



Universalization of LGBTQ Rights

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Introduction

The question of whether and how to acknowledge and protect individual rights over gender identity is a difficult issue for the international community. Although UN Member States have dealt with this and related policy issues for hundreds of years, traditionally state policy meant persecution. Since the mid-Twentieth Century, partially in response to the persecution and killing of Fascist and Nazi governments in the 1930s and '40s, policy has shifted to include greater protection of their rights as equal citizens. A major issue for the international community today is whether and how to best assure those rights, whether outright universalization of LGBTQ rights is feasible, and how to achieve it.

Not only are more UN Member States seeking to universalize their rights, they seek to apply them to a growing group of people. This is seen in the rising importance of the abbreviation LGBTQ, originated in the 1990s to replace what was formerly known as 'the gay community', and include more diverse groups. LGBTQ stands for lesbian, gay, bisexual, transgender, and queer (and/or questioning) individuals/identities. What all share are non-heterosexual perspectives and pursuit of legal equality.

The foundational international statement of international human rights, the Universal Declaration of Human Rights (UDoHR), the treaty completed in 1948 that codifies basic principles binding all 193 UN Member States, does not explicitly protect gay rights. But many states have individually changed their laws in the almost seventy years since it was completed, to extend the same protections all other people receive to protect rights of individual gender identity and permit prosecution of anyone who violates those rights. Some UN Member States

are working to extend those rights to protect individual gender identity globally. But reverse processes also can be seen. Other UN Member States have established laws to bloc such reforms, including prohibiting public discussion of homosexuality and trans-gender rights and criminalizing same-sex relationships.



At the worst, discrimination and persecution leads to violent attacks. One of the worst was the 12 June 2016 shooting attack on the Pulse, a nightclub in Orlando club in which 29 people were killed and 53 wounded by an attacker who swore allegiance to the anti-gay principles of the Islamic State. Despite this attack, the United States Government does not condone or encourage discrimination or violence against gay or trans-gender people. This is not true of several African, Asian and Middle Eastern governments, which criminalize non-heterosexual relationships and sometimes public discussion, or countries were organized militias—sometimes with state support—systematically attack LGBTQ communities.



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Many factors attribute to the push towards equality for the LGBTQ community such as the United Nations has played an especially important role. Former Secretary-General Kofi Annan announced a new doctrine in 1999 of dual sovereignty, which sees the rights of individuals as equal to the rights of Member States. In other words, States are not superior to individuals, and cannot strip them of their human rights. Secretary-General Ban Ki-moon was especially active promoting international recognition of LGBTQ rights during years in office, 2007-2016.

In Third Committee: Social, Humanitarian, and Cultural, you will be challenged to face the obstacles confronting global equality for the LGBTQ community. Are LGBTQ rights best advanced by UN Member States acting independently through domestic laws and regulations to protect rights? Or are human rights the responsibility of the entire international community? Does the international community have a role to play advancing LGBTQ rights in Member States whose governments resist extending protections, where populist and religious leaders campaign against acknowledging or protecting their social and legal equality?

Background

LGBTQ movements were unheard of prior to the late Nineteenth Century. Although was widely known and often accepted in many societies—often discretely, sometimes publically—formal recognition required accepting the legitimacy of homosexuality. The term was first used in 1869 by German psychologist Karoly Maria Benkert. He sought to replace existing language, such as "sodomite" and "pederast", which reinforced

negative views and encouraged persecution.¹ Then, as now, language was a crucial force shaping the way people treat other people, There are many differing public responses to what is now known as homosexuality, depending on the region and culture throughout history. Homosexuality was long accepted and even encouraged in much of the Middle East, South and Southeast Asia. Preceding colonialism in Africa, a number of states in Africa were not only tolerant of homosexuality but also allowed leaders to assume the many different thrones regardless of sexual preference.² Europe also demonstrates cases of sexual indifference in certain regions, while other regions strictly opposed same-sex relations. Attitudes have never been fixed, but tend to shift over time, sometimes becoming more tolerant, other times more prejudiced.

