

GOD V. GAYS?
THE RIGHTS OF SEXUAL MINORITIES IN INTERNATIONAL LAW
AS SEEN THROUGH THE DOOMED EXISTENCE
OF THE BRAZILIAN RESOLUTION

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INTRODUCTION

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”¹ For more than two hundred years, this sweeping statement from the United States Declaration of Independence has provided the starting point for conceptions of human rights. While radical at the time of the Declaration’s signing, the notion “that all men are created equal”² is now a fundamental concept of human rights embraced by the international community.

Following the barbarous human rights violations perpetrated during World War II, the United Nations (UN) prepared its own declaration embracing this notion of equality. Ratified in 1948, the Universal Declaration of Human Rights (UDHR) states:

All human beings are born free and equal in dignity and rights
Everyone is 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.³

Almost universally since the writing of the UDHR, international human rights documents have been routinely imbued with a spirit of equality and justice for all people. In fact, since the dawn of the twenty-first century, most of the world’s recently-formed or recently-amended constitutions include language expressly

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1. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

2. *Id.*

3. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

stating just that.⁴ But equality in form and equality in substance appear to be two different things.

Throughout the world, numerous groups are routinely denied the equality supposedly assured to them under their state constitutions or various international documents, such as the UDHR. One group consistently denied the right of equality is a group that international human rights scholar and professor Jack Donnelly refers to as “sexual minorities.”⁵ This term, as used by Professor Donnelly, includes not only those typically associated with sexual orientation issues—persons who are lesbian, gay, bisexual, and/or transgendered (LGBT)⁶—but it is also meant to include “any group (previously, now, or in the future) stigmatized or despised as a result of sexual orientation, identity, or behavior.”⁷ According to Professor Donnelly, “[i]n almost all countries, sexual minorities suffer under substantial civil disabilities.”⁸ While the most extreme violation, the imposition of the death penalty, is mostly limited to Islamic states,⁹ discrimination against sexual minorities manifests itself in numerous other ways throughout the world.

To be sure, within the past two decades, the international community has increasingly recognized the rights of sexual minorities. However, sexual minorities are still subject to innumerable injustices in a significant portion of the world. Even when excluding the nearly universal animus toward same-sex marriage,¹⁰

4. Of the eighteen national constitutions promulgated, ratified, adopted, enforced, or amended since the year 2000, no fewer than 16 contain references to equality. *See, e.g.*, PERUSTUSLAKI [Constitution] ch. 2 § 6 (Fin.) (“everyone is equal before the law”); IRAQ CONST. ch. 2, pt. 1, art. 14 (“Iraqis are equal before the law”), available at <http://confinder.richmond.edu>.

5. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS: IN THEORY AND PRACTICE 229 (2003).

6. LGBT is the acronym most commonly used to refer to this group of individuals, although numerous others exist. Other common versions include GLBT (gay, lesbian, bi-sexual, transgendered), LGBTIQ (with the ‘I’ signifying persons who are ‘intersexed’ and the ‘Q’ signifying persons who are ‘queer’ or ‘questioning’), a term gaining more prevalence in the field is LBGTTTIQ (here the additional ‘T’s are intended to signify persons who are ‘transsexual and transsensual’ or alternately ‘transsexual and two-spirited’). For the purposes of this article I will use the term “sexual minorities” as being inclusive of all of these groups. The decision to do so is done only for the purpose of readability, and is in no way meant to diminish or undermine those who would choose to use a term other than “sexual minorities.”

7. DONNELLY, *supra* note 5, at 229.

8. *Id.* at 230 (providing a list of examples, many of them horrific, describing the practice of many countries to impose incarceration, and in several instances execution, for such minor homosexual acts as same-sex couples holding hands or kissing in public).

9. *Id.* at 230 n.1.

10. Same-sex marriages are allowed internationally in only seven countries (Belgium, Canada, Netherlands, Norway, South Africa, Spain, and Sweden). Additionally, a few states within the United States allow same-sex marriages (Connecticut, Iowa, Massachusetts, New Hampshire, and Vermont as well as the District of Columbia). Lornet Turnbull, *On Gay Rights, World, U.S. Continue to Shift*, SEATTLE TIMES, Jan. 7, 2010, at A12, available at http://seattletimes.nwsourc.com/html/localnews/2010738123_gaychanges08m.html. Additionally, a few countries will recognize foreign same-sex marriages, even though some of them will not allow such marriages to occur within their own borders (Aruba, Israel, France, Netherlands Antilles, and within the United States - New York). *See* ILGA, LGBTI Rights in the World, <http://www.ilga.org/ilga/en/article/1161> (last visited Feb. 22, 2010).

sexual minorities are subject to “persistent human rights violations”¹¹ that range from death and torture,¹² to inequitable access regarding housing and education,¹³ to the forced imposition of attaining heterosexual norms,¹⁴ and “pressure to remain silent and invisible.”¹⁵ Laws criminalizing sodomy and other homosexual acts still exist in nearly eighty countries.¹⁶ In fact, it was not until 2003 that the Supreme Court of the United States of America struck down sodomy laws for violating notions of liberty and equality.¹⁷ Before that decision, many states in the U.S., with the consent of the U.S. Supreme Court, criminalized the act of adult males engaging in consensual sodomy in the privacy of their own homes.¹⁸

Given this list of inequalities, it is impossible to deny the fact that sexual minorities are not granted substantive equality—even in countries that purport to guarantee such equality. In an attempt to combat these continuing injustices suffered by sexual minorities, Brazil introduced a resolution during the 2003 Session of the U.N. Commission on Human Rights (the Commission). The Resolution on Human Rights and Sexual Orientation (the Brazilian Resolution) simply sought to acknowledge the occurrence of human rights violations due to the sexual orientation of the victim and to reaffirm that the principles of the International Bill of Human Rights (IBHR) apply to all individuals including sexual minorities.¹⁹ Unfortunately, for reasons detailed below, the Brazilian Resolution never even made it to a vote before the Commission.

11. Michael O’Flaherty & John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, 8 HUM. RTS. L. REV. 207, 208 (2008).

12. *Id.* at 208-10.

13. *Id.* at 211.

14. *Id.* at 208.

15. *Id.* This article’s purpose is not to recount all the injustices suffered by sexual minorities throughout the world; however, those interested in a deeper discussion of that issue may wish to read the cited article. Another good source of information is AMNESTY INTERNATIONAL, CRIMES OF HATE, CONSPIRACY OF SILENCE: TORTURE AND ILL-TREATMENT BASED ON SEXUAL IDENTITY (2001), available at <http://www.amnesty.org/en/library/info/ACT40/016/2001/en>.

16. See DANIEL OTTOSSON, INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS PROHIBITING SAME-SEX ACTIVITY BETWEEN CONSENTING ADULTS 4 (2008), available at http://www.ilga.org/state_homophobia/ILGA_State_Sponsored_Homophobia_2008.pdf (“[i]n 2008, no less than 86 member states of the United Nations still criminalize consensual same-sex acts among adults, thus institutionally promoting a culture of hatred. Among those, 7 have legal provisions with death penalty as punishment. To those 86 countries, one must add 6 provinces or territorial units which also punish homosexuality with imprisonment.”).

17. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (“[t]he State cannot demean a homosexual person’s existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. ‘It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter’” (quoting *Planned Parenthood v. Casey*, 505 U.S. 833, 847 (1992))).

18. See *Bowers v. Hardwick*, 478 U.S. 186, 192 (1986) (holding no “fundamental right [for] homosexuals to engage in acts of consensual sodomy”) (overruled by *Lawrence v. Texas*, 539 U.S. 538 (2003)).

19. The Brazilian Resolution on Human Rights and Sexual Orientation, U.N. Econ & Soc. Council [ECOSOC] 59th Sess., U.N. Doc.E/CN.4/2003/L.92 (April 17, 2003) (proposed but not

This paper explores the story of the Brazilian Resolution. Part I discusses the Brazilian Resolution's history. In so doing, it examines prior attempts to legislate the rights of sexual minorities, as well as prior attempts to adjudicate such rights within international law. Part I also discusses how those prior attempts to create a body of law regarding sexual orientation presented an inherent problem in Brazil's presentation of the Brazilian Resolution and discusses how those problems materialized once Brazil introduced it to the Commission.

In preventing the Commission from voting on the Brazilian Resolution, those who so vehemently opposed it presented three main arguments against its introduction. First, they argued that issues of gender and sexuality do not fall within the concern of international human rights.²⁰ Second, they argued that the term "sexual orientation" is not adequately defined in international law.²¹ Finally, they argued that religious law prevents them from accepting a notion of equality for sexual minorities.²²

Part II of this paper examines and subsequently dismisses each of these arguments. It explains why, despite arguments to the contrary, issues of gender and sexuality fall squarely within the concern of international human rights law. It also counters the second argument by proving that the term "sexual orientation" is clearly defined in international law. It then takes a step back and examines the issue from a broader perspective—looking at the role of religious law within the context of international law. In accepting the third argument as true—that religious law prevents them from ever accepting a notion of equality for sexual minorities—the third subsection of part II explains how such an argument necessarily denies citizens of their right to freedom of religion, thereby invalidating that argument as well.

