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**THE GLOBALIZATION OF DISABILITY RIGHTS LAW –
FROM THE AMERICANS WITH DISABILITIES ACT TO THE UN
CONVENTION ON THE RIGHTS OF PERSONS WITH
DISABILITIES**

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ABSTRACT

The author examines a positive aspect of globalization: the spread of laws throughout the world protecting the rights of people with disabilities since the enactment of the Americans with Disabilities Act (ADA) in the United States. The origin of the ADA and its effect and application in the United States are first examined. Next, the subsequent process of the globalization of disabilities rights legislation is analyzed. A general review of significant national and regional disability discrimination laws is undertaken, together with an attempt at ascertaining how such laws were influenced by the ADA. Special attention is given to developments in disability rights law in Europe and Latin America. Finally, the drafting, adoption and future impact of the UN Convention of the Rights of Persons with Disabilities is reviewed. The author concludes with a prognosis of the future global development – and enforcement – of disability rights law and other civil rights laws. Through increased contact and shared information made possible by globalization (among other strategies), disability

rights (as well as other civil rights) advocates may continue to influence the global development of law in their respective fields.

KEYWORDS

Globalization, disability, discrimination, reasonable accommodation, civil rights, undue hardship, essential functions

INTRODUCTION

The dramatic worldwide expansion of disability rights law since the enactment of the Americans with Disabilities Act ("ADA") in 1990, culminating in the recent adoption of the U.N. Convention of the Rights of Persons with Disabilities, presents a case study of the globalization of an area of law in the field of human or civil rights. It is quite an interesting case study, as many other areas of law that may be considered globalized, in some sense, are either directly related to international economic concerns (commercial transactions -free trade/international commerce) and/or have a direct impact on a large number of states (for example, environmental issues). Civil rights and labor issues have generally been seen more as national issues, and so an exception to that trend – the globalization of disability rights – deserves a closer examination, which this article hopes to provide.

First, the general trend of globalization is examined, and its impact on the field of law in general and disability rights in particular. As noted above, the business and commercial law has seen the most rapid development as a consequence of globalization, while civil rights has lagged behind. Still, it is shown that the conditions created by globalization – particularly the ability to exchange information almost instantaneously – can enable good legal ideas in other fields of law (such as civil rights) to spread rapidly on a regional and global level. The specific attributes of "disability rights" that made its development favorable on a global scale are also addressed.

Next, the question of exactly *how* disability rights law became globalized since 1990 is addressed. The focus of this analysis is the Americans with Disabilities Act, which, it is argued, spurred the global development of this area of law since its enactment in the United States. Specifically examined are the ADA's two major attributes that made it susceptible to adoption on a worldwide scale: (1) it shifted the theoretical basis of disability rights from a medical/charitable model to a civil or human rights model, and (2) created an innovative and flexible legal methodology for protected the rights of disabled individuals.

The ADA's impact on subsequent disability rights legislation is then examined, from Europe and Latin America to the level of international law, ending with the adoption of the UN Charter of the Rights of Persons with Disabilities. A focus is placed upon how these laws follow the ADA's shift to a civil rights basis for disability law and other indications of direct borrowing form the text and legal concepts used in the ADA itself.

Finally, thoughts on the future development of disability rights law are given, together with ideas on how the model of globalization in this field of law may be applied to other areas of civil rights law. It is concluded that, as was the case with disability rights, the exchange of information on legal strategies and developments between nongovernmental organizations (among other actors) and the adoption of a coordinated political strategy give the best chance for the further expansion of disability and other civil rights.

1. GLOBALIZATION - GENERAL DEVELOPMENTS ON AN ECONOMIC AND LEGAL LEVEL AND THE EMERGENCE OF DISABILITY RIGHTS LAW

The term 'globalization' often has an economic meaning attached to it. This can be a purely economic meaning – for example, the outsourcing of production from a high cost labor market in a wealthy country to a low cost one in a developing state. Or, it can be a mixed economic/cultural meaning – the dominance of certain multinational corporations in certain fields (particularly entertainment, other services, food) throughout the world, which has a homogenizing effect on local cultures. Depending upon one's point of view, such globalization may be very good for world society, very bad, or somewhere in between. Discussions on the 'law of globalization' understandably are often devoted to national or supra-national legal regulation of such economic globalization.

