

9th session of United Nations' Open-Ended Working Group on Ageing

New York, 23 to 26 July 2018

## ***Towards stalemate or Big Bang?***

Report by Borja Arrue, Project and Policy Officer at AGE Platform Europe

### **Contents**

Some key ideas around the 9 <sup>th</sup> session.....	1
A quick reminder: what is the OEWG? .....	2
The content of the 9 <sup>th</sup> session.....	3
Overview of the participation in plenary sessions.....	4
States.....	4
UN agencies.....	5
National Human Rights Institutions (NHRIs) .....	6
Non-Governmental Organisations (NGOs).....	6
AGE's participation.....	6
Some important points about the dynamics in the periods between sessions .....	8
Ideas for further action .....	9
More information.....	10
ANNEX – Acronyms .....	11

### **Some key ideas around the 9<sup>th</sup> session**

- ✓ **Participation from states declined compared to last year's session**; the fact that it took place End-July explains partly the weak state participation. On the contrary, **national human rights institutions (NHRIs) and NGOs participated in bigger numbers** and the quality of their interventions was praised. The Global Alliance for the Rights of Older People (GAROP) is getting stronger and is already playing a role in improving the level of involvement of organisations of older persons.
- ✓ The overall feeling is that, if states are serious about the original mandate of the OEWG, **more clarity is needed around the direction discussions will be taking**. An increasing impatience among NGOs could be felt, as if the OEWG had arrived to a decisive point where it needs to decide whether it moves towards discussing a new legally binding instrument, or it enters a permanent state of stalemate.

- ✓ Positions of states around a convention have not changed much, with the **EU and some EU states avoiding mentioning the possibility of a new instrument**. The positive surprise came from Canada, which declared to be open to discussing the possibility of a new convention.
- ✓ The chair proposed, as a novelty, to deliver a **written outcome of the session, negotiated by states** – which has not been the case until now. Despite the strong resistances from some countries, including many of those in the EU, to anything that may sound like moving towards drafting a convention, **no opposition was expressed** in the group. A final decision on such written outcome will be made at a bureau meeting early 2019. It remains to be seen whether this triggers a change in the dynamics of the OEWG – from discussion to negotiation.
- ✓ **NGOs can still do more to influence the OEWG through greater contact with their national governments**. This dialogue should include calling on them to consult older persons to prepare each session, asking them to support the allocation of funding to the OEWG and persuading them to include older persons in their delegations and in panels, among others. **The increasing number of accredited AGE members and the participation of several of them to discussions in New York is very positive and encouraging development**.
- ✓ The topics selected by states for the 10<sup>th</sup> session (2019, dates to be defined) are **“Education, training, lifelong learning and capacity building”** and **“Social protection and social security, including social protection floors”**. Although unlikely, changes may happen.

## A quick reminder: what is the OEWG?

The Open-Ended Working Group on Ageing was created by a resolution (65/82 on 21 December 2010) of the UN General Assembly in 2010. The objective pursued with the creation of the group was to *“consider the existing international framework of 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.”*



As a group created by the UN General Assembly – which brings together, with equal representation, all 193 member states, plus the Holy See, the State of Palestine and the European Union –, states are the primary members of the OEWG and are all invited to contribute and participate. However, such involvement is not compulsory – some member states

are very active while others do not take part. On average, around 40-50 countries are present in the room (the number and the states present fluctuate widely, though). **The existence of clashing higher priorities and the difficult period in which the OEWG has been taking place – in the middle of the summer – explain the relatively low levels of participation.**

The OEWG is chaired by the Argentinian ambassador to the UN, Martín García Moritán, and led by a Bureau composed of 4 other country representatives (including from Austria and Slovenia). The OEWG is open to the participation of UN agencies, national human rights institutions (NHRIs) and NGOs; whereas states have the priority to speak and get most of the time for their interventions, UN agencies, NHRIs and NGOs also get to speak.

