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DISABILITY IN COMPARATIVE LAW AFTER THE NEW YORK CONVENTION: DOCTRINAL ANALYSIS FROM 2006-2021

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Abstract.

The 2006 New York Convention establishes the social model for the treatment of people with disabilities, aiming to uphold the human rights to which people with disabilities are entitled and to end the discrimination they suffer. Despite being ratified by many states at a global level, its undertaking has been very different in the signatory countries. By researching comparative legal doctrine, we are able to analyze the degree of execution in different countries, getting a glimpse at the most developed issues in each nation and providing a clear view of the international legal panorama.

Keywords. Disability, New York Convention, Doctrinal Articles, Comparative Law.

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1. Introduction

In the historical evolution of treatments for people with disabilities, three major models have existed that involve very different perspectives in terms of addressing these individuals' rights and their integration into society.

Said models have cropped up over time, although there have been setbacks.

The separation or expendability model had the aim of doing without people with disabilities. Its roots are in the classical world.[1] It reached its maximum expression in the twentieth century in Nazi Germany.[2] Unfortunately, in the twenty-first century it remains in certain discourses that continue to propose the improvement of the human race and the expendability of certain population groups. This model is

[1] See Digest, Book XXI, Title I, Law 4, First Paragraph: "*Vitrium corporis usque ad animun penetrat*" or "*The defect of the body penetrates the mind to the point of incapacity."*

[2] Among the first of the laws to eliminate people with disabilities was the Law for the Prevention of Genetically Diseased Offspring (*Gesetz zur Verhütung Erkrankung Nachwuchses*), also known as the "Sterilization Law," enacted on July 14, 1933. During 1934 and 1935, another series of laws were enacted, generically called the "Nuremberg Laws" (Law for the Protection of the German People's Hereditary Health and Law on Marital Health), which governed the "purification of the blood of the German people" through the prohibition of sexual relations and marriage between Aryans and Jews and the subjection of couples to premarital medical examinations – allegedly to prevent the spread of "racially harmful diseases." Hitler signed, on September 1, 1939, a decree specifying that "incurable patients, after receiving a critical assessment in terms of the state of their illness, must be allowed the right to euthanasia." This decree constituted the basis of the "*Gnadentod*" Euthanasia Program ("Mercy Death"), popularly known as "Aktion T4," due to the location of its administrative offices at Tiergartenstrasse 4 in Berlin, and it meant the beginning of the mass extermination for patients with mental "deficiencies" or pathologies.

incompatible with human rights.

The medical/rehabilitative model aims to put an end to disability through medical practice or through instruments that aim to "rehabilitate" or "normalize" the person with disabilities. In history, it became present especially after the Second World War and as a result of the high number of people who were injured or disabled after the war. This model is not radically contrary to human rights discourse, but some of its instruments, consequences, and results are. It continues to have a presence in many countries, perhaps being the model that is most applied globally.

The third model is the social model, inspired by the International Convention on the Rights of Persons with Disabilities of 2006 (which we will speak of below). This model aims protect the human rights belonging to those with disabilities and put an end to the discrimination that these individuals suffer from.

Its roots can be traced back to the United States through the Independent Living Movement and to England through activists and academics who focused their attention on social barriers in the second half of the twentieth century.

It represents the true entry of disability in human rights discourse.

The signature and ratification process started on March 30, 2007. Eighty-two states initially signed the Convention, of which 44 also proceeded to sign the Optional Protocol. On April 3, 2008, the Convention on the Rights of Persons with Disabilities received its twentieth ratification instrument; thus, in accordance with Article 45 thereof, it and its Optional Protocol entered into force 30 days later,

on May 3, 2008.

The social model of the Convention has not yet managed to be implemented in society for various reasons:

- Legal Reasons: (Questioning the binding value of Treaties and UN Resolutions, as well as a lack of bodies to demand and guarantee rights). We will see how the articles from the doctrine address this issue.
- Social Reasons: (Consideration of disability as a disease, lack of acceptance of diversity, etc.). Many articles to which we will refer call out this issue.
- Political Reasons: (Lack of clarity and uniformity in State policies when defining terms related to disability, such as "condition" and "situation," "deficiency" and "barrier," "identity" and "universality"). There is a lack of domestic policy development in the States to ensure equality and full inclusion.

However, the social model is the one that best connects disability with human rights. Until 2006, the rights of people with disabilities were recognized, but the substitution system prevailed in decision-making, which was carried out by legal guardians. Since 2006, a support-based decision-making system has been gaining momentum.



Figure 1. Historical evolution of models for handling disability.
Drafted by the author.

The fundamental ideas of the New York Convention and the social model embodied thereby are as follows:

The core value of the Convention is human dignity and not pity. Thus, people with disabilities are absolutely entitled to human rights.

