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Still in the Closet: LGBTQ People and the Lack of Protections in Conflict Zones

Arnold, Jordan Tyler

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Still in the Closet: LGBTQ People and the Lack of Protections in Conflict Zones

by

Jordan Tyler Arnold

A THESIS

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Abstract

LGBTQ people have been steadily gaining protections over the last several decades but there is still more progress to be made, especially in conflict zones. LGBTQ people are targeted specifically due to their sexual orientation or gender identity in peacetime, however, this targeting becomes more extreme and violent during times of conflict. One of the more egregious examples of violence targeted towards LGBTQ people was during the Syrian civil war by both the government regime forces as well as other groups like ISIS. The central question of this thesis is why do LGBTQ people face human rights violations in conflict zones despite there being legal protections for civilians? Using securitization theory, I will explore the relationship between securitization of protections for LGBTQ people and the securitization of LGBTQ people as threats. I will use the Syrian civil war as the case study for my analysis to demonstrate that the current protections are not sufficient to adequately protect LGBTQ individuals in states that do not recognize their rights.

Preface

This thesis is original, unpublished, independent work by the author, J. Arnold.

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I would first like to thank my supervisor, Dr. Maureen Hiebert for her support in me choosing a topic that was important to me. Her feedback and mentoring over the last three years helped me push myself to finish my thesis. I would also like to recognize Dr. Erin Gibbs Van Brunschot, former director of the Centre for Military, Security and Strategic Studies who has supported my growth over the past three years.

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List of Abbreviations

API: Additional Protocol I

APII: Additional Protocol II

CA3: Common Article 3

GC: Geneva Conventions

IAC: International Armed Conflict

ICC: International Criminal Court

ICJ: International Court of Justice

ICRC: International Committee of the Red Cross

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for the former Yugoslavia

IHL: International Humanitarian Law

ISIS: Islamic State of Iraq and Syria

LGBTQ: Lesbian, Gay, Bisexual, Transgender, and Queer

LOAC: Laws of Armed Conflict

NGO: Non-Governmental Organization

NIAC: Non-international Armed Conflict

UDHR: Universal Declaration of Human Rights

UN: United Nations

UN: United Nations

UNSC: United Nations Security Council

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Introduction

“These Faggots Kill Fascists”

This is the motto of The Queer Insurrection and Liberation Army (TQILA), a subset of the International Revolutionary Peoples Guerrilla Forces (IRPGF). TQILA is a group of volunteer fighters who fought alongside Kurdish forces in Northern Syria. This group is not entirely all queer people; however, most are and have been inspired to fight ISIS after their treatment of LGBTQ people within Syria. In their formal announcement they describe their goal as “LGBT*QI+ comrades as well as others who seek to smash the gender binary and advance the women’s revolution as well as the broader gender and sexual revolution.” TQILA specifically mentions that they could not sit idly by while Daesh committed atrocities against gay men and trans people across Syria broadly. While various groups have been fighting against ISIS to ultimately destroy the group and eliminate their influence in the region, the TQILA was fighting back to show that while queer people might not be treated the same within society, they are not afraid to fight for their lives against targeted violence.

Since the beginning of the Stonewall riots in the United States in 1969, Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) rights have been at the forefront of the equality movement worldwide.¹ However, LGBTQ people, and specifically trans women, have the least civil rights protections in the world which often translates to increased violence towards this community.² In 2012, United Nations (UN) Secretary-General Ban Ki-moon stated that “internationally, lesbians and gay men are the victims of systematic human rights violations with

¹ Kuhn, Betsy. *Gay power!: The stonewall riots and the Gay Rights Movement, 1969*. Twenty-First Century Books, 2011.

² Mendos, Ramón, Lucas. State-sponsored homophobia 2019. *International Lesbian, Gay, Bisexual, Trans, and Intersex Association*. (2019)

greater frequency than heterosexual persons throughout the world”.³ Moreover, this statement recognizes that “the degree to which sexual minorities are marginalized generally contributes directly to specific incidence and prevalence of targeted violence and marginalization during times of conflict”.⁴ While this statement from Ban Ki-moon does not necessarily include trans-identifying individuals, trans people are often categorized with gay and lesbian individuals, therefore it can be assumed they also faced greater human rights violations than cisgender persons throughout the world.⁵

With one hundred and seventy-three states ratifying the International Covenant on Civil and Political Rights (ICCPR), one hundred and seventy-one states ratifying the International Covenant on Economic, Social and Cultural Rights (ICESR), and Ban Ki-moon’s statement, one might assume that this group would not be persecuted as much as it is. This is not the case, however, as there are still seventy UN member states that still criminalize this group of people.⁶ Additionally, within these seventy countries, same-sex sexual relations are criminally prosecuted with the death penalty in six of them, and ten years to life in prison in twenty-six others.⁷ With a population that has little access to legal protections against hate crimes, employment protections, and subjection to conversion therapy, there are many areas in which LGBTQ people still need increased protections.

One of those areas includes specific protections for LGBTQ people in conflict zones. Given that LGBTQ people are some of the most vulnerable people within societies not in

³ Moore, Melinda W, and John R Barner. “Sexual Minorities in Conflict Zones: A Review of the Literature.” *Aggression and violent behavior* 35 (2017): 33–37.

⁴ Ibid

⁵ Ibid.

⁶ Mendos, 2019.

⁷ Ibid.

conflict, when conflict does occur, they become exponentially more vulnerable.⁸ Therefore, it is important to determine where it is possible within International Humanitarian Law (IHL) and The Law of Armed Conflict (LOAC) to enact adequate protections to ensure safety for this vulnerable group of people.

This research is important in the broad scheme of improving LGBTQ people's rights globally and within institutions that they have been historically overlooked or not included. Academically, queer analysis of security issues is a relatively new interpretation of a very robust field. The closest related approach to this field is feminist and gendered analysis of conflicts. While this field has expanded over the last few decades, scholars have not yet dedicated sexual orientation and non-cisgendered identities as much. Therefore, this research actively contributes to a fledgling field of security studies. Currently, one of the most prominent scholars in this field of queer security studies is Jamie Hagen. Her work focuses on building the theoretical argument of bridging sexuality and security studies.⁹ One of the key points that Hagen mentions is that the terms "gender" and "women" have been used interchangeably. While gender *can* be an all-encompassing term, the current binary approach of male or female does not provide room for other gender identities such as transgender individuals. Moreover, this restriction of the term also ignores how homophobia plays a role in how individuals can face violence.¹⁰ Therefore, those who fall outside of this binary understanding "remain largely neglected by the international

⁸ Human Dignity Trust. (2015). *Criminalising Homosexuality and LGBT Rights in Times of Conflict, Violence and Natural Disasters*; Human Rights Watch. (2020). *They treated us in monstrous ways: sexual violence against men, boys, and transgender women in the syrian conflict*. Human Rights Watch.; Myrntinen, H., & Daigle, M. (2017). *When merely existing is a risk: sexual and gender minorities in conflict, displacement and peacebuilding*. International Alert.

⁹ Hagen, Jamie J. "Queering Women, Peace and Security." *International affairs (London)* 92, no. 2 (2016): 313–332.

¹⁰ Ibid.

peace and security community”.¹¹ My research seeks to add to this field by demonstrating the role that state homophobia plays in determining who gets access to security and who does not.

Additionally, this research highlights how there are still gaps within the legal framework of International Humanitarian Law. While these gaps are not necessarily intended to discriminate, this research highlights the effects of not being explicit when providing special protections for groups of people. Overall, this research shows that while LGBTQ people have made significant progress in achieving equality within Western contexts, there are still places that actively discriminate against this group of people which have negative consequences within conflicts and in peacetime.

Research Question

The research question of this thesis is why do LGBTQ people face human rights violations in conflict zones despite there being legal protections for civilians. The main explanation for this is an incomplete securitization by some (mostly Western) states that accept a universalist approach to human rights, along with the paradoxical complete securitization of LGBTQ people by other states who frame LGBTQ people as threats to their state and wider society. To illustrate my answer to the research question, I will be using the Syrian civil war. This war was specifically chosen due to the well-known attempts by ISIS to target individuals in the LGBTQ community, amongst other minority groups as well. Thus, this war highlights how LGBTQ individuals can be targeted during conflicts for their sexual orientation or gender identity.

Thesis Statement

I argue that there are two closely related factors which explain why LGBTQ people are vulnerable during conflict. First, due to different interpretations in how human rights are applied

¹¹ Ibid.

and who is covered by them, states may or may not actively protect LGBTQ people. There are some states that use a universalist interpretation – where everyone is afforded rights – and other states which subscribe to a cultural relativist view – only certain groups of people have rights. The second related factor is the different processes of securitization. The states which subscribe to a universalist approach have attempted through international law and norms to securitize protections for LGBTQ people’s rights, but this process to date has not been completed as LGBTQ people are still without specific protections beyond those afforded to all civilians in peace and war. The problem with this incomplete securitization is that the international human rights regime has not been fully realized to include sexual and gender minorities. This is where the gaps in the human rights regime are found especially since sexual and gender minorities are not comparable to all other citizens. At the same time, the states which use a cultural relativist approach have effectively securitized LGBTQ people, but as threats to the state.

Both the approaches to human rights and securitization reinforce each other to create gaps in the normative protections of LGBTQ people in peace and war. More importantly, the states which use cultural relativism and have securitized LGBTQ people as threats pose a direct threat to LGBTQ people during peacetime, but particularly during war. I argue that we must understand the experiences of LGBTQ people in these states as unique from the experience of other civilians during wartime.

Theoretical Framework

The framework for this thesis uses securitization theory as the basis to answer my research question. While it will be discussed further within the literature review chapter, it is important to note now that this theory allows for a more nuanced approach to understanding violence and other abuses against LGBTQ in conflict zones. Using the speech act (publicly identifying a

security issue), there have been attempts to securitize the rights of LGBTQ people at the international level. As such, threats to the safety and dignity of LGBTQ peoples in war and peace have been articulated publicly as a significant security problem for LGBTQ communities that must be countered through concerted action. There are several other potential theories such as realism and liberalism that could have been used, however realism's unit of analysis, and liberalism's reliance on institutions do not adequately explain the phenomenon of LGBTQ violence in conflict zones. Due to these limitations with other security theories, I will use securitization theory for the analysis of my research questions.

Using securitization theory, I highlight several factors. The first factor is the vulnerability of LGBTQ people in conflict zones. The next factor is that the lack of protections for LGBTQ people in conflicts in certain places result in abuses against them. Using securitization theory provides the explanation for this outcome. First, LGBTQ people face unique threats and therefore need protection on the battlefield. This is a problem of incomplete securitization at the state level and failure of legal and human rights protections. Second, LGBTQ people are simultaneously constructed by other actors as threats to the status quo of society and are thusly seen as threats that must be eliminated. This is due to state practices and ideology that turn sexual and gender minorities into threats. My entire framework is underpinned by the concept of intersectionality which provides an important understanding as to why LGBTQ people face more vulnerabilities than their heterosexual counterparts. This connection will be explored more fully in the literature review and theoretical framework section of the thesis in the next chapter.

Methodological Approach

The methodological approach I use throughout the thesis is a qualitative case study approach to the Syrian war. While there were a couple other countries that I could have focused on for this

project, I chose Syria as the main case study. This was mainly due to the overt nature of the violence against LGBTQ people in Syria by the government and ISIS. Other potential case study examples included Colombia, however, the data that I could find was less focused on the conflict itself and more so on the effects it had on LGBTQ sex workers and the spread of HIV. Ideally, it would have been interesting to compare two different conflicts to see how LGBTQ people are treated around the world, however due to the lack of data, I chose to do a single case study. George and Bennet highlight several advantages of using a case study.¹² These advantages include “achieving high levels of conceptual validity”, “powerful advantages in the heuristic identification of new variables”, being able to “examine the operation of causal mechanisms in individual cases in detail”, and finally, they can “accommodate complex casual relations”.¹³ Building off of George and Bennett, Hodkinson and Hodkinson point out, there are several benefits to this type of research.¹⁴ First, case studies can help to explain and understand complex relationships. As case studies are relatively narrow in the scope of research, it allows for a more in depth understanding to be developed in a complex way.¹⁵ Second, which is the most relevant to my thesis, is that case studies are “grounded in lived reality”.¹⁶ By understanding the lived reality of those directly involved, it allows for an understanding that highlights the experiences of those affected by the problem being studied.¹⁷ It also prevents researchers from excluding factors that are complex and hard to analyze and thus oversimplifying a case.¹⁸ I use a variety of

¹² George, Alexander L, and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. Cambridge: MIT Press, 2005.

¹³ Ibid.

¹⁴ Hodkinson, P., & Hodkinson, H. (2001, December). The strengths and limitations of case study research. *The Learning Skills Development Agency Conference*. Cambridge.

¹⁵ Ibid.

¹⁶ Ibid. pg. 2

¹⁷ Ibid.

¹⁸ Ibid.

primary and secondary data sources that include the Syrian penal code, interviews conducted by the Human Rights Watch, and reports from NGOs about the state of LGBTQ people within Syria and the conflict. These interviews also include firsthand accounts from survivors of torture by the Syrian government. There are no survivors from ISIS areas as they were all extra judicially sentenced to death. The data from the atrocities committed by ISIS are NGO reports that include eyewitness accounts of trials and what it was like to live under ISIS rule. Since this is not a well-researched topic, I did not exclude data from my analysis unless it did not fit the geographic requirement of Syria. I do briefly mention examples of attacks ISIS has committed abroad, but those serve to highlight the ideological position of ISIS and its hatred of LGBTQ people.

Roadmap

This thesis has 5 chapters that each contribute to the development of my argument by first theoretically exploring the human rights literature and the IHL legal framework, and then empirically within the civil war in Syria and its effects on LGBTQ people, applying IHL to the war, and recommendations on how to bridge the gap in protection for LGBTQ people. The thesis is laid out in this way to gain an understanding of human rights and how they relate to LGBTQ people. Using this understanding of LGBTQ rights, the legal overview of IHL highlights the development of IHL, the most relevant legal frameworks for protections, and to demonstrate where the gap is. With the theoretical background of LGBTQ rights and the legal understanding of what the role of IHL is and how it works, I then examine the Syrian conflict. All these chapters build upon one another which allows for an in-depth analysis of the Syrian conflict as well as potential solutions to better help LGBTQ people in conflict zones.

The first chapter of the thesis is a literature review that spans the debate between human rights as universalist or culturally relativist, the nature and status of rights in conflict zones, how

LGBTQ people's rights are not respected, and how other scholars explore the ways in which the international community deals with violations. Finally, I explore different theoretical understandings of security from a realist, liberal, and securitization perspective. While three theories are considered, I use securitization theory as the main framework of understanding. This is because realism is a theory mainly focused on state security as a whole and individual rights are not considered to be important. And while liberalism could provide potential answers, the reliance on international institutions which have helped promote and protect LGBTQ rights, this theory is not capable of understanding on an individual scale the violence against LGBTQ people. The chapter ends with my theoretical framework. This chapter serves as the background and theoretical position for the whole thesis and provides the background necessary to understand why LGBTQ people are more vulnerable to violence.

The second chapter provides a roadmap of human rights and IHL legal regimes. This chapter explores the various treaties of the Geneva Conventions and the codified laws that supplement them. Furthermore, it explores peremptory norms and what the four basic principles of IHL are. Additionally, this section examines the mechanisms in place to ensure adherence to IHL such as Article 1 common to the Geneva Conventions. Finally, this section will cover the repercussions of breaking IHL and how states and individuals can be held accountable for their actions in perpetrating war crimes. This chapter will provide sufficient context into the types of laws that exist on the battlefield, who is covered under these laws, and what happens when these laws are broken. By including the legal overview of IHL, it is easier to understand the ways in which states have attempted to circumvent these protections for LGBTQ people.

The third chapter begins with the types of violence LGBTQ people face and how the role of cultural relativism leaves this community uniquely vulnerable. The chapter includes a

historical background and examination of the Syrian conflict. While there were other potential conflicts that could be examined such as the conflicts within Colombia and how they have affected the queer community there, I chose Syria because of the prominence that sexuality had played in the conflict as well as how brutal the violence against LGBTQ people had been. Moreover, since both a state and non-state group were involved, it allowed for a more complex situation to analyze. This chapter provides historical context and understanding behind the Syrian Civil War and the development of ISIS. This chapter highlights the role LGBTQ people play in society and their lack of rights. The second part focuses on the types of conflicts that have occurred within Syria and the fight against ISIS. The third section of the case study explores the specific instances of violence that LGBTQ people face and how it differs from the other groups that faced extreme violence within the conflict. This chapter explores in detail the treatment of LGBTQ people and their place within Syrian society. This background will provide the basis for my analysis of the conflict and how LGBTQ people have fared worse than their heterosexual cisgender counterparts within the conflict.

The fourth chapter provides legal analysis on the Syrian civil war and explores the types of violence used and highlights the brutality that LGBTQ Syrians faced solely based on their sexual orientation, and why there is a need for specific protections. This section further breaks down the examples and evidence of violence into potential war crimes and crimes against humanity. Finally, the analysis ends with the detailing the outcomes of the violence against LGBTQ people and the negative impacts on the LGBTQ community. Building on the previous chapters, this section uses securitization and universalism theories discussed in the first chapter and applies the laws that were previously discussed in chapter two to determine in which ways potential war crimes and crimes against humanity have been committed. It is important to note

that all the crimes discussed are considered potential as they have not yet been tried in a court of law.

The fifth chapter considers everything learned from the Syrian war and I provide several recommendations on how to better protect LGBTQ people in conflict zones. First, the international community needs to better advocate for states to remove homophobic laws to better protect them during peacetime. Second, there need to be more inclusive ways of reporting violence against LGBTQ people without putting them at risk of being outed. Third, IHL should be adapted to include LGBTQ people as special persons not to be targeted or treated adversely. As there is no simple solution to this complex problem, included with the recommendations are also some of the potential negative implications for each of them.

Chapter 1 - Literature Review and Theoretical Framework

Introduction

In order to give a comprehensive understanding of the law of war and human rights violations toward the LGBTQ community in conflict zones, it is important to examine the human rights literature first. This chapter will consider three important bodies of literature that explore human rights and how they are interpreted and applied. First, I will consider the debate between universalism and cultural relativism. Second, I will explore the nature and status of rights in conflict zones. Third, I will examine the literature on how LGBTQ people's rights are not respected, and how other scholars explore the ways in which international community deals with violations. Finally, I will explore different theoretical understandings of security. This chapter will conclude on the theoretical framework that I will adopt and use to analyze the violations faced by LGBTQ people during the Syrian Civil War.

Universalism vs. Cultural Relativism of Human Rights

When it comes to examining human rights and their role in the international community, there are two main camps that exist. First is universalism – the idea that human rights are non-negotiable, and everyone is afforded these rights on the basis of being a human. The second, is cultural relativism. This side of the debate argues that while some human rights may be universal, each culture enforces them differently and thus should not be subjected to Western standards. This is mainly applicable to economic versus civil or political rights, as well, some cultures placing higher importance on communal rights rather than individual rights.¹⁹ For

¹⁹ Faturoti, Bukola. "Women's Rights in Africa : an Examination of African Human Rights Systems in the Context of CEDAW and the Universalism Versus Cultural Relativism Debate." *Journal of comparative law in Africa = Revue de droit comparé en Afrique* 3, no. 1 (2016): 149–176

example, certain cultures prioritize rights to housing over individual equality rights for women or LGBTQ people.

Universalism and Human Rights

The origin of the legal interpretation of the universality of human rights dates back to the development of the 1948 Universal Declaration of Human Rights (UDHR) post-WWII.²⁰ The UDHR describes the basic inalienable rights that everyone is afforded. While all of the articles mention “everyone”, the most notable is Article 1 which states “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Building off the UDHR, the international community has also further developed and recognized a wider range of rights within international human rights law.²¹ Ibhawoh further recognizes the importance of the UDHR by stating that regimes could no longer violate human rights and claim sovereignty as a justification.²² Additionally, it is the responsibility of states and the international community that must protect these rights.²³ Donnelly argues that there are three ways in which human rights are universal.²⁴ First, nearly “all states consider internationally recognized human rights to be a firmly established part of international law and politics”.²⁵ Second, nearly “all cultures, regions, and leading worldviews participate in an overlapping consensus on these human rights”.²⁶ Third,

²⁰ Donnelly, 2013

²¹ While not an exhaustive list, further rights exist in treaties such as: the Convention of the Prevention and Punishment of the Crime of Genocide, the International convention of the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention of the rights of Persons with Disabilities, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights.

²² Ibhawoh, Bonny. “Human Rights for Some: Universal Human Rights, Sexual Minorities, and the Exclusionary Impulse.” *International journal (Toronto)* 69, no. 4 (2014): 612–622.

²³ Ibid.

²⁴ Donnelly, 2013

²⁵ Ibid. pg. 94

²⁶ Ibid. pg. 94

the consensus relies on the “existence of threats to human dignity posed by modern markets and modern states”.²⁷ In agreement with Ibhawoh’s argument, Donnelly continues to say that due to the near-universal acceptance of these rights being a part of international law, states agree that they have obligations to respect these rights.²⁸ Donnelly re-emphasizes that the universality of human rights is paramount to protect us from threats in modern society, regardless of religion, culture, morals, or politics.²⁹ Acknowledging the critiques of the relativist approach, Donnelly asks the question “which rights in the Universal Declaration does [a] society or culture reject?”³⁰ This question Donnelly poses is to highlight the fact that if the rights in the Universal Declaration are not universally applied, societies are allowed to pick and choose which ones they want to apply and to whom. This ultimately undermines the role of the UDHR in general and allows for the discrimination of certain groups based on immutable characteristics (gender, sexual orientation, etc.) which the UDHR seeks to protect by ensuring that all of humanity is considered worthy under universalism.

In his earlier work, Donnelly provides a rebuttal to critiques of Western Imperialization. He argues that:

We must not be misled by complaints of the inappropriateness of "western" human rights made by repressive regimes whose practices have at best only the most tenuous connection to the indigenous culture; communitarian rhetoric too often cloaks the depredations of corrupt and often westernized or deracinated elites. In particular, we must be wary of self-interested denunciations of the excessive individualism of "western" human rights.³¹

²⁷ Ibid. pg. 94

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid. pg. 100

³¹ Donnelly, Jack. “Cultural Relativism and Universal Human Rights.” *Human Rights Quarterly* 6, no. 4 (1984): 400–419.

In the same vein, Lenzerini argues that if we left the application of human rights to all cultures to interpret, the legitimacy of international human rights law would be in jeopardy.³² Furthermore, states are largely the ones who perpetrate human rights violations, therefore, leaving them to decide which human rights they believe are applicable to their given society.³³ By leaving states to decide who gets rights and who does not, this creates the possibility of having second class citizens within states. This is evident in the case of Syria and their treatment of LGBTQ people as they do not have any legal protections domestically and are subject to harassment, discrimination, and violence. This paper adopts a universalist approach to understanding the application of human. By not having a universalist approach, Syria has securitized LGBTQ people as threats instead of a marginalized group needing protections.

Cultural Relativism and Human Rights

Cultural Relativism largely serves as a critique of the universalism approach. Relativism focuses mainly on the connections of morals, culture, and humanity and how they intersect within a given society. The fact that each society and culture is unique means that a universal application of rights does not make sense. In other words, different cultures value different things. In exploring the development of the international human rights regime, O’Sullivan rightly points out that the main documents surrounding the concept of human rights are primarily based on a liberal, democratic, Western perspective that evolved from the Western tradition of human rights philosophy.³⁴ He continues to question the authority a universalist approach has over all

³² Lenzerini, Federico. *The Culturalization of Human Rights Law*. First edition. Oxford: Oxford University Press, 2014.

³³ Ibid.

³⁴ O’Sullivan, Declan. “The History of Human Rights Across the Regions: Universalism Vs Cultural Relativism.” *The international journal of human rights* 2, no. 3 (1998): 22–48.

humanity. Simply because the established mainstream documents are “Western in concept does not mean that they have a complete monopoly on the subject”³⁵ O’Sullivan interestingly points out that the International Covenant on Economic, Social and Cultural Rights (ICESR), The International Covenant on Civil and Political Rights (ICCPR), and the Optional Protocol to the International Covenant on Civil and Political Rights did not receive enough signatures to come into effect until ten years later.³⁶ While the ICCPR and ICESR were supposed to be one unified covenant, Western states were opposed to the inclusion of economic, social, and cultural rights being included. Given that the rest of the world fought for the inclusion of the ICESR, this could arguably demonstrate that non-Western states did not easily want to subject themselves to a universalist (i.e., Western) view of human rights.

Further proponents of the cultural relativist approach include Pollis and Schwab who wrote that

the Western political philosophy upon which the United Nations Charter and the Universal Declaration of Human Rights are based provides only one specific elucidation of human rights, and that this Western notion may not be successfully applied to non-Western areas.³⁷

Pollis and Schwab go on to say that one of the core differences between the Western interpretation of human rights versus the rest of the world are ideological differences. Mainly that certain cultures prioritize economic rights over individual civil and political rights. Additionally, other cultures have different views on the relationship between individuals and society, therefore a Western approach is not able to represent non-Western cultures fully and accurately.

³⁵ Ibid. pg. 30

³⁶ Ibid. pg. 29

³⁷ Pollis, Adamantia., and Peter Schwab. *Human Rights : Cultural and Ideological Perspectives*. New York ; Toronto : Praeger, 1979.

In sum, universalists argue that the only requirement needed to afford human rights is being human, whereas the relativists reject the idea that any rights can be universally applied since all cultures are different and prioritize certain societal aspects over others. However, more contemporary discussion of this debate has centered around a hybrid approach that acknowledges the concept of universality, while also respecting the cultural differences of each society.³⁸ In practice, this model acknowledges the legitimacy of human rights law at the international level and the universal application to all humans. At the same time, in order to maintain legitimacy, it is important to use local and regional cultural understandings of rights to help gain widespread societal acceptance.³⁹ While I acknowledge there are merits to the cultural relativist argument, this thesis subscribes to the universalist approach to human rights. Applying this to my case study, there are no rights for LGBTQ people in Syria based on the cultural attitudes towards them. However, later on in my recommendations, I argue that their laws need to be adapted to be more inclusive.

