

# United Nations

## Negotiating Sexual Rights and Sexual Orientation at the UN<sup>1</sup>

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### Introduction

On September 8, 1995, in the main plenary hall at the United Nations Fourth World Conference on Women in Beijing, China, a group of 35 women from the Lesbian Caucus unfurled a large banner from a balcony. The banner read: Lesbian Rights are Human Rights.

The action was not without its own drama; the banner was at first unfurled upside down and the women had to quickly turn it around and drop it again before UN security guards arrived on the scene. The guards removed the banner and the women were ordered from the hall. Two of them were held and questioned by UN security before being released. But everyone in the plenary, including government delegates from 189 countries, had got the message.

\*Photo of the last plenary session of the Beijing Conference (1995) when sexual orientation was debated.

<sup>1</sup> Sources for this chapter include interviews with several of those directly involved in negotiations for the Fourth World Conference on Women and at the Commission on Human Rights, speeches made during the negotiations, UN documents, letters sent by governments stating their positions, leaflets and other materials distributed by non-governmental organizations at these negotiations, journal articles and press accounts. My thanks go to those who shared documents, answered queries and agreed to be interviewed for this chapter, in particular: Berit Austveg, Hossam Bahgat, Suki Beavers, Gloria Careaga, Sonia Correa, John Fisher, Susana Fried, Adrienne Germain, Brigid Inder, Gerd Johnsson-Latham, Barbara Klugman, Ellen Marshall, Frederico Meyer and Rosalind Petchesky.

The United Nations has been the site of an overt struggle over sexuality from as far back as the 1948 Universal Declaration of Human Rights and other human rights treaties, all of which deal with the role of the family, the question of marriage, and equality between the sexes. Indeed, since the beginning of the 1990s the debates have intensified – whether to assert certain rights in connection with sexuality or to name explicitly those aspects that give rise to discrimination.

This should not surprise us – the UN, as one of the foremost international venues for the creation of international norms and discourses, was inevitably going to be a crucial forum to debate sexuality, a manifestation of what historian and philosopher, Michel Foucault has described as the “putting into discourse” (*mise en discours*) of sex in Western societies.<sup>2</sup> Foucault argues that sex, as a political issue, is “located at the point of intersection of the discipline of the body and the control of the population.” It has thus proved impossible to leave sexuality out of the population and development debate that has engaged the UN.

In this paper, I analyze two different instances where governments, civil society, and international institutions have struggled around new progressive norms on sexuality at the UN; first, the negotiations on paragraph 96 of the 1995 Beijing Platform for Action (the right of women to control their sexuality), and, second, the struggle over the Brazilian resolution on sexual orientation at the UN Commission on Human Rights (CHR) in 2003 and 2004. Each case centers on whether or not to recognize “sexual rights” as a concept and to name “sexual orientation” in UN documents, and each highlights the evolving interplay at the UN of relevant actors and of their stated and underlying interests in relation to this issue over time.<sup>3</sup>

On the basis of first hand accounts of the events, I will examine these negotiations through the analytical lens of Foucault’s concepts of discourse, power/biopower and sexuality – a particularly useful framework for analyzing UN debates because of its emphasis on discourse

<sup>2</sup> Rabinow, P. (Ed.) (1984). Truth and power. *The Foucault reader*, p. 67. Pantheon.

<sup>3</sup> For local impacts of global policy-making around sexuality at the UN, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, p. 44; Bahgat, H., & Afifi, W., Sexuality politics in Egypt, pp. 59-62; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 103-106; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 152, 158; Nowicka, W., The struggle for abortion rights in Poland, p. 177; Beresford, B., Schneider, H., & Sember, R., Constitutional authority and its limitations: The politics of sexuality in South Africa, p. 205; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 287-288.

as an essential domain of engagement in and of itself. Analyzing the mechanisms through which discourse is produced and deployed at the UN can lead us to deeper understandings and insights into progressive and conservative claims and arguments.

The implication is that Western discourses on sexuality have had a powerful impact on UN debates, yet this paper recognizes the limitations and shortcomings of these discourses and counter-discourses in the international multicultural arena. It also questions the often gender-neutral nature of Foucault's ideas.

### **Foucault and discourses on sexuality**

In his landmark work, *The History of Sexuality: An Introduction*, Foucault analyses the processes by which Western societies began “putting sex into discourse.” Rather than repressing discussion of sexuality, Foucault argues, Western societies saw a “veritable discursive explosion” around the subject of sex.

Beginning in the seventeenth-century, power began shifting from the traditional sovereign's power over death to one of managing and manipulating life. What had been limited in feudal times to taxes, forced labor, and the death penalty, was transformed into mechanisms to generate forces, make them grow, and organize and order them. One axis was the body as a machine: the optimization of its forces became the subject of the disciplines of the body. The other axis was the human species as a whole; births and death, longevity and health, became the subjects of regulatory controls and management techniques. “Biopower” thus emerged as the development of the numerous techniques for the subjugation of bodies and the regulation of populations, whether through schools, army barracks, and workshops, or public health, eugenics, immigration policy, and demography. Biopower was an essential element in the rise of capitalism and of the modern state, says Foucault, and it remains central to economic development processes. It also interacts (and sometimes competes) in multiple ways with broader medical, demographic, and public health discourses, and with pre-existing and renewed religious beliefs about procreation, the role of women in the family, and the rights of parents over their children.

While Foucault argues against the “repression hypothesis,” he does not deny that sex continued to be subjected to restrictions and prohibitions. But, rather than being controlled by silence, sexuality was constructed and became regulated by means of various discourses and strategies of power. He identifies four strategies developed in the Western world since the beginning of the eighteenth-century to deploy sexuality: a “hysterization” of women’s bodies (whereby women’s bodies are considered by science to be thoroughly saturated with sexuality and the imperatives of reproduction, and therefore in need of medical attention and treatment); a “pedagogization” of children’s sex (children’s sexuality is discovered and while viewed as “natural” is also considered “dangerous” and therefore in need of control and surveillance); a socialization of procreative behavior (in other words, the “responsibilization” of couples with respect to fertility, which had to be restrained or encouraged depending on the needs of society); and a “psychiatrization” of perverse pleasures (whereby the sexual instinct is isolated as a separate phenomenon, the anomalies medicalized — that is identified as diagnostic categories — and corrective therapy devised).

These strategies were layered upon pre-existing legal codes that governed sexual relations and were centered on matrimonial relations and the marital obligation. Up to the end of the eighteenth-century, Foucault observes, canonical law – the Christian pastoral (and penance) – and civil law focused intensively on the sex between husband and wife, besetting it with “rules and recommendations.” These laws were concerned with preserving the “deployment of alliance” – marriage as the means to create and perpetuate kinship ties. As economic processes and political structures rapidly changed, Western societies developed the notion of “sexuality” as a new means of controlling bodies and populations. Heterosexual monogamy was consolidated as the norm and increasingly accorded a modicum of privacy by the law: “The legitimate couple, with its regular sexuality, has a right to more discretion.” The family cell was reorganized along the husband/wife and parent/children axes, with an exalted role assigned to the woman as mother and wife.<sup>4</sup> Foucault argues that sexuality (with the “idle woman” as its prime target) evolved first in the bourgeois family because its initial concern was not the repression of sex among the working class but the self-affirmation of the new ruling class as strong and healthy – that is, sexually “normal” and espousing the Malthusian ethic of “fewer and better” children.

<sup>4</sup> For example, see in this publication: Nowicka, W., The struggle for abortion rights in Poland, pp. 178-181.

Regarding the fourth strategy, Foucault says that whereas ancient civil law and canonical codes had focused on the forbidden act of sodomy,<sup>5</sup> the deployment of sexuality saw the creation of new, fully developed archetypes:

*“The nineteenth-century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology. Nothing that went into his total composition was unaffected by his sexuality.”*<sup>6</sup>

Nineteenth-century psychiatrists classified multiple other categories of “perverts” ranging from zoophiles and fetishists, to presbyophiles (those erotically attracted to older persons), and sadomasochists.

Foucault provides useful tools for analyzing the ways in which sexuality was constructed in modern Western societies and, like feminist writers, he places the body squarely at the center of sexuality “...as the site of power, that is, as the locus of domination through which docility is accomplished and subjectivity constituted.”<sup>7</sup> His observations about the superimposition of sexuality on pre-existing religious codes of conduct and methods of enforcement (like the confessional) are also instructive in the ways religious authorities, and particularly the Holy See, have used and adapted the concepts of sexuality in their discourses at the UN.<sup>8</sup>

Yet Foucault did not delve into gender relations or women’s unequal powers despite his analysis of the “hysterization of women.” Katz has noted Foucault’s generic “sexuality” and “desire,” which fail to take into account feminist concerns about inequality in heterosexual

<sup>5</sup> As Halperin has noted, this is not to imply that there were no “deviant sexual beings” in the pre-modern era, and no connections between sex, gender and identity (see Halperin’s discussion of the *kinaidos* in ancient Greece), but that these individuals were not understood as a psychosexual type in the modern sense. See: Halperin, D. M. (2002). *Forgetting Foucault: Acts, identities, and the history of sexuality*. In M. C. Nussbaum, & J. Sihvola, (Eds.) *The sleep of reason, erotic experience and sexual ethics in Ancient Greece and Rome*, pp. 21-54. University of Chicago Press.

<sup>6</sup> Louis Crompton agrees that the “homosexual” as a psychiatric category is a modern invention, but he argues that earlier ages did not merely condemn certain sexual acts, but also the category of persons who committed them. “Sodomites,” he argues, had a clear and ominous presence in medieval literature. See: Crompton, L. (2003). *Homosexuality and civilization*, pp. 174-175. Belknap Press/Harvard University Press.

<sup>7</sup> Diamond, I. & Quinby, L. (1988). Introduction. In I. Diamond, & L. Quinby, (Eds.) *Feminism and Foucault: Reflections on resistance*, (p. x). Northeastern University Press.

<sup>8</sup> For local examples, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 33-35; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 133-134; Nowicka, W., The struggle for abortion rights in Poland, pp. 182-185.

relationships.<sup>9</sup> Certainly Foucault neglects other strategies of power deployed around the sexuality of women, notably violence and the threat of violence. In *The History of Sexuality* he also omits the range of gender and sexual identities that fall outside conventional binaries of man/woman and homosexual/heterosexual, although he redressed this gap in his ruminations on the historical medicalization of hermaphroditism and codification of two sexes in *Herculine Barbin*.

Diamond notes that:

*“... Foucault is premature in claiming the deployment of sexuality as the predominant mode of power in the modern era. In arguing that Western societies have gone from ‘a symbolics of blood to an analytics of sexuality’ he is too quick to give precedence to a generative mode of power ... Feminists have demonstrated that the kind of power that Foucault associates with the sovereign’s right of death – a power operating primarily within kinship systems that is ‘essentially a right of seizure: of things, time, bodies, and ultimately life itself’ – remains vested in individual men and men as a group. In short, feminist analyses should help Foucauldians see that these two regimes of power coexist and often intertwine in contemporary society.”*<sup>10</sup>

Indeed, Foucault is mostly interested in power as a “productive network, which runs through the whole social body,”<sup>11</sup> that is, in the non-repressive/non-coercive dimension of the power relations that permeate society at large, form knowledge, produce discourses, and induce pleasure. Violence in personal, private, and non-institutional settings is of little interest to him.

Yet what Foucault says about women being confined to conjugal and parental roles, the medicalization of women’s bodies, the politicization of birth control, the creation of perverts, and the sexualization of children, warrants using his analysis to take another look at some of the discourses and ideas about sexuality that were used at the Fourth World Conference on Women and at the Commission on Human Rights.

The role of the Holy See in UN negotiations on sexuality reflects Foucault’s analysis of the

<sup>9</sup> Katz, J. N. (1995). *The invention of heterosexuality*, (p. 179). Dutton.

<sup>10</sup> Diamond, I. & Quinby, L. (1988). Introduction. In I. Diamond, & L. Quinby, (Eds.) *Feminism and Foucault: Reflections on resistance*, (p. xiv). Northeastern University Press.

