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Human Rights Council Background Guide 2022

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Dear Delegates,

Welcome to the 2022 National Model United Nations New York Conference (NMUN•NY)! We are pleased to introduce you to our committee, the Human Rights Council (HRC). This year's staff are: Directors Maïke Weitzel (Conference A) and Yasmine Sabek (Conference B), and Assistant Directors Johannes Schmidl (Conference A) and Tobias Willms (Conference B). Maïke holds a Masters Degree in International Relations from TU Dresden and is currently developing an e-health application for the treatment of diabetes mellitus. Yasmine is an Egyptian Urbanist with a degree in Architecture from the American University in Cairo. She is currently in Rotterdam in the Netherlands completing her Masters in Urban Management and Development. Johannes is currently studying in Munich to become a teacher of English, Social Studies, Ethics, and Educational Psychology. Tobias is in the final year of his law studies at the University of Heidelberg and has recently completed the State Examination of the First Legal Examination. He currently works as a research assistant at Clifford Chance.

The topics under discussion for the HRC are:

1. Advancing International Human Rights to Protect against Discrimination Based on Sexual Orientation and Gender Identity
2. The Impacts of Unilateral Coercive Measures on the Protection and Enjoyment of Human Rights

The Human Rights Council (HRC) serves as the primary intergovernmental body within the United Nations system responsible for the promotion and protection of human rights as identified within the Charter of the United Nations. HRC plays a critical role in the monitoring and implementation of the Universal Declaration of Human Rights and other key human rights instruments. It is a subsidiary body of the General Assembly and possesses a comprehensive mandate that allows it to take proactive measures to address and provide recommendations on all human rights violations.

This Background Guide serves as an introduction to the topics for this committee. However, it is not intended to replace individual research. We encourage you to explore your Member State's policies in depth and use the Annotated Bibliography and Bibliography to further your knowledge on these topics. In preparation for the Conference, each delegation will submit a Position Paper by 11:59 p.m. (Eastern) on 1 March 2022 in accordance with the guidelines in the [Position Paper Guide](#) and the [NMUN•NY Position Papers](#) website.

Two resources, available to download from the [NMUN website](#), serve as essential instruments in preparing for the Conference and as a reference during committee sessions:

1. [NMUN Delegate Preparation Guide](#) - explains each step in the delegate process, from pre-Conference research to the committee debate and resolution drafting processes. Please take note of the information on plagiarism, and the prohibition on pre-written working papers and resolutions. Delegates should not start discussion on the topics with other members of their committee until the first committee session.
2. [NMUN Rules of Procedure](#) - include the long and short form of the rules, as well as an explanatory narrative and example script of the flow of procedure.

In addition, please review the mandatory [NMUN Conduct Expectations](#) on the NMUN website. They include the Conference dress code and other expectations of all attendees. We want to emphasize that any instances of sexual harassment or discrimination based on race, gender, sexual orientation, national origin, religion, age, or disability will not be tolerated. If you have any questions concerning your preparation for the committee or the Conference itself, please contact the Under-Secretaries-General for the Human Rights and Humanitarian Affairs (HRHA) Department, Citlali Mora Catlet (Conference A) and Caitlin Hopper (Conference B), at usg.hrha@nmun.org.

We wish you all the best in your preparations and look forward to seeing you at the Conference!

Sincerely,

Conference A

Maïke Weitzel, Director

Johannes Schmidl, Assistant Director

Conference B

Yasmine Sabek, Director

Tobias Willms, Assistant Director

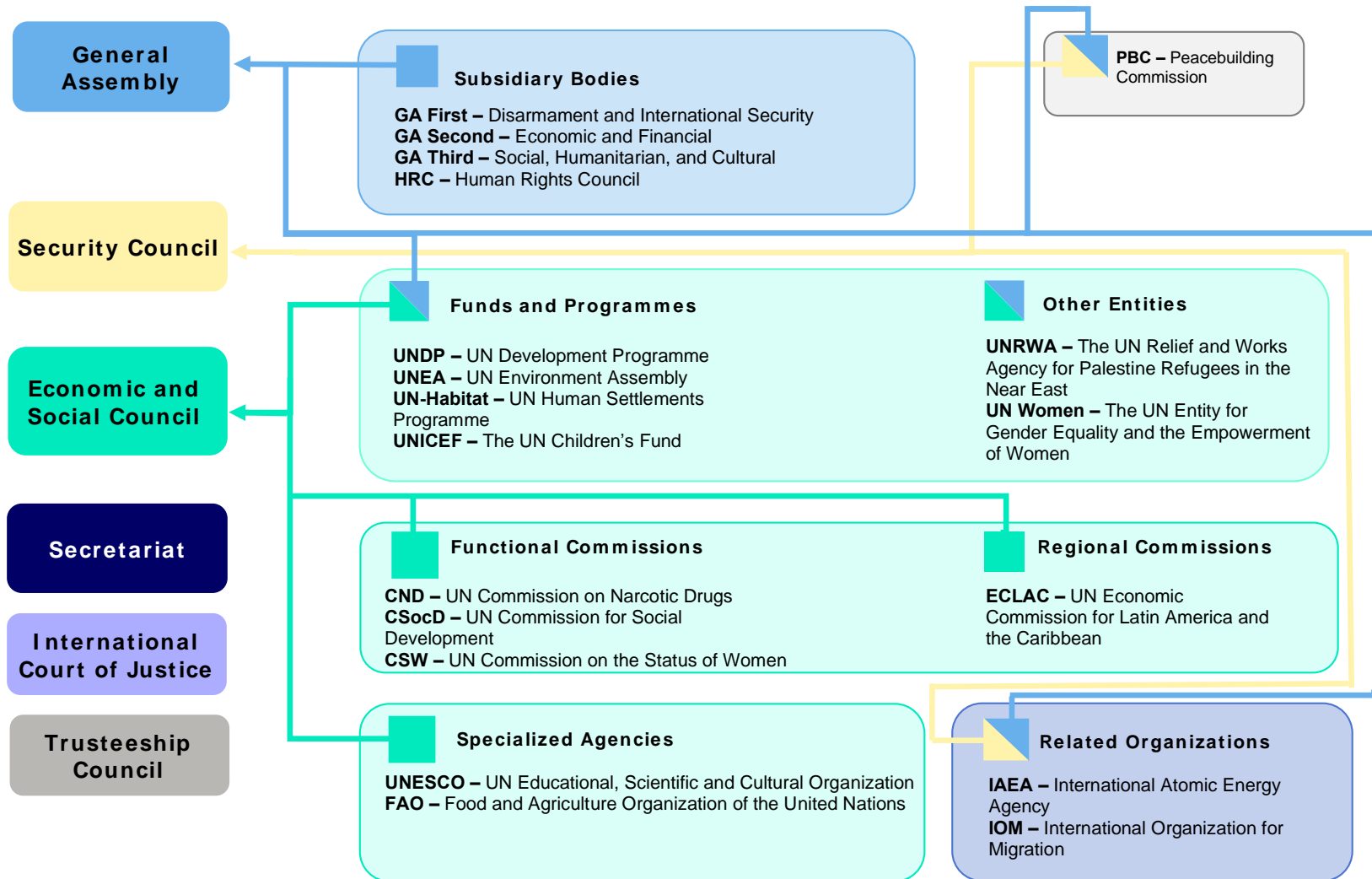


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United Nations System at NMUN•NY

This diagram illustrates the UN system simulated at NMUN•NY and demonstrates the reportage and relationships between entities. Examine the diagram alongside the Committee Overview to gain a clear picture of the committee's position, purpose, and powers within the UN system.



Committee Overview

Introduction

As the main body in the United Nations (UN) system responsible for human rights issues, the Human Rights Council (HRC) makes recommendations on strengthening the promotion and protection of human rights around the globe and addressing situations of human rights violations.¹ Established in 1946, the Human Rights Commission preceded HRC with a mandate similar to, if less comprehensive than, HRC's existing mandate.² After receiving criticism for "excessive politicization," recommendations were made to the General Assembly to replace the existing Human Rights Commission with a new Human Rights Council.³ General Assembly resolution 60/251 (2006) confirmed this recommendation and the Commission was replaced by the HRC in 2006.⁴ Five years after its foundation, HRC's work was reviewed by an open-ended intergovernmental working group and the General Assembly decided it would remain as subsidiary body without substantial changes to its governance.⁵

Both HRC and its predecessor, the Human Rights Commission, based their work largely on the *Universal Declaration of Human Rights* (UDHR), adopted in 1948, which established basic civil, political, economic, social and cultural rights that everyone should enjoy without distinction, and emphasized equality and non-discrimination.⁶ The UDHR was followed by the adoption of the *Vienna Declaration and Programme of Action* at the World Conference on Human Rights in 1993, which reinforced the principles in the UDHR and established the High Commissioner for Human Rights by the General Assembly in December 1993.⁷ The UN Office of the High Commissioner for Human Rights (OHCHR) provides logistical, administrative, and substantive support to the work of all UN human rights mechanisms, including core treaty-based bodies and thematic working groups.⁸ Michelle Bachelet of Chile is the current High Commissioner for Human Rights.⁹ Ms. Bachelet is the seventh High Commissioner and has prioritized the advancement of gender equality within OHCHR.¹⁰

By working closely with the OHCHR, HRC "has responded to urgent human rights situations [through] special sessions; has taken measures to address the accountability for the grave violation of international human rights and humanitarian law by establishing commissions of inquiry or dispatching fact-[finding] missions."¹¹ HRC extends its purview to several regions of Africa, Asia, Latin America, Eastern Europe, and the Middle East.¹²

¹ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

² *Ibid.*

³ UN DGC, *General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions (GA/10449)*, 2006; UN General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General (A/59/2005)*, 2005, p. 45.

⁴ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

⁵ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006; UN HRC, *Report of the Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council (A/HRC/WG.8/2/1)*, 2011.

⁶ UN OHCHR, *Brief History of UN Human Rights*, 2021.

⁷ *Ibid.*

⁸ UN OHCHR, *The Human Rights Council and the Role of the Office of the High Commissioner for Human Rights*.

⁹ UN DGC, *Secretary-General Appoints Michelle Bachelet of Chile United Nations High Commissioner for Human Rights (SG/A/1824)*, 2018.

¹⁰ UN OHCHR, *About us: High Commissioner – Michelle Bachelet Jeria*, 2021.

¹¹ UN OHCHR, *The 20th Anniversary of OHCHR – 20 Human Rights Achievements*, 2018.

¹² UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006; UN HRC, *Agenda and Annotations (A/HRC/41/1)*, 2019; UN OHCHR, *41st Session of the Human Rights Council (24 June 2019 - 12 July 2019)*, 2019.

Governance, Structure, and Membership

The Council consists of 47 Member States who are elected by a majority of the General Assembly through direct and secret ballot.¹³ While electing HRC members, the General Assembly also takes into consideration the candidate Member States' contributions to the promotion and protection of human rights.¹⁴ Membership is based on equitable geographical distribution and a specific number of seats are designated to each geographic region.¹⁵ African states represent 13 seats, Asia-Pacific states represent 13 seats, Latin American and Caribbean states represent eight seats, Western European and other states represent seven seats, and Eastern European states represent six seats on the Council.¹⁶ Each Member serves for a period of three years and upon serving two consecutive terms the Member State is not eligible for immediate re-election.¹⁷ The most recent election took place on 13 October 2020 during the General Assembly's 75th session.¹⁸

In March, June, and September, HRC holds regular sessions to discuss issues under its purview which last a minimum of 10 weeks combined.¹⁹ HRC's latest regular session was the 47th session which started on the 21 June 2021 and ended on the 13 July 2021.²⁰ There must be a total of three regular sessions per annum and, if necessary, one-third of HRC's members can request a special session to address any pressing human rights issues.²¹ There have been a total of 30 special sessions of HRC.²² The latest HRC special session was held on 27 May 2021 and discussed the human rights situation in the occupied Palestinian territory.²³ During the first regular session of each year, HRC elects a President and four Vice Presidents to serve on its Bureau, who are responsible for the organization and procedural function of HRC.²⁴ The President's role is to summon and preside over organizational meetings and regular sessions and propose candidates to serve as special procedures mandate holders.²⁵ The current President for the 15th cycle of HRC is Nazhat Shameem Khan, who has served as the Permanent Representative of Fiji to the UN office at Geneva since 2014.²⁶

In addition to the Bureau, HRC established the Advisory Committee as a subsidiary body.²⁷ The main function of the Advisory Committee is to provide policy advice and expertise to HRC.²⁸ It meets biannually and is composed of 18 human rights experts that are elected by HRC in proportion to the regional composition of the Council.²⁹ The Advisory Committee regularly publishes reports at the request of HRC and discusses research proposals and studies in the field of human rights.³⁰ The General Assembly Third Committee, as the committee allotted to address agenda items of social, humanitarian affairs and human rights issues, is responsible for evaluating human rights questions and hears the annual reports made by HRC.³¹

¹³ UN OHCHR, *Membership of the Human Rights Council*, 2021.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ UN General Assembly, *Election of the Human Rights Council (13 October 2020)*, 2021.

