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GLOBALIZING A RESPONSE TO DISABILITY DISCRIMINATION*

Dick Thornburgh[†]

It is a distinct pleasure for to me to join you today at this important gathering to focus on the worldwide effort to advance disability rights. I congratulate Professor Paul Steven Miller, a longtime friend, and his colleagues at the University of Washington School of Law for bringing together so many of those who are at the front lines of this important undertaking. All of us are engaged in the effort to end discrimination and to promote the rights of those estimated 650 million men, women and children with disabilities around the world who seek vindication of their preeminent human rights in an ever-challenging world.¹

Naturally, we will focus a great deal at this gathering on the recently adopted U.N. Convention on the Rights of Persons with Disabilities (Convention),² a truly significant accomplishment for the international community and a great source of hope for people everywhere with disabilities. But between adopting the Convention and actually securing the important rights it guarantees lies a long and tortuous path that will test the commitment, tenacity, and political will of the international community—from national leaders to grassroots advocacy organizations to individual citizens bent upon justice for all.

As I last looked, a total of 127 countries had signed the Convention and twenty-four had ratified its terms.³ With Ecuador becoming the

* Keynote remarks made at *Framing Legal and Human Rights Strategies for Change: A Case Study of Disability Rights in Asia*, a symposium held on April 24–25, 2008 at the University of Washington School of Law.

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1. International Convention on the Rights of Persons with Disabilities, Aug. 14–25, 2006, *Some Facts About Persons with Disabilities*, available at <http://www.un.org/disabilities/convention/pdfs/factsheet.pdf>, permanent copy available at <http://www.law.washington.edu/wlr/notes/83washrev439n1.pdf>.

2. G.A. Res. 61/106, Annex I, U.N. Doc. A/RES/61/106 (Jan. 24, 2007).

3. U.N. Enable, Convention & Optional Protocol Signatories & Ratification, <http://www.un.org/disabilities/countries.asp?id=166> (last visited Nov. 10, 2008) [hereinafter *Optional Protocol*], permanent copy available at <http://www.law.washington.edu/wlr/notes/83washrev439n3.pdf>. As of November 2008, a total of 136 countries had signed the Convention and 41 countries had ratified its terms. *Id.*

twentieth ratification on April 3, 2008, the thirty-day waiting period for the Convention to enter into force was triggered,⁴ and we stand today at the cusp of a new era of worldwide recognition of disability rights. While only two of the Asian nations represented here at this symposium have thus far ratified the Convention,⁵ I fully expect that Asian nations will assume a lead role in this undertaking. At least 400 million people with disabilities and a growing number of older persons live in the Asian-Pacific region.⁶ Some 400,000 people, for example, used wheelchair services at the Hong Kong International Airport in 2006.⁷ And the World Committee on Disability has three times in the last ten years bestowed its prestigious Franklin D. Roosevelt International Disability Award on Asian-Pacific nations—the Republic of Korea in 1996, the Kingdom of Thailand in 2001, and New Zealand in 2007.⁸ This award is designed to honor *progress*, not perfection, in nations' efforts to empower people with disabilities within their borders.⁹ And it is *progress* that we must seek in the perfecting of disability rights in all nations.

I.

The road to this point has been a lengthy one and I think it might be useful to review how we have arrived here as a means of aiding the process of further progress. The great American jurist Supreme Court Justice Oliver Wendell Holmes, Jr. once observed that “a page of history is worth a volume of logic,”¹⁰ and in this movement as well, I suggest

4. Press Release, U.N. Enable, With 20 Ratifications, Landmark Disability Treaty Set to Enter into Force on 3 May, U.N. Doc. HR/4941 (Apr. 3, 2008), *available at* <http://www.un.org/News/Press/docs/2008/hr4941.doc.htm>, *permanent copy available at* <http://www.law.washington.edu/wlr/notes/83washrev439n4.pdf>.

5. *Optional Protocol*, *supra* note 3.

