

**Sexual and Gender Rights and the
United Nations Human Rights Framework:
Towards a Resolution of the Debate?**

Lucy Morgan

GLOSSARY

ALP	Australian Labor Party
AU	African Union
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CoE	Council of Europe
CROC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EU	European Union
GLBT	Gay, Lesbian, Bisexual and Transgender/Transsexual
HREOC	Human Rights and Equal Opportunity Commission
HRW	Human Rights Watch
IBGR	International Bill of Gender Rights
ICCPR	International Covenant on Civil and Political Rights
ICTLEP	International Conference on Transgender Law and Employment Policy
IGLHRC	International Gay and Lesbian Human Rights Commission
ILGA	International Lesbian and Gay Association
LGBT	Lesbian, Gay, Bisexual and Transgender/Transsexual
LGBTI	Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersex
MSM	Men who have Sex with Men
NGO	Non-Government Organisation
OAS	Organisation of American States
OIC	Organisation of the Islamic Conference
UN	United Nations
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Committee
WAS	World Association for Sexual Health
WHO	World Health Organisation

INTRODUCTION

On the 18th of December 2008, a landmark statement was issued at the United Nations (UN) General Assembly. Supported by 66 member states (see Appendix, this paper, p. 46), the UN Declaration on Sexual Orientation and Gender Identity affirmed that “all human rights [must] be applied to all human beings, regardless of their sexual orientation or gender identity”, and “condemned all human rights violations based on sexual orientation or gender identity, whenever or wherever they might occur,” (UNGA 2008a, “Promotion and Protection of Human Rights” section, statement by Argentina).

This was a milestone in UN history. For the first time, the concerns of sexual and gender minorities* had been formally placed on the General Assembly’s human rights agenda. For the first time, the UN’s most representative body had specifically acknowledged sexual orientation and gender identity as legitimate grounds for protection under international human rights law.

However, immediately following the Declaration, a counter-statement was issued by 57 member states, opposing the mere mention of the “so-called notions of sexual orientation and gender identity”. The counter-statement expressed “serious concern over the attempt to focus on certain persons, based on their sexual orientation and behaviours”, describing such efforts as “disturbing” and “ominous” (UNGA 2008a, “Promotion and Protection of Human Rights” section, statement by Syria).

* The term **sexual minorities** refers to groups whose sexual orientation is not strictly heterosexual, or whose sexuality is not exclusively expressed through heterosexual relations. Those who identify as gay, lesbian or bisexual are the most readily identifiable sexual minority groups, however the term can include anyone who engages in same-sex sexual relations, even if they may identify as heterosexual. The term is not intended to encompass paedophilia or other paraphilic preferences, which are classified as psychological disorders rather than sexual orientations (see WHO 2007, Chapter V, Block F65). The term **gender minorities** refers to groups whose gender identity does not correspond with their biological sex and/or does not correspond with societal expectations of their biological sex. It also encompasses groups whose biological sex may be ambiguous, and thus do not fall within an established gender category. The term primarily refers to transgender, transsexual and intersex people. However, any person whose gender expression does not conform to societal expectations of “masculinity” or “femininity”, could also be considered a member of a gender minority group, even if their gender identity corresponds with their biological sex. This is a broad and somewhat opaque term, however it is intended to encompass all those whose gender identity places them outside the normative boundaries of gender expression in a given society.

The Declaration and counter-statement bring to the fore an issue which has long been a concern of the lesbian, gay, bisexual, transgender/transsexual and intersex (LGBTI) rights movement – the capacity of international human rights law to uphold the rights of sexual and gender minorities. Human rights violations based on actual or perceived sexual orientation and gender identity remain prevalent in virtually every country, ranging from discrimination in employment, housing, relationship recognition and access to health and other services, to physical and verbal abuse, prosecution, imprisonment, rape, torture and even execution (see Amnesty International 2009; IGLHRC 2009a; Ottosson 2009). As awareness of these violations has grown, sexual orientation and gender identity have been increasingly promoted by human rights advocates as “lawful domain[s] of life to which human rights principles could and should be applied,” (Corrêa, Petchesky & Parker 2008, p. 27), and “more and more rights-based arguments concerned with sexual practices, identities and relationships,” have surfaced in international fora (Richardson 2000, p. 114).

In recent years, many of these arguments have been grounded in the emerging paradigm of sexual and gender rights. This paradigm, in the words of Saiz (2004, p. 65), “proposes an affirmative vision of sexuality as a fundamental aspect of being human, as central to the full development of human health and personality as one’s freedom of conscience and physical integrity.” Based on this principle, advocates of sexual and gender rights argue that the freedom to experience and express one’s sexuality and gender, without fear of adverse consequences, should be considered a basic human right. The paradigm encompasses a broad range of human rights concerns related to sexuality and gender, placing particular emphasis on the principles of autonomy, personhood, equality and non-discrimination, bodily integrity, and political and social participation (Kukura 2005, p. 186).

However, the idea of sexual and gender rights remains highly contested and deeply controversial. Sexual and gender rights are still very much the “newest kid on the block in international debates about the meanings and practice of human rights,” (Petchesky

2000, p. 81), and there is disagreement as to whether sexuality and gender issues can or should be addressed through UN human rights framework. Many analysts have questioned whether this framework is an appropriate mechanism for advancing the concerns of sexual and gender minorities. At the same time, however, there is a strong case for the applicability of international human rights law to sexuality and gender issues. With the UN beginning to formally address these issues in human rights terms, there is a clear need to begin a movement towards the resolution of this debate.

This dissertation contributes to this movement by presenting a case for the enshrinement of sexual and gender rights in UN human rights law. Chapter I outlines the UN's previous treatment of issues related to sexual orientation and gender identity, to establish the context for this proposal. Chapter II proceeds to address the various criticisms and contestations of a human rights approach to sexuality and gender issues. Having addressed these criticisms, Chapter III evaluates the available models for a UN convention on sexual and gender rights. The dissertation concludes by presenting recommendations for the future trajectory of research and advocacy efforts in this area.

CHAPTER I: THE PAST

For much of its history, UN human rights law has been largely silent on issues relating to sexual orientation and gender identity. While some broad human rights provisions have potential applicability to the concerns of sexual and gender minorities, such as those relating to non-discrimination, privacy and freedom of expression (see UN 1966a, Articles 17, 19 & 26), no UN human rights instrument explicitly recognises sexual orientation or gender identity as grounds for protection under international law. The Convention on the Rights of the Child (CROC) includes an article on protection against “all forms of sexual exploitation and sexual abuse,” (UN 1989, Article 34), however aside from this narrowly-focused provision, sexual and gender rights remain unacknowledged in the UN human rights canon.

The absence of such an acknowledgment presents a major challenge when applying international human rights principles to the concerns of sexual and gender minorities. This is nowhere more clearly evidenced than in the rulings of the United Nations Human Rights Committee (UNHRC), the treaty body which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR). Under the First Optional Protocol of the ICCPR, the UNHRC may “receive and consider...communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,” (UN 1966b, ¶ 1). It is in this forum, through the mechanism of treaty interpretation, that “the strongest existing explicit protections against discrimination on the basis of sexual orientation” have arisen at the UN (Kukura 2005, p. 183). These are discussed in the following section.

UNHRC Cases Relating to Sexual Rights Issues

The first UNHRC ruling relating to sexual rights was the 1982 *Hertzberg v. Finland* case, concerning the censorship of a radio program which discussed homosexuality. The broadcasters argued that the Finnish government’s decision to censor the program had infringed upon their right to freedom of expression (UN 1966a, Article 19.2). The

UNHRC, however, dismissed this claim, noting that the right to freedom of expression is subject to “certain restrictions” which may be necessary to protect public order, public health or morals (UN 1966a, Article 19.3). As such, the UNHRC found in favour of Finland, arguing that since “public morals differ widely...a certain margin of discretion must be accorded to the responsible national authorities,” (UNHRC 1982, Section 10.3). This conclusion, however, was clearly contentious. Several members of the Committee submitted an additional statement asserting that “this conclusion [does not] prejudice...the right to be different and live accordingly, protected by Article 17 of the Covenant [which enshrines the right to privacy].” They further argued that “the conception and contents of ‘public morals’...are relative and changing [therefore] state-imposed restrictions on freedom of expression must allow for this fact and should not be applied so as to perpetuate prejudice or promote intolerance,” (UNHRC 1982, Appendix section).

The principles articulated by these dissenting Committee members were remarkably forward-thinking. Twelve years later, they would form the basis of UNHRC’s ruling on perhaps the most significant sexual rights case ever tendered at the UN. In the 1994 *Toonen v. Australia* case, Tasmanian resident Nicholas Toonen contended that laws in Tasmania which criminalised homosexual sex contravened his rights to privacy and non-discrimination (see UN 1966a, Articles 17 & 26). As the dissenting Committee members in *Hertzberg* had asserted over a decade earlier, the UNHRC ruled that the right to privacy is indeed applicable to sexual rights issues, stating “it is undisputed that adult consensual sexual activity in private is covered by the concept of ‘privacy’,” (UNHRC 1994, Section 8.2). In response to the Tasmanian government’s assertion that “moral considerations must be taken into account when dealing with the right to privacy,” the UNHRC professed that it “cannot accept...[that] moral issues are exclusively a matter of domestic concern,” (UNHRC 1994, Sections 7.2 & 8.6), reversing its official position in *Hertzberg* in favour of the unofficial dissenting view.

Having established that Toonen’s right to privacy had indeed been violated, the UNHRC recommended that the relevant laws be repealed (UNHRC 1994, Section 10). Since the case had essentially been settled by this finding, the Committee did not also consider

whether Toonen had been a victim of discrimination under Article 26 of the ICCPR. However, they noted that reference to “sex”, listed amongst the prohibited grounds for discrimination in Article 26, “is to be taken as including sexual orientation,” (UNHRC 1994, Section 8.7).

The *Toonen* case was a seminal moment in UN history, representing “first juridical recognition of gay rights on a universal level,” (Joseph 1994, p. 410). In a major departure from *Hertzberg*, the UNHRC acknowledged that concerns of sexual minorities were worthy of protection under international law, and that states did not have exclusive jurisdiction over sexual rights issues. Even more significantly, the UNHRC had explicitly recognised that sexual rights were indeed *human* rights, with a valid place in the UN human rights canon. The *Toonen* case thus served as an affirmation that the concerns of sexual minorities were legitimate human rights concerns, to which international human rights law could and should be applied.

Following the decision, the rights of sexual minorities became a focus area for the UNHRC, and ever since the Committee “has included a concern with anti-homosexual criminal laws in its review of the reports of States parties on compliance with the Covenant,” (Sanders 2002, p. 30). The influence of the *Toonen* case has also extended beyond the UNHRC, with other treaty bodies devoting increased attention to sexual rights issues. As Corrêa, Petchesky and Parker (2008, p. 29) note,

Since [*Toonen*] infringements and abuses related to sexual identity and conduct have gained relevance in the debates and procedures of treaty bodies that monitor the implementation of human rights conventions on civil, political, social and economic rights, on women and children, and on torture, and special rapporteurs on human rights have increasingly reported on perpetrations related to sexuality.

Significant as it was, *Toonen* also had limitations, namely its strong focus on the right to privacy. As Willett (2000, p. 22) notes, this emphasis on privacy implied that sexuality

“was a matter of individual, not social, concern,” and should be regulated by “individual conscience rather than public policy.” As such, the outcome of *Toonen* risked obscuring those sexual rights which are exercised within the public sphere, such as self-expression, legal equality and social participation. This weakness was addressed to some extent by the 2003 *Young v. Australia* case. The applicant, Edward Young, had been denied his deceased partner’s veterans’ pension on the basis that he was the same sex as his partner. The UNHRC found that Young was a victim of discrimination on the basis of sexual orientation under Article 26 of the ICCPR, and instructed the Australian government both to reconsider Young’s pension application and “ensure that similar violations of the Covenant do not occur in the future,” (UNHRC 2003, Section 12). The 2007 *X v. Colombia* case, also relating to the denial of a pension transfer on the basis of sexual orientation, resulted in the same finding (UNHRC 2007, Sections 7.2 & 9).

