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In Search of European Disability Policy : between national and global

A la recherche d'une politique européenne du handicap : entre national et global

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Disability, Social Policy, European Union, Subsidiarity, Globalisation

Abstract

This paper examines the development of disability policy at the European level, from the mid 1970s to the present day, based on documentary research. The development of European policy discourses in this period reflects dramatic changes of thinking about disability that are also evident in global policy debates, driven by activism from the international disabled people's movement. Early policy, based on discourses care and rehabilitation, aimed to compensate for the presumed limitations of individual disabled people but policy today is more concerned with human rights, citizenship, full participation and the removal of structural barriers to inclusion. The analysis draws on theories of disability, Europeanisation, policy transfer and globalisation to explain EU policy development and its uneasy relationship with national and global policy regimes. This analysis suggests a characteristically 'European' policy project, involving a socially-oriented but legalistic rights-based discourse. Europeanisation is challenged on two fronts: by high levels of national subsidiarity in relevant policy domains, and by the emergence of new global regimes of governance (including the United Nations Convention in 2007). The most significant policy catalysts are now at the global level while the most significant implementation constraints are at the national level. Yet, European actors remain important, providing strong support for implementation in member states and as policy entrepreneurs on the global stage.

Cet article examine l'élaboration d'une politique du handicap au niveau européen, depuis le milieu des années 70 à ce jour, sur la base d'une recherche documentaire. Le développement du discours sur les politiques européennes, tout au long de cette période, reflète d'importants changements dans la manière de concevoir le handicap, qui sont également visibles lors de discussions d'ensemble, changements pilotés par l'activisme issu du mouvement international des personnes handicapées. Les premières politiques, basées sur des analyses issues des politiques communautaires de soin et de réadaptation, avaient pour objectif de compenser les limitations supposées des différentes personnes handicapées, mais de nos jours, la politique est davantage concernée par les droits de l'homme, la citoyenneté, la pleine participation et le retrait des barrières structurelles limitant l'inclusion. L'analyse esquisse des théories du handicap, de l'eupéanisation, des politiques de transfert et de mondialisation pour expliquer le développement de la politique de l'UE et son rapport difficile avec les modalités politiques nationales et mondiales. Cette analyse suggère qu'il existe un projet 'européen' caractéristique, impliquant un discours tourné vers le social mais fondé sur les droits légaux. L'eupéanisation est défiée sur deux fronts : d'une part, par les niveaux élevés de subsidiarité nationale dans des domaines politiques pertinents, et d'autre part, par l'émergence de nouveaux régimes globaux de gouvernance (y compris La Convention des Nations Unies en 2007). Les catalyseurs les plus significatifs de la politique du handicap se situent maintenant à un niveau mondial [since "globalisation" = mondialisation], tandis que les contraintes les plus importantes pour sa mise en oeuvre se situent au niveau national. Cependant, les acteurs européens restent importants, fournissant un soutien puissant à l'exécution dans les Etats-Membres et comme entrepreneurs de politique sur la scène mondiale.

In Search of European Disability Policy: between the national and the global

This paper examines the development of disability policy making at the European level, from its inception in the 1970s to the present day. The first part of the paper outlines a theoretical framework, combining key themes from the disability and policy literature (including social interpretations of disability, the emergence of transnational policy institutions, and the role of disabled people's movements in global policy action networks). The remainder of the paper, based on an analysis of diverse policy documents, outlines the development of European policy; the constraints on policy implementation posed by subsidiarity in an enlarged European Union, and Europe's relationship with the emerging global policy regime provided in 2007 by the United Nations Convention on the Rights of Persons with Disabilities.

A framework for analysing European disability policy

For those unfamiliar with European policy process, the European Union (EU) is a complicated organisation, involving different institutions with different functions and powers. Of particular interest here are the legislature (comprising the Council and the Parliament) and the Executive (represented by the Commission). The judiciary (specifically the Court of Justice) has had an increasing influence on the rights of disabled people but it is not the primary focus for this paper (see Lawson and Gooding 2005). The primary legislation for the EU exists in Treaties agreed between the member states. These confer powers to its various institutions to produce secondary legislation that affects citizens in different countries. These secondary laws may be binding directives and regulations that require changes to national laws (it may be helpful to think of this as 'hard' policy) or they may simply be recommendations for action on a particular issue (a kind of 'soft' policy). Understanding how disability features in primary and secondary legislation, and in hard or soft policy initiatives, is important if we are to understand the influence that European decisions have on disabled people in the member states.

