DO HUMAN RIGHTS TREATIES MATTER: THE CASE FOR THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

OS TRATADOS DE DIREITOS HUMANOS IMPORTAM?: O CASO DA CONVENÇÃO DAS NAÇÕES UNIDAS SOBRE OS DIREITOS DAS PESSOAS COM DEFICIÊNCIA

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ABSTRACT: In the United States, and throughout many other parts of the world, we are witnessing attacks on basic human rights. As poverty, inequality, and suffering are evident in so many parts of the world today, there are those who say that the entire human rights regime has failed. This author does not agree. While it is true that human rights treaties have not realized their full potential in every country that has ratified them, human rights treaties do "matter." This Article makes the case for human rights treaties by referring to the success of the Convention on the Rights of People with Disabilities (CRPD), which was adopted by the UN in 2006 and has been ratified by 177 countries. The CRPD has spurred the development of new laws, policies, and practices that are transforming societies and offering new protections and opportunities for people with and without disabilities. The CRPD is also creating new norms within the international human rights system itself. Based on the impact of the CRPD to date, the human rights treaty regime has not only not failed but is, in fact, thriving.

KEYWORDS: People with Disabilities; United Nation Convention; Human Rights; Treats.

RESUMO: Nos Estados Unidos, e em muitas outras partes do mundo, estamos testemunhando ataques aos direitos humanos básicos. Como a pobreza, a desigualdade e o sofrimento são evidentes em tantas partes do mundo hoje, há quem diga que todo o regime de direitos humanos falhou. Esse autor não concorda. Embora seja verdade que os tratados de direitos humanos não tenham realizado todo o seu potencial em todos os países que os ratificaram, os tratados de direitos humanos "importam".Este artigo defende os tratados de direitos humanos refeindo-se ao sucesso da Convenção sobre os Direitos das Pessoas com Deficiência (CDPD), que foi adotada pela ONU em 2006 e ratificada por 177 países. A CDPD estimulou o desenvolvimento de novas leis, políticas e práticas que estão transformando as sociedades e oferecendo novas proteções e oportunidades para pessoas com e sem deficiência. A CDPD também está criando novas normas dentro do próprio sistema internacional de direitos humanos. Com base no impacto da CDPD até o momento, o regime do tratado de direitos humanos não

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apenas não falhou, mas está, de fato, prosperando.

PALAVRAS-CHAVE: Pessoa com deficiência; Conveção das Nações Unidas; Direitos Humanos; Tratados.

"Nothing will change overnight but change comes more rapidly with law behind it".
Kofi Annan, December 13, 2006[2]

I INTRODUCTION

In recent years, the efficacy and wisdom of international human rights treaties, as well as the philosophical underpinnings of the entire human rights regime, have come under attack. Some scholars call our time the "post-human rights era."[3] The continued existence of human rights violations around the world, they argue, constitutes sufficient evidence that human rights laws have not worked.[4]

While it is true that human rights treaties have not realized their full potential in every country that has ratified them, this Article presents the argument that human rights treaties do have positive outcomes, as least with respect to the most recently adopted treaty, the Convention on the Rights of People with Disabilities (CRPD). The CRPD has successfully spurred the development of new disability rights laws, policies, and practices, thereby providing a case study for the potential effectiveness of human rights treaties.

The CRPD was adopted by the UN in 2006 as the first treaty written for and by people with disabilities.[5] This treaty is not only transforming the way in which the world views

[2] Press Release, General Assembly, General Assembly Adopts Groundbreaking Convention, Optional Protocol on Rights of Persons with Disabilities, U.N. Press Release GA/10554 (Dec. 13, 2006).
[3] See, e.g., Ingrid B. Wuerth, International Law in the Post-Human Rights Era, 96 TEX. L. REV. 279, 284 (2017).
[4] See, e.g., Eric Posner, The case against human rights, THE GUARDIAN (Dec. 4, 2014), https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights [https://perma.cc/75XH-QEL4] (archived Feb. 15, 2019).
[5] See generally Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008) [hereinafter CRPD]; Convention on the Rights of Persons with Disabilities

people with disabilities, but it is also changing state practices to ensure new protections, opportunities, and participation for people with disabilities, often for the first time in history. Moreover, the CRPD is creating new norms within the international human rights regime itself.

This Article begins by situating its argument about the impact of the CRPD within the current debate about the effectiveness of human rights treaties, generally. Unlike those scholars who assess the effectiveness of human rights treaties by comparing human rights practices before and after ratification, this author argues that the effectiveness of treaties should be measured in decades, and not according to a linear progression. Using this analysis, this Article will show how the CRPD is resulting in the development of domestic laws, policies, and practices that are transforming societies for the betterment of people with and without disabilities. The Article also explains the CRPD's potential impact on the future development of human rights law, generally.

II. DO HUMAN RIGHTS TREATIES MATTER?

The question of whether or not human rights treaties matter has captured the attention of many legal scholars. Some scholars hold the view that treaties make no difference at all; Eric Posner, for example, has written that human rights laws have made no difference in the lives of people around the globe and that we should, in his words, admit that human rights law "doesn't do much [and that] we should face that fact and move on."[6] In his new book, The Twilight of Human Rights Law, Posner further argues that the continued existence of human rights violations around the world constitutes sufficient evidence that human rights law has not worked and that the whole enterprise should be abandoned.[7] Supporters of this position, cite to the nearly universally ratified Convention on the Rights of the Child (CRC), which has not ended child labor,[8] and the myriad examples of discrimination against women that

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(CRPD), U.N. DEP'T OF ECON. & SOC. AFFAIRS, https://www.un.org/development/desa/disabilities/convention-on-therights-of-persons-with-disabilities.html (last visited Mar. 15, 2019) [https://perma.cc/ 5ZHF-DMCP] (archived Feb. 19, 2019) [hereinafter United Nations—Disability].

[6] Eric A. Posner, Have Human Rights Treaties Failed? Human Rights Law is Too Ambitious and Ambiguous, N.Y. TIMES (Dec. 28, 2014), https://www.nytimes.com/ roomfordebate/2014/12/28/have-human-rights-treaties-failed [https://perma.cc/9M6DEV9D] (archived Feb. 15, 2019).

[7] See, e.g., Dinah Shelton, Recent Books on International Law, 109 AM. J. INT'L L. 228, 228–34 (2015).

[8] Some scholars argue that although the CRC, for example, is the most ratified of all treaties, it has not (yet) resulted in widespread legislative reform. See Ranee Khooshie Lal Panjabi, Sacrificial Lambs of Globalization: Child Labor in the TwentyFirst Century, 37 DENV. J. INT'L L. & POL'Y 421, 445–47, 460 (2009); Yamile Mackenzie, The Campaign for Universal Birth Registration in Latin America: Ensuring All Latin American

continue to occur, even with the widely ratified Convention on Elimination of Discrimination Against Women (CEDAW).[9]

Moreover, Stephen Hopgood, in The Endtimes of Human Rights, argues that human rights laws are powerless to address inequality.[10] Makau Mutua, in his book, Human Rights: A Political and Cultural Critique, presents a related argument that human rights treaties do not work because they have not resulted in greater economic opportunities, particularly in the Global South.[11] Stephen Moyn, too, in Human Rights in the Age of Inequality, calls the UN human rights regime "dead on arrival."[12]

Other scholars who engage in empirical research have sought to show that there is no "concrete evidence" regarding the effectiveness of human rights treaties. Oona Hathaway, for example, in her 2002 article, Do Human Rights Treaties Make a Difference?,[13] presents the findings of her quantitative study in which she compared the records of 166 countries in five areas (torture, genocide, access to fair trials, protection of civil liberties, and political representation of women) to determine their respective records on compliance with human rights treaties.[14] Based on her research, Hathaway concludes not only that human rights treaty

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Children's Inherent Right to Life and Survival by First Guaranteeing their Right to a Legal Identity, 37 GA. J. INT'L & COMP. L. 519, 547–49 (2009). In fact, after ratifying the CRC, almost all of the Latin American countries embarked on "an initial cycle of legislative reforms." The creation of new laws, however, led to problems because in all of the countries in the region, the ratification of the CRC did not lead to the automatic repeal of "old child laws" that were in existence before the CRC.

[9] Today, one in three women is a victim of violence at some point in her life. Facts and figures: Ending violence against women, U.N. WOMEN (Nov. 2018), http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-andfigures [https://perma.cc/2KJX-Q9G8] (archived Feb. 15, 2019).

[10] See, e.g., Samuel Moyn, A Powerless Companion: Human Rights in the Age of Neoliberalism, 77 LAW & CONTEMP. PROBS. 147, 150 (2014).

[11] See, e.g., MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE X (2002).

[12] Samuel Moyn, Human Rights in the Age of Inequality, Can Human Rights Bring Social Justice?, AMNESTY INT'L NETH., https://www.amnesty.nl/content/uploads/ 2015/10/can_human_rights_bring_social_justice.pdf (last visited July 8, 2018) [https://perma.cc/TM5B-MSQ8] (archived Feb. 15, 2019).

[13] Oona A. Hathaway, Do Human Rights Treaties Make a Difference?, 111 YALE L.J. 1935, 1940 (2002) [hereinafter Hathaway Study]. Hathaway is not the only scholar who has argued that human rights treaties have generally no direct effect on the practices of states, and that they may, in fact, even exacerbate levels of repression and abuse. See also Rob Clark, Technical and Institutional States: Loose Coupling in the Human Rights Sector of the World Polity, 51 SOC. Q. 65, 68 (2010); Emilie M. HafnerBurton & Kiyoteru Tsutsui, Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most, 44 J. PEACE RES. 407, 411 (2007); Emilie M. HafnerBurton & Kiyoteru Tsutsui, Human Rights in a Globalizing World: The Paradox of Empty Promises, 110 AM. J. SOC. 1373, 1377–78 (2005).

