

[Karen E. Smith](#)

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Group politics in the debates on gender equality and sexual orientation discrimination at the United Nations

Karen E. Smith

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Abstract The article assesses the impact of 'group politics' in the particularly contentious debates in the UN's Human Rights Council and the UN General Assembly regarding gender equality and discrimination on the basis of sexual orientation. The article identifies those groups that have been most active in the debates, and then analyses how and why they have shaped debates and norms in this area, how they interact with each other, and whether groups help facilitate consensus or foster polarisation in debates. The article examines the extent to which those groups are cohesive, and identifies the norms that each group puts forward in debates (through statements and resolutions). It then assesses and explains their impact on outcomes, the creation of shared norms, and the potential for collective action. It further explores the implications of increasing cross-regional group activity in the Human Rights Council.

Key words: United Nations, human rights, protection of the family, sexual orientation, traditional values, political groups, regional groups

Introduction

Human rights issues have been contested at the United Nations (UN) since its creation, the dynamics of contestation surviving the end of the east-west divisions of the Cold War. Both of the intergovernmental bodies at the UN that discuss human rights issues, the General Assembly's Third Committee and the Human Rights Council, have been described as 'politicised', meaning that states

use them ‘to achieve political objectives’ that are not related to human rights.¹ Regional and political groups have been blamed for fostering this politicisation.² However, ‘politicisation’ is not helpful in illuminating all of the dynamics of contestation on human rights issues at the UN: ‘polarisation’ or ‘division’ are more accurate terms, as states do not just posture for domestic or foreign audiences, or attempt to deflect criticism of their human rights records; they do argue over principles and norms, but because these are seen as irreconcilable, and because groups help to solidify positions, polarisation occurs. Using Rapaport’s terminology (see the Introduction to this special issue), debates at the UN are both ‘debates’ and ‘games’.

The Human Rights Council (HRC) is seen as more divided than the UN General Assembly Third Committee, by diplomats familiar with both institutions. Since its launch in 2006, the HRC has been polarised on several issues: Israeli violations of human rights in the occupied Palestinian territories; ‘country-specific’ resolutions (resolutions that address the human rights situation in specific countries); freedom of speech; gender equality and LGBT (lesbian, gay, bisexual and transsexual) rights; and issues relating to civil society and human rights defenders. On all of these issues, regional and political groups have been active. In the first few years of the Human Rights Council, the European Union (EU) was often pitted against the Organisation of the Islamic Conference (OIC) and/or the Africa Group over Israeli human rights violations (EU v OIC), freedom of speech (EU v OIC) and country-specific resolutions (EU v OIC and Africa Group).³ The OIC’s

¹ Rosa Freedman, *Failing to Protect: The UN and the Politicisation of Human Rights* (London: Hurst and Co, 2014), p. 20. In 2006, the Human Rights Council replaced the old Commission on Human Rights; its remit is to promote and protect human rights worldwide. It is made up of 47 states elected from the five regional groups, and meets in Geneva three times a year, though one-third of the HRC membership can also call for a special session to be held to discuss urgent situations. The Third Committee consists of all the UN member states, and meets every autumn in New York. It debates human-rights resolutions before they are presented to the General Assembly. Far fewer resolutions are debated in the General Assembly than in the HRC.

² Freedman, *Failing to Protect*, pp. 22-3.

³ See: Richard Gowan and Franziska Brantner, ‘A Global Force for Human Rights? An Audit of European Power at the UN’, Policy Paper, European Council on Foreign Relations, 2008); Richard Gowan and Franziska Brantner, ‘The EU and Human Rights at the UN: 2010 Review’, Policy Brief, European Council on Foreign Relations, 2010; Richard Gowan and Franziska Brantner, ‘The EU and Human Rights at the UN: 2011 Review’; Policy Memo, European Council on Foreign Relations, 2011; Karen E. Smith, ‘The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence’, *Journal of European Public Policy*, 17, 2, 2010; Karen E. Smith, ‘The European Union and the Politics of Legitimation at the United Nations’, *European Foreign Affairs Review*, 18, 1, 2013. On the OIC’s attempts to promote norms at the HRC, see Gregorio Bettiza

resolutions were usually approved. The polarisation was decried by numerous commentators; in 2008, UN Secretary-General Ban-Ki Moon told HRC members that they must 'rise above partisan posturing and regional divides'.⁴