In terms of institutions, the Council of the European Union represents the interests of member governments and is the primary decision-making body influencing the direction of EU policy (involving relevant ministers from each country according to the policy area under discussion). On important decisions all states must agree but in many policy areas a qualified majority vote is sufficient. It is worth noting that the 'European Council' (or European Summit) is a different body, comprising the heads of governments without formal legislative power but with a strong political influence. Similarly, it is important to note that the 'Council of Europe' is an independent international organisation, committed to furthering the principles of co-operation, law, human rights and freedoms. It is not a part of the EU.

The European Parliament is the directly elected body representing the citizens of the EU and shares legislative power with the Council to make laws that are superior to national laws, but only in areas of policy where competence has been granted by Treaty. The areas in which the Parliament has powers have expanded with each successive Treaty and this has had significant implications in the case of disability policy. In addition law making, Parliament may have a significant policy influence in making resolutions and recommendations that are not legally binding on member

states. Members of Parliament also conduct business in committees and in special interest groups that may influence policy direction in particular areas.

The European Commission is the executive branch of the EU and independent of the legislature. It plays a very major role in policy development. For example, although Parliament may amend or veto laws only the Commission can propose new legislation. The Commission also carries responsibility for policy implementation, via its numerous offices and agencies.

To understand the development of European disability policy within this institutional context it is helpful to consider four theoretical dynamics. The first concerns the emergence of social model theory and rights-based policy claims. The second concerns the 'Europeanisation' of policies, institutions and citizenship identities. The third concerns mechanisms of policy transfer implicated in that process. The fourth highlights the globalisation of disability policy communities, and the emergence new forms of global governance that transcend the European. These are outlined briefly in turn, together with questions for discussion and analysis.

The development of critical disability research has been based on the much quoted distinction between 'individual models' and 'social models' of disability (Oliver 1996; Priestley 1998). To summarise, we can think of individual model approaches as characterising disability in terms of individual problems caused by physical, sensory or cognitive impairment. The implication is that policy ought to address the deficits of individuals and that welfare states should provide for their inevitable dependency within society. The solution for policy makers must be either to treat the person's impairments (through medicine and rehabilitation) or to compensate them for their 'limitations' (by arranging less valued social roles, such as sheltered employment, residential care, welfare payments, and so on). In this approach, both the assumed cause of the problem and the policy intervention focus on the individual.

A 'social model' of disability adopts a different approach by relocating the problem from the individual to society. From this perspective, the social exclusion experienced by people with impairments is attributed to limitations of society rather than the individual, and 'disability' can characterised as a social problem caused by social processes. Disability, in this sense, is 'the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to physical and social barriers' (Disabled People's International 1982). To summarise:

...disability, according to the social model, is all the things that impose restrictions on disabled people; ranging from individual prejudice to institutional discrimination, from inaccessible buildings to unusable transport systems, from segregated education to excluding work arrangements, and so on. (Oliver 1996: 33)

The original proponents of this analysis (like Oliver) emphasise the structural origins of disabling barriers, including the historic social relations of capitalist production. While barriers can be removed within the existing system, fundamental socio-economic change is viewed as the only means to eradicate 'disability'. This raises challenges for policy development and implementation, which rarely involves any radical reconstitution of existing institutions. It is unsurprising then that the development of social model theory has occurred in parallel with more pragmatic claims for the recognition of disabled people's 'rights' in law and policy (e.g. Despouy 1993 ; Fleisher & Zames 2001).

The reframing of disability as a human rights issue has been widely exploited by disability activists and their allies to pursue a new wave of national non-discrimination legislation (Degener 2005). However, critics have argued that this legislative rights-based approach remains insufficient to deliver full participation and equality because it does not address the underlying structural causes of disabled people's exclusion (e.g. Young & Quibell 2000; Russell 2002). It is therefore useful to ask how far European disability policy has been influenced by social model ideas and rights-based policy claims.

