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Is opposition to LGBTQI+ issues growing at the UN?

By Liv Martin

The Human Rights Council has extended the mandate of the UN expert on LGBTQI+ rights for another three years, but not without fierce opposition from conservative countries.

At the most recent Human Rights Council session in June, countries battled through brusque, razor-edged statements over one historically controversial resolution. The independent expert on sexual orientation and gender identity's (SOGI) mandate three-year term was up; once again the role — the UN's first watchdog for LGBTQI+ rights — was argued over until the bitter end.

Victor Madrigal-Borloz, a Costa Rican lawyer, has been the independent expert since 2018, and is likely to be reelected to the position in September. For the group of majority Latin American countries, and many European Union and North American states in support of the mandate, passing the resolution was as simple as "LGBTQI+ rights are human rights".

On the other side were countries representing the 57-member Organization of Islamic Cooperation (OIC) – excluding Albania – who argued that the resolution has "no basis in human rights law" (Bangladesh) and overlooked "religious and cultural sensitivities" (Nigeria). The OIC submitted 13 amendments to try to strike down the mandate, one of which proposed to eliminate all references to “sexual orientation”. The move was described by Argentina as “deeply hostile”.

When it came to the final vote, a silence stretched over the room, as everyone turned their eyes to the screens to see the final tally, waiting with bated breath. The silence broke; tears, bear hugs, murmurs of “we did it” erupted. In the end, the independent expert’s mandate was renewed by a vote of 23 in favour, 17 against and seven abstentions. One of the OIC’s amendments was passed, while several votes on the suggested changes were nail-bitingly close.

Even as being an LBGTQI+ person has become more mainstream in many parts of the world, it is still one of the most disputed subjects at the UN. The statements heard at the Human Rights Council vote were just the tip of the iceberg, and no match for the language that shocked people behind closed doors.

A growing opposition

According to multiple UN sources, opponents of the LGBTQI+ rights expert’s mandate were more incendiary this year during negotiations than ever before. Egypt reportedly used terms like “poligamy” and “paedophelia” to characterise LGBTQI+ relations during the informal negotiations.

“They said things we shouldn’t accept in the UN. It was really low,” said an anonymous source who was present at the negotiations.

During the Council meeting, many pro-mandate countries emphasised the opposition’s unwillingness to negotiate despite consistent attempts to find common ground.

“We reached out several times to them, and it was clear they weren’t ready to negotiate with us, because engaging with us means recognising that the initiative exists,” a representative for the Uruguay mission, one of the group of seven Latin American countries leading the resolution, told Geneva Solutions. “This doesn’t happen in any other resolution at the UN.”

Mauritania, speaking on behalf of OIC states at the Council meeting, said the resolution “seeks to violate the sovereign right of each country as well as its national laws, development priorities, various religious and ethical values and the cultural substratum of its people, in total contradiction with the universally recognised norms of international human rights law”.

Across the UN, SOGI has been a continuous flashpoint. At the World Health Assembly in late May, Nigeria, Egypt, Pakistan, Jordan and Saudi Arabia banded together against including the terms “sexual orientation”, “sexuality” and “men who have sex with men” in a document about HIV, hepatitis B and STIs. Saudi Arabia, at the last minute, also advocated for the addition of footnotes recording certain countries’ upset over the term “sexual orientation”, reported Health Policy Watch.

In December 2021, countries argued about inclusive language at the UN General Assembly. Egypt pushed back on the terms “women in all their diversity”, “gender identity” and “sexual orientation”, and Saudi Arabia said: “God created man and woman…anything that is neither male nor female is ‘against nature’”. Belarus, Ethiopia and Libya also rebuked the resolution for being insensitive to other states’ cultures or religion.

“We have this feeling that the opposition to SOGI is actually growing, or becoming a bit stronger, in the past few years,” said Gabriel Galil, programme coordinator at The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World), who oversees the association’s involvement in the Council.

‘The bare minimum’

Being LGBTQI+ is still criminalised in many countries around the world. Human Rights Watch statistics show at least 69 countries have national laws criminalising same-sex relations between consenting adults, and at least nine countries have national laws criminalising forms of gender expression that target transgender and gender-nonconforming people. In some countries, it is lawful to subject LGBTQI+ people to violent punishment such as whipping or flogging, life in prison, or even the death penalty.

The independent expert on SOGI position was first created in 2016. Appointing the expert was seen by many as a breakthrough, and the first real acknowledgment from the Council that LGBTQI+ rights are human rights. Human Rights Watch called it a “historic victory” at the time.

But the resolution creating the position barely slipped by during voting: 23 countries were in favour, 18 against and six abstained. In an unprecedented turn, the resolution was also challenged at the General Assembly. The New York body rarely gets involved in Human Rights Council decisions. The independent expert on SOGI’s mandate was renewed in 2019, with slightly less resistance (27 in favour, 12 against, seven abstentions) because of the Council’s makeup of countries at the time.

“When you are in the UN and you know how challenging it is, it feels like a gigantic victory,” Galil said. “But at the same time, we know that it is kind of the bare minimum that the UN should recognise when it comes to LGBT persons’ human rights.”

The independent expert on SOGI is the only UN mechanism dedicated to assessing the status of LGBTQI+ rights around the world. Aside from this mandate, two main resolutions have been adopted by the Council on LGBTQI+ issues. The first, adopted in 2011, requested the UN high commissioner for human rights to compile a report documenting discrimination on people based on their sexual orientation and gender identity. The second, adopted in 2014, asked the high commissioner to update the document to include “good practices and ways to overcome violence and discrimination" using international human rights law.

"We genuinely believe that this independent expert has been one of the great achievements of the Human Rights Council. It has given a voice and a presence to people across the world who were effectively invisible before," Simon Manley, UN ambassador to the United Kingdom, told Geneva Solutions. The United Kingdom has been a consistent proponent of the mandate.

Over the past six years, Madrigal-Borloz and his predecessor Vitit Muntarbhorn have been charged with fact-finding country visits, thematic reports to the Human Rights Council and General Assembly, and have held states accountable via urgent appeals and letters of allegation. So far, the independent experts have visited Argentina, Georgia, Mozambique, Ukraine and Tunisia. A visit to the United States, where the conservative Supreme Court has cracked down on women's rights and suggested LGBTQI+ rights could be next, is planned for August 2022.

"We couldn't allow the resolution to fail," said the Uruguay representative. "At the end of the day, there's a political message that we are supporting the mandate and this fight for equality."

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