

# ADVANCING EQUALITY: A CONVENTION ON THE RIGHTS OF LGBTI PERSONS

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## A. INTRODUCTION

The respect and protection for LGBTI<sup>97</sup> rights have measurably improved over the last decade. States have taken monumental action to recognise marriage equality, implement anti-discrimination protections, defend the dignity of transgender persons, and more. The shift toward greater inclusion and acceptance of queer people in recent years is uplifting and a testament to the work done by national and international advocacy groups to create change. Additionally, the progress made by the United Nations (UN) thus far to protect LGBTI rights and document abuses is admirable. Nonetheless, “while the success of marriage-equality campaigns in North America, Europe, and elsewhere might suggest that further advances in LGBTQ rights are inevitable... empirical evidence of state-sponsored homophobia does not support this claim.”<sup>98</sup> There remains a substantial divide in LGBTI freedoms across world regions,<sup>99</sup> and it is no secret that the rise of inclusivity for the LGBTI community has, in turn, emboldened those in its opposition. The increased rates of intolerance and current gaps in international law necessitate that the UN take further action to better define and protect the rights of the LGBTI community.

## B. LGBTI RIGHTS AND INTERNATIONAL HUMAN RIGHTS LAW

### (1) The United Nations

#### (a) *Charter of the United Nations and the Twin Covenants*

To establish an analysis of the current state of LGBTI rights within international law, primary sources of law will be prioritised and supplemented by soft law sources. To begin, the UN Charter maintains the fundamental principle of human rights law in the Preamble by calling upon member states “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person ...”.<sup>100</sup> This stance is furthered by Article 55 of the Charter, that states *shall* “...promote: universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>101</sup> The

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<sup>97</sup> This research will use LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) in accordance with the United Nations and in tandem with ‘queer’ to discuss members of the LGBTI community.

<sup>98</sup> Robyn Linde, ‘A Seat at the Table: International LGBTQ Rights at the United Nations’ (E-International Relations, 26 June 2015) <<https://www.e-ir.info/2015/06/26/a-seat-at-the-table-international-lgbtq-rights-at-the-united-nations/>> accessed 24 November 2025.

<sup>99</sup> *ibid.*

<sup>100</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Preamble.

<sup>101</sup> *ibid.* art 55.

language of the Charter is essential, as it promotes the core principle of international human rights through binding documentation originally written in the Universal Declaration of Human Rights (UDHR); human rights are universal and must be respected at all times. In the spirit of the UDHR, two covenants arise: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These documents are the core of international human rights law. Each Covenant promotes the universality of human rights, enumerating that they are derived from the inherent dignity of every person and that states are required to respect, protect, and fulfil the rights found in each Covenant.

These documents outline rights and freedoms particularly important regarding LGBTI equality, such as the freedoms of expression and association, and the rights to privacy, equality, and non-discrimination. States are obliged, as parties to these Covenants, to take action to ensure that the rights of individuals or groups are fulfilled and to refrain from any action that may interfere with the fulfilment of any right. Together, these documents serve a key purpose as the “basis for the conclusion that the content and application of international human rights [does] not distinguish between human beings.”<sup>102</sup>

(b) *Resolutions and treaty body actions*

To address this disconnection, the United Nations Human Rights Council (HRC) has passed multiple resolutions that specifically address topics regarding sexual orientation, gender identity, and sex characteristics. The first of these, adopted in 2011, requested that the United Nations High Commissioner for Human Rights (UNHCR) “commission a study... documenting discriminatory law and practices and acts of violence against individuals based on their sexual orientation and gender identity.”<sup>103</sup> The study also considered how international human rights law might be used to end violence and rights violations against individuals based on their perceived characteristics.<sup>104</sup> Subsequent resolutions reiterate these sentiments by condemning instances of violence and discrimination and reaffirming state obligations to respect, protect, and fulfil basic human rights. The most recent, adopted in 2024, takes a step forward by mandating the UNHCR to also examine discriminatory laws and policies, their root causes, and best practices toward realising the fulfilment of human rights of intersex persons.<sup>105</sup> The United Nations General Assembly has also passed numerous resolutions that explicitly address “sexual orientation” or “gender identity,” including

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<sup>102</sup> Michael T Tiu Jr, ‘The Rainbow Flag among the Flag of Nations: Are LGBTQ Rights International Human Rights?’ (2020) 93 *Philippine Law Journal* 56, 68.