<sup>11</sup> Rabinow, P. (Ed.) (1984). Truth and power. *The Foucault reader*, p. 61. Pantheon.

historical role of the Catholic Church in developing the notion of confession of sins, especially sins of the flesh, as a means of control and subjection – sex is seen as a manifestation of original sin that needs to be constantly examined. In fact, the Inquisition played a leading role in prosecuting sodomy well before the invention of “homosexuality.” While the Enlightenment saw a measure of privacy granted by law to the heterosexual married couple, the modern Catholic Church is not willing to relax its control even in that realm, as evidenced by its refusal to allow modern contraception. Yet the Church has incorporated into its discourse the secular strategies of power over sexuality that suits its purposes, notably the notion of the “homosexual” and his “condition.”<sup>12</sup> Similarly, the hysterization of women’s bodies – rooted in the view that biology is destiny; that the capacity to “give life” conditions the entire female personality – was central to Pope John Paul II’s “genius of women.”<sup>13</sup>

Finally, it is important to remember that Foucault focuses on sexuality in Western societies, and to question whether and how his insights apply to other parts of the world. Stoler argues that, in fact, Europe’s eighteenth-century discourses on sexuality grew out of empire and colonialism, thus shaping nineteenth-century technologies of sex. Speaking about the four sexual archetypes described above, she asks rhetorically: “Did any of these figures exist as objects of knowledge and discourse in the nineteenth-century without a racially erotic counterpoint, without reference to the libidinal energies of the savage, the primitive, the colonized – reference points of difference, critique and desire?”<sup>14</sup>

Especially because of the history of modern colonialism, Western constructs of sexuality have permeated debates in other countries and at the UN. They have been partially adopted by colonized countries, and readapted to suit new discourses. The extent and limits of that influence will be noted.

### **The context for sexuality negotiations at the UN**

Before 1993, as has been noted elsewhere<sup>15</sup>, the words “sexuality” or “sexual” had never appeared in an intergovernmental document at the international level, with the notable exception

<sup>12</sup> Letter to the Bishops of the Catholic Church on the pastoral care of homosexual persons, October 1, 1986.

<sup>13</sup> Letter to the Bishops of the Catholic Church on the collaboration of men and women in the Church and in the world, May 31, 2004.

<sup>14</sup> Stoler, A. L. (1995). *Race and the education of desire*, pp. 6-7. Durham, NC: Duke University Press.

<sup>15</sup> Petchesky, R. (2000). Sexual rights: Inventing a concept, mapping an international practice. *In Framing the sexual subject: The politics of gender, sexuality, and power*, p.82. Berkeley: University of California Press.

of the 1989 Convention on the Rights of the Child, in provisions on protection from sexual exploitation and sexual abuse. Sexuality was addressed implicitly through related subjects: the right to marry and found a family, the right to choose a spouse, the right to family planning, and the right to determine the number and spacing of children. These rights were framed within the context of heterosexual marriage, with reproduction an important dimension.

The idea that international human rights should apply to matters of sexuality and reproduction was considered by feminist organizations in both the global North and South beginning in the 1980s.<sup>16</sup> Women's groups came to issues of sexuality through parallel and somewhat overlapping tracks. Groups working on women's health issues identified coercion in family planning programs and unsafe abortion as pressing concerns from the 1980s onwards. At the 1984 International Women and Health Meeting in Amsterdam, activists from North and South concurred on the urgent need for women worldwide to claim control over their reproductive lives and their reproductive rights. An active alliance of North and South women's health advocates formed on these issues by the early 1990s. Groups working on human rights identified violence against women, and in particular sexual violence, as an urgent yet neglected issue. Meanwhile lesbians in the feminist movement and lesbian and gay groups began raising the issue of discrimination based on sexual orientation in various international forums.

It is interesting to note how closely these concerns correspond to the strategies of power that Foucault describes. The battle over coercion in family planning and restrictive abortion laws reflects the politicization of birth control and fertility that emerged in eighteenth-century Europe and developed through neo-Malthusian population control programs at national and international levels, during much of the twentieth-century.<sup>17</sup> Some activists in the women's health movement also emphasized the over-medicalization of women's bodies and life experiences – whether childbirth, birth control or menopause – although these arguments never mobilized as large a movement as did coercion and denial of access to reproductive health services. The struggle against discrimination on the basis of sexual orientation sought to

<sup>16</sup> Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, chapter 1. London: Zed Books.

<sup>17</sup> Chase, A., (1977). *The legacy of Malthus*. New York: Knopf; Bandarage, A., (1997). *Women, population, and global crisis*. London: Zed Books; Gordon, L. (1974). *Woman's body, woman's right: Birth control in America*. New York: Penguin.



combat the notion of “sexual perversity” embedded in psychiatric categories developed in the nineteenth and twentieth-centuries.

The important feminist and LGBT (Lesbian, Gay, Bisexual, Transgender) struggle against violence finds little resonance in Foucault, yet it is an important dimension of the experience of sexuality for many women and men around the world. Looking again at the strategies of power used to construct the sexual subject as defined by Foucault, violence is certainly part of the pre-existing grid of power; an underlying source that affects new discourses and techniques of power and gives them greater potency. The invention of the “homosexual” would have a very different import without the possibility or reality of violence inflicted on that class of persons. Similarly, the notion that women’s bodies and minds are suffused with sexuality and closely linked to their reproductive and sexual function has a different meaning if violence, in the home and in society, were not used to control and channel that sexuality and reproduction, and to maintain women in a subordinate position. Feminist activists have highlighted this in a way Foucault never did.

In developing countries, colonialism’s bourgeois discourses of self-mastery and the ideal family, and their legal codification, have undoubtedly shaped the debates on sexuality. The continued criminalization of “sodomy” and abortion in many former British or French colonies is only the most obvious example. These colonial concepts have also helped frame oppositional political claims. Coercive sterilization and contraception, understood as by-products of the racism and eugenics of colonialism, took on a specific, and perhaps more potent, political dimension.<sup>18</sup>

## Before Beijing

The cycle of UN conferences that began with the 1992 Conference on Environment and Development (Earth Summit) in Rio de Janeiro, Brazil, provided an opportunity to push forward sexuality concerns. Initially appalled by the population-control language that

<sup>18</sup> For local examples, see also in this publication: Vianna, A. R. B., & Carrara, S., Sexual politics and sexual rights in Brazil: A case study, pp. 31-33; Ramasubban, R., Culture, politics and discourses on sexuality: A history of resistance to the anti-sodomy law in India, pp. 104-105; Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, pp. 137-140; Le Minh, G., & Nguyen, T. M. H., From family planning to HIV/AIDS in Vietnam: Shifting priorities, remaining gaps, pp. 285-289.

threatened to come out of Rio, women's health advocates and feminist groups organized to ensure that the final agreement referenced "access to reproductive health care" and women's aspirations in terms of family size "in keeping with their freedom, dignity and personally-held values."<sup>19</sup>

At the 1993 World Conference on Human Rights in Vienna, Austria, feminist human rights activists were successful in obtaining clear statements about the urgency of addressing violations of the human rights of women, and in particular, violence against women. The Vienna Programme of Action recognizes that "the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights..."<sup>20</sup> and further specifies that "violence against women in public and private life" must be eliminated. Violations named in the Vienna agreement include all forms of sexual harassment and exploitation, as well as systematic rape, sexual slavery, and forced pregnancy in situations of armed conflict.<sup>21</sup> Groundbreaking advocacy events included a Global Tribunal on Violations of Women's Human Rights organized by the Center for Women's Global Leadership, where detailed testimony was received on human rights violations in the family, and on violations to women's bodily integrity, including violence and discrimination against lesbians.<sup>22</sup> During the negotiations, Canada proposed adding sexual orientation to a paragraph prohibiting discrimination on listed grounds. The final text condemns discrimination, but without a list.<sup>23</sup>

At the 1994 International Conference on Population and Development (ICPD) in Cairo, Egypt, women's health advocates from the global South and North who had been strategizing together for more than two years, were determined to obtain recognition of sexual and reproductive rights and sexual and reproductive health. Corrêa notes: "We put (sexual rights) on the table and said, 'We want to talk about this!'"<sup>24</sup>

<sup>19</sup> Agenda 21, (paras. 3.8j, 5.12 and 5.49, inter alia), United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992.

<sup>20</sup> Vienna Declaration and Programme of Action, (Doc. A/CONF. 157/23, part I, para. 18), United Nations World Conference on Human Rights.

<sup>21</sup> Vienna Declaration and Programme of Action (Doc. A/CONF.157/23, part II, para 38), United Nations World Conference on Human Rights.

<sup>22</sup> Center for Women's Global Leadership, (1994), *Testimonies of the Global Tribunal on Violations of Women's Human Rights at the United Nations World Conference on Human Rights, Vienna 1993*.

<sup>23</sup> Saunders, D. (July 2005). Human rights and sexual orientation in international law. Available at [www.ilga.org](http://www.ilga.org).

<sup>24</sup> Conversation with Sonia Corrêa, April 12, 2005.

As early as 1992, a diverse group of activists from nearly all regions of the world had drafted a Women's Declaration on Population Policies, which was endorsed by hundreds of organizations worldwide.<sup>25</sup> The Declaration demanded respect for women's sexual and reproductive rights, which "cannot be subordinated, against a woman's will, to the interests of partners, family members, ethnic groups, religious institutions, health providers, researchers, policy makers, the state or any other actors." It also stated, "Women have the right to determine when, whether, why, with whom and how to express their sexuality. Population policies must be based on the principle of respect for the sexual and bodily integrity of girls and women." The Declaration did not mention sexual orientation but later, in January 1994, at the Reproductive Health and Justice Conference held in Rio de Janeiro, lesbian rights were explicitly discussed and a statement was adopted that said, "[S]exuality and gender power relationships must be addressed as a central aspect of reproductive rights ... (and) women have a right to express their sexuality with pleasure and without fear of abuse and risk of diseases or discrimination on the basis of their sexual orientation or disability..."<sup>26</sup>

At that time, certain women's health groups had already done important conceptual thinking about the need to deal with issues of sexuality in the context of family planning.<sup>27</sup> The fact that neo-Malthusian population programs consistently violated the sexual and bodily integrity of women was central to this thinking. Activists and academics had also analyzed and applied pre-existing human rights language to reproduction<sup>28</sup> and health<sup>29</sup>, mapping out what the right to bodily integrity would entail in terms of "enabling conditions"<sup>30</sup> and why human rights should be applied to the full range of sexuality and reproduction issues. The affirmative aspect of sexuality – the capacity for pleasure and the right to diverse sexual expression – was still in its incipient stages.<sup>31</sup>

<sup>25</sup> Germain, A., Nowrojee, S., & Pyne, H. H. (1994). Setting a new agenda: Sexual and reproductive health and rights. (Women's Declaration on Population Policies). In G. Sen, A. Germain, & L. Chen, (Eds.) *Population policies reconsidered: Health, empowerment and rights*, pp. 31-34. Harvard University Press.

<sup>26</sup> International Women's Health Coalition & CEPIA. (1994). Reproductive health and justice: The International Women's Health Coalition for Cairo, (Rio Statement), pp. 4-7.

<sup>27</sup> Dixon-Mueller, R. (1993). The sexuality connection in reproductive health. *Studies in Family Planning* 24(5): pp. 269-282.

<sup>28</sup> Freedman, L. & Isaacs, S. (1993). Human rights and reproductive choice. *Studies in Family Planning*, vol. 24(1), pp. 18-30.

<sup>29</sup> Cook, R. (1994). *Women's health and human rights*. Geneva: World Health Organization.

<sup>30</sup> Corrêa, C. & Petchesky, R. (1994). Reproductive and sexual rights: A feminist perspective. In G. Sen, A. Germain, & L. C. Chen, (Eds.) *Population policies reconsidered: Health, empowerment and rights*, pp. 107-123. Harvard University Press.

<sup>31</sup> Correa, S. & Petchesky, R., p. 114.

Petchesky has pointed to the key role of Southern feminists in the transitional women's health movement in ensuring that the connections between "bodily integrity and individual rights of the body and person" and "social rights" were made early.<sup>32</sup> By the time the Cairo conference came along, "a framework firmly linking reproductive and sexual health issues to both human rights and macroeconomic policies had clearly emerged, and women from the South were a leading and majority presence."<sup>33</sup>

The main impetus for activists going into Cairo was to reverse the population control agenda and its excessive focus on curbing the fertility of poor women in the global South.

