

European Economic and Social Committee

SOC/137

Persons with disabilities

Brussels, 26 March 2003

OPINION

of the European Economic and Social Committee

on the

Communication from the Commission to the Council and the European Parliament – Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities

COM(2003) 16 final

On 24 January 2003, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council and the European Parliament – Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities

(COM(2003) 16 final).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 2003. The rapporteur was **Mr Cabra de Luna**.

At its 398th plenary session of 26–27 March 2003 (meeting of 26 March 2003), the European Economic and Social Committee adopted the following opinion by 98 votes in favour and no votes against with two abstentions:

1. General Comments

1. The European Economic and Social Committee welcomes the European Commission Communication “Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities” and would like to stress its explicit support for some of the key points made in this Communication.
2. The added value of a UN legally binding instrument is to recognise that people with disabilities are entitled to enjoy the full range of internationally guaranteed rights and freedoms and to do so without being discriminated against on the grounds of disability.
3. Thematic conventions, like the Convention on the Rights of the Child (CRC), the Convention against all Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), have demonstrated added value and complementarity with the existing general human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
4. A new UN legally binding instrument would not, in the main, create new rights but would serve to tailor the application of human rights to people with disabilities. It would make a useful contribution to the perception of disabled people as full citizens with the same rights as all others.
5. A UN legally binding instrument would set concrete standards for States to guarantee equal effective enjoyment of human rights by people with disabilities. It would spell out the relevance and application of the general human rights standards to persons with disabilities.
6. A key principle in a future legally binding instrument is the non-discrimination principle. Equal access to human rights can be guaranteed by ensuring that people with disabilities are not discriminated against on the grounds of their disability. The legally binding instrument should protect people with disabilities from discrimination in having access to and enjoying human rights. Protection would need to be provided against direct and indirect discrimination, the latter being of extreme relevance for the achievement of a real equal treatment of disabled people.
7. The participation throughout the process of representative NGOs of disabled people, as approved by the ad hoc Committee, is a welcome decision.

8. However, the EESC believes that it may not be enough to confirm rights unless the objective conditions are created to ensure they stand a good chance of being respected through the different channels that are available.

More specifically, it is an established fact that the right of people with disabilities to be included in mainstream society is often secured through specific initiatives and organisations. Thus, for example, the right to work can be achieved through specific job placement programmes, the right to education through specific back-up activities, and the right to residential autonomy by suitably adapting the disabled person's family home, including with hi-tech equipment.

2. Specific comments

1. The EESC considers that the protection provided by the existing international human rights instruments is not adequate for people with disabilities. The EESC supports the shift from the old medical approach to a social, human rights based approach, which puts much stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life for persons with disabilities.
2. The EESC supports the statement made by the Danish Presidency on behalf of the EU at the meeting of the Third Committee of the 57th Session of the UN General Assembly¹, which recognised that an international legally binding instrument relating to the rights of disabled persons could be a useful tool in the promotion and protection of the rights of persons with disabilities.
3. The EESC considers that a twin-track approach should be pursued and also supports fully the reference made in the EU statement² that “The EU firmly believes that it is of the utmost importance to further mainstream disability as a human rights issue, into the implementation of the existing core United Nations human rights conventions and into their monitoring mechanisms. The drafting of a new convention should not be seen as an alternative to this process but rather as a necessary complement. As stated by **Quinn and Degener**³, “a disability-specific convention could prove to be the best possible catalyst for the mainstreaming of disability in the existing treaty monitoring machinery” and that “a convention is necessary and would underpin – and not undermine – the existing instruments in the field of disability”.
4. The EESC considers that the legally binding instrument should be a Convention. Other possible options, like an optional protocol to the existing UN Treaties, provide much more limited protection and send a message to society that disabled people deserve a lower level of protection of their human rights than other groups in society.
5. The EESC requests that the Convention includes a specific rule stating that human rights are universal thereby including all human beings, among them persons with disabilities and chronic illnesses.

