SELECTED LEGISLATION AND JURISPRUDENCE
UN Convention on the Rights of Persons with Disabilities

1. Introduction

The Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on 13 December 2006.1 In accordance with Article 42, the Convention and the accompanying Optional Protocol were opened for signature on 30 March 2007. As of September 2007, the number of signatures amounts to 102 for the Convention and 59 for the Optional Protocol. Almost all European States as well as the European Community are amongst those who have signed the Convention. Five states formally ratified the Convention. The Convention will enter into force once twenty ratifications or accessions have been received (Article 45).

In this commentary I will address the question why it was felt necessary to draft a new legal instrument on the rights of people with disabilities (§ 2), describe its aim and material provisions (§ 3), examine its implications for (the right to) health and health care (§ 4), and end with the main conclusions (§ 5).

2. Rationale and Passage

Persons with disabilities are traditionally perceived as dependent individuals who evoke sympathy, if not pity, and require societal protection and support to compensate for their inabilities. As such, they were predominantly seen as objects of care instead of legal subjects entitled to respect and the full enjoyment of human rights. This approach is also reflected in the human rights instruments adopted in response to the atrocities committed during the Second World War. Despite large scale eugenics, involuntary sterilisation, ‘euthanasia’ and medical experimentation programmes and policies, not confined to Nazi-Germany, the human rights of people with disabilities were systematically ignored, if not neglected, by the drafters of such instruments as the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1949), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights.

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1 Resolution A/RES/61/06.
Rights (1966). On a national level, disability issues were — if at all — addressed within the realm of welfare policies. To express the solidarity with people with disabilities, many countries established quota systems according to which a specified number or percentage of an organisation's workforce was required to be disabled. These measures were not aimed at breaking away the barriers that exclude people with disabilities from mainstream society, let alone that they were inspired by the principles of equal dignity and non-discrimination, but above all intended to integrate people with disabilities and to diminish the (financial) ‘burden’ they place on society without making society more accessible for people who are differently abled.

It is only since the 1960s that more systematic attention has been paid to the dignity and human rights of people with disabilities and the minority position they hold in society. This holds true for both the national, regional and international level. The feminist, anti-racist and gay rights movements, that mushroomed in these revolutionary years, challenged the unequal treatment and opportunities of large groups of persons. These movements turned out to be a source of inspiration for people concerned about the exclusion and denial of rights of people with disabilities. Since then, disability issues are not merely seen as welfare issues, but increasingly also as a human rights issue.

The United Nations (UN) has always played an eminent pioneering role when it comes to articulating and promoting the rights and dignity of people with disabilities. Following the adoption of the 1966 twin covenants, various UN organs took steps to ensure the human rights protection of persons with disabilities. In 1971, the General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons followed, in 1975, by the Declaration on the Rights of Disabled Persons. Both documents emphasise that persons with disabilities have the same fundamental rights as their able-bodied peers. Yet, emphasis is placed on the rights to medical care and rehabilitation, to a qualified guardian and to social security.

The 1980s marked an irreversible shift towards a civil rights approach. The year 1981 was proclaimed the International Year of the Disabled with the slogan ‘Full Participation and Equality’. Two years later, in 1983 the International Decade for Disabled Persons was launched with the adoption of a World Programme of Action Concerning Disabled Persons. The weight on equality and strong encouragement of involvement of persons with disabilities and their organisations illus-

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