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The human rights of older persons: the politics and substance of the UN Open-Ended Working Group on Ageing

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ABSTRACT

Elder rights are the new frontier in the pluralisation of human rights yet they have been a largely neglected area of research. The United Nations (UN) has started to seriously consider establishing a Convention on the Rights of Older Persons through the Open-Ended Working Group on Ageing (OEWGA). Through qualitative and quantitative analyses of documents from the OEWGA and interviews with elder rights activists, this article examines the rights claims and subgroups of older persons that have been given primacy. It also identifies forces that have shaped the rights discourse and the implications of the dominant themes for how older persons are perceived. It argues that the political divisions and the rules of the OEWGA have prevented a consistently comprehensive discussion on the rights of older persons. It also argues that there is a risk that the emphasis on economic and social rights and older persons with disabilities by states and non-state actors might subtly reinforce the notion that elderly people are a drain on resources, a burden, and objects of welfare rather than as active contributors to societies. It concludes by proposing possible ways of avoiding these pitfalls and suggestions on widening the scope of the rights discussion and future research.

KEYWORDS

Ageing; United Nations; rights of older persons; economic and social rights; marginalised groups; disability; older women

Introduction

The rights of the elderly in the twenty-first century are what women’s rights were to the twentieth – equally as momentous yet largely unstudied and unrecognised. For a long time, older persons have been portrayed as a problem for their families and society – ageing has been characterised as an obstacle to progress and development (Huenchuan and Rodríguez-Piñero 2011, 20). But a paradigm shift is starting to take place, with older persons increasing being viewed – and viewing themselves – as rights’ holders (Doron and Apter 2010; Tang 2008). In 2010, the UN General Assembly (2011a, 4) voted to establish an Open-Ended Working Group on Ageing (OEWGA) to review the ‘existing international framework of the human rights of older persons’ and to identify ‘possible gaps and how best to address them’. The UN General Assembly (2013a, 2) empowered the OEWGA with new authority in 2013, requesting it to consider ‘proposals for an international legal instrument to promote and protect the rights and dignity of older persons’. The human rights of older persons is a new and emergent area of research with important implications for how older persons are perceived.
persons’. This was a major coup for those advocating the creation of a binding international Convention on the Rights of Older Persons (CROP) as it represents the first step towards achieving this end.

Because the turn towards a human-rights-based approach to older persons is so recent, the issue has received limited attention, especially the rights claims emerging from the OEWGA. Despite the fact that there had been six meetings of the OEWGA, by the end of 2015, no consensus had emerged among Member States in the OEWGA on the need to elaborate and ultimately adopt a new convention (Poffé 2015), with strong arguments for and against a CROP (Doron and Apter 2010).

This article is an inductive, mixed-method analysis of the OEWGA meetings (2011–2015) focusing on the core rights and marginalised groups of older people to which state and non-state actors give primacy. It considers the forces that have shaped the discourse on rights and the implications of the dominant themes for how older persons are perceived. The findings are partly based on a quantitative content analysis of submissions by non-state actors – all of whom support the establishment of a CROP – to all the sessions of OEWGA. The six summary reports from the OEWGA sessions prepared by the Chair of the Working Group were also examined. These were used to give a flavour of the rights and subgroups of older persons highlighted by Member States. The findings are triangulated with semi-structured interviews with four elder rights activists who hold senior positions in non-governmental organisations (NGOs) or the United Nations (UN) and have participated in the OEWGA.

The article tells the story of the failure of the OEWGA meetings to facilitate consistently comprehensive discussions on the rights of older persons because of the political divisions among participating Member States on the question of establishing a convention as well as the rules of OEWGA. It argues that economic and social rights for the elderly have received the most attention, while older women and persons with disabilities were the major topical subgroups that stood out in the debate. These themes broadly echo the rights and groups that have received attention in existing international laws and norms to date. The article also argues that such a focus might reinforce the notion that elderly people are a drain on resources, a burden on families and society, and objects of welfare rather than being contributors and valuable members of cultures and societies at large.

The article ultimately concludes that, following the example of the Convention on the Rights of Persons with Disabilities (CRPD, 2006), injecting economic and social rights as they apply to older persons with norms of autonomy and participation might go some way towards avoiding these pitfalls. It also suggests re-framing economic and social rights, as well as the protection and promotion of the rights of older persons with disabilities as an investment rather than a cost. It ends with a brief note about the prospects for overcoming the current political impasse in the OEWGA and by identifying directions for future research.

