

Fundamental Perspectives on International Law, 6th ed. (2009)
Chapter Ten: Human Rights—§10.3.I. GLBT Rights

Documents on this webpage:

- 2008 [1] **Statement on Human Rights, Sexual Orientation and Gender Identity**
(read into the General Assembly Record by Argentina on behalf of France)
- 2008 [2] **Joint Statement, Issued by the Syrian Delegation**
(read into the General Assembly Record by Syria, on behalf of the
Organization for Islamic Conference)
- 2009 [3] Author's op-ed, **UN Round of the Gay Rights Debate**, reprinted with
permission of the Los Angeles Daily Journal
- 2009 [4] U.S. President Obama Proclamation, **Lesbian, Gay, Bisexual, and
Transgender Pride Month**

**[1] Statement on Human Rights, Sexual Orientation and Gender
Identity**

French-Dutch-sponsored Declaration
Read in the General Assembly by Argentina (December 19, 2008)

<http://www.droitslgbt2008.fr/documents/?mode=download&id=2>

We have the honour to make this statement on human rights and sexual orientation and gender identity on behalf of signatory States.

1. We reaffirm the principle of universality of human rights, as enshrined in the Universal Declaration of Human Rights whose 60th anniversary is celebrated this year, article 1 of which proclaims that “all human beings are born free and equal in dignity and rights.”

2. We reaffirm that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as set out in article 2 of the Universal Declaration of Human Rights and article 2 of the International Covenants on Civil and Political, Economic, Social and Cultural Rights, as well as in article 26 of the International Covenant on Civil and Political Rights.

3. We reaffirm the principle of non-discrimination which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity.

4. We are deeply concerned by violations of human rights and fundamental freedoms based on sexual orientation or gender identity.

5. We are also disturbed that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity, and that these practices undermine the integrity and dignity of those subjected to these abuses.

6. We condemn the human rights violations based on sexual orientation or gender identity wherever they occur, in particular the use of the death penalty on this ground, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention and deprivation of economic, social and cultural rights, including the right to health.

7. We recall the statement in 2006 before the Human Rights Council by fifty four countries requesting the President of the Council to provide an opportunity, at an appropriate future session of the Council, for discussing these violations.

8. We commend the attention paid to these issues by special procedures of the Human Rights Council and treaty bodies and encourage them to continue to integrate consideration of human rights violations based on sexual orientation or gender identity within their relevant mandates.

9. We welcome the adoption of Resolution AG/RES. 2435 (XXXVIII-O/08) on “Human Rights, Sexual Orientation, and Gender Identity” by the General Assembly of the Organization of American States during its 38th session in 3 June 2008.

10. We call upon all States and relevant international human rights mechanisms to commit promoting and protecting human rights of all persons, regardless of sexual orientation and gender identity.

11. We urge States to take all the necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention.

12. We urge States to ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice.

13. We urge States to ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity.

[2] Joint Statement, Issued by the Syrian Delegation

Organization of Islamic Conference-sponsored Declaration
Read in the General Assembly by Syria (December 19, 2008)

<http://freemediaproductions.newsvine.com/_news/2008/12/23/2241125-gay-rights-rebuffed-at-un>

Following the statement previously delivered by Argentina on ... human rights and the so-called notion of sexual orientation and gender identity[:] On 10 December 2008 the Human Rights Family celebrated the 60th Anniversary of the adoption of the Universal Declaration of Human Rights and once again made an unequivocal commitment to the principles enshrined therein. On that occasion we reiterated that all human rights are universal, indivisible, interrelated, interdependent, and mutually reinforcing. There was also a universal acknowledgment that in no country or territory can it be claimed that all human rights have been fully realized at all times for all. Member States declared that the full realization of human rights for all remains a

challenge [and] that they shall not shy away from its magnitude. The principal of nondiscrimination and equality are two faces of the same coin. They are indeed cross-cutting principles in the vast area related to the full realization of all human rights and fundamental freedom for all. Such principles are well entrenched in the Charter of the UN and internationally agreed human rights instruments, as they all reaffirm the fate in fundamental rights in the dignity of the worth of the human person and in equal rights of men and women without distinction.