The individual is placed at the center of all the decisions that affect him/her and the center of the problem is located outside the person, in society.

Specification of the rights of people with disabilities arises from the need to make the social group visible.

The Convention does not create new rights; instead, it modulates existing rights in accordance with specific and appropriate criteria. All people are equal and, therefore, everyone has the same rights. However, if the circumstances are different, specific adaptations are required.

The rights protected by the Convention of December 13, 2006, are as follows:

EQUALITY AND NON-DISCRIMINATION
EQUAL RECOGNITION OF THE INDIVIDUAL BEFORE THE LAW
ACCESS TO JUSTICE
FREEDOM AND PERSONAL SECURITY
FREEDOM FROM INJURY TO HONOR, PRIVACY, AND SELF-IMAGE
INDEPENDENT LIVING AND BEING INCLUDED IN THE COMMUNITY
FORM A FAMILY
INCLUSIVE EDUCATION
ADEQUATE STANDARD OF LIVING
PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Figure 2. Table: Fundamental Rights of the Convention. Drafted by

the author.

As we will examine in this article, overall evolution in the different countries is very unequal in terms of applying the social model to disability. The most recent legal milestone in favor of the system or social model is the New York Convention on Persons with Disabilities of December 13, 2006.

But until reaching the publication of the Convention in 2006, there was a previous process that began in December 2001 when the General Assembly of the United Nations approved a resolution in which it was decided "to establish a special committee open to the participation of all Member States and observers of the United Nations to consider proposals to promote and protect the rights and dignity of persons with disabilities based on a holistic approach to the work carried out in the areas of social development, human rights, and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development."

Subsequently, at its 20th session in August 2006, the Special Committee approved the Draft Convention, including a Draft Optional Protocol, agreeing to set up a Drafting Group to ensure uniformity of terminology used in said documents.

Later, at the 22nd session held on December 5, the Committee decided to instruct the General Assembly to approve a Draft Resolution entitled "Convention on the Rights of Persons with Disabilities," which included the Draft Convention and Optional Protocol.

Finally, on December 13 of that same year (2006), the General Assembly approved, through Resolution 61/106, the aforementioned Convention on the Rights of Persons with Disabilities (CRPD) as well as the Optional Protocol of said Convention.

The Convention is divided into fifty articles and belongs to the greater group of international treaties on human rights, which includes the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. The protocol is made up of 18 articles.

This document grants and regulates the substantive rights of people with disabilities; having said that, the idea of non-discrimination takes center stage, being present throughout the different articles and taking on numerous functions which are not only principle in nature – sometimes fulfilling other functions, such as, for example, becoming the end goal of the actions to be taken by the States Parties to guarantee the exercise of rights.

The idea of disability as a human rights matter is a basic principle.

Gerard Quinn[3] classifies the rights of the Convention into five types:

- Rights related to dignity.
- Right to freedom.
- Right to autonomy and independence.

3 Cfr. G, Quinn/Th. Degener (Ed.), Human rights and disability: the current use and future potential of the United Nations human rights instruments in the context of disability, New York-Geneva (UN/WHO) 2002.

- Right to inclusion and participation.
- Right to solidarity.

The terminology that the author uses reminds us of that used by the Charter of Fundamental Rights of the European Union from its first version (that of 2000) onward (without exactly coinciding therewith).

The Convention distinguishes between two types of obligations for States. On the one hand, the specific obligations that stem from each of the rights recognized in the Convention. The contents of these obligations are intrinsically linked to the specific laws they stem from. On the other hand, Article 4 of the Convention governs the general obligations of the essential States Parties for any state that, in the words of Quinn, "places the treaty at the heart of domestic disability policy."

The Convention also contemplates a monitoring system with a view to attributing a certain level of protection to persons with disabilities. It has two levels: one national and one international.

At the national level, States Parties, in accordance with their organizational system, must designate a “governmental” focal point which will be in charge of “matters related to the application of the Convention itself” (Article 33.1).

Additionally, "in accordance with their legal and administrative systems," they must also designate or establish, as well as maintain and strengthen, an independent body with a view to "promoting, protecting, and monitoring" said application (Article 33.2)

At the international level, the oversight mechanism called for translates into the creation of a Committee on the Rights of Persons with Disabilities (hereinafter, "Committee")

(Article 34.1). Initially, its makeup included 12 members – foreseeing, however, an increase to 18 at the time the Convention obtained 60 ratifications or accessions (Article 34.2). With that condition more than fulfilled, the aforementioned structure is what the Committee currently has.

The main task of the Committee is to examine the reports that the States Parties have to present on the measures they have adopted in order to comply with their conventional obligations, as well as on their progress. Such reports must be submitted, initially, within two years from the entry into force of the Convention in each State Party; subsequently, submission is to be every four years – notwithstanding the fact that the Committee may request reports outside the period established as a general rule.