The *Young* and *X* cases supplemented *Toonen* by acknowledging that some sexual rights were indeed a matter of social concern, and thus needed to be addressed through public policy. As Saiz (2004, p. 54) explains, these decisions “transcend *Toonen* by moving the principles of non-discrimination and equal protection beyond the narrow confines of privacy and applying them to other areas of civil, economic, and social entitlements.” The cases therefore demonstrated the capacity of international human rights law to uphold a wider range of sexual rights.

However, when assessing sexual rights claims, the UNHRC has not always applied human rights principles so broadly. In the 2002 *Joslin et al v. New Zealand* case, two lesbian couples argued that New Zealand marriage law, which prohibits same-sex marriage, violated their rights to marriage and non-discrimination (see UN 1966a, Articles 23 & 26). The key point of contention in this case was the phrasing of Article 23, which enshrines “the right of *men and women* of marriageable age to marry,” (UN 1966a, Article 23.2; emphasis added). This provision, according to the UNHRC, “has been consistently and uniformly understood as indicating that the treaty obligation of States parties...is to recognise as marriage only the union between a man and a woman wishing to marry each other,” (UNHRC 2002, Section 8.2). Therefore, since states parties are

only obligated by the ICCPR to recognise opposite-sex marriages, the “mere refusal to provide for marriage between homosexual couples” (UNHRC 2002, Section 8.2) did not constitute a human rights violation, nor was it considered discrimination as defined by Article 26. The UNHRC thus found in favour of New Zealand.

The success of the *Toonen*, *Young and X* cases verified that international human rights law is indeed applicable to the rights concerns of sexual minorities, and has enormous potential for addressing these concerns. However, as demonstrated by the *Joslin* case, the lack of explicit reference points for sexual rights issues in existing instruments presents a serious limitation to the advancement of these rights. The rights claims of sexual minorities remain subject to discretionary interpretations by the UNHRC, rendering sexual rights protection inherently problematic, and ultimately inadequate. Furthermore, the applicability of human rights law to the *gender* rights claims has yet to be determined. Thus far, the UNHRC has only been called upon to consider the rights claims related to sexuality, as opposed to gender identity.

The UNHRC is not, however, the only forum in which sexual and gender rights issues have been discussed. These issues have also been introduced – and hotly debated – at UN world conferences, to which we now turn.

Sexual and Gender Rights at UN World Conferences

The first conference at which sexual rights were discussed was the 1993 World Conference on Human Rights in Vienna. The Declaration and Program of Action which emerged from this conference contains a number of references to sexual rights. It stresses, for example, “the importance of working towards the elimination of violence against women...[including] the elimination of all forms of sexual harassment,” and condemns many forms of sexual violence including systematic rape, sexual slavery, and forced pregnancy (UN 1993, Chapter IIA, ¶ 38). At first glance, such references do not appear to be particularly significant, as the Program of Action “does not address sexuality in the context of sexual minorities,” (Kukura 2005, p. 182). What is noteworthy about

these references, however, is that they “finally initiated ‘the sexual’ into human rights language,” (Petchesky 2000, p. 84). The Vienna Conference was the first time sexual rights of any kind had been formally acknowledged in a UN human rights forum.

The Vienna Conference was also significant in that it involved openly gay and lesbian actors. Three gay and lesbian advocacy organisations were accredited to the conference, representing “the first time any such group had been accredited to a UN conference or forum,” (Morgan & Walker 1995, p. 214). A number of gay and lesbian individuals delivered statements (Kukura 2005, p. 182), and several governments “specifically spoke in favour of lesbian and gay rights,” (Morgan & Walker 1995, p. 215). However, the conference was entirely a success story for advocates of sexual and gender rights. The draft Program of Action had included a paragraph condemning discrimination on a number of listed grounds. When Canada proposed adding “sexual orientation” to this list, “the paragraph was altered to a general, open-ended prohibition of discrimination, without a list,” (Sanders 2002, p. 25). Despite the increasing visibility and participation of sexual minorities at the conference, specific recognition of their rights was not achieved.

Sexual rights again made an appearance at the 1994 International Conference on Population and Development in Cairo, with its Platform of Action containing an entire chapter on reproductive rights and reproductive health. Within the Platform, “reproductive health” is defined as “a state of complete physical, mental and social well-being...in all matters relating to the reproductive system,” with the implication that “people are able to have a satisfying and safe sex life,” (UN 1994, Part I, Chapter VII, ¶ 7.2). The Platform also acknowledged a “diversity of family forms” (UN 1994, Part I, Chapter V, ¶ 5.1), which may be read as an implicit recognition of family units that are not based on heterosexual partnerships.

Again, the Platform does not specifically recognise the concerns of sexual and gender minorities. Notably, however, it “does not limit the principle of self-determination in sexual life to heterosexuals or married people,” (Kukura 2005, p. 183). Even more significantly, the Platform acknowledges sexuality as “something positive rather than

violent [or] abusive,” (Petchesky 2000, p. 84). In the words of Saiz (2004, p. 50), “sexuality, previously on the UN agenda only as something to be circumscribed and regulated in the interest of public health, order, or morality, was for the first time implicitly recognised as a fundamental and positive aspect of human development.” This recognition opened new opportunities for the advancement of sexual rights, as it acknowledged the right of human beings to express and enjoy their sexuality.

The Cairo Conference was also a milestone for another, less positive reason – it marked the emergence of a conservative backlash against sexual rights. According to Cohen and Richards (1994, p. 273), the reference to “diverse family forms” in the Platform of Action had been interpreted by a number of delegates as “an endorsement of homosexuality.” These delegates (including the Holy See, the Vatican’s representative at the UN) issued several reservations in the Cairo Platform, stressing the importance of heterosexual marriage as the foundation of “the family” (see UN 1994, Part 5).

Such opposition was to become a hallmark of the 1995 World Conference on Women in Beijing. The Beijing Platform of Action again included a reference to “various forms of the family” (UN 1995, Part I, Chapter II, ¶ 29) and an acknowledgement of women’s sexual rights, recognising “their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence,” (UN 1995, Part I, Chapter IV, ¶ 96). As in Cairo, these statements were opposed by many delegates, with the final Platform of Action containing over twenty pages of reservations (see UN 1995, Part V). A number of delegates, particularly the Holy See, also objected to the use of the term “gender” in the Platform, on the basis that “the concept of gender implied that sex was socially constructed and, therefore, that more than two sexes were possible (including homosexuals, bisexuals and transsexuals),” (Otto 1995, p. 289).

The Platform in its original form had also included several references to “sexual orientation”. This created enormous controversy, and a heated debate ensued over whether or not to preserve the references in the final document. The references were

eventually removed due to a failure to achieve international consensus. Nonetheless, the debate over the wording of the Platform was “the first substantive discussion of sexual orientation in a UN forum,” (Kukura 2005, p. 183), and a number of states issued reservations stating that they intended to interpret the Platform’s non-discrimination provisions so as to include sexual orientation (see UN 1995, Chapter V, ¶ 17, 30 & 32).

As with the UNHRC, the conference environment has ultimately failed to achieve explicit recognition of the rights of sexual and gender minorities. Nonetheless, the conferences have created more visibility for advocates of sexual and gender rights, and have undoubtedly raised awareness of human rights concerns relating to sexuality and gender. Largely as a result of the Vienna, Cairo and Beijing conferences, and the rulings of the UNHRC, the UN has “found it much more difficult to ignore LGBT issues,” (Mertus 2007, p. 1044), and in recent years there have been several attempts to introduce a formal UN resolution on sexual orientation and gender identity. These statements are discussed in the succeeding section.

Statements and Resolutions on Sexual and Gender Rights Issues

In 2003, Brazil presented a resolution on human rights and sexual orientation to the former UN Commission on Human Rights, the UN body responsible for human rights issues. The resolution met with virulent opposition from the United States, the Holy See and the Organisation of the Islamic Conference (OIC) (Pazello 2005, p. 159), who argued that “sexual orientation was not a proper subject for consideration by a human rights body,” (Saiz 2004, p. 50). In light of this opposition, the Commission repeatedly postponed a vote on whether to officially adopt the resolution. Brazil eventually abandoned its efforts in 2005 on the basis that the Commission had “not yet been able to arrive at a necessary consensus,” (O’Flaherty & Fisher 2008, p. 230).

However, O’Flaherty and Fisher (2008, p. 230) note that the Brazilian resolution “did raise States’ awareness of the issues, and mobilised NGOs from all regions to engage in UN processes.” Paradoxically, the failure of the resolution intensified support for the

development of a similar statement. When Brazil withdrew its resolution in 2005, New Zealand delivered a joint statement on behalf of 32 states, expressing “deep regret” at the resolution’s failure, and calling on states to “condemn discrimination on the basis of sexual orientation,” (ILGA 2005, ¶ 3). The following year, 54 states responded to New Zealand’s call by supporting a joint statement on sexual orientation and gender identity (see ILGA 2006), issued by Norway at the Human Rights Council, which had superseded the Commission in 2006. The statement simultaneously represented the first formal acknowledgement of sexual and gender rights at the UN, and the first time the term “gender identity” had been included in a UN statement (O’Flaherty & Fisher 2008, p. 230).

In 2007, an international group of human rights experts developed a groundbreaking statement on sexual and gender rights. Known as the Yogyakarta Principles, this statement presents “a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity,” (Yogyakarta Principles 2007, p. 7). The Principles relate sexual and gender rights issues to established human rights norms, so as to “collate and clarify State obligations” (Yogyakarta Principles 2007, p. 7) and establish a legal framework for assessing sexual and gender rights claims. The Principles also include specific recommendations for the UN, urging UN bodies to integrate sexual and gender rights issues into their procedures (Yogyakarta Principles 2007, p. 32). The Principles will be further discussed in Chapter III.

The growing international momentum on sexual and gender rights culminated in the 2008 UN Declaration on Sexual Orientation and Gender Identity. The 2008 Declaration is easily the most detailed and widely-supported statement on sexual and gender rights ever issued in a UN forum. It explicitly recognises sexual orientation and gender identity as legitimate grounds for protection under international human rights law, and condemns a range of human rights violations based on sexual orientation and gender identity, including:

the use of the death penalty on this ground, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention and deprivation of economic, social and cultural rights, including the right to health (ILGA 2008a, ¶ 6).

However, while the Declaration *condemns* these human rights abuses, and acknowledges that human rights law applies to sexual and gender minorities, it does not formally *enshrine* sexual and gender rights. As such, the application of human rights principles to sexual and gender rights issues still remains a matter of broad interpretation, since the declaration offers no framework for assessing sexual and gender rights claims. While unquestionably a significant victory for advocates of sexual and gender rights, the Declaration represents a starting point rather than an end in itself.

The key question at the current juncture, therefore, is where to proceed from this starting point. Given that one of the principal barriers to the recognition of sexual and gender rights under UN law has been the lack of a consistent legal framework, a logical “next step” for the advancement of sexual and gender rights at the UN would be the creation of a dedicated human rights convention on sexual and gender rights. A convention which clearly defines and enshrines these rights in a legally-binding sense would offer far greater scope for addressing the human rights concerns of sexual and gender minorities within the UN human rights framework.

However, while human rights approaches to sexuality and gender issues have gained currency in recent years, they have also been widely criticised. The application of human rights principles to the concerns of sexual and gender minorities remains a highly contested process, and there is debate as to whether the formal enshrinement of sexual and gender rights would be an appropriate means of advancing these concerns. To solidify a case for the creation of a convention on sexual and gender rights, and thereby move towards a resolution of the debate on these issues, it is necessary to first address the criticisms of this approach.