Also in the late Nineteenth Century, another pioneering German physician and sexual theorist emerged as the first significant abolitionist of anti-homosexual rhetoric. Magnus Hirschfeld explored the qualities of homosexuality, which later caused him to express the idea of homosexuality being a natural occurrence rather than a deliberate choice³. A strong believer in scientific exploration, Hirschfeld believed that scientific research would not only reduce intolerance towards homosexuality but also initiate discussions as well as deeper understandings of sexuality in general.

¹ "The First Institute for Sexual Science (1919-1933)" <http://magnus-hirschfeld.de/ausstellungen/institute/>

² "OPINION: Homosexuality Is Not Un-African." September 15, 2016. <http://america.aljazeera.com/opinions/2014/4/homosexuality-africamuseveniugandanigeriaethiopia.html>

³ "Magnus Hirschfeld." *Encyclopedia Britannica Online*, <https://www.britannica.com/biography/Magnus-Hirschfeld#ref1221865>



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Hirschfeld established the Scientific Humanitarian Committee in 1897 with his colleagues Max Spohr, Franz Josef von Bülow, and Eduard Oberg.⁴ This ultimately became the first movement to organize the fight for the rights of the LGBT community with the primary agenda being to abolish Germany's policy to punish intimate contact between men under the German Imperial Penal Code.

The process Hirschfeld and other created established a pattern seen in other countries over the years. By the early 1900s many influential figures in history, at the very least, depicted sexual relations with the same sex in art, writings, and research that opposed the harsh treatment of homosexuals. Activists such as Hirschfeld led the first movements towards gay rights. But progress was not assured. Germany saw the reversed of the National Socialists years of 1933-45. After the war, though, progress on LGBT rights resumed.⁵

In addition to Europe and Latin America, the United States emerged in the 1990s and 2000s as a significant advocate on human rights for those within the community. The world itself has made strong efforts to improve the status of LGBTQ rights since the introduction of the *Yogyakarta Principles* on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, in 2006. The guidelines were created by a group of international law specialists and gay advocates, integrating LGBT rights into existing humanitarian law and human rights law. The *Yogyakarta Principles* have never been accepted by the United Nations. The attempt to make gender identity and sexual orientation new categories of non-discrimination has been repeatedly rejected by the General Assembly, the UN Human Rights Council and other UN bodies. Instead, many nation states have

individually agreed to improve the status of LGBTQ rights through legislation and shifting social society to be more accommodating and understanding of the LGBTQ community.



Current Situation

As it stands, many countries have passed progressive marriage equality laws within the past decade. Countries such as the Sweden, Norway, Argentina and even the Netherlands since 2000 have nationally legalized gay marriage. Despite these tremendous steps forward for the LGBTQ community, there are still many areas of focus that must be addressed. The United Kingdom agreed to the Turing Bill, named for the gay father of British computing and hero of World War Two cryptology who was prosecuted for homosexuality. The bill will pardon all homosexuals who were convicted of sexual crimes that were discriminative in nature

⁴ Ibid

⁵ Ibid



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and conflict with the new progressive laws revolving around the LGBTQ community⁶. With just this as an example of homosexual equality in progressive states, it is clear that even those who have passed marriage equality laws have issues they must face.

In addition to the states that have already passed pro-LGBTQ legislation, there are other states that are on the road to progressive legislation. Taiwan, for example, is one of the leading forces in Asia in regards to LGBTQ acceptance and movements towards positive legislation. This year's Pride Festival in Taipei received warm reactions and tremendous support as marchers asked the government 'how long will tongzhi (LGBTQ) have to wait'⁷. Although formal legislation has not been passed due to the Kuomintang's influence, Taiwan has not lost its way to LGBTQ equality. Nepal is also on the forefront of LGBTQ rights in Asia as they have passed laws that protect those within the community. Although Nepal has not formerly legalized same-sex marriage they are making tremendous efforts to protect the community.

