| Chapter 10 |

The International Protection of the Rights of Persons with Disabilities: The United Nations Framework

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ABSTRACT

As Václav Havel has stated, among the amazing and remarkable facets, as well as mysteries, of human existence is the fact that various groups of human beings have such definite distinctions from one another. These distinctions manifest themselves in so many forms, including their very own customs, various traditions, various beliefs, various skin colours, and personal forms of dress, among so many other aspects. This wonderful mosaic of variation, which exists due to the numerous and various communities on earth, can indeed be embraced with a sense of tolerance and patience, since it is something that enhances our lives in the end. It is a reality that can be honoured and valued, and even celebrated with genuine joy. This essay gives a concise history of the trajectory of disability throughout the centuries. It is a general principle that culture in any form, e.g., ancient Greek, Egyptian, and Christian, does not discriminate against individuals with disabilities by nature. If this is the case, then it logically follows that prejudices and biases against people with disabilities do not directly result from the surrounding dominant major cultures. Rather, these prejudices are reproduced and come to life again through the ongoing engagement with the surrounding dominant cultures. This happens alongside deeply ingrained, primitive impulses, ancient pagan superstitions, religious beliefs, and the concept of otherness within society. This has been seen in the development of the understanding of the concept of disability since the 1980s, and it indicates the complexity and multifacetedness of society's understanding of disability. This paper shall track these issues over time by showcasing the operations of the United Nations concerning the lives of persons with disabilities. It has made significant contributions in attitudinal transformation, and the Convention on the Rights of Persons with Disabilities has crowned the journey of people with disabilities and parents in living independently.

KEYWORDS

disability history, Human Rights Council, CRPD, Special Rapporteur, Committee on the Rights of Persons with Disabilities, Taigetos, equal treatment

1. History of Disability

In this chapter, I hope to step in and vividly recall the plight of individuals with disabilities, as it may have been seen within the context of reality. Kálmán and Könczei

Nóra Jakab (2026) 'The International Protection of the Rights of Persons with Disabilities: The United Nations Framework' in Jakab, N. (ed.) *Human Rights Protection of Vulnerable Groups*. Miskolc–Budapest: Central European Academic Publishing, pp. 431–463. https://doi.org/10.71009/2026.nj.hrpovg_10

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have raised a valid observation in stating that the areas of rehabilitation and research into the history relating to disability are quite uncommon and not very popular in our society today. It is a general assumption that culture per se – and not just Greek and Egyptian culture – and Christianity, does not carry out acts of discrimination or exclusion against such individuals. And if this is so, then the prejudices against disabled people do not have their origin in the great cultures, but are generated and recreated in contact with atavistic, old instincts, pagan superstitions, religious beliefs and the hegemony of the respective great cultures, side by side with and in the face of difference.[1] This will be even more important for the modern concept of disability.

There were many influences in pre-modern societies that threatened a child's upbringing. Malnutrition for pregnant women, war, disease and a lack of medical attention meant that many babies and mothers did not survive childbirth, or that the child was born with physical and/or mental handicaps. The scarcity of extant ancient historical records, however, makes it extremely challenging to construct an accurate and detailed understanding of how disabled adults and children were viewed by the various peoples of the multicultural societies of ancient times. Their striking differences in appearance, body form, growth rate, and health condition were mainly perceived through the lens of superstition and, as a general rule were accounted for as evidence of divine punishment or some sort of moral fault. In fact, the concept of disability as such – as a general category of human experience – did not exist in the minds of individuals living in these ancient societies; it was not thought of as a distinct category separate from the common human experience. Nor was there a monolithic opposition to disability.[2]

In ancient empires, including those in Mesopotamia, individuals with disabilities were regarded as an indication of what would be in the future, with consequences in the afterlife. If there was no earthly cause for the disability, then it was thought to have been brought about by something supernatural. In ancient Egypt, there exists a rich historical document in the form of the Ebers papyrus scroll, which dates back to about 1550 BC. This document of interest includes quotes and excerpts from even older texts by a renowned physician named Imhotep, who lived around 3000 BC. The content of the Ebers papyrus includes a diverse set of recipes, valuable life wisdom, and a list of magical remedies that were intended for use by physicians in those times. These remedies range in nature, addressing a series of ailments such as miscarriages and curing tumours. In addition, the papyrus is surprising in its references to symptoms of mental retardation, contains descriptions of epilepsy, and, for the first time in documented history, gives a detailed explanation of the phenomenon of deafness. The Egyptians were not only interested in the potential for healing individuals with disabilities but also aimed to ease their pain and enhance their social standing. Blind children were taught to play musical instruments by priests, and many of them participated in a variety of temple rituals. During some eras, blind individuals comprised

1 Kálmán and Könczei, 2002, pp. 31–32.
2 See more ibid., p. 31 ff; Braddock and Parish, 2001, pp. 15–17.

the majority of musicians and poets. The patron deity of the mentally disabled was Osiris, the most highly revered Egyptian god. The deaf were not so lucky. In Ancient Egypt, dwarves were occasionally able to achieve high social ranks. An example from the 23rd century BC is Seneb, born with a grave disability, yet who ran a textile factory in the Pharaoh's court. This was not just a mark of social recognition, but also a significant fact in the light of occupational rehabilitation. As a reward for his fidelity to the Pharaoh, Seneb was granted a series of privileges, among them the use of a palanquin. He amassed a considerable fortune.[3]

In the Torah, the most significant written record and foundational text of ancient Judaism, we have the profound injunction, '[t]hou shalt not curse the dumb, nor put obstacles in the way of the blind, but fear thy God.' This conveys something very fundamental to a moral principle. The ancient Jews had a very strongly held belief that it was absolutely imperative that nobody was to be discriminated against or marginalised based on their disabilities. They believed in the idea that all individuals, even though they may have physical disabilities, must be provided with the opportunity to lead a life as equally respected and dignified as the rest of society. While society seems to have recognised a charitable obligation to people with disabilities, disability was also perceived as a punishment meted out by God. The belief that illness was inflicted by an angry deity or by a supranatural power was widespread among ancient people.[4]

Life in the ancient world was nasty, brutish and short. The most privileged were those who happened to be freeborn, well-to-do males in perfect health. But of course the overwhelming majority did not belong to that ideal category. The ancient Greeks, particularly in the city-state of Sparta, where the renowned institution of Taigetos was especially active and prominent, cultivated an extensive and profound appreciation for a healthy, robust, and athletic body. This social appreciation of physical fitness and health was deeply ingrained in their culture. At the same time, it is important to note that if one had incurred some form of disability, either due to the ravages of war or through the consequences of hard physical labour, this physical disability was not considered to be representative of their nature or worth as a human being.[5]

Among the expansive and historically monumental Roman Empire, people who were labelled as being mentally disabled were commonly allocated a guardian whose responsibility was to help them handle their diverse matters and day-to-day activities. Likewise, people who were found unable to communicate verbally, and were apparently deaf, were also considered to be intellectually disabled. As a result of such labelling, they were excluded from the possibility of engaging and being part of public affairs and matters of society independently. Dwarf slaves, along with the mentally disabled, were commonly employed in a variety of ways to entertain and amuse the rich elite of society. The owning of these individuals was regarded as a sign of very

3 Kálmán and Könczei, 2002, pp. 38–39.
4 Braddock and Parish, 2001, p. 14., Kálmán and Könczei, 2002, pp. 32–34.
5 Braddock and Parish, 2001, p. 14.

high prestige and social standing for their owners, elevating their position within an affluent society. It was also very much believed that the presence of these individuals in the home would ensure and lead to good luck and auspicious circumstances to the household.[6]

Medieval man's thinking in small, dispersed villages was governed by awe: beliefs and superstitions. For anything other than good and fair could be the handiwork of evil powers only. Intellectual disability was classified as a disease by medieval man. All diseases were held to be God's punishment, including "madness". There were no treatments for infectious diseases that worked, the most sought-after ones being strict isolation.[7] The Middle Ages were notable for contradictory beliefs held about disability. One common conception of disability was that some disabilities had demonological origin. Kálmán and Könczei entertain the suspicion that deeply ingrained prejudices against people with disabilities were actually based on the general view that such people were somehow less than human. This can be demonstrated by the historical case of the witch-swans and the horrific example of the smuggled children, which are used to bring to light this unsettling attitude.[8]

