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European Yearbook
on Human Rights

YEARBOOK 17

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on Human Rights

edited by

Wolfgang Benedek
Matthias C. Kettemann
Reinhard Klaushofer
Karin Lukas
Manfred Nowak

With growing populism and further backlash against human rights defenders, 2016 saw a year of growing human rights challenges.

Across 33 contributions in five sections, the European Yearbook on Human Rights 2017 explains and contextualizes key developments in human rights in the past year. With special sections dedicated to each of the three main organizations charged with securing human rights in Europe (EU, Council of Europe and OSCE), as well as a section on cross-cutting issues, the Yearbook provides much-needed analysis and insightful commentary.

Edited jointly by representatives of four major European human rights research, teaching and training institutions, the Yearbook 2017 remains, in its 9th edition, essential reading for anyone interested in human rights in Europe and the world.



Benedek/Kettemann/Klaushofer/
Lukas/Nowak (Eds.)



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**Zsolt KÖRTVÉLYESI, Balázs MAJTÉNYI
and Péter KÁLLAI**

Binding Principles and Contested Concepts: The Principles of Equality, Indivisibility and Universality before the Human Rights Council*

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Keywords

Democracy, equality, European Union, Human Rights Council, human rights, indivisibility, LGBT persons, migrants, rule of law, universality

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A Introduction

The United Nations (UN) Human Rights Council (HRC) was established in 2006 as a subsidiary body of the UN General Assembly (UNGA)¹ and replaced its predecessor, the UN Commission on Human Rights (CHR). The former Commission played an undeniable role in the history of international human rights protection, yet the body was criticised by many scholars, states and NGO representatives for various reasons, including the protection of regional interests and the lack of political will to hold influential human rights violators accountable.² Criticism led to the consensus that, for lack of credibility,³ the Commission “should disappear”.⁴

The Council’s task is to be the primary UN forum for discussing and mainstreaming human rights, setting standards, promoting development, monitoring implementation and intervening where needed.⁵ An important development is the introduction of the Universal Periodic Review (UPR) where states review each other’s human rights records and make recommendations that the responding state can note or accept.

We are interested in how the values of human rights, democracy and the rule of law that are central to the EU – generally as well as for its external action (TEU Articles 2 and 21) – work in this forum. Considering the Council’s role in the UN human rights machinery, i.e. that it should influence both the doctrinal development in jurisprudence and the activity of other UN human rights bodies, the problems identified by our enquiry will be likely to have further implications for human rights promotion worldwide.

The paper proceeds in two moves. First, it briefly discusses the conceptual background of the concepts of human rights, democracy and the rule of law, and second, it assesses their conceptualization in practice, before the HRC, through studying its activities concerning members of two vulnerable groups: LGBT persons and migrants.

We argue that democracy, human rights and the rule of law appear as abstract substantive concepts with competing conceptions⁶ in the activity of the HRC. As a result, principles of international human rights protection like the ‘universality and indivisibility of human rights’ and ‘the principles of equality’ (protected under

1 UNGA Res. 60/251, Human Rights Council, UN Doc. A/RES/60/251 of 15 March 2006.

2 See, e.g. Paul G Lauren, To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the Human Rights Council, *Human Rights Quarterly* 29 (2007) 307, 308.

3 Olivier De Frouville, Building a Universal System for the Protection of Human Rights: The Way Forward, in: M. Cherif Bassiouni and William A. Schabas (eds.), *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (2011), 242.

4 *Ibid.*

5 Grażyna Baranowska et al., EU human rights engagement in UN bodies, FRAME Deliverable 5.1 (30 November 2014), <http://www.fp7-frame.eu/frame-reps-5-1> (12 March 2017), 33-34, UNGA Res. 60/251, Human Rights Council, UN Doc. A/RES/60/251 of 15 March 2006, para. 5.

6 For the distinction concepts/conceptions, see John Rawls, *A Theory of Justice: Revised Edition* (1999), 9ff.; Ronald Dworkin, *Taking Rights Seriously* (1977), 103, 134-136, 226-227; and Ronald Dworkin, *Law’s Empire* (1986), 70-71.

Article 21 (1) TEU) can play an important role in determining the actual content of these values. This paper will underline how the different interpretations of universality, indivisibility and equality can lead to difficulties when the EU promotes them in its external actions. Our analysis will build on how these principles appear in debates, votes, statements, recommendations and resolutions at the HRC and in the UPR process.

Our case studies on the rights of LGBT persons and migrants show that while the said principles are also “incompletely theorized”⁷ concepts which are not contested on the normative level, governments offer competing interpretations that lead to radical variation in responses to common patterns of discrimination. The two focus areas allow us to trace inconsistencies from various sides of global divisions, paying special attention to charges like cultural imperialism, a common line of critique levelled against the EU.

B Conceptualization of Human Rights, Democracy and the Rule of Law

1 Interconnected Concepts

This analysis deals primarily with human rights, given its nature as a human rights body, but these are often closely connected to the rule of law and democracy. To take an example, the credibility of HRC procedures is interconnected with the issue of international rule of law,⁸ and the election of the members of HRC is interrelated with democratic principles. Just like domestic legal systems, international law requires non-arbitrariness and the supremacy of law.

Let us consider three examples of how the rule of law and democratic principles can apply to the proceedings of the HRC itself. First, the CHR was abolished without the amendment of Article 68 of the UN Charter,⁹ which potentially infringes on the rule of law as well as undermines the legitimacy of the new body.¹⁰ Second, the HRC resolutions “are usually adopted without a vote or with a vote if there are diverging positions within the HRC”.¹¹ This process seems right from a practical point of view but can provide less transparency and accountability (that are central to democratic functioning) than a more formal voting system. Third, NGOs, which could monitor the activity of HRC, are sometimes marginalized¹² or

7 We think that Cass Sunstein's notion of “incompletely theorized agreements” is applicable here: states respect these principles without agreeing on their exact meanings. See Cass R. Sunstein, *Incompletely Theorized Agreements in Constitutional Law*, *Social Research* 74 (2007) 1, 1-24.

8 See Simon Chesterman, *An International Rule of Law?*, *American Journal of Comparative Law* 56 (2008), 331.

9 UN Charter, Art. 68 (reads: “The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”).

10 See De Frouville (2011), 246.

11 See Grażyna Baranowska et al., *EU human rights engagement in UN bodies*, FRAME Deliverable 5.1 (30 November 2014), <http://www.fp7-frame.eu/frame-reps-5-1> (12 March 2017), 34.