CHAPTER II: THE PRESENT

This Chapter endeavours to respond to the criticisms of human rights approaches to sexuality and gender issues, and presents a counter-argument in favour of such approaches. It examines three key areas of contestation – the applicability of the UN human rights framework to sexuality and gender issues; the potential effectiveness of a convention on sexual and gender rights; and the prospect of such a convention achieving support and acceptance amongst UN actors.

The Applicability of the UN Human Rights Framework to Sexuality and Gender Issues

The sexual and gender rights arguments advanced in UN fora thus far have assumed the relevance and applicability of international law to such claims. However, many analysts have contended that the universal human rights framework may in fact be ill-suited to advancing the concerns of sexual and gender minorities. They allege that there are several features of the human rights framework which may render its application to sexual and gender rights issues problematic.

One potentially problematic feature identified by these critics concerns the reliance of the human rights framework on conventional legal classifications. Greenberg (2006, p. 63) points out that “traditional jurisprudence requires that individuals be classified into discrete and often binary categories,” for instance, male or female, heterosexual or homosexual. Such binary classifications are “deeply embedded in human rights discourse,” (Corrêa, Petchesky, & Parker 2008, p. 204), which tends to define the “subjects of rights” within discrete, dichotomous categories.

To date, this factor has not significantly limited the application of human rights principles to the concerns of sexual and gender minorities, largely because the sexual and gender rights claims issued at the UN have not presented a major challenge to binary classifications. The UNHRC cases discussed in Chapter I, for example, all involved “subjects” who fell easily within the male/female and heterosexual/homosexual

dichotomies. However, it has been argued that this reliance on binaries may result in the exclusion of some sexual and gender minority groups from human rights protection. For example, while the categories of “lesbian” and “gay” may fit within the heterosexual/homosexual dichotomy, the category of “bisexual” does not. Similarly, the male/female dichotomy cannot adequately encompass transgender and transsexual people, whose gender identity may not correspond with their biological sex, or intersex people, who may identify as neither male nor female. According to this argument, it is questionable whether a legal framework premised on binaries can be so easily applied to subjects who challenge these fundamental legal tenants. Due to its dependence on dichotomous classifications, it is alleged that the UN human rights framework may “fail to adequately protect individuals...who do not fall neatly into two opposite classifications,” (Greenberg 2006, p. 63).

Additionally, the binary categories on which the international human rights framework relies are primarily derived from Western sexual and gender norms. As such, many analysts point out that they fail to adequately reflect the norms of non-Western cultures. A number of cultures, for example, recognise a trichotomy of sexes. In India, the term *hijras* is used to describe intersex or transgender people who are “considered neither male nor female, but contain elements of both,” (Greenberg 2006, p. 53). Similarly, in Papua New Guinea, intersex people are known as *kwolu-aatmwol* and are treated as a third sex, and many Native American cultures also recognise a third sex (Baird 2001, p. 121-23). While sexual and gender minorities undoubtedly exist the world over, the classifications used to define these minorities may differ widely between cultures. It is therefore contended that framing the “subjects of rights” within Western binary legal categories may become problematic when attempting to address the concerns of sexual and gender minorities in a “universal” sense.

Another arguable limitation of the human rights framework is that it “tends toward responding to fixed and nonintersecting categories of identity,” (Miller 1999, p. 297). The strategy of mobilising around a common identity has been favoured in human rights advocacy, as it “gives power and community and thus makes explicit a credible

constituency,” (Offord & Cantrell 2001, p. 236). The UN has been particularly responsive to identity-based rights arguments which clearly define the constituency to be protected, a trend evidenced by the nature of the treaty system. Many of the UN’s existing human rights treaties focus on protecting particular *types* of people, for example CROC, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities.

Identity-centred advocacy strategies have also been employed in relation to the rights of sexual and gender minorities. As Mertus (2007, p. 1063) notes, “the attempt to frame LGBT concerns in human rights terms largely has centred on sexual identity categories.” However, as the examples of the *hijras* and the *kwolu-aatmwol* demonstrate, many sexual and gender minorities do not view their identities in terms of Western categories, but instead “present a wide variety of sexual identities unrecognisable in the west,” (Mertus 2007, p. 1064). Given the diversity of sexual and gender expressions which exists throughout the world, it has been argued that an identity-based model of sexual and gender rights protection runs the risk of “impos[ing] external categories onto widely divergent peoples,” (Katyal 2002, p. 175), creating what Offord and Cantrell (2001, p. 236) have referred to as a “burden of identity”. A “burden of identity” can arise when human rights protection is contingent upon the assumption of a legally-defined identity. For instance, the rights provisions of CEDAW apply only to those who fall within the legal category of “female”. According to this line of reasoning, an identity-based convention enshrining the rights of sexual and gender minorities may force some groups to assume the “burden” of a legally-defined identity category, whether or not this corresponds with their personal experiences of sexuality and gender, or else risk exclusion from human rights protection.

In advancing the “burden of identity” argument, some analysts have also drawn attention to the fact that there is not always a simple equation between identity and conduct. Katyal (2002, p. 99) points out that there are “numerous individuals...who would never conceive of identifying [as a member of a sexual or gender minority group] and yet who routinely engage in same-sex sexual activity,” citing the category of “men who have sex with men”

(MSM) as a key example. This category is increasingly used in public health circles to define men who “see their sexual orientation as heterosexual, and consider their same-sex sexual activities to be a completely separate pastime, rather than a determinative part of their identities,” (Katyal 2002, p. 156). It is argued that an identity-based convention would have a limited ability to protect the sexual rights of groups such as MSM, as they would not fall within the identity categories necessary for human rights protection.

In light of this factor, it has been suggested that even seemingly “neutral” organisational categories such as “sexual orientation” and “gender identity” can have exclusionary elements. Waites (2009, p. 152) points out that, since both concepts “focus attention on subjectivity before behaviour”, they assume the existence of a relatively stable sexual or gender identity. As such, they may have limited application to those who view their sexuality or gender as fluid rather than fixed, or – like MSM – do not view their sexual and gender expressions as a formative aspect of their identities. Waites does not suggest that these concepts have no merit, but rather emphasises the difficulty of establishing all-encompassing organisational categories for sexual and gender minorities. This difficulty has also been highlighted by Jagose (1996), who documents the attempt in recent decades to posit “queer” as a universal organisational category for sexual and gender minorities. While queer has resonated with some, Jagose notes that it has failed to achieve universal acceptance as an all-inclusive identity category, since many members of sexual and gender minorities “are neither interpellated by the term nor persuaded that the new category describes or represents them,” (Jagose 1996, p. 103). This response suggests that it may not be possible to establish universally-applicable sexual and gender identity categories, in turn leading some analysts to deduce that a universal form of rights protection for sexual and gender minorities may be fundamentally inappropriate.

Due to the reliance of the international legal system on binary categories, and its responsiveness to identity-centred models of rights protection, many analysts have concluded that the UN human rights framework is inimical to the diverse, contested and culturally-specific nature of sexual orientation and gender identity. Given the tendency of the human rights regime towards these forms of universalisation, it has been contended

that a convention on sexual and gender rights may risk “alienat[ing] the very people such rights are supposed to protect,” (Katyal 2002, p. 174).

However, this assumption that diversity and universality are mutually exclusive ignores the fact that even the most multifarious groups can share common experiences. For example, while women are undoubtedly an incredibly diverse group, all are in some way disadvantaged by a patriarchal system of social relations which privileges masculine concerns. Likewise, all sexual and gender minorities are disadvantaged by a social hierarchy which privileges and legitimates heterosexuality. As Cahoon (1996, p. 16) explains:

What appear to be cultural units – human beings, words, meanings, ideas, philosophical systems, social organisations – are maintained in their apparent unity only through an active process of exclusion, opposition, and hierarchisation [sic]. Other phenomena or units must be represented as foreign or ‘other’ through representing a hierarchical dualism in which the unit is ‘privileged’ or favoured, and the other is devalued in some way.

This is certainly true of the relationship between heterosexual and non-heterosexual forms of sexual and gender expression. Heterosexuality has historically been constructed as a “coherent, natural, fixed and stable category,” (Richardson 1996, p. 2) and as a “natural, pure and unproblematic state,” (Jagose 1996, p. 17). As Cahoon suggests, descriptors such as “natural”, “stable” and “pure” have little meaning unless they are defined in relation to the “unnatural”, “unstable” and “impure”. In short, a norm of heterosexuality cannot be established without a complementary definition of what is “abnormal”. As such, the normative legitimacy of heterosexuality, and the privileges this legitimacy entails, can only have meaning when defined against an “other” – a position habitually filled by sexual and gender minorities.

Indeed, this situation of “otherness” has become a “universal” experience of these groups. As a result of the entrenched and systemic “favouring” of heterosexuality, and

consequent “devaluation” of other forms of sexual and gender expression, sexual and gender minorities have been “branded, separated from the whole, marginalised and stigmatised...in a way which [has come] to acquire worldwide proportions,” (Heinze 1995, p. 57). All over the world, persons whose expression of sexuality or gender does not conform to the heterosexual “norm” – no matter how diverse these expressions may be, and regardless of whether they identify as a member of a particular identity group – occupy the position of the “other” virtually without exception. This universal experience in turn creates potential for a universal form of protection within the international human rights framework.

That said, shared experiences alone do not overcome the problems associated with binary classifications and identity-based organisational categories. However, as noted in the introduction to this dissertation, recent rights-based arguments focusing on sexuality and gender issues have employed the language of sexual and gender rights – a paradigm which does not rely on categorisation. A convention established under this paradigm would be more akin to a treaty such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD), than an identity-based treaty such as CEDAW or CROC. Since CERD is based on specific *grounds* for human rights protection, rather than protecting particular *types* of people, it has broader applicability than identity-based instruments. Indeed, while primarily relevant to racial and ethnic minority groups, CERD also applies to members of racial and ethnic *majorities* – they too are protected from racial discrimination, even if they may never have a need to invoke CERD’s provisions.

Similarly, a convention based on the sexual and gender rights paradigm would protect the rights of all people, not just members of certain minority groups. Therefore, as Saiz (2004, p. 65-6) notes, the paradigm “avoids the complex task of identifying a fixed sub-category of humanity to whom these rights apply,” since it focuses on “element[s] of the self common to all humans.” Furthermore, through focusing on these common elements, the paradigm also circumvents the problem of dichotomies, as sexual and gender rights protection would apply both to those who fall within traditional legal binaries, and those who lie beyond their frontiers. In the words of Grigolo (2003, p. 1028), under the

paradigm of sexual and gender rights, “the heterosexual and the homosexual, the masculine and the feminine, would be included in this legal space, but they would not in principle define its borders...this space would be for everybody.” As such, the sexual and gender rights paradigm has the potential to be universally applicable, no matter how diverse its subjects may be.

The grounds-based approach is not without its weaknesses. One of the advantages of identity-based models is that they provide formal recognition of the historical subordination and “othering” of particular groups (see Heinze 1995, pp. 220-21). The more inclusive grounds-based models, on the other hand, may obscure these historical relationships, as they are intended to apply to all people, not only members of subordinated minorities. That said, a convention based on the sexual and gender rights model may still provide a powerful means of challenging the social hierarchy. As Walker (2000, p. 352) points out, the sexual and gender rights paradigm “is not just about freedom and equality for lesbians and gay men, rather, it is about valuing sexual [and gender] diversity.” In other words, the paradigm acknowledges the equal legitimacy of both heterosexual *and* non-heterosexual forms of sexual and gender expression. A convention based on this paradigm, through enshrining the sexual and gender rights of *all* people, would in turn place *all* sexual orientations and *all* gender identities on an equal footing, belying the fundamental basis of the extant social hierarchy.

Therefore, so long as it is employed “very carefully, very self-critically, and always with an eye to deconstructing its implicit exclusions,” (Corrêa, Petchesky, & Parker 2008, p. 161), the international human rights framework is indeed an appropriate mechanism for advancing the concerns of sexual and gender minorities. The incorporation of sexual and gender rights into the international human rights canon would provide a means not only of challenging rights abuses based on the expression of sexuality and gender, but also of challenging the social hierarchy which leads to such abuses in the first place.