The UN Open-Ended Working Group on ageing: actors, politics, and rules

The OEWGA sessions are held in New York and are attended by UN Member States, non-government organisations (NGOs), and other non-state actors, including academics, National Human Rights Institutions (NHRIs), professional associations, and UN
departments and agencies. Through its mandate, the OEWGA has given non-state actors the opportunity to play an active role. The participation of NGOs in particular has increased as the years have passed. UN bodies, such as the International Labour Organisation (ILO), and domestic and international NGOs are permitted to submit written opening and closing statements, and to make verbal interventions based on these statements. At a 2011 session of the OEWGA, for example, equal time in many meetings was devoted to interventions from states and non-state actors (Martin, Rodríguez-Pinzón, and Brown 2015, 16). As with previous efforts to establish a new UN human rights and human-rights-related treaties, such as the CRPD and the Rome Statute, non-state actors have the potential to make an important contribution to articulating how human rights apply to older persons in areas where human rights laws and norms are vague (Deitelhoff 2009; Sabatello 2013).

NGOs who wish to participate in the OEWGA are accredited by the Working Group. This has allowed a large number of organisations, advocating around a range of issues relating to elder rights, to attend, as participation is not predicated on having consultative status with UN Economic and Social Council, which is highly regulated, and the obtaining of which can be a time-consuming and sometimes highly politicised process. While NHRIIs have not yet been granted formal rights of participation (but have occasionally circulated statements, e.g. European Network of National Human Rights Institutions 2013), NHRI representatives have participated regularly as experts in the ‘Expert Panels discussions’ where state and mostly non-state specialists give presentations on various topics relating to the rights of older persons.

While non-state actors can make a unique contribution to how the rights of older persons are conceived, this possibility has been constrained by the highly politicised process that has to date defined the OEWGA. There is a broad division between state delegates from developed and developing countries on the question of the need to establish an elder rights convention. The campaign to establish a CROP has been led by states from Latin America (Sciubba 2014); however, no general support for a new convention can be found in any other regional group (Poffé 2015, 10). The United States, Canada, China, Sweden, the European Union, Switzerland, and Japan have contributed statements to all the OEWGA sessions and consistently argue that any new convention would not add any additional rights to those that already exist. While this argument is used negatively by these states to justify their lack of support for the treaty, it can also be interpreted positively to support a Convention: that is, while the universal scheme of rights is both comprehensive and universal, application of existing norms to the peculiar circumstances of older people is what adds genuine value. Despite the General Assembly adopting a resolution calling on states to consider proposals for a CROP, the resolution was ‘passed with a vote’ – a voting option that state sponsors of a draft resolution select when they do not believe that their proposal would be adopted by consensus or unanimous vote that indicates widespread support (Peterson 2006) – and there were a large number of abstentions. This signals an overall lukewarm political support to move forward on the issue.

This fractured political environment partly influences the agenda of the meetings, in particular the topics that are discussed in the expert panels (analysed below), which are ultimately set by states but in consultation with the UN Focal Point on Ageing. The repetition of certain topics in the panel discussions and elsewhere in the meetings
reflects the lack of consensus among Member States on the best way to move forward regarding establishing a CROP (Anonymous UN official, personal communication, 7 September 2015). Frances Zainoeddin, an active participant of the UN NGO Working Group on Ageing, which itself has a broad membership comprising NGOs involved in ageing issues that have consultative status with the UN Economic and Social Council, expressed similar views on the sluggish OEWGA process: ‘What has been frustrating is the repetition instead of moving forward to discuss elements for a Convention’ (F. Zainoeddin, personal communication, 17 September 2015). It is a common strategy of opponents of new treaties to reopen discussions on subjects that activists who are keen to advance the negotiation process had thought were closed (Bloomfield 2016, 16). This has led individual organisations participating in the OEWGA to use their opening and closing statements, which can cover any topic relating to the rights of older persons, to repeatedly defend the need to establish a Convention rather than to identify and elaborate key rights claims as they apply to older persons.