<sup>103</sup> Human Rights Council, ‘Human rights, sexual orientation and gender identity’ (17 June 2011) UN Doc A/HRC/RES/17/19.

<sup>104</sup> *ibid.*

<sup>105</sup> Human Rights Council, ‘Combating Discrimination, Violence and Harmful Practices against Intersex People’ (4 April 2024) UN Doc A/HRC/RES/55/14.

eleven resolutions on “extrajudicial, summary or arbitrary executions” that elaborate on the right to life for all.<sup>106</sup> As the conversation surrounding queer rights on the international stage has become increasingly more commonplace, the incorporation of “sexual orientation” and “gender identity” as terminology in international human rights mechanisms has been beneficial for ensuring awareness of these issues.

The Human Rights Committee (CCPR), other treaty bodies, and special procedures of the UN, have further issued decisions and recommendations that support LGBTI persons. Monumental cases, such as *Toonen v. Australia* (1994),<sup>107</sup> determined that laws in Tasmania criminalising sexual relations between men violated the ICCPR.<sup>108</sup> Since then, the HRC; the Committee on Economic, Social and Cultural Rights; the Committee on the Rights of the Child; the Committee Against Torture; the Committee on the Elimination of Discrimination Against Women; and others have all reaffirmed that the rights contained in their respective Conventions apply to all persons, regardless of their sexual orientation, gender identity, or sex characteristics.<sup>109</sup> General comments released by these committees regularly address state duties concerning non-discrimination provisions and state obligations to protect LGBTI individuals. Additionally, the HRC’s mechanism, the Universal Periodic Review (UPR), frequently engages with states on the topic of sexual orientation and gender identity and has called for the repeal of criminalisation laws in respective states.<sup>110</sup> In addition to these forms of soft law, state obligations regarding LGBTI persons are enumerated in many sources of customary international law, such as the UDHR. Further, bodies of legal and human rights experts, such as the International Commission of Jurists, have frequently reaffirmed the position that LGBTI rights are protected under current international human rights law.<sup>111</sup>

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<sup>106</sup> United Nations, ‘United Nations Resolutions on Sexual Orientation, Gender Identity and Sex Characteristics’ (Office of the High Commissioner for Human Rights, 2024) <<https://www.ohchr.org/en/sexual-orientation-and-gender-identity/united-nations-resolutions-sexual-orientation-gender-identity-and-sex-characteristics>> accessed 24 November 2025.

<sup>107</sup> *Toonen v. Australia*, Communication No 488/1992, UN Doc CCPR/C/50/D/488/1992 (31 March 1994).

<sup>108</sup> Ignacio Saiz, ‘Bracketing Sexuality: Human Rights and Sexual Orientation - A Decade of Development and Denial at the UN’ (2004) 7 *Health and Human Rights* 48, 49.

<sup>109</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law* (2nd edn, 2019) R/PUB/12/06/Rev.1 9-11.

<sup>110</sup> Melanie Bejzyk, ‘Criminalisation on the Basis of Sexual Orientation and Gender Identity: Reframing the Dominant Human Rights Discourse to Include Freedom from Torture and Inhuman and Degrading Treatment’ (2017) 29 *Canadian Journal of Women and the Law* 375, 386.

<sup>111</sup> International Commission of Jurists (ICJ), *Yogyakarta Principles – Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (March 2007)

<<https://www.refworld.org/legal/resolution/icjurists/2007/en/58135>> accessed 24 November 2025.

