

# HUMAN RIGHTS COUNCIL

Study Guide for Zurich Model United Nations

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## SUBMISSION DEADLINE

Delegates are requested to submit a position paper  
A guide on how to write a position paper is available on

<http://zumun.ch/preparation/>

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Saturday 29th of April 2017

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## YOUR CHAIRS

Dear Delegates,

we hope that this Study Guide will be helpful for your preparation for our upcoming simulation of the United Nations Human Rights Council at ZuMUN 2017. While it serves as a sound basis for your research, we strongly encourage you to go beyond it in preparing your country's position as researching and knowing your country's particularities (policy preferences, voting behavior etc.) will be essential for your participation.

Please do not hesitate to get in touch with us if you have any questions regarding this matter: [hrc@zumun.ch](mailto:hrc@zumun.ch)

We are looking forward to meeting you and wish you good luck with your preparation!

Livija & Corentin



Livija Marko-Wieser

Livija is a final-year International Relations undergraduate student in Ljubljana and a member of MUN Slovenia Club. Having discovered the wondrous world of MUNs just a little under two years ago, this will be her third time chairing the often overlooked, but essential Human Rights Council. Besides trying to find more time for her recently discovered passion, climbing, she enjoys studying languages, travelling and buying way more books than she will ever read in her lifetime. Livija is currently a trainee at the European Parliament Information Office in Slovenia and aspires to work in the field of human rights and migration.



Corentin Pfister

Corentin joined the ETH MUN team somehow by chance as soon as he started his BSc in mechanical engineering in the spring semester 2015. However he becomes more and more enthusiastic for Model United Nations and has developed ever since a growing interest for diplomacy and international politics. Corentin attended last year ZuMUN as a delegate and was part of the ETH delegation to OxiMUN. This year at ZuMUN he is looking for a new challenge as a chair of the HRC. In his free time Corentin enjoys meeting up with friends and doing all kind of sports, and in particular fencing or skiing.

## INTRODUCTION TO THE HUMAN RIGHTS COUNCIL

The **United Nations Human Rights Council** (henceforth UN HRC) is an intergovernmental body within the United Nations system and one of the key bodies responsible for strengthening the **promotion and protection of human rights** around the globe and for **addressing situations of human rights violations**. It has the ability to discuss all human rights issues and situations that require its attention and make recommendations on them. It meets at the UN Office in Geneva. The Council was established by the UN General Assembly (UN GA) on 15 March 2006 by Resolution 60/251 and as such replaced the UN Commission on Human Rights. All 47 Member States are elected by the UN GA for a term of three years. The UN GA takes into consideration the promotion and protection of human rights in those countries, as well as their voluntary pledges. It is not possible for a country to be represented in the Council more than two consecutive terms.

There are **five regional groups in the UN HRC**, each of which has a certain number of seats in the committee:

1. African States (13 seats)
2. Asia-Pacific States (13 seats)
3. Latin American and Caribbean States (8 seats)
4. Western European and other States (7 seats)
5. Eastern European States (6 seats)

The UN HRC uses various mechanisms such as the Universal Periodic Review, the Advisory Committee - considered the Council's "think tank" - and the Complaint Procedure which allows individuals and organizations to bring human rights violations to the attention of the Council. It has special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

Provided with a comprehensive mandate, the UN HRC "shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind in a fair and equal manner". Besides that, it "should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon" (UN GA 2006, art. 3). **This means that the work of the UN HRC is largely of advisory nature.** Its resolutions could be called firm suggestions to the UN Member States since it is ultimately up to the countries' governments to adopt legislation in line with said recommendations.

## TOPIC A: FREEDOM OF SPEECH IN CYBERSPACE

Adapted from: J. Mensah, and C. Rytsakhu, *“Human Rights Council (HRC)”*, Study Guide, HRC ZuMUN’15, (Zurich Model United Nations, 2015).

### Introduction

In today’s age of technology, the advent of the Internet and cyberspace raises crucial and complicated questions regarding human rights. The growing controversy surrounding freedom of speech in cyberspace has caused the international community to begin to examine the issue and call for action. The existence of cyberspace has given freedom of speech an entirely new platform and context. The Internet has made it significantly more realistic for individuals to share information with the world and has become the most commonly used form of communication to this day. As a result, the need to establish a set of rules that both protect individuals’ freedom of speech in cyberspace and provide limitations and regulations that ensure control and preservation of safety has become apparent.

