China and Disability Rights

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I. INTRODUCTION

This article, arising from a March 19, 2010, Loyola Law School, Los Angeles, conference on "The Significance of the United Nations Convention on the Rights of Persons with Disabilities," explores and critiques the role that the People's Republic of China (PRC or China) has taken, abroad and at home, in fostering disability rights. It concludes that, to date, China has supported disability-based rights in the international arena to a greater extent than it has implemented those rights domestically. Consequently, while there is reason to be hopeful about the future prospects for persons with disabilities in China, there likewise is cause to question the extent of the PRC's national level commitment.

II. CHINA ON THE INTERNATIONAL STAGE

The PRC has held itself out as a champion for global disability rights for some thirty years. To name a few notable instances, China supported the 1981 United Nations International Year of Disabled Persons, as well as the two subsequent Asian and Pacific Decades of Persons with Disabilities, ratified the International Labour

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Organization’s respective conventions on employing and educating persons with disabilities, adopted the Biwako Millennium Framework on disability and development, and has hosted the Far East and South Pacific Games for the Disabled in Beijing, the Special Olympics Worldwide Summer Games in Shanghai, and most recently, the Paralympic Games in Beijing. Of greatest significance, and as detailed in the next section, the PRC was highly supportive of the negotiation and adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD or Convention), a progressive human rights treaty that it has since ratified.

By embracing these initiatives and activities, China has engendered a significant expressive affect. PRC approbation demonstrates to the global community that equality for persons with disabilities is an important issue, one that a leading world power has expended political capital to champion. It also indicates that although criticism is justified for various human rights shortcomings in China,

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the PRC has made efforts to facilitate awareness and acceptance of disability human rights. Hence, China’s sustained support of disability as a field suitable for a rights-based approach underscores its validity. Likewise, it signals to States that have not yet committed to disability-based rights that the trend among global actors—including those, like China, that historically have not been recognized as human rights leaders—is to cooperate on schemes that bolster disability human rights.

China has utilized State-controlled media outlets—especially China Daily and Xinhuanet—to document and aggressively publicize its role as a progressive champion of disability rights. These media outlets have emphasized the PRC’s commitment to disability rights by highlighting improvements in conjunction with reports on world-stage moments, such as the 2010 World Expo in Shanghai and the 2008 films and e-mail.” Michael Wines et al., China’s Censors Tackle and Trip Over the Internet, N.Y. TIMES, Apr. 8, 2010, at A1.


15. Along the same lines, the Bush administration’s disengagement with the CRPD negotiations was a lost opportunity for universal support (and technical assistance). By contrast, the Obama administration’s signing of the CRPD and providing international cooperation on its implementation, even in advance of ratification, lends credence to the global disability rights agenda. See generally Michael Ashley Stein & Janet E. Lord, The Law and Politics of US Participation in the UN Convention on the Rights of Persons with Disabilities, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 199 (Shareen Hertel & Kathryn Libal eds., 2011).


18. For an insightful discussion of Chinese media in another role, as civil society monitor, see Benjamin L. Liebman, Watchdog or Demagogue? The Media in the Chinese Legal System, 105 COLUM. L. REV. 1 (2005).

19. See Expo Appealing to Teenagers, XINHUA (May 15, 2010, 20:29:10), http://news.xinhuanet.com/english2010/2010-05/15/c_13296590.htm (describing the Life and Sunshine Pavilion at the Shanghai World Expo as “the first pavilion especially designed for disabled people in the 159 years of Expo history. The pavilion, which covers 1,200 square meters, focuses on how technology could make cities a better place for disadvantaged people, such as accessible life wheelchairs and special designed computers.”).
Paralympic Games. The reports have also underscored positive developments in the aftermath of globally significant events of more negative character, like coverage of schools built specifically for children who became disabled in the Sichuan Earthquake of May 2008. In sum, Chinese media has consistently portrayed the government as a global promoter of the rights of persons with disabilities, with special emphasis on investment in education and rehabilitation services, subsidies paid to municipal governments and businesses that hire employees with disabilities, job creation programs, initiatives for improved access to information, and legal aid.

20. See, e.g., Wang Qian, Paralympic Spirit Still Alive and Well in Beijing, CHINA DAILY (Dec. 4, 2008, 08:13), http://www.chinadaily.com.cn/cndy/2008-12/04/content_7269346.htm ("China has invested a great deal of money into promoting and developing sports for the disabled. It is not limited to the playground, but also to promoting their lives."); Paralympic Glory, CHINA DAILY (Sept. 17, 2008, 07:38), http://www.chinadaily.com.cn/cndy/2008-09/17/content_7032650.htm (expressing pride in the enthusiastic audience that the 2008 Paralympic Games found in Beijing and noting that many public buildings have become wheelchair-accessible due to those Games).

