



## Interview with Gerard Quinn

### Special Rapporteur on the Rights of Persons with Disabilities\*

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***1. By way of introduction, could you briefly explain your role and responsibilities as the UN Special Rapporteur on the Rights of Persons with Disabilities? When and why was the mandate established, and how have you approached its implementation?***

The Special Rapporteur position was created in the 1990s. I think the timing was significant, as it coincided with the enactment of the American Disabilities Act (ADA), which had a huge ripple effect around the world. It also coincided with a special resolution of the United Nations (UN) General Assembly on equal opportunities for persons with disabilities, which was a non-binding resolution. The Special Rapporteur position was set up around that time to answer to the Commission for Social Development, and the first mandate holder was Swedish: Mr Bengt Lindqvist.<sup>1</sup> The fact that the Special Rapporteur was answerable to the Commission for Social Development somehow tells a lot, as it means it was not really anchored on the human rights side of the house, which only came later once the UN Convention on the Rights of Persons with Disabilities (CRPD)<sup>2</sup> was adopted in 2006. As such, the Special Rapporteur position switched from the Commission for Social Development to the Human Rights Council. The first person appointed to the new mandate started in 2014, Mrs Catalina Devandas Aguilar<sup>3</sup> (2014–2020). I am the second person appointed and I started in 2020, regrettably when COVID began.

The tasks of a special rapporteur are basically threefold.

First, we shine a light on contemporary topics and trigger a debate among States primarily. So, twice a year, we issue thematic reports designed to open debates and conversations at the international level.

Second, we shine a light on country situations. We are required to do at least two “country visits” a year. Conflict and post-conflict situations figure prominently in my country visits. We compile reports which are routinely referred to by treaty bodies and others.

- 1 For more information, see UN Department of Economic and Social Affairs, “Special Rapporteur 1994–2002: Bengt Lindqvist”, available at: [www.un.org/development/desa/disabilities/about-us/history-of-disability-and-the-united-nations/special-rapporteur-1994-2002-bengt-lindqvist.html](http://www.un.org/development/desa/disabilities/about-us/history-of-disability-and-the-united-nations/special-rapporteur-1994-2002-bengt-lindqvist.html) (all internet references were accessed in September 2022).
- 2 UN Convention on the Rights of People with Disabilities, Resolution A/RES/61/106, 13 December 2006 (entered into force 3 May 2008), available at: [www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities).
- 3 For more information, see Office of the High Commissioner for Human Rights, “Catalina Devandas Aguilar, Former Special Rapporteur (2014–2020): Special Rapporteur on the Rights of Persons with Disabilities”, available at: [www.ohchr.org/en/special-procedures/sr-disability/catalina-devandas-aguilar-former-special-rapporteur-2014-2020](http://www.ohchr.org/en/special-procedures/sr-disability/catalina-devandas-aguilar-former-special-rapporteur-2014-2020).

Third, and less publicly, we engage in “communications” with governments. In other words, we engage with complaints from individuals and groups and try to mediate with governments confidentially.

There is no set menu of what a special rapporteur should do. You put forward your vision of the mandate to an interview panel. My pitch was that I wanted to do three kinds of things. First, I wanted to try to lift disability from (perceived) silos and connect it up to broader challenges facing humanity – and armed conflict was one of those challenges. Second, I wanted to do much more intersectional work. I am particularly interested in the overlap between the rights of older people and the rights of people with disabilities. You may have noticed I combined forces recently with the UN Special Expert on the rights of older people. We organized an expert seminar in Berlin focusing on war as the “raw edge of intersectionality”. We examined the protection of older people as well as people with disabilities during conflicts, especially regarding the conflict in Ukraine. Third, I decided to focus on issues and rights that had long been neglected, such as the right to culture, refugees with disabilities, indigenous persons and disability. In keeping with our work on conflicts, I also said I would do important thematic work on peacebuilding and disability and on the underappreciated role of persons with disabilities in that crucial process. I would also like to place a spotlight on the role of regional organizations around the world, which is an undertapped resource in advancing the goals of the CRPD.

