

A Seat at the Table: International LGBTQ Rights at the United Nations

Written by Robyn Linde

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ROBYN LINDE, JUN 26 2015

There is at the present time no binding international law that protects lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals based on their sexual orientation or gender identity, nor are there any key organs or agencies of the United Nations that are specifically committed to their protection. While the success of marriage equality campaigns in North America, Europe and elsewhere might be seen as an indication that further advances in LGBTQ rights and protections are inevitable, that a tipping point has been reached on LGBTQ equality, and that we are witnessing the rapid expansion of these rights throughout the world, empirical evidence of state-sponsored homophobia does not support these claims. There is a large divide between the rights and protections enjoyed by Western LGBTQ individuals and those who live in the Global South. Being LGBTQ is punishable under law in more than 75 countries; another eight allow the death penalty for same-sex acts or “propaganda” (International Lesbian and Gay Association, 2015). Nonetheless, statements by the U.N. General Secretary Ban Ki-moon proclaiming LGBTQ rights as human rights in late 2012 were promising, as are the more recent global condemnation of Uganda, Cameroon and Nigeria for their enactment of draconian punishments for “homosexuals.” Despite these promising developments, initiatives to include sexual orientation and gender identity as protected categories under international law have to date largely failed at the United Nations.

Part of the challenge in advancing LGBTQ rights at the international level is the lack of LGBTQ nongovernmental organizations (NGOs) with consultative status with the U.N.’s Economic and Social Council (ECOSOC). Consultative status with ECOSOC allows NGOs to participate in U.N. debates and proceedings through access to diplomats, access to information, the ability to distribute policy papers and research to member states, and the opportunity to provide expertise on issues. Although there are different categories or levels of consultative status with varying degrees of U.N. access, all NGOs with consultative status enjoy three important privileges: access to all U.N. documents, security passes for all U.N. buildings (which provide the opportunity to lobby and network outside of official meetings), and legitimacy in the global political process (Willetts, 1996:43).

The first major international LGBTQ NGO to achieve consultative status at the United Nations was the International Lesbian and Gay Association (ILGA) in 1993. Yet the decision to grant ILGA consultative status with ECOSOC was subsequently reversed after one of its board members was discovered to be associated with an organization that advocates against age of consent laws. Although ILGA expelled this organization from the association in 1994, ILGA was unable to regain consultative status until 2011. A few regional and national organizations, mostly in Europe, gained consultative status with ECOSOC in 2006. In 2010, another international LGBTQ NGO, the International Gay and Lesbian Human Rights Committee (IGLHRC) gained consultative status, and ILGA (as stated) regained consultative status in 2011. The lack of international NGO involvement at the United Nations for 17 years was a tremendous obstacle to the advancement of LGBTQ rights at the United Nations that negatively affected the tenor of debates on LGBTQ issues in U.N. meetings and within U.N. organs and agencies (Buss and Herman, 2003; Clifford, 2012; Clifford, 2013; Linde, 2015; Oliver, 2013).

Some important advances have nonetheless been made. First, in the 1993 case *Toonen v. Australia*, the U.N. Human Rights Committee found that Tasmanian sodomy laws violate a right to privacy codified in the International Covenant on Civil and Political Rights, one of the principal human rights treaties in international law. The ruling

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marked the first time that a U.N. organ or international body interpreted an international treaty as conferring protection under the law based on sexual orientation. Then in 2003, Brazil issued a resolution with 19 supporters asking the (then) U.N. Human Rights Commission to take notice of human rights violations based on sexual orientation, the first resolution of its kind. The vote was delayed until 2004 due to opposition by a conservative network of states. A series of amendments in 2004 removed the references to sexual orientation from the resolution. Despite its ultimate failure, the resolution nonetheless was the first to articulate protection on the grounds of sexual orientation within a human rights frame and within the mandate of U.N. action. A 2008 statement (initiated by the European Union) in the U.N. General Assembly that held that “human rights apply equally to every human being regardless of sexual orientation or gender identity” had 66 state supporters, but was not able to gain enough consensus to become an official resolution (U.N. General Assembly, 2008). A report in 2011 by the U.N. High Commissioner for Human Rights catalogued human rights violations against LGBTQ individuals, including murder, rape, criminalization of same-sex sexual relations, torture, and the application of the death penalty, in addition to multiple types of discrimination (U.N. High Commissioner for Human Rights, 2011).

