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REPORT

on the Communication from the Commission "Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities"
(COM(2003) 16 - 2003/2100(INI))

Committee on Employment and Social Affairs

Rapporteur: Elizabeth Lynne

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PROCEDURAL PAGE

By letter of 24 January 2003 the Commission forwarded to Parliament its Communication on "Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities" (COM(2003) 16), which had been referred to the Committee on Employment and Social Affairs, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Committee on Women's Rights and Equal Opportunities and Committee on Petitions for information.

At the sitting of 15 May 2003 the President of Parliament announced that the Committee on Employment and Social Affairs had been authorised to draw up an own-initiative report on the subject pursuant to Rules 47(2) and 163 of the Rules of Procedure, and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions had been asked for their opinions.

The Committee on Employment and Social Affairs appointed Elizabeth Lynne rapporteur at its meeting of 12 March 2003.

The Committee considered the draft report at its meetings of 20 May 2003 and 9 July 2003.

At the latter meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Marie-Hélène Gillig, acting chairperson; Winfried Menrad and Marie-Thérèse Hermange, vice-chairpersons; Elizabeth Lynne, rapporteur; Jan Andersson, Elspeth Attwooll, Regina Bastos, Hans Udo Bullmann (for Enrico Boselli), Ieke van den Burg, Alejandro Cercas, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Fiorella Ghilardotti (for Elisa Maria Damião), Anne-Karin Glase, Richard Howitt (for Proinsias De Rossa), Stephen Hughes, Anne Elisabet Jensen (for Marco Formentini), Anna Karamanou, Dieter-Lebrecht Koch (for Philip Bushill-Matthews), Ioannis Koukiadis (for Karin Jöns), Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Manuel Pérez Álvarez, Ria G.H.C. Oomen-Ruijten (for Luigi Cocilovo), Paolo Pastorelli (for Raffaele Lombardo) pursuant to Rule 153(2)), Bartho Pronk, Lennart Sacrédeus, Herman Schmid, Miet Smet and Sabine Zissener (for Enrico Ferri).

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached.

The Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions decided on 17 June 2003, 10 June 2003 and 10 June 2003 not to deliver opinions.

The report was tabled on 11 July 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Communication from the Commission "Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities" (COM(2003) 16 - 2003/2100(INI))

The European Parliament,

- having regard to the Commission Communication (COM(2003) 16)¹,
- having regard to the opinion of the European Economic and Social Committee (CESE 407/2003)²,
- having regard to Article 13 TEC and Article 21 of the Charter of Fundamental Rights³ on combating discrimination including on the basis of disability, and having regard to Article 6 TEU and to Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits all forms of discrimination,
- having regard to Article 26 of the Charter of Fundamental Rights on the integration of disabled people and their right to benefit from measures designed to ensure this,
- having regard to its resolutions on sign languages of 17 June 1988⁴ and of 18 November 1998⁵ and to its resolutions of 4 April 2001⁶ on a barrier-free Europe for disabled people and of 15 November 2001⁷ on the European Year of People with Disabilities 2003,
- having regard to the principles expressed in the Madrid Declaration (March 2002) and to the practical results of European Union initiatives such as 'Districts' (1983-1987), 'Helios I' (1987-1991) and 'Helios II' (1993-1997), and the current Community action programme (2001-2006) to combat all discrimination, including discrimination on the grounds of disability,
- having regard to the Universal Declaration of Human Rights 1948, the United Nations (UN) Declaration on the Rights of Mentally Retarded Persons 1971, the UN Declaration on the Rights of Disabled Persons 1975, the UN 'Standard Rules for the Equalisation of Opportunities for Persons with Disabilities' 1993 and all other human rights instruments,
- having regard to the conclusions of the 2002 meeting of the UN Ad Hoc Committee on a comprehensive and integral international Convention on the protection and promotion of the rights and dignity of persons with disabilities, as set up by Resolution 56/168,