## **(2) Analysis**

While the foundations provided by the above sources are valuable in defending LGBTI rights, they are not sufficient to protect queer persons and their rights around the globe. LGBTI rights are included under the universality clause of human rights, which should guarantee their protection. Despite this, there is no universal respect and recognition of the mere existence of LGBTI rights. Only protecting these rights under the umbrella of universality does not address the unique challenges and harms experienced by queer persons, nor does it accurately provide protection and redress from harm. Furthermore, attempting to protect LGBTI rights in this way ignores the fact that queer persons are a vulnerable minority that lacks much-needed protection. International human rights law has made important strides in recognising particularly vulnerable groups such as women, children, migrants, and persons with disabilities. However, there is no singular piece of binding or non-binding instrument of law that explicitly recognises the right of LGBTI individuals to be free from discrimination and violence or one that designates the rights that LGBTI persons are entitled to.<sup>112</sup> Despite the plethora of treaty body sources that now recognise equal protection with respect to sexual orientation or gender identity, there are no primary or hard forms of law that include sexual or gender minorities of their own accord. Omitting these aspects of identity has created gaps in legal clarity and enforceability regarding LGBTI rights, perpetuates homophobic and discriminatory worldviews, and has proven ineffective under the status quo.

## **C. EXPLORING THE NEED FOR A NEW COVENANT**

### **(1) LGBTI Discrimination: Theoretical and Observable Phenomena**

The best way to demonstrate the necessity for a new covenant on LGBTI rights is to examine the many threats facing the LGBTI community that warrant their unique protection. To paint a complete picture of these threats, one must first discuss societal organisations and structures to understand how LGBTI persons are excluded from them. As social identity theorists explain, individuals within a society form groups “as a means of establishing social identity and purpose.”<sup>113</sup> Within these groups, tendencies to associate under

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<sup>112</sup> Francine D’Amico, ‘LGBT and (Dis)United Nations: Sexual and Gender Minorities, International Law and UN Politics’ in Manuela Lavinás Picq and Markus Thiel (eds), *Sexualities in World Politics: How LGBTQ Claims Shape International Relations* (Routledge 2015) 54.

<sup>113</sup> Chelsea Lee and Robert L Ostergard Jr, ‘Measuring Discrimination against LGBTQ People: A Cross-National Analysis’ (2017) 39 *Human Rights Quarterly* 37, 41.

“labels” create tension through the comparison of one group to another, which manifests into “preconceived stereotypes and distinctions between the in-group and out-group, a war of ‘us versus them.’”<sup>114</sup> Discrimination often arises when the in-group perceives the out-group as a threat, an instance of ‘othering’. This theory is predominant in comparing heterosexual and homosexual relationships because homosexual relationships represent “symbolic threats” to perceived social norms since they contradict “cultural, moral, and traditional belief systems.”<sup>115</sup> Internalised heteronormative structures form the basis for these “traditional” belief systems and are what drive rates of homophobia and opposition to LGBTI equality.<sup>116</sup> This belief system often manifests in political and legal frameworks as “state-sponsored homophobia.”<sup>117</sup> For the purposes of this argument, “homophobia” is considered “formally and informally institutionalised hatred that manifests in discriminatory policies at the national and societal levels.”<sup>118</sup> Many organisations globally, including the UN, recognise “state-sponsored homophobia as acts that have allowed the humiliation, intimidation, and violence toward [LGBTI] individuals to occur.”<sup>119</sup> This exists as the deliberate criminalisation of LGBTI sexual acts, banning LGBTI “propaganda”, or simply a state’s refusal to pass legislation that would outlaw discrimination against queer people. Whatever role that a given state plays in this, it only serves to significantly reinforce the labelling of the LGBTI community as “other.”<sup>120</sup>

## (2) Criminalisation and Discrimination

Principally, one must examine the data regarding the current rate of criminalisation and discriminatory laws globally. As of 2024, sixty-three jurisdictions still sanction the criminalisation of “private, consensual, same-sex sexual activity.”<sup>121</sup> Of these, twelve allow for the possibility of the death penalty for engaging in same-sex activities, and fourteen criminalise the expression of transgender people.<sup>122</sup> Beyond the criminalisation of LGBTI actions, nineteen states as of 2019, additionally maintain ‘morality’ or ‘homosexual propaganda’ laws that target and criminalise the promotion of particular values and condemn LGBTI persons as a class.<sup>123</sup> These laws have been created to “protect public morality,” but “rather than protect anyone, the laws prohibit the dissemination of information, promotion of same-sex sexual behaviour, and sharing of

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<sup>114</sup> *ibid* 41.

<sup>115</sup> *ibid* 42.