## **The content of the 9<sup>th</sup> session**

The 9<sup>th</sup> session took place 23 to 26 July 2018 at the headquarters of the United Nations in New York. This session stuck to the formula initiated in the 8<sup>th</sup> session in 2017: it focused on two new specific areas for so-called “substantive discussions”, and on 2017 topics for “normative discussions”.

This year’s new focus areas for “substantive discussions” were:

- **Autonomy and independence**
- **Long-term and palliative care**

Member states, UN agencies and accredited NGOs and national human rights institutions (NHRIs) were invited to submit written contributions responding to a set of guiding questions around those areas by April – all of which, including those submitted by AGE, can be consulted [here](#) (go to “Links to submissions from:” at the bottom of the page).

On the basis of these submissions, the UN staff elaborated “Substantive Reports” summing up the elements put forward by the different countries and organisations (these reports are available in the aforementioned webpage).

**The plenary meetings in New York gave a chance to all member states, UN agencies and accredited NGOs and national human rights institutions to present orally their positions around those areas and to put forward their arguments.**

Usually, **member states** take the floor to either defend their policies and/or to point to existing gaps, and usually make it easy to tell whether they are openly in favour of a new international legally-binding instrument to address gaps, if they are against, or if they just want to keep the conversation going without having defined a clear position. **NGOs and national human rights institutions** usually take the floor to point to existing gaps and to call for further action to address them – with an

overwhelming majority of them, if not all, asking for a new international legally binding instrument.

As mentioned, this year “normative discussions” also took place; the chair of the OEWG asked states, NGOs and NHRIs to submit written contributions **also on the focus areas of the previous session but from a normative point of view**, which means that, unlike for the new areas around which more general/exploratory discussions take place, for the topics of the previous session the chair asked states and accredited organisations **to put forward elements that define those areas in legal/normative terms**. Those topics were:

- **Equality and non-discrimination**
- **Freedom from violence, abuse and neglect**

For NGOs and NHRIs this was the chance to present how the rights to equality and non-discrimination and to live free from violence, abuse and neglect could look like in a new international legally binding instrument. All submissions on normative elements are available in the OEWG webpage ([here](#), go to “Links to submissions from:”, and then to “Normative input”).

## **Overview of the participation in plenary sessions**

### **States**

In terms of participation from member states, in the first plenary session on 23 July the room was quite full, with around 100 countries represented, which is a true record. Moreover, all 28 European Union countries were represented at that moment. Unfortunately, this did not last long: the session opened, as usual, with issues such as the approval of new accreditations; Russia objected to the accreditation of a Ukrainian organisation – accused of anti-Russian activities – and also to that of an Australian LGBTI organisation. This provoked a strong reaction from several countries, including the 28 EU countries, which visibly followed a common instruction to join the session to vote in favour of these two accreditations. The EU, Canada and Australia took the floor to defend the role of civil society and warned against a growing anti-NGO atmosphere. Eventually, the two NGOs’ accreditation was approved, with all EU countries decisively voting in favour.

Once this chapter over, the room adopted the level of participation of the rest of the plenary sessions, with around 40 to 60 countries in the room:

- The **EU** representative – AGE’s contact point in European Commission’s Directorate-General for Justice, Johan Ten Geuzendam –, was present in almost all sessions and took the floor several times. [His introductory message](#) included a remark on the need to complement health and welfare policies with measures to empower older people and safeguard their autonomy, as well as a

call to identify elements that are a priority to improve the protection of human rights of older persons; he showed EU's satisfaction that discussions are now more substantial than in past years. Among EU actions, he mentioned two events organised by AGE (the seminar with the UN Human Rights Office in April and the workshop on working conditions in care with UNI Europa).

- Among EU countries, the representatives of **AT, CZ, DE, FR, SI, NL and UK**, were seen in the room in all or most of the plenary sessions; some other EU countries (ES, for instance), were also present but only in few of the plenary sessions.

