LGBTI Rights and Universality: Analysing Argumentation at the UN Human Rights Council

Katariina Ida Ingrid Saikku

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Author: Katariina Ida Ingrid Saikku

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Abstract:

The Universal Declaration of Human Rights states that human rights are inalienable and belong to everyone without any large scale exceptions. Thus, supranational human rights bodies focus on monitoring human rights violations, instead of discussing to whom human rights in practice are seen to belong to. However, there are vast differences with how states view universal human rights, which is especially apparent when discussing the rights of sexual and gender minorities. This study set out to discover how states justify not including the rights of sexual and gender minorities under the protection of international human rights treaties by analysing statements made at the UN Human Rights Council.

The material for this research were the statements made at the 41st meeting of the Human Rights Council's 32nd session on the 30th of June 2016. This session voted for the establishment of an independent expert on protection against violence and discrimination based on sexual orientation and gender identity. The session included 23 statements that were made either by a country representative who voted against the establishment, or by a representative whose country abstained from the vote. These statements were analysed with qualitative content analysis, by which nine justification categories were identified. These categories were titled Cultural Relativity, Imposing Values, Moral Grounds, Universality, Lack of Legal Basis, Sovereignty, LGBTI Definition's Lack of Clarity, Human Rights Council's Cohesion, and Resolution's Lack of Clarity.

These nine justification categories were further divided into three groups depending on the strength and aim of the argument. This research deduced that cover-up justifications (Lack of Legal Basis, LGBTI Definition's Lack of Clarity, and Resolution's Lack of Clarity) where used in arguments to divert the discussion from the root justifications, which were the arguments under Cultural Relativity and Moral Grounds. The statements in the third category (Universality, Sovereignty, Human Rights Council's Cohesion, and Imposing Values) highlighted the differences with how universality and the mandate of the Human Rights Council is perceived. Understanding the justification categories identified in this research help to direct LGBTI advocacy and resources, and to critically asses the universality of human rights.

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1. Introduction

The United Nations' Universal Declaration of Human Rights (UDHR) starts with the powerful statement that "[a]ll human beings are born free and equal in dignity and rights" (United Nations, n.d.). This statement sets the standard for member states and human rights organisations, yet thus far this has not not been reached by any country in the world. Gender, social status, ethnicity, religion, wealth, health and sexual orientation are factors which directly influence ones claim to dignity and rights. Fortunately, most countries agree that discrimination based solely on these factors is fundamentally wrong and proclaim that the job of regional and supranational governing bodies is to advocate for rights for all. However, the rights of the LGBTI community, so people who identify as lesbian, gay, bisexual, transgender, intersex or any other sexual and gender minority, is an issue on which there is no global consensus – Hence, discussions about LGBTI rights at the UN prove to be difficult and slow.

Over a third of the world's countries have criminalised consensual same-sex sexual acts, the punishments varying from fines to death sentences (Mendos, Botha, Lelis, Lopez de la Pena, Savelev and Tan, 2020). Countries also target LGBTI people by criminalising and moralising gender presentation that does not adhere with one's assigned sex, same-sex couples raising children, or speaking about LGBTI people on public mediums, to name a few. Even in the most liberal countries people face violence and discrimination due to their sexual orientation or gender identity. This makes LGBTI people a particularly vulnerable group which requires extra protection. However, often the discrimination and violence comes from the state itself, or the state does not do anything to stop it, requiring action from non-state actors or intergovernmental organisations. Violence and discrimination that a state has not made any steps to stop is something the UN Human Rights Council (HRC) was established to intervene in. Regrettably, instead of discussing how LGBTI people should be protected, the HRC has spent a lot of time discussing whether or not LGBTI people even belong under the protection of international law.

The World Health Organization's (WHO) World Health Assembly declassified homosexuality as a mental disorder in 1992, being the first UN agency to take a step towards including LGBTI people in their human rights discourse (Trithart, 2021). LGBTI activism, from the American Stonewall Riots to extensive the advocacy during the AIDS crisis, had lifted the status of LGBTI rights and shifted the views on sexual and gender minorities. To date, almost exclusively all human rights theory

include the rights of sexual and gender minorities in their discourse, the position being solidified thanks to the work of feminist and queer theorists such as Judith Butler, Teresa de Laurentis and Michael Warner. These theorists have worked hard to include LGBTI people in existing theory and to create theory specifically for the LGBTI community.

An increasing amount of research is being done on the implementation of human rights and their monitoring, which is necessary and needed, but less research is being done on how states see universal human rights and how they argue for their stance. This slight research gap in the justifications on limiting the coverage of the UDHR is something I wanted to investigate, my interest in global LGBTI rights giving the perfect window for that. LGBTI rights are one of the most, if not the most, divisive minority issue in the world, thus the discourse around it showcases very well how countries are divided on how international law and human rights treaties should be interpreted. My research will contribute to the existing critical international relations and human rights theory, which look more critically at the implementation of human rights and the limitations of the human rights regime. In addition, due to the LGBTI angle, this research will also contribute to the existing queer theory. I second the argument that Cynthia Weber lays in their book *Queer International Relations: Sovereignty, Sexuality and the Will to* Knowledge (2016) that it is important to recognise the need for queer theory in international relations, as well as the need for international relations in queer theory.

The contemporary world in 2021 is more actively than ever fighting against racial injustice and the discrimination people face due to their sex and religion. Campaigns such as #metoo or Black Lives Matter have made these topics a global discussion, with most countries promising to do better to reach equal treatment. With this global consensus, fighting for the oppressed has become not only the right thing to do but also for many the politically smart thing to do. Thus far, LGBTI rights have not reached the same kind of momentum as the rights of women or religious or racial minorities, and states stay very divided on the matter, with many publicly expressing publically their disregard of LGBTI rights. This open disregard for including LGBTI people under the protection of international human rights laws is not only present in domestic discussions, but also at the UN and the Human Rights Council.

In my research I will be analysing the statements made at the 41st meeting of the Human Rights Council at its 32nd session on the 30th of June 2016. This session discussed the establishment of an Independent Expert on Protection Against Violence and Discrimination based on Sexual Orientation and Gender Identity (SOGI). My research will only look at the statements made against the

establishment, as the research will try to answer on what grounds these states do not want to include LGBTI rights under the protection of universal human rights. The goal will be to see whether there are similarities between the justifications and what the main arguments of states are. In total 23 statements were analysed for this research, which included all the statement made by countries who either voted against the establishment of an independent expert, or abstained from the vote.

Understanding the justifications of the countries who voted against the establishment, or abstained from the vote that established the Independent Expert, is important because it helps activists and other human rights actors map out the best ways to advocate for LGBTI rights. By understanding what the main obstacles for political actors and governing elites are, resources can be focused to the areas which need more education and awareness. Moreover, it is common that arguments against the inclusion of LGBTI rights are spoken about as one entity, which simplifies the variety of the justifications and their differing levels of intensity. Through categorisation of the arguments, specific justifications can be approached in a more targeted and efficient way. In addition, looking into these justifications contributes to a larger discussion on human rights and universality. The justification categories identified in this research could possibly be applied to other human rights discussions on LGBTI rights, as well as on other related minority issues.

The research presented in this thesis will focus on one HRC session and the discussion around the establishment of one Independent Expert, but the argumentation from this one session helps to understand the discourse around human rights on a larger scale. This research will argue that there are large fundamental differences with how the concept of 'universal' in universal human rights is perceived, which polarises the Human Rights Council and slows down the decision making process. Moreover, this thesis will argue that having a false sense of agreement on the concept of universality makes the HRC seem performative and ineffective, even though this illusion of agreement justifies human rights work on issues that might not pass the UN's agenda otherwise. With regards to LGBTI rights, this thesis will argue that the main obstacles for advancing the rights of LGBTI people are moral and cultural justifications, but also the differences in how the role of the HRC and universality are seen. The findings of this research can be used to advance LGBTI advocacy and to critically analyse the effectiveness of the HRC.

This research will start with chapter *2. LGBTI Rights, Universality and the United Nations*, which will give, as the name suggests, an overview on LGBTI rights, universal human rights and the United Nations. This chapter will also define what is meant by LGBTI rights. After this, *3. Research Material*

and Methodology will break down the analysis methodology, the nine applied analysis categories, and the context and nature of the research material. *4. Results* will present the findings of the analysis by tables that summarise the findings as well as by going through the findings of each analysis category. After this, *5. Analysis* will discuss the implications of the results, as well as divide the results into three additional categories that help to identify how the findings should be approached and what they contribute to the existing literature. Finally, *6. Conclusion* will summarise the key contributions, discuss limitations and suggest future research.

2. LGBTI Rights, Universality and the United Nations

This chapter will define both LGBTI and LGBTI rights, break down the universality vs. cultural relativity debate, and give an overview of the United Nations and the HRC. This chapter will finish with presenting a global overview of the state of LGBTI rights and a summary of how LGBTI rights have been advanced in the UN. These are necessary background information to fully understand the arguments at the UN Human Rights Council around LGBTI rights.

2.1 Defining LGBTI rights

This section will define what is meant by the LGBTI acronym as well as other acronyms that are often used while talking about sexual and gender minorities. After that, this I will define 'rights' in the context of LGBTI discourse and justify the vocabulary that will be used in this research.

2.1.1 LGBTI, LGBTQ or SOGIESC?

The complexity of LGBTI rights starts with the broadness and many versions of its acronym. In this research I will be using the acronym LGBTI, referring to lesbian, gay, bisexual, transgender and intersex people, as this is the acronym that is used by most international organisations and institutions (Trithart, 2021; Mendos et al., 2020; Amnesty International, 2014). Other commonly used acronyms are LGBTI+, LGBTQ and LTBTQAI, where 'Q' represents queer and questioning people, 'A' asexuals and agender people, and the plus sign emphasises that the acronym is an umbrella term. Despite this research leaving off the plus sign, LGBTI will be used as an umbrella term to include all sexual and gender minorities.

An additional set of acronyms that is used when discussing LGBTI rights are SOGI (sexual orientation and gender identity) and SOGIESC (sexual orientation, gender identity, gender expression, sex characteristics). SOGI is an inclusive term that includes all types of sexual orientation and gender identities, while SOGIESC also includes the expression of gender (behaviour, mannerisms, way of dressing etc.) and sex characteristics (physical features, genitalia etc.) (Montz, n.d.). SOGIESC is the most inclusive term, but SOGI is the acronym that was used in the UN in 2016 and therefore it will also be used in this research when referring to the discussion at the Human Rights Council.

