SOMEBODY OVER THE RAINBOW...  
INTERNATIONAL HUMAN RIGHTS  
PROTECTIONS FOR SEXUAL MINORITIES  
IN THE NEW MILLENNIUM

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INTRODUCTION

Sexual relationships represent a fundamental element of individual  
identity and an intimate aspect of an individual’s private life. Although  
there have always been—and will always be—people who engage in  
homosexual relationships and activities, being “gay” is a modern political  
concept that has emerged in response to the deprivation of rights on the  
basis of sexual orientation.¹ Sexual minorities² have made substantial

¹ CHUCK STEWART, GAY AND LESBIAN ISSUES 1 (ABC-CLIO, Inc. 2003) (1951).  
See ERIC HEINZE, SEXUAL ORIENTATION: A HUMAN RIGHT 37 (Kluwer Academic  

² For the purpose of this paper, sexual minority refers to all individuals who have  
been categorized based on sexual orientation, behavior, or gender identity. I will
progress in obtaining protections of their basic human rights in Australia, parts of Latin America, North America, South Africa and Western Europe, but discrimination on the basis of sexual orientation still persists throughout most of the developing world. Gay, lesbian, bisexual, or transgender (GLBT) relations are criminalized in over eighty-two nations, and the penalty for being gay often includes public humiliation, hard labor, confinement, torture, harassment, blackmail, spurious trials with no right to appeal or death. Very few of these laws, however, actually specify the type of conduct that is forbidden, and this lack of specificity allows states greater flexibility in implementing these laws. Further, many states disproportionately enforce sodomy laws, taking a stronger stance taken against homosexuals.

Less visible forms of discrimination thrive in countries that have passed anti-discrimination legislation on behalf of sexual minorities. Indeed, many governments fail to enforce their anti-discrimination statutes, leaving GLBT individuals unable to exercise the same rights as their heterosexual counterparts. For instance, in November 2005, Brazil, a country leading the battle for GLBT rights, censored the first televised gay kiss. As a result, gay activists protested, including staging a rally advocating for legislation that would allow same-sex marriage.


5 See generally id.

6 Int’l Lesbian & Gay Ass’n, supra note 4; see also Sengupta, supra note 3.


8 See Wilets, supra note 2, at 46-47.

9 See MacGuire, supra note 7, at 32.


11 Two Brazilian state constitutions contain protections against discrimination on the basis of sexual orientation. See Constituição Estado de Mato Grosso (1989); see Constituição Estado de Sergipe (1989).


13 Id.
2005, in South Africa, another nation on the forefront of gay rights, the National Blood Services Organization issued a statement declaring that it would not accept blood donations from openly gay men. Additionally, the majority of states within the United States have not granted gay couples the same marriage, child custody or immigration rights as heterosexual couples.

International human rights instruments mandate that human rights standards be applied without discrimination. Nevertheless, none of these documents explicitly outlaws discrimination on the basis of sexual orientation. Sexual minorities continue to fear the overwhelming threats of state-sanctioned persecution, and stronger international protections for gays and lesbians are necessary to achieve even the most fundamental human rights.

This Note examines using international law to promote human rights for sexual minorities. Admittedly, a multitude of rights exist which are critical to the lives and identities of sexual minorities. However, this Note focuses on the fundamental human rights important to sexual minorities in danger of state-sanctioned and extra-judicial persecution. The Note first discusses the history of the international GLBT rights movement and then presents some of the justifications that states have advanced for their persecution of sexual minorities. Second, the Note demonstrates the ways in which a major inter-governmental organization, the United Nations (“U.N.”), can advance human rights for GLBT individuals. Furthermore, the Note specifically examines those major international agreements which provide the greatest hope and protection for sexual minorities in danger of persecution, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and other

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18 Id.

Cruel, Inhuman or Degrading Treatment or Punishment. Additionally, the Note explores the role that non-governmental organizations (“NGOs”) have played in advocating for GLBT individuals. Finally, the Note proposes amendments to the language of Brazil’s U.N. resolution on human rights for sexual minorities, taking into account the concerns of the bill’s primary critics, traditionally Islamic and Roman Catholic states.20

HISTORY OF THE INTERNATIONAL GLBT RIGHTS MOVEMENT & HUMAN RIGHTS

The international gay rights movement has been marked by periods of advancement with matched regression. The first documented gay subcultures began to develop as early as the 1700s in London, Paris and Amsterdam,21 but it was not until 1869 that a Hungarian doctor, Karoly Maria Benkhert, introduced the term “homosexual” to classify dysfunctional sexual relations.22 Within two years, the word was incorporated into the New Prussian Penal Code, Paragraph 175 (“Paragraph 175”), which outlawed unnatural sexual acts between men, punishing the crime with a mandatory prison sentence of “no less than three years.”23 In 1897, after a series of medical studies on homosexuality, German doctor Magnus Hirshfeld founded the Scientific Humanitarian Committee to challenge anti-gay discrimination and reform the law.24 Later, in 1919, after mild attempts to spur a gay rights movement, Hirshfeld founded the Institut für Sexualwissenschaft (Institute for Sexual Research) to conduct further sexology studies.25 When Hitler took power in 1933, he banned all gay rights organizations and ordered the demolition of the Institute and public book burnings of the Institute’s library archives,26 and by 1935 the entire reform movement was quashed.27 From 1939 to 1945, the government persecuted 50,000 to 70,000 men it identified as being gay and forced the men to wear pink triangles on their arms during the Nazi takeover of Germany.28 Although the atrocities of WWII29 served as the cat-

21 KENT GERARD & GERT HEKMA, MALE HOMOSEXUALITY IN RENAISSANCE AND ENLIGHTENMENT EUROPE 408 (Harrington Park Press 1989).
22 STEWART, supra note 1, at 2.
23 GÜNTER GRAU, HIDDEN HOLOCAUST 65 (Fitzroy Dearborn 1995); see generally RICHARD PLANT, THE PINK TRIANGLE 206 (Henry Holt & Co. 1986).
24 STEWART, supra note 1, at 2.
25 Id. at 3.
26 PLANT, supra note 23, at 107, 209-11.
27 See generally GRAU, supra note 23, at 64-84.
28 Id. at 264-69; see also Lambda GLBT Community Services, Symbols of the Gay, Lesbian, Bisexual and Transgender Movements, http://www.qrd.org/qrd/www/orgs/avproject/symbols.htm (last visited June 20, 2007); see also Andrew Wikholm,
yalist for a general international human rights movement, the gay rights movement failed to share in this momentum.\textsuperscript{30} In West Germany, gay prisoners from WWII remained enslaved for twenty-four years as the government continued until 1969 to enforce Paragraph 175.\textsuperscript{31}

In the United States, the aftermath of World War II stimulated modern gay activism.\textsuperscript{32} During this period, sociologist Alfred Kinsey published two reports, \textit{Sexual Behavior in the Human Male} (1948) and \textit{Sexual Behavior in the Human Female} (1953), which indicated that many Americans exhibited a variety of sexual behaviors, including bisexuality and homosexuality.\textsuperscript{33} These studies fueled McCarthyism\textsuperscript{34} in the 1950s, during which sexual minorities served as scapegoats in anti-communist purges.\textsuperscript{35} In the 1950s and 1960s, gay rights activists such as the Mat-