***2. The CRPD and the mandate you hold have both led to meaningful advances in the protection of the rights of persons with disabilities – including during armed conflict. How have things changed for those rights, and the respect of those rights, since 2006 and since 2014?***

Going back to the ADA of 1990, the message was very simple: people with disabilities count as persons. That message was a profound cultural shift away from treating them as objects to treating them instead as human subjects in their own right. The CRPD projects that simple idea onto the international stage. Also, it adds other things that were absent in the ADA of 1990, including a more developed social programme of change. This is a very profound cultural shift.

The CRPD is almost counterintuitive to how most countries have developed their legislation and policy for decades, if not a century. It upturns many domains of law and policy, where treating people with disabilities as objects had become ingrained. It has had a profound ripple effect across many domains such as education, employment, etc. Working through the implications of this cultural shift is a very necessary task for law reform. I have often called the CRPD one of the biggest law reform projects on the planet.

One field touched by the CRPD is international humanitarian law (IHL). Some fifteen years on from its adoption, the treaty has had a massive, and uneven, effect. There are outlying areas it has yet to reach. IHL is the latest field beginning to be touched by the CRPD.

**3. Part of your legacy as Special Rapporteur has been the development of a three-report series on armed conflicts and disability. Each of those reports takes on a distinct slice of the broader theme. How and why did you choose to focus on armed conflicts and disability? How did you decide to break that topic down into three sections – and what will the third report focus on?**

Three years ago, when I was contemplating going forward for the position, I was shocked by the statistic of how many hot conflicts were taking place around the world. Therefore, I resolved that one of the big challenges facing humanity in which I wanted to situate the disability debate would be the phenomenon of armed conflict, and it is an example of an outlying field that has followed its own logic for many, many years.

One of my “bibles” that frequently guides me is a famous report by the International Law Commission from 2006/2007,<sup>4</sup> seeking to reduce fragmentation of international law and seeking greater coherence across treaty regimes. This does not mean viewing one treaty regime as superior to another. Nor does it mean making one regime dependent on another. However, it does involve an intentional search for bridges that connect treaty regimes so that the combined effect advances mutual goals.

I felt that one thematic report on the topic was not enough. The first report<sup>5</sup> just unzipped the continuum between peace and conflict and asked how visible people with disabilities were at most points along that continuum. The unsurprising conclusion was that persons with disabilities were relatively invisible along most points in the continuum.

The second and latest report,<sup>6</sup> to be debated by the UN General Assembly in October 2022, looks much more closely at the conjunction between IHL and the UN CRPD and how we might achieve better coherence between the two different legal regimes.

The third report (due in 2023) focuses on the active moral agency of persons with disabilities in helping build peace amid the ruins of post-conflict divided societies. I am passionate about this, especially given my home country (which is Ireland) and the role of persons with disabilities in the peace process in Northern Ireland. Whenever I mention that to other groups of people with disabilities around the world, they instinctively get it and I have the intuition that there is considerable untapped potential in the role of people with disabilities in building a more inclusive society and mending broken societies after conflicts.

4 Study Group of the International Law Commission, “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”, 13 April 2006, available at: [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_l682.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf).

5 Office of the High Commissioner for Human Rights, “A/76/146: Report on the Rights of Persons with Disabilities in the Context of Armed Conflict”, 19 July 2021, available at: [www.ohchr.org/en/documents/thematic-reports/a76146-report-rights-persons-disabilities-context-armed-conflict](http://www.ohchr.org/en/documents/thematic-reports/a76146-report-rights-persons-disabilities-context-armed-conflict).

6 Office of the High Commissioner for Human Rights, “A/77/203: Report on the Protection of the Rights of Persons with Disabilities in the Context of Military Operations”, 2 September 2022, available at: [www.ohchr.org/en/documents/thematic-reports/a77203-report-protection-rights-persons-disabilities-context-military](http://www.ohchr.org/en/documents/thematic-reports/a77203-report-protection-rights-persons-disabilities-context-military).

**4. Your latest report as Special Rapporteur grows out of a series of extensive, multisectoral, cross-regional consultations, some of which innovatively brought together militaries and organizations of persons with disabilities. Why did you take that approach, and why was that methodology so important in the context of the rights of persons with disabilities, in particular?**

First, you must step back and realize that persons with disabilities are explicitly covered by the Fourth Geneva Convention.<sup>7</sup> However, they have received very little attention compared to other groups.