The important distinction between using LGBTI and SOGI is that LGBTI refers directly to sexual and gender minorities, while SOGI is something that applies to everyone, as all people have a sexual orientation and a gender identity. However, SOGI is most often used when discussing discrimination or mistreatment due to one's sexual orientation and/or gender identity and therefore the discussion is most often still focused on LGBTI people.

In addition to the varying acronyms, it is important to note that LGBTI and its variants, are of western origin. This does not mean that the acronym only apply to Western people and culture or that the "phenomena" would be solely Western, but this is a current limitation of vocabulary in regards to this issue. Regional differences in language and terminology should be taken into account and people should not be forced to label themselves with any labels that they do not feel suits them. For example, Native American people who identify as two-sprits should not be forced into the Western terminology. However, in the past decades due to globalisation many non-Western countries, NGOs, and people have started to use the LGBTI terminology (Boellstroff, 2012). Despite, no matter what terminology is used, LGBTI rights refer to everyone whose rights are being limited due to their SOGIESC.

As previously stated, everyone has a SOGI identity, but it should be noted that gender identity mainly refers to whether one identifies as a cisgender person (so identifies with the gender assigned to them at birth), transgender person (identifies with a different gender than the one assigned to them at birth), or any other gender identity. Therefore, discrimination based on gender identity does not refer to what is traditionally seen as gender-based discrimination – One is being discriminated against due to them being a trans woman, not because they are a woman.

2.1.2 The Broadness and Intersectionality of Rights

After understanding what is meant by LGBTI and its variants, we should look into what we mean with rights. Rights as human rights will be defined later in this theory section, but the language specific to rights referring to SOGI related issues will be discussed here. The importance of language and definitions is highly present when discussing the legal stance of LGBTI rights. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) uses the term "criminalisation of consensual same-sex sexual acts" when discussing what is often spoken about as the "criminalisation of homosexuality" in public discourse. This is due to the focus of legal frameworks being on acts instead of identities (Mendos et al., 2020). The legal focus being on acts give states the loophole to

argue that they are not criminalising sexual orientation or gender identity as such. However, as ILGA argues in their *State-Sponsored Homophobia 2020: Global Legislation Overview Update:*

> By penalising "sodomy", "buggery" or "sexual acts with people of the same sex", legal frameworks impose criminal punishments upon one of the activities that is relevant in defining such identities. In many places, these acts are even "presumed" when people are reported or arrested under these provisions solely based on their appearance or being in the company of people of the same sex at a gathering. Therefore, the result is the same: impeding persons or diverse sexual orientation to live a full life free from violence and discrimination (Mendos et al., 2020, p.13).

In addition, focusing on the "criminalisation of consensual same-sex sexual acts" excludes paedophilia and non-consensual acts from the discussion, whether or not the acts would be between people of the same sex. This ensures that the discussion of morality and legal basis stays specifically on sexual and gender minorities and not on other unrelated moral discussions. This research will apply the term used by ILGA.

The criminalisation of consensual same-sex sexual acts is the clearest breach in the rights of sexual and gender minorities, as it directly affects the freedom of LGBTI people and vastly discriminates on the basis on their consensual private life acts (Bosia, 2014; Gerber and Gory, 2014). This criminalisation, in its many forms and degrees, is the most pressing LGBTI rights issue, but LGBTI rights are a multi-layered and intersectional problem. For example, the Human Rights Watch lists torture, killing and executions, censorship, medical abuses, work-life discrimination, abuses against children, and denial of family rights and recognition under under LGBT Rights, to name a few (The Human Rights Watch, n.d.).

Thus, simply by not criminalising consensual same-sex sexual acts, it does not automatically mean that LGBTI rights are being respected – Denying someone employment due to their SOGIESC, not allowing same-sex marriage or adoption, and labelling LGBTI media as propaganda are all violations of the rights of LGBTI people, as LGBTI people should have the same rights as everyone else in the society. What issues are the most topical for an individual depends on their identity, country of origin and the community that they are a part of – A white cisgender gay man in Sweden most likely faces vastly different discrimination and violence than a transgender woman in Nigeria. However, all

discrimination, violence and unjust treatment that a person faces due to their sexual orientation and/or gender identity is an LGBTI rights issue.

This research will be talking about LGBTI rights as a whole, but the focus will be on the rights of sexual minorities, especially on homosexual men. This is due to the majority of legal issues around LGBTI people being focused on sexual acts between men, which steers the general discussion towards that direction. Sadly, this will mean that the specific issues faced by transgender and intersex people will be under-represented in this research, as well as the experience of lesbian and bisexual women. More research should be done about the specific arguments and justifications used against the inclusion of trans and intersex rights in global human rights discourse.

2.2 Universality vs. Cultural Relativism

LGBTI rights are built on the notion that everyone, despite any personal characteristics, should be entitled to the right to live free from fear, violence and discrimination – So the notion that human rights are universal (FRA, 2011; Langlois, 2020; UNDP, 2017). The most widely used counter argument to including everyone under the protection of international law and human rights treaties, no matter their personal characteristics or viewed morality, is cultural relativist arguments, which argue that moral values and rights are culture-specific and not absolute (Chimakonam and Agada, 2020). These two views present the two opposing sides of human rights discourse, and understanding this tension helps to grasp why discussing human rights on a global level is more difficult than it may appear on paper.

2.2.1 *Universal* Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted in 1948 in the aftermath of the Second World War, which started to shift the discourse around human rights to be more universalistic (Féron, 2014; Moyn, 2010). By ratifying the UDHR majority of the world's countries agreed that, at least in principle, every human being is valuable and deserves the right to a safe and prosperous life. The UDHR was adapted without much resistance, as no country voted against it, even though eight countries (Soviet Union and five of its allies, Saudi Arabia and South Africa) abstained from the vote (Baehr, 1999).

Despite the ratification of the UDHR, which states in Article 2 that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (United Nations, n.d.), the universality of human rights has been under fire every day since its ratification. For example, the South African apartheid was established the same year as the Declaration but it only ended almost fifty years later in 1994. It was seen by many that the "separate but equal" approach was in fact not a breach on human rights, which started one of the infinite discussion on what human rights actually mean, and to whom they in the end belong to (Kelleher, 1971; Moyn, 2010).

When the UDHR was drafted, many theorist, politicians and philosophers gathered to discuss the nature of human rights and their origin. This group of people could not come to a general consensus on the origins of human rights, nor find any empirical evidence for their existence, which has made scholars such as Henri Féron (2014) state that universal human rights are simply grounded in a *belief* and that they exist mainly because we think they should. This belief can be seen as almost utopian (Moyn, 2010), creating a world where everyone is important and valuable.

Even though the belief in universal human rights is not tied to a religion or spirituality, universal human rights have undoubtedly been shaped by both. René Cassin, a French UN delegate and law professor who was a major player in drafting the UDHR, stated that human rights come from the Bible, more specifically from the Ten Commandments (Stamos, 2013). This is a commonly used argument as UDHR is very West-centric and therefore it was drafted mainly by Christians. However, what needs to be pointed out is that the Ten Commandments were not meant for the humanity as a whole, but instead specifically the Jews, who were seen as the chosen people (Stamos, 2013). Thus, even though the Ten Commandments' commands such as one should not kill (which can be reversed to one having the right to live) can be seen as a generic guide for Universal Human Rights, it cannot be stated that the concept of universality originated from them.

John Locke's theory of Natural Rights has been seen as one of the first blueprints for universal human rights (Welchman, 1995). Locke was one of the most influential philosophers of the 18th century and his work influenced many to question the total authority of the state, especially in regards to religion and property. Locke argued that men naturally had some rights, which they held simply due to them being citizens. As De La Cruz-Ayuso discusses:

> Locke took a decisive step towards the modern theory of natural rights by questioning the legal basis of the obligation of sovereigns to respect natural law. His response was crucial: the governed simply had rights. The subjective natural right of the citizen is the basis of the government's duty to protect that citizen. It is the government's duty because it is also the citizen's right (2019, p.29).

In the contemporary society, natural rights theory bases natural rights on human nature alone, making them absolute and inalienable (Donnelly, 1982). Locke's view on natural rights might have been spoken about at the time as absolute, but it contained many unspoken exceptions, as the rights were mainly seen to apply to men and citizens, which goes against the contemporary society's view on universal human rights. It should also be noted that Locke supported slavery (Welchman, 1995; Uzgalis, 2017), which undoubtedly is seen as a human rights violation today.

Locke's view of rights could be seen as controversial in liberal contemporary societies, but it is important to note that all states in the current world have exceptions to the universality of what is a right and to whom they belong to. For example, anti-suicide laws, mandatory vaccinations or compulsory education all challenge the universality of the right to free will (Donnelly, 1982; Baehr, 1999). Natural rights, nor universal human rights, are ranked in an order of importance and therefore it is often up to states and individual moral understanding to decide how to value their importance (Baehr, 1999). For example, the right to a safe environment requires children to be vaccinated, but simultaneously it could be argued that people have the right to decide what goes into their bodies and decide against it. Most societies have concluded that the right for a safe environment is greater in this case, and therefore enforce mandatory vaccination. However, this decoding of how to interpret universal rights is most often up to states and individuals.

Despite states and global governing bodies having exceptions to their sense of universality, the general discourse favours the idea that universal human rights do not have large scale exceptions, especially ones that would apply to specific groups of people. It is generally seen, as Donnelly states, that that human rights are "—inalienable rights, because being or not being human usually is seen as an inalterable fact of nature, not something that is either earned or can be lost" (2007, p. 282).

The inalienable nature of rights is reflected in the Universal Declaration of Human Rights' Article 1. which states that "[a]ll human beings are born free and equal in dignity and rights" (United Nations, n.d.). This sets the standard for universality and due to this, human rights discourse is generally

focused on human rights violation and their monitoring, instead of focusing on to whom human rights belong to.

Thomas G. Weiss, one of the most notable political science academics who has written extensively about the United Nations, summarises universality at the United Nations in the following words: "While member states commit themselves to the promotion of fundamental protections, the concept of universal human rights remains contested" (2008, p.61). He follows this by discussing how universal human rights, as well as natural rights, have been criticised for being "Western imperialism" and placing too much emphasis on the individual. This discourse around the differences in emphasis is an example of cultural relativity, which serves as the counter argument for universality of rights.

2.2.2 The Cultural Relativist Argument

The definitions of cultural relativism differ, but in principle, while universalists argue that rights and moral values are absolute and the same everywhere, cultural relativists argue that moral values and rights are culture-specific and not absolute (Chimakonam and Agada, 2020; Teson, 1984). Cultural relativism rose during the decolonisation period as a response to imperial values; Cultural relativists argued that the culture specific values and morals of countries had been forgotten during the imperial period and that countries should rediscover their native set of values (Parasad, 2007; Reichert, 2006). In addition, cultural relativism has been used when arguing against the West-centric nature of international organisations and treaties alongside with post-colonial arguments, which highlights the need for diversity in all areas of global governance. It is important to understand cultural relativism in the context of the international human rights regime and LGBTI rights, as arguments tied to culture or religion are the prevalent when arguing against the rights of sexual and gender minorities (Chimakonam and Agada, 2020; Sadgrove, Vanderbeck and Andersson, 2012).