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\textsuperscript{29} Five million to six million Jews were killed in the Holocaust. The proportion of gay men persecuted is relatively small in comparison to the overall number of people persecuted. Still, it is noteworthy that sexual minorities continued to be victimized despite the development of an overarching international human rights movement. See Jewish Virtual Library, \textit{Estimated Number of Jews Killed in the Final Solution} (2006), http://www.jewishvirtuallibrary.org/jsource/Holocaust/killedtable.html.
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\textsuperscript{30} DeLaet, \textit{supra} note 17, at n.6 (citing \textit{Richard Plant, The Pink Triangle: The Nazi War Against Homosexuals} (1986)) (noting that the atrocities of World War II did not provide support for inclusion of sexual minorities in human rights movement); see also Sengupta, \textit{supra} note 3.
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\textsuperscript{31} \textit{Plant, supra} note 23, at 13; see also Lambda GLBT Community Services, \textit{supra} note 28.
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\textsuperscript{33} See generally \textit{Donald Porter Geddes, Analysis of the Kinsey Reports on Sexual Behavior in the Human Male and Female} (Mentor Books 1954); see also \textit{The Kinsey Institute for Sex, Reproduction, and Gender, Inc., Data from Alfred Kinsey's Studies} (1996-2006), http://www.indiana.edu/~kinsey/research/ak-data.html.
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\textsuperscript{34} A period of United States history, lasting from 1950-1954 named for Sen. Joe McCarthy, a Republican from Wisconsin. During this period, the American government actively accused individuals of being members of the American Communist Party and/or sympathizers of the Party. See generally Jeffrey P. Kelson, \textit{The House Un-American Activities Visit Denver: A Cross Fire of Accusations}, 35 Colo. Law. 89 (2006).
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tachine Society, and other “East Coast Homophile Organizations” mobilized to provide services for GLBT individuals and urged the repeal of discriminatory treatment and legislation.

In June 1969, a police raid on the Stonewall Inn provoked rioting by sexual and other minorities and served as a catalyst for the international gay rights movement. Prior to 1969 there were few gay rights groups in the U.S., but within three months of the raid over fifty organizations formed, including the international Gay Liberation Front. Indeed, several other groups materialized in the United States and other Western countries. By 1973, after several years of protest, many gay rights organizations finally triumphed in their challenge to the American Psychiatric Association to remove homosexuality from the list of mental illnesses in the Diagnostic and Statistical Manual of Mental Disorders, a categorization that had previously supported the mistreatment of sexual minorities.

Modern international GLBT activism has focused mainly on the right to equality, the right to privacy and the right to sexual self-determination. The movement peaked during the 1980s when the European Court on Human Rights held in two monumental cases that the criminalization of private adult sexual conduct violated the European Convention on Human Rights. In both cases, the European Court balanced the individuals’ rights against the communities’ interest, holding that Irish...

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42 STEWART, supra note 1, at 13.


and British sodomy laws infringed on the most intimate aspect of the plaintiffs’ private lives, and, as a result, the laws could not be upheld as “necessary in a democratic society.” Other nations took notice of the decisions and began to rely on them in litigation pertaining to their respective sodomy laws.

The last twenty years have signaled some success in the international gay rights movement. In the early 1990s, the World Health Organization voted to remove homosexuality from the International Classification of Diseases. In 1992, the first openly gay man addressed the U.N.’s Sub-Commission on the Prevention of Discrimination and Protection of Minorities requesting recognition of equal rights protections for sexual minorities. Two years later, in Toonen v. Australia, the United Nations Human Rights Committee held that Tasmania’s law criminalizing same-sex sexual activity violated international equal protection and privacy norms. In 2003, with the support of twenty-six other states, Brazil introduced a U.N. resolution that would have granted sexual minorities international human rights protections. Yet, the resolution failed after more than a year of amendments to the document’s language and great

53 Within the last decade, however, the Vatican has aligned with Islamic groups to prevent the discussion of GLBT issues at international human rights and women’s rights conferences. See Sengupta, supra note 3, at 32.
resistance by other nations. In 2006, the United States aligned itself with Iran, Sudan, China and Cuba to block consultative status for gay and lesbian non-governmental organizations in the United Nations. Thus, sexual minorities have made some—albeit limited—progress in obtaining recognition of their human rights on an international front. As evidenced by the current condition of state-sanctioned persecution against sexual minorities, discrimination will continue until international bodies take a stronger position in exposing fundamental human rights violations and guaranteeing such rights to all individuals, regardless of sexual orientation.

STATE-SANCTIONED AND EXTRA-JUDICIAL PERSECUTION OF SEXUAL MINORITIES

In order to effectively combat discrimination against sexual minorities, the legal justifications offered by various states to support their anti-gay stance must be understood. Generally, many current laws criminalizing same-sex relations relate directly to their enacting country’s history. For example, during Stalin’s era, the former Soviet Republic passed laws prohibiting sodomy in order to raise the declining birth rate in the face of World War II. In January 2004, Uzbekistan employed these very laws to imprison and subject a gay rights activist to extreme abuse, including the threat of rape with a bottle.

Similarly, all Asian nations that were former British colonies have had sodomy laws that can be traced to colonization. India, Maldives, Burma

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54 Int’l Gay & Lesbian Human Rights Comm’n, supra note 52.
55 Consultative status is the only official means by which non-governmental organizations (NGOs) can influence and participate in discussions among member states at the United Nations. Although approximately 3,000 organizations have consultative status, only two groups are GLBT rights organizations, the Coalition of Activist Lesbians and International Wages Due Lesbians. See NGOs in CONSULTATIVE STATUS WITH ESOSO (2005), available at http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf.
59 China, Mongolia, Japan, Korea and Thailand have never had sodomy laws. Vietnam, Cambodia, Laos, Indonesia, East Timor, Macao and the Philippines were

Many Caribbean and African nations’ legal frameworks also bear traces of colonization and European-imposed sodomy laws that are used to justify mistreatment against GLBT individuals.\footnote{See MacGuire, supra note 7, at 3-4; see Wilets, supra note 2, at 66. Katherine Williams, Gay Sex Prosecuted Worldwide, THE ADVOCATE (Dec. 13, 2000), available at http://www.planetout.com/pno/news/article.html?2000/12/13/3.} In November 2005, Cameroonian officials forced gay men to undergo physical forensic exams to prove that they had engaged in homosexual conduct.\footnote{Cameroon was colonized by the British and the French. U.S. Department of State, Background Note: Cameroon, http://www.state.gov/r/pa/ei/bgn/26431.htm (last visited Apr. 13, 2007). Human Rights Watch, Letter to the Minister of Justice of Cameroon, HUMAN RIGHTS NEWS (Nov. 30, 2005), available at http://hrw.org/english/docs/2006/01/03/camer012355.htm.} In Zimbabwe, government officials recently outlawed a radio talk show which was aimed at promoting gay rights and educating the public that “homosexuality is not a white man’s disease.”\footnote{Gays Have it Tough in Africa- Zim Activist, INDEPENDENT ONLINE SOUTH AFRICA, July 7, 2006, http://www.iol.co.za/index.php?set_id=1&click_id=84&art_id=QW1152269460949B254.} Jamaican laws punish sodomy with a sentence of up to ten years in jail, and the police are often violent against
openly gay men. Lloyd Ellis, the Chair of Jamaica’s Public Complaints Authority, has excused the police attacks on sexual minorities, maintaining that if the police have abused GLBT individuals, they have done so as citizens and out of necessity. Clearly, sodomy laws have been—and continue to be—used to further discrimination against sexual minorities.

