

Convention on the Rights of Older Persons: How Feasible Is the Option?

Speech by Sergei Zelenev,
Chief, Social Integration Branch, DESA,
on the International Day of Older Persons

October 2, 2008

Dear colleagues, ladies and gentlemen,

It is a pleasure and a privilege for me to be at this podium and address such a distinguished audience today when we mark the International Day of Older Persons. This Day is an opportunity to draw attention to a range of issues affecting older persons, but also to celebrate their contribution to society.

Today we are paying tribute to older persons around the world. We celebrate their vital role in family and in community, we celebrate their wisdom and experience, we celebrate both men and women – but particularly women – as family caregivers, we celebrate older persons as those who provide emotional support to both the old and very young. There are numerous roles that older persons play in society, in a contemporary world, too numerous even to mention or list. But apart from those contributions, today we are also discussing the issue of rights of older persons – a hugely important issue. And this discussion is particularly significant in this year when we commemorate the 60th anniversary of the Universal Declaration of Human Rights.

I have to say that unfortunately, the rights of older persons are often overlooked on the national and international agenda, and when the situation of older persons is discussed it is considered primarily in light of welfare considerations and social assistance schemes, implicitly depicting them as individuals dependent on society. The UN, however, has a history of addressing this issue from both socio-economic and legal standpoints and exploring various aspects of human rights of older persons. The right to social security, for example, is mentioned in the Universal Declaration of Human Rights (article 22), and respective provisions are contained in the International Covenant of Economic, Social and Cultural Rights (article 9). The UN Secretariat also has been actively involved in shaping the agenda on ageing, and more recently in the review and appraisal as well as the implementation of the Madrid Plan, thus providing substantive support to the intergovernmental process. The NGO Committee on Ageing asked me to concentrate today on a call for a Convention on the Rights of Older Persons, and I am happy to share my thoughts in this regard but I have to underscore that I am speaking here today in my personal capacity.

When we are discussing such a serious undertaking as the elaboration of a Convention, we are actually thinking about how to translate our caring and compassion for older persons into hard core legal provisions, making dignity not only a moral underpinning but also a legal principal of the Convention. Dignity of course is one of the key principles, although legally speaking it cannot be seen as a panacea for all of the existing shortcomings of laws meant to promote equality. However, dignity is an important core principle in human rights discourse and it is recognized by the UN as such, along with the other 1991 UN Principles for older persons. These guiding principles were adopted by the United Nations General Assembly as an instrument for policymakers to incorporate into national development programmes. Underscoring the contributions that older persons make to society, the 18 principles, quite justifiably, were grouped under five quality of life characteristics, namely, independence; participation; care; self-fulfillment and dignity. Until now, these UN Principles constitute the only internationally agreed human rights instrument that specifically addresses the needs and rights of older persons.

When we are talking about the rights of older persons and a need to buttress them, we cannot but see that in many cases older persons are suffering from structural disadvantages in society, and ad hoc solutions cannot always plug the gaps in national legislation regarding such existing negative phenomenon as age discrimination or elder abuse. So developing a Convention on the rights of older persons would clearly signify a leap to an entirely different level of social protection. Admittedly, it is not an easy job to do. It requires a confluence of many efforts by many partners. It requires persuasive arguments that could convince the skeptics. But on top of everything else a clearly expressed political will of the Member States – the State Parties – is required. This is a vital precondition on a road towards any Convention.

In my view there are many solid reasons why the elaboration of such a Convention could and should be considered and explored.

First of all, such a Convention is not something that comes out of a blue sky. A Convention would be a continuation of major efforts already undertaken by the Member States at the national level, and would build upon the rights frameworks already established in the existing international instruments. There are numerous initiatives at the national level where the agenda of older persons' rights has been gaining ground, with respective promulgation of special norms, rules and regulations to protect those rights and subsequent entitlements that may stem from those socio-economic rights. One region where this issue has been tackled with particular vigor is the region of the Economic Commission for Latin America and the Caribbean. Admittedly, it has a long historic tradition – let me remind you that in 1948 Argentina became the first country ever to put forward the idea of a Declaration of old age rights thus putting ageing on the UN agenda. Even though the Declaration was not adopted it provided a positive impetus to the political process at the UN to keep the plight of older persons in focus, even at a time

when shifts in the age structure leading to demographic transition with its far-reaching socio-economic consequences was still at its very beginning. In the last five years several countries in the region (let me name Brazil, El Salvador, Mexico, Paraguay and Venezuela as an example) have adopted a wide range of legislation addressing the rights of older persons. By now at least 80 percent of ECLAC countries have some type of legislation protecting the rights of older persons in institutions.

