



The Question of Universalizing of LGBTQ+ Rights

ODU Model United Nations Society

Introduction

LGBTQ+ rights are a tricky topic for the General Assembly. While the international community is solid in its commitment to human rights, specific aspects can be controversial. The UN as an institution—the UN Secretariate—strongly supports LGBTQ+ rights for its staff.¹ Among Member States, though, the topic is highly controversial. In many Member States, sexuality is considered a personal matter, beyond the power of the state. In several other Member States, however, homosexuality is illegal, subject to prosecution. In others, even public discussion is illegal. These differences make LGBT rights a tricky topic for the General Assembly.

LGBTQ+ or even just gay rights are not explicitly discussed in the foundational *UN Charter* of 1945 or *Universal Declaration of Human Rights* of 1948. But these foundational documents of international human rights law establish principles that clearly point in that direction. The UN Charter encourages ‘respect for human rights and for fundamental freedoms for all without distinction’ (in Chapter I, Article 1). Similarly, the Universal Declaration of Human Rights states in Article 2 that ‘Everyone is entitled to all the rights and freedoms set forth

in this Declaration, without distinction of any kind.’²



One of six stamps issued in 2016 by the *United Nations Postal Administration* (UNPA) to promote the UN Free & Equal campaign for lesbian, gay, bisexual and transgender (LGBT) equality.

¹ UN. ‘UN widens its same-sex marriage policy to include all legally-married staff’, *UN News Centre*, 8 July 2014, <https://news.un.org/en/story/2014/07/472572-un-widens-its-same-sex-marriage-policy-include-all-legally-married-staff>

² Gary, Juneau, and Neal S. Rubin, ‘Are LGBT rights human rights? Recent developments at the United Nations’, *Psychology International*, June 2012, <https://www.apa.org/international/pi/2012/06/un-matters>

Expanding LGBTQ+ Rights and Protections

● Same-sex marriage legal ● Some rights for same-sex couples // Antidiscrimination laws



Countries not highlighted on this map:

Some rights for same-sex couples: Andorra, Liechtenstein, San Marino.

Antidiscrimination laws: Andorra, Cape Verde, Kiribati, Mauritius, Micronesia, Saint Lucia, Samoa, San Marino, Seychelles, Tonga, Tuvalu.

Sources : Pew Research Center; Marriage Equality USA; ILGA.

COUNCIL INTL
FOREIGN
RELATIONS

There has been progress beyond those universal documents, but the UN General Assembly continues to resist any but ambiguous commitments. But translating such sentiments into statements with specific application for LGBT people has not been easy. Whether the UN will go further?

Many factors attribute to the push towards equality for the LGBTQ+ community, such as the improved representation of same-sex couples and transgendered characters in television shows and movies. Popular culture plays an important

role. Music videos such as British pop star Ed Sheeran’s ‘Give Me Love’, which portrays love in all dimensions whether it be interracial or same sex, have helped to promote LGBTQ+ relations. But there also is a backlash, most visible in countries with populist leaders on the political right, such as **Poland** and **Russia**.

In this committee, you will be challenged to face the differences confronting global debates over equality for the LGBT community. You are encouraged to reference previous documents that both encourage and oppress the rights of these



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individuals to achieve a comprehensive resolution that will improve the status of the LGBTQ+ community on a global scale.

The diplomatic problem: Recognizing that this topic is a controversial matter, Member State diplomats must be tolerant of all positions in the UN General Assembly, regardless of their personal views., while also presenting the positions of their home governments. As a general rule, diplomats do not have personal views. They represent national policy. Intolerance and bigotry within this committee and the overall conference will be handled with the utmost seriousness.



Background

LGBTQ+ movements were unheard of prior to the late 19th Century. The term 'homosexuality' was not coined until this time by German

psychologist Karoly Maria Benkert. This, however, does not alter the relevance or presence of homosexuality in history.³ History reveals many differing treatments approaches to acceptance or suppression of what we now know as homosexuality. For example, preceding colonialism in African states, 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.⁴ Europe historically showed great diversity as well, with many documented cases of widespread sexual indifference, especially before the rise of Christianity and Islam.