In this context we are seriously concerned at the attempt to introduce to the UN some notions that have no legal foundation in any international human rights instruments. We are even more disturbed at the attempt to focus on certain persons on the grounds of their sexual interests and behaviors while ignoring that intolerance and discrimination regrettably exists in various parts of the world ... on the basis of color, race, religion, to mention only a few. Our alarm does not merely stem from concerns about the lack of legal ground or that the said statement delves into matters which is within the domestic jurisdiction of States, counter to the commitment in the UN Charter to respect sovereignty of States and principal of non-intervention. More important, it arises owing to the ominous usage of those two notions—the notion of [sexual] orientation [that] spans a wide range of personal choices that expand way beyond the individual's sexual interest in a behavior with a normal consenting adult human being, thereby ushering in the social normalization ... [of] many deplorable acts, including pedophilia. The second is often suggested to attribute particular sexual interests or behavior to genetic factors—a notion that has been scientifically rebuffed repeatedly. We affirm that those two notions are not and should not be linked to existing international Human Rights instruments.

We believe that people are not inherently vulnerable. But some individuals are made vulnerable due to the socio-economic setting that they live in. It follows that vulnerable individuals and groups are those women, children, elderly, people under foreign occupation, refugees, asylum seekers, migrants, internally displaced person[s]—deprived of their liberty. And people belonging to ethnic and linguistic, or national, religious minorities [that] will become vulnerable as a result inter alia of intolerance and discrimination.

We strongly deplore all forms of stereotyping, exclusion, stigmatization, prejudice, intolerance, discrimination, and violence directed against peoples, community, individuals on any ground whatsoever, wherever they occur. We also affirm Article 29 of the Universal Declaration of Human Rights and rights of member states to enact laws that they meet just requirements of morality, public order, and the general welfare in a domestic society ... [which] were codified in subsequent international legal instruments. We note with concern [the] attempt at creating new rights or new standards by misinterpreting international treaties to include such notions that were never articulated or agreed by the general membership. These attempts undermine not only intent of drafters or signatories of the Universal Declaration of Human Rights but also seriously jeopardize entire international human rights framework.

We call on all member states to eliminate all forms of xenophobia, racial discrimination, racism, and related intolerance. We also call on member states to refrain from priority [being given] to the rights of certain individuals which can result in a positive discrimination on the expense of others' rights and thus run in contradiction of principle of non-discrimination and equality. We urge all states and NGOs to continue to

devote special attention to protect the family as the natural and fundamental group of society in accordance with Art 16 with the Universal Declaration. To conclude, Mr[.] President, we also urge all States ... to intensify their ... commitment to the promotion of human rights and everyone on equal footing without exception.

[3] UN Round of the Gay Rights Debate

William R. Slomanson

LOS ANGELES & SAN FRANCISCO DAILY JOURNAL LEGAL NEWSPAPER
(Feb. 24, 2009)

<<http://www.dailyjournal.com/law/index.cfm>> (subscription required)
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Members of the gay, lesbian, bisexual and transgender communities have long asserted their right to freedom from discrimination. As vividly articulated in a U.S. Supreme Court decision, they feel this discrimination in the form of criminal sanctions, by a government that has thrust itself into the most private corner of their lives. The court decriminalized sodomy between consenting adults in 2002, over the objection of Justice Antonin Scalia. Dissenting on behalf of three members of the court, he wrote that the majority “has largely signed on to the so-called homosexual agenda ... directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct.”

The U.S. focus on GLBT rights became razor sharp when California voters went to the polls last November. For the second time in eight years, a dwindling majority confirmed that marriage would be limited to a man and a woman. A conflicted California attorney general subsequently reversed his initial post-Prop. 8 position, now hoping to overturn the gay marriage ban. Opposition now turns on the fate of a proposed legal challenge. Spectators will soon witness the opening bell in yet another round of California’s never-ending gay rights bout.

Many nations of the world are not similarly conflicted. Homosexuality is criminalized in over 70 countries—particularly in Africa, Asia and the Middle East. It is subject to the death penalty in a half-dozen countries. The root of the historically anti-gay sentiment supposedly sprouted from a British-spawned homophobia introduced into its former colonies. The GLBT debate surfaced in the U.N. General Assembly for the first time on Dec. 19, 2008. Of the 192-member General Assembly, 66 nations supported—and 60 nations resisted—gay rights as a matter of human rights.