¹⁹ UN OHCHR, *Sessions*, 2021.

²⁰ UN OHCHR, *47th regular session of the Human Rights Council (21 June to 13 July 2021)*, 2021.

²¹ UN OHCHR, *Sessions*, 2021.

²² Ibid.

²³ UN OHCHR, *30th special session of the Human Rights Council on the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem – 27 May 2021*, 2021.

²⁴ UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

²⁵ Ibid.

²⁶ UN OHCHR, *Human Rights Council President of the 15th Cycle (2021)*, 2021.

²⁷ UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

²⁸ UN OHCHR, *Background Information on the Advisory Committee*, 2020.

²⁹ UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

³⁰ UN HRC, *Report of the Advisory Committee on its Twentieth Session (A/HRC/AC/20/2)*, 2018.

³¹ UN General Assembly, *Social, Humanitarian & Cultural Issues (Third Committee)*.

HRC strengthens its efforts in upholding human rights by forming partnerships with non-governmental organizations (NGOs), national human rights institutions (NHRIs), and civil society actors.³² Partnerships facilitate many of HRC's initiatives, including specific programs or frameworks targeting groups deprived of their access to fundamental human rights and freedoms.³³ NHRIs and NGOs that have received Economic and Social Council (ECOSOC) consultative status can directly address HRC during sessions and inform the Council of situations occurring in their home states.³⁴

Mandate, Functions, and Powers

General Assembly resolution 60/251 (2006) forms the basis of HRC's mandate.³⁵ HRC serves to promote universal respect for all human rights and fundamental freedoms, effective governance within the UN system in regards to human rights issues, and, if necessary, provide recommendations on human rights violations.³⁶ HRC is "guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue, and cooperation."³⁷ The General Assembly has also designated HRC as a forum for discussing all human rights issues including violations, emergency response, education, and matters of prevention of human rights abuses.³⁸ Also crucial to enforcing the mandate and work of HRC is the *International Bill of Human Rights*, a framework which encompasses the UDHR, the *International Covenant on Economic, Social and Cultural Rights* (1966), and the *International Covenant on Civil and Political Rights* (1966), and their respective optional protocols.³⁹ These documents are the pillars that guide HRC in its recommendations by outlining the fundamental obligations and commitments of Member States in international human rights law.⁴⁰ Additionally, the *2030 Agenda for Sustainable Development* (2030 Agenda), adopted in 2015, and its 17 Sustainable Development Goals (SDGs) guide the work of HRC and inform its current priorities.⁴¹

HRC's mandate has not been changed since its establishment in 2006, but HRC resolution 5/1 on "institution building" was adopted in 2007 to establish mechanisms and structures to guide HRC's program of work, as well as its rules of procedure and other operational functions.⁴² The resolution also established the format for Special Procedures, the Universal Periodic Review (UPR), and the Complaint Procedure.⁴³ Special Procedures are mechanisms that enable independent parties to report, monitor, and advise on country-specific or thematic issues being considered by HRC.⁴⁴ Each investigation has a mandate and a mandate holder, who is typically a Special Rapporteur, an independent expert, and a working group to carry out the investigation.⁴⁵ Special Procedures can take the form of country or field visits endorsed by OHCHR, and then bring specific cases and concerns to the attention of Member States.⁴⁶ They can send communications detailing accusations of violations or abuses of human rights, engage in advocacy efforts, and offer technical assistance.⁴⁷

³² UN OHCHR, *NGO and NHRI Information*, 2021.

³³ Ibid.

³⁴ Ibid.

³⁵ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

³⁶ Ibid.

³⁷ Ibid.

³⁸ UN OHCHR, *The Human Rights Council and the Role of the Office of the High Commissioner for Human Rights*, 2020.

³⁹ UN OHCHR, *Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights*, 1996.

⁴⁰ UN OHCHR, *Human Rights: A Basic Handbook for UN Staff*, 2000.

⁴¹ UN General Assembly, *Transforming our world: The 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015; UN OHCHR, *Sustainable Development Goals - Related Human Rights*, 2020.

⁴² UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

⁴³ Ibid.

⁴⁴ UN OHCHR, *Special Procedures of the Human Rights Council*, 2021.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

The UPR is one of the most important functions of HRC.⁴⁸ Each Member State of the UN submits to a periodic review to assess the fulfillment of its human rights obligations.⁴⁹ The full cycle of the UPR process takes around four years and includes several steps.⁵⁰ The UPR is unique in both its approach and its universality.⁵¹ At the preparation stage, information is gathered that will form the basis of the review, including national reports from the state under review, stakeholder submissions, and information prepared by OHCHR.⁵² At the review stage, documents are presented at the regular sessions of the working group on the UPR, which is also composed of all 47 Member States.⁵³ At the stage of adoption and consideration, each Member State provides comments and the Member State under review can offer reservations on specific issues.⁵⁴ Finally, during the follow-up stage, each Member State under review shows how effectively it has acted upon the recommendations received.⁵⁵ Groups and NGOs without ECOSOC consultative status can still provide written documents on a Member State as part of the UPR process.⁵⁶ The UPR is currently in its third cycle, which started in 2017 and will conclude in 2021.⁵⁷ The 39th session of the UPR will run from started on 1-12 November 2021.⁵⁸

Recent Sessions and Current Priorities

HRC has been conducting its business virtually since the initial outbreak of COVID-19 and the suspension of the 43rd session on 13 March 2020, and has recently held its 47th session virtually, which ran from 21 June 2021 to 13 July 2021.⁵⁹ The 47th session's agenda included updates and dialogue from the United Nations High Commissioner for Refugees (UNHCR) on the situations in occupied Palestinian territories, Islamic Republic of Iran, Myanmar, Ukraine, Venezuela, and Eritrea, as well as discussions on thematic topics such as conscientious objections to military service, prevention of genocide, and human rights and climate change.⁶⁰ In spite of the continued challenges presented by COVID-19, HRC had a productive session and adopted 25 resolutions, two decisions, and 15 UPRs.⁶¹

One prominent item on HRC's agenda in the 47th session was the situation in Occupied Palestinian Territories.⁶² HRC also held a special session on 27 May 2021 on the grave human rights situation in occupied Palestinian territory, including East Jerusalem.⁶³ The special session resulted in the establishment of an International Commission of Inquiry to Investigate Violations in the Occupied Palestinian Territory, including East Jerusalem.⁶⁴ A three-person commission has been appointed consisting of Navi Pillay of South Africa, Miloon Kothari of India, and Chris Sidoti of Australia to

⁴⁸ UN OHCHR, *Universal Periodic Review*, 2021.

⁴⁹ UN OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, 2008, p. 80.

⁵⁰ *Ibid.*, p. 80.

⁵¹ UN OHCHR, *Universal Periodic Review*, 2021.

⁵² UN OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, 2008, p. 81.

⁵³ *Ibid.*, p. 81.

⁵⁴ *Ibid.*, p. 81.

⁵⁵ *Ibid.*, p. 81.

⁵⁶ UN OHCHR, *NGO and NHRI Information*, 2021.

⁵⁷ UN OHCHR, *Cycles of the Universal Periodic Review*, 2021.

⁵⁸ UN HRC, *Universal Periodic Review*, 2021.

⁵⁹ UN Web TV, *Special Advisor on the Prevention of Genocide - 11th Meeting, 47th Regular Session Human Rights Council*, 2021.

⁶⁰ UN HRC, *47th session of the Human Rights Council: Resolutions, decisions and President's statements*, 2021.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ UN HRC, *30th special session of the Human Rights Council on the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem – 27 May 2021*, 2021.

⁶⁴ UN HRC, *Human Rights Council Establishes International Commission of Inquiry to Investigate Violations in the Occupied Palestinian Territory, including East Jerusalem, and in Israel*, 2021.

investigate any international law violations up until 13 April 2021 and to understand the underlying causes of conflict and discrimination occurring in Occupied Palestinian Territory.⁶⁵

HRC has also recently adopted a resolution highlighting the connection between the adverse effects of climate change on the full enjoyment of human rights during its 47th session.⁶⁶ This resolution stressed that the adverse effects of climate change have a range of implications, both direct and indirect, that can increase with greater global warming, for the effective enjoyment of human rights, including the right to life, adequate food; physical and mental health, adequate housing; safe drinking water and sanitation, the right to work, and the right to development.⁶⁷ The 48th regular session of HRC began on 13 September 2021 and continued until 8 October 2021.⁶⁸

Conclusion

HRC addresses human rights on global, regional, and national levels to ensure all Member States safeguard the fundamental freedoms and rights articulated by international law.⁶⁹ As it continues to invest in knowledge sharing and be informed by its various mechanisms, HRC aims to always be abreast of the implications of its recommendations and decisions.⁶⁹ As human rights issues are multidimensional and complex, HRC will always encourage desegregated dialogue in its forums.⁷⁰ As the right to health, adequate living, and security are fundamental human rights, HRC has ensured its guidance is still accessible to Member States, allowing them to take advantage of appropriate resources and the means to adapt during times of crisis.⁷¹ HRC will continue to remain steadfast in its mandate and work with NGOs, civil society, working groups, inter-agency mechanisms, and coalitions as international human rights and their complexity evolve.⁷²

Annotated Bibliography

Office of the United Nations High Commissioner for Human Rights. (n.d.). *COVID-19 and its human rights dimensions*. Retrieved 10 August 2021 from:

<https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>

This website provides all updates from the UN High Commissioner for Human Rights on COVID-19, including guidance, press releases, press briefings, stories, videos, events, infographics, and other COVID-19 human rights material. Review of this page is essential for delegates to understand the correlation between COVID-19 and human rights, and the impact of the pandemic upon human for already marginalized groups. This page is regularly updated, providing concise and comprehensive information about the effects of COVID-19 on diverse populations. It is therefore advisable that delegates can use this page as a starting point to understand the impact of COVID-19 on the work of the Human Rights Council.

Office of the United Nations High Commissioner for Human Rights. (n.d.). *Sustainable Development Goals - Related Human Rights*. Retrieved 10 August 2021 from:

https://www.ohchr.org/Documents/Publications/Session5_OHCHR_SDG_HR_Table.pdf

⁶⁵ UN HRC, *President of Human Rights Council appoints Members of Commission of Inquiry on the Occupied Palestinian Territories including East Jerusalem and Israel*, 2021.

⁶⁶ UN HRC, *Human Rights Council Adopts two resolutions on Climate Change and Maternal Mortality and Morbidity*, 2021.

⁶⁷ UN HRC, *Promotion and Protection of all Human Rights, civil, political, economic, social and cultural rights, including right to development (A/HRC/47/L.19)*, 2021.

⁶⁸ UN HRC, *48th session of the Human Rights Council: Resolutions, decisions and President's statements*, 2021.

