FACULTAD LATINOAMERICANA DE CIENCIAS SOCIALES

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PROGRAMA DE RELACIONES INTERNACIONALES

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TESIS PARA OBTENER EL TÍTULO DE

MAESTRÍA EN RELACIONES INTERNACIONALES

CON MENCIÓN EN SEGURIDAD Y DERECHOS HUMANOS

THE UNITED NATIONS COMES OUT! :

THE CONSTRUCTION OF SEXUAL ORIENTATION

IN THE UN HUMAN RIGHTS INSTITUTIONS /ORGANS (1983-2011)

CARLOS ANDRÉS PAREDES MINANGO

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ABRIL 2013

DEDICATORIA

A la vida y a la alegría.
Para Gloria, Julio, Carlos y la gran familia.

ACKNOWLEDGEMENTS

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ABSTRACT

Having a constructivist approach to knowledge through regime theory and international organization, this work investigates the construction of sexual orientation at the UNOHCHR. I make use of discourse analysis to explore how this topic has been portrayed in Human Rights Committee decisions and Human Rights Council documents dealing with this theme from 1983 to 2012.

The main argument put forward in this thesis is that the United Nations Organization acts as a structure, exercising tactical or organizational power; and as an agent exercising structural power when constructing sexual orientation at the Human Rights specialized agencies.

The works concludes that in the last couple of years there has been a significant discursive change regarding what is said about sexual orientation in UN documents: how sexual orientation is characterized.

INTRODUCTION

During 2010, on a preliminary human rights literature review on minority and underrepresented populations, specifically indigenous groups, handicapped populations, women and sexual diversity groups (lesbian, gay, bisexual and transgender, LGBT), I encountered that up until that year all of the aforementioned groups, but LGBT ones, were addressed/considered directly, either by resolutions at the General Assembly or at the Human Rights Council. This peculiarity sparked my interest in terms of learning why LGBT groups, sexual orientation and gender identity themes had not been the subject of formal discussion at any of these human rights specialized bodies yet.

Then, in 2011 the Human Rights Council, under agenda item 8: Follow-up and implementation of the Vienna Declaration and Programme of Action, passed Resolution A/HRC/17/L.9/Rev.1. This resolution, submitted by South Africa, requested

> the High Commissioner to commission a study to be finalised by December 2011, to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity (United Nations Human Rights Council, 2011).

This was soon followed by the Report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, which was made available in December 2011.

Then, in March 2012, the same intergovernmental entity of the UN, the Human Rights Council, held the first formal panel debating these issues. It seemed as if what was taking place at the Human Rights Council was the construction of discourses that gave a name to and identified[1] the rights of LGBT people. The inclusion of sexual

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[1]The naming of the UNOHCHR report identifies and represents the 'sexual diversity' groups, providing a new visibility to sexual orientation and gender identity topics. At the same time, it contributes to construct LGBT groups´ identities and interest. While this process takes place, it is relevant recalling Eric Wolf's reflections on model creation so that naming does not imply objectifying and generalizing. "By turning names into things we create false models of reality. By endowing nations, societies, or cultures with the quality of internally homogenous and externally distinctive and bounded objects, we create a model of the world as a global pool hall in which the entities spin off each other like so many hard and round billiard balls" (Wolf, 1982: 6). Identities are constantly interacting with each other and changing. Naming does

orientation and gender identity in the list of topics that were suitable to be discussed at one of the main UN organs, and the fact that the Council mandated further consideration on these themes, legitimized the topics at hand and constituted agents, LGBT groups within the regime of human rights. Given that in previous years, before 2011, such topics had not been officially included in any Human Rights Council resolution, the approval of Resolution A/HRC/17/L.9/Rev.1 provided unique visibility to LGBT issues.

Not much has been written regarding the inclusion of sexual orientation within the universal regime of human rights through United Nations human rights entities. Nonetheless, Sir Nigel Rodley, a member of the Human Rights Committee since 2001, delves into the complexity of analyzing human rights treaty bodies and Special Procedures of the Commission of Human Rights, elucidating whether there is overlap or complementarities among them in order to assess their working. The author considers "potential overlap and duplication of work between the two […] mechanism is largely illusory. Where occasionally, it is real, it is avoidable by [applying…] treaties' rules on admissibility [and] by improved information management systems in the Secretariat" (Rodley, 2003: 907). Rodley´s research calls attention to the links that exist among human rights institutions at the United Nations, emphasizing that they mutually strengthen one another rather than duplicating tasks.

Further, throughout my research in official United Nations Human Rights Council and Human Rights Committee documents, I encountered little reference to LGBT, gender and sexuality studies. This is the reason why, delving into this dissertation has required me to, or rather has given me the opportunity to use unconventional approaches to analyze an apparently indistinct topic. Nevertheless, Ignacio Saiz thinks otherwise and deems that "10 years on from Toonen, the momentum at the UN for addressing issues of sexual orientation within a broader framework of sexual rights is unstoppable" (Saiz, 2004: 67). The author recommended that the United Nations Organization undertakes studies to make public the abuses and violence that LGBT individuals face across the world so that sexual orientation become a more center-stage topic. His perspective is vital for this research since it recognizes that there

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not objectify them then, only insofar as it is conscious of the inherent changing constitution of identities, interests, agents and structures.

is a need for more literature to come out exploring these themes so that the universal regime of human rights be enriched.

It is my desire that my research contributes to the scant information available on these topics by mapping out how sexual orientation has been constructed within United Nations human rights entities, starting from somewhat peripheral UN entities to slowly, but surely, be placed closer to the center. I recognize that in no way this dissertation can provide a holistic and comprehensive review of the processes that have taken place within the UN so that LGBT issues gain prominence. However, I do hope that it provides elements so that future studies can be conducted on the role of the United Nations Organization within the universal regime of human rights as an agent and as a structure.

The modern system /regime of human rights began to be developed in 1948 with the adoption of the Universal Declaration of Human Rights. This legal instrument was complemented with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which entered into force in 1976. Altogether, these three documents make up the International Bill of Human Rights.

The universal human rights regime is strongly linked to the creation and functioning of the United Nations Organization. While there are regional human rights institutions and instruments, such as the Inter-American Commission on Human Rights or the European Court of Human Rights, which are effective and have various degrees of legitimacy in their respective regions, none of these has the scope and legitimacy of the United Nations Human Rights Committee and Human Rights Council to issue statements and demand compliance with its mandates to UN member states worldwide.

The Human Rights Council is made up of state representatives based on the principle of equitable geographical representation, where in order "to facilitate balanced distribution, Member States are informally divided into five regional groups[2] […] For most bodies a specific number of seats is allocated to each regional group" (Permanent Mission of Switzerland to the United Nations, 2011: 69). As the Council is made up of states representatives, they voted on resolution A/HRC/17/L.9/Rev.1. Thus, it can

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[2]"Group of African States, Group of Asian States, Group of Eastern European States, Group of Latin American and Caribbean States (GRULAC), and Western European and Other States Group (WEOG)" (Permanent Mission of Switzerland to the United Nations, 2011: 69).

certainly be argued that states were at the center of this event, at least in terms of being the agents creating a legally sanctioned reality: the mandate to the High Commissioner of Human Rights to elaborate a report on human rights violations worldwide based on sexual orientation or gender identity.

However, while states were the only vote-casting agents, there might have been other actors, agents and structures that were involved in informing, influencing, framing, perhaps even conditioning the decision-making of states. As a case in point, let us consider the Human Rights Committee, a human rights entity associated to the United Nations General Assembly. It is made up of lawyers from member states that make legally binding decisions on human rights issues that pertain to the International Covenant on Civil and Political Rights. These experts are not to act as nationals from their states, but rather as international experts on legal matters. They are invested with the legal authority to create norms and rules through speech acts[3], to collaborate in the creation of realities from concepts, and to hold states accountable for the decisions the Committee takes. This epistemic community, in specific circumstances throughout five cases that are analyzed in this research, was able to decide upon human rights international understandings, occupying a position that is, by design, unattainable to state representatives.

In this research, I use a constructivist approach to knowledge, regimes theory and international organization to explore the global regime of human rights. Further, I use these academic instruments to study the process whereby sexual orientation themes have become included at the two aforementioned United Nations Office of the High Commissioner on Human Rights associated entities:

- The Human Rights Council, and
- The Human Rights Committee.

I investigate the processes that took place at these bodies so that LGBT themes were discussed. It is my contention that the UN[4] played a more active role than simply providing a scenario for states to perform. The UN had a shifting or rather

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[3]The theoretical framework of all topics covered in this dissertation is explained in Chapter 2.

[4] A more elaborate discussion on what encompasses the United Nations in terms of agencies, bodies, organs and what the difference is among such terms takes place in the third chapter.

complimentary identity under different settings: as a structure it displayed what the anthropologist Eric Wolf calls tactical or organizational power; while, as an agent it exercised structural power[5] (Wolf, 1990: 587).

In order to go about exploring the processes by which the concept of sexual orientation has been constructed at human rights entities at the United Nations, this dissertation is divided into 4 pieces. In its first chapter, the theoretical bases for my research: constructivism, regimes theory, international organization and discourse analysis, along with the categories of knowledge and the methodology used are discussed. The second chapter provides a brief description of the universal regime of human rights and the role of the United Nations within it. Then, the third chapter examines various official UN documents pointing out the discursive shifts that have taken place when referring to sexual orientation and LGBT populations in the aforementioned UN entities. Finally, the dissertation ends with a small compilation of the challenges and lessons encountered during the making of this project.

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[5] Tactical power is that "which controls the settings in which people may show forth their potentialities and interact with others" (Wolf, 1990: 586), managing to circumscribe and direct practices. Structural power is "power that not only operates within settings or domains but that also organizes and orchestrates the settings themselves, and that specifies the distribution and direction of energy flow" (Wolf, 1990: 586).

CHAPTER I

SHAPING THE WORLD THROUGH DISCOURSE:
A CONSTRUCTIVIST APPROACH TO REGIME THEORY
AND INTERNATIONAL ORGANIZATIONS

We make the world what it is, from the raw materials that nature provides,
by doing what we do to each other and saying what we say to each other.
Indeed, saying is doing (Onuf, 1998: 59).

This chapter explains constructivism as an approach to knowledge. Thus, it provides information on the epistemology that guides this research. I argue that constructivism underlines change as the safest constant; hence, it focuses on the processes whereby interests, identities, agents and structures interact and are transformed. This multiplicity of relations makes it impossible to fathom discovering a single reason why an event took place. In fact, constructivism emphasizes that there is room for unintended consequences.

I also contend that since constructivism is instrumental to analyzing processes, it gives utmost importance to the somewhat stable configurations that regulate agents, structures, identities and interests in the international arena: international regimes. Regimes facilitate a momentary stability to specific aspects of the heteronomic international system, a stability that can be expressed though the setting of an international organization. This chapter entertains then constructivism, regimes theory and a constructivist view of international organizations exploring their role within regime theory.

Constructivism

Constructivism emerged within the field of international relations in the 1980s, "when neo-realism and neo-liberal institutionalism dominated American international relations theory. [These approximations…] for empirical and theoretical reasons […] proceed on the assumption that state interests are hard-wired and fixed forever" (Barnett, 2005: 253). On the other hand, a constructivist approach to knowledge does consider momentary stability in agents' interests. Nonetheless, it emphasizes the ever changing mutual constitution of agents, structures, interests and identities, where there is neither a single agent (the state, according to more classical theories), nor a single structure,

interest or identity. Hence, various agents (states, international organizations, individuals, among other non-state actors) and structures interact with one another constructing reality by interpretations, practices, discourses and rules. These ever-changing interactions make complete, unchanged stability impossible to fathom; whether it be unmovable interests, identities, agents or structures.

Heteronomy

A constructivist approach to knowledge conceives the international system as one characterized by heteronomy. It is not considered hierarchical, as there is not one single ruler; it is not seen as anarchical either, since not having one distinguishable ruler does not mean that rule is not present. According to Vendulka Kubalkova, "constructivism disagrees that anarchy characterizes the state system; [constructivist authors] see the state system as characterized by *heteronomy,* a pattern of unintended consequences (rules are not directly responsible for agents' conduct)" (2001: 73). In other words, while in an anarchical society agents can cooperate and/or compete, affecting the structure and being affected by it, in heteronomy there is room for other, unintended consequences. These unintended consequences call attention to the unfeasibility of complete apprehension of reality, given that establishing direct causation to agents' actions due to a specific identity, interest or structure would not take into consideration what we cannot grasp, beyond the barriers of what our language structures.

Not having a government body is considered as anarchy by structuralist authors. "Anarchy is rule by no one in particular, and therefore by everyone in association, as an unintended consequence of their many uncoordinated acts" (Onuf, 1998: 77). Hence, working in a different way from the state, which has a clear head of government, the international system is understood as a multiplicity of agents competing to fulfill their desires without an order defined from the top to the bottom. However, "all constructivists took issue with the unreflective adoption of the notion of anarchy as a starting point of analysis […] the rigid dichotomy between hierarchy and anarchy might, indeed be a blunt instrument for the analysis of order" (Kratochwil, 2001: 21). For instance, in 1992, Alexander Wendt put forward his article, "Anarchy is what states make of it" (Wendt, 1992), acknowledging structures' capacity to affect states and

explaining states' capacity to shape their interactions. Thus, states are seen as agents that coordinate, though not fully, their expected behaviors in the international system.

Analyzing processes

Through a constructivist lens a researcher does not look for answers to 'why' questions, since constructivism is about understanding processes, understanding what, how, and in which context an event takes place.

> [It] does not offer general explanations for what people do, why societies differ, how the world changes. Instead, constructivism makes it feasible to theorize about matters that seem to be unrelated because the concepts and propositions normally used to talk about such matters are also unrelated (Onuf, 98:53).

This approach to knowledge is designed to be able to account for a multiplicity of factors, not to establish causation, but rather to enlighten processes. "Constructivism is not a theory; it does not claim to explain why things work as they do. Constructivism is simply an alternative ontology, a redescription of the world" (Kubalkova, Onuf and Kowert, 1998: XII). This is a very important assertion, since constructivist ontology prevents this approach from claiming direct reasons for situations to take place.

Discussing positivist methodology, Kratochwil explains that constructivists argue "that specific elements for explicating actions require methodological tools for which the standard model of science is of little help, because most accounts of action do not fit well with the standard version of causal imputation based on the model of antecedent causes" (Kratochwil, 2001: 17). Thus, he claims that a constructivist analysis considering the multiplicity of elements, as well as unintended consequences, interacting continuously in the international arena makes positivist theories' methodology ill-suited to examine the international system. While positivist theories claim to be able to respond to 'why' questions, a constructivist analysis requires a methodology that is differently shaped to allow researchers' explorations over more categories, to respond to questions of timing, processes, legitimacy and context.

To this end, Maja Zehfuss calls attention upon Nicholas Onuf's emphasis on interpretations, explaining that "human beings construct reality through their deeds, which may be speech acts. Speech acts in turn may be institutionalized into rules and

thereby provide the context and basis of meaning for further human action. This process is deeply political as rules distribute benefits unevenly" (Zehfuss, 2001: 59). Speech acts are the ones that construct reality because interpretations[6] that are given to a social fact find their way and become hegemonic. "[This] term, *hegemony,* had long been used to describe the efforts of leading states to best their peers through diplomacy and war" (Kubalkova, Onuf and Kowert, 1998: 10). In this process, agents, in this case, states, contend all other interpretations and become more powerful, more accepted, and more legitimate than the rest. Evidently, in the international system, there is not an equal relationship among agents in terms of their possibilities to advance their interpretations as appropriate and hegemonic.

Ideas have strong repercussions on institutions that favor the creation of new paradigms, coming from many different sectors of the world, be these states, civil society or international organizations, such as the UN. "Language is the most powerful tool available to us for social construction as an ongoing, largely unpremeditated activity in which everyone is inevitably and perpetually engaged" (Kubalkova, Onuf and Kowert, 1998: 19). The capacity human beings have to create language and, ultimately to affect how they perceive their own existence, thus giving shape to existence itself, is a salient capacity of constructivism canons. Through language, social constructions are given meanings. Everyone is both, condemned and able to enjoy affecting his or her reality, at least minimally, through the many channels made available by the structure.

