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Belated Integration

Disability in International Human Rights Law

With the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) adopted in 2006, disability can no longer be ignored as an issue of human rights and international law. The integration of disability in international law is often presented as the result of the struggle of the global disability movement since the 1970s.¹ But how can this integration, which is mainly described by disability activists and international lawyers, be situated in human rights historiography? The decision of the United Nations General Assembly in 2001 to start the drafting of a new convention could be interpreted as an outcome of the expansion of human rights in the 1990s. As Stefan-Ludwig Hoffmann has argued, individual human rights became a »basic concept (*Grundbegriff*), that is, a contested, irreplaceable and consequential concept of global politics, only in the 1990s, after the end of the Cold War.«² Part of this »breakthrough« was the new emphasis on bodily suffering: asylum seekers for instance were »no longer expected to bring up stories of political persecution,« but they had to »report their traumatization and literally show their wounds, that is, document their bodily suffering.«³ Were people with disabilities »discovered« during the 1990s as suffering individuals like asylum seekers and vulnerable women who were in need of international protection?

In this chapter I will argue that global disability policies were less affected by the expansion of human rights during the 1990s as described by Hoffmann than one would expect. The main reason why the 1990s could not be seen as a breakthrough for disability human rights is that disability was first and foremost seen as an issue of development. My

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1 Sabatello/Schulze, *Human Rights and Disability Advocacy*.

2 Hoffmann, »Human Rights and History,« 282.

3 Ibid., 302.

argument is inspired by Antony Anghie who, in response to Samuel Moyn's *Last Utopia*, has pointed to the importance of the »utopia of ›development‹« that was particularly supported by the Global South.⁴ Although the situation for the 1990s is different, I would like to apply a similar nuance to Hoffmann's statement about the breakthrough of human rights in the 1990s: in the case of disability policies human rights were not omnipresent, but development was. This is evident already from the main argument that Mexico used during its successful lobbying for an international convention: disability was not well integrated in the Millennium Development Goals and therefore a separate convention was needed.

The social development approach to disability that I will discuss in this chapter could best be summarized as a global policy that attempts to give people with disabilities »the same opportunities as other citizens« and »an equal share in the improvement of living conditions resulting from economic and social development.«⁵ The concept of »social development« has been used by the UN to articulate the importance of social welfare in development policy and practice, in particular since the foundation of the UN Research Institute for Social Development in 1963.⁶ Global policies concerning people with disabilities were the responsibility of the Centre for Social Development and Humanitarian Affairs, a division of the Economic and Social Council of the UN. Within the social development approach human rights could play a role as underlying concept or moral standard, but preferably not as international law. This was partly because human rights law for people with disabilities implies a more radical equality than a policy aimed at »same opportunities« and »equal share.« Moreover, human rights law tends to ascribe a central role to implementing national states, monitoring international organizations and public funding whereas the social development approach emphasizes

4 Anghie, »Whose Utopia?«; Moyn, *The Last Utopia*.

5 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, quoted in Van Trigt, »Inequality,« 202.

6 »History,« United Nations Research Institute for Social Development (UNRISD), [www.unrisd.org/80256B3C005BF3C2/\(httpPages\)/F847DB0B7E3947878025792000336079?OpenDocument](http://www.unrisd.org/80256B3C005BF3C2/(httpPages)/F847DB0B7E3947878025792000336079?OpenDocument) (accessed 30 May 2020).

the importance of non-state actors such as NGOs and business companies. In light of the recent literature about human rights and neoliberalism, the social development approach to disability could be characterized as a neoliberal approach: not because the approach is explicitly aimed at the »free market,« but because it supports a neoliberal constellation in which social policies are de-politicized and public spending is limited. At the global level disability was »parked« in the »box« of social development and humanitarian affairs and therefore in the voluntary sphere and at safe distance of state policies and political debate.⁷

The reconstruction of this approach is relevant because it is helpful for understanding the belated integration of disability into international law and the interpretation of the UNCRPD since 2006. Moreover, it shows how the popularity of the human rights discourse in the 1990s was not always translated into popularity of human rights *law*. The structural equality the advocates of international disability law have argued for since the 1980s was, I will show, not adopted by global disability policy makers in the 1990s. In the case of disability, policymakers often framed human rights as human needs and therefore they could be seen as a powerless companion or fellow traveler of neoliberalism. The social development approach to disability did not entail a »development utopia« that according to the literature could be seen as an alternative to the »human rights utopia,« but served a »neoliberal utopia« in which offering people with disabilities equal opportunities and a minimal provision was more urgent than legally ensuring their equal rights. Although the UNCRPD broke through the dominance of the social development approach in principle, it still plays an important role in the practice of global disability policies. Human rights law does hardly rule out the market: the women's movement for instance has integrated women's rights in international law but has often, as Samuel Moyn has argued, imagined development »to be available in free market terms.«⁸

