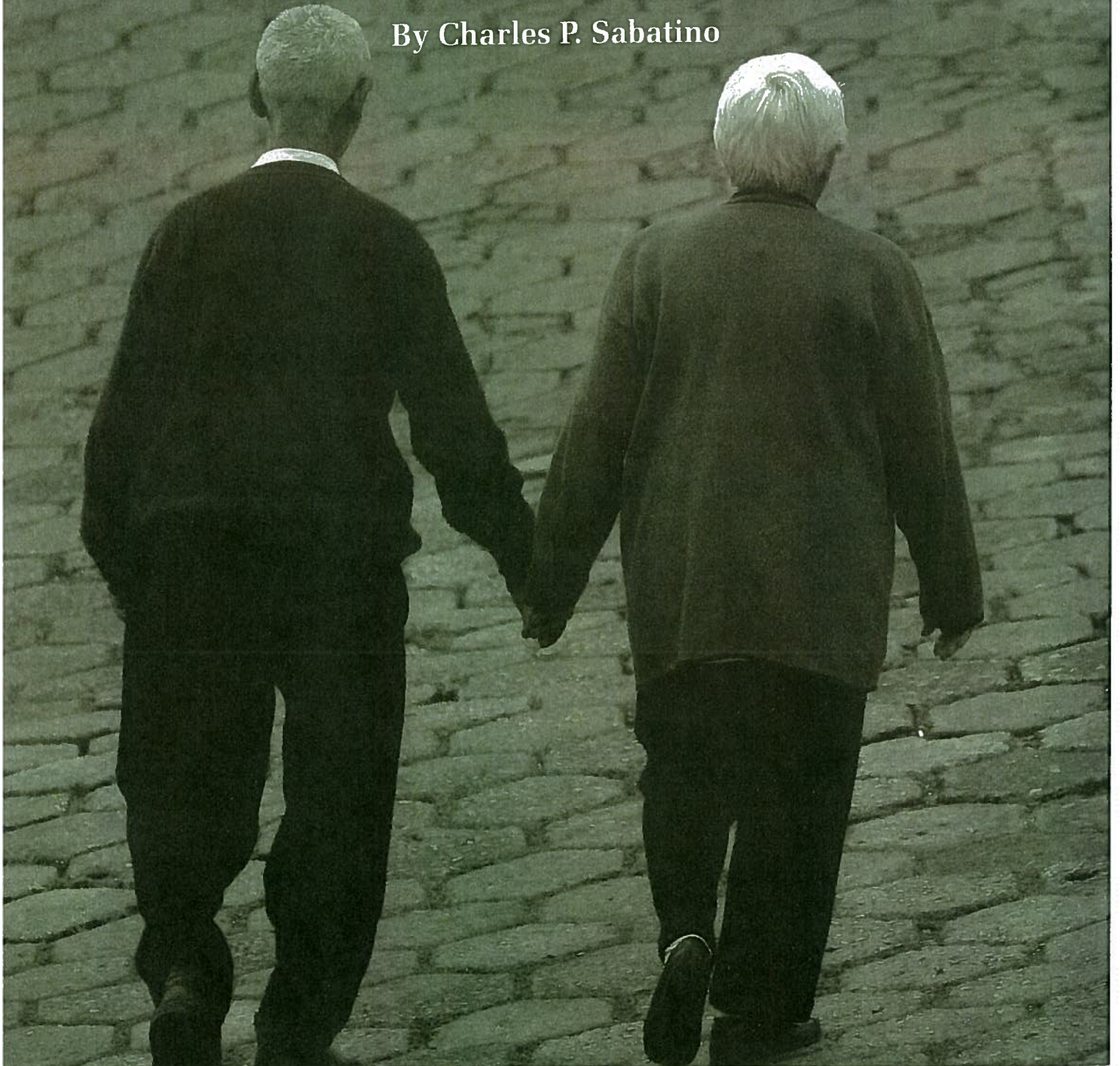


# International Human Rights of Older Persons

## The Gray Wave

By Charles P. Sabatino



In the year 2009, the number of persons over age 60 surpassed 700 million, or about 11 percent of the world's population.<sup>1</sup> By 2050 (less than 38 years away), that number is expected to nearly triple to almost 2 billion older persons, who will then make up 22 percent of the world's population.

Older persons in large numbers around the world too often struggle on the margins of society because of discriminatory views on aging. We may not see this as much in the United States, but conditions vary widely worldwide. Older men and women are often denied access to services, jobs, pensions and other financial supports, and health care, or they are unduly vulnerable to abuse, neglect, and poverty. While there are a good number of existing human rights conventions and mechanisms that offer potential to protect the rights of older persons, this potential is seriously diluted by the lack of focus, depth, and consistency.