Once a speech act takes place, the hearer and the speaker of such an event become agents themselves. "Rules keep the form of the speech act by generalizing the relation between speaker and hearer. Within the general form of a speech act, given rules make hearers into agents to whom those rules apply" (Onuf, 1998: 67). Thus, even the agent who is performing an action, alternatively producing a speech, is being

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[6]Clifford Geertz offers the following appreciation regarding meanings and interpretations: "Wittgenstein's view that thought (feeling, belief, construction, judgment) is a public activity, carried on not in 'the head,' 'the heart,' or some other gossamery private place but in the *plein air* world by means of sign systems-that meaning arises in use, and use is social-is the grounding notion; the rest must come from descriptive analysis. And though the signs involved are, so far at least as human beings are concerned, predominantly linguistic, they are not exclusively so: images, numbers, melodies, gestures, and, in the case at hand, objects of the built environment (or, for that matter, the unbuilt) interweave with words, and words with them, to produce the web of perceptions we weakly call 'experience.'" (Geertz, 1989: 292-293)

constructed by his/her/its speech act. This act affects both, the hearer and the speaker within this interaction.

Additionally, sometimes, "the words themselves, and not the speakers mouthing them, are responsible for what happens. […] Conventions come closer to being rules […telling] agents what they have always done" (Onuf, 1998:66). In other words, tradition and habit also contribute to guiding and informing how agents in the international structure or social arrangement are to interact due to their normative potential.

Rules and norms

Friedrich Kratochwil considers that rules and norms are what allow agents to form decisions to act in one way or another. And, of course, norms and rules are social constructions, not natural realities. Paraphrasing Kratochwil, Zehfuss mentions that "rules and norms serve to reduce the complexity of situations and impose a certain rationality on actors, which forms the basis for decisions. [Kratochwil] also assumes that human action is rule-governed. Rules give action meaning" (Zehfuss, 2001: 65). According to Alexander Wendt, "processes of identity and interest-formation have created a world" (Wendt, 1992:410). Hence, the 'real' world has been created and it is possible to approach it using constructivist paradigms.

For Steve Smith, Onuf "sees a very different kind of social world, one in which actors, whoever they are, are governed by language, rules and choices. [Thus…] all agents follow rules because they live in a world that is socially constructed by these rules" (Smith, 2001: 52). This approach to constructivism is universalistic in terms of its application of rules to all agents, even when such rules are applied differently, noticing that it is impossible to be outside of the structure. Hence it is impossible for an agent to be excluded or to be isolated from rules that are constantly being created, at least minimally, by the agents and their interactions.

Onuf also considers that rules are capable of

> mak[ing] agents out of individual human beings by giving them opportunities
> to act upon the world. These acts have material and social consequences, some
> of them intended and some not[; where…] agents *make* the material world a
> social reality for themselves as human beings (Onuf, 1998: 64).

The continuous creation of social rules by the structure and by agents gives their relationship its characteristic continuity and ever evolving impetus. "Social rules (the term *rules* includes, but it is not restricted to legal rules), make the process by which people and societies constitute each other continuous and reciprocal" (Onuf, 1998: 59). While constructivism does keep in mind that states and other actors are agents constructing a structure, constructivist authors make evident that there is not a symmetrical relationship in terms of which agents get to decide what the rules are. There is rather an assumption that agents do not weigh the same in the international system. "[W]here there are rules (and thus institutions), there is rule – a condition in which some agents use rules to exercise control and obtain advantages over other agents. Rule is a stable pattern of relations, but not a symmetrical one" (Onuf, 1998: 63).

Rules are expressed through a series of ways; however, language is one of the main representations of a rule. Speech acts have material and social consequences in the world: speech acts that become hegemonic gain legitimacy. The articulation of new ways of interpreting a social fact has the potential of becoming mainstream or hegemonic; and thus, able to guide agents' identities and to influence agents' desires, which in turn may further help the reproduction of said interpretations."[M]eaning is neither awaiting discovery in the world 'out there', nor does it merely exist in the mind of the single individual. The meaning of human behavior lays precisely in the fact that it can be understood by other human beings" (Zehfuss, 2001: 69). Hence, given the possibility that each human being has to develop meaning out of all situations, it is of course impossible to have a single meaning for a social reality. Human beings agree upon meanings so that they can communicate more accurately. However, meanings are interpretations given to an elusive reality. Consequently, both "reality" and interpretations are continuously evolving. Reality is therefore unstable.

Ontology

Constructivism's canons are thought of around a series of paradigms, "[relying] on three components: intersubjectivity, context and power" (Klotz and Lynch, 2007:7) to analyze how the world is seen by using the categories advanced through its epistemology. "[O]ntologically speaking, according to Onuf and Kratochwil, our social reality is, at

least to a degree, a linguistic construction, although the existence of a material world is not disputed" (Zehfuss, 2001: 71). Hence, together with Wendt, whose tenets were discussed previously, these three authors agree on the impact hat language has over the social construction of a material world.

Intersubjectivity

The first component of ontology tells us about the inclusion of structures and agents. On the one hand, social phenomena shape identity and influence behavior; and on the other, agents, who possess identity and interests, influence rule making, structures or social facts as well (Klotz and Lynch, 2007:7). Such intersubjectivity requires general acceptance of agents and structure so that a kind of order becomes stable. These instances of stability are called institutions or structures (Klotz and Lynch, 2007:8). The ongoing constitution of structures and agents is a process whereby agents and structure implicitly or explicitly accept some of the practices and discourses that frame their existence.

Context

An order has a degree of stability; nonetheless this is only dependant on the context. Hence, on the use of the word 'structure', Onuf encourages constructivist researchers to move away from it, as international anarchy is no more than a social arrangement. And just as any other social arrangement, structures change and are affected by agents acting within the options a particular social arrangement provides them with. "The central themes of change, sociality, and process of interaction point to the added value of constructivism within a field that has emphasized generalization across time, materiality and rational choice" (Fierke, 2007: 169). For constructivism, change is at the core of the context of an international arena. Thus, Onuf explains that the word "structure" may be interpreted as having a more stable identity than what it really does. The structure is simply a social arrangement that has an indefinite time of expiration (Onuf, 1998: 63).

Constructivism stresses the mutual constitution of agents and structures, and how these change over time. So there is a "potential for people to transform standard practices" (Klotz and Lynch, 2007:9) depending on the specific context of structures. As an agent affects the structure and it is affected by it, its capacity to create change

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depends on its identity and interest at the point, which would be determined by a particular set of circumstances. Given that stability is momentary, the moments, the contexts, where arrangements take place are to be reckoned with, as they shape agents' possibilities to increase or decrease their level of participation in the production of social realities.

Power

A constructivist approach to knowledge must be aware of power dynamics within the various relations that take place in the international system. "All people exercise some degree of power, because their practices either reinforce or undermine meanings" (Klotz and Lynch, 2007:10). Hence, knowing that several interpretations coexist during any intersubjective relationship, constructivism analyzes why some interpretations and practices become more generally agreed upon.

Klotz and Lynch sustain that accepting the following definition regarding exercising power as

> the ability to reconstruct discourses and shape practices offers researchers a framework for assessing how meanings condition identities and actions, why some dominate others, and when these patterns shift. It also broadens the scope of our analysis beyond behavior to include how people justify their actions. Granting the role of language such a fundamental place in the analysis raises epistemological issues about how to study this intersubjective reality (Klotz and Lynch, 2007:11).

In contrast to the realist canon of analyzing power through detailing states' capabilities, constructivism rather focuses on the relationships and processes where such power is exercised. "The habitual actions that emanate from […] interpretations are often referred to as 'practices', and the combination of language and techniques employed to maintain them as 'discourses'" (Klotz and Lynch, 2007:10). Discourses that emanate from dominant interpretations contribute to the self-reproduction of such interpretation through language, while practices are also prescribed.

Discourses and practices are advanced in specific contexts and become legitimate due to a series of circumstances that condition the relations of power among agents and structures. There are then, agents whose interpretations manage to be legitimized. However, "[j]ust because we can identify rulers, we should not conclude

that they alone do the ruling. Whenever there are formal rules (which is everywhere), there is informal rule, either supporting or undercutting formal institutions of rule, or both" (Onuf, 1998: 75). So, even though it may seem rather difficult to locate the actual agent who advanced a rule, constructivism permits us to take into consideration identities and interests in order to find out what might have been the process for a rule to be adopted.

Epistemology

The epistemology of constructivism is contested in terms of the amount of interpretation constructivist authors should make and on how or whether to establish causality. Constructivism is said to be able to analyze the steps and the processes that are relevant in producing an outcome, identifying a structure, an agency, its identity and interests. There are constructivist authors along the whole spectrum. Some of them are more concerned with trying to bring a positivist method to the study of International Relations, and some others are more aware of the implications that interpretativist views can bring to the discipline.

Epistemology and methodology are not to be taken as the same. "*Methodology* differs from *epistemology* in that the former inquires into procedures for attesting to knowledge […], the latter is concerned with the basis for knowledge- the conviction that our sensory experience is systematically related to the world outside ourselves" (Kubalkova, Onuf and Kowert, 1998: 13). Methodology explains in which ways constructivism or any other theory/ approach of knowing the world makes use of certain research tools, while epistemology explains in which way the discipline categorizes and divides the world so that it can be understood by a science. This difference has to be pointed out, because while methodology can change, and there are many methods that are suited for constructivism, the categories that need to be considered to do constructivist research (structure, agent, identity and structure) are fixed.

Further, the epistemology of constructivism is holistic; thus, it posits that "structures cannot be decomposed to the individual units and their interactions because structures are more than the sum of their parts and are irreducibly social. The effects of structures, moreover, go beyond merely constraining" (Barnett, 2005: 267) Hence, a constructivist analysis implies an acute awareness of the totality, and of the inherent

capacity of all realities to accommodate change. For a researcher that claims to be part of the constructivist tradition, language constitutes meaning. So, constructivist epistemology does not 'prove', in the way natural scientists 'prove' or in the way positivist social scientist might wish to 'prove', that events happen one way or another because of a single reason or even because of multiple reasons. Constructivism rather questions in which ways certain agents may have allowed for the creation of a limited but stable structure. Keeping this last clarification in mind, the fundamental categories of constructivist research are structures, agents, identities, and interests.

Structures and Agents

Stable understandings and practices form structures. Therefore, those meanings that become more accepted, socialized, and legitimized form and transform structures. According to Onuf, "structure is what observers see, while institutions are what agents act within. Nevertheless, structures can affect agents" (Onuf, 1998: 62). A structure is perceived by agents as the framework within which they form their identities and interest; nonetheless, institution is the term that is used to talk about the areas where agents can act.

The structure gets changed often and is subjected to, or it makes itself capable of accommodating new agents. For instance, "technical experts may persuade key decision makers […] to adopt new priorities or to mandate the establishment of new agencies" (Klotz and Lynch, 2007: 96). In the case of technical experts, their expertise on an issue may affect international structures through recognized international bodies of epistemic communities. The possible creation, transmission or reproduction of discourses carried out by certain agents constitutes and further legitimizes a rule, whether formal or informal.

> [I]informal rules and formal bureaucracies create frameworks of meaning within which people think and act […] when people speak and write to convey those new meanings, they again replicate identities and practices through their language, creating a cycle of mutual constitution (Klotz and Lynch, 2007:44).

The structure is modified unequally as agents are also involved in unequal relationships among them and with the structure. At the same time, Onuf makes evident that the structure of society limits the extent to which agents can behave among them and act

upon the structure itself. "People are agents, but only to the extent that society, through its rules, makes it possible for us to participate in the many situations for which there are rules. No one is an agent for all situations" (Onuf, 1998: 59). Hence, the structure includes and excludes the agents that are able to be part of decision making processes and further categorizes them, determining which agents only participate in the structure in different strata

A constructivist approach to international relations starts with believing that every agent involved in the structure has an intention. This might not always be rational as it was presumed by previous theories of international relations. However, agents definitely respond to what the structure and other agents consider such agent's identity and interests to be.

> [C]onstructivists start from the assumption that human beings […] have purposes and goals, or 'intentions.' They act on behalf of themselves as individuals and as members of (formal and informal) groups. By arguing and demanding, they advance their views of the world (Klotz and Lynch, 2007:45).

When agents argue for the recognition of a certain interpretation of a social fact, they are indeed not only advancing this specific interpretation, but rather they advance a more comprehensive scheme of reality. "Whether by accident or by design, rules and related practices frequently form a stable (but never fixed) pattern suiting agent´s intentions. These patterns are institutions" (Onuf, 1998: 61). Once a rule becomes stable over time; but clearly never fixed, in terms of unchangeable, a pattern is created and is further institutionalized.

While an agent might be hegemonic, it is by no means the only ruler, since as we have mentioned previously, there is a multiplicity of factors creating rule and it impossible to even point all of those out. "[N]o individual human being, as an agent, has full *autonomy*. By the same token, agents acting together never have full *independence* […] The freedom that agents do have depends on their ability to recognize the material and social limits that apply to them" (Onuf, 1998: 65). Through constructivism we can appreciate that even though an agent may be hegemonic, it is not possible to claim that it is able to shape a world completely at its image, given that direct causation is impossible to establish. And, more importantly, that the hegemonic agent itself is

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affected by the structure that it is creating and by other agents involved in the construction of reality.

Identities

As regards identities, Klotz and Lynch describe them as mutable. They shift depending on the time and context. "Because they are relationships, they are not immutable characteristics of individuals or groups; people produce and reproduce them, rather than being born with them" (Klotz and Lynch, 2007: 65). Identities are not fixed. Thus, they depend upon the sort of relationships agents are involved with, both, with each other and with the structure. In any case, identities mutate in order to adapt to what is being asked of agents in the institution they populate.

While agents can choose among a number of possibilities, identities follow these possibilities and stabilize, though stability is not complete. "Once structures of identity and interests have been created through tipifications, they are not easy to transform because the social system becomes an objective social fact to the authors, and they may have a stake in maintaining stable identities" (Wendt, paraphrased in Zehfuss, 2001: 58). So, once identities have been typified, sometimes they are hard to transform as the system – structure makes them acceptable. In addition, the structure can influence the agent to encourage such identity as necessary; hence, the agent might have a stake in maintaining such identity, reproducing what the system asks of it.

Interests

The multiple levels in which international agents can act and influence each other's interests speak about the continuous bargaining that takes place among all of the agents in the international arena. According to Ian Hurd, "[t]he social construction of actors may well create instrumental, goal-seeking agents who pursue their goals in part by comparing costs and benefits, and their behavior cannot be understood apart from that process of construction" (2008: 310). Agents' interests depend on agent's identities as far as the behaviors such identities are supposed to display. "Constructivists particularly concerned to tap the potential for social change examine how non-state actors seek to redefine state (and other non-states agents) interests" (Klotz and Lynch, 2007: 87).

Agents' interests are continually being modified due to their interaction with social arrangements / structures and the interests of other agents. The structure, for instance, uses "ideas and norms […that] not only constrain but actually construct how states define their interests" (Barnett, 2005: 253). The intersubjective relationships agents have with the structure help produce alternative identities through norms, rules and discourses. In fact, Hurd explains that "[i]nterests are in part products of those identities. The social constitution of interests encompasses all the ways the actors' interests and identities might be influenced by their interactions with others and with the social environment" (Hurd, 2008: 303).

States and constructivism

According to constructivism, states are not the only agents in the international system, since other groupings, such as international organizations, epistemic communities and transnational civil society, among others, interact with each other and with states; and hence, affect and are affected by the structure. This is the reason why Kubalkova, Onuf and Kowert argue that "constructivism offers a way how to go about redescribing the world. Mainstream theories and their critics leave *people out*. Constructivism puts people and their practices at the forefront" (1998: X). By widening the scope of subjects that can be considered agents in the international sphere, constructivism is able to establish various groups of people or even one individual, for instance Chiefs of State or the United Nations Secretary General, as agents with enough power in the international arena to contribute in the structuring of the ever-changing international system.