Over time the direction towards progressivism was long abandoned as the path towards violence and persecution become the predominant response to homosexuality. Europe became a dark region for homosexuals during the latter part of the Medieval era, from roughly 1100 to 1400 a.d. Aggressive suppression of homosexuality may have been related to the Gregorian reform within the Catholic Church. Islam had its own history of suppression, while Buddhism and Hinduism for centuries were more diverse.

The contemporary movement for acceptance of LGBTQ+ preferences started in Germany in the late 1800s. German physician and sexual theorist Magnus Hirschfeld emerged as the first significant abolitionist of anti-homosexual rhetoric. He explored the qualities of homosexuality which later caused him to express the idea of homosexuality being a natural occurrence rather than a deliberate

³ "The First Institute for Sexual Science (1919-1933)." The First Institute for Sexual Science (1919-1933). <http://magnus-hirschfeld.de/ausstellungen/institute/>

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



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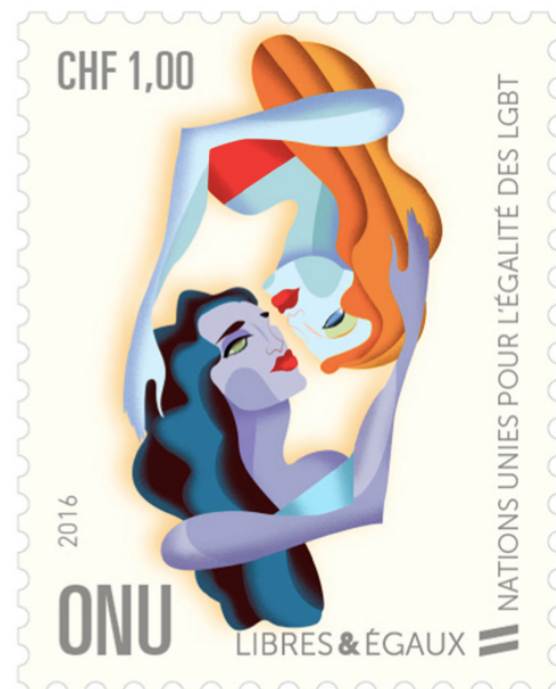
choice.⁵ Hirschfeld believed that scientific research would not only reduce intolerance towards homosexuality but initiate discussions as well as deeper understandings of sexuality in general. Such beliefs inspired Hirschfeld to establish the Humanitarian Science Committee (Wissenschaftlich-humanitäres Komitee) in 1897 with his colleagues Max Spohr, Franz Josef von Bülow, and Eduard Oberg.⁶ This became the first movement to organize the fight for the rights of the LGBT community. Their immediate goal was to abolish Germany's policy to punish intimate contact between men, in the German Imperial Penal Code. The progressive thoughts of Hirschfeld created a domino effect, if you will, inspiring many artists, writers, psychologists, etc. alike to discuss or express homosexual behaviors.

The ideas Hirschfeld and other reforms pioneered over a century ago remain controversial in much of the world. The General Assembly, by acting on this topic, continues an old debate, a process that has witnessed dramatic changes, albeit in fits and starts, with long periods of inactivity as well.

Current Situation

As it stands, many countries have passed progressive marriage equality laws within the past decade. Many of the 27 Member States of the European Union and much of Latin America legalized gay marriage. Many other Member States are caught in difficult debates over their domestic policy, while others are determined to maintain current prohibitions and punishments.

Currently, there are currently 29 countries where same-sex marriage is legal: **Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Taiwan, the United Kingdom, the United States of America and Uruguay.**⁷



The United States is a good example of a torn country. Its federal system of government gives great latitude to its individual states (provinces) in this era. In a process that culminated three decades of activism, eventually all fifty U.S. states changed their laws to allow same-sex

⁵ "Magnus Hirschfeld." Encyclopedia Britannica Online. Accessed September 07, 2016. <https://www.britannica.com/biography/Magnus-Hirschfeld#ref1221865>.

⁶ Ibid

⁷ 'Marriage Equality Around the World', *Human Rights Campaign*, n.d., <https://www.hrc.org/resources/marriage-equality-around-the-world>



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marriage, growing from one from 2004 to all fifty US states in 2015.