International human rights standards for identified vulnerable populations have gained increasing recognition in contemporary society. However, older persons as a group have not been a high-priority beneficiary of this attention. Many treaties and declarations do refer to rights that are of importance to older persons, but there is no comprehensive international instrument that adequately addresses the specific protections required for an aging society. In response to this perceived shortcoming, a growing advocacy effort among both nongovernmental and governmental organizations has sought to bring about a convention drafting and approval process directly addressing the human rights of older persons.

The group Global Action on Aging has been a key coordinating entity in mobilizing efforts toward a convention and in tracking United Nations ("UN") developments on its website at [www.globalaging.org/agingwatch](http://www.globalaging.org/agingwatch). Other groups involved in the effort include, among others, the International Federation on Ageing, the International Longevity Center, HelpAge International, and AARP. These groups have encouraged the legal profession in the United States to support and implement this goal. Nine of these groups have come together to create The Global

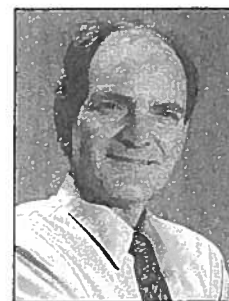
Alliance for the Rights of Older People.<sup>2</sup> The alliance supports the creation of international and regional human rights instruments as tools for strengthening the rights of older people.

Current international standards touching on the rights of older persons are based upon the fundamental premises established in human rights instruments starting with the Universal Declaration of Human Rights ("UDHR"), in particular Article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.<sup>3</sup>

The United Nations and its instrumentalities have issued some 17 documents on aging since 1948, including declarations, principles, resolutions, plans of action, and proclamations. However, none of these rises to the level of a binding treaty. In a 2003 analysis, Professors Diego Rodriguez-Pinzon and Claudia Martin of the Academy on Human Rights and Humanitarian Law at the American University provided a detailed overview of the different types of international regional systems of protection that relate to varying extents to older persons.<sup>4</sup> These authors concluded that older persons comprise the only group in need of special protection (unlike women, children, persons with disabilities, etc.) without an international instrument to protect its members' rights. They also concluded that the current international instruments do not adequately answer their needs. Thus, they recommended that any future action or plan for the elderly address creation of a legal instrument and supervising body for the rights of older persons.

Under current international instruments, most provisions affecting older persons are recognized in treaties that protect economic, social, and cultural rights. These types of treaties identify



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standards for progressive implementation. Such categorization tends to imply that these rights are programmatic aspirations, in contrast to civil and political rights, which require immediate application. In other words, they are “soft law”—they lack sanctions for noncompliance or infringements.

For those treaties that include specific rights applicable to all citizens, including elderly people as citizens of signatory states, the scope of the protection and interpretation of the rights frequently depends upon the composition of the supervisory body, its commitment and combined expertise, as well as the operational creativity it exercises within the

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*Older persons are the only group in need of special protection without an international instrument to protect members' rights.*

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larger political climate. The concerns of older persons have been addressed by such treaty bodies in their concluding observations in a number of reports, but in a very inconsistent manner. A number of them have adopted general comments and recommendations that principally aim to specify the content of the rights enumerated in the instruments and the respective obligations of the state parties, and at times, these comments and recommendations have focused specifically on older persons as rights holders.

Additionally, their evaluation depends on the content of country reports submitted to the UN. A 2010 report by Chinsung Chung, a member of the Advisory Committee of the Human Rights Council, documented the neglect of this theme. Of 124 country reports reviewed by the Human Rights Committee, only three mentioned discrimination based on age, and one addressed long-term

care. Of 122 country reports reviewed by the Committee on Economic Social and Cultural Rights, only 24 included references to the elderly. Of 190 country reports reviewed by the Committee on Elimination of Discrimination against Women, only 32 included references to the elderly.<sup>5</sup>

The Human Rights Council functions as an administrator and guarantor of the Universal Periodic Review (“UPR”) process, a state-driven process that provides the opportunity for each state to report and address the actions they have taken to fulfill their human rights obligations. The UPR’s ultimate goal is to improve the human rights situation in all countries and address human rights violations of the standards contained in the international human rights instruments. In this peer-review process, a number of states have used the opportunity to highlight the unmet concerns of older persons.<sup>6</sup> It is possible that the UPR process could be used more proactively to address the rights of older persons, but advocates do not see a high probability of change without stronger normative and implementation standards.

Over the past two years, UN activities and resolutions have begun to recognize the need for consideration of an international instrument addressing the rights of older persons. The General Assembly adopted Resolution 65/182 on December 21, 2010, creating the Open-Ended Working Group on strengthening the protection of the human rights of older persons. The Working Group has a mandate to consider the existing international framework of the human rights of older persons, identify possible gaps, and determine how best to address them, including by considering, as appropriate, the feasibility of additional instruments and measures. The Working Group held its first organizational meeting in February 2011 and its second meeting in August 2011 in New York. Its third meeting will convene on August 21–24, 2012, in New York.<sup>7</sup>

In August 2011, the ABA House of Delegates adopted a resolution, sponsored by the Commission on Law and Aging, the Senior Lawyers Division, and others, to support deliberations over the

need for an international convention. The resolution stated:

That the American Bar Association urges the United States Department of State and the United Nations and its member states to support the ongoing processes at the United Nations and the Organization of American States to strengthen protection of the rights of older persons, including the efforts and consultations towards an international and regional human rights instrument on the rights of older persons.