Furthermore, constructivism calls attention upon the fact that while states continue being central to understanding international relations, "some of the key political and economic decisions are now taken in international fora and not at the level of the nation-state" (Kaldor, 2003: 560). Thus, constructivism takes notice of the multiplicity of actors that are present and relevant in the international arena and analyzes how they redefine the world.

Regimes Theory and International Organization

For Kratochwil and Ruggie, there is something special about international regimes that make them different from other sorts of international phenomena: their normative

element (1986: 355). They "are broadly defined as governing arrangements constructed by states to coordinate their expectations and organize aspects of international behavior in various issue-areas. They thus comprise a normative element, state practice, and organizational roles" (Kratochwil and Ruggie, 1986: 347); which is why, classically, regimes are conceived as comprising four areas:

> principles ('beliefs of fact, causation, and rectitude'), norms ('standards of behavior defined in terms of rights and obligations'), rules ('specific prescriptions and proscriptions for action'), and decision-making procedures ('prevailing practices for making and implementing collective choice') (Kratochwil and Ruggie, 1986: 357).

Nonetheless, while these four analytical components are well defined, the concept of regimes is somewhat malleable since regimes are "conceptual creations, not concrete entities. As with analytical construction in the human sciences, the concept of regimes will reflect commonsense, understandings, actor preferences, and the particular purposes for which analyses are undertaken" (Kratochwil and Ruggie, 1986: 352). So, in line with constructivist canons, regime theory does consider change as a constant and attempts explaining it.

Regimes are not simply organizational agreements among agents. "Agreements are *ad hoc,* often 'one-shot,' arrangements. [While, t]he purpose of regimes is to facilitate agreements" (Krasner, 2006: 73). In other words, a regime, while malleable in terms of its concept, is nonetheless intended to be strong enough/ structured enough to facilitate arrangements. A regime can then be seen as a framework that makes possible, or that provides the tools to, organize and approve arrangements among agents in a coherent and regulated fashion, through principles, norms, rules and decision-making procedures.

Ruggie considers that norms "as social facts" exist "by virtue of all the relevant actors agreeing that they exist" (Ruggie 1998: 12). On the other hand, a more classical definition is provided by Emile Durkheim who considers that a social fact is "every way of acting, whether fixed or not, capable of exercising on the individual an external constraint; or [...one] which is general throughout a given society, while at the same time existing in its own right independent of its individual manifestations" (Durkheim, 1997: 52). Considering the more classical definition, it becomes apparent that a social

fact is regarded as much more than a set of norms. It is a matter in one's social reality, which is so influential, that it manages to come to represent or provide a glimpse at one's experience and society's of life and culture. Thus, in a regime, when Ruggie equates a norm to a social fact, the author underlines norms as guides to an agent's identity and interests. Also, Ruggie's definition makes evident that the linguistic and interpretative nature of norms' existence depends upon the relevant actors for whom such norms matter.

Rules and norms are at the core of international organizations as these are instrumental to developing and maintaining a somewhat stable system that might, in turn, help international organizations' existence. 'The order of things' is approached through discourses, rules, norms and practices. Nonetheless, "[n]orms may 'guide' behavior, they may 'inspire' behavior, they may 'rationalize' or 'justify' behavior, they may express 'mutual expectations' about behavior, or they may be ignored. But they do not affect cause in the sense that a bullet through the heart causes death" (Kratochwil and Ruggie, 1986: 355). So, investigating norms alone is not enough to claim causation, as the multiplicity of interactions among agents and structures cannot be simplified in one single norm. Additionally, at this point it is convenient to recall the constructivist tenet of holism and its core objective not to determine causation, but rather to seek unveiling processes.

Constructivism takes into account "[the] large number of institutions [that] contribut[e] to rule in a variety of ways. Agents (and not just states) constantly work on these institutions, […] arranged as they are on purpose, by agents' intentions, to serve their interests – including their shared interest in being ruled" (Onuf, 1998: 77). International organizations are thus, at the core of constructivism because they make evident how intersubjective understandings become specific/concrete arrangements that regulate the international order.

Keeping in mind that once a state joins an international organization, it may have to adapt to certain previously accepted rules, which, due to their socialization, are likely to keep on evolving: "[the] acceptance of international norms through treaty ratification is not inconsequential. Governments entangle themselves in an international and domestic legal process that they subsequently find harder and harder to escape" (Risse, 2000: 201). Hence, international organizations develop a sort of life of their

own, not fully independent from states, but definitely self-preserving. They can limit states' capabilities, becoming in fact, "a new kind of 'international legal person' […] neither equivalent nor superior to states, but, within the scope of their charters, can act as both law makers and law-subjects" (Alvarez, 2006: 333).

IOs can be seen as social actors, even mediating among agents' interests and the structure of the international system. In fact, "[t]o constructivists, international organizations have the potential to be purposive actors with independent effects on international relations" (Karns and Mingst, 2009: 52).

> Perhaps the most fundamental difference between regimes and organizations - both of which can be seen as representing a type of international institution (Keohane 1989c: 3f.) -lies in the fact that regimes, being no more than sets of principles, norms, rules, and procedures accepted by states, do not possess the capacity to act, whereas organizations can respond to events (even when their political leeway, more often than not, is tightly circumscribed) (Keohane 1988:384, n. 2 in Hasenclever, Mayer and Rittberger, 2002: 11)

Thus, a salient characteristic of international organizations is their capacity to act. So, regarding their capabilities to affect the behavior of agents (states, other international organizations, epistemic communities, etc), "[a]lthough some may prefer to describe them as merely 'arenas'[7] for lawmaking action, IOs -whether traditional or not- are for all practical purposes a new kind of lawmaking actor, to some degree autonomous from the states that establish them" (Alvarez, 2006: 333).

Considering that international organizations indeed affect other agents, it is necessary to analyze the process by which they also endure change, resist it, shift it, or advance it hegemonically. Further, international organizations' capability to affect the international system may be more complex than simply having the possibility to directly work on norm creation. Boas and McNeill convey that "[a]s social institutions, the

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[7]"Perhaps the most standard, and surely one of the most accurate, images of international organization is that of the stage, emphasizing the provision of a place or setting for the action and interaction of performers" (Claude, 1971: 9). According to this view, an IO is a stage where a well orchestrated/organized show takes place. "The variant notion of the arena tends to suggest, not improperly, that the performers are frequently engaged in wholly earnest competition with each other rather than in make-believe" (Claude, 1971: 9). This dissertation provides IOs a rather more active role in the international system; acknowledging that international organizations can be seen orderly, as in a stage, or confrontational, as in an arena; but also, and perhaps more fascinating for constructivism and regime theory, IOs can be actors and agents. Andrew Cortell and Susan Peterson suggest that "[t]he institutional design of some IOs allow them to engage in behavior undesired by their member states, while others are highly constrained and incapable of such independence" (Cortell and Peterson, 2006, 255).

multilateral institutions possess a clear coercive quality" (2004a: 3). Klotz and Lynch call attention to the multiple ways in which IOs act by explaining that

> informal rules and formal bureaucracies create frameworks of meaning within which people think and act [...] speak[ing] and writ[ing] to convey those new meanings […] replicat[ing] identities and practices through their language, creating a cycle of mutual constitution" (Klotz and Lynch, 2007: 44).

As mentioned earlier, international organizations can claim legitimacy and universality as some of the basis for their authority in certain areas. In fact, "international organizations, because of their trappings of universality are the major venue within which the global legitimation struggle over international regimes is carried out today" (Kratochwil and Ruggie, 1986: 361). So, another specific characteristic of IOs that strengthens their role as agents is their image as universalistic and impartial, which allows them to claim that there is a separation among their objectives and those of other agents, such as the very states that may have initially contributed to generate IOs in the first place.

Now, regarding the workings of international organizations vis-à-vis their organizational culture, "[t]he mission statements of most large public IOs are ambiguous and require interpretation. IO staff must transform these broad mandates into workable doctrines, procedures, and ways of acting in the world" (Barnett and Finnemore, 2004: 5). International civil servants are in a unique position in terms of helping shape the interests and identities of the international organizations where they are employed. Further,

> [w]hile members of IO secretariats, like most international judges or arbitrators, are usually self-effacing when it comes to acknowledging their own authority – a modesty that may be essential to maintaining the myth that they are simply conduits for the desires of states – in practice they contribute to the 'social construction of the world', through the promotion of both law and social goods that are deeply and inescapably political (Alvarez, 2006: 334).

Considering Jürgen Habermas´ reflections on the role of bureaucracies and technology in the exercising of power, it is clear that international organizations are also relevant in the international system because of their expertise and rationality.

> For as our civilization has become increasingly scientific [,...] the laws of self-reproduction demand of an industrially advanced society that it look after its survival on the escalating scale of continually expanded technical control over nature and a continually redefined administration of human beings and their relation to each other by means of social organization (Habermas, 1974: 254)

This escalating scale of technical control may contribute to blurring the power relations which take place in all interactions. In the international system and in industrialized societies, technocratic knowledge and specialization have come to be seen as desirable as there is the assumption that such processes increase or encourage impartiality and neutrality. Keeping this in mind, it is of utmost importance to analyze the ever evolving role of IOs in the international system. Their tasks may grow due to states´ decision-making, "but, as the term 'mission creep' suggests, there is [also] an unintended internal logic at work [...When] defining tasks and implementing mandates, they tend to do so in ways that permit, or even require more intervention" (Boas and McNeill, 2004b: 9). IOs can hence be understood as agents because of their capability to act, to influence and to have a say affecting structures, identities and interests.

The degree of capability IOs have to intervene in a process is, of course, variable, and depends on factors that are specific to each situation. Louis Althusser and Étienne Balibar reflect on this theme by questioning: "Through which concept or group of concepts is it possible to think about the determination of the elements of a structure and the structural relations existing among these elements, and all the effects of those relations, due to the efficacy of this structure?[8]" (Althusser and Balibar, 1977: 201). According to these authors, when there is a multiplicity of factors, taking place in a specific manner, and in a specific circumstance, an event might occur. Such event was overdetermined, somehow meant to be. Nonetheless it is impossible to determine or know whether there is one single factor which even predominates in the determining, creating or giving birth to an event.

Hence, IOs have various degrees of agency. It is possible to analyze their behavior in specific circumstances; however, it is not entirely possible, and it is not the objective of this dissertation, to claim that one or another unique factor determined the taking place of an event or of a set of events. Constructivism is also receptive to the

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[8] This is my translation from a text in Spanish.

previous claim since it understands the international system as a heteronomic space, where unforeseen consequences take place.

As an approach to knowledge, a constructivist framework is strengthened and informed by analyzing international organization's capacity to affect the structure, since it underlines the importance of ideas and interpretations persistently constructing realities in the international arena. This approach to knowledge, focused on processes and interactions does not disregard issues of power, as considering the identities and interests of agents is central in order to analyze the hegemony and legitimacy of new discourses and practices. Keeping this in mind, through a constructivist framework and discourse analysis it is possible to explore the discursive creation of norms, rules, principles and decision making procedures. This is vital for regime theories as the ever evolving construction of ideas eventually becomes ways of knowing and comprehending the world

Methodology

The meanings that are intersubjectively understood are more important than the material world (regarded as meaningless if it has not being conceptualized by language). Thus, "discourse analysis [...] broadly denotes methodologies that capture the creation of meanings and accompanying processes of communication" (Klotz and Lynch, 2007:19). It "is founded on a strong social constructivist epistemology. Social reality is not something uncovered, but something that we actively create through meaningful interaction" (Herrera and Braumoeller, 2004: 20). There are various interpretations to an issue; hence, it is not a scarcity of interpretations that makes one of them hegemonic.

> If we accept the incomplete nature of all discursive construction and, at the same time, affirm the relational nature of every identity, in this case the ambiguous nature of meaning, its impossibility to be singular can only exist as far as there is a proliferation of meanings (Laclau and Mouffe, 2004: 154).

According to Milliken, there are three possible ways to carry out discourse analysis: discourses as systems of signification, discourse productivity and play of practice.

Discourses as systems of signification explain that meanings are constructed. "[P]eople construct the meanings […], using sign systems […] discourses are expected to be structured largely in terms of binary oppositions […] that, far from being neutral,

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establish a relation of power such that one element in the binary is privileged" (Milliken, 2001: 138). Thus, people assign meanings to social facts. In other words, things are essentially meaningless until agents (people) make them meaningful. It is relevant to notice that the final part of the previous quote is informed by Derrida´s philosophical work, where analyzing binary opposites that distinguish one object from others is encouraged. This kind of methodology will be further explored in the "Direct Application" section of this chapter.

Discourse productivity tells us that: "discourses define subjects authorized to speak and to act […] define knowledgeable practices […] Throughout, discourses are understood to work, to define, and to enable, and also to silence and to exclude" (Milliken, 2001: 139). The capacity for discourses to affect agents is truly vital as discourses can limit the possibilities of agents to speak, act, be mere observers or not even exist.

Finally, the play of practice considers that by "implementing practices and ways of making these intelligible and legitimate" (Milliken, 2001: 139), other realities are being created, other agents are being allowed to speak, structures are shaped and the relative stability of a system is questioned, causing change.

Further, through analyzing discourse, researchers can focus on "a particular historical event, the evolution of an organization over the years […] connections among events, and temporal features, such as the order, pace, duration, and frequency. The researcher treats the sequence of events itself as an object of inquiry" (Neuman, 2006: 475). In this case, it is possible to understand various events as a single entity, as an integral process in which the links among such events are explored. If the researcher wants to establish that an original event triggers a sequence of other events, then path dependency is established, which can be seen as self-reinforcing, if once an event takes place it further strengthens the following ones; or as a reactive sequence, if an event may trigger a contesting response which can then reverse the direction from the original event (Neumann, 2006: 476-477).

Undoubtedly, constructivist research can be done applying a variety of methods. "There is no single method for analysis […] but rather a number of ways that scholars can identify key aspects of significant practices and, based on their study, establish a discourse" (Milliken, 2001: 140). My research applies constructivist theoretical

paradigms and discourse analysis methodology to the issue of LGBT topics/themes gaining more visibility from/at human rights United Nations entities: the Human Rights Committee, the Human Rights Council, the Office of the High Commissioner of Human Rights (UNOHCHR) and the Secretariat. I am interested in the process that allowed for a variety of milestones regarding LGBT issues to take place within this international body. Especially, noticing that groups that are diverse regarding their sexual orientation and gender identity have traditionally encountered resistance from various states to their concerns being addressed at international forums.

Legitimizing the visibility of LGBT issues at UN human rights entities sheds light upon the agents that were relevant in the construction of this practice; the interpretations of social facts that were more accepted; how the practice became discursive as well; and if it has happened, what set of rules are/were present at these contexts that allowed these themes to access the multiplicity of discourses in the universal Human Rights regime.

Hence, as was presented in the introduction, using a constructivist framework, regimes and international organization theories, I analyze United Nations human rights entities as agents and structures that have helped construct LGBT themes as part of human rights discourses. It is my belief that analyzing these bodies in terms of the topic of sexual orientation being included in their agenda, is pertinent to the field of international organizations and to a constructivist approach to knowledge because it explores what the process has been for this international organization to construct/reconstruct the aforementioned topic in the regime of human rights.

While it may seem that my dissertation places too much emphasis upon the agency of an international organization, over that of states for instance; this project, being centered exclusively on the Human Rights Committee, the Human Rights Council, the Office of the High Commissioner for Human Rights and the Secretariat is indeed about exploring these pieces of an IO, both as agents and as structures. To achieve this end, I have not included an exploration of states´ agency to, mainly, attempt maintaining focus on my object of study and abide by the length and level of analysis of a Master´s degree thesis. My dissertation strives to accord to both, structure and agency, sufficient interest, by analyzing closely, through the examination of discourse, which

the relevant agents and structures are, what changes are perceived and how these have taken place.