Additionally, since 1999, a biennial statement by the U.N. General Assembly condemning extrajudicial, summary and arbitrary execution has included protections against killing based on discriminatory grounds, including sexual orientation. In response to an amendment by Syria in 2010, the reference to sexual orientation was removed by the Social, Humanitarian and Cultural Committee of the General Assembly. The United States joined other states opposed to removing this protection when the General Assembly heard the amended statement. Supporters of LGBTQ rights then succeeded in reinstating sexual orientation as a protected category in the statement by majority vote. In 2012, there was no amendment challenging this protection, and the statement was expanded to include protection based on gender identity.

It is important to note that the movement for international LGBTQ human rights was not always an inclusive one. It routinely did not include bisexual, transgender and intersex rights until the late 1990s. The gradual expansion of the LGBTQ movement from a narrower focus on the concerns of gay men and lesbians to advocacy on behalf of sexual orientation and gender identity was a result of the increasing tendency of activists to define themselves by what they were not—heteronormative and gender-conforming. Heteronormativity is a social construction that normalizes and privileges heterosexuality, heterosexual identity and heterosexual expression. A heteronormative culture aligns gender identity, biological sex and sexual identity in a rigid male/female or masculine/feminine dichotomy defined by traditional gender roles and expectations. Those that challenge these dichotomies are often labeled gender nonconforming, gender creative, gender variant, genderqueer, transgender, intersex or, simply, queer, depending on the particular identity or expression of the individual and the context in which gender is discussed.

Yet advocacy under the banner of LGBTQ human rights has been problematic for many in the Global South (Linde, 2015). While those that embrace the term are often empowered by the global movement for LGBTQ rights, the term has also been understood to undermine “indigenous ways of conceptualizing sexuality” (Altman, 1996). International LGBTQ NGOs, located in Europe and North America, are often accused of “global queering,” or diffusing specifically Western ideas of sexuality and gender identity in the Global South, facilitated in part by existing mechanisms of globalization (Altman, 1996; Kollman and Waites, 2009: 13; Long, 2009; Seckinelgin, 2009). The question remains whether or to what extent international NGOs with consultative status at the United Nations shape or are shaped by the advocacy agendas of LGBTQ NGOs in the Global South.

As for the future, there have been two treatises that came out of the LGBTQ movement that present a path forward for international LGBTQ rights: the Yogyakarta Principles and the Declaration of Montreal. The first and most influential, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, is a collection of human rights principles regarding sexual orientation and gender identity that was drafted at a meeting of human rights experts in Yogyakarta, Indonesia and published in 2006 (Kollman and Waites, 2009: 5). The Yogyakarta Principles provide an expansive interpretation of existing human rights law for the protection of sexual orientation and gender identity for governments and NGOs. The second treatise, the Declaration of Montreal, also written in 2006, is less a list of principles and more a conversational starting point, identifying violations of international human rights and charting potential action by NGOs, governments and international governmental organizations.[1] Like the Yogyakarta Principles, the declaration advocates for the

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interpretation of existing international law to include LGBTQ rights, and it further advances a new convention, the U.N. Convention on the Elimination of All Forms of Sexual Orientation and Gender Identity Discrimination.

Yet the consensus needed to draft an international convention on LGBTQ rights (such as proposed under the Declaration of Montreal) is unlikely in the near future. Far more likely is the gradual inclusion of sexual orientation and gender identity within existing human rights law. International LGBTQ NGOs, like ILGA and IGLHRC, work with LGBTQ organizations, especially in the Global South, to navigate U.N. organs and processes. In particular, these organizations focus on the universal periodic review process of the U.N. Human Rights Council and the drafting of shadow reports about LGBTQ issues that counter or expound upon state reports to the Committee on the Elimination of Discrimination against Women, among other treaty-based bodies. Although arduous, this type of advocacy moves the received definitions of persecution and discrimination toward greater inclusion of issues facing LGBTQ communities by working through both treaty-based and charter-based bodies at the United Nations. The struggle by LGBTQ NGOs to gain consultative status with ECOSOC continues to slow the pace of change, although the progress made by those NGOs that have obtained consultative status is encouraging.

Notes

[1] A key difference is that the Yogyakarta Principles provide a more fluid definition of gender and sexual minorities than the more clearly defined (and perhaps less empirically accurate) use of categories—lesbian, gay, bisexual and transgender—found in the Montreal Declaration (Kollman and Waites, 2009: 5). Yogyakarta uses the terms “sexual orientation” and “gender identity,” which have received much criticism (Sheill, 2009, 50; Waites, 2009). But thanks to the success of the Yogyakarta Principles, they have become the key terms by which LGBTQ advocates demand rights today (Sheill, 2009: 59; Waites, 2009).

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