

# China and LGBTQ+ Rights

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## Introduction

Human rights have become a priority of many countries as the United Nations has promoted them across the world. With the transition to the United Nations Human Rights Council and the Office of the High Commissioner for Human Rights, the UN has signaled to the world that human rights are and should remain important. Human rights efforts are shared openly at UN General Assembly (UNGA) and General Debate (UNGD) meetings, and states are encouraged to comply with international human rights standards with HRC's. However, some states have lagged behind in their adherence to international human rights norms. This makes research on global human rights practices important to hold governments accountable for the wellbeing of their people. The establishment of the Yogyakarta Principles (YP) in 2006 changed the way that states discussed LGBTQ+ rights and gave the issue a platform on the global stage. Understanding a country's lack of support for SOGIE rights is imperative in improving the wellbeing of LGBTQ+ individuals around the world.

China is very involved in the international human rights regime based on its participation as a state party to seven of nine core international human rights treaties. These nine core treaties set the standard for human rights norms internationally, and include protections for many marginalized communities, but do not include LGBTQ+ individuals. The nine treaties set standards for protecting individuals against racial discrimination (ICERD), protecting civil and political rights (ICCPR), economic, social, and cultural rights (ICESCR), protecting women from discrimination (CEDAW), preventing torture and inhumane treatment (CAT), protecting the rights of children (CRC), upholding rights for migrants workers and their families (ICMW), protecting against the deprivation of liberty by a state (CPED), and upholding the rights of individuals with disabilities (CRPD), all of which were established from

1965 to 2006.<sup>1</sup> Beginning in 1980 China ratified seven treaties. ICERD and ICESCR were respectively ratified by China 12 and 25 years after they were established in the UN, showing that China is a late joiner to parts of the human rights regime.<sup>2</sup> Because there are no treaties protecting LGBTQ+ individuals, and there are only resolutions or norms that have been established, it is difficult to hold states accountable for treatment of LGBTQ+ individuals and assess their support for SOGIE rights. However, there are some existing frameworks supporting LGBTQ+ individuals, so it is still possible for states to express support for SOGIE rights. This makes it essential that researchers assess state involvement in progressing the international LGBTQ+ rights regime. “Table 1” below displays China’s signatory status and ratification status to the nine-core international human rights treaties.<sup>3</sup>

**Table 1: Core 9 Human Rights Treaty China Signatory/Ratification Status**

| Treaty | Date Treaty Was Concluded | Date Treaty Was Entered Into Force | China Signatory Status | China Ratification Status | China Ratification Year | Years Between Enforcement and Ratification |
|--------|---------------------------|------------------------------------|------------------------|---------------------------|-------------------------|--|
| ICERD  | 1965                      | 1969                               | Yes                    | Yes                       | 1981                    | 12   |
| ICCPR  | 1966                      | 1976                               | Yes                    | No                        | N/A                     | N/A  |
| ICESCR | 1966                      | 1976                               | Yes                    | Yes                       | 2001                    | 25   |
| CEDAW  | 1979                      | 1981                               | Yes                    | Yes                       | 1980                    | 0  |
| CAT    | 1984                      | 1987                               | Yes                    | Yes                       | 1988                    | 1  |
| CRC    | 1989                      | 1990                               | Yes                    | Yes                       | 1992                    | 2  |
| ICMW   | 1990                      | 2003                               | No                     | No                        | N/A                     | N/A  |
| CPED   | 2006                      | 2010                               | No                     | No                        | N/A                     | N/A  |
| CRPD   | 2006                      | 2008                               | Yes                    | Yes                       | 2008                    | 0  |

The table shows that China is heavily involved in the international human rights regime and has ratified six of the nine core treaties. This establishes the state as a norm-follower of the international human rights regime and shows that China is more involved than other world powers, including the United States, which has ratified only three of the nine core treaties: ICERD, ICCPR, and CAT.<sup>4</sup> Despite China’s involvement in the human rights regime, the state is not involved in the international SOGIE rights regime. This reveals a major gap in China’s status as an overall norm-supporter of human rights, and establishes the country as a norm-defender of heteronormativity. Because of this gap in participation, this research aims to explore the extent of this lack of involvement and some potential explanations

1 OHCHR, “Core International Instruments.” Accessed November 8, 2021, 1.

2 HRIC, “UN Treaty Bodies and China.” Human Rights in China. Accessed November 8, 2021, 1-3.

3 HRIC, “UN Treaty Bodies and China,” 1-3.

4 ACLU, “Treaty Ratification.” American Civil Liberties Union, Accessed November 8, 2021, 3-5.

for why China is not involved in the SOGIE rights regime.

## Theoretical Perspective

This study uses a Constructivist perspective to analyze SOGIE rights norms in the UN system and the involvement of China in perpetuating or preventing the spread of heteronormativity in global governance. Heteronormativity is defined as the belief that “heterosexuality is the only normal and natural expression of sexuality.”<sup>5</sup> I determine whether China is a norm entrepreneur, norm-supporter, or norm defender of heteronormativity in global governance and its domestic policies. Constructivism shows the importance of international norms in influencing state decisions and reveals how culture, discussion between states, and international organizations impact global governance.<sup>6</sup> Realism argues that states are unitary actors that are solely responsible for influencing their national policies, resulting in policies and actions that are meant to maximize power and state security.<sup>7</sup> A Realist perspective would focus on power relations and neglect to consider how international organizations, culture, and international norms shape state decisions, and would provide an inadequate explanation for why China is either a norm entrepreneur or norm defender of heteronormativity. A Liberal perspective would recognize the roles of international institutions in influencing state decisions, but Liberalism still neglects the role of culture and norms, and sees institutions as secondary actors that do not independently affect global governance.<sup>8</sup>