21. See, e.g., Handicapped Students' Life Two Years After Sichuan Earthquake, XINHUA (May 13, 2010, 07:27:42), http://news.xinhuanet.com/english2010/photo/2010-05/13/c_13291190.htm (providing a photojournalist's account of positive experiences among students in schools that were created for children who became disabled during the 2008 Sichuan Earthquake).


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services,\textsuperscript{27} and medical and housing benefits.\textsuperscript{28} These reports are in conjunction with numerous official reports of the government’s general support of the rights of people with disabilities in the domestic context.\textsuperscript{29} Notably, the State-controlled media reports do not detail negative aspects regarding the daily lived experience of persons with disabilities as are reported outside of the PRC. These range from socially exclusionary lack of physical accessibility\textsuperscript{30} to egregious labor exploitation\textsuperscript{31} and servitude as beggars.\textsuperscript{32}

III. CHINA AND THE CRPD

Returning to the international stage, in December 2001 the General Assembly approved an Ad Hoc Committee (Ad Hoc Committee) to consider whether a disability human rights treaty was necessary or desired.\textsuperscript{33} The impetus came from a combination of persons with disabilities not receiving adequate protection under existing United Nations human rights treaties while also being ignored by other

\textsuperscript{27} See, e.g., 2,500 Legal Aid Centers Help Disabled, CHINA DAILY (Sept. 15, 2008, 10:07), http://www.chinadaily.com.cn/china/2008-09/15/content_7027843.htm ("China has made strenuous efforts to protect the interests of the disabled by both offering legal aid and carrying out random checks on the implementation of the Law on Safeguarding the Legal Rights of the Disabled ... ").

\textsuperscript{28} See, e.g., China Seeks More Medical, Housing Benefits for Disabled, CHINA DAILY (Nov. 12, 2008, 19:51), http://www.chinadaily.com.cn/china/2008-11/12/content_7198939.htm (citing CDPF efforts to bring "costs of psychiatric care, eye operations, hearing aids for disabled children, and rehabilitation" within coverage of individual medical insurance, as well as obtaining housing subsidies and home-renovation assistance for low-income families with disabled persons).


international programming.\textsuperscript{34} For example, the Millennium Development Goals (MDGs)—the most ambitious development scheme in the world, and the core United Nations program on global poverty alleviation—speak to eradicating poverty and improving education.\textsuperscript{35} Persons with disabilities account for ten percent of the world's population but comprise twenty percent of those living in poverty,\textsuperscript{36} only two percent of children with disabilities in developing countries receive a formal education,\textsuperscript{37} and one-third of all primary age children out of school have a disability.\textsuperscript{38} Nevertheless, disability was not referenced in the eight MDGs, and even to date has not specifically been included in their implementation.\textsuperscript{39} Accordingly, there was strong moral and political pressure for clarifying and including the existing human rights of persons with disabilities in international obligations and schemes.\textsuperscript{40}

Chinese support for a disability-specific treaty preceded that of the United Nations. In 2000, a full year before the General Assembly authorized the Ad Hoc Committee, the first World NGO Summit on Disability was convened in Beijing.\textsuperscript{41} The resulting Beijing Declaration on the Rights of People with Disabilities in the New Century called for the adoption of exactly such an instrument.\textsuperscript{42} Similarly, in the midst of the Ad Hoc sessions, China hosted a regional meeting that produced the Beijing Declaration on Elaboration of an International Convention to


\textsuperscript{38} U.N. Doc A/64/180, supra note 36, ¶ 19.

\textsuperscript{39} See United Nations Millennium Development Goals, supra note 35.

\textsuperscript{40} As noted by a specially-tasked rapporteur, “persons with disabilities are going to find themselves at a legal disadvantage in relation to other vulnerable groups” without a specialized human rights treaty because “unlike the other vulnerable groups, they do not have an international control body to provide them with particular and specific protection.” LEANDRO DESPOUY, \textit{HUMAN RIGHTS AND DISABLED PERSONS}, at 40–41, U.N. Sales No. E.92.XIV.4 (1993).