The perceived negative effects of group politics at the HRC have prompted some diplomats to try to change the way they work through and with groups. Since 2009, there have been attempts to try to 'break the blocs' and engage in more cross-regional coalition-building. The space for flexibility in a diplomatic system hitherto dominated by groups has been expanding. Interviewees in Geneva aver that when the US joined the HRC in 2009,⁵ the dynamics of group politics began to shift. The US tried to break the dynamic of the 'EU versus the rest' on a proposed resolution on the freedom of opinion, in which it invited one country from each region to join a 'core group' so that the initiative was not seen as a 'western' one, and the regional and political blocs were split. Since then, attempts to build cross-regional core groups have spread. Many such attempts are led by the 'moderates' or 'bridge-builders' in the groups, and the informal groups have emerged in an attempt to transcend stale inter-group dynamics. One cross-regional group, the 'Like-Minded Group', is, however, formed of states extremely protective of national sovereignty. The LMG is an opaque grouping with a shifting wider membership but a core that has usually included Russia, China, Egypt, Pakistan, Belarus, Cuba, and Sri Lanka. Most of those states come from inactive regional groups: the Asia Group and the Eastern European Group (Russia, Belarus), which are too heterogeneous to do more than elect members to UN bodies. Most are also in the Non-Aligned Movement, which has been somewhat active at the HRC but is always divided on votes and rarely speaks with one voice. The LMG thus serves as a counter-weight to moderate cross-regional groups.

and Filippo Dionigi, 'How do Religious Norms Diffuse? Institutional Translation and International Change in a Post-Secular World Society', *European Journal of International Relations*, 21, 3, 2015.

⁴ United Nations Secretary-General, 'Secretary-General, in Geneva, says work to achieve human rights declaration's principles must continue until they are "foundation of life" for all people', Press Release SG/SM/11999-HRC/10, 12 December 2008. See also: Peggy Hicks, 'Statement by Human Rights Watch global advocacy director Peggy Hicks to the US Senate Foreign Relations Committee on 26 July 2007'; International Federation of Human Rights, 'Human Rights Council Unable to Act Strongly', press release, 26 September 2008.

⁵ Until 2009, the US refused to participate in the HRC, as it argued that the HRC still retained the weaknesses inherent in the former Commission on Human Rights, essentially that human rights-violating countries could still be elected to it.

The dynamics at the General Assembly in New York have not (yet) shifted in the same direction. Diplomats there maintain that the UN General Assembly (UNGA) is becoming increasingly divided, with the EU and the Africa Group often opposing each other. In New York, there is more confrontation between formal groups.

This article seeks to explore and explain the changing role of groups at the HRC and UNGA Third Committee by looking at recent debates on an interrelated trio of issues: ‘traditional values’ and human rights; the protection of the family; and discrimination on the basis of sexual orientation and gender identity. These have been some of the most contentious human rights issues debated at the UN in the last six years. Votes are called for on the resolutions, a clear indication of their divisiveness (most resolutions at the HRC and UNGA are passed by consensus, and consensus is often the stated aim of the sponsors of resolutions). Furthermore, amendments have been proposed on several of the resolutions, to try to alter the language quite fundamentally – another sign of contestation – and the amendments have all been voted on as well. The three issues are interlinked, and intersect with discourses on gender equality: ‘traditional values’ have been explicitly linked to an emphasis on the family (understood as a heterosexual couple with children) as the key unit of society, an emphasis which critics argue can mask violations of the rights of individuals (women, but also children, lesbians and gays) within families. The issues illustrate profound disagreements over cultural relativism vs universalism, the imposition of ‘western’ values on other states, and the role that international human rights institutions should play in sovereign states. One commentator has viewed the resolutions on ‘traditional values’ as indicative of the ‘legitimate concerns that significant sections of the global South have about the human rights project’.⁶ Debates on the trio of issues are ongoing outside the HRC and UNGA as well, in other UN contexts such as the Commission on the Status of Women, and the Commission on Population and Development, within states, and in civil

⁶ Christopher J. McCrudden, ‘Human Rights, Southern Voices and “Traditional Values” at the United Nations’, University of Michigan, Public Law and Legal Theory Research Paper Series, Paper no. 419, May 2014, p. 2.

society internationally.⁷ But the HRC and UNGA Third Committee are the premier human rights bodies in the UN framework so they are the focus here.

The article considers the extent to which states use formal regional and political groups, or more informal cross-regional groups, in their attempts to affect these debates, and then explains how and why those groups have influenced debates and outcomes. Indications of group activity include: sponsoring and co-sponsoring resolutions; sponsoring amendments to resolutions; presenting statements; participating in debates by presenting explanations of votes or positions on resolutions; and coordinating voting positions. The empirical data in this article derives from official documents (principally the reports of the Human Rights Council and the General Assembly), webcasts of debates, and interviews with almost twenty diplomats and activists in Geneva, New York and London in 2014.⁸ Further background knowledge derives from interviews conducted with diplomats involved in EU-UN relations in 2008 and 2010, in Brussels, London and Geneva.

The next two sections describe the debates at the UN on each of the three issues, firstly in Geneva at the HRC and then in New York at the UNGA, with particular attention paid to the role that groups played in those debates, and the arguments they used. The role of groups in both locations is then analysed, and the final section puts forward the conclusions.