The second theoretical dynamic concerns processes of Europeanisation. This concept is useful in capturing top-down and bottom-up processes that lead national institutions and policies to converge and to become more 'European' in character (Bennett 1991 ; Harmson and Wilson 2000). Rights-based approaches to policy are significant here, with considerable developments at the European level in the field of disability and more generally.

The initial policy agenda of the European Community was preoccupied with creating the economic and monetary conditions for a single market (based upon freedom of movement for capital, labour and products between member states). As a consequence, policy development at the European level was initially more concerned with economic and political integration than with social or human rights (with the exception of rights to employment). The founding Treaty of the European Economic Community, in 1957, contained no equivalent of a US 'Bill of Rights' and it was not until the Single European Treaty of 1987 that citizenship rights were introduced more explicitly. However, post-Maastricht, Article 6 of the Treaty on European Union (as amended by the Treaty of Amsterdam) placed human rights and freedoms more clearly at the core. At the same time there was evidence of a stronger social orientation to policy making, leading to a closer examination of social exclusion and the development a European Social Policy Agenda (2000-2005); an agenda that envisaged an active European welfare state, based on 'European' values of solidarity and justice. The current EU Social Agenda (2005-2010) and the Strategy for Social Inclusion (2004) link human rights with social policy, identifying 'discrimination and inequality' amongst the key concerns for European citizens.

For Shore (2004) this 'supranational' citizenship is significant because it replaces attachments to national territory and culture with new attachments to European rights and values. Bhabha (1999) goes further, arguing that 'post national' European citizenship rights exemplify wider processes of globalisation that reduce the autonomy of nation states through transnational governance. In particular:

Universal norms and enforceable minimum standards enshrined in international conventions provide mechanisms for curbing state power... In fact, it is the interface between globalization and human rights that challenges state autonomy most forcefully... (p. 11)

This observation is important in understanding developments in disability policy and raises questions about the mechanisms by which policies in one jurisdiction can influence those in another. Of particular interest to this paper are the ways in which rights-based policy processes at the European and global levels influence disability policies in EU member states. This key theme is expanded in the final section of this paper with reference to the EU's role in the new UN disability Convention.

To understand such processes it is useful to draw on theories policy ‘transfer’ (Dolowitz and Marsh 1996) or ‘lesson learning’ (Rose 1993). Three factors are relevant to this paper. First,

...as global forces increasingly impact on individual states and as technological advances have made it easier and faster for policy-makers to communicate with each other, the occurrences of policy transfer have increased. (Dolowitz and Marsh 2000: 1)

Such processes are exemplified in the European context, where ease of mobility, European institutions and the ubiquity of Internet technologies facilitate rapid knowledge sharing. Second, as Radaelli (2000) illustrates, European institutions also have a direct role in ‘inseminating’ policy solutions into national contexts (here he draws attention to the role of the European Commission as a ‘policy entrepreneur’, often acting in collaboration with relevant pressure groups and policy analysts). Such examples suggest a range of ‘soft’ mechanisms but there is also a ‘harder’ dimension. This is particularly important where international institutions are empowered to make policy decisions that are binding on member states. Indeed, ‘...as nations continue to join larger international institutions, obligated transfer is going to become more common’ (Dolowitz 2003: 104). Both the EU and the UN have acquired increasing powers of governance in the field of disability and human rights through precisely the kinds of norms, standards and conventions described above.

However, this kind of policy making is by no means ‘top-down’ and international policy processes also provide new opportunities for policy advocacy at the international level. Thus, Reinicke and Deng (2000) draw particular attention to the rise of new public policy networks responding to opportunities provided by UN policy initiatives, and this theme is examined more closely in the latter part of this paper. There are opportunities for both governmental and non-governmental organisations to have influence. Indeed, new forms of ‘global civil society’ or ‘globalisation from below’ are now evident in transnational action networks campaigning on global policy issues (Evans 2000 ; Keck and Sikkink 1998 ; Portes 1999). In the field of disability policy, non-governmental actors have strongly influenced the agenda, with organisations of disabled people achieving self-advocacy through a significant global movement (e.g. Driedger 1989 ; Shakespeare 1993). It is therefore important to consider the extent to which disability rights advocates have been willing and able to exploit international policy networks and institutions in making their claims.

