

Chapter 6

International Elder Law: The Future of Elder Law

Israel Doron and Benny Spanier

6.1 Introduction

“So we’re off to the Hague, are we?”
“You may be, Mr Rumpole, but the court of Human Rights sits in Strasbourg.”
“Of course! That’s the one I meant.”¹

Ms. Carson was born in 1931, and lived all her adult life in Britain. Throughout her working years, she paid her social security taxes as required. In 1990, she became a resident of South Africa, after immigrating there. Between 1989 and 1999, Ms. Carson continued to pay her social security payments in Britain, even though she was not required to do so, in order to continue to accrue her pension rights. In 2000, she became eligible for a weekly pension payment of GBP 67.50. However, since that time, the amount was not updated and remained at its nominal level. Had it been updated from time to time, as was done for all older people living in Britain, she would now be receiving GBP 95 per week. Till 2010, Ms. Carson lost 28% of the value of her pension allowance. She believed that her rights had been violated and she had suffered discrimination. She sued the British government with the demand to update her pension as was customary for all older persons living in

¹ The immortal barrister Horace Rumpole confuses between several courts in Europe, and needs a bit of help. From: Mortimer (1996).

I. Doron (✉)
Department of Gerontology, University of Haifa, Haifa 31905, Israel
e-mail: idoron@univ.haifa.ac.il

B. Spanier
Faculty of Law, University of Haifa, Haifa, Israel
e-mail: Benny19@netvision.net.il

Britain. Her lawsuit was rejected by all the courts in Britain.² Therefore, she appealed to the European Court of Human Rights, on the grounds that she had been discriminated against relative to all other older people in Britain. The European Court rejected her lawsuit in the court of first instance and upon appeal.³

Ms. Carson's story is an example of a growing global reality that combines law and older people rights. In this new legal reality, international law is increasingly facing a situation in which it intervenes to protect the rights of older persons. In many cases, older persons find that not only do their personal stories involve aspects of international law, but sometimes, the only remedy for their legal claims lies in the international arena.

Indeed, international law and old age are not foreign to one another. They are, in fact, intertwined for many different reasons. In his article "From national to international elder law,"⁴ Doron presented a four-element model to support his argument for the need to develop the field of international elder law:

As Doron explained in his article, each of the boxes, or "squares," in Fig. 6.1 reflects a set of issues according to intersection of law, aging, and globalization. Square 1 focuses on issues relating neither to law nor to aging but rather on issues relating to the general social phenomenon of globalization; Square 2 focuses on issues relating to the general social phenomenon of aging but not to law, i.e., global aging; Square 3 focuses on issues relating to law but not specifically to aging, i.e. the globalization of law; and finally, Square 4 focuses on issues relating both to law and to aging, i.e., the need for elder law at the international level.

Doron argued that:

[T]he time has come to begin developing the various features of elder law that relate to international law. This means that the dialogue on elder law should branch out in different directions that share an international and global view of the field. This dialogue should embrace the different aspects of international legal practice, including public, private, and comparative international law.⁵

² See: High Court ruling: *R (Carson) v Secretary of State for Work and Pensions* [2002] EWHC 978 (Admin), which was handed down on May 22, 2002.; The ruling of the Court of Appeal, *R (Carson and Reynolds) v Secretary of State for Work and Pensions* [2003] EWCA Civ 797, which was handed down on June 17, 2003; The ruling of the House of Lords: *R (Carson and Reynolds) v. Secretary of State for Work and Pensions* [2005] UKHL 37, which was handed down on May 26, 2005; for a comprehensive review of the issue of the right to a pension allowance in case of residence outside the state's borders, see: Golan and Doron (2007) [in Hebrew] (hereinafter: "Residency"). About the phenomenon of elder immigration and "exporting" pension rights, see at 645–649. For comparative research on the possibility of "exporting" pension rights in different countries, see at 696–698.

³ *Carson et al. v The United Kingdom* (2010) ECtHR Application no. 42184/05. The facts are based on the ruling which was handed down on March 16, 2010 in the court of appeal (Grand Chamber) of the European Court of Human Rights (hereinafter: The European Court of Human Rights, the European Court or the ECtHR).

⁴ Doron (2005) (Hereinafter: From national to international).

⁵ *Id.* at 44.

AGING LAW	Non-Aging	Aging
Non-Legal	1. Globalization	2. Global aging
Legal	3. Legal Globalization	4. International elder law

(Source: From national to international, *supra* n.4, at 45

Fig. 6.1 The four elements of the argument for international elder law

In this chapter, we would like to focus directly on the particular directions that elder law should be developed in the future in the field of international law. More specifically, three different fields of international elder law will be discussed: Public-international elder law; private-international elder law; and comparative international elder law.

6.2 Public-International Elder Law

Public-International elder law as it has been developed in recent decades can be divided into three groups: “hard law,” “soft law” and international case law. We will discuss these three groups separately.

6.2.1 “Hard Law” and the Need for a Specific Convention on the Rights of Older Persons

Interpretation of existing international covenants is the first kind of “hard law.” When rights of the older persons are mentioned in existing international covenants, they are usually presented as part of rights that apply fully to all members of society and not specifically for them. However, rights of older persons can be found by reading the international covenants in a more focused way.⁶ In other words, this refers to “legislation” in which “elder rights” in international law is expressed by means of expansive interpretation of international human rights conventions that do

⁶ See: Rodriguez-Pinzon and Martin (2003) (Hereinafter : Rodriguez-Pinzon).

not explicitly mention older persons' rights as such. A salient example of this can be found in the interpretation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁷

In 1966, the United Nations General Assembly held discussions intended to establish all human rights in one binding convention (the "International Bill of Human Rights"), as a continuation to the Universal Declaration of Human Rights.⁸ In the end, the General Assembly adopted two conventions: The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). In creating the two conventions, two human rights norms were effectively created: The first is the norm of civil and political rights, and the second is the norm of economic and social rights.⁹ The reason for creating these two legal norms have occupied generations of researchers.¹⁰ For our purposes, however, it is important that each of the covenants address different rights, and that states have a different level of commitment to realize them.¹¹ Among the rights mentioned in the ICESCR, we note, for example, the right to health,¹² social security,¹³ and the right to education.¹⁴ However, the rights of older persons, as a separate or unique population, are not in fact found in

⁷ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, (Entered into force Jan 3, 1976) (hereinafter: ICESCR or the International Covenant on Economic, Social and Cultural Rights).

⁸ Rosenne (2004) (Hereinafter: ROSENNE) at 217–218; see: Dennis and Stewart (2004) (Hereinafter: *Justiciability*).

⁹ Van Boven (2010) (hereinafter: Van Boven). Article 2 of the ICCPR requires the states to ensure that the rights are preserved. The equivalent article of the ICESCR instructs the states to take steps to fulfill their obligations. Another difference between the covenants is the fact that the civil rights are "negative," meaning that the state must refrain from infringing upon them. The economic and social rights are "positive," and the states must invest means in their realization. Moreover, the civil rights do not entail an economic cost, whereas the economic and social rights require significant investments; see: Churchill and Khalig (2007) (Hereinafter: Churchill), who argue that there is no real enforceability for economic and social rights, as opposed to civil rights; and see Eide (1989) about the difference between the two groups of rights.