Human Rights Law and International Humanitarian Law (IHL) – *Lex Specialis*

As this thesis is concerned with the abuses LGBTQ people suffered during the Syrian Civil War, it is pertinent to discuss the nature and status of human rights in conflict zones. This discussion will not focus on IHL as a whole, as that will be covered in detail later on. This section is mainly concerned with the debate about whether human rights law is applicable during armed conflicts. Before we examine the relationship between human rights law and IHL, Doswald-Beck and Vité point out that these laws are quite different. First, they note that IHL “indicates how a party to a conflict is to behave in relation to people at its mercy, whereas human rights law concentrates on

³⁸ Lenzerini, 2014

³⁹ Ibid.

the rights of the recipient of a certain treatment.”⁴⁰ Second, the content of these two bodies of law is vastly different. IHL is complex with specific rules and regulations to abide by, while human rights law is concerned with aspirational rights for individuals.⁴¹ Third, another difference between the two is that within human rights law there are both universal and regional human rights treaties.⁴² Some of these treaties also require states to actively take measures to ensure that they are followed through.

Hampson highlights the ICJ’s view on the relationship between IHL and human rights law. First, human rights law is applicable even in cases of armed conflict. Second, unless a state has derogated from a specific provision of human rights law, it remains applicable. Third, when both human rights law and IHL are applicable, IHL is the “*lex specialis*”.⁴³ Oberleitner describes this as human rights law being the *lex generalis* (a general norm), while IHL is *lex specialis* (a specific norm) and takes precedence.

While the ICJ’s views may seem like repetitive statements, Hampson, Doswald-Beck, Vité, Solis, and Oberleitner discuss the fact that despite the majority of states, academics, multiple human rights bodies, and the ICJ agree that human rights law is applicable in times of conflict, the United States and Israel along with a small handful of states take a contrary position and believe that human rights law “does not, and should not apply in the *jus in bello*”.⁴⁴ Some objections to having both laws applicable at the same time can be summed up by Draper and Meron. Draper stated “war, international or internal, is the exceptional situation derogating from the full application of human rights.”⁴⁵ This is furthered by Meron who argues that because it is

⁴⁰ Doswald-Beck and Vité. Pg. 101

⁴¹ Ibid.

⁴² Ibid.

⁴³ Hampson, Françoise, J., pg. 550.

⁴⁴ Hampson; Doswald-Beck and Vité; Solis, pg. 19; Oberleitner

⁴⁵ Draper, pg. 219

legal to have some level of civilian collateral damage during conflicts, this legal form of death is in diametric opposition to the goal of human rights law.⁴⁶ The US has two main objections to the position that both sets of laws can be applicable at the same time. First, the US is cautious of accepting “overly progressive jurisprudence of human rights”.⁴⁷ Second, the US contends that the ICCPR is not able to be applied extraterritorially. In fact, the US Law of War manual specifically mentions that the ICCPR does not apply abroad.⁴⁸ Despite a minority of states’ rejection of human rights law being applied during conflicts, the majority of states agree that it does, therefore, this thesis adopts the same position of human rights law and IHL being applicable concurrently. While the arguments put forward by Draper and Meron have their own merit, I argue that human rights law should still apply during times of conflict in order to help guide combatants and non-combatants alike in doing their best to prevent gross violations of human rights. This is because without having human rights law apply during conflicts, there is less incentive to protect them. Furthermore, without the application of human rights law during conflict, the gap in IHL in protecting LGBTQ people widens further. Since sexual orientation is not included as a protected characteristic in IHL, human rights law can help bridge the gap. Additionally, if it was universally agreed that human rights law remains active during conflict, there could be more legal cases brought forward about specific abuses against minority groups that are not protected within IHL. It should be noted that I am not arguing merely for the application of human rights law as the answer to the IHL gap. The gap within IHL should be closed regardless of other bodies of law in order to create a more robust form of protections for vulnerable people.

⁴⁶ Meron, 2000

⁴⁷ Solis pg. 21, 2022

⁴⁸ Ibid.

LGBTQ Rights and Violations

Narrowing the scope further, it is imperative to set out how other scholars have demonstrated that the LGBTQ community's rights are not respected in general, what the academic literature says about rights on the battlefield, and how the international community responds to violations. Keating and Burack outline three distinct features of SOGI (sexual orientation and gender identity) human rights violations. First, they state that there are explicit and implicit violations of human rights.⁴⁹ Explicit violations include targeted discrimination and persecution due to their sexual orientation or gender identity.⁵⁰ Implicit examples include criminal cases or investigations not being carried out because of a victim's sexual or gender identity.⁵¹ The second feature they point out is that these violations are usually carried out by states, civil society, and interpersonally as well.⁵² For example, a state's legislation can actively target an individual's identity (e.g., anti-sodomy laws).⁵³ Within civil society, LGBTQ people can face discrimination in the workplace by being fired for their identity or being refused healthcare.⁵⁴ Additionally, LGBTQ people are subjected to interpersonal violence that can include bullying, harassment, and other forms of violence.⁵⁵ The third unique feature is that LGBTQ rights are often linked to other human rights issues.⁵⁶ Pharr also touches on this concept of linkages between LGBTQ and other human rights.⁵⁷ Pharr highlights that historically, the women who organized for women's rights were often labeled as lesbians. This was done in order to discredit and delegitimize them.⁵⁸

⁴⁹ Keating, Christine, and Cynthia Burack. "Sexual Orientation, Gender Identity, and Human Rights." In *Human Rights : Politics and Practice*. Edited by Michael E. Goodhart. Third edition. Oxford: Oxford University Press, 2016.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Pharr, Suzanne. *Homophobia : a Weapon of Sexism*. Inverness, CA: Chardon Press, 1988.

⁵⁸ Ibid.

When it comes to the rights of LGBTQ people during time of conflict, Moore and Barner highlight several unique factors of violence. First, many perpetrators of torture and violence against the LGBTQ community choose this community because they know they are unlikely to be reported.⁵⁹ Second, they are at a greater risk of experiencing war crimes.⁶⁰ This finding was also corroborated by Haley-Nelson who found that lesbians were particularly chosen by men for sexual violence.⁶¹ Finally, LGBTQ people have worse physical, psychological, and social outcomes in conflict zones.⁶²

Saltnes and Mos discuss the roles of sanctions as an instrument to help punish violators of LGBTQ rights. More specifically, they focus on the use of social sanctions as a valid method of punishment.⁶³ They use Erickson's definition of social sanctions which argues that social sanctions are "punishments that rely on social or moral leverage, the removal of social status, and targets embarrassment and concern for social standing to provoke behavioral change".⁶⁴ According to Franklin, several types of social sanctions include shaming on the international stage, shunning, and potentially even positive reinforcement.⁶⁵ Saltnes and Mos argue that social sanctions are effective through "peer pressure, social exclusion, or persuasion".⁶⁶ They ultimately argue for this form of sanction as they draw the same conclusions as Dunne and Thiel

⁵⁹ Moore, Melinda W, and John R Barner. "Sexual Minorities in Conflict Zones: A Review of the Literature." *Aggression and violent behavior* 35 (2017): 33–37.

⁶⁰ Ibid.

⁶¹ Haley-Nelson, Chelsea. "Sexualized Violence Against Lesbians." *Peace review (Palo Alto, Calif.)* 17, no. 2-3 (2005): 163–180.

⁶² Moore and Barner, 2017

⁶³ Saltnes, Johanne Døhlie, and Martijn Mos. "Understanding the EU's Response to LGBTI Rights Violations: Inter-Institutional Differences and Social Sanctions." *Politics and governance* 10, no. 1 (2022): 79–89.

⁶⁴ Erickson, Jennifer L. "Punishing the Violators? Arms Embargoes and Economic Sanctions as Tools of Norm Enforcement." *Review of international studies* 46, no. 1 (2020): 96–120. (pg.100)

⁶⁵ James C Franklin. "Human rights naming and shaming: International and domestic processes." In Friman H. Richard (Ed.). 2015. *The Politics of Leverage in International Relations : Name Shame and Sanction*. Houndmills Basingstoke Hampshire: Palgrave Macmillan.

⁶⁶ Saltnes and Moe (2022). Pg. 81

– direct external involvement negatively impacts LGBTQ people in whichever country is being targeted.⁶⁷ An example of the use of social sanctions being applied to protect LGBTQ people is Brunei’s attempt at introducing the death penalty for homosexuality but ultimately abandoning the attempt after intense international condemnation.⁶⁸

When applied to the Syrian case study, nearly all of the empirical findings in the literature are present. While this will be explored fully in the analysis chapter, there were multiple examples of targeted discrimination by the state, lack of legal protections, and LGBTQ people specifically chosen as victims as they are the least likely to report. Saltnes and Mos’ description of social sanctions provides the basis for the reasoning behind one of the recommendations that I make later on which is to change the Syrian Penal Code and decriminalize same sex relations. As both authors highlight, international pressure to force Syria to change without direct foreign intervention is the best way for Syrian LGBTQ people to receive legal protections without putting them in undue danger.

Intersectionality

To tie the human rights part of the literature review together, it is important to talk about the role intersectionality plays in the level of violence that LGBTQ people faced in Syria. While Crenshaw’s influential development of this concept from the 1990’s was targeted at violence against women of colour, this approach can be applied to LGBTQ people as well.⁶⁹ This section

⁶⁷ Dunne, Peter. “LGBTI Rights and the Wrong Way to Give aid.” *Kennedy School review* 12 (2012): 66–.; Thiel, Markus. *The European Union’s International Promotion of LGBTI Rights: Promises and Pitfalls*. Milton: Taylor and Francis, 2021.

⁶⁸ Bhalla, Nita. Uganda plans bill imposing death penalty for gay sex. Reuters. 2019. <https://www.reuters.com/article/us-uganda-lgbt-rights-idUSKBN1WP1GN>

⁶⁹ Crenshaw, Kimberle. “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color.” *Stanford law review* 43, no. 6 (1991): 1241–1299.

will serve as a general understanding of intersectionality and LGBTQ people as this concept will be applied more in depth in the analysis chapter. Crenshaw states that there are various intersections of a person's identity that can lead to discrimination based on their relationship to the power structure.⁷⁰ For example, wealthy, white, cisgender, heterosexual men have the most power within society. Once you deviate from this power structure through intersections of race, class, gender identity, sexual orientation, or any other characteristic, there is a higher chance an individual will be exposed to discrimination or violence. When looking at LGBTQ people in society, they are automatically more prone to intersectional violence. Adding in more intersections such as race and gender and the chances of discrimination become increasingly higher. Intersectionality serves as an important analytical tool as it is able to help provide a framework for understanding why LGBTQ Syrians faced as much discrimination and violence as they did. The figure below is adapted from Worthen's intersectional examination of LGBTQ stigma highlights the intersections that most affect LGBTQ people.⁷¹

⁷⁰ Ibid.

⁷¹ Worthen, Meredith Gwynne Fair. *Queers, Bis, and, Straight Lies : an Intersectional Examination of LGBTQ Stigma*. New York, NY: Routledge, 2020.

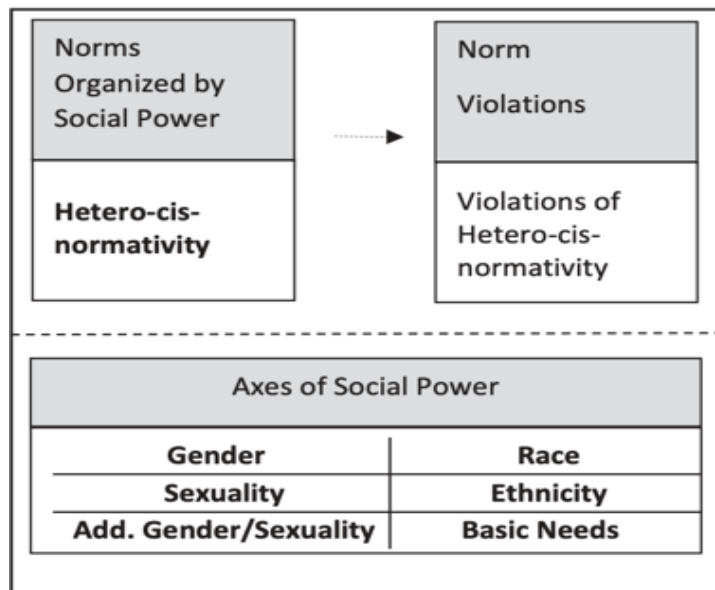


Figure 1 Intersectionality of LGBTQ Stigma, Worthen 2020.

This approach is imperative to understanding the human rights violations of LGBTQ people on the battlefield. Within the current IHL framework, the dominant understanding of identity is a heteronormative approach, that is to say everyone is presumed heterosexual, therefore sexual orientation is not considered a factor of discrimination. While it is true that everyone, (combatants or non-combatants) is protected by some facet of IHL, this surface-level heteronormative thinking leaves out the vulnerable intersecting identities that create environments in which LGBTQ people are not actually protected and face more violence. Going even further and considering non-cisgender identities (transgender, nonbinary etc.), the risk for violence is compounded. Without using this deeper level of analysis and consideration, vulnerable populations are left out. Even more so within the Syrian context, same-sex sexual relations are criminalized and there is little to no consideration of LGBTQ people's rights in general. Without applying an intersectional lens, this level of violence LGBTQ people face is definitely considered illegal by the international human rights regime, however, with an

intersectional lens, it allows for a level of analysis that gets deeper to the core of the issue as to why this group faces such intense violence.

Approaches to Security – Realism

One approach to understanding security is through a realist approach. Prominent theorists such as Morgenthau and Mearshimer argue that the world is inherently anarchic, and states are vying for power to remain dominant.⁷² Morgenthau is skeptical of the role of international law and whether or not it is wise to proclaim one set of normative values is better than another.⁷³ As realism is concerned with state power and sovereignty, it argues that states are reluctant to point out or criticize other states' human rights violations as other states could do the same to them and thus have their own sovereignty undermined.⁷⁴ Applying this to LGBTQ rights, a potential realist approach would be that other states are not concerned with the innerworkings of another and therefore, whether or not they respect the human rights of LGBTQ people is not necessarily of concern. Normative statements or judgements about human rights records have little to no impact on the overall projection of hard power a state has. While it is a valid approach to understanding security issues, it is not necessarily able to capture the nuance that securitization does when analyzing LGBTQ human rights violations.

Approaches to Security – Liberalism

⁷² Morgenthau, Hans J. "Positivism, Functionalism, and International Law." *The American journal of international law* 34, no. 2 (1940): 260–284. ; Morgenthau, Hans J. "The Twilight of International Morality." *Ethics* 58, no. 2 (1948): 79–99. ; Mearsheimer, John J. "The False Promise of International Institutions." *International security* 19, no. 3 (1994): 5–49.

⁷³ Morgenthau 1940; Morgenthau 1948

⁷⁴ Mearshimer , 1994

In contrast to realism, liberalism argues that individuals have rights that must be respected and protected by the state. Locke and Kant are seen as the intellectual developers of liberalism and the protection of rights.⁷⁵ Kant's 'Perpetual Peace' develops an intellectual understanding of international liberalism in which every individual is of equal moral value and an attack or violation of the rights of one individual is "felt everywhere".⁷⁶ While there are several different liberal schools of thought, the main concept is that all individuals have the basic rights to free speech and political equality.⁷⁷ While this can be dismissed as a utopian view of the world, the development of international human rights has been occurring for centuries.⁷⁸ One can simply point to the development of IHL and the UDHR.⁷⁹ Applying liberalism to LGBTQ rights, a potential approach would be to continue to rely on international institutions for the development and enforcement of these rights. Moreover, these institutions are best suited to deal with any violations of human rights rather than having states attempt to condemn or fix these violations on their own. While this theory might be able to provide potential solutions for the problem highlighted by my research question, it does not adequately provide an account of why the LGBTQ human rights violations have occurred, whereas securitization does.

Approaches to Security - Securitization

Finally, as a slightly newer school of thought, securitization put forward by Buzan, Waever, and de Wilde, provides a more nuanced lens to understand how and why LGBTQ violence and the

⁷⁵ Dunne, T. & Hanson, M. Human Rights in International Relations. In M. Goodhart (Eds.), *Human Rights: Politics and Practice*, Oxford: Oxford University Press. (2016).

⁷⁶ Kant, Immanuel, and Mary Campbell Smith. *Perpetual Peace: A Philosophical Essay*. Translated by Mary Campbell Smith. Project Gutenberg, 2016.; Dunne & Hanson, 2016.

⁷⁷ Dunne & Hanson, 2016

⁷⁸ Ibid.

⁷⁹ Ibid.

lack of state action occur.⁸⁰ Securitization allows for an issue that is normally relegated to regular political issues (i.e., healthcare, social issues), to be transformed into a matter of national security.⁸¹ This allows states to allocate increased resources to deal with any given securitized issue. For an issue to become securitized, it must first begin with a speech act in which a political leader advocates that something is an existential threat to society.⁸² Once this threat has been identified, it is then juxtaposed against a referent object which is the group, thing, or object that needs to be protected.⁸³ Finally, the target audience is then persuaded to believe that the new security issue presents an existential threat to their society and must be dealt with.⁸⁴ Applying this to the issue of LGBTQ people and the disproportionate violence they face, I argued that at the international level, there has been an attempt at securitizing this issue to bring about better awareness of the violence LGBTQ communities face. Substantively, however, there have been no concrete attempts at trying to protect this community. In contrast, it can also be seen that some states are also securitizing LGBTQ people as security threats to traditional values of society and family rather than advancing LGBTQ protections. The key takeaway and argument of this thesis is that the international community needs to effectively securitize the protections for sexual and gender minorities. If the rights for this community are not adequately protected, the international community is allowing this minority group to be violently and unjustly threatened and victimized for an immutable characteristic.

Conclusion

⁸⁰ Buzan, Barry., Ole Wæver, and Jaap de. Wilde. *Security : a New Framework for Analysis*. Boulder, Colo: Lynne Rienner Pub., 1998.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

Overall, there are some disagreements within the literature as to whether or not human rights should or could be applied universally across all cultures. However, there are attempts at bridging these two debates into one that can be universally applied but with a deep cultural understanding. Furthermore, there is debate surrounding the applicability of human rights law in conflict zones. Most academics and states agree that human rights law does apply, however prominent actors such as the United States do not. Finally, LGBTQ people face unique forms of violations that are better solved by using social sanctions to not put this community in further danger of violence. Additionally, there are several applicable theories to ground the research and argumentation of this thesis, however, securitization provides the best overall explanation and understanding of this complex issue.

Theoretical Framework

Applying the various frameworks of universalism, cultural relativism, the role of human rights law, and securitization theory, I have developed a theoretical framework which this thesis will adopt to analyze the critical case study of Syria.

To answer my question why LGBTQ people face human rights violations in conflict zones despite there being legal protections for civilians, I offer an argument with two components. First, there is a discrepancy in how states interpret human rights (universalist vs. relativist). Western states have already largely interpreted human rights to be universalist, therefore, the violations that LGBTQ people face in Syria are abhorrent and need to be stopped. At the same time, the Syrian government has securitized the LGBTQ community as a threat that must be stopped.

Second, this lack of mutual understanding of the conception of human rights has led to the gross abuses the LGBTQ community faces in Syria. This is due to the disparities across states in terms of the adoption of international norms, laws, and practices in relation to creating, endorsing, and upholding LGBTQ rights and protections in peace and war, or not providing them any protections at all. Within Syria, the overt homophobic attitudes and laws are seen as positive cultural norms and thus acceptable. The Syrian government and other actors in the country, even in opposition, have used the cultural relativist argument to securitize LGBTQ people. By framing this community as a threat to local culture, the violations against them go unchecked by Syrian society, which is only compounded during times of conflict.

Securitization framework

Using the literatures covered previously, there are three main factors that are applicable to my case study and analysis. The first factor is securitization. This factor can be applied, as already noted, in two different ways. One way sees that the LGBTQ community needs to be securitized in order to protect them from human rights violations. Conversely, securitization has been applied to make the LGBTQ community a threat to Syrian culture. I am using the case study to demonstrate and explain why there are two different versions of securitization – one as a failed form of protection, and as a threat – present within the Syrian example. Both ways of using securitization work together in that they both leave LGBTQ people vulnerable on the battlefield.

The next factor is the role of human rights. Since there are two understandings of which rights are applied and when, there is a discrepancy between what the West and the Syrian government believes to be right. These interpretations will affect the outcome of whether or not LGBTQ community becomes securitized in a positive or negative way. The universalist

approach seeks to have all human rights applied equally across the world and serves as the rationale for extending these basic protections to everyone, including LGBTQ people. It is also used as the basis for the Western attempt at the securitization of LGBTQ people. Contrarily, the cultural relativist approach of human rights allows for states or cultures to choose what rights are relevant what they believe as a culture. This interpretation has been used as a justification to attack the LGBTQ community.

The next factor is the role of human rights law. This can be examined in two different ways to help analyze and understand why LGBTQ people faced gross violations within Syria. First, human rights law can be applied in the sense that it is active during war and therefore, all human rights obligations must be upheld to the highest extent possible. This thesis adopts this same view as it is the stance that most states agree with. Opposingly, human rights law can be seen as potentially discriminating in the sense that it is so broad, it allows for the unique persecution of LGBTQ people.

It is important to consider across the whole thesis the application that intersectionality plays in the level of human rights violations. When examining the LGBTQ Syrian experience, they are negatively impacted due to their sexual orientation and or gender identity. Furthermore, many of them were forced to flee their home communities and therefore, as refugees or internally displaced people, they are also more likely to experience discrimination or violence.

Solution

While there will be detailed recommendations discussed further on in the thesis, my proposed remedy to the gross human rights violations LGBTQ people faced in Syria and elsewhere is that there needs to be a more particularist understanding of IHL. Even though IHL and human rights

law encompasses every single person in the world, this application is arguably too general and has allowed for individuals to fall through the cracks of the protections they are supposed to be guaranteed. When a specific group is being targeted in ways unique to this group, blanket protections do not provide adequate deterrence. Therefore, IHL and human rights law needs to codify sexual orientation and gender identity as a specific characteristic that needs protection. The Yogyakarta Principles+10 can serve as a guide for the international community to adopt certain principles that can help protect LGBTQ people from violence and discrimination.

Conclusion

Overall, it can be seen that there have been positive attempts to securitize sexuality, as well as negative attempts. Until the rights of LGBTQ people have been adequately securitized, there will still be violence and discrimination against them for decades to come. This paper will use the securitization framework to demonstrate that while there have been attempts from the international community to bring awareness to this issue, there has not been enough political will to achieve any sort of meaningful protection. The Syrian conflict will highlight the fact that while states have come out to say that violence against LGBTQ people is unacceptable in an attempt to securitize the issue, they have not been successful. The unsuccessful securitization has led to the deaths and torture of LGBTQ Syrians.

Chapter 2 - Human Rights and International Humanitarian Legal Regimes

Introduction

To determine why LGBTQ people have fallen through the gaps in the legal system which have been set out to protect them, it is important to determine what International Humanitarian Law is, (sometimes referred to as the Laws of Armed Conflict (LOAC)). This section will demonstrate that protections for civilians are not sufficient to protect LGBTQ people as their status in society is different from cisgender heterosexual people before and during armed conflicts. To get a comprehensive understanding of what IHL is, this section will explore the various treaties of the Geneva Conventions and the codified laws that supplement the treaties. Furthermore, it is important to talk about peremptory norms, and what the four basic principles of IHL are. Peremptory norms are important as these are the norms that no state is allowed to derogate from. The four basic principles of IHL are equally important and these are the principles that must be met for any conflict to be fought lawfully. Finally, this section will examine the mechanisms in place to ensure adherence to IHL such as Article 1 common to the Geneva Conventions. Finally, this section will cover the repercussions of breaking IHL and how states and individuals can be held accountable for their actions in perpetrating war crimes.

Securitization of Sexuality - International Efforts

Prior to exploring in depth the international humanitarian legal regimes, it is important to first ground the chapter in understanding how different states have failed to securitize LGBTQ people as either deserving of protection, and how other states have securitized them as threats.

There have been several steps in which the UN has attempted to securitize the issue of LGBTQ people and how to better protect them. The speech act can arguably be seen in both UNSG Ban Ki-moon's declaration that the international community needs to do more to protect LGBTQ people, as well as the 2015 informal meeting of the UN Security Council (UNSC) to discuss the violence against LGBTQ people by ISIS.⁸⁵ These actions demonstrably placed LGBTQ people as the referent group that needs to be protected against the rising threat of violence by states and non-state actors, with the international community acting as the target audience. It is important to note, however, that several member States had declined to attend the 2015 UNSC meeting.⁸⁶ Moreover, member states have refused to cooperate with experts on sexual orientation and gender identity appointed by the UN Human Rights Council.⁸⁷ The refusal of states to participate at the international level not only signifies that the securitization process has not been as effective as it could have been, but that they can do this within the international system and not receive criticism for it. This then emboldens them to continue this practice at the national level. I argue that since states did not take the UNSC council meeting seriously, securitization of LGBTQ people has been incomplete.

Securitization of Sexuality - National Level

As there are still seventy countries that actively criminalize homosexuality, several with the death penalty in place, it could be argued that many of these states have securitized sexuality

⁸⁵ Moore and Barner, 2017.; Margalit, Alon. "Still a Blind Spot: The Protection of LGBT Persons During Armed Conflict and Other Situations of Violence." *International review of the Red Cross* (2005) 100, no. 907-909 (2018): 237-265.

⁸⁶ Margalit, 2018

⁸⁷ Ibid.

within their states.⁸⁸ The majority of these are non-Western states that see the imposition of LGBTQ rights as a geopolitical strategy from the West.⁸⁹ Therefore, non-Western states arguably view homosexuality as a threat to maintaining their sovereignty and legitimacy within their respective states.⁹⁰ Within securitization theory, the speech act can be seen as framing LGBTQ people that were normally kept as invisible as possible; as societal threats that are a danger. This then frames LGBTQ people as the existential threat that will destroy the referent object, in this case, the fabric of traditional society.