It is widely accepted throughout the international community that the freedom of expression is a fundamental civil liberty of all human beings. Yet, when it comes to cyberspace, this basic liberty must be carefully and fully assessed, as it can lead to a number of dangers and issues. In particular, problems pertaining to national security (i.e. terrorism), children, pornography, slander, and obscenity can arise. These threats demonstrate the necessity of the international community to find a solution that will safeguard freedom of expression, while minimizing the threats of cyberspace. Hence, the debate about freedom of speech in cyberspace is dominated by the question to what extent governments can control the information on the Internet that its citizens have access to; as a multi-faceted issue, it is crucial that government censorship be examined carefully.

The purpose of this committee is to devise a definition of freedom of speech - with an emphasis on cyberspace - and to recommend to Member States how they can efficiently tackle the abovementioned significant threats. This committee will need to work comprehensively to find a solution which will balance freedom and safety. In approaching this topic, each delegate should start by considering certain key questions. What content is acceptable or unacceptable in cyberspace? How do existing restrictions on free speech translate to cyberspace? What can the international community do in order to protect individuals in all countries from punishment and power abuse received for stating opinions publicly or online? Do (or to what extent should) governments have the authority to censor and control the information of its citizens? How will it be determined as to what is dangerous or offensive information? All in all, this background guide is not intended to advocate for any position regarding freedom of speech in cyberspace. It is up to the delegates, and their respective country’s position, to reach a position supported by evidence that will enable them to argue their stance in our committee.

## History

The global information technology infrastructure has grown exponentially in the past few years. At present, it is estimated that there are at least 2.8 billion Internet users around the world,<sup>1</sup> and thus it is more pertinent for a comprehensive set of regulations for the benefits of cyberspace to be truly enjoyed. Because each nation has its own interests, in addition to the interests of the private sector and the society, the United Nations is the most important organization in providing a neutral forum for all sectors to work and negotiate legislation regarding freedom of speech in cyberspace.

In its first session in 1946, the United Nations General Assembly (UN GA) stated in resolution A/RES/59 that “freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.”<sup>2</sup> Article 19 of the Universal Declaration of Human Rights itself states that everyone has the right to freedom of expression in all types of media.<sup>3</sup> Other international documents such as the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the African Charter on Human and Peoples Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention, or ECHR) have similarly pointed out the importance of freedom of expression.

Furthermore, there have been several attempts to address this issue although it has been difficult thus far due to the dual nature of the Internet. The Internet empowers freedom of expression as it provides people with a new way to seek and share information; however, this freedom has also raised concerns and the need for content regulation to prevent minors from accessing content that may be potentially harmful.

The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (henceforth Special Rapporteur) gives an explanation of benefits of the internet and promotes its use by stating that, “[by] vastly expanding the capacity of individuals to enjoy their right to freedom of opinion and expression, which is an ‘enabler’ of other human rights, the Internet boosts economic, social and political development, and contributes to the progress of humankind as a whole.”<sup>4</sup> Ideally, democratic governments aim to embody these freedoms in order to be representative of the people they govern. An extremely important aspect of this logic is how freedom of speech is built into the rationale of self-determination. Several aspects of the Universal Declaration of Human Rights ensure that freedom of speech is seen as vital part of each individual’s existence.

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<sup>1</sup> World Internet Users Statistics and 2014 World Population Stats. World Internet Users Statistics and 2014 World Population Stats. Web. 27 Feb 2015.

<sup>2</sup> Jørgensen, Rikke F. "Internet and Freedom of Expression." (n.d.): n. pag. International Federation of Library Associations. RAOUL WALLENBERG INSTITUTE. Web. 27 Feb 2015.

<sup>3</sup> "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights." UN News Center. Web. 27 Feb 2015.

<sup>4</sup> "Freedom of Expression and the Internet." Australian Human Rights Commission. Web. 27 Feb 2015.

This document also reinforces that even though these liberties are important in respect to political views and acknowledgement; its scope is much larger than that. It essentially deems “every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20.”<sup>5</sup>

Throughout the years, several measures to limit the freedom of speech and censor certain online content have come up; even though some of them can be considered legitimate, the question is whether or not it is clear enough to the public. An example of such limitations can be examined in several national laws; the reasons for limiting the public’s access to the Internet include laws on sedition; national security; telecommunications; racial hatred; copyright; defamation; perjury; contempt of court fraud; privacy, and censorship in classification and broadcasting.<sup>6</sup> Many controls are sometimes concealed from the public, since certain blockage may be considered necessary by a government, but may be invalidated if it is not carefully reviewed by the courts or on a case-by-case basis.