As previously mentioned, cultural relativism rose as a way to bring up marginalised voices, which was (and continue to be) necessary to ensure that the loudest West-centric voices did not dominate all discourse. However, in the past decades "—cultural relativism [has become] a weapon in the arsenal of bourgeois-nationalist elites that could be invoked in an effort to undercut the voice-consciousness and degenerate the lived experiences of the masses residing in postcolonial states" (Parasad, 2007, p. 592). In other words, cultural relativist arguments have become a powerful tool for elites with which they can dismiss the parts of human rights that they do not like. This can be seen in practice with leaders arguing against homosexuality by stating that it is a Western import and not

something that is native to their country (Prasad, 2007). For example, in 1993 at the World Human Rights Conference in Vienna, the Singaporean Foreign Minister Wong Kan Seng gave s statement which emphasised cultural relativity and expressed his disregard for LGBTI rights (Ministry of Information & The Arts, 1993; Offord and Cantrell, 2013). This statement was made 27 years ago yet consensual same-sex sexual acts between men remains illegal in Singapore

As the Singaporean case demonstrates, cultural relativist arguments are used globally, but the misuse of cultural relativism is especially strong in the former colonies in Africa - The countries which inspired the birth of cultural relativism in order to fight against imperial oppression (Biruk, 2014). Aimar Rubio Llona summarises how "[m]any nationalisms took on a new meaning with an identity that described the new black man freed from the Western stranglehold. The true African was supposed to be a person representative of a claimed idiosyncrasy where sexual diversity does not exist since it is contrary to African traditions, spirituality and world view" (2019, p.315). Cultural relativism is used for example in Nigeria to justify harsh prison sentences for LGBTI people (Chimakonam and Agada, 2020) and in Zimbabwe to undermine groups such as Gays and Lesbians of Zimbabwe (GALZ) who try to advance the position of sexual and gender minorities in their country (Prasad, 2007).

Due to the strength of the cultural relativist argument, it is also difficult for international organisations to promote LGBTI rights, as the people and actors who oppose LGBTI rights have accused local leaders for abandoning their original values in order to receive aid and recognition from Western countries (Sadgrove et al, 2012; Biruk 2914). This demonstrates how cultural relative arguments influence not only domestic LGBTI work but also multilateral co-operation.

As discussed, the cultural relativist arguments rest on the specified morality of a nation and its people. The main argument is that a set of universal values cannot be made, as the value systems of countries differ. However, what is important to note is that universalists do not argue that all states and humans hold the same set of values, but rather that morals do not play a role in deciding the worth of a human. As Donnelly (2007) states, "If the state refuses to protect some people against private violence, on the grounds that they are immoral, the state violates their basic human rights – which are held no less by the immoral than the moral" (p. 304). Therefore, in the eyes of a universalist, whether or not a culture or religion finds something, or someone, immoral should not affect their claim to human rights.

2.3 Human Rights and the UN

The enforcement of human rights requires effort from both regional and universal systems (Kroetz, 2016). Despite conflicting realities, the global society is making a conscious effort to upheld and monitor human rights in the form of courts and councils, which base their judgements on commonly agreed upon conventions and international laws. These global human rights institutions work on the basis that human rights apply universally to everyone, despite their country of origin or background, which makes human rights violations possible to be evaluated and judged on a supranational level (Baehr, 1999).

The United Nation was founded after the Second World War to unite states against fascists regimes and to prevent the large scale human rights violations (Weiss, 2008). It was commonly agreed that international oversight was needed in order to prevent the upraise of a new fascist leader. In addition, a new norm was set which allowed, at least ideologically, international law and regulations to intervene with state sovereignty. Today, the UN and its organs serve as one of the most important human rights agenda setters (Winer, 2014).

During the drafting of the UDHR member states were divided on what should be specified as a right – Western countries argued for "negative" rights while the East wanted to emphasise "positive" rights (Weiss, 2008). Thus, the West argued for civil and political rights, so rights that governments had to stay out of, while the East wanted to focus on economic, social and cultural rights, so rights which "—governments have to initiate steps to ensure that they are implemented" (Weiss, 2008, p.63). This division lead to the creation of two separate treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which were ratified in 1966. The UDHR was the main document from which these treaties were drafted from and it functions to date as the blueprint for human rights discourse (MacArthur, 2015).

The Commission on Human Rights (CHR) was established in 1946 and it functioned for over fifty years, until it was replaced by the Universal Human Rights Council in 2006, which held less member states and changes to the majority vote (Weiss, 2008). The HRC is the main body that monitors human rights violations and the rights covered by the ICCPR and the ICESCR. The HCR has 47 member states which are elected for three-year terms. The member states rotate, but out of the 47 member states 13 member states must be from African states, another 13 from Asian-Pacific States, six from Eastern European States, seven from Western European and other states, and eight from Latin

American and Caribbean States (OHCHR, n.d.). This divide is kept in order to ensure that the council has the broadest possible set of viewpoints.

One of the main criticisms for the human rights regime is its limited ability to enforce repercussions for countries that have been deemed to violate human rights. Largely due to the limited ability of the Human Rights Council to enforce human rights, it has been claimed to be largely performative and not interested enough in using its full potential. As Thomas G. Weiss discusses:

> – the weight of the shackles of political correctness is a peculiar feature of the UN human rights machinery. What governments – by the major or minor powers – consider acceptable too often determines official policy. Such subservience reflects the outmoded concept of sovereignty without responsibility and builds a substantial flaw into the international civil service (2011, p.20).

What Weiss describes can be seen with the way in which LGBTI rights have been discussed within the UN's human rights regime.

2.4 LGBTI Rights' Rise to Human Rights Discourse

The rights of sexual and gender minorities have become a major topic in human rights discourse notably in the last 40 years. This does not mean that LGBTI rights have not been discussed earlier – the John Wolfenden Report called for decriminalisation of homosexuality in England already in 1957 (Chimakonam and Agada, 2020). However, until the 1980s AIDS crisis the struggles for LGBTI recognition (and largely decriminalisation) stayed local and were rarely discussed in international settings. It was also only after the AIDS crisis that the UN started to aim their policy and programmes to include LGBTI people (Trithart, 2021), even though the AIDS crisis momentarily set back public opinion on gay people (Clements and Field, 2014).

This last part of the theory section will give an overview of LGBTI rights around the world, their legal status, and to what extent SOGIESC related issues have been discussed at the United Nations.

2.4.1 A Global Overview of LGBTI Rights

The introduction disclosed that in over one third of the world's countries consensual same-sex sexual acts are prohibited by law (Mendos, Botha, Lelis, Lopez de la Pena, Savelev and Tan, 2020). The

Human Dignity Trust (n.d.) is one of the NGOs that has collected data on the jurisdictions, finding that as of May 2021 71 countries criminalise consensual same-sex sexual acts between men, 43 specify sexual activity between women in their jurisdictions, 11 jurisdictions impose or have the possibility for the death penalty as a punishment for these crimes, and 15 jurisdictions specify the criminalisation of gender identity and/or expression that does not match with one's assigned sex. The Human Dignity Trust (n.d.) also states that out of the 71 jurisdictions that criminalise consensual same-sex acts between men almost half are Commonwealth jurisdictions.

Moreover, ILGA World, so the International Lesbians, Gay, Bisexual, trans and Intersex Association, report (Mendos et al., 2020) that there are 67 UN Member States that criminalise consensual same-sex sexual acts, and additional two states have de facto criminalisation and Cook Islands having a nonindependent jurisdiction that criminalises consensual same-sex sexual acts. They specify in their *State-Sponsored Homophobia 2020* report the following about the severity of criminalisation in UN member states:

> Among those countries which criminalise, we have full legal certainty that the death penalty is the legally prescribed punishment for consensual same-sex sexual acts in six UN Member States, namely: Brunei, Iran, Mauritania, Nigeria (12 Northern states only), Saudi Arabia and Yemen. There are also five additional UN Member States where certain sources indicate that the death penalty may be imposed for consensual same ex conduct, but where there is less legal certainty on the matter. These countries are: Afghanistan, Pakistan, Qatar, Somalia (including Somaliland) and the United Arab Emirates. (Mendos et al., 2020, p.25).

The death penalty is without a doubt the most serious form of LGBTI criminalisation, but as discussed in *2.1.2. The Broadness and Intersectionality of Rights*, LGBTI people face violence and discrimination also in countries that may not have specific jurisdiction to target LGBTI people. This can be seen form the European Union Agency for Fundamental Rights (FRA) 2019 survey which surveyed 140,000 people across EU, North Macedonia and Serbia. None of the surveyed countries directly criminalise LGBTI Identities, but the study found that discrimination stays common at school, work, restaurants, healthcare and housing, and that harassment and physical and sexual attacks are a fear for many (FRA, 2019). In addition, there is a vast difference between the countries in Europe, with some countries like Sweden and the Netherlands having a high general level of acceptance, while in countries like Turkey acceptance towards LGBTI people is extremely low (FRA,

2019; Gerhards, 2010). Luckily, the survey did also find some positive trends, as younger people had had more people standing up for them and LGBTI people at school and private life.

Despite the criminalisation and persistent discrimination, globally, the general acceptance of LGBTI people has drastically risen in the 21st century, even though some country specific setbacks have also occurred. Pew Research Center (Poushner and Kent, 2020) surveyed people from 34 different countries in 2002 and in 2019 by asking whether the recipients of the survey agreed that homosexuality should be accepted by the society The researchers found some positive trends which pointed how the acceptance of homosexuality has risen since 2002. For example, in South Africa, in 2002 33% of the surveyed said that homosexuality should be accepted by the society while in 2019 this number was 54. Respectably, in India the percentage went from 15 to 37, in Canada from 69 to 85 and in Kenya from 1 to 14.

Moreover, the research found that in most countries one's age plays a major role in determining their view on homosexuality. The differences between age groups were the greatest in South Korea and Japan, as in South Korea 79% of 18-29 year olds said that homosexuality should be accepted by the society, while only 23% of over 50 year olds said the same. In Japan, 92% of 18-29 year olds were accepting of homosexuality while 56% of over fifty year olds agreed that homosexuality should be accepted by the society (Poushner and Kent, 2020). This trend would suggest that the rate of acceptance of homosexuality will steadily grow in the next decades, assuming that the future generations will not be notably less tolerant than their parents'.