"We still had a lot to do with respect to reproductive rights, so we were not thinking clearly about sexuality; we were still trying to subordinate family planning to reproductive rights, rather than the other way around," said Corrêa.<sup>34</sup>

Petchesky recalls: "Sexuality was an annex of reproductive rights, which makes it implicitly heterosexual. By and large, we did not have a thoroughly thought through concept of sexual rights at that time."<sup>35</sup>

With issues like abusive family planning practices and unsafe abortion pre-eminent in the activism of the transnational women's health movement sexuality and reproduction remained linked in the thinking of many activists and academics, with sexuality often subsumed under reproduction and heteronormativity going largely unchallenged.<sup>36</sup>

Strategizing on sexuality for Cairo began among a limited group of activists in early 1993. "Some of the lesbians began to have a conversation about pushing rights and sexuality forward but not in a very organized manner. It was not a broad conversation yet," said Correa.

Gloria Careaga, who was in Cairo and on Mexico's delegation in Beijing, concurs. "There were no deep discussions about sexual rights before Cairo and only a few people were work-

<sup>32</sup> Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, p. 10. London: Zed Books.

<sup>33</sup> Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, pp. 4-5. London: Zed Books.

<sup>34</sup> Conversation with Sonia Corrêa, April 12, 2005.

<sup>35</sup> Conversation with Rosalind Petchesky, December 20, 2005.

<sup>36</sup> Miller, A. (2002). Sexual rights, conceptual advances: Tensions in debate. Presented at the seminar on Sexual, Reproductive and Human Rights, organized by CLADEM, November 5-7, 2002, Lima, Peru. On file with the author.

ing on this,” she said. “There was also a lot of confusion about concepts. Most heterosexual women’s health activists thought sexual rights was about lesbian, gay, bisexual and transgender rights, while lesbians thought it was about women’s rights, about sexuality. Lesbians felt that the responsibility of defending sexual rights was left to them.”<sup>37</sup>

In spite of these tensions and the lack of clarity, sexuality and sexual rights were picked up by women’s health and rights groups overall.

In May 1993, Petchesky, Copelon, and Jacobson prepared a detailed analysis of gender issues in the proposed World Population Plan of Action for the Second Preparatory Committee meeting for ICPD. The action plan focused on gender and reproductive rights but also noted the complete absence of reproductive rights, sexual health and sexuality from the text.<sup>38</sup> At the meeting a well-organized Women’s Caucus lobbied key government delegations to address sexuality in the draft document.<sup>39</sup> In a hard-hitting speech to the government delegates, Bella Abzug of the Women’s Environment and Development Organization reprised the 1992 Women’s Declaration to demand, “All women, regardless of age, marital status, sexual orientation or other social conditions, should have access to up-to-date information and the full range of health services, including safe and voluntary abortion, all of which are necessary to their freely exercising their reproductive and sexual rights and responsibilities.”<sup>40</sup> The Women’s Caucus also pushed for the inclusion of sexual rights and sexual orientation in the draft document.<sup>41</sup>

Several government delegations expressed the view that sexual orientation should not be a ground of discrimination in access to health services and this was noted in the summary

<sup>37</sup> Conversation with Gloria Careaga, October 6, 2005.

<sup>38</sup> Copelon, R., Jacobson, J., & Petchesky, R. (1993, April 12). Women and the World Population Plan of Action: An analysis of gender issues in content and language prepared in advance of the Second Meeting of the UN Preparatory Committee for ICPD, New York, May 10-21, 1993. On file with the author.

<sup>39</sup> See, for example: Statement by Ambassador Lars-Olof Edstrom of Sweden, May 10, 1993, and Statement by Ambassador Warren Zimmerman of the United States, May 17, 1993. On file with the author.

<sup>40</sup> Statement by Bella Abzug, Co-Chair of the Women’s Environment and Development Organization, to the Second Preparatory Committee of the International Conference on Population and Development, May 11, 1993. On file with the author.

<sup>41</sup> WEDO, IWHC & WorldWatch. (1993, May 12). Suggested revisions to the UN Conceptual Framework for the Draft Recommendations of the ICPD. On file with the author.

prepared by the preparatory committee's chairman.<sup>42</sup> In materials circulated to delegations in August 1993 for the Third Preparatory Committee (PrepCom III) the U.S. delegation included sexual orientation in the list of impermissible grounds of discrimination to be added in the section entitled Principles<sup>43</sup> – a position almost opposite to that espoused by the Bush administration 10 years later. At PrepCom III in April 1994, the Nordic countries introduced the Women's Caucus concepts of sexual rights and reproductive rights. At the request of many countries for clarity the World Health Organization (WHO) circulated its technical definitions of reproductive health and sexual health, which became the basis for the paragraph 7.2.<sup>44</sup> Vanuatu, with support from Canada, requested a reference to discrimination on the basis of sexual orientation in the chapter on the family, but that reference was rejected.

It is fascinating to see how closely the battle lines in Cairo followed the contours of biopower as described by Foucault. First, the reproductive-rights agenda proposed by women's groups sought to counter the fertility policies that Foucault recognizes as a strategy of power over bodies and populations; the anti-natalist, coercive population-control approach to family planning, and the pro-natalist rules that blocked the liberalization of restrictive abortion laws and availability and access to contraceptives. Women's groups understood that these pro- and anti- natalist population policies were deploying sexuality among the poor and in the global South through campaigns of "moralization of the poorer (and darker) classes:" "There was unanimous opposition to designing fertility control measures or population policies specifically targeted at Southern countries, indigenous peoples, or marginalized groups within both Southern and Northern countries, whether by race, class, ethnicity, religion, or other basis."<sup>45</sup> The pro-natalist discourse dovetailed with the strict norms propounded by the Holy See and its Catholic allies regarding contraception and abortion. It did not, however, find the same echo in Islamic countries, where contraception is allowed within marriage and abortion is generally accepted before "quickening" of the fetus.

Second, the women's agenda represented a direct attack on the construct of the "hysterical woman" — woman as necessarily confined to the roles of mother and wife in a heterosexual

<sup>42</sup> Correa, S. and Petchesky, R., p. 119.

<sup>43</sup> U.S. Delegation's Suggested Changes to the Proposed Framework Document (PC11) for the United Nations International Conference on Population and Development, July 30, 1993. On file with the author.

<sup>44</sup> Singh, J. S. (1998). *Creating a New Consensus on Population*, p. 31. Earthscan.

<sup>45</sup> International Women's Health Coalition & CEPIA. (1994). *Reproductive health and justice: The International Women's Health Coalition for Cairo*, (Rio Statement), p. 4.

couple because of her sexual and reproductive function. Advocates argued for the right of women, as individuals, to decide whether and when to have a child, and for access to high quality, women-controlled reproductive health services. A closely related battle centered on the restrictive definitions of the family proposed by the Holy See and its conservative Catholic allies, who sought to strengthen or reinstate women's dependence on the male "head of the household" and negate the variety of family forms in which women participate, including same-sex couples.<sup>46</sup> Women's groups denounced the "fundamentalist war against women... over the meaning of "families"<sup>47</sup> and emphasized the need to recognize "changing patterns of sexual and family relationships."<sup>48</sup>

A third debate raged over the access of adolescents to sexual and reproductive health information and services. For the Holy See, which found allies among conservative Islamic countries, this debate rested on the essential role of parents in policing the sexuality of their children – in Foucault's words, in "[taking] charge, in a continuous way, of this precious and perilous, dangerous and endangered sexual potential..."<sup>49</sup> Islamic countries also invoked religious proscriptions against extramarital sex. Women's groups insisted on the "rights [of adolescents] to confidentiality, privacy, and access to all sexual and reproductive health services, independent of knowledge or control by their parents, including safe abortion."<sup>50</sup>

The fourth debate, over Foucault's "sexual perverts," took place somewhat obliquely in connection with the language on family and sexual rights, since "sexual orientation" only made a fleeting appearance in the draft document. The family had become the subject of a separate chapter of the draft after the Second Preparatory Committee (PrepCom II). The battle over various forms of the family centered on the social role of women as mothers and wives, and

<sup>46</sup> Cohen, S. A. & Richards, C. L. (1994). The Cairo consensus: Population, development and women. *International family planning perspectives*, Volume 20, Issue 4, 150-155, p. 151.

<sup>47</sup> International Women's Health Coalition & CEPIA. (1994). Reproductive health and justice: The International Women's Health Coalition for Cairo, (Rio Statement), p. 6.

<sup>48</sup> Germain, A., Nowrojee, S. & Pyne, H. H. (1994). Setting a new agenda: Sexual and reproductive health and rights (Women's Declaration on Population Policies). In G. Sen, A. Germain, and L.C. Chen, (Eds.) *Population policies reconsidered: Health, empowerment and rights*, p. 32. Harvard University Press.

<sup>49</sup> Foucault, M. (1978). *History of sexuality*, vol. 1, p. 104. New York, Pantheon.

<sup>50</sup> The Women's Caucus at PrepCom III. (1994, April 4). Draft Compilation of Proposed Revisions of the Draft ICPD Programme of Action. On file with the author.

the recognition of same-sex families. During the negotiations, the Holy See and its Catholic allies sought to delete references to “families”, “unions” or “the family in all its forms,” and to replace them with “the family”, understood as the union of one man and one woman for the purposes of reproduction. However, several Islamic and African countries could not follow the Holy See all the way on “various forms” because of their support for polygamous families.<sup>51</sup> The reservations issued by conservative countries at the end of the negotiations reflect these controversies and divisions:

“We also enter an express reservation on the term ‘couple’ where it refers to persons of the same sex...” (Dominican Republic)

“...we agree that the family may take various forms, but in no event can its essence be changed. Its essence is the union of a man and woman, from which new human life derives.” (Nicaragua)

“...Our delegation called for the deletion of the word ‘individuals’ since it has always been our understanding that all the questions dealt with by the Programme of Action in this regard relate to harmonious relations between couples [in plural] united by the bond of marriage in the context of the concept of the family as the primary cell of society.” (Egypt)

“With reference to the term ‘couples and individuals’ the Holy See reserves its position with the understanding that this term is to mean married couples and the individual man and women who constitute the couple... The Holy See interprets [the] chapter [on the Family] in terms of... marriage as an equal partnership between husband and wife... Regarding... ‘sexual health,’ ‘sexual rights,’ and ‘reproductive health’ and ‘reproductive rights,’ the Holy See considers these terms [to]... foster the achievement of personal maturity in sexuality and in the mutual love and decision-making that characterize the conjugal relationship in accordance with moral norms.” (Holy See)<sup>52</sup>

<sup>51</sup> Earth Negotiations Bulletin, vol. 6, issue 18, April 6, 1994.

<sup>52</sup> United Nations. (1994). Report of the International Conference on Population and Development (ICPD PoA). (Document A/Conf. 171/13). New York.



Regarding sexual and reproductive rights, women's groups at PrepComs II and III pushed for language that recognized the "fundamental principle of bodily integrity, respect for women's personhood, and the need for both women and men to realize their sexual and parenting potential in conditions of freedom and dignity." Preconditions included individual rights to decide "whether, when, and with whom to have children, to have sex, and to marry..."<sup>53</sup> The concept of rights, which implied the right of women to make claims as autonomous agents, went well beyond the notion of health as a need, the content of which could be decided by authorities.<sup>54</sup> The substance of these elements of sexual and reproductive rights was included in the draft by the end of PrepCom III, but remained contested. The additional call by women's groups to "eliminate discrimination based on gender, marital status, age or sexual orientation" was never included in the paragraph on sexual and reproductive rights.

It is worth noting that "pleasure," "satisfaction," and "affirmative sexuality" were not part of the language proposed by women's groups at either PrepCom. Petchesky observes, "Feminists weren't thinking about pleasure very much at that time. Both heterosexual and lesbian feminists were focused on violations, including sexual violence and abuse, oppression, economic exploitation. It was more the LGBT movement that brought up 'pleasure' later, not feminists."<sup>55</sup>

These dimensions were brought into the draft document through the WHO definitions of reproductive health and sexual health, which included concepts such as "a satisfying and safe sex life," "a positive approach to human sexuality," and "the enhancement of life and personal relations." While these aspects met with some opposition from conservatives, they were not the focus of the Holy See's concern with paragraphs 7.1 and 7.2 at PrepCom III.<sup>56</sup> The Holy See was more preoccupied with removing references to "abortion," "fertility regulation," and "individuals," and replacing them with "couples" and "responsibilities," in an attempt to circumscribe the definitions of reproductive health, sexual health, reproductive rights, and sexual rights within a traditionally gendered, conjugal, heterosexual framework. By the end of PrepCom III, "abortion" had been placed in separate paragraphs, but "fertility regulation"

<sup>53</sup> The Women's Caucus at PrepCom III. (1994, April 4). Draft Compilation of Proposed Revisions of the Draft ICPD Programme of Action. On file with the author.