[14] See Hathaway Study, supra note 12. Hathaway examined the records of 166 countries in five areas (torture, genocide, access to fair trials, protection of civil liberties, and political representation of women) to determine their respective records on compliance with human rights treaties. Then, using data from US State Country Reports and other sources, Hathaway set ratification of treaties as her independent variable and reported incidents of human rights violations as her dependent variable. Her analysis presented five conclusions: 1) Countries with worse human rights practices appear to ratify treaties at higher rates than those with better practices; 2) Treaty ratification appears to be associated with worse human rights practices than otherwise expected; 3) Noncompliance is less pronounced in countries that have ratified the Optional Protocol to the International Convention on Civil and Political Rights and Article 21 of the Torture Convention; 4) Ratification of regional treaties appears more likely to worsen human rights practices than improve them; and 5) Full

ratification does not lead to improvements in state practices, but that treaty ratification may actually have an inverse relationship to the human rights record of any given country.[15]

This author and others have criticized Hathaway's study on several grounds.[16] Indeed, Hathaway herself acknowledges the limitations of her study, including errors in data from self-reporting, a lack of historical context, and her "imperfect" conclusions.[17] 16 Ryan Goodman and Derek Jinks argue that Hathaway's findings do not refute the important role treaties play in the process of developing human rights norms nor does her study explain why, for example, some states with records of human rights abuses ratify treaties since "joining the treaty would signal (as a formal legal matter) the state's acceptance of the human rights principles embodied in the treaty."[18] Moreover, Hathaway's failure to account for changes as a result of improved reporting practices invalidates the entire study, according to Goodman and Jinks.[19]

Hathaway also fails to consider the steps a state may take to mitigate violations, once such violations are identified. Such steps could include improved enforcement of existing laws, amendments to current laws, adoption of new laws, development and implementation of action plans to address the violations, creation of oversight committees that would enforce recommendations to address these violations, as well as advocacy by civil society organizations. Nor does Hathaway adequately address budgetary issues surrounding treaty implementation. Wealthier nations are likely to spend more money on enforcement of treaties,

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democracies appear more likely when they ratify treaties to have better practices than otherwise expected." Hathaway Study, supra note 12. For a detailed response to Hathaway's study and my critique, see ARLENE S. KANTER, THE DEVELOPMENT OF DISABILITY RIGHTS UNDER INTERNATIONAL LAW: FROM CHARITY TO HUMAN RIGHTS 295–98 (2015) [hereinafter KANTER CRPD DEVELOPMENT].

[15] See Hathaway Study, supra note 12. According to Hathaway, ratification of a human rights treaty should not result in what she found, which is worse human rights violations by countries after they ratified treaties than they had prior to ratification. Instead, if human rights treaties are to be effective in protecting against human rights abuses, Hathaway claims, countries should have better records of human rights practices after ratification than before ratification. Hathaway's study, therefore, calls into question two widely shared assumptions: that countries generally comply with their human rights treaty commitments and that countries' practices will be better if they ratify treaties than, if not. In addition, based on her findings, Hathaway suggests that more stringent monitoring and enforcement procedures for ratifying states are required. Hathaway also asserts that because the cost of noncompliance with treaties is "low to nonexistent," countries that sign treaties have little incentive to comply with the terms of the treaties. She suggests, therefore, that universal ratification undermines the legitimacy of human rights treaties, particularly if countries are ratifying without complying. See id.

[16] See KANTER CRPD DEVELOPMENT, supra note 13, at 295–98.

[17] Id.

[18] Ryan Goodman & Derek Jinks, Measuring the Effects of Human Rights Treaties, 14 EUR. J. INT'L L. 171, 179 (2003).

[19] Hathaway has responded to Goodman and Jinks' critique in her article, Testing Conventional Wisdom. See generally Oona Hathaway, Testing Conventional Wisdom, 14 EUR. J. INT'L L. 185 (2003). In this article, Hathaway claims that Goodman and Jinks misunderstood and misinterpreted her study. She refutes their claims and states that although treaties should remain an indispensable tool for the promotion of human rights, the legal and political community should seek to explain and understand them more fully in order to improve human rights practices. Id. at 185.

thereby earning them higher marks according to her methodology. Moreover, neither Hathaway nor Goodman and Jinks raise the issue of what is considered a human rights violation in the first place, and how, even in those wealthier states that do offer due process protections under law, human rights abuses and violations continue to occur. This remains one of the most challenging questions of our time. It is also an issue on which the Convention on the Rights of People with Disabilities may offer some insights.[20]

In contrast to Hathaway, who focuses on the effect of treaties at the time of their ratification, scholars Beth Simmons and Kathryn Sikkink have demonstrated that human rights treaties are not defined by the "magic moment" of ratification. Rather, these scholars argue that the impact of human rights treaties should be evaluated over time.[21] As Sikkink has written, processes of change are gradual, disorderly, and a result of a constellation of disparate events, including the activism of individuals.[22] It takes time for any law to be understood, applied, and for people to rally behind and mobilize for its enforcement. This is especially true regarding implementation of treaties that contain social, economic, and cultural rights since, unlike civil and political rights, these rights are legally designed to be progressively realized, over time.[23] Thus, states may resist implementation of a treaty soon after ratification. However, once these states develop economically, their noncompliance with treaty obligations, including those rights subject to progressive realization, will become less acceptable, resulting in greater treaty compliance.

For example, one may point to the fact that the Convention Against Torture's widespread ratification has resulted in reducing incidents of state-sponsored torture. [24] Another example is the ratification of the Convention on the Elimination of Discrimination Against Women, which, while it has not eliminated all discrimination against women, has resulted in improvement in women's living conditions and greater employment opportunities for women throughout the world.[25] Similarly, the Convention on the Rights of the Child has brought increased rates of inoculation as well as education to millions of children, even in the

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[20] Here, I am thinking of many abuses of people with disabilities such as forced treatment, involuntary hospitalization which some consider torture and which have not been acknowledged as a human rights issue, at least not prior to the CRPD. See Juan E. Méndez (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).

[21] See KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK FOR THE 21ST CENTURY at 20 (2017); BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 317–35 (2009).

[22] SIKKINK, supra note 20.

[23] See id.

[24] SIMMONS, supra note 20, at 273–7

[25] See, e.g., Mark M. Gray et al., Women and Globalization: A Study of 180 Countries, 1975-2000, 60 INT'L ORG. 293, 295 (2006).

most remote countries on earth.[26] These treaties have had an impact, but it takes time.

The United States' experience with its own disability laws illustrates the challenge of assessing the effectiveness of laws. For example, since 1975 with the passage of the Education for All Handicapped Children Act, children with disabilities in the United States have enjoyed the right to receive a "free appropriate public education."[27] This law, which was later amended as the Individuals with Disabilities Education Act, guarantees the right to education for all children who qualify, based on their disability and need for special educational services.[28] But it was not until 2017 that the U.S. Supreme Court actually interpreted the meaning and scope of an "appropriate" education.[29]

Further, with respect to protections against discrimination of people with disabilities in the public and private sectors, section 504 of the Rehabilitation Act was enacted in 1973. It prohibits programs that receive federal funds from discriminating against people with disabilities.[30] Moreover, in 1990, Congress passed the Americans with Disabilities Act (ADA), which prohibits discrimination in workplaces, places of public accommodations, and by state and local governments. This law was amended in 2008 as the Americans with Disabilities Act Amendments Act.[31] Yet now, decades later, neither section 504 of the Rehabilitation Act, the ADA nor the ADA Amendments Act of 2008 are fully implemented.[32] This Article, therefore, argues that like domestic laws in the United States, the effectiveness of human rights treaties should be measured in decades, not months or years, and not along a linear progression. The effects of treaty ratification cannot be reduced to a simple "pre versus post" distinction, as Hathaway and other scholars claim. Like other treaties before it, the CRPD has not eliminated all discrimination and mistreatment in those countries that have ratified it; indeed no treaty alone can do that. But as Beth Simmons would suggest, the more important questions are "what and how has [this treaty] contributed to the chances that human beings will enjoy their rights more fully than would have been the case in the absence of the major human rights treaties."[33]

To provide a foundation for the argument in support of the impact of the CRPD on the lives of people with and without disabilities, the next Part will briefly review why states ratify

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[26] SIMMONS, supra note 20, at 308.
[27] 20 U.S.C. §§ 1400 et seq. (2018)
[28] § 1400(c)(3).
[29] Endrew F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988, 995–96 (2017).
[30] 29 U.S.C. §§ 701 et seq. (2018).
[31] 42 U.S.C. §§ 12101 et seq. (2018).
[32] Arlene S. Kanter, The Americans with Disabilities Act at 25 Years: Lessons to Learn from the UN Convention on the Rights of People with Disabilities, 63 DRAKE L. REV. 819, 831–40 (2015) [hereinafter Kanter ADA].
[33] SIMMONS, supra note 20, at 350.

treaties in the first place. The following Parts of this Article provide a brief background of the CRPD, followed by a discussion of the impact of the CRPD on domestic and international law and practice. This Article hopes to illustrate, contrary to the critics of human rights laws, that the CRPD is making a difference in the lives of people with and without disabilities and within the UN system itself.

III. WHY DO COUNTRIES RATIFY TREATIES?

A. Theories of Treaty Ratification

No country is required to ratify or even sign a human rights treaty; however, most countries do. Of the 193 member states of the United Nations,[34] all countries except the United States have ratified the Convention on the Rights of the Child (CRC); 180 countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); 175 countries have ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); 167 countries have ratified the International Covenant on Civil and Political Rights (ICCPR); 161 countries have ratified the International Covenant on Social, Economic, and Cultural Rights (ICESCR); and 153 countries have ratified the Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT).[35]

Why do so many countries ratify so many treaties? What are the advantages to countries that would lead them to surrender even a modicum of their own state sovereignty in favor of a treaty? With respect to ratification of the CRPD, could it be that these countries support the rights of people with disabilities, or are there other issues at play?

