

Book Reviews

Oddný Mjöll Arnardóttir & Gerard Quinn (Eds), *The UN Convention on the Rights of Persons with Disabilities. European and Scandinavian Perspectives*, Martinus Nijhoff Publishers-Brill Academic (2009)

This collection, edited by Arnardóttir and Quinn, draws together a range of European and Scandinavian perspectives on the United Nations Convention on the Rights of Persons with Disabilities (the ‘UN CRPD’, or simply ‘the Convention’). The UN CRPD is the first human rights treaty of the twenty-first century, and the first legally enforceable United Nations instrument specifically addressing the rights of disabled people. It entered into force on 3 May 2008, along with its Optional Protocol,¹ and it sets forth a framework engaging the full spectrum of civil, political, economic, social and cultural rights for persons with disabilities. This Convention surely opens an unprecedented opportunity for domestic law and policy reform and genesis on behalf of the globe’s ‘largest minority’.²

The contributions contained in this volume comprise the bulk of presentations made at a pathbreaking conference on the Convention, hosted by the Reykjavik University School of Law and the Icelandic Human Rights Centre in September 2007. Contributors include: Michael Stein, Janet Lord, Gerard Quinn, Oddný Mjöll Arnardóttir, Ida Elisabeth Koch, Rannveig Traustadóttir, Lisa Waddington, Davíð Þór Björgvinsson, Colm O’Cinneide, Anna Lawson, Holger Kallehauge, Brynhildur Flóvenz, and Ragnhildur Helgadóttir.

With this volume, Quinn, an expert on the UN Convention, and Arnardóttir, a specialist on non-discrimination law and theory under Council of Europe instruments, manage to capture the existing academic debate about disability through a selection of different contributions, allowing the reader to elaborate his/her personal reflections on the perspectives, the problems and the possible solutions emerging after the entry into force of the Convention.

The book is divided into three parts. Part I, ‘From social policy to the human rights law of the 21st century’, aims to clarify, through various contributions, the shift from a traditional frame of reference on disability – often referred to as the ‘medical model’ – to one based more explicitly on securing the rule of law and human rights for persons with disabilities. This section of the book situates the Convention firmly within *rights*-based, as opposed to prevention- or health-oriented instruments premised on the medical model.³ Traustadóttir’s contribution,

¹ The UN CRPD was opened for signature by the States Parties on 30 March 2007, and it was rapidly signed by a vast majority of States. Thereafter, it quickly attained the requisite twenty ratifications to trigger its entry into force on 3 May 2008.

² See *Some Facts about Persons with Disabilities*, United Nations (2006), available at <http://www.un.org/disabilities/convention/pdfs/factsheet.pdf>.

³ For an overview of traditional models of disability, see *inter alia* G. Williams, *Theorizing Disability*, in G. Albrecht, K. Seelman & M. Bury (Eds.), *Disability Studies 123 et seq.* (2001).

in particular, examines the new social-contextual understanding of disability in a comparative perspective. Although this understanding of disability has many common characteristics worldwide, the new approach to disability has been expressed and conceptualised in various ways in different countries, depending on the historical, social, cultural and academic contexts. The author explains how the re-conceptualisation of disability shifts the focus from the individual to the environment, and draws attention to the social barriers disabled people face in their everyday lives, considering Britain, the Nordic countries and North America. The contribution of Ashley and Lord and the one of Koch focus on the Convention itself. The first paper reviews the background to the Convention's adoption, summarizes its contents, and then assesses its future prospects. Koch, meanwhile, deals with the indivisibility, the interdependence and interrelatedness of the human rights provided for in the Convention. Part I also includes a valuable contribution by one of the editors, Arnardóttir. The paper argues that the principle of equality is the leitmotif of the UN CRPD, but that the significance of this can only be properly understood against the background of the development of the principle of equality in international human rights law and practice. Arnardóttir investigates how to appropriately conceptualise the demands of equality in the specific context of disability. She examines the new frontiers of the concept of equality, which is moving from formal equality to a multidimensional disadvantage approach, informed by an understanding of disability as a social construct, taking into account the need for more sophisticated legal instruments to accommodate diversity.

Part II is devoted to 'The European context'. Several papers explore, from different perspectives, new dynamics of reform in Europe to be reinforced by the Convention. Europe has been at the forefront of disability law reform in the past decade: the European Union (EU) Action Plan (2008-2009) and the Council of Europe's Disability Action Plan (2006-2015) have put in place an almost unstoppable dynamic of reform. In her chapter, Lawson places the UN CRPD in the European context and expands on how it might help refresh the European disability agenda. Particularly interesting and rich is Waddington's contribution, which examines the implications of Ratification of the UN CRPD for the European Community (EC). Most importantly, in compliance with Art. 44 UN CRPD, the EC, having been a signatory, is now about to accede: a proposal for a Council decision concerning the conclusion of this Convention is currently under discussion.⁴ The analysis addresses the extent of the EC's competence in terms of adopting legislative measures with the goal of protection of the rights of persons with disability. Additionally, the author discusses how far existing EC instruments meet the Convention's standard and, consequently, what further initiatives should be taken by the Community. The analysis reveals that the EC

⁴ Proposal for a Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, COM(2008) 530 final/2. The Council has adopted the practice of only concluding a mixed agreement after all Member States have ratified it, in order to avoid so-called 'partial mixity' (where not all the Member States are parties alongside the Community). See G. de Baere, *Constitutional Principles of EU External Relations* 240 (2008).