¹⁰ Koch (2009) (hereinafter: Koch). Three main reasons can be presented for the creation of two levels of rights. The first is the historical background for the creation of the rights—three levels of human rights (human rights, social rights and community rights). The second reason is political/ideological—the creation of the covenants during the Cold War, and the importance that each side attached to the different rights and rejecting the rights of the other side. The last reason is related to skepticism as to the possibility of realizing the economic rights (positive rights). See also: *Justiciability*, *supra* note 8, at 476–480. Another significant difference between the rights is their enforceability. The civil rights are enforceable, whereas the economic and social rights are not, and do not exist in practice; see also, for example: Rosas (1995); ROSENNE, *supra* n. 8, at 217–219; Van Boven, *supra* n. 10, at 174–183.

¹¹ *Justiciability*, *supra* n. 8, at 476–485.

¹² ICESCR, *supra* n. 7, Article 12.

¹³ *Id.* at Article 9.

¹⁴ *Id.* at Article 13.

the covenant. Over the years the struggle has increased to recognize and extend a binding and enforceable status to the economic and social rights as well. For the purpose of the rights of older persons, the struggle is to create an international legal norm that will constitute part of the International Covenant on Economic, Social and Cultural Rights.¹⁵

In 1995, the United Nations Committee on Economic, Social and Cultural Rights passed a resolution entitled General Comment No. 6. This resolution dealing with elder rights reviews the conferences and resolutions passed until Comment No. 6, and determines the following:

10. The International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons... Nevertheless, in view of the fact that the Covenant's provisions apply fully to all members of society, it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant. This approach is also fully reflected in the Vienna International Plan of Action on Ageing. Moreover, in so far as respect for the rights of older persons requires special measures to be taken States parties are required by the Covenant to do so to the maximum of their available resources.¹⁶

In effect, General Comment No. 6 synchronizes the 1966 resolution with a series of resolutions passed in subsequent years by the UN, which deal with elder rights.¹⁷ The resolution interprets and elucidates the manner in which the articles of the ICESCR should be read, with regard to rights of older persons.¹⁸ This is how the following rights set out in the covenant are read, with an emphasis on their implementation with regard to older persons: Equality between men and women,¹⁹ the right to work,²⁰ the right to social security,²¹ protection of the family,²² the right

¹⁵ Koch, *supra* n. 10, at 10.

¹⁶ See: Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 6, 10, UN Doc. E/C.12/1995/16/Rev.1, at Article 10 (1995) (Hereinafter : General Comment No. 6).

¹⁷ *Id.* at Article 4–5. Following are the resolutions mentioned, among others, in General Comment No. 6: Vienna International Plan of Action on Ageing, 26 July–6 August 1982, U.N. A/RES/37/51 (3 December 1982) (hereinafter: Vienna International Plan of Action on Ageing); see the plan itself: Report of the World Assembly on Ageing, Vienna, 26 July–6 August 1982, U.N. Sales No. E.82.1.16 (1982), available at: www.un.org/ageing/Vienna_intlplanofaction.htm. (Last visited May 2011); United Nations Principles for Older Persons, G.A. res. 46/91, Annex, U.N. Doc. A/RES/46/91 (1991) (hereinafter: Principles for Older Persons). A document of an applied nature, which places at its center the five basic rights of elderly persons that arise from the ICESCR.

¹⁸ General Comment No. 6, *supra* 16, at Article 20–42.

¹⁹ *Id.* at Articles 20–21. “Equal rights of men and women”, The states are called upon to place an emphasis on the rights of women who have spent most of their lives caring for their families without going to work, and are liable to find themselves without sources of income in old age.

²⁰ *Id.* at Articles 22–25. “Rights relating to work”, The right to earn a dignified living.

²¹ *Id.* at Articles 26–30. “Right to social security”, The states are called upon to ensure proper social security for all elderly persons, and reference is made to resolutions passed by the International Labor Organization on this matter.

²² *Id.* at Article 31. “Protection of the family”, Calls upon the states to strengthen the family as a basis for protection and support of the elderly.

to dignified subsistence,²³ the right to physical and mental health,²⁴ and the right to education and culture.²⁵ In other words, General Comment No. 6 established older persons' rights by "interpreting" the provisions of the International Covenant on Economic, Social and Cultural Rights as an existing right, despite the lack of explicit textual reference to older persons as such.²⁶

Along with the attempt to develop public international law with regard to older persons on the global level, an attempt was also made to develop this field on the international-regional level as well. One can point, for example, to Article 17 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), which states that every person has a right to certain safeguards in old age.²⁷ Or Article 18 of the Banjul Charter on Human and Peoples' Rights, which guarantees that older persons will have the right to special safeguards consistent with their own needs.²⁸ Another example can be found in Article 23 of the European Social Charter (Revised).²⁹ There the covenant encourages states to take steps, either directly or in cooperation with public or private organizations, "to enable elderly persons to remain full members of society for as long as possible."³⁰

Finally, one of the most significant and developed recognition of older persons' rights could be found in Article 25 of the Charter of Fundamental Rights of the European Union:

The Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.³¹

²³ *Id.* at Articles 32–33. "Right to an adequate standard of living", Appeals to the states to ensure that the elderly have the ability and possibility to obtain food, water, clothing, housing and health care that will enable them a dignified subsistence. The Comment calls to view the term "housing" in the broader sense, i.e. to enable independent living and provide psychological assistance and support for strengthening the elderly person in his own home (As Recommendations 19 to 24 of the Vienna International Plan of Action on Ageing).

²⁴ *Id.* at Articles 34–35. "Right to physical and mental health".

²⁵ *Id.* at Articles 36–42. "Right to education and culture".

²⁶ See: Rodriguez-Pinzon and Martin (2003), *supra* n. 6, at 952.

²⁷ See: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, ("Protocol of San Salvador"), O.A.S. Treaty Series No. 69 (1988), (entered into force November 16, 1999), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992).

²⁸ *Banjul Charter on Human and Peoples' Rights* Article 18, para. 4 (June 27, 1981), 21 I.L.M. 58, 60 (1982).

²⁹ European Social Charter (Revised), (entered into force Jan 7, 1999, E.T.S. 163) (hereinafter: European Social Charter or ESC).

³⁰ *Id.* at Article 23.

³¹ Charter of Fundamental Rights of the European Union (2010/C 83/02) (Hereinafter: Charter of Fundamental Rights), which was amendment to the European Union – Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2008/C 115/01 (signed on 13 December 2007 in Lisbon, entered into force on 1 December 2009), Article 6(1).