However, there is an aspect of globalization in the field of law that is not directly rooted in economic concerns. Certainly, one aspect of globalization has been the radical expansion and development of communications systems throughout the globe, particularly through the internet. Thus, "a letter carried on horseback 150 years ago would have moved information at a rate of .003 bits per second (the average note carrying, say, 10 kilobytes of data, though of course that measure didn't yet exist. As late as the 1960s those same 10 kilobytes might have moved at 300 bits per second. Today global telecom cables transmit at a rate of billions of bits per second, a many-billion-fold increase in speed over 150 years."¹ This has led to a level of interconnectedness between societies that we have not seen before. Importantly, this level of interconnection does not only operate to benefit business transactions, but it also quickens –exponentially – the spread of ideas, including ideas about laws protecting certain civil and human rights.

Admittedly, the process of the globalization of laws protecting civil rights has not moved as fast as the globalization of laws protecting free trade: The right of a multinational corporation to move production to Indonesia, or to sell its products in

¹ Joshua Cooper Ramo, *The Age of the Unthinkable* (New York: Little, Brown and Co., 2009), p. 15-16.

Indonesia, has developed at a much faster pace than the right of an Indonesian worker to receive certain minimal working conditions (which, counterintuitively, is often seen as a matter of local, and not global, concern).² However, in certain areas of civil rights law, particularly the field of disability rights, globalization has led to a dramatic expansion of the legal protection of disabled people throughout the globe, all in a relatively short period of time.³

Perhaps the universal nature of a disability is one reason that the legal concept of disability rights has found such fertile ground throughout the globe. It is estimated that there are an "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."⁴ The existence of a disability cuts across issues of race, gender and even class and level of education. Tomorrow, anyone may be the victim of an unforeseen accident that leaves them permanently disabled. This may be one reason why champions of disability rights sometimes come from even politically conservative quarters, not otherwise known for their support of a broad expansion of human rights.⁵

Even apart from the broad acceptability of the idea of protecting the rights of disabled people throughout the world, there is another factor that explains the rapid global spread of disability rights law. Not only was disability rights a good idea whose time had come, but it was effectively put in use by the United States for the legal scholars, lawyers, politicians and civil rights advocates around the world to see and judge for themselves. As a legal system, as a law, the Americans with Disabilities Act⁶ worked, and therefore could be used as a basis for subsequent disability rights legislation on a national, regional and ultimately global level.

Thanks to globalization, and the resulting speed of communication and spread of ideas through the internet (and through international conferences, of which many attendees became aware through the medium of the internet), disabilities rights advocates were able to present to their respective nation or region a law which was not abstract, but one that actually was effective. As succinctly explained

² On a broad level, this is slowly changing – corporate campaigns highlighting the conditions of such workers, or of human rights standards in certain countries where corporations have outsourced much of their production, have led some multinationals to adopt their own 'codes of conduct'. Such codes provide higher labor standards to local employees than otherwise would be dictated by pure market or political conditions.

³ See Christain Curtis, "Disability Rights in Latin America and International Cooperation," 9 *Sw. J.L. & Trade Am.* 121 (2002): 121-122 ('Although the idea of globalization has been understood primarily in economic terms, enhanced possibilities for communication and the exchange of information, experience, and resources have also collaborated to create a growing disability rights environment').

⁴ Dick Thornburgh, "Globalizing a Response to Disability Discrimination," 83 *Wash. L. Rev.* 439 (2008).

⁵ Thus, the landmark Americans with Disabilities Act was signed into law in the United States by a Republican administration. The Attorney General of that administration, and strong advocate of the passage of this legislation, Dick Thornburgh, had a personal connection to the subject matter of this law. His son has suffered from intellectual and physical disabilities since he was 4 months old, after receiving a serious brain injury as a result of an automobile accident. See *ibid.*: 441.