The trio of issues in Geneva

Since 2009, there have been seven resolutions presented to the HRC on the three issues (see Table 1). Interestingly, no regional or political group sponsored any of the resolutions. As will be seen below, informal groups were behind the presentation of resolutions on ‘traditional values’ and ‘protection of the family’. The lack of formal group involvement in sponsorship reflects the changing

⁷ Two examples of civil society activism, from both sides of the debate: groups such as the UN Family Rights Caucus or Family Watch International link activists in developing and developed countries and lobby in several UN forums and individual countries; and a group of human rights lawyers developed the 2006 Yogyakarta Principles on human rights and sexual orientation and gender identity, which civil society groups use to try to influence international debates in this area at the UN and in individual countries.

⁸ Interviewees were asked a core set of questions about the operation and role of regional and political groups in general, and about the groups in which their states were involved. Diplomats from states in all the major groups were interviewed. All requested anonymity.

dynamics of group politics in Geneva. Between 2006 and 2014, regional and political groups sponsored 31 per cent of all resolutions presented; many of those were the most controversial debated at the HRC: defamation of religions; Israeli violations of human rights; and some country-specific resolutions.⁹ However, diplomats in Geneva report that controversial topics are now seen to need wider cross-regional support.

The trio of issues is still of interest to the groups involved in the debates, though resistance to the spread of ‘western norms’ is intrinsically part of that interest for the Africa Group, OIC and Arab Group. As a result, arguably both a ‘game’ and a ‘debate’ are visible with respect to these issues: the contest (resistance to imposition of western human rights norms; attempts to push forward on issues such as human rights and sexual orientation) is important, but there are also clear attempts to persuade states, as can be seen in the language used by diplomats in the HRC.

Table 1: The contested resolutions at the HRC¹⁰			
Resolution	Date approved	Introduced by?	Vote (yes-no-abstain)
‘traditional values and human rights’			
12/21: ‘Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind’	October 2009	Russia	26-15-6

⁹ Groups sponsored 222 of 713 resolutions. ‘Resolutions’ here includes substantive ‘decisions’, thus excluding decisions relating to Universal Periodic Review (UPR) outcomes or administrative matters. Some resolutions were sponsored by more than one group (the OIC and Arab Group frequently acted together). Sources: UN Human Rights Council, Report of the Human Rights Council on its () Session; reports available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>

¹⁰ Sources: United Nations Human Rights Council, ‘Report of the Human Rights Council on its 12th session’, A/HRC/12/50, 25 February 2010; ‘Report of the Human Rights Council on its 16th session’, A/HRC/16/2, 14 November 2011; ‘Report of the Human Rights Council on its 17th session’, A/HRC/17/2, 24 May 2012; ‘Report of the Human Rights Council on its 21st session’, A/HRC/21/2, 26 August 2013; ‘Report of the Human Rights Council on its 26th session’, A/HRC/26/2, 11 December 2014; ‘Report of the Human Rights Council on its 27th session’, A/HRC/27/2, 26 December 2014. ‘Report of the Human Rights Council on its 29th session’, A/HRC/29/2, 25 November 2015.

16/3 'Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind'	March 2011	Russia	24-14-7
21/3 'Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind'	September 2012	Russia	25-15-7
Protection of the family			
26/11: 'Protection of the family'	June 2014	Côte d'Ivoire, Egypt, Sierra Leone	26-14-6
29/22: 'Protection of the family'	July 2015	Saudi Arabia, Egypt	29-14-4
Sexual orientation and gender identity			
17/19 'Human rights, sexual orientation and gender identity'	June 2011	South Africa, Brazil	23-19-3
27/32 'Human rights, sexual orientation and gender identity'	September 2014	Brazil, Chile, Colombia and Uruguay	25-14-7

Resolutions on traditional values

The three resolutions on 'traditional values' and human rights call for a better understanding of how 'traditional values of humankind' can contribute to the promotion and protection of human rights. Resolution 12/21 requested that the UN High Commissioner for Human Rights convene a workshop to exchange views on this topic. Resolution 16/3 then requested that the Human Rights Council's Advisory Committee prepare a study on the topic and present it to the 21st session of the HRC.

Resolution 21/3 gives the Advisory Committee more time to finalise the study and requests the Office of the High Commissioner for Human Rights to collect information from states on 'best practices in the application of traditional values while promoting human rights and upholding human dignity', and to present a summary at the 24th session of the HRC.

All three resolutions on traditional values were approved by the HRC, with the support of many African, Middle Eastern and Asian countries. Initially groups were not much involved in the debates. The first resolution on traditional values (12/21) presented in October 2009 by Russia had 29 co-sponsors, all individual countries and no formal groups. Many of the sponsors are members of the LMG, which, according to my interviewees in Geneva, tends not to intervene directly in debates but works behind the scenes.