As secularization of religious societies continues to expand, various states’ moral objections to sexual minorities receive increasing criticism on a global scale. Fundamentally, the 1994 U.N. decision in Toonen v. Australia bars arguments for the criminalization of homosexuality on the basis of morality. Still, because many international law instruments do not confer rights in absolute terms, many states claim that the terms of international agreements which would protect sexual minorities are inapplicable. As such, the de-criminalization of homosexuality has yet to trickle down to the rest of the developing world.

Other states have claimed to criminalize homosexuality as a way of controlling the spread of HIV/AIDS. In 2004, while recognizing the interference with the right to privacy and family life, India rejected a reform of its sodomy law out of a concern for public health. In 2002, a Human Rights Watch issued a report on India’s colonial anti-sodomy laws as an obstacle to the NGO’s AIDS prevention efforts. In the Caribbean, sexual minorities have been afraid to request treatment for HIV/AIDS because there are laws criminalizing same-sex conduct. The Jamaican parliament has considered reforming the nation’s sodomy laws, which human rights organizations see as contributing to a rising AIDS rate. The United Nations Human Rights Committee, however, has proposed that there is no link between the criminalization of such activity

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68 Id.
70 Toonen, supra note 51 ¶¶8.5-8.6.
72 See Wilets, supra note 16, at 38.
and the spread of HIV. Rather, the Committee found that the marginalization of GLBT individuals seriously undermines public health initiatives because GLBT individuals are afraid to seek treatment.

Another growing international trend demonstrates that sexuality serves as a scapegoat for other contested issues and government frustration regarding Western influence. For instance, Zimbabwe’s President, Robert Mugabe, has publicly chastised homosexuals for the nation’s damaged economy and political anarchy. In Egypt, homosexuals are accused of foreign espionage which has resulted in a number of arrests. In June 2000, at a U.N. General Assembly meeting, a delegate from Pakistan expressed outrage that representatives from Western nations were supporting the inclusion of sexual orientation in anti-discrimination provisions. Even China, which is not a developing nation, depicts homosexuality as a malignant symbol of Western influence.

The majority of states that persecute GLBT individuals violate international agreements that offer human rights protections for all individuals. GLBT individuals have much to contribute to educational, social, professional and cultural aspects of their societies. State governments must realize that in addition to violating human rights standards, the refusal to recognize sexual identity stifles the overall progress of their nations by silencing a segment of the population. Activists must use international agreements to advance claims for basic human rights protections so that sexual minorities may ultimately enjoy other rights and privileges with

78 See id.
81 Long, supra note 79.
84 See DEPT. OF PUBL. INFORMATION UNITED NATIONS, BASIC FACTS ABOUT THE UNITED NATIONS 3 (United Nations Publication 1992; see, e.g., INT’L LESBIAN & GAY ASS’N, supra note 4.
85 PSYCHOLOGICAL PERSPECTIVES ON LESBIAN, GAY, AND BISEXUAL EXPERIENCES 736 (Linda D. Carnals & Douglas Kimmels eds. 2003).
The United Nations

The U.N. has served as a principal organ of international human rights protections since the end of World War II. Currently, 191 member states from various parts of the world comprise the organization. Drafted in San Francisco on June 6, 1945, the United Nations Charter ("U.N. Charter" or "Charter") creates a set of legal obligations for members and grants the U.N. the authority to create a body of aspirational principles in international human rights law. Among the named ideals are international cooperation in diplomatic relations between nations, the promotion of social development, respect for justice and international law, the suppression of war, and guarantees of fundamental human rights. Since member states have agreed to the terms set forth in the U.N. Charter, the U.N. can enforce authority over nations that fail to comply with the U.N. directives as set forth in the organization's documents and instruments.

The Charter repeatedly and explicitly mandates that member states grant fundamental human rights and equality to all individuals. For instance, the Preamble to the Charter states that one of the goals of the United Nations is to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women. . . ." The Preamble also states that the U.N. will establish "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." Further, Article 1 of the Charter provides that one of the goals of the U.N. is to "promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Similarly, with respect to international economic and social development, Article 55 of the Charter states that the U.N. shall "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or

86 See generally International Covenant on Economic, Social and Cultural Rights, supra note 19.
87 See DEPT. OF PUBLIC INFORMATION UNITED NATIONS, supra note 84.
89 See U.N. Charter art. 2, para. 4.
90 Id.; see also DEPT. OF PUBLIC INFORMATION UNITED NATIONS, supra note 84.
91 See U.N. Charter arts. 5, 6.
92 U.N. Charter pmbl.
93 Id.
94 See id.
95 U.N. Charter art. 1, para. 3.
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religion.” All member states agree to support the U.N. when the organization takes action under the principles set forth in the Charter, and member states also agree to take joint and separate action towards the goals set forth in Article 55.

As such, by including language that outlaws gender discrimination, the U.N. Charter establishes the U.N. as an international organization that is capable of providing human rights protections for sexual minorities. When sexual minorities are marginalized because they fail to comply with traditional gender identity roles and expression, this disparate treatment constitutes a form of gender discrimination. Since the Charter repeatedly and explicitly states that individuals should not be discriminated against on the basis of gender, the U.N. must recognize sexual minorities in its protections. Although this interpretation may be broader than the traditional understandings of gender discrimination, the U.N. has already expanded other terms, including “family,” to encompass the different cultural, social, and psychological structures that have evolved since various agreements were first enacted.

Within the past twelve years, the U.N. has demonstrated efforts to recognize sexual minorities under the term “sex.” In Toonen, the U.N. Human Rights Committee explicitly stated that the term “sex” includes sexual orientation. The Committee, however, has not taken action

96 Id. art. 55.
97 Id.
98 See id. art. 56.
99 U.N. Charter art. 55.
104 Toonen, supra note 51; Sanders, supra note 71.
against states that fail to comply with their directives. Since member states have already pledged to support U.N. action in upholding Charter ideals, the U.N. should take a stronger position to include anti-discrimination measures on the basis of gender. With stronger enforcement, member states would not have as much room to interpret agreements to allow persecution of GLBT individuals. Additionally, member states would be required to take action against those states that committed such violations.