6. Press Release, U.N. Econ. & Soc. Comm'n for Asia & the Pac., People with Disabilities an Untapped Market for Tourism Industry, U.N. Doc. N/66/2007 (Nov. 21, 2007), *available at* <http://www.unescap.org/unis/press/2007/nov/n66.asp>, *permanent copy available at* <http://www.law.washington.edu/wlr/notes/83washrev439n6.pdf>.

7. *Id.*

8. Franklin & Eleanor Roosevelt Institute, Franklin D. Roosevelt International Disability Award, http://www.feri.org/common/news/info_detail.cfm?QID=1984&ClientID=11005 (last visited Sept. 5, 2008), *permanent copy available at* <http://www.law.washington.edu/wlr/notes/83washrev439n8.pdf>.

9. *Id.* (“The Award is presented to a nation that has made noteworthy national progress toward this goal and is accepted by the chief of state.”).

10. *N.Y. Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

some history is an appropriate starting point.

As many of you know, I have been involved in the disability movement for many years. I was a founding director of the National Organization on Disability back in 1982 and now serve as Vice Chairman of its international arm, the World Committee on Disability. I am also the father of a man with intellectual and physical disabilities. My son Peter suffered serious brain injury in 1960 at the age of four months in an automobile accident that tragically took the life of his mother.

As Governor of Pennsylvania and Attorney General of the United States, I have had the privilege to work in official capacities for the inclusion of people with disabilities in all aspects of life. This work has become a bit of a family affair. My wife Ginny, whom I married in 1963, founded the Religion and Disability Program of the National Organization on Disability, designed to ensure spiritual and religious access to persons with physical and mental disabilities. We have thus had the great privilege of merging our personal and career objectives in the cause of disability rights.

Coming to today's program, it is obvious that the United Nations has taken an important and long-overdue step toward bringing people with disabilities all over the world into the mainstream of the human-rights movement. I applaud the disability community for its tireless efforts in what must have seemed at times an uphill battle for international recognition of this important principle.

I know firsthand, from my service as Under-Secretary-General at the United Nations in the immediate post-Cold War era, of the long struggle to obtain passage of this Convention. The effort had its genesis in the U.N.'s 1981 Year of Disabled Persons,¹¹ followed by the Decade of Disabled Persons¹² and the promulgation of the World Programme of Action Concerning Disabled Persons.¹³ All provided focal points for efforts to internationalize concerns about disability rights. I particularly recall attending the historic gathering in Montreal in October of 1992 of the International Conference of Ministers Responsible for the Status of Persons with Disabilities, where seventy-three leaders of governments throughout the world met for the first time to exchange ideas and fashion

11. G.A. Res. 31/123, U.N. Doc. A/RES/31/123 (Dec. 16, 1976).

12. G.A. Res. 37/53, U.N. Doc. A/RES/37/53 (Dec. 3, 1982).

13. G.A. Res. 37/52, U.N. Doc. A/RES/37/52 (Dec. 3, 1982).

strategies that ultimately led to the adoption of the U.N. Convention.¹⁴

The Convention represents important principles that my fellow Americans hold dear: basic recognition and equal protection of every person under the law, non-discrimination, the fundamental importance of independent living, and the right to make basic choices about our lives. We pioneered these basic principles under American law. We in the United States are demonstrating that people with disabilities can participate fully in our democracy. We are demonstrating that society as a whole is richer and better off when people with disabilities are included fully in every aspect of life. Let me add that we in the United States fully intend to work to see that our nation lives up to its leadership role in recognizing these basic principles by signing and ratifying this Convention.