In order to understand why the social development approach prevailed, I will follow a selection of historical actors who were involved in global

7 Whyte, *The Morals of the Market*.

8 Moyn, *Not Enough*, 204.

disability policies during the 1980s and 1990s and ask how and why they used or did not use human rights and what their alternatives were. The main actor in this chapter is Alan Reich (1930-2005), an American with a disability who became involved in disability policies in 1981. Reich had served the U.S. government as appointed Deputy Assistant Secretary of Commerce for East-West Trade and Director of the Bureau of East-West Trade. He also served as member of the U.S. Delegation to the WHO and adviser of the U.S. Mission to the UN.⁹ As a policymaker he developed a diplomatic relationship with the UN Secretary-General during the 1980s and 1990s. Although Reich's influence was limited, his interaction with the Secretary-General provides insight into the development of global disability policies that transcend the particular case of his lobbying.

North American Disability Rights

In the literature about the global disability movement, developments in disability activism and law in North America are generally considered very influential. Activists such as Ed Roberts and Judy Heumann brought their ideas to other parts of the world, and the Americans with Disabilities Act (ADA) passed in 1990 inspired the writing of disability law in other countries and regions.¹⁰ As I have argued elsewhere, the literature sometimes too easily follows a narrative in which the convention is presented as an outcome of a process that started in North America.¹¹ In this chapter I will further complicate this narrative by following actors from North America who give insight into a framing of disability that has remained almost unnoticed, but without which we cannot understand global disability policies and the late inclusion of disability in international law.

An important moment for the development of global disability policies was the International Year of Disabled Persons in 1981. It was preceded by other initiatives such as the Declaration on the Rights of Disabled Persons (1975), but because of the enormous attention for the year and the development of a World Programme of Action »1981« further established

9 CV Reich, in: UNARMS, Archives Secretary General, s-1048-0003-10.

10 Heyer, *Rights Enabled*.

11 Van Trigt, »Inequality.«

disability as a separate (policy) category at the global level. The United States of America also joined the year.

During the national celebrations of the year human rights were not a central concept. However, when the World Programme of Action concerning Disabled Persons (WPA) was discussed at the UN, the human rights perspective was supported by the US. In a speech to the advisory committee for the year, the U.S. delegate – probably Harold O’Flaherty – mentioned human rights in his commentary on the draft WPA as follows: »The document also calls for a very strong statement in the area of human rights. I was distressed, Sir, to learn that the document is calling for the establishment of separate mechanisms and vehicles to handle the human rights and civil rights of disabled persons. This seems, Sir, to be a paradox, for the rest of the document calls for meaningful integration of disabled persons. I think it is time, Sir, that we establish consistency throughout the entire document. The same societal components, strategies which protect the human rights on a nation-by-nation basis of all persons, should consider human rights of disabled persons—in our judgment Sir, this is the true reflection of the U.N. theme (i.e., full participation and equality of life).« This statement went along with another statement. In looking back on the year, the U.S. representative mentioned both the work of the national council in collaboration with »the private sector, or business community, and the voluntary« and the coordinating Federal Interagency Committee for the year that had focused on the public sector but had implemented their projects »at no additional cost to the American taxpayer—truly this is a do-it-yourself year in the United States.«¹²

The speech shows an entanglement of human rights with an additional perspective that underlines the importance of low public spending and the initiative of non-governmental organizations.¹³ The latter perspective probably had its roots in the neoliberal agenda of the U.S. President since 1981, Ronald Reagan. In another speech, the U.S. delegate Harold O’Flaherty shortly discussed »Reaganomics« in the following way: »People say

12 IYDP – Its Promise and Potential, in: NARA, General Records of the Department of Education, Committee for the International Year of Disabled Persons, 1979–82, Box 2, Folder 3/7.