In Europe, the dissemination of the Christian faith and the growth and establishment of church institutions were accompanied by the emergence of the first institutions aimed at providing care for the poor, needy, and disabled. Monasteries themselves were the very first institutions that opened their doors to receive and provide care for the needy segment of the population, taking a leading position in this endeavour. By the time the late Middle Ages approached, the inner architecture of the monasteries had largely adapted and transformed to fulfil this essential function well. With the development of society, other types of establishments emerged, including guesthouses, poorhouses, orphanages, soup kitchens, and hospitals, which collectively functioned to deliver the overall care and support for those in need.[9]

During the 17th century, a new type of "sensibility", a new way of thinking, rose up in the advanced nations of Europe. This formed the foundation for the stigmatisation, and then the exclusion and ultimately "confinement" within institutions. The initial social feeling was established, followed by a symbolic social status – the idea of "those who should be locked up" – and the initial large lock-up institutions. Consequently, these institutions thus named "workhouses", which were the precursors and prototypes of such institutions, began to make their appearance one after another in Europe from the 17th century onwards. These institutions were referred to as workhouses in England, while in Germany they were referred to as Zuchthaus. Besides this type of institution, there was yet another type of holding facility, which was labelled as a 'hospital" of the "asylum" variety, where the objective was not to afford any type of treatment to the individuals imprisoned therein, but merely to oversee and

6 Ibid., p. 15.
7 Ibid., pp. 17–19.
8 See more Kálmán and Könczei, 2002, p. 46 ff.
9 Braddock and Parish, 2001, p. 25.

guard those who had been condemned to a period of incarceration. In Paris, Louis XIV issued a decree on 27th April 1656 establishing a network of institutions known as the "Hôpital general" (public hospital), which consisted of several institutions. This "umbrella organisation" was intended to receive the poor, the indigent and the chronically sick. It included the Bicêtre and the Salpêtrière. However, by the 18th century the Salpêtrière had become an asylum for mentally handicapped women and the Bicêtère for similarly handicapped men, imprisoning them in prison-like conditions. The actual hospitals of today, such as the Hôtel-Dieu in Paris and the Bethlem Royal Hospital ("Bedlam") in London, did however provide some rudimentary care for the mentally handicapped.[10]

It was in medieval tradition that even Renaissance man viewed mental retardation and mental illness as a form of divine retribution, frequently the result of the parents' sins.[11]

In the first decades of the 19th century, public discourse and the press strongly "thematised" the plight of the mentally handicapped and the insane in closed institutions. The abuses that were made public provoked public outrage. This may also have contributed to the emergence in European and North American asylums of humanistic healing procedures rather than unbridled violence.[12]

The turning point was the wars that took place in the 20th century. In most countries, big care institutions were created. The first rehabilitation legislation was enacted in the USA in 1919, and since the 1920s there has been a federal rehabilitation programme in place. Meanwhile during the 1940s, the horrific concept of a life not worth living emerged, with the emergence of compulsory sterilisation, the murder of disabled individuals, and T/4. Later, as the 20th century has begun, there has been a distinct change in focus that diverts from the simple attention to care and the traditionally understood role of the patient. Rather, focus is redirected to such concepts as self-care, independence, integration, and the inclusion of individuals in their communities. One very notable figure who has come to the forefront in the Independent Living Movement is Ed Roberts, whose work has been invaluable. The movement towards deinstitutionalisation is being driven by disabled individuals themselves, along with their parents, who are involved in a great deal of work claiming that basic human rights that have long been withheld. The greatest advances and outcomes of these efforts are notably visible in the USA, where profound change has occurred. Perhaps the most empowering piece of legislation to have come out of these efforts is undoubtedly the Americans with Disabilities Act, which has made an enormous difference.[13]

In tracing the history of disability, the path travels from Taigetos to equal opportunities, from a transcendent, albeit essentially paternalistic, and later

10 Ibid., p. 20. See also Driver, 2004, pp. 1834–1884.
11 Braddock and Parish, 2001, p. 21.
12 Ibid., p. 29 ff.
13 Kálmán and Könczei, 2002, pp. 58–62.

medicalised approach, to a human rights agenda and the imperative to secure equal opportunities.

2. Legislative History and Protection in the UN

The United Nations, or simply the UN, has also taken serious and concrete steps towards the rights protection of individuals who are disabled and have made significant efforts to enhance and upgrade their overall quality of life through a wide array of schemes and programs solely for this very cause.

3. Policy

In April 2018, the Executive Committee chaired by the Secretary-General underlined the need for the United Nations system to improve its performance in the field of disability inclusion within the framework of supporting Member States in their quest for the 2030 Agenda for Sustainable Development, leaving no one behind and reaching the farthest in all United Nations pillars. In this particular context, and as indicated by its decision 2018/20, the Executive Committee has established a series of important tasks to be carried out: (a) The Executive Office of the Secretary-General is entrusted with the responsibility to coordinate a comprehensive institutional review concerning the current practice of the United Nations system in mainstreaming disability into the various activities of the organisation; (b) Building on the work already undertaken and the above-mentioned review, the sub working group of the Inter-Agency Support Group on the Convention on the Rights of Persons with Disabilities, in collaboration with the Department for General Assembly and Conference Management, should develop a robust policy, an actionable plan, and an accountability framework with the aim of enhancing accessibility across the entire system and ensuring the mainstreaming of the rights of persons with disabilities across the activities of the organisation. Most recently, the Nations Disability Inclusion Strategy has been serving as an important and comprehensive foundation that aims to facilitate sustainable and transformative development regarding disability inclusion across all pillars of the extensive work implemented by the United Nations.

In the broad-ranging Strategy, the various organisations making up the United Nations system reiterate and reaffirm that the full and equal enjoyment of the human rights of all persons with disabilities is an inalienable, integral, and indivisible part of all human rights and fundamental freedoms to which every person is entitled. This important Strategy is the outcome of an intensive and thorough process launched by the Secretary-General in April 2018, particularly aimed at enhancing system-wide accessibility for persons with disabilities, as well as ensuring that their rights are effectively mainstreamed in all applicable frameworks and discussions. The development of this initiative was well guided by a comprehensive and inclusive institutional

review, facilitated very effectively by the Special Rapporteur on the rights of persons with disabilities. The Strategy not only encompasses a system-wide policy but also an accountability framework and other implementation modalities that are key to its effectiveness. The policy states the strongest possible commitment levels and a comprehensive vision for the United Nation's system of disability inclusion in the upcoming decade. Its primary objective is to create an effective institutional foundation that will facilitate the implementation of the Convention on the Rights of Persons with Disabilities successfully. It is also seeking to align itself with the 2030 Agenda for Sustainable Development, along with other international human rights conventions. This policy also entails development and humanitarian action commitments so that there is a synergised response to disability rights promotion and inclusion globally. Some relevant targets are:

- Goal 4: Strive to ensure that there is an equitable and inclusive quality of education for all and develop opportunities for lifelong learning for everyone, including in a major way, persons with disabilities, as specified in Target 4.5.
- Goal 10: Strive for the reduction of inequality among and within various countries, with a key focus on social, economic, and political inclusion for all, with a specific focus on including persons with disabilities, as specified in Target 10.2.
- Goal 11: Strive to make cities and human settlements inclusive, safe, resilient, and sustainable, with a key focus on enhancing accessibility for all individuals, as seen in Target 11.2.[14]

The accountability framework has two major elements that are closely related to each other: (a) an entity accountability framework with a total of 15 common-system indicators, where the framework is largely focused on four specific areas of importance. These are: leadership, strategic planning and management; inclusiveness; programming; and organisational culture. In addition to this, (b) there is also a United Nations country team accountability scorecard having particular reference on the inclusion of disability. This scorecard is in the process of being developed and should be finalised sometime in the latter half of the year 2019. Apart from these elements, this framework also includes detailed timetables, technical guidelines, as well as the division of responsibilities necessary for the effective and thorough implementation of the policy. Through the holistic Strategy that has been presented, the United Nations system will collectively endeavour to strategically incorporate the rights of persons with disabilities into all aspects of its work. This incorporation will not only be externally directed through diversified programming efforts toward outreach and support, but also inwardly within the internal practices and policies of the organisation itself. In addition, the Strategy also seeks to establish a sense of trust and confidence among persons with disabilities that they are not merely valued members of society but whose inherent dignity and rights will be fully realised.

