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China and Disability Rights

MICHAEL ASHLEY STEIN*

I. INTRODUCTION

This article, arising from a March 19, 2010, Loyola Law School, Los Angeles, conference on "The Significance of the United Nations Convention on the Rights of Persons with Disabilities,"[1] explores and critiques the role that the People's Republic of China (PRC or 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. Consequently, while there is reason to be hopeful about the future prospects for persons with disabilities in China, there likewise is cause to question the extent of the PRC's national level commitment.

II. CHINA ON THE INTERNATIONAL STAGE

The PRC has held itself out as a champion for global disability rights for some thirty years. To name a few notable instances, China supported the 1981 United Nations International Year of Disabled Persons,[2] as well as the two subsequent Asian and Pacific Decades of Persons with Disabilities,[3] ratified the International Labour

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1. For additional details, see The Significance of the United Nations Convention on the Rights of Persons with Disabilities, Loyola of Los Angeles International and Comparative Law Review Symposium (Mar. 19, 2010), http://ilr.lls.edu/2010Symposium.html (last visited Oct. 15, 2011).

2. *See* G.A. Res. 36/77, at 176–77, U.N. Doc. A/RES/36/77 (Dec. 8, 1981). The General Assembly, of which China is a part, proclaimed 1981 as the International Year of Disabled Persons. *Id.* at 176.

3. *See* G.A. Res. 47/88, at 3, U.N. Doc. A/RES/47/88 (Apr. 5, 1993); United Nations Economic and Social Commission for Asia and the Pacific Res. 58/4, Resolutions Adopted by the

Organization's respective conventions on employing and educating persons with disabilities,[4] adopted the Biwako Millennium Framework on disability and development,[5] and has hosted the Far East and South Pacific Games for the Disabled in Beijing,[6] the Special Olympics Worldwide Summer Games in Shanghai,[7] and most recently, the Paralympic Games in Beijing.[8] Of greatest significance, and as detailed in the next section, the PRC was highly supportive of the negotiation and adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD or Convention),[9] a progressive human rights treaty that it has since ratified.[10]

By embracing these initiatives and activities, China has engendered a significant expressive affect.[11] PRC approbation demonstrates to the global community that equality for persons with disabilities is an important issue, one that a leading world power has expended political capital to champion.[12] It also indicates that although criticism is justified for various human rights shortcomings in China,[13]

Commission, 58th Sess., May 16–22, 2002, at 2 (May 22, 2002) [hereinafter UNESCAP Res. 58/4]. As stated above, China belongs to the bodies adopting these resolutions.

4. *See, e.g.*, INT'L LABOUR FORCE, ILO VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION NO. 159 AND RECOMMENDATION NO. 168, (2008). China is a member of the Governing Body of the International Labour Organization.

5. *See generally* U.N. Secretariat, Biwako Millennium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific, Note by the Secretariat, Econ. & Soc. Comm'n for Asia & the Pac., U.N. Doc. E/ESCAP/APDDP/4/Rev.1 (Nov. 27, 2002).

6. *Previous Hosts*, KL '06 FESPIC GAMES, http://web.archive.org/web/20080622192940/http://www.kl06fespicgames.com.my/aboutFespic/default.asp?p=about&p1=about2&what=archive (accessed by searching for KL '06 FESPIC Games in the Internet Archive index).

7. 2007 SPECIAL OLYMPICS WORLD SUMMER GAMES, http://www.2007specialolympics.com/Webenglish/index.aspx (last visited Oct. 15, 2011).

8. BEIJING 2008 PARALYMPIC GAMES, http://en.paralympic.beijing2008.cn/index.shtml (last visited Oct. 15, 2011).

9. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter CRPD].

10. *Convention and Optional Protocol Signatures and Ratifications*, U.N. ENABLE, http://www.un.org/disabilities/countries.asp?id=166 (last visited Oct. 15, 2011) [hereinafter *Convention and Optional Protocol Signatures and Ratifications*].

11. *See generally* Alex Geisinger & Michael Ashley Stein, *A Theory of Expressive International Law*, 60 VAND. L. REV. 77, 109–14 (2007) (explaining how treaties exert expressive effects that lead States to change their behavior).

12. *See generally* Michael Ashley Stein & Janet E. Lord, *Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities*, in THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: EUROPEAN AND SCANDINAVIAN PERSPECTIVES 17, 31–37 (Gerard Quinn & Oddný Mjöll Arnardóttir eds., 2009) (describing the CRPD as an international expressive value trigger and a national action trigger).

13. For example, the Chinese government highly censors many avenues for free speech, "from cellphone text messages to social networking services; from online chat rooms to blogs,

the PRC has made efforts to facilitate awareness and acceptance of disability human rights. Hence, China's sustained support of disability as a field suitable for a rights-based approach underscores its validity.[14] Likewise, it signals to States that have not yet committed to disability-based rights that the trend among global actors—including those, like China, that historically have not been recognized as human rights leaders—is to cooperate on schemes that bolster disability human rights.[15]

China has utilized State-controlled media outlets—especially China Daily[16] and Xinhuanet[17]—to document and aggressively publicize its role as a progressive champion of disability rights.[18] These media outlets have emphasized the PRC's commitment to disability rights by highlighting improvements in conjunction with reports on world-stage moments, such as the 2010 World Expo in Shanghai[19] and the 2008

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films and e-mail." Michael Wines et al., *China's Censors Tackle and Trip Over the Internet*, N.Y. TIMES, Apr. 8, 2010, at A1.

14. Put another way, support from China enables various processes that international law scholars have described as "transnational legal process," "socialization," "acculturation," "signaling," and a "New World Order." *See, e.g.*, Harold Hongju Koh, *Why Do Nations Obey International Law?*, 96 YALE L.J. 2599, 2625, 2630, 2646 (1997); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 628, 630 (2004); Daniel A. Farber, *Rights as Signals*, 31 J. LEGAL STUD. 83, 87–88 (2002); ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 15–19 (2004).

15. Along the same lines, the Bush administration's disengagement with the CRPD negotiations was a lost opportunity for universal support (and technical assistance). By contrast, the Obama administration's signing of the CRPD and providing international cooperation on its implementation, even in advance of ratification, lends credence to the global disability rights agenda. *See generally* Michael Ashley Stein & Janet E. Lord, *The Law and Politics of US Participation in the UN Convention on the Rights of Persons with Disabilities*, *in* HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 199 (Shareen Hertel & Kathryn Libal eds., 2011).

16. China Daily represents itself as "the national English-language newspaper . . . targeted at Western mainstream society." *See China Daily Website*, CHINA DAILY, http://www.chinadaily.com.cn/cd/introduction.html (last visited Oct. 15, 2011).

17. Xinhuanet is the online news service of the Xinhua News Agency, China's official press entity whose mission is to "publicize China and report the world" and whose web-based news stories purportedly reach more readers globally than Reuters and the Associated Press. *Brief Introduction*, XINHUA, http://news.xinhuanet.com/english/2007-08/31/content_6637522.htm (last visited Oct. 15, 2011).

