-first century,<sup>10</sup> and the first human rights instrument specifically referencing people with disabilities, the UNCRPD reflects a monumental shift in attitudes toward disability. It formalizes a move away from treating people with disabilities through a medical lens and as objects of pity. Rather, the Convention envisions people with disabilities as full citizens seeking to make their own decisions about their lives. As befitting such an instrument, people with disabilities were actively involved with the

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5. G.A. Res. 48/96, U.N. GAOR, 48th Sess., Supp. No. 49, at 202, U.N. Doc. A/48/49 (1993).

6. *See generally* G.A. Res. 55/2, U.N. GAOR 55th Sess., U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

7. *Convention on the Rights of Persons with Disabilities*, U.N. ENABLE, <http://www.un.org/disabilities/default.asp?id=150> (last visited Oct. 15, 2011).

8. *See Convention and Optional Protocol Signatures and Ratifications*, U.N. ENABLE (Oct. 15, 2011), <http://www.un.org/disabilities/countries.asp?id=166>. The United States has signed but not yet ratified the Convention.

9. *Convention on the Rights of Persons with Disabilities*, *supra* note 7.

10. *Id.*

negotiations on the Convention, proceeding under the phrase “Nothing about us without us.”<sup>11</sup>

Policymakers and advocates are now beginning the important work of implementing and enforcing the UNCRPD. This is occurring all over the globe, and part of the challenge is documenting innovation occurring in one location so that it can be replicated, in culturally appropriate ways, in others.<sup>12</sup> The obstacles are daunting: the UNCRPD is an expansive document; as a holistic human rights treaty, it covers the full spectrum of life activities of people with disabilities, including rights involving education, employment, legal capacity, living independently, personal mobility, and habilitation and rehabilitation, amongst others.<sup>13</sup> Yet, as the UN and World Bank have found, people with disabilities have generally poorer health, lower education achievements, fewer economic opportunities, and higher rates of poverty than people without disabilities. This is largely due to the lack of services available to them and the many obstacles they face in their everyday lives.<sup>14</sup> The UNCRPD will not in and of itself create change; that only comes through the hard, often State by State level, work of implementation and enforcement.

At the same time, academics have begun the process of deconstructing the Convention and situating it within the universe of human rights protections. Important early contributions have included conceptualizing the UNCRPD as establishing “Disability Human Rights,” which combines components of the social model of disability, the human right to development, and a capabilities approach.<sup>15</sup> Other work has assessed the participatory justice elements of the UNCRPD,<sup>16</sup> an important background principle illuminating American disability civil rights law.<sup>17</sup> Finally, other academics have offered assessments of the potential of international law generally, and the UNCRPD in

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11. See Stein, *supra* note 2, at 679.

12. To help with this information gathering function, the UN and World Bank have jointly produced the first ever World Report on Disability. See generally *supra* note 4. This report “provides evidence to facilitate implementation of the CRPD. It documents the circumstances of persons with disabilities across the world and explores measures to promote their social participation, ranging from health and rehabilitation to education and employment.” *Id.* at 3.

13. See Stein, *supra* note 2, at 679.

14. See WORLD REPORT ON DISABILITY, *supra* note 4, at xi.

15. See Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75, 75 (2007).

16. See Michael Ashley Stein & Janet E. Lord, *Jacobus tenBroek, Participatory Justice, and the UN Convention on the Rights of Persons with Disabilities*, 13 TEX. J. C.L. & C.R. 167, 167–68 (2007).

17. See Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 CALIF. L. REV. 841, 843 (1966).

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particular, in creating change on the ground in the lives of people with disabilities.<sup>18</sup>

With this background, Loyola Law School hosted a symposium entitled “The Significance of the United Nations Convention on the Rights of Persons with Disabilities” on March 19, 2010. We were able to bring together a unique collection of participants from all over the world. We were fortunate to have influential academics, key policymakers, individuals who were active in the negotiations, and officials who will be responsible for implementing and monitoring the UNCRPD in countries throughout the world. Consistent with the mantra “Nothing about us without us,” many of our participants were people with disabilities or individuals with family members who have disabilities. Our speakers performed the crucial function of telling and dissecting the story of the Convention’s origins, navigating through the UN processes, eventual adoption and entry into force, and the beginning work of implementation and enforcement. They also offered candid assessments of the Convention’s ability to create change, and its successes and shortcomings as an international human rights instrument.