⁶ 42 U.S.C. Section 12101 *et seq.*

by Dick Thornburgh, who was the attorney general of the United States in 1990 when the ADA was passed into law:

[S]ince 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 rights activists 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.⁷

The use of the ADA as a model of sorts for subsequent disability rights legislation enacted through the world can be seen as a harbinger of the spread of other, effective legal ideas on a global level, and not only ones involving mergers and acquisitions. Thus, we can see the spread of class action mechanisms from the United States to Europe⁸, and of common law principles from Anglo-Saxon legal systems used in the European Court of Justice⁹, among a constantly growing list of examples.¹⁰ Consequently, not only for the further analysis of global disability rights law, it is useful to examine more closely, from a legal perspective, what were the special characteristics of the ADA that made it a model for other nations and international groups to follow.

2. THE INNOVATIVE FEATURES OF THE AMERICANS WITH DISABILITIES ACT

The ADA has three significant components, grouped into "titles": Title I protects disabled people from discrimination in employment; Title II ensures that the disabled have access to transportation, government services and services which are publicly funded; and Title III guarantees such access to public services operated by private entities, such as hotels, etc.¹¹ The then-radical concept of the ADA was to integrate disabled people into everyday life as fully as possible, whether it be through taking a bus, getting a job, or shopping at a store.

This objective was itself a sea change from the traditional concept of legal protection for disabled people, to the extent any protection existed at all, in various

⁷ See Dick Thornburgh, *supra* note 4: 443.

⁸ Stefano Grace, "Strengthening Investor Confidence in Europe: U.S.-Style Securities Class Actions and the Acquis Communautaire," 15 *J.Transnat'l L. & Pol.* 281 (2006).

⁹ Koen Lenaerts and Kathleen Gutman, "Federal Common Law in the European Union: A Comparative Perspective from the United States," 54 *Am.J.Comp. L.* 1 (2006).

¹⁰ The United States Supreme Court has even taken to citing European law in its decisions (J. Andrew Atkinson, "King Arthur in a Yankee Court: The United States Supreme Court's use of European Law in *Lawrence v. Texas*," 10 *ILSA J.Int'l & Comp.L.* 143 (Fall, 2003).

¹¹ See 42 U.S.C. Section 12101 *et seq.*

parts of the world. They may generally be described as a paternalistic¹² or a medical model¹³ for treating people with disabilities. Under such models, "people with disabilities have been isolated, stigmatized, mistreated or marginalized. People with disabilities have been viewed as objects of pity, in need of medical cure or charity, but not as individuals capable and willing to contribute to society through work."¹⁴

The situation existing in Latin America for much of the 20th century was not atypical:

The main effect of disability policies was, and still for the vast majority of countries is, the exclusion of the disabled from most significant social spheres of life. The effects of such paternalistic policies are twofold. First, disabled persons have traditionally been confined to a private (as opposed to public) sphere with limited social participation.... Thus, physical and social access to public buildings, transportation, education, employment, and participation in other institutions has not been a sustained public goal for most Latin American countries during the 20th century. Second, society has traditionally viewed disabled people as charitable objects, in need of so-called "special protection." Indeed, the statutory language habitually reflected depictions of disabled individuals as weak and dependent (or in need of care or protection).... The charity model that fosters "welfarism without rights" – the concession of welfare benefits as a matter of charity, without legally enforceable entitlements – is widespread in practice and policy as applied to the disabled individuals throughout the region.¹⁵

The ADA, then, represented a shift from such paternalistic models of assisting the disabled (for example, through the receipt of a modest disability pension or stipend each month) to a human rights model; i.e., the inherent rights of disabled individuals to participate in society.¹⁶

How the ADA accomplished its objective as a civil rights law was equally innovative. A law generally prohibiting discrimination against the disabled is certainly worthwhile and important in and of itself, but, as is so often the case, the devil is in the details. Who exactly is entitled to protection under such a law – in other words, who, as a matter of law, is considered to be 'disabled'? And what does it mean to 'discriminate' against such a person? In providing definitions to these terms, thereby answering these questions, the ADA provided an effective roadmap for future global disability rights legislation.

¹² See Christian Curtis, *supra* note 3: 110.

¹³ Arlene S. Kanter, "The Globalization of Disability Rights Law," 30 *Syracuse J. Int'l. L. & Com.* 241 (2003): 246.

¹⁴ *Ibid.*: 245.

¹⁵ See Christian Curtis, *supra* note 3: 110-111.

¹⁶ See Arlene S. Kanter, *supra* note 13: 247-248.