The framework outlined so far suggests that disability policy at the European level should be considered in relation to four dynamics: the emergence of social model thinking and rights-based policy claims; the Europeanisation of policy and institutions; mechanisms of policy transfer; and Europe’s relationship to global regimes of governance (and particularly the UN). The remainder of the paper draws on documentary policy analysis to examine these dynamics from the mid-1970s to the present day.

The emergence of a ‘European’ approach to disability policy

Although early European Community policy was preoccupied with the economic and conditions for a single market there was recognition that social actions would be required to achieve this, and disability was not entirely overlooked. Thus, in promoting ‘full and better employment’ and an ‘improvement of living and working conditions’, a Council Resolution of 21 January 1974 recommended ‘a programme for

the vocational and social integration of handicapped persons’, including a comparative review of national policies in this area. The Commission proposed the use of the European Social Fund for an action programme concerning disabled workers, reinforced by a Council Resolution outlining, for the first time, wider social goals for European disability policy:

The general aim of Community efforts on behalf of the handicapped must be to help these people to become capable of leading a normal independent life fully integrated into society. This general aim applies to all age groups, all types of handicaps and all rehabilitation measures. (Council of the European Communities 1974)

The end of the first action programme, and the United Nations International Year of Disabled People (IYDP) in 1981, provided opportunities to broaden this agenda beyond vocational integration (e.g. in the European Parliament Resolution of 11 March 1981). There were also first signs of a more socio-economic understanding of disability, evidenced in acknowledgement that disabled people are amongst those most adversely affected by the economic cycle of a capitalist free market.

By the mid 1980s, and with the growing influence of the international disabled people’s movement, a broader social analysis was more clearly articulated (Olsen, Penna & Veith 2004). The 1986 Recommendation on the Employment of Disabled People in the European Community (86/379/EEC) was based on the principle of ‘fair opportunities’ for disabled people within a European labour market, to be achieved via state measures on non-discrimination and positive action. This suggested targeted measures, such as job creation, sheltered employment, vocational training, guidance, and compensatory social security arrangements. But it also acknowledged a wider need for more enabling environments (in terms of accessible workplaces, housing, transport, and information). Explicit references were also included to consultation with disabled people’s organisations reflecting the significant mobilisation of the disabled people’s movement during this period (e.g. the emergence of national and international representative councils linked through Disabled People’s International from 1981/2). Thus, the 1986 Recommendation benchmarked four emergent European policy themes – a preoccupation with employment, the move towards a rights-based approach, the subsidiarity of member states in implementation, and the involvement of disabled people’s organisations in the policy community.

In the area of gender policy there were already signs of a rapid shift towards equality and rights-based approaches, but disability (along with racism) did not yet feature prominently in such debates (see, Cunningham 1992). In response to disabled people’s advocacy, and spurred by Europe’s ratification of the 1993 United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities, disability became a more prominent European theme. In 1993 a ‘Disabled People’s Parliament’ was held to mark the first European Day of Disabled People, at which around 500 participants agreed recommendations to the Commission (see, Report of the *First European Disabled People’s Parliament*, 3 December 1993). The Resolution set out a broad and radical agenda. It challenged assumptions about disabled people, demanded changes to decision-making institutions, and called for amendments to European law. It affirmed disabled people’s claims to universal human rights and identified three kinds of disability discrimination – ‘direct discrimination, indirect discrimination, and “unequal burdens” imposed by socially constructed barriers’. By

comparison with official policy statements at this time, it also articulated a more explicitly social model approach:

...disabled people should be guaranteed equal opportunity through the elimination of all socially-determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society (ibid.)