Most scholars agree that countries ratify treaties often with no intention of fully implementing them.[36] Instead, a country may decide to ratify a treaty in order to protect its international reputation by avoiding the threat of ostracism or punishment by the international

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[34] United Nations, Member States, http://www.un.org/en/memberstates/index.html (last visited Feb. 19, 2019) [https://perma.cc/2EKU-BFE5] (archived Feb. 15, 2019). There are 195 countries in the world today. One hundred ninety-three countries are members states of the United Nations, with the Holy See and the State of Palestine as non-member observer states. Id.

[35] Multilateral Treaties Deposited with the Secretary-General, Chapter IV: Human Rights, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/Treaties.aspx? id=4&subid=A&lang=en (last visited Mar. 15, 2019) [https://perma.cc/7UKQ-63JM] (archived Feb. 15, 2019) [hereinafter Treaty Collection].

[36] See Joshua Keating, Why Countries Make Human Rights Pledges They Have No Intention of Honoring, SLATE (Oct. 21, 2014), http://www.slate.com/blogs/the_world_/ 2014/10/21/why_countries_make_human_rights_pledges_they_have_no_intention_of_h onoring.html [https://perma.cc/X43K-VX9T] (archived Feb. 15, 2019) (referencing recent papers that reference treaties signed by countries and the rationale behind not implementing them).

community. [37] Such countries may believe that they have no choice but to ratify. As Beth Simmons has observed, "Countries may ratify [a treaty] in order to signal their support for the norms expressed in a treaty whether or not they actually espouse those norms and, in some cases, to mask the fact that they do not. This becomes more likely as more countries ratify."[38] According to this view, the act of signing or ratifying a treaty is essentially symbolic.

Because some countries ratify treaties without any intention of full compliance with them, some scholars conclude that treaty ratification is meaningless. [39] These scholars focus on the fact that since there are no adverse repercussions for state-party noncompliance with treaties, ratification itself is no guarantee that any changes to domestic practices will occur.[40]

Yet if treaties are merely symbolic or meaningless to those countries that ratify them, one would think that states parties would ratify all treaties or none, but not some treaties. In particular, one would expect that the country that ratifies the CRC would also ratify the CAT and vice versa, but that is not the case. In fact, many more countries have signed the CRC than the CAT.[41] Indeed, the CRC is the most signed treaty, and the CAT is the least signed treaty, to date.[42] The fact that so many countries have ratified the CRC may indicate that countries are willing to ratify treaties only if they believe that ratification will not cause too many changes in their country. But treaties such as the torture treaty, which would require some countries to dramatically change certain state practices, have received the fewest number of ratifications. [43] This difference suggests that treaties mean something to the countries that choose to ratify them.[44]

But the meaning of such ratification is not clear. Some scholars claim that a country's decision to ratify a treaty relates to the country's resources and position within the international system. According to Jay Goodliffe and Darren G. Hawkins, for example, richer countries with a strong position in the international system are more likely to ratify treaties because they can use their power to mitigate any undesirable unintended consequences of

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[37] See id.
[38] SIMMONS, supra note 20.
[39] Id. at 64.
[40] See Alicia Galea, No Freedom for Afghan Women: The Taliban Hides Behind Religion to Control Its People, 78 U. DET. MERCY L. REV. 341, 368 (2001); see also James F. Smith, NAFTA and Human Rights: A Necessary Linkage, 27 U.C. DAVIS L. REV. 793, 808–10 (1994).
[41] See Treaty Collection, supra note 34.
[42] See id.
[43] See id.
[44] As Beth Simmons argues, "countries are willing to ratify treaties only if they believe that ratification will not cause too many changes within their country, as some countries have argued with respect to the CRC. But treaties such as the torture treaty, which would likely require changes in State practices, have received the fewest number of ratifications. This fact suggests that treaty ratification is not meaningless, at least to the countries that ratify them. Even if they don't plan on making any significant changes in domestic law." SIMMONS, supra note 20.

treaty ratification, and "escape punishment should others attempt to inflict it."[45] According to this view, although ratification itself may not influence changes in state practices, the fear of repercussions on the international stage may have that result.[46] The legal scholar Harold Koh has traced this power explanation" back to Thucydides, who wrote that "strong states do what they can, the weak states suffer what they must, but in the end there is no real 'obedience' of international law, only such coincidence between national conduct and international rules that results from power and coercion."[47]

Other scholars reach the opposite conclusion. They argue that because new and presumably weaker regimes are blank slates in the international arena, they may choose to ratify treaties in order to gain the legitimacy that is a prerequisite to international aid, trade, and political support.[48] Moreover, scholars who analyze treaty ratification using a cost-benefit analysis argue that countries ratify treaties only after a calculation of the costs and benefits of ratification.[49] According to a cost-benefit analysis, the more a treaty would require a state to change its own behavior, the higher the cost of the treaty to the state, and the less likely the state may choose to ratify the given treaty. Thus, if the costs to the state are low, ratification is more likely; if the costs are high, the state will likely not ratify. But the way in which a country may determine costs, or even which costs are considered in this calculus, may differ among countries. In some countries, costs may include financial expenditures; in others, the costs may focus on political or reputation issues.[50]

Other scholars challenge this cost-benefit explanation. George Downs, Anthony Rocke, and Peter Barsoom, for example, view commitment and compliance to treaties as generally low-cost endeavors.[51] They write that "most treaties require states to make only modest departures from what they would have done in the absence of an agreement."[52] According to these scholars, therefore, the perceived costs of treaty ratification are overstated.

Similarly, Abram and Antonia Handler Chayes examined the costs of implementing a

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[45] Jay Goodliffe & Darren G. Hawkins, Explaining Commitment: States and the Convention Against Torture, 68 J. POL. 353, 363 (2006).
[46] Id.
[47] Harold Hongju Koh, How Is International Human Rights Law Enforced?, 74 IND. L. REV. 1397, 1402 (1999).
[48] See Peter Dizikes, Why Sign Rights Treaties?, MIT NEWS (Oct. 20, 2014), http://news.mit.edu/2014/why-sign-human-rights-treaties-1020 [https://perma.cc/X2NU-UXDQ] (archived Feb. 15, 2019).
[49] See, e.g., Oona A. Hathaway, The Cost of Commitment, 55 STAN. L. REV. 1823, 1833 (2003).
[50] See Hathaway Study, supra note 12, at 1944–45 (states considering signing or ratifying a treaty consider not only the cost of complying with the treaty but also the probability that the costs of complying will actually be realized).
[51] George W. Downs et al., Is the Good News About Compliance Good News About Cooperation?, 50 INT'L ORG. 379, 380 (1996).
[52] Id.

treaty, focusing on the costs involved in ratification, based on the state's involvement in the treaty drafting process.[53] According to these scholars, when government officials negotiate a particular treaty, they are more familiar with its terms and are in a better position to anticipate what the treaty will require the state to do and not do.[54] In such cases, the state has the opportunity to minimize its concerns about the terms of the treaty prior to its adoption.[55] According to Chayes and Chayes, a state's participation in the drafting process, therefore, reduces the overall cost of ratification to a given state and may make ratification more likely.

Another factor relevant to an understanding of treaty ratification practices is a country's legal system. In dualist, common law countries, treaty ratification is not automatic; the full effect of a treaty is not realized unless and until it is incorporated into domestic law.[56] In these countries, it is less "costly" for the state to ratify a treaty since ratification will not change any domestic laws and practices until the state's own legislature acts.[57] Moreover, since treaty incorporation is usually not a priority for most legislatures, the treaty may never become part of domestic law, or, if it does, it may be considered relatively ineffectual.

By contrast, in monist or civil law countries, where treaties generally become part of domestic law without any additional legislation, the potential cost of ratifying a treaty to the state is typically greater.[58]57 Once a treaty is ratified in a monist country, the treaty will have the full force and effect of domestic law.[59] As such, the state party is bound by the terms of the treaty, and its residents will be able to bring claims in domestic courts under the ratified treaty.[60] For this reason, monist countries may more carefully weigh their decisions to ratify treaties since once they are ratified, the state will be required to conform its practices to the terms of the treaty. These states parties may therefore be more reluctant to ratify treaties because the treaties' provisions become enforceable directly against the state, in the state's own domestic courts.[61]

Yet a review of the list of countries that have ratified various human rights treaties reveals that countries may not reach their decisions to ratify a particular treaty based solely on

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[53] See, e.g., Abram Chayes & Antonia Handler Chayes, On Compliance, 47 INT'L ORG. 175, 178 (1993).
[54] Id. at 176.
[55] Id.
[56] See Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh (1995) 183 CLR 273 (Austl.) (in which the claimant was granted the "legitimate expectation" to claim rights under the CRC even though the CRC had not yet been incorporated into domestic law).
[57] SIMMONS, supra note 20, at 125–48.
[58] According to Simmons, comparative law literature shows a correlation, but as of yet no data is available to substantiate this view. One would think that common law countries have an extra barrier so they would ratify more treaties (and not enforce them in domestic law) but that is not the case. Id. at 87
[59] Id. at 71–75.
[60] Id.
[61] Id.

their legal systems. Other factors may be at play, such as geography and religious and cultural traditions.[62] If all of a country's neighbors are ratifying a treaty, the country may be more inclined to ratify.[63] The fact that the country is "surrounded by and compared to a critical mass of ratifying countries itself encourages ratification . . . ."[64] Accordingly, "countries are more likely to commit to a treaty if they are located in a region in which other states have already ratified."[65]

There are numerous other theories that seek to explain why countries ratify human rights treaties based on cultural differences. The norm-based theorists predict that a country is more likely to ratify and implement treaties if the country already shares the norms that the treaty reflects.[66] According to these scholars, countries that already respect individual liberties, for example, are more likely to both sign and ratify such treaties as the Convention Against Torture than are states that do not share the same history of individual rights protection.[67]

