

# Content of the Convention on the rights of persons with disabilities

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Convention on the Rights of Persons with Disabilities = The Convention

# 1. The structure of the Convention

- **Preamble**
- **General articles:**
  - **Art 1** Purpose
  - **Art 2** Definitions
  - **Art 3** General principles
  - **Art 4** General obligations
  - **Art 5** Equality and non-discrimination
- **Particular attention to some groups or situations:**
  - **Art 6** Women with disabilities
  - **Art 7** Children with disabilities
  - **Art 11** Situations of risk and humanitarian emergencies

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The Convention is a single unit and is not separated into chapters. The articles were classified here to make clear the structure of the Convention.

•Convention begins by giving important definitions :

Art 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”

The definition of persons with disabilities is based on a systemic approach. Disability is the consequence of an interaction between personal factors (impairments) and environmental factors (attitudinal and environmental barriers) that the society shall remove. One of the objectives of the Convention is to remove these barriers.

Moreover a very important mean to remove these barriers is to fight against discrimination and therefore the article which prohibits the discrimination on the basis of disability is one of the very first articles.

•The ad hoc committee was very sensitive to the double discrimination or to the particular vulnerability which strike women and children with disabilities. Therefore their situation is considered early and in a specific article (and their situation is also approached in other articles). The ad hoc committee has noticed that persons with disabilities were the first victims of war and natural disasters and therefore the article 11 is specific to these situations.

- provisions specific to the Convention :
  - **Art 8** Awareness-raising
  - **Art 9** Accessibility
- Civil and political rights :
  - **Art 10** Right to life
  - **Art 12** Equal recognition before the law
  - **Art 13** Access to justice
  - **Art 14** Liberty and security of person
  - **Art 15** Freedom from torture or cruel, inhuman or degrading treatment or punishment
  - **Art 16** Freedom from exploitation, violence and abuse

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•The provisions specific to the Convention do not give new rights to persons with disabilities but they are **preconditions** to their integration in the society. The awareness-raising (art 8) of the society to the situation of persons with disabilities is the way to remove **attitudinal barriers** which prevent the society from evolving and the accessibility (art 9) of persons with disabilities to the physical environment and to information is the way to remove **environmental barriers**.

•The Convention approaches all civil and political rights already guaranteed by other texts. The originality is that the enumeration of the civil and political rights starts only in article 10.

- **Art 17** Protecting the integrity of the person
- **Art 18** Liberty of movement and nationality
- **Art 21** Freedom of expression and opinion, and access to information
- **Art 22** Respect for privacy
- **Art 23** Respect for home and the family
- **Art 29** Participation in political and public life
- **Economic, social and cultural rights**
  - **Art 19** Living independently and being included in the community
  - **Art 20** Personal mobility
  - **Art 24** Education
  - **Art 25** Health

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•The Convention approaches all human rights (civil and political rights and economic, social and cultural rights). These rights are merged in the Convention because all human rights are indivisible, interdependent and interrelated (see teaching module 2).

- **Art 26** Habilitation and rehabilitation
- **Art 27** Work and employment
- **Art 28** Adequate standard of living and social protection
- **Art 30** Participation in cultural life, recreation, leisure and sport
- **Implementation**
  - **Art 31** Statistics and data collection
  - **Art 32** International cooperation
  - **Art 37** Cooperation between States Parties and the Committee
  - **Art 38** Relationship of the Committee with other bodies
  - **Art 40** Conference of States Parties

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•In order to recognize effectively all human rights, the Convention envisages means of international cooperation between the States, the international organizations and the civil society. (see teaching module 7)

- **Monitoring**
  - **Art 33** National implementation and monitoring
  - **Art 34** Committee on the rights of persons with disabilities
  - **Art 35** Reports by States Parties
  - **Art 36** Consideration of reports
  - **Art 39** Report of the Committee
- **Finale terms**
  - **Art 41** Depositary
  - **Art 42** Signature
  - **Art 43** Consent to be bound
  - **Art 44** Regional integration organizations
  - **Art 45** Entry into force
  - **Art 46** Reservations
  - **Art 47** Amendments
  - **Art 48** Denunciation
  - **Art 49** Accessible format
  - **Art 50** Authentic texts