13 Cf.; Moyn, *Not Enough*; Whyte, *Morals Market*.

to me with Reagan-economics – Reaganism that we’ve lost our hope – we don’t have chance. I say to you that – ANYTIME that someone doesn’t tell me what I have to do, and I can do it for myself, that I am that much better off. Choose this day whom ye shall serve.»¹⁴ O’Flaherty did not consider Reagan as a threat. On the contrary, he suggested that the president’s neoliberal agenda of lowering public spending and stimulating self-reliance and business served the integration of people with disabilities that he, a blind person who served as director of the Federal Interagency Committee for the International Year of Disabled Persons (IYDP), stood for. Because of his austerity policies, Reagan would not have been liked by every disabled person, but the pursuit of equal rights by self-advocates in the US during the 1980s was not incompatible with neoliberalism.

Going to the UN

Alan Reich, director of the national IYDP council, went a bit further than O’Flaherty: he framed the UN policies in neoliberal terminology. When he received the District of Columbia UN Day Award for the council, he said in his speech that »the voluntary response in Washington, D.C., throughout the U.S. and worldwide to the IYDP challenge demonstrates the tremendous moral force of the U.N. With almost no special funding, the U.N. has fostered programs and long-term commitments in all countries, benefiting the world’s one-half billion disabled persons.«¹⁵ This perspective was what Reich wanted to bring forward in the following years – not only for the US, but for the world.

Like other countries, the US had conceived the year as an opportunity to support disability policies in the »Third World« and Reich wanted to continue this.¹⁶ The International Decade of Disabled Persons (1983-

14 Speech by O’Flaherty, NARA, General Records of the Department of Education, Committee for the International Year of Disabled Persons, 1979-82, Box 2, File 3/7.

15 Press release District of Columbia presents UN Day Award to US Council for IYDP, 23 October 1981, in: UNARMS, Archives Secretary General, s-0913-0020-09.

16 Speech by O’Flaherty, in: NARA, General Records of the Department of Education, Committee for the International Year of Disabled Persons, 1979-82, Box 2, File 3/7.

1992) as proclaimed by the UN seemed to offer an excellent opportunity for his program. Reich's council wanted to build on the momentum of the IYDP: »Specifically the U.S. Council supports the proposal before the United States congress to designate 1982 as a special national year of disabled persons and urges the United Nations to help capitalize on what has been so well begun by naming the remainder of the 1980s »The Decade of Disabled Persons«.«¹⁷ A national, American year did not happen, but Reich continued trying to win over the UN for his perspective. To reach that goal, he chose the shortest route: trying to influence the Secretary-General, first Kurt Waldheim (in office 1972-1981) and later Javier Pérez de Cuéllar (1982-1991), Boutros Boutros-Ghali (1992-1996), and Kofi Annan (1997-2006).

After describing U.S. disability activism, historians have begun to investigate the transnational exchange between self-advocates and the way in which U.S. activists spread their ideas over the world.¹⁸ The emphasis, however, has been on politically progressive people, and the role of the US in shaping the UN disability policies is hardly investigated – except that the reluctance of the US to support international (disability) law is well-known.¹⁹ From the international history literature we know that the US since the 1970s disengaged from the UN and turned to »the more easily controlled World Bank, Gatt, and IMF.«²⁰ The increasing influence of these financial institutions challenged the UN to redefine itself and its role in social and development policies.²¹ Thus it was no coincidence that Reich could develop a diplomatic relationship with the UN Secretary-General. He stressed the importance of non-state actors, NGOs as well as business companies, which would become increasingly important for the UN during the 1980s and 1990s.²²

17 Resolution US council IYDP »Continuing the Momentum of IYDP,« 22 October 1981, in: *ibid.*, File 4/7.

18 Heyer, *Rights Enabled*; Heumann, *Being Heumann*, 155.

19 Heumann, *Being Heumann*, 199.

20 Mazower, *Governing the World*, xv, 310.

21 Emmerij/Ghai/Jolly/Lapeyre, *UN Contributions*.

22 Emmerij, *UN Contributions*; Christiansen, »Partnerships«; Weiss/Carayannis/Jolly, »The »Third« United Nations.«

Sources in the archives of the UN Secretary-General clearly document that Reich informed the Secretary-General already during the year about the activities of his council and tried to arrange meetings on a regular basis. However, Secretary-General Waldheim did not have much time for him.²³ In April 1982 the new Secretary-General, Javier Pérez de Cuéllar, was informed by a members of his staff that Reich »was extremely critical of the UN's handling of IYDP.« Waldheim had met Reich at a luncheon, organized in 1981 by Reich and ambassador J. Kirkpatrick, »who is apparently a friend of Mr. Reich« and »a fiasco, as neither realistic proposals nor high-level attendance by major media people came forth.« Moreover, the »US Government-sponsored organization for IYDP expressed discontent at Mr. Reich's access to the Secretary-General.«²⁴