Finally, Part III briefly discusses events subsequent to the Brazilian Resolution's demise. Although the Brazilian Resolution failed to make it to a vote before the Commission, its existence was not in vain. The mere introduction of the Brazilian Resolution considerably raised the concern of human rights for sexual minorities within the international sphere. Since 2003, international organizations, acting both within and outwith the UN, have actively pursued the acknowledgment and rectification of human rights violations due to the sexual orientation of the victim. Both non-governmental organizations (NGOs) and inter-governmental organizations (IGOs) joined these efforts with the motivation of forcing states to recognize that the spirit and the plain language of the UDHR is meant to do what it says: ensure "[e]veryone is entitled to all the rights and freedoms set forth in [the] Declaration, without distinction of any kind, such as race, colour, sex, language,

adopted), available at <http://www.arc-international.net/L92.html> [hereinafter Brazilian Resolution].

20. Douglas Sanders, *Human Rights and Sexual Orientation in International Law*, INT'L GAY & LESBIAN ASS'N FILES: U.N. COMM'N ON HUM. RTS, Nov. 5, 2005, <http://ilga.org/ilga/en/article/577> (stating that opponents circulated a letter asserting that in their perspective sexual orientation is not a human rights issue).

21. *Id.*

22. *Id.*

religion, political or other opinion.”²³ Accordingly, Part III discusses a few of these advancements made in the wake of the Brazilian Resolution.

I. THE BRAZILIAN RESOLUTION ON HUMAN RIGHTS & SEXUAL ORIENTATION

What is commonly referred to as the Brazilian Resolution is an international document officially titled The Brazilian Resolution on Human Rights & Sexual Orientation.²⁴ Brazil presented the Resolution during the 59th Session of the U.N. Commission on Human Rights (Commission) on April 17, 2003.²⁵ The purpose of the Brazilian Resolution was the promotion and protection of human rights for sexual minorities.²⁶

The Brazilian Resolution did not seek to establish any new rights for sexual minorities. By its plain text, it merely sought to reaffirm (as applied to sexual minorities) rights already granted to all persons in documents such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),; and the Convention on the Rights of the Child (CRC).²⁷

Based upon the rights already established in the aforementioned documents, the Brazilian Resolution “[e]xpress[ed] deep concern at the occurrence of violations of human rights in the world against persons based on their sexual orientation,”²⁸ and it “[s]tress[ed] that human rights and fundamental freedoms are the birthright of all human beings . . . and . . . should not be hindered in any way on the grounds of sexual orientation.”²⁹ It also “[c]all[ed] upon States to promote and protect the human rights of all persons regardless of their sexual orientation.”³⁰ It further “[r]equest[ed] the United Nations High Commissioner for Human Rights to pay due attention to the violation of human rights on the grounds of sexual orientation.”³¹

A. *The History of the Brazilian Resolution*

The Brazilian Resolution’s history is rather minor—mostly because Brazil gave no advance warning that it was going to propose such a resolution and introduced it during the final days of the 2003 Session.³² However novel the Brazilian Resolution may have seemed at the time of its introduction, it was not the

23. UDHR, *supra* note 3, art. 2.

24. Brazilian Resolution, *supra* note 19.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Sanders, *supra* note 20. The 59th session of the Commission ended on April 25th, 2003.

first attempt by a UN member state to bring issues concerning sexual orientation to the attention of the UN. In fact, “Brazil ha[d] been at the forefront of government efforts to include language on sexual orientation and human rights in the context of the UN” since 2001.³³ Nonetheless, Brazil should have been more cautious with the Resolution’s introduction, as even the most minor prior attempts to insert recognition of rights for sexual minorities into international documents were routinely met with staunch criticism.³⁴

Much of the earliest work concerning the recognition of human rights for sexual minorities was done within the European system—not the UN.³⁵ Relatively speaking, the UN has been slow to recognize human rights for sexual minorities, despite its assurances of equality. And while other international organizations began doing so as early as the 1980s, it is only since the 1990s that UN member states have consistently attempted to work the concerns of sexual minorities into the language of UN documents. However, as previously mentioned, such attempts were routinely plagued with problems, and it was not until the twenty-first century that member states made any consistent progress. Accordingly, those who criticize Brazil’s late introduction of its Resolution assert that, had Brazil followed the lead of those advocating for the rights of sexual minorities within Europe, the rights of sexual minorities within the UN may have fared better.³⁶

The following subsections give a short history of the fight for recognition of human rights for sexual minorities in international law. As previously mentioned, the UN was not nearly as quick as other international organizations in recognizing such rights. Accordingly, this section concentrates on other organizations’ attempts, while only briefly discussing such attempts within the UN. The first subsection examines prior attempts to legislate rights of sexual minorities in international law, and the second subsection examines prior attempts to adjudicate rights for sexual minorities in international law.

1. Prior Attempts to Legislate Rights of Sexual Minorities

Throughout the 1980s and 1990s, the UN’s legislative process was routinely plagued with an inability to insert language regarding sexual orientation into any UN document.³⁷ Even into the early 2000s, attempts to add such language to UN documents repeatedly failed.³⁸ This was so, despite the fact that most of these

33. INT’L GAY & LESBIAN HUM. RTS. COMM’N, RESOLUTION ON SEXUAL ORIENTATION AND HUMAN RIGHTS: CAMPAIGN DOSSIER 4 (2003), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/213-1.pdf>.

34. See Sanders, *supra* note 20 (describing numerous failed attempts to insert language concerning sexual minorities into U.N. documents).

35. *Id.* (discussing the history of rights for sexual minorities in international law).

36. See Pratima Narayan, *Somewhere over the Rainbow . . . International Human Rights Protections for Sexual Minorities in the New Millennium*, 24 B.U. INT’L L.J. 313, 345-46 (2006) (“[o]ne key failure of the first Brazilian proposal was that the nation’s representatives did not offer advance warning that they would be proposing the bill to gain support”).

37. See Sanders, *supra* note 20 (describing numerous failed attempts to insert language concerning sexual minorities into U.N. documents).

38. *Id.*

attempts sought only to add language expressly recognizing that sexual minorities were included within the scope of a proposed document. While there were many UN members who opposed the insertion of such language, those countries with strong national ties to religion (mostly Catholic or Islamic) were the most vehement in their opposition.³⁹

It is only within the twenty-first century that the UN has made consistent progress in inserting language recognizing the rights of sexual minorities. Those acknowledgments, few as they are, have come sporadically and with much debate and concession.⁴⁰

The . . . (CESCR) has dealt with [sexual orientation discrimination] in its General Comments . . . Nos 18 of 2005 (on the right to work), 15 of 2002 (on the right to water) and 14 of 2000 (on the right to the highest attainable standard of health), it has indicated that the Covenant proscribes any discrimination on the basis of, *inter alia*, sex and sexual orientation “that has the intention or effect of nullifying or impairing the equal enjoyment or exercise of [the right at issue].”

. . .

The Committee on the Rights of the Child (CRC) has also dealt with the issue in a General Comment. In its General Comment No. 4 of 2003, it stated that, “State parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention [on the Rights of the Child] without discrimination (Article 2), including with regard to race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These grounds also cover [inter alia] sexual orientation.”⁴¹

Additionally, “Concluding Observations” submitted by the CESCR and the CRC have mentioned sexual-orientation-related discrimination.⁴²

Although any acknowledgment regarding non-discrimination of sexual minorities is significant, it is also significant that those in favor of such rights face an uphill battle. While the UN allows many NGOs to be involved in lobbying efforts, such groups must first be granted consultative status. As of 2009, the UN has not granted consultative status to any NGOs dealing specifically with the rights of sexual minorities.⁴³

2. Prior Attempts to Adjudicate Rights of Sexual Minorities

Given such limited success in the prior attempts to legislate the rights of sexual minorities, critics argue that those rights may have been better protected had Brazil left it to the various judicial and quasi-judicial international human rights bodies. Such arguments seem appropriate since Europe’s international judicial

39. *Id.*

40. *Id.*

41. O’Flaherty & Fisher, *supra* note 11, at 214-15 (internal citations omitted).

42. *Id.* at 215.

43. Sanders, *supra* note 20.

bodies began recognizing rights for sexual minorities in the early 1980s.⁴⁴ In fact, by the start of the twenty-first century, European law had developed a consistent body of law protecting sexual minorities.