Among those, the most active were DE, SI and UK, which took the floor several times; they highlighted gaps in protection of older people's rights without taking an explicit stance in favour of a convention. Some of the other EU countries took the floor but only discontinuously.

**The overall impression is that the participation of EU countries has been slightly weaker (in terms of the numbers) than in the previous session.**

- **Latin American countries** were, once again, the most explicit in favour of a convention – even though their level of participation was slightly lower than in the previous session. Good interventions from several countries were heard, including those of Argentina, Mexico and Uruguay.
- **US** representative, whose points were pertinent and very much aligned with those of EU countries, stated explicitly that they are opposed to a new international convention.
- The positive surprise came from **Canada**, which broke what looked like a 'developed country alliance' reluctant towards a convention: they declared to be open to discussing a new international convention on the rights of older persons, which was received by all NGOs and notably the Canadian ones as a true success.
- Regarding **Africa** and **Asia**, their participation to discussions was very weak, limited only to a handful of countries. These regions – both in terms of states and also civil society – remain a challenge in terms of increasing the critical mass for the discussions.

### ***UN agencies***

If my memory is right, on top of the UN Human Rights Office (OHCHR, which plays a leading role in organising the OEWG), only the World Health Organization (WHO) was represented in the discussions; they took the floor regarding long-term care, and highlighted gaps in access to quality services and how WHO calls on states to develop their long-term care systems and to stop over-relying on informal care

provision. Unfortunately, other relevant agencies such as the International Labor Organization (ILO) or UN Women were absent.

### ***National Human Rights Institutions (NHRIs)***

NHRIs were better represented than last year, including representatives from outside Europe. Their greater participation contrasted unfortunately with the weak number of written submissions, which was especially regrettable regarding normative elements on equality and non-discrimination, and on violence, abuse and neglect (an area on which NHRIs have expertise): only the German and the Polish NHRIs contributed to this, in the form of a joint submission.

### ***Non-Governmental Organisations (NGOs)***

NGOs took part in greater numbers than in previous years, which was very visible in the NGO workshop organised by GAROP on the day before the start of the 9<sup>th</sup> session (which involved over 60 individuals from around 30-40 NGOs). This was also reflected in the high number of [side events](#) organised by NGOs (11). There was an overall impression that NGOs made more substantial and focused oral interventions than in previous years; a true learning process among civil society organisations has been taking place and **there is a feeling that NGOs are ready to contribute more actively and substantially to discussions.**



### **AGE's participation**

AGE was represented by Ebbe Johansen, President, and Borja Arrue, Project and Policy Officer. Among the 14 accredited AGE members<sup>1</sup>, the following participated to the session: Age UK, BAGSO (represented by AGE vice-president Heidrun Mollenkopf), FIAPA, FOCAGG and Old'Up.

AGE's **introductory statement** was read by Ebbe Johansen. Prior to the session, accredited AGE members were asked to revise and express their support to this statement, which most of them did. The resulting statement was therefore presented as a joint statement of AGE and most accredited members, and included also the support of two accredited organisations linked to FOCAGG and Old'Up (Fundació Aroa and Pass It On Network, respectively). This was a way to recognise their involvement and to provide the statement with a greater degree of legitimacy and representativeness. This statement can be retrieved [here](#). **It contains one**

---

<sup>1</sup> AGE members accredited directly at the OEWG are, as of August 2018: 50+ Hellas, Age UK, APRE Portugal, BAGSO, Bulgarian Red Cross, DaneAge, FIAPA, National Association of Pensioners of Malta, Older Women's Network Europe, Old'Up, Les petits frères des pauvres, SOLIMAI, Spanish Confederation of older people's organisations (CEOMA) and Život 90.

strong message: we need older persons to be part of the OEWG, through involvement in national delegations and in panels during the sessions.