Although there does not seem to be a report of the luncheon, the program as made by Reich showed that he saw the U.S. response to the year as exemplary and that he would use the remaining days of the year for a big awareness campaign.²⁵ This attempt was not successful, but Reich was not discouraged. He wrote »chiefs of state and heads of international organizations to urge their ongoing commitment.«²⁶ He wanted to follow up the year with a »Bimillennium Project« that would »enhance recognition over time of the UN's significant humanitarian contribution and its great value as a moral force.«²⁷ His project wanted to »involve both governments and private sectors in setting goals to assist the disabled and to serve as a clearing house for information in the field of rehabilitation.«²⁸ Throughout the 1980s Reich tried again and again to involve the Secretary-General in his project.

23 Letter to Alan Reich, 17 December 1981, in: UNARMS, Archives Secretary General, s-0908-0012-01.

24 Note for Secretary-General by Angela Knippenberg-Uther, 28 April 1982, in: *ibid.*, s-1028-0011-0013.

25 Letter Reich to Waldheim, 15 October 1981, in: *ibid.*, s-0971-0013-03.

26 Letter Reich/U.S. Council for the International Year of Disabled Persons to Secretary-General Kurt Waldheim, 30 November 1981, in: *ibid.*, s-0971-0013-03.

27 Letter Reich to Secretary-General, 8 December 1982, in: *ibid.*, s-1028-0011-0013.

28 »Meeting with the Secretary-General Monday, subject »Bimillenneum project,« 29 November 1982, in: *ibid.*, s-1048-0003-10.

Since 1982 Reich and Javier Pérez de Cuéllar met almost yearly, but the Secretary-General's staff remained reluctant.²⁹ The UN staff possibly feared informal influence on Reich's part whereas they wanted to shape disability policies according to the official channels. The main responsibility for UN disability policies lay with the UN Centre for Social Development and Humanitarian Affairs in Vienna. However, the Secretary-General himself did not seem to share his staffs concerns. During a luncheon in 1984 organized by Reich, he was willing to deliver a speech.³⁰ The UN had limited power and resources to carry out their disability policies, and the Secretary-General was probably interested in Reich's attempt to stimulate the integration of people with disabilities with the help of NGOs and private companies instead of public money.³¹

A Potential Turning Point in Global Disability Policies

Although Reich wanted to improve the UN policies, he did not really contest the content of these policies focused on prevention, rehabilitation and equalization of opportunities – the keywords of the World Programme of Action. Other actors at the international level, however, tried to change UN disability policies during the late 1980s to steer them into the direction of human rights and to get rid of medical terminology such as prevention and rehabilitation. Human rights were, as mentioned already, part of global disability policies, but certainly did not belong to their core. During the 1970s and early 1980s human rights had functioned mainly as underlying social development policies. In the late 1980s several actors did attempt to make human rights more central.

One attempt I want to discuss first was undertaken by Norman Acton, a collaboration partner of Reich and secretary of Rehabilitation International. This organization was an important partner of the UN in disability

29 Note 10 May to letter 26 April 1983, in: *ibid.*, s-1048-0009-11; Letter Secretary-General to Reich, 7 January 1983, in: *ibid.*, s-1028-0011-0013.

30 Remarks by the Secretary-General for the luncheon organized by ambassador Kirkpatrick in honor of the international decade of disabled persons (1983-1992), 29 October 1984, in: *ibid.*, s-1048-0013-06.