12 Bertrand G Ramcharan, *The UN Human Rights Council* (2011), 124.

completely left out from negotiations.¹³ While a study by the Council draws the attention of states to the fact that “the empowerment and involvement of civil society in the practice of democracy is essential to its good functioning”,¹⁴ this does not seem to apply to the Council.

It is not only in procedural and institutional questions that the three concepts – human rights, democracy and the rule of law – are interrelated.¹⁵ E.g., the concepts of democracy and the rule of law will inevitably feature in analyses of human rights issues. The HRC (and formerly the Commission)¹⁶ has adopted resolutions that emphasize the interdependence between democracy and human rights, implying that the two concepts can mutually reinforce each other. The Universal Declaration of Human Rights links human rights to the rule of law and the UN General Assembly has underlined in its decisions that the rule of law is “an essential factor in the protection of human rights”. For instance, questions of access to justice, effective remedies or other procedural rights, are inseparable from the issue of the rule of law. Or, if one investigates the concept of representation and the participation of vulnerable groups, one is inevitably drawn to questions concerning the conceptualization of democracy. The same is true for democracy: a deficit in democracy might jeopardize the efficient protection of human rights.¹⁷

2 Diverse Definitions

Given the diversity of its members that include countries like China, Cuba, Germany, India and the US, various formal and substantive interpretations of democracy appear in the functioning of the Council. Because of the interdependence of the three concepts,¹⁸ some interpretations of democracy and the rule of law can

13 See De Frouville (2011) 249.

14 UNHRC, Study on Common Challenges Facing States in their Efforts to Secure Democracy and the Rule of Law from a Human Rights Perspective – Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/22/29 of 17 December 2012, 4.11.

15 See Alexandra Timmer, Concepts of human rights, democracy, and the rule of law: a literature review, FRAME Deliverable 3.1 (28 November 2013), <http://www.fp7-frame.eu/frame-reps-3-1> (13 March 2017), 2.

16 See e.g. UNCHR Res. 57, The Promotion of the Right to Democracy, UN Doc. E/CN.4/RES/1999/57 of 27 April 1999; UNCHR Res. 47, Promoting and Consolidating Democracy, UN Doc. E/CN.4/RES/2000/47 of 25 April 2000; UNCHR Res. 41, Continuing Dialogue on Measures to Promote and Consolidate Democracy, UN Doc. E/CN.4/RES/2001/41 of 7 November 2000; UNCHR Res. 46, Further Measures to Promote and Consolidate Democracy, UN Doc. E/CN.4/RES/2002/46 of 23 January 2002; UNCHR Res. 36, Interdependence between Democracy and Human Rights, UN Doc. E/CN.4/RES/2003/36 of 23 April 2003; UNCHR Res. 30, Enhancing the Role of Regional, Subregional and Other Organizations and Arrangements in Promoting and Consolidating Democracy, UN Doc. E/CN.4/RES/2004/30 of 19 April 2004; UNCHR Res. 32, Democracy and the Rule of Law, UN Doc. E/CN.4/RES/2005/32 of 19 April 2005; UNHRC Res. 19/36, Human rights, democracy and the rule of law A/HRC/RES/19/36 of 23 March 2012, UNHRC Res. 18/15, The incompatibility between democracy and racism, UN Doc. A/HRC/RES/18/15 of 14 October 2011.

17 See Chesterman (2008), 345; UNGA Res. 61/39, The Rule of Law and National and International Levels, UN Doc. A/RES/61/39 of 4 December 2006.

18 Ibid. (stating that “[d]emocracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing”).

foster, while others can weaken international human rights protection, which is based on “the inherent dignity and [...] the equal and inalienable rights of all members of the human family”.¹⁹

For example, China rejected many recommendations regarding civil and political rights and at the same time the country accepted a recommendation on the rule of law and on deepening the reform of the judicial system.²⁰ The rule of law now ranks very high on China’s domestic agenda, e.g. the rule of law was the central theme of the 4th Plenum of the Chinese Communist Party.²¹ That is, a state can accept human rights supporting arguments that are based on the rule of law while it can reject arguments that are based on human rights, even if they address the same issue area.

Democracy also has diverse meanings, and very different political systems identify themselves as democracies. The terms (democracy, democratic) are not only used for liberal democracy but also for majoritarian democracy, Islamic democracy, people’s democracy, democratic centralism and so on.²² According to one of the Council resolutions “there is no single model of democracy and democracy does not belong to any country or region”.²³

3 A Substantive, Human Rights Supporting Interpretation of Democracy and the Rule of Law

Chesterman argues that if one uses the concept of international rule of law across cultures and political systems, the commonly accepted interpretation “will necessarily be the formal one”.²⁴ This statement could also be true for the commonly acceptable concept of democracy. Consensus at the universal level is hard to achieve even under the formal concept. The Council member states represent various political systems, yet, HRC resolutions stress that the concepts are interrelated and specify *substantive* (moral) elements. Council Resolution 19/36 “stresses that democracy includes respect for all human rights and fundamental freedoms”,²⁵ which means that human rights are a defining element of democracy. The resolution also links human rights to the rule of law: “the respect

19 UNGA Res. 217 A (III), Universal Declaration of Human Rights, UN Doc. A/RES/3/217 A of 10 December 1948.

20 UNHRC, Report of the Human Rights Council on its Eleventh Session, UN Doc. A/HRC/11/37 of 16 October 2009, para. 522.

21 Communiqué of the 4th Plenary Session of the 18th Central Committee of CPC, http://www.china.org.cn/china/fourth_plenary_session/2014-12/02/content_34208801.htm (18 March 2016).

22 For a critical take on qualifiers, see the notion of “weasel words”. “As a weasel is alleged to be able to empty an egg without leaving a visible sign, so can these words deprive of content any term to which they are prefixed while seemingly leaving them untouched.” See Friedrich August von Hayek, *The Fatal Conceit. The Errors of Socialism* (1988), 116, citing Shakespeare’s *As You Like It*: “I can suck melancholy out of a song, as a weasel sucks eggs.” (*As You Like It*, 11,5). Hayek himself uses this argument against the word “social”.

