



Presentation by Gerard Quinn, UN Special Rapporteur on the rights
of persons with disabilities at the German Institute for Human Rights

Workshop: A Proposed Treaty on the Rights of Older Persons

Berlin | November 14, 2021.

I am the UN Special Rapporteur on the rights of persons with disabilities with a long-standing interest in the rights of older persons – whether disabled or not. I was involved in the drafting of the UN CRPD and was more recently involved in the large Council of Europe Study on the rights of older persons. I co-wrote the 2001 Study with your own Theresia Degener, that helped inform the drafting of the UN CRPD.

Naturally, anyone interested in the idea of a treaty on the rights of older persons is interested in the lessons learned during the drafting of the UN CRPD, and whether or to what extent a new treaty on the rights of older persons would complement the same.

I just want to make three general points.

1. History: First of all, prior to the CRPD there was the underlying problem of invisibility.

To be blunt, much of human rights analysis until the 1990s assumed or internalised the common assumption that certain categories of persons exist mostly at the margins of our economy and society and require substantial social support. These included children, persons with disabilities and older persons. The default focus on them became social protection, as a safety net. This was despite the universality in human rights language, which supposes a much wider scope including autonomy, self-determination and inclusion.

So, Theresia Degener and myself argued in our 2001 UN Study that one of the core tasks of a treaty on the rights of persons with disabilities was **visibility**. That is, the treaty as a sort of visibility project. We did not deny the importance of social support and protection, but it had to be contextualized against a much broader background of human rights.

It is somewhat surprising that this argument was not made until the early 2000s – some 50 years after the Universal Declaration. And when we did, it triggered a switch from a myopic focus on social protection to a much broader focus on justice and human rights.

I am sure you have heard that the UN CRPD represents a ‘paradigm shift’ in the field of disability. The man who invented the term ‘paradigm shift’ (TS Kuhn) meant that by switching

frameworks we can 'see' reality differently, we can spot issues where they were never spotted before, and we can go about resolving problems differently. That aptly sums up the switch to the justice/rights paradigm in the CRPD: Disability hasn't changed – but the policy lens through which we see disability had radically changed.

I would argue that we are simply being more faithful to the original human rights lens put forward in the late 1940s which seems to be arriving late for persons with disabilities and even later for older persons.

2. Intentions: Secondly, we did not intend to create a hermetically sealed island called disability rights.

At one level there is no such thing. There are just human rights, as applied to persons with disabilities. All States were insistent that the CRPD should contain no new rights but simply draw out the entailments of existing rights to meet the specific situation and challenges of persons with disabilities. That is why equal treatment – or a very nuanced and tailored concept of equal treatment – lies at the heart of the disability treaty.

This concept of equal treatment looks *forward* to the actual or material circumstances of persons with disabilities across a broad swathe of policy areas (like employment, political participation, etc).

And it looks *sideways* at similar norms in sister treaties, such as the Convention for the Elimination of Racial Discrimination (CERD), the Convention for the Elimination of Discrimination Against Women (CEDAW) and others. We argued for a treaty on the rights of persons with disabilities not by arguing that a separable, isolated and separate instrument was needed.

Rather we argued that such an instrument *could help animate all existing treaties and attune them to the situation of persons with disabilities.*

We anticipated a sort of normative conversation across all treaty regimes to make them come alive in the context of disability. I would say this has worked rather well. This has made for much more visibility of disability across all treaty regimes – which is as it should have been from the beginning. *I would see a treaty on the rights of older persons having a similarly transformative effect across the system.*

3. Red-Lines: Thirdly, would a treaty on the rights of older persons jeopardise gains made in the UN CRPD?

I don't believe so. First of all, the UN CRPD has sparked a wave of law reform throughout the world. It rests on a completely different policy imagination, based on justice and human rights and not just social protection. It now has a strong momentum of its own and is unlikely to be undone.

Second, there is a strong *desideratum* that States should aim for greater coherence in international law and constantly work toward a reduction of fragmentation of norms. If fragmentation were genuinely feared, then CERD, CRC, CEDAW and others should have objected to the drafting of the CRPD.

They could have – but they didn't. To the contrary, they saw the CRPD project as necessary because it took norms common to all the treaties and applied them – tailored them – to disability. This was something not done previously, and which helped inform the existing system for the better.

I therefore tend to see the prospect of a treaty on the rights of older persons in exactly the same light.

Third, there is the question of red lines. The CRPD applied general norms to the unique situation of persons with disabilities. This has meant that rights focused on autonomy (legal capacity – Article 12) and independent and community living (Article 19) have become the very essence of the disability treaty – emblematic of the 'paradigm shift.' Could a new treaty undermine these norms?

I say no, because the application of these norms to older persons with disabilities cannot be undone in any new treaty. To do so would be to work against the *desideratum* of coherence and avoidance of fragmentation. Any genuflection to work towards 'intersectionality' must mean an effort toward more cross-identity sustainable public policy.

I also say no because, just as the disability treaty took general norms and tailored them to disability, you will have to take general norms and tailor them to old age.

Does that mean these core rights might look a bit differently in the specific context of old age? Perhaps. But that really depends on your theory of difference – on what makes old age qualitatively different to say, disability. The drafters – the various States involved in the drafting of a new treaty - will all have their own views. One cannot and should not pre-empt the drafting process.

At the end of the day, the CRPD process has everything to do with a switch to a justice/human rights lens and with respect for difference. I see much the same dynamics at play in the context of the rights of older persons. I see obvious gains for older persons. But I also see gains for more rational and sustainable policy solutions for Governments.