Queer Source of Law: Expectation of Compliance with the Yogyakarta Principles in International Human Rights Mechanisms

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Abstract

The Yogyakarta Principles (YPs) were produced by transnational civil society actors involved in sexual orientation and gender identity (SOGI) human rights activism. The document has had a significant impact on debates surrounding gender and sexual diversity in international human rights law. As such, it provided a new source, a *queer* source, of law for friendly actors who were already inclined to decide favourably on issues regarding SOGI rights. This article analyses the extent of the YPs' political efficacy in the context of global governance and international law institutional mechanisms. More concretely, the main research question asks: what is the nature, or quality, of the application of the YPs by international human rights monitoring bodies? What does it tell us about their level of political influence? In responding to these questions, the article employs the analytical framework of expectation of compliance as an indicator to measure the YPs' political efficacy.

Keywords: Yogyakarta Principles; sexual orientation and gender identity; international human rights law; queer; law-making.

[A] INTRODUCTION

"And they were put before judges. You can use these documents. And, obviously, you need a receptive judge, but they have a very great effect," Edwin Cameron, former justice of the Constitutional Court of South Africa, and well known for his years-long activism on HIV/Aids and queer rights, told me. Over a faulty internet connection during our online conversation, he continued, "I cannot overstate the importance of these international documents. They're not just talking shops. They actually have an impact" (Cameron, Interview with the author, November 2023). Cameron was a signatory to the Yogyakarta Principles on the Application of International Human Rights Law in Relation to

Sexual Orientation and Gender Identity (YPs, or Principles), as well as to an additional set of principles that amended the original document, the Yogyakarta Principles plus 10 (YP+10). His answer, however, had been given from the standpoint of a judge—in a way, like many of his peers frequenting international bodies, he also occupied the seats of both addresser and addressee of the YPs, since there was an expectation that the document would also find its way to be applied by domestic courts. What his statement reveals is that the YPs provided a new source, a *queer* source of law, for friendly actors who were already inclined to decide favourably on issues regarding sexual orientation and gender identity (SOGI). In other words, it enabled those who wished to deliver queer judgments to do so, backed up by an increasingly authoritative document in the field of international human rights law (IHRL).

The YPs were a civil society-led initiative to fill a regulatory gap regarding SOGI in IHRL (O'Flaherty & Fisher 2008; Lelis 2025: 194-250; Narrain & Patel 2025). Borrowing both the "epistemic authority" (Zagzebski 2016) and the social ties from many of the experts who signed the document, who were known actors within global governance human rights fora, the document achieved an unprecedented impact in both domestic and international legal contexts (Lelis 2025: 194-250). The positive reception of the Principles has led critical scholarly work to frame it as a successful initiative of alternative law-making, blurring the *straight* limits of international legality, which is usually associated with state-crafted norms (Lelis 2019; Santos De Carvalho 2024). While elsewhere I have analysed the elements driving the YPs' normative legitimacy, and which explain their level of success, this article presents evidence of their political efficacy (Lelis 2025: 194-250). That is, their ability to "achieve political force" (Fraser 2007: 13).

On the one hand, their efficacy can be measured by the way national legal bodies make use of the document. In an analysis of the application of the YPs by the Supreme Courts of Brazil and India, I have identified that they are actively applied by these courts with varying degrees of deference, which goes from their characterization as an obligation-setting document to their framing as a soft law instrument (Lelis 2019). Despite nuances seen in different judgments, the overall use of the document's provisions in both domestic contexts, as Juliana dos Santos has likewise observed (Santos De Carvalho 2024), gives a concrete instance of their political efficacy in national legal orders. The Principles have further supported legal reasoning to advance the recognition of SOGI/SOGIESC

rights in multiple national contexts, including their application by the Supreme Court of Nepal, the Court of Appeal in Botswana, and others.[1]

In this article, I focus on the ways in which the same provisions have been mobilized by international human rights mechanisms, including regional human rights courts, United Nations (UN) special procedures mandate holders, and human rights treaty bodies. More concretely, the main research question asks: what is the nature, or *quality*, of the application of the YPs by international mechanisms? What does it tell us about their level of political influence? In responding to these questions, I employ the analytical framework of *expectation of compliance* to partly measure the Principles' political efficacy.