There have also been concrete positive developments with LGBTI rights. There has been a cultural shift in how LGBTI rights are seen in many countries, which has changed how SOGIESC related rights questions are viewed (Baunach, 2012; Brewer, 2003). The most concreate example of this is how 29 countries have to date legalised same-sex marriage, these countries being Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Iceland, Ireland, Luxemburg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Sweden, Taiwan, The Untied Kingdom, the United States of America and Uruguay (The Human Rights Campaign Foundation, n.d.). In addition, several countries which may not have yet legalised same-sex marriage have policies in place to protect LGBTI families, workplace discrimination or criminalise hate crimes.

As it can be seen from the variety of criminalisation, legalisation and protections in place, the international community is very divided on their stance on LGBTI rights. This division can be seen in laws, customs, the media, public opinions and authorities' statements. The division is great between countries as well as within countries, which further complicates the way in which issues regarding sexual orientation and gender identity are dealt with. With some countries battling to decriminalise homosexuality, others battling to legalise same-sex marriage. Thus, it is important to look into the specific international laws that support the rights of LGBTI people.

International laws and treaties acknowledge LGBTI rights to a varying degree. The only supranational law that directly acknowledges the rights of LGBTI people is European non-discrimination law, which protects sexual minorities from employment-based discrimination (FRA, 2011). Neither the ICCPR nor the ICESCR directly single out LGBTI rights; Article 26 of the ICCPR's non-discrimination provision's "other status" is what is most often referred to when discussing the rights of sexual and gender minorities (Trithart, 2021, MacArthur, 2015). LGBTI rights have been seen to go into this category, but not specifically naming LGBTI people, or discrimination based on SOGIESC, has made it possible for international governing bodies, and individual states, to ignore them. As MacArthur states "—in practice this incorporation [of LGBTI rights within the "other status"] has garnered much resistance" (2015, p.27).

2.4.2 SOGIESC at the UN

The United Nation acknowledged for the first time that the protection of human rights extended specifically to LGBTI people in 1994 via the Toonen v Australia case, as the UN Human Rights Committee stated that Tasmania, an Australian territory, violated the ICCPR by prohibiting homosexual activity (Gerber and Gory, 2014). Since then, LGBTI rights have appeared at the UN's agenda on varying levels, as the International Peace Institution's 2021 comprehensive report on LGBTI rights in the UN titled *A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* discusses. This report, written by Albert Trithart, has been a major help for me in compiling the relevant information about SOGIESC policies and programmes.

A major shift with LGBTI rights in the UN experienced a major shift in 2003, when Brazil introduced a draft resolution on human rights and sexual orientation at the Human Rights Council, after which LGBTI rights started to be discussed more strategically in the UN (Trithart, 2021). Eight years after

this in 2011 the HRC passed its first resolution on violence and discrimination based on sexual orientation and gender identity. This resolution has been seen as one of the most important resolutions for protecting people who face discrimination and violence due to their SOGI. The 2011 resolution led to the 2014 resolution, the second resolution on violence and discrimination based on SOGI, and to the 2016 appointment of an independent expert on protection against violence and discrimination based on SOGI (Trithart, 2021).

The HRC's 2016 appointment of an independent expert is one of the most notable milestones for LGBTI rights at the UN (Langlois, 2020; Trithart, 2021). This resolution was adapted at the Human Rights Council's 32nd meeting and the resolution passed with 24 countries in favour, 19 against and six abstaining (UN Human Rights Council, 2016). Due to the divisive nature of the resolution, it was further discussed at the General Assembly at the Third Committee's 71st session, where the African Group tried to unsuccessfully block the resolution (United Nations Meeting Coverage, 2016). The HRC renewed the mandate on the independent expert in 2019 and the resolution passed with less resistance than in 2016.

In 2013, the Office of the United Nations High Commissioner for Human Rights (OHCHR) launched the UN Free & Equal campaign – "an unprecedented global UN public information campaign aimed at promoting equal rights and fair treatment of LGBTI people" (Free & Equal, n.d.). Trithart describes the campaign in his report as "—the UN's most prominent, public-facing program focused on SOGIESC" (2021, p.5) and the campaign has a wide social media reach as well as many country-level projects. Their principle is to talk to "people in the middle,", speak about LGBTI issues interjectionally, and collaborate with civil society organisations (Trithart, 2021). The campaign has received additional funding and is still ongoing, functioning as one of the clearest successful examples of how LGBTI rights can be advocated via the UN.

As the above demonstrates, LGBTI rights have established some footing in the UN human rights discourse. However, due to the lack of universal acceptance across member states, LGBTI rights are not discussed as widely across all UN sectors as other discrimination. Gerber and Gory found in their 2014 research that between March 2003 and March 2013 the HR Committee discussed LGBT matters 54 times in their concluding observations, of which 13 condemned a state's criminalisation of consensual same-sex sexual acts. This is undoubtedly an acknowledgement of LGBTI issues, but "[i]n that same decade, the number of states for which same-sex sexual activity is criminal (or was

criminal at the of reporting) was 31. Thus, only 41 per cent of the State Parties which criminalise same-sex sexual activity conduct received any comment on this by the HR Committee." (p. 415).

Some of the pushback comes directly form UN member states, either in the form of resistance in passing resolutions, picking projects, or hindering the publishing of papers and establishing programmes. For example, UNICEF faced pushback when it published a paper in 2014 on eliminating discrimination against children and parents based on SOGI. The paper ended up being published as a "current issue" instead of a "policy paper" to avoid being withdrawn (Trithart, 2021). However, it is thanks to the creativity and resilience of UN staff that the boundaries of resisting member states are being pushed and resolutions speaking for LGBTI people are being published.

Overall, LGBTI rights in the UN face difficulties on all levels, from being integrated into existing policies and departments, to getting approval by member states. Due to the international and broad nature of the UN, big statements have been hard to make, but small steps, often taken by individuals with personal interest on the matter, have been taken to advocate LGBTI rights externally and within the United Nations' staff. Furthermore, as the IPI report discusses (Trithart, 2021), the position of LGBTI UN employees also needs improvement and the general staff needs more education on how to speak about LGBTI rights and how to advocate for LGBTI rights on different levels.

To further advance LGBTI rights' position in the United Nations, it must be understood on which grounds states formally reject the inclusion of LGBTI rights under the protection of universal human rights.

3. Research Material and Methodology

The methodology for this research was qualitative content analysis with a specific focus on justification. This section will break down the theoretical basis for this methodology, how it was applied and what the analysis categories were. Before that, this section will introduce the material that was used in this research and its context.

3.1. Research Material

The material used for this research was the discussion around the *The establishment of an Independent Expert on Protection Against Violence and Discrimination based on Sexual Orientation and Gender Identity* at the 41st meeting of the Human Rights Council at its 32nd session on the 30th of June 2016. The discussion material was taken from the transcript of the session (APC International and ILGA, 2016) using the video material of the session from UN Web TV as a guide. However, all the material was taken from the transcript as it was not necessary to do any amendments to the existing text.

The transcript of the session, titled *Compilation of the Adaption of the 2016 SOGI Resolution* has been compiled by Allied Rainbow Communities International (ARC International); and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). The transcribing was conducted by Avinaba Dutta. I would like to express my gratitude to Dutta, ARC and ILGA for putting together the transcript.

3.1.1. Context

The proposal of the establishment of an independent expert was brought to the HRC by seven states: Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay (UN Human Rights Council, 2016). These countries, all from Latin America, are termed the "core group" and were the main sponsors of the appointment. The draft resolution was filed on the 17th of June.

On the 28th of June Pakistan proposed eleven amendments to the resolution on behalf of the States of the Organization of Islamic Cooperation (the OIC), expect for Albania. The OIC has 57 member states, of which ten (Albania, Algeria, Cote d'Ivoire, Indonesia, Maldives, Morocco, Nigeria, Qatar, Saudi Arabia and United Arab Emirates) were members of the HRC in 2016.

According to the distribution of seats in the HRC, the states present at the 41st meeting were as follows:

1. African States (13): Algeria, Botswana, Burundi, Congo, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Morocco, Namibia, Nigeria, South Africa, Togo
2. Asia-Pacific States (13): Bangladesh, China, India, Indonesia, Kyrgyzstan, Maldives, Mongolia, Philippines, Qatar, republic of Korea, Saudi Arabia, Viet Nam, United Arab Emirates
3. Latin American States (8): Bolivia (Plurinational State of), Cuba, Ecuador, El Salvador, Mexico, Panama, Paraguay, Venezuela (Bolivarian Republic of)
4. Western European and other States (7): Belgium, France, Germany, Netherlands, Portugal, Switzerland, United Kingdom of Great Britain and Northern Ireland
5. Eastern European States (6): Albania, Georgia, Latvia, Slovenia, the former Yugoslav Republic of Macedonia, Russian Federation

The 32nd session lasted for 3,5 hours and included 17 votes. The first vote was a preliminary vote on a no-action motion that was proposed by Saudi Arabia. The no-action motion was defeated by a vote of 15 in favour, 22 against, and 9 abstaining. The vote was followed by 11 votes on the amendments filed by the OIC of which seven passed and four did not. This was further followed by four votes brought by Qatar and the Maldives to oppose the retention of four parts of the proposal - All four passed. The final vote was on the amended resolution, which passed leading to the establishment of an independent expert on SOGI.

The votes for the final resolution adapted by the Human Rights Council were:

In favour (23): Albania, Belgium (Plurinational State of), Cuba, Ecuador, El Salvador, France, Georgia, Germany, Latvia, Mexico, Mongolia, Netherlands, Panama, Portugal, Republic of Korea, Slovenia, Switzerland, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against (18): Algeria, Bangladesh, Burundi, China, Congo, Côte d'Ivoire, Ethiopia, Indonesia, Kenya, Kyrgyzstan, Maldives, Morocco, Nigeria, Qatar, Russian Federation, Saudi Arabia, Togo, United Arab Emirates

Abstaining (6): Botswana, Ghana, India, Namibia, Philippines, South Africa

3.1.2 Statements

The session included 18 statements made by countries who voted against the resolution, five statements made by countries who abstained from the final vote, and 23 statements made by countries who voted for the proposal (including introductory and concluding remarks). Pakistan, who presented the amendments on the behalf of the OIC states, spoke but was not a member of the council at the time, meaning that they did not participate in the final vote. However, as Pakistan presented the amendments and spoke very heavily against the appointment, Pakistan will be included in the analysis and in the result tables under "Countries who voted against the appointment of an independent expert".