Methodology

Nine steps were followed to analysis submissions to the OEWGA. Step 1: Submissions from non-state actors were downloaded from the OEWGA website and skim read. The text of all scanned documents was converted so that electronic searches could be carried out. Step 2: Nvivio, a computerised software commonly employed as a tool for conducting content analyses (Marsh and White 2006), was used to conduct a word frequency search. The world frequency search identified the top 100 words (including stemmed words) and automatically counted the references to each word across the documents. Words that were clearly unhelpful or neutral, such as conjunctions, were removed from the search list, and the same search was repeated. This was done several times to weed out irrelevant words and add more relevant ones to the list. Step 3: Each word was coded in Excel according to whether it was used in the context of an economic, social, cultural, civil, and/or political right. To ascertain the rights context, a text search of each word in all the sources was conducted using Nvivo. Specifically, the ‘Word Tree’ tool in the software, which displays recurring themes and phrases that surround a particular word, was used for this purpose. Only the most commonly cited phrases or words connected to the central word under examination were coded. Step 4: In cases when the Word Tree did not clearly reveal the context in which a given word was used, I read through all references to the word captured in summary form in Nvivo. Once the context of each word was ascertained, neutral words were further deleted, and this resulted in a total of 62 retained words. The weighted relevance of these words was then calculated in Excel as a simple percentage by computing (averaging) the number of times each selected word is mentioned across documents with respect to the total number of references. Step 5: The analysis also pays closer attention to a sub-selection of ‘main words’ that were the most frequently mentioned in the documents. The criteria for selecting these words are based on the mean (\( \mu = 211.3 \) mentions) plus one standard deviation (\( SD = 184.6 \) mentions), which leads to a threshold of 395.6 mentions (\( \mu + SD = 211.3 + 184.6 = 395.6 \)). There are nine words that were mentioned more than 395.6 times: ‘social’ (1059), ‘protects’ (785), ‘employment’ (583), ‘caring’ (551), ‘workers’ (525), ‘health’ (455), ‘pension’ (453), and ‘discrimination’ (424).
Each word was converted into a right or principle by analysing its characteristics in the OEWGA, and its corresponding measures or rights were identified via manually coding in Nvivo. Several of the words were consolidated due to overlap. Step 6: The expert panel discussion topics were then identified from the summary reports (also available on the OEWGA website) and categorised as addressing either civil and political rights or economic, social, and cultural rights (or both in some cases), and then the overall proportion of each was expressed as a percentage. Step 7: The findings from the previous steps were converted into simple graphs using Excel and one table using Word (see Appendices). Step 8: The summary reports, specifically the reports from the second, third, and fourth OEWGA, which contain the most detailed information on the substantive rights discussion, were also reviewed with the aim of identifying the issues and groups that stood out in state submissions, which were integrated into the findings. Step 9: The responses from the interviews were compared to the findings of the content and document analyses and were also integrated into the discussion.

Results

Trends in rights emphasised

There was an emphasis on economic and social rights in all documents examined. The topics set for discussion as part of the expert panel session reveal that rights such as social security, health, and the care of older persons received 63% of coverage (see Figure 1). Civil and political rights, such as access to justice and violence and abuse against older persons, received only 26%. As mentioned earlier, because the topics panel discussion on which the findings of this article are primarily decided by states, they inevitably give a flavour of the rights claims and subjects prioritised and viewed as most relevant to older persons by governments. Furthermore, there are more references to the rights in the ICESCR than the ICCPR in the 62 most frequently mentioned words of OEWGA submissions and responses of non-state actors to the note verbale (see Figure 2). When these rights are examined at a more detailed level (see Figure 3), we see that economic rights received the most attention (74%), followed closely by social rights (66%), then civil rights (33%), political rights (17%), and cultural rights (2%).

A review of the OEWGA summary reports reveals that the rights discourse appears at times to be quite similar to the results above. In the summary report of the second OEWGA session, for example, the Chair tells us that age discrimination, as well as the violence against and abuse of older persons, were issues repeatedly invoked by state delegations; however, the Chair spent most of this section identifying the economic and social rights that state delegates highlighted, including age-friendly health systems, disability and long-term care services, and pensions, as well as age-adequate housing and transportation to enhance independent living (UN General Assembly 2011b, 8).

At the same time, the summary of states’ responses to the note verbale indicates attention has been given to a range of rights, though there was slightly more emphasis on economic and social rights. The measures outlined to achieve economic empowerment of older persons, for example, were fairly wide-reaching and detailed, and included the right to an adequate standard of living; the right to access to work; the right to social protection, financial security and social assistance; the right to access to credit,
establishment of business, income-generating activities and ownership of property; and the right to education and training. Specific civil and political rights were mentioned although they were not mentioned as extensively, nor were they as nuanced as economic and social rights. The right to recreation and sport was the only cultural right mentioned (UN General Assembly 2013b, 15).