Clearly, sexual minorities would gain greater protection if the U.N. amended the Charter to include language that explicitly protects sexual minorities. However, in April 2005, the membership tabled Brazil’s proposed resolution, “Human Rights and Sexual Orientation,” which would have elevated anti-discrimination measures on behalf of sexual minorities to international human rights status. Speaking on behalf of thirty-two countries, a representative from New Zealand stated that the United Nations was not ready to address the issue of sexual orientation. Sexual minorities will have to rely on language already contained in the Charter and other U.N. instruments to protect their fundamental human rights. Advocates of human rights for sexual minorities must continue to revamp the U.N. resolution, addressing various member states’ concerns to ensure that systematic persecution against sexual minorities is challenged on the international level. Otherwise, as evi-

105 ECOSOC, supra note 103.
106 See U.N. Charter art. 2, para. 4.
107 See U.N. Charter art. 25.
108 In order to amend the Charter, the General Assembly of the U.N. must pass the resolution by two-thirds vote, which must include the five permanent members to the Security Council, the United States, France, China, the United Kingdom and the Russian Federation. Gobal Policy Forum, United Nations: Status of Alternative Revenue Raising Proposals, http://www.globalpolicy.org/finance/alternat/us.htm (last visited Apr. 14, 2007).
denced by current practice, without global exposure and scrutiny, such atrocities will continue to occur, especially in the developing world.

THE UNITED NATIONS INTERNATIONAL BILL OF RIGHTS

In 1946, the United Nations created the Commission on Human Rights to promote human rights according to Article 68 of the U.N. Charter.\textsuperscript{113} As a result, the Commission drafted the International Bill of Human Rights,\textsuperscript{114} which includes the Universal Declaration of Human Rights ("Declaration"),\textsuperscript{115} the International Covenant on Economic, Social and Cultural Rights ("ICESCR"),\textsuperscript{116} the International Covenant on Civil and Political Rights ("ICCPR" or "Covenant"),\textsuperscript{117} and two Optional Protocols to the ICCPR which allow individuals to bring complaints to the U.N. Human Rights Committee.\textsuperscript{118} The Declaration sets forth the guiding principles of international law while ICESCR and ICCPR delineate various rights and their respective limitations.\textsuperscript{119} The International Bill of Rights is composed of several documents and was drafted as a way to further U.N. goals through social and economic measures.\textsuperscript{120}

\begin{footnotesize}
\textsuperscript{113} The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions. Office of the High Comm’r of Human Rights, Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, http://www.unhchr.ch/html/menu6/2/fs2.htm (last visited Mar. 1, 2007).

\textsuperscript{114} Id.


\textsuperscript{119} See Original Protocol, supra note 118; Second Optional Protocol, supra note 118.

\textsuperscript{120} See U.N. Charter art. 2, para. 4.
\end{footnotesize}
THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

In 1948, the United Nations General Assembly adopted The Universal Declaration of Human Rights,\(^\text{121}\) which asserts that all human beings are “entitled to all the rights and freedoms set forth in this Declaration, 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” (emphasis added).\(^\text{122}\) The Universal Declaration also provides unequivocal equal protection for all individuals with regards to all rights included in the Declaration.\(^\text{123}\) The Universal Declaration of Human Rights, however, is merely a resolution; it is not binding as treaty law on U.N. member states.\(^\text{124}\) Nonetheless, the Universal Declaration may be binding as customary international law\(^\text{125}\) because its principles have been accepted into practice by various organizations, courts and countries.\(^\text{126}\)

The Universal Declaration of Human Rights enunciates several civil, political, social, cultural and economic rights that are fundamental to all individuals. These rights include the right to life, liberty and security of the person; the right to equal protection and non-discrimination; the right to a fair trial; the right against arbitrary interference with privacy; freedom of movement; the right to family; the right to property; freedom of religion, freedom of assembly; the right to choose employment; the right to an adequate standard of living, medical care and education; and the right to participate in the cultural life of the community.\(^\text{127}\) The Universal Declaration also protects those human rights that have proved particularly essential to sexual minorities in danger of persecution, including protections against slavery, torture, detention and other cruel, inhumane, or degrading treatment, since these are the most extreme forms of state-sanctioned discrimination.\(^\text{128}\)


\(^{122}\) Id. art 2.

\(^{123}\) Id. art. 7.


\(^{125}\) Customary international law refers to legal norms that have been developed by states through practice over time. Legal obligations may arise where states have not rejected conduct. Customary international law is distinguished from treaty law, which is based on explicit agreements to assume obligations. As such, customary international law is regarded as secondary to treaty law. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §102 (1987).

\(^{126}\) DeLaet, supra note 17, at 36; see Wilets, supra note 2, at 11.

\(^{127}\) Universal Declaration of Human Rights, supra note 121, arts. 3, 7, 10, 12, 13, 16, 17, 18, 20, 23, 25, 26, 27; see also DeLaet, supra note 17, at 36; see generally Wilets, supra note 2.

\(^{128}\) See Wilets, supra note 2, at 11.
Given that the Universal Declaration of Human Rights explicitly provides protection to individuals of “other status,” the document already affords some degree of protections to sexual minorities.129 Almost every clause begins with the word “everyone,” conferring positive rights on all human beings.130 This interpretation finds support in past U.N. conferences, where the term “other status” has been deliberately included to provide anti-discrimination measures for sexual minorities.131 For instance, in 1996, in creating a Global Plan of Action with respect to housing, the U.N. incorporated the term “other status” to ensure that sexual minorities would have equal access to shelter and basic services.132 A year later, at a Special Session on HIV/AIDS, Muslim nations compromised after extensive debate with Western nations regarding the inclusion of gay men, by including the language, “those at risk [of the disease] due to sexual practice” in AIDS prevention efforts.133 Adopted in 2001, a Special Rapporteur on Extra-judicial, Summary, or Arbitrary Executions continues to be the only resolution adopted by the U.N. Human Rights Commission with an explicit reference to sexual orientation.134

Despite the Declaration’s general non-discrimination position, Article 29 does contain language that states might use to circumvent the application of various freedoms to sexual minorities.135 The Declaration states that individuals will be guaranteed protection provided they meet “the just requirements of morality, public order and the general welfare in a democratic society.”136 Since many states persecute GLBT individuals on moral grounds, these states can reference this language to prevent international intervention on behalf of sexual minorities.137 Further, general state practice and the travaux préparatoires138 with respect to certain

129 Universal Declaration of Human Rights, supra note 121, art. 2.
130 See Universal Declaration of Human Rights, supra note 121.
132 Id. ¶61a.
133 Sanders, supra note 71.
135 See Universal Declaration of Human Rights, supra note 121, art. 29.
136 Id. art. 29.2.
137 Id.
rights indicate that the states’ original intention was that certain rights be limited to heterosexuals.139

Advocates for GLBT rights, however, can refute discrimination based on moral grounds in light of Article 29 of the Declaration and the Toonen decision. For instance, Article 30 of the Declaration states that no provision of the Declaration will be interpreted by any state or person to deprive an individual of any of the rights set forth included in the Declaration.140 Therefore, states cannot exploit Article 29 to deprive sexual minorities of basic human rights guaranteed by the Declaration. While some critics may scrutinize whether certain rights are “fundamental human rights,” offending states that are member states to the United Nations have already conceded that the aforementioned rights should receive protection by becoming parties to terms of the U.N. agreements and international treaties.