As such, this article sits in dialogue with the literature on queer approaches to international law and LGBTI+ transnational activism (Thoreson 2014; Ayoub 2016; Otto 2018; O'Hara 2022) as well as the growing field of research on alternative forms of international law-making and the possibilities of producing law without (or beyond) the state (Pauwelyn & Ors 2012; Schultz 2015; Rodiles 2018; Krisch 2021; Reiners 2021; Santos De Carvalho 2024). But most importantly, it brings contributions to the more specific literature on the YPs, alongside other research focused on understanding the document's elaboration (O'Flaherty & Fisher 2008; Brown 2009; Thoreson 2009; O'Flaherty 2015) and their application in domestic and international legal frameworks (Ettelbrick & Zerán 2010; Lelis 2019; Santos De Carvalho 2024). The research is mainly based on case law analysis, complemented with data from key informant interviews to provide context of the YPs' drafting purposes.[2]

The article is divided into two main sections, in addition to this introduction and a brief conclusion. In the following section, I situate the theoretical underpinnings of the analysis, explain what I mean by a *queer* source of law, and elaborate on how the expectation of compliance might be a useful *qualitative* indicator to assess the impact of non-state law-making. Then, in the subsequent section, I move on to examine the mentions of the YPs in the selected international human rights mechanisms.

[1] On mentions to the YPs to both deny and reinforce their legal status, see Submissions on Behalf of the Australian Human Rights Commission (2011); *Ang Ladlad LGBT Party* (2010). See also International Service for Human Rights (2020; 2023).

[2] In this sense, this article uses a very minimal amount of the interview data from a broader research project which interviewed several people involved in the drafting of the document and/or its early dissemination campaigns. The project encompassed 65 interviews, including oral history interviews and semi-structured interviews with key informants. Amongst these, 14 were with people involved with either the YPs or the YP+10. The larger research project, entitled "Reimagining a Queer Human: The Social and Legal Production of Subjects in International Human Rights Law Discourse", was examined and cleared by the Ethics Review Committee of the Graduate Institute of International and Development Studies in July 2022.

[B] EXPECTATION OF COMPLIANCE, POLITICAL EFFICACY, AND QUEER SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW

As mentioned before, there is a growing amount of literature collecting evidence of how domestic courts effectively apply the YPs to advance on rights related to lesbians, gays, bisexuals, trans, and intersex persons (LGBTI+), as well as others within a broad spectrum of SOGI[3] that falls outside these identity markers (Lelis 2019; Santos De Carvalho 2024). But in global governance bodies, too, the YPs' influence is visible. During our interview in Amsterdam, Boris Dittrich shared how getting the YPs known within global governance bodies was a key element from day one when he joined the LGBT rights programme at Human Rights Watch (HRW) at the beginning of 2007. "At the same time, when I started working for Human Rights Watch, the Yogyakarta Principles had been introduced," he remembers.

> And so, when he [Scott Long, my boss] hired me, he said this is your main task, the Yogyakarta Principles, bring them to the UN and elsewhere in the world. And through the Yogyakarta Principles, we need to focus on equal rights. So, I was always there with my Yogyakarta Principles (Dittrich, Interview with the author, July 2022).

Dittrich was responsible for organizing a strategic launch of the Principles in New York. "We call[ed it] the introduction of the Yogyakarta Principles," he says (Dittrich, Interview with the author, July 2022). Similar to the first launch that took place in Geneva, the New York event included many familiar faces from the world of the UN human rights bodies, including former UN High Commissioner for Human Rights and former Irish President, signatory to the document, Mary Robinson, as well as activists and state representatives. This would be the initial spark that later led to the formation of the New York-based UN LGBTI Core Group, which convenes more than 40 member states, the Office of the High Commissioner for Human Rights (OHCHR), and includes only two non-governmental organizations (NGOs)—HRW and Outright International—with the goal of working "within the United Nations framework on ensuring universal respect for the human rights and fundamental freedoms for all", particularly focusing on LGBTI persons' protection from violence and discrimination (UN nd).