14 United Nations, 2021.

It is also imperative that in the work environment, persons with disabilities are met with an enabling environment that will permit them to participate and engage with full and effective participation on an equal basis with their colleagues in ensuring genuine equality and inclusiveness. Mainstreaming a human rights-based approach to disability, along with the use of targeted measures as specifically designed for this objective, will make the issues, experiences, and voices of persons with disabilities an inherent and vital part of the design, implementation, monitoring, and evaluation of policy and programmes across all political, economic, and societal spheres. This is needed to enable persons with disabilities to benefit on an equal footing, in the same way as their peers. The total aim of this endeavour is to realise the equality of results for everyone and to support the evolution of an inclusive culture within the overall United Nations system.[15]

The key initiatives are:

International Day of Persons with Disabilities: Celebrated annually on December 3rd to sensitise and raise awareness as well as understanding of disability issues. Global Disability Summit: A global platform for governments, organisations, and individuals to share ideas and make commitments on disability inclusion. One of the extremely crucial and significant results that was generated out of the International Year of Disabled Persons was the very meticulous and comprehensive formulation of what is simply referred to as the World Programme of Action concerning Disabled Persons. This critical program was adopted by the General Assembly on 3rd December 1982, by virtue of its resolution number 37/52. The World Programme of Action, simply referred to as the WPA, is a comprehensive global strategy which was specially formulated in order to reinforce not only the prevention of disability but also the process of rehabilitation as well as equalisation of opportunities for disabled individuals. This strategy seeks to ensure and promote the full and effective participation of persons with disabilities in all aspects of social life as well as in the broader context of national development programs. The WPA also provides a vital priority to the pressing need to tackle the topic of disability through an inclusive human rights approach. Its three distinct chapters provide a comprehensive analysis of the fundamental principles, key concepts, and various definitions that are associated with disabilities; they offer a broad outline of the current worldwide situation with respect to individuals who live with disabilities; and they offer a set of carefully reasoned recommendations for effective action that can be taken at the national, regional, and international levels. The concept of "equalisation of opportunities" is a fundamental theme of the Workforce Participation Act and is also the philosophy underlying the efforts to provide individuals with disabilities a full opportunity to participate and engage in all spheres of social and economic life. One of the major principles in support of the overall theme is the principle that matters relating to individuals with

15 Ibid.

disabilities must not be viewed in isolation or as separate problems, but within the overall framework of normal services offered by society at large.[16]

It also important to mention the World Health Organisation (WHO) works on disability and rehabilitation issues, including the promotion of accessible health services and research on disability.[17]

The United Nations Development Programme (UNDP) mainstreams disability into development programming in order to advocate for inclusive development.[18]

The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities have been elaborated taking into account all the valuable experience gained during the period of the United Nations Decade of Disabled Persons, 1983–1992. The International Bill of Human Rights, consisting of a series of important documents, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and the World Programme of Action relating to Disabled Persons, serves as a vital basis of human rights. Together all these important instruments form the political and moral framework that underlies and supports the elaboration of the Rules. Although it is a fact that the Rules are not compulsory or mandatory in nature, there is potential for these rules to become international customary rules. This can happen when a considerable number of States apply these rules consistently with a clear intention to follow them as fixed standards in international law. In addition, these Rules embody a deep moral and political commitment that States make to actively pursue measures to level the playing field for people with disabilities. In this regard, important principles concerning responsibility, proactive steps, and cooperative efforts are clearly set out and underscored. The areas of greatest priority for enhancing the quality of life, and to enable full participation and equality, have been stated with clarity. The Rules are a vital instrument specially formulated for policy-making processes and tangible actions towards empowering disabled persons and their organisations. Furthermore, they offer a fundamental framework for facilitating technical and economic cooperation among various States, the United Nations, and numerous other international organisations with a shared objective. The primary function of the Rules is to provide guarantees that individuals, including girls, boys, women, and men with disabilities, are afforded an opportunity to experience the same rights and responsibilities that are presented to all other individuals in their own societies. Within all societies in the world, there are several barriers and challenges that restrict individuals with disabilities from enjoying their inherent rights and freedoms, which thereby makes it very difficult for them to participate and engage fully in the broad variety of activities their societies present. It is the primary duty of States to undertake the

16 United Nations, 1982.
17 World Health Organization, no date.
18 United Nations, no date.

requisite and necessary action needed to successfully eliminate such barriers that hamper the full involvement of individuals. It is imperative that disabled persons, as well as their respective organisations, should participate and have an active and meaningful role as partners in this crucial process. The equalisation of opportunities for disabled persons constitutes an essential and integral contribution to the larger and global undertaking intended to mobilise human resources in an overall manner. It is essential that special attention is given to some groups in society who may require additional support and consideration. These among others, include women, children, the aged, those living in poverty, migrant workers, persons with dual or multiple disabilities, and indigenous people and other ethnic minorities. Furthermore, it is essential to note the significant number of refugees who have disabilities since they have special needs that should be given special attention and support.[19] The Standard Rules, as a guiding document, comprise a total of 22 separate rules that encapsulate the entire message of the World Programme of Action, highlighting its primary goals and principles. The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities expressly provides for the appointment of a Special Rapporteur whose role is to closely follow and oversee the implementation of these important Rules.[20]

4. Special Rapporteur on the Rights of Persons with Disabilities

The Special Rapporteur has been assigned the important responsibility to:[21]'[d]evelop a regular dialogue with States and other stakeholders for the identification, exchange and promotion of good practices related to the realization of the rights of persons with disabilities and their participation as equal members of society.'

The Rapporteur is responsible for accepting and actively engaging in the exchange of information and communications on any abuses pertaining to the rights of persons with disabilities; entering into consultation with persons with disabilities, and actively engage their organisations; and ensuring they are included in a participatory way in the implementation of her work.

It is crucial to formulate and implement definite recommendations that specifically target enhancing the promotion and protection of the rights of individuals with disabilities. This entails outlining effective strategies for encouraging the creation of initiatives that are inclusive and fully accessible to all persons living with disabilities.

It offers advisory services and technical assistance with a perspective to reinforcing national endeavours that focus on the efficient realisation of the rights of individuals who have disabilities;

19 See A/RES/48/96, Standard Rules on the Equalization of Opportunities for Persons with Disabilities.
20 Ibid.
21 See at United Nations Human Rights Office of the High Commissioner, no date.

It raises awareness of the rights that individuals with disabilities have, actively confronts the harmful stigma and widespread stereotypes about them, and makes individuals with disabilities adequately aware of their rights and benefits.

It actively and closely engages in the implementation of the United Nations Disability Inclusion Strategy, as well as in other endeavours, to guarantee that the entire UN system is well aligned and adapted to its purpose and is working closely with other UN human rights mechanisms and UN agencies to advance the rights of persons with disabilities in a coherent manner, with the Conference of State Parties to the CRPD and the Commission for Social Development, and participating in their annual sessions.

It acts on information received by the Rapporteur, which pertains to alleged violations of the human rights of individuals who have disabilities. This involves sending urgent appeals and formal communications to the States concerned, in order to clarify the situation and/or inform them of this urgent information to consider and act further.

The Special Rapporteur carries out visits to various countries following an invitation extended by their respective Governments, with the specific purpose of thoroughly examining the current state of protection concerning the human rights of individuals who have disabilities in any particular state. Following the completion of the visit, the Special Rapporteur then composes and submits a detailed report to the Human Rights Council, wherein he or she presents her comprehensive findings, well-reasoned conclusions, and thoughtful recommendations based on his or her observations during the visit.

They attend conferences, seminars, and panels on issues relating to disability matters, and issue press releases.

They also present detailed annual reports to the Human Rights Council and the General Assembly. The reports are presented in accessible formats so that all can easily understand them. The contents of the reports talk of the international situation of protection afforded to individuals with disabilities, and he or she speaks on his or her key concerns along with noting the good practices seen for the rights of individuals with disabilities. Further, the Special Rapporteur also takes this opportunity to develop concrete recommendations for strengthening and improving the protection of human rights of individuals with disabilities.

5. UN Human Rights Council (HRC)

The UN Human Rights Council (HRC) has adopted several resolutions addressing various aspects of disability rights. These resolutions aim to promote and protect the rights of persons with disabilities, enhance accessibility, and address specific issues affecting this population.