Direct application

I follow Milliken´s depiction of predication in discourse analysis as my specific research method. Hence, I focus on what identifies nouns and characterize them. "[T]he language practices of predication [are…] the verbs, adverbs, and adjectives that attach to nouns. Predications of a noun construct the thing(s) named as a particular sort of thing, with particular features and capacities" (Milliken, 2001: 141). In other words since verbs, adjectives and adverbs create discourse on nouns, predication provides them with capabilities and objectives, identities and interests. In this research, the noun is made into an agent through identities and interests. The structure is the context and the norms, rules, discourses and practices that made possible the identification of agents. The structure can have the framework of regimes or can be more institutionalized through an international organizations approach.

My project thus considers areas of previous official United Nations documents that have been used and interpreted by the members of the Human Rights Committee and Human Rights Council. "Studying the language of rules […] starts with texts to show the existence (and possibly dominance) of particular intersubjective understandings. Relevant primary sources include archives of governments, intergovernmental organizations, and non-governmental organizations" (Klotz and Lynch, 2007:19). While, at first, for this purpose, "researchers can document the extent to which the key words of one frame appear in the discourse of other actors, and trace the timing of the appearance of these words in policy debates to confirm that the discourse indeed originated with the first actor" (Klotz and Lynch, 2007: 55), predicate analysis takes this method even further.

Clearly, "language can never represent the world completely accurately, because language is implicated in making the world it purports to represent" (Kubalkova, Onuf and Kowert, 1998: 17). Language is created by the structure and agents interactions, but agents themselves use it to describe the structure in what becomes an ever evolving set of narratives that shifts the capacity of agents to characterize or assign the structure with its own sets of identity and interests. Further, "no individual study, even a monograph,

can deal with all the aspects of discourse productivity, however, and there are foci that follow from choices that scholars make about whose systems of signification they will principally study" (Milliken, 2001: 146).

I do not compare UN documents among them regarding identical use of language or succession of meanings, but rather focus on exploring the binary opposites in the texts[9] through predicate analysis, "abstract[ing] from […] two particular oppositions to a core opposition underlying both" (Milliken, 2001: 143). Defining a noun also delimits and defines its binary opposite. "[A] text never constructs only one thing. Instead, in implicit or explicit parallels and contrasts, other things (other subjects), […are] labeled and given meaningful attributes by their predicates" (Milliken, 2001: 142). Accordingly, by establishing a set of binary opposites, I wish to make evident the process by which language has constructed LGBT themes in the Human Rights Council and Human Rights Committee as legitimate/ illegitimate, public / private, general/ particular, significant / insignificant, common / taboo, and as a matter to be dealt either by the international community or by each state as a classic principle of sovereignty.

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[9] The official United Nations languages are six: Arabic, Chinese, English, French, Russian, and Spanish. The working languages in the Secretariat are two: English and French. Considering the play of practice approach, it should be noticed that all of the official UN documents analyzed in this dissertation are in English. Thus, within the UN Headquarters, the practice of establishing English (alongside French) as the language by which interactions have to take place, conditions spaces for behavior and provides hegemonic standing to the language: and as it is explored in this thesis, language creates.

CHAPTER II
THE UNIVERSAL HUMAN RIGHTS REGIME:
THE UNITED NATIONS ORGANIZATION AS STRUCTURE AND AGENT
OF THE STRUGGLE FOR HUMAN RIGHTS

> *When our fellow humans are persecuted*
> *because of their sexual orientation or gender identity, we must speak out.*
> *Human rights are human rights everywhere, for everyone.*
> Ban Ki-Moon, 2011

The international system is never fully stable; a multiplicity of agents constantly interacts within it, creating rule, shaping it; perpetually obeying and defying it. Constructivist authors have preferred defining it as heteronomy, as it is discussed in the previous chapter[10]. Agents interact with(in) the structure, at many levels, at various times, and with different outcomes, effectively making of change the surest constant. Hence, in spite of being aware of the unavoidable inaccuracy resulting from attempting to describe the structure of an ever-changing system, my objective throughout this chapter is discussing the role of the United Nations organization and specialized agencies as structures and agents in the regime of human rights.

This research addresses how the United Nations Organization (including members of its staff) has played a role, as an agent and as a structure, constructing sexual orientation within the framework of the universal regime of human rights. Thus, this chapter starts off by characterizing the universal human rights regime and describing the role that the main United Nations Human rights mechanisms and offices, the United Nations Office of the High Commissioner for Human Rights, the Human Rights Committee, the Secretariat and the Human Rights Council, have within it.

The Universal Human Rights Regime
Human rights have been discussed at various times throughout history within different cultural frameworks. According to Bertil Dunér,"[a]lthough the idea of human rights has its roots far back in history, the international human rights order or regime that we know today dates back to the birth of the United Nations: the UN Charter set out in the

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[10]The significance of this difference relies on constructivist's acknowledgement of "unintended consequences" during the continuous and evolving interactions among agents and structures.

Preamble to 'reaffirm faith in fundamental human rights'" (2002: 19). This Charter set out the agreements and expectations of behavior that would govern relations among states after the end of World War II. For Weiss, Forsythe and Coate,

> [i]f there is a clear correlation between at least some human rights and peace, then human rights have importance not only for a direct and 'micro' contribution to human dignity [...They] contribute in a 'macro' sense by enhancing international – and perhaps national – security and stability by eliminating violence (2004: 139).

Though there is no real consensus, according to most estimates, from 1939 to 1945, about 60 million people died as a result of this war. Considering such catastrophe, upholding human rights universally was part of the group of rules and norms that states agreed upon, placing this theme at the very core of the United Nations Organization. Admittedly,

> strong prohibitions inserted in Article 2 had turned the Charter into a fundamentally non-interventionist text. The recognition of human rights as a matter of legitimate international concern had thus been coupled with a firm commitment to the ostensibly contradictory principle of absolute national sovereignty (Serrano, 2010: 7).

Undeniably, citizens of various states enjoyed rights before the setting of the United Nations. However, rights were not, even discursively, universal to every human being, regardless of state borders, even when non-intervention was prescribed. "Before World War II, human rights were systematically violated but rarely discussed in international politics [...] Human rights were viewed as an internal (domestic) political matter, an internationally protected exercise of the sovereign rights of states" (Donnelly, 2007: 3). Therefore, with the creation of the United Nations, human rights became a public, international matter, which was relevant for achieving international peace and security.

Human rights gained legitimacy worldwide while advancing the idea that "[t]he most cherished tenet of human rights thinking is [precisely] the universality of rights" (Dunér, 2002: 55). As respecting, proclaiming and even discussing human rights became more common in the international sphere; the definition of sovereignty changed. Andrew Moravcsik has stated that "the Westphalian ideal of state sovereignty that underlies realism [...] and classical international law [was challenged] but also

though less frequently noted – […] liberal ideals of direct democratic legitimacy and self-determination [were contested]" (Moravcsik, 2000: 218).

The inclusion of human rights in the international politics sphere managed to reshape what was thought about democracy, self-determination, and sovereignty. Further, according to Weiss and Thakur "[w]hile human rights are most endangered in conditions of anarchy when there is no functioning state,[…] the gravest threats in a substantial number of cases to the human rights of citizens actually are posed by their own states" (Weiss and Thakur, 2010: 259). Considering states' sovereignty, it is necessary to underline that even redefining it, for instance, was a process where states were inherently involved; given that they chose to hold themselves accountable to an organization of mostly their making.

> As far as theory of human rights is concerned, since 1945, states have used their sovereignty to create international human rights obligations that in turn have restricted their operational sovereignty. The international law of human rights, developed on a global scale at the United Nations, clearly regulates what legal policies states can adopt even within their own territorial jurisdictions (Weiss, Forsythe and Coate, 2004: 129).

There is a commonly held view that assigns states, and states only, the possibility of agency. There are also other approximations that consider the various agencies of other actors. Weiss, Forsythe and Coate are part of the latter group. They conceive that "state actors primarily shape the UN agenda and action on human rights, although states are pushed and pulled by other actors, such as private human rights groups and UN secretariat officials" (Weiss, Forsythe and Coate, 2004: 130).While states make possible the configuration of a regime, they are not the only agents acting within that regime.

The global regime of human rights is composed of a multiplicity of relations. "[It] is a relatively strong promotional regime, composed of widely accepted substantive norms, largely internationalized standard-setting procedures, some general promotional activity, but very limited international implementation" (Donnelly, 1986: 614). "The[se] global human rights connections of course amount to a regime […:] a treaty framework exists, and it would probably be relevant to talk of a number of regimes, depending on the classification made of extant legal frameworks and procedures" (Dunér, 2002: 28). Thus, the multiplicity of configurations that are part of the regime of human rights could further be divided into smaller, more definite, regimes of their own, that nonetheless act

within the more global regime. "It has been suggested that in human rights matters there is a special kind of interdependence, a 'moral interdependence' which links states together" (Dunér, 2002: 29).

Further, as an international law construct, the international human rights regime establishes subjects with rights and duties, "subjects of the law, in other words, entities to which rights and duties are ascribed and which have the capacity to bring international claims" (Dunér, 2002: 91). Through this process, agents, and structures are explicitly and implicitly identified, since the legal language of international law effectively constructs, creates and shapes reality. Principles, rules, norms and procedures of action are present in the human rights regime, and have been defined through legal language.

The regime of human rights has not been immune to censure. In fact, it has often been criticized because of being perceived as somewhat weak in comparison to other global regimes.

> [I]nternational human rights institutions are not designed primarily to regulate policy externalities arising from societal interactions across borders, but to hold governments accountable for purely internal activities. In contrast to most international regimes, moreover, human rights regimes are not generally enforced by interstate action (Moravcsik, 2000: 217).

Moravcsik calls attention to an important matter that characterizes the regime of human rights: its dealing with internal affairs. This specificity explains why the regime of human rights works differently from other international configurations that regulate or examine interactions among states. "[T]he weakness of the *control system* [occurs because…] the only power available to be used against recalcitrant states is the so-called mobilization of shame, and the worst penalty a sinner can typically expect is to be openly condemned in a UN resolution" (Dunér, 2002: 37). Sovereignty, while redefined and challenged is still a major tenant of international relations, which is why states have not tended to assign as part of the regime of human rights, the mandates to further strengthen the regime and limit or redefine state sovereignty.

Nonetheless, considering the structure of the United Nations and its capability for agency, "[i]ssues ignored at the national level can be taken to the United Nations, where they gain international legitimacy. Often, the result is that the international

spotlight shines on the delinquent national government" (Weiss and Thakur, 2010: 260). In fact, it seems that policies and programmes for the social advancement of various groups of people have commonly been accompanied by UN resolutions, adopted either at the General Assembly or at the Human Rights Council. For instance, UN Women, the United Nations agency for women empowerment and gender equality, was created in July 2010 through a UN General Assembly resolution. Moreover, the legitimacy of UN Women was also based upon successful previous human rights declarations' milestones. The UN Women website mentions that: "the UN has made significant progress in advancing gender equality, including through landmark agreements such as the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)" (UN Women, 2011).

Regarding the specific case of LGBT themes being included in the UN, to some degree there are cases, such as the one for the advancement of women empowerment and gender equity, where the UN had a distinct role as an agent and as a structure. The UN can be seen as a place; in other words as part of the structure where a multiplicity of agents: states, epistemic communities[11], transnational civil society[12] and the organization itself, represented by its staff (which can be considered an epistemic community), helped construct a topic. Thus, it is relevant to discuss the role of the United Nations organization within the global regime of human rights within this international organization.

The United Nations Organization

According to *The United Nations Today*, Franklin D Roosevelt used the term "United Nations" for the first time during the Second World War, on January 1, 1942, in the "Declaration by United Nations", "when representatives of 26 nations pledged their governments to continue fighting together against the Axis powers" (United Nations Department of Public Information 2008: 3). Officially, October 24, 1945 is the date

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[11] "An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas, 1992: 3).
[12] "It refers to self-organized advocacy groups that undertake voluntary collective action across state borders in pursuit of what they deem the wider public interest" (Price, 2003:580).

when the United Nations was created, since, by then, all permanent members of the Security Council[13] and most of the other signatories had ratified the Charter.

The organization has six main organs[14]. In this chapter, I discuss the two UN main organs that are relevant in my research: the General Assembly and the Secretariat. The Human Rights Council, as a subsidiary body of the General Assembly[15] is also described; along with the United Nations Office of the High Commissioner for Human Rights, "as the principal United Nations office mandated to promote and protect human rights for all" (United Nations Office of the High Commissioner for Human Rights, 2012); and, the Human Rights Committee as "the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties" (United Nations Office of the High Commissioner for Human Rights, 1996-2010).

These are structures and agents that deal specifically with human rights: "The United Nations has been crucial to the promotion of human rights, largely through the setting of standard through treaties. This role is logical, given that the UN is the only global intergovernmental organization to define universal human rights" (Weiss, Forsythe and Coate, 2004: 197). Hence, the aforementioned entities are suitable human rights spaces where some LGBT topics, such as sexual orientation and gender identity, have been discussed by / in the international community.

A visual aid regarding what agencies, programmes and bodies are parts of the United Nations family is provided in the annex at the end of the thesis. This information has been directly taken from *The United Nations Today,* published by the United Nations Department of Public Information (2008: 24-25).

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[13] France, the United Kingdom, the Soviet Union, the People's Republic of China and the United States.
[14] The General Assembly, the Security Council, the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice, and the Secretariat. "The United Nations family, however, is much larger, encompassing 15 agencies and several programmes and bodies" (United Nations Department of Public Information 2008: 6).
[15] Previously, the United Nations Commission on Human Rights was under ECOSOC's coordination; nonetheless, currently, its replacement, the United Nations Human Rights Council, is a subsidiary body of the UN General Assembly.

UN Organs

General Assembly

According to Joseph Deiss, President of the 65th session of the General Assembly, this organ, "with its universal membership and its system of 'one country, one vote', is the pre-eminent deliberative, policymaking and representative body of the United Nations" (Permanent Mission of Switzerland to the United Nations, 2011: 7). The General Assembly comprises all member states and has as its original main task recommending actions to be taken in order to maintain international peace and security. Unquestionably, and as it has become more evident throughout the years, many topics can be categorized as within the scope of action of the General Assembly, which is why it is divided in six Main Committees[16]. Regarding its functioning, former Secretary General of the United Nations, Boutros Boutros-Ghali, deems that

> recommendation is the main weapon of the United Nations […] Unlike treaties, recommendations do not create a legal obligation for States. They are not, however, mere exhortations. […C]ertain United Nations human rights standards, presented in the form of recommendations, have taken on such authority that they are widely considered to constitute or to strengthen a rule of customary international law. This has been said, in particular, of a number of parts of the Universal Declaration of Human Rights (Boutros-Ghali, 1995: 6-7).

Decisions may be adopted through a voting process or through consensus, the latter option is the one which the General Assembly secretariat[17] often strives to achieve, as a decision is seen as more legitimate and will carry more weight if voting is not needed, demonstrating that all states present agreed on the resolution or decision.

The Secretariat

Gathering institutional memory, the Secretariat consists of the international civil servants working for the United Nations Organization. It "has some 25,530 staff

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[16] First Committee (Disarmament and International Security); Second Committee (Economic and Financial); Third Committee (Social, Humanitarian and Cultural); Fourth Committee (Special Political and Decolonization); Fifth Committee (Administrative Budgetary); Sixth Committee (Legal).

[17] The UN Secretariat headed by the Secretary General is generally written with a capital 'S', while "[a]ny part of the UN can be designated by Member States as a secretariat [with a small 's'] providing support for an intergovernmental process" (Permanent Mission of Switzerland to the United Nations, 2011: 22).

members on contracts of one year or more. […They] answer to the United Nations alone for their activities, and take an oath not to seek or receive instructions from any government or outside authority" (United Nations Department of Public Information, 2008: 14).

Its head is the Secretary-General, who serves during a five-year term, with the possibility of re-election. He or she is recommended by the Security Council and appointed by the General Assembly. "Equal parts diplomat and advocate, civil servant and CEO, the Secretary-General is a symbol of United Nations ideals […Hence,] one of the most vital roles played by the Secretary-General is the use of his 'good offices'[18]" (United Nations Department of Public Information, 2008: 15).