[3] I mostly use SOGI in this article, instead of SOGIESC (meaning sexual orientation, gender identity, gender expression, and sex characteristics) because the mentions analysed are usually restricted to either status aspect covered by SOGI and tend to focus more on the original version of the YPs instead of the YP+10 document.

Political efficacy

As a result of campaigning and strategic dissemination of the Principles by advocates, the document would incontestably demonstrate their ability to "achieve political force" (Fraser 2007: 13), including through the positive reception by the Inter-American Court of Human Rights (IACtHR), and by the European Court of Human Rights, as well as meaningful citations of it by states during the Universal Periodic Review (UPR), by the UN Treaty Bodies (TBs), and by the UN Special Procedures (SPs) (Ettelbrick & Zerán 2010). In particular, all these global governance actors share different levels of *expectation of compliance* with the YPs. Put differently, the mentions of the YPs indicate, in varying degrees, the assumption that this is a document whose provisions are expected to be complied with, providing an important indicator of the YPs' political efficacy.[4]

When questioning the applicability of the Habermasian public sphere theory (Habermas 1989; 1996) in the transnational framework, Nancy Fraser offers a decoupling of the two necessary conditions for political efficacy: translation and capacity. *Translation* refers to the possibility of communicative power produced by the "publics" being "translated first into binding laws and then into administrative power" (Fraser 2007: 22). Addressing only "binding laws" does not make sense in an international law framework, where non-binding rules play a crucial role, especially within human rights structures. Rather, it would suffice to think in terms of norm creation—to what extent a given public has been successful in creating a new normative document. In turn, the *capacity* condition alludes to public power's ability to implement this "discursively formed will to which it is responsible" (Fraser 2007: 22). Inquiring into the latter condition is beyond the scope of this article. Therefore, the focus will remain on how different mechanisms potentially frame the YPs as a normative source of obligations within IHRL.

Expectation of compliance

The use of compliance as a means to assess the state of international law is frequently contested (Dunoff 2019). The source of contestation can be either because "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time" (Henkin 1979: 47), or because interpretation may complicate defining if

[4] Although I follow Fraser's terminology of "political efficacy", this could also be understood as a matter of descriptive legitimacy. That is, depending "on whether an institution is perceived as legitimate, rather than on whether it is legitimate as a matter of normative theory" (Bodansky 2012: 328).

a norm has indeed been complied with (Howse & Teitel 2010). The fact is that compliance itself may give few clues regarding what international law is and what degree of influence it exercises over states and other actors. This is why I suggest employing not compliance, but the *expectation of compliance*, as relevant evidence of a document's political efficacy and the possibility of recognition of its normative value in international law.[5] In this context, I define expectation of compliance as the public signalling, by either states or international legal or political bodies, that an actor (most often a state) should comply with a given norm or with a document containing a set of rules. Put differently, the expectation of compliance can be identified by assessing whether states and international bodies have indicated that other actors should follow the provisions of a document, rather than evaluating whether the actor has indeed complied with the provisions. When, for instance, a state makes a recommendation during the UPR to other states to follow a specific rule, they assume the norm's legitimacy for a future expectation of compliance regarding themselves. Likewise, recommendations issued by international bodies for states to follow a given provision implicitly recognize it as a valid rule while demonstrating the expectation that it should be complied with. As such, expectation of compliance shows the legitimacy that is ascribed to these documents whose provisions are being recommended for other parties to comply with.

In this sense, the expectation of compliance is closely related to the role of effectiveness in international law. According to Kal Raustiala, "an effective rule is simply a rule that leads to observable, desired behavioural change. Effectiveness is the measure of that change" (Raustiala 2000: 394). Expectation of compliance may be the first sign of a rule's effectiveness. Even if a state has not changed its behaviour meaningfully in relation to something, recognizing that others should comply with a given document is the result of being influenced by it. A small reorientation, but a behaviour change, nonetheless. This may seem trivial when considering laws made by states, but it has a crucial function in considering the possibility of international law-making by civil society and other actors.