THE UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant for Civil and Political Rights, entered into force in 1976, creates a binding legal obligation to observe the treaty provisions on all states that have ratified the treaty.141 The ICCPR includes most of the civil and political rights contained in the Declaration. The Covenant established a Human Rights Committee (“Committee”) which considers reports submitted by state parties on the ways to implement the Covenant’s provisions.142 The Committee may also receive communications from other states when a party is not fulfilling its obligations under the Covenant.143

The ICCPR serves as the most effective instrument for GLBT activists in the struggle for human rights. The ICCPR explicitly guarantees the right to “life,”144 and “liberty and security of the person”145 as enunciated

140 Universal Declaration of Human Rights, supra note 121, art. 30.
142 See Harland, supra note 141.
143 Id.
in the Universal Declaration of Human Rights by stating that no person “shall be subjected to arbitrary arrest or detention “146 or “deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”147 The ICCPR also states that an individual shall be allowed the right to trial before a court if she is deprived of liberty and shall be treated with dignity while in prison.148 Additionally, an individual who has been the victim of unlawful arrest or detention has an enforceable right to compensation.149

States that execute sexual minorities or condone violence by other parties against sexual minorities deny these individuals the most basic right to life in violation of the ICCPR and the Universal Declaration.150 For instance, Sudan, which is subject to the ICCPR and the Universal Declaration, has a provision in its penal code that mandates the death penalty for those engaging in same-sex sodomy.151 Similarly, Yemen’s penal code allows for judicial interpretation of the law to include the death penalty as a punishment for homosexuality.152 Other states also disproportionately enforce sodomy laws with a stronger stance taken against homosexuals.153

The ICCPR’s framework provides proponents of gay rights a legal basis in which to advance their arguments. Still, the effectiveness of this scheme has not been maximized; although 85 nations criminalize same-sex relations, the Committee has only issued recommendations to improve state practices to the United States, the United Kingdom, Colombia, Sudan, Cyprus, Zimbabwe, Ecuador, Austria, Chile, Lesotho, Poland, Romania, Hong Kong, Trinidad and Tobago, El Salvador, Sweden, Egypt, Argentina, and the Philippines under the ICCPR.155 The Committee’s recommendations tend to be relatively general in nature. The proposed reforms have ranged from educational campaigns to the repeal of discriminatory legislation.156 In the case of Sudan, the Committee stated that because homosexuality was not a crime worthy of the death penalty, Sudan’s penal code was incompatible with the Covenant’s

145 *Id.* art. 9.1.
146 *Id.*
147 *Id.*
148 *Id.* art. 9.4.
149 *Id.* art. 9.5.
150 *See* *e.g.*, INT’L LESBIAN & GAY ASS’N, * supra* note 4.
151 *Id.*
152 *Id.*
156 *See id.*
prohibitions on cruel and unjust punishment. The Committee recommended that Sudan provide information on the number of death penalty sentences, the reasons for the executions, and the manner in which the executions were carried out. Sudan failed to respond to the Committee’s recommendations. Still, the Committee did not specify any action that it would take if Sudan failed to comply. Activists and member states have also not challenged the Committee to take action. In the case of Trinidad and Tobago, the nation’s government responded to the Committee’s recommendation regarding its sodomy laws by declaring that since the Covenant does not explicitly outlaw discrimination on the basis of sexual orientation, the state would continue to adopt a more conservative approach and would not repeal laws criminalizing homosexuality. In fact, Sweden appears to be the only state that has implemented the Committee’s suggestion of a media or educational campaign to combat discrimination against sexual minorities.

The Committee’s goal is to encourage public debate with respect to its recommendations. It seeks to determine whether reforms of law or practice are necessary in light of the state parties’ interpretations of the treaty provisions. States have an advantage in submitting their own responses to the Committee’s recommendations because it is an opportunity to expound upon their interpretations of the law. In 2001, the Committee decided that since states have been chronically late with the submission of their reports, the Committee would issue provisional reports to replace the state reports. If a state is repeatedly unrespon-

158 Id.
159 Id.
163 Id at 10.
164 Id. at 14.
sive, the Committee then records the matter and presents it at the next General Assembly.\textsuperscript{165}

However, in order to compel state action, the Committee must take a more aggressive stance in interpreting the Covenant’s provisions to include sexual minorities. By formally prohibiting and denouncing discrimination against sexual minorities, expanded international human rights laws will obligate signatory states to pass legislation to protect sexual minorities’ rights to life and liberty. States would not have as much latitude to arbitrarily enforce laws that target GLBT individuals.\textsuperscript{166} Further, GLBT individuals would have greater means of redress against offending governments or extra-judicial operations.

The U.N. does not have the power to take action against states that fail to comply with the Committee’s recommendations unless those states threaten international peace and security.\textsuperscript{167} However, once a state is reported to the General Assembly for its non-compliance with the Committee’s recommendations, the U.N. should serve as a forum to expose discrimination against sexual minorities. The U.N. should compel other international or regional bodies like the International Labour Organization, the World Health Organization, or the European Convention that have the power to impose sanctions against offending nations.

In 2000, the U.N. established the Working Group on Sanctions to develop recommendations for implementing more effective sanctions.\textsuperscript{168} Possible sanctions on offending states include diplomatic, economic or trade sanctions, travel bans, or limits on financial assistance.\textsuperscript{169} Admittedly, some harm exists in imposing sanctions on developing nations whose economies are already suffering. Refined sanctions, however, can be implemented so that the specific groups or people persecuting GLBT individuals are targeted. Two examples include freezing the financial assets of political leaders or organizations who target sexual minorities and imposing visa restrictions on these leaders so that they cannot travel.\textsuperscript{170} States concerned with the discriminatory treatment of GLBT individuals must also be more diligent in taking action and reporting the

\textsuperscript{165} Id.

\textsuperscript{166} See DeLaet, supra note 17, at 32.

\textsuperscript{167} See U.N. Charter arts. 41, 42.


violations of other states. Further, NGOs can encourage and support sexual minorities who are able to bring complaints against their nations under the Optional Protocol to the ICCPR. Only through international pressure will offending states reform their laws and behavior.

In Article 17, the ICCPR expands on the right to privacy first mentioned in the Declaration, protecting the personal decisions of individuals to express their sexuality. Unlike the Declaration, however, the ICCPR does not recognize states’ rights to limit their observations of the agreement for moral reasons. Thus, persecuted individuals can use the ICCPR for greater protection and redress than the Declaration; laws prohibiting the right to engage in private sexual conduct between consenting individuals violate the ICCPR because offending states cannot make the argument that they are upholding morality, public order and the general welfare of their societies.

The Committee has been more aggressive than in the past in issuing recommendations with respect to violations of the right to privacy, making recommendations of ways to improve to at least 26 states. However, the majority of the states have not responded to the Committee recommendations. A critical shortcoming of the Committee is that it suggests state action but does not specify the kind of action or sanction uncooperative states should face. As a result, states take limited, ineffective action to appease the Committee or do not respond altogether. Again, the Committee must expose states who fail to respond to their recommendations and encourage other nations, international and regional bodies, to impose sanctions against violating states.