Conversely, the UN was much slower in recognizing such rights, with its first decision regarding sexual minorities not coming until the middle of the 1990s.⁴⁵ Arguably then, the rights of sexual minorities may have been better protected had Brazil allowed the judicial and quasi-judicial bodies of the UN to further develop interpretations of how sexual orientation falls within the context of international documents such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), or the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

The following subsections further examine the jurisprudence of the European Court of Human Rights (ECHR)⁴⁶ and the United Nations Human Rights Council (UNHRC), as regards sexual minorities.

a. Prior Attempts to Adjudicate Rights of Sexual Minorities within the European Court of Human Rights

To best understand the prior attempts to adjudicate rights of sexual minorities, it is necessary to first look outside of the UN to Europe where those rights were first recognized. While the UN judicial bodies were not particularly quick to acknowledge the rights of sexual minorities, their European counterparts were (at least comparatively speaking). Starting in the early 1980s, the ECHR slowly began developing a series of decisions that upheld the basic rights of sexual minorities.⁴⁷ While development of this body of law was slow, it was nonetheless consistent.

Throughout the 1980s and much of the 1990s, the ECHR consistently struck down sodomy laws as violating notions of privacy.⁴⁸ The ECHR first applied such a rationale in *Dudgeon v. United Kingdom* in 1981, finding that a Northern Ireland law criminalizing male homosexual activity violated the petitioner's right to

44. See *Dudgeon v. United Kingdom*, App. No. 7525/76, 4 Eur. H.R. Rep. 149, ¶ 63 (1981), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=dudgeon&sessionid=52029168&skin=hudoc-en> (holding Northern Ireland's laws prohibiting buggery and acts of homosexual indecency constitute "a breach of Article 8" of the European Convention on Human Rights).

45. See *Toonen v. Australia*, U.N. H.R. Comm., No. 488, ¶ 9, U.N. Doc. CCPR/C/50/D/488/1992 (1994), available at <http://www.unhcr.org/refworld/docid/48298b8d2.html> (determining that a Tasmanian statute prohibiting private homosexual behavior violates articles 17, paragraph 1, juncto 2, paragraph 1, of the International Covenant on Civil and Political Rights).

46. Until 1998, the European Convention on Human Rights operated under a dual system. There was the European Court of Human Rights, and for those who lacked access to the Court (most often due to the Court's refusal to hear cases of individuals) there was the European Commission of Human Rights. However, in 1998 all state parties to the Convention accepted Protocol 11, which abolished the Commission and allowed the Court to hear more cases (including those of individuals). For the purposes of this essay, ECHR will refer to the decisions of either body.

47. Sanders, *supra* note 20.

48. *Id.*

respect for his private life.⁴⁹ In subsequent cases regarding sodomy laws, the ECHR continued to apply *Dudgeon*, and repeatedly struck down sodomy laws.⁵⁰ But, beyond striking down sodomy laws, the ECHR was reluctant to apply the rationale of *Dudgeon* to other notions of privacy regarding homosexual activity.⁵¹ Such was the state of the law until 1997; the ECHR struck down sodomy laws on privacy grounds, but other laws regulating homosexual activity survived.

It was not until 1997 that the ECHR finally began to expand on that basic notion of privacy it found in *Dudgeon*. However, in a few a short years the ECHR dramatically expanded its jurisprudence in the area, and by the end of the twentieth century it had a full body of law protecting the rights of sexual minorities. This jurisprudential renaissance began in 1997 when the ECHR struck down a United Kingdom law that established an unequal age of consent for heterosexual and homosexual acts.⁵² Within the next three years, the ECHR also found the U.K.'s discriminatory ban on homosexuals in the military to be unnecessary,⁵³ and ruled that a father, who lost custody of his child because of his homosexuality, had been unfairly deprived of his rights.⁵⁴

With the dawn of the twenty-first century, the ECHR continued to expand its jurisprudence regarding sexual minorities. In 2002, the ECHR ruled that a male to female transsexual could lawfully marry a man.⁵⁵ In 2003, the ECHR "upheld successor tenancy rights for same-sex partners."⁵⁶ Crystallizing the differences between the ECHR of the twentieth century with that of the twenty-first century,

49. See *Dudgeon*, 4 Eur. Ct. H.R. ¶ 63 (holding Northern Ireland's laws prohibiting buggery and acts of homosexual indecency constitute "a breach of Article 8" of the European Convention on Human Rights).

50. See *Norris v. Ireland*, App. No. 10581/83, 13 Eur. HR Rep. 186 (1989) *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=norris%20%20v.%20%20ireland&sessionid=52029506&skin=hudoc-en> (holding that an Irish law criminalizing homosexuality violates Articles 8 & 25 of the ICCPR); *Modinos v. Cyprus*, App. No. 15070/89 16 Eur. HR Rep. 485 (1993), *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Modinos%20%20v.%20%20Cyprus&sessionid=52029568&skin=hudoc-en> (holding that a Cyprus law prohibiting homosexuality violates Article 8 of the ICCPR).

51. Sanders, *supra* note 20.

52. *Sutherland v. United Kingdom* (striking out), 2001 Eur. Ct. H.R. *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=sutherland%20%20v.%20%20united%20%20kingdom&sessionid=52029703&skin=hudoc-en>.

53. *Lustig-Prean and Beckett v. The United Kingdom*, 2000 Eur. Ct. H.R. 548, *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Lustig-Prean&sessionid=52029837&skin=hudoc-en>.

54. *Salgueiro da Silva Mouta v. Portugal*, 1999 Eur. Ct. H.R., *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=33290/96&sessionid=52029866&skin=hudoc-en>.

55. *Goodwin v. United Kingdom*, 2002 Eur. Ct. H.R., *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=goodwin.unitedkingdom&sessionid=46838382&skin=hudoc-en>.

56. Sanders, *supra* note 20 (citing *Karner v. Austria*, 2003 Eur. Ct. H.R. *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=40016/98&sessionid=52029974&skin=hudoc-en>).

the ECHR stated in *Karner v Austria*, “[j]ust like differences based on sex, differences based on sexual orientation require particularly serious reasons by way of justification.”⁵⁷ Such a bold statement, equating sexual orientation discrimination with sex-based discrimination, perfectly exemplifies the ECHR’s jurisprudential shift. Whereas the ECHR of the twentieth century refused to expand protections for sexual minorities, the twenty-first century ECHR equated discrimination against sexual minorities with that of gender-based discrimination.

To be sure, this jurisprudential shift did not occur overnight. In fact, it could not have. It was only by creating a consistent body of law protecting the basic rights of sexual minorities that the ECHR was subsequently able to understand the full scope of such rights and begin to expand those rights. Without the well-documented complaints of sexual minorities from a period spanning nearly two decades, it is unlikely that the ECHR could have ever recognized the rights of sexual minorities on par with those of women. However, because the ECHR had such a record, it was able to properly assert such a claim.

b. Prior attempts to adjudicate rights of sexual minorities within the United Nations Human Rights Committee

Most of the UN’s disputes regarding sexual minorities arose as an issue under the ICCPR. As such, those disputes were subject to the jurisdiction of the United Nations Human Rights Committee.⁵⁸ While the ECHR began to recognize rights for sexual minorities in the early 1980s, it was not until nearly a decade and a half later (1994) that the UNHRC first recognized such rights.

Much like the ECHR, the UNHRC’s first opinion recognizing rights for sexual minorities involved a complaint regarding a member state’s sodomy laws. In *Toonen v. Australia*, Nicholas Toonen filed a communication with the UNHRC alleging that Tasmania’s sodomy law (Australia’s last remaining sodomy law) violated his right to privacy under articles 2, paragraphs 1, 17, and 26 of the ICCPR.⁵⁹ While the UNHRC could have simply declared the Tasmanian law to be in violation of the ICCPR, it went much further. Not only did the UNHRC agree with Toonen that the law interfered with his privacy rights under the ICCPR,⁶⁰ it further asserted that the ICCPR prohibits any discrimination based on sexual orientation. In drawing such a conclusion, the UNHRC declared “the reference to

57. *Karner*, 2003 Eur. Ct. H.R. ¶ 37.

58. While not an official judicial body, the UNHRC operates as a quasi-judicial body within the UN. It was established to oversee the compliance of states party to the International Covenant on Civil and Political Rights (ICCPR). The UNHRC allows for individuals within States that have adopted the ICCPR to obtain an opinion regarding violations of the ICCPR. However, those opinions are non-binding and are merely the interpretation of the UNHRC. See Office of the United Nations High Commissioner for Human Rights, Monitoring Civil and Political Rights, <http://www2.ohchr.org/english/bodies/hrc/index.htm> (last visited Apr. 24, 2010). Most of the UN “cases” dealing with discrimination of sexual minorities have arisen as an issue under the ICCPR, and thus were subject to the opinions of the UNHRC.

59. *Toonen*, U.N.H.R. Comm., No. 488 ¶ 3.1.

60. *Id.* at ¶ 8.2.

'sex' in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation,"⁶¹ rather than simply referring to gender.