What is International Humanitarian Law

IHL is the set of rules that have been established to limit the negative effects of armed conflict.⁹¹ These laws limit the effects of violence for both combatants and non-combatants, namely: wounded, sick, and shipwrecked soldiers and sailors, prisoners of war, civilians, and medical workers. IHL has been established and codified through both treaties and customary law. There are currently four Geneva Conventions and three Additional Protocols, however this thesis will only focus on Additional Protocol I and II. The first Geneva Convention is on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.⁹² The second concerns the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed

⁸⁸ Mendos, Ramón, Lucas. State-sponsored homophobia 2019. *International Lesbian, Gay, Bisexual, Trans and Intersex Association*. (2019)

⁸⁹ Amar, Paul. *The Security Archipelago: Human-Security States, Sexuality Politics, and the End of Neoliberalism*. Durham: Duke University Press, 2013.; Massad, Joseph Andoni. *Desiring Arabs*. Chicago: University of Chicago Press, 2007. ; Lavinias Picq, Manuela, and Markus Thiel. *Sexualities in World Politics: How LGBTQ Claims Shape International Relations*. 1st ed. London: Routledge, 2015.

⁹⁰ Ibid.

⁹¹ International Committee of the Red Cross, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

⁹² Ibid.

Forces at Sea.⁹³ The third focuses on the Treatment of Prisoners of War.⁹⁴ The final convention relates to the Protection of Civilian Persons in Time of War.⁹⁵ The Additional Protocols I and II relate to the conduct of international and non-international conflict.⁹⁶ The second source of IHL exists through customary law.

Before the codification of IHL, many different states followed customary international laws in order to minimize suffering on the battlefield.⁹⁷ While not all enemies were seen as worthy combatants, nor were the laws applied equally across different cultures, the foundations of basic IHL principles were developed.⁹⁸ The development of the Lieber Code in 1863 by Francis Lieber during the United States Civil War created the foundations for international conferences to develop an agreed upon framework for the laws of war.⁹⁹ The International Committee of the Red Cross has conducted a study to get a clear “photograph” of the current state of customary international humanitarian law. Across six different IHL concepts which include: the principle of distinction, specifically protected persons and objects, specific methods of warfare, use of weapons, treatment of civilians and persons hors de combat, and implementation, the ICRC found that there are 161 codified rules based off case law within IHL.¹⁰⁰

⁹³ International Committee of the Red Cross, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.

⁹⁴ International Committee of the Red Cross, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

⁹⁵ International Committee of the Red Cross, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

⁹⁶ International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. ; International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

⁹⁷ Henckaerts & Doswald-Beck, Customary International Humanitarian Law Volume I: Rules, 2009

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

Although there are four Geneva Conventions, three additional protocols, and hundreds of additional customary laws, there are several articles and clauses that have more significance in IHL than others. Those include the Martens Clause and Common Article 3.

Martens Clause

The Martens Clause is a clause in the 1899 Hague Convention and has been widely acknowledged as important to the development of IHL as it has been cited and referred to widely in treaties, case law, jurisprudence, and by academics.¹⁰¹ The clause reads:

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.¹⁰²

Martens proposed this clause in order to make sure that small states that were unhappy with how much power larger states were exercising to prevent themselves from being held accountable to the laws of war being negotiated.¹⁰³ The result of this clause has had several legal interpretations that vary as to whether or not they restrict a states' ability to act however they want. One interpretation is from the 1926 Case of the *S.S. "Lotus"* which developed the Lotus principle. In essence, this principle argues that states may act in any way they wish so long as they do not violate an explicit prohibition. Applying this against the Martens Clause, there is a discrepancy between the Lotus principle allowing states to do whatever they please so long as it is not an

¹⁰¹ Stapleton-Coory, *The Enduring Legacy of the Martens Clause: Resolving the Conflict of Morality in International Humanitarian Law*, 2019.

¹⁰² Martens, *The Proceedings of the Hague Peace Conferences: Translation of the Official Texts*, 1920.

¹⁰³ Stapleton-Coory, 2019.

explicit violation, whereas the Martens clause seeks to prevent states from abusing the lack of explicit rules.¹⁰⁴ This is the position that many scholars argue - the true intention of the Martens clause is to not leave judgment of what is and is not acceptable solely up to the state and their military commanders.¹⁰⁵ The second, more frequently, used definition is reads the clause as an *a contrario* argument.¹⁰⁶ This means that the Clause does not come into effect until states or other actors try to exploit a gap in the law to legitimize their actions.¹⁰⁷

One could apply both of these arguments to demonstrate that specific protection of LGBTQ people should be afforded. First, should states try and apply the *Lotus* principle by saying LGBTQ people are not specifically included in IHL, therefore, they are able to exploit this community, this would demonstrate an obvious gap in the law that should be closed. Second, if a state should argue an *a contrario* argument, this should also immediately trigger the Martens Clause and signal to the international community that there is a gap that states are trying to exploit. Therefore, yet again, the international community should unite and close the gap in IHL. While this will be explored further in other chapters of my thesis, the gap within IHL is that while it is technically all inclusive for combatants and non-combatants alike, meaning no one is without protections, these protections are too broad. This means that individuals could use cultural relativist arguments that have been previously explored. The broadly sweeping protections is one of the key factors within the theoretical framework that this thesis applies. That is to say, when a particular group is targeted in a specific and unique way in the same way LGBTQ people are, they fall through gaps in the law that did not account for this type of treatment. The cultural relativist interpretation could be applied in an argument about who

¹⁰⁴ Handeyside, "The Lotus Principle In ICJ Jurisprudence: Was the Ship Ever Afloat?", pg. 79 2007

¹⁰⁵ Stapleton-Cooley, 2019

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

deserves certain rights over others. Based on the dramatic increase of rights and visibility of LGBTQ people over the last few decades, there could be an opposite reaction of needing to protect and develop specific provisions for LGBTQ people.

Geneva Convention IV - The Geneva Convention Relative to the Protection of Civilian Persons in Time of War

The fourth Geneva Convention is unique from the other three previous conventions as Geneva Convention IV solely focuses on protections for civilians.¹⁰⁸ The convention even states that individuals covered under the first three conventions (all focused on combatants) were not considered protected under Geneva Convention IV.¹⁰⁹ This convention is important to cover as most of the violations specific to LGBTQ people in Syria fall under violations of Geneva Convention IV. There are two articles that define who is protected under this Geneva Convention:

Article 4 states that all “persons protected by the Convention are those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals.”¹¹⁰

¹⁰⁸ *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949,

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

Article 13 states that “The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.”¹¹¹

Within the convention protections themselves, Articles 13 and 32 are the most relevant to my thesis as they cover that civilians are to be protected from murder, torture or brutality, and from discrimination on the basis of race, nationality, religion or political opinion.¹¹² Despite the inclusion of “without any adverse distinction”, these were the provisions that were the most frequently violated against the LGBTQ community in Syria. Therefore, understanding that these provisions were already in place and did not wholly protect this community can provide a basis for potential amendments that can better protect LGBTQ people.

Common Article 3

Article 3, common to all four Geneva conventions (Common Article 3) is an important section of customary IHL even though its provisions are clearly defined in all four of the Geneva Conventions. The article applies to non-international armed conflicts (NIACs) rather than international armed conflicts (IACs). Common Article 3 states:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.¹¹³

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ International Committee of the Red Cross, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

The reason why this article is so important is that it was the first time that domestic wars such as a civil war, a State versus a rebel group, and even a rebel group versus another rebel group were covered under IHL.¹¹⁴ While these rights were later protected under the Additional Protocol II in 1977¹¹⁵, Common Article 3 (CA3) would be paramount during the decolonization periods prior to 1977.¹¹⁶ Furthermore, Common Article 3 establishes fundamental rules which states are unable to derogate from.¹¹⁷ Finally, CA3 is often referred to as a mini convention as it is the only one within IHL that ensures humane treatment of all individuals if the conflict's nature (IAC vs NIAC) has yet to be determined. CA3 also guarantees everyone on the battlefield has basic humanitarian protections which is especially important to consider when there are armed opposition groups involved (AOGs).

While this article covers non-international armed conflicts, there are still several thresholds that must be met for this article to be triggered. First, there needs to be a certain intensity of violence met.¹¹⁸ This level of violence must be intense enough that it cannot be dealt with through police force and must be more than the odd strife between the state and opposing groups or individuals.¹¹⁹ This notion of intensity of violence was further defined in the

¹¹⁴ Greenman, Kathryn. "Common Article 3 at 70: Reappraising Revolution and Civil War in International Law." *Melbourne Journal of International Law* 21, no. 1 (2020): 88–114.

¹¹⁵ International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹¹⁶ Whyte, Jessica. "The "Dangerous Concept of the Just War": Decolonization, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions." *Humanity (Philadelphia, Pa.)* 9, no. 3 (2018): 313–41. <https://doi.org/10.1353/hum.2018.0017>.

¹¹⁷ International Committee of the Red Cross. The Geneva Conventions of 1949 and their Additional Protocols. <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>. 01 January 2014.

¹¹⁸ Cullen, Anthony. "Article 3 Common to the Four Geneva Conventions of 1949 and the Threshold of Non-International Armed Conflict in International Humanitarian Law." In *The Concept of Non-International Armed Conflict in International Humanitarian Law*, 25–61, 2010

¹¹⁹ Ibid.

International Criminal Tribunal for the Former Yugoslavia (ICTY) during the *Dusko Tadić* trial in which the presiding judge determined that there is a non-international armed conflict when there is “protracted armed violence between government authorities and organized armed groups or between such groups within a State.”¹²⁰ Furthermore, the number and duration of skirmishes, type of equipment used, number of casualties, and several other criteria determine whether or not the threshold of violence is met.¹²¹¹²² The second threshold that must be met relates to the organizational structure of the force(s) opposing the State.¹²³ This means that the armed opposition group must have a command structure with an identifiable leader, the ability to exercise control over a defined territory, and sufficient logistical capacity, including to uphold IHL.¹²⁴ Overall, even though there are thresholds that must be met, Common Article 3 is deeply important as most of the conflicts that occur now are not inter-state wars, but intra-state wars.¹²⁵

However, there are still some ambiguities over the definition of an “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”.¹²⁶ While it may seem relatively straightforward, there is no widely accepted definition of what an ‘armed conflict not of an international character’ is.¹²⁷ Without this concrete definition, states can use this to their benefit and simply deny an armed conflict exists.¹²⁸ Moreover, the added requirement that the non-state actor must have a certain degree of organization also tends to

¹²⁰ ICTY, *The Prosecutor v Dusko Tadić*, Trial Chamber, Judgment, IT-94-1-T, 7 May 1997, §562.

¹²¹ ICTY, *The Prosecutor v Ramush Haradinaj and others*, Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, §60.

¹²² Vite. “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations.” *International Review of the Red Cross* (2005) 91, no. 873 (2009): 69–94

¹²³ Cullen, 2010.

¹²⁴ Vite, 2009.

¹²⁵ Szayna, Thomas S., Stephen Watts, Angela O'Mahony, Bryan Frederick, and Jennifer Kavanagh, *What Are the Trends in Armed Conflicts, and What Do They Mean for U.S. Defense Policy?*. RAND Corporation, 2017.

¹²⁶ ICRC, Additional Protocol II.

¹²⁷ Moir, Lindsay. *The Law of Internal Armed Conflict*. Cambridge ; New York: Cambridge University Press, 2002.; Solis, Gary D. *The Law of Armed Conflict : International Humanitarian Law in War*. New York, NY : Cambridge University Press, 2016.

¹²⁸ Moir, Lindsay. *The Law of Internal Armed Conflict*, 2002.

become problematic when trying to determine which conflicts Common Article 3 can be applied to.¹²⁹ There are also transformers and dual status conflicts.¹³⁰ Transformers are conflicts that began as either Common Article 2 or Common Article 3 and switch to their opposite. This transformation can happen multiple times during an armed conflict.¹³¹ Dual-status conflicts are situations in which there are simultaneously international and internal conflicts happening in different locations within a State.¹³² It is due to all these different scenarios and requirements that establishing the correct status of a conflict is of paramount importance. Without a proper understanding of what type of conflict is taking place, it is difficult to determine which sets of rules apply to the current situation.

Additional Protocols I and II

Additional Protocols I (API) and II (APII) were adopted in 1977 and both are designed to further protect individuals that are victims of conflicts. API is specifically concerned with international conflicts whereas APII is focused on non-international conflicts. APII is particularly important to the discussion of the Syrian conflict that will occur in a later chapter. Within APII, the foundations of what was considered humane treatment was further defined. Article 4(2)(a-h) are the most relevant to my discussion on Syria. This article states:

“2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or

¹²⁹ Solis, *The Law of Armed Conflict : International Humanitarian Law in War* 2016.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² Moir, *The Law of Internal Armed Conflict* 2002; Solis, *The Law of Armed Conflict : International Humanitarian Law in War* 2016.

- any form of corporal punishment;
- b) collective punishments;
- c) taking of hostages;
- d) acts of terrorism;
- e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f) slavery and the slave trade in all their forms;
- g) pillage;
- h) threats to commit any of the foregoing acts.”¹³³

Keeping the focus of analysis on the conflict within Syria and the violations of these rights against LGBTQ people, the Geneva Convention IV, Common Article 3, and APII will serve as the legal basis for how my analysis will be conducted later in the thesis.

Peremptory Norms

Peremptory norms are fundamental principles of international law from which no derogation is permitted, despite a state’s desire to do so.¹³⁴ An example of a peremptory norm is the previously mentioned Common Article 3 or the prohibition of torture as stated by a prosecutor during the *Furundžija* case at the ICTY¹³⁵. Conklin argues that peremptory norms have been recognized since the late 18th century, meaning there is a long history of states abiding by these norms.¹³⁶ More importantly, building off of the non-derogable nature of peremptory norms, Article 53 of the Vienna Convention on the Law of Treaties states that any treaty that conflicts with a peremptory norm is void.¹³⁷ While there is no fully compiled list of what are considered

¹³³ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977,

¹³⁴ Conklin, William E. “The Peremptory Norms of the International Community.” *European Journal of International Law* 23, no. 3 (2012): 837–61.

¹³⁵ ICTY. *Prosecutor v. Anto Furundžija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998

¹³⁶ Conklin, 2012.

¹³⁷ Menkes, Jerzy. “Article 53 of the Vienna Convention on the Law of Treaties – Codification or Development?” *Polish Review of International and European Law* 2, no. 2 (2013); Vienna Convention on the Law of Treaties, Article 53, May 23, 1969, 1155 U.N.T.S 331, 8 International Legal Materials 679 (1969)

peremptory norms, many agree there is a general prohibition on torture, slavery, genocide, apartheid, and crimes against humanity.¹³⁸

Four Basic Principles of International Humanitarian Law

One of the most crucial parts in the development of IHL is the four basic principles that belligerents to conflicts must adhere to in order to make sure they remain lawful, however, all written and unwritten international laws that deal with conduct on the battlefield are applicable once a war has begun.¹³⁹ These principles are distinction, proportionality, military necessity, and no unnecessary suffering. Distinction refers to the prohibition of targeting certain kinds of persons and objects and distinguishes between civilians and civilian objects, and military objectives.¹⁴⁰ Additional Protocol I states that the only legal or legitimate object of attack is military personnel or property.¹⁴¹ While it may seem like a straightforward principle, there are many different factors that come into play when determining who or what can be legally targeted. Some potential problems include determining who is a combatant or a civilian, and when does a civilian become a combatant and vice versa. Furthermore, there is the question of what is the threshold to determine if an attack on a location or object being used by both civilians and military is necessary or not, and similarly, what is the threshold for the collateral destruction of private property and military necessity? All of these factors make the principle of distinction a challenging principle to manage.

¹³⁸ Menkes, 2013.

¹³⁹ Henckaerts & Doswald-Beck, Customary International Humanitarian Law Volume I: Rules, 2009; Solis, The Law of Armed Conflict : International Humanitarian Law in War 2016.

¹⁴⁰ Solis, The Law of Armed Conflict : International Humanitarian Law in War 2016.

¹⁴¹ Henckaerts & Doswald-Beck, Customary International Humanitarian Law Volume I: Rules, 2009

Proportionality states that attacks resulting in damage and loss of life must be proportional to the military objective.¹⁴² API defines a violation of proportionality as “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.¹⁴³ Therefore, this heavily dictates the time of attacks if civilians might be present, the types of weapons used, and the location.¹⁴⁴ Third, military necessity means that doing damage only so far as necessary to realize a legitimate military objective is lawful, anything past that is illegal.¹⁴⁵ It is important to note that military necessity does not mean that a combatant can do “whatever it takes” to ensure victory.¹⁴⁶ Even more so during times of self-preservation, necessity cannot be invoked if it would lead to grave breaches of the law¹⁴⁷ Therefore, attacking civilians, those hors de combat, torture, or anything else that inflicts damage that is not needed is deemed unlawful.¹⁴⁸ Furthermore, it is important to note that military necessity is always weighed against the three other principles to determine if any kinetic operation or engagement follows the law and especially minimizes the threat to civilians and combatants. Finally, belligerents must not inflict unnecessary suffering on each other.¹⁴⁹ Examples of unnecessary suffering includes the use of weapons of mass destruction such as biological weapons and conventional weapons with expanding or exploding bullets.¹⁵⁰ These laws serve the purpose of ensuring that wars are only used to achieve the outlined goals, that they

¹⁴² Ibid.

¹⁴³ Article 51.5(b) of Additional Protocol I, 1977.

¹⁴⁴ Solis, *The Law of Armed Conflict : International Humanitarian Law in War* 2016.

¹⁴⁵ Henckaerts & Doswald-Beck, *Customary International Humanitarian Law Volume I:Rules*, 2009

¹⁴⁶ Solis, 2016, pg. 219.

¹⁴⁷ Solis, 2016.

¹⁴⁸ Henckaerts & Doswald-Beck, *Customary International Humanitarian Law Volume I:Rules*, 2009; Solis, *The Law of Armed Conflict : International Humanitarian Law in War* 2016.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

should end as quickly as possible, and that those who are not a belligerent party to the conflict remain protected.¹⁵¹

IHL and LGBTQ People

After exploring some of the key provisions of IHL that are designed to protect both combatants and non-combatants, it is evident that nearly all people in conflict zones are covered in some form or another. However, there are no specific mentions of sexual orientation or gender expression as a form of protected group. This is not to say that LGBTQ people are not necessarily afforded protections under IHL, but to highlight that this is a group which is at higher risk of targeted violence. Other groups which are at a higher risk of targeted violence such as women have explicit protections for them. For example, Article 27 of GC IV states that “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. As it is possible for a vulnerable group such as women to be given explicit protections, this level of acknowledgement could easily be extended those of diverse sexual orientations and gender identities.

Adherence and Compliance with IHL

With a general understanding of the types of laws that states must abide by should they find themselves engaged in an international or non-international armed conflict, what mechanisms are in place to ensure that they do? The International Committee of the Red Cross produced a research paper that stated there is “both [a] lack of political will and practical ability of parties to

¹⁵¹ Ibid.

an armed conflict — both States and armed groups — to comply with their legal obligations”¹⁵². The ICRC does acknowledge, however, the advancements made by states such as the development of national IHL implementation committees. Additionally, the development of *ad hoc* international tribunals to prosecute war crimes signifies the international community’s desire to take IHL seriously. However, as noted, there are still challenges to the adherence of IHL. Developing new and more concrete ways to promote compliance is difficult as anything that directly infringes upon their sovereignty is likely to be met with significant backlash.

Enforcement of IHL

It is important to understand the legal enforcement regime of IHL since I will be exploring possible recommendations that the international community can take to resolve the issue of the gross human rights violations of the LGBTQ community at the end of the thesis. One of these is the adaptation of IHL to be more inclusive and include sexual orientation as a ground for protection. Therefore, understanding how the two permanent international courts work is needed to understand how the law can be interpreted to better protect LGBTQ people. Many states and legal scholars alike agree that within the international legal system, state sovereignty remains paramount, however, states have willingly signed on to treaties that constrict their actions. Even though states have signed on, they still manage to break these rules frequently. Therefore, there are several courts that help ensure IHL is followed and punish those who break these laws. There is the International Criminal Court, the International Court of Justice, and there are also *ad hoc* criminal tribunals that can be set up to investigate crimes.

International Criminal Court

¹⁵² ICRC. Improving Compliance With International Law. International Humanitarian Law Research Initiative, 2004. Pg.1

One of the main sources of legal enforcement and punishment for those who commit crimes against humanity, war crimes, and genocide is the International Criminal Court (ICC). The ICC became operational in 2002 when the Rome Statute came into effect.¹⁵³ In the preamble of the Rome Statute, the reasons behind the creation of the ICC are listed, including that states are “mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shocked the conscience of humanity, and [they recognize] that such grave crimes threaten the peace, security and well-being of the world”.¹⁵⁴ As of 2022, there were 123 countries that had ratified the Statute.¹⁵⁵ This court was created as a last resort for prosecution and has limited jurisdiction. The court is only able to prosecute perpetrators of states that are party to the Rome Statute or if a situation or case was referred to them by the United Nations Security Council.¹⁵⁶ In this sense, the ICC supplements domestic criminal justice systems and will only intervene if States are unwilling, or unable to do so themselves.¹⁵⁷ The ICC has seen 30 cases with some having several suspects.¹⁵⁸ The ICC has detained 17 individuals with 13 still at large and has issued 10 convictions and 4 acquittals.¹⁵⁹ Within the ICC’s track record, there have been no explicit cases regarding the treatment of LGBTQ people. This is not entirely surprising as finding out demographic data about victims is incredibly sensitive. However, the lack of prosecution of cases of LGBTQ people does not necessarily mean that it could not happen.

¹⁵³ International Criminal Court. Understanding the International Criminal Court. n.d

¹⁵⁴ International Criminal Court. Rome Statute of the International Criminal Court. 2011

¹⁵⁵ International Criminal Court. The States Parties to the Rome Statute. n.d

¹⁵⁶ International Criminal Court. Understanding the International Criminal Court. n.d

¹⁵⁷ Ibid.

¹⁵⁸ International Criminal Court. About the Court, facts and figures. n.d

¹⁵⁹ Ibid.

International Court of Justice

The International Court of Justice (ICJ) was created in 1945 and is the successor to the Permanent Court of Justice.¹⁶⁰ All UN member states are party to the ICJ Statute, and any member state can bring forward a case to the ICJ, however, both parties to the case must consent to the court's adjudication.¹⁶¹ The ICJ hears three types of cases. These include contentious issues of a dispute, incidental jurisdiction when states are waiting for a final judgment, and finally they can give advisory opinions related to international law.¹⁶² While the ICJ does not deal with criminal matters, the advisory opinion power of the court could influence the treatment of LGBTQ people in conflict zones.¹⁶³ The role of the ICJ to further protections for LGBTQ people will be explored further in chapter 5.

Ad Hoc Criminal Tribunals

The third way to hold individuals accountable for violations of IHL is through the use of *ad hoc* criminal tribunals. The Nuremberg and Tokyo trials after World War II helped set the groundwork for these to be used more commonly in more recent conflicts. More recent examples include the ICTY and the International Criminal Tribunal for Rwanda (ICTR). Both tribunals were established by the UNSC and have contributed to the development of IHL. These tribunals have developed tests to help interpret the law and reduced the gaps in rules applicable to both international and non-international armed conflicts. In recent decades, the ICTR, ICTY, and other special courts that have been set up in Kosovo, Bosnia Herzegovina, East Timor, Sierra Leone, Cambodia, and Lebanon have not heard cases that have explicitly dealt with sexual

¹⁶⁰ International Court of Justice. Handbook. 2014.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

orientation or gender identity as main factors of violations of protections. However, there are other locations around the world in which LGBTQ people have been directly targeted in conflict zones which could be heard in special courts. Finally, as the ICTR and ICTY laid the foundations for the prosecution sexual violence and gender crimes, the case law and tests developed within both tribunals will be explored in the analysis chapter to lay the foundations for understanding the crimes committed during the Syrian conflict.

Conclusion

This chapter has explored the development of IHL, and its core components designed to protect both combatants and non-combatants on the battlefield. The mechanisms for ensuring that states adhere to these principles such as the ICC, ICJ, and *ad hoc* tribunals were highlighted.

Throughout this chapter it has been mentioned that while nearly everyone is protected in some form or another in general – LGBTQ people included – there is a lack of specificity in regard to sexual orientation and gender identity that is the gap. While the 2014 policy paper from the office of the prosecutor of the ICC mentions that they will try to understand the intersection of factors that cause discrimination, including sexual orientation, is a step in the right direction, nothing concrete in the form of law has come out of it.

Chapter 3 - Case Study – Syrian Conflict and IHL

In this chapter I will provide a brief historical background and examination of the conflict. The second part will focus on the type of conflicts that have occurred within Syria and the fight against ISIS. This will be done to determine which rights and responsibilities are applicable as several jurisdictional and legal issues prevent the Syrian conflict from being easily classified. The third section of the case study will explore the specific instances of violence that LGBTQ people face and how it differs from the other groups that faced extreme violence within the conflict. Finally, building on the way that the cultural relativist approach actively discriminates against LGBTQ people, I will explore the unique ways in which they are targeted. These forms of violence are not necessarily unique to Syria, as they are present in many countries across the world. It is these general homophobic and transphobic ideas and practices that make living in a cultural relativist society that does not value LGBTQ people, particularly dangerous. These ideas and practices inform the way the state has securitized LGBTQ people as threats to the rest of society.

Types of Violence Used

To first understand why LGBTQ people need specific protections, understanding the types of violence they face within conflict zones is paramount. This first section explores how the cultural relativist approach to human rights that Syria has taken has repeatedly manifested as violence against LGBTQ people. The ways in which this community has been targeted shows the uniqueness of the attacks against this group and why they need specific protections.

While it is important to acknowledge the violence and discrimination that this community faces in peacetime, I focus this project specifically on violence perpetrated during conflicts.