There have been resolutions concerning:

- 22nd June 2020, A/HRC/RES/43/2 Awareness raising on the rights of persons with disabilities, and habilitation and rehabilitation;

- 19th June 2020, A/HRC/RES/43/13, Mental health and human rights;
- 19th June 2020, A/HRC/RES/43/7, Right to work;
- 12th July 2019, A/HRC/RES/41/21, Human rights and climate change: the rights of persons with disabilities;
- 4th April 2019, A/HRC/RES/40/14, Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education;
- 6th April 2018, A/HRC/RES/37/22, Equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice;
- 9th October 2017, A/HRC/RES/36/13, Mental health and human rights;
- 18th July 2016, A/HRC/RES/32/23, Protection of the family: role of the family in supporting the protection and promotion of human rights of persons with disabilities;
- 7th July 2016, A/HRC/RES/32/18, Mental health and human rights;
- 8th April 2016, A/HRC/RES/31/6, The rights of persons with disabilities in situations of risk and humanitarian emergencies;
- 7th April 2015, A/HRC/RES/28/4, The right of persons with disabilities to live independently and be included in the community on an equal basis with others;
- 14th July 2014, A/HRC/RES/26/20, A Special Rapporteur on the Rights of Persons with Disabilities;
- 14th April 2014, A/HRC/RES/25/20, The right of persons with disabilities to education;
- 14th March 2013, A/HRC/RES/22/3, The work and employment of persons with disabilities;
- 22nd March 2012, A/HRC/RES/19/11, The rights of persons with disabilities: participation in political and public life;
- 12th April 2011, A/HRC/RES/16/15, Role of international cooperation in support of national efforts for the realisation of the rights of persons with disabilities;
- 14th April 2010, A/HRC/RES/13/11, Human rights of persons with disabilities: national implementation and monitoring and introducing as the theme for 2011 the role of international cooperation in support of national efforts for the realisation of the rights of persons with disabilities;
- 26th March 2009, A/HRC/RES/10/7, Human rights of persons with disabilities: national frameworks for the promotion and protection of the human rights of persons with disabilities;
- 27th March 2008, A/HRC/RES/7/9, Human rights of persons with disabilities.[22]

What follows is a full summary that pinpoints the key resolutions along with an analysis of their probable implications:

22 See more at Human Rights Council, no date.

Resolution 7/9 of 2008 is specifically focused on the human rights of individuals with disabilities. It reasserted the basic imperative to promote, protect, and ensure that all individuals with disabilities can fully and equally enjoy all human rights and fundamental freedoms. Besides, it emphasises the necessity for the creation of respect of the inherent dignity of such individuals. For this purpose, it urgently appeals to all Governments to bring about active measures in favour of, and in support of these principles effectively. It strongly recommended that all stakeholders concerned give due and serious consideration to the rights of persons with disabilities at all phases of the universal periodic review process. These include the crucial consultations conducted by States at national level in preparing the required information to be submitted for review. It underlined the importance of ensuring that national human rights institutions, and non-governmental organisations representing persons with disabilities are actively involved in these consultations. Moreover, it also called on governments to comprehensively address the rights of persons with disabilities. This must be accomplished in close consultation with, *inter alia,* national human rights institutions and organisations advocating on behalf of persons with disabilities when they are discharging their reporting obligations under the relevant United Nations human rights instruments. In addition, it welcomed and appreciated the dedicated efforts of those Governments that have already initiated the taking of such crucial steps.

Resolution 13/11 (2010) concerns the fundamental and essential human rights of persons who have disabilities. It is centred on the national implementation and follow-up of such rights, underscoring their significance in frameworks of society. In addition, as a noteworthy development for 2011, it presents the crucial theme relating to the international cooperation. This cooperation plays a key role in offering assistance for the national activities that are intended to attain the realisation of the rights of persons with disabilities.

It asked States parties to the Convention, emphasising the need to take proactive action when they are creating, strengthening, designating, or retaining domestic mechanisms and structures specifically for the implementation and monitoring of the Convention. The States parties are called upon to seize the opportunity to carry out a comprehensive review and where necessary, strengthen existing structures in place for the important promotion and protection of the rights of persons with disabilities. Such an exercise should include assurances of: (a) Governmental focal points, along with any coordination mechanisms that have been set up to the purpose of implementing the Convention, have an adequate mandate that is broad and enables them to effectively develop, coordinate, and implement a coherent strategy towards domestic implementation of the Convention; (b) Any coordination mechanisms within Government, where they exist, should comprise representation from all Government agencies concerned, and it is important that these mechanisms and/or focal points are in close consultation with, as well as actively engage, civil society organisations, in particular those representing and advocating on behalf of persons with disabilities; (c) The frameworks set up to promote, protect, and monitor the implementation of the Convention should incorporate one or more independent

mechanisms, as appropriate, which give due regard to the principles relating to the status and functioning of national institutions responsible for the protection and promotion of human rights, which are known as the Paris Principles.

Resolution 16/15 (2011) addresses the significance and key role played by international cooperation in providing support for national efforts in achieving and maintaining the rights of individuals with disabilities.

It had called upon the States parties to the Convention that signed it to take necessary measures to ensure that all activities on international cooperation in the field of disability would be in accordance with and consistent with their obligations under the Convention; these activities may comprise a range of programs specifically targeting individuals with disabilities, and ensuring all international cooperation programs are genuinely inclusive of and readily accessible to individuals who have disabilities. It urged all the players involved in this significant endeavour, in using proper and effective measures for international cooperation in support of national efforts aimed at the fulfilment and realisation of the rights of persons with disabilities, to ensure, first and foremost, that proper and adequate attention is given to all persons with disabilities. This includes not just those individuals who are confronted by physical impairments but also those individuals confronted by mental, intellectual, and sensory impairments. It is also crucial that attention is given to matters of gender, specifically considering the complicated interlinkages and interrelationships between gender and disability. It is also crucial to ensure proper and effective coordination among various players who are involved in international cooperation activities, so that all of them will be harmoniously and synergistically working. It also requested the Office of the High Commissioner to take the lead in conducting a detailed study on the participation and involvement of persons with disabilities in public and political life. The initiative should be taken in coordination with a wide range of concerned stakeholders, not just States but also regional organisations, including those engaged in regional integration processes, and a range of agencies associated with the United Nations. The study must also involve the Special Rapporteur on disability on behalf of the Commission for Social Development and on behalf of the Economic and Social Council. Apart from the above, civil society organisations, particularly those organisations representing persons with disabilities, must also be involved, along with national human rights institutions. Also requested is that once completed, the study should be made publicly available through the website of the Office of the High Commissioner in an accessible format. It should be published prior to the commencement of the nineteenth session of the Human Rights Council.

Resolution 19/11 Rights of persons with disabilities: participation in political and public life called upon States parties to ensure that persons with disabilities could effectively and fully participate in political and public life on an equal basis with others, including the right and opportunity for persons with disabilities to vote and be elected, and to participate in the conduct of public affairs. It also called upon States parties to adopt and implement appropriate measures to ensure that persons with disabilities could participate effectively and fully in political and public life on an

equal basis with others, including by, *inter alia*: (a) Providing persons with disabilities with access to the support they may require in exercising their legal capacity and, where necessary, and at their request, allowing assistance in voting by a person of their own choice; (b) Providing reasonable accommodation and eliminating barriers that prevent or limit effective and full participation in political and public life, including physical and communication barriers, such as inaccessible polling stations or the lack of election information or materials in accessible formats; (c) Protecting the right to vote by secret ballot and the right to stand for elections and to effectively hold office, and to have access to public service positions, including by providing reasonable accommodation; (d) Promoting public awareness campaigns and training programmes relevant to the exercise of political rights by persons with disabilities, and ensuring an inclusive education system directed at, *inter alia*, the strengthening of respect for human rights, including political rights; (e) Adopting measures to encourage the active involvement of persons with disabilities in non-governmental organisations and associations concerned with public and political life, including political parties, community-based organisations and public boards, as well as the forming and joining of organisations of persons with disabilities at the local, regional, national and international levels; 6. Further calls upon States parties to ensure that measures to assist persons with disabilities in their participation in political and public life are consistent with the Convention, including the general principle of inclusion in society.