Obviously, one would think that the next stop of the “hard law,” and the third kind (after interpretation of classic human rights covenants, and regional instruments), would be an international convention specifically crafted for the rights of older persons. Indeed, one of the key questions that public international elder law has faced in recent years is a debate around the question, whether there is a need for an international convention for the rights of older persons.³²

As noted by Doron and Apter, there are various reasons that can fully explain the new initiative to establish an “older-persons’ specific” human-rights convention.³³ Probably, this is a combination of several factors, including increased awareness of the legal consequences of global ageing,³⁴ the successful completion of the International Convention on the Rights of Persons with Disabilities (2007), (which opened the door for the “next group” in human rights conventions); or grass-roots initiatives from international NGOs such as AGE-UK or IFA—International Federation on Aging, whose members were looking to advance more internationally-binding instruments that can be used at the local/national level.

One of the important factors in this realm was the development of empirical legal knowledge that revealed the existence of an international normative gap in the sphere of rights of older persons. For example, Rodriguez-Pinzon and Martin conducted a broad review of existing international mechanisms that address the rights of older persons and concluded that:

A strategy to have a comprehensive legal instrument on elderly rights is missing at the international level in both universal and regional systems. There are very few provisions in international law that directly address elderly rights. There are isolated efforts by certain international bodies to systematically refer to the rights of the elderly when interpreting their corresponding conventions . . .

However, there is no specific international body with the mandate to focus on the rights of the elderly. Nor is there an elderly rights convention in place. It is in fact the only vulnerable population that does not have a comprehensive and/or binding international instrument addressing their rights specifically.³⁵

Following this new empirical finding, Kwong-Leung Tang and Jik-Joen Lee³⁶ further developed a well-supported conceptual support for an international convention for the rights of older persons:

As far as the rights of the older people are concerned, there is a gap in the existing legal provisions. An international convention that recognizes the specific rights of all older persons and is clearly applicable to older people as citizens of signatory states will be important for older people to assert their rights in the national arena.

³² See Rodriguez-Pinzon, *supra* note 6; Tang and Lee, 2006; Doron, *supra* note 4; UN Expert Group, 2009.

³³ Doron and Apter (2010a) (Hereinafter: *The Debate*). See also Doron and Apter (2010b).

³⁴ See: From national to international, *supra* n. 4, at 48–51.

³⁵ Rodriguez-Pinzon, *supra* n. 6, at 1008.

³⁶ Tang and Lee (2006).

It is not surprising then, that the supporters of an international convention have concluded that such a convention can be an important step forward in empowering older persons around the world. As described by Tang and Lee:

Overall, the convention would define older people's rights as human rights and demonstrate that the abrogation of human rights is not acceptable. It would stipulate positive obligations on nations to realize equality and the enjoyment of rights by older people. The treaty would considerably expand the concept of human rights protection for older people, since it would not be only about refraining from doing harm or placing negative obligations on the participating states, but would also lay down norms in order to assist older people to attain a status comparable with that of the rest of the population. To achieve these goals, national governments would be required to ensure that the rights set forth in the convention were reflected in their national legislation.³⁷

As a result of these empirical and conceptual argumentations, the UN took upon itself to further examine the available legal avenues to advance the rights of older persons. An Expert Meeting Group was held in Bonn, on April 2009,³⁸ which, after in-depth debates, recommended advancing of an international convention. Specifically, it argued that:

A convention on the rights of older persons would add additional weight in furthering, deepening and more precisely defining the rights of older persons. A convention would create obligatory and binding international law. Similar to the adoption of various other human rights instruments, member states would undertake a threefold commitment when adopting such a convention: to respect, to protect and to fulfill the rights enshrined in the relevant text.³⁹

Following these recommendations, on July 2010 the UN Secretary General issued a follow-up report on the Second World Assembly on Aging that was presented before the UN General Assembly.⁴⁰ The UN process culminated on December 21, 2010, when the UN General Assembly adopted resolution 65/182,⁴¹ establishing an "open-ended working group on strengthening the protection of the human rights of older persons." The role of this working group is to consider the existing international framework for the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.⁴² At the time of writing this chapter, the UN working group only started its meetings, and no resolutions or recommendations have been made. However, there is no doubt that the outcome of this working group will be of great importance for the future development of a specific convention for the rights of older persons.

³⁷ Ibid, at 1143

³⁸ UN Expert Group (2009).

³⁹ Ibid.

⁴⁰ UN General Assembly: Report of the Secretary-General. (2010). *Follow Up to the Second World Assembly on Ageing: Comprehensive Overview*. UN: A/65/157.

⁴¹ UN General Assembly (2011).

⁴² See the working group's website, which includes protocols and other relevant materials: <http://social.un.org/ageing-working-group/index.shtml>. Last visited May 3, 2011

In summary, we have discussed three categories of hard international law. The first interprets existing international covenants while applying them to elder persons; the second is the regional specific treaty that includes particular references to the rights of older persons; and the last is the recent international move to establish a new international covenant (still in the discussion stage) that will directly address the specific needs and rights of older persons. This is a dynamic time, and it will be interesting to follow up in the next few years, to discover how all three categories of this “hard law” approach to international elder law will be further developed.

6.2.2 “Soft-Law”

International rights of older persons can be found not only in “hard law,” but also in international “soft law” which is the main and most important judicial norm in the field of international elder law today. “Soft law” can indicate a variety of legal arrangements that are not included in the recognized formal frameworks of agreements, conventions or rulings of international forums.⁴³ The reason for the creation of soft international law in general stems from the states’ need to forge relationships and agreements that do not reach the level of “hardness” of conventional international law. Studies identify a number of possible reasons for this. One explanation is the creation of a mechanism in which many states can create a common denominator on a matter that involves many parties and varying interests. Soft law facilitates cooperation between the parties and finding a common denominator.⁴⁴ A second explanation views soft law as a “gradual” legal mechanism of guiding behavior with a view to the future.⁴⁵ States are inclined to accept soft law because they know that in the future it will become “hard.” They seek to take advantage of the time in which the convention is non-coercive in order to organize and adapt themselves to a situation in which the convention will have enforcement power.⁴⁶

⁴³ See the following for possible definitions: Baxter (1980) (hereinafter: Baxter); Gold (1983) (hereinafter: Gold); Chinkin (1989) (hereinafter: Chinkin); Boyle (1999) (hereinafter: Boyle); The Debate, *supra* n. 33 at 590–591.

⁴⁴ See: Gersen and Posner (2008–2009) (hereinafter: Posner). In the opinion of the authors, conventional international law is based on the consent and will of two states or a small number of states to enter into a binding agreement. However, when the issue under discussion has many parties and participants (for example: Agreements on the environment, climate change and so forth), the chances of reaching a binding agreement are low, due to the large number of parties and interests. Soft law, in the form of a non-binding convention, enables states to undertake the commitment. This effectively constitutes a non-threatening treaty framework, which enables dialogue and agreements between many parties and interests.