## Research Subject

Advancing equality for LGBTQ+ individuals has become a major goal of the UN human rights regime in the new millennium. The United Nations Office of the High Commissioner for Human Rights, the UNDP, and the UN Free & Equal Campaign are dedicated to furthering LGBTQ+ rights globally. The UNDP regional department of Asia and the Pacific’s *Being LGBTI in Asia and the Pacific* program focuses on addressing inequality and discrimination experienced by LGBTQ+ people in the region. The program wrote a China Country Report in 2014 and conducted a China

5 Wang, Min. “UNGA Human Rights Council Speech A/C.3/67/SR.35,” November 8, 2012, 1-3.

6 Mingst, Karen A, Margaret P Karns, and Alynna J Lyon. 2017 “The United Nations in World Politics.” Essay. In *The United Nations in the 21st Century*, 5Th ed., 1-18. Westview Press, 2017.

7 Ibid.

8 Ibid.

National Survey in late 2015 regarding LGBTQ+ individuals. World Bank data shows China's current population is around 1.4 billion people, which is about 17.5% of the world population.<sup>9</sup> According to the Ipsos 2021 LGBTQ+ Global Survey, approximately 11% of people in China are members of the LGBTQ community, amounting to about 154,000,000 people.<sup>10</sup> LGBTQ+ individuals have higher rates of suicide, poor mental health, homelessness, risk for HIV/AIDS, and alcohol and drug consumption.<sup>11</sup> This makes assessing LGBTQ+ rights essential. Although China has gone through three cycles of the UPR, the country has only briefly mentioned SOGIE rights and LGBTQ+ individuals in its three country reports, and these mentions have regarded the government of Hong Kong that is separate from mainland China. The UPR reviews the human rights practices of all UN member states and provides suggestions for improvement. States produce human rights reports on their own and the Human Rights Council and other member states give feedback. The 2009<sup>12</sup> cycle only mentioned working towards gender inequality in mainland China, and the 2013<sup>13</sup> cycle mentioned the words "sexual discrimination," "sexual orientation," and "sexual minorities" for Hong Kong. The 2018 Country Report<sup>14</sup> mentions for the first-time specific ways in which the Hong Kong government has worked towards equality for "sexual minorities," including training for government personnel, telephone hotlines, and the 2014 establishment of the Inter-departmental Working Group on Gender Recognition, but mainland China still failed to mention LGBTQ+ rights. According to the 2018 UPR cycle, Mainland China also still has no written laws protecting LGBTQ+ individuals.<sup>15</sup> The lack of a legal framework shows a need to assess China's support for the LGBTQ+ community.

## Hypothesis

I hypothesize that China is a norm-defender of heteronormativity because of its indifference to international SOGIE rights norms. Preliminary

9 The World Bank, "Population, Total - China." World Bank Data, 2020, 2.

10 Ipsos Group S.A., "LGBT+ Pride 2021 Global Survey." Ipsos Game Changers, June 9, 2021, 7.

11 Office of Disease Prevention and Health Promotion, "Lesbian, Gay, Bisexual, and Transgender Health." Lesbian, Gay, Bisexual, and Transgender Health | Healthy People 2020, 1-3.

12 The Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: China." UPR Info, February 2009, 22-24.

13 The Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*\*": China." UPR Info, October 2013, 23.

14 The Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*\*": China." UPR Info, November 2018, 21.

15 Ibid.

research reveals that China has not signed on to major resolutions protecting LGBTQ+ individuals and has not mentioned SOGIE rights in many UN speeches. Based on some brief review of secondary sources and discourse analysis of the UPR China Country Reports, I argue that the lack of support for LGBTQ+ rights may be because of cultural norms and the intertwined relationships between traditional Chinese philosophy and international law. Scholar Jun Wu Pan observes that traditional Confucian hierarchies influence how China interacts within the framework of international law and whether China follows the rest of the world or maintains its own domestic laws.<sup>16</sup> Further, Pan notes that because of China's semi-colonial relations with Western powers in the past, the country views international law through a cultural and historical lens and sees international and domestic law as separate entities.<sup>17</sup> This suggests that China defends the status quo to maintain its domestic laws. While China is involved in some aspects of human rights governance, the state has resisted outside influence on its domestic policies, especially by Western states and institutions. Replacing domestic policies with international norms would be a dramatic change for a state that has functioned for centuries with specific traditional moral codes and laws.

## Research Methods and Data Collection

I use qualitative methods including content analysis of speeches and UN resolutions and discourse analysis of UN reports as well as an in-depth intrinsic case study of China's involvement in maintaining heteronormativity in global governance. The content analysis tracks the number of times SOGIE rights are mentioned by Chinese leaders and representatives in UNGA Human Rights meetings and UNGD speeches. I also recorded China's signatory status and voting records on major SOGIE rights meetings and resolutions. I documented China's existing domestic legal framework regarding LGBTQ+ individuals. The findings of the content analysis are displayed using tables to allow visual interpretation of China's participation in SOGIE efforts. Tables are provided on pages 14 and 17 to assess the number of times SOGIE rights are mentioned in UN Human Rights meetings and UNGD speeches, and then a separate table is provided on page 19 to assess China's ratification status on SOGIE resolutions, along with the titles and years of the resolutions. I explore any changes over time in national legal framework, including

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16 PAN, Junwu. "Chinese Philosophy and International Law." *Asian Journal of International Law* 1, no. 2 (2010): 233–48.