The ADA defines a person as disabled if he or she has (1) a physical or mental impairment that substantially limits the person in one or more major life activities, or (2) has a record of such impairment, or (3) is regarded as having such an impairment.¹⁷ Under the first prong of this definition, the ADA excludes environmental, cultural, and economic disadvantages, homosexuality and bisexuality, pregnancy, physical characteristics, common personality traits, normal deviations in height, weight, or strength, and the current use of illegal drugs.¹⁸ Even with these exclusions, the definition of the term disability is quite broad under the ADA (and has been made more inclusive still under recent amendments to the ADA effective January 1, 2009).

The term impairment is defined as "is a physiological disorder affecting one or more of a number of body systems or a mental or psychological disorder."¹⁹

A "major life activity" includes is defined as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting, and mental and emotional processes such as thinking, concentrating, and interacting with others."²⁰ The recent amendments to the ADA expand this definition to include reading, bending, and communicating, and also including major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions").²¹

An impairment "substantially limits" such major life activities if "if it prohibits or significantly restricts an individual's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity."²² In general, an impairment is only substantially limiting if it is permanent or long-term.²³ Thus, a common cold or a broken arm would normally not qualify as disabilities within the meaning of the ADA.

The ADA therefore uses a flexible approach to ascertain what is and what is not a disability, apart from the few, specific exclusions listed in the statute (homosexuality, current drug use, etc.). Mental illnesses, psychological conditions, alcoholism, past drug addiction, and other conditions all may be "disabilities" under the ADA, so long as they meet the statutory definition – i.e., they are an impairment that substantially limits one or more major life activities. Such a

¹⁷ 29 CFR Section 1630.2(g).

¹⁸ See United States Equal Employment Opportunity Commission (EEOC), *Executive Summary: Compliance Manual Section 902, Definition of the Term 'Disability'* // <http://www.eeoc.gov/policy/docs/902sum.html> (accessed May 20, 2009).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ See United States Equal Employment Opportunity Commission (EEOC), *Notice Concerning the Americans with Disabilities Amendments Act of 2008* // http://www.eeoc.gov/ada/amendments_notice.html (accessed May 20, 2009).

²² See EEOC, *Executive Summary*, *supra* note 18.

²³ *Ibid.*

flexible approach also obviates the need to draft a comprehensive list of all known illnesses or medical conditions. These kinds of lists have a tendency of being chronically incomplete, and in any case would need to be updated as new illnesses and medical conditions appear.

The second and third prongs of the ADA's definition of a disability also further the already expansive reach of the statute. Individuals are protected from discrimination if they have a record of a qualifying disability (i.e., a past disability that is in remission or otherwise have recovered from their condition) or are regarded as having such an impairment (i.e., the employer fires an employee because it believes he has AIDS, even though in reality he does not).²⁴ These prongs have the effect of removing false prejudices and stereotypes about disabled people from society. In essence, it is unlawful to discriminate against people upon whom an employer projects such false stereotypes, even if these people are not, under the legal definition of the term, in fact disabled.

The second "definitional" innovation of the ADA was to create a commensurately flexible definition of the term discrimination, and in so doing popularized the concept of a reasonable accommodation in disability rights law²⁵. Title I of the ADA protects disabled individuals from employment discrimination so long as the individual is an otherwise *qualified individual* with a handicap. In order to be so "qualified", the individual must be able to perform the "essential functions" of the job with or without a "reasonable accommodation." It is a form of unlawful discrimination for the employer to refuse to make such a reasonable accommodation, unless it would be an "undue hardship" for it to do so.

The interpretive regulations of the ADA further define the "essential functions" of a job as the fundamental duties of the position.²⁶ Thus, one of the essential functions of a trial lawyer in the United States is to have the ability to represent clients in court. To do so, one must have a license to practice law. If a person permanently in a wheelchair (and thus, "disabled" under the ADA – she has a substantial impairment in the major life activity of walking) applies for a job as a trial lawyer, the law firm is not guilty of unlawful discrimination by not hiring her if she does not possess a license to practice law, because she is not qualified for the job. On the other hand, making color copies on a Xerox machine would not be one of the essential functions of the job of a trial lawyer – it is only a marginal component of the job, and the law firm could not refuse to hire an otherwise

²⁴ *Ibid.*

²⁵ In the context of disability rights, the term reasonable accommodation was actually used previously in the Rehabilitation Act of 1973, a law prohibiting disability discrimination by federal contractors and federal government agencies, as well as the Fair Housing Act, as amended in 1988, to prohibit discrimination against the disabled in the area of housing. In the broader civil rights context, the 1964 Civil Rights Act also referred to an accommodation for employees' religious beliefs at work.