⁶⁹ UN HRC, *Agenda and annotations (A/HRC/42/1)*, 2019.

⁷⁰ UN HRC, *Summary of the Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development (A/HRC/40/34)*, 2019.

⁷¹ UN OHCHR, *Human Rights Council discusses human rights implications of the COVID-19 crisis with its special procedures mandate holders*, 2020.

⁷² UN OHCHR, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

The work of HRC is supported by the UN OHCHR, and this info sheet was published by OHCHR as a guide to connect the SDGs to human rights. This guide gives an overview of all SDGs and a list of human rights, which correspond with each SDG. It also describes which human right can be found in which document, also explaining what the different human rights frameworks are. This source provides a comprehensive overview of how HRC is connected to all the SDGs and will be a useful starting point for delegate research into the committee's mandate.

Office of the United Nations High Commissioner for Human Rights. (2021). *Universal Periodic Review*. Retrieved 10 August 2021 from: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx>

This resource is the main page for all UPR related information. Delegates can easily access any news, meeting agendas, and session information through this link. The UPR can provide delegates information on the progress of each state on their Human Rights goals and how they can orient their discussion during the conference to be mindful of each State's current status.

United Nations, Human Rights Council, Fifth session. (2007). *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*. Retrieved 10 August 2021 from:

https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

HRC resolution 5/1 (2007) represents a package that established the procedures, mechanisms, and governance that HRC operates under today. The resolution details HRC's mandate and its rules of procedure. The resolution also modified the system of expertise for human rights issues and the adopted the Complaint Procedure from the old human rights council, the Commission. This resource is a key starting point for delegate research as they begin to gain foundational knowledge of HRC.

United Nations, Human Rights Council. (2021). *47th Session of the Human Rights Council: Resolutions, Decisions and President's Statements*. Retrieved 10 August 2021 from:

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session47/Pages/ResDecStat.aspx>

This page provides links to all the documentation for the 47th regular session of HRC which was held on 21 June – 13 July 2021. Using this resource, delegates will find easily accessible lists of all reports, communications from governments, NGO written statements, communications from NHRIs, adopted resolutions, decisions, and president's statements and draft proposals. This will likely be the primary resource to access HRC's most updated work and current thematic focuses.

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1. Advancing International Human Rights to Protect against Discrimination Based on Sexual Orientation and Gender Identity

“The United Nations stands for the human dignity and rights of everyone, including LGBTIQ+ people. Let us work together for an inclusive world where everyone can live free and equal in dignity and rights, no matter who they are, where they live or whom they love.”⁷³

Introduction

Discussion of the human rights of people with diverse sexual orientations and gender identities (SOGI) within the wider United Nations (UN) began in 1993.⁷⁴ These discussions were based on the fundamental principle that the rights enshrined in the *Universal Declaration of Human Rights* (UDHR) of 1948 are universal and consequently applicable regardless of SOGI.⁷⁵ Nevertheless, violence and discrimination on the basis of SOGI by both state and non-state actors still remain a global issue.⁷⁶ In addition to laws that criminalize certain SOGI, discrimination occurs in all areas of life for people with diverse SOGI, from education and housing to access to justice and health care.⁷⁷ A survey conducted by the European Union (EU) found that one in ten participants had experienced physical or sexual attacks within the last five years based on their SOGI.⁷⁸ Additionally, among those participants who are open about their diverse SOGI, 40% have been subjected to harassment.⁷⁹ In many countries, this situation has been further exacerbated by the ongoing COVID-19 pandemic.⁸⁰

The Human Rights Council (HRC) has been addressing SOGI since 2011.⁸¹ Studies commissioned by HRC have revealed the scope of related human rights violations, and HRC has since appointed an Independent Expert (IE) who is tasked with monitoring the issue and identifying best practices to promote human rights with regard to SOGI.⁸² When discussing SOGI, the UN Free & Equal Campaign (UNFE) uses the term sexual orientation to refer to “a person’s physical, romantic and/or emotional attraction towards other people.”⁸³ Gender identity, on the other hand, describes “a deeply felt and experienced sense of one’s own gender.”⁸⁴ Under this definition, the term “gender” implies learned behavior, sociocultural expectations, and social constructions that go beyond a person’s biological sex.⁸⁵

⁷³ Guterres, *Secretary-General's message on the International Day against Homophobia, Biphobia and Transphobia*, 2021.

⁷⁴ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz (A/HRC/47/27), 2021, p. 4; UN World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993.

⁷⁵ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948, p.1; UN CCPR, *Toonen v. Australia*, Communication No. 488/1992 (CCPR/C/50/D/488/1992), 1994, p. 12.

⁷⁶ OHCHR, *Equality & Non-Discrimination*, 2018, p. 1; OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, pp. vii, 12, 42, 54.

⁷⁷ OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 55.

⁷⁸ EU FRA, *A long way to go for LGBTI equality*, 2020, p. 3.

⁷⁹ *Ibid.*, p. 3.

⁸⁰ OHCHR, *An LGBT-inclusive response to COVID-19*.

⁸¹ OHCHR, *United Nations Resolutions on sexual orientation, gender identity and sex characteristics*.

⁸² UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011; UN HRC, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23)*, 2015; UN HRC, *Protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/RES/32/2)*, 2016.

⁸³ OHCHR, *LGBTI Equality: Frequently Asked Questions*, 2018, p. 1.

⁸⁴ *Ibid.*, p. 1.

⁸⁵ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz (A/HRC/47/27), 2021, p. 4.

The term “sexual orientation” traditionally includes heterosexuality, homosexuality, bisexuality, pansexuality, and asexuality.⁸⁶ The terms heterosexual and homosexual refer to people who are sexually attracted to people of a different gender or their own gender, respectively.⁸⁷ Homosexual attraction between men is historically associated with the term gay, whereas homosexual women may identify as lesbians.⁸⁸ However, the term gay is sometimes used to refer to homosexual people regardless of their gender.⁸⁹ Bisexuality encompasses people who feel sexually attracted to the same sex or gender as well as another sex or gender, whereas pansexual people may experience attraction towards all genders.⁹⁰ By contrast, a person who identifies as asexual does not typically experience sexual attraction towards other people.⁹¹

People whose gender identity corresponds with the sex they were assigned at birth are commonly referred to as being cisgender.⁹² By contrast, a divergence between someone’s assigned sex and gender identity is often called being transgender, agender, gender fluid, or bigender, among others.⁹³ In a broader sense, a gender-diverse person is someone whose gender identity or expression does not align with a societally-perceived gender norm.⁹⁴ The term intersex is applied to people who are born with atypical biological sex characteristics.⁹⁵ Although this complicates their inclusion in a binary system of SOGI, intersex people face similar discrimination and are consequently addressed in discussions about the protection of human rights of people with diverse SOGI.⁹⁶ Although some people facing SOGI-related intolerance may not identify with the terms lesbian, gay, bisexual, trans, and intersex (LGBTI), the UN commonly uses this acronym as an umbrella term for everyone affected.⁹⁷ Additionally, the UN emphasizes that regardless of how an individual identifies, they remain protected by the same international human rights mechanisms and should enjoy access to the same protected rights.⁹⁸

Based on these SOGI, individuals can face both direct and indirect discrimination.⁹⁹ Direct discrimination may refer to the practice of explicitly treating a person differently because of their SOGI, whereas indirect discrimination occurs when a seemingly neutral practice effectively discriminates against a person because it does not address the ramifications of pre-existing inequalities.¹⁰⁰ Acts of violence that are based on these types of discrimination are referred to as sexual and gender-based violence (SGBV).¹⁰¹ This includes both physical and psychological violence, which can include murder, kidnapping, sexual

⁸⁶ UNDSS, UNSMS, *Gender Inclusion in Security Management*, 2019, p. 66.

⁸⁷ *Ibid.*, p. 66.

⁸⁸ OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 6.

⁸⁹ UNDSS, UNSMS, *Gender Inclusion in Security Management*, 2019, p. 66.

⁹⁰ *Ibid.*, p. 66.

⁹¹ *Ibid.*, p. 66.

⁹² UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 3.

⁹³ OHCHR, *Transgender*, 2017, p. 1.

⁹⁴ OHCHR, *The struggle of trans and gender-diverse persons*.

⁹⁵ UNSD, *Gender identity – Developing a statistical standard*, 2015, p. 41.

⁹⁶ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 3.

⁹⁷ OHCHR, *OHCHR and the Human Rights of LGBTI People*; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 3; UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 4.

⁹⁸ OHCHR, *OHCHR and the Human Rights of LGBTI People*.

⁹⁹ UN CEDAW, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/2010/47/GC.2)*, 2010, pp. 4-5.

¹⁰⁰ *Ibid.*, pp. 4-5.

¹⁰¹ UNHCR, *Action against Sexual and Gender-Based Violence: An Updated Strategy*, 2011, p. 6.

violence, or deprivation of liberty, and is often motivated by cultural, political, or religious beliefs.¹⁰² In many cases, such actions are perpetrated in order to coerce individuals into complying with perceived norms on SOGI.¹⁰³ Similarly, intersex people frequently face surgical or medical interventions intended to correct perceived anomalies without their consent, and often during infancy or puberty.¹⁰⁴

The absence of an explicit definition of SOGI within the international human rights instruments has been used as an argument against extending the protection of human rights law to LGBTI people by some Member States.¹⁰⁵ Additionally, some Member States have expressed concerns that the inclusion of SOGI into these frameworks could contradict traditional religious and cultural values.¹⁰⁶ In response to this, former UN Secretary-General Ban Ki-moon has expressed the view that “[w]here there is tension between cultural attitudes and universal human rights, universal human rights must carry the day.”¹⁰⁷

International and Regional Framework

Whereas treaties and covenants have not historically explicitly addressed the relationship between human rights and SOGI, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has stated that the rights enshrined in the UDHR are universally applicable without distinctions of any kind.¹⁰⁸ In 1994, the UN Human Rights Committee, which monitors the implementation of the *International Covenant on Civil and Political Rights* (ICCPR) (1966), established this precedent by determining that the covenant’s provisions preventing discrimination based on a person’s sex include sexual orientation in the case *Toonen v. Australia*.¹⁰⁹ A similar conclusion was reached by the Committee on Social, Economic and Cultural Rights (CESCR) with regard to the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) (1966).¹¹⁰ Therefore, the UNFE campaign concludes that there are no provisions within the international human rights treaties that would enable States parties to withhold rights from LGBTI people.¹¹¹

The concept of gender identity was first referenced by the UN within the *Vienna Declaration and Programme of Action* (1993).¹¹² It was consequently introduced into other international instruments, such as the *Cairo Declaration on Population and Development* (1994) and the *Beijing Declaration and Platform for Action* (1995).¹¹³ Although these sources do not define the term “gender” or explain its relation to the

¹⁰² OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 13.

¹⁰³ *Ibid.*, p. 13.

¹⁰⁴ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 18.

¹⁰⁵ UN HRC, *Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity – Summary of discussion*, 2012, p. 5.

¹⁰⁶ *Ibid.*, p. 6.

¹⁰⁷ UN SG, *Ban Ki-moon – Remarks at event on ending violence and criminal sanctions based on sexual orientation and gender identity [as delivered]*, 2010.

¹⁰⁸ OHCHR, *International Human Rights Law & Sexual Orientation & Gender Identity*, 2018, p. 2; OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 9.

¹⁰⁹ UN CCPR, *Toonen v. Australia, Communication No. 488/1992 (CCPR/C/50/D/488/1992)*, 1994, p. 12; UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, pp. 4-5.

¹¹⁰ UN CESCR, *Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights) – General Comment No. 20*, 2009, pp. 5, 10.

¹¹¹ OHCHR, *International Human Rights Law & Sexual Orientation & Gender Identity*, 2018, p. 2.

¹¹² UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 4; UN World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993.