AGE took the floor on two other occasions. In the plenary on **autonomy and independence** (read statement [here](#)) we highlighted the urgency to shift from abusive, overprotective and paternalistic attitudes to a vision of ensuring and supporting autonomy and independence of older persons in all aspects of life. In the plenary on **normative elements** on equality and non-discrimination and violence, abuse and neglect (read statement [here](#)) we highlighted some of the key elements of AGE’s written submissions. Unfortunately, the high number of NGOs that asked to take the floor made it impossible for AGE to read out a statement on **long-term and palliative care**, but the written version is available [here](#). In it we highlight the gaps in access to long-term and palliative care, the need for care and support services that allow for independent living and participation in the community, and the central role of palliative care in the delivery of quality, person-centred care and support.



Jointly with HelpAge International, AGE organised, on 26 July, 13:15 to 14:30, a **side event** attended by around 50 people, on “**Exploring normative elements to advance the human rights of older persons**”. It involved Tamarin Stodart, from the UK government, and Anna Chabiera, from the office of the Polish Ombudsman. The side event discussed normative elements on equality and non-discrimination, and

around freedom from violence, abuse and neglect. It aimed to offer a space for further discussions between stakeholders, notably NGOs. Participation from attendants was very high and the event showed the willingness of civil society to enter into normative discussions. An idea that was briefly mentioned was the possibility to integrate discussions into the joint normative submission of a group of experts (including Nena Georgantzi, AGE’s Human Rights Officer), which was disseminated among participants, and ask NGOs to endorse it; this would allow civil society to have a reference document and would support the chair of the OEWG when drafting the written outcome of this year’s session. This idea is being discussed by experts.



## Some important points about the dynamics in the periods between sessions

- **All negotiations prior to each session are highly sensitive politically speaking:** states are extremely zealous to avoid any developments that may contradict their own positions in the debates, especially regarding any steps that may approach the group towards normative discussions that could potentially lead to drafting an international legally binding instrument. All states and regional groups need to agree on each year's agenda, which makes it extremely difficult to push them beyond their consolidated positions. The period between sessions is always a tough 'fight' for the chair to advance the work of the group.
- Currently, **the OEWG has no budget**, which means that meetings always need to be organised in the far from ideal summer period, when UN interpretation services and rooms may be free from other commitments. In order to make sure the group has access to the services needed, and that subsequently meetings can be organised in better periods of the year, the Bureau put forward some months ago a proposal to fund the group with 80,000 US dollars for this year's session. Despite this being a very small amount of money, two non-European countries blocked the resolution. The same resolution may be put forward again next year.
- Two important methodological/procedural points will be discussed between states in the coming points:
  - 1) **Solidifying the follow-up on previous year's topics with a discussion on normative elements** around those topics in the next session (which means that the 2019 session deals with normative elements around these year's focus areas, "autonomy and independence" and "long-term and palliative care"). This, on top of the new focus areas for substantive discussions. As mentioned, **this methodology is strongly challenged by some states, which explains the urgency of consolidating it as much as possible.**
  - 2) **Having a written outcome of each session;** such an outcome will be inter-governmentally negotiated. This would be a small but good step in the right direction; such a written outcome could make its way into the UN system and have some impact. As explained, the group did not oppose to such written outcome and a final decision will be taken in the coming months.

Consolidating such a process is seen as a means of increasing states' support for a new convention: it was noted that theoretically it would be possible to

start drafting a convention already, but the risk would be ending up with around 20 ratifications and a convention without any traction<sup>2</sup>.

- The OEWG offers advantages compared to other UN groups: it is the only in which NHRIs have unlimited right to participate, and also the only one where a state's objection to the participation of an NGO does not lead to an automatic exclusion of that NGO, but to a vote. This shows that the group has an openness to be preserved.
- The states that are currently most reluctant to the idea that the OEWG could move towards drafting a new convention (including most EU countries and the EU itself) put forward several arguments and reasons used by opposed countries:
  - “We don't need more instruments: existing human rights mechanisms are enough”.
  - Some states are scared about the costs and the additional obligations that a new convention would imply. Such position often reflects the attitudes of officials in national ministries/government departments.
  - Some countries do not recognise older persons as rights holders.
  - The anti-human rights attitudes in some countries, including in Africa and in the Middle East, explain also some reluctances.