At first, it may appear counterintuitive to imagine that a state would recommend to another one to follow a given rule if they (the recommending party) do not comply with it themselves. But precisely because interpretation leaves so much space for understanding what the rule *is*, it is not so unlikely that, applying different standards, opinions about non-

[5] It is true, of course, that the YPs may not be seen as only one norm, considering the range of different obligations they proscribe. However, for the purpose of this analysis I am considering them as a unit, so that it is possible to measure their overall impact in transnational spaces.

compliance may diverge (Howse & Teitel 2010). Hence, the expectation of compliance provides a more objective criterion for determining the existence of a norm without entering the discussion of its content. In addition, as the YPs have a set of different obligations, it may be the case that states only partially comply with them. Nevertheless, when referring to one of the principles, states and experts in human rights bodies recognize the legitimacy of the document as a whole and illustrate its efficacy. Where a more traditional approach would view this only as a process of customary law formation, I want to stress the possibility of seeing it as a direct attempt at the application of rules crafted by international civil society.

In this sense, the expectation of compliance with the Principles, and therefore their political efficacy, can be seen in different spheres of international legal practice. Aside from their use by domestic bodies mentioned before, states rely on the YPs during the UPR to provide recommendations to their peers, both acknowledging part of their normative content and further (re)constructing the document's legitimacy through its citation. A similar effect can be seen in the mentions to the document by UN human rights TBs, including the Committee Against Torture (CAT) (2011a; 2011b; 2016), the Human Rights Committee (HRCtt) (*G v Australia* 2017), the Committee on Economic, Social, and Cultural Rights (CESCR) (General Comment (GC) No 20 2009: 20), and the Committee on the Elimination of Discrimination against Women (*Rosanna Flamer-Caldera v Sri Lanka* 2022); as well as its use by different UN SPs, including the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI); the Special Rapporteur on the right to privacy (SR Privacy); the Special Rapporteur on the situation of human rights defenders (SR HRDs); the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (SR Torture); the Special Rapporteur on the right to education (SR Education); the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (SR Health); the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SR Terrorism); and the Special Rapporteur on violence against women and girls, its causes and consequences (SR VAWG). Finally, the YPs arguably acquire the status of a source of international law, too, from the ways international human rights courts refer to them—either in a more timid manner, such as the European Court of Human Rights (eg *Zontul v Grèce* 2012; *Hämäläinen v Finland* 2014; *AP, Garçon and Nicot v France* 2017; *X v The Former Yugoslav Republic of*

Macedonia 2019) or in the notoriously progressive stance assumed by the IACtHR (eg *Duque v Colombia* 2016; *Advisory Opinion* OC-24/17 2017).

Both the quantity and especially the *quality* of each of these mentions and instances of application of the Principles serve to demonstrate the success of the initiative and their undeniable political efficacy. As Boris Dittrich deftly summarized in very few words during our interview, "the strategy with the Yogyakarta Principles was to highlight that LGBT rights are human rights" (Dittrich, Interview with the author, July 2022). And, as the next section's analysis suggests, they were successful in their task.

Queer source(s) of law

As far as traditional approaches go, Article 38 of the Statute of the International Court of Justice lists all available sources of international law,[6] which would include international conventions (expressly agreed upon by *states*), international custom, and the general principles of law; judicial decisions and legal doctrine reside there as subsidiary sources. While the overreliance on the categories offered by Article 38 conceals (or attempts to conceal) its historical colonial origins (Chimni 2018), it also elides from the debate the role of other, non-state, actors in producing the law—sticking to the sources of the provision as if stating an all-encompassing truth of the reality of the legal field forecloses the possibility of even considering civil society as legitimate lawmaker. In this sense, a strictly positivist approach to the subject leaves non-state actors out of the realm of intelligibility in the exercise of this specific legal function and consequently renders the notion of "civil society international law-making" an oxymoron. Part of overcoming this mode of thinking requires that we approach international legality as a multifaceted category, instead of focusing on what characterizes the binary distinction between binding and non-binding rules. To be sure, many, if not most, classic approaches