Article 10 of the aforementioned European Convention, signed in 1950, mentions the protection of several freedoms including the freedom to hold opinions and the freedom to impart and receive information and ideas.<sup>7</sup> This implies that citizens have the right to distribute and seek information through all possible lawful sources. Thus, a restriction of the means in which information is sought and imparted suggests that there is a restriction on the freedom of expression. Additionally, the article uses the phrase “regardless of frontiers” which indicates that the state must allow information to be imparted and received beyond the frontiers of the country. Article 10 of the ECHR thus generally guarantees individuals’ freedom of expression and has been implemented by the European Court of Justice (ECJ) effectively. However, the ECJ has also stated that the exceptions to freedom of speech must be interpreted carefully and that any restrictions such as the protection of public interest (relating to national security, public safety, and others), the protection of other individual rights, and the “necessity of maintaining authority and impartiality of the judiciary” should be established convincingly. However, each state defines on its own what online content endangers national security.

The Council of Europe’s (CoE) *Declaration on the Freedom of Expression and Information* from 1982 also addresses this issue and states that the “continued development of information and communication technology should serve to further that right, regardless of frontiers, to express, to seek, to receive and to impart information and ideas, whatever their

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<sup>5</sup> "Council of Europe - ETS No. 005 - Convention for the Protection of Human Rights and Fundamental Freedoms." Council of Europe - ETS No. 005 - Convention for the Protection of Human Rights and Fundamental Freedoms. Web. 27 Feb 2015.

<sup>6</sup> "Freedom of Expression and the Internet." Australian Human Rights Commission. Web. 27 Feb 2015.

<sup>7</sup> "Council of Europe - ETS No. 005 - Convention for the Protection of Human Rights and Fundamental Freedoms." Council of Europe - ETS No. 005 - Convention for the Protection of Human Rights and Fundamental Freedoms. Web. 27 Feb 2015.

source.<sup>8</sup> Member states of the CoE have agreed to objectives such as the absence of censorship or any arbitrary controls on participants in the transmission and dissemination of information as well as the pursuit in the public sector of an open information policy which will enhance people's understanding of political, social, economic, and cultural matters. In turn, they will thus also be able to disseminate all kinds of information freely. The CoE member states have also agreed to promote the free flow of information and expand the scope of freedom of expression and information.

Furthermore, in 1999, the United Nations Educational, Scientific and Cultural Organization (UNESCO) also addressed the issue of freedom of expression and the Internet in a draft called *Cyberspace Law*, which outlines principles to be promoted by the UNESCO.<sup>9</sup> Two key principles are included in this draft, one on free expression and another on access to information to promote free expression and recommend public bodies to be responsible in making public information that is accurate and timely widely available. Additionally, an ethics principle is outlined whereby states and users are encouraged to promote efforts in order to develop ethical guidelines for participation in the cyberspace environment. Having organized workshops with the International Telecommunication Union about these subjects, UNESCO also published a standard-setting report on the subject of Internet freedom and law.

Although both of the above organizations (CoE and UNESCO) do not have true legislative authority, both point to the international political focus and awareness on cyberspace and underline important issues that need to be touched upon in the drafting of a legal framework regarding freedom of speech

Depending on their political ideology, many countries will be more hesitant to allow for complete freedom of speech in the cyberspace. Although even liberal governments restrict certain aspects of cyberspace such as copyright infringements, distribution of hate propaganda, and the sexual exploitation of children, authoritarian governments create further limitations. After the political military coup that occurred in 2006 in Thailand, for example, the government in Bangkok enacted and enforced many laws preventing open political discussion.<sup>10</sup> Thailand slowly developed into such a regime that the government "sought to establish wider controls on 'information security,' as well as covert and offensive-minded tactics."<sup>11</sup> The first measure took place in 2007, in which the Computer-Related Offences Commission Act, or Computer Crimes Act (CCA), "provided state authorities with absolute powers in the surveillance, censorship, and control of Thai communication flows on the In-

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<sup>8</sup> "Council of Europe - ETS No. 132 - Convention on Transfrontier Television." Council of Europe – ETS No. 132 - Convention on Transfrontier Television. Web. 27 Feb 2015.