With these examples of progress for equality, there must also be examples of the opposing side. Universalizing rights and protections for the LGBTQ community is not a popular concept in all states. In fact, many states still impose laws that not only prohibit homosexual behaviors and transgendered ideal but also brutally punish 'offenders'. Regardless of the UN attempting to push for progressivism on the

topic there will continue to be opposing states for quite some time. Aside from the EU and a few other states outside of it, the general thought of LGBTQ rights is a taboo even to states like Australia.



UN Involvement

Over the past few years, many UN bureaucrats have ultimately decided to disregard the consensus-led processes given in the UN Charter with the intentions to advance the idea that individuals possess a right to same-sex marriage. The Secretary General himself, along with many bureaucrats occupying positions in various UN agencies or UN treaty-monitoring bodies, has been publicly championing same-sex marriage, even though no UN document produced by the Member States has ever promoted same-sex

⁶ "'Alan Turing Law': Thousands of Gay Men to Be Pardoned." *BBC News*.

<http://www.bbc.com/news/uk-37711518>.

⁷ "Taiwan's Gay Pride Parade Brings Tens of Thousands to Streets." *The Guardian*, October 29, 2016.

<https://www.theguardian.com/world/2016/oct/29/taiwans-gay-pride-parade-sees-tens-of-thousands-take-to-streets>.



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marriage and many Member States strongly oppose it⁸.

On 7 March 2012 Ban delivered a speech titled "The Time Has Come" to the [United Nations Human Rights Council](#) urging the Council to place greater emphasis on combating [homophobia](#) and promoting LGBTQ rights around the world. The speech was met by a protest by a group of delegates, who organized a walk-out protest during the speech. During a speech at the UN headquarters commemorating Human Rights Day, Ban condemned anti-gay laws, noting that 76 countries still criminalize homosexuality, most of them in the Third World or members of the Non-Aligned Movement. Ban insisted that,

It is an outrage that in our modern world, so many countries continue to criminalize people simply for loving another human being of the same sex.

Ban has told senior managers that homophobia will not be tolerated. He pointed to countries such as Ukraine, which has proposed criminalizing public discussion about homosexuality as threatening basic human rights. He further stated that government has a duty to defend vulnerable minorities. In April 2013, he described LGBTQ rights as one of the great neglected human rights of our time. He also said that religion, culture or tradition can never justify denial of basic rights.

The push within the UN for same-sex marriage culminated in July 2013, when the UN launched "Free & Equal," a campaign designed advocating same-sex marriage and other LGBTQ concerns at the UN and around the

⁸ Coleman, Paul. "The UN's Push for 'same-sex marriage.'" January 21, 2016. Accessed November 5, 2016. <http://www.thepublicdiscourse.com/2016/01/16281/>.

world. Free & Equal boasts that its message has reached "more than a billion people."⁹ Since the launch of Free & Equal, a continuous stream of LGBTQ advocacy has come from the UN.

In July 2014, the UN Secretariat began recognizing the same-sex marriages of its employees, an important step for sharing health and retirement benefits. Secretary-General Ban Ki-moon, implemented this "major policy change" without consulting the Member States. At the time, the Secretary-General explicitly signaled that he believes same-sex marriage is a human right:

Human rights are at the core of the mission of the United Nations.... I am proud to stand for greater equality for all staff, and I call on all members of our UN family to unite in rejecting homophobia as discrimination that can never be tolerated at our workplace.

Last year, Ban Ki-moon continued his public support for same-sex marriage, calling the recent United States Supreme Court's decision in *Obergefell v. Hodges* "a great step forward" and commenting, "Denying couples legal recognition of their relationship opens the door to widespread discrimination." Such advocacy from a Secretary General on an issue that enjoys little support among the Member States is virtually unheard of. And with UN agencies recently appointing thirty new staff persons designated as focal points for LGBTQ rights, the machinery is in place for even more widespread same-sex marriage advocacy efforts at the UN.