**Marginalised groups**

There are four central rights or principles, each with corresponding measures that emerged from the content analysis of submission by non-state actors: social protection, which related mostly to social services, social welfare, and social security; discrimination, relating to all aspects of life including employment, pensions and health, law and justice, and political participation; care, mainly in relation to long-term care and health care and

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**Figure 1.** Weighted percentage of topics of expert panel discussion by rights category. Since some words fit both categories (which are asterisked), the percentages across columns do not add to 100%.
services; and employment and workers, including provisions on abolishing mandatory retirement ages, flexible working conditions, and vocational training and advice. Several marginalised groups of older people are identified as being at heightened risk of discrimination across four main rights and principles (see Table 1).

Women and gender received the most attention with 27 sources mentioning this topic – 18 sources mentioning it as a discrimination issue followed by five sources

Figure 2. Weighted percentage of words according to rights category in submissions of non-state actors to the Open-Ended Working Group on Ageing (OEWGA).
mentioned it as a social protection issue, three as an employment/workers’ rights issue, and one as a care issue (see Figure 4). Bridget Sleap (personal communication, 13 January 2015), Senior Rights Policy Adviser at HelpAge International, commented that the intersectional discrimination of older persons is poorly conceived in the OEWGA discussions and that it is mainly older women who are discussed. She argued that the connections between gender, sexuality, ethnicity, and other identities require greater nuance in the rights discourse. Susan Somers, President of the International Network for the Prevention of Elder Abuse, also recognised the disproportionate focus on women rather than men in the OEWGA discussions, explaining that this is:

Because women have all those other attributes. You can be a woman who’s a migrant, who is maybe in a caste system, and who is seen in a certain way because of who they are, maybe because of their marital status, maybe their sexual orientation etc. But we focus a lot on women because there are more older women than men. (S. Somers, personal communication, 10 October 2015)

This theme is also reinforced with ‘women’ constituting the ninth most frequently mentioned word in the submission from non-state actors to the OEWGA (see

**Figure 3.** Weighted percentage specific rights in submissions of non-state actors to the Open-Ended Working Group on Ageing (OEWGA). Since some words fit into multiple categories, the percentages across columns do not add to 100%.

**Table 1.** Most frequently referenced rights and principles and their corresponding measures by non-state actors.

<table>
<thead>
<tr>
<th>Right or principle</th>
<th>Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social protection Discrimination</td>
<td>Social welfare; social services; pensions and social security.</td>
</tr>
<tr>
<td>Care</td>
<td>Long-term care (aged care; home care)</td>
</tr>
<tr>
<td>Employment and workers</td>
<td>Occupational Health and Safety (OHS) standards; improving public employment standards; flexible working conditions; opportunities for promotion.</td>
</tr>
</tbody>
</table>

Most frequently referenced rights and principles and their corresponding measures by non-state actors.
Figure 2). The second highest number of non-state actor sources cited older persons with disabilities as a cause for special attention in the context of all four rights categories and was mentioned by 17 sources (see Figure 4). Migrants, refugees, and internally displaced persons were also mentioned across all four rights categories; however, fewer sources cited them as requiring special attention. Moreover, the words ‘disabled’ and ‘migrant’ featured prominently among the 62 most frequently cited words in the submissions of non-state actors (see Figure 2). Other groups/identities of older persons cited in the context of four core rights characteristics are: ethnic, religious and indigenous minorities, sexual orientation/marital status, low socio-economic status, poor education levels, poor health levels, geographic locations, including rural areas, and prisoners (see Figure 4). These groups, however, received attention in a limited number of sources.