(now EU) has a variety of important competences in the field of disability, and that the conclusion of the UN CRPD will impose the obligation on the EC/EU to significantly extend its action to combat disability discrimination and to make much wider use of the potential of Art. 13 EC than it has done so far. One point that emerges from Waddington's contribution is that the conclusion of the UN CRPD must not bring significant changes in the direction already undertaken. Rather, it implies that the EC/EU needs to strengthen its current approach to disability issues, to reinforce its legislation in this respect, and to 'fill the gaps' in the protection of disabled (in particular by prohibiting discrimination in access to goods and services). Collectively, these priorities should aim to promote the increased involvement of disabled people. Judge Björgvinsson of the European Court of Human Rights provides an overview on how the Strasbourg Court has dealt with disability thus far, reflecting on the status of persons with disabilities within the legal framework of the European Convention of Human Rights. This contribution appears particularly interesting, given the distinct influence of the Strasbourg Court's judgments on both national courts and the EU system. O'Conneide closes Part II, exploring the potential of the UN CRPD and its limits, partly by means of a comparison with other international instruments. O'Conneide explains the limits of existing international law and shows how, by successfully integrating both sets of rights and focusing them on disability, the UN CRPD may point the way ahead in other fields.

Part III of the book, 'Bringing the Treaty home', deals with the implementation of the Convention, and focuses on the challenges of translating its general provisions into 'hard' domestic law and practice. In this regard, implementation is likely to depend on appropriate governance mechanisms designed to ensure that rights of persons with disability are fully taken into account in all relevant policy fields. Rights provided by the UN CRPD are not based on a mere prohibition of discrimination, which is to be enforced by individual litigation (though the Convention itself does not establish a judicial enforcement system). Rather, the Convention emphasises the importance of developing structural welfare policies to promote equality, and to eliminate disadvantage experienced by groups. Even if the international para-judicial monitoring mechanism (set forth by the Optional protocol) seems unable to impose serious constraints on State parties' behaviour, the UN CRPD provides for mechanisms of internal follow up which can be extremely valuable. As Quinn underlines, this is a truly innovative aspect: the Convention pays attention not merely to what '*ought to be done*' but also to the institutional preconditions necessary to ensure that it '*can be done*' at domestic level. The UN CRPD drafters took care to lay down a matrix for domestic reform and set forth mechanisms, in articles 31-40, to improve a dialogue between the international and the domestic level.⁵ The general themes relevant to the

⁵ Art. 33 requires Parties to designate one or more focal points within their governments for implementing the UN CRPD. A related, but separate provision urges, though it does not require, States to consider creating or designating a coordination mechanism, again within government, to further implement across government sectors. This is an implicit acknowledgement that disability is an issue that cuts across numerous governmental ministries and agencies, and thus the implementation of the CRPD cannot occur absent coordination. The second major obligation

implementation of the Convention are the subject of Kallehaug's contribution. This author analyses, in particular, how the implementation of the UN CRPD may be successfully embedded in different legal orders. Flóvenz's contribution investigates the implementation of the UN CRPD in domestic law in the light of the development of economic and social rights. The influence of the classification of rights on implementation of the Convention is discussed, and examples are given from the judgments of the Icelandic Supreme Court in cases concerning the rights of persons with disabilities. In her chapter, Ragnhildur Helgadóttir sets out how Scandinavian courts have wrestled with the domestic status of international treaties, and she speculates on how the UN CRPD might be successfully invoked before domestic courts. Finally, Quinn's paper analyses the potential of the Convention, focusing on the possible influence the international text may play in States' behavior. Since the Convention alone does not guarantee that its values will be transposed to the worldview of policy and lawmakers, Quinn assesses its potential to trigger real political change where it matters most – within the States Parties themselves.

Concluding, this volume edited by Arnadóttir and Quinn succeeds in providing a comprehensive overview of the existing academic discussion on disability law. As might be expected, perhaps, the contributions draw together a range of different approaches that are not always consistent. The theme of the implementation of the Convention within the European Union probably deserved more than a single contribution (although, happily, Waddington's chapter is illuminating). Still, this collection provides useful insights into the nature of the UN CRPD and into the main challenges of its implementation (especially, but not exclusively, within the European context). Its greatest value is in the timely presentation of contributions, from different angles, showing how this remarkable international convention tackles the persistence of discrimination and marginalisation experienced by disabled persons worldwide.

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of Art. 33 requires States Parties to establish and/or support one or more independent mechanisms separate from government to 'promote, protect and monitor' the Convention's implementation.