Within times of conflict, LGBTQ people face additional layers of persecution due to the breakdown of law and order and daily social life.¹⁶⁴ Some of the forms of violence particularly used against LGBTQ people include, but is not limited to, “targeted violence including killing and sexual violence, policing of gender norms, blackmail, extortion, and rejection by family and other community members”.¹⁶⁵ Moreover, LGBTQ people are viewed with shame and can lead to honor killings.¹⁶⁶ A particular form of unique violence that transgender women face as noted by the UN Office of the High Commissioner on Human Rights (OHCHR), includes violently beating them on their breasts and other locations in which they have had surgery to release toxins and disfigure them.¹⁶⁷ According to the latest available UN report on the issue, the main concerns of violence against LGBTQ people involved sexual violence that includes “forced stripping, rape and forced anal or vaginal examinations, perpetrated both by government forces and by armed groups, in particular in detention facilities”.¹⁶⁸ This data is based on reports by various UN agencies, NGOs, and data willingly submitted by governments to the OHCHR. It is representative of conflicts and LGBTQ people generally, however the findings in this report are consistent with the treatment of LGBTQ people in Syria.

¹⁶⁴ Margalit, A. (2018). Still a blind spot: the protection of LGBT persons during armed conflict and other situations of violence. *International Review of the Red Cross*. 100(1-2-3), 237-265. ; Human Dignity Trust. (2015). Criminalising Homosexuality and LGBT Rights in Times of Conflict, Violence and Natural Disasters. <https://www.humandignitytrust.org/wp-content/uploads/resources/8.-Criminalisation-Conflict-and-Natural-Disasters.pdf>

¹⁶⁵ https://www.hrw.org/sites/default/files/media_2020/08/syria0720_web.pdf ; Myrtilinen, H., & Daigle, M. (2017). When merely existing is a risk: sexual and gender minorities in conflict, displacement and peacebuilding. International Alert.

¹⁶⁶ https://www.hrw.org/sites/default/files/media_2020/08/syria0720_web.pdf

¹⁶⁷ OHCHR. (2012). Born free and equal: Sexual orientation and gender identity in international human rights law. New York and Geneva: UN OHCHR

¹⁶⁸ OHCHR. (2015). Discrimination and Violence against Individuals Based on Their Sexual Orientation and Gender Identity. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E (pg. 8-11)

Additionally, family members, friends, acquaintances, and neighbours threaten to notify armed groups or authorities of LGBTQ people's locations to gain favour.¹⁶⁹ Moreover, it is important to consider that a person's actual sexuality might be different from their perceived sexuality. However, if they are labelled LGBTQ, they will be treated as such regardless of if they are or not. Furthermore, other types of violence include things such as shaming, humiliation, dehumanization of the victims, forced conversion tactics, education, and gaining community support.¹⁷⁰ This serves to instill traditional norms of heterosexuality, masculinity, and femininity. While not all these forms of violence are necessarily unique to LGBTQ people, they are subjected to "increased and intensified" violence due to their actual or assumed sexual orientation and gender identity than heterosexual people.¹⁷¹

This can be seen through other reports such as the Inter-American Commission on Human Rights (IACHR) report on LGBTI violence in South America. From January 2013 to March 2014, they found reports of at least 770 instances of violence against LGBTQ people with 594 cases resulting in killings, which is at least 9 killings per week.¹⁷² The IACHR also found that crimes against LGBTQ people or those perceived to be "particularly cruel and in some instances characterized by levels of brutality exceeding that of other hate crimes".¹⁷³ These killings often included stoning, decapitation, mutilation, being set on fire, acid attacks, being run over by cars, extreme humiliation, torture, and rape.¹⁷⁴ Specific case examples include Joel

¹⁶⁹ Human Rights Watch, 2020; Human Rights Watch, 2014

¹⁷⁰ Human Rights Watch, 2020; Serrano-Amaya, J.F (2018). *Homophobic Violence in Armed Conflict and Political Transition*. New York & London: Palgrave Macmillan

¹⁷¹ Human Rights Watch, 2020. pg 1-2.

¹⁷² Organization of American States, 2015.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

Molero, a 19-year-old gay man who was attacked leaving a night club in Peru.¹⁷⁵ His throat was slit and beheaded, genitals and fingers severed, and placed on a mattress which was set on fire.¹⁷⁶

LGBTQ People as Scapegoats

LGBTQ people face an increased potential for violence to be used against them whether it be via physical, psychological, or sexual means. However, what is uncertain are the reasons why this community is specifically vulnerable. Zea et al., argue that this increase in violence toward LGBTQ people is due to a perceived need to cleanse the general population of moral deviance, which will instill a uniform sense of identity.¹⁷⁷ The UN Security Council (UNSC) has also affirmed that violence against LGBTQ people is used as a form of moral cleansing.¹⁷⁸ This uniform sense of identity then perceives LGBTQ people as enemies or “agents of outside forces” that are trying to destroy a community or a culture.¹⁷⁹ Once they are considered enemies or traitors, it becomes much easier to commit violent attacks against them without fear of legal retribution from the state or moral disapprobation.¹⁸⁰ Moreover, with LGBTQ people acting as scapegoats for the group’s grievances, the offences that actors in conflicts commit against this community often receive less civilian scrutiny as they are more concerned with their hatred for LGBTQ people.¹⁸¹ For example, in Armenia and Northern Ireland, gay men and lesbian women were deemed traitors to their respective countries for not completing their patriotic duty of

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Zea, M, C., Reisen, C, A., Bianchi, Fernanda T, Gonzales, Felisa A, Betancourt, Fabián, Aguilar, Marcela, & Poppen, Paul J. (2013). Armed conflict, homonegativity and forced internal displacement: implications for HIV among Colombian gay, bisexual and transgender individuals. *Culture, Health & Sexuality*, 15(7), 788–803.

¹⁷⁸ United Nations Security Council. (2015). Report of the Secretary-General, “Conflict-Related Sexual Violence,” S/2015/203

¹⁷⁹ Myrntinen, & Daigle pg. 25 (2017).

¹⁸⁰ Ibid.

¹⁸¹ Zea, et al., 2013

producing children for the ‘right’ side of their conflicts.¹⁸² This resulted in individuals being assaulted and their houses set on fire.¹⁸³ Furthermore, gay men’s loyalty to their country has specifically been questioned as there are fears they could be blackmailed or were seen as enemy agents.¹⁸⁴ This can be seen within Canada in the 1960s when the Royal Canadian Mounted Police (RCMP) employed the use of the ‘fruit machine’ – a test devised to root out homosexuals in the civil, diplomatic, and military services as they were thought to undermine national security.¹⁸⁵ All of these were in violation of individuals rights, but those rights were overlooked in order to ensure that the state was secure.

Masculinity and Male Domination

A second potential reason that is more specific to the sexual violence LGBTQ men face is male domination over another. More specifically, this involves the dynamics of masculinity and femininity, and notions of power and dominance over those deemed less worthy.¹⁸⁶ Sivakumaran argues that masculinity dictates that men must be exclusively heterosexual to remain at the top of society and have power over others.¹⁸⁷ Moreover, masculinity is often associated with dominance and strength.¹⁸⁸ Exerting this strength and dominance over others whether they be women, children, other men, or LGBTQ people is of the utmost importance in retaining their societal position. Safeguarding this masculinity requires that one be seen publicly as a man. Once a man

¹⁸² Myrntinen, & Daigle (2017).

¹⁸³ Ibid.

¹⁸⁴ Miriam Smith. “Identity and Opportunity: The Lesbian and Gay Rights Movement.” In *Group Politics and Social Movements in Canada*, 181–. University of Toronto Press, 2007.; Myrntinen & Daigle, 2017.

¹⁸⁵ Miriam Smith. 2007

¹⁸⁶ Sivakumaran, S. (2007). Sexual violence against men in armed conflict. *European Journal of International Law*, 18(2), 253–276. <https://doi.org/10.1093/ejil/chm013>

¹⁸⁷ Ibid.

¹⁸⁸ International Center for Transitional Justice. (2016). When No One Calls it Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts https://www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf

loses his masculinity, he loses his manhood and status within society, thereby becoming feminine.¹⁸⁹ Given that a predominant view about LGBTQ men is that they are “feminine”, they bring dishonour to manhood and their culture.¹⁹⁰ This means any form of violence, particularly sexual, is used to ‘correct’ them and to become more powerful over them.

Sivakumaran describes this as a process of “homosexualization”.¹⁹¹ Homosexual men are seen as less masculine and more effeminate than heterosexual men, thus reducing their status within society and emasculating them.¹⁹² Once a man regardless of his sexuality, experiences any form of sexual violence, he is then deemed a homosexual.¹⁹³ This ‘homosexual’ status then leaves these men vulnerable within society as they are then shunned by their families and communities and are at risk to experience further sexual violence.¹⁹⁴

Why LGBTQ Violence is Different

It is important to note that not all violence is unique to LGBTQ people, as many minority groups face discrimination and violence (e.g., Uighurs in China, Rohingya in Myanmar). However, LGBTQ people are specifically targeted because they deviate from the traditional gender roles and expectations around masculinity and femininity.¹⁹⁵ Given that LGBTQ people are vulnerable even in times of peace, when times of conflict occur this vulnerability is increased

¹⁸⁹ Sivakumaran, (2007).

¹⁹⁰ Myrtilinen, H., & Daigle, M. (2017).; Javaid, A. (2016). Feminism, masculinity and male rape: bringing male rape 'out of the closet' *Journal of Gender Studies*, 25(3), 283–293.; Javaid, A. (2018). Male rape, masculinities, and sexualities. *International Journal of Law, Crime and Justice*, 52, 199–210.
<https://doi.org/10.1016/j.ijlcrj.2017.12.003>

¹⁹¹ Sivakumaran, pg. 272 (2007).

¹⁹² Sivakumaran, 2007.; Javaid, 2016.; Javaid, 2018.; Eichert, D. (2019). "Homosexualization" revisited: an audience-focused theorization of wartime male sexual violence. *International Feminist Journal of Politics*, 21(3), 409–433.

¹⁹³ Sivakumaran, (2007).; Javaid 2016.; Javaid 2018.; Eichert, 2019

¹⁹⁴ Sivakumaran, (2007).; Eichert, 2019

¹⁹⁵ Dolan, C., Fletcher, E. L., Oola, S. (2013). “Promoting Accountability For Conflict-Related Sexual Violence Against Men: A Comparative Legal Analysis of International And Domestic Laws Relating To IDP and Refugee Men In Uganda,”. *Berkeley Law: Social Science Research Network*.

dramatically.¹⁹⁶ This is because, in times of increased strain on resources and strain on law enforcement, the “pre-existing stigma becomes amplified” and homophobic acts can be acted upon with “impunity”.¹⁹⁷ Moreover, the UNSC has found that LGBTQ people are specifically targeted with sexual violence.¹⁹⁸

Additionally, The Refugee Law Project in Uganda states that despite an apparent prevalence in sexual violence against men during conflicts in the past two decades, there is a lack of official empirical data supporting it. The Refugee Law Project suggests that the lack of data is that the stigma of male on male sexual violence is enough of a deterrent to prevent reporting.¹⁹⁹ Furthermore, using Crenshaw’s intersectionality framework, each intersection of personal identity stands to increase the likelihood of discrimination and violence.²⁰⁰ For example, LGBTQ people who also identify as a part of an ethnic minority group are at increased risk for persecution from both the ethnic majority and their minority communities. Therefore, while violence is not unique to any single group, applying different identities together compounds the risks that one can face.

Exploring intersectionality framework further, Adam Jones’ work on the concept of gendercide highlights the fact that “battle aged men” (approximately aged 15-55) are some of the most vulnerable in times of conflict as they are perceived to be the group posing the biggest threat to a conquering force.²⁰¹ Non-combatant men are even more vulnerable within this age

¹⁹⁶ Human Dignity Trust. (2015). Criminalising Homosexuality and LGBT Rights in Times of Conflict, Violence and Natural Disasters.

¹⁹⁷ Human Dignity Trust. Pg.4 (2015).

¹⁹⁸ United Nations Security Council. (2019). Report of the Secretary-General, “Conflict-Related Sexual Violence,” S/2019/280.

¹⁹⁹ Human Dignity Trust (2015).

²⁰⁰ Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, 43(6), 1241-1299.

²⁰¹ Jones, Adam. “Straight as a Rule: Heteronormativity, Gendercide, and the Noncombatant Male.” *Men and masculinities* 8, no. 4 (2006): 451–469.

group as they do not have a means of defending themselves.²⁰² Applying a more intersectional lens, Jones explores the role of hegemonic heterosexuality and masculinity and how the “feminized male”, is one of the most lethal gender roles to be assigned.²⁰³ Militarism, a regime “emphasizing competition, physical hardness, conformity, and a sense of elite membership,” has been the catalyst for creating and perpetuating hegemonic masculinity.²⁰⁴ Militarism allows those who fit within the hegemonic heterosexuality role to hold the most power, and everyone else who goes against this, that is the feminized male, are vulnerable.²⁰⁵ Building off of Sivakumaran's homosexualization, men who are openly homosexual, or perceived to be homosexual are “at special and often mortal risk”.²⁰⁶ With this intersectionality framework in mind, it becomes crucial in understanding how within all societies, whether in conflict or not, LGBTQ people, or perceived to be, face increased potential for violence. While all these forms of violence can be found in different countries across the world, what was particularly prominent within the Syrian context is role of masculinity and domination. The way the Syrian government and forces acted towards LGBTQ and suspected LGBTQ men in particular demonstrated that as long as they were doing the penetration or sex act, they are able to maintain their heterosexuality, while those who were penetrated are ‘homsexualized’. As homosexuality is looked down upon in Syrian society, the attackers would assume that they’re able to act with relative impunity as those who were male victims were unlikely to speak out about what happened for fear of being labelled as a homosexual.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Connell, R. W. 2002. *Gender*. Cambridge: Polity.

²⁰⁵ Jones, 2006.

²⁰⁶ Ibid. pg. 453

Background of the conflict

The Syrian civil war began in March 2011 as a part of the Arab Spring movement in response to oppressive regimes throughout the Middle East. The Arab spring was a popular movement across the Middle East and North Africa to fight back against years of poor living conditions, corruption, and lack of effective democratic institutions.²⁰⁷ These protests first began in 2010 when a young Tunisian man who was frustrated with his local government that was preventing from selling items from his cart set himself on fire in front of a police station.²⁰⁸ This sparked a movement and spread to Libya, Egypt, and Syria as well.²⁰⁹ In Syria, tensions had been rising for decades prior to the Arab Spring. Bashar al-Assad's father, Hafez al-Assad, took power during a Baathist military junta in 1970.²¹⁰ The al-Assad's came from the Alawite minority that had been persecuted for a long time in Syria.²¹¹ After World War I, the French occupiers installed the Alawite's to positions of power despite them being a minority population.²¹² Hafez al-Assad was a brutal ruler that used the military to put down any resistance to his regime, most notably killing 25,000 people in the city of Hama in February 1982 during a Muslim Brotherhood uprising.²¹³ Hama would later both be used by Bashar as an example of how to deal with political unrest, as well as a symbol of resistance by those who opposed his regime.²¹⁴ When Bashar al-Assad succeed his father in 2000, he pledged to enact reforms to make Syria more equal and less corrupt.²¹⁵ These reforms included breaking up and privatizing state monopolies, ending

²⁰⁷ Al Jazeera. How the Arab Spring Unfolded. (2021)

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Laub, Zachary. Syria's Civil War: The Descent Into Horror. The Council on Foreign Relations. (2021)

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

subsidies along with price ceilings on agricultural products.²¹⁶ However, these reforms Bashar al-Assad promised did not help ordinary people as it further concentrated wealth and power among the Alawite elites and others who remained loyal to al-Assad.²¹⁷ The lack of effective reforms that were supposed to help all Syrians, coupled with a record-setting drought from 2006 to 2010, and the demonstration effect of the Arab Spring created an environment that stoked civil unrest and Syrians began to rebel against the al-Assad regime.²¹⁸ Although protests erupted throughout Syria, the most pivotal protest was in the city of Deraa in which government forces laid siege to the city by bringing in armed vehicles and tanks, killing unarmed civilians, and cutting of their supply of food, water, and other important resources.²¹⁹ The Syrian government's brutal response to the initial protest in Syria was due to the fact that other protests in Tunisia and Egypt ultimately ousted their leaders, therefore, Bashar al-Assad wanted to avoid the same fate. However, the government's response to Deraa was the catalyst for further protests erupting throughout Syria.²²⁰ The protests were met with violence by the Syrian government and then escalated to a full-scale conflict.²²¹

Religion, Law, and Society - Syria

To fully understand how and why LGBTQ people were singled out for particularly brutal treatment during the civil war, we need to take a step back in time to trace the roles of religion, law, and society in the longstanding persecution of members of the LGBTQ community in Syria. While there are several different religious groups present in Syria, the minority Alawites control

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ *Ibid.*

most of the political power while the Sunni Muslims represent the majority of society.²²² It is important to understand the dynamics at play to gain a better grasp of the conflict and to determine the public view of LGBTQ people. This will help to understand why they receive the treatment that they do in peace and in times of conflict. Despite being a minority religious group, the Alawites rose to power through both the help of the French when they withdrew from Syria and the Ba'ath party advocating a secular approach to society.²²³ The Ba'athists did not discriminate based on religion and allowed anyone to join the party.²²⁴ This allowed many Alawites to participate in the political process.²²⁵ In conjunction with the Ba'ath party, the armed forces were another way the Alawites sought power.²²⁶ Due to the Franco-Syrian Treaty of Independence, the French had advocated for minority involvement in the armed forces to help offset the Sunni majority.²²⁷ This, in conjunction with the economic and social prospects of being an officer in the armed forces, induced many Alawites to become members.²²⁸ The Sunni majority looked down upon those who had to use the armed forces for economic and social opportunities, thus they were not a major demographic within the armed forces.²²⁹ Since the Alawites made up the majority of the armed forces, they were easily primed to take over during the military coup in 1970.²³⁰

Looking at religious beliefs and attitudes towards homosexuality, the religious understandings of homosexuality must be explored. Similar to Christianity using the chapters of

²²² Farouk-Alli, Aslam. "Sectarianism in Alawi Syria: Exploring the Paradoxes of Politics and Religion." *Journal of Muslim minority affairs* 34, no. 3 (2014): 207–226.

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ *Ibid.*

Leviticus to condemn homosexuality, Islam uses the story of the people of Lot to condemn homosexuality. This story involves Sodom and Gomorrah and how the men of the city demanded to have sex with the male messengers sent by God to the prophet Lot as well as viewing them with lust in the same way they would a woman.²³¹ The Quran states that the penalty for homosexuality is death. Mohsen Kadivar, a prolific Islamic scholar, jurist, and theologian argues that there is a “consensus among Sunnī and Shī‘a scholars towards prohibition of male homosexuality both in defining ruling and declaratory ruling”.²³² Within this agreement between both major sects, the punishment is death by stoning.²³³

Within different areas of life in Syria, such as religion, laws, and social status generally, LGBTQ people are not treated equally and do not receive equal protections amongst their peers and are generally kept out of mainstream discourse of politics and society when possible.²³⁴ The Syrian civil, commercial, and criminal codes are primarily based on French legal practices.²³⁵ However, Syria gained its independence in 1946 and introduced its penal code in 1949. France had not criminalized same sex activity for many years; therefore, the introduction of criminalizing same sex activity was a Syrian invention.²³⁶ There are also Islamic courts, but they are used for matters of family law.²³⁷ LGBTQ people do not have equality in the healthcare

²³¹ The full verse: And “remember” when Lot scolded “the men of” his people, “saying,” “Do you commit a shameful deed that no man has ever done before? You lust after men instead of women! You are certainly transgressors.” But his people’s only response was to say, “Expel them from your land! They are a people who wish to remain chaste!” So We saved him and his family except his wife, who was one of the doomed. We poured upon them a rain “of brimstone”. See what was the end of the wicked! Surah Al-A’raf 7:80-84.

²³² Alipour, M. “Shī‘a Neo-Traditionalist Scholars and Theology of Homosexuality: Review and Reflections on Mohsen Kadivar’s Shifting Approach.” *Theology & sexuality* 24, no. 3 (2018): 200–218. Pg. 201

²³³ Ibid.

²³⁴ Centre for Operational Analysis and Research. LGBTQ+ Syria: Experiences, Challenges, and Priorities for the Aid Sector. European Union. (2021). <https://reliefweb.int/sites/reliefweb.int/files/resources/LGBTQ-Syria-Experiences-Challenges-and-Priorities-for-the-Aid-Sector.pdf>

²³⁵ Collelo, Thomas. *Syria: a Country Study*. 3rd ed. [i.e. 4th ed.]. Vol. 550–47. Washington, D.C: Federal Research Division, Library of Congress, 1988. Pg. 191-192.

²³⁶ <https://www.humandignitytrust.org/country-profile/syria/>

²³⁷ Centre for Operational Analysis and Research, 2021.

system, employment equality, and general political participation in society that heterosexual people are afforded. Article 520 of the Syrian Penal code states that homosexuality or “carnal knowledge against the order of nature” is criminalized with up to three years of imprisonment.²³⁸ Furthermore, there are no laws that protect people from discrimination or violence on the basis of sexual orientation and gender identity.²³⁹ Gender affirming procedures are only legal in cases of intersex or hermaphroditism.²⁴⁰ Within families and faith communities, LGBTQ people are seen as abominations and ostracized within their communities and are often disowned by their families.²⁴¹

Within religious circles of Syria, many believe that individuals cannot be both LGBTQ and religious.²⁴² This has then led to LGBTQ people shaming members of their community if they still choose to practice their preferred religion.²⁴³ Furthermore, LGBTQ Syrians who remain part of the upper class have been able to live somewhat freely due to their social and economic status.²⁴⁴ Similarly, LGBTQ people who remain low in social and economic status are generally left alone as many do not wish to associate or concern themselves with them.²⁴⁵ It is the LGBTQ people who belong to the middle class that suffer the most as their identities are more likely to be weaponized against them.²⁴⁶ Among the out LGBTQ Syrians, 95% have stated that they would not return to Syria even if the security situation stabilizes.²⁴⁷

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

In addition, the 1958 Law on Associations and Private Foundations prevents formal civil society assembly on behalf of LGBTQ issues as it is illegal to support and advocate for homosexuality.²⁴⁸ Due to this law, Syria is one of 30 countries that have no formal or informal LGBTQ organizations.²⁴⁹ The implications of this mean that local LGBTQ people are unable to join and form networks for advice or community support.²⁵⁰ This ultimately manifests as incredibly poor mental health for LGBTQ Syrians. The Centre for Operational Analysis and Research reports “vulnerabilities related to sexual exploitation, substandard housing, stigma, discrimination, heightened poverty, the lack of appropriately tailored services or aid, and the loss of family and community support are additional burdens that drive mental health needs”.²⁵¹ A survey of LGBTQ Syrian refugees in Lebanon found that 58% describe their mental health as poor, and many have considered or attempted suicide.²⁵² Finally, while the humanitarian aid workers are generally willing to provide support to LGBTQ Syrians, the “relevant training has been inadequate, and stereotypes, prejudice, and misinformation are pervasive among providers.”²⁵³ Therefore, many Syrian refugees who identify as LGBTQ do not disclose this to aid workers as they fear negative consequences and stigma.²⁵⁴ With the lack of adequate political representation and rights, lack of adequate specialized healthcare, little to no access to mental health supports, discriminatory hiring practices, and even humanitarian aid workers not providing adequate support, it is no surprise that only 5% of LGBTQ Syrians would willingly return once the civil war ended.²⁵⁵

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.* pg. 18

²⁵² *Ibid.*

²⁵³ *Ibid.* pg. 19

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

While protecting civilians, and LGBTQ people more specifically during a war is not of high priority for the government, it is important to note that even in pre-war society the human rights record of Syria was inadequate. In their 2010 World Report, Human Rights Watch described Syrian human rights as “poor [and] deteriorated further in 2009, as the authorities arrested political and human rights activists, censored websites, detained bloggers, and imposed travel bans. No political parties are licensed. Emergency rule, imposed in 1963, remains in effect and Syria’s multiple security agencies continue to detain people without arrest warrants.”²⁵⁶ In 2009, Freedom House’s “Worst of the Worst” human rights records included Syria with a score of 7/7 for political rights, and a 6/7 for civil rights.²⁵⁷ Meanwhile the government previously and now represses the Kurdish population by not allowing cultural or political gatherings and continues to arrest Kurdish activists who demand equal rights.²⁵⁸ Furthermore, there is still no independent press in Syria and there continues to be rampant arbitrary detention and torture of individuals with the government not disclosing their location to family members.²⁵⁹ These human rights violations have been an issue prior to Basher al-Assad taking over over political power and they are still present today.²⁶⁰ With a terrible human rights record during peacetime, it is no surprise that minorities and specifically LGBTQ people have been subjected to significant human rights abuses during the civil war.

Who is Involved in Syria’s Civil War?

²⁵⁶ Human Rights Watch World Report, 2011. Pg. 555

²⁵⁷ Freedom House, Worst of the Worst: The World’s Most Repressive Societies.

²⁵⁸ Human Rights Watch World Report, 2011.

²⁵⁹ Ibid

²⁶⁰ Human Rights Watch, 2011.

Currently, the conflict involves numerous parties either in support of or in opposition to the Syrian regime as well as other factions who have exploited the war such as ISIS. Members of the Syrian regime include the Syrian Armed Forces, National Defense Force (militia), Shabiha (militia), both Hezbollah and Iran ²⁶¹, Russia, and other smaller groups of foreign Shia militias.²⁶² Within the pro-Syrian government coalition, maintaining the Syrian status quo under Assad is important for Hezbollah.²⁶³ This is because it is essentially a "pipeline" for weapons to get from Iran to Lebanon, as well as providing opportunities to train.²⁶⁴ Building off of using Hezbollah to gain access to Lebanon, Syria is Iran's main ally in the region.²⁶⁵ Should the Assad regime be removed, there are fears that a new government would align with Saudi Arabia, thereby pushing Iran further away from alliances in the region.²⁶⁶ Finally, Russia has been allies with Syria for many years because it has strategic interests in the region. Those interests are mainly the military bases that provide access to the Mediterranean Sea that does not require passing through the Bosphorus, which is controlled by Turkey, therefore, NATO as well.²⁶⁷ Russia also argues that the NATO-led changes in Libya were detrimental and are therefore a reason to not side with Western states in the conflict.²⁶⁸

Those in opposition to the current Syrian regime include the Free Syrian Army, the United States, Turkey, Saudi Arabia, and Qatar.²⁶⁹ The first main group to emerge against the Syrian government was the Free Syrian Army. Their main goal was to be the military wing of the

²⁶¹ While Iran funds Hezbollah, I have considered them two separate actors. This is because each group provided separate support. Hezbollah provided combat troops in support of the Syrian government since 2011, while Iran has provided financial, logistical, training, and intelligence support since 2013.