¹ Not yet published in OJ

² Not yet published in OJ

³ OJ C 364, 18.12.2000, p. 14

⁴ OJ C 187, 18.7.1988, p. 236

⁵ OJ C 379, 7.12.1998, p. 66

⁶ OJ C 21E, 24.1.2002, p. 246

⁷ OJ C 140E, 13.6.2002, p. 599

- having regard to Rules 47(2) and 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0270/2003),
- A. Whereas the approximately 600 million disabled people in the world are often among the poorest of the poor and the most vulnerable, with over two-thirds living in developing countries, and whereas, in many countries, they continue to be excluded and denied fundamental human rights, such as education and access to gainful employment, and still lack access to the built environment as well as to information and communication;
 - B. Whereas there are around 40 million people in the European Union with various types of disabilities;
 - C. Whereas the situation of disabled people ought to be assessed from the perspective of human rights and not from one of charity, which means viewing disabled people as people with rights and not as problem-generators;
 - D. Whereas many people with intellectual, psychiatric and physical disabilities in some countries are still kept in institutions, in many cases as a result of a lack of tailored facilities allowing for an independent life, and are sometimes subjected to indignities and inhuman treatment (such as being restrained in locked cage-beds or in other ways);
 - E. Whereas this year marks the 10th anniversary of the UN Standard Rules for disabled people, which is not however a legally binding instrument;
 - F. Whereas 2003 is also the European Year of People with Disabilities and the start of the second successive Asian and Pacific Decade of Disabled People (2003-2012) and whereas the period 2000-2009 has been designated as the African Decade of Disabled People;
 - G. Whereas there is a need to enhance the profile of issues relating to disability in order to raise public awareness in the present and future EU Member States;
 - H. Whereas individual sign languages and alphabets have evolved independently within Member States;
1. Welcomes the fact that by virtue of Council Decision 2001/903/EC¹ the Council of the European Union declared 2003 the 'European Year of People with Disabilities' as a means of profiling the issues relating to disability and giving political impetus at both EU and international level to equal rights for disabled people;
 2. Welcomes the initiative of the Government of Mexico and the UN General Assembly to set up an Ad Hoc Committee to consider proposals for an international convention to protect and promote the rights and dignity of disabled persons; welcomes the decision of the Ad Hoc Committee in 2003 to establish a Working Group to prepare and present a draft text which would be the basis for negotiation when drawing up the draft

¹ OJ L 335, 19.12.2001, p. 15

Convention by UN Member States and Observers at the next Ad Hoc Committee, as well as a basis for the participation of disabled people's NGOs;

3. Welcomes the Commission Communication setting out its position regarding this possible Convention and stresses that while the Commission is calling for a UN Convention it has failed to provide any timetable for a future comprehensive EU Directive on disabled people's rights; nor has it made any real political commitments to mainstream disabled people's rights within its development cooperation policy;
4. Notes that the EU Member States do not have specific regulations that take into account the special circumstances of disabled people in general terms, and that their judicial systems perpetuate great disparities in this area;
5. Notes that the measures the European Union has adopted with regard to disabled people have been minimal and relate almost exclusively to the establishing of a general framework for equal treatment in employment in the context of the combating of discrimination laid down in Article 13 TEC;
6. Insists that the European Union must lead the way, regardless of the outcome of the UN proceedings, in introducing a Directive on the rights of disabled people;
7. Calls on the Member States to include in the future European Union Constitution, in the Article relating to the objectives of the European Union, a specific reference to the 'protection of the rights of disabled people';
8. Recommends that all measures proposed on the legal basis of Article 13 TEC should move from unanimity to qualified majority voting;
9. Insists that the outcome of this process must be a legally binding Convention with an effective monitoring mechanism, similar to the six human rights conventions that have already been adopted by the UN, including the three specific Conventions on combating discrimination against children, women and racial discrimination; calls on EU Member States to agree to work towards this outcome and to help make the future Convention meaningful in even the poorest countries of the world by prioritising disabled people and their rights within EU and national development and cooperation policies;
10. Believes that the current and future EU Member States must play a leading role in making sure organisations of disabled people and organisations representing disabled people are fully involved in the drafting and monitoring of the implementation of the Convention; calls for the European Parliament also to be involved in this process as part of the EU contribution;
11. Believes that the viewpoint of disabled people themselves must form part of the negotiations and emphasises the importance of ensuring that families, parents and guardians have an input into the process and that organisations of and representing disabled people should also be actively involved in the process;
12. Considers that the objectives of the Convention should be:
 - to afford disabled people full protection of their human rights,
 - to clarify existing rights and tailor them to the needs of disabled people including by