While maintaining a broad vision for the future, disabled people and their allies became more tactical in their policy claims after 1993, persuaded that progress could be most symbolically advanced by legal recognition of disability discrimination at the highest level – the Treaty of European Union. European institutions of governance could not be expected to deliver radical social transformation but they provided an important opportunity structure for the recognition of those claims. There was already some sympathy within the European Commission for the inclusion of disability in a general non-discrimination clause, bolstered by inter-governmental working groups organised under the Spanish presidency in 1995 (disabled people's organisations played a key advocacy role here, via the European Disability Forum and the Spanish National Council of Disabled People).

The non-discrimination campaign was based on claims to legal recognition and input was invited from legal experts (particularly from human rights lawyers). The impetus came from disabled people's organisations, grounded in a broad social model approach, but their policy claims took an increasingly legalistic turn. This was evident in the report for the 1995 European Day of Disabled People, providing detailed legal analysis of disabled people's omission from European Treaties; their rights as workers and consumers within the European Union; the inadequacy of those rights; and calls for greater legal protection (*Disabled Persons' Status in the European Treaties: Invisible Citizens, Report of the Third European Day of Disabled Persons, 7 December 1995*).

After continuing pressure from disability organisations, disabled people were finally made 'visible' in the Amsterdam Treaty of 1997 (Whittle 1998; 2000). For the first time, Article 13 of the amended Treaty empowered the Council to make law to combat discrimination on grounds of disability (along with grounds of sex, racial or ethnic origin, religion or belief, age and sexual orientation). Although this conveyed a new competence to the EU it did not immediately convey any new rights to disabled people. However, Treaty recognition was a landmark achievement, establishing disabled people's claims to full participation and equality as a legitimate concern of the European legislature.

Post-Amsterdam, the 'disability rights' agenda gained momentum, including a growing campaign (co-ordinated by the European Disability Forum) for the adoption of a Comprehensive Directive on Disability, a more binding form of hard policy analogous to the Race Directive. The Council Decision to combat discrimination (2000-2006) raised the profile of disability equality and Article 26 of the Charter of Fundamental Rights (2000) highlighted the integration of disabled people explicitly. The introduction of a Framework Directive on Non-discrimination in Occupation and Employment in 2000 marked the first legislative intervention on disabled people's rights (requiring states to put in place appropriate national legislation by the end of 2003).

To summarise, the 1990s saw a shift in European disability policy, marked by a recognition of citizenship, the adoption of a more legalistic rights-based approach,

and the acquisition of new supranational powers of governance. Yet, it is significant that these new legislative powers were exploited only in the traditionally 'European' domain of rights to employment. Legal scholars have pointed to more far reaching legal enforcement via the European Convention on Human Rights and the European Court of Human Rights (De Schutter 2005). But, for the purposes of this paper, such approaches should be considered primarily as claims against the institutions of European governance than reflections of those institutions' own intent on disability policy.

Although policy debates in the 1990s had focused on narrow claims to rights-based legislation, there was some evidence of a wider view. For example, in 1996 a new EU Disability Strategy was adopted in pursuance of the UN Rules towards 'a society open and accessible to all' (involving the removal of disabling barriers, the participation of disabled people, and the mainstreaming of disability policy). The Strategy identified a range of obstacles to equality, including education, employment, mobility, housing and welfare systems. Similarly, whilst continuing to prioritise equal treatment in employment, the EU Action Plan following 2003 European Year of Disabled People emphasised the need for a much wider mainstreaming of disability policies:

Contributing to shaping society in a fully inclusive way is therefore the overall EU objective: in this respect, the fight against discrimination and the promotion of the participation of people with disabilities into economy and society play a fundamental role (European Commission 2003).

The current Action Plan 2006-2015, recommended by the Council of Ministers in 2006, develops this holistic approach and identifies 15 areas for action (recognising also the cross-cutting significance of gender, age and ethnicity). The Plan draws on the key principles of human rights, non-discrimination, equal opportunities, full citizenship and the participation of disabled people. It aims, 'to provide a comprehensive framework that is both flexible and adaptable in order to meet country-specific conditions' (Council of Europe 2006: 4). This description raises some significant questions about implementation, which are discussed below.