¹¹³ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 4; UN

term “sex,” they use it to describe a sociocultural construct rather than a biological fact, which supports the protection of SOGI populations’ rights.¹¹⁴

While the General Assembly usually addresses the rights of LGBTI people under the agenda item “Extrajudicial, summary or arbitrary executions,” thus only dealing with one aspect of SOGI-related intolerance, HRC has addressed the issue directly since 2011.¹¹⁵ In its resolution 17/19 on “Human rights, sexual orientation and gender identity” (2011), which was adopted by a narrow margin, HRC expressed its concern about SGBV and discrimination, and requested a study on the subject from OHCHR.¹¹⁶ The resulting report concluded that there was a pattern of significant human rights violations that demanded a response.¹¹⁷ Discriminatory laws uncovered by the study include the criminalization of same-sex relations as well as arbitrary arrests and detentions.¹¹⁸ It also found that LGBTI people are often discriminated against in employment decisions, health care, education, and other areas.¹¹⁹ Consequently, HRC requested that OHCHR update its report with a special focus on best practices to overcome violence and discrimination.¹²⁰ The updated report found that HRC should remain seized on the issue and should request information on patterns of human rights violations from Special Procedures mandate holders.¹²¹ In response, HRC appointed an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI).¹²² The latest report of the IE SOGI focuses on the subject of gender theory, concluding that Member States should include an understanding of this concept in their legislation in order to ensure the protection of LGBTI people against discrimination.¹²³ According to the report, this entails recognizing every person’s right to self-determination and the establishment of simple administrative processes to achieve legal recognition of the gender identity of LGBTI people.¹²⁴

On a regional level, the EU has explicitly prohibited discrimination based on sexual orientation in its *Charter of Fundamental Rights* (2012) and the concept of gender identity has been enshrined in the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention) (2011), which notably encompasses a framework of definitions for the concepts of gender and gender-based violence.¹²⁵ Similarly, resolution 275 (2014) of the African

ICPPD, *Cairo Declaration on Population and Development*, 1994; UN Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, 1995.

¹¹⁴ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz (A/HRC/47/27), 2021, p. 4.

¹¹⁵ OHCHR, *United Nations Resolutions on sexual orientation, gender identity and sex characteristics*, 2021.

¹¹⁶ UN HRC, *Human rights, sexual orientation and gender identity* (A/HRC/RES/17/19), 2011, pp. 1-2.

¹¹⁷ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights* (A/HRC/19/41), 2011, p. 24.

¹¹⁸ *Ibid.*, p. 13.

¹¹⁹ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights* (A/HRC/19/41), 2011, p. 16.

¹²⁰ UN HRC, *Human rights, sexual orientation and gender identity* (A/HRC/RES/27/32), 2014, p. 2.

¹²¹ UN HRC, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights* (A/HRC/29/23), 2015, p. 22.

¹²² UN HRC, *Protection against violence and discrimination based on sexual orientation and gender identity* (A/HRC/RES/32/2), 2016, pp. 2-3; UN HRC, *Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (A/HRC/RES/41/18), 2019, pp. 1-2.

¹²³ OHCHR, *Annual Thematic Reports of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, 2021; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz (A/HRC/47/27), 2021, p. 19.

¹²⁴ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz (A/HRC/47/27), 2021, p. 19.

¹²⁵ EU, *Charter of Fundamental Rights of the European Union*, 2012, p. 10; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and*

Commission on Human and People's Rights (ACHPR) confirms that diverse SOGI should be protected under the *African Charter on Human and People's Rights* (Banjul Charter) (1981).¹²⁶ Additionally, the General Assembly of the Organization of American States (OAS) has condemned discrimination based on SOGI in several resolutions.¹²⁷ Its Inter-American Commission on Human Rights (IACHR) has also created a Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex People.¹²⁸ Within the Association of South East Asian Nations (ASEAN), however, no country has included the protection of LGBTI rights in their constitutions or frameworks.¹²⁹ Similarly, the Organization of Islamic Cooperation's (OIC) has stated that the historical, cultural, and religious backgrounds of Member States limit the universality of human rights for LGBTI people.¹³⁰

In 2006, a group of international human rights experts developed the *Yogyakarta Principles*, which aim to apply existing human rights standards to the situation of LGBTI people and include suggestions on how Member States should address related intolerance.¹³¹ They were updated in 2017 in order to encompass more recent developments in international human rights law.¹³² Although these principles have not been adopted by any UN bodies, several Member States have referred to them in the process of developing national policies.¹³³

Role of the International System

As the main intergovernmental human rights body of the UN, the mandate of HRC includes the promotion and protection of all human rights.¹³⁴ Although it usually strives to operate by consensus, both the initial resolution on SOGI and the appointment of an IE on the issue were passed by a narrow margin.¹³⁵ Nevertheless, the IE SOGI has found that Member States are increasingly implementing measures for the protection of LGBTI people in their national legislation.¹³⁶ For example, as of 2020, laws that allow transgender people to legally change their gender had been introduced in 96 countries.¹³⁷

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- gender identity, Victor Madrigal-Borloz (A/HRC/47/27), 2021, p. 5; EU Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, 2011, p. 3.
- ¹²⁶ AU ACHPR, *275 Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, 2014; AU, *African (Banjul) Charter on Human and People's Rights*, 1981.
- ¹²⁷ OAS, IACHR, *Rapporteurship on the Rights of LGBTI Persons – Links*.
- ¹²⁸ OAS, IACHR, *IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons*, 2011.
- ¹²⁹ Kwatra, *LGBTIQ Rights in Southeast Asia – Where We Stand and Pathway Forward*, 2017.
- ¹³⁰ Blitt, *The Organization of Islamic Cooperation's (OIC) Response to Sexual Orientation and Gender Identity Rights: A Challenge to Equality and Nondiscrimination Under International Law*, 2019, p. 110; OHCHR, *Council establishes mandate on protection against violence and discrimination based on sexual orientation and gender identity*, 2016.
- ¹³¹ International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity, *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, 2006, p. 7.
- ¹³² International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity, *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, 2017.
- ¹³³ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 23.
- ¹³⁴ OHCHR, *Human Rights Council*, 2021, p. 1; UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006, p. 2.
- ¹³⁵ OHCHR, *Human Rights Council*, 2021, p. 3; UN HRC, *Report to the General Assembly on the Fifth Session of the Council (A/HRC/5/21)*, 2007, pp. 17, 19, 26; UN HRC, *Human rights, sexual orientation and gender identity (A/HRC/RES/17/19)*, 2011; UN HRC, *Protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/RES/32/2)*, 2016.
- ¹³⁶ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 13.
- ¹³⁷ Wareham, *New Report Shows Where It's Illegal To Be Transgender In 2020*, *Forbes*, 2020.

One of the areas analyzed by IE SOGI is “conversion therapy,” an umbrella term used to describe often violent or coercive interventions to forcibly change a person’s sexual orientation and/or gender identity to one of heterosexual and cisgender.¹³⁸ A number of the methods utilized in conversion therapy may be clandestine, and are therefore under-documented.¹³⁹ In his most recent report, the IE SOGI stressed that the concept of diverse SOGI being a pathological condition that needs to be healed is a form of discrimination in itself and that conversion therapy can constitute torture, which necessitates international interventions.¹⁴⁰ Furthermore, the influence of the COVID-19 pandemic on the rights of LGBTI people has been addressed in a report to the General Assembly in which Member States are encouraged to determine where the pandemic may have led to indirect discrimination of LGBTI people and/or increased stigmatization.¹⁴¹

With regard to the Sustainable Development Goals (SDGs) enshrined in the *2030 Agenda for Sustainable Development* (2015), the inclusion of all vulnerable or marginalized groups, such as LGBTI people, has been deemed essential for the achievement of the goals by the UN Development Programme (UNDP).¹⁴² Due to the pervasiveness of SGBV and discrimination, advancing related international human rights law affects a great number of SDGs.¹⁴³ Most prominently, the SDG 5 (“gender equality”) directly addresses the need to end gender-based discrimination.¹⁴⁴ Additionally, the SDG 1 (“no poverty”) calls for gender-sensitive strategies to promote development, and the SDG 4 (“quality education”) includes targets on reducing gender disparities in education.¹⁴⁵ SDG 17 (“partnerships for the goals”) encompasses a provision to monitor the progress on the goals with regard to gender.¹⁴⁶ The agenda as a whole also calls for a systematic mainstreaming of a gender perspective in its implementation.¹⁴⁷

Other UN bodies and organizations have taken action to promote LGBTI rights as well.¹⁴⁸ A notable example of this is a joint statement by 12 UN entities, including the International Labour Organization (ILO), OHCHR, and UNDP that urges Member States to protect LGBTI individuals from violence and discrimination as well as to repeal discriminatory laws.¹⁴⁹ In general, these efforts are being led by the OHCHR and its UNFE campaign, which was launched in 2013 and has since organized campaign events in almost 30 countries around the world.¹⁵⁰ The aim of this campaign is to support Member States,

¹³⁸ UN HRC, *Practices of so-called “conversion therapy”: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/44/53)*, 2020.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic (A/75/258)*, 2020, pp. 24-25.

¹⁴² Martínez-Solimán, *Ending LGBTI discrimination is key to achieving SDGs*, United Nations Development Programme, 2015; UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

¹⁴³ OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 55; O’Malley et al., *Sexual and gender minorities and the Sustainable Development Goals*, UNDP, 2018.

¹⁴⁴ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, p. 18.

¹⁴⁵ *Ibid.*, pp. 15, 17.

¹⁴⁶ *Ibid.*, p. 27.

¹⁴⁷ *Ibid.*, p. 6.

¹⁴⁸ OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2019.

¹⁴⁹ UN ILO et al., *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People: United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children*, 2015.

¹⁵⁰ OHCHR, *OHCHR and the Human Rights of LGBTI People*, 2021; OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2019, pp. 3-4; OHCHR, *UN Free & Equal: a global campaign to promote equal rights for LGBTI people*, 2021.

national human rights organizations, and other stakeholders in promoting human rights with regard to SOGI in order to end related violence and discrimination.¹⁵¹ Within this scope, it also keeps track of best practices introduced into national law by Member States and publishes them in a separate report.¹⁵²

UNDP has started campaigns in over 50 countries aiming to enhance the access of LGBTI people to general healthcare services and specialized healthcare to treat human immunodeficiency virus (HIV).¹⁵³ With regard to the rights of children, the UN Children’s Fund (UNICEF) has included “Positive Gender Socialization” in its current strategic plan, thereby aiming to address social norms that are discriminatory towards diverse SOGI.¹⁵⁴ Likewise, the UN Entity for Gender Equality and the Empowerment of Women (UN Women), has integrated advocacy for LGBTI rights in its work and has partnered with other stakeholders on flagship events such as the Youth Dialogue during the 63rd session of the Commission on the Status of Women (CSW) in 2019.¹⁵⁵ Additionally, the World Bank has analyzed the economic and developmental impact of violence and discrimination against LGBTI people in several of its client countries.¹⁵⁶ Its findings include that the exclusion of any part of the population can lead to a significant reduction in productivity, which in turn results in high economic and social costs.¹⁵⁷ These studies are used to create projects and safety frameworks that promote diversity and inclusion in the respective Member States.¹⁵⁸

Although there are many regional and local non-governmental organizations (NGOs) that are relevant to the advancement of LGBTI rights, very few of them have consultative status with the UN Economic and Social Council (ECOSOC), which is required for participation in debates within the UN system.¹⁵⁹ By conducting research and organizing campaigns, organizations such as the International Lesbian and Gay Association (ILGA) and OutRight Action International (OutRight) help Member States address SOGI-related intolerance.¹⁶⁰ For example, both of these organizations were involved in the removal of homosexuality and diverse gender identities from the International Classification of Diseases (ICD) of the World Health Organization (WHO).¹⁶¹

Identifying and Combating Violence and Discrimination Based on SOGI

LGBTI people around the world people may face violence and discrimination in all areas of life.¹⁶² To this day, consensual same-sex relationships remain criminal offenses in more than 70 countries, five of which may impose punishments as severe as the death penalty.¹⁶³ Such laws frequently refer to vague concepts such as “crimes against the order of nature” and are used to punish individuals for their actual

¹⁵¹ OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. viii.