Since this landmark decision, the UNHRC's jurisprudence regarding sexual minorities has kept pace with that of the ECHR. The UNHRC, much like the ECHR, has subsequently found "that sexual orientation-related discrimination is a suspect category in terms of the enjoyment of the [ICCPR] rights The [UN]HRC has persistently observed, however, that discrimination on the basis of sexual orientation . . . is not inherently invidious . . . as long as it is based on reasonable and objective criteria."⁶²

Although the UNHRC was not as quick as the ECHR to recognize the rights of sexual minorities, at the time Brazil introduced the Brazilian Resolution, the UNHRC had addressed the issue of sexual minorities on several occasions. More importantly, the UNHRC was even going so far as to repeatedly assert that violations of human rights based on sexual orientation violated the ICCPR by slowly developing a consistent series of decisions protecting the rights of sexual minorities. While it is true that the decisions of the UNHRC are non-binding, it is also true that the UNHRC was much more open to recognizing rights for sexual minorities than were the member states involved in the UN's legislative process. Accordingly, the following sections of Part I discuss the problems inherent in Brazil's promulgation of the Brazilian Resolution, and how those problems manifested once it was introduced.

B. The Problems Inherent in Brazil's Promulgation and Presentation of its Resolution

A number of scholars have written articles about the Brazilian Resolution, but those articles have rarely discussed the Resolution's inherent problems. While the ideals behind the Brazilian Resolution—the protection of rights for sexual minorities—are commendable, the Resolution was arguably flawed from the outset. And, those flaws manifested into foreseeable issues once Brazil introduced the Resolution to the UNHRC. This section discusses each of these perspectives. Section I examines the problems inherent in the mere promulgation of the Brazilian Resolution, while section II discusses how those problems manifested upon its introduction to the Commission.

1. The Problems Inherent in Brazil's Promulgation of the Resolution

As discussed above, prior attempts to insert language concerning sexual orientation into UN documents were routinely met with much hostility and marred by zealous resistance.⁶³ While Brazil occasionally succeeded at inserting language protecting the human rights of sexual minorities into UN documents, these were only very recent developments.⁶⁴ Over the course of the preceding decade, the

61. *Id.* at ¶ 8.7. See also O'Flaherty & Fisher, *supra* note 11, at 216 (discussing the implications of *Toonen*).

62. O'Flaherty & Fisher, *supra* note 11, at 216-17 (citing *Young v. Australia*, U.N.H.R. Comm., No. 941, ¶ 104, U.N. Doc. CCPR/C/78/D/941/2000 (2003)).

63. Sanders, *supra* note 20.

64. *Id.*

majority of attempts to work the phrase “sexual orientation” into even non-binding UN documents, such as conference statements, failed repeatedly.⁶⁵ As such, prior to introducing its Resolution, Brazil should have either: (1) waited for the international courts and committees to develop a more concrete view of the subject matter, or (2) made sure that it had enough supporters to pass the Resolution. However, Brazil did neither.

Brazil’s decision to stop waiting for the judicial branch to fully recognize such rights is understandable. After all, rights for sexual minorities had been a (minor) concern of international law for more than twenty years by the time it introduced its Resolution.⁶⁶ Furthermore, the sexual-minority jurisprudence of the UNHRC was behind that of the ECHR, and perhaps Brazil felt that the issue deserved more immediate attention.

Brazil’s decision to forgo the second option—securing enough votes to pass the Resolution—is more questionable. Despite Brazil’s awareness that several member states were fiercely opposed to the UN’s recognition of rights for sexual minorities, Brazil gave no advance warning to other states that it was going to introduce its Resolution and introduced it during the final days of the 2003 session.⁶⁷ Understandably, its brash decision to do so caught many states off-guard. In fact, the Brazilian Resolution’s introduction was so surprising that a large number of states that might have otherwise supported the Resolution abstained from voting on the motion.⁶⁸ After its introduction, as discussed in further detail below, states did not vote on the Brazilian Resolution in 2003, and it was held over to the following session.

Given that the adjudication of rights for sexual minorities had been much more favorable than the legislation of such rights, the Brazilian Resolution would have fared better had Brazil simply waited for the judiciary to recognize the rights asserted by its Resolution. While neither the ECHR nor the UNHRC universally recognized rights for sexual minorities, they were both quicker (and more successful) in granting judicial protections against discrimination based on sexual orientation than member states were in legislating such protections. Another advantage of advancing such rights through the judicial process is that it allows advocates to avoid the stalling tactics often employed by states opposed to recognition of such rights. Quite foreseeably, those opposed to the Brazilian Resolution immediately employed such tactics, which led to the Resolution’s ultimate demise.

2. The Flaws in Brazil’s Introduction of its Resolution

Having been essentially doomed from its inception, the Brazilian Resolution fared no better once introduced. Introduced on April 17, 2003, the Brazilian

65. *See id.* (describing failed attempts at The Fourth World Conference on Women (1995), and The World Conference on Racism (2001), among others).

66. *See* Dudgeon, 4 Eur. H.R. Rep. ¶ 63 (holding in 1981 that sodomy laws constitute a breach of the European Convention on Human Rights).

67. Sanders, *supra* note 20.

68. *Id.*

Resolution was immediately entwined in a political quagmire. While twenty seven co-sponsors immediately supported the Resolution,⁶⁹ there was fierce opposition from both the Organization of the Islamic Conference (OIC) and various Vatican-influenced states, as well as the Holy See itself.⁷⁰ Those states combined to form a conglomeration of more than fifty states strongly opposed to the measure based on religious grounds.⁷¹ They were so opposed, that several Islamic states immediately moved for a vote of “no action,” which would have kept the Resolution from even being heard on the floor of the Commission.⁷² However, that motion was successfully voted down.⁷³ Nonetheless, the Resolution failed to make it to a vote of the Commission in 2003. Just a few days after Brazil introduced its Resolution, the Commission voted 24 to 17 (with 10 states abstaining) to hold over discussion of the Brazilian Resolution until the Commission’s 2004 session.⁷⁴

Despite the best efforts of many NGOs advocating for the passage of the Brazilian Resolution, it fared no better during the Commission’s 2004 session. In fact, it fared worse. Although the Commission voted in 2003 to hold-over discussion of the Brazilian Resolution until the 2004 session, considerable pressure from the Catholic/Islamic alliance convinced Brazil to withdraw its Resolution from the 2004 session.⁷⁵ In 2005, the Brazilian Resolution died a quite death when Brazil failed to re-introduce it to the Commission.⁷⁶

Had Brazil thought about the possible (or even probable) repercussions of the Resolution’s failure, it may not have introduced it so impulsively. However, because the Resolution was introduced and roundly dismissed, it now presents two major problems. First, states may now be free to refuse to grant its citizens the rights advocated by the Brazilian Resolution. That is to say, states may now argue that because the Commission never even voted on the Brazilian Resolution, it did not (and does not) intend for sexual minorities to be included within the documents invoked by the Brazilian Resolution’s language. Second, some may argue that because states expressly refused to accept the language of the Brazilian Resolution, such states cannot be bound by any interpretations of those documents that include protections for sexual minorities—including non-binding judicial interpretations. Additionally, it seems highly likely that had Brazil never presented its Resolution, the UNHRC would have continued to protect the rights of sexual minorities—eventually securing the rights advocated by the Brazilian Resolution. Moreover, those opinions would have been powerfully persuasive over those states that would ignore such rights.

69. *Id.*

70. *Id.*; Narayan, *supra* note 36, at 341.

71. Juan Perez Cabral, *Vatican, Muslim States Slam Queer Human Rights: Arm-twisting, Procedural Shenanigans at UN in Geneva*, THE GULLY, Apr. 25, 2003, http://www.thegully.com/essays/gaymundo/030425_UN_vatican_muslims.html.

72. Sanders, *supra* note 20.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

While the Commission failed to pass the Brazilian Resolution (or even vote on it), the Resolution succeeded in raising the profile of issues concerning sexual minorities. When it became apparent that the Resolution would not pass, several countries formed their own statements on the issue of sexual orientation.⁷⁷ Part III discusses those statements; however, Part II first discusses many of the inherent flaws in the arguments of the Catholic/Islamic alliance that so vehemently opposed the Brazilian Resolution.

II. THE INHERENT FLAWS IN THE ARGUMENTS AGAINST THE BRAZILIAN RESOLUTION'S ADOPTION

While this paper criticizes Brazil's presentation of its Resolution, it is not meant to suggest that Brazil was at fault for the Resolution's demise. It was not. In fact, one can argue that those most responsible for the Resolution's death were those silent states that failed to support the Brazilian Resolution out of fear for political repercussions. The truth of the matter is that the Brazilian Resolution was a simple re-affirmation of basic human rights for sexual minorities and should have been passed. This Part II examines why this is so, exposing the flaws in the arguments of those who so vehemently opposed adoption of the Brazilian Resolution.

Although the Catholic/Islamic alliance was successful in leading the Brazilian Resolution to a rather quiet death, it did not need to be that way. The flaws in their arguments against recognition of human rights for sexual minorities are threefold. First, the Organization of the Islamic Conference's (OIC) assertion that sexual-orientation discrimination is not a concern for the global south,⁷⁸ while potentially true, is simply inapposite with the goals of international human rights laws. While it may not be a concern of the global south, that does not negate the fact that human rights violations against sexual minorities still occur—nor does it excuse them. Second, at various points throughout the debates surrounding the Brazilian Resolution, the opponents asserted that the term “sexual orientation” had not been defined in international law.⁷⁹ However, as discussed below, such a statement is simply erroneous. Finally, and perhaps most importantly, those opposing the Brazilian Resolution did so out of a religious bias,⁸⁰ a bias that, as also discussed below, necessarily violates international law. The following sections examine each of these issues in turn.