Almost twenty years ago, while serving as U.S. Attorney General, I testified before House and Senate committees of the U.S. Congress as the principal spokesperson for President George H.W. Bush's administration on the Americans with Disabilities Act (ADA).¹⁵ During those hearings, I acknowledged that no piece of legislation alone could change the long-standing misperceptions that many people have about disability—misperceptions based largely on stereotype, ignorance, and fear of what is different. Any reshaping of attitudes would be the gradual result not of the words or ideas in the laws, but of bringing people with disabilities from the margins of society into the mainstream of American life—into our schools and workplaces; onto our buses and trains; and into our courthouses, restaurants, theaters, and congregations—where they not only have an absolute right to be, but where we have an obligation as fellow human beings to welcome them as equals.

The effort to secure passage of the ADA was difficult. Those of us who wanted to see it happen were given countless reasons why it could not be done. We were told that the climate in Congress was not right; that the ADA would be too expensive, too complicated, ineffective, and impossible to enforce; even that the country in general just wasn't ready for it. So we discussed, debated, argued, researched, analyzed, negotiated, pleaded, convinced, and ultimately, drafted and passed the most progressive disability legislation the world had ever seen. This

14. See U.N. C.H.R. Res. 1993/29, U.N. Doc. E/CN.4/RES/1993/29 (Mar. 5, 1993) (mentioning the influence of the International Conference on the U.N.'s dedication to future measures supporting disability rights).

15. 42 U.S.C. §§ 12101–300 (2000).

legislation, with its innovative concepts such as “reasonable accommodation,”¹⁶ is changing America. It has truly made us more representative, more democratic and more empowered by ending the unchecked exclusion of 54 million Americans from our daily lives.

Of course we still have a long way to go in our own country. The ADA is not perfect and people with disabilities in America continue to face serious challenges. Court decisions have sometimes hindered the full implementation of the ADA.¹⁷ Still, since 1990 we have made remarkable progress that is not only celebrated here at home, but also recognized abroad. Because of our adoption of the ADA and other disability-rights legislation, the United States is viewed internationally as a pioneering role model for disability rights. Disability activists from other countries have taken the ADA to their governments and said, “This is how it should be done. We need to do this here in our country.” And governments around the world have responded.¹⁸ As one who worked hard to gain protection of these rights in the United States, I am very proud to see how these basic principles have now been established as a part of international law through the adoption of the Convention. As we overcame so many barriers to the enactment and implementation of the ADA, I am confident that we can create an even greater coalition to bring about support for the Convention.

I have great admiration for the many government representatives and disability activists who worked long hours at the United Nations to draft this excellent Convention. I know many of you who have organized this symposium were intimately involved in the drafting process. This week’s gathering, with its particular focus on Asia, is a valuable opportunity to learn from many of those involved in developing the Convention and to examine the challenges of implementation.

As we work together to gain support for the Convention, we must recognize that the challenges we face are intimately linked with the very circumstances of economic, social, and political marginalization that affect people with disabilities around the world. Despite progress already

16. *Id.* § 12111(9).

17. *See, e.g.*, *Toyota Motor Mfg. v. Williams*, 534 U.S. 184, 194 (2002) (placing the burden of proving an individual is disabled on the employee). More recently, Congress passed the ADA Amendments Act of 2008 to address some of these concerns. *See* ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).

18. *See* Sally Chaffin, *Challenging the United States Position on a United Nations Convention on Disability*, 15 TEMP. POL. & CIV. RTS. L. REV. 121, 140–41 (2005) (discussing laws modeled after the ADA).

made, disability as a global issue remains near the bottom of the list of priorities in many governments and societies. People with disabilities remain among the poorest, least educated, and most abused and excluded people on earth.¹⁹

But we must also keep in mind that the Convention can be a strong tool—as well as an inspiration—for civil society around the world. Non-governmental organizations and advocates will have a new legal framework within which to push for reforms based on legal obligations. The World Committee on Disability, for example, will henceforth use the Convention as a basis for its annual FDR International Disability Award.²⁰ Selection of the winning nation will now be based, in part, on its signing and ratifying the Convention.²¹

II.

Let me address for a moment the painful and, I must admit, somewhat puzzling question of the seeming reluctance of my own government to continue its lead role in this international effort. Let us look at some of the questions and concerns that have been raised about this Convention because they may be repeated elsewhere.