Policy implementation and EU enlargement

Although there had been a radical shift in EU policy discourse on disability, policy implementation continued to rely on relatively 'soft' mechanisms of policy transfer (ranging from facilitation of cross-border lesson learning and the insemination of policy initiatives from the Commission, with some elements of harder regulation and legislation). The predominant approach, in the period under review, can best be summarised as follows:

With full respect for subsidiarity, the EU action can play a role in establishing better co-operation between Member States and fostering the effectiveness of their disability policies by promoting exchange of good practice, improving the collection and the use of comparative information on disability issues across Europe and the identification of effective policy solutions. (preamble to the 1996 EU Disability Strategy)

Even where there had been harder policy measures subsidiarity remained a guiding principle. Thus, Waddington (2005) compares implementation of the Framework

Directive on Non-discrimination in Occupation and Employment in Belgium and the Netherlands to illustrate the extensive scope for national discretion. The initial Treaties of European Union conveyed only limited powers to tackle discrimination and, while the EU demands non-discrimination in a common labour market, many pre-requisites to this (such as investments in education, housing, social security, and so on) rely on member states' own diverse policies (Machado & de Lorenzo 1997). As Eyre and Lodge (2000) show, 'European' models may be common touchstones in policy development, national character is often retained, while 'subsidiarity may govern both the definition of disability and the determination of reasonable accommodation' (Mabbett 2003: 17).

Prior to EU enlargement, Hvinden (2003) questioned whether there was any real evidence of 'convergence' in disability policies in Western European countries (see also, Aarts, Burkhauser, & de Yong 1998 ; Prinz 2003 ; van Oorschot & Hvinden 2000 ; 2001). Thus, he argued that key areas of policy concern for disabled people, like social security, were already 'crowded' by national welfare regimes and traditions. By contrast, he argued that there was greater scope for Europeanisation in more 'vacant' areas (such as European market regulation and anti-discrimination law). Hvinden's thesis is attractive but requires some clarification. For example, implementation of the Framework Directive on Non-discrimination in Employment could be seen as a counter example (i.e. disability employment legislation was already a very 'crowded' area of national policy) while the supposedly 'crowded' areas of welfare were those where the EU had little tradition of regulatory governance.

In an enlarged European Union, harmonization of disability policy is also challenged by diverse national circumstances in a widening range of countries. European disability policy in the 1970s arose from co-operation between the six members of the 'common market' (Belgium, West Germany, Luxembourg, France, Italy and the Netherlands), plus Denmark, Ireland and the United Kingdom (who joined in 1973). At this point disability was not a significant policy concern and no guiding or binding principles were in force. By contrast, Greece, Spain and Portugal entered the EU during the 1980s at a time of disability policy development, and a much more critical disability agenda had been established by the time Austria, Finland and Sweden joined the EU in 1995. However, when the next round of enlargement took place in 2004 new member states entered an EU policy environment in which disability had risen much higher up the agenda, and in which there were now binding conditions of membership in terms of non-discrimination and structural adjustment towards disability equality.

Early EU policies, advocating compensation and rehabilitation, may have raised concerns about welfare expenditure in the original member states but there was little to bind their compliance in the 1970s, 1980s or even the mid 1990s. By contrast, states entering the EU in 2004 and 2007 confront greater policy challenges and with often limited economic resources to devote to that task. Implementation of disability equality also raises significantly different challenges for some of the transition economies of Central, Eastern and Southern Europe. As Walsh (1997) notes, disabled people in Central and Eastern Europe 'share the mixed fortunes' of those states while, for Ursic (1996: 91):

Severe economic and political crises, reduction of social transfers, increasing unemployment - all this exerts a negative influence upon the chances for integration and full participation of the people with disabilities in social life.

Further enlargement in 2007 highlighted the extreme challenges facing disabled people in Bulgaria and Romania, including children and adults with learning difficulties and psychiatric system users (e.g. Rosenthal & Sundram 2002). Suffice to say that policy harmonisation around a rights-based agenda at the EU level is not easily achieved by soft policy transfer mechanisms in such a diversity of member states. However, there are numerous examples of cross-national 'lesson learning' between member states and European institutions have played an active role in facilitating policy transfer (e.g. through exemplar projects on employment in the HELIOS programmes or the inclusion of disability projects in the PHARE enlargement programmes). Support for networking within European civil society (e.g. the 1993 Disabled People's Parliament and the European Disability Forum from 1996) also provided important opportunities for civil society. However, the combination of subsidiarity and EU enlargement means that the pursuit of a hard policy approach to disability that is both legally enforceable and also comprehensive in its coverage of social issues is not easily implemented through EU institutions.