The Potential Effectiveness of a Convention on Sexual and Gender Rights

The ability of human rights law to mount this challenge to the extant social hierarchy depends on its capacity to influence the domestic policies of member states. This brings to the fore one of the longest-standing criticisms of the UN human rights framework – its lack of strong enforcement mechanisms. Unlike domestic law, international law as mandated by the UN is not automatically binding but is instead premised on the notion of state consent. The UN Charter affirms “the principle of the sovereign equality of all its members”, clearly stating that the UN is not authorised “to intervene in matters which are essentially within the domestic jurisdiction of any state,” (UN 1945, Articles 2.1 & 2.7). A corollary of this principle is that “no [human rights] treaty...is binding on a state unless it has consented to it,” (Henkin 1995, p. 28). Critics of the UN legal system have frequently cited this emphasis on sovereignty as “a major impediment to the incorporation of international human rights law into domestic law,” (Antonios 2000, p. 39), since states are obliged to comply only with treaties to which they have consented. Even if a state violates the human rights of its citizens, it will not strictly be in breach of international law if it has not ratified the core human rights conventions.

The UN’s critics also stress that even when states consent to be bound by treaties, it remains difficult to enforce compliance with international law. The implementation of the core human rights treaties is overseen by treaty bodies, such as the UNHRC. The main enforcement mechanism exercised by these bodies is the reporting procedure, under which states are required to submit periodic reports detailing their progress in treaty implementation. Some treaties also offer an individual complaints procedure, such as that enshrined under the First Optional Protocol of the ICCPR. Based on these exchanges, treaty bodies may offer recommendations to states on improving their domestic human rights standards, and criticise states which fail to fulfil their obligations under the treaty. They cannot, however, impose material penalties for disregard of recommendations or non-submission of reports, nor can they discipline states which breach their treaty obligations. As a result, state reports are frequently submitted late or not at all, and recommendations “are still routinely ignored when domestic convenience so requires,”

(Heyns & Viljoen 2002, p. 6). In the case of individual complaints, the rulings of treaty bodies are also frequently rebuffed – in both the *Young* and *X.* cases, for example, the states in question refused to comply with the UNHRC’s decision (see HREOC 2007, p. 42; HRW 2008, ¶ 5).

Overall, critics of the UN legal system generally conclude that the strategies employed by treaty bodies to enforce compliance with UN human rights treaties “appear to have had a very limited demonstrable impact so far,” (Heyns & Viljoen 2002, p. 6) on the domestic recognition of human rights. The apparent failure of the UN human rights regime to induce compliance with international human rights law has led many to hail the UN as a “toothless tiger”, largely incapable of influencing the domestic policies of its member states. It follows from this argument that a convention on sexual and gender rights may have limited ability to enhance the enjoyment of these rights at a domestic level.

However, those who emphasise the weaknesses of the human rights framework often fail to adequately recognise its significant strengths. While the enforcement mechanisms attached to human rights treaties admittedly have significant limitations, this factor certainly does not render the UN human rights framework “toothless”. Although state compliance with human rights law remains inconsistent, there is nonetheless strong international consensus around the idea that “human rights are a legitimate international issue,” (Antonios 2000, p. 40). Human rights have come to be widely acknowledged as a “global norm of appropriate state behaviour,” (Hafner-Burton & Tsutsui 2005, p. 1378) and increasingly provide the “standards for judging the ethics and efficiency of state action,” (Armstrong, Farrell & Lambert 2007, p. 157). Consequently, while international law remains premised on state sovereignty, the *validity* of sovereignty is increasingly viewed as being contingent on respect for human rights. There is an emerging sense that “if a state [does] not adhere to human rights, other states would be justified in excluding it from participation in international society,” (Sandholtz 2002, pp. 207-8). As such, the recognition of sexual and gender rights as *human* rights would render states “vulnerable to potential embarrassment and loss of legitimacy in international society,” (Hafner-Burton & Tsutsui 2005, p. 1385) should they fail to uphold these rights at a domestic

level. As states become increasingly reluctant to open themselves to charges of human rights abuse, this recognition alone would place considerable pressure on states to address domestic violations of sexual and gender rights.

Furthermore, as a result of the increasing sensitivity of states to allegations of human rights violations, a human rights framework can add considerable weight to arguments for domestic reform. Due to their acknowledged legitimacy, human rights principles can provide an authoritative language through which to articulate domestic rights claims, thereby “empower[ing] nonstate advocates with the tools to pressure governments towards compliance,” (Hafner-Burton & Tsutsui 2005, p. 1378). In the words of Corrêa, Petchesky and Parker (2008, p. 153),

A human rights framework provides both the norms upon which movements can base social justice claims and systems of public recognition and accountability they can use as forums to publicise those claims and shame corporate and government violators – even when, in practice, enforcement is weak.

The leverage offered by a human rights framework becomes particularly significant when domestic legal avenues are closed or hostile to the claims of certain groups. This is very often the case for sexual and gender minorities, especially in countries where non-heterosexual forms of sexual and gender expression are criminalised or heavily repressed. In these contexts, the international human rights framework can provide a crucial alternative legal avenue. As Keck and Sikkink (1998, p. 13) note,

On issues where governments are inaccessible or deaf to groups whose claims may nonetheless resonate elsewhere, international contacts can amplify the demands of domestic groups, pry open space for new issues, and then echo back these demands into the domestic arena.

The *Young* and *X* cases are prime examples of this trend in action. When the findings of the *Young* case were released in 2003, the Australian government (at the time headed by the Liberal/National Coalition) ignored the UNHRC's recommendations. However, the UNHRC's decision enabled acts of discrimination against same-sex couples to be framed as human rights violations, creating new advocacy opportunities at a domestic level. In 2006, Australia's Human Rights and Equal Opportunity Commission (HREOC) launched a national inquiry into discrimination against people in same-sex relationships, aiming to "ensure that Australia is in compliance with the provisions of the [ICCPR]," (HREOC 2007, p. 23). The inquiry, which focused specifically on social and economic benefits such as pension transfers, identified 58 Federal laws which "discriminate against same-sex couples in the area of financial and work-related entitlements," and thereby "breach the [ICCPR]," (HREOC 2007, p. 10).

In response to the inquiry's findings, the Australian Labor Party (ALP), which came to power in late 2007, pledged to introduce "legislation to amend provisions that unfairly discriminate against any person on the grounds of sexuality or gender identity," (ALP 2007, p. 207). In November 2008, legislation was passed which amended such provisions in 84 Commonwealth laws, with the support of both the ALP *and* the Coalition (see Parliament of Australia 2008a & 2008b; Coorey 2008, ¶ 3). The enactment of this legislation will effectively "ensure that similar violations of the Covenant do not occur in the future," (UNHRC 2003, Section 12). Thus, while the UNHRC's findings may initially have been ignored, the new advocacy opportunities presented by the *Young* case played a key role in strengthening the case for domestic reform.

The *X v. Colombia* case catalysed a similar chain of events. When the UNHRC first released its findings on the case, the Colombian government alleged that it "lacked a legal framework that would allow it to reconsider the case and therefore could not give Mr. X his life partner's pension," (HRW 2008, ¶ 5). In response, a group of Colombian human rights organisations and legal academics took the case to the Constitutional Court of Colombia, the nation's highest judicial body. They requested that the Court extend health and pension benefits to same-sex couples, so as to bring Colombian law in line

with “the principles of human dignity, equality and non-discrimination,” (HRW 2008, ¶ 6) – the very principles on which the *X.* case had hinged. The Court upheld their request, providing Colombia with the legal framework necessary to “prevent similar violations of the Covenant in the future,” (UNHRC 2007, Section 9). In two very different countries, international recognition of sexual rights as human rights helped to provide the context for domestic reform, even when the UNHRC’s rulings were originally rejected by the state in question. It must be acknowledged that human rights frameworks do not always have as direct an impact on domestic policy; nonetheless, these cases clearly demonstrate just how influential human rights frameworks can be.

There are thus strong indications that the creation of a UN convention on sexual and gender rights could indeed be a very effective means of advancing the rights of sexual and gender minorities. Despite a lack of strong enforcement mechanisms, international human rights law wields a powerful normative influence which increasingly shapes domestic law. As such, there is a significant likelihood that international recognition of sexual and gender rights as human rights would enhance the enjoyment of these rights at a domestic level.

The Prospect of a Convention on Sexual and Gender Rights Achieving Acceptance amongst UN Actors

In order for sexual and gender rights to attain international recognition through a UN convention, they must first achieve a degree of acceptance amongst the international community. While universal consensus is not a prerequisite for the enshrinement of rights, formal recognition is unlikely to occur without the support of a significant proportion of UN member states. Many analysts have argued that securing this support is likely to be exceptionally difficult in the case of sexual and gender rights, which is easily one of the most contentious and divisive issues ever to have arisen at the UN. Issues relating to sexual orientation and gender identity have caused heated debate whenever they have been raised at UN World Conferences, and formal statements on sexual and gender rights have always incited strong opposition (see Chapter I). Due to this historical

resistance, it is alleged that achieving a general consensus amongst UN actors on sexual and gender rights issues will be extremely difficult, if not impossible. As such, the creation of a formal human rights instrument on the rights of sexual and gender minorities is viewed by many analysts as an unrealistic aspiration. Indeed, Donnelly (2003, p 238) asserts that “in the short and medium run, there is no chance of anything even close to an international consensus on even a working text for a draft declaration on the rights of homosexuals.”

It has also been argued that this state of affairs is unlikely to improve significantly in the present context, given that UN member states have in the past been reluctant to support statements which may render them “vulnerable to charges of [human rights] violation,” (Henkin 1995, p. 206). The response to recent UN Declaration on the Rights of Indigenous Peoples is a widely-recognised example of this trend. Despite being supported by the majority of UN member states, the Declaration was strongly opposed by the USA, Canada, Australia and New Zealand. These four states raised numerous objections to the Declaration during the drafting process, claiming that provisions which enshrined indigenous rights to traditional lands, and to compensation for confiscated lands, were “impossible to implement” and “unworkable” (USUN 2006, ¶ 7 & 9). This opposition stemmed largely from the fact that all four states have “sizeable indigenous populations” (UNGA 2007, ¶ 4), and therefore bear primary responsibility for the recognition of indigenous rights at a domestic level. While the Declaration is not a legally-binding instrument and thus imposes no legal responsibilities on states, the formal recognition of indigenous rights has created greater potential for these rights to be claimed by domestic actors. As such, it is likely that concerns over the “workability” of the Declaration resulted largely from a desire to avoid “charges of human rights violation”.

This case suggests that UN member states may be unwilling to support statements on human rights, if doing so may implicate their state in human rights violations. Since the vast majority of UN member states actively discriminate against sexual and gender minorities, and are therefore vulnerable to charges of sexual and gender rights violation, it has become “widely understood that a significant number of States would block the

[sexual and gender rights] movement at the international level,” (Sanders 1996, p. 69). Following from this principle, it is contended that until state vulnerability to “charges of violation” decreases, a convention on sexual gender rights is unlikely to achieve resounding support.

Many analysts also emphasise that member states are not the only actors within the UN who may oppose the enshrinement of sexual and gender rights. The Vatican, represented at the UN by the Holy See, has permanent observer status at the UN and remains “one of the most important international conservative voices in the areas of gender, sexuality, and the family,” (Buss & Herman 2003, p. 123). As a permanent observer, the Holy See does not have voting powers as does a member state, but does have a right to participate in UN debates and conferences, and comment on UN resolutions. The Vatican is thus in a unique position to advance its concerns at the UN, and several analysts have highlighted its consistent opposition to acknowledgments of sexual and gender rights. As Buss and Herman (2003, p. 123) note, the Vatican “has taken an increasingly vocal stance against lesbian and gay rights, and...is distrustful of human rights language that may suggest an acceptance of homosexuality.” The Vatican’s campaign against sexual and gender rights has been supported by other conservative actors with permanent missions at the UN, such as the OIC and the League of Arab States. These actors have successfully opposed the recognition of sexual and gender rights on a number of occasions. The Holy See has continuously suppressed the acknowledgement of sexual and gender rights at UN Conferences, and both the Holy See and the OIC played a key role in quashing the ill-fated Brazilian resolution on human rights and sexual orientation (see Chapter I).