18. For an insightful discussion of Chinese media in another role, as civil society monitor, see Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 (2005).

19. *See Expo Appealing to Teenagers*, XINHUA (May 15, 2010, 21:29:10), http://news.xinhuanet.com/english2010/2010-05/15/c_13296590.htm (describing the Life and Sunshine Pavilion at the Shanghai World Expo as "the first pavilion especially designed for disabled people in the 159 years of Expo history. The pavilion, which covers 1,200 square meters, focuses on how technology could make cities a better place for disadvantaged people, such as accessible life wheelchairs and special designed computers.").

Paralympic Games.[20] The reports have also underscored positive developments in the aftermath of globally significant events of more negative character, like coverage of schools built specifically for children who became disabled in the Sichuan Earthquake of May 2008.[21] In sum, Chinese media has consistently portrayed the government as a global promoter of the rights of persons with disabilities, with special emphasis on investment in education[22] and in rehabilitation services,[23] subsidies paid to municipal governments and businesses that hire employees with disabilities,[24] job creation programs,[25] initiatives for improved access to information,[26] legal aid

20. *See, e.g.*, Wang Qian, *Paralympic Spirit Still Alive and Well in Beijing*, CHINA DAILY (Dec. 4, 2008, 08:13), http://www.chinadaily.com.cn/cndy/2008-12/04/content_7269346.htm ("China has invested a great deal of money into promoting and developing sports for the disabled. It is not limited to the playground, but also to promoting their lives."); *Paralympic Glory*, CHINA DAILY (Sept. 17, 2008, 07:38), http://www.chinadaily.com.cn/cndy/2008-09/17/content_7032650 .htm (expressing pride in the enthusiastic audience that the 2008 Paralympic Games found in Beijing and noting that many public buildings have become wheelchair-accessible due to those Games).

21. *See, e.g.*, *Handicapped Students' Life Two Years After Sichuan Earthquake*, XINHUA (May 13, 2010, 07:27:42), http://news.xinhuanet.com/english2010/photo/2010-05/13/c_13291190 .htm (providing a photojournalist's account of positive experiences among students in schools that were created for children who became disabled during the 2008 Sichuan Earthquake).

22. *See, e.g.*, *China Vows to Spend More on Education for Disabled*, CHINA DAILY (Sept. 12, 2008, 07:13), http://www.chinadaily.com.cn/bizchina/2008-09/12/content_7021268.htm (describing the government's $87 million investment in 190 new schools for disabled children in 2008); Liu Weifeng, *Disabled Students Get New Focused Attention*, CHINA DAILY (Apr. 6, 2004, 00:32), http://www.chinadaily.com.cn/english/doc/2004-04/06/content_320831.htm (surveying various tuition-free and blind and deaf schooling initiatives in the Guangdong province).

23. *See, e.g.*, Cao Li, *Nationwide Drive Launched to Aid Disabled*, CHINA DAILY (Oct. 6, 2009, 13:31), http://www.chinadaily.com.cn/china/2009-10/06/content_8765637.htm (describing a new two-year campaign to train "100,000 community-based rehabilitation professionals"); *All Handicapped Chinese to Enjoy Rehabilitative Services by 2015*, CHINA DAILY (Aug. 30, 2002, 14:23), http://www.chinadaily.com.cn/en/doc/2002-08/30/content_134317.htm (citing the government's announcement of goal to provide all disabled persons in China with access to rehabilitative services by 2015).

24. *See, e.g.*, Wang Qian, *Career Boost for Disabled Beijingers*, CHINA DAILY (Apr. 1, 2009, 07:52), http://www.chinadaily.com.cn/cndy/2009-04/01/content_7636185.htm (outlining Beijing government's $32 million employment subsidy program covering 16,400 companies).

25. *See, e.g.*, *Nation to Create More Jobs for Disabled*, CHINA DAILY (May 16, 2005, 05:21:08), http://www.chinadaily.com.cn/fortune/en/doc/2005-05/16/content_442403.htm (describing 'redoubling' of government efforts called for by Vice-Premier Hui Liangyu to create a better work environment for the disabled); *China Regulates to Help Disabled Find Jobs*, CHINA DAILY (Feb. 14, 2007, 19:13), http://www.chinadaily.com.cn/china/2007-02/14/content_809697 .htm (announcing passage of government regulation in 2007 to "provide more training opportunities to the disabled and help them find jobs").

26. *See, e.g.*, *$22M Program to Make Disabled Chinese Better Informed*, CHINA DAILY (Jan. 13, 2009, 15:30), http://www.chinadaily.com.cn/bizchina/2009-01/13/content_7393245.htm (highlighting public investment in a program to establish a website providing information on "rehabilitation training courses, distance education and entertainment," as well as a national database of disabled persons).

services,[27] and medical and housing benefits.[28] These reports are in conjunction with numerous official reports of the government's general support of the rights of people with disabilities in the domestic context.[29] Notably, the State-controlled media reports do not detail negative aspects regarding the daily lived experience of persons with disabilities as are reported outside of the PRC. These range from socially exclusionary lack of physical accessibility[30] to egregious labor exploitation[31] and servitude as beggars.[32]

III. CHINA AND THE CRPD

Returning to the international stage, in December 2001 the General Assembly approved an Ad Hoc Committee (Ad Hoc Committee) to consider whether a disability human rights treaty was necessary or desired.[33] The impetus came from a combination of persons with disabilities not receiving adequate protection under existing United Nations human rights treaties while also being ignored by other

27. *See, e.g.*, *2,500 Legal Aid Centers Help Disabled*, CHINA DAILY (Sept. 15, 2008, 10:07), http://www.chinadaily.com.cn/china/2008-09/15/content_7027843.htm ("China has made strenuous efforts to protect the interests of the disabled by both offering legal aid and carrying out random checks on the implementation of the Law on Safeguarding the Legal Rights of the Disabled . . . .").

28. *See, e.g.*, *China Seeks More Medical, Housing Benefits for Disabled*, CHINA DAILY (Nov. 12, 2008, 19:51), http://www.chinadaily.com.cn/china/2008-11/12/content_7198939.htm (citing CDPF efforts to bring "costs of psychiatric care, eye operations, hearing aids for disabled children, and rehabilitation" within coverage of individual medical insurance, as well as obtaining housing subsidies and home-renovation assistance for low-income families with disabled persons).

29. *See, e.g.*, *Vice Premier Urges More Care for Disabled*, XINHUA (May 10, 2010, 12:29:10), http://news.xinhuanet.com/english2010/china/2010-05/10/c_13285322.htm (quoting Vice Premier Hui Liangyu's statement at the 2010 Shanghai World Expo that "'[t]he hearts of the disabled should be filled by warm love'"); *Human Rights: China Putting Its People First*, CHINA DAILY (Aug. 28, 2010), http://www.chinadaily.com.cn/cndy/2009-04/14/content_7673711.htm (republishing 2009–2010 National Human Rights Action Plan of China); *China Urges More Social Opportunities for Disabled People*, CHINA DAILY (Dec. 13, 2008), http://www.chinadaily.com.cn/chinagate/doc/2000-12/13/content_246281.htm (citing the Chinese delegation's support for an increase in social opportunities for disabled persons at Campaign 2000 for Asia-Pacific Decade of Disabled Persons).