Harold Koh makes a related argument that treaty ratification is often the result of "noble" goals.[68] Koh argues, based in large part on Immanuel Kant's 1795 pamphlet, Perpetual Peace, that some countries feel some sort of internal "compliance pull" toward certain rules that they feel are legitimate.[69] Harold Koh gives an example of this rule legitimacy theory in the treaties on genocide or favoring diplomatic immunity, which nations perceive as legitimate, either because they meet a procedural standard of legitimacy or a substantive notion of due process or distributive justice.[70] According to this view, some countries decide to ratify certain treaties because they are "normatively pulled" toward that treaty or rule by its very legitimacy.[71]

In sum, there are many reasons why countries may decide to ratify a particular treaty. However, most of those reasons have little, if anything, to do with a state party's commitment to complying with the specific terms of the treaty. The reasons for ratification seem to focus

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[62] SIKKINK, supra note 20, at 204.
[63] SIMMONS, supra note 20, at 376.
[64] Id.
[65] Id. at 110. See also Goodliffe & Hawkins, supra note 44, at 365; Oona A. Hathaway, Why Do Countries Commit to Human Rights Treaties?, 51 J. CONFLICT RES. 588, 611–12 (2007).
[66] See Oona A. Hathaway, Between Power and Principle: An Integrated Theory of International Law, 72 U. CHI. L. REV. 477, 481–83 (2005).
[67] Goodliffe & Hawkins, supra note 44, at 369. For example, Goodliffe and Hawkins also found that in countries where the official state religion is Islam and where the state promotes a more traditional view of women, the likelihood of the ratification of CEDAW is diminished since some of its provisions conflict with the norms of the state. See SIMMONS, supra note 20, at 361.
[68] Koh, supra note 46, at 1403.
[69] Id.
[70] Id. at 1403–04.
[71] Id. at 1404.

more on the state's interest in gaining stature in the international community, which may be a prerequisite for receiving international aid; following the lead of regional neighbors; calculating the cost of ratification as low compared to its benefits; (particularly in dualist countries); or simply because the state party believes it is powerless not to ratify. The following subpart will review possible reasons why a country may decide to ratify the CRPD, focusing on the United States.

B. Why Countries Decide to Ratify or Not Ratify the CRPD

The CRPD has become one of the most highly ratified treaties in the world, with 177 states ratifying it as of March 2019.[72] Why does a state decide to ratify the CRPD? Is the state committed to equal rights for people with disabilities or are there other reasons for ratification? This subpart will provide an overview of the decision of the United States not to ratify the CRPD in contrast to the decision of various other states to ratify the CRPD.

1. The Failure of the United States to Ratify the CRPD

Based on the criteria discussed in the previous subpart, one would have expected the United States to ratify the CRPD. The United States is a powerful nation typically not subject to international pressure. It is also surrounded by states parties that have ratified the CRPD.[73] Moreover, since the CRPD is modeled after the United States' own ADA, one might have expected ratification of the CRPD, based on its merits alone.[74] But the United States has failed to ratify the CRPD.[75] Although President Obama signed the CRPD in 2009, the United States Republican-majority Senate failed to muster the two-thirds majority vote needed to ratify it on two separate occasions.[76] Apparently, the Senate failed to ratify the CRPD because the Republican majority refused to support any bipartisan effort, even when it meant failing to ratify a treaty that could realize the goals of our own ADA.[77]

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[72] See United Nations—Disability, supra note 4.
[73] See id. (noting the full list of ratified states).
[74] Kanter ADA, supra note 31, at 822.
[75] See United Nations—Disability, supra note 4 (noting that the United States is a signatory state, but has not ratified the CRPD).
[76] Arlene S. Kanter, The Failure of the United States to Ratify the Convention on the Rights of People with Disabilities, in RECOGNISING RIGHTS IN DIFFERENT CULTURAL CONTEXTS: THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) (forthcoming 2019) [hereinafter Kanter Failure]
[77] Id.; see also Liz Klimas, Republicans Defeat Ratification of the U.N.'s 'Rights of Persons With Disabilities' Treaty in Senate, THE BLAZE (Dec. 4, 2012), https://www.theblaze.com/news/2012/12/04/republicans-defeat-

Indeed, the United States has a long history of failing to ratify treaties. Of the nine core human rights treaties adopted by the UN, the United States has signed only three.[78] This number is strikingly low, especially in relation to other countries with whom it compares itself. These countries, including Australia, the United Kingdom, France, Germany, and Canada, have either ratified or accededto all or most human rights treaties and their optional protocols.[79] As such, the United States is now the country with the "poorest record of ratification of human rights treaties among all industrialized nations."[80]. Some commentators have gone so far as to suggest that the failure of the United States to ratify human rights treaties not only reflects poorly on the United States internationally, but also adversely affects the ability of the United States to conduct foreign policy.[81]

2. The Decisions of Other Countries to Ratify the CRPD

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ratification-of-the-u-n-srights-of-persons-with-disabilities-treaty-in-senate [https://perma.cc/Y7TY-4SUE] (archived Feb. 15, 2019).

[78] These "core" treaties, as they are known, include: CDPR, supra note 4; Convention for the Protection of All Persons from Enforced Disappearance, adopted Dec. 20, 2006, 2716 U.N.T.S. 3 (entered into force Dec. 23, 2010) [hereinafter CPPED]; Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 3; Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC]; Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 [hereinafter CEDAW]; International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195.

[79] Penny M. Venetis, Making Human Rights Treaty Law Actionable in the United States: The Case for Universal Implementing Legislation, 63 ALA. L. REV. 97, 100–01 (2011).

[80] Janet E. Lord & Michael Ashley Stein, Ratify the UN Disability Treaty, FOREIGN POL'Y IN FOCUS (July 9, 2009), http://fpif.org/ratify_the_un_disability_treaty/ [https://perma.cc/D3TF-8AAL] (archived Feb. 15, 2019). The Senate has a very bad track record when it comes to human rights treaties, having only ratified three treaties and two optional protocols since the 1960's. The three treaties are the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United States has ratified two Optional Protocols for the Convention on the Rights of the Child, one concerning children in armed conflict and the other concerning "the sale of children, child prostitution and child pornography." United States Ratification of International Human Rights Treaties, HUM. RTS. WATCH (July 24, 2009), http://www.hrw.org/news/ 2009/07/24/united-states-ratification-international-human-rights-treaties [https://perma.cc/X2CB-XG4V] (archived Feb. 15, 2019) [hereinafter US Ratification]. The following are some of the treaties the U.S. has not ratified: CEDAW, supra note 77; CPPED, supra note 77; CRC, supra note 77; Convention on Cluster Munitions, May 30, 2008, 2688 U.N.T.S. 39; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, 2375 U.N.T.S. 237; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211. See US Ratification, supra. With respect to the CEDAW, there are only seven countries, including the U.S., that have not ratified it. Id. The United States is also the only country besides Somalia who has not signed the CRC, and Somalia has no recognized government to sign the treaty. Id

[81] See generally David Kaye, Stealth Multilateralism: U.S. Foreign Policy Without Treaties—or the Senate, 92 FOREIGN AFF. 113 (2013).

Unlike the United States, 177 other countries decided to ratify the CRPD—many simply because all of their neighbors did.[82] Looking at the regions of Africa, the Middle East, and Latin America, for example, one can attribute the CRPD ratification to "peer" pressure at work.[83] These states also may have been interested in boosting their international reputation and accessing international aid.

Another explanation for the widespread ratification of the CRPD may be a state's interest in showing the rest of the world how progressive it is, at least with respect to a "safe" human rights issue, like disability rights.[84] A disability treaty appears far less controversial than a treaty on torture or even on the rights of women, particularly in those countries that do not afford equality to women under their domestic laws.

The CRPD addresses the rights of people who, for decades and even centuries, have been seen as in need of protection and charity, not protection under law.[85] Viewing people with disabilities in this way means that ratifying a treaty for them would be seen as relatively noncontroversial and could garner international respect and perhaps international aid as well. This view is more common in countries where there has been no history of disability advocacy movements or disability-related domestic laws.[86]

On the other hand, in those countries with a long history of human rights advocacy, such as many countries in Latin America, Canada, and Australia, the price of ratification may be considered higher but worth the cost.[87] These countries had previously ratified the CEDAW and CRC, and may have assumed that ratifying the CRPD was not only consistent with their past practices but also was the next logical step in ensuring legal protections for their citizenry. The CRPD was simply, for these countries, the next treaty to endorse.[88]

Yet as one examines which states parties have ratified the CRPD and which have not, it is clear that few, if any, states parties ratified the CRPD simply because they were

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[82] See United Nations—Disability, supra note 4.
[83] See KANTER CRPD DEVELOPMENT, supra note 13, at 295.
[84] Id. at 293.
[85] Id. at 291.
[86] Id. at 294.
[87] See, e.g., Kathryn Sikkink, Latin America's Protagonist Role in Human Rights, INT'L J. HUM. RTS. (Dec. 2015), http://sur.conectas.org/en/latin-americasprotagonist-role-human-rights/ [https://perma.cc/76HK-NFFY] (archived Feb. 15, 2
[88] The United States, which has a long history of domestic civil rights laws, including disability rights laws, chose not to ratify the CRPD. In my forthcoming chapter, I argue that the Tea Party-Republican-led United States Senate refused to vote for the ratification because of their opposition to endorsing any bi-partisan effort and due to their general opposition to international law as part of US law. Kanter Failure, supra note 75.

committed to disability rights as a national policy.[89] Indeed, most states parties that have ratified the CRPD were likely uninformed about what ratification of the CRPD would mean and what they would be expected to do in order to reach full compliance with the CRPD.

