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Ratify the UN Disability Treaty

By Michael Ashley Stein and Janet E. Lord. Edited by John Feffer, July 9, 2009

The United Nations Convention on the Rights of Persons with Disabilities (CRPD, or the Convention) is the first human rights treaty of the 21st century. The CRPD is also the first legally binding international instrument with the power specifically to protect the rights of the world's largest minority, some 650 million persons with disabilities.

Adopted in December 2006, along with an optional protocol providing for communications and inquiry procedures, the Convention is currently in operation. Some 139 states have signed and 58 states have ratified the Convention, but not the United States. Nor did the United States actively participate in or otherwise facilitate the CRPD's negotiations and drafting, despite a wealth of technical expertise garnered from years of experience with the seminal Americans with Disabilities Act (ADA).
The Obama administration can use the opportunity of signing and submitting to the Senate for ratification the Convention as a means of reaffirming the commitment of the United States rejoining the global community generally, and to continuing American leadership in the area of disability law and policy. Hence, action on the CRPD would signal support for the human rights efforts that we already fund and facilitate beyond our borders.

Finally, the CRPD represents a break from the well-worn and misconceived Cold-War era split between economic, social, and cultural rights on the one hand, and civil and political rights on the other. In expressing the connections between different human rights, in part through the expression of the U.S. disability rights concept of reasonable accommodation, the Convention offers a new way to conceptualize the whole field of human rights.

**A Critical Convention**

The CRPD relates to contemporary UN human rights conventions in two significant and substantive ways. The Convention holistically combines civil and political rights with economic, social, and cultural rights, demonstrating the Vienna Declaration’s notion that human rights are truly "indivisible, interrelated and interconnected." Additionally, the CRPD emulates the Convention on the Rights of the Child by comprehensively cataloging human rights obligations for a targeted population, in this instance, persons with disabilities.

In terms of substance, the aims of the CRPD are consistent with that of U.S. disability law. Indeed, the core principles articulated in the CRPD are firmly embedded in American disability law — respect for human dignity, nondiscrimination, and reasonable accommodation, autonomy, and participation. Indeed, it's the first human rights treaty to provide explicit expression of reasonable accommodation as a core component of non-discrimination. The concept of reasonable accommodation under the CPPD requires that necessary and appropriate modification and adjustments be made where needed in order to
facilitate the enjoyment of human rights by persons with disabilities, whether in employment, education, access to justice, health care, or other contexts. Where gaps arise between the two sets of legal mandates, they do so because U.S. domestic civil rights laws and international human rights laws operate from distinct, but not necessarily mutually exclusive, perspectives. Thus, U.S. law is either consistent with the mandates of the Convention or capable of reaching those levels through more rigorous implementation and/or additional actions by Congress.

To provide one example, an obvious gap in coverage between the U.S. federal disability scheme and the CRPD involves job training and rehabilitation. Title I of the ADA, which governs employment, contains strong antidiscrimination prohibitions, and was intended as the most expedient method of bringing about social and economic equality for people with disabilities. However, additional policy measures supporting that aspiration have been gradual or nonexistent. It took nearly a decade after the ADA's passage to raise the level of income that disabled persons could earn while still maintaining health care coverage, and the United States has yet to pass a national vocational training program for people with disabilities. Consequently, while the ADA forbids employment discrimination, the means by which disabled Americans can obtain and keep gainful employment have not been provided. Yet there is no reason to believe that a combination of aggressive implementation of existing law, as well as additional steps by Congress, could not approximate the CRPD's more comprehensive scheme.

**U.S. Resistance**

In December 2001, the UN General Assembly authorized an ad-hoc committee to consider a specialized disability human rights treaty. During the first two ad-hoc sessions, held in July 2002 and June 2003 respectively, representatives debated the necessity and of drafting a treaty targeted at protecting the human rights of persons with disabilities. The U.S. position during those sessions was that
disability was a matter of domestic, rather than international, concern. Moreover, that in light of the ADA being considered the leading statute in this field, the United States would neither sign nor ratify an international agreement relating to disability rights.

To bolster that position, the Bush administration sent a skeletal delegation to initial negotiating sessions and didn't permit members in attendance to intervene (proffer official emendations). During the final sessions of the negotiation, the Bush administration replaced one of its most seasoned human rights treaty negotiators from the Department of State with a junior-level official, possessing neither substantive disability law expertise nor human rights treaty experience, to lead the U.S. delegation. This occurred at a time when key provisions were being finalized, including the issues of particular interest to American foreign policy (e.g., rights to sexual and reproductive health, international monitoring).

The Bush administration's absence was glaring in view of the extensive experience of the United States in the disability rights field. These path-breaking laws — the Architectural Barriers Act, the Rehabilitation Act, the Education for all Handicapped Children Act — set international standards. The Bush administration's aversion to cooperation was also particularly striking because of the references in the CRPD to American disability law (notably, the concept of reasonable accommodation) and its inherent values (such as its emphasis on independence and autonomy).

**The Bricker Legacy**

The Bush administration chose not to complete the legacy of President George H.W. Bush, who ushered in the ADA, and indeed arrogantly stated at the outset of the CRPD negotiations that this was a law not for us, but for the foreign "others." While the previous administration had a particularly hostile attitude toward human rights treaties, cultural resistance to human rights treaties, and indeed international law in general, extends back in time to the 1950s.
Although the United States started out in a position of international leadership in the early international human rights movement, which included the participation of Eleanor Roosevelt and other Americans, former Senator John W. Bricker (R-OH) brought an abrupt end to this pioneering role in the early 1950s. Bricker proposed an amendment to the Constitution that would have made all treaties non-self-executing, meaning among other things that individuals would be unable to invoke treaty provisions in U.S. courts absent implementing legislation. Instrumentally, Bricker's amendment would have made it extremely difficult for the U.S. to join human rights treaties, thus helping to preserve racist state legislation.

While President Dwight D. Eisenhower was successful in defeating the Bricker amendment, success came at a cost. In order to defeat the amendment, the administration promised not to accede to any international human rights treaties. Bricker's legacy lives on in some measure, owing to an enduring resistance to U.S. participation in human rights treaties. There remains a real disconnect between some of the human rights strengthening activities we pursue abroad in USAID, State Department-funded development assistance activities, and what we are doing back home.

**A Return to the Global Community**

Regrettably, the United States has the poorest record of ratification of human rights treaties among all industrialized nations, having ratified only 3 of 26 international human rights treaties. The CRPD offers our nation an opportunity to join the global community as part of a historic Convention, and to signal acceptance of the Vienna Declaration's principles that human rights are holistic in nature. As well, the CRPD is a vehicle to reevaluate domestic laws and policies in a manner that would respond to current shortcomings and thereby maintain America's precedence in the disability field.

On December 11, 2007, then-candidate Barack Obama called for the United
States to "lead the world in empowering people with disabilities to take full advantage of their talents and become independent, integrated members of society." He further called for a reclamation of America's global leadership by becoming a signatory to — and having the Senate ratify — the UN Convention on the Rights of Persons with Disabilities.

As president, Obama continues to underscore his support for disability rights (notwithstanding his blunder on late-night television, in which he likened his bowling skills to the Special Olympics and for which he quickly issued an apology). The State Department is spearheading the preparatory work on behalf of the administration for signature and submission of the CRPD to the Senate for ratification. Unlike other potential human rights treaty ratifications that might garner Senate consideration — for instance, the Convention on the Rights of the Child, and the Convention on the Elimination of all forms of Discrimination against Women — disability law is an area in which the United States claims a precedence that it can and must prove.

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