<sup>9</sup> "The International Dimensions of Cyberspace Law: UNESCO Culture Sector." The International Dimensions of Cyberspace Law: UNESCO Culture Sector. N.p., n.d. Web. 27 Feb 2015.

<sup>10</sup> "Thailand's Struggle for Freedom of Expression in Cyberspace." International Relations. Web. 27 Feb 2015.

<sup>11</sup> *ibid.*

ternet."<sup>12</sup> These historical precedents continue to influence authoritarian governments, such as North Korea and China.

However, as technology advances and increasingly facilitates access to information, the methods to censor and limit people's access to certain information are also increasing. There are a lot of ways to infringe on people's freedom of speech without explicitly saying so. Some of these methods include website blockage, the continuous control of filtering certain texts and posts on social media websites, using legal provisions in order to arrest certain bloggers and journalists as a means to incite fear in the general public and much more. These tactics have enabled censorship to increase, as many sources responsible for such filtering would agree with. This phenomenon is occurring worldwide and "the ways and means of blocking political discussion, religious freedom, and reports of institutional corruption are getting more invidious, from China to the Middle East."<sup>13</sup>

Most recently, in 2012, the UN HRC adopted its first resolution to protect the free speech of individuals on the Internet.<sup>14</sup> Although China and Cuba expressed reservations, they approved the resolution. The resolution evokes Article 19 of the Universal Declaration of Human Rights and affirms that the rights - particularly freedom of expression - people have offline are also applicable online regardless of frontiers. It recognizes the Internet as a driving force in development processes, while simultaneously indicating that the Council will continue to consider human rights in the context of the Internet and other technologies.

From the many events like the Arab Spring to the various Occupy movements in the United States, it can be seen that the freedom of expression in cyberspace has a great impact on what will shape our future. At the same time, an increasing number of states are using the Internet to spy on people, be it through journalists or citizens, in order to prosecute them and censor information published online.<sup>15</sup> It is thus important to set standards, monitor, and promote activities of international and non-governmental organizations, and to set regulations that ensure the safety of people but at the same time ensure freedom expression for all.

## Past UN Action

In considering past UN and international actions pertaining to the freedom of speech, it is important to keep in mind the resolutions which were written and are widely accepted throughout the world. Article 19 of the Universal Declaration of Human Rights states that "everyone has the right to freedom of opinion and expression; this right includes freedom to

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<sup>12</sup> *ibid.*

<sup>13</sup> Quain, John R. "Special Report: Censorship in Cyberspace." Fox News. FOX News Network, 13 Feb. 2013. Web. 27 Feb 2015.

<sup>14</sup> "U.N. Human Rights Council: First Resolution on Internet Free Speech." Global Legal Monitor: Web. 27 Feb 2015.

<sup>15</sup> "Council of Europe." Freedom of Expression and the Internet. Web. 27 Feb 2015.

hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>16</sup> Based on and much like the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) demonstrates a very similar concept. However, it goes a step further; it also mentions the need for establishing certain restrictions and limitations, such as not to violate the rights of others or preserving national security and public order.<sup>17</sup> This clause gave individual governments a certain flexibility to censor free speech. It is essential to take declarations and resolutions like the ICCPR into account when discussing the freedom of speech in cyberspace and how basic inalienable rights play a role in this new age of technology.<sup>18</sup> In addition, it is vital to bear in mind that at the time at which the Declaration on Human Rights was composed, the Internet did not exist, and therefore, can be seen as not applicable in the context of cyberspace.

With the rise in computer and Internet usage the United Nations and the international community has felt the need to devote efforts to this development. In December of 2003, the World Summit on the Information Society adopted the Geneva Declaration of Principles, which underscores the importance of Article 19 of the Universal Declaration of Human Rights as it applies to cyberspace.<sup>19</sup> The document states the following: “We support the activities of the United Nations to prevent the potential use of ICTs for purposes that are inconsistent with the objectives of maintaining international stability and security, and may adversely affect the integrity of the infrastructure within States, to the detriment of their security. It is necessary to prevent the use of information resources and technologies for criminal and terrorist purposes, while respecting human rights.”<sup>20</sup>

In October and November of 1997, the twenty-ninth session of the UNESCO General Conference took place in Paris, at which time the need to form an international treaty on cyberspace was apparent. This conference resulted in producing a report on, “International instrument on the establishment of a legal framework relating to cyberspace and of a recommendation on the preservation of a balanced use of languages in cyberspace.”<sup>21</sup>

Another institution that was founded for reasons centered on cyberspace is the Open Net Initiative. The organization consists of several collaborating partners including the Munk

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<sup>16</sup> "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights." *UN News Center*. UN, n.d. Web. 27 Feb 2015.