The statements made by countries who voted against the proposal (including Pakistan) and statements made by countries who abstained from the vote was4re the material used for this research. Short comments that simply agreed with a vote or asked a practical question from the President were excluded from the material. Due to the focus of the research, this research will **not** look at the statements made for the proposal (and therefore for LGBTI rights) and they will be excluded from all tables and discussions. Additional research should be done into these statements, as well as comparative study between the different sides of the discussion.

All the material that was used was in English, meaning that some of the statements are translated and not in the original language that they were presented in. I do recognise that some word choices or emphasis might have been lost in translation, even though the translating has been done by UN on sight professionals.

The states who spoke at the session, their stance and the times spoken can be seen from Table 1.

Table 1: Country Name and Times Spoken at the 41st Meeting of the HRC at its 32nd Session

Country Name	Times Spoken
Voted against and spoke at the session	
Algeria	1
Indonesia	1
Maldives	1
Morocco	1
Nigeria	3
Qatar	2
Russia	3
Pakistan*	1
Saudi Arabia	4
United Arab Emirates	1
	Total = 18
Abstained and spoke at the session	
Botswana	1
Ghana	1
Namibia	1
Philippines	1
South Africa	1
	Total = 5

3.2 Methodology

3.2.1 Theoretical Basis

My research methodology will be leaning on Ylä-Anttila and Luhtakallio's *Justification Analysis: Understanding Moral Evaluations in Public Debates* (2016), which has been drawn in the work of Boltanski and Thévenot around justification theory (1999; 2006). The mentioned research analysis has been applied the most in the context of sociology, but I do believe that it also applies to discourse from a political science perspective. Justification analysis was chosen because it analyses not only what has been said, but the history and intent of what has been said (Luhtakallio and Ylä-Anttila, 2011). As Ylä-Anttila and Luhtakallio write:

> In sum, Justification Analysis is useful for understanding why some arguments become successful in public debates. When political actors are willing and able to modify their arguments to lean on a wide enough range of moral justifications and thus resonate with

> a wider range of allies and sometimes opponents, they are more likely to succeed. (2016, p.6).

Ylä-Anttila and Luhtakallio's research focuses on public debates in the media, mainly between politicians and the public, which presents a power dynamic that focuses the public debate either from the elite to the people, or vice versa. The UN's Human Rights Council, and other UN organs, present a slightly different forum for political debate, as UN representatives are appointed instead of elected, and the the discussions are held between actors who try to appeal to very different groups of people – their representative countries.

Ylä-Anttila and Luhtakallio use the seven categories presented by Boltaski and Thévenont (market, industrial, civic, domestic, inspiration, opinion and green) (Boltanski and Thévenot, 2006) in their analysis, but as over half of these categories would not be necessary in my research, I have decided to determine my own categories from the material. The categories got initial guidelines from the relevant literature on LGBTI rights advocacy, and got expanded in the process of analysing the material on the basis of what arguments were used in the statements.

3.2.2 Application

The theory was applied by first reading out the material, which was the transcript of the Human Rights Council's session). After reading through the material, the statements under analysis, so the statements by countries who voted either against the establishment of an Independent Expert or abstained from the vote, were moved to a separate document so that they would be easier to analyse. I printed out this document and started manually going through the statements, using different colour highlighters to indicate the different categories.

While analysing the material I created new categories each time I felt like an argument that was used did not fit one of the existing justification categories. The next section will elaborate on the analysis categories, but the basis of creating a new category was that the specific justification added a new argument to why the Independent Expert of violence and discrimination based on SOGI should not be appointed. The justification could either be direct or indirect, meaning that the argument could directly say that something was a reason for the vote, or the justification's affect on the voting decision could be implied or read between the lines. In addition, the analysis material had to have at

least two similar arguments for me to create a new category for them, instead of broadening the grounds of an existing category and including the argument in that.

In practice, country representatives ended up using multiple justifications within one sentence, meaning that one sentence could be categorised under two, or more, categories. The links between the justifications is discussed more in *4.2 Results by Categories*. I calculated which countries used which arguments in their statements, the focus being on which justifications were used in a statement, rather than how many times the argument was used, or specifically which countries made the statements. This means that even if one country used an argument four times in one statement while another country used the same argument only once in their statement, the focus was still put in both cases on the fact that both countries used the statement.

As the statements were grouped solely based on my judgement, there are possibilities of human error in either categorisation or in calculating the frequency of the categories. The document that I used did not have page numbers, meaning that that the quotations will only refer to who the speaker was and what country the speaker represented. All of the statements in full can be found either from the UN Web TV (2016) coverage of the session, or from the transcript found on ILGA's website (ARC International and ILGA, 2016). The details of these sources will be elaborated on in *3.2. Research Material.* The analysis categories will be discussed next.

3.2.3 Analysis Categories

The initial categories that I started with were Cultural Relativity, Lack of Legal Basis, and Moral Grounds, but as I started to analyse the material it became clear that more categories were needed. These three categories were decided on the basis of the appropriate theory. By the end of analysing the material I had recognised nine categories: Cultural Relativity, Imposing Values, Lack of Legal Basis, Moral Grounds, Sovereignty, HRC's Cohesion, Resolution's Lack of Clarity, Principle of Universality, and LGBTI Definition's Lack of Clarity.

The next section will break down how the categories were used and identified. Each category will also include an example from the research material to highlight how the category was applied. This is necessary to ensure that the differences between the categories are as well differentiated as possible. More elaboration on the categories and examples from the material can be found from *4.2 Results by Categories.*

Cultural Relativity: Arguments that directly referenced to culture, religion or traditions were classified under Cultural Relativity. These arguments did not condemn LGBTI people directly, but argued that supporting the proposal would go against their cultural or religious beliefs, or that the HRC should respect specific cultural perspectives. These arguments did not put the focus on the morality of LGBTI rights, but rather on the specific cultural point of view.

Example: " – especially when these concepts run counter to our beliefs, culture and specities" (Faisal Bin Hassan Trad, Saudi Arabia)

Imposing Values: These arguments directly used the word 'impose' and used it in a moral, cultural, or ideological context.

Example: "—refrain from imposing certain values or norms to others" (Dicky Komar, Indonesia).

Lack of Legal Basis: Arguments put under this category used the lack of legal grounds as their argumentation. This includes referring to the lack of LGBTI references in international law or human rights conventions.

Example: "—concept that has not yet been adapted by any universal intergovernmental negotiated treaty or convention" (Tehmina Janjua, speaking for Pakistan and OIC member states)

Moral Grounds: Arguments under cultural relativity refer to the specific cultural or religious point of view without fully condemning LGBTI people, while arguments under Moral Grounds condemn homosexuality, or other LGBTI people, on moral grounds. These condemnations can be indirect, for example by stating that their domestic laws, or religion, prohibits acts related to homosexuality, or indirect by questioning LGBTI people's way of life. While arguments under cultural relativity refrain from stating that their culture or religion prohibits such acts (even though it could be read between the lines) and simply argue that the issue goes against their customs or beliefs, arguments under Moral Grounds moralise LGBTI people. As it can be seen, Cultural Relativity and Moral Grounds overlap at times, but I felt like two categories were needed as moral grounds were also used without references to culture, while cultural relativist arguments were also used without direct references to morality.

Example: "—[we] are suggesting that we set up a separate legal regime for the protection of those who take a choice for a certain model of personal relationships" (Natalia Zolotova, Russia).

Sovereignty: These arguments refer to the sovereign right of states to define their domestic affairs. These arguments most often include the word 'sovereignty' or talks about the freedom of states to decide their affairs.

Example: " – accordance with the principle of national sovereignty" (Peter Omologbe Emuze, Nigeria).

The Human Rights Council's Cohesion: Arguments under this category argue that the establishment of an Independent Expert in this field is going to result in the division of the council, harm the relations within the council, or create unnecessary tensions. It is most often referred that outcomes like these should be avoided, and hence the representative cannot vote for the proposal. Arguments that refer to the credibility of the council, or moreover the loss of credibility if the resolution passes, were also included in this category.

Example: "—it will lead to dissension to divisions within our Council and we do not want this" (Antar Hassani, Algeria).

Resolution's Lack of Clarity: These arguments refer to the unclear details of the resolution, the power of the resolution, or to the unclear process that lead to the resolution.

Example: "—procedure building up to this resolution has not been transparent" (Peters Omologbe Emuze, Nigeria).

Principle of Universality: These arguments used the lack of universal acceptance or recognition as their reference point. Unlike HRC's cohesion, these arguments did not refer to the cohesion of the council, but to the international community as a whole. These arguments almost exclusively used the word 'universal' or 'universality' in their arguments. Arguments that referred to universal human rights were included in this category.

Example: "—sexual orientation and gender identity still do not enjoy universal popularity and acceptability to qualify for a human rights issue" (Peters Omologbe Emuze, Nigeria)

LGBTI definition's lack of clarity: These arguments did not refer to the legal or moral stance of SOGI but instead to the lack of clarity in the terminology itself.

Example: "-- there is no agreed definition or acceptance of the use of the terminology on sexual orientation and gender identity as discussed under the current resolution" (Mothusi Bruce Rabasha Palai, Botswana).

4. Results

This section will present the overview of the results, and the results of the specific analysis categories.

4.1 Overview

Upon analysis of the aforementioned statements, I found that cultural relativity and the Human Rights Council's cohesion were the most used arguments - Cultural relativity being used in 12 of the analysed speeches, while the latter was also used in 12 speeches, as well as in one of the abstaining statements. Lack of legal basis was used as a justification in 11 speeches, making it the third most frequent category. The Principle of Universality and Moral Grounds were used almost as often, while Sovereignty, LGBTI Definition's Lack of Clarity, and Resolution's Lack of Clarity were the least frequent categories.

Table 2: The Justification Categories and their Frequency

Justification	Number of against voting speeches that used the argument	Number of abstaining speeches that used the argument
Cultural Relativity	12	
Imposing Values	7	
Moral Grounds	8	1
Principle of Universality	9	1
Lack of Legal Basis	11	1
Sovereignty	5	
LGBTI Definition's Lack of Clarity	3	1
HRC's Cohesion	12	1
Resolution's Lack of Clarity	5	

Table 2 gives us an overview of what justifications were used the most, but it does not take into account whether some justifications were used by the same countries in multiple speeches. Table 3 demonstrates which countries used which specific justification in at least one speech or statement.