The influence of conservative actors within the UN is partially offset by the increasing engagement of non-government organisations (NGOs) with the UN. However, it has been argued that compared to member states and the permanent observers such as the Holy See, the ability of NGOs to influence UN activities is far more limited. NGOs must receive accreditation before they can participate in any UN activities, and accreditation is usually granted only for the duration of a conference or meeting. While it is possible for NGOs to receive ongoing consultative status with UN organs, only one agency – the

Economic and Social Council (ECOSOC) – has “established rights for NGOs to observe and contribute to its work,” (Sidhu 2007, p. 12). As such, some analysts contend that the activities of NGOs “remain partially imprisoned by traditional roles and priorities of international politics,” which tend to privilege states as the dominant international actors (Clark, Friedman & Hochstetler 1998, p. 35). Moreover, as documented by Buss and Herman (2003), it is possible for NGOs which *oppose* sexual and gender rights to receive consultative status, thus increased participation by NGOs in UN processes is not generally viewed as a guarantee of increased support for sexual and gender rights.

Overall, there appears to be a broad agreement that “the adoption of a clear instrument [on sexual and gender rights] is unlikely in the short or medium term,” (Tahmindjis 2005, p. 24). Even those who acknowledge the validity of sexual and gender rights arguments tend to dismiss the formal enshrinement of these rights as a “hopelessly unattainable [goal] in the current climate,” (Saiz 2004, p. 63). This widespread pessimism, however, is demonstrably ill-founded. Firstly, while the capacity of NGOs to influence UN activities is admittedly limited, their influence cannot be dismissed altogether. Otto (1996, pp. 117-18) argues that NGOs have become “increasingly influential” actors in UN processes, and now “play key roles in devising new human rights standards.” Indeed, even analysts who question the influence of NGOs still concede that these actors have become an “integral part” of UN activities, and “are on the world stage to stay,” (Clark, Friedman & Hochstetler 1998, p. 33). Despite their limited powers, NGOs do have an acknowledged place within the international community, and thus have the potential to counter the opposition to sexual and gender rights to some extent.

Additionally, while not all UN-accredited NGOs support sexual and gender rights, organisations which represent the concerns of sexual and gender minorities have achieved increasing visibility in recent years. For over a decade prior to 2006, only two of the several thousand NGOs with consultative status at ECOSOC were organisations representing LGBTI concerns. Between 2006 and 2008, however, a further seven LGBTI organisations were granted consultative status (see ILGA 2008b), creating greater potential for the advancement of sexual and gender rights concerns in UN fora.

The increased willingness of ECOSOC to engage with these organisations also suggests that sexual and gender rights are gaining currency amongst UN actors, and are increasingly being viewed as legitimate human rights concerns. In fact, both the previous and current UN High Commissioners for Human Rights (UNHCHR) have strongly affirmed the legitimacy of sexual and gender rights claims. In response to the launch of the Yogyakarta Principles, the then UNHCHR Louise Arbour released a statement declaring “the firm commitment of my Office to promote and protect the human rights of all people regardless of their sexual orientation or gender identity,” (quoted in Sanders 2008, “Launching the Yogyakarta Principles” section, ¶ 5-9). In late 2008, the current UNHCHR, Navanethem Pillay, reiterated this commitment by expressing full support for the UN Declaration on Sexual Orientation and Gender Identity. She went on to assert that human rights violations based on sexual orientation and gender identity “are increasingly becoming recognised as anachronistic and as inconsistent both with international law and with traditional values of dignity, inclusion and respect for all,” (see UN 2008, 38:28). These categorical statements from the UN’s highest authority on human rights issues suggest a trend towards a broader acceptance of sexual and gender rights concerns.

This trend is further evidenced by the upsurge in support for sexual and gender rights issues amongst UN member states. When Brazil withdrew its resolution on sexual orientation in 2005, 32 states signed New Zealand’s joint statement to express disappointment at the resolution’s failure. The following year, 54 states backed Norway’s statement on sexual and orientation and gender identity at the Human Rights Council. By 2008, 66 member states were willing to support the Declaration on Sexual Orientation and Gender Identity at the UN General Assembly. Within the space of three years, support for a resolution on sexual and gender rights had more than doubled amongst member states.

Furthermore, these statements do not tiptoe around the issue of sexual and gender rights, but instead strongly condemn human rights violations based on sexual orientation and gender identity. The New Zealand statement declares that such violations are among “the

worst forms of discrimination,” (ILGA 2005, ¶ 3), and asserts that its signatories “are not prepared to compromise on the principle that all people are equal in dignity, rights and freedoms,” (ILGA 2005, ¶ 5). Both the Norwegian statement and the 2008 Declaration express “deep concern” at human rights violations based on sexual orientation and gender identity, and the latter statement explicitly denounces these violations (see ILGA 2006 & 2008a). Additionally, all three statements call upon UN bodies and member states to work towards the elimination of human rights violations based on sexual orientation and gender identity. The recognition of sexual and gender rights may indeed be strongly opposed by many states; however, as evidenced by these statements, it is also strongly supported.

Interestingly, the signatories to 2008 Declaration included many states which would be rendered “vulnerable to charges of [human rights] violation” (Henkin 1995, p. 206) by the formal enshrinement of sexual and gender rights. For example, while the Declaration condemns the “deprivation of economic, social and cultural rights,” on the basis of sexual orientation and gender identity (ILGA 2008a, ¶ 6), few of its signatories currently recognise the economic and social rights of same-sex couples (cf. Ottosson 2009, p. 53). The Declaration’s signatories also included two states – Mauritius and São Tomé and Príncipe – which criminalise same-sex sexual acts (Ottosson 2009, p. 28; 36) and thereby fail to recognise even the most basic of sexual and gender rights. The fact that these states were willing to support the Declaration suggests that state vulnerability to “charges of violation” may not necessarily present an insurmountable barrier to the enshrinement of sexual and gender rights.

An examination of *why* support for sexual and gender rights has grown so considerably in recent years is beyond the scope of this dissertation. Nonetheless, it is evident that sexual and gender rights have begun to achieve a significant level of support amongst the international community. While proposals for the recognition of sexual and gender rights remain ardently opposed, they are also swiftly gaining acceptance, and considerable consensus around these proposals has begun to emerge. It is true that the enshrinement of sexual and gender rights in international human rights law is likely to remain a very

difficult task, but it is certainly not a “hopelessly unattainable” goal in the present context.

Therefore, while human rights approaches to sexual and gender rights issues have been significantly contested, there is also a strong case for the validity of such approaches. The arguments presented in this Chapter have verified that the human rights framework is indeed a suitable mechanism for advancing the concerns of sexual and gender minorities; that the creation of a convention on sexual and gender rights has the potential to be a very effective means of increasing the enjoyment of these rights; and that such a convention may receive a considerable level of support amongst key UN actors.

CHAPTER III: THE FUTURE

As Chapter II has illustrated, a UN convention on sexual and gender rights would indeed have the potential to be an appropriate and effective means of advancing the rights of sexual and gender minorities. Additionally, recent developments at the UN suggest that, in spite of strong opposition, advocacy efforts in this area would have a significant chance of success. If both of these premises are accepted, it is necessary to now turn to the practicalities of enshrinement. To further pave the way towards a resolution of the debate on sexual and gender rights, this Chapter examines the potential forms that a convention enshrining these rights may take.

Statements Produced by Interstate Human Rights Bodies

Amongst interstate assemblies, there are very few existing models available for a convention on sexual and gender rights. Like the UN, other interstate human rights regimes are still developing frameworks for recognising and upholding the rights of sexual and gender minorities, and nowhere in the international legal system has a detailed articulation of sexual and gender rights been produced.

The 2008 UN Declaration on Sexual Orientation and Gender Identity makes reference to the Resolution on Human Rights, Sexual Orientation, and Gender Identity adopted by the Organisation of American States (OAS) in June 2008. The scope of this resolution, however, is even narrower than the UN Declaration itself. The OAS limits itself to “express[ing] concern about acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity,” (OAS 2008, Article 1), without condemning any specific violations. Furthermore, while the resolution places the topic of human rights, sexual orientation and gender identity on the OAS agenda (OAS 2008, Article 2), it provides no framework for implementation, and it remains to be seen how the resolution will be enacted. The OAS is thus in much the same position as the UN, in that it has only just begun to formally acknowledge sexual and gender rights.

The African Union's (AU) recognition of these rights has been even more limited. The charter of the African Commission on Human and Peoples' Rights, the AU's core human rights body, makes no mention of sexual and gender rights, and as yet these issues have "remained largely outside the consideration of the African Commission," (Murray & Viljoen 2007, p. 87). While the human rights standards set by the AU do have potential applicability to the concerns of sexual and gender minorities, these standards "have not so far been used in this regard," (Murray & Viljoen 2007, p. 111).

Compared to the OAS and the AU, the European Union (EU) and the Council of Europe (CoE) provide "by far the most advanced system of [human rights] protection," of all regional assemblies (Armstrong, Farrell & Lambert 2007, p. 160). Moreover, these bodies "lead the world in sexual orientation law reform," (Lau 2004, p. 1702) at an international level. The Charter of Fundamental Rights of the European Union specifically acknowledges sexual orientation as prohibited grounds for discrimination and, unlike the ICCPR, does not limit the right to marry to opposite-sex couples (EU 2000, Articles 21 & 9). Additionally, the European Court of Human Rights (ECHR), which has an individual complaints procedure similar to that offered by the UNHRC, has been a trailblazer for the recognition of sexual and gender rights at an international level. For example, the court has affirmed that same-sex couples are entitled to the same social and economic benefits accorded to opposite-sex couples (ECHR 2003); that homosexual individuals have a right to adopt children (ECHR 2008); that disparate ages of consent for same-sex and opposite-sex sexual relations are discriminatory and should be equalised (ECHR 2001); and that transsexuals have a right to legal recognition of their post-operative sex (ECHR 2002a & 2002b). The recognition of this latter right also makes the ECHR also the only interstate human rights body to have specifically recognised *gender* rights, as well as sexual rights.

The success of sexual and gender rights claims in European fora suggests that the regional human rights instruments mandated by the EU and CoE could offer important reference points for a convention on sexual and gender rights. However, when examined

more closely, it becomes clear that these successes do not stem from the nature of the instruments themselves. The provisions on sexual rights in the EU Charter, while noteworthy, are extremely limited – the Charter specifically enshrines only one sexual right (non-discrimination), and contains no mention of gender rights. Moreover, the EU Charter is not Europe’s principal human rights treaty, and it has not been the determinative instrument in the ECHR’s trailblazing decisions. The ECHR is a body of the CoE, not the EU, and its judgements are based on the Convention for the Protection of Human Rights and Fundamental Freedoms – which does *not* specifically acknowledge sexual orientation as prohibited grounds for discrimination, and *does* limit marriage rights to opposite-sex couples (see CoE 2003, Articles 14 & 12). In fact, the Convention lacks any specific reference points for sexual and gender rights issues. Just as it has at the UN, the absence of these reference points has frequently constrained the advancement of sexual and gender rights in the European context.

