

LESBIANS?

NOT IN MY COUNTRY

Dianne Otto

Sexual orientation at the Beijing World Conference on Women.

At 4 a.m. on Friday, 15 September, the morning of the last day of the Fourth World Conference on Women (FWCW) in Beijing, there remained three outstanding issues needing resolution before the Conference outcomes could be adopted by consensus later that day. One of the issues was whether 'sexual orientation' would be acknowledged as an aspect of women's diversity and an actionable ground of discrimination. It is notable, in itself, that debate about the inclusion of lesbians was not knocked off the agenda before the eleventh hour.

By 4.30 a.m., all references to 'sexual orientation' in the Conference documents had been deleted in a 'trade' with another unresolved issue: whether cultural relativity would be allowed to modify the universality of the application of human rights standards. The result of this exchange was that reasonably strong, but still ambiguous, language about states' obligations to promote and protect *all* human rights, regardless of cultural differences, was retained in the FWCW Platform for Action (para.9).¹ This outcome suggests that the inclusion of 'sexual orientation' was so antipathetic to some states that they were even prepared to water down language about cultural diversity to ensure that sexual diversity remained unspoken. It is also clear that those countries supporting the inclusion of sexual diversity were prepared to give it up in a last minute exchange that resulted in rather illusory gain.

This trade in diversities illustrates a fundamental, though not always explicit, tension which was present throughout the Beijing preparations and Conference: the contradictions inherent in acknowledging diversity while also seeking to define standards that apply to all. The surfacing of this tension in the United Nations' (UN) discourse on women is largely the result of two oppositional narratives. On the one hand, are critical challenges by feminists to essentialist, unitary notions of 'woman' constructed on a model of compulsory heterosexuality and motherhood, and dominated by European norms. On the other hand, are authoritarian states and religious fundamentalists arguing that standards of female humanity are self-evident, as expressed by cultural or religious norms, and therefore not a matter for international judgement or scrutiny.

Unfortunately, the domination of the diversity debate by conservative, masculinist protagonists prompts absolutist responses, demanding unqualified commitment to universality, from many feminist and human rights groups. This results in an unproductive and defensive polarisation, rather than a deepening of the debate. It leads to paradoxical outcomes, like the erasure of 'sexual orientation' from a Platform which also declares unequivocal commitment to 'acknowledging the voices of all women everywhere and taking note of the diversity of women and their roles and circumstances' (Beijing Declaration para.4). In the final analysis, it is not surprising that the contestation of universality and difference remains on the global agenda post-Beijing, but it is disappointing that the FWCW doesn't appear to reflect any advance in our thinking on these issues. The paralysis of the debate is unfortunate, as dealing with diversity is a factor that is central to

Dianne Otto teaches law at the University of Melbourne.

addressing all three themes of the Conference — equality, development and peace. Further, legal treatment of difference continues to be a critical issue for both domestic and international legal systems.

The inclusion of 'sexual orientation'

The issue of 'sexual orientation' made its way into the draft Beijing Platform at the 39th Session of the Commission on the Status of Women in New York in March-April 1995. This session functioned as the final preparatory meeting for the Beijing Conference. During the preceding two years, five regional meetings had been held in order to identify priorities and prepare regional platforms which would form the basis for the official Platform for Action to be adopted in Beijing. The regions were Asia and the Pacific, Europe, Latin America and the Caribbean, Africa, and the Arab region. Europe was the only region which made reference to 'sexual orientation' in its regional platform. At the Asia-Pacific meetings in Manila and Djakarta there were heated debates about the inclusion of lesbian issues as a result of the work of lesbian lobby groups in the region, particularly the Sydney-based Coalition of Activist Lesbians (COAL). But, while there was considerable support expressed, this was accompanied by homophobic outpourings from a large number of states, which ultimately determined the result.

At the Commission on the Status of Women meeting in New York, lobbying for the inclusion of 'sexual orientation' in the draft Platform was intensified by a lesbian caucus, which was also active in Beijing. The caucus decided to promote the term 'sexual orientation' rather than 'lesbian' because it was the language used in the few relevant texts which could provide support as precedents — the European regional platform (mentioned above), the draft Constitution of South Africa and the decision of the UN Human Rights Committee in the *Toonen* case which decided that discrimination on the basis of 'sex' included discrimination because of 'sexual orientation'.² This decision on terminology is, I believe, also important for two other reasons. First, it is inclusive of the full range of women's sexual expression and moves beyond the biological determinism that sounds in debates about who qualifies as a 'real lesbian'. Second, it recognises an important commonality between oppressive narratives of women's sexuality and those which construct gay men as a threat to the social order.³ This intersection was clearly made in the homophobic contributions to the Beijing debate on the issue which are referred to below.