Table 3: The Justification Categories and the Countries that Used Them

	Cultural Relativity	Imposing Values	Moral Grounds	Universality	Lack of Legal Basis	Sovereignty	LGBTI Definition's Lack of Clarity	HRC's Cohesion	Resolution's Lack of Clarity
Algeria		X		X				X	
Indonesia		X		X	X			X	
Maldives	X							X	
Morocco	X		X	X				X	
Nigeria	X	X	X	X	X	X		X	X
Qatar	X	X	X		X				
Russia		X	X		X	X	X	X	X
Pakistan*	X		X	X	X	X		X	X
Saudi Arabia	X	X	X	X	X	X	X	X	
UAE	X				X			X	
Botswana					X		X		
Ghana			X*		X				
Namibia							X		
Philippines				X					
South Africa								X	

What can be seen from Table 3 is that the HRC's cohesion was mentioned by all countries that voted against the final proposal, except for Qatar. Cultural Relativity and Lack of Legal Basis was used by all but three countries, while Imposing Values, Moral Grounds, and Universality were used by all but four countries.

The next section will break down the results of each categories and elaborate on how the categories were used. The implications of the categories will be discussed further in *5. Analysis.*

4.2 Results by Categories

4.2.1 Cultural Relativity

As expected from the theoretical insight of international LGBTI rights, cultural relativity was the most frequently used justification both across speeches and across states. These arguments stated that the proposal of and Independent Expert on SOGI does not take into account the cultural or religious differences between states. The arguments in this category have an underlying moral

stance, but they focus on pointing out that the issues around LGBTI are not relevant, or debatable, in their respective countries, or that the Council is at fault for not taking these differences into account.

Many of the cultural relativist arguments use the term "respect", for example, "[t]hat's why the draft resolution on the table doesn't reflect the *respect* on the Council to the different cultures and religions –" (Faisal Bin Hassan, Bangladesh, emphasis added) or "[t]hese amendments, (--) seek to *respect* international standards that *respect* religious, cultural, social, political and economic diversity –" (Hala Hameed, Maldives, emphasis added).

In some cases, the ask for respect is seen to go both ways: "At a time when the Council needs to return to its foundational principles of cooperation and mutual respect for each other's cultural and religious particularities" (Tehmina Janjua, Pakistan). This statement particularly highlights the lack of direct moralisation of LGBTI people, while still stating that the question of LGBTI rights is not something that the country in question is willing to discuss.

Terms such as "particularities" or "specifities" were used in many statements to avoid using terms such as "criminalisation", or other terms that would more directly condemn LGBTI people. This, and the externalisation of LGBTI people, can most clearly be seen in a statement made by Obaid Salem Saeed Al Zaabi of the United Arab Emirates: "On the other hand, we as people that have nothing to do with the draft resolution, express our rejection of any concept that compromises our cultural and religious particularities – even if these concepts are widespread in other societies".

In addition, the common denominator in these statements is the absolutism which groups all people of the respective countries, cultures or religions as one. Statements such as "My government, indeed many governments, seriously object LGBT rights as human rights and have legislated against those rights because it offends their culture, religion and natural laws" (Peters Omologbe Emuze, Nigeria) go around stating that they condemn homosexuality by stating that LGBTI people in fact offend them, making themselves – which in this case is an entire government or nation – the victim. Unlike many other statements classified under the category of Cultural Relativity, this statement also took a clearer moral stance. These will be discussed next.

4.2.2 Moral Grounds

As stated in the methodology, arguments under this section did not only refer to their culture or religion's "particularities" but were more direct and clear in their condemnation of LGBTI people. As seen from Table 3, moral grounds were used by most countries in their statements that spoke against the resolution.

Some statements in this group openly spoke against LGBTI people by for example stating that "[a]ll Nigeria is sating that its laws don't accept it --" (Peters Omologbe Emuze, Nigeria) or "[y]ou are basing a proposal on behavioural issues and this pushes us to review issues that are in fact prohibited by religion" (Faisal Bin Hassan Trad, Saudi Arabia).

In some cases, the moralisation of LGBTI people is less direct but can be detected in the tone or the word choices. For example: " – we are suggesting that we set up a separate legal regime for the protection of those who *take a choice* for a certain model of personal relationship" (Natalia Zolotova, Russian Federation, emphasis added). This argument tries to appeal to the idea that SOGI is a personal choice, which is often used to moralise or dismiss LGBTI people. Another similar notion is that LGBTI identity is a lifestyle choice. This was used by Pakistan's Tehmia Janjua in their opening statement about the proposed amendments: "Mr. President, OIC's amendments are a sincere attempt to advance global efforts against violence and discrimination, while preventing these genuine endeavours from being taken hostage to the promotion of certain notions and concepts and lifestyles on which there is no consensus".

Ghana, who abstained from the vote, argued that they "- do not support the propagandation or commercialisation" of LGBTI people. This argument has been classified under Moral Grounds, but it does not fully fit under it due to the rest of Ghana's statement by Sammie Eddico being LGBTI positive and relatively non-judgemental. However, this statement was put under this category as Moral Grounds is where it is most applicable, due to the the statement taking a stance that is somewhat rooted in morality.

4.2.3 Imposing Values and Universality

As stated in the literature review, it is seen that cultural relativist arguments tend to come with the notion that especially Western countries are trying to impose their specific values on others. However,

surprisingly, in the analysed statements justifications referring to the imposing of values were as often used without cultural relativist arguments as it was with cultural relativist arguments (see Table 3). Neither Algeria, Indonesia nor Russia used cultural relativist arguments but they all used arguments going under Imposing Values. Instead, these arguments were most often seen in the context of universality.

Algeria's Antar Hassani stated that "[y]et we think that is is not useful to impose values that are not agreed upon universally on others", while Indonesia's Dicky Komar stated that "[w]e believe that members of the council should (--) refrain from imposing certain values or norm to others and to those that do not enjoy international consensus". These statements do not directly take a cultural specific or moral stance, but base their argument on the notion that LGBTI issues are a value based topic that is not universally agreed upon.

Justifications going under these two categories highlight the differences in how universal human rights are perceived. For example, both Saudi Arabia and Pakistan stated how there is a "disregard" to the universality of human rights, due to the SOGI discussion. Statements such as "—the universality of rights does not mean that we have to impose cultures that are contravening with our Muslim religion" (Faisal Bin Hassan Trad, Saudi Arabia) beg to question what is actually meant with universality. Faisal Bin Hassan furthered this point in another statement by saying: "—we are calling for the promotion of human rights through universal principles based on our own contemporary culture. However, this does not mean that we will compromise and barter man-made legislation against divine laws". This statement brings together many different justifications, but it highlights the difficulty of discussing human rights in a multilateral setting.

Universality was also used in Philippines' statement by Cecilia B. Rebong to justify their abstention from the vote. They argued that "—my delegation was not ready to support the establishment of a mandate holder, especially so when the mandate holder to be created would, by its very nature, pursue a set of standards applied to a specific sector when there is no consensus on a set of universally-accepted human rights standards". This, once again, questions the concept of universality and the disagreement on its definition.

4.2.4 Lack of Legal Basis

The lack of legal basis for LGBTI people's protection was the other major justification raised in the literature review alongside cultural relativity. As assumed, the argument for there not being enough legal backing was used by most countries; This justification was used the most if the justifications by abstaining and countries voting against the final resolution are put together.

While the abstaining countries used the argument in the context of the LGBTI definition (see below *4.2.6 Resolution and LGBTI Definition's Lack of Clarity*), the countries that voted against the justified their stance by the lack of LGBTI references in international law. For example, Qatar stated that "—we also condemn the attempts to involve the Human Rights Council in matters that do not enjoy consensus or are not part of international instruments that our countries have ratified". In addition, it was argued that SOGI related issues have "—no basis in international law--" (Tehmina Janjua, Pakistan) or, are "—contrary to International Human Rights law –" (Faisal Bin Hassan Trad, Saudi Arabia). Nigeria's Peter Omologbe Emuze summarised the legal arguments by stating:

> Mr. President, allow me to remind this august body that this issue has not been recognised by the vast majority of legal systems as part of the international human rights structure, and that it has not received sanction by any legal framework, outside the acceptance of its existence in special privilege accorded under national law in some States.

Moreover, most countries opened their statements by stating that they agreed with the categories listed in the UDHR, ICCPR, or other international agreements, insinuating that LGBTI people's absence from these lists meant that not supporting the establishment of an Independent Expert did not mean that they would go against international human rights agreements.

4.2.5 Sovereignty

The notion of sovereignty was raised by four countries in varying contexts – however, in all contexts the speakers were worried about the limits to freedom, especially states' freedom to dictate their laws and regulations.

Saudi Arabia stated in their speech that the universality of human rights should not be "—used as an instrument to intervene in the business of the sovereign States –" and that "we have to refrain from using the Council to interfere in the business and the affairs of other sovereign states". In a later

statement Faisal Bin Hassan Trad, speaking for Saudi Arabia, continued by stating "[t]his is an issue better left to states – and the people – rather than be determined by the UN body or an Independent Expert".

Another take on sovereignty and the limits to freedom was taken by Nigeria in their statement by Peters Omologbe Emuze, which stated that that lack of clarity of the proposed resolution "—carries certain worrying implications for eventual limitations on freedom of expression, freedom of opinion, freedom of religion and certain responsibilities on the part of society and the State under international law". What stays unclear in the speech is what these limitations would in practice be.

Most of the statements under this category were concerned of the freedom of states or governments, but the Russian federation took a different route that was still categorised under Sovereignty as it touched upon freedom. Natalia Zolotova, speaking for the Russian Federation, stated that "—[s]exual orientation is an element of private life of a separately taken individual and one cannot interfere in this".

4.2.6. Resolution and LGBTI Definition's Lack of Clarity

These two categories – the Resolution's Lack of Clarity and the LGBTI Definition's Lack of Clarity – can be discussed as one, as these statement defer from taking a moral stance and instead focus on the unclear details of the resolution, or of the LGBTI definition.

As seen from Table 3, neither of these justifications were particularly widely used. However, out of the five abstaining statements two used LGBTI definition's lack of clarity as a justification, making this a relatively significant category. Namibia's Gladice Pitchering argued that international law does not "—provide us with an agreed definition of sexual orientation and gender identity", while Botswana's Mothusi Rabasha Plai argued that "—at the international level and within international law there is no agreed definition or acceptance of the terminology on sexual orientation and gender identity as discussed under the current resolution". Evidently, the international law aspect that these abstaining countries focused on was the lack of clarity on the LBGTI definition.

Countries which voted against the final resolution referred to the resolution as having "—unclear powers and unclear terms of reference –" (Alexey Goltyaev, Russian Federation), and that the

resolution had "—concepts that are vague, undefined and have no basis in international law—" (Faisal Bin Hassan Trad, Saudi Arabia).

The justifications referring to the unclear nature of the proposal described the title of the resolution " – very very misleading" and question how " – the procedures building up to this resolution has not been transparent" (Both quotes: Peters Omologbe Emuze, Nigeria).