\textsuperscript{42} See id. ¶ 9.
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Promote and Protect the Rights and Dignity of Persons with Disabilities,\footnote{Beijing Declaration on Elaboration of an International Convention to Promote and Protect the Rights and Dignity of Persons With Disabilities, U.N. Econ. & Soc. Comm’n for Asia & the Pac. (Nov. 7, 2003), http://www.netzwerk-artikel-3.de/un-konv/dokubeijing-declaration.pdf.} which embraced the ongoing negotiations toward a treaty and encouraged States to adopt progressive provisions.\footnote{See id. ¶ 8(d), (h). These provisions included several that came to fruition, including special attention to the situation of women with disabilities and the need for international cooperation.}

Because the General Assembly had gone only so far as to approve an Ad Hoc Committee to consider the wisdom of developing a disability-specific human rights treaty, the first two negotiation sessions focused on its viability and possible content.\footnote{See Stein & Lord, supra note 15.} During the first two negotiation sessions, the States’ representatives\footnote{See Katherine Guernsey et al., Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank 3–4 (2007), http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf.} agreed that a convention was necessary, and that it would comprise civil, political, economic, social, and cultural rights in a holistic manner.\footnote{See Michael Ashley Stein, Disability Human Rights, 95 Calif. L. Rev. 75, 83–85 (2007) [hereinafter Disability Human Rights] (explaining how Draft Articles indicated international community’s rethinking of “sparse” disability human rights protections).} China was among the vast majority of States that actively supported a disability-specific instrument.\footnote{For an archive of the negotiations, including position papers, see Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons With Disabilities, U.N. ENABLE, http://www.un.org/disabilities/default.asp?id=1423 (last visited Oct. 15, 2011).} The strongest dissent was voiced by the Bush administration while justifiably, but without intended irony, touting the virtues of American disability law and policies.\footnote{See Michael Ashley Stein & Janet E. Lord, Ratify the U.N. Disability Treaty, Foreign Policy in Focus (July 9, 2009), http://www.fpf.org/fpftxt/6247 [hereinafter Ratify the U.N. Disability Treaty].}

The Chinese delegation remained stalwart supporters of drafting and adopting a treaty despite, similar to many other States,\footnote{As stated by the PRC representative at the time the CRPD was adopted, “The Chinese government is among those who promote the formulation of the Convention in early days. In the past 5 years, the Chinese delegation took an active part in the work of the Ad Hoc Committee on the Convention and made its due contribution. In order to complete the drafting of the Convention on time, many delegations, including mine, did their best to demonstrate flexibility on some contentious issues in the Convention during consultations.” Deputy Permanent Representative of China to the U.N. Ambassador Liu Zhenmin, Statement at UNGA 61st Session on the Adoption of the Convention on the Rights of Persons with Disabilities (Dec. 13, 2006), http://www.un.org/esa/socdev/enable/convstatementgov.htm#ch.} disagreeing
on certain issues or the particular points to advance.\textsuperscript{51} One of these areas involved international monitoring; a position consistent with the PRC's broader aversion to international oversight.\textsuperscript{52} China firmly and correctly held that international instruments were first and foremost to be applied and monitored domestically.\textsuperscript{53} It initially resisted the creation of an international monitoring body to receive complaints, review State reports, and issue recommendations in favor of international cooperation and national level review.\textsuperscript{54} Such a body, the Committee on the Convention of the Rights of Persons with Disabilities, was in the end established.\textsuperscript{55} Notably, the PRC has not yet ratified—and is unlikely to ratify anytime in the near future—the Optional Protocol to the CRPD,

\textsuperscript{51} For example, after absenting itself from the majority of negotiations, the United States sent a delegation head to the Seventh and Eighth Ad Hoc sessions in order to focus on its issues of interest, which included removing elements of sexual and reproductive health, and the category of areas of occupation. See Ratify the U.N. Disability Treaty, supra note 49.


\textsuperscript{54} Position Paper by the People's Republic of China, Ad Hoc Comm. on a Comprehensive and Integral Int'l Convention on Prot. and Promotion of the Rights and Dignity of Persons with Disabilities, ¶ 12, July 29–Aug. 9, 2002, U.N. Doc. A/AC.265/WP.3 (2002) ("The international community should undertake to cooperate in matters relating to persons with disabilities on the basis of the principle of experience-sharing and equal benefit. The developed countries should make allowances for the effects of the developing countries' low economic level and the incomplete state of their social security, and should take concrete steps to provide the developing countries with support and financial assistance in order to help them successfully solve the problems of people with disabilities."); see also Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Seventh Session, Vol. 8, No. 10 (Jan. 27, 2006), http://www.un.org/esa/socdev/enable/rights/abc7sun27jan.htm (recording the Chinese delegation's statement that "each country should be able to decide on an effective and practical monitoring system"). At times, China seemed to relent on these points. See Ad Hoc Comm. on the Convention on the Rights of People with Disabilities, Daily Summary of Discussion at the Third Session, Vol. 1, No. 1 (May 24, 2004) (agreement by the PRC that monitoring should be done by an expert committee, modeled on other relevant international instruments, which would review national reports of compliance).

which would make it responsive to the CRPD Committee, yet it lobbied effectively to place its own nominated expert on the Committee.