A. *Issues of Gender and Sexuality Fall Squarely within the Concern of International Human Rights Law*⁸¹

Once introduced, the Brazilian Resolution was met with immediate

77. *Id.* The various statements are discussed in detail below, *infra* Part II.

78. *Id.*

79. *Id.*

80. *Id.*

81. The title of this subsection is borrowed from a quote of Nicholas Bamforth wherein he makes such an assertion. See Nicholas Bamforth, *Introduction to AMNESTY INTERNATIONAL, SEX RIGHTS: OXFORD AMNESTY LECTURES 1* (Nicholas Bamforth ed., 2005) (stating “issues of gender and sexuality fall squarely within the concern of international human rights law”).

opposition. Those states most opposed to the Brazilian Resolution's introduction were Islamic and Catholic states. Additionally, both the Vatican and the OIC circulated letters urging states not to adopt the Brazilian Resolution. The letter circulated by the OIC between the Commission's 2003 and 2004 sessions stated, among other things, that in the OIC's perspective sexual orientation is not a human rights issue.⁸²

While such a statement may have persuaded some states against voting for the Brazilian Resolution, the veracity of the assertion is questionable. It is true that those within the OIC may not believe sexual orientation to be a human rights issue, but there are many who disagree. Numerous scholars, many advocating the recognition of human rights for sexual minorities, repeatedly assert just the opposite. As Nicholas Bamforth states in the introduction to an Amnesty International article, "[t]hat issues of gender and sexuality fall squarely within the concern of international and national human rights law cannot be doubted."⁸³ That is, "at least if one believes that human rights concern a person's ability to lead a valuable life free from oppression."⁸⁴

While many scholars write on the topic of sexual orientation and human rights,⁸⁵ the scholarly argument is not the only one opposed to the OIC's view. The full body of international law also supports the notion that sexual orientation is an issue within international law. Throughout the world, sexual minorities routinely experience persecution and a denial of rights granted to the sexual majority.⁸⁶ Accordingly, such discrimination on the basis of sexual orientation has been ruled to be violative of both the ICCPR⁸⁷ and the ECHR⁸⁸, concern over such discrimination has found its way into numerous international documents⁸⁹ and numerous NGOs focus specifically on human rights violations that affect sexual minorities.⁹⁰ With so many players in the field of international human rights law

82. Sanders, *supra* note 20.

83. Bamforth, *supra* note 81, at 1.

84. *Id.* at 14.

85. For an in-depth discussion of this topic, see generally Vincent J. Samar, "Family" and the Political Landscape for Lesbian, Gay, Bisexual and Transgender People (LGBT): Gay-Rights as a Particular Instantiation of Human Rights, 64 ALB. L. REV. 983 (2001).

86. See O'Flaherty & Fisher, *supra* note 11, at 211 (describing numerous forms of persecution endured by sexual minorities).

87. See Toonen, U.N.H.R. Comm'n, No. 488, ¶ 8.3 (determining that a Tasmanian statute prohibiting private homosexual behavior violates articles 17, paragraph 1, juncto 2, paragraph 1, of the International Covenant on Civil and Political Rights).

88. See Dudgeon, 4 Eur. H.R. Rep. ¶ 63 (holding Northern Ireland's laws prohibiting buggery and acts of homosexual indecency constitute "a breach of Article 8" of the European Convention on Human Rights).

89. O'Flaherty & Fisher, *supra* note 11, at 214-15.

90. For various political reasons, however, most of those groups have been denied observer status within the UN. One of the major international organizations dealing with the rights of sexual minorities is the International Lesbian and Gay Association (ILGA). ILGA was initially granted observer status within ECOSOC in 1994, but that status was rescinded at the behest of the United States in 1994. Since then, all attempts to gain observer status by groups representing sexual minorities have been denied. For a more in-depth discussion of this topic, see Douglas Sanders, *Human Rights and Sexual Orientation in International Law*, INT'L GAY & LESBIAN ASS'N FILES: U.N. COMM'N ON HUM. RTS,

spending time on protecting the rights of sexual minorities, it was disingenuous for the OIC to assert that sexual orientation is not a concern of international law.

Not only are such rights a clearly recognized concern of international human rights law, international bodies have a moral imperative to recognize these rights. Now that the issue is clearly a part of the international debate, failure to protect such rights would be a failure to uphold the human rights of all persons. As such, the OIC's assertion to the contrary was wrong; but it was also wrong for other states to acquiesce to the OIC's demands that were based upon such a disingenuous assertion.

B. International Law Does Define "Sexual Orientation"

The letters circulated by the Vatican and the OIC also expressed concern that international law does not define the term "sexual orientation."⁹¹ As such, they suggested that inclusion of the term could lead to protections for universally-despised acts such as pedophilia. Such an assertion is inaccurate for at least two reasons. First, it is simply erroneous. International law clearly defines the term "sexual orientation" and this term is well understood. Second, this assertion demonstrates the basic misunderstanding between the granting of special rights and the recognition of human rights. This article discusses each reason below.

The OIC's assertion that "sexual orientation" is undefined in international law is plainly erroneous. As previously discussed, the term has been used in international law for more than two decades. Even within the UN, the UNHRC issued decisions dealing with sexual orientation long before the Brazilian Resolution's introduction. For example, in *Toonen*, the UNHRC's first decision to mention "sexual orientation," the UNHRC definitively stated, "the reference to 'sex' in articles 2, paragraph 1, and 26 [of the ICCPR] is to be taken as including sexual orientation."⁹²

It would have been unfathomable for the UNHRC to make such a grand statement if the term "sexual orientation" was not a clearly defined term. Likewise, if the term did not have a clear meaning and understanding, the UNHRC certainly would have taken care to define it before making such a bold pronouncement. This is especially true given the importance of the term to the case. However, at no point during its decision did the UNHRC undertake such an effort. To the contrary, the term "sexual orientation" is so well defined in the general parlance that the UNHRC used it sixteen times in *Toonen* without ever finding a need to officially define it.⁹³

It is not only within the UN that "sexual orientation" is clearly defined; it has a universally understood definition. Courts and committees of national and international jurisdiction (including, inter alia, those in France, the United Kingdom, Canada, and the United States) have included the term "sexual

Nov. 5, 2005, <http://ilga.org/ilga/en/article/577>.

91. Sanders, *supra* note 20.

92. Toonen, U.N.H.R. Comm'n No. 488 ¶ 8.7.

93. *Id.* (including individual opinion of Mr. Bertil Wennergren).

orientation” in their judicial decisions⁹⁴ Not only have judicial and quasi-judicial bodies readily adopted the term because of its plain meaning; numerous binding and non-binding international documents and reports throughout the world have adopted the term.⁹⁵ Given the broad official use of the term “sexual orientation” throughout the world, the assertion that “sexual orientation” is an undefined term is simply preposterous.

It is, in fact, the immediate reaction of those opposing the Brazilian Resolution that proves the argument’s flaw. At no point did any in the opposition ask for clarification or definition of the term. Yet, they still knew they were opposed to the introduction of the Brazilian Resolution. That the Vatican and the OIC immediately reacted against the introduction of the Brazilian Resolution proves the term “sexual orientation” has a plain and well understood meaning. Had this not been so, then neither the Vatican nor the OIC could have been immediately opposed to the Brazilian Resolution. It was only because the meaning of the term was so well defined that Vatican and OIC were immediately against the Brazilian Resolution.

Additionally, the claim that the term “sexual orientation” is too vague rings hollow. The term is certainly no more vague than the phrase used to punish sexual minorities throughout the OIC’s member states. Laws prohibiting “carnal knowledge of any person against the order of nature”⁹⁶ are common in many of the countries represented by the OIC. Yet, these countries use these laws, vague as they are, to routinely punish only sexual minorities. This is true despite the science indicating it is the nature of these individuals to desire having sex with someone of the same-sex.⁹⁷

94. See *Lawrence v. Texas*, 539 U.S. 558, 581 (2003) (using the term “sexual orientation” without defining it); *EB v. France*, 2008 Eur. Ct. H.R., 4, ¶ 9, *available at* (finding the same); *Ghaidan v. Godin-Mendoza*, [2004] UKHL 30, ¶ 9 [2001] EWCA (Civ) 1533 (appeal taken from England) (U.K.), *available at* <http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040621/gha-1.htm> (finding the same); *Karner*, 2003 Eur. Ct. H.R., ¶33; *Halpern v. Canada*, [2003] 14 BHRC 687, O.J. 2268, ¶ 6 (Ct. App. Ont. June 10, 2003), *available at* <http://www.ontariocourts.on.ca/decisions/2003/june/halpernC39172.htm> (finding the same).