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•To make sure that the States respect their obligations, the Convention sets up a monitoring committee made up eventually of 18 experts. It is in charge of checking periodic reports submitted periodically by the States. (see teaching module 7)

## 2. Preliminary information

- The Convention does not create new rights

The goal is to allow persons with disabilities to enjoy the same rights as others



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The Convention doesn't aim to create new rights to persons with disabilities but to enable them to fully enjoy the same rights than everybody on the basis of equal opportunities.

Article 1: "The purpose of the present Convention is to promote, protect and ensure the **full and equal enjoyment of all human rights** and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".

The expression "on an equal basis with others" (equality in law) is used in almost all articles of the Convention: art 10 (right to life), 12 (equal recognition before the law), 13 (access to justice), 22 (respect for privacy)...

➤ Definition of disability

- Physical, mental, intellectual or sensory impairment (long-term)
- Interaction with various barriers
- Hinder the participation in society

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•The Convention uses in broad outline the definition of disability of the Standards Rules for equalization of opportunities.

•The Convention acknowledges that disability is an evolving concept and that a definition is difficult to find (no consensus between the States thus the definition of disability is in the preamble). However, the Convention recognizes that disability results from an interaction between persons with impairments and attitudinal and environmental barriers.

Preamble: “*Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

Art 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

•Definition of disability:

- The impairment may be physical, mental, intellectual or sensory
- The impairment must be long-term
- The person with disabilities meet barriers which may be attitudinal or environmental
- The interaction between the impairment and the barriers may hinder a full and effective participation in society.

### 3. General principles

- The Convention depends on a vision of an inclusive society in which everyone has the same rights and opportunities.

This vision is illustrated through 8 general principles (art 3):

- Dignity, autonomy, freedom to make one's choices, independence
- Non-discrimination
- Participation and inclusion in society
- Respect for difference
- Equality of opportunity
- Accessibility
- Equality between men and women
- Respect for the evolving of children with disabilities

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## ▪ Dignity

Each human beings is of inestimable value  
and nobody is insignificant



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See “Human rights and disability” Quinn and Degener p11

The concept of dignity is in the basis of Human rights. The human rights are one means of succeeding in the recognition of the dignity of all human beings, independently of their economic power, their physical capacities or their physical appearance. Persons with disabilities are not objects of charity but subjects of law.

The concept of dignity is **omnipresent in the Convention**. For example, in articles 10 (right to life) and 23 (respect for home and the family). The Convention doesn't state precisely when the right to life begins (in the event of abortion due to impairment diagnosed or supposed during the pregnancy). Depending to each State, the right to life begins with the conception, with the birth, or in a date defined between both as for example when the embryo becomes fetus.

▪ Autonomy and freedom to make choices

Assure persons with disabilities the possibility to be autonomous and to be free to make choices in their private and family life.



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See "Human rights and disability" Quinn and Degener p13

The Convention ensures to person with disabilities the freedom to choose:

- The place of residence (art19), in order to not be compelled to live in an institution
- medical treatment (art 25)
- Right to have a family life (art 23)
- Right to have personal mobility aids (art 20)

▪ Non-discrimination

Prohibition of:

- any distinction, exclusion or restriction,
- on the basis of disability,
- which have the purpose or effect of impairing access to the human rights.

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**Article 2:** ““Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”

**Article 5, paragraph 1:** “States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law”

**Article 5, paragraph 2:** “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”

## ▪ Non-discrimination

- Encompasses all forms of discrimination, including denial of reasonable accommodation.

- Encompasses double discrimination (sex, ethnic origins...)



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• We can differentiate between 2 fundamental types of discrimination:

**Direct discrimination**: Treating a person less favourably than another in a similar situation (ex: refusal to hire someone because of a disability).

