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**Advancing the Rights of Persons with Disabilities:  
A US-Iran Dialogue on Law, Policy, and Advocacy**

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# **United States Ratification of the Convention on the Rights of Persons with Disabilities: Would it Make a Difference?**

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## **Introduction**

The United States signed the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on July 30, 2010, and the Obama administration has pledged to support ratification and submit its CRPD ratification package to the Senate in short order. America has long held itself out as the global leader in disability law and policy. At the same time, the United States historically has been reluctant to ratify United Nations human rights treaties. Accordingly, possible CRPD ratification is of consequence, not only for disability rights, but more generally for US human rights foreign policy.

## **Legal and political requirements for ratification**

In the United States, treaties require consent by two-thirds of the Senate (US Constitution). The first step in that process is a comprehensive review of the treaty by the governing administration. This review is undertaken in order to determine whether the treaty in question is consistent with United States laws and policies. This assessment is typically led by the United States Department of State, but includes an inter-agency process in which all relevant agencies are given the opportunity to review and comment on the implications of ratification, identify shortcomings in law or policy, and otherwise provide input. The State Department prepares a recommendation for the President, based on its interagency review process and comprehensive legal analysis, on whether the United States should ratify the instrument. The State Department also prepares documentation, inclusive of the detailed legal analysis, for submission to the Senate to request approval of the treaty. A final review of these documents is made by the President's staff. If the President considers that treaty ratification is in the best interests of the United States, the documents—referred to as the ratification package—are sent to the Senate, to start the process of consent (CRS, 2001).

A treaty sent to the Senate for ratification is referred specifically to the Senate Foreign Relations Committee. Typically, there is a hearing on the treaty, to determine if there are any public concerns or to consider the need for special legislative implementation. A political decision is made by the Committee Chair of the Senate Foreign Relations Committee on what the appropriate process should be in each instance. The Chair may thus use his/her discretion in placing the treaty on the agenda and can effectively delay any action on the treaty, sometimes for many years. The final steps for Senate consent are

a recommendation by the Senate Foreign Relations Committee and a favorable vote by the Senate. The Committee is responsive to expressions of support and questions from the public. Human rights organizations, private companies and other organizations may contact the Committee to express their support and ask questions (CRS, 2001).

The submission of a treaty ratification package to the Senate will often include, in addition to the detailed legal analysis, recommend reservations, understandings, or declarations (RUDs). RUDs are intended to address any potential problems or objections regarding ratification of the treaty. For example, there may be United States laws that require change as a result of treaty approval. While a separate legislative bill can be introduced by the administration to accomplish this change, following the standard process for approval of new laws in the Congress, this would likely stall treaty ratification. In such cases, RUDs could be utilized in order to prevent such legislative action. A reservation is designed to alter the terms of the treaty, thus changing the legal obligation undertaken by the ratifying state. Understandings and declarations may be used to clarify the interpretation of a treaty provision (Buergenthal, 1995), for example to ensure alignment of a treaty obligation with constitutional understandings.

Following the Senate's consent to ratification, the treaty is returned to the President. Thus, the process is complete once the President signs the instrument of ratification following the Senate's granting its consent. The President's signature on the instrument of ratification binds the US government to the terms of the treaty, subject to any RUDs.

## **Assessing American disability law and CRPD obligations**

The CRPD's aims are consistent with those of American disability law and policy. Overall, United States law can be viewed as either being in alignment with the CRPD, or certainly capable of reaching those levels through more rigorous enforcement and, potentially in some instances, through additional legislative action. Indeed, the core principles articulated in the CRPD are firmly embedded in and drawn from American disability law—respect for human dignity, non-discrimination and autonomy, reasonable accommodation, and participation (Stein & Lord, 2008).