¹⁵² OHCHR, *Living Free & Equal – What States are Doing to Tackle Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2016.

¹⁵³ OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2019, p. 7.

¹⁵⁴ UNICEF, *UNICEF Strategic Plan 2018-2021*, 2018, p. 23; OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2019, p. 11.

¹⁵⁵ OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2019, pp. 12-13.

¹⁵⁶ *Ibid.*, pp. 20-23.

¹⁵⁷ World Bank, *Inclusion Matters – The Foundation for Shared Prosperity*, 2013, p. xvi.

¹⁵⁸ OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*, 2019, pp. 20-23.

¹⁵⁹ OutRight Action International, *About Us*; Linde, *A Seat at the Table: International LGBTQ Rights at the United Nations*, 2015.

¹⁶⁰ Linde, *A Seat at the Table: International LGBTQ Rights at the United Nations*, 2015; Stern, *OutRight Now: 30 Years of Outright Action*, 2020.

¹⁶¹ Paletta, *Being Trans is Not a Mental Disorder Anymore: ICD-11 is Officially Released*, 2018; Stern, *OutRight Now: 30 Years of Outright Action*, 2020.

¹⁶² OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 13.

¹⁶³ OHCHR, *Criminalization*, 2018, p. 1.

or perceived SOGI.¹⁶⁴ HRC has confirmed that the criminalization of diverse SOGI violates international human rights law, as private and consensual sexual activity between adults is protected under the ICCPR.¹⁶⁵ Moreover, criminalization of diverse SOGI exacerbates social stigmatization and can therefore result in an increase of violence perpetrated by non-state actors.¹⁶⁶ In order to combat this form of intolerance, Member States can repeal the relevant legislation.¹⁶⁷ In some Member States, laws penalizing LGBTI people have also been overturned by their judicial system.¹⁶⁸

In addition to this, LGBTI individuals also often lack equal access to areas such as education, employment, housing, and healthcare.¹⁶⁹ Bullying, harassment, and violence both at school and at the workplace can also indirectly violate the right to education and employment.¹⁷⁰ Within educational systems, discrimination can come in the form of recommendations of certain subjects and professions based on a student's perceived sex or gender identity.¹⁷¹ The impact of SOGI-based discrimination on students has been analyzed by various studies.¹⁷² For instance, research in the United States revealed that 70% of LGBTI youth felt unsafe at school.¹⁷³ In a survey conducted in China, 59% of the respondents stated that they felt their academic performance had been undermined by bullying.¹⁷⁴

The COVID-19 pandemic has further exacerbated the vulnerability of LGBTI people, many of whom already face discrimination with regard to receiving adequate healthcare.¹⁷⁵ Up to 40% of LGBTI people are estimated to be living alone and might experience increased isolation in times of social distancing.¹⁷⁶ The stigmatization of diverse SOGI may also expose LGBTI people to an increased risk of contracting COVID-19 if it forces them to live in slums or other cramped areas.¹⁷⁷ In order to address these issues, IE

¹⁶⁴ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 14.

¹⁶⁵ UN CCPR, *Toonen v. Australia, Communication No. 488/1992 (CCPR/C/50/D/488/1992)*, 1994, pp. 10, 11; UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 14.

¹⁶⁶ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 14.

¹⁶⁷ OHCHR, *Criminalization*, 2018, p. 3.

¹⁶⁸ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 14.

¹⁶⁹ OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, p. 55; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 11.

¹⁷⁰ OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*, 2019, pp. 61, 63-64.

¹⁷¹ OHCHR, *Bullying and Violence in Schools*, 2017, p. 1.

¹⁷² *Ibid.*, p. 2.

¹⁷³ *Ibid.*, p. 2.

¹⁷⁴ *Ibid.*, p. 2.

¹⁷⁵ OHCHR, *An LGBT-inclusive response to COVID-19*, 2021; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 11.

¹⁷⁶ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic (A/75/258)*, 2020, p. 5.

¹⁷⁷ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic (A/75/258)*, 2020, p. 9.

SOGI has developed the *ASPIRE Guidelines* (2020), which Member States can refer to when devising their national responses to the pandemic.¹⁷⁸

Other existing best practices include the specific training of state officials with regard to SOGI.¹⁷⁹ With such training and additional support from their respective Member States, teachers can learn how to address and prevent SGBV at their schools and teach students to be more tolerant from a young age.¹⁸⁰ Similar training can help law enforcement officials recognize and respond to SGBV crimes.¹⁸¹ OHCHR also advises Member States to establish safe spaces as retreats for LGBTI youths.¹⁸² Furthermore, states can address SGBV by penalizing related hate crimes.¹⁸³ In order to promote the notion that diverse SOGI are not divergences from some societal norm, the OHCHR has recommended banning conversion therapy and sensitizing health care systems to the specific needs of LGBTI people.¹⁸⁴

Although there are a substantial number of suggestions with regard to ensuring the protection of LGBTI people, their implementation can be difficult for Member States that do not have the resources to start and maintain comprehensive reporting mechanisms.¹⁸⁵ And even if such mechanisms are already in place, the people who are affected by SOGI-related intolerance may not want to report any incidents of violence in order to preserve their anonymity.¹⁸⁶ These problems can, however, be partially alleviated by employing broad information campaigns, created following the advice of experts, which can increase tolerance and public awareness towards the situation of LGBTI people.¹⁸⁷

Legal Recognition of SOGI

Throughout the work of the UN with regard to SOGI, the issue of legal recognition of a person's SOGI is a recurring topic.¹⁸⁸ Gender-diverse people face discrimination when their identity is not reflected on official documents due to their apparent divergence from a societal norm.¹⁸⁹ This divergence between legal gender and gender expression can restrict the access of LGBTI people to goods, services, and necessary humanitarian assistance during crises such as the COVID-19 pandemic.¹⁹⁰ This can be further complicated in countries where existing legal recognition processes had been postponed during the

¹⁷⁸ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic (A/75/258)*, 2020, pp. 23-25.

¹⁷⁹ UN General Assembly, *Extrajudicial, summary or arbitrary executions (A/RES/67/168)*, 2012, p. 4.

¹⁸⁰ OHCHR, *Bullying and Violence in Schools*, 2017, p. 3.

¹⁸¹ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 23.

¹⁸² *Ibid.*, p. 23.

¹⁸³ UN HRC, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23)*, 2015, p. 20.

¹⁸⁴ *Ibid.*, pp. 20-21.

¹⁸⁵ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 9.

¹⁸⁶ *Ibid.*, p. 9.

¹⁸⁷ *Ibid.*, pp. 23-25.

¹⁸⁸ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 19; UN ILO et al., *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People: United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children*, 2015, p. 2.

¹⁸⁹ OHCHR, *The struggle of trans and gender-diverse persons*, 2021.

¹⁹⁰ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic (A/75/258)*, 2020, pp. 7-8.

pandemic because they were deemed to be non-essential.¹⁹¹ In addition to this, the explicit recognition of diverse SOGI in national and international law is necessary for the equal enjoyment of human rights by everyone.¹⁹²

The societal perception of gender norms and sexual orientations is based on the premise that members of a society need to behave in certain ways according to the sex they were assigned at birth, such as liking a certain color, playing with certain toys, or pursuing specific careers.¹⁹³ Such a system is, however, based on stereotypes and inequality.¹⁹⁴ This binary order of gender identities constitutes a particular problem for intersex people, who are often surgically assigned a biological sex as infants and then expected to behave accordingly.¹⁹⁵ In the context of international instruments, the concept of gender is usually employed to describe discrimination against women.¹⁹⁶ There is, however, no provision that would restrict its application to one sex, as it is used to describe roles assigned to individuals on the basis of sex characteristics.¹⁹⁷ Consequently, every person living in a gendered society has a gender identity.¹⁹⁸

In recent years, several states have introduced gender perspectives into national law, in some cases at the constitutional level.¹⁹⁹ Mainstreaming such frameworks into national policy and education has emerged as a best practice for achieving social and political justice for LGBTI people.²⁰⁰ Therefore, IE SOGI recommends that Member States recognize the concept of gender identity in their laws in order to be able to fulfill their obligations under international human rights law.²⁰¹

Conclusion

Although the UN has engaged in substantive dialogue on the human rights of LGBTI people in recent years and stakeholders such as the IE SOGI have compiled comprehensive information and suggestions on the topic, these have yet to be adopted by many UN bodies and Member States.²⁰² In order to achieve the goals of the 2030 Agenda for all people, Member States can implement training programs and information campaigns with regard to SOGI in order to mainstream a gender perspective into their

¹⁹¹ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic (A/75/258)*, 2020, p. 8.

¹⁹² UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 2.

¹⁹³ *Ibid.*, p. 2.

¹⁹⁴ *Ibid.*, p. 2.

¹⁹⁵ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 18; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 3.

¹⁹⁶ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 4.

¹⁹⁷ *Ibid.*, p. 4.

¹⁹⁸ *Ibid.*, p. 4.

¹⁹⁹ *Ibid.*, p. 14.

²⁰⁰ UN HRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 23; UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, p. 14.

²⁰¹ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*, 2021, pp. 17-20.

²⁰² OHCHR, *United Nations Resolutions on sexual orientation, gender identity and sex characteristics*, 2021.

existing efforts, and examine their existing legislation for discriminatory clauses.²⁰³ OHCHR also endorses special considerations for the protection of LGBTI youth, especially in school.²⁰⁴ These actions will likely necessitate the development of an official framework of SOGI-related definitions within the existing human rights instruments in order to overcome any remaining uncertainties with regard to their interpretation and create a firm foundation for the promotion of LGBTI rights.²⁰⁵

Renewal of the IE SOGI's mandate for 2022 will also enable HRC to remain informed on current developments and to establish additional best practices.²⁰⁶ A particular emphasis could be placed on the discovery and repeal of laws that enable both direct and indirect discrimination.²⁰⁷ Based on the IE SOGI findings, HRC can issue recommendations to Member States and suggest ways of further sensitizing existing UN mechanism to the specific needs of LGBTI people.²⁰⁸

Further Research

Delegates should consider the following questions in their research: Which best practices related to protecting the rights of LGBTI people can be implemented by the international community? Which possible actions can HRC take on the issue whilst considering the cultural differences of the Member States? How do the SDGs relate to international human rights law and how do they influence each other? How can SOGI issues be mainstreamed within the operations of the UN System? How has the COVID-19 pandemic impacted the rights of SOGI individuals, and how can these impacts be mitigated?

Annotated Bibliography

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The Yogyakarta Principles are an unofficial list of recommendations for states with regard to the protection of LGBTI rights. They were adopted by a panel of experts on international human rights law and SOGI in 2006 and supplemented in 2017. Although these principles are not an official UN document, some Member States have referred to them when drafting new legislation regarding SOGI. Consequently, they can be used as a basis for developing concepts to advance international human rights law and will provide a useful resource to delegates looking for additional foundational documents on this issue.

Office of the United Nations High Commissioner for Human Rights. (2018). *LGBTI Equality: Frequently Asked Questions*. Retrieved 27 June 2021 from: <https://www.unfe.org/wp-content/uploads/2018/10/FAQs-English.pdf>

This document was created by OHCHR as part of its UNFE campaign and has since been updated several times to maintain its relevance to current discourse. It provides

²⁰³ Martínez-Solimán, *Ending LGBTI discrimination is key to achieving SDGs*, United Nations Development Programme, 2015; UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, p. 6.

²⁰⁴ OHCHR, *Bullying and Violence in Schools*, 2017.

²⁰⁵ UN HRC, *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz (A/HRC/47/27), 2021, pp. 14-15.