23 UNHRC Res. 19/36, Human rights, democracy and the rule of law, UN Doc. A/HRC/RES/19/36 of 19 April 2012, 2.

24 See Chesterman (2008), 342.

25 UNHRC Res. 19/36, Human rights, democracy and the rule of law A/HRC/RES/19/36 of 23 March 2012 2, para. 1.

of human rights and the rule of law are essential for the stability of democratic societies”.²⁶ On the other hand, China and Cuba abstained from voting on the resolution, and it is generally true that there are Council resolutions that do not show the common position of states on issues related to human rights, democracy and the rule of law, but only the position most acceptable for the majority of member states. This can result in levelling down, in opting for a more formal understanding to capture a commonly acceptable position for all. What makes Council resolutions interesting is that there are cases where substantive elements feature nevertheless in a process that could be labelled a “rough consensus”,²⁷ without strong opposition but with a number of abstentions instead of unanimous support for a resolution.

Some definitions of democracy contain moral elements that are principles of the international human rights protection. Council resolutions link democracy and the principle of equality by stating, for instance, that “human rights, democracy and the rule of law are strengthened when states work to eliminate discrimination [...] and when they strive to ensure equality between men and women in decision-making”,²⁸ or “democracy and racism are incompatible”.²⁹ One HRC study states that “democracy is a political norm predicated upon equality and justice”.³⁰ The moral interpretations of democracy that are based on equality clearly support international human rights protection.

We can conclude that for an international human rights organisation like the HRC it is logical to build on basic principles of international human rights protection like equality and adopt a substantive definition of democracy and the rule of law. It is important, on the other hand, to underline that democracy, the rule of law and human rights work as aspirations,³¹ and the soft law resolutions of the Council are not binding, but only commitments that encourage UN member states to achieve the democratic rule of law with fundamental rights. While we can register the aspirational value of these soft law documents for strengthening a substantive definition of democracy and the rule of law, we are far from a

26 Ibid., 3, para. 11.

27 See the use of the concept by the Internet Engineering Task Force (IETF), in “rough consensus and running code”. Pete Resnick, On Consensus and Humming in the IETF (June 2014), <https://tools.ietf.org/html/rfc7282> (12 March 2017), originally by Dave Clark, A Cloudy Crystal Ball – Visions of the Future, in: Megan Davies, Cynthia Clark and Debra Legare (eds.), Proceedings of the Twenty-Fourth Internet Engineering Task Force (1992), <http://www.ietf.org/proceedings/24.pdf> (11 March 2017) 539-543.

28 UNHRC Res. 19/36 (2012), para. 1.

28 Ibid., 2.

29 Ibid., 3, para. 13 or see UNHRC Res. 18/15, The incompatibility between democracy and racism, UN Doc. A/HRC/RES/18/15 of 14 October 2011, para. 4 (on the incompatibility between democracy and racism that underlines the following: “the elimination of all forms of discrimination as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and the respect for ethnic, cultural and religious diversity contribute to strengthening and promoting democracy and political participation”).

30 See UNHRC, Study on Common Challenges Facing States in their Efforts to Secure Democracy and the Rule of Law from a Human Rights Perspective – Report of the United Nations High Commissioner for Human Rights (2012) 4.

31 See Chesterman (2008), 361.

“global rule of law”, an emergence of an international regulation “that touches individuals directly”.³²

C Case Studies on Vulnerable Groups

1 LGBT Rights

The HRC has adopted three resolutions on LGBT³³ rights. In 2011, the Council adopted Resolution 17/19 on “human rights, sexual orientation and gender identity” with a margin of 4 votes (23 votes for and 19 votes against the resolution with 3 abstentions).³⁴ A follow-up resolution was adopted in 2014, this time with a margin of 11 votes. The record shows a move towards abstentions (and closer to “rough consensus”) with 25 votes for and 14 votes against with 7 abstentions.³⁵ A third resolution was adopted in 2016, with 23 votes in favour and 18 votes against and six abstentions. These resolutions underline “the universality, interdependence, indivisibility and interrelatedness of human rights”, based on international human rights documents.³⁶ The direct outcome of the first resolution was a report prepared by the UN High Commissioner for Human Rights (UNHCHR) concerning “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” that also emphasises the universality of human rights and the principle of non-discrimination.³⁷

The very fact of the division between Council member states can indicate that universality is partial and remains an ambition not universally shared within the HRC.³⁸ While the UPR process might contribute to a general sense that human

32 Ibid., 355-356.

33 The term LGBT is used at the HRC while the term LGBTI is used by the EU, whereas other organizations, documents use other terms (e.g. LGBTQI – lesbian, gay, bisexual, transgender, *queer*, intersexual) to denote persons specified along gender identity and sexual orientation. A more accurate description is, accordingly, SOGI, “sexual orientation and gender identity”, the expression used, e.g. in the two HRC resolutions on the topic.

34 UNHRC Res. 17/19, Human Rights, Sexual Orientation and Gender Identity, UN Doc. A/HRC/RES/17/19 of 14 July 2011.

35 UNHRC Res. 27/32, Human Rights Sexual Orientation and Gender Identity, UN Doc. A/HRC/RES/27/32 of 2 October 2014.

36 The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and UNHRC Res. 27/32 also refers to the Vienna Declaration and Programme Action.

37 UNHRC, Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity – Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/19/41 of 17 November 2011. See also the update: UNHRC, Discrimination and violence against individuals based on their sexual orientation and gender identity – Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/29/23 of 4 May 2015.

38 Such challenges are not unique to the Human Rights Council, see the overviews of other UN bodies: Anthony S. Winert, Levels of Generality and the Protection of LGBT Rights Before the United Nations General Assembly, *William Mitchell Law Review* 41 (2015), 80; Paula Gerber and Joel Gory, *The UN Human Rights Committee*

rights are universal, LGBT rights seem to be at the edge of this consensus, even if gravitating towards the centre. The division that still exists follows a more or less clear geographical pattern, with the EU and the Americas – and some other countries like South Africa,³⁹ Australia, Japan and Korea, Thailand – on the supporting side while China, Russia, countries in the African Group, the Arab Group and, most prominently, States of the Organisation of Islamic Cooperation (OIC) in the opposition. Schlanbusch, based on data from the first reporting cycle, concludes that:

“recommendations concerning sexual orientation/gender identity (SOGI) rights are going from the ‘West’ to the ‘Global South’. [...] This could support the idea of a Western hegemony in the construction of human rights norms, however it could also be an indication of where SOGI rights are perceived to be frequently violated.”⁴⁰

The issue of universality is thus especially relevant in the case of LGBT rights. It seems that relying on the concept of universality, states are more likely to make and accept recommendations that are based on instruments not ratified by the State under review. Yet, it also remains true that states are more likely to not accept recommendations concerning LGBT rights. Looking at the statistics (see Figure 1 below), it is telling that the acceptance rate for these rights is less than half of the total average: overall, approximately 73 % of the recommendations are accepted, while in the case of recommendations concerning sexual orientation and gender identity, the rate is 36 %.