30. *See* Peter Ford, *Paralympics Bring Forward Plight of China's Disabled*, CHRISTIAN SCI. MONITOR, Sept. 8, 2008, http://www.csmonitor.com/World/Asia-Pacific/2008/0909/ p01s02-woap.html.

31. *See* Barbara Demick, *China's Disabled Exploited as Slaves*, L.A. TIMES, Feb. 26, 2011, http://articles.latimes.com/2011/feb/26/world/la-fg-china-brick-factory-20110226.

32. *See* John Ray, *China's Disabled Children are Sold into Slavery as Beggars*, GUARDIAN OBSERVER, July 22, 2007, http://www.guardian.co.uk/world/2007/jul/22/china.theobserver.

33. *See* Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, G.A. Res. 56/168, at 2, U.N. Doc. A/RES/56/168 (Feb. 26, 2002).

international programming.[34] For example, the Millennium Development Goals (MDGs)—the most ambitious development scheme in the world, and the core United Nations program on global poverty alleviation—speak to eradicating poverty and improving education.[35] Persons with disabilities account for ten percent of the world's population but comprise twenty percent of those living in poverty;[36] only two percent of children with disabilities in developing countries receive a formal education,[37] and one-third of all primary age children out of school have a disability.[38] Nevertheless, disability was not referenced in the eight MDGs, and even to date has not specifically been included in their implementation.[39] Accordingly, there was strong moral and political pressure for clarifying and including the existing human rights of persons with disabilities in international obligations and schemes.[40]

Chinese support for a disability-specific treaty preceded that of the United Nations. In 2000, a full year before the General Assembly authorized the Ad Hoc Committee, the first World NGO Summit on Disability was convened in Beijing.[41] The resulting Beijing Declaration on the Rights of People with Disabilities in the New Century called for the adoption of exactly such an instrument.[42] Similarly, in the midst of the Ad Hoc sessions, China hosted a regional meeting that produced the Beijing Declaration on Elaboration of an International Convention to

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34. *See* Gerard Quinn, *National Human Rights Institutions—Catalysts for Change*, *in* GERARD QUINN ET AL., HUMAN RIGHTS AND DISABILITY: THE CURRENT USE AND FUTURE POTENTIAL OF UNITED NATIONS HUMAN RIGHTS INSTRUMENTS IN THE CONTEXT OF DISABILITY 273–86 (2002), *available at* http://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf.

35. *See United Nations Millennium Development Goals*, UNITED NATIONS, http://www.un.org/millenniumgoals (last visited Oct. 15, 2011).

36. *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. Doc A/64/180].

37. *The Committee on the Rights of Persons with Disabilities Meets for the First Time*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS (Feb. 2009), http://www.ohchr.org/EN/NEWSEVENTS/Pages/FirstMeetingCRPD.aspx.

38. U.N. Doc A/64/180, *supra* note 36, ¶ 19.

39. *See United Nations Millennium Development Goals*, *supra* note 35.

40. As noted by a specially-tasked rapporteur, "persons with disabilities are going to find themselves at a legal disadvantage in relation to other vulnerable groups" without a specialized human rights treaty because "unlike the other vulnerable groups, they do not have an international control body to provide them with particular and specific protection." LEANDRO DESPOUY, HUMAN RIGHTS AND DISABLED PERSONS, at 40–41, U.N. Sales No. E.92.XIV.4 (1993).

41. *See generally* WORLD NGO SUMMIT ON DISABILITY, BEIJING DECLARATION ON THE RIGHTS OF PEOPLE WITH DISABILITIES IN THE NEW CENTURY ¶ 1 (2000), *available at* http://www.icrpd.net/implementation/en/toolkit/files/beijing.htm.

42. *See id.* ¶ 9.

Promote and Protect the Rights and Dignity of Persons with Disabilities,[43] which embraced the ongoing negotiations toward a treaty and encouraged States to adopt progressive provisions.[44]

Because the General Assembly had gone only so far as to approve an Ad Hoc Committee to consider the wisdom of developing a disability-specific human rights treaty, the first two negotiation sessions focused on its viability and possible content.[45] During the first two negotiation sessions, the States' representatives[46] agreed that a convention was necessary, and that it would comprise civil, political, economic, social, and cultural rights in a holistic manner.[47] China was among the vast majority of States that actively supported a disability-specific instrument.[48] The strongest dissent was voiced by the Bush administration while justifiably, but without intended irony, touting the virtues of American disability law and policies.[49]

The Chinese delegation remained stalwart supporters of drafting and adopting a treaty despite, similar to many other States,[50] disagreeing

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43. Beijing Declaration on Elaboration of an International Convention to Promote and Protect the Rights and Dignity of Persons With Disabilities, U.N. Econ. & Soc. Comm'n for Asia & the Pac. (Nov. 7, 2003), http://www.netzwerk-artikel-3.de/un-konv/doku/beijing-declaration.pdf.

44. *See id.* ¶ 8(d), (h). These provisions included several that came to fruition, including special attention to the situation of women with disabilities and the need for international cooperation.

45. *See* Stein & Lord, *supra* note 15.

46. *See* KATHERINE GUERNSEY ET AL., CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: ITS IMPLEMENTATION AND RELEVANCE FOR THE WORLD BANK 3–4 (2007), http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf.

47. *See* Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75, 83–85 (2007) [hereinafter *Disability Human Rights*] (explaining how Draft Articles indicated international community's rethinking of "sparse" disability human rights protections).

48. For an archive of the negotiations, including position papers, see *Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons With Disabilities*, U.N. ENABLE, http://www.un.org/disabilities/default.asp?id=1423 (last visited Oct. 15, 2011).

49. *See* Michael Ashley Stein & Janet E. Lord, *Ratify the U.N. Disability Treaty*, FOREIGN POLICY IN FOCUS (July 9, 2009), http://www.fpif.org/fpiftxt/6247 [hereinafter *Ratify the U.N. Disability Treaty*].

50. As stated by the PRC representative at the time the CRPD was adopted, "The Chinese government is among those who promote the formulation of the Convention in early days. In the past 5 years, the Chinese delegation took an active part in the work of the Ad Hoc Committee on the Convention and made its due contribution. In order to complete the drafting of the Convention on time, many delegations, including mine, did their best to demonstrate flexibility on some contentious issues in the Convention during consultations." Deputy Permanent Representative of China to the U.N. Ambassador Liu Zhenmin, Statement at UNGA 61st Session on the Adoption of the Convention on the Rights of Persons with Disabilities (Dec. 13, 2006), http://www.un.org/esa/socdev/enable/convstatementgov.htm#ch.

on certain issues or the particular points to advance.[51] One of these areas involved international monitoring; a position consistent with the PRC's broader aversion to international oversight.[52] China firmly and correctly held that international instruments were first and foremost to be applied and monitored domestically.[53] It initially resisted the creation of an international monitoring body to receive complaints, review State reports, and issue recommendations in favor of international cooperation and national level review.[54] Such a body, the Committee on the Convention of the Rights of Persons with Disabilities, was in the end established.[55] Notably, the PRC has not yet ratified—and is unlikely to ratify anytime in the near future—the Optional Protocol to the CRPD,

51. For example, after absenting itself from the majority of negotiations, the United States sent a delegation head to the Seventh and Eighth Ad Hoc sessions in order to focus on its issues of interest, which included removing elements of sexual and reproductive health, and the category of areas of occupation. *See Ratify the U.N. Disability Treaty*, *supra* note 49.