Most such states parties were likely unaware that compliance with the CRPD would mean changes beyond accessibility of buildings and transportation. In fact, ratification of the CRPD necessarily may involve changes in domestic law and policies in such areas as guardianship, mental health, education, and communication and service accessibility.[90] Thus many of the countries that ratified the CRPD likely did so without any comprehensive analysis of the effect of the treaty on the domestic status quo. For that reason, ratifying the CRPD was likely perceived as less risky than ratification of other treaties, particularly those that would increase legal protections for more politically controversial groups such as women, political dissidents, and indigenous people.[91] Through this lens, the widespread ratification of the CRPD may be seen as a success, but not because of states parties' enthusiastic support for the rights of people with disabilities in their own countries. Indeed, in those countries that ratified the CRPD based on the assumption that it would make no difference in their domestic practices, they were likely mistaken.

C. Ratifying States May Not Have Yet Realized the Potential Effect of the CRPD

The CRPD, as the next subparts will explain, has the potential to challenge the very structure of how and for whose benefit societies are organized. As a result, ratification of the CRPD will likely "make a difference" by resulting in significant changes in most countries.

Once a state decides to ratify the CRPD and conform its domestic laws to the CRPD, some obvious changes are expected and even welcome. Such changes may include new policies regarding the accessibility of buildings and transportation.[92] But conforming domestic laws and policies to the CRPD is not just about passing laws requiring buildings and transportation systems to be accessible. Rather, it is about making fundamental changes in how societies view people with disabilities so that they will be able to fully participate. It may require redefining who is included in society and who is not; who is responsible for their own

[89] See KANTER CRPD DEVELOPMENT, supra note 13, at 294.
[90] See, e.g., Steven J. Hoffman et al., Is the UN Convention on the Rights of Persons with Disabilities Impacting Mental Health Laws and Policies in High-Income Countries? A Case Study of Implementation in Canada, 16 BMC INT'L HEALTH & HUM. RTS. 28, 31 (2016).
[91] KANTER CRPD DEVELOPMENT, supra note 13, at 292–93.
[92] See, e.g., CRPD, supra note 4, at 8–10

actions and who is denied legal capacity;[93] who has the right to be a parent and to be born;[94] who can work and attend school and universities;[95] who can live freely in the community, and with supports as needed;[96] and who can be subjected to torture in the name of treatment.[97]

Thus, what many states parties likely failed to consider when they ratified the CRPD is that ratification would make visible the needs, rights, and potential political power of people with disabilities. Indeed, one of the most important tools for implementing human rights laws is to make visible "invisible harms."[98] As Kathryn Sikkink has written, in the process of making invisible harms visible, human rights treaties raise the bar of what constitutes human rights in the first instance.[99] Although we may not yet know why each of the 177 countries that ratified the CRPD decided to do so, we can assume that most of these states parties did not predict the changes in state laws, policies, and practices that would be required to fully conform to the CRPD. However, even if the states parties did not anticipate such changes when they ratified the CRPD, these changes are occurring. It is these changes that this Article will now address.

IV. THE CRPD MATTERS: IT IS MAKING A DIFFERENCE IN THE LIVES OF PEOPLE WITH AND WITHOUT DISABILITIES

The adoption of the CRPD by the United Nations in 2006 was, in many respects, a great accomplishment for people with disabilities.[100] Although prior to the CRPD, there were nonbinding international documents that addressed the rights of people with disabilities, it was not until the adoption of the CRPD by the United Nations that people with disabilities were officially recognized as entitled to legal protections under international human rights law.[101] Since its adoption, 177 countries (but not the United States) have ratified it.[102] Some say that given the high number of ratifications, the issue of disability rights is no longer invisible.[103]

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[93] See id. at 10.
[94] See id. at 13.
[95] See id. at 7–8.
[96] See id. at 11–12.
[97] See id. at 10.
[98] SIKKINK, supra note 20, at 154.
[99] Id.
[100] See KANTER CRPD DEVELOPMENT, supra note 13, at 1.
[101] Id. at 39.
[102] See United Nations—Disability, supra note 4.
[103] See id.

But let's look a bit deeper and ask what and how the CRPD has made the issue of disability rights more visible. In other words, how is the CRPD making a difference in the lives of people with and without disabilities? Is it, in Simmons' words, contributing "to the chance that human beings will enjoy their rights more fully than would have been the case in the absence of [the treaty]."[104] The next subpart will argue that the CRPD is, in fact, "making a difference" not only to people with disabilities and the societies in which they live, but also in the development of international human rights norms, generally.

A. Background of the CRPD

The CRPD was the fastest drafted treaty in the history of the UN. The process began with a proposal by Mexico to create a treaty drafting committee in 2001, and ended with the approval of the final version of the CRPD by consensus in 2006.[105] On its opening day for signatures, the CRPD had the most signatories of any other treaty in the history of the UN.[106] Subsequently, after twenty states ratified it, the CRPD came into force in May 2008.[107]

Prior to the CRPD, people with disabilities were often ignored not only by the state, but also by employers, teachers, neighbors, and their own family members, as well as mainstream human rights organizations. When Human Rights Watch and Amnesty International, for example, secured the release of political prisoners held in Soviet psychiatric institutions in the 1970s, they did nothing to stop the abuse of the thousands of people labeled as mentally ill who were forced to remain and eventually die in those same institutions.[108]

The CRPD was intended to make visible the plight and rights of people with disabilities in a way that even the larger human rights community had ignored. The CRPD accomplishes this goal by addressing all aspects of life for people with all types of disabilities,

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[104] SIMMONS, supra note 20, at 350.
[105] See 10th anniversary of the adoption of Convention on the Rights of Persons with Disabilities (CRPD), U.N. DEP'T ECON. & SOC. AFFAIRS, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-personswith-disabilities/the-10th-anniversary-of-the-adoption-of-convention-on-the-rights-ofpersons-with-disabilities-crpd-crpd-10.html (last visited Mar. 1, 2019) [https://perma.cc/S8HH-PQJC] (archived Feb. 19, 2019).
[106] See United Nations—Disability, supra note 4.
[107] Id. One could argue that a separate treaty for people with disabilities is discriminatory on its face. In order to ensure equality for people with disabilities, they should be protected, like people without disabilities, under existing human rights laws and declarations. But without a specific treaty for people with disabilities, they would remain in the background, forgotten and invisible. I was reminded that prior to the ADA in the U.S., for example, restaurants, shopping malls, banks, schools, workplaces, and doctor's and lawyer's offices were not accessible to people with disabilities. The ADA was, and is still, necessary to change practices.
[108] See, e.g., Leonid Ragozin, Left Behind: Russian prisoners who didn't make the headlines, AL JAZEERA (Jan. 18, 2014), https://www.aljazeera.com/indepth/opinion/ 2014/01/left-behind-russian-prisoners-who-didn-make-headlines20141875744768429.html [https://perma.cc/FX5Q-Z3SW] (archived Feb. 19, 2019).

making it one of the most comprehensive treaties ever written. It contains fifty articles, covering topics ranging from employment to family life, and the rights to health, education, access to justice, and liberty to name a few areas.[109] The CRPD also includes the following general principles: autonomy, independence, nondiscrimination and equality of opportunity, respect for differences, and acceptance of disability as part of human diversity and full inclusion as equal citizens and participants in all aspects of life.[110] Thus as the following subparts explain, by its language as well as its implementation, the CRPD is making a difference in many countries throughout the world —perhaps not in relation to the ideal of an inclusive society but at least as compared with past practices.

B. Why the CRPD Matters

In support of the argument that the CRPD is making a difference in the lives of people with and without disabilities, as well as in the international human rights regime, this Article offers the following six examples.

1. The CRPD Is Changing Society's View of People with Disabilities

The first way in which the CRPD is making a difference is the way it is changing society's view of people with disabilities. The CRPD is changing the way people with disabilities are portrayed in society and how people with disabilities are responding to their new roles in society as rights holders rather than passive recipients of services.[111] For centuries, people with disabilities have been viewed as in need of care, charity, or medical treatment.[112] They have not been viewed as persons entitled as rights holders, entitled to equality, dignity, and autonomy.[113] As a result, policies have been developed to deprive people with disabilities of their humanity and legal personhood, exposing them to neglect,

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[109] In its fifty articles, the CRPD covers the following topics: Access, including Access to Justice; Equality; Women and Children, Right to Life, Liberty, Movement, Security; Freedom from Torture, Inhuman, Degrading Treatment, Exploitation, Violence, Abuse; Freedom of Expression; Respect for Privacy, for Home and Family; Inclusive Education; Right to Health care; Work and Employment; Habilitation and Rehabilitation; Adequate Standard of Living; Participation in Political, Public, Cultural Life, Leisure, Sport. See CRPD, supra note 4.
[110] See id.
[111] For a discussion of the various models of disability, including the medical versus the social model of disability, see Arlene S. Kanter, The Law: What's Disability Studies Got to Do with It or an Introduction to Disability Legal Studies, 42 COLUM. HUM. RTS. L. REV. 403, 419 (2011).
[112] KANTER CRPD DEVELOPMENT, supra note 13, at 7.
[113] Id. at 48.

abuse, segregation, exclusion, and discrimination.[114]

From 2001–06, hundreds of men and women with disabilities came to the UN to help draft the CRPD.[115] There, they proclaimed that they were no longer willing to accept second class status.[116] They developed the slogan "nothing about us without us."[117] With this, they affirmed, some for the first time, that they are rights holders, not merely recipients of services, treatment, or charity.[118] They explained that what causes their exclusion from society is often not their disability but rather the physical, attitudinal, and legal barriers that prevent them from fully participating as equal members in society.[119] After their experience at the UN, they returned to their home countries and began to work for change, using the CRPD as their guidepost.[120] Without the CRPD, the grassroots global disability movement would not have emerged. And, without this movement, implementation of the CRPD would not be possible.