17 Ibid.

decriminalization of same-sex relations and laws regarding LGBTQ+ relationships and sexual activity. The discourse analysis is of documents created by the UNDP's Being LGBTI in Asia Program, including the *China Country Report* and the *National Survey on Social Attitudes towards Sexual Orientation, Gender Identity and Gender Expression*. I analyze how SOGIE rights are discussed by China in the UPR. For the data collection, I digitally record the quotations relating to SOGIE rights in China and then analyze these in the context of China's legal philosophy, as well as examine how the language has changed over time in the UPR country reports.

My intrinsic case study of China examines the independent variables of laws protecting or harming LGBTQ+ individuals, the number of treaties, meetings, and resolutions that China has participated in regarding LGBTQ+ rights, as well as a brief background on legal philosophy in China and how that could explain state attitudes towards following international SOGIE norms. Case studies reveal deeper reasons for specific phenomena, and this case will help to explain whether China is defending or attempting to change heteronormativity.<sup>18</sup> I divided my case study into sections in my report so they can be easily understood. These include a background on China's legal philosophy, an analysis of national laws and policies regarding LGBTQ+ individuals, and an analysis of China's involvement with the international SOGIE rights framework. I use the timeframe of 2006 to present day, as 2006 was the year that the YP were established.<sup>19</sup> The YP created the first list of norms and obligations for states to protect LGBTQ+ individuals. They helped apply international human rights laws to issues of sexual orientation and gender identity discrimination.<sup>20</sup> These Principles set the standard for international SOGIE rights. 2013 was the first year China partnered with the UNDP to create dialogue around LGBTQ+ individuals in China, showing a major turning point in China's work towards equality. Beginning with the year of the establishment of the YP shows how China's resistance to SOGIE norms has changed overtime. This pattern shows China has challenged more progressive opinions and the human rights regime's promotion of SOGIE rights.<sup>21</sup>

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18 Lune, Howard, and Bruce Berg. "Case Studies." Essay. In *Qualitative Research Methods for the Social Sciences*, 9th ed., 160–70. Pearson, 2017.

19 ARC International, "The Yogyakarta Principles." *Yogyakarta Principles*, 2016, 1-4.

20 O'Flaherty, Michael. "The Yogyakarta Principles at Ten." *Nordic Journal of Human Rights* 33, no. 4 (2015): 280–98.

21 UNDP Asia and the Pacific, "Being LGBT in Asia: China Country Report; A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons and Civil Society." United Nations Development Program. Accessed October 3, 2021, 8.

The limitations of my study include language barriers, limited access to government documents, and lack of generalizability. Because I only speak introductory-level Mandarin, I am unable to interpret government documents and must utilize documents produced or translated in English, which could lead to incomplete research. Government documents may be difficult to access because of media restrictions in the state. Because of censorship laws, Chinese news sources can be considered primary sources, and “China Daily” is available in English, but may differ from the Mandarin version. Although the China conducts a census every decade, the census contains no information about sexuality or gender identity and expression, so the true number of LGBTQ+ individuals cannot be determined.<sup>22</sup> However, the lack of regard in the census for LGBTQ+ individuals is a data point in itself, showing that China does not prioritize knowing the sexual orientation or gender identity of its population. This supports the argument that China is a norm-defender of heteronormativity. Because I only had access to documents in English, this study lacks information about domestic policies regarding LGBTQ+ individuals. According to Lune and Berg, the use of an intrinsic case study also has limitations.<sup>23</sup> The data cannot be generalized without a comparative analysis of other states. However, focusing on only China allows for a deeper understanding of its role in SOGIE rights governance.

## Literature Review

I found no scholarly research analyzing China’s position as a norm-defender of heteronormativity in the international SOGIE rights regime. However, scholars such as Junwu Pan<sup>24</sup> have conducted research to explain China’s tendency to avoid involvement in international law. Pan argues that China’s seemingly protectionist views on international laws reflect differences in domestic law and culture, and China’s desire to maintain its control over its own national policies. Pan argues that China’s traditional legal philosophy determines China’s interactions with other states and within global governance. Pan conducted a discourse analysis of Chinese legal cases and documents to support his hypothesis that China has had difficulty integrating into global governance to maintain traditional legal philosophy. Pan analyzes the traditional Chinese concepts of *Li* and *Fa*. *Li* is a set of traditional moral

22 Jizhe, Ning. 2021 “Main Data of the Seventh National Population Census.” Stats Gov. National Bureau of Statistics of China, May 11, 2021, 1.

23 Lune, Howard, and Berg. “Case Studies,” 160–70.

24 PAN, “Chinese Philosophy and International Law,” 233–48.

codes, while *Fa* is comparable to legalism or law, but differs from Western ideas of law in that it is specifically defined as punishment. The idea of using law as a way to protect rights has not been in practice in China.<sup>25</sup> He also argues that China resists following international law to maintain its position as a growing hegemon, as following predominantly Western international norms would subject China to colonial-like influence.<sup>26</sup> Pan's argument therefore supports the idea that China does not want to adhere to international SOGIE rights norms to preserve traditional domestic policies that value moral codes and view law as related to punishment more than protecting rights. Pan's theory connecting China's involvement in international law and traditional Chinese philosophy is the primary argument that I use to explain China's stance as a norm-defender of heteronormativity.

For primary sources, UNGD records and UN Human Rights Council (UNHRC) meeting speeches show a pattern in China's logic that follows Pan's argument. China repeatedly argued in UNGD and UNHRC speeches that "developed" countries must be lenient on "developing" countries when analyzing adherence to human rights because each state has its own domestic policies that must be respected. These documents show China's efforts to maintain its domestic policy and avoid Western influence are manifested in its choices to not participate in international SOGIE rights norms.