A second point of particular interest to China during the CRPD negotiations was the issue of how disability would be defined under the Convention. Disability rights advocates have long contended that the category of individuals labeled as “disabled” is a social construct, and thus culturally variable. This assertion is borne out by the wide divergence in self-reported prevalence rates of disability amongst States, which vary wildly from less than one percent in Kenya to twenty percent in New Zealand, even as the World Health Organization utilized a baseline assumption of ten percent and the World Bank estimated ten to twelve percent. Discussion of an univocal definition was delayed until the very last Ad Hoc session, with the PRC preferring not to set a standard. Ultimately, the CRPD did not include a formal definition within Article 2 (Definitions), but instead declared in Article 1 (Purpose) that the disability category includes persons “who have long-term physical, mental, intellectual or sensory impairments” that “in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” China retained its own classification system of disability that yielded a six and one


57. See Members of the Committee on the Rights of Persons with Disabilities, U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx (last visited Oct. 15, 2011). Professor Jia Yang, the PRC’s nominated expert, is the Founding Director of the Women’s Committee of China’s Association of the Blind and a Member of the World Blind Union’s Asia-Pacific Region Women’s Committee. Id.

58. This is one of the basic premises of the social model of disability, and is linked to the attendant notion that barriers excluding persons situated within the disability category are artificial and remedial. See Michael Ashley Stein, Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination, 153 U. PA. L. REV. 579, 622–26 (2004).


61. CRPD, supra note 9, art. 2.

62. Id. art. 1. This provision is notable for two reasons. First, it is rare for a human rights treaty to contain an overt “Purpose” article. Second, by placing this progressive, socially constructed view of disability within an article entitled “Purpose,” the CRPD drafters precluded States from reserving against it.
third percent prevalence rate, and in doing so, overtly shared its concern that a broader definition would yield a larger number of disabled persons, leading to a greater financial obligation.

In addition to the above two issues, China endeavored to respond to Western-driven disability advocacy during the Ad Hoc sessions by interpreting a number of issues through its own, culturally Asian lens. A unique feature of the CRPD negotiations was that the stakeholders—here, people with disabilities—were included in the negotiations. This was the first time for such an occurrence in United Nations core human rights treaty development. Consequently, disabled persons and their representative organizations were involved from the initial discussions and did a great deal to educate the States’ representatives about disabilities. This signal achievement carried over into the Convention’s substantive provisions. At the same time, the reality of United Nations negotiations is that the people who participate can financially afford to do so, which usually translates to individuals or organizations from developed countries. Additionally, although the disability rights community organized itself into an international disability caucus that intervened with a unified position on issues, the outcome frequently reflected Western ideals.

64. See Guernsey et al., supra note 46, at 3.
65. See id. at 4.
67. See Michael Ashley Stein, Charlotte McClain-Nhlapo & Janet E. Lord, Disability Rights, the MDGs and Inclusive Development, in Millennium Development Goals and Human Rights: Past, Present and Future (Malcolm Langford et al. eds., forthcoming 2011). To name a few examples, the continuing and central role of people with disabilities is reflected explicitly in CRPD provisions requiring States Parties to “closely consult with and actively involve persons with disabilities” in the development of all national laws, policies, and implementation schemes related to CRPD transposition (Article 4), monitoring (Article 33), reporting (Article 35), and international cooperation (Article 32). CRPD, supra note 9, arts. 4, 33, 35, 32.
Two connected examples of advocacy positions arising from developed countries are independent living and legal capacity. Collectively, these notions hold that people with disabilities ought to be independent and autonomous, make their own decisions, and live in a manner of their own choosing. In its most elemental position, it means that disabled persons should never be warehoused in large institutions and subjected to conditions the international community equates to torture, including involuntary sterilization, physical restraints, and other inhumane living conditions. This is a circumstance that historically predominated, and continues to exist in many nations. These paired notions aver that, at a minimum, people with disabilities cannot be deprived of what non-disabled persons assume are basic and protected legal rights, such as opening a bank account or marrying. In its most progressive manifestation, combining independent living and legal capacity results in people with disabilities receiving facilitation and support to be able to live full, equal, and meaningful lives in their communities.