Following the adoption of the CRPD by the United Nations, the people with disabilities and their allies returned to their home countries to work for legislative reform to advance the rights of people with disabilities to equality, dignity, and freedom from discrimination within their legal systems.[121] Some formed organizations to work on shadow reports to the Committee on the Rights of Persons with Disabilities (CRPD Committee). In Jordan, for example, a disability rights organization submitted a shadow report to the CRPD Committee even before the country submitted its country report.[122] In other countries, civil society organizations are working to develop programs to enforce the protections of the CRPD.[123] In Kenya and in Peru, for example, coalitions of women's groups are working to enforce the protections for women with disabilities under the CRPD, including their right to access justice as victims of domestic violence.[124] Other organizations supported by Handicap

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[114] Id. at 265. Even today in many countries where I have worked, children who are born with disabilities are not seen as human beings and are not allowed to be registered at birth. People with cognitive or psychosocial disabilities, may be denied legal capacity and equal recognition under law, not permitted to make decisions about their own lives, about where to live and with whom, or what to do each day.
[115] Id. at 298.
[116] Id. at 40.
[117] 116. I
[118] Id. at 46.
[119] Id.
[120] Id. at 299; KATHRYN SIKKINK & MARGARET E. KECK, ACTIVISTS BEYOND BORDERS 79 (1998). Personally, I have seen these efforts first hand in such diverse countries as Argentina, Egypt, India, Ireland, Israel, Jordan, Kenya, Mexico, Palestine, Portugal, Turkey, South Africa and Vietnam.
[121] KANTER CRPD DEVELOPMENT, supra note 13, at 299.
[122] Muhanned Al-Azzeh, Mirror of Reality and a Tool For Change: Civil Society Repot on the Status of the Implementation of the Convention on the Rights of People With Disabilities in Jordan, in KANTER CRPD DEVELOPMENT, supra note 13, at 115.
[123] KANTER CRPD DEVELOPMENT, supra note 13, at 44.
[124] See, e.g., Coalition Building to Prevent Gender-Based Violence (GBV), GLOB. DISABILITY RIGHTS NOW! (Jan. 19, 2018), https://www.globaldisabilityrightsnow.org/ impact/kenya/coalition-building-prevent-gender-based-violence-gbv [https://perma.cc/ S697-Q5FQ] (archived Feb. 20, 2019); Strengthening Implementation and Enforcement of Disability Rights Laws in Peru, MOBILITY INT'L USA (May 2–6, 2017), http://www.miusa.org/event/2017/perutraining [https://perma.cc/2TXS-LMXP] (archived Feb. 20, 2019).

International in Uruguay, Guatemala, Canada, Kenya, Costa Rica, Fiji, Colombia, Mexico, Burundi, Uganda, Tanzania, and Israel are working to advance equity for women and girls with disabilities, and to stop violence and exploitation.[125] These initiatives would not have taken place without the CRPD.

The very existence of these new disability organizations, particularly those comprised mostly of and led by men and women with disabilities, advances the position of people with disabilities in their countries, even in the absence of full nationwide implementation of the CRPD. Such organizations are now eligible for funding by donor governments in a way that they would not be without ratification.[126] In this way, therefore, the CRPD is doing what it is supposed to do: It is empowering "individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties."[127] The CRPD therefore can be directly credited for bringing men and women with disabilities out of the shadows and onto the international stage, as agents for change in their own countries, demanding recognition and rights under law. They not only helped write the CRPD, but now they are helping to implement it.

In sum, people with disabilities are now front and center in efforts to implement the CRPD. Thus, ratification of the CRPD has not only helped some states parties gain the international respect they sought, but it also has enabled disability self-advocates to gain respect as equal citizens in their own countries, some for the first time.[128] Of course, people with disabilities alone cannot force governments to comply with the CRPD. Even in those countries that have ratified the Optional Protocol to the CRPD, which authorizes the CRPD Committee to hear complaints by citizens of ratifying countries, enforcement remains a challenge.[129] But by ensuring a prominent role for people with disabilities, the CRPD has already increased awareness about the need for greater vigilance for the protection of the equal rights of people with disabilities.

2. The CRPD Is Having an Impact on the Development of Domestic Disability Laws

The second example of how the CRPD is making a difference in the lives of people

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[125] See Welcome, HANDICAP INT'L, https://hi.org/ (last visited Mar. 1, 2019) [https://perma.cc/E5TN-RKJQ] (archived Mar. 1, 2019).
[126] See, e.g., World Bank Grp. [WBG], Disability Inclusion and Accountability Framework, at 2 (Jan. 1, 2018), http://documents.worldbank.org/curated/en/437451528 442789278/pdf/126977-WP-PUBLIC-DisabilityInclusionAccountabilitydigital.pdf [https://perma.cc/RQ26-LS9D] (archived Mar. 14, 2019) (USAID programs that focus on inclusive development).
[127] SIMMONS, supra note 20, at 125.
[128] KANTER CRPD DEVELOPMENT, supra note 13, at 298–99.
[129] Id. at 11.

with and without disabilities is its impact on the development of new domestic laws. Of the 177 states parties that have ratified the CRPD, a growing number have already begun drafting new disability laws or amending existing disability laws in their efforts to comply with the CRPD.[130]129 Some countries also are engaged in a process of reviewing their existing laws to determine their impact on people with disabilities.[131] For example, even if a country's law currently prohibits discrimination based on disability, people with disabilities may suffer discrimination through the application of other domestic laws, such as family laws that deprive them of their right to parent or retain custody; guardianship laws that deprive them of legal capacity; education laws that deny them of the right to education; or mental health laws that deny their right to make treatment decisions and authorize their involuntary confinement.[132] Such domestic laws also require review for their compliance with the CRPD.

Vietnam, for example, delayed its ratification of the CRPD until it developed its first domestic disability law.[133] The newly enacted Vietnamese law establishes for the first time the right of Vietnamese people with disabilities to employment and education.[134] In South Sudan, which has no history of civil rights laws, disability activists are working to develop the country's first disability law based on the CRPD.[135] Further, the governments of Bulgaria, Georgia, Hungary, India, Ireland, Israel, Croatia, Costa Rica, Peru, and Colombia are working with disability activists to reform their guardianship laws to protect the rights of people with disabilities to legal capacity.[136] These changes would not have occurred without the CRPD.

3. The CRPD Is Having an Impact on International Human Rights Norms

The third way in which the CRPD is making a difference is its effect on future human

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[130] Id. at 88. For example, Argentina, Brazil, Canada, China, Colombia, Costa Rica, Croatia, Ethiopia, India, Hungary, Israel, Japan, Kenya, Malawi, Morocco, Peru, South Sudan, Spain, Sweden, Tanzania, Turkey, and Vietnam have all engaged in serious domestic disability law reform as a result of their ratification of the CRPD.
[131] Id.
[132] Id. at 302.
[133] See GLOB. DISABILITY RIGHTS NOW!, VIET NAM INITIAL STATE REPORT ON THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 4 (2017), https://www.globaldisabilityrightsnow.org/sites/default/ files/related-files/258/2017%20Vietnam%20Initial%20State%20Implementation% 20Report.pdf (last visited Mar. 1, 2019) [https://perma.cc/8EMN-SC9R] (archived Feb. 20, 2019) (discussing the legal framework for the protection of human rights in general and the rights of persons with disabilities in particular at the national level).
[134] Id. at 5.
[135] . See BRIGITTE ROHWERDER, INST. DEV. STUDIES, DISABILITY IN SOUTH SUDAN (2016), https://assets.publishing.service.gov.uk/media/5af96f2fe5274a25dbface4c/ Disability_in_South_Sudan.pdf [https://perma.cc/R3N7-D6BA] (archived Apr. 24, 2019); South Sudan, HUMANITY & INCLUSION, https://www.hi-us.org/south_sudan (last visited Apr. 24, 2019) [https://perma.cc/TP2T-8SAN] (archived Apr. 24, 2019).
[136] KANTER CRPD DEVELOPMENT, supra note 13, at 299.

rights treaties. Even before the CRPD has been fully implemented by any states parties, it is making a difference by the process that resulted in the treaty as well as the content of the treaty itself. For the first time in the history of the UN, the people affected directly by the treaty participated in its drafting.[137] In the future, it is likely that constituents of treaties will also lay claim to a role in drafting those treaties that affect them.

In addition to changes in the drafting process, the language and scope of the CRPD itself will likely influence future treaties. The CRPD combines civil and political rights, and social, economic, and cultural rights as well as negative and positive rights within one treaty.[138] This is a significant shift in the conception of human rights law at the international level. Traditionally, human rights laws addressed either civil and political rights (i.e., the ICCPR) or social, economic, and cultural rights (i.e., the ICESCR), but not both groups of rights.[139] The reason for this distinction is historic, apparently based on the different views between the "east," which was more concerned about the role of government in ensuring social welfare, and the "west," which was more concerned about the protection of civil and political rights.[140]

The CRPD, however, combines all such rights in one treaty. Indeed, the articles of the CRPD are interdependent. Under the CRPD, civil and political rights cannot be realized unless and until the related social, economic, and cultural rights are also ensured.[141] That means, for example, that the right to access justice for people with disabilities cannot be realized unless and until voting places and courthouses are made accessible;[142]141 the right to

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[137] Id. at 298.
[138] Kanter ADA, supra note 31, at 849.
[139] Id.
[140] See generally Hakemli Makale, Civil and Political Rights vs. Social and Economic Rights: A Brief Overview, 6 J. BITLIS EREN U. 205, 209 (2017).
[141] Kanter ADA, supra note 31, at 850.
[142] Article 5, for example, recognizes that: "in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided." CRPD, supra note 4, art. 5. Article 19 also affirms the equal right to people with disabilities to live in the community. However, in order to realize that right, Article 19 requires states parties to provide a "range of inhome services," as well as to make "community services and facilities for the general population [available] on an equal basis to persons with disabilities and are responsive to their needs." Id. art. 19. Article 14 upholds the right of the individual with a disability to liberty and security, a civil right that has applied to all people under international human rights law for decades. However, Article 14 goes beyond existing law to require states parties to protect persons with disabilities from deprivation, "including by provision of reasonable accommodations." Id. art. 14. Another example of the way in which the CRPD joins together political and civil rights with social, economic, and cultural rights is Article 15, which requires states parties to enact effective legislative, administrative, judicial or other measures in order to protect people with disabilities from torture, cruel, inhuman, and degrading treatment and punishment on an equal basis with others. Id. art. 15. These examples illustrate the ways in which the CRPD recognizes that formal equality, alone, is not adequate to protect the rights of people with disabilities. The CRPD goes beyond formal equality by building on the interrelationship between what are considered civil and political rights, and social, economic or cultural rights to ensure the actualization of the rights contained in the CRPD. This interdependency of rights has not occurred in prior treaties.

equality and nondiscrimination of people with disabilities in all aspects of life cannot be fully realized until they also receive their right to accommodations in the workplace, public life, education, transportation, communication, and so on.