6. The EESC would like to highlight the importance of the UN Standard Rules on the Equalisation of Opportunities of People with Disabilities. Although not legally binding, this instrument, which will be supplemented in 2004 with some additional elements, has established standards that need to be supported and strengthened by the UN Convention. This needs to be included in a reference to the UN Standard Rules in recognition of the fact that any breach or action which is not in compliance with the UN Standard Rules is considered a human rights violation.
7. The EESC considers that the Convention must be based on the principles and ideas laid down in the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities⁴ and in the World Programme for Action concerning Disabled Persons⁵. It should at the same time reflect the core principles of the disability movement and transform them into an operational, effective and progressive tool, aiming at promoting and protecting human rights in a disability context.
8. The EESC considers that the content of the Convention, while being based on overarching principles and core values like equality, dignity, liberty and solidarity, should refer to and identify the full spread of human rights, including political and civil/fundamental, as well as economic, social and cultural, and should highlight that States should take action to ensure that in reality people with disabilities are in a position to exercise their rights. The EESC would like to highlight the important interlinking of the different areas. A good example is transport. If disabled people are supposed to fully enjoy their rights to education and employment, an accessible transport system is required.
9. The EESC considers that the Convention should be all embracing and protect adequately all disabled people and therefore needs to consider their diversity.
10. The EESC considers the establishment of a strong monitoring mechanism and the specification of enforcement provisions as crucial success factors, in line with those included in the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of Discrimination against Women.
11. The EESC considers it of great importance that the EU plays a leading role at the next meeting of the ad hoc Committee and suggests that the EU Presidency seek a common position by all EU Member States and accession countries, and present this joint position formally as a contribution to the ad hoc Committee.
12. The EESC, as the representative voice of organised civil society, wishes to be actively involved in the work to be done by the EU on this issue.
13. The EESC also considers that the European Union should lead by example in the involvement of representative disability organisations in the process. This should be done through the presence of representatives of national and European disability organisations in the national delegations, as well as in the EC delegation to take part at the next ad hoc Committee meeting.

14. The EESC requests that the European Commission play an active role in the negotiations on the UN Convention, in order to ensure adequate consistency between the new Convention and the EU disability strategy, in particular Article 13 and Articles 21 and 26 of the EU Charter of Fundamental Rights. This should also ensure consistency between European internal and international action regarding disabled people.
15. The EESC considers it very relevant to follow the recommendation issued at the first ad hoc Committee meeting to organise a regional seminar in Europe prior to the next ad hoc Committee meeting.
16. In this respect, the EESC recalls its recommendation included in a previous opinion⁶ on the need for a disability specific directive, based on Article 13 of the EC Treaty, combating discrimination in all areas of EC competence.
17. The EESC considers that EU work in the areas of human rights and development cooperation should take into account the work to be done on this UN Convention. Therefore, the focus on the human rights of disabled people needs to increase and be given much greater prominence in the annual EU human rights reports prepared by the Council, and EU work on development cooperation needs to be reviewed in light of a human rights approach to disability.

Brussels, 26 March 2003.

The President

The Secretary-General

of the

of the

European Economic and Social Committee

European Economic and Social Committee

Roger Briesch

Patrick Venturini

¹ The Danish EU Presidency – EU Statement regarding social issues during the 57th Session of the United Nations’ General Assembly

² The Danish EU Presidency – EU Statement regarding social issues during the 57th Session of the United Nations’ General Assembly

³ **Prof. Gerard Quinn** and **Mrs Theresa Degener**, “Human Rights and Disability – the current use and future potential of United Nations human rights instruments in the context of disability” – February 2002 – UN Human Rights Commission, <http://www.unhchr.ch/html/menu6/2/disability.doc>

⁴ The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, of 20.12.1993

⁵ World Conference on Human Rights - Vienna - 14/25 June 1993 - The Vienna Declaration and Programme of Action

⁶ “The integration of disabled people in society”, OJ C 241 of 7.10.2002, p. 89-97

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