Russia is very different. Although Russia decriminalized homosexuality decades ago, animosity against gays remains high. In 2012, the Moscow city government ordered that gay pride parades be banned for the next 100 years. The following year, the parliament unanimously passed a law forbidding “propaganda of nontraditional sexual relationships” among minors. The possibility of further change ended on 1 July 2020, when Russian voters approved a package of constitutional amendments, one of them stipulating that marriage is only between a man and a woman.⁸

Many countries are more like **China**, where attitudes appear to be changing. Currently gay marriage is illegal there. But China recently took a step to allowing same-sex marriage. A body of the National People's Congress, the country's highest law-making institution, has publicly acknowledged petitions to legalize same-sex marriage, a rare development that has triggered a nationwide discussion of a topic that was once taboo.

Expectations are raised that China led by the Chinese Communist Party, might eventually join the growing number of countries that have

passed legislation protecting the rights of lesbian, gay, bisexual, transgender and queer people. While change now seems possible, the pace remains slow, and no action has happened yet.⁹

In addition to the states that have already passed pro-LGBTQ legislation, there are other states. Other countries are still caught in difficult debates. While **India** does not recognize same-sex marriage, some of its state courts have recognized the rights of same-sex couples who live together. The High Court in the north Indian state of Uttarakhand ruled that same-sex couples have the right to live together, even though they may not have the right to get married. But in most of the country, LGBT rights are not legally protected.¹⁰ Indian activists are pressing for greater rights, by using the courts, but political opposition is strong, and the ruling Bhartiya Janata Party is generally opposed.¹¹

Change is slowest where strong conservative and religious values make homosexuality illegal. Same-sex sexual activity is a crime in 70 countries. Some of them, including six Member States of the United Nations, impose the death penalty. Another five make such punishment technically possible, even though it is rarely enforced. Most of these countries are in Africa and the Middle East., including large and wealthy states like **Iran** and **Nigeria**.¹²

⁸ NBC News. ‘Russian constitution change ends hopes for gay marriage’, *NBC News*, 13 July 2020, <https://www.pbs.org/newshour/world/russian-constitution-change-bans-same-sex-marriage>

⁹ ‘Eric Baculinao, Eric. ‘Why is China raising the prospect of same-sex marriage?’ *NBC News*, 7 January 2020, <https://www.nbcnews.com/feature/nbc-out/why-china-raising-prospect-same-sex-marriage-n1109471> ; and Economist, ‘China’s government finds surprising support for same-sex marriage’, *The Economist*, 23 January 2020, <https://www.economist.com/china/2020/01/23/chinas-government-finds-surprising-support-for-same-sex-marriage>

¹⁰ Deutsche Welle. ‘India grapples with legality of same-sex marriage’, *Deutsche Welle*, 19 October 2020, <https://www.dw.com/en/india-same-sex-marriage-homosexuality/a-55324279>

¹¹ RFI. ‘Demands for same sex marriage in India gathers momentum’, *RFI*, 14 November 2020, <https://www.rfi.fr/en/international/20201114-demands-for-same-sex-marriage-in-india-gathers-momentum>

¹² Byrnes, Hristina. ‘13 countries where being gay is legally punishable by death’, *USA Today*, 14 June 2019, <https://www.usatoday.com/story/money/2019/06/14/countries-where-being-gay-is-legally-punishable-by->



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Past UN action

For advocates of LGBTQ+ rights, the UN is a world of promise and frustration. Despite many efforts since the 1980s, UN action mostly concerns policies for *its own staff*. This is the field controlled by the UN Secretary-General, who has no power over the Member States.

There have been many initiatives, but few votes, and less action concerning the *Member States*. For opponents of LGBTQ+ rights, the General Assembly has been helpful, allowing them to slow action. International momentum is real. Opponents have not killed the issue, but they can use General Assembly requirements for majority voting, and its preference in controversial matters for consensus among all Member States, to slow decisions that might cause difficulty.

Over the last few years, many UN leaders have repeatedly disregarded the consensus-led processes given in the UN Charter. Instead they acted within their limited areas of authority to advance the idea that individuals possess a right to same-sex marriage. Past UN Secretaries-General Kofi Annan and Ban-Ki moon publicly championed rights for same-sex marriage, even though no UN document produced by the Member States has ever promoted same-sex marriage and the vast majority of Member States strongly oppose it.¹³

The major push at the UN for same-sex marriage can be traced back to July 2013, when the UN launched ‘Free & Equal’, a campaign to advocate same-sex marriage rights and other

LGBT concerns at the UN and around the world. Free & Equal boasted that its message has reached more than a billion people.¹⁴ Since the launch of Free & Equal, a continuous stream of LGBTQ+ advocacy has flooded the UN.