<sup>17</sup> "International Covenant on Civil and Political Rights." *International Covenant on Civil and Political Rights*. N.p., n.d. Web. 27 Feb 2015.

<sup>18</sup> *ibid.*

<sup>19</sup> "World Summit on the Information Society." *World Summit on the Information Society*. N.p., n.d. Web. 27 Feb 2015. <http://www.itu.int/wsis/index.html>.

<sup>20</sup> "WSIS: Declaration of Principles." *WSIS: Declaration of Principles*. N.p., n.d. Web. 27 Feb 2015.

<sup>21</sup> Records of the General Conference, Twenty-ninth Session, Paris, 21 October to 12 November 1997. Paris: Unesco, 1998. Web. 27 Feb 2015.

School of Global Affairs, University of Toronto; the Berkman Center for the Internet & Society at Harvard University; and the SecDev Group based in Ottawa. The organization works primarily “to investigate, expose and analyze Internet filtering and surveillance practices in a credible and non-partisan fashion. [It] intends to uncover the potential pitfalls and unintended consequences of these practices, and thus help to inform better public policy and advocacy work.”<sup>22</sup>

Lastly, in July of 2012, the UN HRC Resolution unanimously adopted resolution L13, the first UN resolution on human rights in cyberspace. Resolution L13 or the Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet serves to protect individuals’ freedom of speech on the internet.<sup>23</sup>

## Current Status

As new technologies like the internet have transformed and revolutionized the way people live, governments have had to continuously revise and reshape their nations’ legislation accordingly. For example, with respect to Article 19 of the International Covenant on Civil and Political Rights, there are two conditions that are used to calculate what aspects of freedom of expression are protected under international law. The first stipulates that national legislation, along with international law, must establish comprehensive standards, which every person in that population has access to. The second asserts that the freedom of expression can only be limited when it serves to protect the “rights or reputations of others” and “for the protection of national security or of public order, or of public health or morals.”<sup>24</sup>

While international laws and regulations that concern freedom of expression in cyberspace are already in place, every nation has its own understanding of the best way to approach this topic. Many states feel strongly that an unrestricted and unchecked freedom of speech could result in causing several serious problems. Moreover, a number of nations take the position that it is best for the country, and thereby for its citizens, to censor, regulate, and even suppress users who attempt to communicate and transmit information on the Internet.

## Conclusion

Cyberspace is an ever-growing, complex entity that is shaping the political and social world. Without clear borders and boundaries, information and opinion has the freedom to reach virtually anywhere. Naturally, this raises a large number of questions regarding human rights and how they pertain to the use of the internet. Whether it is legality, content restriction, or general censorship, there are many points to consider.

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<sup>22</sup> "About ONI." OpenNet Initiative. N.p., n.d. Web. 27 Feb 2015. <https://opennet.net/about-oni>.

<sup>23</sup> "U.N. Human Rights Council: First Resolution on Internet Free Speech." Global Legal Monitor:. N.p., n.d. Web. 27 Feb 2015. [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403231\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403231_text).

<sup>24</sup> "International Covenant on Civil and Political Rights." International Covenant on Civil and Political Rights. Web. 27 Feb 2015. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

The United Nations Human Rights Council must work to pass an effective resolution that will clearly outline the legality of internet regulation, and the access to information for the average user.

Beyond political perspectives, human rights must take a central role in debate. Cyberspace is having a grand effect across the world, which is why the committee must understand that their decisions could have an extremely impactful, lasting effect on the world at large.

### Points the Resolution should address

At the moment, there are no universal laws governing the use of the Internet, each nation is responsible for regulating or deregulating cyberspace. Thus far, individual nations have taken it upon themselves to classify certain content in cyberspace as acceptable or unacceptable. The UN HRC should work to find solution on what content can and should be edited before it reaches the public. Would it be more effective for each individual nation to implement their own laws in regard to freedom of speech in cyberspace or should it be more of a collaborative endeavor between nations? Should this body create an external organization with the sole purpose of aiding nations with this?