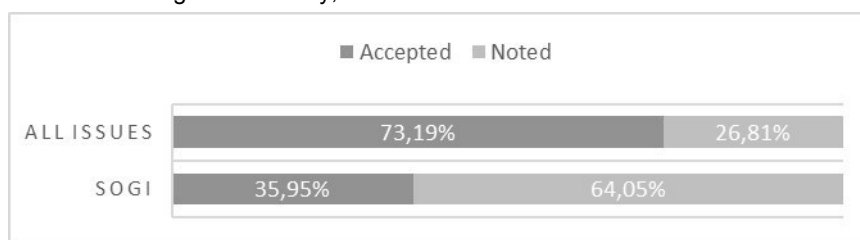


Figure 1. Diversity in universality? Average of state responses to all recommendations, and recommendations on sexual orientation and gender identity (SOGI).⁴¹

According to the account of Julie Billaud – working in the team at the Office of the UN High Representative for Human Rights (OHRHR) in charge of preparing documents for the UPR (first cycle) – the decision to include LGBT rights under

and LGBT Rights: What is it Doing? What Could it be Doing?, Human Rights Law Review 14 (2014), 403.

39 For a conclusion that South Africa acts, ultimately, as an obstacle to human rights promotion, with a specific remark on the ambiguous stance towards LGBT rights, see Eduard Jordaan, South Africa and the United Nations Human Rights Council Human Rights Quarterly 36 (2014) 90, 117.

40 Mari D. Schlanbusch, Sexual Orientation and Gender Identity Rights in the Universal Periodic Review (2013), http://www.upr-info.org/sites/default/files/general-document/pdf/-schlanbusch_-_sogi_rights_in_the_upr_-_2013.pdf (18 March 2016), 54.

41 Source: UPR Info Global Statistics: “Response”; and Issues Statistics: “Sexual Orientation” and “Gender Identity” (data as of 5 March 2017). The rates show great stability over time, with no considerable change between the first and the second UPR cycle.

the section “right to privacy” instead of “non-discrimination”, meant to take into account “the sensitivities of certain states” regarding these rights, as an opposite decision “would signify an ‘official’ recognition of LGBT rights as a universal human rights concern”.⁴²

Concerning the standard of “democratic human rights with the rule of law”, this means that in many cases laws are applied in a discriminative way and/or discriminatory laws are applied to LGBT people, and this is seen by (a decreasing but considerable) part of the HRC as in line with international human rights standards. This raises issues of human rights as well as rule of law and, when (as often) impeding the participation and integration of LGBT people, it is a violation of the democratic principle as well. While the importance of equality, diversity and non-discrimination is emphasized by virtually all actors, when it comes to application in the LGBT field, divisions resurface.

Arguments against the 2011 LGBT resolution include the following: lack of international legal basis, undermining human rights and their universality, anti-democratic, violating religious diversity, and diverting attention from real pressing issues.⁴³

A common argument was that LGBT rights cannot bind states as they are not recognized by international law. This can be presented as a rule of law argument, too.⁴⁴ The representative of Pakistan, speaking on behalf of the OIC, said that they were

“very concerned that the Council had chosen to discuss very controversial notions [...] on human rights, sexual orientation and gender identity. The OIC was very concerned about attempts to include in this forum notions that had no basis in international law and international legal and human

42 Julie Billaud, *Keepers of the Truth: Producing ‘Transparent’ Documents for the Universal Periodic Review*, in: Hilary Charlesworth and Emma Larking (eds.), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (2014), 77.

43 Regarding the last item the comment by the representative of Pakistan who argued that the resolution “would divert the attention of the Council from other important issues” is noteworthy; or, in a harsher formulation: “Bangladesh was disturbed by the focus on personal sexual interests while discrimination based on race, ethnicity, religion and other issues remained ignored.” *Ibid.* Also, Mauritania: “In addition to be a highly controversial subject on many levels, cultural, moral, religious, this issue had nothing to do with human rights, as did other issues dealt with in the Human Rights Council, such as violence against women or violations of human dignity. Imposing this issue was unacceptable.” UNHRC, *Council Establishes Mandate on Côte d’Ivoire, Adopts Protocol to Child Rights Treaty, Requests Study on Discrimination and Sexual Orientation* (17 June 2011), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11167&LangID=E> (18 March 2016). The item has since disappeared from the OHCHR website but a copy remains available at <http://web.archive.org/web/20160303213404>, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11167&LangID=E> (5 March 2017).

44 As Dominguez-Redondo noted, states “have on occasion rejected recommendations on the basis that they do not engage recognised human rights; for example, in relation to sexual discrimination and sexual orientation”. See Elvira Dominguez-Redondo, *The Universal Periodic Review – Is There Life Beyond Naming and Shaming in Human Rights Implementation?*, *New Zealand Law Review* 4 (2012) 673; also Rosa Freedman, *New Mechanisms of the UN Human Rights Council*, *Netherlands Quarterly of Human Rights* 29 (2011) 289, 310.

rights standards. The OIC noted with concern the attempts to create new standards and include notions that had never been agreed before.”⁴⁵

A widely used rejection argument by states is to trump LGBT rights with cultural diversity arguments. The representation of Qatar “stressed the need to respect cultural diversity [invoking Article 29 of the UDHR] and the responsibility of States in maintaining social and democratic order” and “indicated that this issue went against Islam”.⁴⁶ Such arguments might go hand in hand with arguments about national sovereignty (as a guarantee of international diversity), illegitimate imposition of values (particularly of western values, as a surviving form of imperialism).⁴⁷ Presenting a similar argument almost in the name of an entire continent, Nigeria argued that:

“African countries, and more than 90 per cent of the African people did not support this draft resolution. South Africa had referred to a declaration of African leaders indicating desires to deal with human rights in an objective and non-confrontational manner and accused the resolution of disregarding the universality of human rights and putting individual conduct above international instruments. Notions on sexual orientation should not be imposed on countries.”⁴⁸

Furthermore:

“Nigeria said it was unacceptable that countries lacked the ability to have laws on sexual orientation and countries lacked the political will to subject themselves to a true picture of democracy. It went against all norms preached in the Human Rights Council, such as transparency, accountability and democracy. This was a signal that the Human Rights Council should be careful to not again go against its roots.”⁴⁹

The argument that protecting LGBT rights at the international level is not simply arbitrary, but also undermines human rights in general, and universality in particular, is also recurrent. For instance Mauritania, putting it even more bluntly:

45 UNHRC, Council Establishes Mandate on Côte d’Ivoire, Adopts Protocol to Child Rights Treaty, Requests Study on Discrimination and Sexual Orientation’ (2011). Along the same lines, see Saudi Arabia: “the draft resolution was not in line with internationally agreed human rights principles.” Bahrain: the country “[...] condemned the attempt to make the Council deal with controversial issues such as gender identity. This was an attempt to create new standards and new human rights by misinterpreting the existing international human rights standards. These were issues based on personal decisions and were not fundamental human rights.” Bangladesh: “[t]here was no legal foundation for this draft resolution in human rights instruments”. Mauritania: the country “considered that this issue was not within the scope of any international treaty”. Ibid.

46 Ibid. See also Pakistan: “[t]he international community had agreed during the Vienna Conference that while considering human rights, national, regional and cultural specificities would be taken into account.”

47 According to Saudi Arabia, it “was not appropriate to impose these values on other countries. Cultural and religious considerations should be taken into account. It was not appropriate to impose values without considering them as counter to Sharia in Islam, and other religions”. Ibid.

48 Ibid.

49 Ibid.

“the resolution did not promote the advancement of human rights but rather the dehumanisation of human beings.”⁵⁰

A similar trend appears in some of the comments on LGBT related recommendations. Samoa rejected the recommendations concerning the decriminalization of sexual activity between consenting adults⁵¹ with the following reasoning:

“There have not been formal charges before the Courts based on sexual orientation and gender identity and if so, the courts would rule them out as discriminatory. [...] Decriminalizing sexual activity of sodomy is not possible at this time because of cultural sensitivities and Christian beliefs of the Samoan society.”⁵²

While the first part of the argument raises serious doubts about the concept of the rule of law in the country, the second voices well-known concerns invoking culture and religion. In the review process concerning Tonga, Bangladesh indicated that

“the purpose of UPR was not to impose the values of one society on another and noted that if the traditional society of Tonga does not permit consensual sex between two men or two women, one should refrain from imposing this on them, as it is outside the purview of universally accepted human rights norms. As there is no treaty obliging Tonga to do otherwise.”

Bangladesh recommended Tonga “continue to criminalize consensual same sex, which is outside the purview of universally accepted human rights norms, according to Tonga’s national legislation”.⁵³ In an interesting twist, Tonga not only rejected three other recommendations, on decriminalization, but also the Bangladesh recommendation, on upholding criminalization, claiming that it has “a Christian society that believes in tolerance and respect across difference. A respect for difference allows the widest margin of appreciation to lawmakers as well as other stakeholders and encourages robust debate about equality within society”.⁵⁴ This – unsuccessful – attempt to synchronise criminalization and tolerance

50 Ibid. Milder forms of opposition also appeared during the debate, arguing that some “internal diversity” or democratic dissension does not allow support. Jordan stated that “the text before the Council had rendered it divided and prevented it from obtaining a joint position. Jordan regretted it could not join the consensus on this draft resolution”.

51 UNHRC, Report of the Working Group on the Universal Periodic Review – Samoa, UN Doc. A/HRC/18/14 of 11 July 2011, Recommendations 75.38-75.41 by Canada, France, Norway and the United States respectively.

52 UNHRC, Report of the Working Group on the Universal Periodic Review – Samoa – Addendum – Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, UN Doc. A/HRC/18/14/Add.1 of 21 September 2011, para. 29; Natalie Baird, *The Universal Periodic Review: Building a Bridge between the Pacific and Geneva?*, in: Charlesworth and Larking (eds.) (2014), 195.

53 UNHRC, Report of the Working Group on the Universal Periodic Review – Tonga, UN Doc. A/HRC/8/48 of 5 June 2008, para. 58. See also Walter Kälin, *Ritual and ritualism at the Universal Periodic Review: a preliminary appraisal*, in: Charlesworth and Larking (eds.) (2014), 36; Schlanbusch (2016), 36.

54 UNHRC, *Universal Periodic Review – Tonga (2008)*, para. 65. See also Baird (2014), 196.

demonstrates how the religious reference can be used both for and against LGBT rights.

While the Bangladesh proposal is a somewhat unique case of a human rights proposal arguing for a blatant violation, it shows the extent to which the UPR process relies on state input, which can jeopardize universality. Despite strong opposition to LGBT rights, there are states that come forward with progressive recommendations, but this pattern can result in inconsistency, e.g. in raising LGBT issues in some cases but not in others. For example, LGBT concerns were not raised in the first cycle in cases such as Bahrain, China (although here the issue did come up in the second cycle), Jordan, Pakistan or Saudi Arabia.⁵⁵

Selectivity might be present also in the types of issues and types of recommendations picked by the reviewing States. Concerning the danger of recommendations that are too vague, based on data from the first cycle, LGBT recommendations seem to be more specific than the average.⁵⁶ The increased specificity is, at least partly, a result of the fact that many recommendations ask for decriminalization of sexual activity between consenting adults. On the other hand, this might also mean that other types of issues remain under the carpet.⁵⁷

This short overview of LGBT rights at the HRC shows that despite repeated rejections of denial of rights based on cultural relativist arguments (resolutions, statements of the Secretary General and state representatives, recommendations etc.), the inclusion of LGBT rights in the notion of universality remains a continuing challenge, and arguments about diversity, democracy and the rule of law are used on both sides of the debate. Perceptions of imposition and cultural imperialism might be reinforced by formulating opinions as a group, i.e. EU member states.

2 Migrants' Rights

The HRC has always paid special attention to the rights of migrants. For example, the mandate of the Special Rapporteur on the Human Rights of Migrants was created in 1999 by the Commission on Human Rights, and it was strengthened and further extended several times by the HRC.