The UPR also tracks China's involvement in the SOGIE rights regime. All UN member states participate in the UPR every three to five years. This process provides an opportunity for states to share how they adhere to international human rights laws and norms. Member states prepare reports for the UPR and then other member states, the Human Rights Council, and NGO's can respond. This study uses the UPR China Country Reports from 2009, 2013, and 2018. The report analyzes China's involvement in areas of the human rights regime and focuses on the state's legislative framework and national policies. Each report I analyzed found a change over time in the mentions of SOGIE rights, beginning with minimal mentions in 2009 to a full paragraph dedicated to the improvement of SOGIE rights in Hong Kong in 2018.

My discourse analysis and case study use the UNDP *Being LGBTI in Asia: China Country Report* and the UNDP *Being LGBTI in Asia: China Survey*, which analyze the experiences of LGBTQ+ individuals in China. The

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<sup>25</sup> Ibid.

<sup>26</sup> Ibid.



UNDP *Being LGBT in Asia: China Country Report* documents the presentations and discourse of China's two meetings on SOGIE rights in August and November of 2013. It summarizes both meetings and assesses China's support for LGBTQ+ individuals in law, policy, society, employment, education, health, family, media, and community. The report finds regional differences in support with urban areas being more supportive and rural areas being less supportive. It also identifies major organizations supporting LGBTQ+ rights in China. The country report reveals China's limited involvement in the discussion of SOGIE rights and refusal to participate in the legal aspects of the regime. The *China Survey* explores public attitudes towards LGBTQ+ individuals and how they are treated in society. The survey was conducted country-wide using a snowball technique to find participants. It surveyed LGBTQ+ individuals and non-LGBTQ+ individuals to assess national attitudes, and gaps in the survey were supplemented with in-depth interviews. The study found that society was not outwardly homophobic but that stigma prevented LGBTQ+ individuals from being widely accepted. It found that in terms of government support through public policy and services, "sexual minorities" find it difficult to access social services and that the lack of policy leaves them vulnerable to discrimination. Like the regional differences found in the *Country Report*, the *China Survey* found changes in LGBTQ+ support between younger and older individuals and changes in support depending on the context (such as more acceptance on college campuses but less acceptance in the workplace or family).

## Content Analysis

I found that China is uninvolved in the global SOGIE rights regime and is a norm defender regarding heteronormativity following the review of 35 UNGA Human Rights meetings, 15 speeches from the UN annual General Debates, and 7 different international treaties and resolutions related to the improvement of LGBTQ+ rights. I consulted the UN Digital Library when searching for documents to analyze. I specifically searched for "Speeches," within the UNGA, then used the country-specific search to find documents where China spoke, and then filtered for only human rights topics. I looked at the speeches from Chinese nationals to measure the times SOGIE rights are mentioned at the meetings when reviewing the UNGA Human Rights meeting and UN annual General Debate speeches. I searched for the words "Sexuality," "Gender," and "Sexual orientation," to account for topics related to lesbian, gay, bisexual, and transgender individuals. As seen in the table below, out of the 35 speeches from the UNGA Human Rights meetings

Chinese nationals did not mention any of these terms. The table shows the year of the UNGA Human Rights meeting followed in parentheses by the number of meetings held that year. The columns that follow list the words searched for in the speeches: “Sexuality,” “Gender,” and “Sexual Orientation.”

**Table 2: Mentions of SOGIE Rights by China in UNGA Human Rights Meetings**

| Year and Number of UNGA Human Rights Meeting | “Sexuality” Mentions | “Gender” Mentions | “Sexual Orientation” Mentions |
|--|----------------------|-------------------|-------------------------------|
| 2006 (Three)                                 | 0                    | 0                 | 0                             |
| 2007 (Five)                                  | 0                    | 0                 | 0                             |
| 2008 (Two)                                   | 0                    | 0                 | 0                             |
| 2009 (One)                                   | 0                    | 0                 | 0                             |
| 2010 (Four)                                  | 0                    | 0                 | 0                             |
| 2011 (One)                                   | 0                    | 0                 | 0                             |
| 2012 (One)                                   | 0                    | 0                 | 0                             |
| 2013 (Three)                                 | 0                    | 0                 | 0                             |
| 2014 (Three)                                 | 0                    | 0                 | 0                             |
| 2015 (Three)                                 | 0                    | 0                 | 0                             |
| 2016 (Three)                                 | 0                    | 0                 | 0                             |
| 2017 (Three)                                 | 0                    | 0                 | 0                             |
| 2018 (Three)                                 | 0                    | 0                 | 0                             |

The speeches span from October of 2006 to October of 2018. Each document records the discussions of member states regarding human rights. There are distinct patterns in their speeches that reveal that China has remained stagnant throughout the years regarding SOGIE rights. While other states began mentioning SOGIE rights in the 2010’s, China remained silent on LGBTQ+ issues. China argued that the UN must be more forgiving of developing countries when analyzing their participation in the international human rights regime. The UNGA began to regularly discuss SOGIE rights in 2009, but the conversation was dominated mainly by European countries. Many EU states urged other member states to sign onto the 2008 UNGA declaration supporting SOGIE rights.<sup>27</sup> China, however, did not add to the conversation and continued the pattern of defending itself against being reprimanded by other member states for allegedly violating human rights. China’s responses to being reprimanded for allegedly violating human rights use two main arguments: the UN should take it easy on “developing countries,” when evaluating human rights, and China has created its own

<sup>27</sup> Liu, Zhenmin. “UNGA Human Rights Council Speech A/C.3/64/SR.29,” October 26, 2009, 10-11.