Once presented and analyzed, the Committee can make any "suggestions and recommendations it deems appropriate," turning to the State which may, in turn, provide any information it deems pertinent. In any event, it is up to the Committee to ask the States for more information. The States must widely disseminate the national reports prepared by the Committee in their country, facilitating access to any suggestions and general recommendations that may have been formulated.

Likewise, the United Nations publishes data on disability in the world on its website.

About 15% of the world's population –more than a billion people– live with some type of disability. Of those, between 2% and 4% experience significant difficulties in functioning. Many of these people require assistive technologies, such as low vision devices, wheelchairs, and hearing aids.

Women are more likely to have a disability than men and older people are more likely than young people.

Low– and middle–income countries have higher rates of disability than high–income countries, and the impact of disability on people in poorer areas is compounded by accessibility issues and a general lack of health care services.

Indigenous people, those internally displaced, and stateless people, refugees, migrants, and prisoners with disabilities also face challenges in accessing services.

People with disabilities experience pervasive barriers that other people often do not realize, including barriers in the health system, education, employment, transportation, and community space. These gaps are exacerbated in poorer or less developed communities.

We will end this introduction by referring to the Model Disability Survey (MDS), which is a general population survey that provides comprehensive information on the distribution of disability in a country or region.

By collecting detailed and nuanced information about how people with different levels of disability lead their lives, it identifies unmet needs, as well as barriers and inequalities.

The MDS helps Member States establish policies and services and it provides the data to monitor countries' progress in meeting their obligations to the Sustainable Development Goals and the Convention on the Rights of Persons with Disabilities.

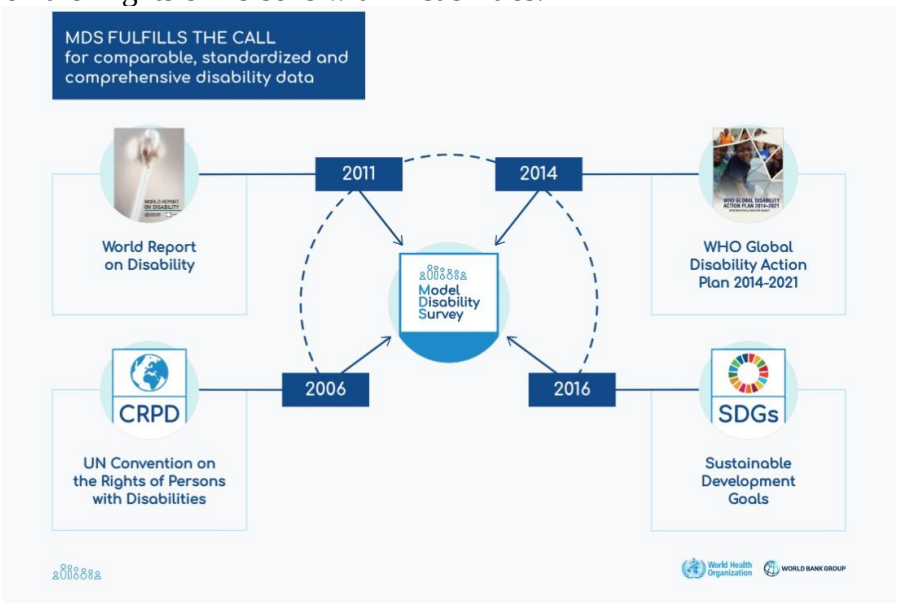


Figure 3. Model Disability Survey and associated documents drafted by the United Nations. Source: United Nations.

Also, one can find data on people with disabilities and at risk of social exclusion on the European Union website. These data are essential to analyze the goals to be worked towards in the planned agendas.

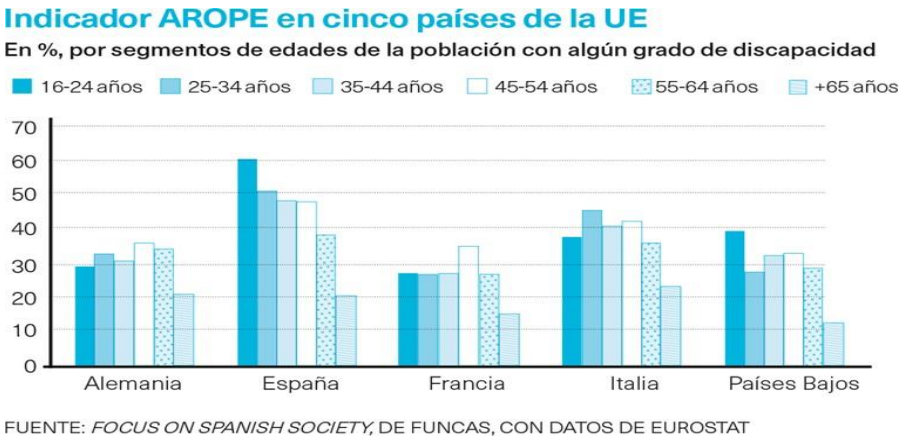


Figure 4. Disability indicators. Source: Focus on Spanish Society.