70. See CRPD, supra note 9, art. 19.
71. See id. art. 12.
73. The CRPD states that “[e]very person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.” CRPD, supra note 9, art. 17.
75. See CRPD, supra note 9, art. 12, ¶ 2 (“States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”).
76. See id. art. 12, ¶ 5 (“States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own
For China, the idea of persons with disabilities living independently was received with some consternation during the Ad Hoc sessions. State representatives questioned who would want to deprive individuals with disabilities of their families, as in the PRC’s view, family members were best positioned to understand and care for them.\footnote{Cf. Ad Hoc Comm. on the Convention on the Human Rights of Persons with Disabilities, Daily Summary of Discussion at the Seventh Session, Vol. 8, No. 5 (Jan. 20, 2006) [hereinafter January 20 Summary of Discussion at Seventh Session] (“China agreed that the word ‘independently’ should be deleted from the title [of Article 15, Living Independently and Being Included in the Community], since it implies ‘independently of others’ in Chinese.”); Annex I: Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Report of the Working Group to the Ad Hoc Committee, art. 15 n.51, U.N. Doc. A/AC.265/2004/WG.1 (Jan. 27, 2004) (“Some members of the Working Group expressed the concern that the words ‘living independently’ in the title and chapeau of this draft Article does not reflect the cultural norm in many countries, and that the words might suggest that persons with disabilities should be separated from their families.”).}

In addition, China (and a few other States) considered living in an interdependent household to be a time-honored and sensible tradition.\footnote{See January 20 Summary of Discussion at Seventh Session, supra note 77 (summarizing the Chinese delegation’s concern that the CRPD independent living provisions might be misconstrued to imply independence from other persons, and noting the delegation’s agreement with countries like Costa Rica that expressed the view that persons with disabilities “have equal rights to choose how they live in the community and thus they should be able to choose to live with family members if so desired”).} This disjuncture highlights different cultural understandings: in the West, independent living is commonly understood as facilitating activities to enable an individual’s autonomy, rather than the more literal interpretation of living on one’s own.\footnote{See Dr. Adolf D. Ratzka, Indep. Living Inst., Presentation at “Our Common World” (May 1997), http://www.independentliving.org/toolsforpower/tools7.html.}

Significantly, the International Disability Caucus during the Ad Hoc sessions was understandably motivated by horrific experiences of institutionalization, and in response staked out the position that all persons with disabilities always have full legal capacity.\footnote{See Position Paper by Int’l Disability Alliance, CRPD Forum, Principles for Implementation of CRPD Article 12, ¶¶ 3–5, 2008, available at http://www.internationaldisabilityalliance.org/wp-content/uploads/2009/08/Article_12_Principles_Final.doc.} Consequently, the disability rights advocates held that there is no such thing as substituted decision making, which in practice often leads to guardianship arrangements.\footnote{See Amita Dhanda, Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?, 34 SYRACUSE J. INT’L L. & COM. 429, 445–46 (2007).} China maintained the opposite view,
namely, that at times some people with disabilities cannot exercise their rights even with facilitation from their supporters and families, and therefore require substituted decision making. This view is consistent with long-held PRC laws and policies. One outcome of this difference in opinions on legal capacity and its significance is that China, along with the Arab group and Russia, inserted a footnote in a late draft of the treaty splitting the right to have capacity, which everyone possesses, and the right to exercise capacity, which was presumed, but may not always be the case for a certain subset of individuals. Though that footnote was eventually removed, the scope and operation of legal capacity is still a very controversial issue flowing from the CRPD, the topic on which the majority of reservations have been made by States when ratifying, and making up the heart of high profile litigation before the European Court of Human Rights.

82. See Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 10 (Feb. 4, 2005), http://www.un.org/esa/socdev/enable/rights/ahc5sum4feb.htm ("China proposed amending the [Coordinator’s Report] to read ‘some delegates expressed grave concern about the wording ‘legal capacity,’ and if these words need to be used they should be interpreted in each language to reflect legal capacity as to rights, not legal capacity to act.’ In legal systems legal capacity can mean two different things."); Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 3 (Jan. 26, 2005), http://www.un.org/esa/socdev/enable/rights/ahc5sum26jan.htm ("China stated that . . . [i]f legal capacity means legal entitlement or legal rights, there is no problem. Capacity to act is a different concept in the Chinese language."); Ad Hoc Comm. on the Convention on the Human Rights of People with Disabilities, Daily Summary of Discussion at the Fifth Session, Vol. 6, No. 2 (Jan. 25, 2005), http://www.un.org/esa/socdev/enable/rights/ahc5sum25jan.htm (noting China’s position that “[i]f ‘legal capacity’ refers only to rights and entitlements, and not to the capacity to act, this concept should be supported”).