Several UN bodies have taken the same pro-same-sex marriage stance. The United Nations Children's Fund ("UNICEF"), for instance, explicitly stated in a 2014 publication that it supports states' enactment of laws that provide "legal recognition" to "same-sex couples."¹⁰

⁹ Ibid

¹⁰ Ibid



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Similarly, UN treaty-monitoring bodies are beginning to promote same-sex marriage when the opportunity arises, even though such advocacy falls entirely outside the scope of their mandates. For example, the Committee on Economic, Social, and Cultural Rights (“CESCR”) has noted “with appreciation” Argentina’s same-sex marriage act, expressed to Japan its opinion that the International Covenant on Civil and Political Rights requires identical benefits to be granted to “unmarried cohabiting same-sex couples” as to “unmarried cohabiting opposite-sex couples,” and asked Slovakia and Bulgaria to “consider adopting legislation that would grant legal recognition to homosexual couples and regulate the financial effects of such relationships.”

For all the leadership of the UN Secretary-General, the Member States have been slower to act. The States are strong divided on this issue and have not been able to agree on clear resolutions. The gap between the reforms within the UN—which only affect its own staff—and the policies and recommendations for member states is striking. The difference is that the Secretary-General makes policy for his staff, the UN Secretariat. Resolutions that recommend policy to states come from the General Assembly, where the Member States are in control.

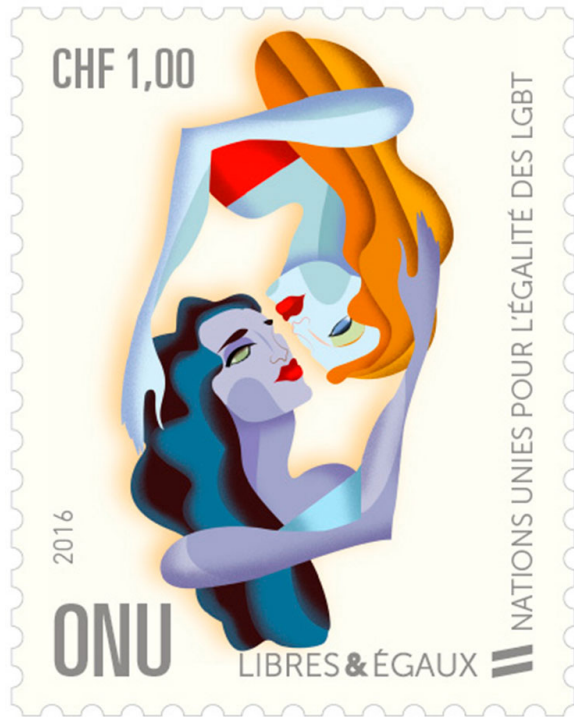
The depth of disagreement within the UN was revealed in 2014 when a UN body passed the first UN resolution on the topic, Human Rights Council resolution 27/32 (2014) *Protection against violence and discrimination based on sexual orientation and gender identity*. The resolution has been passed again in 2015 and 2016. Although the votes are exclusively about building principles of nondiscrimination, it remains highly controversial. In 2016 The 47 Member States of the Human Right Council were split 23 in favor, 18 opposed and 6 abstentions:

- *In Favor:* Albania, Belgium, Bolivia (Plurinational State of), Cuba, Ecuador, El Salvador, France, Georgia, Germany, Latvia, Mexico, Mongolia, Netherlands, Panama, Paraguay, Portugal, Republic of Korea, Slovenia, Switzerland, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam
- *Against:* Algeria, Bangladesh, Burundi, China, Congo, Côte d’Ivoire, Ethiopia, Indonesia, Kenya, Kyrgyzstan, Maldives, Morocco, Nigeria, Qatar, Russian Federation, Saudi Arabia, Togo, United Arab Emirates
- *Abstaining:* Botswana, Ghana, India, Namibia, Philippines, South Africa

The General Assembly, which represents all UN Member States, has yet to act on the topic. A resolution criticizing discrimination and recommended action by states—the General Assembly cannot demand its sovereign Member States do anything—would still be path breaking for the UN



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Country and Bloc Positions

African Bloc: The countries of Africa are highly divided on this issue. Some accept Western concepts of human rights and dual sovereignty. Others reject homosexuality on religious and political grounds and criminalize homosexuality. Several countries have seen vigilante militias intimidating or attacking gay men especially. Several African countries support UN action on LGBT rights. Others can be relied on resist it. Much depends on national law and the attitudes of national leaders.