France and the Netherlands sponsored the 13-point Statement on Human Rights, Sexual Orientation, and Gender Identity. They opted for the non-binding declaration format, knowing that there was insufficient support for an official General Assembly resolution. This unprecedented declaration was broadly supported in Europe and Latin America. Navanethem Pillay, the U.N. High Commissioner for Human Rights, asserted that—like apartheid laws that criminalized sexual relations between different races—laws against homosexuality “are increasingly becoming recognized as anachronistic and as inconsistent both with international law and with traditional values of dignity, inclusion and respect for all.”

The above French-Dutch declaration follows on the heels of the March 2007 Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. This group of human rights experts from multiple legal systems met with the

former U.N. High Commissioner for Human Rights in Yogyakarta, Indonesia, expressing views akin to the above declaration. As summarized by the Yogyakarta conference chair: “Human rights are for everyone, without reservation. Yet women, men and persons whose sexuality does not conform to dominant norms face rape, torture, murder, violence and abuse because of their sexual orientation or gender identity. These principles affirm that human rights admit no exceptions.”

The French-Dutch U.N. statement was simultaneously countered by the U.N.’s Syrian delegation, on behalf of the Organization of the Islamic Conference. The following entities rank among those refusing to support this nonbinding measure: China, the Organization of the Islamic Conference nations, Russia, the U.S. and the Vatican. They publicly support human rights in general, but not in matters relating to sexual orientation.

Their opposing statement rejected the claim that sexual orientation is a matter of genetic coding. They claimed that efforts to decriminalize homosexuality threaten to undermine the international framework of human rights. In their view, the European-driven, pro-sexual orientation rights declaration effectively normalized pedophilia, among other “despicable” acts.

The Syrian-sponsored counter-declaration acknowledges that “all human rights are universal, indivisible, interrelated, interdependent, and mutually reinforcing ... [and] reaffirm ... the dignity of the worth of the human person and ... equal rights of men and women without distinction.” These nations believe, however, that the push for memorializing freedom of sexual orientation at the U.N. has no legal foundation in any international human rights instrument. They oppose this “attempt to focus on certain persons on the grounds of their sexual interests and behaviors while ignoring that intolerance and discrimination regrettably exists in various parts of the world ... on the basis of color, race, religion, to mention only a few.” This choose-your-battle type of argument resists an overloaded U.N. human rights program being further expanded into a cultural, religious, regional and historically sensitive minefield.

Their related complaint is that introducing sexual orientation at this international level delves into matters falling within the domestic jurisdiction of each nation. They invoke the U.N. Charter’s intense respect for sovereignty of states, and its primordial principal of non-intervention into member-state affairs. Such matters should therefore be determined on a country-by-country basis, not on the international level via a fresh round of human rights instruments.

The opposition refuses to attribute particular sexual interests or behavior to genetic factors—claiming that such a notion has been “scientifically rebuffed.” These nations thus argue that sexual orientation is, instead, a matter of choice. Therefore, it should not be linked to existing international human rights treaties, or to any other U.N. program.

The U.S. joined the opposition on similar but more technical ground. The French-Dutch text was arguably painted with too broad a brush. That document globally repels discrimination “without distinction of any kind.” The U.S. position is that, were it to espouse a national posture in this international debate, the federal government would thereby override states’ rights to individually resolve gay marriage issues. As Alejandro Wolff, the U.S. deputy permanent representative to the U.N. explained: “We are opposed to any discrimination, legally or politically, but the nature of our federal system prevents us from undertaking commitments and engagements where federal authorities don’t have jurisdiction.”

The U.S. position is unlikely to change with the new presidential administration. As Obama said last July, “I will continue to fight for civil unions as president.” Obama spokeswoman Shannon Gilson then released this nuanced statement: “Obama supports civil unions, and he has consistently opposed federal and state constitutional marriage amendments because as we have seen in some states, enshrining a definition of marriage into the constitution can allow states to roll back the civil

rights and benefits that are provided in domestic partnerships and civil unions.” Two days before the November election, Obama restated his position in an MTV interview. He believes that marriage should be only “between a man and a woman.” He was opposed to California’s Prop. 8, but not in favor of gay marriage.