The risks of violating human rights can take various forms in the context of international migration, largely falling under three areas of common threats.⁵⁸ The first set of violations concerns the enhanced vulnerability of migrants. The circumstances leading to migration (poverty, armed conflict etc.) and the exploitive

55 Based on data from UPR Info.

56 Schlanbusch (2016), 54.

57 Issues can range from discrimination, violence, harassment (arrests and other harassment by police, by private actors), hate crimes, through torture, cruel and inhuman treatment, freedom of expression, assembly and association, privacy, criminalization, legal recognition (recognized partnerships: civil unions, same-sex marriages, adoption, hospital visits and other health care related decisions, name changes, inheritance, social benefits, tax benefits, social protection *etc.*, change of sex (legal recognition and financial support), discrimination in employment (outright persecution, don't ask, don't tell, no state-sponsored discrimination, legal protection against private discrimination) to support and protection to human rights defenders. Grounds of discrimination can involve (actual and perceived) sex, gender and sexual orientation.

58 Kristen Hill Maher, *Who Has a Right to Rights? Citizenship's Exclusions in an Age of Migration*, in: Alison Brysk (ed.), *Globalization and Human Rights* (2002), 19.

nature of human trafficking force people into human rights threatening (sometimes life-threatening) situations. The second type of threats is the potential human rights violations related to crossing borders and applying for asylum, for example violation of the right to a fair trial (access to justice, effective remedies, prohibition on arbitrary detention) or of the non-refoulement principle. The third type concerns the violations of the social and political rights of migrants in relation to their status as non-citizens. While states usually devote at least some attention to the first two issues, they tend to neglect the third set of potential violations. For instance, ensuring human rights exclusively to citizens instead of a universal approach covering all residents can jeopardize efforts of integration by those who do not have access to quick naturalization but nevertheless seek integration into the society.

Since 2009 the HRC has adopted several resolutions in this area, and only one of them, Resolution 17/22 on “migrants and asylum-seekers fleeing recent events in North Africa” was accepted through formal voting, upon request by the representatives of Hungary (on behalf of the EU) and the US.⁵⁹ The resolution mentions among others that these groups of migrants and asylum seekers “are subjected to life-threatening exclusion, detention, rejection and xenophobia”.⁶⁰ It stressed in particular that

“countries of destination should deal with the arrival of thousands of migrants and asylum-seekers [...] in accordance with international obligations under international human rights law.”⁶¹

The division follows the geographic pattern common to the area of migrants’ rights. Angola, Bahrain, Bangladesh, Cameroon, Ecuador, Gabon, Ghana, Guatemala, Jordan, Senegal, Uganda, Zambia supported the resolution while several EU countries – Belgium, France, Hungary, Poland, the UK – and the US opposed it.

Earlier research has shown how, in some areas that include migrants’ rights, the EU’s approach seems “thematically imbalanced and selective”.⁶² This also implies that less (successful) coordination in these areas is not necessarily a problem, but might actually be seen as beneficial, from the point of view of the substantive human rights issues.

Based on the Resolution 17/22, the OHCHR presented a report at the eighteenth session of the HRC.⁶³ The report states that the flows of people leaving North Africa in response to the events between January and August 2011 are mixed flows, because “they include people with various motivations and protection profiles, including refugees and asylum-seekers, unaccompanied and separated children, victims of trafficking, irregular migrants and smuggled migrants”.⁶⁴ Every migrant is entitled to the individual consideration of his or her particular circum-

59 UNHRC Res. 17/22, Migrants and Asylum-Seekers Fleeing Recent Events in North Africa, UN Doc. A/HRC/RES/17/22 of 19 July 2011.

60 Ibid., 2.

61 Ibid., 2, para. 6.

62 See Baranowska et al. (2014), 223. For further relevant observations, see also 84, 88, 99, 112 and 221.

63 UNHRC, The Situation of Migrants and Asylum-Seekers Fleeing Recent Events in North Africa – Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/18/54 of 1 September 2011.

64 Ibid., para. 61.

stances. “Some migrants will need the protection offered by specific legal regimes, such as refugee law or the protection of victims of trafficking. Others will need the protection of universal human rights norms that protect all persons regardless of their status”.⁶⁵ The report claims that this approach leads to greater protection of human rights. It follows therefore that there are migrants who do not fall under the protection of refugee law or the asylum system, but another aspect of the universal human rights protection system applies to them (e.g. political liberties or fair trial rights), in connection with the phase of crossing borders, and there are measures that violate the universality of human rights.

Between 2010 and 2016 several resolutions were adopted concerning migrants. Four of them are simply on the “human rights of migrants” (Resolutions 15/16, 18/21, 20/03 and 23/20)⁶⁶ and the resolutions adopted later have been focusing on more specific problems. (Resolutions 26/21, 26/19, 29/02, 32/14 and 33/7)⁶⁷ However all of them refer to the Universal Declaration of Human Rights, and the goal to secure “full respect for (or ‘enjoyment’ of) the human rights and fundamental freedoms of migrants” concerning various aspects of human rights in the context of ban on discrimination based on gender, race etc. Some of these resolutions mention work or education related topics in the context of universality, but they are mainly focusing on typical migrants-related human rights threats, such as xenophobia-motivated hate crimes and more specifically smuggling and human trafficking.

Most resolutions are accepted without a vote, however in debates some differences between countries and regions regarding migrants’ rights and the principle of indivisibility appear. In 2016 the representative of Pakistan stated that “the Syrian crisis had blurred the lines between migrants and refugees, and efforts were needed to curb those trends”.⁶⁸ Or it was mentioned by the representative of Thailand that “many of those irregular migrants should be accorded necessary assistance based on humanitarian principles. However, often they

65 Ibid., para. 62.

66 UNHRC Res. 15/16, Human Rights of Migrants, UN Doc. A/HRC/RES/15/16 of 6 October 2010; UNHRC Res. 18/21, The Human Rights of Migrants, UN Doc. A/HRC/RES/18/21 of 17 October 2011; UNHRC Res. 20/03, Human Rights of Migrants, UN Doc. A/HRC/RES/20/3 of 16 July 2012; UNHRC Res. 23/20, Human Rights of Migrants, UN Doc. A/HRC/RES/23/20 of 26 June 2013.