Sexual minorities would also benefit from the stronger enforcement of Article 26 of the ICCPR, which guarantees the right to equal protection of the laws specified by the ICCPR. Stronger observation of Article 26

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175 Id. at 161; see also DeLaet, supra note 17, at 38.


would provide support for other aspects of the law, which suggest that the state should play a greater role in the protection of sexual minorities. Member states also fail to adhere to the equal protection provision of Article 26 if they selectively recognize some rights but not others, such as the right to engage in same-sex relations, while refusing the right to marriage and family. States must take greater measures to observe the equal protection clause, especially since equal protection serves as the basis for other basic rights.

Thus, while the Covenant sets forth many protections for sexual minorities, there are several deficiencies in the scheme that foster inconsistencies in the reform of state laws. A critical failure of the Covenant is that it merely requests that signatory states take steps toward a goal, but it does not mandate appropriate activity. The U.N. serves as staunch advocate for fundamental human rights for all individuals, so it must assert itself in compelling greater state action on behalf of sexual minorities. The U.N. can take a stronger position through issuing more detailed recommendations, educating and exposing the injustices in nations that support or allow the persecution of sexual minorities, and compelling other member states to take action. Although the U.N. does not have the authority to enforce sanctions, the organization can apply political pressures and recommend that other international and regional bodies impose sanctions on offending nations. Offending states will be more likely to change their behavior once they know that other governments’ perceptions of their egregious behavior may affect their relations in the global arena.

UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, DEGRADING TREATMENT OR PUNISHMENT

The United Nations created the Convention Against Torture which established the U.N. Committee Against Torture. The Convention defines torture and is intended to expand the Universal Declaration

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178 DeLaet, supra note 17, at 40.
180 See id.
182 “[T]he term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, where such pain or suffering is inflicted by or at the
and ICCPR’s ban on cruel and unjust punishment. Since customary international law prohibits torture, the legal obligations of the Convention Against Torture are binding even on those states that have not ratified the agreement. The U.N.’s protections against torture are not limited to state actors. Rather, under the Convention Against Torture, the U.N. can also pursue individuals and government who commit torture even if member states do not protect sexual minorities or investigate the crime.

The U.N. requires that states make torture illegal, punish those who commit torture, or extradite suspects to face trial before another competent court. In 2001, the Special Rapporteur on Torture called for reports from states specifically regarding ill-treatment of sexual minorities at the hands of state officials. The Special Rapporteur generally visits states after receiving letters or complaints of torture to investigate prisons, detention centers and places where suspects are questioned. The Special Rapporteur also investigates whether victims of torture have free access to the authorities, NGOs, private individuals and the media. The Special Rapporteur then submits an annual report on its activities to the General Assembly and member states.

The Special Rapporteur reported that “... sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations.”


See Convention Against Torture, supra note 183, art. 1.


See Convention Against Torture, supra note 183, arts. 2, 8.


Id.

entation often contributes to the dehumanization of the victim, which is often a necessary condition for torture.\textsuperscript{192} Several nations, including Jamaica, the Bahamas and Malaysia fail to investigate or prosecute individuals and organizations that engage in systematic violence against sexual minorities.\textsuperscript{193} More recently, Egyptian and Iranian officials have identified gay men through the Internet and subjected them to torture.\textsuperscript{194} As a result of the government’s harassment of sexual minorities, the Torture Convention issued several recommendations to Egypt, including regular inspections of prisons by a neutral body, the abolishment of incommunicado detention and open access to NGOs.\textsuperscript{195} The Convention has also made recommendations to Brazil with respect to its maltreatment of sexual minorities in prisons.\textsuperscript{196} Although these nations have responded positively to the Committee’s recommendations, systematic persecution of GLBT individuals continues which illustrates that the U.N. must take stronger, more consistent action with respect to torture.

The Convention mandates that states provide training to law enforcement authorities on torture prevention.\textsuperscript{197} The Convention also mandates that states investigate allegations when its officials have committed torture.\textsuperscript{198} The Convention also provides that statements obtained under torture cannot be used against suspects at trial.\textsuperscript{199} In many developing nations, the police participate in the persecution of sexual minorities.\textsuperscript{200} In 2004, Human Rights Watch exposed torture of sexual minorities in

\textsuperscript{192} Id.
\textsuperscript{197} Convention Against Torture, supra note 183, art. 10.
\textsuperscript{198} Id.
\textsuperscript{199} Id. art. 15.
Uganda by government officials. In 2005, police in Saudi Arabia detained and flogged 100 men for dancing and "behaving like women." The U.N. Committee on Torture and the U.N. Working Group on Arbitrary Detention recently condemned Egypt’s gender-neutral “debauchery” law as constituting discrimination on the basis of sexual orientation. The U.N. Working Group has held that when states detain individuals on the basis of sexual orientation without a law that criminalizes same sex-relations, the states are violating sexual minorities’ fundamental human rights.

The U.N. also prohibits states from returning an individual to a nation where she will be tortured. Further, the Convention provides that states must evaluate the human rights record of the native country and allow victims refugee status if there is reason to suspect that the individual will be tortured. As such, stronger recognition of international human rights for sexual minorities would assist torture victims in receiving asylum in other nations under the Convention.

Many nations strive to mitigate the effect of torture on sexual minorities. Canada, Kingdom of the Netherlands and the United Kingdom already provide asylum to sexual minorities who have been torture victims. Moreover, in October 2003, the Australian High Court recognized that refugee status should be granted to individuals persecuted on the basis of sexual orientation. The United States grants sexual minorities asylum but is also one of the largest financial supporters of the Egyptian military, an organization that systematically persecutes sexual minorities. While the Convention on Torture is important to ensuring

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203 Article 9(c), Egyptian Law 10 of 1961 on the Combat of Prostitution.
204 Sanders, supra note 71.
205 Id.
206 Convention Against Torture, supra note 183, art. 3.
207 Id.
that victims receive immediate support, it is also critical that host nations pressure offending states to improve their human rights records with respect to sexual orientation. Host states should impose sanctions on offending states to compel reform by withholding financial assistance.\textsuperscript{211} Then, asylum claims would not only serve as a short-term solution, but would also serve as another avenue for achieving long-term change.