Should governments have the authority to censor and control the information of its citizens? Is it within the rights of the government to be able to control the content on the Internet? Does it violate the covenants to freedom of speech that have previously been established by the United Nations? If the government should have the authority to censor the Internet under what circumstances is this acceptable? Will censorship restrict the rights of citizens?

### Further Research

Freedom of speech is becoming an increasingly complex concept as today's modern technologies and platforms offer numerous possibilities to state an opinion. Delegates are expected to consider multiple aspects of today's technologies while working out solutions.

How do existing restrictions on free speech translate to cyberspace? Is it feasible to regulate the Internet? The Internet is expanding with millions of users daily. By the end of 2016, global Internet traffic reached 1.1 zettabytes per year<sup>25</sup> How would this amount of data be regulated or monitored?

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<sup>25</sup> One zettabyte is the equivalent of 36,000 years of high-definition video, which, in turn, is the equivalent of streaming Netflix's entire catalog 3,177 times.  
Pappas. 2016. <http://www.livescience.com/54094-how-big-is-the-internet.html>.

## TOPIC B: LGBT RIGHTS

Adapted from: S. J. Schlosser and N. Nickerson, *“Human Rights Council”*, Study Guide, HRC ZuMUN’16, (Zurich Model United Nations, 2016).

### Introduction

Non-discrimination is a core human rights principle embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and other core human rights treaties.

However, people experience violence and discrimination worldwide because of their sexual orientation or gender identity. In many cases, even the perception of homosexuality or transgender identity puts lesbian, gay, bisexual, transgender (LGBT) people<sup>26</sup> at risk as homophobia - the dislike, hatred or fear of homosexual people - and transphobia - the dislike, hatred or fear of transgender people - manifest themselves in many UN Member States’ legislations.

Currently, same-sex relationships are illegal in over 70 states and punishable by death in seven states worldwide.

### History

Documented forms of homosexuality date back to ancient Egyptian and Greek societies, and attitudes towards homosexuality have always been controversial. The rise of Christianity in the early First Century AD led to greater condemnation of homosexuality, followed by differing attitudes throughout the later centuries.

It was not until after World War II that institutions were created on behalf of the LGBT community. LGBT movements during this time took place primarily in the United States of America and Europe. Greater awareness of homosexuality as a product of post-World War II globalization brought to light “political demands for fair treatment in mental health, public policy, and employment”.

The 1960s Civil Rights Movement in the US marked a turning point with its Stonewall Revolution, during which homosexuals resisted police raids in New York City. This period was followed by the 1970s gay liberation movement, during which groups organized advocacy organizations and planned public demonstrations. In the 1990s and 2000s overall yielded the greatest advancement for LGBT people, but inequality between groups based upon sexual orientation continues.

The issue of LGBT rights has never been addressed by the UN until December 2008, when a Dutch/French-initiated, European Union-backed statement supporting LGBT rights was presented to the United Nations General Assembly (UN GA). That statement was sponsored

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<sup>26</sup> Commonly, LGBT people are also referred to as LGBTQ (lesbian, gay, bisexual, transgender and queer), however for the purposes of this study guide, we will be using the abbreviation used by the UN.



staff, and I call on all members of our UN family to unite in rejecting homophobia as discrimination that can never be tolerated at our workplace.”<sup>27</sup>

## Universality, Equality and Non-Discrimination

The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration Human Rights, which states that “all human beings are born free and equal in dignity and rights”. All people, including LGBT persons, are entitled to enjoy the protections provided for by international human rights law, including the rights to life, security of the person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

Non-discrimination clauses in international documents typically require that rights be applicable to everyone without discrimination, and that States ensure that their laws, policies and programs are not discriminatory in impact. For example, under article 2 of the International Covenant on Civil and Political Rights (ICCPR), each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in ICCPR, without distinction of any kind such as race, color, sex, language, etc. It can therefore be argued that every individual should be protected from torture and other cruel, inhuman or degrading treatment and arbitrary detention and everyone’s rights of freedom of expression, association and assembly have to be ensured.

