

[GA Third Committee deletes 'sexual orientation' from resolution on extrajudicial executions](#)

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For the first time in over ten years, African, Arab and Islamic States in the Third Committee were successful in their bid to remove a reference to sexual orientation from the resolution on [extrajudicial, summary or arbitrary executions](#). On 16 November 2010, [an amendment](#) jointly proposed by the African Group (Mali), the Arab Group and the Organisation of Islamic Conference (Morocco), was adopted by [a vote](#) of 79 in favour, 70 against, and 17 abstentions. It meant that the long-standing paragraph that refers to more than 15 groups that are vulnerable to extrajudicial killings now does not specifically urge States to protect against and investigate killings committed because of discrimination on the basis of sexual orientation. Although the list of the other vulnerable groups remains, States are now simply urged to protect against and investigate 'all killings committed for any discriminatory reasons on any basis'.

Although discrimination on the basis of sexual orientation and gender identity remains one of the most sensitive topics under discussion in the UN human rights system, most States have been in favour of the reference remaining in the extrajudicial executions resolution because it focuses on the most egregious violations. However, this year the decision by the African Group, Arab Group and OIC to jointly (rather than individually) bring an amendment finally tipped the balance in the other direction. (1) Ten African States that had abstained from the vote on the same issue in 2008 switched to vote in favour of the deletion this year, along with a handful of other States, mostly from the Caribbean (2).

This represents a backward step for the Third Committee and the General Assembly, as the resolution on extrajudicial executions was the only UN text where Member States formally acknowledged their responsibility to prevent discrimination on the basis of sexual orientation.

The deletion of sexual orientation from the resolution also runs counter to a range of initiatives by various parts of the UN human rights system to highlight the responsibility of States to prevent discrimination on the basis of sexual orientation and gender identity. These include the [2008 statement](#) in the General Assembly on human rights, sexual orientation and gender identity, which is supported by 68 States. More recently at a [high-level panel in Geneva](#) in September 2010, the UN Secretary-General, the High Commission for Human Rights, and Archbishop Emeritus Desmond Tutu, all called for an end to violence and criminal sanctions on the basis of sexual orientation and gender identity.

The discussions and vote in the Third Committee

All States that spoke in support of the amendment began by confirming their belief that human rights should be equally enjoyed by all, particularly the right to live free from discrimination and violence. The arguments presented by Benin (on behalf of the African Group) and Morocco (on behalf of the Arab Group and OIC) in support of the deletion were the same as in previous years. They included that sexual orientation was a term not recognised or defined in international law, and that States could not create new rights for certain groups that had no basis in the *Universal Declaration of Human Rights*. Benin, Morocco, Cuba and Jamaica argued that deleting the reference to sexual orientation was a 'non-selective' and 'non-controversial' way for the Third Committee to avoid this divisive issue, and at the same time, not exclude any group from protection by the State. St. Lucia echoed this point, adding that the co-sponsors' 'shopping list' approach was not only unwieldy, but would lead to 'misinterpretation and misuse'. Some groups were highlighted at the expense of others, when all people should enjoy equal protection under the law. Although no State advocated deleting any other part of the paragraph (OP6(b)) at this stage, Jamaica suggested that in future, all that was needed was a 'general reference to all vulnerable groups, without distinction'.

As the main sponsor of the biennial resolution, Finland (on behalf of the Nordic Group) reminded the Third Committee that it had begun drawing attention to the serious human rights violations suffered by lesbian, gay, bisexual and transgender (LGBT) people in this resolution in 1999. This was in response to documented cases of extrajudicial killings on the grounds of sexual orientation in a number of reports by the Special Rapporteur

on extrajudicial, summary and arbitrary executions. Finland added that since that time, subsequent mandate-holders had 'continuously raised this issue in reports, statements, urgent appeals to States'. None of the co-sponsors were claiming that any group was more important than another, rather the purpose of highlighting sexual orientation was to alert States that they needed to take steps to protect LGBT communities from these killings. The general reference to States' obligation to prevent 'discrimination on any basis', would not, in the opinion of the co-sponsors, be sufficient to ensure all States understood that they needed to take targeted steps to protect LGBT individuals.