4.2.7 Human Rights Council's Cohesion

Arguments going under the category of HRC's Cohesion were used by all countries that voted against the final proposal, expect for Qatar. This makes this argument the most widely used argument across all the statements. Out of the abstaining countries South Africa used this argument stating that "[g]randstanding, recklessness, brinkmanship and point-scoring will not take us anywhere".

Arguments going under this category were used to either speak against the polarisation within the council or to argue that the proposal would harm the credibility or mission of the HRC. For example, Mohamed Auaijar, speaking for Morocco, stated that " – today we are calling upon the members to vote against this draft resolution just to preserve the credibility of the council" and Saudi Arabia stated how this proposal "—might incur irreversible damage to the future of the Human Rights Council at large –". Peter Omologbe Emuze, speaking for Nigeria and the OIC states, stated that the resolution "—promises to polarise the Council – " and that the "—resolution is trying to create rancour within the Council". The tone of these statements reflects how heated the discussion at the council was, and how seriously it was taken.

In addition, the principle of cooperation was brought up multiple times, and these statements were also classified under this category. It was stated that "--[t]he establishment of this "special procedure" would mean the end of the constructive cooperation in the Council of Human Rights on thematic issues and closing the door of this dialogue" (Alexey Goltyaev, Russia) and "we believe that the council should always take a constructive and cooperating approach in the consideration of issues –" (Dicky Komar, Indonesia).

These statements question the whole proposal, or that it is even being discussed in the first place. As stated, the arguments under this category primarily highlight the tone of the discussion and the frustration that was not directed at LGBTI people nor specific states, but to the whole council. The

countries speak about “polarisation”, which is apparent. Moreover, the arguments under this category shine a light to the principle differences in how the council is seen and to what extent it should discuss divisive human rights breaches.

5. Analysis

The research categories expanding from three to nine demonstrate how the justifications used for not including LGBTI rights within the limitations of universal human rights are more varied than suggested by previous research or initial hypothesis. The nine categories have grouped arguments that range from misunderstandings, to deep rooted beliefs, highlighting the importance of approaching different countries, groups and justifications with different approaches. The large variety of justifications also bring to attention the importance of taking the arguments presented seriously, and not dismissing them due to their nature – Understanding the root of the justification can help to change attitudes and bring forth impactful change.

I have divided the nine justification categories into three sub-categories based on their validity and use: Cover-up justification, Root justifications, and Justifications that question member states' understanding of universality and the role of the HRC. The different natures of these justifications affect how these categories should be approached, and to what extent they serve as legitimate base for impactful discussion.

In this analysis I will discuss the previously named three categories and why different justifications were grouped into them, the approach that should be taken when discussing these categories, and how these categories relate to our view of universality.

5.1 Cover-up Justifications

It can be deducted from the research material that especially Resolution's Lack of Clarity, LGBTI Definition's Lack of Clarity, and Lack of Legal Basis are used to some extent as cover-ups to hide underlying motives. This is supported by arguments in these three categories clinging onto technicalities, which have either already been defined or discussed, or which have already been accepted by a large proportion of the international community. Moreover, basing justifications on definitions, procedures or legal questions divert the discussion away from the more polarising topics such as moral questions or cultural and religious norms. In short, with the relevant academia and the research material in mind, justifying not voting for the resolution due to lack of clarity or lack of understanding seems like a "non-offensive" way out, which aims to question the possible underlying reasons for not supporting the proposal and LGBTI rights.

Three out of the five abstaining countries who spoke at the session used Lack of Legal Basis and Lack of LGBTI definitions' clarity as the main justification for their voting decision. This supports the conclusion that justifications under these categories are likely to be used in situations where the user does not want to come off as polarising or offensive, but furthermore does not want to give their full support. Both the representatives of Namibia and Botswana focused on the lack of accepted terminology, which even if a valid discussion, should not be deal breaking issue, especially as the information is available.

In addition, even though the discourse around terminology is important, the Independent Expert was established to monitor the violence and discrimination people face due to their sexual orientation and gender identity – LGBTI terminology as such should not play a role. One could identify as something unheard of and they should still be entitled to live a discrimination and violence free life. Moreover, the lack of clarity in terminology is a barrier for some states to grant protection, but the lack of clarity does not seem to hinder persecution. This showcases that the questions over the exact terminology is not something that should alone stop the establishment of protective measures.

The need for clear definitions as well as the usage of direct and accessible words is the most apparent when looking at the justifications under Lack of Legal Basis. As stated in the theory section, it was expected that this category would be widely used and that states would focus on the fact that neither sexual orientation nor gender identity is listed in the ICCPR or ICESCR, or in any other major internationally ratified human rights treaty. As MacArthur's (2015) argument was discussed in the literature review, the "other" status in Article 26 of the ICCPR's non-discrimination provision, to which LGBTI people are grouped to by most states, is very reluctantly used by others.

The use of the "other" status in international human rights treaties brings forth the division between states and their approaches to human rights treaties and discourse. As seen in the discussion at the HRC, one half of the countries group LGBTI people by default to the "other" category and therefore include SOGI identity under the protection of human rights, while one half does not. This is further highlighted by most abstaining or against voting countries starting their initial statements at the HRC with agreeing that for example they "—reaffirm its unwavering commitments in the elimination of discrimination and violence against all persons—" (Dicy Komar, Indonesia), but then continue to discuss who in fact are named in the international human rights treaties. This suggests that there is a conscious decision to include some in human rights while excluding others - meaning that the absence of direct SOGI references in international law would not be the core issue for states.

As stated, not having direct mentions of LGBTI people in international law gives space for ignoring LGBTI people's human rights and gives states the opportunity to discuss the resolution and its terms "objectively" without sounding clearly offensive or dismissive. This could be solved by directly including SOGIESC references in international law, which hopefully could be done in the next decades.

The UN has been providing different internal training on SOGIESC since 2015 with the aim to increase the knowledge and understanding of LGBTI labels and people. In addition, in 2017 the UNDP produced a handbook for Parliamentarians titled *Advancing the Human Rights and Inclusion of LGBTI People*. This handbook and the internal trainings provide important information on the inclusion of LGBTI people within the realm of human rights, but as stated in the IPI's A UN for All report:

> The biggest barrier is that training on SOGIESC across most of the UN systems are ad hoc, at best. Even in agencies with formal programs, some offices are reluctant to implement them, and some staff are reluctant to participate or may not be allowed to by their managers. Moreover, because of high staff turnover due to short-term contracts, limited long-term retention of training content, and the fast-evolving terminology around SOGIESC, training need to be systematic (Trithart, 2021, p.21).

As Trithart discusses, there are already major roadblock in educating established UN staff, which helps to understand the barriers to educating representatives and country specific teams. As the handbooks and trainings demonstrate, there is information and knowledge out there on UN level which answers to the questions presented by country representatives. The lack of understanding despite the available information leaves off the impression that the exclusion of LGBTI rights from international law, as well as the general understanding of the proposal and its terminology, is more a conscious choice made by representatives and countries, than a question of lack of available information.

This choice of not taking time to understand where LGBTI activists inside and outside the UN say, leaves me to conclude that justifications belonging in the three discussed categories are used as cover up justifications to package the root reasons in a less offensive and more politically correct cover.

5.2 Root Justifications

Justifications going under Cultural Relativity and Moral Grounds can be classified as the root justifications, as they drive most of the arguments, as well as influence the thought process behind other justifications. It is evidently not possible to know what the discussions have been behind the scenes which have led to the statements made, but the wide use of these arguments and their strength suggests that most of the statements were built around the beliefs rooted in these two categories. As the theory section would suggest, Imposing Values could be seen as a natural addition to this category, but as noted *4.2.3 Imposing Values and Universality,* in the in this research's material, arguments that went under Imposing Values were linked with Universality justifications instead of Cultural Relativity or Moral Grounds. These justification categories will be discussed in the next section.

Table 3 shows that almost all countries that voted against the resolution used either Cultural Relativity or Moral Grounds in their arguments. Out of the ten countries eight used one of the arguments while half used both. However, these two justifications sweep their way into almost all categories, meaning that their influence is seen more widely than just in the arguments that were classified under Cultural Relativity or Moral Grounds. As discussed in the theory section, universal human rights are rooted in a belief, and this belief affects how the all discussions around LGBTI people are approached. Staeve Nemande, a medical doctor and former director of Alternatives Cameroon, discusses in Amnesty International's LGBTI advocacy guide for Sub-Sahara the impact of personal belief:

> Often, judges, police officers and civil servants will say that as Christians, they know Homosexuality is a sin and against nature. Most often there is no legal argument. But they speak and use their personal beliefs in their professional work, and bring the moral and religious aspects to bear. (2014, p. 12).

As discussed and seen from the material, the moral and cultural justifications are rooted in the core beliefs of people and societies. The beliefs affect the willingness to get educated and the way in which law is interpreted. It is evident that changing these root beliefs would lead to impactful change, which has already been stated by most theorists and experts (Amnesty International, 2014; Bosia, 2014; Free & Equal, n.d.)

The material showed that even though there are various similarities and overlaps between the justifications under Cultural Relativity and Moral Grounds, there are also some differences which can affect how these arguments should be approached.

The justifications under Cultural Relativity manage to fully externalise LGBTI people or get personally offended by the conversation in its entity. This blockage makes representatives unwilling to learn or listen, especially to any actor that could be perceived as Western influence. This is partially due to the pushback against former imperial powers, as discussed in the literature review (Prasad, 2007). Regardless of the fact that some external pressure is needed, the most impactful way to change these views is by trying to reverse the assumption that LGBTI people are a Western phenomena and that LGBTI rights would counteract with some religions and cultures. As Amnesty International States in their advocacy guide for Sub-Saharan LGBTI activists:

> This discourse [that homosexuality is a "Western import"] is prevalent despite the fact that prior to colonisation, same-sex sexual activity existed in Africa, and despite the fact that the vast majority of the laws criminalizing same-sex consensual sexual behaviour are relics to colonial rule. The real "Western import" was the condition of morality in the form these discriminatory laws. (Amnesty International, 2014).

This "Western import" of morality is what lies at the root of all LGBTI discourse and what dominates the justifications – Whether the moral stance would be said out loud in a diplomatic setting or not. The arguments under Moral Grounds do not necessarily tie the question of LGBTI rights into culture or religion, but to a greater sense of moral values and the idea of right and wrong. Justifications that clearly state that the country's laws or religion prohibit consensual same-sex sexual relations, or some other form of LGBTI criminalisation, are justifications that cannot be overturn by simple discussions at the HRC – They require fundamental changes at the local and regional level.