²⁶ 29 CFR Section 1630.2 (n).

qualified candidate for a trial lawyer position if she was color blind.

However, in determining whether a disabled person can perform the essential functions of a job, the test is whether she can perform them with or without a reasonable accommodation from the employer. Reasonable accommodation may include "making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials or policies; providing qualified readers or interpreters; [and/or] reassignment to a vacant position."²⁷ Thus, even assuming word processing on a computer is an essential function of the job for many types of lawyers, an applicant with no arms may still be able to perform that function if the law firm gives him some form of reasonable accommodation – for example, voice recognition software to perform word processing, or access to a secretary who can type her dictation.

There may be many forms of a reasonable accommodation, and the employee is not entitled to the most reasonable accommodation, only a reasonable one. Moreover, an employer does not have to provide a reasonable accommodation if it creates an undue hardship upon the employer. An undue hardship occurs when the accommodation requested or proposed would cause significant difficulty or expense for the employer, including, for example, if the accommodation is beyond its financial resources.²⁸ Mercedes-Benz might be required to provide more expensive accommodations than a small business owner, because of the size and wealth of Mercedes-Benz. What may be reasonable to a large multinational corporation may create an undue hardship to a much smaller employer, and so the precise type of accommodation required by the ADA may vary depending upon the financial resources of the employer.

The effect of the reasonable accommodation requirement of the ADA is to make employers work with their disabled employees to come up with some solution that would enable them to perform the essential functions of the job. If the accommodation is too costly relative to the financial resources of the employer, the employer is not required to make such an accommodation. This flexible approach helps, to a great extent, integrate disabled individuals into the American workforce to the maximum extent possible, and rewards creative thinking on both the part of the employer and the disabled applicant or employee.

²⁷ United States Equal Employment Opportunity Commission (EEOC), *Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act* // <http://www.eeoc.gov/policy/docs/accommodation.html> (accessed May 20, 2009).

²⁸ *Ibid.*

3. THE ADA'S IMPACT ON THE SPREAD OF DISABILITY RIGHTS LAW THROUGHOUT THE GLOBE

The ADA's impact on global disability rights law has been accurately described as enormous:

The ADA was enacted to address the attitudinal and physical barriers preventing Americans with disabilities from exercising their right to participate as equal citizens in society.... Accordingly, the ADA is a powerful statement of the United States' commitment to equality of opportunity, full inclusion, and economic self-sufficiency for people with disabilities. Its impact throughout the world is now recognized as well.

* * * *

Since the passage of the ADA in 1990, approximately 40 countries have enacted their own disability discrimination laws, some of which reflect a shift in approach from a welfare model to a civil rights law, as the ADA exemplifies.²⁹

To take two examples, regional disability rights standards in Europe and Latin America both draw heavily from the text of the ADA, and purposefully so.

Thus, the European Equality Directive adopted by the European Community in 2000 prohibits, among other forms of discrimination, discrimination on the basis of disability. Article 5 of this Directive goes on to state:

In order to guarantee compliance with the principles of equal treatment in relations to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, when needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to provide training for such a person, unless such measures would impose a disproportionate burden on the employer....³⁰

As pointed out by one scholar, the ADA:

directly influenced the drafting of Article 5 of the Equality Employment Directive. In particular, it is submitted that the term "reasonable accommodation"... was determinant of the terminology used in Article 5. A conscious choice was made to use the term "reasonable accommodation" in the Directive because of the level of familiarity with this particular element of the ADA among relevant commission staff, some Member States, and disability non-governmental organizations, which lobbied for the inclusion of such a requirement in the

²⁹ See Arlene S. Kanter, *supra* note 13: 248-249.