**Indirect discrimination**: Where a « neutral » criteria creates a particular disadvantage for persons with disabilities (ex : a staircase designed for everybody excludes people in wheelchairs). The fact of refusing a reasonable accommodation can also constitute indirect discrimination.

**General Comment n°5 on disabled people of the Committee on Economic, Social and Cultural Rights, para. 15** : For the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.

• Article 6 on women with disabilities recognizes that they are subject to multiple discriminations and that States shall take measures to fight against these discriminations.

## ▪ Equality of opportunities

Enable persons with disabilities to access, on an equal basis with others, to services, information and activities



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Beyond the respect of equality before the law, the Convention aims to respect the equality of opportunities, i.e. an equality in fact, in particular through articles 24 (education - > persons with disabilities receive the support required, within the general education system, to facilitate their effective education), 27 (right to work - > including by using affirmative actions)...

In the field of education, the State shall ensure persons with disabilities education opportunities within the general education system which should be a system for everybody.

Equality of opportunities aims to insure all individuals an equal chance to access an opportunity, and takes into consideration that different persons do not all have the same starting point.

The notion of equalization of opportunities became a very important since the adoption of the Standards rules.

## ➤ Affirmative actions

- Measures of preferential promotion of a usually disadvantaged category of persons.
- Aiming at equalisation of opportunities
- Temporary measures

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The implementation of non-discrimination and of equality of opportunities requires affirmative actions (temporally preferential measures for a category of persons) and reasonable accommodations (material measures specific to a situation).

The goal of affirmative actions is to take concrete actions in order to increase the representation of persons with disabilities in the fields where they are traditionally excluded (work, education..) and in a temporary manner.

When these affirmative actions include quotas or a preferential selection, they often generate controversies. Some people may find contestable the fact of privileging the hiring of a person with disabilities for a job, in comparison to other candidates with equal qualifications. It is however one of the means of fighting against discrimination of persons with disabilities in hiring, which is a harsh reality.

Affirmative actions cannot be considered as discrimination (art 5), since even if preferential treatment seems contrary to the formal notion of equality, it is recognised in substance that individuals in different situations ought to be treated differently.

For more information about affirmative actions, see the *“Background conference document prepared by the Office of the United Nations High Commissioner for Human Rights on the concept of « special » measures in international human rights law”*

## ➤ Reasonable accommodation measures

Material measures aiming to equalization of opportunities



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Art 2: ““Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”

The accommodation has to be:

Individual: adapted to the precise and personal needs of the person.

Reasonable: which does not imply a disproportionate investment in comparison to the goal to achieve, but sufficient to attain the goal.

Example: provide a keyboard in Braille to a blind person ; provide an interpreter in sign language during a job interview ; give extra time to do the same work...

Reasonable accommodation is used in the context of the fight against discrimination. When a person with disabilities is disadvantaged in her social participation because of her disability, an equal treatment will become discrimination if it can be established that there is a way of reasonably accommodating the difference and it has not been used.

Reasonable accommodation measures are necessary to fight against the discrimination which undergoes persons with disabilities since the indirect discrimination supposes only inaction contrary to direct discrimination. To fight against inaction, it is necessary to compel action, to compel a reasonable accommodation.

### ▪ Full participation and inclusion

Persons with disabilities are integrated in all aspects of the public life, they are viewed as equal citizens.



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•For the projects and policies to benefit effectively to everybody, the State should encourage the participation of people with disabilities and disabled persons organizations in the decision-making processes.

Participation of persons with disabilities has to be considered from two angles:

Expertise: persons with disabilities are the only “experts” of the disability situation, in terms of needs, barriers, policies, discrimination, etc. It is unbelievable to not consult them before designing anything that concerns them.

Participation as concerned persons: as any person concerned by a plan (town planning, drainage work...) persons with disabilities should not be forgotten and must have the opportunity to make their voices heard and to participate in the process. It is not because a project does not concern them directly as disabled people that it does not concern them as person and citizen.

The participation of persons with disabilities and of their representative organizations in decision-making processes is important, in particular, in articles 4 (general obligations of States), 8 (awareness-raising), 29 (participation in political and public life), 31 (statistics and data collection)...