The root justifications run deep within societies, but that should not encourage from believing that fundamental change is possible. As discussed earlier, LGBTI acceptance has risen globally in the past years and it has been shown that younger people are more accepting than the older generations (Poushter and Kent, 2020). The change only a few years can make can also be seen with the reappointment of the Independent Expert passing through with less resistance and with a slightly larger margin, even though it only happened three years after the original appointment (Trithart, 2021). A small but significant change is for example Togo abstaining from the 2019 vote when it

voted against the establishment of the Independent Expert in 2016 (ARC international, ILGA and ISHR, 2019).

Positive change can also be seen when looking into the countries' statements that abstained from the final vote. For example, Ghana, spoke quite positively about LGBTI people and rights but abstained due to not supporting the "propagandation or commercialisation" of LGBTI people. Statements such as these give hope for advancing LGBTI rights on global and national level, as even though Ghana abstained from the vote, it is a step up from loud opposition and voting against the Independent Expert.

Ensuring that states include LGBTI people in their human rights work is a challenge that cannot be undermined, but the justifications found in the material analysis shows that even though states would appear to agree on a surface level on human rights, there are different understanding to what universal human rights mean and what the purpose of the HRC is. These will be dicussed next.

5.3 Justifications that question universality and the principle of the HRC

Imposing Values, Universality, Sovereignty, and HRC's Cohesion all raised in different ways the question of what universality in fact means, and moreover, what the purpose of the Human Rights Council is. As discussed earlier, in the analysed statements under Imposing Values and Universality were often linked together to question the universality of LGBTI rights and the morality of discussing them in the HRC that was not united on the matter. HRC's Cohesion was the the category that was used the most by countries who voted against the resolution, a category that also included arguments that questioned whether the matter should be in the HRC at all due to its divisive nature. Justifications under Sovereignty questioned the role of the Council and global governing board, which is something that is reflected within the four justifications.

The main characteristic that sets these justifications apart is the way in which they tap into the foundations of universal human rights and the UDHR, as well as the international human rights regime. What sets these four categories apart from Root Justifications is that they do not necessarily show their stance on LGBTI rights and SOGI related issues, but moreover they question the framework that is justifying the protection of these rights.

As discussed in the theory section, there is not one agreed definition of what universal human rights mean, and that their implementation and monitoring has always had exceptions. Locke's Natural Rights were seen as revolutionary at their time, but as discussed, modern human rights theorists nor activists would approve the way in which Locke excluded groups of people – Locke's Natural Rights cannot in modern societies be seen as universal. This dichotomy with how universality is viewed is reflected in the analysed statements; States are talking about the same concepts but defining them differently. This is evident especially in the Universality statements which use the world 'universal' and for example state that "—the universality of human rights does not mean the imposition of certain so-called human rights concepts and ideas that are imposed from the point of view of another part – "(Faisal Bin Hassan Trad, Saudi Arabia). Statements like these show that there is no consensus over what universal human rights mean, even though the discourse around human rights often assumes that a consensus has been reached.

The statement that human rights are absolute and held by everyone despite their personal history or characteristics is one that the United Nations pushes in their programmes and in their communication. For example, with regards to LGBTI rights the UNDP states that "—international human rights law makes it clear all people, including LGBTI people, must be protected against discrimination. And the legal obligation of States to respect, protect and fulfil the human rights of LGBTI people are well established in international human rights law" (UNDP, 2017). This does not leave room for interpretations, but regardless, there seem to be clear differences in how the universality is interpret.

HRC's Cohesion and Sovereignty arguments force one to think about the limitations of the HRC. Statements such as "-- the establishment of a new mandate, while there is no consensus, strips us of credibility and trips this Council of its mandate--" (Faisal Bin Hassan, Saudi Arabia) and "—the resolution before us is one that divisive and contrary to the spirit of consensual agreement which is the foundation upon which this organisation sets global norms" (Hala Hameed, Maldives), bring forth the question of how the mandate and foundation of the HRC is seen. In addition, analysing the statements question to what extent the HRC is performative – What are states ready to do in practice to stand up for the UDHR?

Moreover, statements such as "[w]e have to refrain from using this Council to interfere in the business and the affairs of other sovereign States" (Faisal Bin Hassan, Saudi Arabia) raise important questions of how the Council and its mandate are seen and approached by different countries. The battle between sovereignty and multilateralism is not new - It has weighted the HRC since its predecessor's

establishment (Weiss, 2008; Cox, 1997). Prominent critical theorists such as Robert W. Cox (1992; 1997) have discussed how multilateral co-operation and internalization has "-- eaten away the abstract concept of sovereignty" (1997, p. 106), but as Weiss states: "The issue of human rights illustrates more clearly than any other the extent to which orthodox interpretations of state state sovereignty remain a chronic ailment for the United Nations" (2008, p.37). The data from my research recognises this aliment.

To eliminate these arguments form UN human rights discourse, the UN and its member states need to be ready to open the discussion of what is actually meant with universal human rights, and to whom they are seen to belong to. It should be discussed more openly what the purpose of the HRC is and what it tries to establish. The discussions around LGBTI people is staring to push the boundaries of what can be spoken about at the Council.

It should be noted that making states admit that their view on the universality of human rights differ could potentially negatively affect the work that is based on universal human rights and affect diplomatic discourse. However, meaning different conflicting things when talking about the same concept is also counterproductive and stalls human rights work. It is difficult to say which out of these two options would be preferable in the long run.

5.4. Summary of the Analysis

The analysis has demonstrated that there are vast differences with the intention and use of the arguments at the Human Rights Council, which affects how the justifications should be approached. The justifications that are the easiest to battle are the cover-up excuses, as they are a question of terminology, definitions and interpretation. These can be fixed with education. It is more difficult, but not impossible, to influence the root justifications, which are anchored in culture and beliefs. Meanwhile, the justifications in the third category raise large philosophical and practical questions on what the UDHR in fact stands for and what the purpose of the HRC is. Overall, all of the categories highlight how differently universality is approached by member states – Representatives speak about respecting universal human rights, but the definition for universal human rights differs.

6. Conclusion

The final chapter of this thesis will conclude the main arguments and contributions of this study. The final section will discuss the limitations and improvements of the research, as well as suggestions for future related research.

6.1. Summary of the Contributions of this Study

This thesis started with the intention to find out what specific justifications are being used by UN member states to not classify violence and discrimination based on SOGIESC as a human rights violation. By not including LGBTI people under the protection of international human rights laws member states demonstrate that there are differences with how the universality of universal human rights is seen.

Through the analysing the statements made at the Human Rights Council I recognised nine distinct justification categories, all of which demonstrate a different nuance of human rights discourse. The large variety of arguments show that LGBTI rights are a multi-layered issue and therefore the arguments should not be grouped simply to opposing and supporting arguments. The results show that all countries that voted against the establishment of an Independent Expert used more than one justification for their stance, seven out of the ten countries using four or more different justifications in their statements. This shows that the opposition to including LGBTI rights in the HRC mandate is faced with a wide range of arguments that should be approached in appropriate ways.

The analysis section of this thesis introduced three groups which help to approach the nine different justification categories. Cover-up justifications, root justifications, and justifications that question universality and the principle of the HRC show that there are major differences within the analysis categories, which affects the validity of the arguments, the depth of the arguments, and how these arguments should be deconstructed. These categories can help LGBTI activists and UN staff to target LGBTI advocacy in the most efficient way. Understanding the opposing arguments that are made by country representatives help to advance LGBTI rights in the representative countries, and to understand why advancing SOGIESC related issues is difficult on a supranational level. Hopefully, with targeting education and grass-root advocacy, the status of LGBTI rights at the UN can continue to rise.

I started this research with the relatively correct assumption that cultural relativist and moral arguments would be the most used justifications at the HRC. The analysis confirmed that cultural relativist and moral justifications, named root justifications later in the analysis, were the most prevalent arguments made at the session. However, the most interesting factor that this analysis discovered was the emphasis that was put on the HRC's cohesion and the concept of universality.

6.2. LGBTI Rights, the UN and Universality – What's next?

I would like to end this thesis on a positive note and to emphasise how far LGBTI rights have come in the past decades. A UN human rights body made their first LGBTI supporting decision in 1994, which was only 27 years ago to date. In this time, SOGIESC related issues have been discussed more than ever, and in a more positive light than ever before. International law and supranational governing bodies have started to take into account LGBTI people and LGBTI identities are being spoken about on the international stage. This already in itself is a massive leap for a group of people who struggle to get their voices heard - An analysis such as the one I conducted would not have had any analysis material even five years ago.

So, what is next for LGBTI rights? The world stays divided on SOGIESC related issues as some countries recognise same-sex marriage and others enforce the death penalty; The more progress happens the more division there will be between countries, which will no doubt keep on challenging the HRC and other global governing bodies. LGBTI rights heavily challenge how we talk about universality and how we view universal human rights. This is something that should be spoken about more openly, as talking about universal human rights when everyone has their own definition for it is counterproductive and performative.

The hope is, that with grass-root activism, education, and perseverance the status of LGBTI rights can keep on increasing. I doubts in 1994 LGBTI people and activists would have believed were we are in 2021, and I hope we can say the same 27 years from now.

6.3 Limitations, Improvements and Future research

This study is limited by the focal point being the frequency of the arguments, instead of focusing on what the statements were specifically built on. In this study all arguments that were mentioned within statements were given an equal weight, not taken into account how frequently one specific

justification was used within a statement. This methodology gave a good overview of the overall justifications and put the focus on the range of the arguments, instead of the specific use of them. However, in hindsight, this study could have gained added value if it would have looked more deeply in to what extent each statement used the justifications and which justifications were used as the main arguments, and which as afterthoughts.

Therefore, future research should be done into the weight of the justifications, instead of their frequency. In addition, future research should be done that analyses the context in which these justifications were used – Which arguments were used in opening statements, which when asking for a no action vote and so on. The analysis categories that I used in this research could still be used. My research also ignored the arguments used by the states who voted for the mandate. Analysing these arguments would give important insight on which justifications are being argued against, and in which way. Mapping this out would help LGBTI activists to know which counter arguments are already being used at the UN, and what kind of arguments would add value and impact to the discourse.

Moreover, my research did not put emphasis on who said what, or what parts of the world they represented, but rather simply on what was said. This gave this research the opportunity to focus on the justification categories, instead of focusing on regional differences or country specific arguments. Research that would look more deeply into what categories were used by which countries would give my research a new layer and added value.

Similar research should also be done on the discussion around the 2019 vote to renew the mandate of the Independent Expert, and to conduct comparative study on the two separate discussions to see whether the arguments or their frequency changed between the sessions.

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