**Non-Governmental Organizations**

Mainstream NGOs, such as Amnesty International and Human Rights Watch, are increasingly active in launching campaigns to combat discrimination.\textsuperscript{212} In 1991, Amnesty International became the first mainstream human rights organization to include sexual minorities in its definition of political prisoners.\textsuperscript{213} There are currently human rights campaigns on behalf of sexual minorities in Cameroon, Nicaragua, Nigeria, Nepal, the Netherlands, Peru, South Africa, Russia, Guatemala, Zimbabwe, and India.\textsuperscript{214} The majority of these campaigns are focused on exposing official homophobia, releasing political prisoners, decriminalizing sodomy laws and urging other states and organizations to take action against discriminatory legislation.\textsuperscript{215} These human right campaigns, which are designed to prompt state action to protect sexual minorities, expose torture by making the international community aware of the atrocities in various parts of the world.\textsuperscript{216} The most promising aspect of the NGO movement is that generally several organizations coalesce to support GLBT human rights protections in each campaign. For instance, in recent action taken on behalf of sexual minorities in Nigeria, Human Rights Watch joined with organizations in the United States, Nigeria, Cameroon, the United Kingdom, the Congo, Switzerland, and South Africa.\textsuperscript{217}
NGOs have been successful in exposing state-sanctioned and extra-judicial persecution of individuals in many nations. Recently, Amnesty International advocated for the release of an HIV/AIDS activist in China who was detained for speaking against the state’s treatment of people with HIV/AIDS.\textsuperscript{218} In July 2005, a gay activist in South Korea was released after his refusal to join the nation’s military because of its discriminatory policy against GLBT individuals.\textsuperscript{219} In September 2004, the former Deputy Prime Minister of Malaysia was released after allegations that he had engaged in sodomy.\textsuperscript{220} A gay political prisoner was recently released in Egypt after police arrested him for crimes related to prostitution, lechery and debauchery.\textsuperscript{221} In February 2006, the Pride Shelter Trust, the first crisis center for GLBT individuals was erected in Cape Town, South Africa.\textsuperscript{222}

Despite the aforementioned successes of NGOs, however, they must continue to play a larger role in exposing state-sanctioned and extra-judicial persecution against sexual minorities. Major NGOs must join with other more local organizations that have more access to those sexual minorities in immediate danger of persecution in the developing world. Gaining a forum to investigate and air complaints has proven especially difficult because only two GBLT rights NGOs have consultative status in


\textsuperscript{221} Interview with Wissam Tawfiq Abyad, supra note 197.

the U.N. Two other NGOs, the International Gay and Lesbian Human Rights Commission ("IGLHRC") and the International Lesbian and Gay Association ("ILGA"), had consultative status but the United Nations revoked the associations' consultative status after the associations included another organization which condoned pedophilia. These organizations attempted to regain consultative status in January 2006. However, United Nations member states recently aligned to continue preventing these NGOs from obtaining consultative status. Several NGOs are still campaigning for the U.N. to reinstate the ILGA’s consultative status.

**Opposition to the U.N. Resolution on Sexual Orientation**

When the United Nations first organized, sexual orientation had not emerged as a major focus of study in the world. In fact, Brazil's 2003 resolution, *Human Rights and Sexual Orientation*, represented the first time that a sweeping resolution specifically addressing sexual orientation had been proposed in the U.N. U.N. member states polarized, with Canada and European nations supporting the bill, and the Organization of the Islamic Conference and Vatican states uniting to oppose the bill. In particular, among the resolution’s greatest critics were Pakistan, Saudi Arabia, Egypt, Libya and Malaysia, who urged the removal of the words “sexual orientation” from the resolution. After intense

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223 NGOs in Consultative Status with ESOSO, supra note 55.


226 Human Rights Watch, supra note 56.

227 Id.

228 Id.


230 Austria, Belgium, Brazil, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and United Kingdom of Great Britain and Northern Ireland supported the draft resolution. U.N. WIRE, supra note 230.


debate, twenty-four member states voted to postpone the vote until the following year.233 By 2004, after member states repeatedly tabled the resolution, Brazil withdrew its efforts.234

Islamic critics voiced opposition to the resolution, maintaining that homosexuality is inconsistent with Islamic religious tenets.235 This interpretation of Islam, however, does not represent all Islamic beliefs. Rather, historical analyses indicate that there is great variance in the interpretation of Islamic religious principles with respect to homosexuality.236 First, homosexuality is not explicitly referenced in the Q’uran.237 The belief that the Q’uran outlaws homosexuality originates from interpretations of the story of Lot who God saved because he condemned other men that engaged in same-sex practices.238 Generally, Muslims believe there is a divine order in nature that mandates that humans use their God-given features to fulfill a purpose on earth.239 Homosexual relationships run contrary to the rule of nature because in these relationships human beings use their bodies for a purpose that God did not intend.240 Some orthodox Muslims also believe that the Hadith, a collection of sayings attributed to Mohammad, denounces same-sex relationships.241 Another school of thought, the Hanbalite, which continues to dominate Saudi Arabia and Syria, codified the punishments for sexual minorities: stoning by execution.242

On the other hand, the Hanafites consider individual reasoning and local circumstances in practice, teaching that homosexuality is wrong but

235 WORLDNETDAILY, supra note 112.
238 According to some interpretations of the Qur’an, God saved Lot and his family and killed the other inhabitants of Sodom, presumably for their homosexual activities. Islam and Homosexuality, Homosexuality in the Qur’an and Hadith, Differences Between the Qur’an and Bible; Penalties for Homosexual Activity, http://www.religioustolerance.org/hom_isla1.htm (last visited June 22, 2007).
240 Id. at 358-59.
242 Id.
does not warrant physical punishment.\textsuperscript{243} Further, progressive Muslims now challenge the Shari’ah as solely an interpretation of the Qur’an which developed over time, incorporating local customs and practice into the law.\textsuperscript{244} Reformists believe that they will succeed once the Shari’ah laws are placed in their historical context.\textsuperscript{245} Increasingly, more nongovernmental organizations allow gay Muslims to explore their sexual identities.\textsuperscript{246} Advocates build upon the arguments of reformist Muslims by arguing that the omission of an explicit reference to homosexuality in the Qur’an undermines any argument for a general Islamic ban on homosexuality.\textsuperscript{247} Greater recognition of the variance of religious beliefs, as well as the progress of the gender rights movement in Islamic nations would provide advocates with a basis upon which to promote acceptance of a U.N. resolution.\textsuperscript{248}

The Vatican aligned with the Organization of Islamic states to contest the passage of the U.N. resolution.\textsuperscript{249} Unlike the Qur’an, the Bible specifically prohibits homosexuality.\textsuperscript{250} As such, the Catholic Church views homosexuality as contrary to its religious principals.\textsuperscript{251} Within Catholicism, however, there is still a wide array of beliefs regarding homosexuality. Under the religion, human beings are equipped with intellect, reason, and free will.\textsuperscript{252} “Natural law” entails humans using reasoning to do what is good in concrete situations.\textsuperscript{253} The basic goods of life include the sexual unions of males and females according to physical nature, procrea-
tion, education of children, knowing God, and living in peace with society. A second level of “natural law” entails human beings using reasoning to achieve “proximate conclusions” based on the aforementioned basic goods. Accordingly, the Catholic tension with homosexuality also stems from the belief that human beings will use their reasoning to promote a certain way of life that has been ordained by God.

Increasingly, however, more Catholics have engaged in free thought, dissenting from the Church’s position that homosexuality is immoral. Recently, some have started to believe that the homosexual orientation is a reality that people discover within, rather than a lifestyle that individuals choose for themselves. Additionally, some who believe contempt for GLBT individuals is a form of hypocrisy that the Bible prohibits. More and more priests also recognize that homosexuals have an active role in the Christian community.