- tackling barriers that hinder the full enjoyment of rights,
 - to facilitate the fulfilment of the aspirations of disabled people, and to help them unlock their potential,
 - to prioritise disabled people on policy agendas and to increase international cooperation and knowledge,
 - to have a permanent mechanism monitoring the human rights of disabled people in the world;
13. All the parties concerned would reap practical benefits, since the precise obligations in the sphere of disability of the States party to that Convention and of the European Union would be clarified, and civil society would also be able to focus on a coherent set of standards rather than on the six different current sets of human rights standards adopted by the UN;
14. Considers that the Convention should be binding to all States parties;
15. Believes that a future Convention on the rights of disabled people should be based on and include the following principles:
- the rights-based approach emphasising and tailoring human rights (civil and political as well as economic, social and cultural) already included in various treaties, to the needs of disabled people,
 - acknowledgement of the need to provide for both the general and impairment-specific needs of disabled people, including those with 'hidden' disabilities, thereby recognising the diversity of disabled people, in particular persons with multiple and severe disabilities and their families,
 - the development of information campaigns targeting the relevant persons (teachers, doctors and parents) on the so-called 'hidden' disabilities which in fact clearly manifest themselves in daily life and life at school,
 - full involvement of disabled people, organisations of disabled people and organisations representing disabled people in the establishment of national and international policies and bodies which affect them,
 - recognition of the reality that many disabled people are confronted with multiple discrimination on grounds of gender, race, age etc.;
16. Considers that, wherever possible, the rights should be legally enforceable with concrete deadlines for their achievement;
17. Believes that the definition of disability should cover all persons with disabilities, irrespective of the level of severity, define disability as the interaction of a person with an impairment and the social barriers, both environmental and attitudinal, and that the definition of discrimination should broadly reflect the one used in the EU Directive on equal treatment in the employment¹ and include direct and indirect discrimination, reasonable accommodation (adjustments) and harassment;
18. Considers that legally enforceable rights should be combined with actions to support the full participation of disabled people in society and to combat prejudice and false images

¹ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

of disabled people;

19. Calls on the UN Member States to make sure that at least the following rights of disabled people are specified in the future Convention:

a) Right to quality of life

- Protection from degrading and inhumane treatment and institutionalisation;

b) Access to employment

- The promotion of the integration of disabled people in the field of employment and training,
- The removal of all legal and administrative barriers to employment,
- The prohibition of any form of discrimination in recruitment, management practices and promotion in the workplace, including the refusal to provide reasonable accommodation (adjustments); the EU Directive on equal treatment in employment provides a good model for such an article,
- The right of disabled people to equal pay for equal work or work of equal value;

c) Access to education and vocational training

- The right to an education of equal quality that furthers the development, independence and participation of both disabled adults and disabled children in society. This may be achieved either ideally through full and equal access to mainstream education, with the resources, tools and other support (such as access to new technologies) needed to enable participation and development or, if necessary to meet the individual's particular needs, by special education alongside children and young people with similar disabilities. In both cases, sufficient financial resources should be provided,
- The right of equal access to the whole range of tertiary education, including vocational education, and to be provided with the resources, tools and other support (such as access to new technologies) needed to enable disabled students to participate fully in such courses and activities so that they can complete their education/training,
- The right to appropriate vocational training for people who voluntarily assist disabled adults and children, to enable specific assistance tailored to the various forms of disability to be provided;

d) Right to inclusion

- Prevention and gradual removal of any barriers to accessing buildings and facilities (including access for assistance dogs) and public transport (including stations, services and transport information available in accessible formats),
- The right to live independently and with dignity in the community, instead of an institution, with the right to accessible housing and/or supported accommodation, together with other support services, where appropriate, to facilitate independent living,
- The right to be able to access the technical equipment and assistance necessary to raise the level of independence of disabled people,
- Non-discriminatory access to goods and services, guaranteed by adequate laws,
- All agencies and organisations should have disability awareness training for all their personnel;