Resolution 22/3 (2013) The work and employment of people with disabilities issued a call to the States parties to take steps and measures which could enable persons with disabilities to equally and fully enjoy the fundamental right to work as other members of society could. These are steps ensuring they have an opportunity to earn a living from work freely chosen or accepted by them. It also stipulates the need for ensuring an open, inclusive, and fully accessible labour market and working environment for persons with disabilities, to allow them to make their contribution to the workforce on an equal basis.

6. Convention on the Rights of Persons with Disabilities (CRPD)

On 13th December 2006, the UN General Assembly adopted the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, which were signed by Hungary on 30th March 2007. Subsequently, the Parliament of the Republic of Hungary adopted Act XCII of 2007 on the proclamation of the Convention and the Protocol on 25th June 2007. The Convention thus became part of the Hungarian legal order.

Hungary has a three-tiered obligation with regards to the rights enshrined in the Convention: firstly, to respect the rights; secondly, to provide adequate protection to the individual in the event of possible violations; and thirdly, to ensure the necessary framework conditions for the exercise of the declared rights.

The drafting of a new human rights convention on the rights of persons with disabilities had to meet two basic requirements: on the one hand, it had to reflect the paradigm shift from the medical model to the human rights model, thanks to the disability rights movement; on the other hand, it had to set minimum standards that would protect people with disabilities in the most vulnerable situations.[23]

For more than 20 years, organisations have been calling for a convention to protect nearly 600 million people with disabilities. The first Italian proposal was made in 1987 as part of the Decade of People with Disabilities (1983–1992), followed by a Swedish proposal in 1989, but these remained mere proposals. However, the time was ripe for a catalogue of rights.[24] This was confirmed by two exceptional reports which placed disability in the context of international human rights policy for the first time.[25] Previously, for the first forty years within the UN's framework, disability had been treated as a medical or social issue. Therefore, during this period, the focus was on prevention, rehabilitation and social security.[26] Then, in 1982, the idea of equal opportunities was introduced, but disability was still seen as a medical and social problem. *Leandro* Despouy drew attention to the human rights violations that led to disability, thus raising the issue to an international level within the UN. Among these violations, *Despouy* highlighted the use of inhumane treatment in wartime (e.g. amputations), female mutilation, medical experiments on human beings, forced sterilisation in institutions for people with disabilities, psychological violence, sexual harassment.[27] Finally, within a decade of the *United* Nations *Standard Rules for* Persons with Disabilities, the *United Nations Standard Rules* were born. But it was not binding.[28] On 12th March 2000, five non-governmental bodies also called for a human rights convention in the Beijing Declaration.[29] In April 2010 in Geneva, Ireland also raised the issue, but no decision was taken to create a convention due to lack of consensus.[30] However, the resolution did commit the High Commissioner for Human Rights to conduct an inquiry to ensure that measures taken to protect the rights of people with disabilities are more effective.

Following a proposal by Mexico on 19th December 2001, on 26th February 2002 the UN General Assembly established an Ad-Hoc Committee on the Convention by

23 Degener, 2006, p. 104; Lachwitz, 2008, p. 143.
24 Dhanda, 2008, p. 44.
25 Daes, 1986, p. 9; Despouy, 1993, p. 4.
26 Degener, 2006, p. 104; Degener, 2009, p. 34; Lachwitz, 2008, p. 143.
27 Degener, 2006, p. 104.
28 Degener, 2009, p. 34.
29 Beijing Declaration on the Rights of People with Disabilities in the New Century, adopted on 12 March 2000 at the World NGO Summit on Disability, para 7.
30 Within the UN, there have been several declarations on people with disabilities, which is actually one of the reasons why there has been no consensus on a new convention. See Dhanda, 2008, p. 45.

resolution A/RES/56/168.[31] Following the first draft in January 2004, negotiations started in May 2004 at the third meeting of the Commission.[32] The January draft followed a holistic approach, based on the principle of non-discrimination, and sought to declare existing human rights in a catalogue. This is why the Convention can be considered *specific*, although the wording itself is unfortunate, because it suggests that it is a declaration of specific rights. Rather it is specific because some of the articles of the Convention have been drafted through the lenses of autonomy, equal opportunities and the need for participation, and the civil, political, economic, social and cultural rights it contains have been given a disability-specific interpretation. *Aichele* and *Bernstoff* stress however, that the Convention, thanks to the disability rights movement, is new compared to previous human rights conventions and represents the next stage in a process of development in human rights protection, particularly with regard to the definition of disability and the concept of non-discrimination. It is this new perspective and context that sets the Convention apart from other human rights conventions.[33]

The working document, prepared in February 2006, can be considered as a consensus document, which was discussed at the eighth meeting in August and adopted on 13th December of the same year.[34] The first signature took place on 30th March 2007 and the contract entered into force on 3rd May 2007.[35]

7. International and European Law Issues Related to the Convention

The Convention has entered into force. However it is a question of how and when it will become a binding document in the domestic law of the signatory States, since its real strength will be shown by the legal symbiosis between the Convention and the domestic law of the States, i.e. the extent to which assumed international legal obligations and domestic law are compatible. The theoretical background to the establishment of consistency points to monist and dualist tendencies.

31 A/RES/56/168 General Assembly Resolution on the Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, 26 February 2002.

32 Degener, 2006, p. 106. The number of NGOs was 30 at the first meeting of the Commission and 469 at the 7th meeting. Lachwitz, 2008, p. 144.

33 In the meantime, in order to move the stalled negotiations forward, *Don MacKay* made his own proposal after the sixth negotiation. Bielefeldt, 2009, pp. 13–14; Lachwitz, 2008, p. 144; Kotzur and Richter, 2012, p. 81; Aichele and Bernstorff, 2010, pp. 199–204.

34 Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/106, 24 January 2007, and Optional Protocol to the Convention on the Rights of Persons with Disabilities, UN Doc. A/Res/61/106, 24 January 2007. On the genesis of the Convention, see also Rothfritz, 2010, pp. 103–120.

35 As of 24 August 2010, the Convention has been signed by 146 States and ratified by 90; the Optional Protocol has been signed by 89 States and ratified by 56.

According to the monism approach, international law and domestic law are in fact the same law, i.e. there is no theoretical obstacle to applying international law to domestic law. This theory proclaims the principle of the primacy of domestic law, following the work of Hegel, and then another sub-school of the principle of the primacy of international law, following Kelsen. According to the dualism school of thought, international law and domestic law are two separate and unrelated worlds. The link between them must be artificially created, the international legal treaty must be transformed into a form of internal law. This is called transformation. But this does not provide an answer to the question of customary international law in domestic law. This is helped by the principle of adoption, which is the solution proposed by German constitutionalism. It is a general reference in the constitution to the general rules of international law, which are incorporated into domestic law as a whole. A state has to choose between the two approaches, which in fact implies technical differences, but the end result, the implementation of international obligations, must be guaranteed in accordance with the principle of *pacta sunt servanda*.[36] Pursuant to Article Q(2) and (3) of the Constitution, which was promulgated on 25th April 2011 and entered into force on 1st January 2012, customary international law and the so-called general principles of law are an integral part of the internal legal order in Hungary by virtue of the Constitution, while international treaties concluded by the Hungarian State become part of the legal order and applicable to the application of the law when they are promulgated in Hungarian law. This solution is the technique of general adoption and dualism, which build on each other.[37] The Convention was promulgated in Hungary by Act XCII of 2007. Following its promulgation, the question "How to proceed?" arises. International obligations have been taken on, which need to be brought into line with domestic law. Among the many articles of the Convention, currently the most important is Article 12 and the question of the compatibility / incompatibility of the incapacity guardianship in domestic law.

As this transformation results in an international treaty becoming part of domestic law and being enacted into law, the Constitutions of the States Parties take precedence in the hierarchy of legal sources. The Constitutional Court has attempted to resolve the tension arising from the relationship between an international treaty and the Constitution by interpreting the fundamental rights contained in the Constitution in the light of the international treaty.[38]

After adoption or transformation, it is not clear whether the rights and obligations contained in an international treaty can be invoked directly before national courts and other authorities. The fact that the Convention has become part of the domestic legal order does not clearly imply that certain provisions are directly applicable.

36 Kovács, 2011, pp. 57–65; Kotzur and Richter, 2012, pp. 82–83.

37 Kovács, 2011, p. 75. Article Q) of the Fundamental Law (2) '*Hungary shall ensure the consistency of international law and Hungarian law in order to fulfil its obligations under international law. Other sources of international law shall become part of the Hungarian legal system upon their promulgation by law.*'.