95. See *supra* Introduction (discussing prior attempts to legislate rights of sexual minorities).

96. See Douglas Karekona Singiza, *Exorcising the Antiquity Spirit of Intolerance: Possibilities and Dilemmas of Decriminalising Sodomy Laws in Uganda*, 11 (Oct. 29, 2007) (unpublished LL.M. dissertation, University of the Western Cape, Cape Town, South Africa) *available at* http://www.up.ac.za/dspace/bitstream/2263/5851/1/singiza_2007.pdf. (quoting the Uganda statute that criminalizes homosexual acts).

97. While the cause of homosexuality is far from settled, much science supports the proposition that homosexuality is a genetic predisposition. See George Rice et al., *Male Homosexuality: Absence of Linkage to Microsatellite Markers at Xq28*, 284 *Sci.* 665, 665 (1999) (“Several lines of evidence have implicated genetic factors in homosexuality”), *available at* <http://www.sciencemag.org/cgi/reprint/284/5414/665.pdf>. *But see*, P.S. Bearman, *Opposite-Sex Twins and Adolescent Same-Sex Attraction*, 107 *AM. J. SOC.* 1179, 1179 (2005) (“the pattern of concordance (similarity across pairs) of same-sex preference for sibling pairs does not suggest genetic influence independent of social context”). However, even if sexual orientation is a choice made by homosexuals, the argument that those choosing homosexuality should be granted the same rights granted to all individuals is not diminished by such a conclusion. This is because homosexuals and other sexual minorities are nonetheless human and therefore just as deserving of basic human rights.

The second reason the argument is flawed is that it shows a basic misunderstanding between granting special rights and protecting human rights. The Brazilian Resolution sought to do only the latter. Even if one accepted the argument that the term's vagueness would lead to the inclusion of pedophilia, such an inclusion would not grant pedophiles any special rights.⁹⁸ The Brazilian Resolution sought to grant all sexual minorities (including, hypothetically, pedophiles) only the basic human right to be free from discrimination *for their existence*. Such a basic recognition of human rights would not remove any domestic sanctions that might be imposed for non-consensual (i.e. forced or exploitative) acts. The difference is one of being versus doing, and those fearful of the inclusion of persons such as pedophiles miss the key element present in the legal acts of sexual minorities; they are committed between consenting adults.⁹⁹

International law clearly defines the term "sexual orientation." Universal use of the term with a clear understanding of its meaning spans several decades. And, even if some construe it to include persons such as pedophiles or rapists, such an inclusion would have been of no consequence to the adoption of the Brazilian Resolution. As such, the argument that international law does not define "sexual orientation" is simply devoid of merit.

C. Freedom of Religion Necessarily Includes Freedom from Religion

As their third argument against the Brazilian Resolution, both the OIC and the Vatican asserted that religious law would prevent them from recognizing the Brazilian Resolution and that, if adopted, there would be severe consequences.¹⁰⁰ By invoking the tenants of their religious laws to negate the human rights of sexual minorities, the OIC and the Vatican exposed the inherent flaws in allowing religious law to exist within the framework of the UN.

This section discusses those flaws, but in the process it presents a much broader argument than the previous sections. It looks at the history and framework of the UN, using the case of sexual minorities to expose why religious law cannot co-exist with international human rights laws within the UN. In so doing, the purpose is not to promote religious intolerance, but rather to promote religious freedom. This section argues that when religious law and religious freedom conflict, as is often the case, the Universal Declaration of Human Rights (UDHR)

98. It is odd that the concern expressed is for pedophiles rather than rapists. Perhaps that is because a concern for rapists would require the OIC to acknowledge the many acts of rape its member states perpetrate against sexual minorities in an attempt to "correct" their behavior. See AMNESTY INTERNATIONAL, *BREAKING THE SILENCE: HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION* (1994) and AMNESTY INTERNATIONAL, *CRIMES OF HATE, CONSPIRACY OF SILENCE: TORTURE AND ILL-TREATMENT BASED ON SEXUAL IDENTITY* (2001), available at <http://www.amnesty.org/en/library/info/ACT40/016/2001/en>.

99. At all times, this paper takes as a given that the sex acts discussed consist of acts between two consenting adults. While the issue of what constitutes consent is an interesting one, it is not for this paper. Nonetheless, this paper does not suggest that those persons (sexual minorities or otherwise) engaged in non-consensual sex acts, should be outside the reach of the law.

100. Sanders, *supra* note 20.

requires religious freedom to reign supreme. To best represent this argument, this section takes as its example the existence of Shari'a law¹⁰¹ within the UN.¹⁰²

To properly understand the rights guaranteed by the UDHR, one must look beyond the text of the document. That is not to say that the text should be ignored; only that one must consider it within its broader context, taking into account both the document's history and the framework of its guarantees. This section briefly discusses each of these concerns—looking first to the text, then exploring both the history and framework of the UDHR. After properly framing its significance, this section proceeds to the broader discussion of why religious law cannot properly co-exist with international human rights law.

1. The Text, History, and Framework of the UDHR

To best understand the significance of the UDHR's guarantee of religious freedom, one must first look to the document's text. Article 2 of the UDHR states "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . religion."¹⁰³ Article 18 further asserts, "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, *to manifest his religion or belief in teaching, practice, worship and observance.*"¹⁰⁴ Read together, these two Articles clearly affirm the right of all persons, without distinction of any kind, to freedom of thought, conscience, and religion, which includes the right to practice and worship in one's own way. Such is the text of the UDHR, but as simple as that statement may sound, one cannot fully understand its meaning without looking to both the history and framework of the UDHR.

When trying to understand the UDHR's guarantee of religious freedom, one must also look to the UN's history—including the horrific events that preceded its formation. Specifically, one must not forget the enormous role religion played in fostering the atrocities perpetrated by the Nazis during World War II. It was the extermination of millions of people, based on both religious and ethnic grounds, which led to the birth of the UN in 1945. Not only did World War II see the most rapid killing of members of a religious minority in human history,¹⁰⁵ but the Nazis' actions were condoned, and at times assisted, by numerous religious organizations

101. Islamic law. "The Arabic word means literally 'a way to a watering place,' and thus, a path to be followed. According to Muslim belief, it is the path ordained by God for the guidance of mankind, and must be followed by all Muslims." JAMILA HUSSAIN, *ISLAM: ITS LAW AND SOCIETY* 28 (2004) (internal citations omitted).

102. This is not done in an attempt to disparage Islam or Shari'a law. It is done only because Shari'a law provides the clearest example of the inherent conflict between religious and international law. However, within the context of the Brazilian Resolution, the arguments put forth below would apply equally to those states that followed the lead of the Vatican, which also asserted that religious law would prevent it from recognizing the Brazilian Resolution.

103. UDHR, *supra* note 3, art. 2.

104. *Id.* art. 18 (emphasis added).

105. D. NIEWYK & FRANCIS NICOSIA, *THE COLUMBIA GUIDE TO THE HOLOCAUST* 45 (2000) (estimating that more than 5,000,000 Jewish people were killed by the Nazis between the years 1933 and 1945).

throughout the world.¹⁰⁶ It is with these circumstances in mind that one must look at the UDHR's promise of religious freedom.¹⁰⁷

Additionally, the Preamble to the UDHR clearly shows the intent to rectify these travesties of World War II. Among other things, the Preamble states:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.¹⁰⁸

Now, having read the UDHR's text, including the Preamble and the articles specifically relating to religion, and considering those words within its historical context, a clearer intent of its meaning emerges. Not only does the UDHR guarantee religious freedom, but it does so for the purpose of rectifying and preventing barbarous acts that have outraged the conscience of mankind. However, a full understanding of the UDHR's religious-freedom guarantees also necessitates a consideration of the UDHR's framework.

Understanding the framework of the UDHR helps solidify the proper understanding of its religious-freedom guarantees. The U.N. General Assembly adopted the UDHR on December 10, 1948. It is part of the U.N.'s International Bill of Human Rights (IBHR) which consists of the UDHR, as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (and its two Optional Protocols). The U.N. General Assembly completed the IBHR in 1966 when it adopted both the ICESCR and the ICCPR. These documents work in conjunction with one another to protect human rights throughout the world.

In reading each of the documents that make up the IBHR, it becomes clear that the IBHR grants religious freedom to the individual, not the state. For instance, Article 55 of the U.N. Charter states that the UN shall "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for *all* without distinction as to race, sex, language, or religion."¹⁰⁹ The UDHR further compels religious freedom for the individual in its statement that,

106. CHRISTOPHER HITCHENS, *GOD IS NOT GREAT*, 235-51 (2007) (describing the acquiescence of the Vatican, which signed the very first diplomatic accord undertaken by Hitler after his seizure of power, and other religious organizations throughout Europe who failed to even try to stop the Nazi's attempted extermination of the Jews).

107. Article 2 of the UDHR states "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . religion," and article 18 further asserts, "[e]veryone has the right to freedom of thought, conscience and religion." UDHR, *supra* note 3, arts. 2 & 18.