84. See WORLD NETWORK OF USERS AND SURVIVORS OF PSYCHIATRY, supra note 60, at 5.

85. See, e.g., News & Events: Legal Capacity Conference, HARVARD LAW SCHOOL PROJECT ON DISABILITY (Feb. 2010), http://hpod.org/activities/events-detail/legal-capacity-conference/ (describing a conference that “will present a variety of perspectives on the scope and operation of legal capacity”).

86. For example, Australia declared “its understanding that the Convention allows for fully supported or substituted decision-making arrangements,” and Canada declared “its understanding that Article 12 permits supported and substitute decision-making arrangements.” Declarations and Reservations, U.N. ENABLE, http://www.un.org/disabilities/default.asp?id=475 (last visited Oct. 15, 2011).

87. To name one example, a recent case at the European Court of Human Rights, Kiss v. Hungary, involved Hungary’s blanket prohibition on voting for individuals with mental disabilities (and any others) placed under plenary guardianship. The Court struck down the ban as violating both the European Convention on Human Rights and the CRPD. See Alajos Kiss v. Hungary, App. No. 38832/06 (Eur. Ct. of Human Rights May 20, 2010), http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=868214&portal=hbkm&source=externalbydocnu
The CRPD was adopted by consensus on December 13, 2006, becoming the first human rights treaty of the twenty-first century. It covers all aspects of the lived experiences of persons with disabilities, including ones that immediately come to mind, like education, employment, health care, political participation, and freedom of expression, as well as those that must be highlighted from existing instruments, such as personal mobility and independent living. The Convention opened for signature on March 30, 2007, at which time it received the largest number of signatures to a United Nations Convention on an opening day, including China’s. The CRPD became operational on May 3, 2008, followed by three Conferences of States Parties and three meetings of the CRPD Committee as of this writing.

IV. CHINA AT HOME

The year 1988 saw the establishment of the China Disabled Persons’ Federation (CDPF) under the leadership of Deng Pufang, a son of Deng Xiaoping, one of China’s senior leaders and architect of its “opening and reform” policies. Drawing upon his family’s politically
powerful connections, Deng Pufang was able to gain PRC backing for the CDPF, as a quasi-government nongovernmental organization, to engage in otherwise non-viable advocacy efforts. An early CDPF achievement was its facilitation of the 1990 Law on the Protection of Disabled Persons (1990 LPDP). This was the same year that the United States passed the Americans with Disabilities Act (ADA), before similar legislation in Australia and the United Kingdom, and a decade in advance of an employment antidiscrimination directive in the European Union.

Anticipating CRPD ratification, China began to reflect on how to revise the 1990 LPDP. The eventual 2008 revision, the Law on the Protection of Persons with Disabilities (2008 LPPD), was announced four months prior to CRPD ratification. The 2008 LPPD falls significantly short of achieving the full range of CPRD core concepts in that it does not require, among other mandates: provisions of reasonable accommodation, equal recognition before the law, liberty and security of the person, freedom from torture or abuse, and removal of societal barriers to the full inclusion of women and children with disabilities. It also does not define discrimination trenchantly, making its prohibition and ultimate eradication

106. See id. at 94–96.
114. Cf. CRPD, supra note 9, arts. 5, ¶ 3, 27, ¶ 1(i) (providing reasonable accommodations).
115. Cf. id. art. 12 (providing equal recognition before the law).
116. Cf. id. arts. 17–18 (providing protection for the integrity of person and liberty of movement and nationality).
117. Cf. id. art. 15 (providing "[f]reedom from torture or cruel, inhuman or degrading treatment or punishment").
118. Cf. id. art. 6 (providing protection for women with disabilities).
119. Cf. id. art. 7 (providing equality for children with disabilities).
120. See 2008 LPPD, supra note 112.
implausible. In addition, the revised statute remains grounded in heavily medical-based notions of disability, and so the prevention and rehabilitation of disability retains its prior emphasis. Professor Carole Petersen views these and other shortcomings in the 2008 LPPD as conflicting with CRPD-recognized rights of persons with disabilities to life, marriage, and procreation through human rights violating practices embedded in policies like the one-child rule. And Dr. Fengming Cui argues that the 2008 LPPD, as well as education laws, do not bring about disability-inclusive education at a level required by the CRPD.