Some 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.”¹⁵ 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.”

Country and bloc positions

This section reviews Member State positions on LGBTQ+ rights *in the UN General Assembly*. It is not focused on the domestic legal situation in most UN Member States. That has been reviewed above, and in more details in reports.

[death/39574685/](https://www.theguardian.com/world/2017/jul/27/gay-relationships-still-criminalised-countries-report); and. ‘Duncan, Pamela. Gay relationships are still criminalised in 72 countries, report finds’, *Guardian*, 27 July 2017, <https://www.theguardian.com/world/2017/jul/27/gay-relationships-still-criminalised-countries-report>

¹³ Coleman, Paul. ‘The UN’s Push for ‘same-sex marriage.’ 21 January 2016.

<http://www.thepublicdiscourse.com/2016/01/16281/>

¹⁴ Ibid

¹⁵ Ibid



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Know your country's *domestic position* on these issues, as well as its approach to *action in the UN General Assembly*; these two can be quite different.¹⁶

African Union: The 55 Member States of the African Union are sensitive to the issue, due in part to domestic activism, and especially due to pressure from donor governments in the European Union. 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. This is the African Union's preferred approach, setting standards and inviting its Member States to implement them by themselves. But homosexuality remains illegal in many African countries, and they resist foreign pressure for change.

China considers matters like LGBTQ+ rights to be domestic matters, with each Member State left to its own. China resists UN action that creates a precedent for intervening in other countries' domestic affairs. Its domestic policy, long assumed to be liberalizing, turned more regressive recently, most clearly seen in a national campaign on the 'masculinity crisis', aimed at 'effeminate' men in popular culture, said to be corrupting a generation. That campaign has now taken a harsher turn. In recent

months, the government has dialed things up into a full-blown culture war against unorthodox masculine expression, policing it in earnest.¹⁷ The impact of this on its foreign policy is not clear.

European Union: The European Union has taken a leading role promoting LGBTQ+ rights in international institutions on behalf of its 27 Member States, including using international institutions to try to change discriminatory laws around the world. The EU also helps fund activity movements to change laws around the world. Not all EU Member States agree. **Poland** has become very outspoken in its opposition to EU policy.

Non-Aligned Movement: LGBTQ+ rights, including same-sex marriage, is a difficult issue for the UN's largest voting bloc, the 137 Member States of the Non-Aligned Movement (NAM). The Nam unifies most to press demands against former colonial powers and demand better access to the global economy. It is more reserved about matters affecting the domestic affairs of its member states, generally preferring to let each Member States vote based its own domestic law and preferences. Generally, Latin American countries have been most supportive, Africa and Asia more hesitant.

Russia: Russia got enormous global publicity from its law prohibiting 'gay propaganda',

¹⁶ To learn more about your country, helpful global reviews include: Felter, Claire, and Danielle Renwick, 'Same-Sex Marriage: Global Comparisons', *Council on Foreign Relations*, 23 June 2020, <https://www.cfr.org/backgrounders/same-sex-marriage-global-comparisons> ; Byrnes, Hristina. '13 countries where being gay is legally punishable by death', *USA Today*, 14 June 2019, <https://www.usatoday.com/story/money/2019/06/14/countries-where-being-gay-is-legally-punishable-by-death/39574685/> ; and. 'Duncan, Pamela. 'Gay relationships are still criminalised in 72 countries, report finds', *Guardian*, 27 July 2017, [https://www.theguardian.com/world/2017/jul/27/gay-](https://www.theguardian.com/world/2017/jul/27/gay-relationships-still-criminalised-countries-report)

[relationships-still-criminalised-countries-report](#) . Also helpful are country-by-country reviews in *Wikipedia*, including *Wikipedia*, 'LGBT rights by country or territory', *Wikipedia*, n.d., https://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory and 'Same-sex marriage', *Wikipedia*, n.d., https://en.wikipedia.org/wiki/Same-sex_marriage

¹⁷ Helen Gao, 'China's Ban on 'Sissy Men' Is Bound to Backfire', *New York Times*, 31 December 2021, <https://www.nytimes.com/2021/12/31/opinion/china-masculinity.html>



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which the law defines as virtually all public discussion of anything explicitly about homosexuality. International judicial institutions and oversight bodies have been harshly critical of the Russia law. This has pushed Russia into a defensive position in international bodies, struggling to protect its domestic authority and sovereignty.¹⁸ Russia is not opposed to private LGBTQ+ life, but aggressively discourages its publicity. It can be expected to take the same approach I the UN General Assembly.