set of human rights norms domestically that follow specifically “Chinese characteristics.” In 2012, China argued that “For three decades the Chinese Government had followed a human rights development path with Chinese characteristics, bringing benefits to the Chinese people and contributing to the international human rights endeavor,” in response to member states criticizing its role in upholding human rights norms.<sup>28</sup> This quote supports the argument that China’s reluctance to uphold human rights for LGBTQ+ individuals is about China’s ability and want to determine its own rules instead of following international rules, instead of about the specific norms. China continued in 2013 by stating that “Western countries should fully respect the endeavors of other countries, particularly developing countries, in ensuring human rights on the basis of their own national conditions.” This again supports the argument from Junwu Pan<sup>29</sup> that China’s semicolonial history with the West has led to reluctance to follow international norms.<sup>30</sup> In that same meeting, China argues that the country has developed its own human rights path, “reflecting its own realities,” in a socialist way. This shows how government structure and domestic law are determinants of a state’s involvement in international law. In 2014 this continued as China emphasized that states should not politicize human rights and that human rights standards should be suitable for each individual country’s conditions. Min Wang argued that “Governments and peoples had the right to choose the path of human rights development most suitable to their national conditions...” and that instead of setting international standards for human rights, states should “...achieve an international paradigm for human rights development that would allow different forms to prosper.”<sup>31</sup> This more blatant rejection of the international human rights regime in these meetings mirrors China’s lack of involvement in the international SOGIE rights regime. This is evident in China’s refusal to participate in global LGBTQ+ rights treaties and resolutions. In the table below, a similar content analysis of the UNGD speeches was conducted. Like the UNGA Human Rights meeting speeches, SOGIE rights were not mentioned at all. The UNGD speech content analysis was conducted from 2006 to 2020, while the UNGA Human Rights meeting speeches were only available up to 2018. The extra two years of analysis gave more opportunity to assess China’s involvement in the SOGIE rights regime.

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28 Wang, “UNGA Human Rights Council Speech A/C.3/67/SR.35,” 1-3.

29 PAN, “Chinese Philosophy and International Law,” 233–48.

30 Wang, “UNGA Human Rights Council Speech A/C.3/68/SR.35,” 1-3.

31 Wang, Min. “UNGA Human Rights Council Speech A/C.3/69/SR.34,” October 29, 2014, 6.

Despite the speeches being more recent, I found no mentions of the words “Sexuality,” “Gender,” or “Sexual Orientation” (gender was mentioned thrice but in the context of women’s equality and in response to other countries, so those mentions are not included in the table).

**Table 3: Mentions of SOGIE Rights by China in UN General Debate Speeches**

| Year of UN General Debate | “Sexuality” Mentions | “Gender” Mentions | “Sexual Orientation” Mentions |
|---------------------------|----------------------|-------------------|-------------------------------|
| 2006                      | 0                    | 0                 | 0                             |
| 2007                      | 0                    | 0                 | 0                             |
| 2008                      | 0                    | 0                 | 0                             |
| 2009                      | 0                    | 0                 | 0                             |
| 2010                      | 0                    | 0                 | 0                             |
| 2011                      | 0                    | 0                 | 0                             |
| 2012                      | 0                    | 0                 | 0                             |
| 2013                      | 0                    | 0                 | 0                             |
| 2014                      | 0                    | 0                 | 0                             |
| 2015                      | 0                    | 0                 | 0                             |
| 2016                      | 0                    | 0                 | 0                             |
| 2017                      | 0                    | 0                 | 0                             |
| 2018                      | 0                    | 0                 | 0                             |
| 2019                      | 0                    | 0                 | 0                             |
| 2020                      | 0                    | 0                 | 0                             |

As previously mentioned, no Chinese national has signed on to the YP Plus 10. It is difficult to assess participation in the Principles because they are not something states typically sign on to. However, state representatives, organizations, and country nationals can become signatories which gives some ability to assess participation. A Chinese national and director of the Beijing AIZHIXING Institute of Health Education signed onto the original YP from 2006.<sup>32</sup> The 2017 Principles are an addendum to the original principles from 2006 that add new principles and state obligations.<sup>33</sup> This shows that China may be supportive of LGBTQ+ individuals, but is reluctant to follow policy recommendations. This pattern of participation follows China’s shift from abstaining to voting against SOGIE resolutions (seen in Table 4 below). China has abstained or voted against five different UNGA and Human

<sup>32</sup> ARC International, “The Yogyakarta Principles,” 1–4

<sup>33</sup> Wang, “UNGA Human Rights Council Speech A/C.3/67/SR.35,” 6.