This limitation is clearly illustrated by the fact that the aforementioned ECHR cases all *overturned* previous decisions. In the past, the ECHR has found that differential treatment of same-sex and opposite-sex couples is justifiable (ECHR 1986a); that homosexuals do not have a right to adopt children (ECHR 2002c); that unequal ages of consent do not constitute discrimination (ECHR 1979); and that transsexuals do not have a right to legal recognition of their post-operative sex (ECHR 1986b). Significantly, both the negative and the positive rulings were based on the *same* human rights instrument – the contrary outcomes were purely the result of differences in interpretation. Since the CoE’s Convention offers no consistent framework for assessing sexual and gender rights claims, the level of protection accorded to sexual and gender minorities is largely determined by the discretion of individual judges.

Essentially, therefore, the European human rights regime suffers from the same weaknesses as the UN system – namely, the lack of specific reference points for sexual and gender rights issues, and the consequent subjection of sexual and gender rights claims to interpretive discretion. In the words of Tahmindjis (2005, p. 21), “the problem of finding a sufficient beachhead in the relevant instruments to launch a GLBT offensive

against discriminatory domestic laws and practices still remains,” in the European human rights system, because “problems of process and structure persist.” While recent sexual and gender rights claims have indeed met with a considerable degree of success in European fora, these successes cannot be explained by any outstanding features of European human rights instruments. As such, these instruments do not offer appropriate models for a convention on sexual and gender rights.

There are consequently no models available amongst interstate assemblies for the enshrinement of sexual and gender rights in international law. There have, however, been several attempts by non-state bodies to frame sexuality and gender issues in human rights terms. These statements are examined in the following section.

Statements Produced by Non-State Bodies

In 1996, the International Conference on Transgender Law and Employment Policy (ICTLEP) produced the International Bill of Gender Rights (IBGR), which “strives to present human and civil rights from a gender perspective,” (ICTLEP 1996, p. 327). Three years later, the World Association for Sexual Health (WAS) developed the Universal Declaration of Sexual Rights, which is based on the premise that “since health is a fundamental human right, so must sexual health be a basic human right,” (WAS 1999, ¶ 3).

These statements are among the earliest formal applications of human rights principles to sexuality and gender issues, and they have a number of strengths worth noting. Benford and Snow (2000, p. 621) argue that advocacy frameworks are more likely to be successful if they are “congruent or resonant with the personal, everyday experiences” of the affected communities. Both the IBGR and the Declaration of Sexual Rights appear to satisfy this requirement, as they address several of the major human rights violations faced by sexual and gender minorities. The statements enshrine rights to non-discrimination, privacy, protection from violence, freedom of expression, access to gender reassignment, relationship recognition, and access to adoption and reproductive

technologies. Furthermore, neither statement focuses on subjectivity, instead utilising the inclusive paradigm of sexual and gender rights. The statements thereby avoid the pitfalls associated with identity-based frameworks and binary sex categories, and as such have the potential to resonate with a diverse range of individuals and groups.

However, the IBGR and the Declaration of Sexual Rights also have significant limitations. Neither statement is particularly comprehensive – each consists of less than a dozen articles, and their rights provisions are generally accompanied by only a single sentence of explanatory text. The statements do not provide detailed information on the practicalities of implementing the rights they enshrine, nor do they impose specific responsibilities upon potential states parties. Indeed, both the Bill and the Declaration appear to be intended as abstract, theoretical statements rather than effective, binding instruments. Therefore, while the IBGR and the Universal Declaration of Sexual Rights may offer useful reference points when enshrining sexual and gender rights in UN human rights law, they do not in themselves provide adequate models for a legal statement on sexual and gender rights.

Arguably, the only existing statement on sexual and gender rights which has genuine potential to serve as a model for a UN convention is the Yogyakarta Principles. The Principles are the most comprehensive statement on sexual and gender rights yet produced, encompassing issues as wide-ranging as non-discrimination, legal recognition, security of person, privacy, access to justice, work, social security, housing, education, health, freedom of expression, immigration and refugee issues, founding a family, public participation and effective redress. Within these broad areas, the Principles address specific issues which relate to the human rights violations experienced by sexual and gender minorities. For instance, Principle 17 on the Right to Health includes a provision on access to gender reassignment (Yogyakarta Principles 2007, Principle 17G). The Principles are thus broad enough to encompass the concerns of a diverse range of individuals and groups, yet at the same time are likely to have resonance with the “personal, everyday experiences” (Benford & Snow 2000, p. 621) of sexual and gender minorities.

Furthermore, unlike the IBGR and the Declaration of Sexual Rights, the Principles are designed not as an abstract or theoretical statement, but are intended to be practically implemented. As Sanders (2008, “The Yogyakarta Meeting” section, ¶ 7) argues, the drafters of the Principles “did not want an aspirational document. They did not want to produce a ‘where we should be going’ sermon.” Instead, the Principles clearly “affirm the primary obligation of States to implement human rights,” and specifically aim to “bring greater clarity and coherence to States’ human rights obligations,” (Yogyakarta Principles 2007, p. 7). Each broad human rights provision enshrined by the Principles is accompanied by detailed information on the responsibilities of potential states parties, and recommendations for the practical implementation of the Principles at a domestic level.

Additionally, the Principles have excellent potential to garner recognition and support amongst the international community. Keck and Sikkink (1998, p. 204) argue that transnational advocacy frameworks “are more likely to be influential if they fit well with existing ideas and ideologies”, a test which the Principles arguably pass with flying colours. Since they are intended to reflect the *application* of international law to sexual orientation and gender identity, the Principles are expressed in a manner which echoes the established structure, language and provisions of the UN human rights canon. Most of the Principles represent elaborations on accepted human rights, such as privacy (Principle 6), freedom from torture (Principle 10) and an adequate standard of living (Principle 14) (cf. UN 1966a, Article 17; UN 1984; UN 1966c, Article 11), and even Principles which do not derive from any specific treaty provision still “reflect...accepted legal standard[s],” (O’Flaherty & Fisher 2008, p. 235). For instance, Principle 27 on the Right to Promote Human Rights, which states that “everyone has the right, individually and in association with others, to promote the protection and realisation of human rights...without discrimination on the basis of sexual orientation or gender identity,” (Yogyakarta Principles 2007, Principle 27), draws on the extant rights of freedom of expression, peaceful assembly and non-discrimination (see UN 1966a, Articles 19, 21 &

26). As such, the Principles clearly resonate with the “existing ideas and ideologies,” of the UN legal framework.

Largely due to this resonance with existing statements, the Principles have “ha[ve] met with a surprising degree of success,” (O’Flaherty & Fisher 2008, p. 239) in international fora. Since their launch in 2007, the Principles have significantly influenced discussions and interpretations of sexual and gender rights at the UN. Many UN member states have expressed official support for the Principles, and the statement has been cited in the proceedings and publications of a number of UN agencies. Several states have drawn on the Principles in domestic policy-making (see O’Flaherty & Fisher 2008, pp. 238-44; Sanders 2008, “How Have the Principles been Received?” section). Additionally, the Principles have been endorsed by several peak human rights organisations, including those which represent the interests of sexual and gender minorities. Human Rights Watch (see HRW 2007, ¶ 4), the International Lesbian and Gay Association (see ILGA 2008c, ¶ 10) and the International Gay and Lesbian Human Rights Commission (see IGLHRC 2009b, “Promoting the Yogyakarta Principles” section) have all expressed official support for the Principles, and urged UN member states to follow suit. Amnesty International also promotes the Principles (see Amnesty International 2009, “Key Facts” section, ¶ 5-6) and has issued calls for their practical implementation. For example, a recent Amnesty International report on the decriminalisation of homosexuality contained several recommendations drawn specifically from the Principles (see Amnesty International 2008, p. 67n176).

The Yogyakarta Principles therefore have significant potential to serve as a model for a convention on sexual and gender rights. They have relevance to the individuals and communities affected by sexual and gender rights violations, are sufficiently detailed to have potential for practical implementation, and their congruence with the existing human rights framework has resulted in a considerable level of international acknowledgement and acceptance. The Principles are not, however, a flawless statement. Given that they have been formulated only recently, there has been little critical analysis of the Principles; nonetheless, some significant defects have already become apparent.

While the Principles employ gender-neutral terms and avoid the use of identity categories, they do make extensive use of the terms “sexual orientation” and “gender identity”, rather than the more broadly-applicable terminology of “sexual and gender rights” (see Chapter II). While it may not be necessary to avoid the use of these terms entirely, the Principles place a particularly heavy emphasis on sexual orientation and gender identity as organisational categories. This approach, as noted in Chapter II, may risk alienating or excluding those who find little resonance in these categories (see Waites 2009).

Additionally, while the grounding of the Principles in extant human rights provisions has enhanced their international profile, there are also significant constraints associated with this approach. In particular, the adoption of this strategy may have limited the extent to which certain rights can be upheld by the Principles. For example, Principle 24 on the Right to Found a Family implores states to

Take all necessary legislative, administrative and other measures to ensure that *in States that recognise same-sex marriages or registered partnerships*, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners (Yogyakarta Principles 2007, Principle 24E; emphasis added).

As can be seen, the Principles stop short of enshrining a *right* to marriage regardless of sexual orientation or gender identity. While advocating equal treatment of same-sex and opposite-sex married or registered couples, the Principles do not require states to recognise same-sex marriages or registered partnerships. In this case, the desire for complete consistency with existing human rights provisions – which, as affirmed by the *Joslin* case, only enshrine the right of opposite-sex couples to marry – has limited the Principles’ capacity to address the concerns of sexual and gender minorities. This suggests that the interpretive strategy reflected in the Principles may be too rigid to accommodate the gamut of sexual and gender rights.

However, while the drafters of the Principles adopted a somewhat rigid interpretive stance in certain cases, they also recognised the need for flexibility. The Principles may be intended to “reflect the *existing* state of international human rights law in relation to issues of sexual orientation and gender identity,” but they also explicitly acknowledge that “states may incur additional obligations as human rights law continues to evolve,” (Yogyakarta Principles 2007, p. 7; emphasis added). As such, the Principles should be understood less as a finished product, and more as a “work in progress” which will require further development. The Principles indeed have limitations, but at the same time they recognise, even require, that these limitations may be rectified.

Therefore, while they will undoubtedly require revision and amendment before being enshrined in a legally-binding sense, the Yogyakarta Principles nonetheless offer a valuable working text for a convention on sexual and gender rights. With an “ongoing and frank consideration of how they might be improved and adjusted,” (O’Flaherty & Fisher 2008, p. 248), the Principles have the potential to play a central role in the enshrinement of sexual and gender rights.

CONCLUSION & RECOMMENDATIONS

In her statement expressing support for the UN Declaration on Sexual Orientation and Gender Identity, UN High Commissioner for Human Rights Navanethem Pillay challenged the UN membership to “move beyond a debate on whether all human beings have rights...and instead to secure the climate for implementation,” (see UN 2008, 41:10). The arguments presented in this paper indicate that Pillay’s challenge is well-founded. An assessment of the critiques of human rights approaches to sexuality and gender issues suggests that a convention on sexual and gender rights would indeed be an appropriate and effective mechanism for advancing the concerns of sexual and gender minorities. The inclusive paradigm of sexual and gender rights encompasses the concerns of a diverse range of individuals and groups, and has the potential to strongly challenge human rights violations based on sexuality and gender. Additionally, given the normative power of the human rights framework, the creation of a convention on sexual and gender rights is likely to have a significant influence on the domestic enjoyment of these rights. There is also evidence to suggest that such a convention would achieve a considerable level of acceptance and support amongst UN agencies and member states in the current context.

There is thus a strong case to support Pillay’s assertion that it is time to move forward from a debate on *whether* the international human rights framework is an appropriate tool for protecting the rights of sexual and gender minorities, and instead focus on securing the “climate for implementation” of sexual and gender rights. It is therefore arguable that, at this juncture, the principal task at hand is to determine the best means of enshrining these rights in the UN human rights canon.