<sup>116</sup> Berta Hernández-Truyol, ‘LGBTI Transnational Law: Sex as Crime, Violence as Control’, in Donald P Haider-Markel (ed), *The Oxford Research Encyclopedia of LGBT Politics and Policy* (OUP 2021).

<sup>117</sup> Lee and Ostergard (n 17) 41.

<sup>118</sup> *ibid* 41.

<sup>119</sup> *ibid* 41.

<sup>120</sup> *ibid* 40.

<sup>121</sup> ‘Map of Jurisdictions that Criminalise LGBT People’ (Human Dignity Trust, 2024)

<<https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/>> accessed 24 November 2025.

<sup>122</sup> *ibid*.

<sup>123</sup> Hernández-Truyol (n 20) 8.

information about gender identity.”<sup>124</sup> The presence of discriminatory laws such as these, or the lack of explicit protection in states that are “more accepting” of LGBTI persons, results in measurable and concrete harm. These laws are considered violations of numerous rights, including rights to equality, non-discrimination, privacy, family life, and freedom of expression, among others.<sup>125</sup> Increasingly, awareness is growing of laws that criminalise LGBTI activity and of how the impact of these laws may amount to violations of the right to freedom from cruel, inhuman, or degrading treatment for queer individuals.<sup>126</sup> The role of state-sponsored homophobia is of pressing concern as it is widespread and growing. The next section will highlight the urgent need for greater clarity and protection in international law for LGBTI individuals considering these harmful laws.

Unfortunately, the complete impact of criminalisation and discrimination directed toward LGBTI individuals cannot be completely quantified:<sup>127</sup> “It’s extremely difficult to define the magnitude of the problem of LGBTIQI discrimination, not least because it is extremely difficult to identify the number of queer people in the world.”<sup>128</sup> Additionally, rates of crime, violence, and discrimination experienced by the LGBTI community are so frequent that instances of “everyday violence” go unreported.<sup>129</sup> Despite potential gaps in data, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Europe reported that 2022 was the most violent year for LGBTI people across Europe and Central Asia in the past decade.<sup>130</sup> In 2023, ILGA reported that only six of fifty-four reporting countries recorded no instances of hate crimes against queer individuals, with the majority of physical and verbal violence targeting transgender people.<sup>131</sup> The types of violence directed at LGBTI individuals range from acts of aggression such as hate speech or bullying, to sexual violence, murder, or “honour killings.”<sup>132</sup> Concerningly, discriminatory rhetoric is often used deliberately to incite homophobic and transphobic violence: “Such language is used by some political, community, and religious leaders to promote negative stereotypes, stir up prejudice, and harass particular individuals, especially during electoral periods, and during periods of political tension and armed conflict.”<sup>133</sup> Further, LGBTI individuals often experience abuse and mistreatment amounting to cruel and inhuman punishment, particularly in police custody, prisons, other

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<sup>124</sup> *ibid.*

<sup>125</sup> *ibid.*

<sup>126</sup> Bejzyk (n 14) 375-400.

<sup>127</sup> Hernández-Truyol (n 20) 13.

<sup>128</sup> Maksym Eristavi and Daniel Baer, ‘Recognizing the Rights of LGBTIQI People’ in Carla Koppell (ed), *Untapped Power: Leveraging Diversity and Inclusion for Conflict and Development* (OUP 2022) 156, 158.

<sup>129</sup> Hernández-Truyol (n 20) 13.

<sup>130</sup> ‘Deadliest Rise in Anti-LGBTI Violence in Over a Decade, Our Annual Report Shows’ (International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe, 20 Feb 2023) <<https://www.ilga-europe.org/press-release/deadliest-rise-anti-lgbti-violence-decade/>> accessed 24 November 2025.

<sup>131</sup> ‘Annual Review 2024’ (International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe, 29 Sep 2024) <<https://www.ilga-europe.org/?s=&view=grid&documenttype=all&orderresultsby=priority&categories=report>> accessed 24 November 2025.

<sup>132</sup> OHCHR (n 13) 15.