One problematic issue that frequently arises is the fact that the specific grounds of discrimination referred to in ICCPR and other human rights treaties are not specifically defined, instead the definition is left open. Sexual orientation and gender identity, like disability, age and health status, are not explicitly mentioned among the grounds listed in ICCPR or the International Covenant on Economic, Social and Cultural Rights (ICESR). The right to non-discrimination as well as all other abovementioned rights determined in ICCPR and ICESR, but also the Universal Declaration of Human Rights can thus be implicitly applied to LGBT people, however since their protection is inferred from the general principle of universality, it is often defied in countries unfavorable to those communities, defending their policies with the argument that the treaties they have signed and/or ratified do not explicitly require them to ensure the rights of LGBT people as well. However, in 1994, the Human Rights Committee - a body of independent experts that monitors the implementation of ICCPR by its State parties with the Human Rights Council - held in the individual communication *Toonen v. Australia* that “Member States are obligated to protect individuals from discrimination on the basis of their sexual orientation and that the ‘reference to sex’ in Article 2 (1) of ICCPR is to be taken as including sexual orientation.”<sup>28</sup> Similar views were expressed in general com-

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<sup>27</sup> The Atlantic. 7 July 2014. <https://www.theatlantic.com/international/archive/2014/07/united-nations-recognizes-staffers-same-sex-marriages/374054/>.

<sup>28</sup> European Commission. 2014. Combating Sexual Orientation Discrimination in the European Union. p. 10; [http://ec.europa.eu/justice/discrimination/files/sexual\\_orientation\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/sexual_orientation_en.pdf).

ments of the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.

## The Persecution of LGBT People

Despite the fact that most Member States do recognize untraditional sexual orientation and gender identity, anti LGBT legislation remains a significant challenge. United Nations mechanisms such as the Universal Periodic Review of the Human Rights Council have been documenting such violations for close to two decades. As of February 2014, laws in Sudan, Iran, Mauritania, Saudi Arabia, Yemen and parts of Nigeria and Somalia maintain that homosexuality is a crime punishable by death. An additional 70 nations enforce legislations resulting in the imprisonment of members of the LGBT community. It is sometimes even written in the constitution that being LGBT is illegal. An important consideration is that in many nations such as Nigeria, simply being perceived as homosexual warrants arrest and other forms of discrimination. In some countries, even LGBT activism and statements favoring LGBT rights are prohibited. Another important point to take into consideration is that transgender people are often more persecuted than gay and lesbian people. In other countries, only male homosexual relationships are illegal. In India even if same-sex relationships are legal, same-sex sexual activity is prohibited and punishable by law. Unlike most countries, however, India has a much more liberal policy regarding transgender rights, recognizes their needs and some states even provide Sex Reassignment Surgery for free.

## Discrimination, social ostracism and hate crimes

Discrimination at an institutional or social level remains a problem in most countries, regardless of its hostile or protective legislation of LGBT people. Discrimination in the workplace is prominent and especially the treatment of transgender employees is of particular concern, as a 2011 survey<sup>29</sup> has shown that the US transgender community experiences greater harassment than the homo- and bisexual community in the professional environment. Pay, hiring, or promotion inequality as well as harassment are aspects of this discrimination.

Discrimination outside the workplace can range from denied access to public goods and services to arbitrarily raised prices. According to the study mentioned above, the transgender community may struggle to find affordable housing and is often confronted with refusal from service at restaurants, public transportation and medical attention. Many Member States have no legislation in place to prevent such harassment and discrimination. Even if there is preventive legislation, much of it remains ineffective, as much of this occurs at the individual level and discrimination is often difficult to prove.

An additional and equally damaging product of homophobia and transphobia is social ostracism of LGBT people. This rejection, which can begin at an early age, pervades all as-

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<sup>29</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis. 2011. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey ([http://endtransdiscrimination.org/PDFs/NTDS\\_Report.pdf](http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf))

pects of a community including school, social media, and entertainment. It might impact young people's physical and psychological development. Research conducted by Concordia University suggests that "the stress of being rejected or victimized because of sexual orientation may disrupt hormonal responses in lesbians, gays and bisexuals" and contribute to the high suicide and depression rates in young LGBT people. The American Foundation for Suicide Prevention found that among their respondents, 41 percent of transgender people have attempted to commit suicide. This vastly exceeds the 4.6 percent of the overall US population who report a lifetime suicide attempt, and is also higher than the 10-20 percent of lesbian, gay and bisexual adults who reported attempting suicide.<sup>30</sup>

Not only do LGBT people face social ostracism and employment discrimination, but they also suffer from violence known as hate crimes. Hate crimes, which include harassment, assault, and even grievous bodily harm, occur with alarming frequency in all regions of the world. The issue that hate crimes are grossly underreported is also important to consider. Several Member States have launched campaigns aiming to combat hate crimes, such as for example UK Government with its report<sup>31</sup> "Challenge It, Report It, Stop It." It outlines an approach that addresses preventive measures, increased reporting and availability of support services, and more effective management of cases.