This resolution is somewhat of a sea change for the ABA. The ABA has supported other conventions, such as the Convention on the Rights of Persons with Disability (2010), the Convention on the Rights of the Child (1991), and the Convention on the Elimination of All forms of Discrimination Against Women (1996), but the ABA supported these after final conventions were adopted. This may be the first time the ABA has supported the process of determining the need for an international instrument

during the deliberation stage, and if it proceeds, during the drafting stages.

The ABA and other nongovernmental organizations (“NGOs”) have the ability to play a major role in shaping both the deliberations and the process of drafting a convention if that is the objective ultimately recommended. The precedent for this was the drafting of the Convention on the Rights of Persons with Disabilities (adopted by the UN in 2008), during which NGOs played a substantial role in motivating the process and ensuring that the interests of the target population were heard and understood. The disability advocacy community stridently follows the tenet, “Not about me without me.”

The ABA can bring to the table the legal expertise and a long history of human rights values that can add an important perspective in helping to shape upcoming developments. The resolution adopted by the House gives the ABA the foundation to contribute meaningfully to this ongoing process. The Commission on Law and Aging believes that four positive steps can be taken to implement the ABA resolution in a meaningful way.

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1. Educational efforts, such as panel presentations at section or division meetings, are needed to generate greater understanding of the human rights landscape of aging. Ideally, this would produce a critical mass of interested ABA members who can come together to form an internal working group on the subject.
2. Making use of the ABA's consultative status with the UN, the ABA can appoint an observer/advisor to future meetings of the Open-Ended Working Group at the UN, the next meeting being in August 2102.

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*The ABA resolution urges the U.S. State Department and the UN "to strengthen protection of the rights of older persons."*

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3. Our observer/advisor and other key members of the ABA can engage in discussions and efforts with other NGOs on the subject. Coordination and cross-fertilization of ideas among NGOs is important both for efficiency of work and for ensuring a meaningful impact on the process.
4. If the drafting of an international instrument commences, the ABA can be a valuable technical assistance resource in conceptualizing and possibly drafting whatever instruments emerge in the process.

The process toward any kind of new international instrument can be long, complicated, and at times frustrating, but its ultimate impact goes far beyond the crafting of abstract principles and official documents. International aging scholars Israel Doron and Kate Mewhinny perhaps summarized the impact best:

Certain human rights instruments establish legal benchmarks for acceptable behaviour that can act as a guarantee of protection for those who are frail, vulnerable, and dependent on the care of others. But human rights can offer more than this. At their core, they embody a series of values such as dignity, fairness, respect, equality, and autonomy—all of which should underpin the design and delivery of services that support older people, promote their independence, and encourage their full participation in the community. . . . Human rights have the potential to create a vision of a better future for our ageing population where older people can enjoy better health, improved well-being, and live their lives to the full.<sup>8</sup> ■

#### Endnotes

1. U.N. Secretariat, Dept. of Econ. and Social Affairs, Population Division, *World Population Ageing: 2009*, available at [http://www.un.org/esa/population/publications/WPA2009/WPA2009\\_WorkingPaper.pdf](http://www.un.org/esa/population/publications/WPA2009/WPA2009_WorkingPaper.pdf).
2. See <http://www.rightsalliance.org>.
3. The UDHR is available at <http://www.un.org/en/documents/udhr/index.shtml#a25>. See also ACADEMY ON HUMAN RIGHTS AND HUMANITARIAN LAW, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, HANDBOOK, INTERNATIONAL AND REGIONAL HUMAN RIGHTS OF OLDER PERSONS (Draft, Apr. 2011), ch. D. at 1.
4. Diego Rodriguez-Pinzon & Claudia Martin, *The International Human Rights Status of Elderly Persons*, 18 AMERICAN UNIV. INTERNATIONAL LAW REV. 915 (2003).
5. Chinsung Chung, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, (Human Rights Council Advisory Committee, Working Paper, Jan. 2010), available at <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/session4/docs/A-HRC-AC-4%20CRP-1.doc>.
6. UPR background information is available at <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.
7. See <http://social.un.org/ageing-working-group>.
8. THE RIGHTS OF OLDER PERSONS: COLLECTION OF INTERNATIONAL DOCUMENTS, (Israel Doron & Kate Mewhinny eds., International Federation on Ageing) (2007).