The Yogyakarta Principles offer a useful starting point for the creation of a legally-binding statement on sexual and gender rights. They provide a comprehensive articulation of many of the core sexual and gender rights, and have already begun to achieve visibility and acceptance in UN fora. That said, the Principles are certainly an imperfect model, and the establishment of a more substantial body of analysis on the

Principles will be critical to identifying flaws, omissions and areas in need of further elaboration. Consultation with individuals and communities from diverse regions will be a crucial aspect of this process, so as to ensure that a convention on sexual and gender rights will be a genuine reflection of the concerns of sexual and gender minorities throughout the world.

Additionally, while the success of the Yogyakarta Principles attests to the importance of achieving congruence with “existing ideas and ideologies”, the limitations of this statement reveal that it is also necessary to expand upon these existing ideas. In formulating a convention on sexual and gender rights, it will be important to strike a balance between maintaining sufficient resonance with the UN legal framework to guarantee a reasonable level of international support, and ensuring that the current weaknesses of this framework are adequately addressed. The exploration of creative framing strategies and more flexible interpretive approaches will be essential to developing a convention which maintains congruence with the extant human rights norms, without losing the capacity to address the concerns of sexual and gender minorities.

Effective framing will also be essential to ensuring that sexual and gender rights remain firmly positioned on the UN agenda. As outlined in this dissertation, the acknowledgements of sexual and gender rights secured at the UN to date have “emerge[d] from a series of struggles” (Kukura 2005, p. 181) over several decades, and it is likely that achieving more formal recognition of sexual and gender rights will similarly require persistent and well-targeted advocacy efforts. Further research into the factors which have led to the recent burgeoning of support for sexual and gender rights at the UN, may point to the framing strategies most likely to be successful in maintaining, and augmenting, this support.

In moving forward from the point of debate to the pursuit of more concrete goals, it is important to keep in mind the advice of Donnelly (2003, p. 241), who reminds us that “all human rights for all is a goal to which, even in the best of circumstances, we will always

be aspiring.” While the battle to achieve recognition of sexual and gender rights in UN fora has now yielded significant victories, the battle to secure the “climate for implementation” of sexual and gender rights has only just begun. The signs are certainly promising, however much remains to be achieved, and advocates of sexual and gender rights must “remain steady for a long struggle,” (Donnelly 2003, p. 241). Achieving the enshrinement of sexual and gender rights in the UN human rights law is likely to be an uphill battle – but it is a battle which should be fought, which can be won, and which is well worth enduring.

APPENDIX: Signatories to the 2008 UN Declaration on Sexual Orientation and Gender Identity, and its Counter-Statement

A total of 66 states signed the 2008 UN Declaration on Sexual Orientation and Gender Identity. These states were Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, São Tomé and Príncipe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

A total of 57 states signed the Counter-Statement to the Declaration. These states were Afghanistan, Algeria, Bahrain, Bangladesh, Benin, Brunei Darussalam, Cameroon, Chad, Comoros, Cote d'Ivoire, Democratic Republic of Korea, Djibouti, Egypt, Eritrea, Ethiopia, Fiji, Gambia, Guinea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mali, Mauritania, Morocco, Niger, Nigeria, Oman, Pakistan, Qatar, Rwanda, Saudi Arabia, Senegal, Sierra Leone, St Lucia, Solomon Islands, Somalia, Sudan, Swaziland, Syria, Tajikistan, Togo, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Yemen and Zimbabwe.

See UNGA 2008b, 2:25:20 & 2:32:10.

REFERENCE LIST

- Amnesty International (2008). *Love, Hate and the Law: Decriminalising Homosexuality*. Retrieved 23 April 2009, <<http://www.amnesty.org/en/library/asset/POL30/003/2008/en/d77ce647-4cd3-11dd-bca2-bb9d43f3e059/pol300032008eng.pdf>>
- (2009). *Sexual Orientation and Gender Identity*. Retrieved 15 April 2009, <<http://www.amnesty.org/en/sexual-orientation-and-gender-identity>>
- Antonios, Z. (2000). “The International Human Rights System and Social Change”. *Just Policy*, vol. 19-20, pp. 38-46.
- Armstrong, D., Farrell, T. & Lambert, H. (2007). *International Law and International Relations*. Cambridge: Cambridge University Press.
- Australian Labor Party (ALP) (2007). *ALP National Platform and Constitution 2007*. Retrieved 29 April 2009, <http://www.alp.org.au/download/now/2007_national_platform.pdf>
- Baird, V. (2001). *The No-Nonsense Guide to Sexual Diversity*. Oxford: New Internationalist Publications.
- Benford, R. D. & Snow, D. A. (2000). “Framing Processes and Social Movements: An Overview and Assessment”. *Annual Review of Sociology*, vol. 26, pp. 611-39.
- Buss, D. & Herman, D. (2003). *Globalizing Family Values: The Christian Right in International Politics*. Minneapolis/London: University of Minnesota Press.
- Cahoone, L. E. (1996). “Introduction”. In *From Modernism to Postmodernism: An Anthology* (pp. 1-23). Oxford: Blackwell.
- Clark, M. C., Friedman, E. J. & Hochstetler, K. (1998). “The Sovereign Limits of Global Civil Society: A Comparison of NGO Participation in UN World Conferences on the Environment, Human Rights and Women.” *World Politics*, vol. 51, iss. 1, pp. 1-35.
- Cohen, S. A. & Richards, C. L. (1994). “The Cairo Consensus: Population, Development and Women”. *Family Planning Perspectives*, vol. 26, iss. 6, pp. 272-77.
- Coorey, P. (2008). “Turnbull Calls for Unity on Gay Laws.” *The Sydney Morning Herald*, 17 October. Retrieved 10 April 2009, <<http://www.smh.com.au/news/national/turnbull-calls-for-unity-on-gay-laws/2008/10/16/1223750232676.html>>
- Corrêa, S., Petchesky, R. & Parker, R. (2008). *Sexuality, Health and Human Rights*. London/New York: Routledge.
- Council of Europe (CoE) (2003). *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13*. European Court of Human Rights. Retrieved 11 April 2009, <<http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>>
- Donnelly, J. (2003). “Non-Discrimination for All: the Case of Sexual Minorities”. In *Universal Human Rights in Theory and Practice*, 2nd edn (pp. 225-41). Ithaca/London: Cornell University Press.
- European Court of Human Rights (ECHR) (1979). *Case of X Against the United Kingdom: Application no. 7215/75*. HUDOC Database. Retrieved 12 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=7215/75&sessionid=21918992&skin=hudoc-en>>
- (1986a). *Case of S. v. United Kingdom: Application no. 11716/85*. HUDOC

- Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=664758&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>>
- (1986b). *Case of Rees v. the United Kingdom: Application no. 9532/81*. HUDOC Database. Retrieved 12 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=rees&sessionid=21919143&skin=hudoc-en>>
- (2001). *Case of Sutherland v. United Kingdom: Application no. 25186/94*. HUDOC Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=sutherland&sessionid=21896709&skin=hudoc-en>>
- (2002a). *Case of Christine Goodwin v. United Kingdom: Application no. 28957/95*. HUDOC Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=goodwin&sessionid=21896709&skin=hudoc-en>>
- (2002b). *Case of I. v. United Kingdom: Application no. 25680/94*. HUDOC Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=rees&sessionid=21896709&skin=hudoc-en>>
- (2002c). *Case of Fretté v. France: Application no. 36515/97*. HUDOC Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=frette&sessionid=21896709&skin=hudoc-en>>
- (2003). *Case of Karner v. Austria: Application no. 40016/98*. HUDOC Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=karner&sessionid=21901305&skin=hudoc-en>>
- (2008). *Case of E.B. v. France: Application no. 43546/02*. HUDOC Database. Retrieved 11 April 2009, <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=E.B.%20v.%20France&sessionid=21896709&skin=hudoc-en>>
- European Union (EU) (2000). *Charter of Fundamental Rights of the European Union*. Official Journal of the European Communities, 18 December. Retrieved 22 April 2009, <http://www.europarl.europa.eu/charter/pdf/text_en.pdf>
- Greenberg, J. A. (2006). “The Roads Less Travelled: The Problem with Binary Sex Categories”. In Currah, P., Juang, R. M. & Minter, S. P. (eds), *Transgender Rights* (pp. 51-73). Minneapolis/London: University of Minnesota Press.
- Grigolo, M. (2003). “Sexualities and the ECHR: Introducing the Universal Sexual Legal Subject”. *European Journal of International Law*, vol. 14, iss. 5, pp. 1023-1044.
- Hafner-Burton, E. M. & Tsutsui, K. (2005). “Human Rights in a Globalising World: The Paradox of Empty Promises”. *American Journal of Sociology*, vol. 110, iss. 5, pp. 1373-411.
- Heinze, E. (1995). *Sexual Orientation: A Human Right – An Essay on International Human Rights Law*. Dordrecht: Martinus Nijhoff Publishers.
- Henkin, L. (1995). *International Law: Politics and Values*. Dordrecht: Martinus Nijhoff Publishers.

- Heyns, C. & Viljoen, F. (2002). *The Impact of the United Nations Human Rights Treaties on the Domestic Level*. The Hague: Kluwer Law International.
- Human Rights and Equal Opportunity Commission (HREOC) (2007). *Same Sex: Same Entitlements. National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*. Retrieved 10 April 2009, <http://www.humanrights.gov.au/human_rights/samesex/report/pdf/SSSE_Report.pdf>
- Human Rights Watch (HRW) (2007). *UN: Support Global Gay Rights Charter*. 4 November. Retrieved 23 April 2009, <<http://www.hrw.org/en/news/2007/11/04/un-support-global-gay-rights-charter>>
- (2008). *Colombia: Court Extends Benefits to Same-Sex Couples*. 17 April. Retrieved 10 April 2009, <<http://www.hrw.org/en/news/2008/04/17/colombia-court-extends-benefits-same-sex-couples>>
- International Conference on Transgender Law and Employment Policy (ICTLEP) (1996). “International Bill of Gender Rights”. In Currah, P., Juang, R. M. & Minter, S. P. (eds) (2006), *Transgender Rights* (pp. 327-31). Minneapolis/London: University of Minnesota Press.
- International Gay and Lesbian Human Rights Commission (IGLHRC) (2009a). *Our Issues*. Retrieved 15 April 2009, <<http://www.iglhrc.org/cgi-bin/iowa/content/globalissues/index.html>>
- (2009b). *Information by Country: United Nations*. Retrieved 23 April 2009, <<http://www.iglhrc.org/cgi-bin/iowa/region/118.html>>
- International Lesbian and Gay Association (ILGA) (2005). *32 Countries Support New Zealand*. 20 April. Retrieved 22 April 2009, <http://www.ilga.org/news_results.asp?LanguageID=1&FileID=533&FileCategory=61&ZoneID=7>
- (2006). *Statement by Norway: UNHRC*. 5 December. Retrieved 22 April 2009, <http://ilga.org/news_results.asp?LanguageID=1&FileCategory=44&ZoneID=7&FileID=944>
- (2008a). *UN General Assembly Statement Affirms Rights for All*. Retrieved 11 February 2009, <http://ilga.org/news_results.asp?LanguageID=1&FileID=1211&FileCategory=44&ZoneID=7>
- (2008b). *United Nations: ECOSOC Campaign*. 31 July. Retrieved 23 May 2009, <http://www.ilga.org/news_results.asp?LanguageID=1&FileCategoryID=1&FileID=1183&ZoneID=7>
- (2008c). *ILGA Publishes State-sponsored Homophobia Report*. Retrieved 24 April 2009, <http://www.ilga.org/news_results.asp?LanguageID=1&FileCategoryID=9&FileID=1165&ZoneID=7>
- Jagose, A. (1996). *Queer Theory*. Carlton: Melbourne University Press.
- Joseph, S. (1994). “Gay rights under the ICCPR: Commentary on Toonen v Australia”. *University of Tasmania Law Review*, vol.13, iss. 2, pp. 392-411.
- Katyal, S. (2002). “Exporting Identity”. *Yale Journal of Law and Feminism*, vol. 14, pp. 97-176.
- Keck, M. E. & Sikkink, K. (1998). *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca/London: Cornell University Press.
- Kukura, E. (2005). “Sexual Orientation and Non-Discrimination”. *Peace Review*, vol. 17, pp. 181-88.