The New York lesbian caucus was highly effective. Their work resulted in references to 'sexual orientation' in four places in the draft Platform: it was included in the two key statements of women's diversity (paras 48, 226) and in two paragraphs urging state action to counter discrimination, one requiring general legal safeguards (para.232(h)) and the other focussing specifically on discrimination in employment access and conditions (para.180(b)). All four references were bracketed which meant that they were controversial and would be reviewed in Beijing.

The apparent success of the lesbian caucus was dampened by ominous signals from another discussion in New York in which several states, led by Honduras, objected to the use of the term 'gender' in the Platform and suggested it be replaced with the word 'sex'. The primary motivation for this proposal was homophobic, the fear being that the concept of gender implied that sex was socially constructed and, therefore, that more than two sexes were possible (including homosexuals,

bisexuals and transsexuals). A Contact Group of interested states was formed to seek agreement on the commonly understood meaning of the term 'gender' in the context of the Platform. Their recommendation, accepted by the Beijing Main Committee, was that the use of 'gender' be retained as 'there was no indication that any new meaning or connotation of the term, different from accepted prior usage, was intended'. The resolution of the 'gender' debate had the effect of shifting the debate about women's sexuality squarely into the 'sexual orientation' discussion, except for peripheral reference in the context of women's health and reproduction which I will discuss below.

The debate in Beijing

In Beijing, the lesbian caucus took up the cudgel again, building on achievements at the 1993 UN Conference on Human Rights where, for the first time, there had been a visible gay and lesbian presence at a UN conference. Lesbians were very active at the Beijing Non-Governmental (NGO) Forum, although not (as some Australian journalists would have it) 'fatuously' promoting lesbian flirting and advocating lesbianism as the only acceptable form of sexuality.⁴ Rather, daily activities and discussions were facilitated in the lesbian tent which had taken considerable prior negotiation with the UN to arrange, a well-attended speak-out and demonstration was organised and, as part of the main programme, workshops were run which addressed a multitude of themes including lesbian health, achieving parity in the workplace, using theatre as a force for change and self-determination of women's sexuality. Lesbians were often the target of Chinese surveillance and those attending lesbian events usually had to endure the intrusive presence of Chinese security personnel wielding cameras. This made participation very difficult for some and raises the issue of UN inclusivity in a very direct way.

Once the government Conference commenced, the lesbian caucus swung into lobbying mode, aiming to defend the four references to 'sexual orientation' in the Platform. In the early stages of the Conference the issue was delegated to an Informal Group of interested states for resolution as it was clear that the main Working Group was irreconcilably divided on the question. Two positions emerged from the Informal Group which was also unable to reach consensus. Canada, New Zealand, South Africa and some others (I understand Australia was one of these) supported inclusion of the reference, arguing that discrimination on any grounds should be prohibited. Those opposing the reference included Egypt and Iran who stated that it would contradict their religious and cultural values and argued erroneously that no international precedent existed for using the term.

Behind the measured official pronouncements on the issue, heated discussion occurred throughout the Conference, involving government delegates and NGOs alike, in a climate of misinformation and fear-mongering. It was widely contended that adopting the reference to 'sexual orientation' would mean endorsing paedophilia and bestiality. These myths slipped easily from their usual target of gay men to include lesbians, illustrating a unity within the dominant homophobic discourse which demonises lesbians in the same language that it vilifies gay men. This could also be an example of the way in which lesbianism is erased from legal texts by reference to male sexuality, which Ruthann Robson identifies in her discussion of the effects on lesbians of 'unnatural' sex legislation in the United States.⁵ I am still

wondering how, or if, use of the term 'lesbian' instead of 'sexual orientation' would have (re)shaped this discourse or whether the slippage just reveals the arbitrariness of the fictions in the first place.

Those blatantly perpetrating anti-homosexual agendas included right-wing North American fundamentalist Protestants, the Holy See and Muslim extremists. This alliance sought to dominate many of the central debates at the Conference including cultural and religious relativity, the rights of parents in relation to girl-children and, as anticipated, the reproductive rights of women.