²⁶² BBC 2016

²⁶³ Laub, 2017.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ BBC, 2016.

government after they toppled the Assad regime. They advocate for democracy and a pluralistic Syria. Under President Obama, the United States mainly wanted to reduce its military footprint in the Middle East. Under the Trump administration, they increased the bombing campaign efforts against ISIS. Turkey initially thought the Assad regime would quickly fall, however Turkey's main goal is blocking the development of an autonomous Kurdish region in Northern Syria along its border which could inspire the Kurdish populations with Turkey to join them as well. Finally, Saudi Arabia and Qatar are backing opposition forces as they believe that a strong Syria is ultimately Iranian expansion into the Arab world. They also state that there are counterterrorism goals as well, as ISIS claims responsibility for several attacks within Saudi Arabia.

Finally, the third group of fighters in the conflict includes the Al-Qaeda-affiliated Al-Nusra Front which was allied with ISIS until 2014 when they severed ties, as well as ISIS itself. Al Nusra Front's goal was similar to ISIS in wanting to create an Islamic State in the region, however their methods for achieving this are different from ISIS'. These differences ultimately culminated in terminating their alliance with ISIS.²⁷⁰ With so many different groups within each faction, it is important to apply the concepts of IHL and determine what type of conflict is going on, whether it would be an IAC or NIAC and which groups are party to each type. This conflict status determination sets out the legal requirements and boundaries and the applicable laws that apply to each party. Furthermore, by determining the legal requirements at play, it is easier to highlight which aspects of IHL has been violated by which actors. In the same vein, by highlighting which laws have been broken, it is also easier to determine where the gaps in IHL

²⁷⁰ Glenn, 2017.

are when it comes to protecting minority groups on the battlefield such as LGBTQ people. This will then lead to a more fruitful discussion of how the gaps can be closed.

Non-State Actors – ISIS

For the purposes of the time and space constraints of my thesis, and as their violations have been the most extreme. I will be focusing on the Islamic State of Iraq and Syria (ISIS) as the main non-state actor that perpetrated violence against LGBTQ people. I will be focusing mainly on ISIS as a non-state actor as most of the evidence that has been gathered by non-governmental organizations (NGO's) and the United Nations (UN) directly implicates them. Furthermore, they were also the most prominent in displaying their ideological hatred towards LGBTQ people. While there are other groups that could have committed targeted violence against LGBTQ people, there is simply not enough data for me to use in my research. Therefore, the rest of the case study section will focus on both ISIS and government forces and the violence that they've committed.

Also known as the Islamic State of Iraq and the Levant (ISIL), Daesh, or simply the Islamic State (IS), ISIS is a group that from 2014 to 2020 aimed to create a theocratic state or caliphate in Iraq and Syria.²⁷¹ They have a hybrid ideology from different sects of Islam that include, Salafism, Salafi Jihadism, Wahhabism, and Sunni Islamist Fundamentalism.²⁷² Salafism is a branch of Sunni Islam that argues for a return to the traditions of the *salaf* (pious predecessors) as they exemplified the original conception of Islam. This means that they to ignore more modern interpretations of Islam.²⁷³ Salafi Jihadism is a hybrid religious-political

²⁷¹ Beauchamp, 2015

²⁷² Bunzel, 2015

²⁷³ Bin Ali, Mohammed *The Roots of Religious Extremism: Understanding the Salafi Doctrine of Al-Wala' wal Bara' (Insurgency and Terrorism)*. : Imperial College Press , 2015

ideology based on the Sunni sect of Islam which advocates for a global caliphate by way of military jihad.²⁷⁴ Wahhabism is seen as a “rigid, localized, conservative Saudi doctrine focused on the recreation of and strict adherence to the past”.²⁷⁵ It also rejects modernity in the sense of Western human rights and democracy.²⁷⁶ Finally, Islamist fundamentalism believes “that in order to get rid of the problems in Islamic societies and achieve a just and moral society, we have to return to the basic principles and beliefs and behaviour of Islam”.²⁷⁷

The origin of what would later become ISIS dates back to 1999 by Ahmad Fadhil Nazzal al-Khalaylah, more commonly known as Abu Musab al-Zarqawi, under the name Jamaat al-Tawhid wal-Jihad.²⁷⁸ Following the United States’ invasion of Iraq, Zarqawi pledged allegiance to Al-Qaeda, and his group was renamed al-Qaeda in Iraq (AQI).²⁷⁹ Zarqawi was killed in 2006 and was succeeded by Abu Omar al-Baghdadi that same year.²⁸⁰ Abu Omar al-Baghdadi was killed in 2010 and would be succeeded by Abu Bakr al-Baghdadi.²⁸¹ He was killed in 2013, and was also succeeded by a man of the same name from 2013 – 2019. It was not until 2012 that the Arab Spring protests in Syria became a full-fledged civil war.²⁸² This conflict allowed ISIS to expand and dramatically influence how the civil war would go for the next several years. In 2014, ISIS proclaimed to be a worldwide caliphate that had religious, political, and military

²⁷⁴ Moghadam, Assaf. *The Globalization of Martyrdom: Al Qaeda, Salafi Jihad, and the Diffusion of Suicide Attacks*. Baltimore: The John Hopkins University Press. 2008

²⁷⁵ DeLong-Bas, Natana J., 'Wahhabism and Salafism in Global Perspective', in Peter Mandaville (ed.), *Wahhabism and the World: Understanding Saudi Arabia's Global Influence on Islam* (New York, 2022; online edn, Oxford Academic, 21 Apr. 2022). Pg. 36

²⁷⁶ Ibid.

²⁷⁷ Bayani, Farhad, and Seyed Hossein Serajzadeh. “Islamic Fundamentalism as a Lifestyle? a Sociological Study of Islamic Fundamentalism Among Sunni Kurds of Iran.” *British journal of Middle Eastern studies* ahead-of-print, no. ahead-of-print (2022): 1–19. Pg. 1.

²⁷⁸ Beauchamp, 2015

²⁷⁹ Ibid.

²⁸⁰ Ibid. Gonzalez, 2019, al-Baghdadi was the ISIS leader from 2014-2019 as he was killed in a US forces operation. His successor, Abul-Hasan al-Muhajir, was killed two days prior in an air strike.

²⁸¹ Ibrahim, Waleed, 2010. Reuters.

²⁸² Ibid.

authority over all Muslims worldwide.²⁸³ Many countries, Muslim groups, and even the UN rejected their claims of legitimacy, however, this did not stop individuals who believed in ISIS' vision from joining their cause.²⁸⁴ At their peak, ISIS had an estimated operating budget of \$1 billion US dollars and more than 30,000 fighters.²⁸⁵ Over the course of the civil war, ISIS has lost most of its territory and now only controls minor areas throughout Syria.²⁸⁶ This section serves as an initial description of ISIS as an actor in the region to get an understanding of which groups are actors in the conflict. In a later section, ISIS' battlefield violations will be explored more in depth.

ISIS Ideology

The ISIS ideology itself declares a hatred of not only LGBTQ people, but of many other groups. It is important to explore how ISIS as a group operates ideologically to understand how and why they treated certain groups in the way that they did. Al-Zarqawi created his own unique Jihadi-Salafism that would set the foundation for how ISIS would develop and operate to this day.²⁸⁷ One of the prominent features of his ideology was to deliberately target the Shi'ite communities.²⁸⁸ He saw them as outside the bounds of Islam and argued that they played a role in destroying the Islamic world dating back centuries.²⁸⁹ He tried to stoke a civil war in Iraq by pitting the Sunni's and Shi'ites against each other by arguing that the Shi'ites would willingly

²⁸³ Withnall, Adam. Iraq crisis: Isis declares its territories a new Islamic state with 'restoration of caliphate' in Middle East. *The Independent*. (2014).

²⁸⁴ Akyol, Mustafa. A Medieval Antidote to ISIS. *The New York Times*. (December, 2015).

²⁸⁵ Gerges, Fawaz. *ISIS: A History*. 2021

²⁸⁶ BBC, 2017

²⁸⁷ Bunzel, 2015

²⁸⁸ *Ibid*

²⁸⁹ *Ibid*

side with the United States in the Iraq war and therefore must be eliminated.²⁹⁰ Al-Qaeda and Zarqawi's former teacher would criticize him for his attacks on the Shi'ite population.²⁹¹

However, Al-Qaeda was on board with Zarqawi's plans to create an Islamic state and suppressed their contempt for his treatment of the Shi'ites.²⁹² This alliance was broken in 2014 when Al-Qaeda formally distanced itself from ISIS due to its poor treatment of Shia groups and civilian supports of their regime.²⁹³

ISIS follows a jihadi-salafist ideology similar to Al-Qaeda, however they follow it in a more extreme manner.²⁹⁴ Some of their arguments include that all Muslims must only associate and interact with fellow true Muslims, i.e., those who believe in an Islamic State in the same way as ISIS, arguing against the creation of the Islamic State is apostasy, all Shi'a Muslims are apostates and deserve death.²⁹⁵ Furthermore, they believe in both a defensive and offensive jihad to protect themselves.²⁹⁶ ISIS wages a defensive jihad against the governments of Muslim countries as they see them as "traitors, unbelievers, sinners, liars, deceivers, and criminals", and fighting against them is more important than the "occupying crusader".²⁹⁷ In the offensive jihad, al-Baghdadi highlighted that the offensive jihad that ISIS carried out was to focus on the expansion of Shi'ites within the Middle East and he believed that the United States was a part of their plan to do this.²⁹⁸

²⁹⁰ Ibid

²⁹¹ Ibid

²⁹² Ibid

²⁹³ BBC, 2014.

²⁹⁴ Ibid

²⁹⁵ Ibid

²⁹⁶ Ibid

²⁹⁷ Bunzel, 2015, pg. 10

²⁹⁸ Ibid

While it can be seen that ISIS despises anyone who does not adhere to their specific interpretation of the Quran, even fellow Muslims, what does this ideology mean for LGBTQ people? Within the ISIS caliphate, ISIS leaders developed and enforced a strict penal code that everyone under their control had to follow.²⁹⁹ They released a document designed to further “clarify the Hudud [Koranic punishments]”.³⁰⁰ Within this document, they stated that according to sharia, anyone “committing and ... receiving” gay sex would be killed.³⁰¹ This would generally involve throwing gay men off the rooftops of high buildings, and if the fall did not kill them, they would be stoned to death by a crowd waiting below.³⁰² This persecution of LGBTQ people is a part of their extremist interpretation of the Quran. ISIS believes that same-sex sex acts are an affront to the “natural human disposition”.³⁰³ This goes even further with one of their teachings arguing that LGBTQ people belong to the tribe of Lot.³⁰⁴ As noted above, in the Quran this tribe is said to have caused the destruction of the city of Sodom. Allowing them to exist within the caliphate would be an act against God.³⁰⁵ In the February 2015 issue of ISIS’ magazine, they blamed the West’s sexual revolution for starting a downward spiral of sexual deviance and immorality.³⁰⁶ It also argued that the Quran said there will be plagues and disease that will destroy societies that allow for this sexual perversion.³⁰⁷ They push this rhetoric by saying that the rise of AIDS and other sexually transmitted infections are a direct representation of this prophesy being fulfilled.³⁰⁸ A final example of ISIS’ extreme interpretation of the Quran

²⁹⁹ Counter Extremism Project, 2017.

³⁰⁰ *Ibid*

³⁰¹ *Ibid*

³⁰² *Ibid*

³⁰³ *Ibid*

³⁰⁴ *Ibid*

³⁰⁵ *Ibid*

³⁰⁶ *Ibid*

³⁰⁷ *Ibid*

³⁰⁸ *Ibid*

is that it originally allowed for two people who were guilty of “lewdness” to repent their sins and be spared death.³⁰⁹ However, ISIS has removed the possibility of repenting for committing such an act.³¹⁰ Overall, it can be seen that ISIS’ extremist interpretation not only harms their fellow Muslims that they disagree with, but that they have specifically targeted LGBTQ people by sentencing them to death without any possibility of repenting and sparing their lives.

Violence against LGBTQ People in Syria

Both ISIS and the Syrian Government have actively perpetrated crimes against this community with higher severity than their heterosexual counterparts. Using reports from local non-government organizations and UN documents, aggregating all the crimes committed against LGBTQ people will illuminate the difficulties this vulnerable community faces. Moreover, due to LGBTQ people’s position in Syria, the breakdown of society has allowed the government forces and ISIS to actively pursue violence against them. This section will explore the types of violence used and highlight the brutality that LGBTQ Syrians faced solely based on their sexual orientation, and why there is a need for specific protections. It must first be noted that within the Syrian penal code several laws specifically target LGBTQ people, thereby promoting the idea that LGBTQ people are illegal and need to be punished.³¹¹ Article 517 punishes crimes against public decency, while article 520 states that any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years.³¹²

With laws such as these shaping the views on LGBTQ people within Syrian society, it is no surprise the violence they faced was much more intense than against heterosexuals. While the

³⁰⁹ Ibid

³¹⁰ Ibid

³¹¹ Human Rights Watch, 2020.

³¹² Syrian Penal Code (1949). Legislative Decree No.148 of 1949.

numbers are difficult to obtain due to privacy concerns with outing people as LGBTQ, upwards of 70% of LGBTQ people fled Syria and more than half had suffered violence with the majority of it being sexual.³¹³ This includes forcible penetration with objects, having their genitals beaten, forced prostitution, forced nudity, forced incest, among other forms of sexual violence.³¹⁴ Finally, the “surveillance, entrapment, and public exposure” of LGBTQ people has increased throughout the conflict.³¹⁵ While not inherently violent acts per se, they can easily lead to violence against LGBTQ people in the future. Should the government have an active list of LGBTQ individuals with information on their whereabouts and acquaintances, they would become easy targets either during peace or conflict. Additionally, this type of surveillance often leads to violence and rape as other countries in the middle east employ similar tactics. In Egypt, and more recently Qatar, police and state intelligence officers often use gay dating apps to lure men to meet and are then subsequently arrested and often assaulted.³¹⁶

Evidence – Syrian Government

To gain a more comprehensive view of the type of violence that LGBTQ people suffered, I have used transcripts of interviews that the Human Rights Watch conducted with LGBTQ survivors.³¹⁷ There have been reports that once officers (and even fellow detainees) found out individuals were a part of the LGBTQ community, they would specifically target these individuals for sexual violence and rape. A specific fact situation is that of Zarifa, a “22-year-old

³¹³ Chynoweth, S. (2017). Sexual violence against men and boys in the Syrian crisis. *United Nations High Commissioner for Refugees*.

³¹⁴ Human Rights Watch, 2020.

³¹⁵ Ibid. pg. 25.

³¹⁶ Strudwick, 2022; Human Rights Watch, 2020.

³¹⁷ Human Rights Watch, 2020.

gay man, who uses female pronouns” and was sent to a central prison. She recounted her story as this:

“A week later they took me to a collective prison [central prison] where I was raped almost every night. I don’t even know if the mukhabarat [intelligence] knew about it. People in the prison not the guards [were raping me]. I was with adults. There were also many minors with me. I believe that they faced the same things like me.... I meant minors were being raped at night.... Rape was committed by adults in the prison and the rest of the violence by guards. I was in the prison until 17 years old—late 17.”³¹⁸

Another example that highlights the specific violence against LGBTQ people is the treatment of a survivor called Yousef.³¹⁹ Yousef was detained during an anti-government protest in 2012 in Damascus and when his interrogators found out he was gay, they began to use increasingly severe sexual violence against him.³²⁰ He was held at the Al-Khattib prison in Damascus that was run by Branch 251 of the Syrian General Intelligence.³²¹

“They said to us that they checked our phones and told us [Yousef’s detained friends], ‘You are not only against what is right; but you are also faggots.’ All the aggression was multiplied by 10 [because of my sexuality] I would say. They were happily doing it. They were of course raping us with sticks. They rape you just to see you suffering, shouting. To see you are humiliated. This is what they like to see. They had a stick inside my anus, and they started saying, ‘This is what you like, don’t you like it?’ It went up until my stomach.”³²²

Another example is Sabah, a transgender woman who was subjected to numerous rapes and humiliating and degrading treatment.³²³ From 2011 to 2015, she was in Hama Central Prison.³²⁴

Even if you are caught with other people, they would interrogate you individually. It is the same routine that applied on everybody just for being gay or trans. We are beaten, treated with violence and insulted. Not by one person but by many. They could tell from our appearance

³¹⁸ Human Rights Watch, 2020

³¹⁹ His full name is not given to protect his identity.

³²⁰ Human Rights Watch, 2020.

³²¹ Ibid.

³²² Ibid.

³²³ Ibid.

³²⁴ Ibid.

[that we were trans or gay]. Perpetrators were both guards and prisoners. If someone [other prisoners] asked for me, I had to go and see them among the normal [other] prisoners [for them to abuse or rape me]. You couldn't say no or we would be thrown from buildings, slaughtered, or beaten with sharp objects.”³²⁵

Naila is another transgender woman and activist who was arrested for taking part in demonstrations after 2011.³²⁶ She was detained several times but on March 18th, 2013, she was detained and taken to a police station and held for two weeks during which she was raped and tortured.³²⁷

“The room was very small. There were 25 men inside. Then they started taking off their shirts. Some of them touched me. I was suffocating and scared. It was disgusting. I never stopped calling the guard. But to no avail. Then they dragged me to the middle of the room. Some of them lifted me up and tore my clothes apart. They raped me.”³²⁸

Later on, the Syrian police forces took Naila to a different room to be further raped and abused.³²⁹

“As soon as I entered the room I understood why I was there. I wasn't alone experiencing this. There was a gay person in room nine and he was also in the middle of the room and going through the same things I went through. That room was bigger. It had 30 men inside. When they saw that there are two 'soft' people among them, they put us in the middle of the room of course without food or water and the series of rapes started again. They forced me with the gay person to have sex in front of them while beating us and cutting us with blades. Then they brought the stick of a mop and they inserted it in our anus. A strong bleeding started, and we were mutilated. [Then] they woke me up and took me to room five. It was an individual cell. I thought I would be alone, but they let in someone every single day, one or two people. Guards, prisoners, high ranking officials working at the police station. At the end I lost the power to resist. I just surrendered. I was covered in blood the whole time.”³³⁰

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Ibid.

This testimony demonstrates that LGBTQ people have been specifically targeted for their sexual orientation and receive harsher treatment because of it. This level of systematic persecution on behalf of the Syrian government demonstrates the unique vulnerabilities this community faces. The lack of protection LGBTQ Syrians receive during peacetime arguably correlates to how they are treated during conflict. The evidence exemplifies the need for LGBTQ people to gain protected status.

Evidence - ISIS

While there are not as many unique or specific examples of ISIS committing violence against LGBTQ people, this could be seen as how mundane or normalized the murder of LGBTQ people were during ISIS' rule. The lack of specific examples can also be attributed to the fact that ISIS was actively murdering journalists such as James Foley and Steven Sotloff. With journalists and aid workers being active targets by ISIS despite being non-combatants, truly knowing what was occurring on a daily basis is difficult.³³¹ However, there have been reports noting that ISIS routinely used their Islamic courts to hold trials that did not include full answer and defence which inevitably found LGBTQ "suspects" guilty of sodomy no matter what the truth of the matter was.³³² Those who could be tried for sodomy also included the victims of rapes and sexual violence as well.³³³ Punishment was generally the same – being thrown off of a building and stoned to death if the fall did not kill them.³³⁴ There are numerous examples of this happening as ISIS would circulate these executions widely to terrorise LGBTQ individuals and

³³¹ CNN, 2015.

³³² Counter Extremism Project, 2017.

³³³ Ibid

³³⁴ Ibid

demonstrate what would happen if they were caught.³³⁵ There are many incidents of this occurring in Aleppo, ar-Raqqah, Dayr az-Zawr, and Palmyra (Homs) throughout the period that ISIS controlled territory within these regions.³³⁶

There was, for example, a trial in Palmyra of 32-year-old Hawas Mallah and 21-year-old Mohammed Salameh.³³⁷ The ISIS judge found them guilty of sodomy and they were subsequently sentenced to be thrown off a building to cleanse their sins.³³⁸ “The judge then asked the convicted if they were satisfied with the sentence. “I’d prefer it if you shoot me in the head, Mallah said.”³³⁹ They were blindfolded and thrown from the top of the Wael Hotel nearby.³⁴⁰ Another example includes an ISIS court finding another Syrian man guilty of sodomy in Manbij and throwing him off a building in front of a crowd of hundreds of ISIS members and local citizens.³⁴¹ While not in Syria specifically, ISIS also sentenced a 17-year-old boy with sodomy and threw him off a roof in Mosul, Iraq.³⁴²

A potential reason for the performative trials and punishments that ISIS carried out against LGBTQ people was to help legitimize themselves in the eyes of the local populations. This type of performative action made the local population more receptive to allowing ISIS to remain in power. When creating the ‘Islamic State’, ISIS implemented practical governance structures. With a significant amount of the ISIS leadership being former Iraqi Baathist officials, there was a strategy of focusing on winning the “hearts and minds” of the local population.³⁴³

³³⁵ OHCHR, 2018.

³³⁶ Counter Extremism Project, 2017; OHCHR, 2018

³³⁷ Counter Extremism Project, 2017.

³³⁸ Ibid

³³⁹ Ibid

³⁴⁰ Ibid

³⁴¹ Ibid

³⁴² Ibid.

³⁴³ Oosterveld, Willem Theo and Willem Bloem. *The Rise and Fall of ISIS: From Evitability to Inevitability*. Hague Centre for Strategic Studies, 2017. pg. 11

This was done by giving local populations “water, electricity, law enforcement, health care, public control, employment, education, and public radio.”³⁴⁴ Since ISIS operated in its heyday in a space with several other competitors such as Al-Qaeda and Al-Nusra, by providing these services, they became the de facto government in the region and therefore, in the eyes of many Sunnis, ISIS the most legitimate player.³⁴⁵

While ISIS has been vocal against following IHL or other secular laws, this analysis focuses on the legal understanding of groups and their responsibilities, irrespective of whether they want to follow their legal obligations. When determining the legitimacy of an armed rebel group, there are three main qualifications. First, the group needs territorial control, second, a resident population, and finally the use of violence or a threat of violence.³⁴⁶ Furthermore, similar to states, these groups need to explain and justify their agendas and actions, and they also need material and moral support from communities both inside and outside of the conflict region.³⁴⁷ One of the more important aspects with respect to maintaining their legitimacy is the moral support of the community that the groups operated in. The support and legitimacy from communities both in Syria and Iraq, and abroad is quite evident in the number of foreign fighters that joined ISIS. Official estimates from the Tunisian, Jordanian, Saudi Arabian, Turkish, Moroccan, Lebanese, Egyptian, Algerian, and Kuwaiti governments suggest that 15,570 individuals total joined ISIS from their respective countries.³⁴⁸ Unofficial estimates by the Soufan group argue that it was closer to 18,000 foreign fighters from these countries.³⁴⁹ The

³⁴⁴ Ibid. pg. 11-12

³⁴⁵ Ibid. pg. 12

³⁴⁶ Arjona, Ana, Nelson Kasfir, and Zachariah Cherian Mampilly. *Rebel Governance in Civil War*. Edited by Ana Arjona, Nelson Kasfir, and Zachariah Cherian Mampilly. Cambridge: Cambridge University Press, 2015.

³⁴⁷ Schlichte, K., & Schneekener, U. (2015). *Armed Groups and the Politics of Legitimacy*. *Civil Wars*, 17(4), 409–424.

³⁴⁸ Wilson Centre, 2017.

³⁴⁹ Ibid.

most recent number of total foreign fighters overall by the Soufan group was close to 30,000.³⁵⁰ The amount of foreign fighters that travelled to Syria and Iraq suggest that there is a legitimacy in the message and ultimate goals of ISIS. Furthermore, they were able to gain legitimacy and maintain authority as they promised “access to women for young, single, economically marginalized men.”³⁵¹ Using this legitimacy framework, ISIS meets all the qualifications as they had territory in Syria and Iraq, a stable and growing resident population of locals and foreign fighters, and actively used threats of violence and killed individuals who went against them. Additionally, they were able to explain and justify their actions by using their magazine *Dabiq* to promote and attract individuals from all around the world to join them.

Applying this to ISIS, their treatment of LGBTQ people is arguably how they can maintain the moral support of the community. As previously explored, LGBTQ people were and still are almost universally looked down upon within Syrian society. Therefore, ISIS was able to use this hatred of LGBTQ people to their advantage by uniting communities against a common enemy. Additionally, the use of trials against LGBTQ people is another example of trying to emulate how a state or government operates, thereby furthering their legitimacy. The culmination of these trials resulting in a public execution in which the community was able to act on their hatred by participating in stoning guilty individuals arguably helped cement ISIS as a legitimate group. It is important to note that due to the ‘no-go zone’ of ISIS territory, getting accurate data has been a challenge. Some of the civilians that engaged in the execution could be willing participants, while others could be feeling pressure to follow the social norm to avoid being persecuted themselves. Another potential aspect is that the civilians who participated in the

³⁵⁰ 8717 from the Former Soviet Republics, 7054 from the Middle East, 5778 from Western Europe, 5356 from the Maghreb, 1568 from South and South East Asia, 845 from the Balkans, 444 North America. The Soufan Centre, 2017.

³⁵¹ Oosterveld and Bloem, 2017 pg. 10

executions might be seen as supporting ISIS and its ideology as whole when they could be involved purely out of hatred towards LGBTQ people. In other words, they might not believe in ISIS' ultimate goals as a group, but they do hold a hatred towards LGBTQ people and that is why they participated in executions or supported ISIS.