<sup>54</sup> Petchesky, R. (2003). *Global prescriptions: Gendering health and human rights*, p. 18. London: Zed Books

<sup>55</sup> Conversation with Rosalind Petchesky, December 20, 2005.

<sup>56</sup> Email communication by Berit Austveg, December 22, 2005.

and “individuals” remained, and the definition of sexual health stood on its own without being subsumed under reproductive health.<sup>57</sup> This led the Holy See to bracket “sexual and reproductive health” and “sexual and reproductive rights” throughout the draft.

In Cairo the negotiations proved arduous. Systematic opposition by the Holy See and a few of its Latin American allies to “sexual and reproductive health” and “sexual and reproductive rights” succeeded in keeping the phrase “sexual rights” out, confining the text of paragraph 7.3 to “reproductive rights.” Corrêa recalls an explicit trade-off as it became clear that “sexual rights” would not be agreed: “We had a group of activists who were very passionate about sexual rights and other actors, mostly governments, who were using sexual rights as a trade-off for reproductive rights. This was very clear; the sexual rights language was kept in the text to be traded off for reproductive rights.”<sup>58</sup>

With regard to sexual rights language, “respect for the security of the person and the integrity of the physical body” was transformed into “full respect for the physical integrity of the human body” and moved to paragraph 7.34 on human sexuality and gender relations, which did not deal with rights. This paragraph would become the source of the second sentence in paragraph 96 of the Beijing Platform for Action a year later. However, paragraph 7.2 on reproductive health retained “safe and satisfying sex life” as a precondition.

“Sexual health” was harder for the Holy See to combat given the growing HIV/AIDS pandemic. Progressive Latin American countries like Brazil expressed support for the concept, as did Bangladesh, Pakistan, and a number of sub-Saharan African countries. Yet by characterizing sexual health as condoning “immoral” sexual behavior, particularly extramarital sexual relations, the Holy See was instrumental in keeping sexual health subordinated to reproductive health and thus within the heterosexual (and presumably married) realm. The “positive approach to sexuality” required for sexual health was also taken out and the WHO definition of sexual health substantially cut:

<sup>57</sup> United Nations. (1994, May 13). Draft Programme of Action of the International Conference on Population and Development. (Doc. A/CONF.171/L.1, para 7.1).

<sup>58</sup> Conversation with Sonia Corrêa, April 12, 2005.

*“7.2. Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. ... In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques, and services that contribute to reproductive health and well being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.”*

Various other references to sexuality remained in the ICPD Programme of Action, most of which frame sexual relations as heterosexual and emphasize aspects of sexuality related to disease and violence.<sup>59</sup>

## **Beijing and sexuality**

Coming out of ICPD and moving towards the Fourth World Conference on Women in Beijing, many feminist activists were, in the words of Inder, “going with the unfinished business of sexual rights on the agenda. There was no doubt about that!”<sup>60</sup> While there seemed to be little time and space for progressive women’s groups to strategize about sexuality for Beijing, an agenda and a plan had been crafted, as confirmed by Careaga: “When we arrived in Beijing, we were much more organized for sexual rights and sexual orientation than we were in Cairo.”<sup>61</sup>

The work had started at the High-Level Regional Preparatory Meeting for the Economic Commission for Europe (ECE), held in Vienna in October 1994 in preparation for Beijing. There, European and North American women’s groups had lobbied their governments to ensure that the final regional report would highlight sexuality. The language agreed was the precursor to

<sup>59</sup> ICPD Programme of Action, paragraphs 7.3, 7.34, 7.35, 7.36, 7.38, 7.41.

<sup>60</sup> Conversation with Brigid Inder, May 19, 2005.

<sup>61</sup> Conversation with Gloria Careaga, October 6, 2005

the eventual sexual rights paragraph in the Beijing Platform for Action and for some of the unsuccessful language on sexual orientation:

*“2. ... (a) The human rights of women are an inalienable, integral and indivisible part of universal human rights and must therefore be promoted, protected and realized at all stages of the life cycle — childhood, adolescence, adulthood and old age — and must further reflect the full diversity of women, recognizing that many women face additional barriers because of such factors as their race, language, ethnicity, culture, religion, sexual orientation, disability, socio-economic class or status as indigenous people, migrants, displaced people or refugees;*

*27. Human sexuality and gender relations are closely interrelated and together affect the ability of women and men to achieve and maintain sexual health and manage their reproductive lives. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, require mutual respect and willingness to accept responsibility for the consequences of sexual behavior. In this respect, women’s reproductive rights and sexual rights are often not respected and sometimes not yet recognized.*

*86. Governments and non-governmental organizations should, as appropriate, promote equal relationships between women and men in matters of sexual relations and reproduction. Governments should ensure the implementation of the right of all human persons to full respect of the physical integrity of the human body. In this respect, Governments should take action to ensure that women’s reproductive rights and sexual rights are fully recognized and respected.”<sup>62</sup>*

The other regional meetings held by the UN in preparation for Beijing did not raise “sexual rights” or “sexual orientation” but “sexual health” and “knowledge of human sexuality” were included in the Latin American report by consensus. This came after a protracted negotiation where Argentina, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras,

<sup>62</sup> United Nations. (1995, January 6). Regional Platform for Action: Women in a Changing World - Call for Action from an ECE Perspective. Adopted at the High-level Regional Preparatory Meeting of the Economic Commission for Europe, held at Vienna, October 17-21, 1994. (Doc. E/CN.6/1995/5/Add.4).

Nicaragua and Peru took reservations on reproductive rights, and the United States on the negative effects of the debt burden and structural adjustment programs.<sup>63</sup> The Organization of African Unity (OAU), under the leadership of Senegal, agreed to the language of sexual rights in its regional preparatory meeting. As noted by Klugman, “African ministers had accepted the terminology of sexual rights on the basis of its importance in the context of HIV/AIDS and violence on the continent. They recognized that addressing unequal sexual and power relations between men and women was a central prerequisite for preventing HIV/AIDS and responding to violence against women...”<sup>64</sup>

In the fall of 1994, the International Gay and Lesbian Human Rights Commission (IGLHRC), a U.S.-based group, organized a petition to “put sexuality on the agenda” of the Beijing Conference. The petition, which had garnered some 6,000 signatures of individuals and groups around the world by the time it was presented in Beijing, called on governments to “...recognize the right to determine one’s sexual identity; the right to control one’s body, particularly in establishing intimate relationships; and the right to choose if, when, and with whom to bear or raise children, as fundamental components of the human rights of all women regardless of sexual orientation.”<sup>65</sup> The geographical and cultural diversity of those who signed the petition was impressive, and it succeeded in countering the notion that sexual orientation was “a Western or Northern issue,”<sup>66</sup> a main IGLHRC objective. IGLHRC also took the lead in organizing the Lesbian Tent at the NGO Forum held in connection with the conference. Many organizations worked in close partnership with IGLHRC during that time, notably the International Lesbian and Gay Association (ILGA), the Center for Women’s Global Leadership, and *El Closet de Sor Juana* of Mexico.

In the period leading up to PrepCom III in March 1995, key women’s health advocates lobbied for sexual rights separately from reproductive rights. The reactions of conservatives in Cairo

<sup>63</sup> United Nations. (1995, January 6). Regional Programme of Action for the Women of Latin America and the Caribbean, 1995-2001, adopted by the Sixth Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean (Doc. E/CN.6/1995/5/Add. 3). Mar del Plata, Argentina, September 20-25, 1994 and Santiago, Chile, November 16-18, 1994.

<sup>64</sup> Klugman, B. (2000). Sexual rights in Southern Africa: A Beijing discourse or a strategic necessity?. *Health and Human Rights*, vol. 4, no. 2, p. 152.

<sup>65</sup> International Gay and Lesbian Human Rights Commission. (1995). Put Sexuality on the Agenda at the World Conference on Women, Beijing Campaign. On file with the author.

<sup>66</sup> Fried, S.T. & Landsberg-Lewis, I. (2001). Sexual rights: From concept to strategy. In K. D. Askin & D. Koenig, (Eds.) *Women and international human rights*, vol. 3, Toward Empowerment, p. 119. Transnational Publishers.

to “sexual rights” and “families” had started a process of reflection that was taking feminists in new directions. Looking back on it, Petchesky concludes, “Beijing was the pivot, the moment where our thinking about sexuality shifted. The Vatican’s reactions and anticipatory attacks made us think. It was a dialectical process, and in that process concepts were developed.”

While sexual orientation was explicit in this evolving concept of sexual rights,<sup>67</sup> health activists did not emphasize it. Sexual rights applied to “all women and men,” and were part of universal human rights, so their advocacy materials focused on violations, as in, “Recognition of sexual rights will ensure that women and girls are not subject to... unwanted sexual relations... physical, sexual and psychological violence... coercive or unsafe contraceptive practices... unwanted medical interventions... discrimination... transmission of... HIV/AIDS... systematic rape...” But they did put forward some affirmative aspects of sexual rights, like access to health services and information, and the “right to make decisions concerning sexuality and reproduction...” Pleasure, satisfaction and expression were still not mentioned.

If, as Foucault believed, “[T]he real strength of the women’s liberation movements is not that of having laid claim to the specificity of their sexuality and the rights pertaining to it, but that they have actually departed from the discourse conducted within the apparatuses of sexuality...”<sup>68</sup> that vision was already bending to the realities of intergovernmental negotiations.

At PrepCom III “sexual rights” and “sexual orientation” were both put forward by women’s groups as part of a common strategy forged out of the experience of Cairo. Lesbian activists wanted visibility, and organized a separate Lesbian Caucus. But feminist, human rights and lesbian activists worked in alliance and the tensions experienced in Cairo, while not completely absent, were less pronounced. Health groups (which included some lesbians) were in charge of sexual rights, and the Lesbian Caucus and human rights groups took the lead on sexual orientation, with a few activists acting as a bridge between the various groups.

Placement of the language on sexual orientation was carefully considered from a conceptual point of view akin to a Foucauldian “reverse discourse.” As noted by Careaga, “The decision to put sexual orientation under human rights was made because lesbians are stigmatized as a re-

<sup>67</sup> See, for example: International Women’s Health Coalition (1995). *Fact Sheet on Sexual Rights*, available at [www.iwhc.org](http://www.iwhc.org).

<sup>68</sup> Foucault, M. (1980). In C. Gordon, (Ed.) *Power/knowledge: Selected interviews and other writings*, p. 219. Pantheon.

sult of their sexuality; they become ‘perverts’ and ‘abnormal.’ We wanted to be seen as women with our own rights, in other fields. We didn’t want to be defined only by sexuality.”<sup>69</sup>

But strategic considerations were also important Careaga recalls. “We did not want sexual orientation in the Health chapter because we knew that conservatives were going to put all their forces to work on that chapter, which contained abortion. So we put it in the chapters on Human Rights and Employment.”<sup>70</sup>

So it was that Canada and the European Union introduced sexual orientation in four paragraphs of the draft Platform for Action, two of them declarative (preamble of the Strategic Objectives section and chapter on Human Rights), and two action-oriented (chapters on Human Rights and Economy).<sup>71</sup>

The language on sexual rights was proposed by the European Union for placement in the Health chapter partly because of its genealogy in the ICPD Programme of Action (it was originally in the paragraph on reproductive rights), and partly because of its justification in relation to HIV/AIDS. That ancestry also influenced its initial formulation, which referred to the sexual rights of the individual (male or female), rather than of women only. The draft paragraph did not refer specifically to human rights, leaving it open to an interpretation that sexual rights were less than human rights. In addition the paragraph contained a sentence on the equal relationships between men and women from the ICPD Programme of Action (paragraph 7.34). In that sense, what would become paragraph 96 was already “heteronormatized:”

*“97. (Sexual rights include the individual’s right to have control over and decide freely on matters related to her or his sexuality, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, require mutual consent and willingness to accept responsibility for the consequences of sexual behavior.)”*

<sup>69</sup> Conversation with Gloria Careaga, October 6, 2005.

<sup>70</sup> *Ibid.*

<sup>71</sup> United Nations. (1995, May 24). Draft Platform for Action, Doc. A/CONF. 177/L.1, paras. 48, 226, 232(h), 180(b).