⁴⁵ See: Posner, *supra* n. 44, at 625. See also: Guzman and Meyer (2010) (hereinafter: Guzman).

⁴⁶ See: Posner, *supra* n. 44, at 586–587. The authors speak about soft law as guiding behavior in domestic law in the US and in international law. States discussing the acceptance of a soft law convention do not know what the chances are that the non-binding convention will subsequently become a regular and binding treaty, and what their ability to fulfill the treaty will be. Experience shows that soft-law conventions will harden over the years and become binding. Therefore, soft law serves as a kind of signal and declaration of intentions, the entry into which is done gradually and provides the state with an adjustment period.

Three definitions may be proposed, in such a way that if even one of them is fulfilled, the legal norm on the issue of older persons can be defined as soft law.⁴⁷ One case is that the law in question is not binding law.⁴⁸ In other words, if the agreements are non-binding and do not include enforcement measures, the norm will be considered soft law. A second case is that the legal norm comprises general norms and principles but not laws. In this case, it is the language of the convention that determines whether we are talking about soft law. A situation is possible in which a particular convention will have one section that is soft law and another section that is a binding conventional norm.⁴⁹ The third case refers to a legal norm that is not subject to simple enforcement. This refers mainly to conventions dealing with many issues and consisting of many articles, which is difficult to enforce as an integral whole.⁵⁰

As noted in the scholarly literature, “soft law”—while not binding on the formal level—has been proven to play an important role in determining customary international law.⁵¹ Through its specificity, soft-international law can act as a guide for policy matters. This is especially true on the international level, where flexibility and diversity is needed—here, “soft law” in the form of detailed yet unbinding legal formulas, stands a better chance of being adopted in local policies. For example, the work of UNHCR in setting standards for the treatment of older refugees—while having no formally binding status—has effectively captured the vulnerability of persons in emergencies, as well as provided useful guidance on how to respond best to the needs of older persons in crisis situations

Rights of older persons in soft public international law began to take shape at the beginning of the 1980s,⁵² starting from the Vienna International Plan of Action on Ageing, which the UN General Assembly adopted in 1983.⁵³ The plan includes 62 recommendations for action aimed at aiding and ensuring the subsistence and rights of older persons. The recommendations addressed the main issues of health, nutrition, housing, social services, preventing unemployment, and education.⁵⁴ This plan constituted a milestone in the development of elder rights on the

⁴⁷ Boyle, *supra* n. 43, at 901–902. The article discusses the relationship between a “soft law” norm and the “treaty law” norm in international law.

⁴⁸ *Id.* at 901.

⁴⁹ *Id.* at 902. He cites as an example the Convention on Climate Change, which includes both soft law and treaty norms.

⁵⁰ *Id.*

⁵¹ See: *The Debate*, *supra* n. 33, at 590–591; Gold, *supra* n.43, at 443–445 (1983); Boyle, *supra* n. 43, at 901–902

⁵² Doron and Mewhinney (2007); *The Debate*, *supra* n. 33 at 590; Rodriguez-Pinzon, *supra* n. 6, at 917; General Comment No. 6, *supra* n. 16, at Article 4.

⁵³ Vienna International Plan on Ageing, *supra* n. 17; Rodriguez-Pinzon, *supra* n. 6, at 947. The plan was adopted unanimously by 124 states at the World Assembly on Ageing.

⁵⁴ General Comment No. 6, *supra* n. 16, at Article 4; Rodriguez-Pinzon, *supra* n. 6, at 947; *The Debate*, *supra* n. 33, at 590.

international level, but had no binding legal validity, and served only as a kind of document of recommendations.

In 1991, the UN issued the United Nations Principles for Older Persons.⁵⁵ The document was divided into five principles: The first principle is independence, and includes the right to food, shelter, clothing, health and the right to work and education.⁵⁶ The second principle is care. Older persons have the right to receive proper care, whether they live at home, in an institution or anywhere else.⁵⁷ The third principle is participation. The idea is to enable older persons to take part and share in the public sphere, so that they can be partners to decisions that pertain to them and help shape the face of society in general.⁵⁸ The fourth principle is self-fulfillment. This refers to the possibility of self-realization and personal development, by enabling older persons to enjoy full access to educational and cultural systems.⁵⁹ The last principle deals with elder dignity. The idea is to enable older persons to lead an independent life, without being exploited or suffering from discrimination or abuse.⁶⁰ Here too, we see a resolution that has no binding legal validity, is not enforceable, and has importance on a declarative level only.

Two additional important documents were issued in 1992. First, the UN General Assembly adopted a plan with eight targets for international action until 2001 on the matter of older persons.⁶¹ The second document was the Proclamation on Aging.⁶² This document was issued on the occasion of the tenth anniversary of the Vienna International Plan of Action on Ageing.⁶³ It urges, among other things, the states to support older women who spent most of their lives caring for the home and family and to ensure for them a dignified old age.⁶⁴ The document encourages men to continue to lead a productive life even after retirement.⁶⁵ The proclamation attaches importance to encouraging, supporting and strengthening families, which serve as a basis and support for the elder population.⁶⁶ The proclamation calls upon the states of the world to strengthen their cooperation with regard to research and knowledge on aging and older persons.⁶⁷

⁵⁵ Principles for Older Persons, *supra* n. 17; General Comment No. 6, *supra* n. 16, at Article 5; Rodriguez-Pinzon, *supra* n. 6, at 948; The Debate Around, *supra* n. 33, at 590.

⁵⁶ Principles for Older Persons, *supra* n. 17, at Articles 1–6.

⁵⁷ *Id.* at Articles 10–14.

⁵⁸ *Id.* at Articles 7–9.

⁵⁹ *Id.* at Articles 15–16.

⁶⁰ *Id.* at Articles 17–18; Rodriguez-Pinzon, *supra* n. 6, at 948.

⁶¹ Implementation of the International Plan of Action on Aging: Integration of Older Persons in Development, U.N. Doc. A/RES/47/86 (1992).

⁶² Proclamation on Aging, U.N. Doc. A/RES/47/5 (1992) (Hereinafter: Proclamation on Aging).

⁶³ Vienna International Plan on Ageing, *supra* n. Articles 17.

⁶⁴ Proclamation on Aging, *supra* n. 62 at Article 2 (h).

⁶⁵ *Id.* at Article 2 (i).

⁶⁶ *Id.* at Article 2 (k).

⁶⁷ *Id.* at Article 2 (o); General Comment No. 6, *supra* n. 16, at Article 7; Rodriguez-Pinzon, *supra* n. 6, at 948–949.

The most important landmark, as of today, in the field of developing “soft” elder rights was carried out during the Madrid Assembly of April 2002, with the support of all 159 UN member states (at the time).⁶⁸ Specifically, it should be taken into account that the focus of the 2002 Madrid Assembly shifted the existing policy framework regarding the rights of older persons considerably: it promoted the view of aging from the perspective of both developing and developed countries. An intergenerational policy approach that pays attention to all age groups with the objective of creating a society for all ages and a shift from developing policies for older persons toward the inclusion of older persons in the policymaking process were major outcomes of the Madrid Assembly. We can say that there is almost no sphere of social interest concerning the older population that is not covered by the very detailed existing international documents. If the Madrid Plan of Action is taken seriously and implemented properly, there will be no need for any new international convention. However, if the Madrid Plan of Action is not taken seriously, there is no reason to expect that another international document will be treated any differently.