Rights Council resolutions regarding SOGIE rights. In 2008, a declaration delivered to the UNGA by Argentina on behalf of 66 member states presented a resolution to the UN Declaration of Human Rights that had been already adopted by the Organization of American States. The 2008 Declaration expanded sections of the Declaration of Human Rights to include human rights norms based on Sexual Orientation and Gender Identity.<sup>34</sup> China was not part of this group of 66 member states. This signals China's early refusal to join the fight for global LGBTQ+ rights. Then in 2011 and 2014, the Human Rights Council released two resolutions regarding sexual orientation and gender identity that urged the UN High Commissioner for Human Rights to examine LGBTQ+ discrimination globally and to have a future panel to discuss LGBTQ+ rights.<sup>35</sup> Both resolutions were adopted, but China abstained from voting each time. This shows a reluctance to outwardly reject or support LGBTQ+ rights. After 2014, there was an observably more extreme shift in the way China was discussing the international human rights regime in general that also manifested itself in how China was involved with SOGIE rights. In a 2017 UNGA Human Rights meeting, China stated in reference to a resolution unrelated to SOGIE rights that China would "interpret the draft resolution according to Chinese law and its own understanding, and would not accept anything in the draft resolution that ran counter to the laws, regulations and policies of China."<sup>36</sup> This is a shift from requesting that other states consider China's domestic policy to refusing to participate in aspects of the international human rights regime that China did not deem as fitting in with their domestic situation. Around the same time, China began voting against SOGIE rights resolutions from the Human Rights Council, instead of simply abstaining. In June of 2016 and July of 2019 the Human Rights Council again released resolutions regarding SOGIE rights. The 2016 resolution established an Independent Expert (IE) to evaluate SOGIE rights among states. The 2019 resolution called on states to cooperate with said IE. Although the 2016 resolution called for the UN to be patient with developing countries regarding LGBTQ+ rights, China still voted against both resolutions (although both were passed). China's refusal to vote in favor of both SOGIE resolutions after efforts to consider the case of developing countries displays a shift in China's behavior in international law. China has gone from being

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34 Winocur, Mariana. "2008 Joint Statement." ARC International. ARC International, 2016, 1-4.

35 OHCHR, "United Nations Resolutions on Sexual Orientation, Gender Identity and Sex Characteristics." Office of the High Commissioner for Human Rights, 2021, 1-3.

36 Yao, Shaojun. "UNGA Human Rights Council Speech A/C.3/72/SR.51," November 20, 2017, 2-6.

disengaged to publicly rejecting the influence of the international SOGIE rights regime. This supports the argument that China is a norm-defender of heteronormativity to avoid Western influence and maintain their own domestic policies. The table below displays each resolution and China's voting and signing status.

**Table 4: SOGIE Rights Resolutions China Signatory/Vote Status**

| Resolution                           | Signing/Voting Status         |
|--------------------------------------|-------------------------------|
| Yogyakarta Principles (2006)         | Chinese National Signed       |
| Yogyakarta Principle Plus 10 (2017)  | Chinese National Did Not Sign |
| UNGA December 2008 Resolution        | China Did Not Sign            |
| Human Rights Council Resolution 2011 | China Abstained from Vote     |
| Human Rights Council Resolution 2014 | China Abstained from Vote     |
| Human Rights Council Resolution 2016 | China Voted Against           |
| Human Rights Council Resolution 2019 | China Voted Against           |

China has no domestic policies regarding or preventing discrimination against LGBTQ+ people. Examination of China's national policies by the Sexual Rights Initiative (SRI), a stakeholder in the 2013 UPR, shows that China is a norm defender of heteronormativity because the country does not protect LGBTQ+ individuals from discrimination. Currently, it is decriminalized in China to have same-sex relationships, but it is still greatly stigmatized. The Chinese government decriminalized same-sex relationships in 1997 by removing the law against "hooliganism" that had previously been used to discriminate against LGBTQ+ individuals.<sup>37</sup> Same-sex relations, however, are still not legally recognized in China, so while same-sex couples can exist they are not allowed to be legally married. Homosexuality was removed from the "Chinese Classification and Diagnostic Criteria of Mental Disorders" (CDCMD) in 2001, and transgender individuals that have had "sex reassignment operations" are able to change their sex on legal documents.<sup>38</sup> Despite these efforts, there is still no legal framework protecting LGBTQ+ individuals in China. Although transgender individuals can legally change their

37 Sexual Rights Initiative, "Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in China For the 17th Session of the Universal Periodic Review - October 2013." Sexual Rights Initiative, October 2013. OHCHR, 1-7.

38 Sexual Rights Initiative, "Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in China For the 17th Session of the Universal Periodic Review - October 2013," 1-7.

sex, being transgender is still considered a mental disorder in the CDCMD.<sup>39</sup> LGBTQ+ individuals are not included in the protections in China's legal framework against workplace discrimination.<sup>40</sup> This leaves them vulnerable to mistreatment in the workplace. According to the study by the SRI, 92% of LGBTQ+ Chinese individuals surveyed chose not to come out fully at work, and 61% of respondents said they had experienced discrimination based on their sexuality and gender identity in the workplace.<sup>41</sup> China was found to be a norm-defender of heteronormativity because of the country's lack of legal framework protecting SOGIE rights and the frequency of discrimination against LGBTQ+ individuals.

## Discourse Analysis

This section is an analysis of the language used in UPR China Country Reports, the domestic policy and meetings outlined in the UNDP *Being LGBTI in Asia: China Country Report*, and the national attitudes and LGBTQ+ experiences documented in the UNDP *Being LGBTI in Asia: China Survey*. I found that although China has participated in some efforts to assess their support of LGBTQ+ individuals domestically, the country still lacks involvement in the international SOGIE rights regime and lacks domestic policy protecting LGBTQ+ individuals. This makes it apparent that China is a norm-defender of heteronormativity.

It is evident in the UPR that China's opinions towards SOGIE rights have slowly become more progressive overtime, but that the country still lacks involvement in the international SOGIE rights regime that would reflect these changing views. In the 2009 UPR China National Report, LGBTQ+ individuals are only indirectly mentioned when talking about the domestic policy of Hong Kong. SOGIE rights are not mentioned when discussing the efforts towards advancing human rights in mainland China.<sup>42</sup> Although 2009 is only three years after the initial founding of the YP, and one year after the UNGD addendum of 2008, there are major improvements in SOGIE rights in Hong Kong, but not mainland China. These differences between mainland China's efforts to support LGBTQ+ rights and Hong Kong's efforts show a divide between mainland China's traditional Chinese philosophical ideals

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39 Ibid.