Other Armed Groups

While the main section of the case study focuses on the Syrian government and its forces as well as ISIS, there have been cases of other armed groups committing violence against LGBTQ people as well. In 2016, Jabhat al-Nusra accused two men of sodomy and homosexuality, announced their crimes over loudspeakers, and subsequently tied the victims' hands behind their backs and threw them off of a building in Idlib.³⁵² Again in 2016, members of the “newly self-styled Jabhat Fatah al-Sham⁷” and other armed fighters from groups that were not named, executed seven men by firing squad.³⁵³ They were accused of homosexuality by an unauthorized court that was being used by multiple armed groups in the area.³⁵⁴

Outcomes

Research dating back from the 1990's of LGBTQ men and women survivors of sexual violence in general, all the way to research commissioned by the United Nations High Commissioner for Refugees (UNHCR) on survivors from the Syrian conflict have found the same results. That is, survivors of sexual violence inflicted upon them may suffer from various psychological traumas such as depression, post-traumatic stress, sexual trauma, loss of hope and paranoid thoughts.³⁵⁵

³⁵² OHCHR, 2018

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Human Rights Watch, 2020.

UNCHR research ultimately found that the “specific risks faced by Syrian LGBTI refugees and IDPs, combined with difficulties accessing safe and supportive services, and extreme stigma and discrimination create specific psychosocial and social difficulties for Syrian LGBTI persons in their social relations, integration and identity.”³⁵⁶ Due to the sexual violence, survivors may also suffer from physical traumas, including severe pain in their rectum and genitals, rectal bleeding, and muscle pain, and may have sexually transmitted infections (STIs), including HIV.³⁵⁷ Men and boys, transgender women, and non-binary survivors of the violence inflicted upon them did not seek any medical or mental health services in Syria for a range of reasons, including shame, fear of stigma, and a lack of trust in the health care system.³⁵⁸

This lack of support for the trauma that LGBTQ people face is indicative of their place within society in general. Furthermore, this lack of support also translates into negative effects for heterosexual men as well.³⁵⁹

The role of masculinity in society dictates that a man who is penetrated willingly or not, is seen as feminine, homosexual, and a lesser man.³⁶⁰ At the same time, the man who commits rape against a homosexual man or transgender woman is still seen as heterosexual and their status within society is not changed.³⁶¹ This type of social hierarchy is evident by interviews conducted by the All Survivors Project.³⁶² The following interview quotes with confidential

Loncar, M., Henigsberg, N., & Hrabac, P. (2010). Mental health consequences in men exposed to sexual abuse during the war in Croatia and Bosnia. *Journal of Interpersonal Violence*, 25(2), 191–203.

Garnets, L., Herek, G., & Levy, B. (1990). Violence and victimization of lesbians and gay men. *Journal of Interpersonal Violence*, 5(3), 366–383.

³⁵⁶ Hassan, G., P. Ventevogel, H. Jefe-Bahloul, A. Barkil-Oteo, and L. J. Kirmayer. “Mental Health and Psychosocial Wellbeing of Syrians Affected by Armed Conflict.” *Epidemiology and psychiatric sciences* 25, no. 2 (2016): 129–141. Pg. 133

³⁵⁷ Human Rights Watch, 2020; Loncar et al., 2010; Garnets et al., 1990.

³⁵⁸ Human Rights Watch, 2020.

³⁵⁹ All Survivors Project, 2018

³⁶⁰ All Survivors Project, 2018; Sivakumaran 2007

³⁶¹ All Survivors Project, 2018

³⁶² Ibid.

sources explain the way in which the perpetrator and victim are viewed differently in Syrian society: “They consider [the] homosexual the person who has been penetrated and not the person who penetrates, [so] they can use it [rape] as a weapon. If you are a soldier and you [commit] rape, your manhood is not debated. It is the other one [the victim] who is considered a homosexual.”³⁶³

“They are not treated as a victim; they are treated as a criminal. They are blamed, their families talk to him in bad way: ‘What did you do? Why did you do this?’ There is the feeling that they did not fight the person off.”³⁶⁴

These types of responses from society and their own family can continue the psychological trauma that they face as survivors of such a violent act.³⁶⁵ Many men feel emasculated and can no longer talk to their friends or family about what happened to them.³⁶⁶ Due to the societal aversion to anyone deemed homosexual, younger male detainees, whether homosexual or not, fear that their fathers will no longer respect them if they find out they’ve been raped.³⁶⁷ Finally, some men have become sexually impotent due to the trauma they’ve experienced.³⁶⁸ Some of those who suffer from impotency feel guilty for being unable to conceive children and thus psychological effects of the rape still affect them long after it’s happened.³⁶⁹

Conclusion

Overall, the Assad government has been criticized throughout its handling of the conflict as civilians have been deliberately targeted throughout. The Assad government has also been

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ OHCHR, 2018

³⁶⁸ Ibid.

³⁶⁹ Ibid.

lambasted for its use of chemical weapons i.e Sarin gas against civilians and combatants.³⁷⁰ The government as well did not give equal access to humanitarian aid to rebel-held areas.³⁷¹ These are just several examples of the Syrian government consciously breaking international humanitarian law. ISIS has also further persecuted specifically gay men for executions violating international laws. Furthermore, this conflict has resulted in one of the world's largest refugee crises with 6.6 million people fleeing the country and another 6.7 million people internally displaced.³⁷²

³⁷⁰ Ibid.

³⁷¹ The Syrian war: Between Justice and Political Reality, 2020.

³⁷² UN Refugees, 2023. <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>

Chapter 4 – Legal Analysis of the Violence Perpetrated Against the LGBTQ Community in the Syrian Civil War

As there are many different actors involved and different geographical limits, there must be a clear delineation between each combatant within the conflict to understand what legal duties there are. A common Article 2 conflict, or international armed conflict (IAC) consists of “declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”³⁷³ Given that the Syrian government did not consent to US airstrikes within their territory, Koutroulis argues that this means that there is an IAC involved between the two states.³⁷⁴ There is room for argument based off of who the intended targets of US air strikes were – the Syrian Regime or ISIS – and whether or not that is a factor in determining an IAC or NIAC. However, Koutroulis argues that “when the US-led coalition conducts its 3500 strikes in Syria, even if the final aim of the strikes is ISIL, the damage resulting from the strikes on population and infrastructure is damage suffered by Syria.”³⁷⁵ Furthermore, “the coalition accepts such damages as an unavoidable consequence of its actions”, therefore, the coalition’s actions are directed against Syria and they must abide by the legal obligations from this situation.³⁷⁶

For a common Article 3 conflict to be recognized, there must be the two conditions previously mentioned: prolonged violence (i.e., intensity and duration) and armed groups with sufficient organization.³⁷⁷ Both of these conditions are met as ISIS has been violently active in the region since approximately 2013 and is still operating today, albeit at a heavily reduced

³⁷³ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

³⁷⁴ Koutroulis

³⁷⁵ Ibid. pg. 839

³⁷⁶ Ibid. pg. 839

³⁷⁷ Solis; Geneva Conventions

capacity. Secondly, ISIS is easily able to fit the requirements of sufficient organization as they were actively recruiting, became the de facto governing structure within the territory they controlled, and allegedly carried out military attacks across the globe.³⁷⁸ Under Article 1(2) of Additional Protocol II, ISIS falls under the legal requirements of armed groups as they were “under responsible command, exercise[d] such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”.³⁷⁹ Moreover, a 2013 UN Commission of Inquiry determined that ISIS had committed various war crimes.³⁸⁰ This determination demonstrates that the UN sees ISIS as a belligerent party in the NIAC.³⁸¹ As previously mentioned, due to the presence of both an IAC and a NIAC, this means that the Syrian civil war is considered a dual-status conflict.³⁸² While there may be both types of conflicts occurring, for the case study, this paper will mainly focus on the similarities and differences between ISIS and the Syrian government and how they treated LGBTQ people during the conflict.

Having determined the war in Syria is part NIAC, what laws of armed conflict apply to each party fighting in the NIAC? Moreover, as ISIS is not technically a state that can sign on to treaties such as the Geneva conventions, one could argue that they do not need to abide by IHL. However, legal scholars and practitioners have established that IHL is not only applicable to states or individuals but non-state actors so long as these groups meet the threshold of sufficient organization.³⁸³ Several legal elements bind these groups. First, is a doctrine of legislative

³⁷⁸ Koutroulis

³⁷⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

³⁸⁰ Human Rights Council, 2014

³⁸¹ Koutroulis

³⁸² Solis

³⁸³ Solis ; *Haradinaj et al. Case* (April 3, 2008, para.60); *Boskovski and Tarculovski case* (ICTY, IT-04-82-T, July 10 2007, paras.194-195)

jurisdiction.³⁸⁴ This approach argues that a state has the right and the capacity to legislate for all of its citizens which includes any obligations through international law that the state is a party to.³⁸⁵ Even if the group rebelling against the parent state does not recognize its legitimacy, those individuals are bound to the states' obligations regardless.³⁸⁶ A second approach is that the law of war is binding on individuals as well. Should they commit war crimes while in conflict with another group or state, they must be held accountable for their actions.³⁸⁷ Finally, any group that exercises and administers any sort of governmental function will also be held accountable to any applicable IHL/LOAC.³⁸⁸ According to Article 3 of the 1949 Geneva Convention, all belligerents party to the conflict must ensure that:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the

³⁸⁴ Solis; Moir

³⁸⁵ Solis; Moir

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.³⁸⁹

While there are provisions that prohibit treating individuals inhumanely based on “race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”, LGBTQ people are not explicitly included. While they could be included under “other similar criteria,” this requires that combatants are well versed in IHL and the restrictions placed upon them. Without combatants explicitly being told that they are unable to treat LGBTQ people differently from others, they treat them how they would in peacetime, thereby inflicting violence upon them with impunity.³⁹⁰ While the assumption that they can treat them poorly is wrong, within the IHL case law, the international community is “not articulating its falsity” well enough for there to be a precedent for it³⁹¹ In other words, the international community has not done an adequate job demonstrating that it is illegal to target people on the basis of sexual orientation or gender identity. As it has been now established that there is a common Article 3 conflict occurring between ISIS and the Syrian government forces and that both sides must abide by IHL, it is important to consider that all of the violence conducted against the LGBTQ community within the conflict can potentially constitute war crimes. As such, there should be a legal tribunal after the conflict is over.

Crimes Against Humanity vs. War Crimes

Within the context of the Syrian conflict, there are both potential crimes against humanity and war crimes and while they might seem similar, they have several important differences between

³⁸⁹ Geneva Convention

³⁹⁰ Human Dignity Trust, 2015

³⁹¹ Human Dignity Trust, 2015, pg 12

them. Before exploring the differences, it is important to note that the same fact situation can fall under both war crimes and crimes against humanity. However, as I will explore in depth below, there is no nexus to a conflict for crimes against humanity to be committed since these crimes can occur in war and peace, unlike war crimes. In other words, crimes against humanity can be committed during conflicts, however they are not directly related to combat operations. The Rome Statute of the ICC defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:³⁹²

- I. Murder;
- II. Extermination;
- III. Enslavement;
- IV. Deportation or forcible transfer of population;
- V. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- VI. Torture;
- VII. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- VIII. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- IX. Enforced disappearance of persons;
- X. The crime of apartheid;
- XI. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

There are three elements that make up this crime. First, there is a physical element that can include anything from a to k as mentioned above.³⁹³ Second, there is a contextual element which means any of the physical elements have been committed as a widespread or systematic

³⁹² Rome Statute, 1998.

³⁹³ Ibid.

attack against any civilian population.³⁹⁴ Third, there is a mental element which means the perpetrator must have knowledge of the plan or attack.³⁹⁵ The United Nations Office on Genocide Prevention and the Responsibility to Protect further states that the widespread factor within the contextual element includes large scale violence either by number of victims or geographical area, while the systematic violence refers to a methodical form of violence.³⁹⁶ With this in mind, crimes against humanity excludes random, accidental, or isolated acts of violence.³⁹⁷ Furthermore, within article 7(2)(a), crimes against humanity must be committed by following a state or group organizational policy that plans to commit an attack.³⁹⁸ Finally, the plan to commit an attack does not need to explicitly be adopted and can be inferred by the circumstances of the crime.³⁹⁹

With respect to war crimes, these are found within the Geneva Conventions and their additional protocols.⁴⁰⁰ While the Geneva Conventions have universal ratification by all UN member states, their additional protocols and other treaties do not have the same level of acceptance. However, due to their nature, many of the laws found within these conventions and protocols have been codified as customary law that no state can violate even if they have not yet ratified it.⁴⁰¹ The Rome Statute specifically states that:

“The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. For the purpose of this Statute, ‘war crimes’ means: Grave breaches of the Geneva Conventions of 12 August

³⁹⁴ Ibid.

³⁹⁵ Ibid.

³⁹⁶ Office on Genocide Prevention and the Responsibility to Protect, n.d.

³⁹⁷ Ibid.

³⁹⁸ Rome Statute, 1998.

³⁹⁹ Office on Genocide Prevention and the Responsibility to Protect, n.d.

⁴⁰⁰ Rome Statute, 1998.

⁴⁰¹ Office on Genocide Prevention and the Responsibility to Protect, n.d.

1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention...”.⁴⁰²

The United Nations Office on Genocide Prevention and the Responsibility to Protect provides a further substantive categorization of the types of war crimes that can occur.⁴⁰³ These include: war crimes against persons requiring particular protection; war crimes against those providing humanitarian assistance and peacekeeping operations; war crimes against property and other rights; prohibited methods of warfare; and prohibited means of warfare.⁴⁰⁴ There are many different acts that constitute a war crime, however, I will only be focusing on ones that constitute grave breaches of the Geneva Conventions that could have occurred within the Syrian Civil War against LGBTQ people. These include:

- I. Wilful killing
- II. Torture or inhuman treatment, including biological experiments;
- III. Wilfully causing great suffering, or serious injury to body or health;
- IV. Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- V. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- VI. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;⁴⁰⁵

Similar to crimes against humanity, there is a contextual and a mental element to the crime.⁴⁰⁶

Contextually, the crime must have occurred during an international or non-international armed conflict.⁴⁰⁷ Mentally, there must be “intent and knowledge both with regards to the individual act

⁴⁰² Rome Statute, 1998.

⁴⁰³ Office on Genocide Prevention and the Responsibility to Protect, n.d.

⁴⁰⁴ Ibid.

⁴⁰⁵ Rome Statute, 1998.

⁴⁰⁶ Office on Genocide Prevention and the Responsibility to Protect, n.d.

⁴⁰⁷ Ibid.

and the contextual element.”⁴⁰⁸ As stated above, acts against persons requiring particular protection is considered a war crime. While LGBTQ people are not a protected group, their targeted persecution based on their perceived or real sexual orientation, should be grounds for their protection as a protected group beyond simply their status as civilians. It should be noted that there is a required nexus to an armed conflict for war crimes to be considered. The appeals chamber for the *Kunarac* trial laid out the points of reference needed for the nexus to be met. They mention that “what ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment — the armed conflict — in which it is committed.”⁴⁰⁹ There are more concrete details the Appeals Chamber identified such as whether or not the perpetrator is a combatant, the victim is a non-combatant, the victim is a member of the opposing party, the act may be said to serve the ultimate goal of a military campaign and that the crime is committed as part, or in the context, of the perpetrator’s official duties.⁴¹⁰

Alleged Crimes Committed

It is important to highlight the various violations of IHL that have been occurring on both sides of the conflict. First looking at the Syrian regime, there are several major violations that could potentially amount to international crimes. These include several crimes against humanity

⁴⁰⁸ Office on Genocide Prevention and the Responsibility to Protect, n.d.

⁴⁰⁹ Full quote from the trial “What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment — the armed conflict — in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient that his acts were closely related to the armed conflict.” Judgment, *Kunarac and others* (IT-96-23 & IT-96-23/1-A), Appeals Chamber, 12 June 2002, § 57

⁴¹⁰ *Ibid.*

violations, namely murder, torture, and persecution, and war crimes that include torture and committing outrages upon personal dignity. Examining ISIS' role on in the conflict in relation to IHL, they committed acts that could also amount to war crimes and crimes against humanity, namely torture, persecution, and willfully causing great suffering. It is difficult to get concrete information due to the lack of journalists and humanitarian aid workers in areas which ISIS maintained control, however there are numerous corroborating reports and ISIS' media which depicts some of their violence against LGBTQ people. Their violence is quite different from the Syrian regime's as it is mainly executions for homosexuality, rather than committing sexual violence. It is assumed that there is upwards of 100 executions of men for homosexuality. These executions were mainly comprised of throwing gay men off the top of tall buildings and stoning them if the fall did not kill them. One interesting case with ISIS is the double standard of how they treat their own soldiers who commit homosexual acts. A prominent ISIS officer, Abu Zaid al-Jazrawi in Deir ez-Zor, (Syria's seventh-largest city), was in a "homosexual relationship"⁴¹¹ with a 15-year-old boy.⁴¹² The local sharia court decided both the boy and al-Jazrawi should be executed for homosexuality.⁴¹³ However, ISIS commanders overrode that decision and sent al-Jazrawi to the front lines in another city.⁴¹⁴

There are several potential crimes that can apply to both the Syrian government and Pro-Syrian forces as well as ISIS. I use the phrase potential crimes to mean that the fact situations and cases have already happened and may fit the definition of crimes against humanity or war crimes but have yet to be proven in a court of law. This section will go beyond the broader

⁴¹¹ Given that the individual was 15, this would be legally considered rape, however I am using the words in the report that described what happened.

⁴¹² Teeman, Tim. The Secret, Hypocritical Gay World of ISIS. 2017. <https://www.thedailybeast.com/the-secret-hypocritical-gay-world-of-isis>

⁴¹³ Ibid.

⁴¹⁴ Ibid.

definitions of crimes against humanity and war crimes by exploring details of previous crimes and comparing them to examples within Syria. This section uses existing jurisprudence to demonstrate that the types of crimes committed in Syria would potentially meet the threshold of violating the Geneva Conventions should these crimes be tried in the ICC. Furthermore, the relevant case law from previous trials including the ICTY and the International Criminal Tribunal for Rwanda (ICTR) will also be included. Finally, the general elements of the crimes will also be included to determine if the basic components of the crime have been met.

Crime - Torture Article 7(f) and Article 8(a)(ii) of Rome Statute

The first potential crime observed in the Syrian conflict is torture as both a crime against humanity, and a war crime. Within international law, the UN Convention Against Torture (UNCAT) came into effect in June 1987.⁴¹⁵ This treaty defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” to obtain a confession, elicit information, as a punishment, or coercion tactic.⁴¹⁶ It also must be inflicted at the direction of a public official or anyone acting in an official capacity.⁴¹⁷ When it comes to IHL specifically, the ICC defines torture as a crime against humanity which means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.⁴¹⁸

When looking at both definitions, there is a quite a lot of overlap, however the UNCAT is unique in that it specifically includes the intent for why torture can occur as well as identifies

⁴¹⁵ Convention Against Torture, 1984.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

⁴¹⁸ Rome Statute, 1998.

that it must be done at the direction of a public official or anyone acting in an official capacity. This intent must then be proved in a trial. While the ICC's definition is not as broad, the main act of inflicting pain on someone while in the custody of another is still there. The main categorical difference from classifying torture as a crime against humanity or war crime is the caveat that it is a part of a widespread and systematic attack on a civilian population.⁴¹⁹ Looking at specific cases that have been tried in *ad hoc* tribunals, the *Akayesu* trial during the ICTR adopted the UNCAT definition wholly, while both the *Brđanin* and *Kunarac et al.* trials during the ICTY expanded the definition of torture to include “the infliction, by act or *omission*, of *severe* pain or suffering, whether physical or mental.”⁴²⁰

In the ICC definition and application of the crime of torture, there are two important words: omission and severe. First, torture by an act of omission means that an individual who deliberately chooses to avoid intervening in a situation that inflicts pain or suffering upon an individual could be considered an act of torture.⁴²¹ Second, the word severe implies there is a threshold that must be met for something to be considered an act of torture.⁴²² Within the *Krnojelac*, *Martic*, and *Brđanin* cases, the ICC covered an extensive list of the factors that go in to determining the severity of the case. These include: the nature, consistency and context of the infliction of pain, including the period of time of the ill-treatment; the premeditation, purpose and institutionalization of the ill-treatment; the physical and mental condition of the victim,

⁴¹⁹ *Ibid.*

⁴²⁰ Judgment, *Brđanin* (IT-99-36), Appeals Chamber, 3 April 2007, x 242.;

⁴²¹ Burchard, Christoph. “Torture in the Jurisprudence of the Ad Hoc Tribunals: A Critical Assessment.” *Journal of international criminal justice* 6, no. 2 (2008): 159–182.

⁴²² *Ibid.*

including, in some cases, factors such as the victim's age, sex, state of health, as well as position of inferiority.⁴²³

With all the different jurisprudence and applications of the term torture as both a war crime and crime against humanity through past cases at the ICTY and ICTR, it is evident that it has been widely used throughout Syria by both the government and ISIS. Should ISIS and the Syrian government go to trial for the acts of torture they have committed, there is arguably sufficient evidence to find both parties guilty. The evidence and analysis of these crimes committed by both parties will be explored in detail later in this chapter.

Crime – Rape, Sexual Slavery, and other forms of Sexual Violence Article 7(g) and 8(xxii) of Rome Statute

Rape and sexual violence during times of conflict is nothing new and has been going on for centuries. It still exists today despite many efforts on the international community's behalf to prevent such atrocities. Even though it has been an issue for hundreds of years, it was not until the Lieber Code of 1863 that it was seen as a violation of international humanitarian law. This early codification helped protect non-combatants and civilians from being targeted. Article 44 explicitly mentions that "wanton violence committed against persons in [an] invaded country... [including] rape ... is prohibited under the penalty of death or other such severe punishment."⁴²⁴ Article 47 states "crimes punishable by all penal codes, such as ... rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred."⁴²⁵

⁴²³ Burchard, 2008. ; Cf. Judgment, *Krnjelac* (IT-97-25), Trial Chamber, 15 March 2002, x 182; Judgment, *Brđanin* (IT-99-36), Trial Chamber, 1 September 2004, x 484; Judgment, *Martic* (IT-95-11), Trial Chamber, 12 June 2007, x75

⁴²⁴ Article 44 of the Lieber Code

⁴²⁵ Article 47 of the Lieber Code

While the Lieber code only applied to U.S soldiers, it began to create a standard of how militaries should operate in conflict zones. The international humanitarian legal framework was further strengthened with the 1949 Geneva conventions post World War II and their subsequent Additional Protocols. Article 27 of Geneva IV states that “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”⁴²⁶

As this type of crime against humanity and war crime is quite common, international criminal tribunals have heard several important cases that have further strengthened the international community’s understanding of what wartime rape and sexual violence are and how it affects individuals on and off the battlefield. The ICTR’s case against *Akayesu* established some important precedents for rape as a crime against humanity and war crime. Akayesu was the mayor of Taba where he used sexual violence specifically against Tutsi women in a systematic manner which was integral to destroying the Tutsi ethnic group.⁴²⁷ Presented with these facts, Akayesu was the first ever conviction for genocide and the first time an international tribunal ruled that sexual violence and rape could constitute genocide.⁴²⁸ He was also the first individual convicted of rape as a crime against humanity.⁴²⁹

The ICTY also provided some landmark judgements that expanded the concept of wartime rape and sexual violence. The *Tadić* case was the first ever trial that found that men can be victims of sexual violence. This is an important development as Article 27 of Geneva IV specifically lists that women should be protected against rape. Duško Tadić was a Bosnian Serb

⁴²⁶ Geneva Convention IV.

⁴²⁷ UN General Assembly, 1999. A/54/315 S/1999/943

⁴²⁸ International Crimes Database, n.d.

⁴²⁹ Ibid.

politician and former member of paramilitary forces that attacked Prijedor.⁴³⁰ Many of the crimes that Tadić committed involved sexual mutilation and violence against male detainees in the Omarska camp. Moreover, he was aware of the actions going on in the camp and actively supported the actions as well as the camp guards and encouraged them to be as brutal as they were.⁴³¹

The second ICTY case involving the crime of rape and sexual violence was *Mucić et al.* Esad Landžo, Zdravko Mucić, and Hazim Delić were a prison guard, commander and deputy commander, respectively, of the Čelebići prison camp.⁴³² They were charged with and convicted of grave breaches of the Geneva Conventions and violations of the laws and customs of war.⁴³³ These men routinely murdered, beat, tortured, sexually assaulted, and committed other forms of cruel and inhumane acts against the Bosniak and Croat members of the prison camp.⁴³⁴ Examples include forcing two Muslim brothers to perform fellatio on each other while detainees and guards watched.⁴³⁵ The Mucić et al. trial was important as it was the first international trial that recognized rape as a form of torture.⁴³⁶

A final case from the ICTY that involves rape and sexual violence as a crime against humanity and war crime is that of *Kunarac et al.* Dragoljub Kunarac, Zoran Vuković and Radomir Kovač were Bosnian Serb army officers that played a prominent role in organizing and maintaining rape camps within the town of Foča.⁴³⁷ When the Serbs took over the town, the

⁴³⁰ *Prosecutor v. Tadic*, Case No. IT-94-1 (Trial Chamber), November 11, 1999.

⁴³¹ *Ibid.*

⁴³² *Prosecutor v. Mucic et al.*, Case No. IT-96-21 (Trial Chamber), November 16, 1998.

⁴³³ *Ibid.*

⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*

⁴³⁶ *Ibid.*

⁴³⁷ *Prosecutor v. Kunarac, Kovac and Vukovic*, Case No. IT-96-23 and IT-96-23/11 (Trial Chamber), February 22, 2001.

Muslim women were rounded up and put into detention centres and raped by Serbian soldiers.⁴³⁸ After their time in the detention centres, the women were then sent to brothels where they were further raped and assaulted.⁴³⁹ In addition to the rape, the women were also forced to perform chores and abide by what the Serbian soldiers told them to do.⁴⁴⁰ All three were found guilty of rape as a crime against humanity as well as sexual enslavement.⁴⁴¹ The *Kunarac et al.* case was important as it was the first time that judges found that enslavement could include sexual servitude. Moreover, this case helped solidify rape as a “strategy of expulsion through terror, the ultimate goal of which was to drive the Muslims out of the region of Foča”.⁴⁴²

Crime – Persecution (Article 7(h) of Rome Statute

The crime of persecution in international law dates to the Nuremberg and Tokyo Trials post-World War II. The International Military Tribunal tried cases for crimes against peace and conventional war crimes that were established by the Hague Conventions and crimes against humanity. These included “persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”.⁴⁴³ In more recent developments of international humanitarian law, Article 7(2)(g) of the Rome Statute defines persecution as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”.⁴⁴⁴ The concept of persecution as a crime against

⁴³⁸ Ibid.