Corrêa observes, “We did not really react to the second sentence at that time. Only after Beijing did we consider its implications.”<sup>72</sup>

The Holy See and a handful of its conservative allies (notably, Honduras, Sudan and Malta) launched a counteroffensive of their own at PrepCom III. Predictably, they repeated their objections to ICPD-agreed language on sexual and reproductive health and reproductive rights, and opposed sexual rights and sexual orientation. The surprise came in the third week of the PrepCom (and after sexual orientation and sexual rights had already been introduced in the draft), when the alliance began contesting the use of the term “gender” throughout the document. Many activists and governments were caught off guard by the Holy See’s request for definitions or deletion of the term; the word “gender” had been agreed by governments many times before (as recently as Cairo and Copenhagen), and appeared in dozens of paragraphs in the draft Platform.<sup>73</sup>

“They came at us with something we didn’t expect,” said Petchesky. “Many of us thought: what are they TALKING about? We had to ask ourselves: what do WE think about it? We had to explain gender to ourselves and to others.”<sup>74</sup>

North American right-wing groups jumped into the fray with arguments linking gender to homosexuality and to a state takeover of maternity, and accusing feminist groups of promoting five genders. A pamphlet from the Coalition for Women and the Family stated, “Unfortunately there is a ‘gender feminism,’ often homosexual, which strongly promotes the idea that gender is something fluid, changing, not related naturally to being a man or being a women. According to such feminist/homosexual ideology, there are at least five genders!”<sup>75</sup> An article in *The Arlington Catholic Herald* picked up the charge: “The coupling of ‘five genders’ with the reproductive tools of contraception, abortion and sterilization that are marketed as the ‘empowerment of women’ results in a ‘state-owned womb.’ As is evident among anti-life

<sup>72</sup> Conversation with Sonia Corrêa, April 12, 2005.

<sup>73</sup> Fried, S.T., & Landsberg-Lewis, I. (2001). Sexual rights: From concept to strategy. In K. D. Askin, & D. Koenig, (Eds.) *Women and international human rights, vol. 3, Toward empowerment*, p. 111. Transnational Publishers.

<sup>74</sup> Conversation with Rosalind Petchesky, December 20, 2005.

<sup>75</sup> Coalition for Women and the Family, Note concerning the term “gender.” On file with the author.



forces throughout the world, verbal manipulation precedes social manipulation.”<sup>76</sup> This accusation was apparently based on a 1993 article in which Anne Fausto-Sterling had argued for replacing the two-sex system with a five-sex one (female, male, “true” hermaphrodites, male “pseudo-hermaphrodites,” and female “pseudo-hermaphrodites”).<sup>77</sup>

Yet the Holy See’s arguments about the “hidden meaning” of gender highlighted its understanding of contemporary debates about sexuality. While most governments and feminist activists at the negotiations were in fact using “gender” in accordance with contemporary political usage, as a proxy for “women,” the Holy See recognized the far-reaching implications of detaching social roles, identities and expressions from biological sex. They understood Fausto-Sterling’s point that “if nature really offers us more than two sexes, then it follows that our current notions of masculinity and femininity are cultural conceits.”<sup>78</sup>

While the Holy See (and right-wing NGOs) emphasized the link between gender and homosexuality, they also linked gender with transsexuality, thereby moving beyond sexual orientation. As noted by Judith Butler, “The term ‘gender’ has become a site of contest for various interests ... Discrimination against women continues – especially poor women and women of color – so this dimension of gender discrimination remains crucial to acknowledge. But gender now also means gender identity, a particularly salient issue in the politics and theory of transgenderism and transsexuality.”

Was this a preemptive move by the Holy See against future claims based on gender identity and gender expression? It certainly was an acknowledgement that fluid or multiple gender identities or expressions (transgender, cross-gender, queer) bring into question the very notion of binary categories, like “woman/man” or “femininity/masculinity,” and of preordained social roles.

Faced with this, the Holy See and its allies clearly meant to reaffirm the idea of “woman” and re-essentialize her as wife and mother. Butler concludes, “If the Vatican seeks to re-

<sup>76</sup> Laird, G. (1995, May 4). Verbal manipulation and the World Conference on Women, *Arlington Catholic Herald*, p. 10.

<sup>77</sup> Fausto-Sterling, A. (1993). The five sexes: Why male and female are not enough. *The Sciences*, March-April, pp. 20-24.

<sup>78</sup> Fausto-Sterling, A. (2000). *Sexing the body: Gender politics and the construction of sexuality*, p. 31. Basic Books.

place the language of gender with the language of sex, it is because the Vatican wishes to rebiologize sexual difference, that is, to re-establish a biologically narrow notion of reproduction as women's social fate."<sup>79</sup>

In a speech to the PrepCom, Abzug addressed that specific objective head on, while leaving aside the broader question of gender identities and what is "woman:" "We will not be forced back into the 'biology is destiny' concept that seeks to define, confine, and reduce women and girls to their physical sexual characteristics... In the present context, 'gender' recognizes the multiple roles that females fill through our life cycles, the diversity of our needs, concerns, abilities, life experiences, and aspirations."<sup>80</sup>

At the end of PrepCom III, a Contact Group of governments, chaired by Namibia, was charged with reaching agreement on a definition of gender. Rather than delve into these debates, the Contact Group defused the issue by declaring, "'Gender' as used in the Platform for Action was intended to be interpreted and understood as it was in ordinary, generally accepted usage."<sup>81</sup>

The ultra-conservative U.S.-based Family Research Council was left to "hope the commonly accepted meaning of gender in the United States remains that which acknowledges the biological classifications of male and female,"<sup>82</sup> while the Holy See took a reservation: "The term 'gender' is understood by the Holy See as grounded in biological sexual identity, male or female... The Holy See thus excludes dubious interpretations based on world views which assert that sexual identity can be adapted indefinitely to suit new and different purposes."<sup>83</sup>

But the Holy See had advanced one of its objectives: to create "a general nervousness about the existence of a feminist/lesbian agenda" and therefore constrain the possibilities

<sup>79</sup> Butler, J. (2004). *Undoing gender*, p. 185. Routledge.

<sup>80</sup> Quoted in: Butler, J. (2004). *Undoing gender*, p. 182. Routledge.

<sup>81</sup> United Nations. (1995, October 27). Statement by the President of the Conference on the commonly understood meaning of the term "gender." *Report of the Fourth World Conference on Women*, Doc. A/CONF.177/20/Add. 1, Annex IV.

<sup>82</sup> Family Research Council. (1995, August 21). *Reinventing family values in Beijing*.

<sup>83</sup> United Nations. (1995, October 27). Adoption of the Beijing declaration and Platform for Action, *Report of the Fourth World Conference on Women*, Doc. A/CONF.177/20/Add. 1, chapter V.

for advocating sexual orientation or sexual rights.<sup>84</sup> North American right-wing groups had distributed multiple leaflets that equated sexual rights and sexual orientation with “behaviors which are unhealthy” and “which everyone knows spread HIV/AIDS” in addition to being “illegal, immoral, contrary to religious beliefs and cultural traditions.” The leaflets asked whether sexual rights and sexual orientation included “pedophilia, prostitution, incest, and adultery.”<sup>85</sup> These groups had also launched a virulent attack against the Canadian delegation for introducing sexual orientation into the draft.

In Beijing, the Holy See adopted a lower profile than in Cairo or at PrepCom III. Rather than taking the lead it worked closely with its conservative Catholic and Islamic allies, putting forward arguments that centered on the preservation of the traditional family and the rights of parents.

“I regret that we did not photograph the mullahs and the Vatican priests, in the UN corridors and the hotels, sitting and preparing their joint texts together,” says Gerd Johnsson-Latham, who was on the Swedish delegation and negotiated the language on the family.<sup>86</sup>

The Holy See also sought to frame its views in light of the “equality in dignity of women,” which “requires respect for the roles of women whose quest for personal fulfillment and the construction of a stable society is inseparably linked to their commitments to God, family, neighbor and especially to their children.”<sup>87</sup>

The North American right-wing groups that had been active at PrepCom III continued their strident campaign against sexual rights, equating them with pedophilia and making ample use of references to all the “perversions” created by nineteenth-century psychiatry.

Negotiations on sexual rights and sexual orientation proceeded on two separate tracks, with different negotiators in different rooms. In the small room where sexual rights was be-

<sup>84</sup> Fried, S.T. & Landsberg-Lewis, I. (2001). Sexual rights: From concept to strategy. In K. D. Askin, & D. Koenig, (Eds.) *Women and international human rights, vol. 3, Toward empowerment*, p. 112. Transnational Publishers.

<sup>85</sup> Coalition for Women and the Family. *Sexual rights and sexual orientation: What do these words really mean?* On file with the author.

<sup>86</sup> Conversation with Gerd Johnsson-Latham, October 28, 2005.

<sup>87</sup> Holy See Statement of Prof. Mary Ann Glendon, Head of the Delegation of the Holy See to the Fourth World Conference on Women, Beijing, 5 September 1995.

ing negotiated Guyana chaired the discussions and the EU, South Africa and Iran played active roles. Domestic electoral considerations weighed on the U.S. delegation, which was supportive but not in the lead as in Cairo. Relying on the OAU position, African delegations (with the exception of a few like Benin and Morocco) consistently supported the language of sexual rights. However, interpretation of what this entailed differed; while South Africa clearly supported the inclusion of sexual orientation in the Platform and understood that sexual rights covered sexual orientation, other supportive African delegations did not.

Klugman, who was on the South African delegation in Cairo and Beijing, observes, “Had the African delegations understood sexual rights to mean rights to gay relationships, they would have retracted their support as a result of their own prejudices.”<sup>88</sup>

She adds: “Sexual rights was not at all [for the African delegations] about control of sexuality per se, or pleasure, or sexual orientation, except for South Africa. It was HIV and violence against women, which are huge development and human rights challenges in Africa. Let’s be clear: getting [paragraph] 96 required obfuscation of the sexual orientation issue.”

As the debates continued some EU delegates (who Johnsson-Latham confirms were heavily lobbied by lesbian activists) began making arguments for sexual rights exclusively on the basis of sexual orientation. As Klugman recalls, “The EU hadn’t come in with a worked-out agenda for sexual rights. They hadn’t discussed what [it meant]. We were faced with the particular development of a concept in a certain [European] context, a certain society, where ‘sexuality’ has come to mean ‘gay.’”

In the end, paragraph 96 was successfully negotiated and resolved a few days before the end of the conference, and not in a direct trade-off against anything else. The result of this negotiation was a paragraph about the right of women to have control over matters related to their sexuality and without the words “sexual rights.” “Men” and “adolescents” were out. The reference to “physical integrity of the human body” from Cairo was deleted and replaced with the “integrity of the person.”

<sup>88</sup> Klugman, B. (2000). Sexual rights in Southern Africa: A Beijing discourse or a strategic necessity? *Health and Human Rights*, vol. 4, no. 2, p. 153.

96. *“The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent, and shared responsibility for sexual behavior and its consequences.”*

The outcome was a result of strong support from sub-Saharan Africa, especially South Africa and Senegal, as well as the Caribbean and a number of Latin American countries like Brazil and Mexico, along with the leadership of Ambassador Merwat Tallawy of Egypt in the larger contact group on Health. Iran’s Vice President for Women’s Affairs, Shahla Habibi, who headed the Islamic Republic’s delegation, claimed that Iran was responsible for the deletion of the phrase “sexual rights” from the document, but Iranian diplomats were, in fact, key to securing an agreement that left intact the content of the paragraph.<sup>89</sup>

There is no doubt that paragraph 96 was a great achievement in the circumstances. As Johnsson-Latham notes, “In 1995, we took ourselves by surprise, and we took our opponents by tremendous surprise!”<sup>90</sup>

Susana Fried says the work done over the previous years paid off. “The possibility of sexual rights in Beijing came about because we had talked about violence against women and violations with respect to sexuality in Vienna. We had brought women’s bodies into the picture. This was crucial for how we were able to move the issue forward, through Cairo, Copenhagen and then at Beijing.”<sup>91</sup>

In the end, 20 countries (overwhelmingly Muslim) issued reservations or made interpretive statements on paragraph 96 or the term “sexual rights,” as compared with 21 reservations on “sexual and reproductive health” and “reproductive rights” in Cairo.

<sup>89</sup> Qureshi, A. (1995, October). The 1,000-mile journey begins: Fourth World Conference on Women in Beijing. *The Minaret: America’s Source on Islam*; Conversation with Ellen Marshall, June 13, 2005.