e) Civil and political rights

- Equal citizenship rights and non-discrimination in immigration rules,
 - The right to a free and secret vote with adequate information and facilities (accessible polling stations, mobile or postal voting, ballot papers and information on candidates and political parties available in accessible formats and plain language), as well as the right to be elected,
 - Promotion of the involvement of disabled people in public life and their right to take part in formulation of policies and co-determine decisions directly and/or indirectly affecting them, making sure that all legislation has disability impact assessments,
 - The right to freedom of expression (recognition of sign language, Braille),
 - The right to obtain information, including public documents, in clear, simple language, without jargon and in accessible formats (including adequate design for notes and coins so that they can be recognised by blind and visually impaired people);
- f) Access to financial support
- The right to sufficient and suitable public financial assistance, permitting a decent life,
 - The right to compensation, under social security programmes, for the extra costs related to the specific needs of disabled people and their carers where relevant;
- g) Access to healthcare
- The right to equal access to health services (including by providing balanced and objective information in accessible formats about available health services),
 - The right to own consent and authorisation in relation to personal treatments and procedures and, where it becomes necessary to restrict the rights of mentally disabled people, the establishment of adequate legal safeguards and periodic review in order to avoid any abuse,
 - The right to access personal data and information in relation to one's own healthcare situation,
 - The right to be treated and advised by medical staff who have had disability awareness training;
- h) Access to culture and leisure
- The right to accessible television, broadcasting and internet (including audio description, sign language interpretation and subtitling of programmes, where appropriate),
 - The right to equal access to and participation in all recreational, cultural and sports facilities,
 - Integration of disabled people into mainstream sport and sporting competitions;
- i) Equality before the law and the right to justice
- The right to legal counsel and free interpretation, translation services or communication guides, where needed, whilst not discriminating against anyone who cannot communicate verbally,
 - The right to victims' protection and compensation that is sensitive to the special circumstances arising from being disabled,
 - The right to become a practising lawyer, judge or juror and to be given any assistance that may be necessary to enable these tasks to be performed;

20. Believes that a UN Monitoring Committee on the Rights of Persons with Disabilities should be composed of a majority of disabled people and should be established as a strong and effective monitoring system to identify measures to enhance and surmount obstacles to proper implementation of the Convention by:
 - evaluating reports submitted periodically by States Parties and NGOs on the progress and problems encountered in implementing the Convention and making recommendations to these States,
 - identifying areas of cooperation among States, and between them and competent agencies that facilitate implementation of the Convention,
 - receiving complaints from individuals or NGOs and responding to requests for independent enquiries;
21. Calls on its President to forward this resolution to the United Nations, the Commission, the Council and the Governments of the EU Member States and future Member States and the Government of Mexico.

EXPLANATORY STATEMENT

Introduction

There are approximately 600 million disabled people throughout the world. Anyone can become disabled at any time and, as populations age, disability will be experienced by an increasing percentage of every society. Yet disabled children, women and men lack access to basic human rights, and are often excluded and discriminated against.

Most disabled people (approximately 80%) live in developing countries where lack of access to human rights is first and foremost about the right to life, to food, water and shelter. Because poverty is both a cause and consequence of disability, some estimates state that as many as 1 in 5 poor people are disabled¹. Despite this situation, within UN human rights and development policies, disabled people are usually invisible and excluded.

Therefore, it seems necessary to establish binding international rules protecting the rights of disabled people, with an adequate monitoring mechanism.

Background to the United Nations Convention on the Rights of Disabled People

Since the Universal Declaration on Human Rights there have been 6 thematic UN treaties on Human Rights: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

Each treaty or convention has a treaty monitoring body with the task of enforcing or monitoring its implementation. As primary legal responsibility rests with the States parties, the main job of the treaty bodies is to monitor domestic implementation of the treaties. This is done through the examination of periodic State reports on the basis of which the treaty monitoring bodies can issue observations, comments or conclusions and recommendations.

While existing international human rights treaties do apply to persons with disabilities, as reflected in the case law of these treaties, they do not usually state this. Indeed, the monitoring bodies have until now proven to be unable to look specifically at how the rights of persons with disabilities are protected.