Advocates must not abandon attempts for the passage of the resolution. First, the existence of a resolution specifically outlawing persecution based on sexual orientation indicates that states recognize and are aware of the need for human rights protections for sexual minorities. Further, activists must capitalize on the progress they have made in achieving protection of other rights for sexual minorities through the U.N. and global conferences. Additionally, mass gay activism recently emerged in nations such as India, Brazil, Taiwan and South Africa, which should provide more grassroots support in developing nations for such a resolution. Moreover, the Brazilian resolution was tabled instead of vetoed; thus, there remains hope for the passage of such a resolution in the future.

**Proposed Amendments to the U.N. Resolution on Sexual Orientation**

In light of the criticisms of Islamic and Vatican states, activists must alter the language of the Resolution to focus on the more basic human rights for sexual minorities in danger of persecution, such as the right to

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254 *Id.*
255 *Id.*
256 See *id.*
261 See Redding, *supra* note 247, at 437; see Sanders, *supra* note 82.
262 See Redding, *supra* note 247, at 441.
be free from arbitrary detention, rather than aim for more sweeping, all-inclusive provisions. Accordingly, I propose the following amendments

The Commission on Human Rights,

Reaffirming the principles set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recalling that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human race, regardless of age, race, gender, or other status or those at risk due to sexual practice, is the foundation of freedom, justice and peace in the world,

Reaffirming that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind,

1. Expresses deep concern at the occurrence of violations of human rights in the world against persons of other status or those at risk due to sexual practice;

2. Stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be undermined based on other status;

3. Calls upon all States to promote and protect those human rights with respect to life and liberty of all persons regardless of other status;

4. Notes the attention given to human rights violations on the grounds of other status by the special procedures in their reports to the Commission on Human Rights, as well as by the treaty monitoring bodies, and encourages all special procedures of the Commission, within their mandates, to give due attention to the subject;

5. Mandates that the United Nations High Commissioner for Human Rights pay due attention to the violation of human rights on the grounds of other status.

In proposing a new resolution, activists must first caucus with other nations in advance of proposing the bill to ensure that they can maximize support before facing opposition. One key failure of the first Brazilian proposal was that the nation’s representatives did not offer advance

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263 Modifications to Brazil’s resolution are indicated in italics.
264 Compare with Human Rights and Sexual Orientation, supra note 230.
warning that they would be proposing the bill to gain support.\textsuperscript{265} Additionally, advocates should focus on the aforementioned U.N. Treaties and Documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since these documents provide the greatest basis for anti-discrimination measures against sexual minorities.\textsuperscript{266}

In proposing a new resolution, the omission of references to broader rights such as the right to family and custody is also critical. In the past, the inclusion of these references ignited Islamic and Roman Catholic states since these rights and privileges directly conflict with traditional notions of “natural law” and morality.\textsuperscript{267} Indeed, Pakistan opposed one version of the Brazilian Resolution because the document contained three references to family and adoption.\textsuperscript{268}

Activists must also build upon the successes of past treaties and decisions such as \textit{Toonen} and the June 2001 General Assembly Special Session on AIDS/HIV.\textsuperscript{269} As demonstrated by the first Brazilian Resolution on Sexual Orientation,\textsuperscript{270} explicit language regarding “sexual orientation” is unlikely to pass the Vatican and Islamic alliance.\textsuperscript{271} However, more general language such as “other status” and “those at risk due to sexual orientation” has represented some compromise between Western nations and the Catholic-Islamic alliance at past conferences.\textsuperscript{272} More

\begin{itemize}
\item \textsuperscript{265} Sanders, \textit{supra} note 82
\item \textsuperscript{266} Universal Declaration of Human Rights, \textit{supra} note 115; International Covenant on Civil and Political Rights, \textit{supra} note 117.
\item \textsuperscript{267} See \textit{Jung \& Coray}, \textit{supra} note 251, at 64; see also \textit{Homosexual Activism Pits Third World and Vatican Against UN Secretariat, Canada and EU}, \textit{LIFE SITE} (Mar. 16, 2004), http://www.lifesite.net/ldn/2004/mar/04031603.html.
\item \textsuperscript{268} Sanders, \textit{supra} note 82.
\item \textsuperscript{269} Id.
\item \textsuperscript{270} Text of Brazilian Resolution on Sexual Orientation: 1. Expresses deep concern at the occurrence of violations of human rights all over the world against persons on the grounds of their sexual orientation; 2. Stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation; 3. Calls upon all States to promote and protect the human right of all persons regardless of their sexual orientation; 4. Notes the attention given to human rights violations on grounds of sexual orientation by the special procedures in their reports to the Commission on Human Rights, as well as the treaty monitoring bodies, and encourages all special procedures of the Commission on Human Rights, within their mandates, to give due attention to the subject; 5. Requests the High Commissioner for Human Rights to pay due attention to violations of human rights on the grounds of sexual orientation; 6. Decides to continue consideration of the matter at its sixtieth session under the same agenda item. \textit{Id}.
\item \textsuperscript{271} \textit{Id}.
\item \textsuperscript{272} \textit{Id}.
\end{itemize}
general references, coupled with supporting debate or notes in the legislative history of the resolution may provide a stronger basis for protections due to sexual orientation since activists will have a stronger frame of reference than in the past.

Even given these revisions to the Resolution, progress in obtaining rights for sexual minorities on the international level will be limited given the opposition. However, it is important to capitalize on past successes in the area of GLBT rights by continuing to test the boundaries of offending states. Once the basic rights addressed in this Note receive protection, advocates will then have a greater foundation to advocate for other rights.

**Conclusion**

Attacks on sexual minorities are among the fastest growing types of aggression in the world. The number of incidents that remain unreported due to fear of persecution is even larger. Sexual minorities have gained some legal protections of their rights within national and regional arenas. However, as evidenced by the many examples provided, international protections have lagged far behind. In light of the atrocities against GLBT individuals around the world, human rights activists and organizations must demand greater human rights protections for sexual minorities. Without a stronger position taken by international human rights bodies, gay and lesbian rights activists have no unifying, guiding principle on which to base their arguments.

As the largest international body and a self-proclaimed proponent of human rights, the United Nations must take a more active role in compelling action against offending states. Continued documentation, investigation and news reporting are necessary to ensure that systematic GLBT persecution is exposed. Other states and regional bodies that become aware of atrocities must take action through imposing sanctions on offending states. Although states and international bodies may amend their laws, advocates must not become complacent; new legislation which confers greater protections on GLBT individuals does not necessarily translate into governments effectively enforcing these laws. The effectiveness of any law will ultimately depend on the willingness of judges and lawmakers to ensure that the rights of sexual minorities are preserved. Advocates must also be cautious that what appears to be progress doesn’t mask pervasive discrimination.

When Canadian Professor Douglas Sanders first addressed the United Nations on behalf of the IGLA in 1991, he believed that it would take 10 years for sexual minorities to achieve basic protections of their funda-

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273 HEINZE, supra note 1, at 8.
274 HEINZE, supra note 1, at 8-9.
275 See generally, DeLaet, supra note 17.
mental rights. He was incorrect. To date, no nation in the world fully respects the identities and rights of its sexual minorities. As such, we must join to advocate on behalf of sexual minorities in developing nations who are silenced and persecuted by their governments and extra-judicial organizations. Ultimately, everyone is deserving of equal protection under international human rights law regardless of sexual orientation.