Similarly, the CRPD transforms rights—that in the past had been considered negative rights—into positive state obligations. For example, the right to equality must not only ensure freedom from restrictions but must also ensure the affirmative right to physical and communication access and accommodations under the CRPD.[143] This interdependency of the many substantive rights included in the CRPD, as well as the responsibility of states parties to protect those rights, is one of the most novel and future-thinking aspects of the CRPD. Future drafting committees will now have to look to the CRPD for the way in which it combines in civil, political, social, economic, and cultural as well as positive and negative rights. As such, the CRPD is already having an impact on the future development of human rights law.

4. The CRPD Introduces New Rights and Novel Interpretations of Existing Rights

A fourth way in which the CRPD is making a difference is by introducing new rights and reinterpreting existing rights. The drafters of the CRPD claimed that their goal was simply to apply existing human rights laws to people with disabilities.[144] They did not intend to create any new human rights; but they did. [145] For example, the CRPD recognizes, for the first time under international law, the right of people with disabilities to "live in the community" with "choices equal to others," the right to "reasonable accommodations," "accessibility," and the right to "communication access."[146] These are all "new human rights" and all are necessary in order for people with disabilities to realize other rights under the CRPD as well as their rights under other international and domestic laws.[147]

Another new right recognized in the CRPD is the right to inclusive education. Although the right to education was enshrined in various international instruments prior to the CRPD, including in the Convention on the Rights of the Child,[148] no international treaty prior to the CRPD ensured the right to inclusive education.[149] Article 24 of the CRPD specifically requires states parties "to ensure an inclusive education system at all levels and lifelong

[143] KANTER CRPD DEVELOPMENT, supra note 13, at 3.
[144] Id. at 5.
[145] Id.
[146] Id. at 9.
[147] Id. at 5.
[148] See CRC, supra note 87, art. 28.
[149] KANTER CRPD DEVELOPMENT, supra note 13, at 48.

learning . . . ."[150] Under this article, children, youth, and adults may not be excluded from the general education system on the basis of their disability.[151] Further, they are entitled "access to an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live."[152]

Article 24 has provided a model for new domestic laws on inclusive education in several countries, such as Kenya, Tanzania, South Sudan, Ethiopia, and Spain.[153] In addition, a South African court held recently that under the CRPD, children with disabilities have a right to inclusive education.[154] To implement this right, the court held that the government must spend whatever money is necessary to ensure that children with disabilities are educated in inclusive settings.[155]

The CRPD also offers new interpretations of existing human rights principles, such as respect for autonomy and independence by valuing interdependency.[156] The CRPD presents a new vision of a social order that values dependency, rather than independency, alone. This view stands in contrast to the classic liberal "rights-based approach" in most international laws that focus on the importance of independence as a desired social goal.[157]

In recent years, scholars have challenged the value society places on independence and autonomy. For example, in The Myth of Autonomy, Professor Martha Fineman argues that we have become so fixated on autonomy as a desirable social status that we have failed to recognize the inevitability and normalcy of dependency.[158] In fact, no one is truly independent; everyone needs others to survive. Thus dependency, rather than independence, is the natural state.[159] The CRPD adopts this view by challenging the ideal of independence

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[150] CRPD, supra note 4, art. 24.
[151] Id.
[152] Id.
[153] Arlene S. Kanter, Inclusive Education Under International Law, in THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW (2019)
[154] Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa and Another 2011 (5) SA 87 (CC) at para. 8 (S. Afr.).
[155] Id. The South African court has gone further than any court in the U.S. See KANTER CRPD DEVELOPMENT, supra note 13.
[156] CRPD, supra note 4.
[157] The United States is perhaps the country that places the highest possible value on independence. Each of us is expected to achieve success by "pulling ourselves up by our own bootstraps." Independence is good; dependence is bad.
[158] See generally MARTHA ALBERTSON FINEMAN, THE MYTH OF AUTONOMY: A THEORY OF DEPENDENCY (2004).
[159] See id. Professor Martha Fineman argues that we have become so fixated on autonomy as a desirable social status that we have failed to recognize the inevitability and normalcy of dependency. To Fineman, dependency rather than autonomy is the natural state, and as such, the State should bear its responsibility to meet dependency needs and support caretaking. Id.; see KANTER CRPD DEVELOPMENT, supra note 13, at 301–02.

itself.[160]

Central to the CRPD, therefore, is the view that no individual does or should have to live completely independently or autonomously. Instead, people with disabilities should have the opportunity to rely on support networks, consisting of people whom they choose to assist them. Moreover, it is the state's responsibility to meet the support needs of people with disabilities so that they may realize their own personal goals. [161] Such supports need not be stigmatizing; instead, they reflect the natural human condition.[162] In this regard, the United States, which places a high premium on independence, has much to learn from other, so-called less developed societies in the Global South. The cultural values of many countries in Asia, Africa, and the Middle East, for example, focus more on community, tribe, and families than on the individual.[163] When people need care in these countries, they are not sent to institutions; instead, the government relies on formal and informal support networks to assist and care for people who need help.[164] The CRPD therefore challenges all countries to consider how best to provide support without the stigmatizing and harmful effects of segregation and institutionalization.

One could say that above all else, the CRPD stands for the proposition that all people, regardless of their labels, impairments, limitations, challenges, or abilities, are entitled to equality, dignity, and autonomy as well as the support they may need to live their lives, and on an equal basis with others.[165] No longer may a society exclude a group of people based on their dependent status.[166] That is one of the overriding messages of the CRPD. The extent to which the CRPD's view of dependency will spill over to the rest of society remains to be seen. But unlike any prior human rights treaty, the CRPD values, as a social good, the idea

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[160] KANTER CRPD DEVELOPMENT, supra note 13, at 301.
[161] Id.
[162] The CRPD does not portray dependency as a negative value; rather it is desirable to the social order. Valuing independence above all else, as we do in the US, can be devastating on people with disabilities as well as their supporters. Because (some) people with disabilities may need some help from time to time or all the time to meet their daily living needs, they are stigmatized as less worthy and less valuable human beings. It is this view of people with disabilities as less valuable that gave rise to the eugenics movement and provided the justification for the development of institutions for their care; for the enactment of civil commitment laws that deprive them of their liberty and permit their treatment without their consent; and for legal mechanisms such as guardianships that "assist" them by authorizing others to make decisions for them, thereby denying them the right to exercise their own will. To many, the notion of the independent disabled person is still an oxymoron. However, the CRPD contests this view by challenging the ideal of independence itself. See id. at 301–02.
[163] Id.
[164] Id. at 267. Of course, by placing the burden of caring for family members on the family and without providing resources for such support and care, families and their loved ones with disabilities may suffer. See generally, e.g., Bazondile D. Marimbe et al., Perceived Burden of Care and Reported Coping Strategies and Needs for Family Caregivers of People with Mental Disorders in Zimbabwe, 5 AFR. J. DISABILITY 209 (2016).
[165] KANTER CRPD DEVELOPMENT, supra note 13, at 302.
[166] Id.

that people may need help from time to time, and that such help in no way diminishes their entitlement to dignity, autonomy, and equality as a matter of international human rights law.[167] As such, the CRPD introduces the new the "right to support" that may now serve as an important source for defining human relations in terms of care, reciprocity and interdependence.[168]

The CRPD also expands our view of independence by specifically challenging the legal consequences of viewing people with disabilities as dependent, under guardianship laws. Several countries that have ratified the CRPD are now working to abolish guardianship laws entirely, or to offer alternatives to guardianship, such as supported decision making. With supported decision making, people with a disability retain their right to make decisions about their lives, and to get help to make such decisions, if they so choose.[169]

Supported decision making has already been introduced as a legally sanctioned alternative to guardianship in several countries.[170] For example, Israel recently enacted one of the first national laws authorizing supported decision making.[171] In response to the fact that more than sixty thousand people were living under guardianship in Israel, Israel's Human Rights Center for People with Disabilities (Bizchut), developed a pilot project designed to provide support instead of guardians for people with disabilities.[172] This pilot project resulted in significant changes to Israel's guardianship law, including the introduction of supported decision making as an alternative to guardianship.[173]

It remains to be seen exactly how the CRPD's new view of the dependency will improve the lives of people with disabilities in different countries throughout the world. But it is undeniable that, already, there has been a significant shift in our conception of the meaning of autonomy, independence, and even what a "human right" means in many countries as well as under international law.

5. The CRPD Provides a Model for Awareness Raising

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[167] Id.
[168] See generally BARBARA HILLYER, FEMINISM AND DISABILITY (1993); Susan Wendell, Toward a Feminist Theory of Disability, 28 HYPATIA: FEMINIST ETHICS & MED. 104 (1989).
[169] See Arlene S. Kanter & Yotam Tolub, The Fight for Personhood, Legal Capacity and Equal Recognition Under Law for People with Disabilities in Israel and Beyond, 39 CARDOZO L. REV. 557, 559 (2017).
[170] Id. These countries include Canada, Sweden, Ireland, India, Croatia, Georgia, Bulgaria, Peru, Argentina, Costa Rica, Columbia, and states in Australia and the U.S.
[171] See id.
[172] Id. at 594.
[173] See id. at 557.