States’ responses to the note verbale reveal that rights of indigenous people, prisoners, disabled older persons, older women, and migrants were singled out (UN General Assembly 2013b, 17). We thus see that the two major groups – older persons and women – are also highlighted by states along with other marginalised groups that also appear in the non-state submissions but that received less attention. Moreover, in an international forum on the rights of older persons, organised by the Government of Mexico and the Latin American and Caribbean Demographic Centre (2012, 6), and attended by Government and civil society representatives from 22 countries, mostly from Latin America, older women were the principal groups that were identified as deserving of special consideration.
Limitations and discussion

The software used in this study offered a promising opportunity to examine the rights of older people as conceived by non-state actors attending the OEWGA. However, because the analysis partly relied on a linguistic computerised analysis, there may be some shortcomings. One inaccuracy might be due to the inability of the Word Frequency analysis (represented in Figures 2 and 3) to identify whether a single source mentions one or more words more frequently than other sources. Furthermore, the formula used calculates the weight of each word as a proportion of its frequency with respect to all other words; however, like all computerised analyses that quantify words in a large corpus of documents, the Word Frequency Query in Nvivo might have encountered problems disambiguating words – or taking words out of context – which, in turn, could have affected the weighted percentage attributed to given right. Yet, Steps 2 and 3 of the data analysis described under the section ‘Methodology’ revealed that one meaning of a word (of the many theoretically possible meanings) tended to dominate in the texts. Despite this potential limitation, the results of studies using computer-aided content analyses have performed well against other common types of analyses such as expert coding (Laver and Garry 2000). Moreover, sometimes the bulk of an opening/closing submission was used to make a case in support of establishing a Convention rather than discussing substantive rights issues, which might have skewed the results. Yet because the words that did not reveal anything about the substantive rights discourse were treated as ‘neutral’ and were thus omitted from the word frequency count, it is unlikely that these sections would have affected the results of the content analysis in a meaningful way. Finally, many of the state submissions to the OEWGA were in Spanish or languages other than English, and so these were not subjected to the same level of scrutiny as those from non-state actors. The summary reports, panel discussion, and other secondary sources were thus consulted to provide an indication of the dominant themes and issues raised by states. The findings, however, should not be treated as absolute, but rather as indicators of general trends.

A principal finding is that elder rights are mostly addressed as economic and social rights. This is not entirely surprising. First, the focus on economic and social issues is highly relevant to older persons. While the experiences of old age vary from country to country (Help Age International 2015) and are influenced by factors such as class and gender, older persons can be an especially vulnerable group that is exposed to poverty and its consequences, as well as difficulty finding and sustaining jobs. They also generally experience profound limitations in the enjoyment of the right to education because of, among other reasons, the stereotype that education should be for younger generations (Martin, Rodríguez-Pinzón, and Brown 2015, 6, 49).

Second, the focus on economic and social rights is consistent with studies on how existing international legal principles and standards have been applied to older persons. Such studies take into consideration ‘hard laws’ or conventions that are binding on states, and some also examine the related work of treaty-monitoring bodies, including their concluding comments and recommendations. Studies indicate that most of the attention on older persons in terms of rights has focused on their economic and social rights (HelpAge International 2011, 8; Mégret 2011, 51; Office of the High Commissioner for Human Rights 2011, 5). Specifically, according to a review conducted by the UN
Office of the High Commissioner for Human Rights (2011, 5), international human rights mechanisms have placed more emphasis overall on State obligations to the right to social security, to health, and to adequate housing rather than on issues relating to civil and political rights. Furthermore, States have reported less on the topic of older persons to the Committee monitoring states’ commitments to the International Covenant on Civil and Political Rights than to the International Covenant on Economic and Social Rights. The UN Secretary-General writes that from 2000 to 2008, out of 124 state reports under the Covenant on Civil and Political Rights only three made a reference to older people. The Covenant on Economic and Social Rights fared slighter better with 24 references out of 122 state reports to the Committee (UN General Assembly 2009, 7). This is despite the fact that the UN nominally recognises that the human rights challenges faced by older people relate equally to civil, cultural, economic, political, and social rights (UN Economic and Social Council 2012).

What are the implications of emphasising economic and social rights in the OEWGA for protecting and promoting elder rights? From one perspective, codifying the economic and social rights of older people into a new Convention is essential not only as an end in itself but also as a means of realising civil and political rights, since the two sets of rights are indivisible, and often one type of right is required to realise another. For example, having an adequate standard of living may be a condition for exercising one’s civil and political rights (Gavison 2003, 32).