31 Emmerij, *UN Contributions*.

policies, especially because »in view of the financial constraints currently facing the United Nations the support of non-governmental organizations is even more essential.« Acton suggested to the Secretary-General that the Disabled Persons Unit »might function better in a different administrative and geographic setting« such as Geneva or New York. Perhaps the unit could be associated with the Centre for Human Rights in Geneva instead of Centre for Social Development and Humanitarian Affairs in Vienna since »the human response to disability has evolved in recent years, emphasis has shifted toward greater attention to the rights of people who are disabled.« However, Acton's suggestion was not followed up. Because »issues related to disabled persons which are not solely a human rights concern should be considered in a broad development context,« the General Assembly had made this decision, responded one of the staff members.³²

Acton partly made an argument that was also used by Reich: in their opinion, the disability unit at the Centre for Social Development and Humanitarian Affairs in Vienna was doing too little for global disability policies. In 1989 Reich wrote about the way the Decade was managed by the Vienna office as follows: they »truly are doing everything possible with limited resources,« but had »not achieved the visibility or results for which we all had hoped.«³³ However, Acton was not only driven by disappointment about the Vienna office. He also pointed to the rise of the human rights perspective. Since the 1970s his organization was interested in the legislative dimension of rehabilitation, but other organizations and individuals had also argued for a human rights perspective on disability and investigations into human rights violations. Here the influence of the increasing popularity of human rights probably played a role: self-advocates and disability policy makers expected to further improve the situation of people with disabilities when they used the human rights frame.

32 Note to letter Yolah to Reich, 9 September 1986, in: *ibid.*, s-1048-0041-05. The letter mentioned that Reich and Acton are collaborators. The file also contains the correspondence between Yolah and Acton (who operated on behalf of the International Council on Disability, the former Council of World Organizations interested in the Handicapped initiated by the UN in 1952).

33 Letter Reich to SG, 7 January 1989, in: *ibid.*, s-1048-0090-02.

However, the UN, as became clear from the General-Secretary's response, was not eager to reframe disability in terms of human rights. Although research on violations was started in 1984, the following correspondence makes clear that the UN wanted to keep disability in the »social development box.« In March 1985 the Secretary-General received a letter from Mr. A. Cielens from Australia, who was wondering how he could use the declaration in his work to enhance the »welfare and rights of handicapped persons in his country«: »to which procedures I should follow in lodging a formal complaint in relation to the exploitation and mistreatment of handicapped persons by non-profit and government organisations«?³⁴ The special assistant of the Secretary-General explained in his reply that the UN did not have the »intention of endowing it with a binding quality such as treaties and other international agreements have under international law. However, the General Assembly called for national and international action to ensure that the Declaration will be used as a common basis and frame of reference for the protection of the rights contained in the Declaration.«³⁵

This policy line was contested during an expert meeting in 1987 in Stockholm, organized by Bengt Lindqvist, Swedish Minister for Family Affairs and Matters concerning the Elderly and Disabled and prominent member of the leading self-advocacy organization Disabled People International. The Swedish government supported this meeting with the aim to strengthen the UN disability unit in Vienna. During the expert meeting, where self-advocates were well represented, the idea of developing a UN convention was discussed for the first time and became one of the experts' recommendations.³⁶ This inspired representatives of Italy and Sweden to propose the drafting of a new UN disability convention, but these attempts were not successful. The reluctance of the General Assembly could be explained, as Lindqvist has suggested, by the framing of disability as an issue of social development and by »convention fatigue,«

34 Letter A. Cielens to Secretary-General, 5 March 1985, in: *ibid.*, s-1028-0011-0013.

35 Letter Secretary-General to Cielens, 19 August 1985, in: *ibid.* s-1028-0011-0013.

36 Lindqvist, *Blindstyre*, 181 (thanks to my colleague Anna Derksen for the translations of parts of the book).

because the UN at that time had adopted a women's convention and was working on a children's convention.³⁷ The staff of the Secretary-General was also not keen on the recommendations from Stockholm. One of the staff members wrote »As you can see they are quite far reaching. The problem is that if all implemented they would have ... financial and adm. implications for the UN«. ³⁸ Was collaborating with NGOs and companies in social development seen as a more feasible option?

Consolidation of the Social Development Approach

The reluctance of the UN bureaucrats towards too far-reaching changes in UN disability policy was similar to the response during the first years of Reich's diplomatic mission. Before a meeting with Reich in November 1986 for instance, the Secretary-General was advised by staff members to make no commitments concerning publicity. The staff of the Secretary-General had, in the words of Undersecretary-General for International Economic and Social Affairs Shuaib U. Yolah, »problems« with Reich's ideas because of »their financial and programmatic implications.« ³⁹ However, it is striking that the Secretary-General remained interested in Reich's ideas whereas the idea of an international convention did not stand a chance in the late 1980s. Why this was the case might be illuminated by the following exchange between Reich and the Secretary-General.