To begin with, it has been argued that disability rights are more appropriately addressed as a domestic concern, given the complexity of the issues involved.²² In other words, this really is not an appropriate subject for international protection. Certainly, good domestic legislation in every country would be the ideal solution. But since most countries lack such protections, it seems unreasonable to expect the situation will change dramatically without international pressure. The fact is, for many countries, international conventions have already served as a catalyst for the development of important domestic protections in many other

19. See International Convention on the Rights of Persons with Disabilities, *supra* note 1.

20. National Organization on Disability, Franklin Delano Roosevelt International Disability Award: Guidelines for Nominating a Nation, <http://www.nod.org/index.cfm?fuseaction=Feature.showFeature&FeatureID=88> (last visited Sept. 5, 2008), *permanent copy available at* <http://www.law.washington.edu/wlr/notes/83washrev439n20.pdf>.

21. *Id.*

22. Letter from Kim R. Holmes, Assistant Secretary of State for International Organization Affairs, United States Department of State, to Lex Frieden, Chairperson, National Council on Disability (June 3, 2004), *available at* http://www.usicd.org/StateDept_Letter_to_NCD.pdf, *permanent copy available at* <http://www.law.washington.edu/wlr/notes/83washrev439n22.pdf>.

areas.²³

As a practical matter, the United States will have much more authority worldwide to speak out about discrimination against people with disabilities if we agree to abide by international scrutiny at home. We already have laws in place that are consistent with the Convention. But in ratifying the Convention, the United States agrees to report regularly to an international oversight body.²⁴ We have nothing to hide. We can only gain from participating in the international review process. Moreover, we should not be so proud to think we have nothing to learn from other countries about how to provide better opportunities for people with disabilities.

Some have looked at the final text of the Convention and found it lacking in strict, enforceable protections.²⁵ Some say it lacks the kind of detail we fought so hard to include in the ADA and that we have found essential for the enforcement of basic rights in the United States.²⁶ We must keep in mind that a human-rights convention is a legal instrument that must apply consistently around the world—in countries rich and poor, in countries with widely varying legal systems, in countries where the idea of full participation for people with disabilities may be radically new and untested. The flexibility of this Convention is its strength—not its weakness. It lays down the core values and principles essential to ending discrimination against people with disabilities in any society.²⁷ It provides governments with guidance and direction now lacking under the general provisions of international law.²⁸ Article 9, for example, requires governments to “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications . . . and to other facilities and services open or provided to the public, both in urban and in rural areas.”²⁹ Article 24 recognizes the right of persons

23. See Chaffin, *supra* note 18 at 140.

24. See U.N. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex I, art. 35, U.N. Doc. A/RES/61/106 (Jan. 24, 2007).

25. Ad Hoc Committee on the Disability Convention, Seventh Session, *Intervention by Mental Disability Rights International (MDRI) on Draft Article 9 (Accessibility)*, <http://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7mdriart9.doc> (last visited Sept. 5, 2008), permanent copy available at <http://www.law.washington.edu/wlr/notes/83washlrev439n25.pdf>.

26. *Id.*

27. U.N. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex I, art. 3.

28. See, e.g., *id.* art. 4 (laying out general obligations of signing parties under the Convention).

29. *Id.* art. 9.

with disabilities to education and requires governments to provide “an inclusive education system at all levels . . . [e]nabling persons with disabilities to participate effectively in a free society.”³⁰

The Convention provides governments with core minimum standards needed to make essential reforms without locking different countries into one particular approach or another. The Convention creates a Committee on the Rights of Persons with Disabilities that will review reports of governments and will issue general recommendations about how to bring about full compliance with the Convention.³¹ Through this process of interpretation, governments from nations at every level of economic and social development can receive guidance about steps they can take to enforce the Convention.