Where gaps arise between the two sets of legal mandates, they do so because United States domestic civil rights laws and international human rights laws operate from distinct, although not mutually exclusive perspectives. Disability laws and policies in the United States are grounded in the social model of disability, as is the CRPD (Stein, 2007). According to the social model, factors external to any given person's impairments determine how disabled she or he will be from functioning in society. Disability rights proponents in the United States view discriminatory attitudes toward citizens with disabilities as the central obstacle to mainstream integration, and have pursued an antidiscrimination approach modeled after previous civil rights statutes, most notably Title VII of the Civil Rights Act of 1964. The most significant result of their advocacy efforts was the 1990 promulgation of the Americans with Disabilities Act (ADA), which signaled the social model's legislative victory in the United States (Stein & Stein, 2007).

The American disability antidiscrimination agenda has exerted powerful influence in revising legal regimes affecting persons with disabilities, yet remains limited in the means by which equality can be achieved. This is because the American approach to disability rights is grounded in rigid formal justice notions that narrowly compel the treatment of similarly situated people as alike. One result of this exclusive focus is the implementation of civil and political rights through antidiscrimination statutes that do not fully encompass economic, social and cultural rights. Accordingly, the ADA provides civil rights protection without advancing robust equality measures. Put another way, civil rights are directed at ensuring equal treatment but not at equal opportunity, or, more comprehensively, robust substantive equality. As a result, the ADA as well as other American statutory protections cannot bring about full social inclusion for persons with disabilities (Stein & Stein, 2007).

To illustrate, consider the example of employment, where an obvious gap exists in coverage between American federal disability law and policy and the CRPD as it relates to the promotion of employment opportunities. Yet there is no reason to believe that by providing measures that support the ADA's strong antidiscrimination prohibitions, the United States could not achieve the CRPD's more comprehensive vision. Necessary measures might include some combination of vocational training, tax subsidies for extra-reasonable accommodations, affirmative action, job set-asides, or contract procurement (Stein & Waterstone, 2008).

Beyond employment, there are several areas in which it may be said that United States disability law and policy falls short of the CRPD's full conception of disability rights. This disconnect arises from the American perception that favors civil and political rights as worthy of strong statutory protection, regarding economic, cultural and social rights as beyond the ordinary normative realm of legislation. While American disability rights law does encompass some components of economic, social and cultural rights, there are clearly some gaps where the Convention appears to require strong equality measures or proactive action. This is the case, for example, in the circumstances of Articles 5 (Equality and non-discrimination); 6 (Women with disabilities); 8 (Awareness-raising); 20 (Personal mobility); 28 (Adequate standard of living and social protection); and 30 (Participation in cultural life, recreation, leisure, and sport). For other CRPD provisions, under-enforcement of United States laws creates a gap between legal requirements (that are otherwise adequate) and reality. This is apparent with regard to obligations set forth in Articles 9 (Accessibility); 11 (Situations of risk and humanitarian emergencies); 13 (Access to justice); and 29 (Participation in political and public life). And for still other Articles, because their province lies in state rather than in federal law, there is reason to suspect that those areas are not adequately protected. Articles 12 (Equal recognition before the law); 23 (Respect for home and the family); and 25 (Health) fall into this last group. With regard to Article 12, for example, it seems clear the progressive nature of a supported decision-making framework requires law and policy reform in most if not all countries around the world (Stein & Waterstone, 2008).

It is important to emphasize, however, that existing gaps in American disability rights law and policy that fall short of the CRPD obligations are capable of being narrowed or eradicated through either more rigorous implementation of existing United States laws and policies, and/or through Congressional legislative action. Importantly, none of these gaps presents an obstacle to ratification of the CRPD by the United States (Stein & Waterstone, 2008).

## **Significance of ratification being considered**

By considering CRPD ratification, the United States has begun a detailed internal review of its currently prevailing disability laws, policies, and practices. One positive result of its consideration of the CRPD is a better understanding of the landscape of disability law and policy. Even if the United States does not ratify the CRPD in the near term, the act of signing the CRPD and commencing the ratification process has triggered dialogue across the federal government that can serve as an impetus for better compliance and policy invigoration. Such dialogue can prompt policy and programmatic shifts in disability laws and policies in anticipation of possible ratification, and in turn can serve to promote and advance specific issues related to disability-based human rights.