The role of formal groups in the debate was relatively limited, with only the EU and CANZ (Canada, Australia and New Zealand) making statements. The EU expressed concerns that the notion of 'traditional values' was undefined and imprecise, and that it was not clear how such values conformed to international human rights law. The EU noted that traditional practices, such as female genital mutilation, were contrary to human rights law, and that therefore it opposed the resolution because it could be used to weaken human rights norms. CANZ took a similar view.¹¹

The second resolution on traditional values (16/3), presented in March 2011, attracted more co-sponsors, including the OIC, allowing Russia to claim that 72 states co-sponsored it. States also used groups more in the debates, with Pakistan for the OIC and Nigeria for the Africa Group expressing support for the resolution. The OIC statement was relatively understated – noting that the particularities of cultures, nations, and so on must be kept in mind. Nigeria's statement, on behalf of the Africa Group, was less so, indicating that to Africa, 'God, family, community matters; the traditional way of life matters', and that the culture of others should not be imposed on Africa.¹² The EU reiterated the objections it had raised a year and half earlier: there was no consensus on

¹¹ Human Rights Council, archived webcast of morning session, 2 October 2009 (<http://www.un.org/webcast/unhrc/archive.asp?go=091002>)

¹² Human Rights Council, archived webcast of morning session, 24 March 2011 (<http://www.un.org/webcast/unhrc/archive.asp?go=110324>)

what constituted traditional values, the resolution left too much room for interpretation and cultural relativism, and it did not condemn human rights violations that were justified by reference to traditional values. Instead, the resolution only indicated that ‘the better understanding and appreciation of these values contribute to promoting and protecting human rights and fundamental freedoms’. Chile spoke on behalf of four South American countries, expressing similar concerns.

The third resolution on traditional values (21/3), presented in September 2012, attracted co-sponsorship by the OIC and the Arab Group. The only group that participated in the debate was the EU. This debate however was considerably more contentious, as the Advisory Committee had been divided over the issue of traditional values, and its initial study indicated considerable concerns that traditional values could be used to legitimise human rights violations. Russia neglected to mention the concerns, and pushed ahead with the resolution even though the study had not been completed. This was criticised by several diplomats during the debate.¹³

Resolutions on protection of the family

Resolution 26/11, asks the HRC to convene a panel session¹⁴ on the protection of the family at its 27th session in September 2014, and requests the High Commissioner for Human Rights to present a report summarising the panel session at the 28th session of the HRC in March 2015. Resolution 29/22 states that the family is the natural and fundamental group unit of society, notes a variety of positive outcomes that families contribute to, and requests the High Commissioner to prepare a report on the implementation by states of their obligations with regard to the protection of the family, and on the role of families in poverty eradication and sustainable development.

The first resolution on the protection of the family (26/11), presented in June 2014, was sponsored primarily, though not officially, by the Africa Group (all African countries sponsored it),

¹³ Human Rights Council, webcast of session, 26 September 2012 (<http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/21st-session/watch/1.2-vote-item3-36th-meeting-21st-regular-session-of-human-rights-council/1863440075001>)

¹⁴ Panel sessions are sessions in which a panel of experts presents views and research on particular topics, and answers questions from HRC delegates.

with the support of the OIC and countries in the core of the LMG (including Russia, China, and Sri Lanka). The sponsors then became known as the ‘group for the protection of the family’. Diplomats in Geneva stated that the resolution represents a response to the debates on human rights and sexual orientation in Geneva and New York (see below), and an indication of Africa Group ‘push-back’ against what it perceives as attempts to foist foreign values on it. An amendment to the resolution was sponsored by Chile, France, Ireland and Uruguay, and co-sponsored by a group of states including 26 of the 28 EU member states, which would have added the wording ‘bearing in mind that, in different cultural, political and social systems, various forms of the family exist.’ But the amendment was effectively rejected when Russia moved to adjourn consideration of it, and its ‘no-action’ motion was carried by a close vote of 22-20-4. The only group to participate in the debate was the EU, which opposed the resolution because it did not mention that different forms of the family exist, or acknowledge that the human rights of individuals within the family must be protected as abuses can occur within the family.

At the panel discussion in September 2014, numerous groups participated: the Africa Group; CELAC (Community of Latin American States); Austria, Croatia and Slovenia; the EU; Uruguay for a cross-regional group; the US for a cross-regional group; the OIC; Australia for a cross-regional group; the LMG; and Egypt for the sponsors of Resolution 26/11 (the group for the protection of the family). They were essentially divided along the lines indicated already in the debate on Resolution 26/11. The Africa Group, the OIC, the LMG and the group of the friends of the family all indicated that states must support the family as the fundamental unit of society, that families have a role to play in eradicating poverty and enabling development, that the family is a custodian of morals and traditional values.¹⁵ All of the other groups argued that there were a wide variety of family types, that the human rights of family members had to be protected (from human rights violations such as

¹⁵ See, ‘Statement delivered by Ethiopia on behalf of the African Group on panel on the protection of the family’, ‘Statement by Pakistan on behalf of OIC on Panel discussion on the protection of the family and its members’; ‘LMG Statement Panel Discussion on Protection of the Family and its Members’; Statement by Egypt on behalf of the main sponsors of the resolution 26/10; all 15 September 2014. Available on the HRC extranet.