Reich arranged a meeting with the Secretary-General in 1986 because he was worried about the progress of the International Decade. On another occasion that year Reich had given a talk titled »The International Decade of Disabled Persons: Can it be saved?« According to Reich the hope with which the Decade was launched was fading: »So far, the world's attention has not been aroused. There is little political will.« In that talk Reich quoted Pérez de Cuéllar, who had said that »outside the disability

³⁷ Ibid., 181 and 184.

³⁸ Note from Florence to Mr. Dayal, 6 October 1987, in: UNARMS, Archives Secretary General, S-1048-0089-02.

³⁹ Notes Paul Kavanagh and Shuaib U. Yolah to Secretary-General, 6 November 1986, *ibid.*, S-1028-0011-0013.

community, I have noted only minimal public awareness.« The limited impact of the decade was not only in disadvantage of the global »disability family« as Reich stated, but it would also damage the image of the UN: »if people were made aware that the U.N. successfully conducts and promotes important social and humanitarian programs, such as its Decade of Disabled Persons initiative, confidence in the U.N. itself would be enhanced.«⁴⁰ It was probably this rhetoric the Secretary-General was sensitive to, although he would not always directly adopt Reich's solutions.

During the meeting Reich suggested to appoint a special representative of the Decade who could »save« it. To that suggestion he received the following response: »the Secretary-General does not deem it advisable to designate a special representative solely on his own initiative in relation to one of them.«⁴¹ The Secretary-General did not leave it at that. In 1988 he appointed a special representative for the promotion of the Decade, businessman and humanitarian Hans Hoegh from Denmark, and established a supporting »Committee of Wisemen.« It appeared, as legal officer Sinha Basnayake wrote, »that the ›Wisemen‹ in question are commercial organizations ... the Note for the Secretary-General describing the proposal states that the involvement of the commercial organizations would be pro bono publico. We understand this to mean, inter alia, that these organizations would not use their association with the UN for commercial purposes.« Hoegh felt that his efforts »particularly in the area of fund-raising, could greatly benefit from professional advice« from a committee for which he had identified organizations such as McKinsey Consultancy, known today as an influential neoliberal hub.⁴²

Although the UN staff remained reluctant towards Reich, it is evident that his »business approach« to disability policies was seen as promising. In retrospect we can even say that this approach foreshadowed »inclusive

40 Ibid., document with remarks of Reich on Decade during International Rehabilitation Week Conference in April 1986.

41 Letter Yolach to Reich 30 December 1986, in: *ibid.*, s-1048-0041-05.

42 Letter Basnayake to Jopling, 14 February 1989, in: *ibid.*, s-1048-0090-02; Daniel Markovits, »How McKinsey Destroyed the Middle Class. Technocratic management, no matter how brilliant, cannot unwind structural inequalities,« *The Atlantic*, 3 February 2020.

capitalism« as developed under the leadership of Kofi Annan.⁴³ The efforts to move disability policies in the direction of human rights (law) were, by contrast, simply blocked. Reich's approach remained in line with UN policies by keeping disability in the social development box and using human rights only as an underlying concept. It is plausible that a lot of countries favored this approach over a more radical human rights law perspective. Reich had good relationships with several important players at the global level. In a letter of the »World Committee for the U.N. Decade of Disabled Persons,« chaired by Reich, China for instance was mentioned as exemplary in disability policies: »we exchanged ideas with committee member Hon. Deng Pufang [son of Deng Xiaoping] during his recent visit to the United States, on the approach to national goal-setting in China. China, almost uniquely among the nations of the world, has set forth a statement of national goals to be met by the end of the Decade. It is a model for possible use by other nations.«⁴⁴

Because the reluctance of the UN to turn disability into an issue of human rights law, Lindqvist started to develop an alternative: a non-binding document on disability policies. During a series of conferences, he and other participants from all over the world wrote a draft that was proposed by Swedish diplomats to the UN and became the Standard Rules on the Equalization of Opportunities for Disabled Persons (1993). Lindqvist was asked by Secretary-General Boutros Boutros-Ghali to become the special rapporteur responsible for monitoring the implementation of the Rules – although this position would not have been possible without financial support from Sweden.⁴⁵ Afterwards the Rules have often been seen as an important step towards the convention. This is true in part, but – as I have argued elsewhere – the emphasis was more on equal needs and social development than on equal rights.⁴⁶ The Standard Rules would set

43 Christiansen, »Partnerships.«

44 Letter of committee to members, 1 January 1988 (probably sent as attachment of correspondence Reich-SG), in: UNARMS, Archives Secretary General, s-1028-0011-0014.