The role of the United Nations within the Universal Regime of Human Rights

The Preamble to the Charter of the United Nations places human rights at the center of the UN creation. Thus, it reads: "[w]e the peoples of the United Nations [are] determined […] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women" (Charter of the United Nations, 2003 [1946]). Hence, from its very beginnings, this organization establishes as part of its elementary agreement that member states commit themselves to respect human rights.

Three years after the signing of the United Nations Charter, the General Assembly adopted the Universal Declaration of Human Rights, which establishes two categories of rights: civil and political; and economic, cultural and social. This document is often considered to be similar to customary international law, due to its wide acceptance and its invocation to evaluate the behavior of states on human rights matters (United Nations Department of Public Information, 2008: 240).

Keeping in mind current criticisms of the global regime of human rights, Dunér explains that there are authors who claim that

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[18]"Steps taken publicly and in private, drawing upon his independence, impartiality and integrity, to prevent international disputes from arising, escalating or spreading" (United Nations Department of Public Information, 2008: 15). The Secretary General can bring to the attention of the Security Council any events or issues that may threaten to disrupt international peace and security; for instance, systematic human rights violations or abuses.

> [t]here is an unbalanced normative input in the human rights tradition. Whereas the Judeo-Christian tradition is richly represented, other cultures are not, for instance, Islam, Hinduism − Janism − Buddhism, and the Chinese and Japanese traditions. The consequence of this 'massive Western structural / cultural export' is, among other things, 'the destruction of alternative structures and cultures' (Dunér, 2002:69).

While the universality of human rights was both, fervently upheld and adamantly contested at that time, in 1966 after being debated in the then Commission of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) were adopted . These two documents, along with the 1948 Universal Declaration of Human Rights, are included in the International Bill of Human Rights.

A distinction is made between civil and political rights and economic, social and cultural rights. Donnelly explains that "critics argue that economic, social and cultural rights, entitlements to socially provided goods, services, and opportunities such as food, health care, social insurance, and education, are at best less important than civil and political rights" (Donnelly, 2007: 25). Nonetheless, the author emphasizes that human rights are interrelated and violations to economic, social and cultural rights are often directly related to civil and political rights. For instance, even when equating civil and political rights to negative[19] ones, and economic, social and cultural rights to positive[20] ones, the distinction is blurry when confronted against pragmatic issues: "The (social) right to marry and found a family is no less negative than the right to freedom of religion" (Donnelly, 2007: 26).

While there was one Universal Declaration of Human Rights, the separation in two Covenants of two sorts of rights took place due to the political context of the time. "The East − West rivalry had serious repercussions because efforts to convert the Universal Declaration of Human Rights into a single covenant that countries could

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[19] "Negative rights require only the forbearance of others to be realized. Violating a negative right thus involves actively causing harm, a sin of commission" (Donnelly, 2007: 26).

[20] "Positive rights require that others provide active support. Violating a positive right involves only failing to provide assistance, a (presumably lesser) sin of omission" (Donnelly, 2007: 26). Other authors, such as Weiss, Forsythe and Coate also mention third-generation solidarity rights, which "followed the other two clusters and […] pertain to collections of persons rather than individuals. Later formulations have included claims to a right to peace, development, and a healthy environment as the common heritage of human kind" (Weiss, Forsythe and Coate, 2004: 142).

ratify were delayed when ideological debates became intensely polarized (Weiss and Thakur, 2010: 262). In fact,

> the Universal Declaration of Human Rights is a Resolution of the UN General Assembly, not a treaty. Thus, it is not, per se, legally binding. A draft covenant to give human rights binding force in international law was largely completed by 1953 but was tabled for more than a decade, a hostage to East – West ideological rivalry (Donnelly, 2007: 6).

Further, the political international context of the Cold War had made it difficult for the International Covenants to be more specific than the often open ended principles listed at the Universal Declaration of Human Rights. However, official United Nations information reads that: "[t]he covenants should be neither a recasting of the Universal Declaration of Human Rights nor a compendium of all civil and penal codes and all social or education legislation" (United Nations Department of Public Information, 1995: 44).

> The utility of the two covenants on human rights of 1966 lies in the requirement imposed on signatories to submit periodic reports on the human rights situation in their countries. Therefore, ratifying and bringing the covenants into force connotes more than acceptance of internationally proclaimed standards of human rights. Signatories also agree to construct long-term national infrastructure to protect and promote human rights and to put in places national authorities to collect data to submit to the UN (Weiss and Thakur, 2010: 265).

According to the *Fact Sheet 15* of the Office of the United Nations High Commissioner for Human Rights, more than 100 regional and international human rights declarations, treaties, conventions and projects have been inspired by the International Covenants of Human Rights (Office of the United Nations High Commissioner for Human Rights, 2005: 1). "From a quantitative point of view the global human rights framework is impressive indeed. The official list of documents produced by the UN numbers almost 100. Equally impressive is the set of institutions concerned" (Dunér, 2002:47)

Besides the Bill of Human Rights, the following treaties are especially relevant UN documents in the global regime of human rights: the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(1984); the Convention on the Rights of the Child (1989); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (Office of the United Nations High Commissioner for Human Rights, 2005: 1).

All of these treaties have a section that explains the specific rights and freedoms in the area identified by the treaty. Also, each treaty has an independent body or committee that is in charge of reviewing states' compliance with it;

> there is a notable tendency to take economic and social rights lightly or at least to overlook problems involved. This may partly be due to the relatively lower rank attributed to them in the Western human rights tradition, but it should also be kept in mind that these rights generally are quite vague and difficult to operationalize (Dunér, 2002: 137).

These committees are composed of individuals from the state parties, who are nominated based on their expertise, impartiality and independence. "For the International Covenant on Civil and Political Rights, the treaty body established for that purpose is the Human Rights Committee[21]" (Office of the United Nations High Commissioner for Human Rights, 2005: 2).

For Donnelly, the 1960s represented a time of revitalization for human rights, due to, among other factors, the size increase in the number of UN member states. "Progress again began to be made […] as a result of effective UN human rights activity on behalf of self-determination and decolonization […, while] membership doubled in less than a decade, and by the mid-1960s, Afro-Asian states formed the largest voting bloc" (Donnelly, 2007: 6).

Also, the United Nations evolved from setting standards to monitoring how such standards were applied by states.

> The late 1960s saw a flurry of international monitoring initiatives […] In 1970, Economic and Social Council Resolution 1503 authorized the Commission on Human Rights to conduct confidential investigations of complaints that suggested 'a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms (Donnelly, 2007: 8).

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[21] "[I]t may best be described as a committee on civil and political rights as it is responsible for oversight of the implementation of the civil and political rights set out in the International Covenant on Civil and Political Rights" (Office of the United Nations High Commissioner for Human Rights, 2005: 2).

Monitoring implied collecting information, interviewing official and unofficial sources and ultimately, being able to judge, identify and define interests and identities for states. In this way, "the official pronouncement of human rights goals for the UN (a) human rights *standard – setting*, (b) *promotion;* and (c) *protection* (Dunér: 2002: 48) became more prominent.

In 1993, the High Commissioner for Human Rights office was created. The mandate of the High Commissioner

> covers six broad areas, namely the promotion and protection of human rights throughout the world, the reinforcement of international cooperation in the field of human rights, the establishment of a dialogue with Governments with a view to ensuring respect for human rights, the coordination of efforts made in this area by the different United Nations organs, the adaptation of the United Nations machinery in this area to current and future needs and the supervision of the Centre for Human Rights United Nations Department of Public Information, 1995: 476).

It is important to notice that the new powers of the Human Right Commissioner and his office were not readily accepted by all Member States given the political framework in the international sphere."[P]eacekeeping operations scrupulously avoided direct reference to human rights […] In the late 1980s and 1990s, however, the link between human rights and international peace and security, which has been a central part […] since the drafting of the UN Charter, finally became part of UN practice" (Donnelly, 2007: 14).

The United Nations entities as structures and as agents

Constructivism places a strong emphasis on the acceptance and creation of rules, after all, "[n]orms are not converted into laws and regimes by some mysterious process. They require identifiable agents" (Weiss and Thakur, 2010: 317). Underlining that institutions such as the UN are structures and agents, and shape the interests of other agents, it is clear that there is a complex set of relationships among agents and structure, where it cannot be said that either one acts independently.

The United Nations as a structure

The United Nations can be considered both, a structure and an agent, depending on the situation and on the topics that are treated in each of its organs and specialized agencies.

As a structure, the organization itself is an attempt to create order in a heteronomic international arena through rules, norms and even customary practices.

> By presenting agents with choices, rules affect conduct. Conversely, the pattern of choices affects rules, strengthening those that agents choose to follow and weakening those that they do not. In aggregate, rules perform regulative and constitutive functions because each and every rule simultaneously produces both kinds of effects. This is so whether rules are informal — so informal that many scholars call them *norms* and *conventions* — or highly formal — so obviously set apart from other rules that, by convention, we call them *law* and divide them by function (Onuf, 2001a: 13-14).

The structure of the United Nations is populated by rules; a short example of these is the voting procedure that was explained regarding the General Assembly. Each one of the entities of the UN has a set of rules and norms that delimits and gives shape to the behaviors than can take place in those spaces. Further, Onuf deems that rules (which are somewhat consistent although also ever changing), are able to define who acts as an agent, and in which situations, in a more stable way than anarchy. (Onuf, 2001a: 11).

The Human Rights Council is a place where the organization is part of the structure in the international stage, defining through norms, conventions and laws the possibilities agents have to act within it. According to Claude "the supplying of a stage for the stars is conceivably more important than the sneaking of an additional player into the cast" (1971: 13). Therefore, providing a stage may sometimes have more vital repercussions in constructing a theme or topic than being just another agent.

What is also important in this process of construction of agents and norms is, as Onuf points out, that norms that are continuously followed are strengthened and thus gain legitimacy by custom. On the other hand, norms that are continuously disregarded tend to be weakened. For instance, the capacity the United Nations Office of the High Commissioner for Human Rights has to produce reports, mandated by member states, can transform what the organization talks about into more than information; into issues with a relative normative value. "[T]he instrumentalities of power […are] useful for understanding how "operating units" circumscribe the actions of others within determinate settings" Wolf, 1990: 587). Moreover, the Office of the High Commissioner for Human Rights is mandated to collect information and produce documents on human rights concerns identified by the members of the Human Rights

Council. The members of the Council interact with one another through the setting, rules and norms provided by the organization.

Even given its limited material capabilities, when considering budgetary limitations for instance, by publishing and interpreting information, the United Nations contributes to the construction of norms, which in turn frames who the actors are and what behaviors those actors (transformed into agents once they act upon that norm) can adopt. "Throughout the 1990s, the United Nations Commission of Human Rights was in many ways the heart of the global human rights regime" (Donnelly, 2007: 83).

I believe that Onuf's previously alluded concept of speech acts, especially commmissive speech acts, is instrumental in further clarifying how the structure of the United Nations allows room for its own agency and that of other agents. Commissive speech acts are those "by which speakers seek to change the world by having other agents hold speakers to the consequences indicated by their choice of words" (Onuf, 2001b: 60). For instance, while the UN emphasizes the role of human rights in creating or maintaining peace, the organization directly holds member states accountable for respecting human rights and encourages states as agents to act within the boundaries the structure dictates.

This brings us to commitment rules, which are directly linked to commissive speech acts. The former "tell agents what they and other agents owe to, and may expect from, each other" (Onuf, 2001b: 60). Hence, the more pragmatic part of commissive speech acts becomes evident as commitment rules. The UN staff carry out uncountable activities for member states; so, even the capacity to arrange a topic in a certain way has real repercussions in terms of what interests are constructed for states, as well as what identities are encouraged and what states can expect from each other. For instance, the rules of procedure in the Human Rights Council create a practice where speakers have to be recognized by the Chair to speak before the assembly; the existence of an order so that agents are given the floor elucidates on the generally taken for granted, tactical or organizational power.

The process of structure, rules, and norms constituting agents or agents being able to change rules and norms to give a new shape to the structure is circular. In other words,

> [t]here can be no agents where there are no rules of agency. There can be no agency in the absence of institutions. There can be no institutions in the absence of agents. It is pointless to ask which comes first. The rules of agency distribute statuses, offices and roles. Every agent holds an ensemble of statuses, offices and roles unique to that agent. Agents link networks, organizations and associations in an inconceivably large number of ways, the totality of which we conceptualize as society (Onuf, 2001b: 61).

The United Nations as an agent

The UN international civil servants provide various services to members states, among which are coordinating meetings, helping frame topics, translating and interpreting language and even ensuring to be up to date with who the official members of every diplomatic mission to the UN are. Onuf's understanding of speaking provides some light in terms of the power that is invested in some of the tasks undertaken by the UN staff, especially the ones related to language. "[A]lways normative, speaking is inextricably related to the achievement of the speaker's goals, and thus it is always laden with value [… T]he observer (or perhaps I should say auditor) talks about […] then that observer becomes an agent, and those facts take on value" (Onuf, 2001a: 15).

So, the agency of the UN becomes tangible through the acts of its staff / members: judges in the Human Rights Committee and the Secretary General as the most prominent character in the Secretariat. This is why Barnett and Finnemore argue that: "IO staff can be the source of new ideas and new solutions in policy debates. Their status as being 'an authority' and 'in authority' on areas related to their mission positions them well both to generate new ideas and to have those ideas heard and respected" (Barnett and Finnemore, 2004: 162).

Noticing that the task of coordinating activities requires UN staff's input and considering that their technical knowledge is specific and complex, it is safe to say that UN staff plays an important role within the organization, a role that is not completely controlled by the member states that gave birth or have become parts to the organization. According to Wolf, "structural power shapes the social field of action so as to render some kinds of behavior possible, while making others less possible or impossible. As […] Georg Friedrich Hegel argued, what occurs in reality has first to be possible" (Wolf, 1990: 587).

As has been already mentioned, specialization is key at the United Nations. "It is because bureaucracies are rational, impartial, and technical that they are valued and

viewed as a superior way of organizing and coordinating activities" (Barnett and Finnemore, 2004: 27). Impartiality and rational thinking are highly respected within this organization, given that UN staff must pledge allegiance to the organization itself and to the values that it upholds. These sets of values, rules and norms can be found at its foundational Charter and at the various international treaties that have been convened by any of the UN entities.

Additionally, international organizations and their staff are thought of as impartial: "because they are bureaucracies, [acting... in a] mostly rational, technocratic, impartial, and nonviolent [way]. This often makes IOS appear more legitimate to more actors than self-serving states that employ coercive tactics in pursuit of their particularistic goals" (Barnett and Finnemore, 2004: 5). International organizations favor specialized ways for their staff to interact with one another due to a logic of bureaucratization, where it is believed that effectiveness of a processes depends on further specialization and established (but ever developing) rules and norms of procedure. Due to such level of bureaucracy, the organization is also seen as impartial and legitimate to serve other interests besides its own, gaining some sort of moral authority. "By 'authority' we mean the ability of one actor to use institutional and discursive resources to induce deference from others" (Barnett and Finnemore, 2004: 5).

For Onuf, "[t]hanks to the rules, some agents benefit beyond their due—they rule without the vestments of rule" (Onuf, 2001a: 16). At times, this is the case of the organization itself, and the staff members that work at the UN. The kind of power they can exercise due to being agents is related to directing the flows of energy and defining a field of interaction. While the UN was created by states' representatives, the organization has taken a life of its own, due, among other reasons, to the need for resource effectiveness and neutrality that are central to the UN missions.

The United Nations Organization encourages individuals who work at this institution to acquire a sort of bureaucratic knowledge in order to be able to accomplish their tasks as agents and structures in a more effective manner. Case in point, the Human Rights Committee judges are invested with quite some room for agency within the mechanics of the organization and along with the Secretary General, act as agents.

It becomes intuitive then, to understand that the structure of the UN requires affording agency to the organization. "Rules constitute the conditions of agency within

limits set by the functional properties of these rules. As ensembles of rules, institutions also function within limits set by the same functional properties" (Onuf, 2001: b 59). The UN's capacity to elaborate norms and rules does not only limit traditional agents' capabilities, such as states; the UN limits itself and other agents, such as, transnational civil society, as well.