Some qualitative steps regarding the Convention on the Rights of Older Persons were made in the Brasilia Declaration adopted by the Second Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean on 6 December 2007. The Declaration proposed that “legal frameworks and monitoring mechanisms be created to protect the human rights and fundamental freedoms of older persons, whether they live in long-stay facilities or in their own homes, and to facilitate the formulation and enforcement of laws and programmes for the prevention of abuse, abandonment, neglect, ill-treatment and violence against older persons”. The Declaration further pledged to organize the necessary consultations with Governments in the region “to promote the drafting of a convention on the rights of older persons within the framework of the United Nations”. One such consultative meeting of great importance, with the participation of interested Governments, civil society organizations and representatives of the academic community, was just completed in mid-September in Rio de Janeiro, where all aspects of the Convention were explored at length. The Distinguished Minister H.E. Paulo de Tarso Vannuchi has just presented the position of the Brazilian Government in this regard.

The reasons why many Governments feel compelled to act, specifically regarding older persons, and to introduce legal provisions to protect their rights reflect the fact that this particular socio-demographic group remains vulnerable and DOES NEED special protection. This vulnerability has many dimensions and income security is often mentioned as a key issue. Yes, poverty is a gross violation of basic human rights, and failure to provide older persons with adequate means to live in dignity impedes their full participation in society. Older persons, however, face risks other than loss of income, including frailty, discrimination, neglect and even harassment. Lack of access to affordable health care is another crucial dimension of insecurity in old age. While vulnerability of older persons as a group may vary depending on a country's circumstances, it does exist in real life, and is an obvious factor of concern, providing moral, ethical and political grounds for the calls for existence of better legal instruments to protect this particular segment of the population. By the way, while poverty reduction has been a central concern of global development policy over the past decade, in neither of the two key poverty-reduction frameworks – the Millennium Development Goals and the Poverty Reduction Strategy Papers – is the situation of older persons directly addressed. So the Convention may reduce the risk of older persons becoming marginalized – a serious threat that many older persons will continue to face unless specific efforts are made in policy documents at both the national and

global levels. Older persons need to become a more visible target of development programming.

Apart from the above, there is another compelling consideration for strong legal protection – the issue of participation and inclusion, the issue of voice. Not everywhere at the national level can the voice of older persons be heard, not everywhere can older persons effectively articulate their concerns and subsequently claim their rights even when formally these rights have been recognized. Without clear legal norms older persons may have difficulties fighting the caricature images that depict them primarily as a burden on society or as predominantly passive and weak individuals. So obviously, existence of an international, legally binding instrument such as a Convention could facilitate realization of their rights in practice, making a ‘society for all ages’ a reality and not only a noble aspiration.

Let me say a word about the Madrid Plan in this context. As we all know the Madrid Plan of Action is a comprehensive and detailed document regarding ageing-specific policies, but it is not legally binding. Existence of a Convention, legally binding by definition, could give greater leverage to those whom the Convention may serve, and add some “teeth” to the implementation of the Madrid Plan, facilitating social protection schemes, preventing age discrimination and meeting the growing demand for care. From this standpoint, these two documents would naturally complement each other.

One of the arguments used by the skeptics who question the need to elaborate a Convention specifically addressing the rights of older persons is that the International Covenant on civil and political rights together with the International Covenant on economic, social and cultural rights cover the rights of older persons along with the rights of all other people. Yes, in principle, it is a valid argument. But there may be a counterargument to it: existence of such Covenants, however, were NOT considered by the Member States an obstacle for the creating of at least four separate legal instruments, actually, specific human rights instruments for children, women, and most recently, for persons with disabilities and indigenous peoples. So, in this particular juncture older persons could be in many cases considered an equally, if not more vulnerable category, as other groups mentioned. Admittedly, there are cases where some categories of vulnerable populations may overlap – some older persons may belong to the group of persons with disabilities, some may belong to indigenous peoples while a substantial number of older persons are women.

Let me emphasize that empowerment, protecting the rights and ensuring the dignity of older persons are crucial issues in the context of a “society for all ages” – one of the core concepts of the Madrid Plan. An appeal for the effective participation of older persons in the economic, political and social spheres of their societies, along with provision of opportunities for the individual development of people throughout their life course, permeates the Madrid Plan. One example is

lifelong learning and possibility to upgrade the skills of older persons through access to education and training that allows such workers not only to stay productive but also improves the chances of intergenerational transmission of experience and knowledge, from older to younger generations, and to the benefit of society at large. It is important to stress that promotion and protection of all human rights and fundamental freedoms are recognized as an essential element of an inclusive society where older persons can participate as equal partners without incurring discrimination and where their dignity is assured. To make it happen the human rights of older persons must be guaranteed by the State through its legal system and subsequent enforcement of laws that specifically protect older persons. Protecting their rights is the prerequisite and the shortest way to the empowerment of older persons.

In this light there is a need to redouble the efforts of society in preventing age discrimination and abuse of older persons as well as their neglect, which often leads to abuse. The need to strengthen national legislative frameworks and enhance abuse awareness efforts is quite apparent when the major challenge of PREVENTING neglect, abuse and violence of older persons is discussed. The existence of an international instrument such as a Convention could give a boost to national efforts.