Another element of soft law that must be mentioned is the activity of international organizations that promote elder rights in their field. For example, the International Labor Organization (ILO), in various conventions, has addressed specific issues relating to the older population, such as minimum standards of social security,⁶⁹ and old age benefits. Furthermore, the organization issued a recommendation to act to prevent discrimination against older workers in terms of their employment, social security, and retirement conditions.⁷⁰ The ILO also passed resolutions to refrain from discrimination against older workers with regard to vocational training, and to prevent discrimination against women who began to work at a later age, having been previously engaged in managing the household.⁷¹ It is important to see that despite the organization’s activity, it too does not have a convention, proclamation, or plan that deals specifically with the older population.⁷²

Some may view soft law regarding the older population, in effect, as a type of weak law that lacks enforcement powers.⁷³ But others will find an advantage in this.

⁶⁸ See: Madrid International Plan of Action on Ageing, U.N. Doc A/CONF.197/9 (2002) (Hereinafter: Madrid International Plan).

⁶⁹ See: International Labour Organization, *Social Security (Minimum Standards) Convention* (June 28, 1952), ILO. Doc. C102, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102> (accessed July 1, 2004) (Last visited May 3, 2011).

⁷⁰ See: ILO: Older Workers Recommendation, 1980 (No. 162).

⁷¹ See: ILO: Convention No.142, Convention No.156; Rodriguez-Pinzon, *supra* n. 6, at 951.

⁷² Rodriguez-Pinzon, *supra* n. 6, at 951.

⁷³ Baxter, *supra* n. 43, at 550, writes: “We may start this examination on ‘soft’ or ‘weak’ law. . . .”; and see: Boyle, *supra* n. 43 at 911–912, who regards soft law as a possibility of creating an entire system that is parallel to conventional law—a soft law system that is not normatively binding. He considers such a framework to be more comfortable for enforcement and conflict resolution.

For them, soft law offers many options for implementation at the international level. It will be easier for states to accept these non-binding norms, and this will make it possible to advance issues at the international level. On the matter of elder rights, if they are composed of soft law, there is hope that states will be willing to accept these norms with greater ease.⁷⁴

6.2.3 *International Case Law*

Along with the three streams of elder rights the “hard” law, interpretation of international convention, and “soft” law, another element that has developed in international law is case law created by international tribunals that have begun to address human rights in general and elder rights in particular. Between 1922 and 1960, the International Court of Justice in The Hague was the only international court for resolving international conflicts. Since then, the number of such courts and forums has grown. Some are the product of international UN conventions on human rights, and some were set up by virtue of regional conventions.⁷⁵ The greatest change has taken place in Europe, and it combines an unprecedented political and economic union; a union in which states waive, of their own free will, symbols of sovereignty (local currency, law) in favor of creating a binding multinational framework.⁷⁶ Among other things, this framework has also created an advanced and sophisticated legal system.⁷⁷ The union has many reasons, one of which was the desire to unify and raise norms with regard to safeguarding human rights.⁷⁸ On the matter of elder rights, we can distinguish between two possible types of discussions. In one, a disputed question related to older persons is discussed in public international law between states. In the other case, which is the product of the past decades, older persons as individuals bring claims against states within the framework of public international law.⁷⁹

⁷⁴ The Debate, *supra* n. 33, at 590–591.

⁷⁵ Higgins (2001) (hereinafter: Higgins); see listing of courts and forums that have evolved in the past decades: Greer (2010) (hereinafter: Greer). Among others, the following courts can be noted: The European Court of Human Rights, the European Court of Justice, the International Tribunal for the Law of the Sea, the World Trade Organization, the International Labor Organization, the International Criminal Court, the regional courts in America and Africa and more.

⁷⁶ Rosenne, *supra* n. 8, at 454.

⁷⁷ *Id.* at 454–455.

⁷⁸ Goldhaber (2007) (hereinafter: Goldhaber).

⁷⁹ Rosenne, *supra* n. 8, at 455; Goldhaber, *supra* n. 78, at 3–4. In the first case, the example is the discussions being held on the matter of the elderly in the UN’s International Court of Justice (see below). In this case, the discussion is between states only. The second salient case is the European Court of Human Rights (see below).

6.2.3.1 Elder Rights in Inter-State Law

Elder rights, when discussed in courts and international forums between states, are marked by the fact that states are the litigating parties that come before the courts and forums.⁸⁰ This group includes, among others: The International Court of Justice (ICJ) in The Hague,⁸¹ the International Committee on Economic, Social and Cultural Rights (CESCR),⁸² the European Committee of Social Rights (ECSR) and the Inter-American Commission on Human Rights (IACHR).⁸³ Non-governmental organizations (NGOs) can also come before some of these courts and international forums.⁸⁴

The European Committee of Social Rights is the committee charged with implementing the European Social Charter.⁸⁵ Complaints and appearances before the committee are only possible for a closed list of labor organizations and non-governmental organizations. Older persons themselves cannot appear before the committee. The European Committee of Social Rights has discussed a small number of cases to date. The committee lacks enforcement powers and its recommendations regarding the deviation of states from the ESC are turned over to the Committee of Ministers of the Council of Europe for enforcement.⁸⁶

In the decision on the matter of the International Federation of Human Rights Leagues (IFHR) v. Ireland,⁸⁷ the IFHR sued the Irish government on behalf of

⁸⁰ The committees mentioned below are not courts. However, these committees conduct, in different forms, procedures of inquiry and clarification. Such inquiries are also conducted on issues related to elderly persons.

⁸¹ Hereinafter: ICJ.

⁸² Hereinafter: CESCR. This is an international body of primary importance for examining and monitoring the development and implementation of Economic, Social and Cultural Rights. By virtue of being a UN committee, it has a broad picture placed before it, and holds the authority to report to the Economic and Social Council. The committee is subordinate to the UN General Assembly. It does not accept complaints from individuals, and its main power lies in reporting. See: Scheinin (1995) (hereinafter: Scheinin).

⁸³ Hereinafter: IACHR. Filing claims with the Inter-American Court of Human Rights is under the authority of the Inter-American Commission on Human Rights, and only after exhausting the procedures with the states against which the claims are filed.

⁸⁴ One notable example is the court of the International Labor Organization (ILO). Individuals can file complaints only against organizations that are members of the ILO. The authority of the court and tribunals applies to its member organizations, and it discusses complaints among the members.

⁸⁵ ESC, *supra* n. 29, Article 23.