This dual role can also be understood using Claude's insights: An international organization is most clearly an actor when it is most distinctly an "it," an entity distinguishable from its member states (Claude, 1971:13). When speaking, the organization might distance itself from member states, gaining an identity as an 'it', different from them (the other agents). This identity becomes institutionalized through rules and norms, gaining legitimacy through discourse and practice in the structure. The current multilateral system can be seen as the institutionalization of the 'order of things'. The institutions within this specific system are particular amalgams of ideas, interests and material power which in turn influence the development of ideas, interests and material conditions of agents (Boas and McNeill, 2004: 6).

Article 103 of the Charter "[…] posits that some community rules (and its principal institutional representatives, namely the United Nations itself) are superior to others by dint of the claims of the United Nations to universal participation and its pursuit of universally desired goals" (Alvarez, 2006: 327). An example of this can be the Human Rights Council, given that its members effectively create legally binding rules. Additionally, for the organization to be able to claim neutrality and effectiveness in its mission, specific procedures and specialization take place among its entities and the staff working in them.

Thus, in any of the UN's specialized organs and entities, there are actors and agents (agents as the actors that have the possibility to act) who do, perform and are within the framework of the organization, favoring division of labor and acquisition of expertise[22]. Michael Barnett and Martha Finnemore explain that "we want important social tasks to be done by people with detailed, specialized knowledge about those tasks […] Professional training, norms, and occupational cultures strongly shape the way experts view the world" (2004: 24).

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[22] Here it is relevant to consider Habermas's discussion on p. 31 on the focus on expertise in order to exercise power.

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CHAPTER III
DEFINING INTERESTS, IDENTIFYING AGENTS:
PREDICATE ANALYSIS OF UNITED NATIONS' HUMAN RIGHTS
OFFICIAL DOCUMENTS ON LGBT THEMES

> *Some say sexual orientation and gender identity is a sensitive subject.*
> *I understand. Like many of my generation, I did not grow up talking about these issues.*
> *But I learned to speak out because lives are at stake, and because it is our duty,*
> *under the United Nations Charter and the Universal Declaration of Human Rights,*
> *to protect the lives of everyone, everywhere....*
> Ban Ki – Moon, 2012

Through discourse analysis of official UN documents, I discuss the binary opposite adjectives, nouns and images used to describe sexual orientation and LGBT people and themes at the Human Rights Committee and at the Human Rights Council. In this way I wish to show that there have been changes regarding the sort of language that has been used and associated with LGBT issues, both at the Human Rights Council and at the Human Rights Committee, within a 28 year time frame, from 1983 (when the first case that deals with issues on sexual orientation was considered by the Human Rights Committee) to 2011 (when the first report on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity was presented by the High Commissioner of Human Rights within the framework of the Human Rights Council).

While roughly three decades is clearly too long a period to attempt developing a substantial analysis of any of these human rights bodies, I have chosen to analyze only those documents that deal directly with sexual orientation and gender identity, which I have trimmed down to eight, including all Human Rights Committee cases dealing with the aforementioned issues. Further, throughout the analysis of such documents, I have sought to establish a narrative of an interpretation on how LGBT issues have entered

these Human Rights UN bodies. Given my attempt at unveiling processes, my dissertation requires a longer than usual timeframe which might make it possible to point out tendencies.

In the first chapter of this dissertation, I expounded the theoretical framework guiding my work: constructivism, regime theory and international organizations, as well as the methodology to be used in this research: discourse analysis. In the second chapter, I portrayed the United Nations Organization as both an agent and a structure in the regime of human rights.

While only official documents of the aforementioned entities are analyzed with this method so that the research is centered around the official discourses constructing sexual orientation within the United Nations, this chapter also describes some international lesbian, gay, bisexual, and transgender (LGBT) rights milestones that have taken place during the last three decades, in order to provide a context for the events[23] that took place at the listed entities. It is important to emphasize that the contextual events that I refer in this essay have counted with direct participation of UN organs[24], UN entities[25] or UN representatives; hence, they are events that are intimately linked to the regime of human rights through the United Nations organization.

I am aware that there are other agents, besides the United Nations, affecting the very possibility of these events being able to take place; such as transnational civil society and states. Nonetheless, this research focuses on the dual role of the UN in constructing sexual orientation in the universal regime of human rights, as an agent and as a structure. Thus, I am interested in change and instability, in the capacity of the UN to have diverse characteristics on constructing a theme within the regime of human rights, depending on whether it acts as an agent or as a structure.

The various entities of the United Nations occupy different spaces regarding how central or peripheral they are within the organization. Thus, the six UN bodies that

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[23] "A social event is a bit of social reality abstracted by an observer. When treated as a particle, an event becomes a discrete unit of information, interpretation, or meaning that can be rationally linked to an interpretation process" (Peterson, 1998: 20).

[24] "'UN organs' is understood to be shorthand for 'the principal organs of the UN'. However, the term is sometimes used interchangeably with 'UN bodies'" (Permanent Mission of Switzerland to the United Nations, 2011: 23).

[25] "'UN entities' is widely used and understood as a generic term for all institutional entities of the UN System, i.e., all UN Offices, Departments, Funds and Programmes and Specialized Agencies" (Permanent Mission of Switzerland to the United Nations, 2011: 23).

are listed in the Charter of the United Nations are, by default, more prominent within the international organization than institutions, entities, working groups or other configurations associated with the UN (with the exception of the Trusteeship Council which was listed in the Charter but suspended operations in 1994 when Palau became independent).

My assumption regarding how sexual orientation, as a theme, entered the UN is that it started off as a topic treated in a peripheral, somewhat less public channel, to progressively be entertained in more central bodies. Considering this assertion, my research starts off looking at how this topic was treated in the Human Rights Committee in 1983, in what I have encountered as one of the first mentions of an LGBT topic within the organization. Then, the topic was entertained by one of the six main UN bodies, the Human Rights Council, and finally, it can be argued that themes concerning sexual orientation and the rights of LGBT continued making it to the core of the organization. For instance, in 2010 once the Secretary General used his good offices to exercise pressure on the Malawi government to release two prisoners who had been accused of performing what the government considered a same-sex wedding ceremony. And then in 2011 when the United Nations Office of the High Commissioner for Human Rights was entrusted by the Human Rights Council to elaborate a Report on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.

Due to the number of events I approach, this project requires creating categories, regardless of how artificial they may seem. So, I divide these events according to the United Nations entity where they took place, since the capacity the organization / structure has, to be an agent is different in each one of these entities, given their diverse norms, rules, and the weight that is afforded to other agents.

Predication in official documents is analyzed to evidence the construction of definitions or characteristics of LGBT themes. I choose to focus on the discourses that qualify nouns and categorize them as being part of one side of a binary opposite relation. Hence, while it might be deemed a theoretical stretch, I propound that some discourses characterize LGBT themes as: legitimate/ illegitimate, public / private, general/ particular, significant / insignificant, common / taboo, and as a matter to be

dealt either by the international community as part of the concept of responsibility to protect or by each state as part of the principle of sovereignty.

I have decided to use these categories because preliminary readings of official UN documents suggested that defining and redefining topics often consisted on aligning them with either one side or the other of any given issue. For instance, a topic is almost a taboo at an international organization if it is associated with the principle of sovereignty, while a topic becomes a public matter, once it is associated with occurrences/ phenomena that need to be undertaken by the international community under the responsibility to protect doctrine.

So, starting chronologically, official documents from the Human Rights Committee, Human Rights Council, Office of the High Commissioner for Human Rights, and Secretariat are explored. While there are various discourses regarding themes on sexual orientation and gender identity, I have chosen to only analyze official documents since, as it has hopefully become clear in the previous chapters, these specific official documents are constitutive elements of the regime of human rights encompassing LGBT themes, though they do not constitute gender theory studies.

All documents from the Human Rights Committee are the decisions rendered by the jurists who analyzed cases where individuals accused their respective states of disrespecting the International Covenant on Civil and Political Rights:

1. Hertzberg et al. v. Finland (1982),
2. Toonen v. Australia (1994),
3. Joslin et al. v. New Zealand (2002),
4. Young v. Australia (2003),
5. X. v. Colombia (2007).
6. Resolution A/HRC/17/L.9/Rev.1 (2011). This resolution took place at the Human Rights Council.
7. Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2011).
8. The Secretary General´s Good Offices

Legal cases considered by the Human Rights Committee:

The International Covenant on Civil and Political Rights (ICCPR), already discussed in the previous chapter, is the cornerstone document guiding the jurists at the Human Rights Committee, which is why this document is also explored. The ICCPR defines "human rights" in its Preamble, Part I and Part II, which covers the first 6 articles. Part I discusses the right of self-determination, which can be seen as at the center of all human rights. Part II "contains a number of general principles that apply across the board, among them in particular the prohibition of discrimination" (Tomuschat, 1966: 2). I wish to focus on what is stated about human rights in these parts since, paraphrasing Tomuschat, the main general principles of human rights are spelled out in these opening articles of the ICCPR. The rest of the document lists and describes various other human rights; however, it does not provide further definitions of how the totality of human rights is to be understood.

The adjectives that define all human rights according to the Preamble, Part I and Part II of the ICCPR are: "equal", "inalienable/unrestrictable", "non-derogable", "universal", "non-discriminatory" - solely on the ground of race, colour, sex, language, religion or social origin, and "incapable" - of "be[ing] interpreted as implying for any State, group or person any right to engage in any activity […] aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant" (International Covenant on Civil and Political Rights, 1966).

My dissertation takes notice of the six markers or definers of what human rights are and looks for predication of nouns in official UN documents, where it is implied or made explicit that LGBT rights are included or excluded in/from the six markers through the binary opposite categories that were described previously. What is being stated about LGBT themes is further pointed out throughout this chapter to emphasize the shifting sides in the binary opposite categories and the discursive changes that have taken place within UN official documents.

Hertzberg et al. v. Finland (1982)
In 1982, five individuals were represented by SETA (Organization for Sexual Equality), a Finnish non-governmental organization, in their demand against Finland. The individuals claimed that Finnish authorities, specifically the Finnish Broadcasting

Company (FBC), had hampered their right of freedom of expression, entailed in article 19 of the International Covenant on Civil and Political Rights, by stopping them from broadcasting, via radio and television, a variety of programs that made reference to or dealt directly with homosexuality.

On behalf of the Finnish state, it is argued that censorship was exercised since the Finnish Penal Code reads on its paragraph 9 of Chapter 20 that

> [i]f someone publicly engages in an act violating sexual morality, thereby giving offense, he shall be sentenced for publicly violating sexual morality to imprisonment for at most six months to a fine. Anyone who publicly encourages indecent behavior between persons of the same sex shall be sentenced for encouragement to indecent behavior between members of the same sex as decreed in subsection 1. (From United Nations Human Rights Committee, 1982).

The Committee deemed the communication admissible and it considered that Finland had not violated its obligations under the Covenant on Civil and Political Rights given that its own Penal Code contemplated censorship when regarded as "for the public good", and that no individual had been directly affected by the FBC decision.

On the other hand, the authors of the communication to the Human Rights Committee expressed that: "[h]omosexuals [are] portrayed as sick, disturbed, criminal or wanting to change their sex" (United Nations Human Rights Committee, 1982) on mass media in Finland. Further they challenged the 30 October 1975, FBC´s programme directive which reads:

> All persons responsible for programs are to observe maximum strictness and carefulness, even when factual information about homosexuality is given [Noticing also that] a written warning had been issued to the head of the film service of FBC to reject any production which gave a positive picture of homosexuality (United Nations Human Rights Committee, 1982).

The party-state cites from the Finnish Penal Code, paragraph 9 of chapter 20, which reads that "anyone who publicly encourages indecent behavior between persons of the same sex shall be sentenced" (United Nations Human Rights Committee, 1982).

The Human Rights Committee deemed that,

> The sole fact that the author takes a personal interest in the dissemination of information about homosexuality does not make him a victim in the sense required by the Optional Protocol. [Additionally, it justifies its decision on] Article 19 (3) (which) permits certain restrictions on the exercise of the rights

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protected by article 19 (2), as are provided by law and are necessary for the protection of public order or of public health and morals (United Nations Human Rights Committee, 1982).

The Committee further added a cultural relativist dimension to the issue mentioning that "[p]ublic morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities" (United Nations Human Rights Committee, 1982). Thus, it is considered that the Committee cannot oppose Finnish judgment that "radio and TV are not the appropriate forums to discuss issues related to homosexuality, as far as a programme can be judged as encouraging homosexual behavior […] In particular, harmful effects on minors cannot be excluded" (United Nations Human Rights Committee, 1982).

In the Human Rights Committee decision's appendix, Torkel Opsahl, member of the Committee was backed by members Rajsoomer Lallah and Walter Surma Tarnopolsky, in stating that everyone must in principle have the right to impart information and ideas – positive or negative – about homosexuality and discuss any problem relating to it freely, through any media of his choice and on his own responsibility" (United Nations Human Rights Committee, 1982). Also, on the issue of public morals he explains that these are

relative and changing. 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. It is of special importance to protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority... It must also be shown that the application of the restriction is 'necessary' (United Nations Human Rights Committee, 1982).

Considering the binary opposite categories that were listed at the beginning of the chapter, the judges of the Human Rights Committee used cultural relativism to deem broadcasting the topic of homosexuality as illegitimate since disseminating content on the subject is seen as legally censurable. It is also constructed as a private matter that consequently must be dealt with by each state as a sovereignty issue. Additionally, it is a taboo subject that is regarded as even harmful (to children and teenagers) and having limited interest to the general population; in other words, homosexuality is characterized

as an insignificant and too particular of a topic, as a theme of personal interest, neither universally relevant, nor appropriate to discuss freely.

To sum up, in 1982, when Hertzberg et al. took their case against Finland, the Human Rights Committee judges denied their claims and constructed the theme of sexual orientation, specifically homosexuality, as being illegitimate, private, particular, insignificant, taboo, illegal to be broadcasted (to an extent), and as a matter that has to do with state sovereignty. Hence, within the structure of the Human Rights Council, on this occasion the judges acting as agents defined the identity and interests of LGBT populations as unrelated to the ICCPR.

Then, eight years later, on May 17, 1990, a radical change took place: The World Health Organization (WHO) resolved to eliminate homosexuality from its list of mental illnesses. Thus, following previous Scandinavian countries' steps to better protect the rights of their LGBT citizens[26], a United Nations specialized agency, took note of the actions taken by Sweden and Denmark, acknowledging that homosexuality could no longer be classified as an illness. Margaret Chan, WHO Director-General mentioned that:

> The World Health Organization removed homosexuality from the International Classification of Diseases […] this was an important step forward. Yet over two decades later, stigma and discrimination against homosexuality still exists, and can result in restricted access to health services and missed targets for health programmes (World Health Organization, 2011: 2).

In this case, the epistemic community of experts at the international organization acted as an agent shaping and changing discourses on homosexuality to define it as unrelated to a health disorder. By removing homosexuality from the list of mental diseases, the World Health Organization, which is also an associated international organization to the UN, changed its discourse on sexual orientation by constructing homosexuality as a common occurrence in human sexuality, rather than a disease. Hence, it legitimized homosexuality in direct opposition to its previous standing; where, since it was considered a disease it was treated as such and even regarded as the cause of other health related problems.

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[26] In 1972, Sweden authorizes its citizens to be legally able to change their gender. In 1989, Denmark becomes the first state to allow registered partnership between people of the same sex.

Thus, considering once again the six binary opposite categories, it is possible to assert that the WHO experts constructed homosexuality as a more legitimate sexual orientation than when it was taken as a disease. In terms of the category private / public, it can be argued that since homosexuality is no longer listed as a disease, it distances itself from the private field and approaches the public one as "the homosexual" would no longer be constructed as a sick person, whose sickness can be cured, thus there would be less reasons to "hide" his/her sexual orientation in the private sphere. In addition, the theme is seen as a valid, general sexual orientation, no longer an isolated, insignificant phenomenon. Finally, when deciding upon this topic, the experts at the WHO contributed to the legality of homosexuality by not listing it as a disease, consequently making it more difficult for states to claim for themselves exclusively the capacity to regulate the legality of sexual orientation within the realm of sovereignty.