Our aim is not to impose new legal obligations. They are already there in the text of the treaty. Our goal is to open up a conversation about what those obligations mean in the specific context of persons with disabilities. Through this conversation, our hope was to put flesh on the core thesis of the relative invisibility of persons with disabilities in IHL.

All treaties need to be constantly refreshed by looking at how they pan out in the context of real-life situations. That was not possible without a conversation between military authorities and civil society – a conversation that arguably should have happened decades ago but is welcome to happen now. In a way, the deep logic of Article 11<sup>8</sup> of the CRPD calls for this.

I think the experiment succeeded in helping us understand how the norms can be better actualized. It gave both sides increased confidence and competence in talking to each other. That is the best way to make treaties have relevance, especially in the context of conflicts.

**5. In your latest report, you tackle head-on the co-application of IHL, on one hand, and human rights law, on the other hand, as applied to persons with disabilities during armed conflict. You refer to those fields of law as “complementary, mutually strengthening and reinforcing, and highly pertinent to the protection of persons with disabilities during military operations and their immediate aftermath”. What about those fields of law – and about the rights and needs of persons with disabilities – makes IHL and the CRPD mutually reinforcing and co-applicable?**

This goes to the heart of the matter and it is a great question. Herein lies the real “added value” of our second report.<sup>9</sup>

Obviously, the protective norms of IHL have clear resonance for persons with disabilities: I refer to the usual norms, the distinction between military and

7 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), available at: [www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33\\_GC-IV-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf).

8 For Article 11 of the CRPD, see UN Department of Economic and Social Affairs, “Article 11 – Situations of Risk and Humanitarian Emergencies”, available at: [www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-11-situations-of-risk-and-humanitarian-emergencies.html](http://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-11-situations-of-risk-and-humanitarian-emergencies.html).

9 Office of the High Commissioner for Human Rights, above note 6.

civilian objects, the requirement to carry out all feasible precautions, the obligation to preserve essential civilian infrastructure, etc.

On one level, Article 11 of the UN CRPD adds nothing to this mix. It just reaffirms the application of IHL to persons with disabilities during armed conflict.

I think, and we propound this thesis in the second thematic report on armed conflicts, that the CRPD adds three new dimensions which serve to refresh IHL in this context.

First, the CRPD's conception of disability is a million miles away from the medical model of IHL implanted in the Fourth Geneva Convention in 1949. The concept of disability in IHL always had sufficient latitude to evolve – and it should. A better-rounded conception of disability opens our eyes to the accumulated disadvantages of persons with disabilities. This is a big advance on the traditional medical model.

Second, the core message of the CRPD is not static protection. On the contrary, it is a very active conception of personhood, agency and autonomy. The object of protection is thus no longer an object, but a person in the round.

Third, protection extends beyond bodily protection. It encompasses the full expanse of rights under the CRPD. Elements of the right to education, family integration, food, minimum standard of living, etc., may be relevant in the context of conflicts. It pries open the military mind to a broader constellation of factors.

These three points pry open the lens of the traditional focus of IHL. So, the practical question becomes how to translate these into IHL norms and practices.

***6. How, then, does the CRPD's human rights approach to disability inform the framing of disability in IHL? What is the practical effect of that reframing – both for those who wage war and for civilians living through it?***

First, let us look at those involved in the conflict directly. Returning to the original thesis of (in)visibility, it can be somewhat counterintuitive, since persons with disabilities are explicitly embraced by IHL. However, it is all about revealing the person behind the mask of disability and then working through how you handle that in practice.

In practice, this leads to an operational assumption that 15% of civilians in any theatre of operations will have a disability. Assume that they will be present and modulate your plans accordingly. As such, it is important to anticipate and look ahead. The best way to do that is to develop close relationships with civil society and to talk through the (in)visibility of different groups of persons with disabilities in different theatres of operations.