²⁰⁶ UN HRC, *Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/RES/41/18)*, 2019, p. 1; UN HRC, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23)*, 2015, p. 22.

²⁰⁷ UN HRC, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23)*, 2015, p. 21.

²⁰⁸ *Ibid.*, pp. 20-22.

brief definitions of the concepts behind diverse SOGI. As these FAQs are only intended to help the reader understand certain terms, they do not include any in-depth information. Nevertheless, this document can help delegates to get a first overview of the concepts addressed by this topic.

Office of the United Nations High Commissioner for Human Rights. (2019). *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)*. Retrieved 8 August 2021 from:

https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf

“Born Free and Equal” is an overview of the obligations that states have with regard to the protection of LGBTI rights, which was published by OHCHR in 2019 as part of its UNFE campaign. It also explains how international human rights law has been interpreted by UN mechanisms in this context. Delegates can refer to this publication for a comprehensive overview of the relevant aspects of the human rights framework as well as established best practices.

Office of the United Nations High Commissioner for Human Rights. (2019). *The Role of the United Nations in Combatting Discrimination and Violence against Lesbian, Gay, Bisexual, Transgender and Intersex People*. Retrieved 27 June 2021 from:

https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/UN_LGBTI_summary_2019.pdf

This document was published by OHCHR in 2019. It lists the actions taken by UN bodies and entities to promote LGBTI rights as well as their interactions with other stakeholders. Although it has not been updated since 2019, delegates can use it as an overview of which UN bodies have previously addressed SOGI-related issues. Delegates can also refer to this document to facilitate their research into the role of the UN system with regard to this topic.

United Nations, Human Rights Council, Forty-seventh session. (2021). *The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (A/HRC/47/27)*. Retrieved 27 June 2021 from:

https://www.ohchr.org/Documents/Issues/SexualOrientation/A_HRC_47_27_AEV.docx

This report is one of the annual reports submitted to HRC by IE SOGI. It was presented at the forty-seventh session of HRC in 2021 and addresses gender theory in international human rights law. Its appendix includes an outline of the report that IE SOGI will be presenting at the seventy-sixth session of the General Assembly and that will be supplementing this document. Delegates can refer to this report to gain an understanding of the recognition of gender theory within existing human rights frameworks.

United Nations, International Labour Organization, et al. (2015). *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People: United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children*. Retrieved 27 June 2021 from:

https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

This joint statement is the outcome of an unprecedented initiative involving 12 UN agencies. It was published in 2015 and contains urgent recommendations for Member States on how to combat violence and discrimination against people of diverse SOGI. Delegates can consider the principles included in this statement when discussing possible goals for the advancement of international human rights law.

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European Union Agency for Fundamental Rights. (2020). *A long way to go for LGBTI equality*. Retrieved 19 September 2021 from: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf

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2. The Impacts of Unilateral Coercive Measures on the Protection and Enjoyment of Human Rights

*“The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights.”*²⁰⁹

Introduction

A study by the Office of the United Nations High Commissioner for Human Rights (OHCHR) presented the following definition for unilateral coercive measures (UCMs): “Unilateral coercive measures often refer to economic measures taken by one State to compel a change in policy of another State.”²¹⁰ This broad definition includes established economic pressure mechanisms, embargos, boycotts, and the interruption of financial flows and investments into the target country.²¹¹ Other possible UCMs include travel, military, diplomatic, cultural, and a rising number of cyber sanctions.²¹² Targeted sanctions are aimed at government officials and their associates, and include asset freezing and travel bans.²¹³ In the last decades, smart sanctions, or sanctions selectively designed to put pressure on specific groups, emerged, becoming more common in recently applied unilateral measures.²¹⁴ Sanctions have become common in international politics as the number of sanctions has doubled in the 21st century to more than 220 active sanctions regimes.²¹⁵

The general legal status of UCMs under international law is yet to be definitively addressed.²¹⁶ Most Member States in the General Assembly and the Human Rights Council (HRC) argue that almost all UCMs that are not authorized by the Security Council, should be considered illegal.²¹⁷ However, even if deemed legal, broad UCMs still carry the potential to negatively affect the enjoyment of human rights in targeted countries.²¹⁸

UCMs do not impact all human rights equally, with some rights being more impacted than others, especially “all categories of economic, social and cultural rights, including the right to life and health, the right to food, the right to an adequate standard of living, the right to education, the right to development and the right to a healthy environment” according to HRC.²¹⁹ Civil and political rights can also be violated through targeted cyber sanctions.²²⁰ The groups most affected by UCMs include women, children, older persons, persons with disabilities, migrants, and refugees, as well as persons with low financial resources

²⁰⁹ UN World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993, p. 11.

²¹⁰ UN HRC, *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures (A/HRC/19/33)*, 2012, p. 3.

²¹¹ *Ibid.*, pp. 8-9.

²¹² UN ECOSOC, *Review of further developments in fields with which the sub-commission has been or may be concerned: The adverse consequences of economic sanctions on the enjoyment of human rights (A/CN.4/Sub.2/2000/33)*, 2000, p.5-7; UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 9.

²¹³ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, pp. 7-8.

²¹⁴ UN HRC, *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures (A/HRC/19/33)*, 2012, pp. 8-9.

²¹⁵ Felbermayr et al., *The ‘Global Sanctions Data Base’: Mapping international sanction policies from 1950-2019, CEPR VoxEU*, 2020.

²¹⁶ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, pp. 13-14.

²¹⁷ *Ibid.*, p. 16.

²¹⁸ *Ibid.*, p. 2.

²¹⁹ *Ibid.*, pp. 14-15.

²²⁰ *Ibid.*, pp. 9-10.

such as unemployed or self-employed persons.²²¹ The COVID-19 pandemic has worsened the human rights situation for these groups as sanctions and other broad UCMs make necessary state measures in a pandemic even more difficult, emphasizing the importance of understanding the human right simplifications of these decisions.²²²

International and Regional Framework

The HRC and the General Assembly are the main United Nations (UN) institutions addressing the adverse effects of UCMs on human rights.²²³ They strive to adhere to the principle of promoting international cooperation to strengthen international law, as set out in Article 13 of the *Charter of the United Nations* (1945), and achieve the realization of all human rights in the fields of economic, social, educational, and cultural matters.²²⁴ Under Article 41 of Chapter VII of the Charter, sanctions and other non-military coercive measures can be legally established if the Security Council identifies threats to or breaches of international peace.²²⁵ Article 41 of the Charter provides a framework for how sanctions and other non-military coercive measures can be legally instituted within the UN system.²²⁶ It is important to note that Article 41 is limited to cases in which international peace is threatened or broken.²²⁷

The 1948 *Universal Declaration of Human Rights* (UDHR) forms the basis for the work of the HRC.²²⁸ The UDHR provides a benchmark for all Member State actions, as article 30 prohibits any measure that could infringe upon human rights.²²⁹ The UDHR specifically encourages international cooperation as an important means to realize individual human rights, as specified in article 22.²³⁰ The importance of cooperation, which is hindered by UCMs, is named as especially relevant for economic, social, and cultural rights.²³¹ This emphasis on cooperation further reinforces the fundamental principles established in Chapter IX of the Charter.²³²

In 1966, the General Assembly adopted the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).²³³ The ICCPR, specifically article 6, focused on the so-called first-generation human rights that primarily protect the individual and provide individual freedoms such as the right to life, a fair trial, and freedom of religion.²³⁴ The ICESCR focuses on the ostensible second generation of human rights, which include providing basic needs such as an adequate standard of living and the right to health.²³⁵ These fundamental rights are often found to be in conflict with UCMs.²³⁶ Identifying and resolving such conflicts between UCMs and human rights through genuine and constructive dialogue is part of the mandate of the HRC.²³⁷

²²¹ UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020, p. 16-17.

²²² UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 8.

²²³ *Charter of the United Nations*, 1945, Art. 13.

²²⁴ *Ibid.*, Art. 13.

²²⁵ *Ibid.*, Art. 39.

²²⁶ *Ibid.*, Art. 39.

²²⁷ *Ibid.*, Art. 39-41.

²²⁸ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006, pp. 1-2.

²²⁹ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² *Charter of the United Nations*, 1945, Ch. IX.

²³³ UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*, 1966; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966.

²³⁴ UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*, 1966, art. 6.

²³⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966, art. 2; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966, art. 11-12.

²³⁶ UN HRC, *Negative impact of unilateral coercive measures: priorities and road map (A/HRC/45/7)*, 2020, p. 18.

²³⁷ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006, p. 2.

The *Declaration on the Right to Development* (1986) contributes to the third generation of human rights, which add among others collective rights, rights to development, and environmental rights, to the aforementioned first two generations.²³⁸ Article 3 of the declaration establishes that Member States have a duty to cooperate to ensure development and to remove obstacles to development, which is in contradiction to the use of UCMs.²³⁹ In past resolutions, HRC has taken the position that the right to development is hindered by UCMs, based on recommendations from experts as well UN working groups focused on the right to development.²⁴⁰

The 1993 *Vienna Declaration and Programme of Action* (Vienna Declaration) first addressed the inherent contradiction between UCMs and the full enjoyment of all human rights.²⁴¹ The human rights explicitly mentioned in the Vienna Declaration are all elements of the second generation of human rights.²⁴² Article 31 of the Vienna Declaration highlights areas of particular importance, namely an adequate standard of living, health, food, medical care, housing, and access to social services.²⁴³ It also maintains that some goods such as food should never be used to exert political pressure, as they are essential parts of the enjoyment of human rights.²⁴⁴

The Sustainable Development Goals (SDGs) can be broadly impacted by UCMs.²⁴⁵ The SDGs most frequently affected by UCMs include SDG 2 (“zero hunger”), SDG 6 (“clean water and sanitation”), and SDG 16 (“peace, justice and strong institutions”), with each goal being included in more than 20% of the recommendations in the Special Rapporteur on the Negative Impact of the Unilateral Coercive Measures on the Enjoyment of Human Rights’ annual reports.²⁴⁶ The Special Rapporteur (SR) recommends that since the 2030 Agenda is an UN-wide project, all other organs should consider the negative impacts of UCMs in their field of work.²⁴⁷ These recommendations aim to promote policy changes in Member States currently employing UCMs that negatively impact the achievement of the SDGs.²⁴⁸ To achieve the SDGs, Member States are also urged not to employ illegal unilateral measures that have the potential to hinder the achievement of the SDGs.²⁴⁹ Illegal measures include at a minimum those state measures whose effects can be conclusively shown to harm the human rights of the population in targeted countries.²⁵⁰ However, there is a lack of information on determining and enforcing the status of UCMs on an international level.²⁵¹

²³⁸ UN General Assembly, *Declaration on the Right to Development (A/RES/41/128)*, 1986.

²³⁹ *Ibid.*, pp. 1-2.

²⁴⁰ UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021, pp. 4-5; UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021, p. 3.

²⁴¹ UN World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993, p. 11.

²⁴² *Ibid.*

²⁴³ *Ibid.*, p. 11.

²⁴⁴ *Ibid.*, p. 11.

²⁴⁵ UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021, pp. 1-2.

²⁴⁶ The Danish Institute for Human Rights, *SDG – Human Rights Data Explorer Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, 2021.

²⁴⁷ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 19.

²⁴⁸ The Danish Institute for Human Rights, *SDG – Human Rights Data Explorer Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, 2021.

²⁴⁹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, p. 8.

²⁵⁰ *Ibid.*, p. 8.

²⁵¹ *Ibid.*, p. 8.