violence, rape or forced marriage), though CELAC focused mostly on the need to prevent violence against children.¹⁶

The second resolution on the protection of the family (29/22), was presented in July 2015 by Saudi Arabia and Egypt ‘on behalf of a cross regional core group’,¹⁷ and co-sponsored by the Arab Group, the OIC (except Albania), and Africa Group (except for South Africa). Several amendments were proposed; one, by Brazil, South Africa and Uruguay, would have added wording recognising that ‘in different cultural, political and social systems, various forms of the family exist’. Russia again called for a no-action motion on it, which was carried (narrowly) by the HRC (22-21-3). Other amendments submitted by Albania, Ireland and Norway, and by Albania, Denmark and Norway, would have specified that the family ‘and its members’ deserved protection, and strengthened language about protection of individual family members. These were defeated.

In the debate, there was relatively little participation by states in the name of formal groups; only Latvia spoke on behalf of the EU. There was cross-regional activity, and not just the ‘group of the friends of the family’. Estonia spoke on behalf of a large, cross-regional (though predominantly European) group of 45 states; Norway and the US also spoke on behalf of a (much smaller) group of states. Many diplomats – speaking either for or against the resolution – mentioned repeatedly other human rights commitments to support their positions. Egypt’s introduction of the resolution began with this: ‘in accordance with international human rights law, the UDHR, the two international covenants, the CRC and other international instruments, the family is the natural and fundamental unit of society and as such is entitled to protection by the State and society’.¹⁸ Estonia, Ireland, Latvia (for EU), Norway, and Uruguay – among others – referred to international human rights law, and particularly the Convention on the Rights of the Child, the rights of women, and gender equality, to object to the resolution. Several diplomats on both sides decried the ‘politicisation’ of the debate,

¹⁶ See ‘Panel on the Protection of the Family and its Member, EU Intervention’ and ‘Panel: Proteccion de la Familia. Intervencion de la CELAC’, 15 September 2014. Available on the HRC extranet.

¹⁷ Permanent Mission of the Arab Republic of Egypt, ‘Introduction of Draft Resolution L.25 on “Protection of the Family”’, 2 July 2015. Available on the HRC extranet.

¹⁸ Permanent Mission of the Arab Republic of Egypt, ‘Introduction of Draft Resolution L.25 on “Protection of the Family”’, 2 July 2015. Available on the HRC extranet.

and lamented the use of 'divisive' or 'controversial' language that prevented consensus on the protection of the family.¹⁹

Resolutions on sexual orientation

Surprisingly, the two resolutions on sexual orientation were approved by the HRC, despite the strong opposition of the Africa Group and the OIC to them, and the HRC's approval of the resolutions discussed above. Resolution 17/19 (June 2011) requests that the Office of the High Commissioner for Human Rights (OHCHR) prepare a study 'documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity... and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.' A panel discussion at the 19th session of the HRC in March 2012 was then to have a dialogue about the issue of discriminatory laws and violence against individuals, informed by the study. Resolution 27/32 (September 2014) takes note of the report and the panel discussion, and requests the High Commissioner to update the report with a view to sharing ways to combat discrimination and violence, and to share the report at the 29th session in June 2015.

Why did these resolutions pass? The dynamics of group politics were different. All of the Latin American countries in the HRC voted for the resolutions, including those countries that have been in the core of the LMG, so the LMG 'split'. The first resolution on sexual orientation (17/19), in June 2011, was sponsored and co-sponsored by two individual states, Brazil and South Africa. South Africa was heavily criticised by the Africa Group for doing so.²⁰ In the debate, the EU, Africa Group

¹⁹ Archived webcast of 45th Meeting, 29th Regular Session Human Rights Council, 3 July 2015: <http://webtv.un.org/search/ahrc29l.25-vote-item3-45th-meeting-29th-regular-session-human-rights-council/4336313483001?term=Human Rights Council&languages=&sort=date>.

²⁰ Jourdan points out that in the March 2011 HRC session, South Africa had put forward a much more limited resolution on sexual orientation – which would set up a working group to define 'sexual orientation' – but under pressure from the US, it withdrew the draft. Domestic and international civil society pushed South Africa into sponsoring a more progressive resolution, but it then came under fire from other African states opposing such a resolution. Eduard Jourdaan, 'South Africa and the United Nations Human Rights Council', *Human Rights Quarterly*, 36, 1, 2014, p. 117.

and OIC intervened. The EU supported the resolution as an important step in addressing issues of discrimination and violence against people because of sexual orientation and gender identity, and argued that it did not create new rights but merely sought to apply existing human rights standards. The OIC and Africa Group opposed the resolution on the grounds that the issues ('so-called' sexual orientation and gender identity) were only related to 'personal behaviours and preferences', and had nothing to do with human rights. Furthermore, there was no legal foundation for the 'notions' and these had never been agreed by the UN general membership, and the resolution ignored the diverse cultural backgrounds of UN member states.²¹ Again, then, states were trying to appeal to wider norms and practices (norms against violence; existing standards, or lack of previous 'legal' agreements) to garner support.