³⁰ Lisa Waddington, "When it is Reasonable for Europeans to be Confused: Understanding when a Disability Accommodation is 'Reasonable' from a Comparative Perspective," 29 *Comp.Lab. L. & Pol. J.* 317 (2008): 319.

Directive.³¹

Similarly, the related terms used by individual European states in transposing Article 5's requirements into their respective national laws – "adjustments" (United Kingdom), "steps" (Finland) or "appropriate measures" (France, Ireland, Lithuania and Slovakia) – all stem from the ADA's concept of "reasonable accommodation."³²

In Latin America, the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities ("Inter-American Convention"), adopted in 1999 and entered into force in 2001, also was strongly influenced by the ADA.³³ The Inter-American Convention's definition of disability, for example, includes as a disability an impairment "that limits the capacity to perform one or more essential activities of daily life..." This is quite similar to the ADA's definition of a disability as an impairment that "substantially limits one or more major life activities."³⁴ The Inter-American Convention's definition of disability also includes those who have a "record of disability, condition resulting from a previous disability, or perception of disability, whether present or past." This corresponds with the ADA's protection of those who have a record of an impairment or are regarded as being impaired. Thus, both the ADA and the Inter-American Convention "encompass a broad definition of disability, intending to prevent and eradicate social prejudice against persons with disabilities or persons perceived as having disabilities[,] and thus the text of the Inter-American Convention is a "clear example[] of the influence of the social model of disability on anti-discrimination legislation."³⁵

At the same time that more and more disability rights laws have been enacted at the national or (through applicable treaties) regional level since the passage of the ADA in 1990, the area of disability rights have also been moving forward as a matter of international law.

Prior to 1990, the United Nations had of course adopted various declarations and covenants relating to human rights. However, neither the 1948 Universal Declaration of Human Rights nor the International Covenant on Economic, Social and Cultural Rights ("ICESCR", adopted in 1966 and entered into force in 1976) specifically mention the rights of disabled persons.³⁶

In 1993, this situation was somewhat remedied by the adoption of resolution 48/96 by the U.N. General Assembly, which set forth Standard Rules on Equalization of Opportunity for Persons with Disabilities ("Standard Rules"). The

³¹ *Ibid.*: 320.

³² *Idid.*: 321.

³³ See Christian Courtis, *supra* note 3: 114.

³⁴ *Ibid.*: 115.

³⁵ *Ibid.*: 115-116.

³⁶ See Eric G. Zhang, "Employment of People with Disabilities: International Standards and Domestic Legislation and Practices in China," 34 *Syracuse J. Int'l. L. & Com.* 517(2007): 520-522.

Standard Rules stressed that disabled persons should be “empowered to exercise their human rights, particularly in the field of employment.” Rule 7 goes on to require that national labor and employment laws “not discriminate against persons with disabilities or raise obstacles to their employment,” and called on member states to integrate disabled persons in the workplace, among other measures.³⁷ In 1994, the U.N. Committee on Economic, Social and Cultural Rights (“CESCR”) attempted to link the Standard Rules to the ICESCR, as an interpretive tool to apply ICESCR to disabled persons. Still, as a formal matter, the Standard Rules were not legally binding upon member states.³⁸

The need for more comprehensive, and specific, international protection of the rights of disabled persons led to the drafting and adoption of the U.N. Convention on the Rights of Persons with Disabilities in 2006 (“Convention”).³⁹ After Ecuador became the 20th member state to ratify the terms of the Convention in April, 2008, the Convention came into force following a 30 day waiting period.⁴⁰

The Convention broadly sets forth the:

core values and principles essential to ending discrimination against people with disabilities in any society. It provides governments with guidance and direction now lacking under general provisions of international law. 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.’ Article 24 recognizes the right of persons 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.”⁴¹

In addition, Article 27 of the Convention prohibits discrimination against disabled persons in employment, in part by requiring that states take appropriate steps to “[e]nsure that reasonable accommodation is provided to people with disabilities in the work place.”⁴²

³⁷ *Ibid.*:522-523.

³⁸ *Ibid.*: 523-525.

³⁹ *Ibid.*: 528-529.

⁴⁰ Dick Thornburgh, *supra* note 4: 439-440.