United States: LGBTQ+ rights have emerged as an issue American leaders can generally agree on. After a major change in position under President Obama, under President Trump the United States continued to be a leading force for LGBT rights in the United Nations. During the Trump presidency, America's priority was global decriminalization.¹⁹ This has not changed greatly under President Biden and Secretary of State Blinken, but has been emphasized much more prominently.²⁰

Some possible proposals for action

- **Comprehensive LGBTQ+ rights:** The most ambitious step for the international community remains a distant goal. But incisive trade-offs and diplomatic offers on related issues might bring this or part of it into existence.

A treaty outlining LGBTQ+ rights is a goal for many UN Member States, although it

faces strong opposition among many others. A General Assembly resolution could authorize such a negotiation process. The goals of the negotiations would have to be specified. Would this establish total legal equality, or restrict equality to specific legal provisions? Negotiations schedule would have to be set, and funding provide for the host country or organization, perhaps from a sympathetic government.

- **Marriage equality** is the most visible legal issue in many countries where homosexuality already is legal. While many countries have legalized gay marriage, may refuse to consider the issue. They might be persuaded, but that could require major concessions in other fields, or enormous pressure, more than major powers may be willing to spend on this issue.
- **Narrower legal reforms**, such as decriminalization and elimination of draconian punishments. The General Assembly may choose to focus on specific reforms it wants states to consider or implement. Although it cannot demand Member States do anything, the General Assembly can set new global standards and encourage all Member States to implement them.
- **Support national choice and sovereignty:** rather than being pressed to undertake action they oppose, many Member States may favor a resolution reaffirming the primacy of their

¹⁸ 'UN Rights Panel Rules Against Russian Gay Propaganda Law', Moscow Times, 15 August 2018, <https://www.themoscowtimes.com/2018/08/15/un-rights-panel-rules-against-russian-gay-propaganda-law-a62527>

¹⁹ U.S. Dept. of State. 'Media Note: Decriminalizing Sexual Orientation', *United States Mission to the United Nations*, 19 December 2020,

<https://usun.usmission.gov/media-note-decriminalizing-sexual-orientation/>

²⁰ Conor Finnegan, 'State Department's 1st openly gay spokesperson sends signal to the world, advocates say', *ABC News*, 2 February 2021, <https://abcnews.go.com/Politics/state-departments-1st-openly-gay-spokesperson-sends-signal/story?id=75620246>



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domestic law and decision-making, leaving policy in their own hands. The General Assembly could agree on the limits of acceptable policy, offer guidance or even recommend *best practices* for states to adopt.

- **Create a study group or committee to make recommendations:** As in the past, agreement on principles or recommendations for Member State action may not be possible. Confronted with sharp difference that cannot be overcome, advocates of LGBT rights may prefer to recommend *further study* and recommendations rather than do nothing. And countries opposed to expanding rights through the UN may welcome a chance to delay action, and the possibility of influencing further deliberations.
- **Studies** become important tools for the Un when Member States are divided. Studies—

usually undertaken by a Group of Experts chosen by the UN Secretary-General, are a way of preserving and building international consensus without isolating skeptical Member States, forcing them to vote against.

Normally UN studies are supervised by the *UN Secretary-General*. Procedures for selecting experts would have to be set. Most likely they would be government-chosen experts. The *countries to participate* also would require specifying. Also to be made clear are the goals of the study, the *Term of Refence*, and the final reporting *deadline*. Finally, *funding* for the group would have to be provided, probably from a sympathetic government.

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Homosexuality: legal status around the world

- No penalising law
- Recognises civil union
- Recognises marriage
- Homosexuality is criminalised - 0-7 year sentence
- 8-14 years
- 15 years to life
- 15 years to life in some areas
- Death penalty
- Death penalty in part of country
- Death penalty but not applied



Guardian graphic | Source: ILGA



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