Toonen v. Australia (1994)

In 1994, the Human Rights Committee decided upon *Toonen v. Australia*, a legal case where the victim, Nicholas Toonen, "challenge[d] two provisions of the Tasmanian Criminal Code, namely, sections 122 (a) and (c) and 123, which criminalize various forms of sexual contact between men, including all forms of sexual contact between consenting adult homosexual men in private" (United Nations Human Rights Committee, 1994). The United Nations Human Rights Committee deemed that Toonen's request for the Committee to intervene was admissible; and further acknowledged that Toonen could be considered a victim within the Optional Protocol to the International Covenant on Civil and Political Rights.

This case opened up various issues regarding the right of privacy and legal prohibitions to discriminate. Among the many arguments that the State party and Toonen put forward to justify or oppose sections 122 (a) and (c) and 123 of the Tasmanian Criminal Code, there is one that linked prohibiting sexual intercourse among males to controlling the spread of HIV/AIDS. I call attention to this specific argument because public health concerns are a historical leitmotif in terms of being recalled when dealing with issues of sexual orientation and gender identity. It is relevant here to consider that the removal of homosexuality from the World Health Organization list of mental illnesses made the previous argument by the state party clearly unsustainable.

Hence, on this matter, the Human Rights Committee established that "no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus" (United Nations Human Rights Committee, 1994). Furthermore, the Committee argued for the repeal of the aforementioned sections from the Tasmanian Criminal Code. Finally, the Committee ruled that, in terms of sexual orientation,

> [t]he State party has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purposes of article 26 [of the Covenant]. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view, the reference to "sex" in articles 2, paragraph 1, and 26 [of the Covenant] is to be taken as including sexual orientation (United Nations Human Rights Committee, 1994).

Thus, the United Nations Human Rights Committee affirmed that sexual orientation was a protected category against discrimination as defined by the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee intervention in local Australian laws regarding the rights of LGBT citizens is an important landmark in the advancement of LGBT rights throughout the world, as it makes sexual orientation a ground that is prohibited from discrimination, a prohibition that is legally binding to human rights-abiding states.

The discourse on homosexuality advanced by the Committee, in its capacity as an agent, constructs this topic as a significant category, a general and common occurrence, a legitimate category and a responsibility for states to protect LGBT citizens from discrimination based on sexual orientation. This is a clear demonstration of an instance where a major United Nations organ uses its agency/capacity to affect individual states´ laws to redefine norms and language, creating direct reference of rights for LGBT groups within the Bill of Human Rights.

Hence, considering our six binary opposite categories, discursive shifts can be noticed within the 12 years that elapsed between Hertzberg et al. v. Finland in 1982 to Toonen v. Australia in 1994. Broadcasting themes associated with homosexuality was deemed as illegitimate, private, particular, insignificant, taboo, illegal (to an extent), and as a matter that had to be dealt by states (due to sovereignty considerations). On the other hand, in 1994, the judges of the Human Rights Committee ruled that sexual orientation is a legitimate ground for non-discrimination. In doing so, they redefined

this matter as a public, general, significant, and common one. By considering that sexual orientation is included in the reference to "sex" in articles 2, paragraph 1, and 26, the experts provided this theme with the capacity to be taken as outside of the realm of state sovereignty in terms of making it possible to hold states accountable for respecting and protecting sexual diversity as part of the Covenant on Civil and Political Rights

Additionally, their ruling makes clear that it is indeed illegal to discriminate based on someone´s sexual orientation. Thus, there have been significant changes regarding the sort of discourses that have been produced regarding LGBT themes within the entities of the United Nations. In the previous cases, sexual orientation passed from being unrelated to the global regime of Human Rights, to being located within the International Covenant on Civil and Political Rights, one of the components of the Bill of Human Rights. Thus, this event paved the way for LGBT themes to continue being considered and explored by the judges of the Human Rights Committee within the global regime of Human Rights.

Joslin et al. v. New Zealand (2002)

On July 2002, The United Nations Human Rights Committee decided upon the legal case *Joslin et al. v. New Zealand*. In this event, two lesbian couples argued that not allowing same-sex marriage in New Zealand went against various articles of the International Covenant on Civil and Political Rights. They mentioned that discrimination took place once every adult citizen was not able to marry another adult regardless of his/her sex, since the law discriminated due to sex and sexual orientation. The Human Rights Council deemed the communication admissible, yet considered that:

> [i]n light of the scope of the right to marry under article 23, paragraph 2, of the Covenant, the Committee cannot find that by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors under articles 16, 17, 23, paragraphs 1 and 2, or 26 of the Covenant (United Nations Human Rights Committee, 2002).

Noting that there was a specific article dealing with marriage and stating that it was referred to as a union between one man and one woman, the Council did not consider that New Zealand had violated the lesbian couples' rights by not allowing them to call their partnership marriage. Further, as part of the government of New Zealand's

argument, it was stated that the *Universal Declaration of Human Rights* and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* understood marriage as between a man and a woman. But, it acknowledged that, at that time, a bill that would make same sex marriage possible was being considered by the Dutch Parliament. Hence, in its appendix the Council also mentioned as individual comments of two Committee members, Rajsomeer Allah and Martin Scheinin,[27] that "[t]he provision in no way limits the liberty of States, pursuant to article 5, paragraph 2, to recognize, in the form of marriage or in some other comparable form, the companionship between two men or between two women" (United Nations Human Rights Committee, 2002).

On this occasion, the legal opinion of experts at the Committee rejected an immediate review of discriminatory laws in terms of who could marry whom by basing its decision on the main United Nations document on human rights, the *Universal Declaration of Human Rights.* By doing so, the experts brought back the discourse on homosexuality as matter to be dealt with by member states; a somewhat private matter that constructed the link between homosexuality and marriage as a taboo subject in terms of its inadmissibility to be discussed at a world forum rather than in national, sovereign settings.

Hence, considering our six binary opposite categories, this case shows that according to the judges, same-sex marriage was not a legitimate human right. Further, it was deemed that a romantic relationship between two people of the same sex did not need to be called marriage, bringing the relationship to a more private sphere. By characterizing the parties as "fail[ing], perhaps intentionally, to demonstrate that they were personally affected in relation to certain rights not necessarily related to the institution of marriage" (United Nations Human Rights Committee, 2002), the Human Rights Committee views same-sex marriage as a particular, issue of no consequence. At the same time, while it does not state that same-sex marriage is illegal; it falls short of assigning this theme a legal framework to ensure equality. Finally, the Committee refers this theme back to the state in terms of being unwilling to pronounce itself in favor or

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[27] It is imperative to state that Martin Scheinin is one of the experts who, five years later, would help develop the Yogyakarta Principles.

against same-sex marriage, preferring instead to leave this taboo issue to states' decision-making.

Young v. Australia (2003).

In August 2003, the United Nations Human Right Committee was again at the center of LGBT rights history by deciding on the legal case *Young v. Australia*. The case was about pension rights for the partner of a war veteran. Edward Young argued that he had been in a long-term relationship with Mr. C., a war veteran; hence, Young claimed that he qualified as a dependent and the government of Australia was violating the International Covenant on Civil and Political Rights by denying his demand based on sexual orientation.

According to the Human Rights Council the communication was admissible and Young was indeed a victim of discrimination as Australia violated article 26 of the Covenant when discriminating based on sex or sexual orientation, a discursive change that was advanced in 1994 in *Toonen v. Australia*.

This case created a major legal precedent, since it questioned "whether a state is obliged by the Covenant on Civil and Political Rights to treat long-term same-sex relationships identically to formal marriages and 'marriage-like' heterosexual unions" (United Nations Human Rights Committee, 2003). According to the experts, a state was not specifically obliged to do so; nonetheless, as the Covenant stated that all forms of discrimination were to be eliminated, interpretation of a norm is brought back to center stage. Thus, national decisions on the situation of same-sex marriage cannot be divorced from interpretations regarding the ways in which the discourse of discrimination is being constructed and how is defined nationally.

In other words, taking into account our six binary opposite categories, this case is extremely interesting since first, it considers that sexual orientation as a ground for non-discrimination is not encompassed in the International Covenant on Civil and Political Rights within the word "sex", as in *Toonen v. Australia*. It rather explains that sexual orientation was a ground for non-discrimination as it was comprised within the area of the ICCPR that mentions "other status".

Young´s request was deemed legitimate as the Committee saw no reason why pensions should not be given to the member of a couple regardless of his sexual

orientation. It is relevant to point out that in the previous case, *Joslin et al. v. New Zealand,* the Committee did not consider that Joslin´s petition was as legitimate as Young´s. It can be argued that the Committee held a different view once economic rights were involved, given that not receiving pensions was considered as more important than the simply moral arguments advanced by Joslin to demand her right to marry her partner.

X. v. Colombia (2007).

This case was very similar to *Young v. Australia*, as it involved pension benefits: A man whose partner of 22 years with whom he lived 7 of them, had died. The widower requested the Social Welfare Fund of the Colombian Congress, Division of Economic Benefits a pension transfer. The Colombian laws did not contemplate extending such rights to same-sex couples; so, it ruled on many occasions, in various judicial instances that X could not receive pension benefits.

The outcome of this case was directly influenced by previous ones, given that the Committee "recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation" (United Nations Human Rights Committee, 2007). Thus, the Committee found that the state party had violated article 26 of the Covenant and requested the state to provide information on what actions were taken to remedy this situation within 90 days of the decision.

On this occasion, I would like to emphasize how the body of decisions made by this epistemic community is rational and dependant on previous rulings. Hence, this customary law reproduces norms and rules helping define identities and interests. The decision made by the judges was truly similar to the one made in Young v. Australia. The economic rights of X had to be upheld as the economic rights of Young regarding pension benefits.

So, considering once again the 6 binary opposite categories, this theme was constructed as legitimate. The issue of pension rights for same sex partners has come out twice already, so it is quite a public happening. Further, it is evident that the theme is more common than what was previously thought of in the Finnish case - where broadcasting information on homosexuality was perceived as somewhat dangerous – since similar situations had taken place in two separate environments: Australia and

Colombia. Thus, the theme was understood as general and as significant. Finally, the legality of homosexuality becomes strengthened as discrimination based on sexual orientation is further delegitimized. Additionally, noticing that the Human Rights Committee demanded that Colombia respect its adherence to the ICCPR and to the Optional Protocol by correcting its violations, the theme goes beyond national sovereignty and boundaries.

Events that took place at the Human Rights Council and at the United Nations Office of the High Commissioner for Human Rights

At the Human Rights Council, the United Nations' role is that of a structure, a stage, an arena where states can negotiate. States create new discourses, thus rules. To recall the binary oppositions previously mentioned, sexual orientation and gender identity became little by little less illegitimate and more legitimate, less of a private matter to become a public one, less of a particular issue on human rights, to become part of a general understanding of human rights protection, less of an insignificant matter to be taken as a significant one. Additionally, these were no longer taboo topics at the Council, but common. Finally, perhaps more importantly, if one considers the legal implications of these human rights bodies working intertwined, the Human Rights Council and the Human Rights Committee, sexual orientation was constructed as a legally binding ground for non discrimination and violations of gender identity rights were constructed not as a sovereign state occurrence but as a practice that states had the responsibility to stop by protecting LGBT minorities.

On June 16, 2011, the United Nations Human Rights Council passed, for the first time, a resolution that denounced discrimination against LGBT individuals. Thus, the last perambulatory clause of resolution A/HRC/17/L.9/Rev.1 reads that the Human Rights Council "[e]xpress[es] grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity" (United Nations Human Rights Council, 2011: 1).

The vote was passed narrowly with 23 states voting for the resolution and 19 against. All 9 American countries in the Council voted in favor. Almost all 12 European countries, except the Republic of Moldova and the Russian Federation also voted for the resolution. The remaining four affirmative votes were notably cast by Japan, the

Republic of Korea, Mauritius, and, of course, South Africa, the sponsoring country. The countries voting against or abstaining were African and Asian. The resolution further

> *Requests* the High Commissioner to commission a study to be finalised by December 2011, to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity (United Nations Human Rights Council, 2011: 1).

The previous request is also unprecedented at the United Nations as it means that all states, even the ones that did not vote for the resolution would be scrutinized regarding the status of LGBT individuals in their jurisdictions.

Finally, on December 16, 2011, Navi Pillay, the High Commissioner for Human Rights, responding to the already mentioned resolution A/HRC/17/L.9/Rev.1, introduced the first Report on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. In this report, the structure responds to what agents requests with a comprehensive description on what states are to do regarding their commitment to human right as far as LGBT populations are concerned. "While not addressing all violations perpetrated in relation to sexual orientation or gender identity, the […] report highlights critical human rights concerns that States have an obligation to address, and highlights emerging responses" (United Nations, Human Rights Council, 2011: 3).

The good offices of Ban-Ki Moon, Secretary-General of the United Nations

On April 1, 2001 the Netherlands became the first country to sanction same sex-marriage[28], extending the same rights and responsibilities of heterosexual marriage to same-sex couples. This step is truly important in the field of Human Rights, as, for the first time, a state enacted provisions to attempt providing exactly the same rights for heterosexual and homosexual citizens. While the people of the Netherlands approach this landmark nationally, it is due to international considerations that equality cannot be achieved. "Only Dutch nationals or resident foreigners living with a Dutch partner are eligible for same-sex marriages under the new law. Also barred is the adoption of

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[28]Currently 11 countries allow same sex marriage: the Netherlands (2001), Belgium (2003), Canada (2005), Spain (2005), South Africa (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010) and Denmark (2011).

foreign children by same-sex couples, in order to avoid confrontation with less liberal nations" (CBS NEWS, 2009). In the case of international adoption, opposite-sex married couples can adopt from any country; however, international adoption for same-sex couples is controversial at best, due to reticence from either foreign countries or adoption agencies.

On May 20, 2010, in Malawi, two individuals, Tiwonge Chimbalanga and Steven Monjeza, were to be subjected to 14 years of hard labor due to having participated in what Malawi officials considered as a public same-sex engagement ceremony. "Section 153 of Malawi's penal code currently prohibits 'unnatural offences'. Section 156 concerns 'public decency' and is used to punish gay acts and expel tourists who commit them from the country" (Gray, 2011). This case was extremely publicized and managed to get Malawi much international attention, mostly from human rights organizations, European and American governments, international organizations, pop stars such as Madonna and Elton John, among others, who condemned the Court's decision and called for the release of Chimbalanga and Monjeza. Out of all of the circumstances surrounding Chimbalanga and Monjeza's verdict and later on acquittal, I wish to call attention upon the actions of United Nations Secretary General, Ban Ki-Moon, to use his good offices asking for their release.

The Guardian claims that on an official visit from UN Secretary General to Malawi, "after talking with Ban […] Malawi's president, Binguwa Mutharika, announced the pair would be freed […explaining that] 'I have done this on humanitarian grounds, but this does not mean that I support this'" (Fallon, 2010). The involvement of Ban Ki-Moon in this case seems to give a clear signal that LGBT issues have reached the core of the United Nations. The United Nations' highest representative's direct contact with Malawi's President to discuss this specific case highlights the degree to which the organization itself supports the protection of LGBT citizens regardless of what can be argued as cultural norms or religious beliefs. In fact, it might even indicate that same sex marriage is slowly but surely adding itself to the universal regime of human rights. By denouncing a state decision to punish two individuals for contracting a marriage like ceremony, the Secretary General, as an agent in the structure of the human rights regime, constructs LGBT issues as legitimate,

public, general, significant, common, and legal themes, inscribing within the states human rights responsibilities towards their citizens.