38 Kotzur and Richter, 2012, pp. 82–83.

Direct applicability presupposes that the provision is specifically defined in terms of its purpose, content and generally accepted meaning, that is to say, that it has the legal effect corresponding to the provisions of domestic law, and does not require any further normative action on the part of the legislature. Many of the provisions of the Convention require further interpretation, and some of them are not directly applicable, although the Convention affects the whole legal order. The Additional Protocol does, however, provide for the institution of an individual complaint, which may be invoked in cases where a Convention right would be violated. This in turn presupposes the enforceability of the Convention rights. The content of these rights must be examined in conjunction with the Covenants containing civil, political, economic, social and cultural rights.[39]

The Convention is a human rights treaty, which is also relevant for the interpretation of the treaty, as there is no distinction between first, second and third generation rights, as they are universal, indivisible, interdependent and interrelated. This also determines the interpretation of fundamental rights in domestic law. Several provisions require active behaviour by the State. The existing catalogue of fundamental rights does not stipulate that the Convention is only in force if the rights declared in the Convention are to be found in the Constitution; the Convention's own fundamental rights dimension enriches the catalogue of fundamental rights existing in the State party.[40]

The European Union's adoption of the Convention means that European law must be interpreted in accordance with the Convention.[41] International treaties are situated between primary and secondary sources of law. It is for the Court of Justice of the European Union to give guidance on what it means to interpret the law in accordance with the Convention. However, the Court of Justice of the European Union presumes that EU law is interpreted in conformity with international law.[42]

The Convention is a "mixed agreement".[43] The "mixed" nature of the Convention is reflected in the fact that some of the provisions of the international treaty fall within the competence of the European Union, while others fall within the competence of the Member States. There has been much theoretical debate on the nature of such agreements, since this is not only a question of European law but also of public international law. Of particular importance from the point of view of European law is the question of the division of competences, which is set out in detail in the declaration

39 Ibid., pp. 83–84.
40 Ibid., p. 85.
41 Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities. On 15 December 2010, the Council adopted a Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities.
42 Kotzur and Richter, 2012, p. 87.
43 On the role of mixed agreements see Karayigit, 2006, pp. 445–469; Heliskoski, 2001; Leal-Arcas, 2001, pp. 483–513.

in Annex II to the Decision. It *states* that the Community shall have competences shared with the Member States for matters concerning measures on the combating of discrimination on grounds of disability, the free movement of goods, persons, services and capital, agriculture, transport by rail, road, sea and air, taxation, the internal market, equal pay for male and female workers, trans-European networks policy and statistics. The scope of the various issues that fall under the shared and exclusive competence of the Community will evolve and change with time, as a direct result of ongoing development as well as interpretation of the law. This ongoing evolution is a reflection of changing circumstances and legal understanding. Moreover, the declaration of competence is of fundamental significance, among other reasons, because it not only delineates the areas of responsibility but also establishes a form of international accountability in the execution of the Convention. Such a system is necessary to ensure that obligations are discharged in conformity with international standards. If we look at the situation of mixed agreements, as mentioned above, they are situated between primary and secondary sources of law, and the agreements adopted by the European Union and the Member States are part of the Community system of sources of law as long as the provisions fall within the Community's competence.[44] However an interesting question arises. The Convention is a convention on human rights and contains fundamental rights which are already "constitutional law" in the European Union legal order, thanks to the Charter of Fundamental Rights of the European Union. Furthermore, the Charter of Fundamental Rights of the European Union, including Articles 21 (on non-discrimination) and 26 (on the integration of persons with disabilities), is closely linked to the Convention.[45] On this basis, can the Convention be considered a "source of constitutional law" for the EU? The answer to this question will certainly be given in the future, as the interpretation of mixed agreements is a matter for the Court of Justice of the European Union.[46] However, since the Court of Justice takes the Charter of Fundamental Rights of the European Union as a starting point for the interpretation of fundamental rights[47] and the legislation adopted by the European Union is assessed in this light, the Convention will, in any case, have an indirect impact on legislative processes, since the Charter of Fundamental Rights must be applied in accordance with the Convention.

In the framework of a preliminary ruling procedure, the Court of Justice of the European Union decides whether a provision of a mixed agreement can be invoked by individuals before a national court, but only if the provision in question falls within the scope of European law.[48] The case-law of the Court of Justice presents a varied picture of the extent to which a measure of the European Union (by which legislation is also meant) may be challenged on the ground that it is in breach of an international

44 Commission of the European Communities v French Republic, Case C-239/03.
45 Charter of Fundamental Rights of the European Union.
46 Article 267 of the Treaty on the Functioning of the European Union.
47 *Joint Communication from Presidents Costa and Skouris*, 2011.
48 *Merck Genéricos – Produtos Farmacêuticos Lda v Merck & Co. Inc*. and *Merck Sharp & Dohme Lda*, Case C-431/05.

agreement which it has concluded. As a general rule, this may be the case for provisions with a direct effect, but since the *Nakajima*[49] and *Fediol*[50] cases, a measure must be reviewed even if it contains a specific obligation or makes express reference to an international agreement. In another case, the Court did not require the direct effect of the provision.[51] The Court's unclear case law leaves open the question of whether EU measures can be reviewed in the light of the Convention if they expressly refer to an international agreement or if they contain a specific obligation, even if the provision of the international agreement does not have direct effect. However, international agreements which do not have a direct effect may nevertheless have an impact on the legal order of the European Union, in the light of Article 216(2) of the Treaty on European Union, i.e. the direct effect of agreements concluded by the Union and the principle of consistent interpretation, which is based on the primacy of international agreements over secondary sources of law.

It may be noted that the case-law of the Court of Justice on mixed agreements is uncertain, but only the Court of Justice can answer the questions raised, particularly with regards to the constitutional significance of the Convention and the relationship between the Convention and European law. It has a huge responsibility, but it is in the exceptional position of being able to interpret the limits of its own jurisdiction.

8. The Convention as the Completion of the Human Rights Model

As the subtitle indicates, the Convention is seen by this author as the culmination of the disability rights movement with its human rights model of disability. In the following, which areas of life are covered by the Convention will be examined.

Article 1 of the Convention sets out the purpose of the Convention, which is '*to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.*'

Alongside the social model of disability, which holds that disability is the responsibility of society, and goes beyond it, the Convention is the most prominent representative of the human rights model of disability.[52] According to the human rights model, a person with a disability is a subject of human rights, which the state has a duty to respect, protect and ensure, i.e. it requires both active and passive behaviour.

Defining the purpose of the Convention has contributed greatly to the empowerment of people with disabilities, also known as *empowerment*.[53] Empowerment is a

49 *Nakajima All Precision Co. Ltd v Council of the European Communities*, Case C-69/89.
50 *Fédération de l'industrie de l'huilerie de la CEE (Fediol) v Commission of the European Communities*, Case C-70/87.
51 *Kingdom of the Netherlands v European Parliament and Council of the European Union*, Case C-377/98.
52 Kálmán and Könczei, 2002, pp. 87–89. See for more on this Dhanda, 2008, pp. 43–61.
53 Aichele, 2008.

developmental process whereby, over time, people are empowered to live a better life by their own means. The concept can also be seen as an open normative form that can be filled with beliefs, values and moral judgements. There are different approaches: political, everyday, reflexive, transitive.[54]

In the *political* approach, the concept describes a process whereby people and groups are empowered to play a role in political decision-making. The civil rights and emancipation movements are seen by many as having their origins in this concept.[55]

The everyday approach *to the* concept focuses on the microenvironment of everyday life, in which individuals autonomously determine their lifestyle, personal and material relations. This approach is relevant to social work, since it focuses on the recognition of people's strengths and resources, which are used to provide social assistance.[56]

The reflexive sense refers to the process of gaining vitality, to some change in the life process, usually a release from dependency, such as guardianship. It can also be understood at the level of everyday life and politics.[57]

The *transitive approach* is also important in social work, as it helps in self-determination and provides all the reserved resources needed to lead a successful life.[58]

To sum up, *empowerment* is self-actualisation, empowerment of the self, empowerment of qualities and autonomy. At the same time, it is also a process of people taking control, moving out of disadvantage and using their own and collective skills and resources to determine their own lives, according to their choices, needs, interests and desires.[59] This concept is related to the findings of the measurement of capability, and the concept of decision-making capability, which will be discussed later. Thus, just as mental health law and therapeutic justice, so *empowerment* has emerged from the Independent Living Movement over decades.