45 Lindqvist, *Blindstyre*, 186f.; Letter Minister Foreign Affairs Sweden, 4 May 1994, in: UNARMS, Archives Secretary General, s-1086-0053-04-00001.

46 Van Trigt, »Inequality.«

the tone for the 1990s: although it was very difficult to make disability part of general development programs, the Rules further strengthened disability as a relevant category in global policies and stimulated national action plans and self-advocacy.⁴⁷ However, disability was not included in international human rights law during the 1990s. This potential inclusion was blocked in the late 1980s and a social development approach was further strengthened since then.

The persistence of this approach during the 1990s becomes clear if we continue to follow Reich's diplomatic relationship with the Secretary-General. This continuation is not self-evident considering the less successful attempts of others. During a meeting of the Secretary-General with Disabled People International in 1992 for instance, Joshua Teke Malinga stated that »one frustration that NGOs had was the layers of hierarchy in the United Nations. That day was the first time that they were in direct contact with the Secretary-General.«⁴⁸ Reich on the contrary managed in 1995 to launch in collaboration with the Secretary-General secretariat the Franklin D. Roosevelt International Disability Award, that »will be presented each year, beginning in 1996, to a nation that has made noteworthy progress toward the goal of the U.N. World Programme of Action Concerning Disabled Persons.«⁴⁹ The reference to this program designed in 1981 shows that Reich considered the social development approach to disability still as relevant and saw no need to refer to a human rights (law) perspective that was increasingly brought to the fore by others. Reich was not against this perspective, but human rights were simply not a central concept for him.

In 2002 he wrote Secretary-General Kofi Annan with great enthusiasm that disability was embraced as a relevant policy category by the World Bank President.⁵⁰ Disability activist and policymaker Judy Heumann was appointed that year as Advisor on Disability and Development to

47 Lindqvist, *Blindstyre*, 189.

48 Notes of the Secretary-General's meeting with Disability Awareness in Action and DPI, 13 October 1992, in: UNARMS, Archives Secretary General, s-1086-105-10; Correspondence with DPI in 1995, in: *ibid.*, s-1086-0081-04-00001.

49 Announcement award UN, in: *ibid.*, s-1086-0060-02-00001.

50 Correspondence with Reich, 4 December 2002, in: *ibid.*, s-1096-0177-07-00004.

»integrate a disability lens across the institution« in its focus on the »development for the poorest of the poor.«⁵¹ A year earlier, Reich had written to the secretariat that he had started to challenge »our good friend« Jim Wolfensohn to make disability more central in the Bank's policies. This seems to fit the UN »inclusive capitalism« strategy as developed under the leadership of Annan: Gillian Martin Sorensen, the assistant of the Secretary-General for external relations, wrote to him that she was happy to hear about the attempt to involve the World Bank: »You are doing wonderful work!«⁵²

Interestingly, at the same time the negotiations about the convention had started. One of the reasons why the UN in 2001 adopted Mexico's proposal to create an Ad Hoc Committee of the General Assembly to »consider proposals for a comprehensive and integral convention to promote and protect the rights and dignity of persons with disabilities« was, as mentioned, the omission of disability in the Millennium Development Goals.⁵³ It was therefore unclear if the convention would become a human rights or a social development treaty. According to international lawyer and disability self-advocate Theresia Degener, it became clear »from day one« during the first meeting of the Ad Hoc Committee in July 2002 that there was »no agreement on the need for a convention.« Apart from the divided opponents and supporters of a human rights convention, some delegations were cautious because they feared »a convention could end up focusing on social development« and others suggested a social development treaty.⁵⁴

However, the second meeting in June 2003 was no longer focused on the need for a convention, but on the appropriate scope for a holistic convention covering a broad range of rights.⁵⁵ During this meeting and its preparation year, disability was finally moved to the UN human rights »box,« mainly due to the influence of a coalition of international lawyers