Promoting inclusion of older persons is vital on numerous grounds, including political grounds. While the classical definition of citizenship relates to the implementation and enforcement of rights and obligations, it is often seen as a set of general concepts that may be subjectively interpreted to benefit select groups in society. A more contemporary understanding of citizenship derives from the principle of inclusiveness and active involvement. In the case of older persons, dynamic citizenship entails full participation in political, social and economic affairs through the mobilization of tangible and intangible resources. In this context, the aim may be to transform informal rights into legitimate rights, and, subsequently, get access to some pertinent entitlements, or transform their potential and resources into effective action. Awareness of rights enhances the participation of older persons in society, making them active citizens rather than passive objects of top-down policies.

Considering modalities for the elaboration of a new Convention, one can definitely discuss what could be learned from the recently completed process regarding the Convention on the Rights of Persons with Disabilities—the first human rights Convention of the 21 Century. If we hope to create a similar positive momentum and generate political support one has to answer the question ‘what was the motivation of the Member States to support the creation of such a Convention and what motivated Member States to act so fast?’ (By the way, this particular Convention had the fastest negotiation track for a human rights instrument in the history of the UN.) To make a Convention happen, it is not sufficient simply to come up with some national draft, however good this text may be. There is an obvious need to bridge the different interests of Member

States to create a platform of shared interests and to find possible solutions over potential disputes. I dare say that should such consultations on the draft Convention start, any text, even a preliminary one, inevitably will be a result of protracted and difficult intergovernmental negotiations.

Experience gained at the United Nations in the area of ageing as well as elaboration of legal instruments in the area of human rights, gives plenty of food for thought when we try to predict the trajectory of discussions in connection with the initiative regarding the Convention put forward in the Brasilia Declaration of December 2007 as well as in the statements made by some Member States. Of course every initiative has a life and destiny of its own, and in this sense, I cannot predict how the discussions will develop. However, I would like to bring to your consideration some of my personal observations from previous intergovernmental efforts, particularly in connection with the Convention on the Rights of Persons with Disabilities.

Number one, the process of elaboration of the Convention on the Rights of Persons with Disabilities proved its viability and resulted in a desired tangible outcome when it was dynamic from its inception. Dynamic in a sense that a commitment regarding a Convention was clearly expressed by several Member States from the very beginning of the process, and many countries provided active support for such an initiative during the negotiations.

The second point was the very important role of partnerships in the elaboration of the above Convention: partnerships between the Member States to move forward the agenda of negotiations and partnerships between the Member States and civil society. Civil society representatives were vital assets in the process of elaboration of the Convention. Actually, for the first time, they were active participants in the process of the Convention and their voices were heard on par with the voices of representatives of the Member States. Summing up, to move toward a similar Convention on the Rights of Older Persons one needs a constructive dialogue and strategic alliances between Governments, the United Nations system, civil society and the private sector.

One of the important dimensions when the Convention on the Rights of Persons with Disabilities was discussed was that apart from the human rights framework an emphasis on development as its essential pillar was clearly articulated, and disability issues were seen also in the context of the development discourse. This is another lesson learned from elaboration of the Convention on the Rights of Persons with Disabilities. Actually the same is true when we are discussing ageing as well. One of the premises of the Madrid Plan is that demographic shifts in the world cannot be considered without a broader approach and the linking of ageing with the development agenda.

Towards the end of my presentation today, let me refer briefly to the issue of the implementation of the Madrid Plan and some lessons learned. The review and

appraisal exercise undertaken 2007-2008 by the Member States and summarized during the February 2008 meeting of the Commission for Social Development clearly demonstrated that there is much more that should be done to implement the Madrid Plan. For instance, there is an obvious need to improve capacity development on ageing at the national level as well as to improve the work of focal points on ageing within national ministries, making their efforts multi-sectoral yet holistic. Let me tell you that the UN Secretariat was guided by some very practical considerations and a desire to assist the Member States in the implementation of the Plan when our office brought together a team of distinguished academics and practitioners to create a Guide to the National Implementation of the Madrid International Plan of Action on Ageing. We tried to make the Guide a very specific, hands-on document that may facilitate implementation of the objectives of the Madrid Plan. It has just been released and I am very pleased to bring it to your attention, along with another publication "Regional Dimensions of the Ageing Situation" – also just released, actually on 1 October, on the Day of Older Persons.

In my opinion, what is required is much additional focused work at all levels to raise awareness of the Madrid Plan, coupled with some further specific policy measures to translate its provisions into tangible outcomes. There is a need to promote empowerment of older persons and to better use opportunities of an ageing world. Overall, as the review and appraisal exercise has vividly demonstrated, the Madrid Plan still essentially remains a document that is not widely known to the public at large, and it has not trickled down to the national level, to the line ministries and the focal points within ministries who are dealing with ageing issues. In this context while discussing the feasibility of the Convention on the Rights of Older Persons we, as stakeholders, should not forget the need to continue raising awareness of the Plan as well as working towards the implementation of the existing commitments. Talking about some major "macro" issues we should not overlook that all of our efforts should be eventually geared towards one paramount goal: improving the plight of older persons and making life, for millions of older women and men around the world, better.

Thank you for your attention.

Courtesy: <http://www.globalaging.org/agingwatch/events/IDOP/zelenev.htm>