The Trans Murder Monitoring project, which collects reports of murders of transgender persons in all regions. In its 2015 update reports a total of 1,731 cases of reported killings of transgender and gender-diverse people from January 1st, 2008 to December 31st, 2014. LGBT people are also among the victims of so-called honor killings. These are carried out by those who believe they have brought shame and dishonor on a family or community.

The Committee on the Elimination of Discrimination against Women also expressed grave concern about reported sexual offences committed against women on account of their sexual orientation. Allegations of lesbians being attacked, raped, forcibly impregnated and otherwise punished because of sexual orientation come from many regions.

## Measures taken by the UN

In a statement produced by the UN General Assembly on 18 December 2008, the UN formally recognized non-traditional sexual orientation and gender identity and declared its commitment to the protection of LGBT people following a letter from the Organization of American States. The UN GA further expressed its concern regarding human rights violations of the LGBT community and its intention to discuss LGBT equality in the future.

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<sup>30</sup> American Foundation for Suicide Prevention. 2014. Suicide Attempts among Transgender and Gender Non-Conforming Adults. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.

<sup>31</sup> UK government, minister for Equality: Challenge it, Report it, Stop it. 2012. The Government's Plan to Tackle Hate Crime ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97849/action-plan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf))

Resolution 17/19 on Human rights, sexual orientation and gender identity adopted by the Human Rights Council in June 2011 acknowledges the injustices inflicted upon the LGBT community and mentioned that a study on the current treatment of LGBT people should be presented in a future panel session. The United Nations High Commissioner for Human Rights produced this study (Report 19/41) in November 2011. It provides a comprehensive analysis of the experiences of LGBT people around the world and emphasizes the role of the Member States in protecting and ensuring human rights.<sup>32</sup>

In addition to the actions taken by the High Commissioner and the Human Rights Council, the United Nations is currently sponsoring Free & Equal, a campaign started in 2013 dedicated to public education for LGBT equality. The campaign “works to inform individuals of their human rights, identify and address human rights challenges, and assist governments in fulfilling their human rights obligations”<sup>33</sup> and is aimed at challenging LGBT discrimination. Celebrities work with the campaign to spread awareness through social media. Additionally, the Free & Equal Global Film Series encourages education about LGBT topics through “documentaries and narrative films that explore the lives of lesbian, gay, bisexual, transgender and intersex people in different parts of the world.”<sup>34</sup> This collection of films is a valuable tool to promote United Nations ideals, and screenings are available at UN offices around the world.

## Points the Resolution Should Address

1. How can the Human Rights Council take into account conflicting cultural norms while also ensuring the rights the rights LGBT people?
2. What measures can the Human Rights Council suggest in order to improve the standing of LGBT people in countries with unfavorable legislation? What good practices could be promoted on the international level?

## Further Research

- General Assembly resolution - Extrajudicial, summary or arbitrary executions **A/RES/57/214**: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/57/214](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/57/214)
- Human Rights Council resolution - Human rights, sexual orientation and gender identity (adopted 17 June 2011) - **A/HRC/RES/17/1**: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/17/19](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19)
- Report of the United Nations High Commissioner for Human Rights - Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity - **A/HRC/19/41**: [http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf)

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<sup>32</sup> cf. further readings.

<sup>33</sup> United Nations. Free & Equal: <https://www.unfe.org/en/about>.

<sup>34</sup> United Nations. Free & Equal Global Film Series: <https://www.unfe.org/en/global-film-series>.

- Human Rights Watch, LGBT Rights: <https://www.hrw.org/topic/lgbt-rights>
- 2015 Report TMM:  
[http://www.transrespect-transphobia.org/en\\_US/tvt-project/tmm-results/idahot-2015.htm](http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/idahot-2015.htm)