A fifth way in which the CRPD is changing societies relates to a new awareness about disability and the challenges that people with disabilities face in accessing their societies on an equal basis with others. Prior to the CRPD, there was no reason for a country's foreign affairs office or diplomatic staff to be concerned about the rights of people with disabilities, and many were not. But once the UN adopted the CRPD, all member states were presented with the choice of signing and/or ratifying it. Although signing or even ratifying a treaty does not evidence an intent to change domestic practices to comply with it, as discussed above, once a country signs a treaty, it is bound not to engage in policies or practices that directly contravene the treaty.[174] Thus, today, 177 countries have agreed, at least in principle, not to take actions that contravene the CRPD.

Further, Article 8 of the CRPD specifically requires

> states parties to adopt immediate, effective and appropriate measures to raise awareness throughout society . . . and to foster respect for the rights and dignity of persons with disabilities . . . and to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; and . . . to promote awareness of the capabilities and contributions of persons with disabilities.[175]

No prior international human rights treaty includes a separate article on awareness raising, and no stronger language could have been included to show the urgency and priority of awareness raising as integral to the goals of the CRPD in combatting exclusion of people with disabilities from society.[176] As such, Article 8 shifts the responsibility for the exclusion of people with disabilities from the person with a disability to society.[177] With such increased awareness, children and adults with disabilities are no longer hidden from view, and their rights and needs are no longer the sole concern of their families, service providers, or charities. Countries are now required to make decisions about whether they will support people with disabilities or continue to ignore their plight. Such transparency has the potential to affect other laws and policies that address the rights of other groups, too, who have been marginalized and made invisible within their respective societies.

6. The CRPD Provides a Model for More Rigorous International and Domestic Reporting and Monitoring

The final example regarding how the CRPD is making a difference relates to its

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[174] A/CONF. 157/23, Vienna Declaration and Programme of Action (July, 12 1993).
[175] CRPD, supra note 4, art. 8.
[176] KANTER CRPD DEVELOPMENT, supra note 13, at 9.
[177] CRPD, supra note 4, art. 8.

reporting and monitoring provisions. The reporting and monitoring requirements of most human rights treaties have been referred to as "some of the most powerless, under-funded, formulaic, and politically manipulated institutions of the United Nations."[178] The drafters of the CRPD were well aware of this critique and responded by including in the CRPD the most stringent monitoring and reporting requirements of any human rights treaty to date.[179] As such, the CRPD offers a new and potentially better model for the enforcement of human rights protections under international law than prior treaties. Some scholars have observed that the CRPD's reporting and monitoring requirements are "unprecedented."[180]

The CRPD includes not only requirements for international monitoring but also detailed requirements regarding national monitoring. Without a commitment by states parties to implement the CRPD domestically, international monitoring would have little effect on the lives of people with disabilities. Thus, the CRPD identifies "which measures [states parties] should adopt in order to give effect to their human rights obligations."[181] The CRPD accomplishes this goal by creating (1) independent coordinating mechanisms for the promotion, protection, and monitoring of the implementation of the CRPD to facilitate its implementation within the different sectors and levels of the government; (2) the requirement of data collection about people with disabilities and their lives, as well as about the barriers they face in exercising their rights;[182] and (3) the requirement of a focal point, charged with leading the process of implementation within the government.[183] The focal point within the government also has an obligation to include people with disabilities and their organizations in all aspects of their work, including in the development and implementation of disability-

[178] Peter Uvin, HUMAN RIGHTS AND DEVELOPMENT 140 (2004); see also SIMMONS, supra note 20, at 356 ("Scores of volumes have been written on the inability of the UN to enforce human rights and the unwillingness of major powers to consistently do so."); Michael Ashley Stein & Janet E. Lord, Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential, 32 HUM. RTS Q. 689, 693 (2010) (citing Claire O'Brien & Michael O'Flaherty, Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, 7 HUM. RTS. L. REV. 141, 144 (2007)).
[179] KANTER CRPD DEVELOPMENT, supra note 13, at 4.
[180] Hum. Rights Council, Thematic Study by the Office of the United Nations High Commissioner for Human Rights on the Structure and Role of National Mechanisms for the Implementation and Monitoring of the Convention on the Rights of Persons with Disabilities, U.N. Doc. A/HRC/13/29 ¶ 15 (2009); see also Gauthier de Beco & Alexander Hoefmans, National Structures for the Implementation and Monitoring of the UN Convention on the Rights of Persons with Disabilities, in ARTICLE 33 OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: NATIONAL STRUCTURES FOR THE IMPLEMENTATION AND MONITORING OF THE CONVENTION 18 (2013).
[181] KANTER CRPD DEVELOPMENT, supra note 13, at 4.
[182] CRPD, supra note 4, art. 31. Arguably, no other treaty requires collection of data covering such a broad range of issues.
[183] Id. art. 33.

related laws and policies enacted to conform to the CRPD.[184] As such, the focal points will ensure accountability of the government to its own constituencies, as well as to international monitoring bodies.[185]

The CRPD is also changing certain international norms regarding monitoring and enforcement of treaties through its CRPD Committee. Unlike in the past when people with disabilities were considered interested parties, but never experts, the CRPD requires the expert CRPD Committee to consist primarily of members with disabilities.[186] Not only is the composition of the CRPD Committee unique within the international law system, but the CRPD Committee itself appears to be more active in responding to country reports than other human rights committees.[187] They have provided more detailed responses to country reports than other committees, thus giving rise to a new responsibility on states parties to more carefully document the information contained in their country reports.[188] This approach, therefore, provides a model for other human rights committees.

V. CONCLUSION

This Article has argued that the CRPD is an example of a human rights treaty that matters not only to people with disabilities, but also to societies, generally as well as the

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[184] Id. art. 4.

[185] The focal points also may choose to identify, in coordination with the independent coordinating mechanisms, the changes in domestic law that are necessary to comply with the CRPD as well which issues should be included in the country reports regarding implementation of the CRPD that they will prepare and submit to the CRPD Committee. Although it is too early to tell whether the focal points and independent coordinating mechanisms are having the effect of improving implementation of the CRPD in all the countries that have ratified it, these new focal points and independent mechanisms do provide a new model for future human right treaty enforcement.

[186] KANTER CRPD DEVELOPMENT, supra note 13, at 11.

[187] Id. at 10.

[188] Within two years of ratification, states parties are required to submit country reports on the implementation of the CRPD in their respective countries to the CRPD Committee. To date at least 102 countries and the EU have filed country reports to the CRPD Committee. See States Parties Reports, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=29 [https://perma.cc/XZC9-4W79] (archived Mar. 11, 2019). In response to these reports, the CRPD Committee has provided detailed observations about each report, contained in the Committee's "Concluding Observations." See Concluding Observations, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5 [https://perma.cc/K5G9-TS3U] (archived Mar. 11, 2019). The Committee also has issued several General Comments, which clarify the meaning and scope of certain articles of the CRPD. See Committee on the Rights of Persons with Disabilities: General Comments, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx (last visited Mar. 15, 2019) [https://perma.cc/DBD4-WBNR] (archived Mar. 11, 2019). Thus, the CRPD Committee's approach to country reports and to its role in interpreting the meaning and scope of the CRPD has set a new and higher standard of what should be expected from countries in their reports, as well as the type of detailed responses and observations that should be expected in response, from international human rights monitoring committees.

larger human rights community. As such, the CRPD has the potential to influence the development and expansion of domestic laws and international norms. Although the CRPD cannot solve all the problems of the world—indeed, no treaty can—treaties such as the CRPD should be given credit for those problems that they have begun to address successfully. As Beth Simmons has written, "to say that here are other important problems that public international law does not address very well does nothing to diminish the areas in which it has some modest success."[189] As the first treaty of the twenty-first century, the CRPD has already begun to have an impact on state practices as well as international human rights norms.

Even in those countries in which the governments expected no changes upon their ratification of the CRPD, we are beginning to see changes in their domestic laws. This observation is made in the context of what appears to be an inverse relationship between the political structure of a country and the potential for change resulting from ratification of the CRPD. In other words, countries that do not have a history of human rights protections generally may have a greater potential to make the most changes as a result of the CRPD as opposed to countries with a history of human rights enforcement. Further, one of the most important determinants for affecting change under the CRPD may be the willingness and ability of people with disabilities and their allies to organize and form new organizations to fight for their rights. So far, this situation seems to have occurred in both countries in the Global South as well as the Global North.

As this Article also has demonstrated, the CRPD is a significant first step towards achieving equality for people with disabilities under international law. It recognizes the rights and needs of people with disabilities, while also presenting a new view of dependency as a natural part of the human condition as well as a new human right to accommodation and support. Again, the CRPD may not eradicate all discrimination, mistreatment, and segregation of people with disabilities worldwide. But it is nonetheless "no small thing"[190] that countries now have the opportunity to alter their domestic laws and practices to address the many injustices to which people with disabilities have been subjected, and to ensure their human rights protections under international law.

Further, at its core, the CRPD presents a new vision of a social order that not only values differences based on disability as part of diversity but also values the different ways in which people may live, work, act, think, walk, talk, love, and make decisions, with or without supports. The implementation of the CRPD, therefore, involves changing the very nature and

[189] SIMMONS, supra note 20, at 366.
[190] Id.

fabric of society, reordering government priorities, and creating places at the table for new constituencies. Additional research will be needed to show empirically the advances in various countries with respect to the rights and participation of people with disabilities in their respective societies. Yet we can already see that the inclusive drafting process of the CRPD as well as its contents stand for the proposition that excluding and mistreating people with disabilities will no longer be tolerated by people with disabilities themselves nor as a matter of international law. The message of the CRPD is clear: The CRPD must make a difference so that people with disabilities will finally enjoy their rights to equality, inclusion, and participation under international human law.

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