



# *The Association of the Bar of the City of New York*

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March 10, 2004

Honorable Colin L. Powell  
Secretary of State  
U.S. Department of State  
2201 C Street NW  
Washington, DC 20520

Dear Secretary of State Powell:

I write on behalf of the Association of the Bar of the City of New York. The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and government officials. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world. The Association, which has supported the work of the United Nations since the organization's inception, has consultative status as a nongovernmental organization with both the United Nations Economic and Social Council and the United Nations Department of Public Information.

The Association strongly supports the resolution on "Human Rights and Sexual Orientation" to be offered by the government of Brazil and other member states at the session of the Commission on Human Rights scheduled to begin March 15, 2004. The resolution, in its current form "[e]xpresses deep concern at the occurrence of violations of human rights all over the world against persons on the grounds of their sexual orientation." It calls upon states to promote and protect the human rights of all persons regardless of their sexual orientation, notes the attention given to sexual orientation-based human rights violations in prior reports to the Commission, and asks that the Commission continue to give attention to such violations. The resolution does not seek to create new law, but rather to reaffirm existing principles of non-discrimination which have been repeatedly endorsed by international human rights courts and tribunals, as well as by United Nations treaty bodies. The Association understands that there are ongoing negotiations about the wording of the resolution and that the resolution presented to the Commission for a vote may differ from that presented last session.

The resolution's recognition and call for prohibition of sexual orientation-based human rights violations is long overdue and critically important. Persecution and discrimination based on sexual orientation and gender identity are widespread. Nearly 90 countries impose criminal penalties for consensual same sex relations between adults. Documented atrocities against gay men, lesbians and other sexual minorities in recent years – crimes committed by or with the tacit permission of governments around the world – include extrajudicial killing, torture, imprisonment, rape, forced medical procedures, and other forms of degrading or inhuman treatment or punishment.

The resolution's rebuke of human rights violations on sexual orientation grounds, and its call for the protection of all person's human rights, is firmly grounded in international law. The United Nations Human Rights Committee's 1994 decision in *Toonen v. Australia* reaffirmed discrimination on the basis of sexual orientation is prohibited by Articles 2 and 26 of the International Covenant on Civil and Political Rights. See CCPR/C/50/D/488/1992 (1994). The European Court of Human Rights has endorsed the same principle under Article 14 of the European Convention on Human Rights. See, e.g., *Karner v. Austria*, App No. 40016/98 (July 24, 2003); *Case of L. & V. v. Austria*, App Nos. 39392/98 and 39829/98, both available at <http://www.echr.coe.in/hudoc.htm>. Moreover, the Commission's recent resolution on extrajudicial, summary, or arbitrary executions called upon states to promptly investigate killings on sexual orientation grounds (Commission Resolution 2003/53); the Special Rapporteur on Torture, in his 2001 report to the General Assembly, noted that sexual minorities are "disproportionately subjected to torture and other forms of ill-treatment" (E/CN.4/2002/76); and the 2001 report of the Special Representative of the Secretary General on Human Rights Defenders noted the abuse of human rights groups active on issues of sexuality (E/CN.4/2002/106/Add.2).

With regard to domestic law, the Supreme Court's majority opinion in *Lawrence v. Texas*, 123 S. Ct. 2472 (2003) – which cited to international human rights law in determining that Texas's criminal ban on consensual sodomy was unconstitutional – resolves any potential doubt about the resolution's consistency with the law of the United States.<sup>1</sup> While our Association would support language that expressly recognizing equal rights within the context of domestic relations, we note that the current text of the resolution simply seeks the right to be free from discrimination and abuse on the grounds of sexual orientation.

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<sup>1</sup> See also *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9<sup>th</sup> Cir. 2000) (granting asylum to a Mexican gay man who has suffered past persecution on account of his membership in a social group defined by sexual orientation and gender identity); *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819 (BIA 1990) (granting withholding of deportation to a gay Cuban man who had suffered past persecution on account of his status as a gay man).

For these reasons, we urge the United States to co-sponsor the Brazil resolution, for the United States delegation to the Commission to vote in favor and otherwise strongly support the Brazil resolution, and for all of the member states of the Commission on Human Rights to join in supporting this basic affirmation of the elemental human rights of sexual minorities.

Respectfully,



E. Leo Milonas

Cc: Hon. Lorne W. Craner  
Assistant Secretary for Democracy, Human Rights and Labor

Hon. Mark P. Lagon  
Deputy Assistant Secretary for International Organization Affairs

Hon. Ambassador Kevin Edward Moley  
Permanent Representative of the United States to the United Nations in Geneva