Several Western States supported Finland and advocated the reference to sexual orientation be retained (France, Norway, Sweden, Switzerland, UK, USA). Switzerland pointed out that statistics showed that threats and killings of LGBT individuals were 'at a new high'. In its view, the General Assembly must apply human rights to all groups, without selectivity. Sweden warned that the deletion would suggest that the General Assembly was 'looking the other way' or 'condoning' discrimination on the basis of sexual orientation as a legitimate ground for carrying out an extrajudicial execution. This was at odds with the General Assembly's obligation to investigate and prosecute crimes against all persons. The UK added that impunity for any extrajudicial executions was completely unacceptable. Along with Sweden, the UK also rejected suggestions that OP6(b) should be streamlined to make it consistent with other Third Committee texts. Rather, they argued the paragraph only referred to highly vulnerable groups that had been identified by the Special Rapporteur, and as such was consistent with the approach taken in other General Assembly resolutions. The US said the arguments put forward to support the amendment were 'without merit'. The reference to sexual orientation did not create new rights, but reaffirmed the right to life.

Latin American States, which have been strong advocates of the rights of LGBT people in the General Assembly in recent years, were largely absent from the discussion.⁽³⁾ Brazil was the only one to make a statement, which was brief and rather muted in its support. It commented that the deletion of the reference to sexual orientation did not send a positive message, and repeated the call for dialogue on the matter.

A new element in the discussions at the Third Committee was the suggestion that if the international community wanted to address the issue of sexual orientation, it should agree to do so in a direct and focused manner, rather than through divisive resolutions. It was notable that this suggestion came from Benin (on behalf of the African Group) and South Africa. Benin suggested that States would first need to agree on a format and framework for discussion. South Africa suggested that an open-ended intergovernmental discussion was required so that States could establish the parameters of sexual orientation under international law.

The Third Committee then proceeded to a vote on the resolution as amended, and adopted it with 165 in favour, none against and 10 abstentions.⁽⁴⁾

The US explained that although it 'agreed with much in the text', it had abstained on several grounds. It was 'dismayed' by the loss of the reference to sexual orientation and the inability of the General Assembly to take up this matter. It also objected to the text obscuring the important distinctions between international human rights law and international humanitarian law, and affirmed that international humanitarian law 'generally governed' the situation where a State was involved in armed conflict outside its national territory.

Sudan was the only other State which explained its abstention. It rejected OP10, as along with others States, it did not accept the universal jurisdiction of the International Criminal Court. It criticised the court's 'selective' and 'politicised' approach, along with its failure to complete a single trial after more than ten years of operation. Controversy surrounded the Court, and its relationship with the Security Council remained ambiguous.

Iran and Jamaica both joined consensus, but expressed reservations about OP5, which referred to the death penalty. Jamaica argued it falsely implied the use of the death penalty automatically amounted to an extrajudicial execution.

Looking forward, the resolution is expected to be taken up by the plenary of the General Assembly and adopted, most likely by consensus, in mid-December.

Important new language in the resolution on extrajudicial executions

The resolution contained a number of significant new paragraphs, which were overshadowed in the Third Committee by the controversy regarding sexual orientation. Each of these new additions gave effect to recommendations by the Special Rapporteur:

- Responding to several reports by the Special Rapporteur, OP 9 ‘urges’ States to prevent or end ‘**prisoner control of prisons**’, in order to meet their human rights obligations, which include protection against extrajudicial, summary or arbitrary executions. Although the paragraph was significantly pared back from Finland’s original proposal, the core elements were retained and provide a solid basis for future negotiation.
- Based on the Special Rapporteur’s 2009 report to the General Assembly,(5) OP 13 ‘encourages’ States to prevent and end ‘**vigilante killings**’ by undertaking ‘systematic studies’ that will allow them to take ‘context-specific measures and focused action’.
- OP14 picks up on a recommendation in the [Special Rapporteur’s report to the current session](#) of the General Assembly concerning ‘**new technologies**’. It ‘encourages’ OHCHR to convene ‘**an expert consultation** to discuss the current and potential human rights applications of new technologies and the risks and obstacles to their effective use’. It suggests that States, regional organisations, relevant UN bodies, civil society organisations and other relevant stakeholders should participate. It also invites OHCHR to submit a summary report of the consultation to the Human Rights Council.