52. Miron Mushkat & Roda Mushkat, *The Political Economy of Sovereignty Revisited: A Re-Examination of the Public Choice Model in Light of China's Accession to the World Trade Organization*, 7 ASPER REV. INT'L BUS. & TRADE L. 115, 135 (2007) (noting that "'[s]tate entrepreneurs pursue alternative forms of compliance, disguise state participation in the market, and exploit their control over information, in an effort to resist monitoring and enforcement regimes'") (quoting Paul Thiers, *Challenges for WTO Implementation: Lessons from China's Deep Integration into an International Trade Regime*, 11 J. CONTEMP. CHINA 413, 413 (2002)).

53. *See generally* Michael Ashley Stein & Janet E. Lord, *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*, 83 U. WASH. L. REV. 449, 452–56 (2008) [hereinafter *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*].

54. Position Paper by the People's Republic of China, Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rights and Dignity of Persons with Disabilities, ¶ 12, July 29–Aug. 9, 2002, U.N. Doc. A/AC.265/WP.3 (2002) ("The international community should undertake to cooperate in matters relating to persons with disabilities on the basis of the principle of experience-sharing and equal benefit. The developed countries should make allowances for the effects of the developing countries' low economic level and the incomplete state of their social security, and should take concrete steps to provide the developing countries with support and financial assistance in order to help them successfully solve the problems of people with disabilities."); *see also* Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Seventh Session, Vol. 8, No. 10 (Jan. 27, 2006), http://www.un.org/esa/socdev/enable/rights/ahc7sum27jan.htm (recording the Chinese delegation's statement that "each country should be able to decide on an effective and practical monitoring system"). At times, China seemed to relent on these points. *See* Ad Hoc Comm. on the Convention on the Rights of People with Disabilities, Daily Summary of Discussion at the Third Session, Vol. 1, No. 1 (May 24, 2004) (agreement by the PRC that monitoring should be done by an expert committee, modeled on other relevant international instruments, which would review national reports of compliance).

55. *See* CRPD, *supra* note 9, art. 34; *see also* Michael Ashley Stein & Janet E. Lord, *Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential*, 32 HUM. RTS. Q. 689, 690 (2010) [hereinafter *Monitoring the Convention on the Rights of Persons with Disabilities*].

which would make it responsive to the CRPD Committee,[56] yet it lobbied effectively to place its own nominated expert on the Committee.[57]

A second point of particular interest to China during the CRPD negotiations was the issue of how disability would be defined under the Convention. Disability rights advocates have long contended that the category of individuals labeled as "disabled" is a social construct, and thus culturally variable.[58] This assertion is borne out by the wide divergence in self-reported prevalence rates of disability amongst States, which vary wildly from less than one percent in Kenya to twenty percent in New Zealand, even as the World Health Organization utilized a baseline assumption of ten percent and the World Bank estimated ten to twelve percent.[59] Discussion of an univocal definition was delayed until the very last Ad Hoc session, with the PRC preferring not to set a standard.[60] Ultimately, the CRPD did not include a formal definition within Article 2 (Definitions),[61] but instead declared in Article 1 (Purpose) that the disability category includes persons "who have long-term physical, mental, intellectual or sensory impairments" that "in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[62] China retained its own classification system of disability that yielded a six and one

56. *See* Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, art. 11, U.N. Doc. A/RES/61/106 (Jan. 24, 2007); *Convention and Optional Protocol Signatures and Ratifications*, *supra* note 10.

57. *See Members of the Committee on the Rights of Persons with Disabilities*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx (last visited Oct. 15, 2011). Professor Jia Yang, the PRC's nominated expert, is the Founding Director of the Women's Committee of China's Association of the Blind and a Member of the World Blind Union's Asia-Pacific Region Women's Committee. *Id.*

58. This is one of the basic premises of the social model of disability, and is linked to the attendant notion that barriers excluding persons situated within the disability category are artificial and remedial. *See* Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579, 622–26 (2004).

59. *See* DANIEL MONT, MEASURING DISABILITY PREVALENCE 2 (2007), *available at* http://siteresources.worldbank.org/DISABILITY/Resources/Data/MontPrevalence.pdf.

60. *See* WORLD NETWORK OF USERS AND SURVIVORS OF PSYCHIATRY, IMPLEMENTATION MANUAL FOR THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 3 (2008), http://wnusp.rafus.dk/documents/WNUSP_CRPD_Manual.pdf.

61. CRPD, *supra* note 9, art. 2.

62. *Id.* art. 1. This provision is notable for two reasons. First, it is rare for a human rights treaty to contain an overt "Purpose" article. Second, by placing this progressive, socially constructed view of disability within an article entitled "Purpose," the CRPD drafters precluded States from reserving against it.

third percent prevalence rate,[63] and in doing so, overtly shared its concern that a broader definition would yield a larger number of disabled persons, leading to a greater financial obligation.

In addition to the above two issues, China endeavored to respond to Western-driven disability advocacy during the Ad Hoc sessions by interpreting a number of issues through its own, culturally Asian lens. A unique feature of the CRPD negotiations was that the stakeholders—here, people with disabilities—were included in the negotiations.[64] This was the first time for such an occurrence in United Nations core human rights treaty development.[65] Consequently, disabled persons and their representative organizations were involved from the initial discussions and did a great deal to educate the States' representatives about disabilities.[66] This signal achievement carried over into the Convention's substantive provisions.[67] At the same time, the reality of United Nations negotiations is that the people who participate can financially afford to do so, which usually translates to individuals or organizations from developed countries.[68] Additionally, although the disability rights community organized itself into an international disability caucus that intervened with a unified position on issues,[69] the outcome frequently reflected Western ideals.

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63. *See generally* INCLUSION OF PEOPLE WITH DISABILITIES IN CHINA, INT'L LABOUR ORG., 1 (July 2009), http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_112380.pdf.

64. *See* GUERNSEY ET AL., *supra* note 46, at 3.

65. *See id.* at 4.

66. *See* Michael Ashley Stein & Janet E. Lord, *Participation in International Agreements as Transformative Social Change: The UN Convention on the Rights of Persons with Disabilities*, *in* MAKING RIGHTS REAL (Jody Heymann ed., 2011); *Monitoring the Convention on the Rights of Persons with Disabilities*, *supra* note 55, at 691–92.