Role of the International System

The General Assembly has consistently voiced its opposition to UCMs ever since the issue of UCMs was first addressed in 1991.²⁵² This stance has been shared by a majority of Member States in the HRC throughout the council's engagement in the topic.²⁵³ The obstacles to development and trade posed by UCMs are areas of special concern, as they reinforce inequalities between developed and developing nations.²⁵⁴ In more recent resolutions, the focus has broadened and the human rights implications of UCMs are presented as equal in importance to questions of trade, development, and international law.²⁵⁵ The General Assembly continues to express support for the HRC's stance on UCMs, the work of the SR, and calls upon Member States to discontinue existing UCMs.²⁵⁶

In 2014, HRC decided to create the SR.²⁵⁷ Each SR's term is three years, after which it can be extended for another period.²⁵⁸ Mr. Idriss Jazairy from Algeria served as the SR until 2019, before being replaced by Ms. Alena Douhan from Belarus in 2020.²⁵⁹ The SR is tasked with gathering information, studying the negative effects of UCMs, reviewing mechanisms to evaluate the effects of UCMs, issuing recommendations on how to minimize negative effects, providing technical assistance to the Office of the United Nations High Commissioner for Human Rights (OHCHR), and providing affected states with advice as to how the negative impact of UCMs can be contained, corrected, or prevented.²⁶⁰ To these ends, the SR is asked to cooperate with other UN bodies and international organizations.²⁶¹ The SR reports annually to the HRC and the General Assembly.²⁶² The SR frequently attends panels or webinars to provide information on the negative effects of UCMs to academic and diplomatic audiences.²⁶³ The SR recommends that sanctions should not be used as alternatives to legal processes, peaceful dispute settlement should be fostered, a database on sanctions and their impacts should be established, and a continuous academic and humanitarian assessment of sanctions regimes should be pursued.²⁶⁴

Since its formation, HRC has been aware of the risks UCMs pose to the goal of promoting and protecting human rights.²⁶⁵ The council has consistently been urging Member States to refrain from UCMs in general, as can be seen in the recent HRC resolutions 34/13 (2017) and 46/5 (2021).²⁶⁶ These resolutions highlight international cooperation and compliance with the goals set by HRC and support the continued work of the SR.²⁶⁷ Both resolutions find the practice of UCMs to be fundamentally in violation of the Charter and subsequent treaties, including the *Declaration on the Right to Development*, which

²⁵² UN General Assembly, *Human rights and unilateral coercive measures (A/RES/75/181)*, 2021; UN General Assembly, *Economic measures as a means of political and economic coercion against developing countries (A/RES/46/210)*, 1991.

²⁵³ UN General Assembly, *Human rights and unilateral coercive measures (A/RES/75/181)*, 2021.

²⁵⁴ UN General Assembly, *Economic measures as a means of political and economic coercion against developing countries (A/RES/46/210)*, 1991, pp. 143-144.

²⁵⁵ UN General Assembly, *Human rights and unilateral coercive measures (A/RES/75/181)*, 2021, pp. 2-4.

²⁵⁶ *Ibid.*, pp. 6-7.

²⁵⁷ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/27/21)*, 2014.

²⁵⁸ *Ibid.*

²⁵⁹ UN OHCHR, *Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights*, 2021.

²⁶⁰ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/27/21)*, 2014, p. 5

²⁶¹ *Ibid.*, pp. 5-6.

²⁶² *Ibid.*, p. 6.

²⁶³ UN OHCHR, *Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights*, 2021.

²⁶⁴ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 19.

²⁶⁵ UN HRC, *Decision 4/103. Human rights and unilateral coercive measures (A/HRC/DEC/4/103)*, 2007; UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/27/21)*, 2014.

²⁶⁶ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/34/13)*, 2017; UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021.

²⁶⁷ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/34/13)*, 2017, p. 6; UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021, pp. 5-6.

explicitly highlighted the uncooperative nature and extraterritorial effects of UCMs.²⁶⁸ The majority of Member States in the committee support this approach to UCMs, however, resolutions on this topic did not pass by unanimous consent as some members expressed that UCMs are a valuable measure in cases of human rights violations.²⁶⁹

The non-governmental organization (NGO) Human Rights Watch is evaluating the human rights situation worldwide, including through research on UCMs and their effects on human rights.²⁷⁰ Human Rights Watch acknowledges positive intentions to pressure countries with poor human rights records in case of some measures, especially targeted sanctions.²⁷¹ However it criticizes the negative effects of broad sanctions on human rights, especially regarding the access to medical supplies.²⁷² The group advises targeted measures, travel bans, and asset freezing directed at individual perpetrators and their affiliates, and warns against broad approaches, because of their potential to negatively impact human rights of vulnerable populations.²⁷³

The Non-Aligned Movement (NAM), a forum of 120 countries that are not formally aligned with or against any major power bloc, is an outspoken critic of UCMs, as the organization represents mainly the interests of developing nations and former colonies.²⁷⁴ In the outcome document of the 2019 summit, the group condemned the use of UCMs as a mean of extraterritorial involvement used against some NAM members to exert economic and political pressure.²⁷⁵ The group also voiced its support for UN efforts to end the practice of UCMs in violation of the Charter, such as economic sanctions, intimidation tactics, or arbitrary travel sanctions.²⁷⁶

Sanctions and Unilateral Coercive Measures: Legal Status and Currently Affected Member States

For HRC, the chief concern regarding the legality of UCMs is whether they negatively impact human rights, even in cases of measures targeting human rights violations.²⁷⁷ The General Assembly and HRC have repeatedly affirmed that they see any unilateral or multilateral measure whose consequences violate international human rights law, as illegal.²⁷⁸ Even measures taken by the Security Council have to comply with this standard.²⁷⁹ Thus, the rights to life, an adequate standard of living, housing, food, together with the right to freedom from hunger, and the rights to health and medical care have to be preserved.²⁸⁰ Even

²⁶⁸ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/34/13)*, 2017, pp. 3-4; UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021, pp. 4-5.

²⁶⁹ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/34/13)*, 2017; UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021.

²⁷⁰ Human Rights Watch, *Myanmar, Sanctions, and Human Rights – Questions and Answers*, 2021; Human Rights Watch, *Iran: Sanctions Threatening Health - US Should Ensure Effective Humanitarian Exemptions*, 2019.

²⁷¹ Human Rights Watch, *Myanmar, Sanctions, and Human Rights – Questions and Answers*, 2021.

²⁷² Human Rights Watch, *Myanmar, Sanctions, and Human Rights – Questions and Answers*, 2021; Human Rights Watch, *Iran: Sanctions Threatening Health - US Should Ensure Effective Humanitarian Exemptions*, 2019.

²⁷³ Human Rights Watch, *Myanmar, Sanctions, and Human Rights – Questions and Answers*, 2021.

²⁷⁴ Munro, *Non-Aligned Movement*, 2020; UNIDR, *18th Summit of Heads of State and Government of the Non-Aligned Movement. Final Document*, 2021, pp.10-11.

²⁷⁵ UNIDR, *18th Summit of Heads of State and Government of the Non-Aligned Movement. Final Document*, 2021, pp.10-11, 160, 211.

²⁷⁶ UNIDR, *18th Summit of Heads of State and Government of the Non-Aligned Movement. Final Document*, 2021, p.16; UN General Assembly, *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba (A/RES/75/289)*, 2021.

²⁷⁷ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 12; UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, pp. 5-6.

²⁷⁸ UN HRC, *Human rights and unilateral coercive measures (A/HRC/RES/15/24)*, 2010; UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 18.

²⁷⁹ Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, p. 17.

²⁸⁰ UN HRC, *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures (A/HRC/19/33)*, 2012, pp. 4-5.

though targeted sanctions may not directly threaten the human rights of civilians, they are extraterritorial in nature and bear the risk of not following an independent judicial process while being instated in response to actions that are not considered illegal in all Member States.²⁸¹

The understanding of what poses a legal versus an illegal UCM differs, which is why the SR compiled a list of criteria from existing definitions in her 2021 report to allow for measures to be classified as UCMs, and to help determine their legality.²⁸² It is possible that economic pressure can gain such a level of magnitude that it can constitute illegal coercion.²⁸³ A level only reached, according to the definition of the SR, if a major actor or a group of actors takes specific actions.²⁸⁴

The extraterritorial effects of UCMs are seen as problematic by the General Assembly, HRC, and the SR because they encroach on the sovereignty of Member States.²⁸⁵ Extraterritorial effects of UCMs occur, for example, when trade relations with a state are grounds to also sanction its trading partners as UCMs effect actors in the targeted and non-targeted states equally.²⁸⁶ Trade relations between states can be seen as sovereign decisions, as long as they are not of a magnitude that limits the sovereignty of another state.²⁸⁷ Any UCMs affecting the trade relationships between two states are therefore legal.²⁸⁸ The International Court of Justice (ICJ) confirmed this by ruling that there is no obligation to maintain economic relations unless there exist obligations from international treaties.²⁸⁹

A notable exception of legal UCMs is the idea of countermeasures.²⁹⁰ In its *Gabcikovo-Nagymaros* ruling, the ICJ found that if a state intentionally breaches international law and human rights conventions, individual states may take countermeasures against it.²⁹¹ In response to a prior wrongful act, measures may be taken.²⁹² The use of force remains prohibited, and measures must protect fundamental human rights, thus prohibiting practices such as blocking access to essential water or food sources.²⁹³

Exemplary cases, where countries are targets of UCMs and human rights are negatively affected by them, can be found around the world.²⁹⁴ The negative impacts of long-term UCMs on the enjoyment of human rights can be seen in Cuba, where statistics show that children are strongly affected by the inability to import nutritional products, leading to a 33% lower daily calorie intake, opposite to global averages.²⁹⁵ Safe drinking water is also challenging to ensure, as chemical supplies and spare parts for the water supply system cannot be imported.²⁹⁶ In regard to health care, the number of available medications has gone down since 1991, and the country has to pay above-market prices for equipment

²⁸¹ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, pp. 15-16.

²⁸² *Ibid.*, pp. 17-18.

²⁸³ *Ibid.*, pp. 16-17.

²⁸⁴ *Ibid.*, pp. 16-17.

²⁸⁵ *Ibid.*, pp. 15-16.

²⁸⁶ Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, pp. 8-9.

²⁸⁷ Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, p. 6; UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, pp. 13-14.

²⁸⁸ UN HRC, *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures (A/HRC/19/33)*, 2012, p. 5.

²⁸⁹ *Ibid.*, p. 5.

²⁹⁰ Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, pp. 11-12.

²⁹¹ *Ibid.*, pp. 11-12.

²⁹² Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, p. 17; Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, pp. 11-12.

²⁹³ Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, p. 13.

²⁹⁴ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 2.

²⁹⁵ UN HRC, *Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability (A/HRC/28/74)*, 2015, pp. 8-9.

²⁹⁶ *Ibid.*, p. 9.

and medicine.²⁹⁷ These same patterns can also be observed in other Member States affected by UCMs, such as Venezuela and Iran.²⁹⁸

To cope with the extraterritorial effects of US sanctions against Iran, a structure similar to barter, the *Instrument in Support of Trade Exchanges* (2020), was instituted to allow for trade in goods such as medical supplies.²⁹⁹ It demonstrated how Member States can circumvent UCMs.³⁰⁰ This method however requires the targeted countries to be able to afford necessary imports to care for their citizens' medical needs.³⁰¹ If pressure is applied to international organizations, such as the International Monetary Fund (IMF) and the World Bank, to prevent them from granting states the necessary credits, the UCMs harmful effects are catalyzed.³⁰² This happened when Venezuela, Iran, Cuba, Sudan, and Zimbabwe applied for emergency loans during the current pandemic.³⁰³ The large pressure on states is exacerbated when the assets of their private and central banks are also frozen abroad, as happened in the case of the Central Bank of Venezuela last year.³⁰⁴ In this case, the consequences of financial UCMs affected the human rights of those people dependent on public welfare and social services.³⁰⁵

There are also examples of cyber sanctions affecting human rights.³⁰⁶ A lack of access to the latest software for CT scanners in Syria put patients at risk last year, endangering the human right to life.³⁰⁷ The limited access to satellite technology and rental satellites in Venezuela caused encroachments on the right to information and freedom of expression.³⁰⁸ These examples show that in the digital age extraterritorial effects of UCMs create new threats to the full enjoyment of human rights.³⁰⁹

Developments during the COVID-19 Pandemic

In 2020, incoming SR Alena Douhan issued her first report on the negative impact of unilateral coercive measures on the enjoyment of human rights, which was also the first SR report to take into account the impacts of the COVID-19 pandemic.³¹⁰ The report highlights that financial limitations and import restrictions due to UCMs during the pandemic make it harder for targeted countries to appropriately react to the pandemic, as they cannot import the necessary medical supplies and also face logistical obstacles.³¹¹

The right to information is crucial during a pandemic such as COVID-19, as individuals need to be well-informed to appropriately protect themselves, and to retain access to work and education.³¹² The situation is exacerbated when medical professionals and researchers also face restrictions from the blocking of

²⁹⁷ UN HRC, *Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability (A/HRC/28/74)*, 2015, p. 9.