Events advanced by epistemic communities and transnational civil society groups, where UN representatives were involved

On July 29, 2006, during the opening ceremony of the 2006 World Out Games, a group of cultural and sport events oriented to the LGBT community, the Declaration of Montreal was presented. This declaration listed a number of actions regarding LGBT issues that should be taken in order to strengthen the human rights of LGBT population. The document was adopted by the International Conference on LGBT Human Rights, which was taking place at the same venue. It is worth noticing that the conference was attended by keynote speakers who are considered experts on human rights issues. For instance, Louis Arbour, UN High Commissioner for Human Rights from 2004 to 2008, delivered a speech at the conference. It can be argued that her mere presence represented a "friendly wink" at LGBT rights due to her position within the universal regime of human rights, which allotted her the agency to endorse the particular understanding of sexual orientation that were put forward during the event

"To some degree, the Declaration of Montreal can also be viewed as the predecessor to the Yogyakarta Principles, formulated in November 2006 by a group of legal experts" (Swiebel, 2008: 239). The reason why this can be claimed is that this declaration covers various areas where LGBT rights can be improved at a national and international level. It focuses on giving international relevance to LGBT issues; and was adopted by the New Democratic Party in Canada on September 10 of the same year, becoming the first party in the world to do so.

On 29 March, 2007, the Yogyakarta Principles[29] were released, and on November 7, 2007 the principles were launched at the United Nations Headquarters in New York. The drafting of this document started in 2006, when 29 human rights specialists met in the city of Yogyakarta, in the Island of Java, Indonesia, to create a comprehensive framework on how to apply provisions in internationally recognized

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[29]In 2006, international human rights experts met in Yogyakarta, Indonesia to outline "[p]rinciples […] intended as a coherent and comprehensive identification of the obligation of States to respect, protect and fulfill the human rights of all persons regardless of their sexual orientation or gender identity" (O´Flaherty and Fisher, 2008: 207).

human rights documents to sexual orientation and gender identity. This meeting, which took place on November 2006 made two objectives explicit:

> First, to provide a fair assessment of the current state of human rights law as applied to sexual minorities, in particular […] (LGBT) people. At the core of the YPs are the human rights norms of universality and non-discrimination. That no human being or group of human beings are considered outside of the clear and straightforward language of the international treaties that are the foundation of international human rights law. That LGBT people are no exception to this basic understanding of the application of human rights law (Ettelbrick and Trabucco, 2010: 4).

Hence, the transnational civil society groups and epistemic community which drafted the Yogyakarta Principles, the group of experts, UN specialists and activists, focused on the norms of universality and non-discrimination as a main strategy to argue that LGBT individuals were also protected by all human rights treaties. They claimed that regardless of the fact there is not a specific mention of gender identity and sexual orientation in any of the treaties, LGBT people are intrinsically included in them.

> Second, the YPs, by detailing obligations for State action with each of the 29 principles, are intended to enhance LGBT activists' and advocates' capacity to successfully challenge some of the more persistent human rights violations faced by the community (Ettelbrick and Trabucco, 2010: 4).

Even when the Yogyakarta Principles are not legally binding, "[o]ne development worthy of mention is the frequent adoption of the Principles' definitions of "sexual orientation" and "gender identity" found in the Preamble by a number of authorities and States" (Ettelbrick and Trabucco, 2010: 12). Thus, a number of states, international organizations and local authorities have resorted to these principles, even by the somewhat fundamental fact of adopting definitions on sexual orientation and gender identity. This might be a clear example of individuals organizing to attempt exercising a sort of tactical power within the regime of human rights, while the UN is also able to exercise strategic and structural power.

CONCLUSIONS

The sword often proves mightier than the word, at least in the short-run.
But the task of human rights advocates, wherever they may be,
is the ancient and noble one of speaking the truth of justice to power.
And far more often than so-called realists would ever allow, truth can triumph.
(Donnelly, 2007: 144)

Heteronomy is advanced by constructivist authors to account for the specificity of the moment where a causal juxtaposition of circumstances results in an event. Heteronomy makes explicit the impossibility to theorize about international relations from a universalistic and perpetual reality. Hence, while anarchy is a possibility, a multiplicity of arrangements made by agents for whatever reason is also possible, plus an added dose of uncertainty.

Due to its onthological and methodological canons, constructivism can be seen as a theory but it can rather be seen as an approach to knowledge, where direct causation is not established. What is researched in constructivism is the process by which events might become present, having the need to use other methods with a less positivistic approach.

Agents are able to exercise their capacity to influence action, structural change and agents' identities, through the use of language. Such discursive production, when hegemonic, is able to redefine structural codes/rules, which influence other actors while influencing the hegemonic agent, made a situational actor. Consequently, rules are discursive exercises that are sufficiently followed by actors, transformed into agents by the very existence of a rule upon which the actors are to act. Further, language that has become institutionalized through rules and norms gains legitimacy, and according to regime theory, contributes to the creation of expectations.

Klotz and Lynch mention that once a norm exists, "[it] set[s] expectations about how the world works, what types of behaviors are legitimate, and which interests or identities are possible" (Klotz and Lynch, 2007: 8). First, norms prescribe how the world should work. Second, they can strongly suggest in which ways the agents that agreed upon norms' existence would conduct themselves. Third, norms expose the sort of identity expected of agents, and by doing so they shape their desires; ultimately affecting agents' interests.

"IOs are powerful not so much because they possess material and informational resources but, more fundamentally, because they use their authority to orient action and create social reality" Barnett and Finnemore (2004: 7). Meaning is constantly given new shapes. However, certain meanings are given a higher weight due to a multiplicity of both, material and linguistic causes –the construction of reality. Meaning is never fixed, which is why there is a complex battle of definitions and redefinitions taking place in social interactions.

The heteronomic system of states is not egalitarian in terms of the amount of power each state has in the international system. It rather works having as only common authority the consensus and negotiations among agents, which is where the United Nations Organization becomes relevant. The creation of the UN as an attempt to organize the heteronomic international arena among states is groundbreaking due to the ever increasing role the organization has gained in promoting human rights for a wider variety of groups, for instance, in this case, sexual diversity groups.

I have reviewed the creation of a vital configuration in international relations, the United Nations Organization (UN), as a structure where various agents, including representatives of the organization itself, relate to one another. The UN is a dual entity, a structure and an agent within the universal regime of human rights. Further, since the creation of this organization, states are not the sole agents within the organization, as individuals such as the Secretary General and epistemic communities (through entities like the Human Rights Committee) are also relevant agents in the construction of norms. Even more salient is the fact that the United Nations itself is an agent within the structure that it helps construct.

Indeed, the functioning of the United Nations would not be possible if some room for agency was not provided within the organization. Since the United Nations has impartiality as one of its core missions, it has had to develop a series of rules, norms and practices, which construct other agents' identities and interest, as well as the organization's in order to claim to be able to be a bureaucratic body, impartial to the political leanings of its constituents. Moreover, during this continuous construction of rules and norms, the organization frames itself, directly affecting the structure.

It is rather problematical and it has not been the objective of this dissertation to establish a correlation, or a one-path process of inclusion regarding constructing sexual

orientation within the human rights regime at the United Nations. This research has instead chosen to examine various official UN documents to prove there has been a discursive shift regarding sexual orientation and gender identity in the UN bodies.

Discourse analysis has been used to analyze official UN documents in human rights bodies since each one of them has its own regulations, members and procedures; which, as it has been seen previously, determines who can be an agent under such arrangements and in which ways they can interact within the structure and with one another. Considering this last point, it is vital to underline the capacity UN staff has to influence norms within the organization. Even simple tasks such as deciding on how certain topics should be framed for a specific meeting, or the agenda for the day have repercussions on the structure, on other agents and in the UN staff itself since, as Onuf would claim, "saying is doing".

My research considered specific events and the official United Nations documents that constructed/ gave shape to these events. My methodology attempted to look for the areas of previous United Nations documents that have been used and reinterpreted to advance a specific event, and whether there was a succession of events influenced by the previous ones as regards the inclusion of LGBT themes at UN entities. By considering these diverse and interconnected events, my research has attempted to explore the ways in which relevant official documents in UN entities have constructed, changed, and allowed for the inclusion of LGBT themes in their framework.

This work established a set of binary opposites aimed at evidencing when language constructed LGBT themes as legitimate/ illegitimate, private /public, particular/ general, insignificant/ significant, taboo/ common, legal/illegal and as sovereignty / or more able to be dealt of a topic in an international forum.

Aware that "institutional discourses create perceptions of 'interests' that become consistently reproduced in institutional decision-making […and knowing that] language is this intimately tied to ethics […] by appealing to the 'higher' moral authority based on the values of the international community" (Klotz & Lynch, 2007: 41), language can be institutionalized through rules, which according to regime theory, contribute to the creation of expectations. Further, even without the legality that norms and rules entail, tradition, frequency and legitimacy are also instrumental to making of language rule:

> Judicialized, or at least, reasoned, opinions, some formally binding (but only on parties to them) and many purely advisory, constitute attempts at treaty or customary law interpretation that [...] are influential generally and, in any case, are treated as quasi-binding precedents by the bodies issuing them (Alvarez, 2006: 329).

Additionally, international organizations, as arrangements that enforce or embody regimes, can make use of its generally accepted, or thought-of- impartiality, to gain legitimacy, claiming advancing an impartial interpretation of agents' interests and identities, while furthering interests of their own.

> For an idea to be attractive to multilateral institutions it must therefore be possible to adapt or distort it in accordance with already existing problem definitions [...] Their programmes, projects and policies are therefore supposedly politically neutral. By defining various issue areas and the approach to them in a technical manner, multilateral institutions seek to keep politics at bay. But these are, we assert, political institutions (Boas and McNeill, 2004a: 11).

So, while being a stage or an arena for the discussion of sexual orientation and gender identity, while being included in a resolution to mandate the High Commissioner of Human Rights, Ms. Navi Pillay, to compile information on violations based on the aforementioned categories, the Human Rights Council, provided a space for international decision making to be negotiated. States were the only agents having a vote on the issue, while the organization, represented by its more visible staff member, the Secretary General, might have made direct use of the new majority decision on the Human Rights Council resolution A/HRC/17/L.9/Rev.1 to endorse LGBT rights. Then, Mr. Ban Ki-Moon was able to remind states of their responsibility to uphold human rights.

In a way, the organization as a stage had first-hand information on what the agents (states) had decided and how; the organization then, acted, as an agent, using its moral authority, discussed in the previous chapter, proclaiming before the Human Rights Council member states that it was their obligation to protect LGBT people from discrimination under international law. The process by which sexual orientation, as a theme, entered first somewhat peripheral areas, to then achieve a more central stage speaks about the strategic reasoning that may have taken place so that the topic, perhaps quietly, gained more legitimacy step by step. The chamaleonic nature of the

UN, sometimes an agent, sometimes a structure, questions the many possible ways in which agents of the international system relate to one another and with the structure, considering their relative weight (discursive and material) in a determined situation.

The United Nations organization shows that there is a complex apparatus for decision-making and reality building in the universal regime of human rights. The United Nations Organization and its staff members, as structures and agents, have been able to foster the inclusion of LGBT themes within the universal regime of human rights. For instance, as has been mentioned before, the most visible representative of the organization, Ban – Ki Mon was able to exercise agency because, "[i]n some respects the secretary-general is chief of an organization that exists because states have seen fit to sponsor its creation and that is dependent upon, but essentially separate from them" (Claude, 1971: 13).

The United Nations Organization defies binary opposites in terms of an agent being able to be either an actor or an agent; as, the UN shows that it is possible to be an agent for a situation, an actor for another and a structure sometimes. Let us remember that if constructivism makes one thing clear, it is the certainty of change in a system of multiple relations. So, why shouldn't there be changes in terms of a structure becoming an agent? And, considering the processes that have been shown and the working of the human rights entities at the UN, one can only look forward to the increasing advance of LGBT, gender and sexuality themes within the universal regime of human rights.

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The United Nations System

Principal Organs

Trusteeship Council

Security Council

Subsidiary Bodies
- Military Staff Committee
- Standing Committees and ad hoc bodies
- Peacekeeping Operations and Missions
- Counter-Terrorism Committee

Programmes and Funds
- UNCTAD United Nations Conference on Trade and Development
  - ITC International Trade Centre (UNCTAD/WTO)
- UNDCP[1] United Nations Drug Control Programme
- UNEP United Nations Environment Programme
- UNICEF United Nations Children's Fund
- UNDP United Nations Development Programme
  - UNIFEM United Nations Development Fund for Women
  - UNV United Nations Volunteers
  - UNCDF United Nations Capital Development Fund
- UNFPA United Nations Population Fund
- UNHCR Office of the United Nations High Commissioner for Refugees
- WFP World Food Programme
- UNRWA[2] United Nations Relief and Works Agency for Palestine Refugees in the Near East
- UN-HABITAT United Nations Human Settlements Programme

Research and Training Institutes
- UNICRI United Nations Interregional Crime and Justice Research Institute
- UNITAR United Nations Institute for Training and Research
- UNRISD United Nations Research Institute for Social Development
- UNIDIR[2] United Nations Institute for Disarmament Research
- UN-INSTRAW United Nations International Research and Training Institute for the Advancement of Women

Other UN Entities
- UNOPS United Nations Office for Project Services
- UNU United Nations University
- UNSSC United Nations System Staff College
- UNAIDS Joint United Nations Programme on HIV/AIDS

Other UN Trust Funds[8]
- UNFIP United Nations Fund for International Partnerships
- UNDEF United Nations Democracy Fund

General Assembly

Subsidiary Bodies
- Main committees
- Human Rights Council
- Other sessional committees
- Standing committees and ad hoc bodies
- Other subsidiary organs

Advisory Subsidiary Body
- United Nations Peacebuilding Commission

Economic and Social Council

Functional Commissions
- Commissions on:
  - Narcotic Drugs
  - Crime Prevention and Criminal Justice
  - Science and Technology for Development
  - Sustainable Development
  - Status of Women
  - Population and Development
  - Commission for Social Development
  - Statistical Commission

Regional Commissions
- Economic Commission for Africa (ECA)
- Economic Commission for Europe (ECE)
- Economic Commission for Latin America and the Caribbean (ECLAC)
- Economic and Social Commission for Asia and the Pacific (ESCAP)
- Economic and Social Commission for Western Asia (ESCWA)

Other Bodies
- Permanent Forum on Indigenous Issues
- United Nations Forum on Forests
- Sessional and standing committees
- Expert, ad hoc and related bodies

Related Organizations
- WTO World Trade Organization
- IAEA[3] International Atomic Energy Agency
- CTBTO Prep.Com[5] PrepCom for the Nuclear-Test-Ban Treaty Organization
- OPCW[6] Organization for the Prohibition of Chemical Weapons

International Court of Justice

Specialized Agencies[4]
- ILO International Labour Organization
- FAO Food and Agriculture Organization of the United Nations
- UNESCO United Nations Educational, Scientific and Cultural Organization
- WHO World Health Organization
- **World Bank Group**
  - IBRD International Bank for Reconstruction and Development
  - IDA International Development Association
  - IFC International Finance Corporation
  - MIGA Multilateral Investment Guarantee Agency
  - ICSID International Centre for Settlement of Investment Disputes
- IMF International Monetary Fund
- ICAO International Civil Aviation Organization
- IMO International Maritime Organization
- ITU International Telecommunication Union
- UPU Universal Postal Union
- WMO World Meteorological Organization
- WIPO World Intellectual Property Organization
- IFAD International Fund for Agricultural Development
- UNIDO United Nations Industrial Development Organization
- UNWTO World Tourism Organization

Secretariat

Departments and Offices
- OSG[7] Office of the Secretary-General
- OIOS Office of Internal Oversight Services
- OLA Office of Legal Affairs
- DPA Department of Political Affairs
- UNODA Office for Disarmament Affairs
- DPKO Department of Peacekeeping Operations
- DFS[7] Department of Field Support
- OCHA Office for the Coordination of Humanitarian Affairs
- DESA Department of Economic and Social Affairs
- DGACM Department for General Assembly and Conference Management
- DPI Department of Public Information
- DM Department of Management
- UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
- OHCHR Office of the United Nations High Commissioner for Human Rights
- UNODC United Nations Office on Drugs and Crime
- DSS Department of Safety and Security
- UNOG UN Office at Geneva
- UNOV UN Office at Vienna
- UNON UN Office at Nairobi

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