To achieve this, the Convention draws a clear distinction between the different areas of life and the state's obligations in relation to them.[60]

Respect for human dignity is a central concept of the Convention, it is repeatedly mentioned in it, and it has become a tool for shaping consciousness. However, it is necessary to shape the consciousness not only of society, but also of the person with a disability. This is the purpose of awareness-raising programmes and training.[61]

The Convention's Preamble (*i)* and *(m)*, Article 3(*d)* (General Principles), Article 24(1)(*a)* (Education) contain the twist that makes disability part of human diversity and humanity. This is called the principle of *diversity*.[62] This turn is also relevant to

54 Herriger, 2010, pp. 13–19.
55 Ibid., pp. 14–15.
56 Ibid., pp. 15–16.
57 Ibid.
58 Ibid., p. 17.
59 Ibid., p. 20.
60 Aichele, 2008, p. 4.
61 Bielefeldt, 2009, pp. 4–5.
62 Ibid., pp. 6–7; Dhanda, 2008, p. 46.

the development of genetic engineering. However, this perception can often give the reader of the Convention the impression that it is a document for the protection of minorities, since each disability group has its own culture, which requires support from the state and society.[63] Also new in Preamble (m) is the notion that ensuring the full participation of people with disabilities helps them to feel a sense of belonging to society *(Zugehörigkeit)*.[64]

It is often the case that human rights conventions, precisely by providing protection, inadvertently delimit the protected subject in society. Thus, the present Convention has a negative protective function, but at the same time it creates a strong demand for progress in the community. According to *Bielfeldt*, this is not the case in any other human rights convention.[65]

The Convention covers eight thematic areas of disability policy, reflecting the achievements of the disability rights movement: general disability policy, women with disabilities, children with disabilities, protection and safety of persons with disabilities, self-determination, freedom and participation rights/freedom from barriers, solidarity, international cooperation.[66]

Disability policy should take into account the fact that international developments and disability rights movements have made disability a human rights issue as well as a medical and social one. In fact, Article 1 (Purpose of the Convention), Article 3 (General principles), Article 4 (General obligations), Article 5 (Equality and non-discrimination), and Article 8 (Raising awareness) lay down the basis for a state's disability policy.[67] Degener does not include Article 12 on equality before the law. However in this author's view, a state's disability policy is largely determined by the state's attitude to the guardianship system. After all, for people with intellectual and psychosocial disabilities, the exercise of all Convention rights is conditional upon the exercise of their capacity to act, either independently or with assistance[68]

Article 6 of the Convention specifically establishes the fact of multiple discrimination against women with disabilities, and in view of this States shall take measures to ensure their full and equal enjoyment of all human rights and freedoms *(empowerment)*.[69] However, we find references to women/gender not only in Article 6, but also in other places: preamble *q*. and *s*. , Article 3(g),Article 8(1)(b), protection from violence and exploitation is also mentioned in Article 16(1), (2), (4), (5); respect for home and family in Article 23; the highest attainable standard of health in Article 25; and an adequate standard of living and social protection in Article 28.[70]

63 Bielefeldt, 2009, p. 8.
64 Ibid., p. 10.
65 Ibid., pp. 12–13.
66 Degener, 2009, pp. 36–51; Kotzur and Richter, 2012, p. 82.
67 Degener, 2009, p. 36.
68 This view is supported by Amita Dhanda. Dhanda, 2008, p. 47.
69 Degener, 2009, p. 36. On the merits of the Convention in combating multiple discrimination, see Dhanda, 2008, p. 51.
70 Degener, 2009, p. 36.

In addition to Article 7 on children with disabilities, age-specific statements are made in the preamble (d) and (r), Article 3 (h), Article 4(3) (inclusion of children with disabilities in legislation), Article 8(2)(b) (raising awareness of the need to include children up to the age of majority), Article 16(5) (child-centred legislation), Article 16(3)(b) (inclusion of children with disabilities in legislation), Article 16(3)(c)(d) and (r)), Article 16(3)(d) and (e), Article 16(5)(d) and (f)), Article 16(2) (children's right to acquire citizenship), Article 23(3), (4) and (5) (family rights), Article 24(2)(a) and (3)(c) (integrated education), Article 25(b) (right to health services) and Article 30(5)(d) (participation in cultural and leisure activities).

On the issue of the protection and safety of persons with disabilities, a mention should be made of the articles on the right to life, on emergencies and humanitarian emergencies, on the liberty and security of person, on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, on freedom from exploitation, violence and abuse, and on the protection of the integrity of the individual.

Self-determination is a central theme of human rights and disability, an expression of the exercise of autonomy, which according to the Convention's approach, focuses on the decision-making capacity and considers the circumstances of decision-making.[71] Article 12 on equality before the law, Article 19 on independent living and inclusion in the community, Article 22 on respect for private life, Article 23 on respect for home and family life, Article 26 on habilitation and rehabilitation are relevant to self-determination.

The rights to freedom and participation, and accessibility in particular:

Article 9 on accessibility, Article 13 on access to justice, Article 18 on freedom of movement and citizenship, Article 20 on personal mobility, Article 29 on participation in political life and public life, Article 30 on participation in cultural and leisure activities.[72] In my opinion, this area includes Article 12 on equal legal capacity before the law, since the existence and exercise of such capacity is a fundamental condition for participation.

With the civil and political freedoms set out in points *(V)* and *(VI)*, the Convention is unique among conventions on people with disabilities, as it includes civil, political and economic, social, and cultural rights within a single convention.[73]

The rights of solidarity concern economic, social and cultural rights.[74] The Convention was not intended to separate these rights from classical civil and political liberties. However, it is impossible to exercise rights in this area without the guarantee of participatory rights. In particular it is a question of the exercise of the right to education under Article 24, the right to health services under Article 25, the right to work and employment under Article 27, and the right to an adequate standard of living and social protection under Article 28.

71 Ibid.; Dhanda, 2008, p. 47.
72 Degener, 2009, p. 37.
73 Dhanda, 2008, p. 46.
74 Steiner and Alston, 1996, p. 256.

Article 12 and Article 27 are understandably separated in the Convention, but Article 27 is based on the assumption that people with intellectual and psychosocial disabilities can be employed. However, Article 27 can only be interpreted in the light of Article 12 in the case of people with intellectual and psychosocial disabilities who, because of incapacity to work, cannot be employed in some States.

Article 32 is unique among human rights conventions in that it provides for international cooperation as a guarantee of its continued development and the achievement of its goals, alongside strict implementation provisions. The Article can act as a catalyst and has an impact on the development of national disability policies.[75]

9. Role of the UN in Defining Disability

In point (e) of the Preamble, it can be seen that disability is a changing concept and that it is also the result of the interaction between persons with disabilities and attitudinal and environmental barriers that prevent them from participating fully and effectively in society on an equal basis with others.

Article 1 sets out the definition of disability, which states that '[a] person with a disability is any person who has a long-term physical, mental, intellectual or sensory impairment which, together with a number of other barriers, may limit that person's full, effective and equal participation in society.'

The concept of disability is undergoing a major shift in two respects: *on the one hand,* the concept of disability is socially constructed, even if it is based on some kind of long-term physical, intellectual, mental or sensory impairment. Through this approach, people with disabilities are transformed from suffering subjects into citizens who actively criticise stigmatising, discriminatory and exclusionary social structures.[76]

On the other hand, this concept is a "dynamic concept" of disability. It is an open concept, as future developments, experiences and findings may lead to further disabilities. That is why the scope of the Convention has been placed within the definition of the objective, which is to provide protection in all conceivable areas of life. It thus encompasses the full spectrum of first and second generation rights, i.e. civil, political, economic, social and cultural rights.

Linked to the concept is the definition of discrimination on the basis of disability in Article 2:

> 'any distinction, exclusion or restriction based on disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with others, in the political, economic, social, cultural, civil or any other

75 Degener, 2009, p. 37.
76 Ibid., p. 9.

field. This includes all forms of discrimination, including denial of reasonable accommodation.'