²⁹⁸ UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020, pp. 9-10.

²⁹⁹ *Ibid.*

³⁰⁰ UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020, p. 10.

³⁰¹ *Ibid.*

³⁰² UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 8.

³⁰³ *Ibid.*, p. 8.

³⁰⁴ *Ibid.*, p. 7.

³⁰⁵ *Ibid.*, pp. 7-8.

³⁰⁶ *Ibid.*, p. 10.

³⁰⁷ *Ibid.*, p. 10.

³⁰⁸ *Ibid.*, p. 10.

³⁰⁹ *Ibid.*, pp. 9-10.

³¹⁰ UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020.

³¹¹ *Ibid.*, p. 13.

³¹² *Ibid.*, pp. 14-15.

digital or personal knowledge exchange due to UCMs targeting free travel and research access.³¹³ The right to health, as outlined in the ICESCR, has been among those human rights most negatively affected since the beginning of the COVID-19 pandemic.³¹⁴ Among the cases listed in the report, countries from the Group of 77 are disproportionately affected.³¹⁵ In a call by UN experts to grant humanitarian exceptions to unilateral sanctions for countries such as Cuba, Iran, Sudan, Syria, Venezuela, and Yemen, it is argued that these states are lacking medical supplies to fight the pandemic and the fuel or electricity to distribute them due to UCMs.³¹⁶ The COVID-19 pandemic has further worsened the human rights situation of the most vulnerable groups including women, children, older persons, persons with disabilities, migrants, and refugees.³¹⁷ These groups are more immediately affected by rising prices for medical products or fuel due to their limited financial resources.³¹⁸ The risk of people falling into poverty due to economic sanctions has also increased during the pandemic, while people with low financial resources, unemployed, or self-employed persons are most at risk.³¹⁹

In the SR's 2021 report, the effects of the COVID-19 pandemic, as they present themselves more than one year into the pandemic, are discussed.³²⁰ The workings of the SR and UN human rights system were affected since all communications and meetings moved to digital platforms and in-person negotiations had to be halted.³²¹ Cyber sanctions affected the ability of sanctioned states to officially communicate with the UN system via platforms such as Zoom when access to the technology was limited.³²² The report also specifically highlighted that cyber sanctions hinder the ability of medical professionals to access research results, which is illustrated with the examples of Iran and Syria.³²³ The direct effects of cyber sanctions can be traced, which is not possible to that extent for other UCM types.³²⁴ The report also notes that political pressure on the IMF and World Bank should be utilized, as UCMs further affect human rights when countries are blocked from receiving credits needed to protect the right to life of those affected by the COVID-19 pandemic in targeted countries.³²⁵ UCMs can also directly affect the delivery of donated goods as seen in 2020 when the SR appealed to the US government on behalf of the Cuban government.³²⁶ A similar dynamic has been noted by the World Food Programme in regard to supply chains in the Democratic People's Republic of Korea.³²⁷ The SR stated that UCMs have severe impacts, exacerbated by the COVID-19 pandemic, when the delivery of donated goods is obstructed, as in the case of a US company tasked with delivering Chinese-donated medical masks to Cuba, that declined to do so fearing high monetary or criminal penalties from the United States of America.³²⁸

The process of achieving humanitarian exceptions to sanctions is currently too costly and time-consuming to sufficiently help the disproportionately impacted civilian populations.³²⁹ Going forward, the effects of UCMs on the impact of COVID-19 pandemic must be further discussed within the international

³¹³ UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020, pp. 14-16.

³¹⁴ *Ibid.*, pp. 9-10.

³¹⁵ *Ibid.*, pp. 11-12.

³¹⁶ UN DGC, COVID-19: Lift sanctions 'bringing suffering and death', urge UN rights experts, *UN News*, 2020.

³¹⁷ UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020, p. 16.

³¹⁸ *Ibid.*, p. 16.

³¹⁹ *Ibid.*, pp. 16-17.

³²⁰ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 10.

³²¹ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 3; UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 9.

³²² UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 9.

³²³ *Ibid.*, p. 10.

³²⁴ *Ibid.*, p. 10.

³²⁵ *Ibid.*, p. 8.

³²⁶ UN HRC, *Negative impact of unilateral coercive measures: priorities and road map (A/HRC/45/7)*, 2020, p. 3.

³²⁷ World Food Programme, *WFP DPR Korea Country Brief*, 2019, p. 2.

³²⁸ UN HRC, *Negative impact of unilateral coercive measures: priorities and road map (A/HRC/45/7)*, 2020, p. 3, 7.

³²⁹ UN DGC, COVID-19: Lift sanctions 'bringing suffering and death', urge UN rights experts, *UN News*, 2020.

community.³³⁰ This is especially relevant for the global distribution of vaccines and related medications, the support of marginalized populations, and the continued protection of human rights under the current global sanctions regime.³³¹

Conclusion

Sanctions regimes have become a widely used tool in international politics, doubling their global number since the 1980s.³³² Sanctions employed as UCMs are of growing concern.³³³ They have the potential to impact the enjoyment of human rights in Member States targeted by measures regarding the basic needs of civilian populations.³³⁴

The legal status of UCMs under international law is still unresolved.³³⁵ Member States are in no way obliged to maintain relations with any other state unless they engaged in a binding international treaty that has not been terminated.³³⁶ Economic pressure can reach a magnitude that qualifies as illegal coercion, however, this level can only be achieved if major actors take these unilateral economic actions.³³⁷ In these cases, a negative effect on human rights is very likely, and of concern to HRC and the international community.³³⁸ HRC has repeatedly worded strong opposition to the use of UCMs, citing their extraterritorial effects as an important reason for the fundamental illegality of UCMs.³³⁹ However international law includes some possibilities for unilateral action that continue to make UCMs a legal possibility.³⁴⁰

Developing and least developed nations see themselves as more likely subjects of UCMs and mean of foreign intervention.³⁴¹ Their populations are also more likely to be negatively impacted in the enjoyment of their human rights through UCMs since they are more dependent on the import of critical goods such as fuel or medicine.³⁴² This can lead to a lack of basic needs and cause human rights infringements.³⁴³ HRC therefore calls upon Member States to freeze existing UCMs and refrain from imposing new unilateral measures.³⁴⁴

Further Research

For further research on this topic, delegates may consider the following questions: How can an international consensus be achieved on the definition of legal versus illegal UCMs? Is there enough

³³⁰ UN OHCHR, *UN expert issues sanctions guidance amid COVID-19 aid*, 2020, p. 3.

³³¹ *Ibid.*, p. 3.

³³² Felbermayr et al., *The 'Global Sanctions Data Base': Mapping international sanction policies from 1950-2019*, *CEPR VoxEU*, 2020.

³³³ *Ibid.*

³³⁴ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 7.

³³⁵ UN HRC, *Negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/42/46)*, 2019; UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 13.

³³⁶ UN HRC, *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*, 2021, p. 13.

³³⁷ *Ibid.*, pp. 16-17.

³³⁸ UN HRC, *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures (A/HRC/19/33)*, 2012.

³³⁹ UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021.

³⁴⁰ Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, 2016, pp. 11-12.

³⁴¹ UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021, pp. 2-3.

UN General Assembly, *Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic (A/75/209)*, 2020, p.5.

³⁴³ UN HRC, *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*, 2021.

³⁴⁴ *Ibid.*

research being commissioned to quantify the effects of UCMs on human rights? How can the committee more accurately determine the causality between UCMs and human rights violations? What are possible safeguards against negative effects on human rights through economic UCMs? Which measures can be taken to promote the human rights most negatively affected by UCMs in crisis situations such as the current COVID-19 pandemic? What kind of international framework is missing to prevent UCMs from encroaching on the enjoyment of human rights? Is there any action the international community could take to make UCMs obsolete?

Annotated Bibliography

United Nations, General Assembly, Seventy-fifth session. (2020). *Negative impact of unilateral coercive measures on the enjoyment of human rights (A/75/209)*. Retrieved 27 June 2021 from: <https://undocs.org/A/75/209>

This report by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights is unique since it was the first report to consider the effects the COVID-19 pandemic has had on the relationship between UCMs and human rights. It also describes how sanction regimes and their effects have developed during the COVID-19 pandemic. This document will enable delegates to better understand the recent work of the Special Rapporteur and provide a useful overview of how currently active UCMs are impacting human rights across the globe.

United Nations, Human Rights Council, Twenty-seventh session. (2014). *Human rights and unilateral coercive measures (A/HRC/RES/27/21)*. Retrieved 27 June 2021 from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/21

This resolution first established the of the Special Rapporteur on the Negative Impact of the Unilateral Coercive Measures on the Enjoyment of Human Rights. It will help delegates get a clear understanding of the variety of the SR's existing tasks. Due to the essential role of the Special Rapporteur as the HRC's main executive organ on the issue, understanding their mandate is key to this topic. This document will also help delegates develop their proposals in three ways as it displays the capabilities of the council, is an example of how resolutions addressing the topic usually read, and finally, will support delegates in understanding how to correctly include the Special Rapporteur when developing their unique action plans.

United Nations, Human Rights Council, Forty-second session. (2019). *Negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/42/46)*. Retrieved 27 June 2021 from: <https://undocs.org/A/HRC/42/46>

This report presents the most recent assessment of the harmful impacts of unilateral coercive measures on the enjoyment of human rights in specific countries (Iran, Cuba Venezuela, Russia, Qatar, Palestine, Syria, and Yemen). Instead of examining the phenomenon at large it gives an insight into specific different ongoing UCM situations. This account illustrates the concrete forms UCMs take in states where UCMs are currently applied, and also elaborates on which mechanisms lead to negative UCM effects on human rights. Delegates will find helpful concrete examples of the negative effects of UCMs on human rights in this report.

United Nations, Human Rights Council, Forty-sixth session. (2021). *The negative impact of unilateral coercive measures on the enjoyment of human rights (A/HRC/RES/46/5)*. Retrieved 27 June 2021 from: <https://undocs.org/A/HRC/RES/46/5>

This resolution warns Member States not to employ unilateral coercive measures due to their negative human rights impact and urges them to seek multilateral solutions that enable all Member States to participate equally. It is the most recent resolution on the issue but is very much an emblematic example of previous decisions of HRC and the committee's stance over the years. Delegates should read this resolution to understand the current position of HRC. In reading this resolution, delegates may also find guidance

on how Member States' positions are distributed as the resolution was only adopted after a contested vote.

United Nations, Human Rights Council, Forty-eighth session. (2021). *Unilateral coercive measures: notion, types and qualification (A/HRC/48/59)*. Retrieved 07 September 2021 from: https://ap.ohchr.org/documents/dpage_e.aspx?m=215

This report by the SR outlines the types of measures currently used as UCMs and an assessment of their legality. The document also includes the effects of the COVID-19 pandemic on the work of the SR. More than a year into the pandemic, the effects on UCMs and human rights are evaluated and discussed for different states targeted by UCMs. Finally, the report also provides recommendations for the handling of UCMs on a national and international level. Delegates will find this report helpful as it addresses the most recent developments in the field of unilateral coercive measures.

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