⁸⁶ Churchill, *supra* n. 9, at 229. At 221–224, they report that until 2006, 34 complaints were discussed regarding nine states out of the 14 that ratified the ESC. Their argument is that the Council of Ministers is mainly motivated by political considerations, and there is no meaningful enforcement of the ESC in case of violations. The reporting system works effectively, and the main problem that requires a solution is finding a more effective enforcement system.; see as well: Koch, *supra* n. 10, at 292. Until January 1, 2009, 53 cases were discussed by the committee. This is a small number relative to the number of cases discussed by the European Court of Human Rights (see below).

⁸⁷ International Federation of Human Rights Leagues (IFHR) v. Ireland Application No. 42/2007 (3/6/2008) (hereinafter: International Federation v. Ireland).

a group of Irish pensioners, who did not live in Ireland on a permanent basis. Their argument was that during visits to Ireland, they were not entitled to free rides on public transportation, like all other pensioners living in Ireland. Their right to a free ride was denied to them solely because they had chosen not to live in Ireland during the retirement period. The committee that discussed the complaint found that Ireland had not deviated from the provisions of the ESC, and that the state had discretion as to the manner of implementing the budget and its distribution among the citizens. Despite the fact that the discussion pertained, among other things, to Article 23 (the rights of the elderly), the committee did not assign any weight to the plaintiffs' place of residence and lifestyle or their needs as older persons. In effect, the committee ignored the older population as a unique group with special sensitivities and needs.⁸⁸

6.2.3.2 Older Persons in International Law as Having Independent *Locus Standi*

Opening the gates of international courts to individual complaints is part of the process of transforming the courts and committees of international organizations into a significant tool for the defense of human rights.⁸⁹ A number of international bodies enable individuals to file complaints with them. Five of the committees on the UN Economic and Social Council enable such a procedure.⁹⁰ The committees are: The Human Rights Committee (HRC),⁹¹ the Committee on the Elimination of Racial Discrimination (CERD), the Committee against Torture (CAT), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of Persons with Disabilities (CRPD).⁹² In these cases, complaints are submitted to the committees, which conduct an investigation. The complaints discussed by the committees are those submitted by individuals against states that have ratified the consent to discuss individual complaints. The committees summarize and formulate their position on the basis of the complaints, the parties' responses, and an inquiry. Conclusions and recommendations are ultimately submitted to the Economic and Social Council, and in any case the

⁸⁸ *Id.* at Article 19–20, 31–32.

⁸⁹ Goldhaber, *supra* n. 78, at 6; Rosenne, *supra* n. 8, at 455; see also: www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics (Last visited July 11, 2011). Until December 2010, 57,400 complaints were filed with the European Court of Human Rights, a 10% increase from the previous year. 80% of the complaints come from states of the former Soviet bloc.

⁹⁰ Smith (2010) (hereinafter: Rhona). Explains in a clear and concise manner the existing committees within the overall picture of the UN committees.

⁹¹ Not to be confused with the Human Rights Council.

⁹² Rhona, *supra* n. 91, at 66–79. Listing of the committees, their roles and their manner of operation.

decisions are non-binding.⁹³ The committees do not carry out, as a matter of routine, a process of litigation (as in the adversary system). For our purposes, it is important to emphasize that older persons who file complaints with the committees can do so only on the basis of articles in the conventions according to which the committees operate, and which were violated (discrimination against women, torture, racism and so forth). Complaints are not submitted to these committees on violations of articles prohibiting discrimination against older, persons as such. The reason for this is simple: No such articles exist in these conventions. On the individual-complaint level, the central European legal instance that over the years has become a leading world instance with regard to human rights is the European Court of Human Rights. The court belongs to the European Council and was founded on July 21, 1951.⁹⁴ From its founding until 1998, the court handed down only 837 rulings. Between 2003 and 2007, the court gave 4,000 rulings. In September 2008, the court handed down its 10,000th ruling. At present, over 100,000 cases are being handled by the court, and every year 50,000 cases are added.⁹⁵ This demonstrates the court's scope of activity and its status. The court's jurisdiction applies to the 47 states that are members of the Council of Europe, from Vladivostok (Russia) in the east to Reykjavik (Iceland) in the west. Some 800 million people, speaking 28 languages, fall under the court's jurisdiction.⁹⁶ It examines the claims in light of the wording of the European Convention on Human Rights, and by virtue of this, the court also has the authority to discuss individual complaints.⁹⁷

The ECtHR made its unique breakthrough of the individual complains in the international sphere in November 1998.⁹⁸ The court summarized the process that brought it to its unique position today:

... the Court would stress that although the Convention right to individual application was originally intended as an optional part of the system of protection, it has over the years become of high importance and is now a key component of the machinery for protecting the rights and freedoms set forth in the Convention. ... right of individual application is no longer dependent on a declaration by the Contracting States. Thus, individuals now enjoy at the international level a real right of action to assert the rights and freedoms to which they are directly entitled under the Convention.⁹⁹

In summary, it would appear that looking forward, we can expect a significant increase in the use that older persons will make of international courts and tribunals

⁹³ Justiciability, *supra* n. 8, at 467. The authors show that enforcement is weak mainly due to the fear that states will not join (ratify) the protocols enabling individual complaints. If there is an aggressive enforcement against the states, they will refrain from ratification or will withdraw after having ratified.

⁹⁴ Rosenne, *supra* n. 8, at 92.

⁹⁵ For all data cited here, see: Deutsch and Wolfrum (2009); see also: www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics (Last visited July 11, 2011).

⁹⁶ Goldhaber, *supra* n. 78, at 6.

⁹⁷ *Id.*

⁹⁸ See: Egli (2007–2008); Reiss (2009); Wildhaber (2006–2007).

⁹⁹ Mamatkulov & Askarov v. Turkey, (2005) ECtHR Application nos. 46827/99 & 46951/99, article 122.

to further their rights. We can also expect to see the development of a new legal theory of judicial precedents that will focus on the status and rights of older persons throughout the world, a legal theory that will trickle down and become binding for the courts in the various states as well. Here too, we are talking about an important development that is only at the start of its path, and it will be important to follow the precedent-setting rulings on the matter.

6.3 Private International Elder Law

Private law problems that arise from factual situations connected with more than one country are commonly encountered in the modern world. As described by Doron, in a globalized and aging world, older persons travel, move, and migrate from one country to another for a variety of purposes and contemplated or actual durations.¹⁰⁰ To achieve reasonably satisfactory resolutions that arise from these situations, legal systems have adopted special rules that form the legal discipline known as conflict of laws and private international law.¹⁰¹ Like any other rule in a country's private law, rules of conflict may be coordinated with those of other countries by means of international treaties.

Although international private law is relevant to the aging population in various respects, perhaps the most common area is that of wills and inheritance. This area regulates the allocation of property after a person's death and the degree to which the person is free to decide what will happen to that property, which gives rise to many legal questions at the international level. A relatively simple question is whether the country within whose boundaries the person's property is found should honor a will made in a different country. An example of a more complex issue is the status of a will that was drawn up in one country and signed in another, and whose provisions are required to be carried out in a third country. Such questions can only receive a legal solution by means of private international law.