From another perspective, it is important to consider how economic and social rights are viewed in the human rights schema. They are often referred to as positive rights because they imply a much more proactive and positive role for the state. While some public expenditure is required to realise civil and political rights (Gavison 2003, 35; Holmes and Sunstein 1999), the level of expenditure needed to adequately realise economic and social rights is significantly greater, and represents a commitment few governments are prepared to make in light of the perceived wisdom of reducing public social spending (Ife 2012, 50). Because economic and social rights are sometimes viewed as aspirational goals contingent upon a country’s politics and economic resources (Rodriguez-Pinzon and Martín 2002, 918), associating them closely with older people might run the risk of subtly legitimising and reinforcing the notion of the ‘burden of old age’ and of elderly people as a drain on public resources (Crystal et al. 2000). It also might stoke the fears of opponents of a new Convention who are concerned about the high cost of implementation (Sciubba 2014). As expressed by Gerard Quinn (2014, 5), who was instrumental in the negotiations of the Convention of the Right of Persons with Disabilities, in his Keynote Address to the International Elder Law and Policy Conference, . . . many Western countries implicitly take the view that an age treaty is simply a Trojan horse for particularized and costly social claims. You in the age sector are almost uniquely vulnerable to this charge, which is easily laid and very difficult to disabuse. You have to nuance your arguments to avoid lending any support whatever to this view. (italics added by author)

Furthermore, there is a risk that a strong emphasis on economic and social rights might actually invoke images of older persons as objects of welfare. One scholar paints a worrisome picture of a shrinking labour force, thanks to the growing number of older persons, having to ‘bear the cost of basic services and pensions for an increasingly
dependent population’ (Mautone 2014, 63). Indeed, the question of whether the money needed to be spent on older persons as a result of the establishment of a CROP would be worthwhile has been debated in the OEWGA (UN General Assembly 2013b, 14). According to Quinn (2014, 14), when the CRPD was being negotiated, there were many who argued that economic and social rights were too closely connected to a welfare approach, which was what they were ‘fighting against’. Consequently, the articles in the CRPD that focus on social and economic rights place an ‘over-riding emphasis on inclusion and participation by persons with disability in the mainstream education system and labour market, supported by the accommodations and other positive measures required by persons with disability to realise these rights’ (Kayess and French 2008, 30).

I am certainly not arguing that economic and social rights should be avoided. Instead, I am suggesting that they need to be spoken about in a different way. One way is to ensure the narrative begins with older people as ‘subjects’ in their own right and not ‘objects’ to be managed, controlled, or cared for. Another way is by infusing economic and social rights as they apply to older persons with the ground-norms of autonomy, participation, independence, and freedom, which is already starting to take place. For example, in an expert panel presentation by Age Platform Europe (2012), Nena Georgantzi explains how older people are often stripped of their agency in care delivery with care-givers often not considering the preferences of the aged regarding basic daily routines, such as what to eat, what to wear, and what time to go to sleep. She highlights the importance of administering institutional and home care in such a way that respects the autonomy and will of older persons, and ensuring that a CROP reflects these issues and principles. In her 2015 report to the Human Rights Council, the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte also identifies the principle of autonomy as a central right of older persons, connecting autonomy to economic and social rights. She stresses, for example, that social protection, which includes social security and pensions, ‘should be fully implemented and enforced in order to promote the autonomy of older persons’ (UN General Assembly 2015a, 10). She goes on to write that ‘[i]n care settings, autonomy means that older persons are able to participate in the formulation, monitoring and evaluation of their care services’ (UN General Assembly 2015a, 13). The Independent Expert is thus challenging the notion that public money and services are given to passive recipients of care and welfare and insisting that rights should be viewed means of promoting the autonomy of older persons, thereby highlighting their role of subjects within a social and economic rights framework.

While these discussions are from a normative perspective, another way to counter ageist attitudes towards social and economic spending on older people could be to portray it as an investment rather than as a cost (Applewhite 2016, 33). See also Mautone (2014). In other words, protecting and promoting the economic and social rights of older persons is not just the ‘right thing to do’ but is also worthwhile for societies at large. This pragmatic framing has at least two precedents in the suite of UN human rights treaties. The preamble of the Convention on the Elimination of All Forms of Discrimination against Women (1979), for example, partly justifies the provisions in the convention by stating that ‘discrimination against women . . . hampers the growth of
the prosperity of society and the family and makes more difficult the full development of
the potentialities of women in the service of their countries and of humanity’.