<sup>90</sup> Conversation with Gerd Johnsson-Latham, October 28, 2005.

<sup>91</sup> Conversation with Susana Fried, May 25, 2005.

On the other front, mention of “sexual orientation” was not agreed even in paragraphs that were merely statements of fact about the barriers women face to the realization of their rights. The final reference to sexual orientation was taken out on the last night of the conference in a trade-off against language, in the framework of the Platform, which would have conditioned human rights to religious values and cultural backgrounds. The existing agreement on sexual rights made this trade-off more palatable.

“The fact that paragraph 96 had already been agreed allowed governments that had wanted sexual orientation as well as strong language on human rights, to let sexual orientation go,” says Fried.

Klugman confirms the point. “We recognized that sexual orientation was not going to be possible, but that we had something else that could work.”<sup>92</sup>

Nonetheless it was the first time the language had been discussed by government delegations at a UN Conference, and the discussions were substantive not only procedural. Careaga says, “This was a success for us because there were four or five days of discussion on sexual orientation. Beijing, so far, has been the only space where governments have spent so much time on this subject.”<sup>93</sup> Klugman agrees. “It was an enormous victory that it had been discussed at all.”<sup>94</sup>

On the penultimate day of the conference, Palesa Beverley Ditsie, a South African representative of the Lesbian Caucus, addressed the plenary on the situation of lesbians and the importance of guaranteeing their human rights. During that debate, opposition to mention of sexual orientation was voiced by the Holy See, some Catholic countries and a number of Islamic countries. Sudan and Yemen made especially virulent statements against homosexuality. Some sub-Saharan African governments also opposed it, notably Benin, Cote d’Ivoire, and Uganda. Even Senegal, which actively supported paragraph 96, objected. But, to the surprise of many, mention of sexual orientation was supported by more than 30 countries, including

<sup>92</sup> Conversation with Barbara Klugman, September 16, 2005.

<sup>93</sup> Conversation with Gloria Careaga, October 6, 2005.

<sup>94</sup> Conversation with Barbara Klugman, September 16, 2005.

South Africa, Barbados, Jamaica, Cuba, Bolivia, Brazil, Chile, Columbia, Venezuela, the 15 countries of the European Union, Slovenia, Norway, Canada, the U.S., Australia, New Zealand, Israel, and the Cook Islands. South African Health Minister, Nkosazana Zuma, made a particularly strong appeal for inclusion of sexual orientation in the Platform for Action by calling for an end to all forms of discrimination.

At the time, activists were profoundly disappointed. Says Fried, “I remember being crushed about what happened around sexual orientation. I felt that paragraph 96 was a poor substitute.”<sup>95</sup>

But the intervening years have led to a re-evaluation. Now Fried says, “Paragraph 96 serves me much better than I expected. I have become critical of identity frameworks. Now I feel it is more far-reaching than references to sexual orientation.”<sup>96</sup>

### **The UN Commission on Human Rights, 2003 and 2004**

Eight years later, in April 2003 at the Commission on Human Rights in Geneva, Brazil took activists and other governments by surprise by proposing a resolution entitled, Human Rights and Sexual Orientation, and modeled on the Universal Declaration of Human Rights. Brazil had not consulted with other potentially supportive governments beforehand, and had not invited to Geneva civil society organizations that could support its resolution.

From Brazil’s point of view, presenting this resolution was a natural follow-up to its recent positions at the global level – it had been supportive of sexual rights and sexual orientation in Beijing and led the way in pushing (unsuccessfully) for sexual rights at the UN’s first five-year progress review of the Beijing Platform for Action (known as Beijing+5) in 2000. Brazil had strongly supported mention of “men who have sex with men” (MSM) in the 2001 Declaration of Commitment on HIV/AIDS. It had also played a leading role in advocating for “sexual orientation” at the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, where Brazilian civil society organizations were highly visible and active. Brazil was therefore an eminently legitimate banner

<sup>95</sup> Conversation with Susana Fried, May 25, 2005.

<sup>96</sup> *Ibid.*

carrier for sexual orientation at the UN. Nevertheless, the absence of consultations created tensions that would continue to play themselves out over the next two years.

“Some governments, like Sweden and Canada, had felt ownership of the issue, and were not happy to see Brazil taking their leadership role without consultation,” says Suki Beavers of Action Canada for Population and Development.<sup>97</sup>

“The Brazilians didn’t do ground work with other governments, didn’t even share their draft ... They were very capable individuals, very enthusiastic, spontaneous ... It’s OK to surprise your opponents, but not your allies,” observes Inder.<sup>98</sup>

Moreover, the CHR had adopted several times since 2000 a resolution presented by Sweden on Extra judicial, summary or arbitrary executions (EJEs), which explicitly mentioned sexual orientation.<sup>99</sup> In addition, there had been a number of resolutions on sexual violence and Special Rapporteurs to the CHR mentioned issues of sexuality regularly in reports.

Fried says, “Sweden’s view was that they had made steady progress working with the Special Rapporteur [on Extra judicial, summary and arbitrary executions] to get issues of sexual orientation, sexual rights and gender identity... translated into resolutions in a more organic way.”<sup>100</sup>

The Brazilian diplomats in Geneva saw non-discrimination on the basis of sexual orientation as a simple expression of the general principle of non-discrimination in human rights. By their own admission, these diplomats simply jumped in with the resolution with little expectation of opposition.

Frederico Duque Meyer recalls, “When we announced the resolution, we never thought the reaction would be so strong. To be frank, this reaction was a great surprise to us!”<sup>101</sup>

<sup>97</sup> Conversation with Suki Beavers, September 27, 2005.

<sup>98</sup> Conversation with Brigid Inder, May 19, 2005.

<sup>99</sup> See, for example: United Nations, Commission on Human Rights, Resolution on Extra judicial, summary or arbitrary executions, doc. E/CN.4/RES/2000/31.

<sup>100</sup> Conversation with Susana Fried, May 25, 2005.

<sup>101</sup> Conversation with Frederico Duque Meyer, October 4, 2005.



After the initial surprise Amnesty International, Action Canada for Population and Development, and other NGOs present, rushed to build what support they could for the resolution. Informal discussions were held with activists and many governments (Islamic countries did not take part), and the resolution was rewritten by the EU, with NGO input, as a much shorter text that focused on the universality of rights, the existence of violations, and, consequently, the importance of non-discrimination on the basis of sexual orientation. Activists asked that gender identity be included in the resolution but Ireland's apparent opposition precluded this. Neither did the resolution refer to sexual rights, the right to control matters related to sexuality, or the integrity of the body, all concepts that had been adopted or debated in Cairo and Beijing – evidence of the silo effect of UN negotiations, and of the small contingent of experienced negotiators at the CHR with Beijing or Cairo experience.

Brazil cosponsored the resolution with Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. Croatia, Cyprus, New Zealand, Poland, Serbia and Montenegro, Slovenia, and Switzerland subsequently joined the sponsors (27 in all). The resolution expressed “deep concern at the occurrence of violations of human rights in the world against persons on the grounds of their sexual orientation” and emphasized “that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question, and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation.” It also called on all states “to promote and protect the human rights of all persons regardless of their sexual orientation,” and requested the UN High Commissioner for Human Rights “to pay due attention to the violation of human rights on the grounds of sexual orientation.”<sup>102</sup>

Strong opposition to the resolution was quickly raised by Pakistan purporting to speak on behalf of the Organization of the Islamic Conference group in Geneva, even though the OIC does not adopt positions on sexuality and social matters. According to Meyer, the ambassador of Pakistan denied the existence of homosexuality in his country, and argued, “If there are homosexuals in your country, you should pass a national law not a resolution at

<sup>102</sup> UN Commission on Human Rights, 59<sup>th</sup> session, Human rights and sexual orientation: draft resolution, doc. E/CN.4/2003/L.92

the United Nations.”<sup>103</sup> The Holy See joined Pakistan in opposing the text, arguing it could condone pedophilia.

The Brazilian diplomats were surprised. Says Meyer, “It was obvious we were not defending pedophilia. But Brazil had not anticipated this line of argument.”<sup>104</sup>

Meyer also noted opposition from some sub-Saharan African countries. “One African diplomat told the Brazilian ambassador that there are no homosexuals in their countries; that this is something that came with the white man.”<sup>105</sup>

Action on the resolution was confined to aggressive procedural maneuvering, with little substantive debate – Pakistan, Saudi Arabia, and others introduced amendments to the resolution that would have completely changed its nature and repeatedly raised dubious points of order (for instance, a no-action motion was put forward by Pakistan), and Pakistan and Syria brought significant pressure to bear on the Chairwoman of the Commission, Najat al-Hajjaji of Libya, to bar consideration of the resolution. Moreover the Holy See was reported to be telephoning Latin American capitals to secure abstentions or a vote against the resolution.<sup>106</sup> In the end, consideration of the resolution was postponed to the 2004 CHR.

The 23 CHR members voting in favor of postponement included: Algeria, Argentina, Bahrain, Burkina Faso, Cameroon, China, Democratic Republic of Congo, Gabon, India, Kenya, Malaysia, Pakistan, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka, Sudan, Syria, Thailand, Togo, Uganda, Vietnam, and Zimbabwe. Seventeen members voted against postponement: Austria, Belgium, Brazil, Canada, Croatia, France, Germany, Guatemala, Japan, Mexico, Poland, Republic of Korea, Sweden, Ukraine, the UK, Uruguay, and Venezuela. Ten countries abstained: Armenia, Australia, Chile, Costa Rica, Ireland, Paraguay, Peru, Russia, South Africa, and notably, the U.S. But it was close; if voting had been allowed, many observers

<sup>103</sup> Conversation with Frederico Duque Meyer, October 4, 2005.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> For example, see in this publication: Cáceres, C., Cueto, M., & Palomino, N., Sexual and reproductive-rights policies in Peru: Unveiling false paradoxes, p. 25.

believe the resolution could have passed by one vote. In contrast, the annual resolution on EJE passed with its usual mention of sexual orientation.

In preparation for the 2004 CHR, international human rights groups, sexual and reproductive health groups, and LGBT groups organized a meeting to review events and to mobilize support for the resolution.

“Even before the CHR was over we thought of bringing together a broad-based coalition. The aim was good, but possibly too ambitious. We had lots of groups who had never worked together, who had different goals and different perspectives,” recalls Suki Beavers.<sup>107</sup>

The meeting brought together sexual and reproductive health groups and advocates who had been active in Beijing, international human rights organizations, and Brazilian LGBT groups. While some of those present had been key players in Cairo and Beijing, there was limited awareness of those past struggles in the group as a whole.

This diverse group managed to reach agreement to push for inclusion of gender identity in the sexual orientation resolution. Sexual and reproductive health activists pressed others present to focus on the sexual orientation resolution as well as on resolutions on health or the rights of the child where issues of sexuality could appear, but agreement on this strategy remained elusive. It was also decided to seek greater visibility for LGBT activists through side events, panels, and statements to the Commission.

As the 2004 CHR approached Pakistan once again sprang into action, claiming to speak on behalf of the OIC as Coordinator of Human Rights and Humanitarian Issues. In February 2004, Ambassador Shaukat Umer of Pakistan sent a letter to all the other ambassadors in Geneva warning them that reactivating the resolution would “re-ignite the divisions” of the previous year, and raising multiple arguments against it. After stating that sexual orientation had never been defined at the UN (but admitting that it had been mentioned in UN documents, although “hardly ever”), he claimed that sexual orientation as a human right or basis of discrimination is “not enshrined in the UDHR and subsequent instruments, resolutions,

<sup>107</sup> Conversation with Suki Beavers, September 27, 2005.

conventions and mechanisms.” (He omitted to mention the 1994 decision of the Human Rights Committee in Toonen).