•The means to implement in order to ensure the participation of persons with disabilities are notably:

- Art 29 (participation in political and public life): ensuring that voting procedures, facilities and materials are accessible ; allowing assistance in voting by a person of their own choice...

- Art 30 (participation in cultural life, recreation, leisure and sport): cultural materials must be disseminated in accessible formats ; the places for cultural performances must be accessible ; persons with disabilities must have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their benefit, but also for the enrichment of society ; laws protecting intellectual property rights mustn't constitute unreasonable barriers to access by persons with disabilities to cultural materials ; recognition and support of the deaf culture...

About inclusion, see the slide on “mainstreaming” and in the teaching module 7, the slide on “inclusive development”.

▪ Accessibility

The States must fight against barriers to participation of persons with disabilities in:

- The physical environment
- The information and communication



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•Physical environment: the elimination of barriers concerns all facilities and services indoor or outdoor open or provided to the public (private or public entities), both in urban and in rural areas.

The States shall promote universal design products: art 2 ““Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”

Example: elaborate national minimum accessibility norms

•Information and communication: allow access to information and enjoyment of freedom of expression notably thanks to new technologies.

Example: providing information in braille, providing information in “easy to read and understand” forms, providing professional sign language interpreters...

Access to information is fundamental but is too often neglected compared to the physical access.

Accessibility has a wide spectrum: it benefits not only to disabled people, but also to people with reduced mobility (such as pregnant women, the elderly...), which can amount to roughly 40% of the population.

Art 9: “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

## ▪ Respect for difference

Raising awareness throughout society in order to fight against stereotypes, prejudices and nurture receptiveness and promote positive perceptions towards persons with disabilities.



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The main means to raise awareness (art 8) are:

- The education system
- Medias
- Awareness-raising programmes

Awareness-raising and accessibility are main way to fight against discrimination against persons with disabilities. Whereas accessibility fights against environmental barriers, awareness-raising aims at eliminating attitudinal barriers.

The media as well as the education system are identified as most important sectors to mobilize to fight against the attitudinal barriers.

## ▪ Equality between men and women

- States parties must fight against all forms of discrimination against women and girls by taking appropriate measures.

- The States shall take into consideration the equality men/women in the implementation of all human rights.



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The Convention considers, in a specific article, the particular situation of women with disabilities.

In the article 6 (women with disabilities), it is recalled that to fight against discrimination in general it is necessary to fight against the multiple discriminations to which women are subjected.

In general, a particular attention must be given to the respect of the equality between men and women in the implementation of all rights of the Convention.

Art 28 (Adequate standard of living and social protection): States shall take measures “to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes”

▪ The evolving capacities of children with disabilities

As for women with disabilities, the Convention considers the particular situation of children with disabilities.



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The children with disabilities situation is approached notably in the preamble, in article 3 (general principles), 7 (children with disabilities), 24 (education).

▪ The evolving capacities of children with disabilities

- The Convention recalls the obligations undertaken by States parties to the Convention on the rights of the child.
- The Convention recalls that the best interests of the child shall be a primary consideration in all actions concerning children.

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In the preamble of the Convention, the States agree to an undertaking under the terms of the International Convention on the rights of the child (and under all other international conventions on human rights). It is a manner of saying that the implementation of all rights stated in the convention on the rights of the child will have to consider the disability issue.

## 4. Other cross-subjects

➤ The mainstreaming :

Consider the disability issue in all development actions and at all stages (planning, implementation, monitoring, evaluation...)

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•Mainstreaming is the taking into consideration of the needs of persons with disabilities, at all stages (conception, planning, implementation, monitoring) and in a transversal way, in the decision-making processes concerning the entire population.

•Examples: taking into consideration of the disability issue during the planning of a general policy of health, education, housing...

Art 4 (general obligation): “To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes”

The mainstreaming requires the promotion of the universal design and accessibility.

Art 4: “To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines”

Art 9 (accessibility): “Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost”

➤ The community based support:

The appropriate services and resources have to be available at the community level, including in rural areas, in the fields of education, health, rehabilitation...