[6] As with other approaches, the label of "traditional" does not cover a monolith and nuance is also present therein—for one possible framing of "traditional approaches", see Bianchi (2016: chapter 1). However, even if the recognition of "other possible sources of international law" are still acknowledged, the analysis of sources is invariably guided by the provisions of Article 38, and the broadening of legal categories can be often dismissed, for instance, through the claim of "confusion between law-making, law-determining and law-evidencing", or at best characterizing it as a possible evidence of custom provided that *opinio juris* is demonstrated (eg Shaw 2017: 85). Likewise, the mention to "soft law" often accompanies the caveat that, in fact, "soft law is not law" (Shaw 2017: 87); and the value of legal acts that fall outside Article 38, such as unilateral acts of states or decisions of international organizations, is eventually asserted based on the thin differentiation of the sources of international law listed in the said Article and "sources of obligation" (see ibid: 90); or, yet, these other acts are recognized as a "*lacune*" or "*source oubliée*" from Article 38, even if only some acts can legitimately be ascribed this place of valid-albeit-forgotten-source (Pellet & Müller 2019: 38; Pellet 2021: 184-185). For yet another "traditional" take on the issue, see Crawford (2019: 18-44).

likewise place the production of soft law under state monopoly, as they more clearly do with hard law instruments, and would not confer the legal label to any civil society practices or documents. In what follows, I approach international law-making despite these differentiations.

In this context, the meaning of *queer* source(s) of law is twofold. On the one hand, it refers to the legal production taking place outside the traditional limits of international legal practice set out by Article 38. In other words, it refers to the mobilization of legal discourse by civil society in ways that fall outside the state-centric arrangement, which only recognizes the legitimacy of state-produced law. What the evidence ahead demonstrates is that, despite lacking the *formal* requirements that would confer upon the YPs the status of a legal source, they are still applied by international actors *as if* they were one—and, through this process, they become one. On the other hand, the YPs are a queer source because they establish obligations that directly affect the lives of queer people. In a way, they inaugurate many obligations regarding SOGI that had never been codified or consolidated in any other international legal documents. Thus, they serve as a source for judges or experts who need a source to justify progressive decisions on queer rights within the discursive economy of *legal* discourse. As such, they provide the necessary instrument for actors who were already willing to rule favourably on issues regarding SOGI and LGBTI+ rights but who lacked some legal foundation to do so.

What the notion of a queer source of law suggests, then, is giving a "queer use", to borrow Sara Ahmed's conceptualization (Ahmed 2019), to the framework that limits the definition of what is (and what can be recognized as) a source of international law. In this sense, following Ahmed (2019: 199), "queer use as when you use something for a purpose that is 'very different' from that which was 'originally intended'." Reclaiming, and demonstrating through the empirical evidence ahead, the YPs as a queer source of law troubles the traditional understandings of what sources are and opens up new possibilities to (re)thinking how this *straight* legal category can be broadened—or, as it were, queered.

[C] APPLYING THE YOGYAKARTA PRINCIPLES: MENTIONS OF THE YPs BY GLOBAL AND REGIONAL HUMAN RIGHTS MECHANISMS

This section provides a *qualitative* analysis of mentions of the YPs by relevant actors of the international human rights system, including its citation by states during the UPR, by the UN SPs, by the UN human rights TBs, by the IACtHR, and by the European Court of Human Rights (ECHR). In this sense, the sample of analysis includes all the main global human rights-monitoring mechanisms, as well as all the regional mechanisms which have mentioned the YPs in their case law (as there are no cases at the African Court on Human and Peoples' Rights where the Principles are cited).[7] As such, it further substantiates the argument introduced above by identifying how the expectation of compliance may play a role in understanding the normative character of the YPs and their political efficacy. With variations depending on the mechanism analysed, the temporal frame covered by the analysis includes documents available until the end of 2024—judgments or reports published after that were not included in the research. Additionally, the documents analysed are limited to the data available in the databases chosen for the research, as indicated below. Therefore, this is not meant to offer an exhaustive analysis of every single mention of the Principles made by those bodies, but only to use the qualitative examination of the cases and reports recorded in the databases to infer how different actors perceive the YPs' legal nature. Moreover, because of the focus on international bodies, this small sample leaves out a number of domestic bodies that could be used to measure the Principles' political efficacy and might merit future research.