Ambassador Umer then claimed that “all minorities who could possibly be marginalized in society have been identified in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,” even though the Declaration, as its name implies, is far from exhaustive. Leaving aside legal arguments, Ambassador Umer made the predictable charge that sexual orientation may encompass “grossly errant behavior like pedophilia.” He went on to state that sexual orientation is not a human rights issue but is related to “social values and cultural norms” and should therefore be dealt with in the social and legal parameters of individual countries. The ambassador also brought up the “concept of the traditional family,” which, he said, “Muslim people, like the adherents of all other faiths,” cannot abandon. He concluded with the assertion that adoption of this resolution would “cause serious offense to the religious values of 1.2 billion Muslims as well as to the followers of other religions and faiths around the world.”<sup>108</sup>

A few days later, the Permanent Mission of the Holy See to the UN in Geneva issued its comments on the proposed resolution repeating most of its previous arguments but focusing on the supposed threat the resolution would present to heterosexual marriage and to children. The Holy See was particularly concerned that the resolution could be used to claim adoption rights for “unisexual households.”<sup>109</sup> (The repeated use by the Holy See of the word “unisexual” should be mentioned since the Holy See does use “heterosexual” in the same Note). Indeed, the wording of the resolution clearly left open the possibility that the “right to marry and to found a family” (in Article 16 of the Universal Declaration of Human Rights) should be available to all without discrimination on the basis of sexual orientation.

As Meyer points out, “The Holy See was vociferous on family, marriage. They don’t deny homosexuality exists; they have the same Western concept of it as we do.”<sup>110</sup>

<sup>108</sup> Letter from Ambassador Shaukat Umer, Permanent Mission of Pakistan to the United Nations in Geneva, to other ambassadors, February 26, 2004. On file with the author.

<sup>109</sup> Permanent Mission of the Holy See to the United Nations in Geneva. Note on the Project of Resolution of the United Nations Commission on Human Rights concerning “sexual orientation” and discrimination, March 1, 2006. On file with the author.

<sup>110</sup> Conversation with Frederico Duque Meyer, October 4, 2005.

At the start of the 2004 CHR, to the consternation of LGBT and sexual health activists, Brazil announced it would not proceed with the resolution. In a press statement Brazil showed just how much it had retreated: “Brazil considers that the treatment of any issue in the Commission should not lend itself to exploitation of a political nature nor should it generate controversies with communities and countries with which we hold deep links of friendship.”<sup>111</sup>

As Fried recalls, “In 2004, as we got to the CHR, Brazil disappeared on us. They told us they didn’t want a discussion that divides rather than unites.”<sup>112</sup>

Tremendous pressure had apparently been placed on Brazil by OIC states, which threatened to boycott a trade summit Brazil was due to host later that year. The Holy See also mobilized domestic channels of pressure on the Brazilian government. Inder says, “The year between 2003 and 2004 gave conservatives the time to organize, find other issues as trade-offs. They raised fears about sexual orientation in other UN meetings, like the [Commission on Population and Development] in [March] 2004, and the Fifth Committee.”<sup>113</sup>

In the event, no other country was willing to step in. The EU refused to take the lead on the grounds that a Southern country should take forward the resolution. South Africa, which has a constitution that expressly mentions sexual orientation, would not sponsor the resolution, disappointing many who remembered the strong support of the South African delegation in Beijing. Things moved very fast, and activists, who attended in large numbers, had little time to react.

John Fisher of ARC International notes: “Brazil said it was concerned that the EU did not want to support the resolution, but it did not give us much time to pressure the EU. We had no chance to explore alternative strategies.”<sup>114</sup>

<sup>111</sup> Permanent Mission of Brazil to the United Nations, Geneva. Press Release. (2004, March 29). On file with author.

<sup>112</sup> Conversation with Susana Fried, May 25, 2005.

<sup>113</sup> At the March 2004 meeting of the UN Commission on Population and Development, conservative governments, led by Egypt, began to oppose re-affirmation of the 1994 ICPD Programme of Action by arguing that it would be tantamount to supporting same-sex marriage. The UN Fifth Committee, which happened to be meeting at the same time in an adjacent conference room, was debating same-sex partner benefits for UN employees from countries that recognized same-sex partner status or same-sex marriage in national law.

<sup>114</sup> Conversation with John Fisher, December 5, 2005.

Meanwhile, advocacy on other relevant resolutions proceeded. However, support from LGBT groups for sexual rights resolutions more broadly conceived did not materialize in spite of the December 2003 discussions in Rio de Janeiro. “The LGBT groups went only for the Brazilian resolution,” remembers Careaga. “They were not aware of other issues. They learned a lot after 2004 but it was not an easy lesson. They were not experienced.”<sup>115</sup>

Crucially, the LGBT groups did not extend their efforts to the resolution on the right to health, which was meant to welcome the report tabled by Paul Hunt, the Special Rapporteur on the Right to Health. This report, which contains the most complete analysis ever found in a UN document of what sexual rights entail, concludes: “[T]he Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty, or social interference.”<sup>116</sup>

This lack of support from LGBT groups in the context of the resolution on sexual orientation, made it difficult to battle for the adoption of the resolution on the right to health. Egypt, the U.S. and the Holy See objected to language on sexual and reproductive health and to the content of Hunt’s report. “As it became clearer that Brazil would not proceed the attack shifted to Paul Hunt. The other NGOs did not organize to support his work and protect him from the onslaught,” says Beavers.<sup>117</sup>

Divisions between feminist activists and LGBT groups were also apparent. Careaga says, “The LGBT groups did not link with feminists, and feminists did not link with LGBT groups either. Feminists got involved with the Brazil resolution when they got to Geneva. Because of their experience, they could do both [Brazil resolution and other resolutions], but LGBT groups could not. They thought [feminists] were wasting their time, distracting them.”<sup>118</sup>

<sup>115</sup> Conversation with Gloria Careaga, October 6, 2005.

<sup>116</sup> United Nations, Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur, Paul Hunt*, doc. E/CN.4/2004/49, para 54.

<sup>117</sup> Conversation with Suki Beavers, September 27, 2005.

<sup>118</sup> Conversation with Gloria Careaga, October 6, 2005.

“None of them [LGBT] were working on the resolutions on HIV, education, violence against women, on sexuality as such,” notes Hossam Bahgat.<sup>119</sup>

Fried concurs. “There was lots of disagreement on appropriate strategy. In general, national-level LGBT advocates focused on the resolution on sexual orientation while LGBT street-level activists wanted to focus on raising visibility at the CHR, and the more experienced human rights and feminist groups wanted to inject sexuality into various resolutions.”<sup>120</sup>

The strategies discussed in Rio in December 2003 evidently had not met with general agreement. Feminist and sexual and reproductive health activists favored a broad approach that promoted sexual rights and sexual health across the board, building on the achievements of Beijing. LGBT groups had little interest at that point. Inder observes, “The tension between gender analysis and sexuality analysis came to the fore. It was difficult to maintain a gender analysis in the coalition. But at the December 2004 strategy meeting [organized by ARC in Geneva] the coalition moved to take positions we [feminists] had advocated; to look at sexual rights across all resolutions, not just the single resolution.”<sup>121</sup>

This focus on getting the Brazil resolution through precluded an overall debate amongst activists about whether other language or approaches would be more useful. Fried says, “We may have constructed the issue too narrowly. Sexual orientation is too narrow. It may also be better not to seek a resolution, but go for other processes.”<sup>122</sup>

“The resolution itself was not well conceived,” says Bahgat. “The opposition said it led the way to marriage, and they had a point. We had been working on violence, torture, and discrimination as entry points, and that could work. But not marriage.”<sup>123</sup>

Fisher concurs. “The anti-discrimination framework tends to raise questions around marriage and family, but NGOs have more core needs like freedom from violence and security.

<sup>119</sup> Conversation with Hossam Bahgat, December 23, 2005.

<sup>120</sup> Conversation with Susana Fried, May 25, 2005.

<sup>121</sup> Conversation with Brigid Inder, May 19, 2005.

<sup>122</sup> Conversation with Susana Fried, May 25, 2005.

<sup>123</sup> Conversation with Hossam Bahgat, December 23, 2005.

From my perspective, universality of rights should be the framework rather than non-discrimination. Many states don't accept that we have human rights."<sup>124</sup>

The homosexual archetype as conceived in Western sexuality has limited resonance for many activists in the global South. Bahgat relays his experience in the Middle East: "There is a problem with sexual orientation as a concept, with identity frameworks. In the region people don't identify as gay. Many have wives and children. In my country [Egypt], people don't get arrested for who they are, but for what they do; conduct is the issue. Of course, identity politics are still useful for activism but we need to look at other frameworks."<sup>125</sup>

Meyer says the debate was an eye-opener for the Brazil delegation. "We never thought about identity politics, how would that work for Africa. We discovered a lot of things we didn't know!"<sup>126</sup>

It seems clear that focusing the entire battle on sexual orientation instead of finding ways to step outside or transcend the Western sexuality discourse left LGBT activists with fewer options.

At the International Dialogue organized by ARC in Geneva in December 2004 activists and NGOs from around the world once again sought to reach a common approach. They endorsed the previously agreed strategy of working on a range of sexual rights issues and integrating sexual orientation and gender identity in a range of relevant thematic resolutions. They also endorsed the need to build support for a new resolution to be presented jointly by states from a variety of regions to demonstrate that sexual orientation was not only a Western issue, and to limit dependence on the willingness of any one government to proceed. In addition, activists reaffirmed the need to increase LGBT visibility at the CHR and educate governments to better understand the issues. But it was too late; the moment for the resolution on sexual orientation had passed. At the 2005 CHR Brazil confirmed it would not proceed with the resolution and no other country was willing to take it up. The resolution thus lapsed.

<sup>124</sup> Conversation with John Fisher, December 5, 2005.

<sup>125</sup> Conversation with Hossam Bahgat, December 23, 2005.

<sup>126</sup> Conversation with Frederico Duque Meyer, October 4, 2005.



Nonetheless, the advocates at the 2005 CHR were able to claim some progress. New Zealand delivered, on behalf of 32 countries from diverse regions, a strong statement against discrimination on the basis of sexual orientation. Interestingly, New Zealand characterized sexual orientation as part of identity and self: “Sexual orientation is a fundamental aspect of every individual’s identity and an immutable part of self. It is contrary to human dignity to force an individual to change their sexual orientation, or to discriminate against them on this basis. And it is repugnant for the state to tolerate violence against individuals. All states must exercise due diligence to prevent, investigate, prosecute, and punish the perpetrators of violence committed against individuals because of their sexual orientation.”<sup>127</sup> Another mark of progress: South Korea became the first Asian government to openly endorse non-discrimination on the basis of sexual orientation. And panels and presentations by activists from various parts of the world continued apace.

Many advocates question why the EU or Canada would not take over the resolution in 2004 or 2005. Legitimate questions about strategy seem to mesh with a certain degree of territoriality; in 2005 Sweden included gender identity in its annual resolution on EJE, and Canada put sexual orientation and sexual rights in its annual resolution on violence against women.

“Do we really need a Southern country to present sexual orientation?” Bahgat asks. “Sweden presents its resolution on EJE with sexual orientation every year and it passes.”<sup>128</sup>

And yet, analysis by Northern NGOs of the EU’s internal dynamics was probably insufficient. Observes Beavers, “The assumption was that the EU would be easily brought on board. But there was a failure to pay attention to EU dynamics, the internal paralysis. Northern groups are then surprised, but they shouldn’t be. The EU always has that propensity unless they are lobbied hard.”<sup>129</sup>

The debate over whether gender identity should have been included in the resolution remains unresolved. Some believe that this would have made the resolution even harder to pass, while others believe that to be a Northern construct of what the South thinks.

<sup>127</sup> United Nations, Commission on Human Rights, Statement by New Zealand Permanent Representative Ambassador Tim Caughley, 19 April 2005. On file with the author.

<sup>128</sup> Conversation with Hossam Bahgat, December 23, 2005.

<sup>129</sup> Conversation with Suki Beavers, September 27, 2005.

Bahgat says, “Including gender identity is the moral position but there is no way it would have passed. It’s true that Egypt is not as antagonized by gender identity, but they would not support it because they understand it’s part of the same agenda, politically.”<sup>130</sup>

Says Beavers, “Many Northern NGOs thought gender identity was harder to accept. But I think that was not in fact true. In many Southern countries, gender identity is much easier to deal with. There was a failure to check assumptions from the start.”<sup>131</sup>

The focus on the resolution on sexual orientation generated strong opposition by conservative governments to previously agreed concepts. According to Bahgat, “The resolution brought a significant backlash in 2004 and 2005, not just on sexual orientation but also sexuality, the International Guidelines on HIV/AIDS [and human rights], sexuality education, the resolution on Extra judicial, summary and arbitrary executions, and so on. In 2005 at the CHR even Beijing language on HIV was under attack; Canada and Sweden took sexual orientation, gender identity and sexual rights out of their resolutions before the vote. One of the Egyptian representatives at the CHR in 2005 told me we could not have the word ‘sexuality’ in the resolution on education because that implied gay marriage and sexual orientation.”<sup>132</sup>

Fisher notes that references to sexual orientation or sexual rights in other resolutions became even harder to sustain in 2005: “[They] were no less controversial, and perhaps more, because they could not jeopardize other resolutions. Some states became reluctant to move forward (and) some mainstream human rights NGOs also shared their concerns.”<sup>133</sup>

Yet the backlash may have begun even before that. The resolution on EJE, which had been adopted with mention of sexual orientation without a vote in 2000, had to be voted on each year beginning in 2002 after the Special Rapporteur on EJE, Asma Jahangir, highlighted the

<sup>130</sup> Conversation with Hossam Bahgat, December 23, 2005.