The beginning of a powerful shift toward the human rights model on disability is a fundamental development concerning disabled people in the international arena. This was gradually achieved in the UN through the 1982 World Programme of Action and the 1993 Standard Rules on the Equalisation of Opportunities for People with Disabilities. Proposals for a UN Convention on the Rights of Disabled People were submitted in 1987 by Italy and in 1989 by Sweden. However, these proposals were not taken on board.

In December 2001, the Government of Mexico put forward UN Resolution 56/168, calling for consideration of a convention on the human rights of persons with disabilities and calling for

¹ Ann Elwan, Poverty and Disability: A Survey of the Literature, World Bank Report, section 4.14

the immediate formation of an adhoc committee. This adhoc committee would "consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities". This Resolution was adopted by the UN General Assembly.

The first meeting of the Ad Hoc Committee took place between 29th of July and 9th of August 2002. The discussion focused on procedural aspects, including the participation of NGOs representing disabled people, and on the next steps to be taken. There was no decision on whether a UN Convention would be the outcome of this process. The next step will be another meeting of the Ad Hoc Committee between 16th and 27th of June 2003. We hope that the outcome of this meeting will be the decision to start the process of drafting a United Nations Convention on the Rights of Disabled People.

The United Nations process for the drafting of a Convention can last for a number of years. While it is important to avoid unnecessary delay, we should be equally aware that a great deal of work and consultation will be needed before agreeing on a workable Convention.

The importance of a legally-binding Convention

One of the main points of discussion in the first meeting of the Ad Hoc Committee was what type of instrument should be used to protect the rights of disabled people. All States are in agreement that disability should be mainstreamed into the existing treaty body processes. This could take the form of a protocol attached to one of the existing human rights treaties or an instrument of general principles, with the possibility of subsequent optional protocols. However, the opinion of your rapporteur is that adequate results can only be achieved through a legally binding Convention containing both civil and political as well as economic, social and cultural rights tailored to the particular circumstances of people with disabilities with general prohibition of discrimination against disabled people.

The human rights of persons with disabilities deserve the same level of protection as the human rights of other disadvantaged or vulnerable groups, like women, children and ethnic minorities. A binding Convention will highlight the significant and widespread problems that disabled people face in their daily lives, whether they be issues of access, bureaucracy or people's attitudes. It will provide a basis for disabled people's rights all over the world. Such a Convention is needed in order to increase the visibility of the rights of disabled people on the international agenda. It is not about providing new rights, but about clarifying and tailoring existing rights. Only through a specific Convention will we be able to have an effective monitoring mechanism which will look at how disabled people are treated all over the world. The current monitoring committees for the other conventions do not have the resources or the expertise to look particularly at disabled people and a separate committee therefore needs to be established.

A Convention on the rights of disabled people will get rid of the "medical model" once and for all and will establish universally the rights-based approach to disabled people's issues, building on the work of the last two decades.

The medical model perceives the disabled person as the problem, as a passive recipient of aid, and does nothing to change society. The social model (or the rights-based model) instead views disabled people as bearers of rights and locates the problem in the environment and the society.

The rights-based model also focuses on the potential a disabled person represents.

At present, definitions and perceptions of disability vary greatly. There are different views on who should be included under the term "disabled", particularly in relation to people with chronic health conditions. Surveys and reports are not standardised and often reflect a medical model. Visible disabilities are easily surveyed, but ignorance about how to identify other disabilities (for example deafness, learning difficulties or other hidden disabilities) means that a child's disability could remain unidentified for years. This can result in worsening discrimination and exclusion.

Such a Convention will also prioritise disabled people's rights on governments' agendas. It should be the start of a focused and effective process to secure full and equal integration of disabled people all over the world. This means that disabled people's issues are taken into account in all political decision-making at local, regional, national and international levels.

There is a concern among some that addressing disabled people's rights is expensive, a luxury for developing countries and therefore not a priority. That is not the case. The initial costs for adjusting systems and environments are offset by long-term benefits resulting from the full participation of disabled people in the economy and society in general. Moreover, costs incurred for the care of a disabled person can be higher than the costs needed to enable that person to be independent. Finally, a service or system that excludes disabled people often excludes other vulnerable groups as well such as children, mothers with young children and elderly people.