Without in any way downplaying the limitations of the 2008 LPPD, or disagreeing with the critiques offered by Professor Petersen and Dr. Cui, it bears noting that the CRPD sets the global standard for disability human rights and therefore includes best practices that few States, on paper or in reality, have yet to completely follow. The 2008 LPPD, moreover, is in some ways more progressive than its predecessor as evidenced by the shift to “people first” language—“persons with disabilities” as opposed to “the disabled”—and some other more


122. Notions of prevention and rehabilitation are often abhorred by Western disability rights advocates, in large measure because of the prejudicial history against persons with disabilities having been justified by “objective” medical reasons. See generally Disability, in 2 THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY 334 (Stanley N. Katz et al. eds., 2009). Nevertheless, having witnessed avoidable river blindness in South Africa and people (who would otherwise use wheelchairs) crawling on the ground in Bangladesh, to name only a few examples, I believe that much good can be achieved from preventing disabling conditions (e.g., does anyone—with or without a disability—affirmatively want to contract a debilitating illness?) and that service-oriented providers can develop capacity to act as disability rights agents.

123. CRPD, supra note 9, art. 10.

124. Id. art. 23, ¶ 1(a).

125. Id. arts. 23, ¶ 1(a)–(b), 25(a).


127. See Fengming Cui, Inclusive Education In China: An Important Topic for Research and Advocacy (on file with author).

128. See Disability Human Rights, supra note 47, at 83–85, 97–98.

politically sensitive terms. It has the potential to include a broader category of persons with disabilities and is framed more as a rights-based approach consistent with the CRPD because it makes clear what rights exist and that they may be pursued. Further, the 2008 LPPD is culturally specific to China. Accordingly, families and communities are tasked with supporting persons with disabilities, a national day of assisting persons with disabilities remains from the earlier iteration, people with disabilities themselves are admonished to help themselves, be positive, and contribute to “socialist development,” and the CDPF retains its central role of monitoring, facilitating, and implementing the national law.

What is decidedly indefinite about the 2008 LPPD is how well it will be implemented. For enforcement, the statute relies on the promulgation of future regulations, whose contents are not yet clear, and on future directives to provincial and local officials, whose commitment to making abstract mandates real is unknown. More specifically, it remains to be seen how the regulations to the 2008 LPPD will manifest rights to “launch complaints” to the CDPF and to “competent departments,” what “disciplinary measures,” “administrative penalties,” and civil and criminal redress are contemplated, and what impact any of these devices will have. To be fair, the challenge of effective implementation of disability rights is the fly in the ointment of every State. This includes the United States, where despite strong antidiscrimination laws, the relative employment rate of people with disabilities has fallen steadily since 1984, some six years before the passage of the ADA in 1990.

130. See, e.g., 2008 LPPD, supra note 112, art. 1.
131. See id. art. 2.
132. See id. arts. 3, 59.
133. See id. art. 16.
134. See id. art. 14.
135. See id. art. 10.
136. See 2008 LPPD, supra note 112, art. 8.
137. See id. art. 5.
138. See id. art. 59.
139. See id. arts. 61–62.
141. Richard V. Burkhauser et al., Accounting for the Declining Fortunes of Working-Age People with Disabilities (forthcoming 2011) (on file with author). The relative and absolute decline in employment rates for Americans with disabilities since the mid-1980s has been documented in several papers by economist Richard V. Burkhauser, whose work is listed online at http://www.human.cornell.edu/bio.cfm?netid=rvbl.
Applying different means of addressing similar problems, China has implemented a number of unique measures to make its national laws and policies more concrete. To illustrate this conundrum in a specific context, consider the disability-related employment policies outside the 2008 LPPD. Commentators have identified the shift in China’s disability employment policies as a move from “concentration” to “dispersion.” Prior to 1990, the Chinese government had a policy of placing disabled persons in State-run “welfare workshops,” which later became free-market “welfare enterprises” after the 1978 opening of China’s economy to the West. The Chinese government mandated that workers with disabilities should account for at least thirty-five percent of the staff of these enterprises.