This wording refers to both direct and indirect forms of discrimination. The Convention has a dual protective function: on the one hand, it protects people with disabilities by declaring universal human rights by making rights specific to people with disabilities; and on the other hand, it consistently extends the prohibition of discrimination to all areas of life.[77]

It is worth examining the relationship between the Convention and the WHO concepts of disability. The change in the concept of disability reflects this author's view that disability as a phenomenon and the social issues it raises need to be considered in a systemic way, in its context and in its process. This is how we move from the medical or medical model, where disability is purely a medical issue and a problem for the individual, to the social model, to the human rights model.

The first WHO definition of disability between 1980–1997 placed disability along a linear path, where *impairment* is some kind of disorder of a person's psychological and physiological structure and function, and this corresponds to health impairment; *disability* is a reduced ability to perform certain activities; *and disadvantage* is the social disadvantage resulting from a person's impairment or disability. This is the medical model of disability. That is, disability is a medical issue and a private matter.[78]

The concept has placed people with disabilities in the role of the sick *(Talcott Parsons)*, whereas disability is much more severe and persistent than illness, and as such is interpreted as having a lower status than illness. Although the above WHO definition can still be used in the medical and health sphere, it is no longer used in sociological and social psychological analyses, or in legal analyses of discrimination. This is most evident in the notion of "disadvantage", where disadvantage is defined as an individual's inability to fulfil a normal social role, as if it were an individual problem of the person with a disability, whereas it affects society as a whole.[79] Statistics show that it is largely caused by accidents at work and traffic accidents and cannot be separated from social facts.[80]

In 2002, the WHO created a new concept, because in the space of almost two decades, changes in the life of disabled people had to be reflected in the way disability was understood. The awakening of the disability community and its representatives, the equal opportunities and independent living movements and of course, research have played a major role in this change. Research has an unparalleled merit in finding solutions to the legal problems of people with intellectual and psychosocial disabilities. Related to this are the law of mental health, including issues of capacity measurement and decision-making, and the ethical and legal-theoretical considerations of the

77 Aichele, 2008, p. 4.
78 Kálmán and Könczei, 2002, p. 82.
79 Könczei and Varga, 2000, p. 25.
80 Kálmán and Könczei, 2002, p. 82.

therapeutic justice system on substitute decision-making and its disadvantages in the lives of individuals. All of this enriches the field of disability studies.

The new WHO concept derives from two background factors that are closely interrelated: one environmental, the other individual. It can be said that behind the condition of disability lies the responsibility of society itself, which, if it does not help the individual to participate in the economic and social life of the world with his or her existing abilities, makes him or her disabled. Thus, the impairment of an ability is not in itself a disability. It becomes a disability when society itself treats it in such a way as to disadvantage the impaired person. The environment, and society, are thus given a special role.[81]

The question is: has the WHO figure changed, and if so, in what way, according to the Convention definition?

It is this author's opinion that the conceptual building blocks of the concept itself have not changed much over time. However, importantly, there has been a tremendous shift in emphasis that has occurred directly due to the Convention. Such change has once again pushed to the fore the question of the health, and more importantly of any impairment with which a person may be burdened, and of the many individual and environmental variables that have an important impact on influencing this health. There is also a stark emphasis on understanding the influence of the social, physical, and legal environment and how these interacting pieces together help to make up the overall health of individuals. Cumulatively, these many elements are then combined to bring about the overall activity potential of a particular individual, which in its own turn, significantly influences the level of involvement of that individual in society. The interplay between this relationship and that which we observe through the activity of constructing the notion of disability, if we look at how our investigation of the history of disability comes into play, is mirrored. As Kálmán and Köncezi point out, prejudices against disabled people do not have their origin in the great cultures, but are generated and recreated in contact with atavistic, old instincts, pagan superstitions, religious beliefs and the hegemony of the respective great cultures, side by side with and in the face of difference.

10. Committee on the Rights of Persons with Disabilities

The Committee is a conscientious group of 18 independent members, all of whom are distinctively experienced and insightful in their own respects. They are responsible for overseeing the degree to which the States parties observe and implement the articles included in the Convention on the Rights of Persons with Disabilities.

All State parties are obliged to furnish periodic and regular reports to the Committee regarding how the rights under the Convention are being effectively enforced and implemented. States are required to furnish their first report within two years

81 Könczei and Varga, 2000, p. 26.

of their ratification of the Convention, and subsequently they are required to report every four years, as per Article 35 of the Convention.

The Committee thoroughly examines each individual report and formulates recommendations in detail that are designed to enhance and strengthen the application of the Convention in the given State. It then presents these carefully crafted recommendations in the form of concluding observations to the respective State party.

The Optional Protocol, which is designated as A/RES/61/106 and enters into force simultaneously with the Convention, also provides the Committee with the mandate to receive and consider individual complaints. Additionally, it empowers the Committee to conduct inquiries when there are reliable reports indicating serious and systematic violations of provisions outlined in the Convention.

The Committee also publishes its interpretation of the meaning of human rights provisions, known as general comments, on matters of a thematic nature. The Committee typically sits in Geneva and conducts two sessions each year to discuss its agenda and projects.

The Committee's work, that of monitoring, is carried out according to a modern and contemporary conception of what is understood by disability. In line with the human rights model of disability, we argue that disability should be thought of as a social phenomenon and not a solely medical one. It is truly the barriers within society itself, rather than the individual impairments one has, which serve to exclude and marginalise individuals with disabilities from full participation in various aspects of life. Globally, it has been estimated that almost 15% of the global population, meaning more than one billion individuals, are persons living with disabilities. The Committee has indicated that one of the fundamental reasons for the widespread discrimination and exclusion of people with disabilities in all sectors of society is a result of the insufficient comprehension and improper implementation of the human rights approach to disability. Through its proactive function and coordination with the various States parties, the Committee highly promotes the protection and advancement of human rights of persons with disabilities. Furthermore, it provides such States parties with specific guidelines and advice that are geared towards easing and enhancing the effective realisation of provisions that are embedded in the Convention. The Committee has consistently emphasised and brought to the forefront the important reality that States parties have an obligation to ensure that persons with disabilities, and their organisations, are genuinely included and involved in all efforts and decision-making processes that relate to or impact persons with disabilities.

11. Summary

Tracing the history of disability, we therefore travel from Taigetos to equal opportunities, from a transcendent, albeit ultimately paternalistic, subsequently medicalised reaction to a human rights framework and the imperative to secure equal opportunities.

The United Nations has indeed taken serious and concrete steps that are aimed at the protection of the rights of people who are disabled. It has also taken significant efforts aimed at enhancing and increasing the general quality of life for such individuals through a wide arena of well-designed schemes and programs that are especially dedicated to this very noble mission. Then in 2006, a significant and landmark advancement was achieved with the adoption of the Convention on the Rights of Persons with Disabilities, simply referred to as the CRPD. This historic and unprecedented treaty was a significant step forward in the global acknowledgment of human rights; its primary purpose being to promote, ensure, and safeguard the rights of all individuals who live with disability, thereby acknowledging their inherent dignity and worth as members of society. It firmly upholds and assertively places at the centre the inalienable rights that belong to them, which enable them to engage and become involved in all aspects of society. This ensures that they are provided with the necessary access to key areas such as education, employment, health care, and a wide range of other significant services that contribute extensively and enhance their overall well-being. The United Nations 2030 Agenda for Sustainable Development contains a list of detailed goals and objectives for carefully addressing and meeting the diverse and different needs of people living with disabilities. For example there is a specific goal, Goal 4, aimed at making inclusive and equitable quality education accessible to everyone, including persons living with disabilities, in order to promote and support equal opportunities in learning institutions for all learners. UN Enable is dedicated to spreading disability issues awareness and the rights of individuals with disabilities in the UN system and beyond. It offers resources, advocacy, and assistance for CRPD implementation. An International Day of Persons with Disabilities falls annually on 3rd December, raising awareness of issues of disability and furthering the rights and welfare of individuals with disabilities. The United Nations Human Rights Council takes serious and solemn measures in confronting the daunting challenges confronting people with disabilities, as well as advancing their basic rights, through a sequence of meticulously designed resolutions. In addition, this illustrious Council goes a step further by appointing special rapporteurs who bear the critical mandate of closely monitoring, carefully assessing, and exhaustively reporting on the status and living conditions of people with disabilities worldwide.

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