67. *See* Michael Ashley Stein, Charlotte McClain-Nhlapo & Janet E. Lord, *Disability Rights, the MDGs and Inclusive Development*, *in* MILLENNIUM DEVELOPMENT GOALS AND HUMAN RIGHTS: PAST, PRESENT AND FUTURE (Malcolm Langford et al. eds., forthcoming 2011). To name a few examples, the continuing and central role of people with disabilities is reflected explicitly in CRPD provisions requiring States Parties to "closely consult with and actively involve persons with disabilities" in the development of all national laws, policies, and implementation schemes related to CRPD transposition (Article 4), monitoring (Article 33), reporting (Article 35), and international cooperation (Article 32). CRPD, *supra* note 9, arts. 4, 33, 35, 32.

68. *See* Chandler H. Udo, *Nongovernmental Organizations and African Governments: Seeking an Effective International Legal Framework in a New Era of Health and Developmental Aid*, 31 B.C. INT'L & COMP. L. REV. 371, 386 (noting the linkage, through funding, between nongovernmental organizations and Western countries).

69. *See* Stefan Tromel, *A Personal Perspective on the Drafting of the United Nations Convention on the Rights of Persons with Disabilities*, *in* 1 EUROPEAN YEARBOOK OF DISABILITY LAW 115, 117–18 (Gerard Quinn & Lisa Waddington eds., 2009).

Two connected examples of advocacy positions arising from developed countries are independent living[70] and legal capacity.[71] Collectively, these notions hold that people with disabilities ought to be independent and autonomous, make their own decisions, and live in a manner of their own choosing.[72] In its most elemental position, it means that disabled persons should never be warehoused in large institutions and subjected to conditions the international community equates to torture, including involuntary sterilization, physical restraints, and other inhumane living conditions.[73] This is a circumstance that historically predominated, and continues to exist in many nations.[74] These paired notions aver that, at a minimum, people with disabilities cannot be deprived of what non-disabled persons assume are basic and protected legal rights, such as opening a bank account or marrying.[75] In its most progressive manifestation, combining independent living and legal capacity results in people with disabilities receiving facilitation and support to be able to live full, equal, and meaningful lives in their communities.[76]

70. *See* CRPD, *supra* note 9, art. 19.

71. *See id.* art. 12.

72. *See generally* CHAVA WILLIG LEVY, A PEOPLE'S HISTORY OF THE INDEPENDENT LIVING MOVEMENT 5–23 (1988) (describing personal stories of independent living movement for people with disabilities).

73. The CRPD states that "[e]very person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others." CRPD, *supra* note 9, art. 17.

74. *See generally* MENTAL DISABILITY RIGHTS INT'L, BEHIND CLOSED DOORS: HUMAN RIGHTS ABUSES IN THE PSYCHIATRIC FACILITIES, ORPHANAGES, AND REHABILITATION CENTERS IN TURKEY 1–35 (2005), *available at* http://www.mdri.org/PDFs/reports/turkey%20final%209-26-05.pdf (explaining abuses against and inadequate treatment for institutionalized people with physical and mental disabilities in Turkey); MENTAL DISABILITY RIGHTS INT'L, HIDDEN SUFFERING: ROMANIA'S SEGREGATION AND ABUSE OF INFANTS AND CHILDREN WITH DISABILITIES, 1–27 (2006), *available at* http://www.mdri.org/PDFs/reports/romania-May%209%20final_ with%20photos.pdf (reporting on human rights abuses against children with disabilities in institutions in Romania); MENTAL DISABILITY RIGHTS INT'L & CTR. FOR LEGAL & SOC. STUDIES, RUINED LIVES: SEGREGATION FROM SOCIETY IN ARGENTINA'S PSYCHIATRIC ASYLUMS, 6–36 (2007), *available at* http://www.mdri.org/PDFs/reports/MDRI.ARG.ENG.NEW.pdf (describing inhumane conditions for individuals with mental disabilities in psychiatric institutions in Argentina). In addition to the reports cited by MDRI, *supra*, it is notable that several central European States have used funds from the European Union to build new and larger institutions. *See* EUROPEAN COAL. FOR CMTY. LIVING, WASTED TIME, WASTED MONEY, WASTED LIVES . . . A WASTED OPPORTUNITY? A FOCUS REPORT ON HOW THE CURRENT USE OF STRUCTURAL FUNDS PERPETUATES THE SOCIAL EXCLUSION OF DISABLED PEOPLE IN CENTRAL AND EASTERN EUROPE BY FAILING TO SUPPORT THE TRANSITION FROM INSTITUTIONAL CARE TO COMMUNITY-BASED SERVICES 23–31 (2010), *available at* http://www.community-living.info/documents/ECCL-StructuralFundsReport-final-WEB.pdf.

75. *See* CRPD, *supra* note 9, art. 12, ¶ 2 ("States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.").

76. *See id.* art. 12, ¶ 5 ("States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own

For China, the idea of persons with disabilities living independently was received with some consternation during the Ad Hoc sessions. State representatives questioned who would want to deprive individuals with disabilities of their families, as in the PRC's view, family members were best positioned to understand and care for them.[77] In addition, China (and a few other States) considered living in an interdependent household to be a time-honored and sensible tradition.[78] This disjuncture highlights different cultural understandings: in the West, independent living is commonly understood as facilitating activities to enable an individual's autonomy, rather than the more literal interpretation of living on one's own.[79]

Significantly, the International Disability Caucus during the Ad Hoc sessions was understandably motivated by horrific experiences of institutionalization, and in response staked out the position that all persons with disabilities always have full legal capacity.[80] Consequently, the disability rights advocates held that there is no such thing as substituted decision making, which in practice often leads to guardianship arrangements.[81] China maintained the opposite view,

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financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property."); *id.* art. 19 ("States Parties . . . shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community . . . .").

77. *Cf.* Ad Hoc Comm. on the Convention on the Human Rights of Persons with Disabilities, Daily Summary of Discussion at the Seventh Session, Vol. 8, No. 5 (Jan. 20, 2006) [hereinafter January 20 Summary of Discussion at Seventh Session] ("China agreed that the word 'independently' should be deleted from the title [of Article 15, Living Independently and Being Included in the Community], since it implies 'independently of others' in Chinese."); Annex I: Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Report of the Working Group to the Ad Hoc Committee, art. 15 n.51, U.N. Doc. A/AC.265/2004/WG.1 (Jan. 27, 2004) ("Some members of the Working Group expressed the concern that the words 'living independently' in the title and chapeau of this draft Article does not reflect the cultural norm in many countries, and that the words might suggest that persons with disabilities should be separated from their families.").

78. *See* January 20 Summary of Discussion at Seventh Session, *supra* note 77 (summarizing the Chinese delegation's concern that the CRPD independent living provisions might be misconstrued to imply independence from other persons, and noting the delegation's agreement with countries like Costa Rica that expressed the view that persons with disabilities "have equal rights to choose how they live in the community and thus they should be able to choose to live with family members if so desired").

79. *See* Dr. Adolf D. Ratzka, Indep. Living Inst., Presentation at "Our Common World" (May 1997), http://www.independentliving.org/toolsforpower/tools7.html.

