



EMBRACING DIVERSITY: AN AGENDA FOR THE UNITED NATIONS IN THE TWENTY-FIRST CENTURY

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I believe that all forms of prejudice and discrimination degrade civilisation and dehumanise us all. The principle of tolerance of difference lies at the heart of decent human society. And I believe that the United Nations has a central role to play in advancing an agenda for tolerance. That is because the more tolerant societies are, and the more accommodating of difference, the more flourishing their civilisation will be; the better they may resolve disputes through dialogue and without force; and therefore the fundamental precepts of the United Nations, namely mitigation of conflict and respect for and promotion of common human values, are more likely to be advanced.

Some might argue that there is nothing in the 1945 Treaty of San Francisco about the rights or roles of minorities, including ethnic groups, religious groups, lesbians, gays, bisexuals, transgender and intersex people. But such broad assertions would merit reconsideration in the light of careful textual analysis. The UN Charter does indeed refer to general norms within which the rights and dignities of minority groups can and should be captured. Its very recitals refer to the dignity and worth of human persons; the equal rights of men and women (and by extension their sexual rights); the promotion of social progress; and the importance of practising tolerance. Indeed the Economic and Social Council is expressly tasked with the formulation and advancement of recommendations for the purposes of promoting respect for, and observance of, human rights and fundamental freedoms for all. The Universal Declaration of Human Rights, that the United Nations is called upon to uphold, exhibits complimentary principles.

Moreover the United Nations' fundamental mandate to prevent and mitigate conflict necessary entails respect for minority rights. Conflicts are too often the result of different groups seeking to impose their values or ideals upon others. LGBT rights are minority rights deserving of protection in precisely the same way as any other kind of minority rights, and for precisely the same reasons. LGBT rights are important not just in and for themselves, to preserve the dignity of the groups who seek to express them; but also to promote a global culture of tolerance and non-confrontation upon which the United Nations Organisation is premised.

This connection between UN foundations and equal treatment of minorities has been made perhaps most directly and forcefully by the British government. Its top UN diplomat is on record as saying:

[There is] much more to be done in [many] parts of the world to advance LGBT rights. I firmly believe that the United Nations can play a key role in advancing this agenda. ... [a]t the heart of the UN Charter is a shared faith in fundamental human rights and in the dignity and worth of all people. ... The United Kingdom is proud to be ... a member of the LGBT Core Group, a cross-regional group of countries advocating and negotiating at the United Nations for recognition and protection of the human rights of LGBT people. We partner with the UN High Commissioner for Human Rights. We use high-level UN events and social media campaigns to keep this issue on the international agenda.

Indeed the British view, commendably strong, is that respect for minority rights is a central tenet of the UN's Sustainable Development Goals. In the words of the British representative:

The United Kingdom is adamant that when developing the SDGs, we need to keep human rights up front. People must be at the heart of the goals. That is why we support the principle of "leave no one behind" at the core of the SDGs. No goal or target of the new agenda can be considered met unless it is met for all groups in society. This includes the LGBT community. Inclusion is the right thing to do, but it is also the smart thing to do to achieve true sustainable development.

This is not a mere British fad. Respect for minority rights is something that is accepted across Europe and beyond. It has its supporters even in the Russian President, an individual who is otherwise periodically the subject of British diplomatic ire. Vladimir Putin notably observed:

I believe there should not be any criminal prosecution or any other persecution or infringement of people's rights on the basis of their race, ethnicity, religious or sexual orientation. ... People of non-traditional sexual orientation work, they live in peace, they get promoted, they get state awards for their achievements in science and arts or other areas.

These comments should not come as a surprise. They reflect some of the most fundamental principles in the constitution of the Russian Federation. By Chapter 2 of that country's constitution:

In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of persons and citizens according to the universally recognised principles and norms of international law ... The State shall guarantee the equality of rights and freedoms of persons and citizens, regardless of sexuality, race, nationality, language, origin, property and official status, place of residence, religion, convictions ... All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned. Men and women shall enjoy equal rights and freedoms and have equal opportunities to exercise them.
...