The panel discussion held in March 2012 generated much controversy as well, and according to the report of the panel session, several states opposed any discussion and left the chamber.²² Every member of the OIC group left,²³ though Pakistan did deliver a statement on behalf of the OIC. A number of regional and political groups participated in the debate: Mercosur, the OIC, the EU, the Arab Group and the Africa Group. The discussions in the room centred on similar views as those expressed in the debate on the resolution, with many supporting the discussion, while others (OIC) argued that sexual orientation and gender identity were new concepts outside human rights law, and that no state could be compelled to recognise these as prohibited grounds for discrimination. The gap between supporters and proponents of the resolutions is wide, as can be illustrated in the OIC's statement: 'Our opposition to the notion of sexual orientation also stems from the fact that it may encompass the social normalization, and possibly the legitimization, of many deplorable acts, including pedophilia and incest. A number of studies have confirmed that homosexuality has a

²¹ Archived webcast of the morning session on 17 June 2011:
<http://www.un.org/webcast/unhrc/archive.asp?go=110617>

²² Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity, Geneva, 7 March 2012, Summary of discussion. See also the archived webcast: <http://www.unmultimedia.org/tv/webcast/2012/03/panel-discussion-sexual-orientation-and-gender-identity.html>

²³ Freedman, *Failing to Protect*, p. 49.

negative health impact. At the same time, such behaviour contributes to the weakening of the institution of the family and can lead to a generation gap.’ Homosexuality conflicted with religious, cultural and traditional values of many communities, and therefore any attempt to ‘force’ through change would challenge cultural pluralism.²⁴ The EU stressed that the issue was not about creating new rights, but about ensuring that ‘all human rights can be enjoyed by all human beings’.²⁵

The second resolution (27/32), in September 2014, was sponsored by four South American states (Brazil, Chile, Colombia and Uruguay) and co-sponsored by a group of states including all 28 EU member states (but not in the EU’s name, in a deliberate attempt to soften ‘group politics’). It again generated considerable heat.²⁶ Egypt on behalf of nine or ten states in Africa and the Middle East submitted seven amendments, all of which would have removed the terms ‘sexual orientation and gender identity’ from the resolution, replacing them with ‘individuals because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. The amendments would thus have completely nullified the intention of the sponsors to overcome violence and discrimination of individuals because of their sexual orientation and gender identity. In the heated debate on the resolution and the amendments, the EU, OIC and Gulf Cooperation Council (GCC) intervened, expressing views already outlined above. The amendments were defeated in a series of votes, and the resolution was then approved.

The trio of issues in New York

The successes of the resolutions on sexual orientation at the HRC in Geneva have been partly responsible for what has been described by diplomats as a ‘backlash’ (or ‘counter-momentum’) in New York, led by the Africa Group, on, among others things, family and LGBT issues. While many resolutions are ‘run’ in both the HRC and General Assembly, none of the resolutions on the trio of

²⁴ Statement by Pakistan on behalf of the OIC states, 7 March 2012.

²⁵ Statement by the EU, 7 March 2012. Emphasis in the original.

²⁶ See the webcast of session on 26 September 2014: <http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/27th-session/watch/ahrc27l.27rev.1-vote-item8-42nd-meeting-27th-regular-session-human-rights-council/3808532203001>

issues have. This may change, with the establishment of a ‘Group of the Friends of the Family’ in New York. The informal group for the protection of the family formed at the HRC became the ‘Group of Friends of the Family’ in February 2015. It was officially launched, by Belarus, Egypt, Indonesia, Iran, Holy See, Libya, Pakistan, Qatar, Russia, Saudi Arabia, Sudan, Yemen, and Tajikistan – countries that are ‘stout supporters of the traditional family and family values’²⁷

The activity in New York on the trio of issues has, however, been much more limited. In 2008, France led a small cross-regional group of eight states in promoting a statement on human rights and sexual orientation, which was signed by 66 states and read out in the UNGA by Argentina in December. Of note is that this was not an initiative of formal groups, although all EU member states signed the statement as did many from the Group of Latin American and Caribbean Countries (GRULAC). The statement affirmed ‘the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity’, expressed concern about ‘violations of human rights and fundamental freedoms based on sexual orientation or gender identity’, and noted that ‘violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity’.²⁸

A large group was involved, however, in the response to the statement: the OIC initiated a statement strongly objecting to the statement. This was signed by almost 60 states and ‘rejected the idea that sexual orientation was a matter of genetic coding’ and ‘said the effort threatened to undermine the international framework of human rights by trying to normalize pedophilia, among other acts’.²⁹ The opposition reportedly shocked proponents of the French-initiated statement,³⁰ and

²⁷ Belarusian News, ‘Belarus, Egypt, Qatar initiating group of friends of family in UN HQ’, 04 February 2015; http://eng.belta.by/all_news/politics/Belarus-Egypt-Qatar-initiating-group-of-friends-of-family-in-UN-HQ_i_79260.html

²⁸ Human Rights Watch, ‘UN: General Assembly Statement Affirms Rights for All 66 States Condemn Violations Based on Sexual Orientation and Gender Identity’, 19 December 2008; available at: <http://www.hrw.org/news/2008/12/18/un-general-assembly-statement-affirms-rights-all>.