From European policy to global governance

In the early part of this paper, moves towards a socially-oriented and rights-based policy framework were identified as characteristically 'European' yet the human rights agenda is by no means a uniquely European slant on disability (Despouy 1993 ; Doyle 1995 ; Waddington 1994). Indeed, moves from compensatory to rights-based policy in Europe were heavily influenced by the development of rights-based approaches elsewhere in the world (including the UN International Year of Disabled People in 1981, the 1990 Americans with Disabilities Act in the USA, and adoption of the 1993 UN Rules on the Equalization of Opportunities for Persons with Disabilities). Analysis of EU disability policy development suggests that the UN in particular has become increasingly significant. For example, the text of the first EU Disability Strategy confirms that, 'The international year in 1981, and the World Programme of Action to which it led, provided the stimulus for enhanced Community interest and involvement' while the 1993 UN Rules implied 'a strong moral and political commitment on behalf of States to take action' (European Commission 1996).

The theoretical framework outlined at the beginning of this paper raised questions about the relationship between EU disability policy, global activism and new techniques of global governance emerging within the UN. The landmark adoption of a UN Convention on the Rights of Persons with Disabilities in 2007 provides an opportunity to examine this relationship more closely. Ratification of this new Treaty would introduce far reaching and binding responsibilities on the EU and national governments concerning disability equality (for which European disability activists have long campaigned but which EU policy institutions have yet to deliver). It is therefore important to ask how 'European' policy values are represented in the new Convention and how the EU been represented in its development.

Building on recommendations by the Commission on Human Rights and the Commission for Social Development, an ad hoc Committee was established by the UN in December 2001:

...to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the

fields of social development, human rights and non-discrimination...
(General Assembly Resolution 56/168).

In the eight sessions of this Committee, from 2002 to 2006, European voices were prominent advocates. For example, at its first session (in August 2001) the Committee received a number of documents, including a brief position paper from the EU (represented by Denmark). In addition, the European Disability Forum (representing disabled people in European civil society) was one of nine non-governmental organisations accredited to the Committee at this opening session. The key policy themes outlined in this paper were immediately evident in the EU representation, opening with the assertion that 'The European Union is committed to a rights-based approach to questions concerning people with disabilities' (European Union 2002). Whilst maintaining an 'open mind' about its eventual form and content, the EU voiced pragmatic support for a non-utopian and realistically enforceable legal instrument 'containing general principles, mainly including equality and non-discrimination with respect to human rights'. Added to this, there was support for efforts to mainstream disability equality in existing human rights instruments, and further development of the UN Standard Rules. This commitment to a universal but pragmatic and legalistic approach closely mirrored European policy debates of the 1990s, while the theme of mainstreaming disability (prominent in the EU Disability Strategy) re-emphasised awareness of a 'segregationist tendency' in disability policy making.

The following year, the EU sponsored the General Assembly motion to establish a drafting group (in which delegates from Germany, Ireland, Sweden, and the European Disability Forum were amongst the 40 participants). The resulting text was discussed and amended at two sessions of the Committee in 2004, during which the EU was an active voice. Here, the EU (represented by Ireland) again expressed concerns with legal implementation. It also proposed specific reference to a number of issues, including poverty (particularly in developing countries), sexual orientation, sexual or physical abuse, institutionalisation, the rights of disabled women and children, etc. There was specific EU advocacy for the inclusion of non-governmental disability organisations in the debate (see Landmine Survivors Network 2004a/b). The text echoed the persistent EU themes of legally enforceable non-discrimination within a paradigm of universal citizenship (a pragmatic legalistic approach not necessarily shared by European representatives of disabled people, who preferred to emphasise the more distant goal of equality).