For civilians, the implications are that we need to develop a better capacity to interact with the military. I think there needs to be more assertions of rights, especially when it comes to military doctrine and operations. Ensure accurate information is provided to enable successful evacuations and warnings. Of course, if that information is not available, that does not excuse the military from failing to take the care to adjust their plans. It also means being aware of what kinds of

evidence and proof are needed to, later, substantiate claims of violations of IHL. This means becoming increasingly knowledgeable about war crimes and what counts as proof.

**7. Your first report on armed conflict and disability,<sup>10</sup> which was published in July 2021, focused heavily on the visibility of persons with disabilities along the conflict–peace continuum. Why is visibility such a core question for persons with disabilities? How does the visibility of persons with disabilities affect the application of IHL obligations? And, with visibility in mind, what are the invisible or less-visible harms that persons with disabilities face during armed conflict?**

The “invisibility thesis” really is core. One might characterize the CRPD itself as a visibility project, reminding people of the innate personhood and rights of persons with disabilities, regardless of the disability.

I understand how historically peace and security, human rights and development have been sealed off in the UN system from each other. But (in) visibility cuts across all three domains. To be countered in one, it must be countered in all three.

Disability was always emblazoned on the Fourth Geneva Convention (via the so-called “sick and infirmed”). So, the question is: why was the application of the Geneva Convention system to persons with disabilities neglected compared to other groups? This is not a criticism of other groups, but it shows that merely being in the text does not guarantee visibility. The prodding of the CRPD is what gets at visibility.

There are some real-life impacts of this invisibility: the trauma of certain kinds of ordnance on people with psychosocial disabilities is often in orders of magnitude greater than on other people in the community. This kind of information is not usually understood by people who formulate military doctrine. It is about coming to terms with the life cycles and circumstances of persons with disabilities. That is why I call this a visibility project.

As for what the CRPD’s personhood-based perspective means and implies for IHL and the conduct of hostilities, it is a new dimension and it generates added value, which is very important.

One byproduct of the old medical model of disability, as etched into the Fourth Geneva Convention, was a tendency to make judgments for or about the best interests of persons with disabilities in battle, if at all. No real care was taken to find out the life circumstances of persons with disabilities. If you do not know about their life situations, how are you going to responsibly conduct yourself in that situation?

We must make operational assumptions that civilians with disabilities will be there. And then do not make assumptions about their lives. Instead, find out about their lives, engage with, converse, and plan with them. Seek to mitigate the

10 Office of the High Commissioner for Human Rights, above note 5.



effects of your actions. It is all about being more aware, more intentional, and more connected.

**8. Last December, you released a report on artificial intelligence (AI) and disability.<sup>11</sup> That is a burgeoning issue in IHL and armed conflict, as well, given the increasing incorporation of AI into the tools of war – and States’ ongoing negotiations on regulating autonomy in weapons systems. In your view, what promise and what dangers does AI pose for persons with disabilities in general, and in the context of armed conflict in particular?**

AI is one of those grand challenges facing humanity to which I resolved to connect the disability debate when I started the mandate. It is causing a fourth industrial revolution that is resetting the terms of human co-existence, whether it is in the social sphere, the economic sphere, or indeed other spheres. We must keep on top of it to harness its benefits and avoid known discriminatory impacts.

Our report was meant to set the stage for a bigger debate about the balance of risks and opportunities. In doing that, we called attention to algorithms that simply mimic ableist assumptions and therefore replicate disability discrimination – what is generally known as “algorithmic bias”. Meanwhile, as a civilian, you do not even know that these decisions are being made and therefore cannot possibly have a remedy. We called on business developers of AI to adopt a human rights and business approach – and one of the primary principles of the business and human rights approach is a deep dialogue with those who are going to be potentially affected by new technology. We call for much greater conversations and collaboration between business and civil society. In the report, we did not do a deep dive into autonomous weapons systems. However, the general issues that plague AI also carry over into this domain. Perhaps there are other issues, as well.<sup>12</sup>

There is an additional side of this question, beyond the questions of algorithmic bias and ableism: I find intriguing the interface between mind and machine, and whether, at some point in time, the machines become analogous to persons and therefore liable for the action and the injury they cause. That turns on very fascinating questions of personhood as it applies to the future. I actually taught a whole course on this in India (NALSAR).