<sup>131</sup> Conversation with Suki Beavers, September 27, 2005.

<sup>132</sup> Conversation with Hossam Bahgat, December 23, 2005.

<sup>133</sup> Conversation with John Fisher, December 5, 2005.

number of persons killed because of their sexual orientation in her report to the CHR. In 2005, the EJE's resolution was adopted by a vote of 36 in favor, zero against and 17 abstentions, with the U.S., Egypt, Saudi Arabia and Pakistan among the abstainers.

Nevertheless, even if some regrouping might now be needed, attention to issues of sexual orientation and gender identity at the CHR has been raised to a higher level than ever before. Says Fisher, "Regardless of the outcome the resolution had a significant mobilizing effect. We have become aware of other entry points, and have an appreciation for the international system as a whole."<sup>134</sup>

The involvement of new groups in the UN's work on human rights will be a lasting legacy of the Brazil resolution. Another positive consequence is the greater awareness and understanding by governments and advocates of a range of issues related to sexuality.

Brazil's Meyer is unreservedly optimistic: "Everyone knows that one day we will pass this resolution. It's only a matter of time. We put this on the agenda of the UN, something that was not dealt with before. And those who 'don't know what it is' are forced to hear about it." And he does not believe the failure to pass the resolution has had negative effects. "If we had not done it, it would not have happened otherwise. We could have waited until 2030."<sup>135</sup>

Meanwhile, the demise of the CHR and its replacement by the new Human Rights Council in 2006 have put this and many other issues on hold at the UN.

## Conclusion

While governments would not name sexual rights or sexual orientation in Beijing, the result and the process have proven more useful than anticipated. A change in norms has been underway in international law since then, as evidenced by the growing body of documentation and commentary on these issues at the UN and in regional human rights forums.

<sup>134</sup> *Ibid.*

<sup>135</sup> Conversation with Frederico Duque Meyer, October 4, 2005.

Confronting homosexuality head on, while essential, remains difficult. Beijing and the CHR show that homophobes are not ashamed of speaking up. Homophobia *qua* homophobia, which is anchored in the Western experience of sexuality, has been transported to the developing world by colonialism and mixed in with new nationalisms and discourses and counter-discourses about tradition and culture. The refusal of South Africa to support the resolution on sexual orientation at the CHR, in spite of its own progressive constitution, shows what a potent mix this can be. Yet, because of the incomplete incorporation of the concepts, the reliance on gay/lesbian identity as an organizing tool continues to have only partial resonance with Southern activists.

Sexuality is an issue that progressive forces have put on the table at the UN; they are the ones who “put it in discourse.” Conservatives have sought to obtain norms about sexuality in a covert way; they seek agreements about the family, marriage, the rights of parents, or trafficking but they would never have put the words “sexuality,” “sexual health,” and “sexual orientation” up for discussion.

For their part, feminists and lesbian and gay activists have been very proactive. The image of the lesbians and their banner in the Beijing plenary is an apt one; they dared to take action, even in places and at times when it was deemed “inappropriate” or “too early.” This is worth considering when progressives face right-wing opposition today, feel embattled and put on the defensive by their attacks. On sexuality, the right wing is operating on the ground progressives laid out, not the other way around.

In Beijing and at the CHR, the initial impulse of activists and supportive governments was, “Let’s plunge in.” Those lesbians with their banner and the Brazilian diplomats who presented the resolution at the CHR just went for it. But, in both cases, the action was not accompanied by equivalent conceptual thinking; What is meant by sexuality? What are the limits of a non-discrimination framework and how does it relate to positive sexuality? Is the action challenging or reinforcing heteronormativity? What do identity politics mean in a multicultural context? Should gender identity be included, and if so, what else is missing or what will progressives regret having used or left out in 10 years?

As already demonstrated, there was some thinking about these concepts. But the thinking was partial, evolving along with rapidly changing events in a kind of dialectic, and what conceptualization existed was not widely understood. Most activists proceeded largely on intuition, a sense that this was the right thing to do, so they were not always prepared for the opposition's arguments and tactics. For example, activists at Beijing and at the CHR did not anticipate right-wing arguments linking pedophilia and bestiality to homosexuality to discredit sexual rights and sexual orientation and were therefore ill prepared to respond.

In general, thinking had to catch up with action. When paragraph 96 was transformed from one on the sexual rights of all, to one on the sexual rights of women only, what did that mean for the future in terms of the sexual rights of men who could be allies? What about the second sentence in paragraph 96 on the equal relationships between men and women? Even relatively sophisticated activists did not analyze and react until after the fact.

Mobilization was key to success in Beijing, and will be key to future successes at the Human Rights Council and elsewhere. North/South alliances are especially important. They were crucial in Beijing and at the CHR. These alliances are essential to combat the arguments of culture and religion that constitute the main obstacles to the advancement of rights related to sexuality: the leadership provided by Southern activists effectively counters the claim that these are Northern/Western issues.

These alliances are not without tensions due to objective differences between North and South NGOs in agenda and priorities, perceptions of the issues, resources to follow the negotiations and develop media messages, and multiple discrimination and stigma.

North/South coalitions face power dynamics that must be recognized clearly and addressed directly. Beavers notes, "There are difficulties when Northern-based groups are at the forefront of strategizing. When you have regionally-based networks, the situation is much different than when you have identity-based or issue-based networks."<sup>136</sup> Given that culture and religion remain the principal arguments deployed against progressive language on sexuality at the UN, and given the difficulties many activists have in responding to these arguments, it

<sup>136</sup> Conversation with Suki Beavers, September 27, 2005.

seems evident that more resources must be allocated to support the work of Southern/Eastern activists in this respect.

The difficulties involved in forging coalitions with multiple identities and interest groups, also needs particular attention. In Beijing, feminists and lesbians (and those who overlapped) did not always see eye to eye on objectives and tactics. Some sexual-rights activists working on paragraph 96 did not approve of the visibility of the Lesbian Caucus, in part because they thought this would jeopardize the negotiations on paragraph 96, but also, in some cases, because of discomfort with the issues raised by lesbians.

At the CHR there were also tensions between feminists and gay men. Feminists and their allies supported the sexual orientation resolution, but also pushed for sexual rights and sexual health language in other resolutions. Many of the LGBT activists focused only on the sexual orientation resolution and were not active on other resolutions. Diverse conceptualizations of the issues underlie these differences. Power dynamics between men and women also proved to be a concern. Speaking about the 2004 CHR, one activist commented, “The coalition was very North American, very male-dominated. We ended up working in an environment we had spent 20 years critiquing!”

When it comes to sexuality, creative ambiguity is often a component of success, with all the exclusions and difficulties that this entails. That was certainly the case in Beijing during the negotiations on paragraph 96. When the words “sexual rights” were defined as inclusive of the rights of lesbians by the Dutch delegates, they had to be taken out of the paragraph, but the first sentence of the paragraph can be read as supportive of the rights of lesbians. Leaving certain things unsaid in the negotiation room ensured it was agreed, but that meant some things remained unsaid, which was a loss in and of itself. Gender identity never even made it into the resolution on sexual orientation at the CHR. The difficulty of getting the words “sexual orientation” in a negotiated document is the flip side of this. Explicit words can generate even more virulent opposition even as the opposition claims not to know what they mean, as with Pakistan at the CHR.

To advance a progressive agenda on sexuality, multiple parallel strategies are needed. The battle for explicit words has to continue because those words are essential to combating discrimination and violence. But other approaches must also be taken. The Beijing model, with parallel negotiations on sexual rights and on sexual orientation, is also the way forward for work with human rights bodies in Geneva.

The need for groundwork, for building alliances<sup>137</sup> and preparing argumentation, emerges from the experiences of Beijing, however imperfect those efforts were at the time. The energy generated by the alliances made at Cairo and Beijing had multiple effects says Inder. “From 1998 on there were lots of references to sexual orientation in the concluding recommendations of treaty bodies, in the work of Special Rapporteurs [and in] other bodies – the CRC [Committee on the Rights of the Child], CEDAW [Committee on the Elimination of all forms of Discrimination Against Women], the Working Group on Arbitrary Detention, the Special Rapporteur on Violence against Women, the Representative of the Secretary General on Human Rights Defenders. This momentum was generated by Beijing. Paragraph 96 had a lot of impact and it led to a change in norms post-Beijing.”<sup>138</sup>

Parallel strategies were also important at the CHR. The successes evidenced by the 2002 adoption of a resolution on the right to health and the appointment of the Special Rapporteur on the Right to Health, Paul Hunt, were overshadowed by the battle over the resolution on sexual orientation. Yet Hunt’s report on sexual and reproductive health contains one of the most complete, well-argued and explicit statements on sexual rights as human rights in any UN document and will likely prove useful in years to come. Note too that the resolution on EJE’s continued to be adopted throughout these events. In the struggle for progressive language on sexuality, multiple fronts have to be opened and sustained.

Advocates also need to think more deeply to ensure advocacy on sexuality does not inadvertently reinforce heterosexism. As Ignacio Saiz has pointed out, “The binary categories

<sup>137</sup> For local examples of alliance building, see also in this publication: Vianna, A. R. B. & Carrara, S. Sexual politics and sexual rights in Brazil: a case study, pp. 41-51; Ramasubban, R. Culture, politics and discourses on sexuality: a history of resistance to the anti-sodomy law in India, p. 119; Cáceres, C., Cueto, M. & Palomino, N. Sexual and reproductive-rights policies in Peru: unveiling false promises, pp. 152-154; Ikkaracan, P. How adultery almost derailed Turkey’s aspiration to join the European Union, pp. 266-270.

<sup>138</sup> Conversation with Brigid Inder, May 19, 2005.

inherent to non-discrimination norms – men/women, homo/heterosexual – can also serve to subtly reinforce the subordination of one by the other.”<sup>139</sup> Some of the advocacy on behalf of “sexual rights for all women” in Beijing is a case in point. Similarly, advocates have to push forward a positive agenda on sexuality, and guard against the temptation to frame arguments solely in terms of avoiding violence and disease.

The post-Foucauldian deconstruction of gender, sex, and sexuality has revealed that progressives can and do occupy different positions and speak from different perspectives. As the bases of discourses have multiplied so have the potential forms of counter-discourses. This does not mean that it is not valid to speak from the perspective of “woman,” “gay man,” or “trans.” “Sex”, “gender”, and “sexual orientation” remain viable terms of engagement, but they can no longer be understood as universal, immutable terms of engagement. Foucault makes it clear that identities are tied to history and power so are thus open to change.

Foucault’s description of biopower as a multiplicity of forced relations running through the social body as a whole is instructive in thinking about progressive organizing on sexuality. Since power is not centralized, neither can resistance come from a single source. Feminisms and LGBT and queer activisms, in all their permutations, offer possibilities for this kind of resistance. Bidy Martin argues that:

*“...a very different form of political organization and struggle suggests itself, an alternative to the frontal attack on the state led by the One revolutionary subject, local struggles that undermine institutional power where it reveals itself in ideology under the mask of humanism, or as it operates in homes, schools, prisons, therapists’ offices, and factories, wherever the work of normalization is carried on. What is crucial is the capacity to shift the terms of the struggle, the ability to see our position within existing structures but to respond from somewhere else.”<sup>140</sup>*

Such may be the path to Foucault’s “different economy of bodies and pleasures.”

<sup>139</sup> Saiz, I. (2004). Bracketing sexuality: Human rights and sexual orientation — A decade of development and denial at the UN. *Health and Human Rights* 7(2): 48-81, 63.

<sup>140</sup> Martin, B. (1988). Feminism, criticism and Foucault. In I. Diamond, & L. Quinby, (Eds.) *Feminism and Foucault: Reflections on resistance*, p. 10. Northeastern University Press, 1988.