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ <https://www.nationalww2museum.org/war/articles/crimes-against-humanity-international-law>

⁴⁴⁴ Rome Statute, 1998.

humanity is furthered in Article 7(1)(h) where it is defined as “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender . . . or other grounds that are universally recognized as impermissible under international law.”⁴⁴⁵

There are several important cases found in the case law of the ICTY and ICTR that helped develop the jurisprudence around persecution. When using the ICC definition of persecution, it is very broad and does not go into specifics of what acts constitute persecution, however in *Kvočka et al.*, the ICTY developed an enumerated list of what could be considered persecution.⁴⁴⁶ Examples include: “imprisonment; unlawful detention of civilians or infringement upon individual freedom; murder; deportation or forcible transfer; seizure, collection, segregation and forced transfer of civilians to camps; comprehensive destruction of homes and property; the destruction of towns, villages, and other public or private property and the plunder of property; attacks upon cities, towns, and villages; trench-digging and the use of hostages and human shields; the destruction and damage of religious or educational institutions; and sexual violence”⁴⁴⁷

The ICTY furthered the development of persecution as a crime with a test set out in the *Mladen Naletilic ("Tuta") and Vinko Martinovic ("Stela")* case as to whether the crime of persecution has occurred. This test has four elements. First, the perpetrator commits a discriminatory act or omission.⁴⁴⁸ Second, the act or omission must deny or infringe upon a fundamental right laid down in international customary or treaty law.⁴⁴⁹ Third, the perpetrator

⁴⁴⁵ Rome Statute, 1998.

⁴⁴⁶ ICTY Case Information sheet. The Prosecutor v. Miroslav Kvočka, Dragoljub Prcać, Milošica Kos, Mlađo Radić & Zoran Žigić. n.d.

⁴⁴⁷ Ibid.

⁴⁴⁸ ICTY. Prosecutor v. Mladen Naletilic, Aka “Tuta” and Vinko Martinovic, aka “ŠTELA”, Judgment Case No. IT-98-34-T, 31 March 2003

⁴⁴⁹ Ibid.

carries out the act or omission with the intent to discriminate on racial, religious, or political grounds.⁴⁵⁰ Finally, the general requirements for a crime against humanity pursuant to Article 5 of the Statute are met.⁴⁵¹

Applying this jurisprudence and the test developed to the Syria situation, all four elements have been met. The Syrian government and ISIS have committed discriminatory acts by against the LGBTQ community by specifically targeting them based on their sexual orientation and gender identity. Second, the victims have had their fundamental rights of life and equality before the law set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, infringed upon. Third, based off ISIS ideology and Syrian society in general, the intent to discriminate on immutable characteristics has been met. Finally, both parties have acted in a way that intentionally and severely deprives LGBTQ people of fundamental rights, thereby meeting the fourth element of the test. The evidence for this will be discussed later in detail.

Crime – Committing outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(b)(xxi) of Rome Statute)

The final crime that has been committed against the LGBTQ community in Syria is that of outrages upon personal dignity, in particular humiliating and degrading treatment.⁴⁵² Within international humanitarian law, this war crime was codified in the Third Geneva Convention (3GC) Article 3 (c), the Fourth Geneva Convention (4GC) Article 3 (c), Additional Protocol I and II, and was also included in the Rome Statute of the ICC as a crime against humanity.⁴⁵³

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

⁴⁵² Rome Statute, 1998.

⁴⁵³ Geneva Convention III.

3GC sets out the protections for those who have been captured on the battlefield, while 4GC sets out the protections for civilians and non-combatants. The As the potential acts that constitute this crime can be vague, the jurisprudence set out in the ICTY has helped developed what could be considered a violation of this law. First, in the *Kunarac et al.* case, the chamber developed several requirements that must be met for the crime to be committed. First, the crime of requires: “(i) that the accused intentionally committed or participated in an act or an omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity, and (ii) that he knew that the act or omission could have that effect.”⁴⁵⁴

Furthermore, the humiliation of the victim must be so intense that any reasonable person would be outraged. Additionally, the trial judges determined that the “form, severity and duration of the violence, the intensity, and duration of the physical or mental suffering, shall serve as a basis for assessing whether crimes were committed.”⁴⁵⁵ Finally, the chamber agreed that there is no temporal requirement for how long the treatment can last and that the offender must know that the act or omission could cause humiliation or degradation.⁴⁵⁶ The *Aleksovski* trial furthered the concept of the accuser knowing that the act could cause harm by stating that there might not be a specific intent to humiliate or degrade, but that they must be able to “perceive this as a foreseeable and reasonable consequence of their actions”.⁴⁵⁷

Concerning crimes against civilians, the *Furundzija* case helped cement sexual violence as a form of outrage upon personal dignity and humiliation. Anto Furundžija was a Bosnian Croat and a commander of a militia known as *The Jokers* who took part in ethnic cleansing in the

⁴⁵⁴ *Prosecutor v. Kunarac, Kovac and Vukovic*, Case No. IT-96-23 and IT-96-23/11 (Trial Chamber), February 22, 2001

⁴⁵⁵ *Ibid.*

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

Lašva Valley and who were under the command of the Croatian Defence Council⁴⁵⁸. Furundžija assaulted a female while interrogating her and then let another soldier orally and vaginally rape her while other soldiers watched and laughed.⁴⁵⁹ While he did not commit the CRSV himself, he was charged under command responsibility as he did nothing to stop the rape from happening.⁴⁶⁰ Furundžija was ultimately found guilty of aiding and abetting the war crime of outrages upon personal dignity, including rape, and was charged with a grave breach of the Geneva Conventions and as a violation of the laws and customs of war.⁴⁶¹ The *Furundžija* case was the first case which solely focused on sexual violence and command responsibility. Moreover, the trial judges also found that rape can also be used as a method of genocide.

While it is still somewhat vague as to what types of acts constitute this crime, some of the examples from the ICTY include the use of captured combatants as human shields and trench diggers, inappropriate conditions of confinement, relieving bodily functions in an individual's clothing, enduring the constant fear of being subjected to physical, mental or sexual violence, and rape itself is also seen as an outrage upon personal dignity⁴⁶². Applying the jurisprudence and the type of examples that have previously been considered outrages upon personal dignity, it is obvious that that have been many examples of this crime against humanity occurring in Syria. Members of the Syrian Government's armed forces, police, and other groups acting on their behalf used sexual violence and raped many LGBTQ men and transwomen. Furthermore, the constant fear of being outed as LGBTQ to their family and community could potentially

⁴⁵⁸ *Prosecutor v. Furundžija*, Case No. IT-95-17/1 (Trial Chamber), December 10, 1998.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Ibid.*

⁴⁶¹ *Ibid.*

⁴⁶² *Prosecutor v. Furundžija*, Case No. IT-95-17/1 (Trial Chamber), December 10, 1998. ;

constitute outrages upon personal dignity as they do not know if they will be shunned and excommunicated from their own support network or lose their home.

Syrian Government and Pro-Syrian Forces

Potential Crimes Committed

Crime Against Humanity	Torture	Article 7(f) of Rome Statute
Crime Against Humanity	Rape, Sexual Slavery, and other forms of Sexual Violence	Article 7(g) of Rome Statute
Crime Against Humanity	Persecution	Article 7(h) of Rome Statute
War Crime	Torture	Common Article 3 of Geneva Conventions
War Crime	Committing outrages upon personal dignity, in particular humiliating and degrading treatment	Common Article 3 of Geneva Conventions, Additional Protocol II of Geneva Conventions

The Syrian government perpetrated the most heinous crimes against LGBTQ people in detention centres, during interrogations, at checkpoints, and on the battlefield.⁴⁶³ While all men regardless of real or assumed sexual orientation were subjected to physical and potentially sexual violence within prisons and detention centres, LGBTQ men and boys were specifically subjected to “rape, including with objects; sexual harassment and humiliation; genital beatings, burnings,

⁴⁶³ Human Rights Watch, 2020.

electric shock and mutilation; the threat of rape against them and others; and forced nudity”.⁴⁶⁴ Moreover, LGBTQ people were also subjected to this type of sexual violence by their fellow detainees.⁴⁶⁵ This violence was not limited to individuals whom they imprisoned on suspicion or with proof of being LGBTQ. The Syrian Army would send off LGBTQ members of the army to military prisons where they would be subjected to rape and other forms of violence.⁴⁶⁶

Throughout Syria most of the violence against LGBTQ people was similar even throughout different regions. The torture and sexual violence were arguably systematically used against LGBTQ people by the Syrian government and pro-Syrian forces. Furthermore, even though the conflict has spanned over a decade, the type of violence has not stopped. Finally, the conflict is extremely complex by involving a significant amount of pro-Syrian militias not necessarily employed by the government but acting on their behalf.⁴⁶⁷ This complicates determining who is ultimately at fault as there is no way for the international community to know if the Syrian government instructed them to commit attacks against LGBTQ people. However, as Cohen & Nordås suggest, militias that have been trained and are associated with state governments are more likely to use sexual violence in conflicts.⁴⁶⁸

ISIS

Alleged Crimes Committed

Crime Against Humanity	Torture	Article 7(f) of Rome Statute
Crime Against Humanity	Persecution	Article 7(h) of Rome Statute

⁴⁶⁴ Ibid. (pg. 21)

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ Human Rights Watch, 2014.

⁴⁶⁸ Cohen, D. & Nordås, R. (2015). Do states delegate shameful violence to militias? patterns of sexual violence in recent armed conflicts. *The Journal of Conflict Resolution*, 59(5), 877–898.

War Crime	Torture	Common Article 3 of Geneva Conventions
War Crime	Wilfully causing great suffering, or serious injury to body or health	Article 1(a) of Geneva Convention I

ISIS has published edicts stating that sodomy and homosexuality are punishable by death.⁴⁶⁹ Because of this, it is estimated that around 400 self-identifying LGBTQ people have escaped from ISIS to avoid potential execution and torture. However, ISIS militants are known to have murdered at least 90 LGBTQ men and women for their sexual orientation; however, this number is likely to be much higher.⁴⁷⁰ These killings include throwing LGBTQ people off the top of buildings and if they survived the fall, they were then stoned to death by civilians waiting at the bottom.⁴⁷¹ It is important to note that while there have been many reports of sexual violence and rape against LGBTQ people by the Syrian Government, there have only been a few unconfirmed reports of ISIS using sexual violence against LGBTQ people.⁴⁷² Furthermore, ISIS systematically hunt down LGBTQ people by taking the phones of individuals convicted of homosexuality and go through their contacts as well as social media profiles to find other LGBTQ people.⁴⁷³ ISIS has also been known to have their soldiers pose as gay men in order to find other gay men in hiding and then execute them.⁴⁷⁴

⁴⁶⁹ Tharoor, I. (2016). The Islamic State's shocking war on gays. *The Washington Post*.

⁴⁷⁰ Outright Action International. (n.d.). Timeline of publicized executions for "indecent behaviour" by militias.

⁴⁷¹ Outright Action International, n.d.; Counter Extremism Project, 2017.

⁴⁷² Ibid.

⁴⁷³ Ibid.

⁴⁷⁴ Hastings, D. (2015). ISIS terrorists pose as gay men, lure victims on dates, then kill them: social media. *NY Daily News*.

One of the more shocking aspects of being LGBTQ and living under ISIS controlled territory is how eager the public is to engage in the executions and stoning of suspected LGBTQ people.⁴⁷⁵ ISIS has managed to capitalize on the hatred the Syrian people have against those in the LGBTQ community and use it to their advantage to gain support. Finally, while not explicitly related to the violence occurring in Syria, it is important to include the Omar Mateen shooting at Pulse in Orlando, Florida.⁴⁷⁶ Omar Mateen shot and killed 49 people and injured 53 more at Pulse which is an LGBTQ nightclub.⁴⁷⁷ He cited ISIS ideology as his reason and ISIS themselves claimed responsibility and claimed him as a fighter.⁴⁷⁸ The Pulse shooting remains the second deadliest mass shooting in the US. This is an important piece of evidence to include as ISIS can inspire individuals to carry out attacks against LGBTQ people across the world, thus potentially putting them in danger outside of the battlefield.

Conclusion

This chapter explored the various ways in which LGBTQ people face unique forms of violence simply because of their sexual orientation. Whether it be from being outed to their family or community group, to increased sexual violence, LGBTQ people face extreme levels of violence in peace time and in conflict. Within Syria, there is no safe haven for LGBTQ people as they were persecuted by both the state government and ISIS. Furthermore, LGBTQ people who managed to escape to neighbouring countries for asylum or as a refugee still face persecution

⁴⁷⁵ *Ibid.*

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*

⁴⁷⁸ *Ibid.*

based on their sexual orientation.⁴⁷⁹ With the understanding that LGBTQ people are vulnerable, what can be done to help protect them during times of conflict?

⁴⁷⁹ Heartland Alliance. *No Place for People Like You” An Analysis of the Needs, Vulnerabilities, and Experiences of LGBT Syrian Refugees in Lebanon*. 2014.

Chapter 5 - How Can LGBTQ People Be Better Protected in Conflict Zones

Based upon the evidence from the previous chapter, it can be seen that LGBTQ people are some of the most vulnerable individuals in conflict zones. Therefore, how can the international community take action to better protect them? Several potential methods can be used. First, the international community needs to better advocate for states to remove homophobic laws to better protect them during peacetime. With better protection in peacetime, there will arguably be better treatment during times of conflict. Second, there needs to be more inclusive ways of reporting violence against LGBTQ people that can demonstrate the amount of violence they face without putting them at risk of being outed. Third, IHL can be adapted to include LGBTQ people as special persons not to be targeted or treated adversely.

Removal of Homophobic Laws

As it has been previously examined, the maltreatment of LGBTQ people in peacetime has a direct correlation to the treatment they face during times of conflict.⁴⁸⁰ While expanding IHL to include specific protections for LGBTQ people is important, these laws would only be applicable during times of conflict. This does not account for the vast majority of the time in which a state is at peace. Therefore, one of the more direct ways to address the systemic issue facing LGBTQ people is to amend the current homophobic laws within a given state.⁴⁸¹ While this might not be the fastest solution, addressing the root causes of homophobia and legal discrimination within the state will have more beneficial outcomes than merely addressing the symptoms of the problem. A potential way this can happen is by including these types of legal and social reforms in the

⁴⁸⁰ Myrtilinen, H., & Daigle, M. (2017); Human Rights Watch. (2020); Human Dignity Trust. (2015).

⁴⁸¹ Human Dignity Trust. (2015).

post-conflict peacebuilding process.⁴⁸² These can include both treaties, constitutional, or legal changes. A prime example of legal reforms post-conflict is post-Apartheid South Africa. South Africa became the first country in the world to criminalize discrimination on the basis of sexual orientation.⁴⁸³

Moreover, states or international organizations that become involved in state-building efforts after a conflict can help address these issues.⁴⁸⁴ Additionally, should states become aware of targeted violence against LGBTQ people, they should put diplomatic pressure on the state in which the violence is occurring to provide better treatment to the LGBTQ community.⁴⁸⁵ In a recent ICRC report on SGBV against men and LGBTQ people recommends that the international community continue to use diplomatic tools to create dialogue and draw attention to SGBV in humanitarian settings to “promote survivor-centred, non-discriminatory, and inclusive frameworks”.⁴⁸⁶ By removing these laws, not only will LGBTQ individuals be safer, but it can also have secondary and tertiary effects. These can include generally improving the public health system by better being able to tackle the HIV/AIDS epidemic and freeing up law enforcement resources to better prevent another outbreak of violence.⁴⁸⁷

It is important to note that there is a lack of political will on behalf of the international community to implement changes that will positively affect the socio-political status of LGBTQ people. During the height of the Syrian conflict with ISIS, many member states declined to attend the first ever informal meeting of the UNSC regarding the treatment of LGBTQ people by ISIS. Furthermore, several member states have also refused to cooperate with the HRC appointed

⁴⁸² Ibid.

⁴⁸³ International Alert, 2017; ICRC, That Never Happens Here 2022.

⁴⁸⁴ Human Dignity Trust 2015; Human Rights Watch 2020

⁴⁸⁵ Human Dignity Trust, 2015

⁴⁸⁶ ICRC. That Never Happens Here. 2022. Pg. 7

⁴⁸⁷ Ibid.

independent expert on sexual orientation and gender identity. This lack of political will has direct negative effects on a group of people that many within the international system has espoused they desire to protect.

Potential Critiques

One of the issues with this, however, is with the securitization of sexuality at the state level. As Lavinias and Thiel mention, non-Western states view the acceptance of homosexuality as a Western geopolitical strategy.⁴⁸⁸ Should states try to impose Western values on states after they are coming out of a conflict, it could potentially galvanize them into adhering to their homophobic laws and potentially make life worse for LGBTQ people. Moreover, this could also be seen as neo-colonialism as the West is trying to dominate over other states who do not hold the same ideals as them.⁴⁸⁹ While these are potential downfalls to tying in LGBTQ rights to post-conflict reconstruction, the disadvantages of being viewed as neo-colonialist or imposing western values do not outweigh the much-needed protection that LGBTQ people deserve.

Better Reporting and Support Systems

A second main obstacle that makes it difficult for violence of any nature against LGBTQ people to be taken seriously is that there is a lack of data proving that it is a problem. While it is evident based on the previous examples explored that demonstrate LGBTQ people face violence at a much higher and severe rate than their heterosexual counterparts, it is difficult to find widescale evidence in support of this.⁴⁹⁰ This is due to an absence of large-scale quantitative data that establishes LGBTQ people as particularly vulnerable. However, this issue is due to the sensitive

⁴⁸⁸ Lavinias M, P., & Thiel, M. (2015). Sexualities in world politics. In *Sexualities in World Politics* (1st ed.).

⁴⁸⁹ Ibid.

⁴⁹⁰ Kiss L, Quinlan-Davidson M, Ollé Tejero P, Pasquero L, Hogg C, Zimmerman C. (2020). The health of male and lgbt survivors of conflict-related sexual violence. All Survivors Project.

nature of identity and protecting LGBTQ people from being outed as well as the stigma associated with being a male survivor. The report goes on to further say that if male survivors cannot properly articulate what happened to them, “they face the danger of consent being assumed if they are unable to prove the rape”⁴⁹¹ In line with the previous recommendation, the lack of reporting is also due to the stigma of being assumed as part of the LGBTQ community. The stigma has the potential to revictimize and individuals could also be rejected from their family and community. The lack of reporting due to not wanting to out individuals creates a feedback loop in which the issue of LGBTQ violence seems minimal and therefore does not take priority.

Furthermore, as the International Committee of the Red Cross justly highlights, there are also barriers to reporting while in detention.⁴⁹² There is a reluctance to report to officials for fear of further punishment as retribution for speaking out as well as a fear of being in the same proximity as the perpetrator.⁴⁹³ Additionally, there is a lack of adequate psycho-social, physical, and sexual health services within detention centres.⁴⁹⁴ Consequently, it can be argued that detainees are not likely to report that anything has happened to them, as they see it not leading to any useful outcome.⁴⁹⁵ Therefore, for this problem to be taken seriously, it is imperative to understand the full extent of the violence LGBTQ people face. For this violence to be addressed, there must also be efforts to eliminate the stigma and shame around being sexually abused or

⁴⁹¹ ICRC, *That Never Happens Here*, 2022. pg. 41

⁴⁹² *Ibid*

⁴⁹³ *Ibid*.

⁴⁹⁴ *Ibid*.

⁴⁹⁵ *Ibid*.

raped whether one is LGBTQ or not.⁴⁹⁶ This begins with addressing the multitude of causes shown in the figure below.

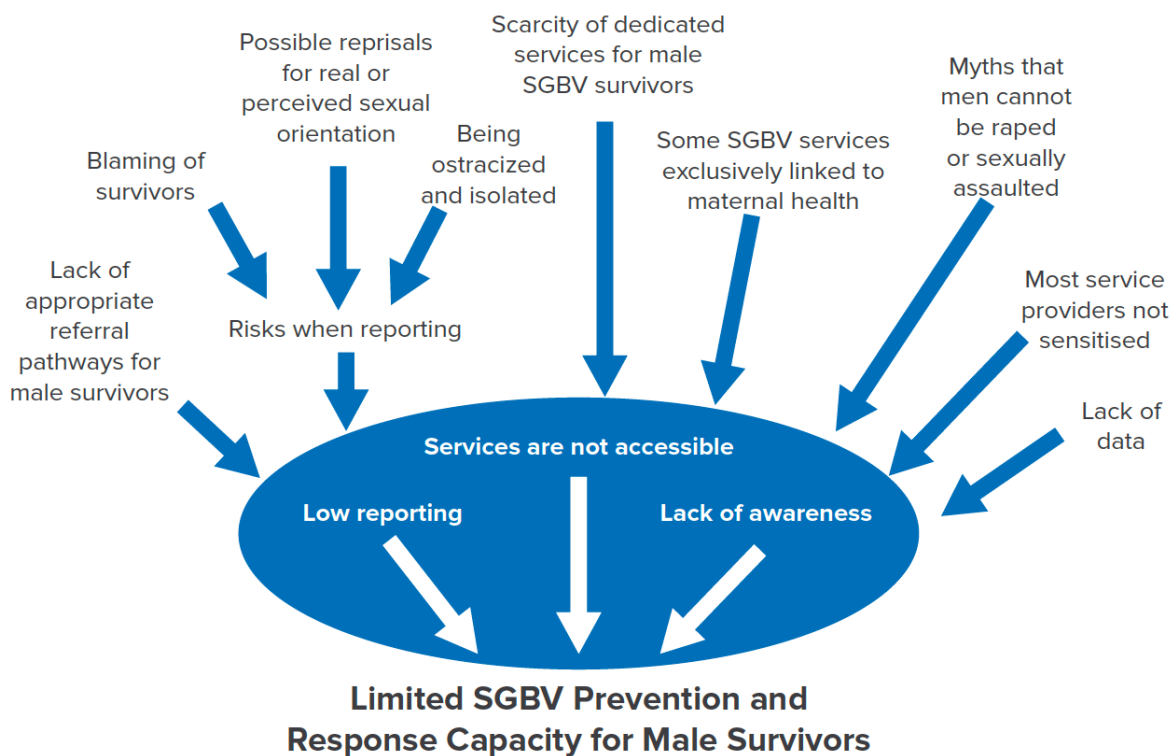


Figure 2 SGBV Prevention and Response, Chynoweth pg. 8 2017

A second way that this problem needs to be addressed is with increased specialized humanitarian support for LGBTQ victims. As most of the current programs are aimed at

⁴⁹⁶ Kiss et al., 2020; Chynoweth, S. (2017). Sexual violence against men and boys in the Syrian crisis. *United Nations High Commissioner for Refugees*.; Dolan, C. (2014). Letting go of the gender binary: Charting new pathways for humanitarian interventions on gender-based violence. *International Review of the Red Cross* (2005), 96(894), 485–501.; Gold, S., Marx, B., & Lexington, J. (2007). Gay male sexual assault survivors: The relations among internalized homophobia, experiential avoidance, and psychological symptom severity. *Behaviour Research and Therapy*, 45(3), 549–562.; Tol, W.A., Stavrou, V., Greene, M. C., Mergenthaler, C., Van Ommeren, M., & García Moreno, C. (2013). Sexual and gender-based violence in areas of armed conflict: A systematic review of mental health and psychosocial support interventions. *Conflict and Health*, 7(1), 16–16.

responding to sexual violence targeting women and girls, it is important that men and boys, and LGBTQ people are able to also receive the same level of treatment and experience.⁴⁹⁷ Currently, most of the care for male survivors of SGBV is *ad hoc* and only provided when men come forward with medical issues that are very severe.⁴⁹⁸ Médecins sans Frontières (MSF) has observed that the “lack of knowledge about SGBV services among adult males is a major barrier to access of care”.⁴⁹⁹ Due to the lack of specialized programs and organizations for men, the ICRC and Women’s Refugee Coalition (WFC) have released several recommendations for the inclusion of men and boys, and specifically LGBTQ people in post-conflict SGBV care.

First, humanitarian providers must engage in “safe and ethical consultations with victim/survivor groups, and other community organizations led by LGBTIQ community leaders”.⁵⁰⁰ Secondly, both the ICRC and the WFC, highlight the need for inclusive referral pathways to community-based organizations that “represent or deliver services to men, boys, and LGBTQ victims/survivors” in order to adequately meet their needs.⁵⁰¹ Third, both mental and physical health service providers must be educated in the different ways that LGBTQ people can experience sexual violence compared to heterosexual people.⁵⁰² This mainly can be the enforced rape of others, specific forms of genital violence (e.g. forced circumcisions), and most importantly “corrective” forms of rape and sexual violence.⁵⁰³ Finally, it is important for service providers to be aware of the “terms, innuendoes, euphemisms, and metaphors regarding sexual victimization” and understand ever evolving queer culture and language in general, but also in

⁴⁹⁷ ICRC, *That Never Happens Here*, 2022.

⁴⁹⁸ *Ibid.*

⁴⁹⁹ *Ibid.* pg. 37

⁵⁰⁰ *Ibid.* pg. 8

⁵⁰¹ ICRC, *That Never Happens Here*, 2022.; Women’s Refugee Coalition, 2021.

⁵⁰² *Ibid.*

⁵⁰³ *Ibid.*

the local context of where they are operating.⁵⁰⁴ While these are general suggestions and recommendations, they are crucial in implementing basics on how to support LGBTQ survivors and developing ways in to which to create resources for them.

Potential Critiques

Based on the figure above, many different causes contribute to the lack of knowledge of this issue. These causes then contribute to lack of reporting and services available. While it may seem like an easy solution to suggest that better reporting needs to happen, it is evident that there are various intricate reasons for why this occurs. These issues will likely not get fixed without a major cultural overhaul on how societies view LGBTQ people. This is quite a big task as even within Western countries, there is still high amounts of hatred towards LGBTQ people that make it difficult for them to come forward when they have been attacked.⁵⁰⁵ While this cultural shift will take time, as previously mentioned, addressing homophobic laws within a country will help develop an increased tolerance and acceptance of LGBTQ people. Without these changes first, the larger issues of targeted LGBTQ violence will likely never change. Furthermore, even though there is a large amount of resources dedicated towards women and girl survivors of SGBV in comparison to LGBTQ survivors, there are still very large gaps to receiving adequate resources and funding for them. For example, from 2016-2018, only 0.1% of humanitarian response funding was spent on SGBV programs for women and girls and 2/3 funding requests went unfunded.⁵⁰⁶ With this in mind, it will likely take a cohesive and concentrated effort to help bring this issue to the forefront of the current humanitarian agenda.