<sup>133</sup> *ibid.* 21.

places of detention, hospitals, and medical settings.<sup>134</sup> This mistreatment may take the form of physical and sexual violence, forced or degrading medical examinations, and solitary confinement.<sup>135</sup> In medical settings, individuals may be subjected to involuntary “conversion therapy,” forced sterilisation or gender reassignment surgery, and medically unnecessary surgery for intersex individuals.<sup>136</sup> The continuation of mistreatment against LGBTI individuals exemplifies how states persist in disregarding even the most fundamental human rights as they apply to LGBTI persons, despite clear prohibitions under international law.

For this reason, increased violations of so-called “non-derogable” human rights, such as the prohibition against torture and cruel or inhuman treatment, against queer people are particularly concerning. The Office of the United Nations High Commissioner for Human Rights (OHCHR) defines “non-derogable” rights as those that constitute “*jus-cogens* - a peremptory norm of international law that is binding on all states.”<sup>137</sup> As previously stated, LGBTI individuals are sometimes subjected to experiences that amount to torture or cruel and degrading treatment, often in places of detention or medical settings:

The Special Rapporteur on torture has emphasized that States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorises, explicitly or implicitly, prohibited acts to be performed with impunity.<sup>138</sup>

The Rapporteur has also noted that violations occur when states are complicit in any violence against the LGBTI community when discriminatory laws are implemented that “foster a climate in which such violence by both state and non-state actors is condoned and met with impunity.”<sup>139</sup> Demonstrated by the myriad of documentation reporting the infringements of the human rights of LGBTI persons discussed above, states are regularly in violation of these non-derogable rights through either direct action or the failure to take any action to protect the rights of the community.

These acts of state-sponsored homophobia or violence represent only part of the violations of core human rights and freedoms that LGBTI individuals regularly experience. The second edition of *Born Free and Equal*, published by the OHCHR, provides in-depth insight into the multitude of rights violations that

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<sup>134</sup> *ibid* 27.

<sup>135</sup> *ibid* 26-34.

<sup>136</sup> *ibid* 34-39.

<sup>137</sup> *ibid* 27.

<sup>138</sup> *ibid* 28.

<sup>139</sup> *ibid*.

occur due to a person's sexual orientation, gender identity, or sex characteristics as they relate to fundamental human rights. A direct result of criminalisation and discriminatory laws is the impediments that prevent LGBTI people from exercising their rights. These occur in relation to the rights to health, education, employment, housing, self-determination, and other fundamental rights. Furthermore, individuals experience barriers to fully engaging in meaningful aspects of society that do not exist for heterosexuals, such as access to justice and remedies, political participation, the right to family life, and recognition of relationships.<sup>140</sup> Additionally, the prevalence of "morality" laws discussed above prohibits or restricts the freedoms of expression, peaceful assembly, and association as they relate to subjects concerning LGBTI people.<sup>141</sup> This is by no means a comprehensive list of the rights violations experienced by queer people; however, it is necessary to illustrate how discrimination, violence, and ill-treatment negatively affect the daily life of all LGBTI people.

(a) *Criminalisation and discrimination in focus: the right to health*

To best demonstrate the inequalities affecting the LGBTI community, one may look to the right to health. This right encompasses the highest attainable standard of physical and mental health, autonomy over one's body and health, and freedom from interference, such as torture.<sup>142</sup> LGBTI people face discrimination in many areas related to medical care, such as accessing general health services and receiving necessary medical information. This results in health inequalities for both physical and mental health. In Europe, lesbian, gay, and bisexual people experience increased incidences of long-term health conditions that restrict daily activities.<sup>143</sup> LGB people are also at a higher risk of developing certain types of cancer at younger ages, and "there is a gap in high-quality international research on both the cancer burden, general health profile, and care needs of trans and intersex people."<sup>144</sup> Regarding mental health, LGBTI people generally experience increased rates of depression, anxiety, and suicide.<sup>145</sup> This is due in part to the concept of "othering", as LGBTI people experience "pressure to hide their sexuality or gender identity in order to appear respectable within their community."<sup>146</sup> Additionally, LGBT individuals are two to three times more likely to report enduring psychological and emotional issues, and one and a half times more likely to report suicide attempts, suicidal ideation, as well as depression and anxiety disorders compared to the general population.<sup>147</sup> Intersex

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<sup>140</sup> *ibid* 56-77.