67 UNHRC Res. 26/21, Promotion of the Right of Migrants to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, UN Doc. A/DRC/RES/26/21 of 17 July 2014; UNHRC Res. 26/19, Human Rights of Migrants: Mandate of the Special Rapporteur on the Human Rights of Migrants, UN Doc. A/HRC/RES/26/19 of 11 July 2014; UNHRC Res. 29/02, Protection of the Human Rights of Migrants: Migrants in Transit, UN Doc. A/HRC/RES/29/2 of 22 July 2015; UNHRC Res. 29/12, Unaccompanied Migrant Children and Adolescents and Human Rights, UN Doc. A/HRC/RES/29/12 of 22 July 2015; UNHRC Res. 32/14, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, UN Doc. A/HRC/RES/32/14 of 1 July 2016; UNHRC Res. 33/7, Unaccompanied Migrant Children and Adolescents and Human Rights, UN Doc. A/HRC/RES/33/7 of 29 September 2016.

68 UNHRC, Human Rights Council Hold Clustered Interactive Dialogue, on Rights of Migrants and Extreme Poverty (14 June 2016), [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/6E2F32BB5012B430C1257FD200537F8F?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/6E2F32BB5012B430C1257FD200537F8F?OpenDocument) (10 March 2017) Pakistan, speaking on behalf of the Organization of Islamic Cooperation.

would fall prey to trafficking and other forms of human rights abuse”.⁶⁹ Many participants stressed the importance of economic, social and cultural rights, while Belgium mentioned the need to find the balance between social rights and civil and political rights.⁷⁰ Belarus also underlined the indivisibility of human rights, saying that human rights cannot be considered as a hierarchic system and the importance of “presented national measures to realize economic, social and cultural rights”.⁷¹ Egypt, among others, stated that countries recognize social rights, but “these were not ensured due to lack of adequate legislation”.⁷² Despite these somewhat opposing views, it is not apparent that the resolutions would amount to a step forward from the established common minimum standards regarding social rights.

The UPR recommendations show a more complex picture. First of all, it should be noted that the UPR system, unlike the resolutions, separates recommendations on asylum seekers from those on migrants. States seem to more likely not accept recommendations concerning migrants. The acceptance rate for migrant rights is around 57 % of the total, but the acceptance rate for recommendations concerning asylum seekers reaches nearly 66 %.

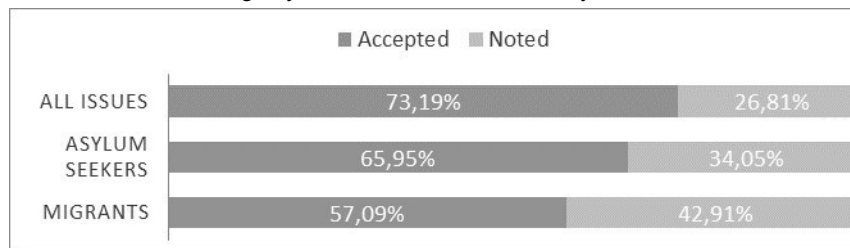


Figure 2: Recommendations, total average and recommendations on migrants and asylum seekers.⁷³

States are more likely to accept recommendations concerning the official method of crossing borders and the special issues of asylum seekers and refugees, and less likely to accept recommendations concerning migrants, the flow of people who want to settle in a given state.

“Accepted” recommendations regarding both categories (asylum seekers and migrants) address various issues, such as the duration of the procedure, rights of children, in a few cases freedom of religion, etc. However, almost all recommendations that the scrutinized states did not accept but ‘noted’ (especially the not too specific ones) are about international obligations. In the case of migrants, most of them call for ratifying the International Convention on the Protection of

69 UNHRC, Human Rights Council Holds Panel Discussion on technical cooperation to promote and protect rights of all migrants (22 March 2016), [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/47E83B26CE54C722C1257F7E00545DCD?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/47E83B26CE54C722C1257F7E00545DCD?OpenDocument) (10 March 2017).

70 UNHRC Human Rights Council Hold Clustered Interactive Dialogue, on Rights of Migrants and Extreme Poverty (14 June 2016).

71 Ibid.

72 Ibid.

73 Source: UPR Info Global Statistics: ‘Response’; and Issues Statistics: ‘Migrants’ and Asylum Seekers – Refugees’ (data as of 1 March 2017). Data from the second cycle up to May 2016.

the Rights of All Migrant Workers and Members of Their Families (ICRMW).⁷⁴ Today the Convention has fifty state parties and sixteen states that have signed but not yet ratified it. State parties are mainly from North Africa and from Latin America.⁷⁵ As globalization and the international circumstances continuously change the patterns of migration, it cannot be stated that the ICRMW is only an instrument of countries of origin, but it can be said, that the main countries of destination (EU member states, the US or Canada) have not ratified it. Resolutions 15/16, 18/21 and 23/20 expressly called upon states to consider signing and ratifying it. EU member states seem to have a consensus on not ratifying the document, and do not accept any relating recommendations. In fact, while having this *de facto* consensus, the migration policy of the EU becomes one of the core issues of EU legislation.⁷⁶ This is the main explanation for having no EU countries ratifying the ICRMW, even though the European Parliament has several times called on member states to ratify it. The European institutions have two main reasons to support the ratification. Firstly, there are indubitable economic advantages of migrant labour-force for EU countries. Secondly, ratifying this convention could send a strong message internationally about the universality of human rights: 'The fact that EU member states fail to maintain this level of commitment when it comes to the rights of third-country nationals gives rise to critical appraisal of the consistency of their (and the EU's) internal and external human rights policies.'⁷⁷

The OHCHR identifies several standpoints of the ratification debate,⁷⁸ but if we examine the substance of the rights included in the convention, it becomes hard to understand the outright opposition to ratification. The ICRMW does not create new human rights standards for migrants or higher standards than existing general ones that universally protect all human beings. Even irregular migrants have rights under all human rights instruments.⁷⁹ However, it does create a human rights based framework for regulating international migration. The main principle relates to the rule of law that requires basic procedural guarantees. The ICRMW includes more concrete formulations of the considerations, notes and requests of the above discussed resolutions and builds upon these a mandatory framework.