AROPE Indicator in Five Countries of the EU

In %, by age segments with a degree of disability

16-24 Years, 25-34 Years, 35-44 Years, 44-54 Years, 55-64 Years, +65 Years

Germany, Spain, France, Italy, Netherlands

Source: Focus on Spanish Society with EUROSTAT data.

2. **Methodology**

The methodology used in this study has been to carry out a complete search of doctrinal databases.

The search was limited to the years 2006 to 2021. The study period that has been taken into account spans from the year 2006 (the date of

the publication of the New York Convention on the Rights of Persons with Disabilities) until the current year 2021.

The query string was TITLE-ABS-KEY. The terms searched for in the different databases were in Spanish: “adaptation articulo 12 Convención Nueva York en derecho comparado;" “personas con discapacidad derecho comparado.” These terms were also searched for in English, being: "adaptation of Article 12 New York Convention in comparative law;" "persons with disabilities comparative law."

The search was carried out in the Google Scholar, Scopus, Web of Science, JCR, and Academia databases.

The search for publications on this topic is very broad, so specific search filters had to be activated to understand only the legal aspects of disability.

The results of Google Scholar were not taken into account due to the heterogeneity of their contents and the unreliability of the sources of information.

In the WOS, JCR, and Scopus databases, the terms were introduced in English, that is: "people with disabilities comparative law" and "adaptation of Article 12 New York Convention in comparative law."

In the Scopus database, after filtering the information and reducing it to Social Sciences and the International Journal of Law and Psychiatry, there were 85 entries in accordance with the following search string: (ALL (people AND with AND disabilities AND comparative AND law) AND (laws) AND (LIMIT-TO (SUBJAREA,

"SOCI") AND (LIMIT-TO-EXACTSRCTITLE, "International Journal of Law and Psychiatry"). 76 documents were from the 2002-2021 period.

In the WOS database, after filtering the information, there were 76 results corresponding to the 2001 to 2021 period. When refining the search areas to the legal area, we found that the term "Government Law," reduced our results to 32 doctrinal articles.

Lastly, 544 entries were found in academic articles in the Academia database. After going through a filtering process to limit the search to legal matters only, that number was reduced to 107 articles. Finally, we filtered all articles that dealt with the issue of this piece of research, discarding doctoral theses, informational brochures, and reports (as we were unsure from the data that they provided whether they were published or not and/or the authority of the journal).

We opted to carry out this piece of research using the 107 entries in the Academia database (with the aforementioned exclusions) for several reasons: firstly, because of their homogeneity with regard to legal issues and, secondly, because of the fact of being able to have the 107 entries in PDF format for reading and analysis.

Only those articles actually used are referenced at the end of this text, as those not referenced are doctoral theses for which we are unsure about publication and documents of informational value and not published by recognized universities and research centers.

The countries and geographical areas of origin for the articles and documents published in the academic journals from universities on the

five continents are:

Germany
Argentina
Australia
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Ecuador
Spain
The USA
France
Guatemala
India
Indonesia
Israel
Kenya

Macedonia
Mexico
Islamic World
Palestine
Peru
Portugal
Russia
Sri Lanka
South Africa
Uruguay
Zambia

Figure 5. Country table. Source: Drafted by the author.

3. **Analysis**

After studying and analyzing the documents mentioned in the previous section, we were able –first of all– to classify them into different thematic axes that refer to the main sub-topics in terms of disability.

The first topic addressed was that of the application of the International Conventions in the domestic law of each state and reviews of the domestic laws on capacity in each country as they pertain to fundamental rights.

It has been found that, of the articles analyzed, a quarter of those

articles address general questions about disability and the application of international conventions in domestic law in different parts of the world, specifically in the following countries: Argentina,[4] Saudi Arabia,[5] Australia,[6] Canada,[7] Bolivia, Brazil, Chile, Colombia, Ecuador, the USA,[8] Spain,[9] India, Indonesia,[10] Israel,[11] North

4 Law 26378 (Official Gazette 9-6-2008) has had constitutional status since December 2014 thanks to Law 27044 (Official Gazette 22-12-2014). This 2014 law reforms the Civil Code and establishes the support model for decision-making. Cases of incapacity and representation are limited to very exceptional circumstances (persons unable to intervene and express their will in any way or form (Article 32). The figure of the "curator" is used.