The area of thinking machines is one that requires much deeper study and research. However, I must concede that we did not do a deep dive into AI, weaponry and IHL in our second report.

11 Office of the High Commissioner for Human Rights, “A/HRC/49/52: Artificial Intelligence and the Rights of Persons with Disabilities – Report of the Special Rapporteur on the Rights of Persons with Disabilities”, 28 December 2021, available at: [www.ohchr.org/en/documents/thematic-reports/ahrc4952-artificial-intelligence-and-rights-persons-disabilities-report](http://www.ohchr.org/en/documents/thematic-reports/ahrc4952-artificial-intelligence-and-rights-persons-disabilities-report).

12 See Mariana Díaz Figueroa, Anderson Henao Orozco, Jesús Martínez and Wanda Muñoz, “The Risks of Autonomous Weapons: A Disability Rights Perspective”, in this issue of the *International Review of the Red Cross*, 2023.



**9. Across all of these topics, your work – and broader work to make international obligations cohere with one another – grows out of many sources, including the CRPD, IHL, the UN Security Council, the UN Secretary-General’s Annual Report on Civilian Protection, and the UN Disability Inclusion Strategy. To what extent are these many sources harmonized? To what extent could they be better harmonized, and how can we get there?**

I think there is a risk of being confused by overlapping instruments and domains, which can give the impression that the legal landscape is more complex and less harmonized than it is in fact. In reality, the lay of the land is simple. We have elegant and time-tested norms in IHL. Disability is explicitly emblazoned on IHL, so disability is not a new or alien imposition.

To be sure, there is a need for coherence among treaty regimes. That coherence is all about how you see bridges tying these regimes together. We already have some help on that front, via Article 11 of the CRPD and its explicit work to link the CRPD and IHL. In my view, if we did not have Article 11, we would be searching for these bridges anyway.

UN Security Council Resolution 2475<sup>13</sup> makes clear what we already know about visibility on the peace–conflict continuum. The UN Disability and Inclusion Strategy (UNDIS) is the UN’s attempt to step up and lead by example on these issues. Of course, the UN is not doing that because it is, itself, bound by the CRPD: being a treaty, the CRPD does not apply to an international organization like the UN. However, UNDIS is a clear effort to embody the treaty’s principles in the UN’s own work.

The plethora of instruments all cohere around a simple idea: an expanded conception of disability beyond the medical model; and an expanded conception of IHL as informed by CRPD, and especially as informed by people on the ground.

**10. What is the most important next step to address the needs and rights of persons with disabilities in the context of armed conflict? In other words, what is next?**

Maintaining and developing the conversation is the most important thing – as we did in our consultations in the build-up to our latest report.

It is important to remember that disability is embraced already by IHL, and this is significantly underappreciated. The aim of this work is not to develop a concept of a more “inclusive warfare”. Rather, the aim is to reduce loss of life and limb, to limit the lethality of conflict, to plant the seeds of recovery and to allow persons with disabilities to remain active agents in their own lives, as much as anyone can during armed conflict.

13 UN Security Council, Resolution 2475 (2019), UN Doc. S/RES/2475 (2019), 20 June 2019, available at: <http://unscr.com/en/resolutions/2475>.

***11. In your view, what is the role of the International Committee of the Red Cross (ICRC) and the International Red Cross and Red Crescent Movement in the current and future work on these issues?***

I can only commend the ICRC for already doing great work. The ICRC and regional groups should continue convenings. It is through these convenings that the old norms of IHL are refreshed by the new breeze of the CRPD and the voices of those that matter most.

Contemporary debates about autonomous weapons systems will bring some of these issues into a very sharp focus – a different meeting point among the different sides to move the dial forward.

***12. Any final takeaways?***

The main point to get across is this: this work on the rights of persons with disabilities in the context of IHL is not something alien, new, or intended to act as a side constraint. The constraints are already there. We have just only had half of a consciousness of what they mean in the context of the largest minority in the world. Through the work we are doing now, we are belatedly catching up with that. This serves to make international law real and relevant, and all humanity benefits from that.