## Ideas for further action

- The Bureau is open to including older persons in the panels of the plenary sessions. Panels are decided by the Bureau, the UN Human Rights Office (OHCHR) and member states. Therefore, **NGOs can put pressure on these three actors, and especially on their states, to make sure they include older persons.** People involved in the process that led to the Convention on the Rights of Persons with Disabilities (CRPD) highlighted how important it was to involve directly persons with disabilities in the discussions.
- We need states to support a resolution to allocate funding to the OEWG. It is essential to put pressure on them.

---

<sup>2</sup> Among the existing 9 core international human rights conventions, the one on the Protection of the Rights of All Migrant Workers and Members of Their Families, for instance, has been ratified by only 51 countries worldwide (most of them sending countries), and not by a single EU member state; the result is that such an instrument has very limited impact.

- Those two points build around the same challenge: the increasing urgency that EU states become more active in debates and open themselves to the possibility of discussing a convention.
- Age UK provides the secretariat for the All Party Parliamentary Group (APPG) for Ageing and Older People at the UK Parliament. In that framework, in October 2017 they launched an inquiry with Members of the UK Parliament around how older people's human rights can be better protected. The result of that work is [a report](#) that recommends, as the first point, a new international convention. The European Parliament could be activated in a similar way.
- The Austrian government will organise, in November this year, an event on older persons' human rights, with a focus on new technologies. This event may include a final declaration pointing to the importance of the OEWG and of ensuring it makes progress.
- A key principle that came up a few times in human rights discussions in the last times is the **indivisibility of human rights**: getting involved in discussions about older people's human rights involves exploring intersectionality (the interaction of age discrimination with other forms of discrimination) and developing a sensitivity towards all human rights violations affecting all human beings for whatever reason. This also means that stakeholders that currently do little work on the situations faced by the older cohorts in their target groups may become supportive of our work.
- Regarding GAROP, they are playing an increasingly important role, but achieving greater coherence between members' views remains a challenge. Their Steering Committee will be renovated soon, and AGE will apply to be part of it again.

## More information

- AGE's [Special Briefing](#) on the OEWG.
- [Website of the 9<sup>th</sup> session of the OEWG](#), with more background information about the group and all materials from this and previous years' sessions.
- All statements of the 9<sup>th</sup> session, including those of AGE, are available in the PaperSmart platform of the United Nations, [here](#).
- [EU's opening statement](#), in which two events organised by AGE are mentioned (the seminar organised jointly with OHCHR in Brussels in April 2018, and the workshop organised with the European Commission, ENNHRI and UNI Europa on working conditions in care).

## ANNEX – Acronyms

DG	Directorate-General (European Commission)
GAROP	Global Alliance for the Rights of Older People
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersex
NHRI	National human rights institution
OEWG	Open-Ended Working Group (sometimes written as OEWG-A, for ‘Ageing’)
OHCHR	Office of the High Commissioner for Human Rights (also called UN Human Rights Office)
UN	United Nations

### EU country codes

Belgium	BE	Greece	EL	Lithuania	LT	Portugal	PT
Bulgaria	BG	Spain	ES	Luxembourg	LU	Romania	RO
Czech Republic	CZ	France	FR	Hungary	HU	Slovenia	SI
Denmark	DK	Croatia	HR	Malta	MT	Slovakia	SK
Germany	DE	Italy	IT	Netherlands	NL	Finland	FI
Estonia	EE	Cyprus	CY	Austria	AT	Sweden	SE
Ireland	IE	Latvia	LV	Poland	PL	United Kingdom	UK