At a subsequent session in 2005 (represented by the Netherlands) the EU again argued that 'disability rights' should not be regarded as separate from universal human rights, noting that disability need not be legally defined in order to protect the rights of disabled people (although EDF expressed a different view). However, it was also clear that non-discrimination should be viewed as only one of the principles underlying an EU approach, along with equality of opportunity, autonomy, and participation/inclusion, placing a firm emphasis on the participation of disabled people's organisations (ibid.). Similar arguments were advanced by civil society representatives throughout the process to ensure that the final Convention text be brought 'into line' with EU policy and European Court judgements (see for example, Council of Europe Secretariat 2006).

There is not room here to review the entire process in detail but, as these examples suggest, the EU emerged as a proactive policy entrepreneur within the global policy process and its representatives echoed European debates of the preceding decade. As

a consequence, there was a significant insemination of European concepts and approaches in the drafting process – in particular, the emphasis on a comprehensive and legally enforceable instrument of international governance, linking disability discrimination with fundamental human rights. The opening for signature of the UN Convention on 30 March 2007 marked a watershed in the disability policy field (the fastest negotiated international human rights instrument with the largest number of first day signatures). It was also the first time that the EU had formally signed any UN human rights Convention. In a press release, Vladimír Špidla (Commissioner for Employment, Social Affairs and Equal Opportunities) expressed the view that:

It is a success for the EU as it reflects all the core elements of our disability strategy: anti-discrimination, equal opportunities and active inclusion. It also shows that Europe is at the forefront of strengthening rights for people with disabilities worldwide and is an important achievement in the European Year of Equal Opportunities for All.

To understand the significance for disability policy making in the EU it is necessary to return to the theoretical principles outlined at the beginning of this paper.

Conclusions

The analysis presented in this paper suggests that the opportunity structure of European Union fostered an agenda for disability policy that is characteristically ‘European’, but with considerable divergence and ambiguities at the national level – ambiguities that have been compounded by rapid EU enlargement since 2004. Drivers towards harmonisation amongst member states include: the European single market; the rise of a European legal rights model; international disability advocacy networks, and the emergence of new techniques of global governance (including the UN Rules and the Convention). Drivers for policy divergence between member states include: subsidiarity in many areas of disability policy making, differences in national political economies and welfare regimes, and the uneven development of self-advocacy networks of disabled people in different countries.

The shift towards a rights-based approach during the 1990s can be interpreted in two ways: as a characteristically ‘European’ response to internal citizenship and non-discrimination claims or as a response to external international developments (such as the Americans with Disabilities Act or the 1993 UN Rules). Disabled people’s claims to legal recognition played heavily on the kinds of legal status and protection that defined emerging concepts of European citizenship, yet developments beyond Europe were also significant in framing this policy discourse.

Expanding European competence to include non-discrimination on disability in the late 1990s provided new opportunities for legal enforcement. However, this was exploited only in a limited range of policy areas, and primarily in the area of employment. Policy development mirrored other European policy processes in this period, yet lagged considerably behind responses to gender and racism. Whilst the scope of the 2006 Action Plan on disability is far-reaching, its implementation also relies on soft co-ordination mechanisms. In the absence of a revised constitution, EU competence to legislate more decisively on disability equality remains contingent on unanimous agreement of an enlarged community of member states. Thus, long-standing claims for a more Comprehensive Disability Directive appear an optimistic ambition. However, ratification of a comprehensive UN Convention in 2007 (pending

at the time of writing) may be seen by many as a means to deliver both legal enforcement and comprehensive coverage on disability equality.

It is tempting to conclude that the historical development of disability policy within the EU provides evidence of an archetypal 'European' project, demonstrating the increasing influence of unification over national autonomy. However, when we look more carefully the picture is complex. On the one hand, the EU creates opportunity structures through which European disability advocates, in global activist networks, have been able to influence global policy agendas. On the other, opportunity structures provided by the UN have enabled advocates of disability rights to advance a Europeanisation project by other means. In Bhabha's (1999) terms, it is indeed 'the interface between globalization and human rights' that appears to have shaped this project.

Note

The research on which this paper is based was initiated for a plenary paper presented to the European Commission DG Enlargement conference, 'Working Capital: transforming disability into ability' (Prague, 25-27 March 2004) and for a subsequent book chapter (Priestley 2005).

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