⁵⁰⁴ Ibid.

⁵⁰⁵ Jaffray, B. (2020). Experiences of violent victimization and unwanted sexual behaviours among gay, lesbian, bisexual and other sexual minority people, and the transgender population, in Canada, 2018. Statistics Canada

⁵⁰⁶ International Rescue Committee. Where's the money? 2019

Adapting IHL and Military Methods

A third option that can be employed to better protect LGBTQ people in conflict zones involves expanding IHL with clear provisions dedicated to protecting LGBTQ people. As previously discussed, international humanitarian law must be applied to all without discrimination.

Furthermore, sexual violence is prohibited under IHL regardless of the victim's gender or sexual orientation. This prohibition is customary in both IAC and NIACs. While sexual violence is prohibited legally, it is still occurring in conflicts around the world. The prevalence of sexual violence can be attributed to a lack of respect for IHL. Considering that LGBTQ people have little to no social power within Syria and many other states where they are already subject to cruel treatments regardless of legality, IHL must adopt new specific provisions that are inclusive of sexual orientation and gender minority groups. While adapting the content of IHL may seem like a useless endeavour, there is research to indicate that inclusive legal provisions reduces the presence of hate. Levy and Levy conducted a study in which they analyzed data across the span of 12 years and found that once hate crime and employment discrimination laws include sexual orientation, there is a reduction in hate crime incidents.⁵⁰⁷ While a reduction in hate crime may not be directly comparable, it does demonstrate that language is important when it comes to actively protecting vulnerable populations. Furthermore, in 2014, the Office of the Prosecutor released a policy paper on sexual and gender-based crimes that expanded the interpretation of Article 21 of the Rome Statute which focuses on the applicable law. They made two important statements. First, the court will “consider not only acts of violence and discrimination based on

⁵⁰⁷ Levy, Brian L., and Denise L. Levy. “When Love Meets Hate: The Relationship Between State Policies on Gay and Lesbian Rights and Hate Crime Incidence.” *Social science research* 61 (2017): 142–159.

sex, but also those related to socially constructed gender roles”.⁵⁰⁸ By opening the definition of gender to socially constructed gender roles, this would potentially allow for prosecutions based on gender identities that fall out of the male/female binary and include transgender people as well. The second important point is that they say they will “understand the intersection of factors such as gender..., sex, sexual orientation, and other status or identities which may give rise to multiple forms of discrimination and social inequalities”.⁵⁰⁹ While the wording of “understand[ing] the intersection of factors...” is vague in terms of what it might mean for a potential prosecution, it is a step forward in the ICC acknowledging sexual orientation as a potential form of discrimination that could lead to a crime. However, as this has yet to be tried in court, it is hard to understand how the court would interpret their commitment within this policy paper. Therefore, the fact that inclusive provisions and interpretations of international law could help reduce the severity and frequency of direct violence against LGBTQ people means that the international community should adopt this perspective as well. There are several ways that more inclusive language can potentially be achieved.

First, it is possible that the International Court of Justice (ICJ) could hear a case involving targeted violence against LGBTQ people.⁵¹⁰ Alternatively, the ICC could also hear a court case on a similar issue. Both courts could interpret LGBTQ people as being specifically vulnerable in conflict zones and needing special protections. This interpretation of the law would create the precedent that all future and current conflicts need to ensure that LGBTQ people are protected. However, given the structure of the ICJ, the court would have to wait for legal disputes between member states of the UN to be brought to them, or the court could be asked for an advisory

⁵⁰⁸ ICC, Office of the Prosecutor. Policy Paper on Sexual and Gender-Based Crimes. 2014.

⁵⁰⁹ Ibid.

⁵¹⁰ Human Dignity Trust, 2015.

opinions on legal issues involving states' obligations to provide protections of LGBTQ people during armed conflicts.⁵¹¹ However, advisory proceedings can only be initiated by either the five organs of the UN, usually the General Assembly, or any of the UN's sixteen specialized agencies.⁵¹² With regard to IHL specifically, based on previous cases,⁵¹³ the ICJ could play a role in enforcing LGBTQ-specific IHL provisions by “ensuring state responsibility for violations; reparations due to States, legal entities, and individuals; and indication of provisional measures of protection in armed conflict situations.”⁵¹⁴

A hypothetical case that each of these courts could hear would be the ICJ hearing a case between states during peace time, whereas the ICC would hear a case that happened during an armed conflict. The ICJ could hear a case between two states in which one is suing the other for the treatment of its LGBTQ people. For instance, since Canada had specific intentions of rescuing LGBTQ Syrians from ISIS, they could bring a case against Syria. This potential case could have Canada highlighting the lack of LGBTQ freedoms to participate openly in society, as well as the laws criminalizing same sex relations – which as previously shown throughout the thesis – directly contributes to the violence against this community. The outcome of this case could be that the ICJ finds that Syria is in violation of articles within the ICCPR (such as Article 2.1)⁵¹⁵ and as Syria's current treatment is conducive to violence, violates international human rights law.

⁵¹¹ ICC. How the court works. n.d.

⁵¹² Ibid.

⁵¹³ (such as the Application of the Convention on the prevention and Punishment of the Crime of Genocide, 1993)

⁵¹⁴ Zyberi, Gentian. *Enforcement of International Humanitarian Law*. Springer Nature, 2018. Pg. 13

⁵¹⁵ Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A hypothetical case that the ICC could hear might directly be about the treatment of LGBTQ people during the civil war. As previously explored, the Syrian government forces have potentially violated several aspects of IHL including crimes against humanity and war crimes that include torture and persecution. Specific fact cases could include that of Yousef who was detained by the Syrian forces and was subject to increased sexual violence once the prison guards found out that he was gay. With a clear case of deliberate increase of violence once the victim's identity was found out would be an obvious case of persecution. The outcome of this case could be that the court finds a specific indicted Syrian officials or officials guilty of committing this crime against humanity. There would also be the potential for the presiding judges to explicitly read in sexual orientation as part of the "other similar criteria" listed within the Geneva Conventions. While everyone is covered under the conventions in some form or another, as shown previously, explicit language protecting sexual and gender minorities has a direct impact on how LGBTQ people are treated.

Additionally, states must also be vocal in their views of preventing violence against LGBTQ people. The more that states talk about the issue of the violence that LGBTQ people face in conflict zones, the more likely it will be taken seriously as an issue. This follows the idea of securitizing sexuality as mentioned throughout.⁵¹⁶ States who say that LGBTQ violence is an issue that needs to be dealt with begin the securitization process with the speech act. Another aspect of this is norm generation and diffusion.

Within norms, there are both regulative norms and constitutive norms.⁵¹⁷ The former orders and constrains states behaviour while the latter create new actors, interests, or categories

⁵¹⁶ Buzan, Wæver, & de Wilde. (1998). *Security: a new framework for analysis*. Lynne Rienner Pub.; Lavinias and Thiel, 2015

⁵¹⁷ Finnemore, Martha and Kathryn Sikkink. 1998. International Norm Dynamics and Political Change." *International Organization*, 52 (4): 887-917

of action.⁵¹⁸ Finnemore and Sikkink describe the evolution of norms through the norm life cycle that has three components. First, is the emergence of a norm. This is when norm ‘entrepreneurs’ put forth a new norm and use existing organizations as their platform.⁵¹⁹ States then adopt these norms and are further institutionalized in rules and organizations. They then rely on enough states to adopt the norm, which persuades the rest of the states to eventually adopt it as well.⁵²⁰ Second, norm cascade occurs when states are subsequently motivated by a desire to adopt norms to further their state legitimacy.⁵²¹ Finally, there is norm internalization in which states come to see a norm as part of their identity. .⁵²² At this stage, domestic and international laws solidify the institutionalization of the norm.⁵²³ Furthermore, the authors argue that there are five reasons norms are adopted. First, to increase state legitimacy on the international stage.⁵²⁴ Second, norms adopted by prominent states are more likely to be adopted elsewhere.⁵²⁵ Third, the intrinsic qualities of the norm play a role in which norms get adopted.⁵²⁶ Fourth, if the norm is adjacent to already existing norms, they are more likely to be adopted.⁵²⁷ Finally, the temporal context. Major historic events cause new ideas and norms to follow events such as wars and depressions.⁵²⁸

In the last several years, the legalization of same sex marriages has increased as well as renewed discourse on LGBTQ rights, specifically trans rights. This shift towards further acceptance towards LGBTQ people arguably meets several of the criteria for norm adoption laid

⁵¹⁸ Ibid.

⁵¹⁹ Ibid

⁵²⁰ Ibid.

⁵²¹ Ibid.

⁵²² Ibid.

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ Ibid.

⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ Ibid.

out by Finnemore and Sikkink. First, many prominent states (U.S, Canada, Brazil, South Africa etc.) have legalized and protected LGBTQ rights, which could lead to further adoption by other states.⁵²⁹ Second, protecting LGBTQ rights are already similar, or adjacent to, other norms protecting civil rights. Finally, within the last three years, eight more countries have legalized same sex marriage bringing the total up to thirty-three countries which could constitute the beginning of a historical shift towards widespread LGBTQ acceptance and legal reforms.

The final option is that individual states update their military manuals to include procedures on how to properly interact with and support LGBTQ civilians and potential victims of violence. In trying to ensure that states adhere to IHL, several militaries around the world, most notably the United States, have included teaching IHL as part of their military training doctrine.⁵³⁰

Expanding on including IHL in training by national militaries, several consultations with the ICRC and Switzerland have focused on how to get non-state actors to comply with IHL.⁵³¹ Some potential mechanisms include developing the concept of ownership which could look like non-state actors voluntarily reporting their compliance or non-compliance with IHL standards to the ICRC.⁵³² Second, there could be the development of incentives for non-state actors. For example, states could negotiate terms of amnesty at the end of the conflict if the non-state actors comply with IHL.⁵³³ Finally, non-state actors could voluntarily allow a third-party monitoring group to make sure that they are following IHL standards as best as they can.⁵³⁴ While these solutions mainly focus on non-state actors, it is important to keep furthering the discussion surrounding

⁵²⁹ At the time of writing, some of the rights and protections for LGBTQ people are being challenged and rolled back in several US states.

⁵³⁰ Müller-Wille, 2015; Solis, 2016

⁵³¹ *Ibid.*

⁵³² *Ibid.*

⁵³³ *Ibid.*

⁵³⁴ *Ibid.*

high contracting parties and their compliance with the treaties that they have ratified. While targeting civilians in general is illegal, manuals can include that within conflicts, sexual orientation is a protected group and train their members on how to act accordingly to address any issues that LGBTQ people face that they might not be aware of.⁵³⁵ As women and children are specific groups “whose special needs must be taken in account by combatants”, it does not seem to be a large legal stretch to include LGBTQ people as having unique needs as well.⁵³⁶

Potential Critiques

First, it is unlikely that either the ICJ or the ICC will be hearing a case surrounding violence against LGBTQ people in the near future.⁵³⁷ This is mainly due to sexual orientation not being included as a specific ground for protection within IHL. Moreover, due to the courts not interpreting LGBTQ rights into current IHL practice, it is unlikely that states will require their militaries to interpret them into Common Article 2 or 3 conflicts. While states can interpret LGBTQ protections in their own military manuals,⁵³⁸ “many governments are reluctant to address, let alone support, ways to improve the protection of LGBT groups amid strong opposition.”⁵³⁹ With all of this in mind, waiting for LGBTQ rights violations to be brought to the courts would likely take years to occur. A particular critique of advocating for special protections for LGBTQ people within IHL is that all the protections that should be needed to adequately protected individuals have already been developed, it is more so a lack of enforcement at this

⁵³⁵ Human Dignity Trust, 2015

⁵³⁶ Geneva Conventions.

⁵³⁷ Human Dignity Trust, 2015.

⁵³⁸ Upon researching, I could not find a single military manual that mentions anything about sexual orientation or gender identity as specific grounds for protections for combatants or civilians.

⁵³⁹ Margalit, Alon. “Still a Blind Spot: The Protection of LGBT Persons During Armed Conflict and Other Situations of Violence.” *International review of the Red Cross* (2005) 100, no. 907-909 (2018): 237–265.

point.⁵⁴⁰ Even though states have ratified the Geneva conventions and other aspects of IHL, they have not wholly complied with it. It is crucial that there is stricter compliance and enforcement with IHL, however, it is also crucial to adapt laws as society changes. Enforcement and adaptation do not necessarily need to exist in a vacuum.

Regarding enforcement, Moir fairly critiques that common Article 3 has rarely been respected and adhered to. Furthermore, Moir quoted an American diplomat saying that “non-observance is an almost universal phenomenon”.⁵⁴¹ Even though IHL was partially developed to protect people who are not or are no longer participating in the hostilities on the battlefield, these rules are rarely respected in the Syrian conflict.⁵⁴² Deliberately and indiscriminately attacking civilians and those *hors de combat* has been a hallmark of this conflict, thereby violating the principle of distinction.⁵⁴³ Moreover, specifically named groups within the Geneva Conventions such as medical personnel and locations such as hospitals have been targeted.⁵⁴⁴ Furthermore, the “repeated use of chemical weapons and nerve agents” increasingly undermines the efficacy of IHL.⁵⁴⁵ It is important to mention these violations as it highlights the pervasive violations of specific IHL rules by Syria. If Syria is unable to follow explicit rules already laid out, it could be argued that reading in LGBTQ as a group that falls under “other status” in Article 2(1) of APII will result in the same violations of IHL. Therefore, it would be reasonable for sexual orientation and gender identity to be included as a specific group instead of other status. While LGBTQ

⁵⁴⁰ <https://www.unocha.org/story/we-don%E2%80%99t-have-change-law-we-have-enforce-it-un-humanitarian-chief>

⁵⁴¹ Moir, 2002. Pg. 67

⁵⁴² Mudrik-Even Khen, Hili, Sareta Ashraph, and Nir T. Boms. *The Syrian War : Between Justice and Political Reality*. Edited by Hili Mudrik-Even Khen, Sareta Ashraph, and Nir T. Boms. Cambridge, United Kingdom ; New York, NY, USA: Cambridge University Press, 2020.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid. pg. 80

people would potentially still be targeted even if they were highlighted as a protected group, having them included would provide a more clear-cut violation of IHL in a court case.

Conclusion

Deciding how to best protect LGBTQ people in conflict zones is a complex decision. Whether or not the international community decides to address homophobic laws at the state level, adapt IHL and military methods, or improve reporting, it is evident that something must be done to help a vulnerable population that has been historically discriminated against. As previously discussed, each argument presented has its own drawbacks. On the other hand, doing nothing is not an adequate response to this problem. The development of the Yogyakarta Principles and the additional ten (YP+ 10)⁵⁴⁶ by the International Commission of Jurists and the International Service for Human Rights is a good start to the inclusion and development of LGBTQ rights on the international stage. One of the key statements from the YP+10 is that they acknowledge that international law

“will require revision on a regular basis in order to take account of developments ... and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries”.⁵⁴⁷

The notion that international laws should require revision on a regular basis is critical to help the LGBTQ community expand its protection from discrimination. Society and social norms evolve faster than laws which means that legal protections need periodic review to keep up.

⁵⁴⁶ Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta principles

⁵⁴⁷ Ibid.

While this may bring about various logistical issues, the intentions behind it might help evolve and adapt international norms that would be more effective in championing minority rights.

Conclusion

In this thesis I sought to answer the question, why do LGBTQ people face gross human rights violations in conflict zones despite there being general protections for all individuals in armed conflicts? This community has been at the forefront of violence and discrimination globally in peace time and during conflicts all around the globe. There are several treaties that provide some protections for sexual orientation and gender identity, however, IHL does not have any specific protections for these characteristics. To answer my research question, I used the Syrian civil war as a case study. This was because the treatment of LGBTQ people was so egregious and at the forefront of ISIS' policies, practices, and ideas. To answer the question, I focused on what the enabling factors for using violence against LGBTQ people in conflict zones are, and why it is still an issue prevalent in conflicts today. These factors include, first, the incomplete securitization of LGBTQ people due to Western vs. non-Western interpretations of human rights. Second, a parallel complete securitization of LGBTQ communities as security threats in Syria and other conflict zones that has led the Syrian government to attack LGBTQ based on their sexual orientation and/or gender identity.

I first established that there are unique instances in which LGBTQ people are more vulnerable to violence during peacetime. These include the development of laws that are used to persecute them and their sexual activity, being at risk for bringing shame to families with the potential of being victims of honour killings or being blackmailed and forced into non-consensual sexual acts. Moreover, I used an intersectional framework of analysis when looking at the violence that LGBTQ people face. The intersectional framework considers class, religion, social status, gender identity, and sexual orientation. When applying this framework in general, those with higher social status are more likely to be able to navigate society without facing

intense violence due to their sexual orientation. Applying the various layers of identity to sexual orientation, those who are poorer, have a non-cisgender identity, are refugees, or any other kind of similar social status, are more likely to face violence but do not report it due to fear of retribution in both peace and wartime.

Before analyzing the case study, this thesis took several theoretical stances to ground the analysis. First, I explored the human rights literature focusing on three important aspects – universalism versus cultural relativism, the status of rights within conflict zones, and how LGBTQ peoples’ rights are not respected. Within these debates, I took two main stances to understand the Syrian civil war and LGBTQ people. To begin, I adopted a universalist approach to human rights as it helps provide the framework for including LGBTQ protections in areas that are not as accepting as others. I used this approach as Lenzerini succinctly argues that if we left the application of human rights to all cultures to interpret, the legitimacy of international human rights law would be in jeopardy.⁵⁴⁸ Second, within the status of rights on the battlefield, this thesis adopts the dominant position shared amongst most nations which is that human rights law is still applicable and must be followed as closely as possible during times of conflict. This is because without having human rights law apply during conflicts, there is less incentive to protect them. Furthermore, without the application of human rights law during conflict, the gap in IHL in protecting LGBTQ people widens further. Since sexual orientation is not included as a protected characteristic in IHL, human rights law can help bridge the gap.

Finally, while there are many different approaches to security, this thesis uses the securitization approach. This approach allows for a deeper and more nuanced approach and understanding for why certain states have given LGBTQ people equal rights while others have

⁵⁴⁸ Lenzerini, Federico. *The Culturalization of Human Rights Law*. First edition. Oxford: Oxford University Press, 2014.

not, going so far as to target LGBTQ communities during armed conflicts. Other approaches include realism which is not necessarily able to provide the nuance needed to understand why the violations against LGBTQ people occur due to realism not considering human rights as the only unit of analysis is state security and not individual levels of analysis. Additionally, there is liberalism which can provide a better understanding of how international institutions can protect LGBTQ people, however, this approach has less to say about why these violations have and continue to occur. Overall, this thesis understands this problem as the West has securitized the rights of LGBTQ people, whereas other states such as Syria have securitized LGBTQ people as a threat.

Using the Syrian civil war as a critical case study, I sought out to determine whether or not LGBTQ people faced more specific and targeted violence during conflict than their heterosexual counterparts due to a lack of respect and recognition of human rights. I found that LGBTQ people were in fact targeted for their real or perceived sexuality prior to the civil war. There were many instances in which LGBTQ Syrians were subjected to brutal sexual and physical violence simply because they were LGBTQ. This was perpetrated by both the Syrian government and pro-Syrian forces, as well as non-state actors such as ISIS. Within the detention centres, checkpoints, and battlefield, LGBTQ people were forced to endure high levels of discrimination and sexual violence. Therefore, this case study effectively highlights the issue of targeted violence against LGBTQ people. The enabling factors and the reasons why violations against LGBTQ people in war is still an issue today are that LGBTQ people are vulnerable even in peacetime and this vulnerability becomes exacerbated in times of conflict. Within the Syrian context, homosexual acts are illegal and those engaged in them can face the death penalty. This puts them at risk during peacetime but carries carry over into times of conflict as they are then

targeted because of their sexuality. Second, these crimes are underreported due to shame and stigma around the sexual violence they faced. Moreover, due to homosexuality being criminalized within Syria, individuals who come forward are likely to face more violence from police and security forces. The criminalization combined with the stigma ultimately prevents individuals from accessing health or psychosocial care or pursuing any sort of legal action. Finally, there is a gap in IHL that does not explicitly include LGBTQ people as a protected group that needs specific care such as women, children, and the elderly. All of these factors coincide together to create a hostile environment for LGBTQ people on the battlefield.

Limitations

There is one main limitation to the research and argument. This limitation has been extensively explored throughout the paper, which is that there is simply not a lot of data on this topic as a whole. Since there is a lack of widescale empirical data, this thesis relied on reports from NGOs and branches of the UN which collected anecdotal evidence from interviews given by LGBTQ Syrian refugees. While the Syrian conflict accurately answered the research question, it might not be realistic to examine another conflict and achieve exactly the same results. However, it is reasonable to argue that Syria is likely representative of general trends in other conflicts where LGBTQ people have been targeted. Given how sensitive sexuality is when dealing with individuals who could face punishment for being outed, it will be difficult to gain future data on this issue until these laws are repealed.

Implications and Recommendations – Broad and Specific to LGBTQ securitization

I have identified several recommendations that could be used to help bridge the shortcomings of IHL. First, the international community and international organizations should be putting more pressure on states that have homophobic laws in place. Additionally, post-conflict reforms could also be a tool in which homophobic laws get repealed. While there is the potential for these reforms to be seen as Western neo-colonialism, there are several benefits that impact the whole of society. These include improvements to the healthcare system to better tackle the HIV/AIDS epidemic and freeing up law enforcement resources that would have been devoted to tracking and harassing LGBTQ people.

Second, there needs to be better reporting and support systems in place for LGBTQ people who suffer targeted violence. One of the main issues with the current reporting systems is that they do not provide accurate data for violence faced by LGBTQ people. This is a problem as the few men – LGBTQ or otherwise – who end up seeking medical help for sexual violence are faced with stigma and risk further violence or trauma from navigating the health and judicial systems. Additionally, most of the current services offered towards sexual violence are targeted at women and girls. This means that while humanitarian aid groups are able to effectively support women and girls who are victims, men and boys, and specifically those who are LGBTQ, are unlikely to receive the same level of care and support. Finally, many aid organizations and services are not trained in LGBTQ care and are unaware of “terms, innuendoes, euphemisms, and metaphors regarding sexual victimization”. Additionally, many organizations lack the ability and understanding of ever evolving queer culture and language in general, but also in the local context of where they are operating.

The third and final recommendation is to adapt IHL and military methods. There are several ways in which this could be achieved. First the ICJ could hear a court case about how

during peacetime, LGBTQ people face violence and discrimination which violates the ICCPR. This could potentially force Syria to remove their homophobic laws. Second, the ICC could hear a case about the treatment of LGBTQ people during the civil war as the Syrian government and government affiliated forces have demonstrably violated IHL including crimes against humanity and war crimes. More importantly, the ICJ must wait for cases to be brought to them whereas the ICC can take a proactive role by having their chief prosecutors conduct preliminary investigations into potential LGBTQ specific cases. Finally, states themselves can change military manuals, standard operation procedures (SOPs), and rules of engagement (ROEs) in specific conflicts to include LGBTQ sensitive approaches and procedures on how to interact with and support LGBTQ victims of violence.

The implications of this research highlight the importance that LGBTQ people are still incredibly vulnerable in peace time, but especially during times of conflict. As a group that is afforded little to no protections on a day-to-day basis, this lack of protection directly translates into being susceptible to targeted and increased violence when conflict breaks out. The findings also demonstrate that while there are legal protections for everyone on the battlefield, they are not followed based on the identity of the victims. With blanket protections, it leaves those who are powerless to be subjected to more intense violence as they are unlikely to report crimes for fear of retribution for their sexual orientation or gender identity. This is a seemingly large gap within the IHL legal framework that should be addressed as soon as possible. While there have been attempts within the past several years to recognize this within the ICC, no concrete court cases have been brought forward with sexual orientation as an issue. While the argument could be made that LGBTQ people are still covered and nothing needs to be changed, as previously

mentioned with the hate crime research, language does matter when it comes to the law.

Therefore, any and all attempts at being more inclusive within the legal language must be made.

Considering all of this within a securitization framework, this theory shows that securitization can be used in multiple ways and not necessarily for good. By framing LGBTQ people as a threat, states can justify violence against this group of people with little to no ramifications from within the state. Furthermore, this securitization of LGBTQ people is unreasonable as there is no actual security threat by this community simply based on sexual orientation or gender identity. This builds upon the cultural relativist argument which allows for each culture to deem what they think is acceptable within their respective societies. By not having a universalist approach and treating LGBTQ people as second-class citizens, they will continue to remain a vulnerable population at risk of targeted violence regardless of if there is a conflict present. This practice by states has created the enduring insecurity the community faces in peace and war.

Future Research

Given that the main limitation is that this is an under-researched topic area, there are many different avenues for future research. The main avenue for future research would be to analyze countries that have recently decriminalized homosexuality and have had conflicts and measure the change in societal attitudes towards LGBTQ people and whether or not that translated to better treatment towards them. A second potential area of future research is measuring the impacts of the UN and branches of the UN mentioning that LGBTQ people face higher levels of violence and discrimination, and that they need to be protected. It would be worthwhile to see if their statements have any bearing on whether or not states then enact positive changes within

their states and national legal frameworks. This could potentially have positive effects on societal attitudes towards homophobia and LGBTQ people. Should they have a positive impact, it could prove quite useful in ensuring that LGBTQ people can live their lives without the worry of enduring persecution and violence for something that they are unable to change.

Overall, any positive change in how LGBTQ people are treated will likely take several years to occur. Until the international community explicitly states that sexual orientation and gender identity are prohibited grounds for targeting individuals during the conflict, LGBTQ people face threats not faced by other vulnerable groups (Human Dignity Trust, 2015).

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