80. *See* Position Paper by Int'l Disability Alliance, CRPD Forum, Principles for Implementation of CRPD Article 12, ¶¶ 3–5, 2008, *available at* http://www.international disabilityalliance.org/wp-content/uploads/2009/08/Article_12_Principles_Final.doc.

81. *See* Amita Dhanda, *Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?*, 34 SYRACUSE J. INT'L L. & COM. 429, 445–46 (2007).

namely, that at times some people with disabilities cannot exercise their rights even with facilitation from their supporters and families, and therefore require substituted decision making. This view is consistent with long-held PRC laws and policies.[82] One outcome of this difference in opinions on legal capacity and its significance is that China, along with the Arab group and Russia, inserted a footnote in a late draft of the treaty splitting the right to have capacity, which everyone possesses, and the right to exercise capacity, which was presumed, but may not always be the case for a certain subset of individuals.[83] Though that footnote was eventually removed,[84] the scope and operation of legal capacity is still a very controversial issue flowing from the CRPD,[85] the topic on which the majority of reservations have been made by States when ratifying,[86] and making up the heart of high profile litigation before the European Court of Human Rights.[87]

82. *See* Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 10 (Feb. 4, 2005), http://www.un.org/esa/socdev/enable/rights/ahc5sum4feb.htm ("China proposed amending the [Coordinator's Report] to read 'some delegates expressed grave concern about the wording 'legal capacity,' and if these words need to be used they should be interpreted in each language to reflect legal capacity as to rights, not legal capacity to act.' In legal systems legal capacity can mean two different things."); Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 3 (Jan. 26, 2005), http://www.un.org/esa/socdev/enable/rights/ahc5sum26jan.htm ("China stated that . . . [i]f legal capacity means legal entitlement or legal rights, there is no problem. Capacity to act is a different concept in the Chinese language."); Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 2 (Jan. 25, 2005), http://www.un.org/esa/socdev/enable/rights/ahc5sum25jan.htm (noting China's position that "[i]f 'legal capacity' refers only to rights and entitlements, and not to the capacity to act, this concept should be supported").

83. *See* Tina Minkowitz, *The United Nations Convention on the Rights of Persons with Disabilities and the Right to be Free from Nonconsensual Psychiatric Interventions*, 34 SYRACUSE J. INT'L L. & COM. 405, 410–11 (2007).

84. *See* WORLD NETWORK OF USERS AND SURVIVORS OF PSYCHIATRY, *supra* note 60, at 5.

85. *See, e.g.*, *News & Events: Legal Capacity Conference*, HARVARD LAW SCHOOL PROJECT ON DISABILITY (Feb. 2010), http://hpod.org/activities/events-detail/legal-capacity-conference/ (describing a conference that "will present a variety of perspectives on the scope and operation of legal capacity").

86. For example, Australia declared "its understanding that the Convention allows for fully supported or substituted decision-making arrangements," and Canada declared "its understanding that Article 12 permits supported and substitute decision-making arrangements." *Declarations and Reservations*, U.N. ENABLE, http://www.un.org/disabilities/default.asp?id=475 (last visited Oct. 15, 2011).

87. To name one example, a recent case at the European Court of Human Rights, *Kiss v. Hungary*, involved Hungary's blanket prohibition on voting for individuals with mental disabilities (and any others) placed under plenary guardianship. The Court struck down the ban as violating both the European Convention on Human Rights and the CRPD. *See* Alajos Kiss v. Hungary, App. No. 38832/06 (Eur. Ct. of Human Rights May 20, 2010), http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=868214&portal=hbkm&source=externalbydocnu

The CRPD was adopted by consensus on December 13, 2006,[88] becoming the first human rights treaty of the twenty-first century.[89] It covers all aspects of the lived experiences of persons with disabilities, including ones that immediately come to mind, like education,[90] employment,[91] health care,[92] political participation,[93] and freedom of expression,[94] as well as those that must be highlighted from existing instruments, such as personal mobility[95] and independent living.[96] The Convention opened for signature on March 30, 2007,[97] at which time it received the largest number of signatures to a United Nations Convention on an opening day,[98] including China's.[99] The CRPD became operational on May 3, 2008,[100] followed by three Conferences of States Parties[101] and three meetings of the CRPD Committee[102] as of this writing.

IV. CHINA AT HOME

The year 1988 saw the establishment of the China Disabled Persons' Federation (CDPF)[103] under the leadership of Deng Pufang,[104] a son of Deng Xiaoping, one of China's senior leaders and architect of its "opening and reform" policies.[105] Drawing upon his family's politically

mber&table=F69A27FD8FB86142BF01C1166DEA398649. The Harvard Law School Project on Disability was involved in this decision, with its brief cited by the Court. *See Disability Rights Victory in Europe Won by Alum with Help from HPOD*, HARVARD LAW SCHOOL (June 22, 2010), http://www.law.harvard.edu/news/2010/06/22_disability.rights.html.

88. *See Timeline of Events*, U.N. ENABLE, http://www.un.org/disabilities/default.asp?navid=23&pid=153 (last visited Oct. 15, 2011) [hereinafter *Timeline of Events*].

89. *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) [hereinafter *Convention on the Rights of Persons with Disabilities Introduction*].

90. *See* CRPD, *supra* note 9, art. 24.

91. *Id.* art. 27.

92. *Id.* art. 25.

93. *Id.* art. 29.

94. *Id.* art. 21.

95. *Id.* art. 20.

96. CRPD, *supra* note 9, art. 19.

97. *Timeline of Events*, *supra* note 88.

98. *Convention on the Rights of Persons with Disabilities Introduction*, *supra* note 89.

99. *See Convention and Optional Protocol Signatures and Ratifications*, *supra* note 10.

100. *Timeline of Events*, *supra* note 88.

101. *See id.*

102. *See id.*

103. *About Us*, CHINA DISABLED PERSONS' FED'N, http://www.cdpf.org.cn/english/aboutus/aboutus.htm (last visited Oct. 15, 2011).

104. *See* MATTHEW KOHRMAN, BODIES OF DIFFERENCE: EXPERIENCES OF DISABILITY AND INSTITUTIONAL ADVOCACY IN THE MAKING OF MODERN CHINA 90 (2005).

105. *See id.* at 91.

powerful connections, Deng Pufang was able to gain PRC backing for the CDPF, as a quasi-government nongovernmental organization, to engage in otherwise non-viable advocacy efforts.[106] An early CDPF achievement was its facilitation of the 1990 Law on the Protection of Disabled Persons (1990 LPDP).[107] This was the same year that the United States passed the Americans with Disabilities Act (ADA),[108] before similar legislation in Australia[109] and the United Kingdom,[110] and a decade in advance of an employment antidiscrimination directive in the European Union.[111]

Anticipating CRPD ratification, China began to reflect on how to revise the 1990 LPDP. The eventual 2008 revision, the Law on the Protection of Persons with Disabilities (2008 LPPD),[112] was announced four months prior to CRPD ratification.[113] The 2008 LPPD falls significantly short of achieving the full range of CPRD core concepts in that it does not require, among other mandates: provisions of reasonable accommodation;[114] equal recognition before the law;[115] liberty and security of the person;[116] freedom from torture or abuse;[117] and removal of societal barriers to the full inclusion of women[118] and children with disabilities.[119] It also does not define discrimination trenchantly,[120] making its prohibition and ultimate eradication

106. *See id.* at 94–96.