Some critical questions remain that uncommitted U.N. member states should consider. First: The Syrian-based opposition proclaims that there is no international precedent for including GLBT rights in the U.N.’s otherwise comprehensive human rights agenda. That is misleading. One could counter that there was no direct precedent for the human rights-laden English Magna Charta, French Revolution and U.S. Declaration of Independence.

Second: Can the U.S. objectively claim that embracing (or disavowing) a multinational declaration—merely read to a U.N. General Assembly meeting, without a vote—necessarily sets a bad precedent for state-federal relations? The international community of nations has not surrendered its sovereign powers to the U.N. Express consent is still required to obligate a nation to recognize specific rights; for example, those associated with sexual orientation. This misdirection avoids the inconvenient truth that it fails to directly address a pressing issue of minority rights.

Third: How can the Syrian-based opposition to the French-Dutch gay rights declaration logically associate a particular segment of the sexual orientation spectrum with pedophilia? Where is the scientific evidence that one’s sexual orientation renders one more prone to a crime that is unfortunately committed by members of many social groups?

Finally: In a matter as personal as sexual orientation, does one *choose* to be X, Y or otherwise?

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[4] U.S. President Obama, Proclamation of Lesbian, Gay, Bisexual, and Transgender Pride Month

THE BRIEFING ROOM

THE WHITE HOUSE

Office of the Press Secretary

<http://www.whitehouse.gov/the_press_office/Presidential-Proclamation-LGBT-Pride-Month>

For Immediate Release

June 1, 2009

LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PRIDE MONTH, 2009

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Forty years ago, patrons and supporters of the Stonewall Inn in New York City resisted police harassment that had become all too common for members of the lesbian, gay, bisexual, and transgender (LGBT) community. Out of this resistance, the LGBT rights movement in America was

born. During LGBT Pride Month, we commemorate the events of June 1969 and commit to achieving equal justice under law for LGBT Americans.

LGBT Americans have made, and continue to make, great and lasting contributions that continue to strengthen the fabric of American society. There are many well-respected LGBT leaders in all professional fields, including the arts and business communities. LGBT Americans also mobilized the Nation to respond to the domestic HIV/AIDS epidemic and have played a vital role in broadening this country's response to the HIV pandemic.

Due in no small part to the determination and dedication of the LGBT rights movement, more LGBT Americans are living their lives openly today than ever before. I am proud to be the first President to appoint openly LGBT candidates to Senate-confirmed positions in the first 100 days of an Administration. These individuals embody the best qualities we seek in public servants, and across my Administration -- in both the White House and the Federal agencies -- openly LGBT employees are doing their jobs with distinction and professionalism.

The LGBT rights movement has achieved great progress, but there is more work to be done. LGBT youth should feel safe to learn without the fear of harassment, and LGBT families and seniors should be allowed to live their lives with dignity and respect.

My Administration has partnered with the LGBT community to advance a wide range of initiatives. At the international level, I have joined efforts at the United Nations to decriminalize homosexuality around the world. Here at home, I continue to support measures to bring the full spectrum of equal rights to LGBT Americans. These measures include enhancing hate crimes laws, supporting civil unions and Federal rights for LGBT couples, outlawing discrimination in the workplace, ensuring adoption rights, and ending the existing "Don't Ask, Don't Tell" policy in a way that strengthens our Armed Forces and our national security. We must also commit ourselves to fighting the HIV/AIDS epidemic by both reducing the number of HIV infections and providing care and support services to people living with HIV/AIDS across the United States.

These issues affect not only the LGBT community, but also our entire Nation. As long as the promise of equality for all remains unfulfilled, all Americans are affected. If we can work together to advance the principles upon which our Nation was founded, every American will benefit. During LGBT Pride Month, I call upon the LGBT community, the Congress, and the American people to work together to promote equal rights for all, regardless of sexual orientation or gender identity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2009 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of the United States to turn back discrimination and prejudice everywhere it exists.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

BARACK OBAMA