Some attitudes are shifting. The African Commission on Human and Peoples' Rights adopted a groundbreaking resolution against violence and other human rights violations committed against people on the basis of their sexual orientation and gender identity. The resolution, adopted during the commission's April-May 2016 meeting in Angola, came at a time of intensified repression of LGBTQ people

and LGBTQ rights activists in many African countries.¹¹ The resolution called for governments to create an "environment that is free of stigma, reprisals or criminal prosecution as a result of [advocates'] human rights protection activities, including the rights of sexual minorities." But several key African states voted against it.

Legal and financial support from the European Union has been a major factor affecting African attitudes in international institutions.

Arab Bloc: The countries of the Arab bloc vary greatly in policy and attitude. Personally, many of their leaders and publics are not concerned about homosexual lifestyles, but their conservatism and religious loyalty makes public advocacy impossible.

China: Although China is a conservative society in many ways, there is increasing acceptance of homosexuality and other LGBT lifestyles in China, especially in larger cities. In the United Nations China is cautious on this issue. It believes in human rights and advocates protection, but rejects the notion that state sovereignty can be compromised in any way. For China, the exact wording of any resolution is very important.

European Union (EU): Under EU law, lesbian, bisexual and gay people are currently protected from discrimination on the ground of sexual orientation only in the field of employment. Meanwhile, transgender people are legally protected from discrimination under EU law on the ground of sex to the extent that

¹¹ LeBlanc, Denis. "African Commission Backs LGBT Rights." May 22, 2014. Accessed November 5, 2016. <https://76crimes.com/2014/05/22/african-commission-backs-lgbt-rights/>.



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discrimination arises from gender reassignment¹².

European countries and the EU are a leading force for expansion of LGBT rights around the world. The EU strongly lobbies governments in Africa, Asia, Latin America and the Middle East for reform. They also fund Non-Governmental Organizations (NGOS) or civil society organizations to work for better understanding and acceptance of gay rights by the public.

Latin America: One of world's most post-modern regions also is the scene of a divide between public and official attitudes. While Latin America publics often are not comfortable with shifting gender roles and do not approve of LGBT initiatives, most Latin American governments are very active and highly supportive.

Russia: Under the leadership of President Vladimir Putin, Russia rejects public protection of LGBT rights. Russia has passed laws making public advocacy of LGBT perspectives a form of 'gay propaganda', punishable by law. It rejects United Nations advocacy on this issue. But Russia has many other issues of greater importance in the General Assembly, and may be willing to strike larger deals if they advance its other interests.

United States: Under President Obama and Ambassador Power, the United States was a leading force in favor LGBT rights in international fora, including the Human Rights Council and General Assembly. How hard the United States will pursue the issue now remains to be seen.

This committee implores you to challenge misconceptions and intolerance on a global scale. Unfortunately, this will not be your most difficult task that you will be asked to face when delving into this topic. This committee calls upon the delegates to respond to many unanswered questions regarding the universalization of LGBTQ rights and potential concerns about this topic. Below we have graciously provided a few essential questions you are expected to consider:

- How can the body address the issues of LGBTQ rights while acknowledging that many countries are opposed to these concepts?
- How can the body both encourage and ensure universalization of LGBTQ rights?
- Considering a number of states opposed to LGBTQ relations, how can the body challenge this topic without antagonizing to many opposed Member States?
- How can the body combat against false reports made by Member States that depict a safe environment for the LGBTQ community?
- Is the entirety of the international community ready for such rapid change in both political and social structures?
- How can the body address LGBTQ rights in regions of violence, armed conflict and political instability?

Essential Questions

¹² "LGBTI." October 6, 2016. Accessed November 5, 2016. <http://fra.europa.eu/en/theme/lgbti>.



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