107. Can ji ren bao zhang fa (残疾人保障法) [Law on the Protection of Disabled Persons] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 1990, effective May 15, 1991) 1990–1992 FALÜ QUANSHU 1268 (China), *translated in* 14 P.R.C. LAWS & REGS. V-03-00-101, *available at* http://www.dredf.org/international/china.html [hereinafter 1990 LPDP].

108. Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (2006).

109. Disability Discrimination Act (Act No. 135/1992) 1 (Austl.).

110. Disability Discrimination Act, 1995, c. 50 (U.K.).

111. Council Directive 2000/78, 2000 O.J. (L 303) 16 (EC).

112. Can ji ren bao zhang fa (残疾人保障法) [Law on the Protection of Persons with Disabilities] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2008, effective July 1, 2008), *translated in* China Disabled Persons' Federation, http://www.cdpf.org.cn/english/law/content/2008-04/10/content_84949.htm [hereinafter 2008 LPPD].

113. *See Convention and Optional Protocol Signatures and Ratifications*, *supra* note 10. China ratified the CRPD on August 1, 2008. *Id.*

114. *Cf.* CRPD, *supra* note 9, arts. 5, ¶ 3, 27, ¶ 1(i) (providing reasonable accommodations).

115. *Cf. id.* art. 12 (providing equal recognition before the law).

116. *Cf. id.* arts. 17–18 (providing protection for the integrity of person and liberty of movement and nationality).

117. *Cf. id.* art. 15 (providing "[f]reedom from torture or cruel, inhuman or degrading treatment or punishment").

118. *Cf. id.* art. 6 (providing protection for women with disabilities).

119. *Cf. id.* art. 7 (providing equality for children with disabilities).

120. *See* 2008 LPPD, *supra* note 112.

implausible.[121] In addition, the revised statute remains grounded in heavily medical-based notions of disability, and so the prevention and rehabilitation of disability retains its prior emphasis.[122] Professor Carole Petersen views these and other shortcomings in the 2008 LPPD as conflicting with CRPD-recognized rights of persons with disabilities to life,[123] marriage,[124] and procreation,[125] through human rights violating practices embedded in policies like the one-child rule.[126] And Dr. Fengming Cui argues that the 2008 LPPD, as well as education laws, do not bring about disability-inclusive education at a level required by the CRPD.[127]

Without in any way downplaying the limitations of the 2008 LPPD, or disagreeing with the critiques offered by Professor Petersen and Dr. Cui, it bears noting that the CRPD sets the global standard for disability human rights[128] and therefore includes best practices that few States, on paper or in reality, have yet to completely follow.[129] The 2008 LPPD, moreover, is in some ways more progressive than its predecessor as evidenced by the shift to "people first" language—"persons with disabilities" as opposed to "the disabled"—and some other more

121. On the essential difficulty encountered by the United States government in enforcing its comparatively clearer guidelines established under the Americans with Disabilities Act, see Michael E. Waterstone, *A New Vision of Pubic Enforcement*, 92 MINN. L. REV. 434, 438–40 (2007); Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of "Abusive" ADA Litigation*, 54 UCLA L. REV. 1, 10 (2006).

122. Notions of prevention and rehabilitation are often abhorred by Western disability rights advocates, in large measure because of the prejudicial history against persons with disabilities having been justified by "objective" medical reasons. *See generally Disability*, *in* 2 THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY 334 (Stanley N. Katz et al. eds., 2009). Nevertheless, having witnessed avoidable river blindness in South Africa and people (who would otherwise use wheelchairs) crawling on the ground in Bangladesh, to name only a few examples, I believe that much good can be achieved from preventing disabling conditions (e.g., does anyone—with or without a disability—affirmatively want to contract a debilitating illness?) and that service-oriented providers can develop capacity to act as disability rights agents.

123. CRPD, *supra* note 9, art. 10.

124. *Id.* art. 23, ¶ 1(a).

125. *Id.* arts. 23, ¶ 1(a)–(b), 25(a).

126. *See* Carole J. Petersen, *Population Policy and Eugenic Theory: Implications of China's Ratification of the United Nations Convention on the Rights of Persons with Disabilities*, 8 CHINA: INT'L J. 85, 101–08 (2010).

127. *See* Fengming Cui, *Inclusive Education In China: An Important Topic for Research and Advocacy* (on file with author).

128. *See Disability Human Rights*, *supra* note 47, at 83–85, 97–98.

129. For an analysis of how American disability law compares to the CRPD, see MICHAEL ASHLEY STEIN & MICHAEL E. WATERSTONE, FINDING THE GAPS: A COMPARATIVE ANALYSIS OF DISABILITY LAWS IN THE UNITED STATES TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2008), *available at* http://www.ncd.gov/rawmedia_repository/bbae6ede_8719_48b8_b40f_33938b9a2189?document.pdf.

politically sensitive terms.[130] It has the potential to include a broader category of persons with disabilities[131] and is framed more as a rights-based approach consistent with the CRPD because it makes clear what rights exist and that they may be pursued.[132] Further, the 2008 LPPD is culturally specific to China. Accordingly, families and communities are tasked with supporting persons with disabilities,[133] a national day of assisting persons with disabilities remains from the earlier iteration,[134] people with disabilities themselves are admonished to help themselves, be positive, and contribute to "socialist development,"[135] and the CDPF retains its central role of monitoring, facilitating, and implementing the national law.[136]

What is decidedly indefinite about the 2008 LPPD is how well it will be implemented. For enforcement, the statute relies on the promulgation of future regulations, whose contents are not yet clear, and on future directives to provincial and local officials, whose commitment to making abstract mandates real is unknown.[137] More specifically, it remains to be seen how the regulations to the 2008 LPPD will manifest rights to "launch complaints" to the CDPF and to "competent departments,"[138] what "disciplinary measures," "administrative penalties," and civil and criminal redress are contemplated,[139] and what impact any of these devices will have. To be fair, the challenge of effective implementation of disability rights is the fly in the ointment of every State.[140] This includes the United States, where despite strong antidiscrimination laws, the relative employment rate of people with disabilities has fallen steadily since 1984, some six years before the passage of the ADA in 1990.[141]

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130. *See, e.g.*, 2008 LPPD, *supra* note 112, art. 1.
131. *See id.* art. 2.
132. *See id.* arts. 3, 59.
133. *See id.* art. 16.
134. *See id.* art. 14.
135. *See id.* art. 10.
136. *See* 2008 LPPD, *supra* note 112, art. 8.
137. *See id.* art. 5.
138. *See id.* art. 59.
139. *See id.* arts. 61–62.
140. *See, e.g.*, *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*, *supra* note 53, at 467–74.
141. Richard V. Burkhauser et al., *Accounting for the Declining Fortunes of Working-Age People with Disabilities* (forthcoming 2011) (on file with author). The relative and absolute decline in employment rates for Americans with disabilities since the mid-1980s has been documented in several papers by economist Richard V. Burkhauser, whose work is listed online at http://www.human.cornell.edu/bio.cfm?netid=rvb1.