5 In Saudi Arabia (which, according to its Constitution adopted in March 1992, is defined as a fully Islamic Arab State with an absolute monarchy), the application of the Convention has been carried out with absolute respect for the Sharia, which is the main source of the country's law. The disability law was enacted by Royal Decree M/37 of December 19, 2000.

6 The CRPD Committee, in relationship with Article 12, recommended that Australia "provide training" in consultation and cooperation with persons with disabilities and their representative organizations.

7 Since its entry into force on May 3, 2008, the CRPD has received more than 160 ratifications, representing 80 percent of all UN Member States. Canada ratified the Convention in 2010.

8 All states in the United States have domestic laws from the 1990s (prior to the Convention) that prohibit discrimination against the disabled (physically and mentally) in matters such as public employment, housing, education, etc.

9 The last important legal reform was carried out by law 8/2021 of June 2, which reformed civil capacity and affected the Civil Code and which entered into force in September 2021. The text of Article 49 of the 1978 Constitution is pending reform.

10 In Indonesia, the Convention was ratified in 2011 and in 2016 law 8/2016, on People with Disabilities, was published.

11 In 1999 and 2001, two long-running strike campaigns by people with disabilities (PWDs) in Israel brought their plight to the forefront of the national agenda and spurred strong and compassionate public support. The two strikes had similar characteristics. Both were organized by a core group of disabled people (mostly with mobility problems) and attracted many additional disabled and non-disabled people who spontaneously joined the fight. Both strikes were primarily related to social

Macedonia, Mexico, Palestine,[12] Peru, Russia,[13] Sri Lanka, South Africa,[14] Zambia, and the Islamic Countries.

The second topic addressed was that of disability in the work environment and access to work by people with disabilities. Eight articles dealing with these matters were analyzed: in Germany, Brazil, Canada, Colombia, Costa Rica, Indonesia, Kenya, and Peru.

The third issue addressed was that of universal access for people with disabilities to justice, education, and housing. In terms of justice,

welfare benefits for people with disabilities, in particular cash benefits under the National Insurance Institute's disability insurance program (a general social security program for people with disabilities). Furthermore, both strikes lasted several weeks and ended after the signing of an agreement with the Israeli government that partially accepted some of the strikers' demands. But the ultimate significance of the strikes was as "movement-building" events; as unique instances where the voice of people with disabilities was heard and rare moments of solidarity in action.

12 The 1999 Law was recently replaced by a 2019 bill approved in 2021, or the "New Disability Law."

13 Regarding universal accessibility, the reforms in Russia of the General Regulations for Air Transport stand out, as in the past they allowed airlines to deny boarding to passengers in wheelchairs or passengers on stretchers. These reforms came about as a result of the Prisetskaya case, which made the Supreme Court of the Russian Federation rule against discrimination. Its fundamental anti-discrimination rule is Article 19, Paragraph 2 of the Russian Constitution of 1993.

14 ROWLAND notes that disability is not a health or social security issue; it is an issue of human rights and development, adding that pacifist methods for fighting are the best to help the cause of people with disabilities.

several countries were analyzed: Argentina,[15] Peru,[16] Spain,[17] Mexico,[18] and Chile.[19] Regarding access to education, nine articles from the following countries stand out: Spain, Chile, Colombia, and Portugal. These articles analyze the problem of including people with functional diversity: people with hearing disabilities,[20] young people

15 15 The New Civil and Commercial Code of the Nation, enacted by law 26994 of October 1, 2014, Title I, Chapter 2 (Articles 31 to 50), includes the following aspects in relationship with justice: Participation in the proceedings with legal assistance (Article 31) provided by the State if the individual does not have means, judge's duty of immediacy, and implementation of reasonable accommodations for the proceedings (Article 35). Right to appear in the proceedings as a party just like any other individual (Article 36). The judge must designate the necessary support (Article 43), making reasonable accommodations based on the needs and circumstances of the person. On November 19, 2014, the Argentine state incorporated the UN Convention and its Optional Protocol as part of its federal law.

16 To guarantee access to justice, a system of supports and safeguards is contemplated in the country's laws.

17 Through the Reform of Law 8/2021, of June 2, it was intended to comply with Article 12 and 13 of the Convention by promoting the social model and moving away from the substitution system which was in force at that time. The obligatory nature of hearing from people with disabilities and respect for their wishes in proceedings both in and out of court to provide them with support have both been strengthened.

18 In Mexico, to guarantee personal access in terms of the administration of justice, the "pro-person" principle is applied. The Federal Court of Mexico is responsible for the first sentence in the world adapted for easy reading (in the case of Ricardo Adair).

19 The National Disability Service (SENADIS) has been in charge of guaranteeing universal access to the government by people with disabilities, especially people with visual disabilities (Law number 20285).