40 Ibid.

41 Ibid.

42 The Universal Periodic Review, "National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: China," 22-24.

and avoidance of international influence in domestic policy, compared to Hong Kong's more globalized government and economy that is subject to international influence. China's lack of discussion about SOGIE rights in 2009 mirrors its existing lack of national policy regarding LGBTQ+ individuals. In 2013, the Chinese government again did not mention SOGIE rights. The government of Hong Kong, however, continues to discuss SOGIE rights in more detail, showing a great connection between state ideologies and involvement in the international human rights regime. The lack of discussion about SOGIE rights also continues the pattern of the content analysis around this time period. China was still abstaining from voting in favor of progressing the SOGIE rights regime, further emphasizing the country's status as a norm-defender of heteronormativity. In the most recent UPR cycle in 2018, China continued to avoid the topic of LGBTQ+ rights, despite the government of Hong Kong discussing them in greater detail. This reflects the continued lack of involvement in the international SOGIE rights regime and China's lack of domestic policy regarding SOGIE rights that make it apparent that China is a norm-defender of heteronormativity.

Analysis of the UNDP *Being LGBTI in Asia: China Country Report* shows that although China has made some efforts to discuss LGBTQ+ rights domestically, their absence in the international SOGIE rights regime maintains their status as a norm-defender of heteronormativity. China's 2013 meetings on LGBTQ+ rights do not outweigh their lack of domestic policy protecting LGBTQ+ individuals. These China LGBT Community Dialogues hosted by the UNDP were held in Beijing from August 16th through 18th of 2013, involving individuals from over 40 organizations to represent the LGBTQ+ community in China, as well as representatives of the central government and legal organizations.<sup>43</sup> A second consultation hosted by the UNDP occurred in November of 2013 and focused specifically on the experiences of transgender individuals in China, as the first consultation lacked transgender representation.<sup>44</sup> Both consultations examined China's involvement in the international SOGIE rights regime as well as China's domestic policy regarding LGBTQ+ individuals. The consultations found that China generally does not follow international norms regarding SOGIE rights. The report restates that although China is a member of the UN and a signatory to many

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43 UNDP Asia and the Pacific, "Being LGBT in Asia: China Country Report; A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons and Civil Society," 3-4; 7-8.

44 Ibid.



human rights treaties, none of the core treaties that China is a party to include protections for LGBTQ+ individuals, and China has not signed on to or voted in favor of most resolutions and informal norms that do include LGBTQ+ rights. According to the report and the UNDP, the three historical goals of LGBTQ+ individuals have been decriminalization, anti-discrimination legislation, and legal recognition of same-sex relations. China has only accomplished the first goal. The report found that decriminalization was not purposeful, as the repeal of the anti-hooliganism law was not originally intended to decriminalize same-sex relations. This shows that the language used by the Chinese government is not necessarily directly against LGBTQ+ individuals but that there is more of a willing ignorance and indifference towards improving the SOGIE rights regime (a key characteristic of being a norm-defender).<sup>45</sup> In terms of anti-discrimination laws and laws supporting same-sex relations, China follows similar patterns in that the language is not directly criminalizing LGBTQ+ individuals but that the lack of language leaves room for LGBTQ+ individuals to be legally discriminated against. China has multiple anti-discrimination laws regarding marginalized groups in its Constitution and multiple anti-discrimination resolutions the country has signed on to. None of these laws or resolutions they supported directly mention LGBTQ+ individuals, leaving a major gap in their international and domestic policy. China does not have any laws directly criminalizing same-sex relations, but relations laws state that unions are between a man and a woman, leaving same-sex couples indirectly out of the picture.<sup>46</sup>

The language used in the UNDP *Being LGBTI in Asia: China Survey* also follows this pattern of indirect exclusion of the LGBTQ+ community. In late 2015 the UNDP, Peking University, the Beijing LGBT Center, and other national organizations surveyed around 30,000 individuals in China to conduct research on national attitudes towards LGBTQ+ individuals. The findings can be used to explain China's lack of involvement in the international SOGIE rights regime and lack of domestic policy. The report found that generally Chinese people do not necessarily view LGBTQ+ individuals negatively and that when asked directly individuals were majority in support of the LGBTQ+ community. The survey found that the existence of LGBTQ+ people is just not talked about, reflecting the lack of policy that the government has chosen to adhere to instead of a direct criminalization

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45 Ibid., 8.

46 Ibid., 8-9.

or discrimination of LGBTQ+ individuals.<sup>47</sup> According to the survey, there is a distinct correlation between age of respondent and attitudes towards LGBTQ+ individuals. Younger respondents were found to be more open to LGBTQ+ individuals while older respondents were more likely to discriminate. These generational shifts could be promising for China's future in supporting LGBTQ+ rights as the younger generation enters the public sphere.<sup>48</sup> The survey found that the public was opposed to viewing LGBTQ+ individuals as "pathological" (viewing them as individuals with a mental illness or disease). However, there is still general stigma regarding LGBTQ+ individuals, especially transgender individuals and those living with HIV.<sup>49</sup> In terms of public institutions, a lack of education about and recognition of "sexual minorities" and transgender individuals was found, mirroring China's lack of domestic and international involvement with LGBTQ+ rights. This continues the language pattern that China does not directly discriminate against LGBTQ+ individuals but instead ignores their existence, leading to social stigma and no protection against discrimination.<sup>50</sup>

Overall, China's pattern of abstaining and voting against international resolutions on SOGIE rights, not mentioning LGBTQ+ individuals in any UNGA or UNGD meetings, not mentioning LGBTQ+ rights in the UPR cycles, and choosing to directly ignore LGBTQ+ individuals in domestic policy instead of directly discriminating against them shows that China has opportunity for improvement regarding involvement in the international SOGIE rights regime. The country's indifference towards LGBTQ+ people leave the minority vulnerable to discrimination and solidifies China's status as a norm-defender of heteronormativity. However, this indifference is promising for China's future because no direct discrimination allows for protections for LGBTQ+ individuals to be more easily added to domestic policy.