There are indications that such triggered responses are already occurring. Concurrent with the CRPD's signing by the United States, President Obama's senior advisor, Valerie Jarrett, announced creation of a new position, special advisor for international disability rights, within the Department of State's Bureau of Democracy, Human Rights and Labor, thereby signaling a renewed commitment to ensuring the human rights foreign policy of the United States is disability inclusive (AAPD, 2010). Two months later, the United States National Council on Disability, an independent federal agency advising the President on disability issues, launched a study to review and assess the extent to which the foreign assistance policy of the United States is disability inclusive and the possible implications of CRPD ratification, especially in the light of Article 32's requirements relating to international cooperation (NCD, 2011). The President's appointment of a senior advisor on disability issues within the Federal Emergency Management Agency (FEMA), which is part of the Department of Homeland Security, is likewise fostering CRPD-related dialogue inasmuch as FEMA is considering the implications of Article 11 for its international humanitarian and disaster response programming (White House, 2011). And most recently, in December 2010, the President appointed a coordinator of disability and inclusive development at the United States Agency for International Development (State News Service, 2011). Indeed the State Department's Quadrennial Diplomacy and Development Review likewise reflects this interest in disability inclusion and commits to ensuring that disability is mainstreamed in all diplomacy and development undertaken by the United States (Quadrennial Diplomacy and Development Review, 2010).

## **Significance of ratification beyond the United States**

By signing the CRPD on July 30, 2009, voicing support for its ratification, and providing technical assistance (UN Enable, 2009), the Obama administration has demonstrated the commitment of the United States to rejoining the global community generally (Ogilvy & Ya'alon 2009, 193-94), and to continuing American leadership in the area of disability law and policy. In February 2011, the Obama White House briefed the American disability community on the status of its work on CRPD ratification, indicating the ratification package was nearing completion and that it would soon be transmitted to the United States Senate for its advice and consent. The briefing included a summary of the ratification package consisting of three reservations where shortcomings or differences in American disability law required some modification of CRPD obligations, five understandings regarding the

interpretation of various CRPD provisions and one declaration clarifying the application of the CRPD in domestic courts. The RUDs reflect the conclusion reached by the inter-agency review process that CRPD implementation is readily achievable.

Many in the United States human rights movement find hope in the promises undertaken by President Obama during his campaign to sign and support human rights treaty ratification, including ratification of the CRPD. At the same time, it bears noting American resistance to participating in human rights treaties (Nash, 2009)—and indeed international law in general—originates more than half a century ago (Foot 2008, 720), thus making an exceedingly challenging environment for CRPD ratification. Two factors nevertheless differentiate and improve prospects for CRPD ratification from that of other human rights instruments. First, disability rights has always been viewed as an across-the-aisle issue and benefited accordingly from bipartisan support (Bagenstos, 2003). Second, unlike other human rights issues, the United States has long held itself out as the global leader in disability rights (Stein & Lord, 2011). Hence, CRPD ratification is necessary to continue the aspiration voiced by President George H.W. Bush when signing the ADA, that America can be “a model for the choices and opportunities of future generations around the world” (Bush, 1990).

## **Conclusion**

Ratification of the CRPD is ostensibly readily achievable in view of the highly developed state of American disability law and policy, the traditional bipartisan nature of disability politics and the commitment by the United States to advance disability rights through its foreign policy. And yet American intransigence with regard to human rights treaties—and treaties in general—is a hurdle that supporters of ratification cannot ignore. It remains open to question whether the Obama administration is willing to spend much political capital on pressing for CRPD ratification. Equally unclear is whether the American disability community is willing to allocate the time and attention needed to press 67 United States Senators on participation in an international treaty.

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