20 The first subtitled programs for the deaf appeared in the United States, first soft coded and later hard coded. In Europe, the BBC was and is the leading network in subtitling for the deaf. In Spain, it first began in Catalonia in 1990 and a few months later the RTVE station followed suit. In 2003, after Law 51/2003, of December 2, the UNE 153010 Standard of 2003 was approved (subtitling for deaf and hearing impaired people). This standard was replaced by the UNE 153010 Standard (2012),

with disabilities, adults with intellectual disabilities, the visually impaired, children and adolescents with Down Syndrome, etc.

Special education issues are addressed at all levels of education – including higher education.

Another issue addressed was that of the abuse and discrimination[21] experienced by people with disabilities in two areas: health and education. Three studies were found from Chile[22], Colombia[23], the United States of America, and Mexico.

These articles also address the politicization of disability and its image

which is broader as it covers all scenarios of audiovisual communication and aims to establish minimum quality and homogeneity requirements in subtitling for deaf people and people with hearing disabilities. The idea is to create accessible audiovisual content through subtitles. Germany was 10 years ahead of Spain in terms of the first subtitled broadcast for deaf people. However, today Spain is more developed to this end, especially in private channels – something which is non-existent in Germany.

21 Among the comparative studies that have been analyzed, one stands out that compares the laws of Ecuador and Uruguay and access to the government. In Uruguay, there is greater democratization and less discrimination in access, which is free and unconditional. Meanwhile, in Ecuador, there is a system that seeks economic efficiency, equal opportunities, meritocracy, and quality.

22 The group of researchers from the VRAID Research Project (2008-2009) of the Pontifical Catholic University of Chile confirmed in this period the lack of training for teachers on topics relating with disability, inclusion, and curricular adaptations. They considered an interactive model for the inclusion of students with disabilities in higher education contexts and proposed a training strategy for teachers based on the perspective of universal design for learning (UDL). This took into account the opinions and wishes of students with disabilities in order to look into and promote change in the educational model in the university context.

23 Caring for people with disabilities is an obligation of the State according to the Political Constitution of Colombia of 1991. The level of illiteracy is higher in low income levels for people with disabilities. The policies and regulations in Colombia have been directed more towards the primary and basic educational levels and have not been extended to the higher educational level.

in the media, highlighting two studies from Chile and Mexico.

There are some studies on disabilities and criminal law, such as a study from Australia and another from Spain.

Lastly, we must note the existence of doctrinal studies in comparative law that compare two and even three different national laws: the United States and Canada; Spain and Germany; France, Spain, and Germany; Mexico and Spain; and even two laws from the same country, as is the case with the Palestinian laws of 1999 and 2019.

In the selection of doctrinal sources studied, only one article has been found that contains a general bibliographic review on the subject of disability.

4. **Results**

Firstly, we must remember that, since December 13, 2006 (the date of the New York Convention) and up until now, there has been growing global interest in promoting the integration of people with disabilities in all countries.

Spain ratified the Convention and its Optional Protocol on May 3, 2008, the date of its entry into force.

Since that date, the Convention has been part of the Spanish legal system. In other words, the Convention can be invoked before the political, judicial, and governmental authorities (Articles 96.1 and 10.2 of the Spanish Constitution). Therefore, the Convention is mandatory for our country.

The purpose of this Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all individuals with disabilities, and to promote respect for their inherent dignity.

Various organizations representing people with disabilities participated in the Convention's drafting.

The oversight body is the UN Committee on the Rights of Persons with Disabilities.

There is an Optional Protocol to the Convention on the Rights of Persons with Disabilities, which stipulates the conditions for filing a complaint or claim before the Committee.

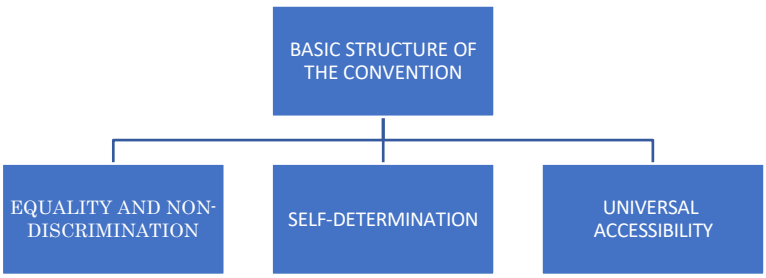
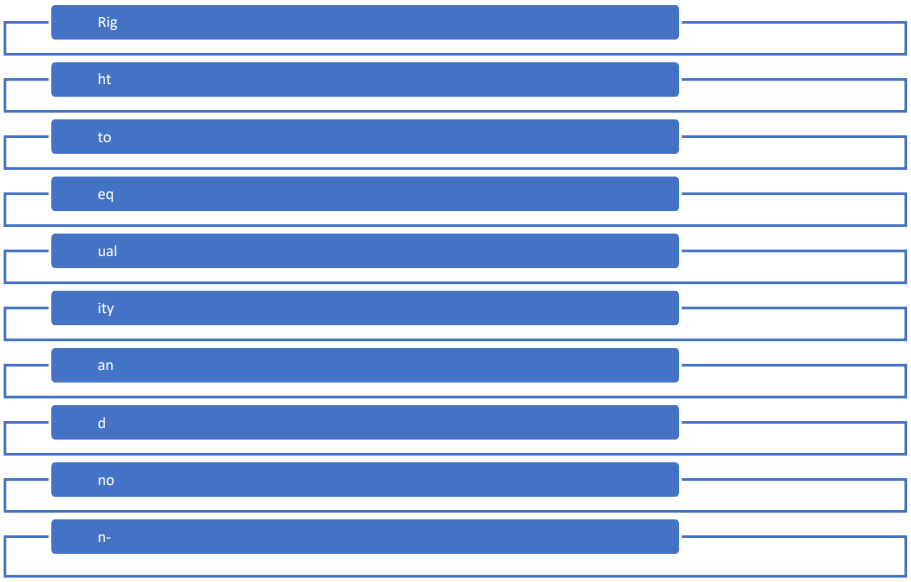