The role of the European Union and its institutions; and the position of the European Parliament

The basis for the involvement of the European Union in the Convention process lies in conclusions of the first Ad Hoc Committee, which has invited "regional commissions and inter-governmental organisations, as well as non-governmental organisations to make available to the Ad Hoc Committee suggestions and possible elements, to be considered in proposals for a Convention".

The European Union has considerable experience in the field of disabled people's rights, although there is still a great deal to be done. A joint position of the EU in the Ad Hoc Committee could therefore have an important influence. A successful outcome of the Ad Hoc Committee meeting would be a decision to start the work on the Convention, by setting up a UN working group to receive contributions and prepare recommendations for the substance of the Convention. The European Union should also make sure that the organisations of and for disabled people are fully represented and consulted throughout the process of the Convention. In setting out their joint position, EU Member States should consult fully with the European Parliament, national parliaments as well as disability NGOs in Europe and the European Commission.

The European Parliament has always been in the forefront of the fight for disabled people's rights. Numerous reports and amendments to reports have called for the rights of disabled people to be fully considered in European legislation. The report on the European Year of Disabled People 2003 called for the Commission to announce during the year a disability specific Directive based on Article 13 of the Treaty. This now seems unlikely and it is curious that the Commission is pushing for a UN Convention, but does not seem to want to present a proposal for such a Directive in the near future, particularly when the Communication clearly

states that "the Commission will also seek to ensure consistency between European internal and international action regarding disabled people". The Convention is not an alternative to the Directive. While a global Convention has to be of a more general character, the EU Directive should be more specific and precise.

The Commission should pay more attention to the issue of disability within its development cooperation policy. Its recent guidance to EU delegations is a first step, but the final aim should be to mainstream disabled people's rights in its development cooperation policy if it really wants to promote the rights of people with disabilities in the forthcoming negotiations of the UN Ad Hoc Committee.

This report will not be adopted in time for the second meeting of the Ad Hoc Committee in June 2003. However, a strong statement that the outcome of the UN process must be a legally binding convention is included. The report has therefore addressed the substance of the Convention, underlining the rights-based approach, the role that must be played by the EU, the involvement of disabled people's organisations and setting out the view on what should be the objectives and principles of the Convention. A list of rights that must find their place in a future text of the Convention has also been included. It should be noted that due to constraints on the length of the report, this is a non-exhaustive list. These rights are already present in the existing human rights treaties, but in order to enable disabled people to enjoy them fully, they need to be spelled out.

Great importance should be attached to the monitoring mechanism, which should be in line with those established for existing human rights treaties. A monitoring committee on the Rights of Persons with Disabilities should be established to: evaluate reports submitted periodically by States Parties on the progress and problems encountered in implementing the Convention, make recommendations to these States, identify areas of cooperation among States Parties, and between them and specialised bodies and competent agencies that facilitate implementation of this Convention. This Committee should also be able to receive complaints from individuals or non-governmental organisations.

1 July 2003

OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS

for the Committee on Employment and Social Affairs

on the Communication from the Commission to the Council and the European Parliament
'Towards a United Nations legally binding instrument to promote and protect the rights and
dignity of persons with disabilities'
(COM(2003) 16 – C5-0206/2003 – 2003/2100(INI))

Draftsman: Carmen Cerdeira Morterero

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed
Carmen Cerdeira Morterero draftsman at its meeting of 19 May 2003.

The committee considered the draft opinion at its meetings of 11 June and 30 June 2003.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Giacomo Santini, vice-chairman and acting
chairman; Johanna L.A. Boogerd-Quaak, vice-chairman, Carmen Cerdeira Morterero,
draftsman; Niall Andrews, Alima Boumediene-Thiery, Marco Cappato (for Mario
Borghezio), Michael Cashman, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello
Finuoli, Adeline Hazan, Ewa Hedkvist Petersen (for Robert J.E. Evans), Anna Karamanou
(for Martine Roure), Timothy Kirkhope, Eva Klamt, Bill Newton Dunn, Elena Ornella
Paciotti, Olle Schmidt (for Baroness Ludford), Joke Swiebel, Anna Terrón i Cusí, Maurizio
Turco, Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Walter Veltroni).