⁴¹ *Ibid.*: 445-446. Many years prior to the passage of the ADA, the U.S. Congress had enacted the Individuals with Disabilities Education Act (IDEA) ‘to ensure that all children with disabilities have available to them a free appropriate education... [that will] prepare them for further education, employment and independent living.’ See 20 U.S.C. Section 1400(d)(1)(A).

⁴² Eric G. Zhang, *supra* note 36: 532, *quoting* the Convention, Article 27(1)(j).

CONCLUSIONS

To be sure, the Convention is not the final step in the development of disability rights law. Among other issues, it still lacks an effective enforcement mechanism. Yet, the Convention is another – and this time truly global – signpost for nations and regional organizations to look up to and use as an impetus to develop their own stronger and enforceable disability discrimination laws.⁴³ Indeed, the existence of the Convention may spur states in regional groupings, such as the Council of Europe, to actively implement their own regional disability rights action plans as a means of complying with the terms of the Convention.⁴⁴

As can be seen, the landscape of global disability rights law has radically changed – for the better – in 28 years between the passage of the ADA and the adoption and entrance into force of the Convention. Globalization – especially in the sense of the widespread improvement of global communications and the ability to share information almost instantaneously – deserves much of the credit for this welcome development. We are in an age where a good idea in the field of law may be readily adopted and further developed in many parts of the globe. This certainly presents challenges for legal professionals and academics, but, of course, many opportunities, particularly in the area of international labor and civil rights law. For scholars and practitioners in these fields, the globalization of disability rights law in the past two or three decades may provide a useful roadmap.⁴⁵

More specifically, Professor Courtis lists (1) training and exchanges between NGOs, (2) collaboration in human rights monitoring, (3) pressure to incorporate disability rights issues in U.S. international policy, and (4) direct pressure on U.S. corporations that conduct business in the U.S. and abroad as ways to advance disability rights issues internationally. These suggestions could also be used to advance other civil rights and labor laws at a global level.⁴⁶

The first two steps involve taking advantage of the opportunities for contemporaneous communication brought about by globalization. Disability rights – or other civil rights – NGOs can educate and cross-train each other in the latest legal developments in their field of specialization. Consequently, if there is a promising new legal innovation in one country, it can be analyzed and reviewed,

⁴³ Dick Thornburgh, *supra* note 4: 447.

⁴⁴ Thorsten Afflerbach and Angela Garabagiu, "Council of Europe Actions to Promote Human Rights and Full Participation of People with Disabilities: Improving the Quality of Life of People with Disabilities in Europe," 34 *Syracuse J. Int'l L. & Com.* 463(2007): 479.

⁴⁵ See, e.g., Vanessa Torres Hernandez, "Making Good on the Promise of International Law: The Convention on the Rights of Persons with Disabilities and Inclusive Education in China and India," 17 *Pac.Rim L.& Pol. J.* 497 (March, 2008) (noting that 'the Convention' has galvanized disability rights advocates and their supporters', with the author, for example, calling upon China to abandon its 'medical' model of disability rights law in favor of a human rights model).

⁴⁶ See Christian Courtis, *supra* note 3: 121-129.

and possibly "exported" to other jurisdictions through (among other means) political lobbying. For example, in Israel, Bizchut, a disability rights organization, drafted that nation's original law on disability rights. In so doing, Bizchut's intent was to incorporate the best elements of the ADA, Canadian law and Swedish law on disability rights into the new Israeli system.⁴⁷

The remaining two steps involve concerted efforts to put pressure on developed nations' corporations and government to promote disability rights abroad. While poorer nations may not have the resources (or, often, given the nature of their governments, the political desire) to enact comprehensive disability rights laws, multinational corporations doing business in these countries may set an example by abiding by a higher legal standard than would otherwise be required under local law. Government pressure could include direct state to state diplomatic efforts, or also traveler advisories for their citizens, warning would-be tourist that specified countries do not protect the rights of disabled people (by providing public access, etc.).⁴⁸

These are sound recommendations that will likely be more and more used to promote a positive side of globalization, the worldwide expansion of disability and other civil rights laws.

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⁴⁷ See Arlene S. Kanter, *supra* note 13: 249, note 35.

⁴⁸ See Christian Courtis, *supra* note 3.

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