Figure 6: Thematic Axes of the Convention. Drafted by the author.

The articles selected and studied herein deal with these three main thematic axes and the rights protected by the Convention.

The rights that the Convention protects, and which are studied in the doctrinal contributions studied are listed in the figure below



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Figure 7: Rights protected by the Convention. Drafted by the author.

Other, more specific issues also addressed (in addition to the application of the Convention in each State and the degree of compliance with the rights set forth in the Convention in favor of persons with disabilities) are:

- Mechanisms to guarantee access to the world of work, avoiding Discrimination against people with disabilities.
- Access to the government in general and the administration of justice in particular, as well as the channels for communication therewith.
- The right to health and access to health resources, social services, and housing.
- Means to tend to every type of disability: auditory, visual,

intellectual, etc.

- Critical analysis of the politicization of disability and its representation in the public media and on social networks.
- Claims of abuse and cases of discrimination in specific places and spheres.
- Specific studies on positive experiences resulting in the full inclusion of people with disabilities.
- Studies of comparative law taking into account several countries in order to draw conclusions on the best regulations to implement for the matters at hand.
- Studies aimed at defending respect for human dignity as the basis of the legal system.

A comparative law study is useful as long as it recognizes obvious legal pluralism and rejects ethnocentric claims or seeks a single form of legal response based on global ideological positivism.

As Moreno Cruz[24] indicates, perhaps one of the most complex and least consolidated aspects in the science of comparative law is the methodological aspect. There have been many methodological proposals and equally many debates surrounding them. The "parasitic" nature, so to speak, of comparative law –although not lacking a certain epistemological autonomy– certainly does not help legal comparison, more now than before, tends to build its own methodologies by

24 See MORENO CRUZ, P. *Comparar las comparaciones jurídicas: observaciones al margen de la Introducción al derecho comparado de Alessandro Soma. Revista de derecho privado*. Issue 32. January-June 2017. Pp. 491 to 512.

borrowing (and reformulating) the epistemological contributions of other social sciences.

However, in this paper, we assume methodological proposals for comparative science that lean towards a comparison that brings together (also with the nuances that crop up in terms of the limits of structuralist and functionalist methodologies): either because effectively it is possible to identify broad similarities between the systems or because there is a tendency (as a rule) to generate fungible models at a global level.

We started with an International UN Convention and the rights and values reflected therein and we have come to see the unequal execution that said Convention is having in the different countries, without coming to conclusions at a global level other than those established by the Convention itself – highlighting the different advances in the execution and transfer of the values and rights listed in the international text to domestic law by each state.

5. **Doctrinal Debate in Comparative Law**

The study described in this article focuses on countries from several continents and on Spain, as well as the legal and ethical implications of the integration of people with disabilities.

A first point that is being debated in all the countries is that of application at the level of each State's domestic law – something which implies legal reforms of all kinds. In Spain, for example, there is a project to reform Article 49 of the current Constitution so as to adapt

it to the social model provided for in the Convention.

A second object of doctrinal debate from the legal point of view is whether or not the Convention has created new rights in favor of people with disabilities, judging this issue in the light of international instruments (either general or specific) approved by the United Nations. There are authors who understand that the New York Convention on Persons with Disabilities has reformulated, innovated, and added new content to the traditional human rights and fundamental freedoms contemplated in other international treaties – even if this does not entail the creation of new rights.

In other words, the Convention has not only limited itself to accommodating or adapting human rights to the unique, concurrent circumstances of people with disabilities. Instead, it has gone one step further, proceeding on numerous occasions to delve into greater detail and/or to incorporate ideas not included in the general treaties.