Emphasising the contribution of older persons to the social fabric of states is not new. In
the second OEWGA, for example, the participation of older persons in development and
policymaking and the recognition of their contribution to society were identified as
central dimensions of their human rights (UN General Assembly 2011b). This theme is
also echoed in a recent national inquiry by the Australian Human Rights Commission
into employment discrimination against older Australians and Australians with disability.
The report underscores the importance of protecting and promoting the right of older
Australians to work (an economic right) partly by highlighting the individual and societal
economic benefits that this would accrue ‘through increasing revenues, decreasing
expenditures and providing people with extra years of savings, investments and super-

Moreover, seminal global policies on older persons have depicted solutions to eco-
nomic and social challenges facing the aged in terms of both their normative credentials
and their pragmatic ones. The Madrid Platform for Action (UN 2002, para 26) states that
the continued employment of older workers ‘can provide an ongoing and valuable
contribution to the improvement of national economic performance and output for the
benefit of all members of society’. Since we know that non-binding programmatic docu-
ments such as Madrid are sometimes designed as a ‘way station’ to harder legalisation
(Abbott and Snidal 2000, 423), invoking this positive framing of economic and social rights
in discussion on a treaty could be worthwhile and is currently taking place.

The level of attention devoted in the OEWGA to older women and persons with
disabilities is – again – not entirely surprising given the state of existing international
human rights laws and norms. Studies on how international legal principles and stan-
dards have been applied to older persons have highlighted certain marginalised groups
that are at heightened risk of discrimination across the life-course resulting from the
intersection of age and other grounds for distinction. Groups that stand out are older
women (HelpAge International 2011; Office of the High Commissioner for Human Rights
2011) and older persons with disabilities, but also older migrant workers, and older
refugees and other persons in emergencies (Martin, Rodríguez-Pinzón, and Brown 2015,
85–110), all of whom are also mentioned in the OEWGA submissions and discussion
topics. The Committee on the Elimination of Discrimination against Women’s (2010)
general recommendation on the rights of older women provides a very comprehensive
account of the multiple forms of discrimination that women face as they age and
outlines recommendations for states to mainstream the responses to the concerns of
older women into national policies.

The significant attention devoted to older women is important in light of their widely
recognised marginalised status in old age as well as the fact that they live longer than
men (Grundy 2006; Pahor, Domajnko, and Hlebec 2006). It is particularly welcome as
(with the exception of some voices from the global South) the international women’s
human rights community has been accused of focusing on ‘women’ to the exclusion of
other identity categories, such as race, class, and age, which has resulted in a limited
understanding of women’s human rights. The current emphasis on older people with
disabilities may also subtly reinforce negative stereotypes (echoing those previously
mentioned) articulated in the report of the UN Expert Panel on the Rights of Older
Persons (2009, 5) – that is, ‘older persons as dependent people with declines in intellect, cognitive and physical performance, and other areas required for autonomous, daily functioning’. This is not to suggest that the rights of older persons with disabilities ought to be sidelined, as studies have shown that more health issues might arise with age and that some of the resulting impairments might turn into a disability (e.g. Fried and Guralnik 1997). Rather it is to suggest highlighting – as in the case of economic and social rights – that this too should be infused with the kinds of values that embody autonomy and personhood as well as highlighting the positive contribution that older women and persons with disabilities can make to society. This not only is reflected in the tone and substance of CEDAW but is also in the CRPD, 2006 (preamble, m), which recognises the ‘existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities’.

Conclusion

This article has analysed the contribution of state and non-state actors in the OEWGA with a view to understanding the rights claims and subgroups of older persons that have been given primacy and the implications of these themes for how older persons are portrayed. On the one hand, the findings show that human rights are being applied to older persons in novel ways. Attention to ‘new’ marginalised groups of older persons, such as those of diverse sexual orientations and prisoners (who are at greater risk of being discriminated against), and the range of topics addressed in the expert panel sessions are examples of this. Civil and political rights, such as violence and abuse, planning for end-of-life care, and access to justice, have also been brought within the OEWGA’s purview. The process of interpreting and defining rights in a population-specific way is an important step in protecting and promoting the rights of older persons. On the other hand, the human rights discourse emerging from the OEWGA echoes much of the existing application of international human rights norms and laws, as identified by previous studies. Economic and social rights stood out in the documents that were analysed, and older women and persons with disability received notable attention. The themes of the discussion, including the repetition of issues across the expert panels, were influenced by the politicised nature of the debate and the rules governing the OEWGA. Ultimately, state and non-state advocates of a CROP have struggled to break through the political impasse.