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body monitoring the implementation of the ICRMW by its State parties. The mandate of the CMW can be one of the main reasons for refusing ratification as it puts constant pressure on States to harmonize their legislation and practice with international obligations in the field

74 See UNGA Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, UN Doc. A/RES/45/158 of 18 December 1990. In accordance with Art. 87 (1), it entered into force on 1 July 2003.

75 See OHCHR Dashboard for an overview of the status of ratifications, <http://indicators.ohchr.org> (1 March 2017).

76 OHCHR, Rights of Migrant Workers in Europe (2011), http://europe.ohchr.org/Documents/Publications/Migrant_Workers.pdf (31 March 2016), 15.

77 Ibid., 17.

78 Ibid., 17-26.

79 Ibid., 22. (reading that "[a]ll European States concerned have ratified other core international human rights treaties that protect migrant workers" rights even when they are undocumented. In particular, European States have all ratified the ICCPR and the ICESCR; and they have all ratified the European Convention on Human Rights (ECHR)).

of migrant workers' rights through its periodic reports and recommendations.⁸⁰ The EU's approach seems to be guided by legally framed and largely politically motivated concerns, e.g. the division of competences between the EU and its member states – some member states pointing to the EU, while the Commission points to the member states on the question of ratification.⁸¹ The EP, for its part, has been repeatedly calling, since 1998, on member states to ratify the ICRMW.⁸² This cacophony does not make it easy to make a "European voice" heard in this area.

The refusal to ratify the social rights-centred ICRMW by states shows that even if they are engaged in ensuring a wide scale of human rights of migrants through several other mechanisms, treaties or institutions, they refrain from accepting new mechanisms and international obligations. This attitude seems to be prevalent in connection to all three types of potential human rights threats concerning international migration, not just the third type of potential threats. This situation goes against the principle of universal and equal application of human rights. The problem is apparent in light of the substantive concepts of democracy and rule of law as well. The liberal model of constitutional democracy is based on human rights, legal procedures based on the rule of law and equality before the law.⁸³ Violating the substantive rule of law principle in the case of migrants, by drawing a distinction between citizens and noncitizen migrants in ensuring human rights, also violates the equality before the law (including the equal protection of human rights) and the respect for fair trial and therefore leads to a violation of all three elements of the concept of democratic rule of law with human rights.

While there are other instruments which universally protect all human beings, "ICRMW is the only one that specifically protects and formulates the discussed human rights in a way that aims at addressing specific vulnerabilities of migrants" and even of irregular migrants.⁸⁴ This apparent generality in refraining from ratification shows that in the context of transnational migration at least when international institutions are stepping forward from weak recommendations, universality is not evident; leaving the citizen based approach behind is not axiomatic.

D Conclusions

Substantive interpretations of democracy and the rule of law appear in the practice and documents of the Council. The moral content of these two concepts make use of the principles of international human rights in general. Principles such as universality, indivisibility and equality inform the use of the concepts of democracy and the rule of law. This paper provides an analysis of how certain competing

80 Simple Guide to the UN Treaty Bodies, International Service for Human Rights (2010), 8.

81 For the examples, see Euan MacDonald and Ryszard Cholewinski, *The ICRMW and the European Union*, in: Ryszard Cholewinski, Paul De Guchteneire and Antoine Pécoud (eds.), *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (2009), 366 and 385 n 67.

82 *Ibid.*, 385.

83 See Alexandra Timmer et al., *EU Human rights, democracy and rule of law: from concepts to practice*, FRAME Deliverable 3.2 (31 December 2014), <http://www.fp7-frame.eu/frame-reps-3-2> (10 March 2017), 24.

84 OHCHR, *Rights of Migrant Workers* (2011) 23.

notions of these principles appear in the field of LGBT and migrants' rights between actors, and also its implications for the HRC.

Not surprisingly, the HRC founding resolution declares that "human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing".⁸⁵ Besides universal values, the founding resolution also underlines particular values: "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind."⁸⁶ The case studies have shown the challenges in how the Council documents try to make the universal values compatible with particular values.

The trend of regionalization that the activities of organizations like the EU or the OIC presents can be a challenge to *universality*, and seems to hinder efficiency of influencing the agenda of the Council by state actors.⁸⁷ However, as one expert with work experience at the Council noted, the phenomenon of cross-regional core groups counterbalances the problem of coordinated voting to some extent.⁸⁸

The activity of the Council fosters the idea of *indivisibility*, particularly through the functioning of the UPR and with drafting the Optional Protocol of ICESR. Both instruments reduced the differences between the monitoring mechanism of civic and political and social rights. Nevertheless, systematically neglecting larger groups of violations in the review process can go against the indivisibility of rights concept. E.g., in cases where criminalization is in place, other types of LGBT rights violations tend to be neglected. This suggests that indivisibility does not function properly in the practice of the HRC. Or one can mention that although HRC resolutions called upon states to ratify the social rights-centred ICRMV, neither EU member states nor the US have ratified it.

The power of the Human Rights Council lies in the fact that national governments express their views directly on human rights issues. Countries are the main actors and their overall human rights performance is the main target of scrutiny, especially in the UPR mechanism. In situations in which countries have conflicting views on what *equality* requires in concrete cases, they can voice and gather support from like-minded states. This should primarily be seen as a challenge for a coherent and universal application of equality. Our two case studies illustrated this incoherence from various sides. When conducting interviews with human rights experts, gender and LGBT issues commonly came up as an area where reconciling universal enforcement and cultural differences has not been successful.⁸⁹ Experts also mentioned the urban ghettos with Muslim and Roma majorities in the European context.⁹⁰ It is a common pattern that non-European countries criticized for their LGBT and gender records blame Western States for migrants' and minority rights.

85 UNHRC Res. 19/36 (2012), 1.

86 UNGA Res. 60/251 (2006).

87 That is why it is important that in general, EU countries do not seem to be acting as one unitary block. See Baranowska et al. (2014), Chapter V. B.

88 Interview with international expert with experience in diplomatic service (national and international level, including the HRC) (electronic interview, October 2015).

89 This area was mentioned during three out of the five interviews conducted by the authors.

90 Interview with regional human rights NGO expert (electronic interview, October 2015).

Our analysis has shown that while the principle of equality is an accepted and indeed central part of international human rights protection, its different and often relativist interpretations create divisions between states and regions. This not only demonstrates that universality, equality and indivisibility are interconnected but also that these same principles – and with them, vulnerable groups in particular and human rights promotion in general – are in constant danger.