The scope of the general right to work clause of Article 27.1 is also under intense doctrinal discussion, expressly noting that said right must be recognized on equal terms between persons with disabilities and other citizens, including the right to have the "opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive, and accessible to persons with disabilities." In relationship with the right to work, the Convention maintains the criterion set forth first by the Standard Rules and later by General Comment No. 5 of the ICESCR, in accordance with which state social policies must be directed, preferably and prominently, towards inserting people with disabilities into jobs offered and

undertaken in the labor market.

Once the right to work is recognized under the terms that have just been expressed, Article 27.1 of the Convention sets out the measures that the States Parties must adopt with a view to protecting and allowing for the exercise of this right.

a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring, and employment, continuance of employment, career advancement, and safe and healthy working conditions.

b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.

c. Ensure that persons with disabilities are able to exercise their labor and trade union rights on an equal basis with others.

d. Enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services, and vocational and continuing training.

e. Promote employment opportunities and career advancement for persons with disabilities in the labor market, as well as assistance in finding, obtaining, maintaining, and returning to employment.

f. Promote opportunities for self-employment, entrepreneurship,

the development of cooperatives, and starting one's own business.

g. Employ persons with disabilities in the public sector.

h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives, and other measures.

i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.

j. Promote the acquisition by persons with disabilities of work experience in the open labor market.

k. Promote vocational and professional rehabilitation, job retention, and return-to-work programs for persons with disabilities.

Reasonable accommodations for persons with disabilities in the workplace are the subject of specific doctrinal debate. This is based on Article 2 of the Convention, which we have mentioned above, and which qualifies the "denial of reasonable accommodations" as discrimination on the basis of disability. There is also a link between the prohibition of discrimination and measures aimed at guaranteeing equal opportunities between people with disabilities and others in relationship with "fair and favorable working conditions" and the enjoyment of all "labor and trade union rights."

Conclusions

In this text, the scientific publications on disability and on the application of the New York Convention of 2006 to the domestic law of each State have been analyzed, together with the main national regulations on this matter. The regulations have been listed in a final annex. According to the UN, comparative studies on disability law indicate that only 45 countries have laws against discrimination and other specific laws in this regard.

The main countries that contribute to this field are, by number of publications: Chile, Spain, Colombia, Argentina, the United States, and Germany.

It has been observed that, above all, there are two important disciplines that govern the scientific literature in this field: the social sciences of law and sociology, with the first being the clearest in terms of legal and political implications but the second being the field that determines ethical criteria.

In addition, we have detected that in the different countries there is a need for greater involvement in the execution of the New York Convention.

In all the countries, emphasis has been placed, at least doctrinally, on the axis of the Convention that deals with placing caring for the person with a disability above everything else, as indicated in the Preamble.

This is about giving every person with disabilities the individual

support they need with the reasonable accommodations that are necessary to guarantee inclusion and universal accessibility – all in accordance with the principle of proportionality.

Through the Convention, the aim is to move beyond justice to equity, which is to give everyone one what they are entitled to or, as the maxim goes, "equity follows the law."[25] In other words, application of the Convention must be marked by equity.

Likewise, it can be observed in the doctrinal articles that the idea of respect for differences is delved into deeper, as well as the idea of accepting the person with disabilities as part of diversity and the human condition. This principle is included in Article 3.d of the Convention.

In the doctrinal texts that deal with Article 12 of the Convention (necessary provision of support for the exercise of legal capacity) and Article 13 (access to justice for individuals with disabilities under equal conditions), the reasonable accommodations required for domestic legal proceedings in which people with disabilities

25 See Domingo R. (Coordinator), Ortega J., and Zambrana N. *Principios de Derecho Global. 1000 reglas y Aforismos Jurídicos Comentados.* THOMSON Aranzadi S.A. Publishing House, Second Edition, Navarre, 2006. Page 65. This is a principle of unknown origin. It appears in the *Principia Legis Et Æquitatis* by Thomas Branch London, 1753. An anonymous author whose work of selecting maxims enjoyed great fame in his time. It is also included in Thomas Tyler, *Glossary*, page 22 and in Hebert Bromm, *Legal Maxims*, page XVIII. General and abstract law, by definition, needs, in the daily application of equity, to be fully integrated into the legal system; that is why "*aequitas nunquam contravenit legi*" or "*equity cannot contravene the law, only complete it*." In the same sense, we have the maxim "*aequitas non facit ius sed iuri auxiliatur*" or "*equity does not make law, but it helps it*."

participate are noted in order to guarantee universal accessibility and equal access as citizens, as well as highlighting the need to modify the processes aimed at providing support for people with disabilities.

In all the doctrinal texts, emphasis is placed on the need for judicial immediacy in the interview with the person with disabilities in order to know the state in which the person with the disability is and to understand their will and obtain their declarations.

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