Every legal system is free to define its own legal responses to questions like these. On the international level, however, there are a number of conventions that attempt to establish standardized practices in areas of private international law applicable to older persons. These conventions were drawn up by the Hague Conference on Private International Law, an organization comprising fifty-six member nations.¹⁰² The purpose of this body is to unify the rules of private international law¹⁰³ by drafting multilateral treaties known as Hague Conventions.¹⁰⁴ Some of the conventions deal

¹⁰⁰ See: From national to international, *supra* n. 4, at 48–51.

¹⁰¹ See generally Stone (1995).

¹⁰² Fagan (2002) (hereinafter: Fagan).

¹⁰³ Hague Conference on Private international Law, *Statute of the Hague Conference on Private International Law*, <http://hcch.net/index.en.php?act=conventions.text&cid=29> (entered into force July 15, 2004) (last visited July 11, 2011).

¹⁰⁴ Fagan, *supra* n. 110 at 337.

specifically with legal issues of concern to older persons: testamentary dispositions,¹⁰⁵ international estate administration,¹⁰⁶ succession to estates,¹⁰⁷ and trusts.¹⁰⁸ There is also the Fourth Report of the Private International Law Committee, which provides a universal basis in this field and was adopted by many countries around the world and incorporated into their legal systems.¹⁰⁹

An important recent development in this field is the Convention on the International Protection of Adults, which “applies to the protection in international situations of adults who, by reason of impairment or insufficiency of their personal facilities, are not in a position to protect their interests.”¹¹⁰ The convention “aims to shield the vulnerable members of society by determining which state — that of their citizenship or of their current residence — may assert jurisdiction over them.”¹¹¹ While not explicitly stated, it is clear that this convention is of “significant, if not primary, relevance to the elderly.”¹¹²

According to the convention, it is the adult’s country of habitual residence that has the jurisdiction to take measures for protecting the adult’s person and property.¹¹³ However, as Fagan notes, the convention recognizes some exceptions, such as the jurisdiction to take emergency or temporary measures of protection.¹¹⁴ The actual protective authority is broad, and includes “the determination of incapacity and the institution of a protective regime,” “the placement of the adult in an establishment or other place where protection can be provided,” and “the authorization of a specific intervention for the protection of the person or property of the

¹⁰⁵ Hague Conference on Private International Law, *Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions*, http://www.hcch.net/index_en.php?act=conventions.text&cid=40 (Oct 5, 1961) (last visited July 11, 2011).

¹⁰⁶ *Convention Concerning the International Administration of the Estates of Deceased Persons*, http://www.hcch.net/index_en.php?act=conventions.text&cid=83 (Oct 2, 1973) (last visited July 11, 2011).

¹⁰⁷ *Convention on the Law Applicable to Succession to the Estates of Deceased Persons*, http://www.hcch.net/index_en.php?act=conventions.text&cid=62 (Aug 1, 1989) (last visited July 11, 2011).

¹⁰⁸ *Convention on the Law Applicable to Trusts and on Their Recognition*, http://www.hcch.net/index_en.php?act=conventions.text&cid=59 (July 1, 1985) (last visited July 11, 2011).

¹⁰⁹ Private Int’l. L. Comm., *Formal Validity of Wills, Fourth Report of the Private International Law Committee* (1958). See also Stone (1995) at 374 (noting that thirty-eight countries have incorporated the Report into their legal systems).

¹¹⁰ *Convention on the International Protection of Adults*, Article 1, para. 1, <http://www.hcch.net/e/conventions/text35e.html> (Jan 13, 2000) (last visited); see generally Paul Lagarde, *Convention of 13 January 2000 on the International Protection of Adults, Explanatory Report*, http://www.hcch.net/index_en.php?act=conventions.text&cid=71 (Jan 5, 2000) (last visited July 11, 2011).

¹¹¹ Fagan, *supra* n. 110, at 331.

¹¹² *Id.* at 339.

¹¹³ *Convention on the International Protection of Adults*, *supra* n. 118, at Article 1, para. 5.

¹¹⁴ Fagan, *supra* n. 110, at 340–341 (citing *Convention on the International Protection of Adults*, *supra* n. 118 at Article 10, para. 1; Article 11, para. 1).

adult,” including matters such as “a surgical operation or the sale of an asset.”¹¹⁵ Most importantly, the convention makes it possible to respect (within certain limits) legal documents such as advance directives, living wills, and durable powers of attorney, so that the wishes of older persons will be honored in case of incapacity, even outside their own country.¹¹⁶

An example of the complicated judicial norm regarding older persons may be found in the following case. A Greek pensioner was treated for a chronic heart complaint while traveling in Germany. The ECJ judgment declared that EU pensioners traveling in member states other than their home country have the right to medical treatment with costs borne by the home country.¹¹⁷ The Court wrote that a Greek pensioner treated for a chronic heart complaint while traveling in Germany should have been recompensed by his own country.¹¹⁸ The court added that such treatment is not to be “limited solely to cases where the treatment provided has become necessary because of a sudden illness” but should also include cases of “a pre-existent pathology of which [the patient] is aware, such as chronic illness.”

6.4 Comparative Elder Law

“Globalization brings laws and legal cultures into more direct, frequent, intimate, and often complicated and stressed contact.”¹¹⁹ Naturally, this trend also encourages the development of comparative elder law. It should be noted that comparisons between legal systems can broaden horizons. Comparative research enables us to consider legal solutions that our own system has not contemplated, to weigh the advantages and disadvantages of our own system against those of other approaches discovered in the course of research,¹²⁰ and to better understand our own system. The ability to identify an identical lineage, or similar basic principles, helps us single out the universal cornerstones of the legal system and better interpret

¹¹⁵ Fagan, *supra* n. 110, at 341 (citing Lagarde, at 31; *see also Convention on the International Protection of Adults*, *supra* n.118, at Article 3).

¹¹⁶ Fagan, *supra* n. 110, at at 347 (analyzing the success or failure of the convention in achieving this goal).

¹¹⁷ Case C-326/00, *Idryma Koinonikon Asfaliseon (IKA) v. Vasileios Ioannidis*, 2003 E.C.R. I-1703 (available at: <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-326%2F00&datefs=2003-02-25&datefe=&nomusuel=&domaine=&mots=&resmax=100>) (last visited July 11, 2011).

¹¹⁸ *Id.* at para. 55.

¹¹⁹ Gerber (2001).

¹²⁰ *See generally* Haris (2001) (Hebrew); Bogdan (1994); Schlesinger et al. (1998); Zweigert and Kötz (1998).

the law on the basis of wider knowledge.¹²¹ An understanding of foreign systems of law enables us to provide solutions for clients who encounter legal difficulties in other countries. Finally, comparative research facilitates dialogues between societies and, to a certain extent, encourages international cooperation and mutual understanding.¹²²

At the present time, unfortunately, there is relatively little literature in the field of elder law that makes use of comparative methodology. Thus, there is considerable room for development, both with respect to the general advantages mentioned above as well as at a more advanced level: the ability to use the comparative method to discern and analyze the more profound social aspects of old age.