The Third Committee’s interactive dialogue with the Special Rapporteur

On 22 October, the new Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Christof Heyns, presented the final report of his predecessor, Mr Philip Alston, to the Third Committee. His first interaction with the Committee was constructive and non-confrontational, even though he stood by the reports’ recommendations and indicated his interest in pursuing them. Although the recommendation in relation to new technologies found support amongst States (EU, Canada, US), others in relation to targeted killings proved more sensitive, particularly with the US.

Mr Heyns shared the concerns of his predecessor that ‘grave danger’ could be done to the legal framework related to the right to life, if transparency and accountability for targeted killings were not addressed. He commented that targeted killings were unlikely to be lawful if there was no armed conflict, but there were grey areas where it was not so clear whether the situation constituted an armed conflict. The international community needed to be engaged to clarify how international laws should be applied in these instances. Pakistan was interested to know what measures were available to the international community to address criminal responsibility, and what specific obligations required States to provide information on criminal responsibility.

The US, whose use of targeted killings came under particular scrutiny by the previous Special Rapporteur, responded by reiterating its view that armed conflict situations were not within the mandate of the Special Rapporteur because they were addressed under international humanitarian law. The US disparaged Mr Alston for his ‘fundamental confusion or misapplication of the law’ on this point, and insisted it had provided full disclosure of its policy regarding the use of force. It only went after ‘legitimate targets’ and ensured that ‘collateral damage was kept to a minimum’. The Special Rapporteur responded directly, explaining that the mandate rightfully needs to deal with international humanitarian law, and had done so for some time. He warned that there was a risk of a protection gap opening if human rights law and international humanitarian law were ‘artificially’ separated and a ‘silo approach’ taken.

Another point of convergence between the outgoing and incoming Special Rapporteurs was the need for the international community to begin to address the implications of the development and use of lethal robotic technologies. As a first step, they recommended the Secretary-General convene a group of military and civilian experts from a range of professions to advise on the ethical, moral and legal questions these technologies raise. Particular consideration should be given to the question of responsibility for civilian casualties or other violations of the laws of war, and whether lethal force should ever be permitted to be fully automated. Although Canada, Liechtenstein and Switzerland asked a number of questions to explore aspects of this recommendation, there was otherwise little indication that States were interested in taking up the proposal.

In terms of his vision for the mandate, the new Special Rapporteur said he intended to collaborate constructively with States, inter-governmental organisations and civil society. In addition to following up on the priorities identified by the previous mandate-holder, he planned to work on: the right to life of children (including children in armed conflict, the death penalty, and infanticide); aspects of the protection of civilians in armed conflict; organised and deadly crime. When pressed further during the dialogue, the Special Rapporteur added several other areas of interest, including sexual violence and unlawful killings; UN peacekeepers; demobilisation; corruption; mass graves; non-State actors; death penalty; reparations. Cooperation with regional and sub-regional human rights mechanisms, especially with respect to norm setting, was another ambition.

Footnotes

(1) In 2008, Uganda (on behalf of the OIC) proposed a very similar amendment to the resolution, which was put to a vote in the Third Committee and defeated: 59:77:25.

(2) Angola, Botswana, Burundi, Ethiopia, Kenya, Lesotho, Madagascar, Namibia, Rwanda, Tanzania. Cape Verde and Mauritius were the only African States to abstain this year; all others voted in favour of the amendment. The other States that switched from abstention in 2008 to vote in favour this year were Bahamas, Haiti, Jamaica and Kazakhstan. In Latin America, Colombia stood out this year as the only State to abstain from the vote, whereas its neighbours all opposed the amendment (with the exception of Bolivia which did not vote). In 2008 Colombia had voted against the deletion of sexual orientation.

(3) In 2008, Argentina delivered the joint statement on human rights, sexual orientation and gender identity referred to above.

(4) States that abstained: Burkina Faso, Israel, Libya, Marshall Islands, Sri Lanka, Sudan, Turkey, Tuvalu, US, Zimbabwe.

(5) Para.83 of A/64/187.