SHORT JUSTIFICATION

At all stages in mankind's development, in all corners of the world and at every level of every society there have been and continue to be a large proportion of people with various types and degrees of disability. Today this number stands at 600 million, which represents around 10% of the world's population.

It is estimated that the European Union is home to forty million people with various types of disabilities.

The social factors of ignorance, poverty, distress, abandonment, superstition, fear and neglect have, throughout the course of history, isolated persons with disabilities and slowed down their development. Everywhere in the world there is a direct link between disability, on the one hand, and poverty and social exclusion on the other. Two thirds of all the world's disabled persons live in the Third World, and only 2 percent of disabled children in these developing countries receive any form of education or rehabilitation.

However, the last twenty years have seen an extraordinary change in perspective, with disability beginning to be approached from a standpoint of human rights rather than one of charity, so that persons with disabilities are now viewed as people with entitlements and not simply as problem-generators.

The debate surrounding the rights of persons with disabilities has more to do with guaranteeing that they are effectively able to enjoy all human rights on an equal footing and without discrimination than it does with the enjoyment of specific rights.

The principles of equality and non-discrimination can help make it possible for general human rights to be applied in the specific context of the implicit differences between different types of disability (as is the case in the contexts of age, gender and childhood), in such a way that persons with disabilities are guaranteed enjoyment of all human rights, via legal protection mechanisms.

Consequently, non-discrimination and the effective enjoyment by persons with disabilities of all human rights on an equal footing are key factors in the long-awaited reform of the way that the issue of disability and persons with disabilities is considered throughout the world.

Persons with disabilities are themselves already using the language of human rights to frame their centuries-old feelings of injury and injustice.

The process of guaranteeing that persons with disabilities enjoy human rights is progressing slowly and haphazardly. It is nevertheless under way in all economic and social systems. It draws on the values that underpin human rights: the inestimable dignity of each and every human being, the notion of autonomy and self-determination which places the individual at the centre of all the decisions affecting them, the inherent equality of all people regardless of differences and the solidarity which society requires to defend the freedom of the individual via the appropriate social supports.

The United Nations has adopted six legally binding human rights treaties: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and

Political Rights, the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination.

However, if one considers disability from the perspective of the applicability of the human rights recognised in these treaties, the basic problem arises of the relative invisibility of the people concerned by them, and also their invisibility in society. Therefore, the basic human rights issue in this area is that of accommodating the differences entailed by disability and seeing to it that persons with disabilities are visible within the Treaty system.

Your draftsman considers that the extension of the current human rights system in the context of disability, with the adoption of a thematic treaty on the rights of persons with disabilities, would be a decisive step towards protecting and promoting the rights and dignity of persons with disabilities throughout the world.

Your draftsman therefore supports the resolution adopted by the United Nations General Assembly establishing an Ad Hoc Committee to consider proposals for an International Convention in this area, similar to the ones already adopted for women and for children, and unequivocally supports the broad outlines of the Communication from the Commission which forms the subject of this opinion.

CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following items into its motion for a resolution:

- having regard to the Universal Declaration of Human Rights of 10 December 1948, and in particular Articles 1, 2 and 7 thereof, which proclaim the principles of dignity, non-discrimination and equality for all human beings,
- having regard to the six United Nations human rights treaties, which are legally binding on the States that have ratified them: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, as amended by Protocol No 11, and in particular Article 14 thereof, which prohibits all forms of discrimination,
- having regard to the Charter of Fundamental Rights of the European Union, formally proclaimed in Nice on 7 December 2000, and in particular Articles 21 and 26 thereof,