51 Heumann, *Being Heumann*, 188.

52 Letter to Reich, 7 December 2001, in: UNARMS, Archives Secretary General, s-1096-0217-07-00011.

53 Heyer, *Rights Enabled*, 172 f.; Degener/Begg, »From Invisible Citizens,« 13.

54 Degener/Begg, »From Invisible Citizens,« 16.

55 Ibid., 18.

and disability self-advocates who were working on an international law perspective on disability since the late 1990s.⁵⁶ During the 1990s self-advocates had increasingly become dissatisfied with the social development approach because the UN Commission for Social Development to which the Special Rapporteur had to report turned out to be »a poor cousin« of the Commission on Human Rights: meetings of the latter »were crowded and often standing room only« whereas the first »barely attracted attention in capitals, was attended mainly by junior delegations from New York Missions, and numerous empty seats signified that many delegations simply did not bother to turn up.«⁵⁷ Therefore the International Disability Alliance, in which the main international disability organizations worked together, began around 2000 to strive for a separate convention. Their lobbying was accompanied by the publication of an evaluative study about human rights instruments in the context of disability by the Office of High Commissioner for Human Rights in early 2002. This study showed clearly how the human rights of people with disabilities were not fully protected under existing human rights law and recommended drafting a new human rights convention.⁵⁸ The turn from social development to human rights during the convention negotiations did not mean that social development was no longer important: in 2008 the Secretary-General characterized the convention as »a human rights instrument with an explicit social development dimension.«⁵⁹ Yet human rights were to come first. The story of Reich's efforts shows that this was by no means the logical outcome of the previous decades.

Conclusion

This chapter has shown that global disability policies were hardly affected by the »breakthrough« of human rights during the 1990s as described by Hoffmann. Inspired by Anghie's review of Moyn's work, I have argued that disability was first and foremost seen as an issue of (social) devel-

56 Lord, »Disability Rights,« 89.

57 Degener/Begg, »From Invisible Citizens,« 10 f.

58 Ibid., 13.

59 Tromel, »A Personal Perspective,« 117.

opment. However, the development approach to disability that hindered its integration in international law is not (or not only) the approach put forward by the Global South. Anghie and others have shown that a »utopia of development« existed that was characterized by a »structural« approach to (in)equality.⁶⁰ The development approach I have traced in this chapter followed a different idea that could be characterized as neoliberal imagination. In a slight departure from the existing literature, this chapter has shown that global disability policies are not so much determined by a coalition between neoliberalism and human rights, but by a coalition of neoliberalism and development that did not see any benefit in applying human rights law. This does not mean that the »suffering« of people with disabilities did not receive attention from a human rights perspective during the 1990s, nor that the human rights approach was not worked out further by international lawyers.⁶¹ But it was not until the negotiations about the convention began that the UN started to move away from a social development to a human rights approach. Remarkably, this latter approach was not a variation on the non-utopian interpretation of human rights, namely as a »bare minimum« that Hoffmann sees as becoming dominant after the Cold War.⁶² Compared to other international law, the international disability convention of 2006 is sensitive to »issues of structural power and oppression« and seems therefore to stimulate the »social imaginary of a different, more perfect society.«⁶³

The use of human rights by global disability policymakers thus seems somewhat atypical considering the broader developments in post-Cold-War human rights history. However, in historiography the emphasis has mainly been placed on the use of human rights in relation to »high« international politics whereas attention to the use of human rights by and for marginalized groups such as disabled people could uncover other

60 Anghie, »Whose Utopia«; Dehm, »A Pragmatic Compromise.«

61 Degener/Begg, »From Invisible Citizens«; Lord, »Disability Rights«; Van Trigt, »Farwell to Social Europe.«

62 Hoffmann, »Human Rights and History.«

63 Mégret, »The Disabilities Convention.« Cf. Van Trigt, »Equal Reproduction Rights.«

trajectories.⁶⁴ It is interesting in this regard that a »more perfect society« for people with disabilities has often been imagined as a national society. The understanding of human rights as individual rights which enjoy international protection that has dominated the recent decades according to Moyn and Hoffmann not only determines disability human rights. The convention shows a use of human rights aimed at domestic policies, parallel to the use of human rights in foreign policy and by NGOs such as Amnesty in the last decades. Has the national framework remained more important than the literature suggests and is it perhaps again one of the dominant framings of human rights today? China for instance, is known for its reluctance to international intervention and has not considered the convention as a threat yet.⁶⁵ Does the case of China indicate that we are currently moving away from using human rights as an international yardstick to judge the bad behavior of others elsewhere to understanding them as an instrument to show one's own good behavior to vulnerable others within the nation? That is a question I hope to answer in another chapter elsewhere.

64 Hunt, »The Long and the Short.«

65 Stein, »China and Disability Rights.«