²⁹ Neil MacFarquhar, ‘In a First, Gay Rights are Pressed at the UN’, *The New York Times*, 18 December 2008.

³⁰ Robert Kissack, *Pursuing Effective Multilateralism: The European Union, International Organisations and the Politics of Decision Making* (Palgrave Macmillan, 2010), p. 44.

appears to have ended any attempt to introduce a resolution on human rights and sexual orientation in New York. In interviews in the summer of 2014, diplomats from several EU member states in New York reported that the Africa Group was large and therefore successful, and as result, there could be no movement on LGBT rights. The EU hesitated to push the issue because it would be perceived as trying to impose its values on others.

The other way in which the issue of human rights and sexual orientation has been addressed in New York is through a resolution on extrajudicial, summary or arbitrary executions, traditionally introduced every other year by Sweden or Finland.³¹ Since 2000, the proposed resolution has contained a provision whereby states are to investigate killings that target people based on their sexual orientation (and since 2012, gender identity as well). Each time it has been introduced in the Third Committee, there has been an attempt to either have a vote on the paragraph containing the language about sexual orientation, or to pass an amendment to the resolution which would remove the language. These attempts have usually been initiated by the OIC. The paragraph is usually approved or the amendment is usually rejected but in 2010, in the Third Committee, the amendment passed (79-70-17). (In 2010, the amendment was sponsored by the OIC and the Africa Group.) However, when the resolution was introduced in the plenary of the General Assembly about a month later, the language on sexual orientation was reinstated (93-55-27). The usual groups (Africa, OIC, Arab, EU) also participated in this debate and spoke in favour or against the amendment to restore the language.³²

Thus in New York, the entire trio of issues has not been debated in the General Assembly. To the extent that there has been some debate about LGBT rights, groups have played a major role – particularly in opposing attempts to introduce language on human rights and sexual orientation. The OIC and Africa Group have tried to play the numbers game. Although they may not have succeeded in influencing the language used in the resolutions on summary executions, it is nonetheless notable

³¹ The equivalent resolution in the HRC involves the mandate of a special rapporteur on extrajudicial, summary or arbitrary executions, and does not contain the same language.

³² United Nations General Assembly, Official Records, 65th session, 71st meeting, 21 December 2010, A/65/PV.71, pp. 11-18

that there have been no attempts (yet) to introduce a resolution on sexual orientation and human rights, partly because of the perceived strength of the opposition.

The role of groups

Groups – formal and informal, regional and political – have clearly played significant roles in the debates on the trio of issues in Geneva, and on LGBT rights in New York, though they have not officially put forward the relevant resolutions. But the differences between the two institutional settings are also notable: in Geneva there has been a considerable amount of cross-regional group formation and use, while this is perhaps starting to happen in New York. Group politics, in other words, is not just a case of large formal groups facing each other.

The most active formal groups in both locations are the EU, the Africa Group and groupings consisting mostly of Arab states (the OIC, the Arab Group, and the GCC). The salience of the issues for these groups has been high, though they have been flexible about how their views can be heard and objectives attained (though the use of informal groups too). These groups are also well-established in both Geneva and New York, so are seen as relevant players. Less formal political groups have participated in debates, to a lesser extent, but two have been involved ‘behind the scenes’: the LMG on ‘traditional values’ and the group for the protection of the family (many members of which are also said to be in the LMG).

Notably, only two groups were never ‘split’; that is, their members voted the same way on all the resolutions, demonstrating considerable unity: the EU and the Arab Group. As one interviewee from a country in the Arab Group explained, on family issues, the Arab Group is united, while newer country situations – as in Syria – have split the group. Thus these issues help to paper over divisions and present a united front in the HRC. EU unity stems from the general framework of EU law which bans discrimination on sexual orientation, even though there are internal EU divisions over gay marriage and LGBT rights in general.³³ Other groups were less united, though the Africa

³³ See EU statement to the panel on human rights and sexual orientation, 7 March 2012.

Group and the OIC had only a few dissenters. The Latin America group was split on all issues except for the sexual orientation resolutions.³⁴

Thus, states have used informal and formal groups in the process of contestation on the trio of resolutions at the HRC, but what stands out is the extent of the use of cross-regional groupings, both more formal (LMG, friends of the family) and informal (states speaking on behalf of a number of states). This reflects the changing dynamics of multilateral diplomacy at the HRC.