Ultimately, on the last night of the Conference, the issue of the inclusion of 'sexual orientation' rested with the Chair of the main Working Group, Patricia Licuana (Philippines), who referred it to 'Friends of the Chair' along with the other two unresolved issues (cultural relativity and the question of what resources would be made available for implementation of the Platform). It was Licuana's ruling some time between 4 a.m. and 4.30 a.m., on the advice of the 'Friends', that the term be deleted from the text since, in her view, it had elicited such strong opposition and had not been aired in the UN before.

Later that day, in the final Plenary which adopted the Platform for Action and Beijing Declaration by consensus, eight states issued interpretive statements which noted that they understood the mention of 'other status' in the key paragraph on diversity (para.48) to include discrimination on the grounds of sexual orientation. They were Canada, New Zealand, Latvia, Israel, Jamaica, South Africa, Norway and the Cook Islands. In addition, Slovenia stated that it would interpret a paragraph in the Human Rights section of the document (para.232(f)) as including the right to be free from discrimination, violence and coercion on the basis of sexual orientation. Both the United States and the European Union gave notice that they would submit interpretive statements which outlined their policies of non-discrimination.

Sexuality and women's health

The question of women's sexual diversity also arose in the most heavily bracketed section of the Platform which deals with women's sexual and reproductive rights. This section dubiously positions sexuality as a women's health issue in a thinly disguised attempt to contain and control its potential to be emancipatory. This strategy was largely successful as the final health text makes no reference to 'sexual rights' *per se*. Almost every mention of 'sex', 'sexuality' or 'sexual health/lives/information' is directly paired with reproduction, heavily imbuing women's sexuality with the heterosexual presumption and limiting its meaning to reproductive issues. There are only two statements which suggest that women's sexuality exists outside the sphere of reproduction (paras 96, 97) and both are heavily compromised by being situated with the rest of the health text. Even so, when some states later realised that the agreed text could be read as supporting lesbianism they threatened to reopen debate on the wording. Although this threat was not made good, a large number of states issued interpretive statements to paragraph 97 stressing that its approach to sexual rights is contrary to national laws, or cultural or religious values.

Future directions

So, what conclusions can be drawn from the Beijing experience? On the positive side, women's sexual orientation was firmly positioned as a central issue for public discussion

during the entire Conference and, as a result, many delegates and NGO representatives rethought their views, although this was not enough to alter the outcome. Many now know that this is an issue in *their* country, when they had previously believed that it wasn't. A number of states argued strongly for international recognition of women's sexual diversity and can be expected to maintain that view into the future. On the negative side, it can now be argued that the issue should not be reopened in future global forums because it has been well-canvassed and a consensus position reached. This is a powerful argument in the international context and was often used at the Beijing Conference to prevent earlier agreements, such as those made at the International Conference on Population and Development, from being watered down.

The agreements reached and commitments undertaken by governments in Beijing are not legally binding. Nevertheless, it could be argued, on the basis of the recent High Court decision in *Minister for Immigration v Teoh* (1995) 128 ALR 353 (if it survives government attempts to reverse it), that 'positive statements' made by the Executive Government to the world involving domestic undertakings are something more than 'merely platitudinous' (at 365) and could give rise to a legitimate expectation that Australian administrative decision-makers will act accordingly. However, it is likely that the Beijing Declaration and Platform for Action will, at most, contribute to the prospective enunciation of customary international law and suggest areas for future treaty coverage.

The importance of international forums like the FWCW lies less in their specific legal outcomes than in their contestation of the dominant global discourse, including the 'truths' promoted by international law, and the shifts in power and new possibilities that emerge as a result. The Beijing discussion made important inroads into breaking the dominant codes of lesbian invisibility and in placing women's sexuality and sexual identities firmly onto the main agenda. One direction for future action is to highlight the use of homophobic discourse about lesbians and gay men as a disciplinary mechanism that contributes to normalising and legitimating the subordinate position of *all* women, and thereby build a broader base of support for further interventions.

References

1. The paragraph numbering used relates to the text as discussed in Beijing. This will change in the final version as some paragraphs have been merged or deleted. The text is currently available on the Internet — gopher://gopher.undp.org:70/00/unconfs/women/off/platform.
2. *Toonen v Australia*, UN Doc CCPR/C/50/D/488/1992 (31 March 1993).
3. Morgan, Wayne, 'Identifying Evil For What It Is: Tasmania, Sexual Perversity and the United Nations', (1993-4) 19 *Melbourne University Law Review* 740.
4. See Terry Lane's report in the *Sunday Age*, 10.9.95.
5. Robson, Ruthann, *Lesbian (Out)Law*, Firebrand Books, Ithaca, New York, 1992, Ch.3.