108. UDHR, *supra* note 3, Preamble.

109. U.N. Charter, art. 55.

“[e]veryone is entitled to all the rights . . . without distinction of any kind, such as . . . religion.”¹¹⁰ The ICCPR is no less precise in according the right to the individual within the state by expressing, “the present Covenant undertakes to respect and to ensure to all *individuals* . . . the rights recognized in the present Covenant without distinction of any kind, such as . . . religion.”¹¹¹ Likewise, Article 5 of ICESCR asserts, “[n]othing in the present Covenant may be interpreted as implying for any State, group or *person* any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein.”¹¹² Taken together, these documents unequivocally establish that the rights of the individual are paramount, and that the rights provided for and protected by these documents exist with the individual.

Having established that the UDHR’s religious-freedom guarantee is granted to the individual and intended to prevent future atrocities executed in the name of religion, the following sub-section proceeds to the broader discussion of why religious law cannot co-exist with international human rights law.

2. Why Religious Law Cannot Co-Exist with International Human Rights Law

Having explored the Universal Declaration of Human Rights’ (UDHR) text, history, and framework within the International Bill of Human Rights (IBHR), it is now possible to explore why religious law cannot co-exist with international human rights law. Simply put, the IBHR prohibits the existence of theocracies within the UN because its religious-freedom guarantees reside with the individual (not the state), and it granted these guarantees to prevent states from executing future atrocities in the name of religion. As such, the IBHR’s goals are in direct conflict with the goals of theocracies.

Theocracies exist not to guarantee religious freedom, but to impose religious law upon their citizens regardless of whether their citizens ascribe to those beliefs or not. Accordingly, theocracies necessarily violate international law in at least two ways. First, by denying individuals the ability to worship according to the dictates of their own conscience, theocracies deny individuals of their right to religious freedom as guaranteed under the IBHR.¹¹³ Second, as demonstrated by the OIC’s refusal to allow the Brazilian Resolution to come to a vote, theocracies often deny groups or individuals of basic human rights under the guise of religious doctrine. This paper discusses both of these concepts in further detail below.

110. UDHR, *supra* note 3, art. 2 (emphasis added).

111. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), arts. 2, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368, (emphasis added).

112. International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), arts. 5, December 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360, (emphasis added).

113. As previously mentioned, this argument is examined by considering the U.N. member states that apply Shari’a law. This is done not in an attempt to disparage Islam, but simply because such states – by deriving their domestic law almost entirely from religious texts – provide the clearest example from which to understand this argument. Again, much of the rationale used herein can also be applied to the Vatican and other states that rely heavily on other religious texts for their domestic law.

By denying individuals the ability to worship according to the dictates of their own conscience, theocracies subject religious minorities to state persecution and deny individuals of the IBHR's religious-freedom guarantees. Although not always recognized, these guarantees necessarily embody both negative and positive rights. All would agree that the IBHR's religious-freedom guarantees prevent a state from discriminating against individuals because of religion. This is typically understood to mean that states may not discriminate against individuals based upon the individual's religion. However, since the IBHR's religious-freedom guarantees exist to prevent the types of tragedies that precipitated its creation, it must also be true that states may not discriminate against persons because of the state's religion. To conclude otherwise would be to ignore the IBHR's history and that its religious-freedom guarantees reside with the individual rather than the state.

Exploring the case of sexual minorities within Shari'a law shows why this must be the case. In countries that abide by Shari'a law, there is no other source of law (such as the common law) and all citizens of that country are subject to the requirements of Shari'a law.¹¹⁴ This is true, for example, of sexual minorities who choose to live by a religion other than Islam (presumably one that does not condemn them for their homosexual acts).¹¹⁵ Although states applying Shari'a law may allow such individuals the choice to practice another religion, many of those states still condemn non-Islamic individuals for their homosexual acts. Accordingly, while Shari'a law may allow sexual minorities to choose a religion that would not condemn their sexual acts, that freedom of choice does not, by itself, protect them from the state condemning such acts. Such a result is untenable given the IBHR's clear intent to prevent state discrimination based upon religion.

Not only do theocracies wrongfully subject sexual minorities to state discrimination, they also prevent sexual minorities from fully practicing the religion they choose. As previously discussed, Article 18 of the UDHR ensures that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹¹⁶ However, by requiring non-Islamic citizens to adhere to Shari'a law, such states deny those individuals of the right to "manifest [their] religion or belief in teaching, practice, worship and observance." Accordingly, by subjecting sexual minorities to punishments for acts not prohibited under their own religion, Shari'a law prevents sexual minorities

114. HUSSAIN, *supra* note 101, at 6 ("Islamic law is entirely religious. In theory, there is no separation between 'church' and state.").

115. While many Islamic interpretations of both the Qur'an and the Hadith assert that both explicitly refer to homosexuality as a grave sin punishable by stoning, there are those who contest whether homosexuality is even prohibited by the tenets of Islam. *See id.* at 9 ("Islamic law prohibits . . . some types of personal relationships, such as . . . homosexual relationships"). *But see*, Narayan, *supra* note 36, at 342 ("historical analyses indicate that there is great variance in the interpretation of Islamic religious principles with respect to homosexuality . . . [which] is not explicitly referenced in the Q'uran").

116. UDHR, *supra* note 3, art. 18.

from fully practicing the religion of their own choosing. Unless the state allows a person to both freely choose and fully practice their right to religious freedom, that state denies its citizens of the IBHR's religious-freedom guarantees.

Certainly, however, one could argue that the IBHR's goal is only to prevent states from discriminating against individuals because of their chosen religion, rather than preventing states from instituting religious law. Put another way, it is arguable that the IBHR requires only that a state treat all religious groups equally and not grant certain rights to one religious group while denying such rights to other religious groups. Therefore, one could assert that Shari'a law's presence within the UN does not violate the IBHR, because the law in those states applies equally to all citizens regardless of their religion. However, such an understanding of the IBHR's religious-freedom guarantees is horribly restrictive and does not offer the protections necessary to prevent the types of atrocities that prompted the UDHR's creation.¹¹⁷

As previously discussed, nations developed the UDHR in response to the barbarous acts perpetrated during World War II. Given the oppressive historical backdrop of the UDHR's creation, it is difficult to imagine how the UDHR's framers would condone the imposition of religious ideals upon any group in the name of religious freedom. That the Jews of Europe were free to exercise their religion did not prevent the Nazis from killing several million of them. Likewise, that sexual minorities living under Shari'a law are free to practice a religion that would not condemn them in the afterlife does not prevent states from applying Shari'a law to condemn them in this life. That the IBHR's religious-freedom guarantees would allow such a curious result seems dubious, especially given the fact that sexual minorities also endured the wrath of the Nazis' extermination attempts.¹¹⁸ Consequently, if the IBHR's religious-freedom guarantees mean anything, they must include not only the freedom *of* religion, but also the freedom *from* religion. Theocracies necessarily deny their citizens of the latter right, and as such their existence within the UN is inconsistent with the IBHR's religious-freedom guarantees.

While theocracies necessarily deny individuals of the IBHR's religious-freedom guarantees, they also violate international law by using religious doctrine to cover blatant human rights violations. Exploring the story of the Brazilian Resolution more closely shows why this is true. In opposing the Brazilian Resolution, the OIC and Vatican asserted that homosexuality is contrary to their religious law.¹¹⁹ However, the OIC went even further. Speaking on behalf of the OIC, Pakistan stated that adoption of the Brazilian Resolution would lead to significant repercussions.¹²⁰ By invoking the teachings of their religious law, the

117. See *supra* Part III.C (explaining the history leading to the UDHR's creation).

118. It is estimated that "some 50,000 gays were branded criminals and degenerates by the Third Reich and 10,000 to 15,000 went to concentration camps, from which few ever returned." BBC News, *Berlin to Mark Nazis' Gay Victims* (Dec. 12, 2003), available at <http://news.bbc.co.uk/2/hi/europe/3314887.stm>

119. Sanders, *supra* note 20.

120. See *id.* (stating that the Pakistan delegate asserted that "attempts to develop norms which

OIC and Vatican exposed the second flaw of allowing theocracies to exist within the UN; theocracies often deny groups or individuals of basic human rights under the guise of religious doctrine.