The article also explored the implications of the dominant content and characteristics of the human rights discussion in the OEWGA. Given that some within the disability community have argued that a focus on economic and social rights invoked a type of welfare register, following their example and consciously infusing these rights with ideas of autonomy, inclusion, and participation might be a valuable way to proceed going forward (and to continue for those who are already doing this). Moreover, re-framing the economic and social rights as they apply to older persons as an investment rather than as a cost might go some way towards combating the related negative stereotypes.

The same argument applies to how older persons with disabilities could be framed. While it is heartening to see that discussions about older women have continued, this needs to be complemented with a more balanced and consistent attention to marginalised groups and the measures that government must take to protect them. This study
also highlights the importance of articulating and interpreting a diverse range of civil and political rights as well as cultural rights as they pertain to older persons.

Developing a more comprehensive and inclusive discussion on the rights of older persons in the OEWGA is unlikely to happen until the burgeoning civil society advocacy network, the Global Alliance on the Rights of Older Persons (GAROP), is strengthened. In contrast to the network of disability activists that campaigned for a CRPD, the network for a Convention on the Rights of Older Persons is ‘less coherent, weaker and less visibly inclusive of its constituents [i.e. older persons] and has shown less ability to garner support from mainstream human rights organizations’ (Sciubba 2016, 6). If the network establishes stronger domestic campaigns targeting individual member states (which is a goal of GAROP), this might ease the political impasse that is hindering the commencement of the drafting process. The potential impact of NHRIs on shaping the discourse of older persons is also an important resource, which is recognised in the landmark UN General Assembly Resolution (2015b) on enhancing the visibility, presence, and role of NHRIs in the UN system overall. Granting NHRIs formal rights of participation could be one way of heightening this influence over the OEWGA process. Finally, a stronger network might increase the likelihood that advocates would more effectively and consistently frame economic and social rights in a way that assuages member states’ concerns about the high cost of the treaty (Sciubba 2016, 14).

Another way to arrive at a more meaningful discussion could be to circumvent the deadlock in the OEWGA and convene an extra-UN meeting with interested governments and non-state actors. This strategy was successful in the early stages of the International Coalition to Ban Landmines. When it became clear that UN-based discussions to ban landmines were unfruitful, a separate meeting of NGOs and key state activists was organised, which was the first step to what would develop 10 months later into the Ottawa process, and later the adoption of the Anti-Personnel Mine Ban Convention (Mekata 2000, 146–157). The potential risks of going outside the UN to commence negotiations, however, is that only a relatively small number of states could ratify the treaty given the absence of widespread political support.

There is still much ground to be covered, and questions remain for further research. For example, a follow-up study could conduct a similar content analysis on submissions from Latin American states and compare them to those of non-state actors. A detailed qualitative analysis on how particular subgroups of older persons as well as economic and social rights are articulated in the OEWGA and other international meetings where elder rights are discussed would also be valuable.

Notes

1. Non-state actor is broadly defined in this article to include all actors that are not strictly states or their direct representatives.

2. The UN General Assembly (2011a, 4) resolution mandating the OEWGA says that the General Assembly ‘invites States and relevant bodies and organizations of the United Nations system, including relevant human rights mandate holders and treaty bodies and the regional commissions, as well as intergovernmental and relevant non-governmental organizations with an interest in the matter, to make contributions to the work entrusted to the open-ended working group, as appropriate’.

3. For example, a Word Tree of ‘living’ revealed that the phrase ‘adequate standard of living’ was the most commonly cited, with 13 sources mentioning it, and so ‘living’ was classified as both
a social and economic right. Since ‘lives’ is a stem word of ‘living’, the Word Tree revealed that ‘working lives’ also received pronounced attention, which further confirmed the word’s application as an economic right.

4. The benefit of this method was that some words that might, at first sight, appear to be neutral actually did correspond to one set of rights. For example, a Text Search of the word ‘family’ revealed that it was used in the context of rights of caregivers, including the need for flexible working hours (and thus was classified as a social and economic right).

5. For example, the central right surrounding the word ‘protect’ was social protection, and therefore this created a key right into which several connecting rights, such as social security (derived from the word ‘social’), were subsumed (see Table 1).

6. Unlike the openness of these general statements, both state and non-state actors were also invited to submit a note verbale (a particular kind of diplomatic communication) in which they were supposed to identify elements of a proposed Convention, including its purpose, general principles, and specific human rights (UN 2013).

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