Beginning in 1990 with the LPDP, China’s policies have expanded to include focus on employment of persons with disabilities through self-employment and a quota system under which all employers must, in theory, ensure that persons with disabilities make up a percentage of their staffs to be set by provincial governments. The quota system is designed to be enforced through a system of fines administered by provincial governments. It also is said to be supplemented by a system of mandatory (but undefined) tax incentives for welfare enterprises and persons with disabilities who obtain independent employment through establishment of a business. A further element of China’s implementing framework is a requirement that employment services agencies affiliated with the CDPF provide vocational training and job recommendations (among other services) to persons with disabilities. Notably, China has not altogether abandoned

142. For a more thorough discussion of these and other policies, see generally RONALD BROWN, UNDERSTANDING LABOR & EMPLOYMENT IN CHINA (2009).
144. Id. at 47–48.
145. Id. at 47.
146. See, e.g., 1990 LPDP, supra note 107, arts. 33–34; 2008 LPPD, supra note 112, arts. 33–34 (providing for general government “encouragement,” as well as preference in licensing and waiver of administrative fees, for persons with disabilities who undertake self-employment).
147. See Huang et. al., supra note 143, at 47, 49–50; see also Regulations on the Employment of Persons With Disabilities, CHINA DISABLED PERSONS’ FED’N, art. 8 (Apr. 10, 2008), http://www.cdpf.org.cn/english/lawsdoc/content/2008-04/10/content_84888.htm (setting a national quota floor of 1.5 percent for all businesses and leaving it to provincial governments to establish their own specific ratios above that floor).
149. See id. art. 17.
150. See id. art. 19.
151. See id. art. 22.
“concentratrice employment units” (i.e., welfare enterprises), though the percentage of persons with disabilities on the staffs of such work units currently needs to meet a standard of twenty-five percent, a reduced goal from the pre-1990 level of thirty-five percent.

From the perspective of an advocate applying the CRPD, the PRC’s use of quotas and segregated workshops are highly problematic since those measures arise from charitable motivations that do not accord persons with disabilities equal and rights-based access to the open labor market. Indeed, the States’ representatives, individuals with disabilities, and disabled persons organizations who negotiated Article 27 of the CRPD relating to employment specifically omitted references to quotas or sheltered workshops as not being in the spirit of the treaty’s rights orientation. By contrast, the vocational training and tax incentives contemplated by the Chinese framework are very much on a level with the CRPD’s employment equity mandates and fall within a range of equality measures used by nearby Asian States. China’s self-reported overall employment rate of eighty-four percent for persons with disabilities, if true, would be among the highest in the world, eclipsing a disability employment rate estimated at twenty percent in the United States. The variance between these two countries’ respective disability employment figures, in combination with the placement of workers with disabilities in sheltered PRC factories, raises concerns about their comparability.

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152. See id. art. 11.
154. See, e.g., G.A. Res. 47/88, supra note 3, at 2. These schemes are also not in line with the spirit of the ILO Convention and Recommendation relating to workers with disabilities.
155. See MICHAEL S. LYNK & MICHAEL ASHLEY STEIN, COMPARATIVE PERSPECTIVES ON THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS EMPLOYMENT EQUITY MANDATE (forthcoming) (on file with author).
156. Id.
159. As of July 2010, the unemployment rate among working age adults with disabilities, sixteen to sixty-four, is approaching eighty percent. See 2010 KESSLER FOUNDATION/NOD SURVEYS OF AMERICANS WITH DISABILITIES, SURVEY OF AMERICANS WITH DISABILITIES (July 26, 2010), http://www.2010DisabilitySurveys.org/indexold.html.
Having played a significant role in the development of international laws, policies, and programs on behalf of the global population of persons with disabilities, China has been reluctant to make an equivalent commitment to applying the same standards at home. Some commentators believe this type of divergence is motivated by a State desire to cull reputation points in the international arena without ever intending to domestically implement those rights. Other international scholars might assert that such States acted with the intention of narrowing the gap incrementally. Yet others might aver that whatever the true intention when ratifying the CRPD, the processes of socialization and enculturation will inculcate disability human rights values into these States over time. Regardless of which school of thought prevails, the current situation involving the reported eighty-three million persons with disabilities in China does not reflect the standards promulgated by the CRPD. Time will tell how deeply the PRC is committed to its citizens with disabilities.

160. Cf. Oona A. Hathaway, Do Human Rights Treaties Make a Difference?, 111 YALE L.J. 1935, 2010–11 (2002) (arguing that countries may be substantially more likely to fail to comply with treaty obligations if they obtain reputational benefits but suffer little reputational cost when they fail to observe these obligations).


163. See generally Geisinger & Stein, supra note 11, at 78–131 (providing an account of the expressive law value of human rights treaties).