Human dignity shall be protected by the State. Nothing may serve as the basis for its derogation. ... Everyone shall have the right to inviolability of private life, personal and family secrets, the protection of honour and good name.

Notwithstanding the commendable efforts and pronouncements of some of the UN's most important figures, the record of the United Nations in promoting minority rights is not as always as admirable as those who stand behind it might wish. A draft resolution supporting lesbian, gay, bisexual and transgender rights stalled in the UN's Human Rights Council, not proceeding beyond its 23rd session. A 2003 initiative to table a resolution before the UN Commission on Human Rights also stalled. Nevertheless the UN's Special Rapporteur on Extrajudicial, Summary and Arbitrary Killings has issued a report highlighting the persecution of LGBT persons, so at least the discussion was continuing. One positive result is Resolution 17/19 of the Human Rights Council, highlighting the importance of human rights laws and norms in the freedom to determine one's own sexual identity.

Moreover there are now very recent and highly laudable developments. On 21 November 2016, His Excellency Zaid Hussain, United Nations High Commissioner for Human Rights, presided over a major victory in this field. The General Assembly's Human Rights Committee has elected to grant the UN independent expert on violence and discrimination on the basis of sexual orientation and gender identity. This superlative new role is occupied by Vitit Muntaborn of Thailand. The Coordination Committee on Special Procedures recently upheld the Special Rapporteur's broad mandate. Outgoing Secretary-General Ban Ki-moon described this as an "unprecedented victory",

and it is hard not to sympathise with this astounding result achieved at the tail end of his stewardship of the world's foremost peace and security organisation.

Muntaborn has a long and distinguished UN record, including an extended, exceptionally challenging yet effective role in the Democratic People's Republic of Korea; a member of the Committee of Experts on the Application of the ILO Conventions; Special Rapporteur on Child Abuse and Pornography; and Chair of the 2012 Independent Commission of Enquiry on Syria, charged with investigating and determining responsibility for human rights abuses during the civil conflict in that country. He is a principal advocate of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. In his new role, his breadth of responsibilities will be virtually unprecedented. I applaud this, because as a Balkan peacekeeper I observed some of the worst episodes of sexual violence, trafficking and discrimination, and I resolved that when the opportunity came along, I would use such influence as I might subsequently have to ensure the things I observed would never happen again.

The mandate of Professor Muntaborn is substantial. He is charged with implementing existing international human rights law in the field of LGBT rights; raising awareness of violence and discrimination suffered by LGBT persons; engaging in dialogue and cooperating with States to implement measures; and providing technical advice and assistance where needed. Let us hope, and we must all exhort, that the appropriate UN authorities provide him with all requisite budget and resources to implement effectively this broad and important mandate.

LGBT rights are important in the United Nations context not just as a matter of clear treaty interpretation but also for plain reasons of public policy. The premise underlying LGBT rights is the same as that underlying the protection of any minority right: the respect for difference, and the diffusion of conflict. The United Nations must take the lead. The organisation has not always acted as admirably as it might in the treatment of staff members who wish to assert their identities as members of the LGBT community. As a private lawyer, I have had long experience of acting for employees who complain of discrimination within the United Nations system. I know how it feels to fight for their rights, and it should be easier than it is.

Nevertheless the internal UN justice system is taking such complaints far more seriously than it used to, and that is right and proper. The United Nations, as the world's foremost advocate of human rights, must lead by example. Hence respect for LGBT rights within the organisation is an essential premise of advocating the moral principles of tolerance and minority respect amidst member states. The central role played by a pivotal Special Rapporteur is a fundamental step in renewing the United Nations' human rights mandate in a bold way appropriate for the twenty-first century. If we want to see change, then the United Nations can and should stand at the forefront of that change. This is by some way by far the most powerful answer to the cynical who might aver that the United Nations has lost its relevance in the contemporary era.

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