Applying different means of addressing similar problems, China has implemented a number of unique measures to make its national laws and policies more concrete. To illustrate this conundrum in a specific context, consider the disability-related employment policies outside the 2008 LPPD.[142] Commentators have identified the shift in China's disability employment policies as a move from "concentration" to "dispersion."[143] Prior to 1990, the Chinese government had a policy of placing disabled persons in State-run "welfare workshops," which later became free-market "welfare enterprises" after the 1978 opening of China's economy to the West.[144] The Chinese government mandated that workers with disabilities should account for at least thirty-five percent of the staff of these enterprises.[145]

Beginning in 1990 with the LPDP, China's policies have expanded to include focus on employment of persons with disabilities through self-employment[146] and a quota system under which all employers must, in theory, ensure that persons with disabilities make up a percentage of their staffs to be set by provincial governments.[147] The quota system is designed to be enforced through a system of fines administered by provincial governments.[148] It also is said to be supplemented by a system of mandatory (but undefined) tax incentives for welfare enterprises[149] and persons with disabilities who obtain independent employment through establishment of a business.[150] A further element of China's implementing framework is a requirement that employment services agencies affiliated with the CDPF provide vocational training and job recommendations (among other services) to persons with disabilities.[151] Notably, China has not altogether abandoned

142. For a more thorough discussion of these and other policies, see generally RONALD BROWN, UNDERSTANDING LABOR & EMPLOYMENT IN CHINA (2009).

143. Jin Huang et al., *From Concentration to Dispersion: The Shift in Policy Approach to Disability Employment in China*, 20 J. DISABILITY POL'Y STUD. 46, 46 (2009).

144. *Id.* at 47–48.

145. *Id.* at 47.

146. *See, e.g.*, 1990 LPDP, *supra* note 107, arts. 33–34; 2008 LPPD, *supra* note 112, arts. 33–34 (providing for general government "encouragement," as well as preference in licensing and waiver of administrative fees, for persons with disabilities who undertake self-employment).

147. *See* Huang et. al., *supra* note 143, at 47, 49–50; *see also Regulations on the Employment of Persons With Disabilities*, CHINA DISABLED PERSONS' FED'N, art. 8 (Apr. 10, 2008), http://www.cdpf.org.cn/english/lawsdoc/content/2008-04/10/content_84888.htm (setting a national quota floor of 1.5 percent for all businesses and leaving it to provincial governments to establish their own specific ratios above that floor).

148. *See Regulations on the Employment of Persons With Disabilities*, *supra* note 147, arts. 25–28.

149. *See id.* art. 17.

150. *See id.* art. 19.

151. *See id.* art. 22.

"concentrative employment units" (i.e., welfare enterprises), though the percentage of persons with disabilities on the staffs of such work units currently needs to meet a standard of twenty-five percent,[152] a reduced goal from the pre-1990 level of thirty-five percent.[153]

From the perspective of an advocate applying the CRPD, the PRC's use of quotas and segregated workshops are highly problematic since those measures arise from charitable motivations that do not accord persons with disabilities equal and rights-based access to the open labor market.[154] Indeed, the States' representatives, individuals with disabilities, and disabled persons organizations who negotiated Article 27 of the CRPD relating to employment specifically omitted references to quotas or sheltered workshops as not being in the spirit of the treaty's rights orientation.[155] By contrast, the vocational training and tax incentives contemplated by the Chinese framework are very much on a level with the CRPD's employment equity mandates[156] and fall within a range of equality measures used by nearby Asian States.[157] China's self-reported overall employment rate of eighty-four percent for persons with disabilities,[158] if true, would be among the highest in the world, eclipsing a disability employment rate estimated at twenty percent in the United States.[159] The variance between these two countries' respective disability employment figures, in combination with the placement of workers with disabilities in sheltered PRC factories, raises concerns about their comparability.

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152. *See id.* art. 11.

153. Huang et al., *supra* note 143, at 47–48.

154. *See, e.g.*, G.A. Res. 47/88, *supra* note 3, at 2. These schemes are also not in line with the spirit of the ILO Convention and Recommendation relating to workers with disabilities.

155. *See* MICHAEL S. LYNK & MICHAEL ASHLEY STEIN, COMPARATIVE PERSPECTIVES ON THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS EMPLOYMENT EQUITY MANDATE (forthcoming) (on file with author).

156. *Id.*

157. *See generally* Michael Ashley Stein & Penelope J.S. Stein, *Beyond Disability Civil Rights*, 58 HASTINGS L.J. 1203, 1225–40 (2007) (illustrating international practices in line with disability human rights based framework).

158. *See* White Paper of the Information Office of the State Council on China's Employment Situation and Policies (PRC), April 2004, http://english.gov.cn/official/2005-07/28/content_17992.htm.

159. As of July 2010, the unemployment rate among working age adults with disabilities, sixteen to sixty-four, is approaching eighty percent. *See* 2010 KESSLER FOUNDATION/NOD SURVEYS OF AMERICANS WITH DISABILITIES, SURVEY OF AMERICANS WITH DISABILITIES (July 26, 2010), http://www.2010DisabilitySurveys.org/indexold.html.

V. CONCLUSION

Having played a significant role in the development of international laws, policies, and programs on behalf of the global population of persons with disabilities, China has been reluctant to make an equivalent commitment to applying the same standards at home. Some commentators believe this type of divergence is motivated by a State desire to cull reputation points in the international arena without ever intending to domestically implement those rights.[160] Other international scholars might assert that such States acted with the intention of narrowing the gap incrementally.[161] Yet others might aver that whatever the true intention when ratifying the CRPD, the processes of socialization and enculturation will inculcate disability human rights values into these States over time.[162] Regardless of which school of thought prevails,[163] the current situation involving the reported eighty-three million persons with disabilities in China[164] does not reflect the standards promulgated by the CRPD. Time will tell how deeply the PRC is committed to its citizens with disabilities.

160. *Cf.* Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 2010–11 (2002) (arguing that countries may be substantially more likely to fail to comply with treaty obligations if they obtain reputational benefits but suffer little reputational cost when they fail to observe these obligations).

161. *Cf.* BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 125–29 (2009) (stating that international human rights treaties have predictable and important effects on domestic politics).

162. *Cf.* Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUR. J. INT'L L. 171, 180, 182–83 (2003) (arguing that treaty law plays an important role in process of incorporation of human rights norms).

163. *See generally* Geisinger & Stein, *supra* note 11, at 78–131 (providing an account of the expressive law value of human rights treaties).

164. Cerise Fritsch, *Right to Work? A Comparative Look at China and Japan's Labor Rights for Disabled Persons*, 6 LOY. U. CHI. L.J. 403, 413 (2009).