One example of a long-known use of comparative law is legal reform. Legal systems have always been learned, or simply copied. It is natural, in any process of legal change, to make a comparative examination of what is happening in the field in the outside world.¹²³ It would likewise be natural that in the field of elder law, in which there is a constantly growing demand for legal change and reform of existing laws, one should turn to comparative international law for solutions.

Despite the very limited amount of comparative research in elder law to date, a slow increase has recently become discernible. There is more detailed research in elder guardianship,¹²⁴ family responsibility,¹²⁵ long-term care for old people,¹²⁶ and the right to a dignified death.¹²⁷ The increasing awareness of the importance of comparative international law has also affected education and professional training. For example, the National Academy of Elder Law Attorneys (NAELA) founded in 1988, has organized comparative international panels in several of its professional conferences,¹²⁸ such as the Wake Forest University School of Law course offered in Italy in 2003 devoted entirely to the comparative aspects of elder law.¹²⁹

¹²¹ Haris, *supra* n. 128; *see generally* Bogdan, *supra* n. 132, at 28–32; de Cruz (1999) (describing how the judges of the European Court of Justice draw upon their experience from various traditions to resolve legal issues that present themselves in this international forum).

¹²² Haris, *supra* n. 128. *See also* Cruz, *supra* n. 129, at 24–26 (encouraging the use of “common core research” to discern the “highest common factor[] of substantive law” across international legal systems).

¹²³ Cruz, *supra* n. 129, at 20–21 (providing several examples of nations’ engaging in comparative studies and borrowing of foreign laws).

¹²⁴ *See generally* Doron (2002) (comparing guardianship law reform internationally).

¹²⁵ *See generally* Moskowitz (2002) (comparing major nations’ filial responsibility laws).

¹²⁶ *See generally* Glendinning et al. (1997).

¹²⁷ Little (1997) (comparing physician-assisted suicide in the Northern Territory, Australia; the Netherlands; and Oregon, United States); *see also* de Cruz (2001) (summarizing and comparing advance-directive and physician-assisted suicide laws in several countries).

¹²⁸ National Academy of Elder Law Attorneys, <http://www.naela.org/> (Last visited June 30, 2004).

¹²⁹ Wake Forest University Comparative Law Summer Program, <http://www.wfu.edu/users/palmitar/LawSchoolPrograms/Venice-Summer-Program/Brochure2003/Academic-life.html> (Last visited June 30, 2004).

The studies and activities mentioned above have implications for social and legal policy, and offer a deeper understanding of the field, as well as the ability to forecast possible future developments. Recognition of the importance of the international aspects of elder law will intensify the use of comparative law tools and enable the field to develop with the aid of international cooperation.

6.5 Conclusion

Doron has already argued that the extension of elder law into international law holds great promise, and will make possible new areas of cooperation. It can release great creative potential and facilitate the formulation of legal solutions that have hitherto been impossible. It proffers a vision of old age from the perspective of universal law, one that crosses frontiers and unites cultures. Finally, it is an expression of the “maturation” of the field of elder law, reflective of many other fields that, at one stage or another, have undergone a process of internationalization.¹³⁰

The ability to realize this vision in practice depends primarily on the ability to create an awareness of the need to do so. One key purpose of this chapter has been to promote an understanding among those who work in elder law that they should raise their sights from the local to the international level. Only understanding, consciousness, and internalization of the need to bring about a change in thought will eventually bring about the required reforms. We present here Doron’s recommendations in two fields¹³¹:

6.5.1 *Increased International Cooperation*

The international aspects of elder law cannot be developed without international cooperation. This must be promoted at various levels and in different contexts. Thus, for instance, at the academic level, cooperation between scholars at academic research centers the world over is a natural development. This can take place in a number of ways: joint research projects, exchange of scholars, conferences and workshops, and a whole host of academic activities. The same applies to the professional level as well.¹³² There is already a great deal of international cooperation among lawyers, so it is reasonable to suppose that they will expand this cooperation to find legal solutions to the international problems of their older

¹³⁰ See generally Dyer (1997); Kinney (2001).

¹³¹ From National to International, *supra* n. 4, at 66–67.

¹³² See generally Gerber, *supra* n. 127, at 955 (noting that “[g]lobalization . . . changes the relationships between legal professionals in ways that influence the processing and transmission of legal information”).

clients. Such cooperation should take place both among individual lawyers or law firms, and among professional organizations. Professional organizations, which are today more involved and active in matters of elder law than in the past, should increase the degree of their international cooperation and should educate and encourage professional cooperation among lawyers as individuals.

In this connection, it should be noted that rising importance of nongovernmental organizations (NGOs) heralds a fundamental change in international law. Although gerontological organizations conduct a lively and dynamic international dialogue,¹³³ in the field of elder law, cooperation and dialog between NGOs is extremely limited.¹³⁴

6.5.2 *International “Legislation”*

As noted previously, there is a major lacuna in international law: the absence of a charter of rights for the older population. There is no justification for the fact that, whereas other underprivileged groups have been granted internationally recognized charters of rights, older persons have no such document bearing obligatory legal validity. This is a badge of shame for all those who are active in the field of elder law; it is in part the expression of inactivity and the lack of consciousness of the need for international action to promote the rights of older persons. It may be that the most important challenge in international elder law is the framing of an international charter that defines the fundamental rights of old people the world over. Such a document, in addition to its obligatory legal status, would have great educational, symbolic, and political value and would serve to advance the rights and improve the status of older persons all over the globe. Moreover, international and regional organizations should publish papers, covenants, and detailed international agreements as a basis for the specific rights of older persons. Legal instruments such as these would bring about change throughout the field of elder law at both the national and the international levels.¹³⁵

¹³³ See e.g. International Association of Gerontology, *welcome* <http://www.sfu.ca/iag/> (Last visited June 30, 2004); International Federation on Ageing, <http://www.ifa-fiv.org/en/accueil.aspx> (Last visited June 30, 2004).

¹³⁴ From National to International, *supra* n. 4, at 66–67; in many countries there already exist associations and NGOs that promote the law as an instrument for social change among the old. In the United States, the Legal Counsel for the Elderly gives legal aid to old people in need on behalf of AARP. See generally <http://www.aarp.org/lce/> (Last visited May 11, 2004). The Advocacy Centre for the Elderly in Toronto, Canada, and Law in Services of the Elderly in Israel serve similar functions. See generally <http://www.advocacycentreelderly.org/index.htm> (Last visited March 19, 2011) and <http://www.elderlaw.org.il> (*select* English) (Last visited May 11, 2011). These organizations work on the local level, and have scarcely any international cooperation between them.

¹³⁵ *Id.* at 67.

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