- Lau, H. (2004). "Sexual Orientation: Testing the Universality of International Human Rights Law". *The University of Chicago Law Review*, vol. 71, iss. 4, pp. 1689-1720.
- Mertus, J. (2007). "The Rejection of Human Rights Framings: The Case of LGBT Advocacy in the US". *Human Rights Quarterly*, vol. 29, pp. 1036-64.
- Miller, A. M. (1999). "Human Rights and Sexuality: First Steps Toward Articulating a Rights Framework for Claims to Sexual Rights and Freedoms". *American Society of International Law*, Proceedings of the Annual Meeting 1999, pp. 288-303.
- Morgan, W. & Walker, K. (1995). "Tolerance and Homosex: A Policy of Control and Containment". *Melbourne University Law Review*, vol. 20, pp. 202-17.
- Murray, R. & Viljoen, F. (2007). "Towards Non-Discrimination on the Basis of Sexual Orientation: The Normative Basis and Procedural Possibilities before the African Commission on Human and Peoples' Rights and the African Union." *Human Rights Quarterly*, vol. 29, iss. 1, pp. 86-111.
- O'Flaherty, M. & Fisher, J. (2008). "Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles". *Human Rights Law Review*, vol. 8, iss. 2, pp. 207-248.
- Offord, B. & Cantrell, L. (2001). "Homosexual Rights as Human Rights in Indonesia and Australia". *Journal of Homosexuality*, vol. 40, iss. 3/4, pp. 233-52.
- Organisation of American States (OAS) (2008). *AG/RES. 2435 (XXXVIII-O/08) Resolution on Human Rights, Sexual Orientation and Gender Identity*. General Assembly of the Organisation of American States. Retrieved 11 April 2009, <http://www.oas.org/dil/agres_2435.doc>
- Otto, D. (1995), "Lesbians? Not in My Country: Sexual Orientation at the Beijing World Conference on Women". *Alternative Law Journal*, vol. 20, iss. 6, pp. 288-90.
- (1996). "Nongovernmental Organisations in the United Nations System: The Emerging Role of International Civil Society." *Human Rights Quarterly*, vol. 18, iss. 1, pp. 107-41.
- Ottosson, D. (2009). *State-sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity Between Consenting Adults*. International Lesbian and Gay Association (ILGA). Retrieved 28 May 2009, <http://www.ilga.org/statehomophobia/ILGA_State_Sponsored_Homophobia_2009.pdf>
- Parliament of Australia (2008a). *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008*. Commonwealth of Australia Law (ComLaw). Retrieved 10 April 2009, <[http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/F3483AA2F033EF02CA2574BA008360AA/\\$file/08161B.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/F3483AA2F033EF02CA2574BA008360AA/$file/08161B.pdf)>
- (2008b). *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008*. Commonwealth of Australia Law (ComLaw). Retrieved 10 April 2009, [http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/ED1CA452F2DA49EFCA2574590026055A/\\$file/08107b.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/0/ED1CA452F2DA49EFCA2574590026055A/$file/08107b.pdf)
- Pazello, M. (2005). "Sexual Rights and Trade". *Peace Review*, vol. 17, pp. 155-62.
- Petchesky, R. P. (2000). "Sexual Rights: Inventing a Concept, Mapping an International Practice". In Parker, R., Barbosa, R. M. & Aggleton, P., *Framing the Sexual Subject: The Politics of Gender, Sexuality and Power* (pp. 81-103). Berkeley: University of California Press.

- Richardson, D. (1996). "Heterosexuality and Social Theory". In *Theorising Heterosexuality: Telling it Straight* (pp. 1-20). Buckingham/Philadelphia: Open University Press.
- (2000). *Rethinking Sexuality*. London: Sage Publications.
- Saiz, I. (2004). "Bracketing Sexuality: Human Rights and Sexual Orientation – A Decade of Development and Denial at the UN". *Health and Human Rights*, vol. 7, iss. 2, pp. 48-80.
- Sanders, D. (1996). "Getting Lesbian and Gay Issues on the International Human Rights Agenda". *Human Rights Quarterly*, vol. 18, iss. 1, pp. 67-106.
- (2002). "Human Rights and Sexual Orientation in International Law". *International Journal of Public Administration*, vol. 25, iss. 1. pp. 13-44.
- (2008). *The Role of the Yogyakarta Principles*. International Gay and Lesbian Human Rights Commission, 4 August. Retrieved 23 April 2009, <<http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/22.html>>
- Sandholtz, W. (2002). "Humanitarian Intervention: Global Enforcement of Human Rights?" in Brysk, A.(ed) *Globalization and Human Rights* (pp. 201-225). Berkeley: University of California Press.
- Sidhu, G. (2007). "A Guide to NGO Participation". In *Intergovernmental Negotiations and Decision Making at the United Nations: A Guide*, 2nd edn (pp. 51-83). UN Non-Governmental Liaison Service. Retrieved 19 April 2009, <http://www.un-ngls.org/IMG/pdf/DMUN_Book_PAO_WEB.pdf>
- Tahmindjis, P. (2005). "Sexuality and International Human Rights Law". In Graupner, H. & Tahmindjis, P. (eds), *Sexuality and Human Rights: A Global Overview* (pp. 9-29). Binghamton: Harrington Park Press.
- United Nations (UN) (1945). *Charter of the United Nations*. United Nations. Retrieved 5 April 2009, <<http://www.un.org/aboutun/charter/>>
- (1966a). *International Covenant on Civil and Political Rights*. United Nations Office of the High Commissioner for Human Rights. Retrieved 23 March 2009, <<http://www2.ohchr.org/english/law/ccpr.htm>>
- (1966b). *First Optional Protocol to the International Covenant on Civil and Political Rights*. United Nations Office of the High Commissioner for Human Rights. Retrieved 29 March 2009, <<http://www2.ohchr.org/english/law/ccpr-one.htm>>
- United Nations (UN) (1966c). *International Covenant on Economic, Social and Cultural Rights*. United Nations Office of the High Commissioner for Human Rights. Retrieved 23 May 2009, <<http://www2.ohchr.org/english/law/cescr.htm>>
- (1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations Office of the High Commissioner for Human Rights. Retrieved 3 June 2009, <<http://www2.ohchr.org/english/law/cat.htm>>
- (1989). *Convention on the Rights of the Child*. United Nations Office of the High Commissioner for Human Rights. Retrieved 23 March 2009, <<http://www2.ohchr.org/english/law/crc.htm>>
- (1993). "Vienna Declaration and Program of Action". *World Conference on*

- Human Rights*, 14-25 June 1993, Vienna, Austria. Office of the United Nations High Commissioner for Human Rights. Retrieved 11 March 2009, <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)>
- (1994). “Program of Action of the International Conference on Population and Development”. *International Conference on Population and Development*, 5-13 September 1994, Cairo, Egypt. United Nations Population Fund. Retrieved 11 March 2009, <<http://www.unfpa.org/icpd/icpd-programme.cfm>>
- (1995). “Report of the Fourth World Conference on Women”. *World Conference on Women*, 4-15 September 1995, Beijing, China. Retrieved 11 March 2009, <<http://daccessdds.un.org/doc/UNDOC/GEN/N96/273/01/PDF/N9627301.pdf?OpenElement>>
- (2008). *High-Level Panel Discussion on Human Rights, Sexual Orientation and Gender Identity* [webcast]. UN Webcast Archives, Special Events, 18 December. Retrieved 29 April 2009, <<http://www.un.org/webcast/SE2008.html>>
- United Nations General Assembly (UNGA) (2007). *Sixty-first General Assembly Plenary, 107th & 108th Meetings (AM & PM): General Assembly Adopts Declaration on the Rights of Indigenous Peoples; ‘Major Step Forward’ Towards Human Rights for All, Says President*. Department of Public Information, 13 September. Retrieved 7 June 2009, <<http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>>
- (2008a). *Sixty-third General Assembly Plenary, 70th & 71st Meetings (AM & PM): General Assembly Adopts 52 Resolutions, 6 Decisions Recommended by Third Committee on Wide Range of Human Rights, Social and Humanitarian Issues*. Department of Public Information, 18 December. Retrieved 22 April 2009, <<http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>>
- (2008b). *General Assembly 70th & 71st Plenary Meeting, Morning Session* [webcast]. UN Webcast Archives, General Assembly, 18 December. Retrieved 11 February 2009, <<http://www.un.org/webcast/ga2008.html>>
- United Nations Human Rights Committee (UNHRC) (1982). *Hertzberg et al v. Finland: Communication No. 61/1979, UN Doc CCPR/C/15/D/61/1979*. Office of the United Nations High Commission for Human Rights. Retrieved 30 March 2009, <<http://www.unhchr.ch/tbs/doc.nsf/0/23a5d17c91636ac3c1256ab50030c76b?OpenDocument>>
- (1994). *Toonen v Australia: Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992*. Office of the United Nations High Commission for Human Rights. Retrieved 30 March 2009, <<http://www.unhchr.ch/tbs/doc.nsf/0/d22a00bcd1320c9c80256724005e60d5?OpenDocument>>
- (2002). *Joslin et al v New Zealand: Communication No. 902/1999, UN Doc CCPR/C/75/D/902/1999*. Office of the United Nations High Commission for Human Rights. Retrieved 30 March 2009, <<http://daccessdds.un.org/doc/UNDOC/DER/G02/441/12/PDF/G0244112.pdf?OpenElement>>
- (2003). *Young v Australia: Communication No. 941/2000, UN Doc CCPR/C/78/D/941/2000*. Office of the United Nations High Commission for Human Rights. Retrieved 30 March 2009, <<http://www.unhchr.ch/tbs/doc.nsf/0/3c839cb2ae3bef6fc1256dac002b3034?OpenDocument>>
- (2007). *X v. Colombia: Communication No. 1361/2005, UN Doc*

- CCPR/C/89/D/1361/2005. Office of the United Nations High Commission for Human Rights. Retrieved 30 March 2009, <<http://www.unhchr.ch/tbs/doc.nsf/0/51537efd406147c3c125730600464373?Opendocument>>
- United States Mission to the United Nations (USUN) (2006). *Statement by H. E. Ambassador Rosemary Banks, On Behalf of Australia, New Zealand and the United States, on Item 64(a) The Declaration on the Rights of the Indigenous Peoples, in the Third Committee of the 61st General Assembly*. USUN Office of Press and Public Diplomacy, 16 October. Retrieved 7 June 2009, <http://www.usunnewyork.usmission.gov/press_releases/20061016_294.html>
- Waites, M. (2009). "Critique of 'Sexual Orientation' and 'Gender Identity' in Human Rights Discourse: Global Queer Politics Beyond the Yogyakarta Principles". *Contemporary Politics*, vol. 15, iss. 1, pp. 137-56.
- Walker, K. (2000). "Evolving Human Rights Norms Around Sexuality". *ILSA Journal of International & Comparative Law*, vol. 6, pp. 343-53.
- Willett, G. (2000). "Liberalism and its Limits". In *Living Out Loud: A History of Gay and Lesbian Activism in Australia* (pp. 19-30). St Leonards: Allen & Unwin.
- World Association for Sexual Health (WAS). *Universal Declaration of Sexual Rights*. Retrieved 29 April 2009, <http://www.worldsexology.org/about_sexualrights.asp>
- World Health Organisation (WHO) (2007). *International Statistical Classification of Diseases and Related Health Problems*. 10th edn. Retrieved 19 April 2009, <<http://www.who.int/classifications/apps/icd/icd10online/>>
- Yogyakarta Principles (2007). *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity. Retrieved 29 April 2009, <http://www.yogyakarta-principles.org/principles_en.pdf>