The Universal Periodic Review

The UPR is one of the many mechanisms of the UN Human Rights Council (HRC). Through the UPR, each state is periodically evaluated regarding the fulfilment of its human rights obligations (Schutter 2014). In this

[7] An in-text search in all the 'finalized' cases with a decision on the merits on the official website of the African Court on Human and Peoples' Rights (AfCHPR) indicated that the Court has never mentioned the YPs in its judgments, which is the reason why the AfCHPR is not included in the sample analysed that otherwise includes judgments from the other two existing regional human rights courts. The absence of mentions can be explained both by the fact that the AfCHPR has been created relatively recently when compared to its Inter-American and European counterparts (therefore having decided on a smaller number of cases), but especially because the Court has not yet ruled on the merits of any case regarding SOGI. Evidently, in the only thematic related case, the *Advisory Opinion No 002/2015* (2017), concerning the observer status of the NGO Coalition of African Lesbians (CAL) before the African Commission on Human and Peoples' Rights, the Court declared that it could not deliver the Advisory Opinion because the NGOs which had requested it did not fulfil all the requirements to access the Court's jurisdiction.

State	Recommendations			
	Recommended	**Received**	**Supported**	**Noted**
	Canada (1)	Albania (1)	Albania (1)	Albania (0)
	Czechia (1)	Canada (1)	Canada (1)	Canada (0)
	Finland (1)	Chile (1)	Chile (1)	Chile (0)
	Malta (1)	Czechia (1)	Czechia (1)	Czechia (0)
	Netherlands (4)	Dominica (2)	Dominica (0)	Dominica (2)
	Norway (1)	Estonia (1)	Estonia (0)	Estonia (1)
	Panama (2)	Finland (1)	Finland (1)	Finland (0)
	Slovenia (6)	Grenada (1)	Grenada (0)	Grenada (1)
	Spain (1)	Jamaica (1)	Jamaica (0)	Jamaica (1)
	Sweden (4)	Malta (1)	Malta (0)	Malta (1)
	-	Mauritania (2)	Mauritania (0)	Mauritania (2)
	-	Panama (1)	Panama (1)	Panama (0)
	-	Peru (2)	Peru (1)	Peru (1)
	-	St Kitts & Nevis (1)	St Kitts & Nevis (0)	St Kitts & Nevis (1)
	-	San Marino (1)	San Marino (0)	San Marino (1)
	-	Serbia (1)	Serbia (1)	Serbia (0)
	-	Sweden (1)	Sweden (0)	Sweden (1)
	-	Ukraine (2)	Ukraine (0)	Ukraine (2)

Table 1: Distribution of UPR recommendations with mention to the YPs by State. Source: elaborated by the author.

sense, states' mention of the YPs in the UPR recommendations is an important indication that certain states, at least those that have made the recommendations, consider the YPs to contain human rights norms that should be applied.

I used the search tool in the Universal Human Rights Index, a database provided by the OHCHR, to select the relevant recommendations.[8] The results indicated a total of 22 recommendations mentioning the term "Yogyakarta Principles" since the beginning of the review cycles. For someone familiar with the mechanism, this might come across as an insignificant number. After all, by 2021, sexual orientation and gender identity alone had already been referenced more than two thousand times since the first UPR cycle (McGoldrick 2016; Galil 2020). Nonetheless, my primary concern is to qualitatively analyse those appearances, in order to better understand how states consider the YPs. In Table 1, I present the distribution of the recommendations by state.