Finally, some have said that because of the United State’s comprehensive domestic protections, a treaty on disability would have no relevance in our own country.³² But let’s hold on a minute. We are indeed at this time the most progressive country in the world when it comes to the domestic protection of disability rights. The universality of rights and fundamental freedoms—as expressed in our Declaration of Independence—is the foundation on which our entire society is based. Respect for human rights is also a stated principle of our foreign policy³³—precisely because we recognize that stability, security, and economic opportunity in any society presuppose a social order based on respect for the rights of citizens. Given this history and these values, it would seem natural for the United States to assume a *leading* role—not a passive one—in the effort to recognize and enforce an international treaty of this kind.

Ratification of the Convention is an opportunity to export to the world the very best we have to offer. This is a chance to use our rich national experience in disability rights—which has gained us the respect of the world community—to extend the principles embodied in the ADA to the hundreds of millions of people with disabilities worldwide who today have no domestic protection. This is worthy of our leadership. We have

30. *Id.* art. 24.

31. *Id.* arts. 35–36.

32. See, e.g., Tracy R. Justesen & Troy R. Justesen, *An Analysis of the Development and Adoption of the United Nations Convention Recognizing the Rights of Individuals*, 14 HUM. RTS. BRIEF 36, 39 (2007).

33. Bureau of Democracy, Human Rights, & Labor, U.S. Dep’t of State, Democracy, <http://www.state.gov/g/drl/democ> (last visited June 26, 2008), *permanent copy available at* <http://www.law.washington.edu/wlr/notes/83washrev439n33.pdf>.

everything to gain and nothing to lose by playing the role the world expects of us. We must sign and ratify the U.N. Convention to fulfill that role.

III.

Just like the ADA, this Convention will not provide an instant legal solution that can effect immediate changes in attitudes and cultural perceptions; nor will it dispel the ignorance that leads to discrimination and human-rights abuses of people with disabilities. What it will do is create a permanent place for disability within the human-rights framework. It will put disability on the radar screens of governments and societies as a legitimate human-rights issue to which they must pay heed. It will provide guidance and standards and create legal obligations for governments to respect the rights of this sizable population. It can serve as a powerful advocacy tool for the global disability movement to promote inclusion and equality of opportunity.

Before closing, let me say a word, in particular, about the developing nations of the world wherein, it is estimated, some eighty percent of the world's people with disabilities live.³⁴ Most of these persons are at the margins of their respective societies where, unfortunately, concerns regarding mere survival—combating hunger, securing shelter and eking out a daily existence—take precedence over concerns regarding people with disabilities.

It is sometimes said that, in nations struggling with a full agenda of political and economic problems and the effort to achieve basic human rights for all their citizens, the interests of persons with disabilities are likely to be set to one side for “future consideration,” i.e., when these other more important matters have been addressed. On the contrary, I would suggest that what responsible leaders of developing nations need to realize is the unique opportunity they have to embed disability rights in their emerging institutions as part of their development efforts, and to build an infrastructure of government, economy, and human rights that includes and respects the interests of persons with disabilities from the very beginning—for it is no exaggeration to say that the way a society treats its citizens with disabilities is a valid measure of the quality of life and the respect for human dignity in that society.

I hope those of you focusing on the agenda for disability rights in

34. International Convention on the Rights of Persons with Disabilities, *supra* note 1.

Asia will profit from the rich program that has been arranged for your participation this week. This symposium has concentrated, as noted in your program, on how to “create strategies for implementing, enforcing, and further developing rights protections on behalf of people with disabilities.” Your exchanges and discussions will no doubt enrich your ability to pursue this broad agenda.

Surely change will be gradual—perhaps painfully slow. But implementing the U.N. Convention on the Rights of Persons with Disabilities represents the best first step we can take toward promoting change on a global scale. This Convention can help all of us focus world attention on the more than 650 million people worldwide whose rights have been ignored for too long. Let us be about the business of seeing that those rights are honored and implemented, now and forever.