<sup>141</sup> *ibid* 79-83.

<sup>142</sup> *ibid* 57.

<sup>143</sup> Laetitia Zeeman and others, 'A Review of Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Health and Healthcare Inequalities' (2019) 29 *European Journal of Public Health* 974, 977.

<sup>144</sup> *ibid* 978.

<sup>145</sup> Megan E Springate, 'A Note about Intersectionality, LGBTQ Communities, History and Place' in Katherine Crawford-Lackey and Megan E Springate (eds), *Identities and Place* (Routledge 2019) 1, 8.

<sup>146</sup> *ibid* 8.

<sup>147</sup> Zeeman and others (n 47) 978.

individuals also report higher incidences of suicide attempts.<sup>148</sup> As demonstrated by this example of the right to health, the continued stigma surrounding people who identify as LGBTI has measurable and tangible effects on the daily lives of people who identify as members of this community.

(b) *Criminalisation and discrimination: the role of intersectionality*

As a last note, an analysis of the current state of LGBTI rights would be incomplete without a discussion regarding intersectionality and the LGBTI community. Essentially, intersectionality involves recognising that the categories defining people, such as race, ethnicity, gender, sexuality, intersect to shape individual experiences:<sup>149</sup> “This means that oppression and prejudice (including racism, classism, transphobia, homophobia, and sexism) also affect individuals and communities in multiple interdependent ways.”<sup>150</sup>

With this understanding:

A wide range of United Nations human rights bodies have recognized that discrimination based on sexual orientation, gender identity, and/or sex characteristics is commonly compounded by discrimination on other grounds, including gender, race, age, religion, disability, health, immigration status, and economic status.<sup>151</sup>

It is well documented that queer people who are also members of other marginalised groups are significantly more likely to experience violence.<sup>152</sup> For example, “the rise of murder rates of trans-Americans (particularly trans women of colour), the historically high rates of violent deaths of queer Brazilians, and the rising number of homophobic attacks in France are all indicative.”<sup>153</sup> Additionally, the concept of intersectionality within the LGBTI community is crucial to understanding how international human rights law currently fails to fully reflect their needs and protect their rights. This will be an important consideration in guiding the international community toward genuine protection and equality for LGBTI individuals.

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<sup>148</sup> *ibid.*

<sup>149</sup> Springate (n 49) 1.

<sup>150</sup> *ibid.*

<sup>151</sup> OHCHR (n 13) 56.

<sup>152</sup> Eristavi and Baer (n 32) 159.

<sup>153</sup> *ibid.*

## D. ADDRESSING EXPECTED RESISTANCE

In campaigning for a new covenant on LGBTI rights, it is essential to examine potential arguments that could hinder progress toward this proposed law. As evidenced above, the opposition of numerous states to a convention of this nature is expected. A rise in homophobic policies has been observed alongside recent advances in the recognition of LGBTI rights.<sup>154</sup> Opposition to greater acceptance of LGBTI individuals has manifested in various ways, including an increase in discriminatory legislation and violence, and stems from multiple factors. States that are opposed to LGBTI rights utilise positions such as “traditional values”<sup>155</sup> and cultural relativism<sup>156</sup> to continue to “shield themselves from criticism and condemnation of their anti-LGBTQ laws...”.<sup>157</sup> Indeed, many states “do not see the equal protection resolutions or free expression provisions of their constitutions as protecting same-sex individuals.”<sup>158</sup> States continue to enact deliberately discriminatory legislation that limits the fulfilment of rights and freedoms, as they perceive themselves to be exempt from any obligations to respect the rights of LGBTI people:

Supporters of the prohibition on [LGBTI] discrimination have sought to subsume it within established human rights...and within established human rights procedures and institutions. Opponents of the prohibition have, to various degrees, rejected these arguments. They see the prohibition as a ‘new’ additional right to which they have not and are not going to consent.<sup>159</sup>

Opposition to LGBTI rights is not a new phenomenon, nor is it unique within the broader struggle for human rights.<sup>160</sup> There was once significant opposition to the Twin Covenants,<sup>161</sup> now regarded as a milestone accomplishment in the history of human rights. Widespread disregard for human rights initially prompted the international community to adopt the Two Covenants, laying the foundation for subsequent

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<sup>154</sup> *ibid* 157.