Why have states used groups on these issues? As expected, the 'numbers game' influences behaviour: to pass or block controversial resolutions, votes are needed; by working in large groups, this becomes easier. But there is awareness that this is not enough: to gain legitimacy, states must convince others, and to do this, they must refer to norms, principles, arguments that could resonate widely. The debates on the trio of issues all reveal attempts to link the particular subject at hand to even wider debates: on prohibitions against violence; on resistance to 'westernisation' and protection of cultural diversity. Diplomats made reference to language used in other declarations or resolutions (or the absence of such on 'traditional values'), to show that there was long-standing support for their preferences. In other words, there were clear attempts on both sides to present ideas that resonate. This led to success for the sponsors of all the resolutions on the trio of issues, but not to a consensus among UN member states. Politicisation is thus not an adequate description of these discussions, which show that although the parties are polarised they are still engaged in debate more so than a game.

The resolutions on traditional values and the protection of the family illustrate how groups help sponsors win the 'numbers game' at the HRC: the big groups (OIC, Africa) were clearly in the majority (with the core LMG as well). In these cases, the largest groups prevailed. Material resources – in the sense of the combined national wealth of group members – mattered less than sheer numbers. This was a typical 'north-south' or 'west-vs-the-rest' confrontation, and the rich

³⁴ This reflects the general acceptance of LGBT rights in much of Latin America (though not the Caribbean), with gay marriage legalised in a few countries, including Argentina, Brazil and Uruguay, and discrimination against LGBT persons outlawed in most (but by no means all) countries. If there had been Caribbean countries on the HRC, the Latin American group would not have been united on the resolutions.

northern/western states were in the minority: a 'game', to a large extent. However, the resolutions were also relatively low-key in that they appeared to be limited attempts to set the tone and parameters of a much wider debate on the family, women's rights, and LGBT rights, without directly bringing those issues into the debates. The resolutions – and the debates in favour of them in the HRC – focused on generic arguments that families and respect for other cultures are important. Those opposed to them, however, did raise the wider and more contentious issues (eg family types are diverse and can include gay marriages; traditional values can harm LGBT persons, women, minorities; and so on). These arguments did not convince many other moderate HRC members to oppose the resolutions (instead they abstained). In other words, groups could win the numbers game but the arguments they used did not turn moderates into opponents: in July 2015, for example, countries that had supported the sexual orientation resolutions (Argentina, Brazil and Mexico) did not vote against the resolution on the protection of the family; instead they abstained.

The unity of groups shifted on the resolutions on sexual orientation. Those resolutions, however, indicated that even when the OIC and Africa Group are (mostly) united (with the exceptions of South Africa, Mauritius and Burkina Faso), they may still not prevail: in this case, the LMG was split because all of the Latin America Group members in the HRC were united in favour (including countries such as Cuba, Ecuador and Venezuela), and they combined with western states and several Asian states. The resolutions on sexual orientation also gathered a wide consensus arguably because they focused on violence perpetrated against people, not on newer and more contentious issues such as the right to marry. The debates focused on violence - and the long-established fundamental human right to not be subject to it – and this increased the legitimacy of the stance in favour of the resolutions.

Conclusions

Rather than engaging *only* in a 'game' (or 'theatre'), this article has illustrated that proponents and opponents of the trio of issues are also engaged in a principled debate on the issues (even though

the principles may be repugnant to either side). Groups (formal and informal) are used by countries on both sides, to try to boost support for and the legitimacy of their positions. They are engaged in contestation over norms, and in so far as we understand politics to encompass attempts to convince others of the legitimacy of one's own position, this is 'group politics' and not 'politicisation'. Groups matter in debates on human rights, and specifically on the trio of issues considered here. They thus matter in the processes of norm creation, norm evolution, and norm diffusion that happen constantly in the UN. The role of groups in these processes in other areas deserves further research.

It is mostly three formal groups that are active on the trio of issues: the OIC, the Africa Group and the EU. The largest groups, the OIC and Africa Group, have arguably had most impact on debates and outcomes, including non-outcomes in New York. Some informal groups (such as the Friends of the Family) have had influence, and have the potential to continue to shape future debates on these norms. But it is not just a group v. group story and it is apparent that even though groups are very significant actors, there is still flexibility in that states can act in and out of groups. There have been numerous attempts to 'break the blocs', especially in the HRC, with moderate states forming cross-regional groupings to try to show that there is a wide section of the HRC in support of their views. Furthermore, some groups have been divided over the issues, notably the LMG over human rights and sexual orientation – which essentially enabled a coalition of groups and moderate states to win approval of the resolutions. Group politics is thus not entrenched in the sense that it is always the same groups pitted against each other; the issues at stake can prompt states to form more flexible groupings, and try to prevail in the search for collective legitimisation. Diplomats at the UN are thus working within a complex multilateral system in which groups – their roles, their changing composition, and so on – must be taken into account.