## **Lack of Involvement Explained Through Traditional Chinese Philosophy**

Although homophobia could be a motivation for China's lack of involvement in the international SOGIE rights regime, other factors are more likely to be at play. The lack of mentions of SOGIE rights and the absence

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47 "Being LGBTI in China: A National Survey on Social Attitudes towards Sexual Orientation, Gender Identity and Gender Expression." UNDP China. UNDP, May 16, 2016. United Nations Development Program, 17.

48 *Ibid.*, 19.

49 *Ibid.*, 18.

50 *Ibid.*, 16-17; 21-22.

of domestic policy regarding LGBTQ+ individuals instead of outright discrimination signals other political motivations. One striking cause of China's lack of involvement, argued by Junwu Pan in his journal article titled *Chinese Philosophy and International Law*,<sup>51</sup> is China's history of using traditional Confucian philosophy and ideology to guide state decisions on international and domestic law. This means that avoiding adherence to international norms is more about preserving the Chinese way of governance and less about rejecting the content of the international norms. According to traditional Chinese philosophy, two types of "law" exist, one being *Li* and the other being *Fa*. The concept of *Li* is loosely defined as the moral rules that individuals follow that are ingrained in them throughout their lives which shape behavior and society.<sup>52</sup> *Li* establishes hierarchy in society, and individuals must behave within these hierarchies, such as a son respecting his father, or a student following his teacher.<sup>53</sup> *Fa*, also known as legalism, is the traditional Chinese form of law that differs greatly from Western law. While Western ideas of law can be used as punishment or as protection to preserve societal order, *Fa* is purely criminal law. This means that if there is a law in place it exists to ensure that criminals are punished, rather than existing to protect an individual.<sup>54</sup> It is evident after applying this theory to China's existing lack of involvement in the international SOGIE rights regime and lack of domestic policy regarding LGBTQ+ individuals that China is a norm-defender of heteronormativity because of the traditional ways that laws are established in Chinese society. If China had laws that were outwardly discriminatory against LGBTQ+ individuals, then it could be argued greatly that homophobia is behind the laws. But because China does not mention LGBTQ+ individuals in their legal framework and has not mentioned LGBTQ+ issues in UN meetings, the lack of policy and involvement is more about preserving traditional ways of governance than refusing to protect LGBTQ+ individuals.

However, there are some gaps in this argument, as China has signed on to other human rights resolutions that do not include LGBTQ+ individuals, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>55</sup> It can also be argued through the

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51 PAN, "Chinese Philosophy and International Law," 233–48.

52 Ibid.

53 Ibid.

54 Ibid.

55 HRIC, "Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)." Human Rights in China, July 20, 2020, 1–4.

analysis of Confucian teachings and traditional Chinese philosophy that there is a lack of policy because of social stigma around LGBTQ+ individuals. *Li* functions in society so individuals do not deviate from the norm for fear of shame, which could be applied to explain why LGBTQ+ individuals may not feel comfortable being publicly out to their families or at work, as seen in the UNDP *Being LGBTI in Asia: China Survey*.

## Conclusion and Recommendations

Whether traditional societal standards or the connection between Confucian philosophy and international law is to blame, China's lack of involvement in the international SOGIE rights regime and nonexistent national policy regarding LGBTQ+ individuals leaves people incredibly vulnerable. LGBTQ+ individuals are subject to discrimination and left out of different aspects of society, such as marriage or equal access to healthcare. Through an analysis of UNGA Human Rights meetings, UNGD speeches, the UPR cycles, signatory status of existing LGBTQ+ rights resolutions, the UNDP *Being LGBTI in Asia: China Country Report*, and the UNDP *Being LGBTI in Asia: China Survey*, it is evident that China is a norm defender regarding heteronormativity. China has not mentioned SOGIE issues in any UN meeting or UPR cycle, has not signed on to most major resolutions regarding LGBTQ+ rights, and has no existing domestic policy regarding LGBTQ+ individuals.

In order for China to begin following international norms regarding LGBTQ+ rights, I would recommend that the Chinese government immediately sign onto the major SOGIE rights resolutions analyzed above. I would also recommend that China establish a domestic policy to protect LGBTQ+ individuals that is explicitly stated, instead of just implying that they are included in existing human rights policy. As China is currently a major participant in the international human rights regime, extending their support to the LGBTQ+ community would further solidify the country as a norm-entrepreneur of human rights overall. For future research, a critical feminist theory would be effective in explaining how gender roles and expectations may prevent China from furthering LGBTQ+ rights. I predict that China will eventually sign onto SOGIE rights resolutions because of their pattern of late ratification of the core human rights treaties. Participation in the SOGIE rights regime could improve the country's status as a growing world power, as China would even further surpass the United States as an entrepreneur of human rights. Because of the evidence that LGBTQ+ individuals feel

vulnerable to discrimination and their existence is stigmatized in China, I also recommend that China include LGBTQ+ issues in education and create laws preventing discrimination against LGBTQ+ individuals in the workplace. I am hopeful for China's future in the SOGIE rights regime as citizens continue to support LGBTQ+ individuals and the government becomes more open to international SOGIE norms.

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