<sup>155</sup> Anthony J Langlois, ‘International Political Theory and LGBTQ Rights’ in Chris Brown and Robyn Eckersley (eds), *The Oxford Handbook of International Political Theory* (OUP 2018) 270, 372.

<sup>156</sup> Tiu (n 6) 58.

<sup>157</sup> *ibid*.

<sup>158</sup> Andrew Malec, ‘Expanding International LGBTQ Rights: International Human Rights law, Equal Protection, and Freedom of Expression’ (2021) 29 *Michigan State Law Review* 77, 97.

<sup>159</sup> Dominick McGoldrick, ‘The Development and Status of Sexual Orientation Discrimination under International Human Rights Law’ (2016) 16 *Human Rights Law Review* 613, 668.

<sup>160</sup> *ibid* 616.

<sup>161</sup> Maya Hertig Randall, ‘The History of the Covenants: Looking Back Half a Century and Beyond’ in Corina Heri, Helen Keller and Daniel Moeckli (eds), *The Human Rights Covenants at 50: Their Past, Present, and Future* (OUP 2018) 7-30.

treaties aimed at protecting vulnerable communities. In the same way, opposition to LGBTI equality must not be regarded as an insurmountable barrier to progress.

### **(1) A New Covenant, Moving Forward or Backward?**

Additionally, one must acknowledge concerns regarding promoting LGBTI equality through the normative human rights framework. Some advocates for LGBTI rights have long pursued a “living” interpretation of human rights law, insisting that these rights are protected within existing legal frameworks as analysed above.<sup>162</sup> However, some scholars and activists recognise that the current framing of human rights and its focus on “universality” is naturally incompatible with LGBTI rights, as queer individuals exist outside of this normative framework.<sup>163</sup> While this course of defence has had its share of victories, it is obvious that this current path of discourse surrounding LGBTI rights has been less successful than hoped. As alluded to in the discussion regarding intersectionality, without truly engaging with international human rights law through an intersectional lens, the protections created will always be incomplete. It is for this reason that many activists for LGBTI inclusion view representation as the dismantling of numerous societal norms. Therefore, attempting to include queer rights in current human rights law, which is rooted in existing norms, is likely ineffective.<sup>164</sup>

These concerns are valid, and this paper concurs with that assessment. Efforts to fit LGBTI individuals into the existing international human rights framework have proven ineffective and fail to truly represent the community. Nevertheless, the evidence presented above clearly demonstrates that the LGBTI community warrants formal protection. A viable path forward may involve initiating discussion on a new covenant. As with all human rights advancements in the past, this undertaking will inevitably challenge existing norms, paving the way for a more inclusive and representative framework.

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<sup>162</sup> McGoldrick (n 63) 617.

<sup>163</sup> Ryan Richard Thoreson, ‘The Queer Paradox of LGBTI Human Rights’ (2011) 6 *Central European Journal of Social Sciences and Humanities* 1-27.

<sup>164</sup> *ibid.*

## E. CONCLUSION

As a final note, due recognition of the existing victories for LGBTI equality is necessary. These victories, on international and regional scales, have paved the way for increased acceptance, awareness, and protection of queer identities and representation. Many human rights advocates have devoted their efforts to ensuring that LGBTI people are protected within current human rights frameworks, but greater progress is possible. It is undeniable that the status quo perpetuates the violations that queer persons experience in the exercise of their rights. Any current reluctance of the international community to address this matter only indirectly validates claims that the right to equality or other freedoms does not exist for LGBTI persons.

A new covenant would not establish ‘new’ human rights but would ensure that all queer persons and identities are accurately represented and explicitly protected. It can serve to clarify state obligations and articulate the steps a state must take to ensure the full enjoyment of these rights. Properly drafted, a new covenant can create a more inclusive and enforceable branch of human rights law that will ensure LGBTI rights are recognised and protected globally. Through deliberate and representative inclusion, the rights of LGBTI people can be recognised on their own terms, and the international community will make momentous strides toward a safer and more accepting world.