- having regard to the Treaty on European Union, and in particular Article 6 thereof, and to the Treaty establishing the European Community, and in particular Article 13 thereof,
- A. whereas almost 10 per cent of the world's population have some form of disability, and over two thirds of those 660 million people live in developing countries, whilst only 2 per cent of disabled children in the developing world receive any form of education or rehabilitation,
 - B. whereas there are around 40 million people in the European Union with various types of disabilities,
 - C. whereas everywhere in the world there is a direct link between disability on the one hand and poverty and social exclusion on the other,
 - D. whereas the situation of persons with disabilities ought to be assessed from the perspective of human rights and not from one of charity, which means viewing persons with disabilities as people with rights and not as problem-generators,
 - E. whereas the principle of equality and non-discrimination calls for the application of human rights in the specific context of the differences implicit in the various types of disabilities, in such a way that, via legal protection mechanisms, persons with disabilities are guaranteed enjoyment of all human rights under conditions of equality without discrimination,
1. Welcomes the fact that by virtue of Council Decision 2001/1903/EC the Council of the European Union declared 2003 the 'European Year of People with Disabilities' as a means of profiling the issues relating to disability and giving political impetus at both EU and international level to equal rights for persons with disabilities;
 2. Notes that the EU Member States do not have specific regulations that take into account the special circumstances of persons with disabilities in general terms, and that their judicial systems perpetuate great disparities in this area;
 3. Notes that the measures the European Community has adopted with regard to persons with disabilities have been minimal and relate almost exclusively to the establishing of a general framework for equal treatment in employment in the context of the combating of discrimination laid down in Article 13 of the EC Treaty introduced by the Treaty of Amsterdam;
 4. Urges the European Community to adopt, within the scope of the powers conferred upon it by the Treaties and in accordance with the principles of subsidiarity and

proportionality, the measures needed to guarantee persons with disabilities equal access to human rights in reality and in practice, thereby ensuring they do not suffer any form of discrimination on the grounds of their disability;

5. Supports the historic United Nations General Assembly Resolution 56/168 of 19 December 2001, on a proposal from the government of Mexico, establishing an Ad Hoc Committee, open to the participation of all Member States and observers of the United Nations, to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with physical, sensory, mental or intellectual disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination;
6. Endorses the Communication from the Commission of 24 January 2003 (COM (2003) 16) supporting the adoption of a legally binding United Nations instrument to protect and promote the rights and dignity of persons with disabilities;
7. Considers that the adoption of an International Convention on the protection and promotion of the rights and dignity of persons with disabilities would help focus attention on disability and facilitate the adoption of general human rights standards that take into account the special circumstances of persons with disabilities;
8. Considers that the adoption of a thematic International Convention on the rights of persons with disabilities would enhance the visibility of the issue of disability in the current human rights system and would accommodate the differences entailed by disability. All the parties concerned would reap practical benefits, since the precise obligations in the sphere of disability of the states party to that Convention and of the European Community would be clarified, and civil society would also be able to focus on a coherent set of standards rather than on the six different current sets of human rights standards adopted by the United Nations Organisation;
9. Considers that legally enforceable rights should be combined with actions to support the full participation of disabled people in society and to combat prejudice and false images of disabled people;
10. Takes the view that the future International Convention should include all human, civil, political, economic, social and cultural rights with a view to achieving the objective of the full participation in society of the different types of persons with disabilities, also taking into account the possibility that these persons may suffer multiple discrimination (firstly as disabled persons, and then on the grounds of their gender, racial origin, religion or belief, age or sexual orientation);
11. Takes the view that under the future International Convention an effective supervision mechanism should be established to monitor compliance with that Convention, lending assistance to all States in assessing the extent of the application thereof and measuring the progress made. The supervision mechanism should help define obstacles and put forward suitable measures that contribute to efficient application of the Convention. It should also take account of the economic, social and cultural characteristics of each of the States party to the Convention;

12. Calls on the Member States to include in the future European Union Constitution, in the article relating to the objectives of the European Union, a specific reference to the 'protection of the rights of persons with disabilities';
13. Urges both the Member States and the European Community to considerably increase the flow of resources to developing countries, in accordance with the agreements adopted under the United Nations international development strategy, since the majority of persons with disabilities live in these countries which are riven with poverty, distress and neglect;
14. Recommends that all measures proposed on the legal basis of Article 13 (TEC) should move from unanimity to qualified majority voting.