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•We can find the notion of community based support in many articles of the Convention, like those regarding education (article 24), health (article 25) and rehabilitation (article 26).

Community based support is also illustrated particularly in article 19 concerning independent living and inclusion in the community. The local support is essential in order to allow persons with disabilities to enjoy their right to live like anyone else in the place of residence of their choice.

➤ The progressive realization:

On the economic, social and cultural rights, States can invoke limited resources to justify not complying with immediate implementation of these rights.

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Art 4 (general obligations): “With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law ”

- The States are not compelled to grant immediately the full enjoyment of economic, social and cultural rights if they do not have enough resources. However the committee on economic, social and cultural rights already has decided that some obligations require an immediate realization. In particular the obligation to ensure the enjoyment of the rights without discrimination and the obligation to take steps (to act) to the maximum of the State's available resources. These immediate obligations avoid the States refuse to implement a Convention which they ratified under the pretext of a lack of resources. (see general comment n°3 committee on economic, social and cultural rights).

- General comment n°3 paragraph 10: “On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”

## 5. Some important notions

- The right to recognition everywhere as persons before the law
- The Convention reaffirms that all persons are subjects of law (everybody has the same rights).
- In principle persons with disabilities fully enjoy their rights (legal capacity).
  - The States shall provide access by persons with disabilities to the support they may require in exercising their rights
  - Some exceptions to the full legal capacity are permitted in strict conditions.

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• It is generally acknowledged that the right to recognition as a person before the law is the ability to have rights (as human being and as member of society) and that the legal capacity is the ability to exercise these rights (to use these rights, to assert them before a court). It is possible to have rights without having the ability to use them. Indeed the legal capacity is sometimes limited by a guardianship system.

The guardianship system is a complex subject, because it differs from country to country. Article 12 on the equal recognition before the law was much-discussed during the drafting process of the Convention.

Some States use this concept of legal capacity to remove any right to recognition before the law to political opponents and to convict them to a civil death. Other types of abuse on the vulnerable persons are possible and do exist.

• The Convention recognizes the rights to equal recognition before the law to everybody without exception. It is the basis of all human rights: everybody has the right because he is a human being.

• The Convention recognizes that everybody enjoys his legal capacity. Moreover the States must provide persons with disabilities the support they may require in exercising their legal capacity. However, the Convention accepts that States adopt measures in relation with “the exercise of legal capacity” in accordance with some conditions.

To ensure the respect of human rights of everybody, these measures in relation with “the exercise of legal capacity” should always aim to support the person in the exercise of her rights and not to replace her to make important decisions.

These measures relating to “the exercise of legal capacity” shall be proportional and tailored to the circumstances, shall apply for the shortest time possible... (art 12)

For more information on legal capacity, see *Background conference document prepared by the Office of the United Nations High Commissioner for Human Rights on Legal Capacity*.

➤ Situations of risk and humanitarian emergencies

- States shall ensure the protection and safety of persons with disabilities in situations of armed conflict, humanitarian emergencies, the occurrence of natural disasters, and other situations which make them more vulnerable.



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Considering the devastation caused by the tsunami in Asia on December 2004 (the 5th ad hoc Committee held meeting in January 2005) as well as the Katrina hurricane in the United States or the earthquake in Pakistan, it is important to note the gaps, mismanagements and failures in the evacuation and rescuing of disabled persons. This topic is therefore important for the convention.

The experience shows that the situation of persons with disabilities in situations of risk (natural disaster, armed conflicts...) is particularly difficult and neglected, whether it is in disaster-preparedness, during the catastrophes, or in an emergency and post-emergency context where intervention is needed to manage the consequences of the risk involved.

This article demands the States to respect their international undertaking, in particular as regards international humanitarian law, for everybody including persons with disabilities. A difference shall be done to equalize the opportunities.

This obligation is for all States: States were the disaster arise and States within the framework of the international cooperation. (The undertaking is for all signatory states including European Union which is an important provider of funds ).