The articles in this symposium reflect the depth of intellectual engagement and excitement of the conference. Several themes emerge from these articles, which are reflective of the day’s discussions. First, they explain and analyze the many intersectionalities facing women with disabilities, racial minorities with disabilities, and other groups. They provide theoretical and conceptual backgrounds to disability as a human right, and discuss the impact of previous human rights instruments on the UNCRPD. The impact of the Convention on States’ domestic laws, a topic of several articles, is an important element to the UNCRPD’s effectiveness in improving the lives of people with disabilities. Yet these articles also address the complex topic of how the Convention must be implemented at the State level in a culturally appropriate manner. In sum, these articles show the UNCRPD’s potential, yet point out that the Convention is not a panacea for the multitude of challenges facing people with disabilities worldwide. They also demonstrate why the Convention was so desperately needed, given the failure of previous human rights instruments to specifically address disability, and the often unfortunate history of domestic governments’ failure to accord people with disabilities their basic human rights.

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18. See Gerard Quinn, *The United Nations Convention on the Rights of Persons with Disabilities: Toward a New International Politics of Disability*, 15 *TEX. J. C.L. & C.R.* 33, 39–40 (2009).

In *China and Disability Rights*, Professor Michael Ashley Stein, the leading academic and tireless participant in working with States, United Nations agencies, and disabled persons organizations to implement the UNCRPD, explores and critiques the role that the People's Republic of China has taken, abroad and at home, in fostering disability rights. It concludes that, to date, China has supported disability-based rights in the international arena to a greater extent than it has implemented those rights domestically.

In *Shared Understanding or Consensus-Masked Disagreement? The Anti-Torture Framework in the Convention on the Rights of Persons with Disabilities?*, Janet E. Lord, a key participant in the UN negotiations, offers the Convention as a window through which to view human rights law in the context of disability, including the prohibition against torture and other cruel, inhuman, and degrading treatment or punishment.

In *Women with Disabilities: The Forgotten Peace Builders*, Stephanie Ortoleva, a human rights attorney who was a Human Rights Officer at the U.S. Department of State and served on the United States governmental delegation to the UN during UNCRPD negotiations, describes the situation of women with disabilities generally and in the conflict environment. She then reviews the evolution and legal framework of the United Nations Women, Peace, and Security strategy, and explores the intersection of the UNCRPD and other human rights instruments protecting women. She continues by outlining current practices on the international, national, and regional levels to integrate women with disabilities into peace-building and development programs, and concludes with recommendations for changing policy and practice.

In *Legal Regulations Relating to the Passive and Active Legal Capacity of Persons with Intellectual and Psychosocial Disabilities in Light of the Convention on the Rights of Persons with Disabilities and the Impending Reform of the Hungarian Civil Code*, István Hoffman, a Ph.D. in Administrative Law, Lecturer of the Department of Administrative Law and Faculty of Law and Political Sciences of Eötvös Loránd University in Budapest, and György Köncei, a Professor of Disability Studies at Eötvös Loránd University in Budapest, Chair of the Governmental Committee for the European Social Charter, Council of Europe, and one of the founding members of the Committee on the Rights of Persons with Disabilities, trace the history of legal treatment of individuals with intellectual and psychosocial disabilities from the civil law system under Roman law to modern-day Hungarian law.

Finally, in *Future of Disability Law in Japan: Employment and Accommodation*, Jun Nakagawa, a Professor in the Department of Social Policy, Faculty of Social Welfare at Hokusei Gakuen University, Japan, and Peter Blanck, University Professor and Chairman of the Burton Blatt Institute at Syracuse University, first describe current disability employment law in Japan and the concept of accommodation. They then set out ideas relevant to the future of Japanese disability employment law, considering the comparative perspective. They conclude with recommendations for future disability law and policy development in Japan.

Taken together, these articles represent an important contribution to the emerging field of international disability human rights law, as expressed through the UNCRPD. Loyola Law School and the Loyola International and Comparative Law Review were privileged and honored to host such an important conference.