In preventing the Commission from voting on the Brazilian Resolution, the OIC and Vatican also denied those citizens of many other rights. The Brazilian Resolution's adoption would have affirmed that sexual minorities are included within the scope of numerous international human rights documents, thereby explicitly granting such rights to sexual minorities. Had the Commission adopted the Brazilian Resolution, there would have been no question that the protections of those documents included sexual minorities. However, because the Commission never voted on the Resolution, whether the Commission intends for sexual minorities to be included within the documents invoked by the Brazilian Resolution's language remains an open question. And, at least for now, states are arguably free to continue subjecting sexual minorities to "persistent human rights violations."¹²¹

Nevertheless, in considering whether the Brazilian Resolution's stagnation leaves the question open, it is important to note that "[h]uman rights have a particular pre-occupation with disadvantaged individuals and groups. This pre-occupation is reflected in numerous provisions of international human rights law, not least those enshrining the principles of non-discrimination and equality."¹²² As such, the IBHR's text and history caution against an interpretation that would negate the human rights of sexual minorities. Throughout history, millions of people have been and continue to be slaughtered in the name of religion.¹²³ Sexual minorities are one such group that continues to be subjected to "persistent human rights violations."¹²⁴ This, despite the UDHR's clear dictate that "[e]veryone is entitled to all the rights and freedoms set forth in [the UDHR], 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."¹²⁵

It is immaterial whether the UDHR should include sexual minorities within the guise of "sex," "other status," or "everyone." Under any interpretation, it is difficult to understand how one could read the UDHR's broad language as excluding sexual minorities, especially when considering that sexual minorities were among those intentionally killed by the Nazis.¹²⁶ Accordingly, even without

directly contradict fundamental value systems need to be avoided No Islamic society would be able to accept any obligation which directly contradicts the basic tenants of our religion.").

121. O'Flaherty & Fisher, *supra* note 11, at 208.

122. Paul Hunt & Gillian MacNoughton, *A Human Rights-Based Approach to Health Indicators, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ACTION 303* (Mashood A. Baderin & Robert McCorquodale eds., 2007).

123. See HITCHENS, *supra* note 106, at 235-51 (discussing numerous examples of mass killings perpetrated in the name of religion).

124. O'Flaherty & Fisher, *supra* note 11, at 208.

125. UDHR, *supra* note 3, art. 2.

126. It is estimated that "some 50,000 gays were branded criminals as degenerates by the Third Reich and 10,000 to 15,000 went to concentration camps, from which few ever returned." BBC News, *Berlin to Mark Nazis' Gay Victims*, BBC NEWS, Dec. 12, 2003, <http://news.bbc.co.uk/2/hi/europe>

the Commission's adoption of the Brazilian Resolution, those human rights documents invoked by the Resolution's text necessarily extend to sexual minorities. But, by invoking religious doctrine, the OIC and the Vatican have so far succeeded in denying these basic human rights to sexual minorities. Such a result is inapposite with international law, and exposes one reason why theocracies should not exist within the UN.

III. PROGRESS MADE IN THE ADVANCEMENT OF RIGHTS FOR SEXUAL MINORITIES SINCE THE INTRODUCTION OF THE BRAZILIAN RESOLUTION

To be sure, Brazil made a major misstep in presenting the Brazilian Resolution without first garnering enough support to ensure its passage. However, that does not mean that no good has come from its introduction. As previously mentioned, the Commission's inability to pass the Brazilian Resolution was not a complete failure in terms of advancing sexual minorities' rights. In fact, by raising the profile of human rights and sexual orientation, the Brazilian Resolution helped advance those rights throughout international law—despite its demise. And, perhaps that is all that Brazil sought to do by introducing its Resolution.

Since 2003, when Brazil first introduced its Resolution to the Commission, supportive governments have introduced numerous similarly themed documents to other UN bodies. On December 18, 2008, France and The Netherlands presented the U.N. General Assembly with the first declaration concerning gay rights. Although originally intended as a resolution, it lacked support for adoption as such and was quickly met with an opposing statement from the OIC.¹²⁷ It is now known as the United Nations Statement on Human Rights, Sexual Orientation and Gender Identity (“Statement”).¹²⁸ Interestingly, the Statement is more strongly worded than was the Brazilian Resolution. It condemns, among other things, “human rights violations based on sexual orientation or gender identity wherever they occur.”¹²⁹ However, despite its strong language, the Statement won the support of sixty-six countries in the U.N. General Assembly.¹³⁰

Additionally, countries signed multiple statements expressing concern for discrimination based on sexual orientation or gender identity, and altogether sixty countries have signed at least one statement.¹³¹ Most significantly, on January 12, 2006, Norway presented the U.N. Human Rights Council with a “statement on human rights violations based on sexual orientation and gender identity on behalf of . . . 54 states,”¹³² which “urge[d] the Human Rights Council to pay due attention

/3314887.stm.

127. Neil MacFarquhar, *In a First, Gay Rights Are Pressed at the U.N.*, N.Y. TIMES, Dec. 18, 2008, at A22.

128. Statement on Human Rights, Sexual Orientation and Gender Identity, G.A. Res. 2435, ¶ 6, 4th plen. mtg., (Dec. 18 2008).

129. *Id.*

130. MacFarquhar, *supra* note 127, at A22.

131. ILGA, SUPPORTIVE GOVERNMENTS: 60 COUNTRIES HAVE PUBLICLY SUPPORTED SEXUAL ORIENTATION AT THE CHR/HRC BETWEEN 2003 AND 2008 (2008), available at <http://ilga.org/ilga/en/article/583>.

132. The Norwegian Statement, Human Rights Council, Dec. 1, 2006, <http://www.ilga->

to human rights violations based on sexual orientation and gender identity.”¹³³ The Norwegian Statement was particularly notable because several Islamic States actually signed onto it,¹³⁴ despite Pakistan’s assertion that no Islamic state could ever support any document expressing concern over human rights violations of sexual minorities.¹³⁵

Outside of the UN, numerous Intergovernmental Organizations (IGOs) have continued to work feverishly to protect the rights of sexual minorities. Although it did not occur during a session of the U.N. Human Rights Commission, Brazil did eventually get a version of its Resolution passed by an international governing body. In 2008, the Organization of American States (OAS) passed a slightly modified version of the original Brazilian Resolution. The “non-binding resolution was passed by consensus, meaning that all OAS countries agreed including the United States.”¹³⁶

In addition to the work of IGOs, individual experts in the field of human rights and sexual orientation have been hard at work as well. In March of 2007, a group of human rights experts launched the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles). The Yogyakarta Principles are a collection of twenty-nine principles relating to human rights and sexual orientation. Each enumerated principle contains recommendations directed at states to assure their fulfillment. “The Principles are intended as a coherent and comprehensive identification of the obligation of States to respect, protect and fulfill the human rights of all persons regardless of their sexual orientation or gender identity.”¹³⁷

Although the Commission failed to pass the Brazilian Resolution, it is arguable that Brazil managed to do indirectly what it was unable to do directly. After all, it can be assumed by Brazil’s actions that it sought merely to raise the profile of human rights violations based on sexual orientation. Certainly it has managed to do that. While there are still numerous states that vehemently oppose adoption of such a resolution, many other states, IGOs, and NGOs have worked tirelessly over the past six years to advance those rights.

europa.eu/eu-issues/international/norwegian_statement_at_the_un.

133. *Id.*

134. The Norwegian Statement was signed by Albania, which is member state of the OIC. Additionally it was signed by Bosnia & Herzegovina and Cyprus, both of which have observer status with the OIC. *See id.* (listing all signatories); Organization of the Islamic Conference, Member States, http://www.oic-oci.org/member_states.asp (last visited Apr. 24, 2010) (listing OIC member states); Organization of the Islamic Conference, Observers http://www.oic-oci.org/page_detail.asp?p_id=179 (last visited Apr. 24, 2010) (listing OIC observers).

135. Sanders, *supra* note 20.

136. Samantha Singson, *Brazil Successfully Pushes Homosexual Rights at OAS Meeting*, 34 CATH. FAM. & HUM. RTS. INST. 1, 1 (2008), available at http://www.c-fam.org/publications/id.696/pub_detail.asp.

137. O’Flaherty & Fisher, *supra* note 11, at 207.

All this adds up to show that the rights of sexual minorities are a concern of the international community, and that those concerns are being recognized and slowly advanced. The Commission was designed so that all states would be held to the same human rights standards. With that in mind, the Brazilian Resolution should have passed, for it sought nothing more than a mere acknowledgment that states show concern for violations of human rights based on sexual orientation. However, the states opposing the Brazilian Resolution were those states most likely to be guilty of committing egregious violations of human rights against sexual minorities. In failing to pass the Brazilian Resolution, the Commission itself failed in its duty to promote and protect human rights.

CONCLUSION

Throughout the world, numerous groups are denied basic human rights because of their status within society. Oftentimes, those committing violations of human rights against these groups assert that they have a perfectly valid reason for doing so. In the case of sexual minorities, the reasons asserted for such violations appear at first glance to be logical. Surely, no one wants to grant special rights to sexual predators such as rapists and pedophiles, nor does anyone wish to rely upon laws that are based on undefined terms. Furthermore, religion is a very important and sacred part of millions of lives, and deserves the utmost deference.

However, this paper has attempted to explain why those arguments are not as sound as they may first seem. Sexual minorities are not seeking special rights, only basic human rights. Moreover, sexual predators are easily distinguishable from sexual minorities. The latter group deals with adults who have consensual sexual relations with one another, whereas the former does not. Additionally, while the use of undefined terms can bring havoc upon the legal system, the term "sexual orientation" presents no such problems. Numerous laws and judicial decisions throughout the world use the term. And as for religion, while it does deserve a certain level of respect, a concern for human rights deserves more. The international community cannot allow religion to excuse persistent human rights violations.