Examining the recommendations more closely,[9] it is possible to see that they vary from broad comments regarding the application of the

[8] The search was first conducted on 19 November 2021 with the filter "UPR" in the mechanism field. I ran the search a second time on 11 December 2024, obtaining the same results. "Yogyakarta Principles" was the defined search descriptor. For confirmation, I likewise conducted the same search on the UPR Info database, obtaining the same results.

[9] See Table 2 at the end of the article for a summary of the recommendations mentioning the Yogyakarta Principles.

YPs to their use concerning particular matters—like decriminalization of same-sex sexual relations, implementation of legal gender recognition, and elaboration of anti-discrimination legislation. However, the overall tendency was to recommend the document without specification. The language used could be summarized in the following pattern groups: 1) apply/follow/consider using the YP; 2) undertake measures or adopt legislation in line with/develop comprehensive policy instruments based on/harmonize legislation in accordance with the YPs. These appeared either alone or, more frequently, conjugated with the idea of having the YPs as a "guide to assist policy development".[10] The only recommendation to directly signal the YPs as a form of interpretation of other human rights law (and not as a norm in itself) was made by Sweden.[11]

Balancing this set of results, it is interesting to notice that there is indeed an expectation of compliance with the YPs by some states, namely the 10 recommending ones. Despite being addressed in the diplomatic suggestive language that characterizes the UPR, they attribute a normative force to the Principles. Something that is reinforced by the support of the recommendations by eight of the receiving states. They appear to see it as a norm of international law, be it binding or not, and expect it to be followed by their peers.

The United Nations Human Rights Treaty Bodies

The UN TBs are treaty-based mechanisms responsible for monitoring the implementation of UN human rights conventions. They are judicial-like bodies that deliver authoritative interpretations of their respective human rights conventions. Among their functions are: reviewing states' commitment to their human rights obligations; assessing individual cases; and issuing GCs interpreting the content of specific human rights provisions.

[10] Eg recommendations by Slovenia to Czech Republic (2008) and to Finland (2008); and by the Netherlands to Chile (2009).

[11] It reads: "Take all necessary measures to ensure the full enjoyment of human rights by lesbian, gay, bisexual and transgender persons, as stipulated by the principle of non-discrimination established under international human rights law and articulated in the Yogyakarta principles." See: Recommendation made by Sweden during the session of review of Jamaica in 2011 at the UPR.

To select the documents for analysis, I proceeded again with the search in the Universal Human Rights Index.[12] The database shows only concluding observations and/or recommendations containing the specified expression. It does not display other types of manifestations from human rights mechanisms. Even though the YPs might have been mentioned in other treaty bodies' documents, according to the database, the CAT is the only one to have included them in its "concluding observations" regarding states' reviews.[13] To broaden the search, I consulted the OHCHR Jurisprudence Database[14] and the UN Treaty Body Database.[15] They each identified one additional mention of the YPs, respectively, regarding a View on an individual communication by the HRCtt and a GC adopted by the CESCR.

The CAT is the UN TB responsible for monitoring the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Among its functions is the periodic review of states' efforts concerning the scope of the Convention. The search result indicated a mention of the YPs in three different reviews conducted by the CAT. The first of them was the 2011 consideration of the report submitted by Mongolia. Under "discrimination and violence against vulnerable groups", the Committee noted that the state party should "establish effective policing, enforcement and complaints mechanisms with a view to ensuring prompt, thorough and impartial investigations into allegations of attacks against persons on the basis of their sexual orientation or gender identity *in line with* the Yogyakarta Principles" (CAT 2011a, emphasis added).

[12] Similarly to the procedure I followed with the UPR, the Universal Human Rights Index search was first conducted on 19 November 2021 with the filter "Treaty Bodies" in the mechanism field. I ran the search a second time on 11 December 2024, obtaining the same results. "Yogyakarta Principles" was the defined search descriptor. For confirmation, I likewise conducted the same search on the ILGA World database, which only includes documents since 2016 meaning that the search found only one match, coinciding with the only post-2016 mention found in the previous search.

[13] Even within the context of the CAT, the principles have been mentioned in other documents, but it will not be explored here considering the focus on direct recommendations/concluding observations. Or, for instance, the Committee on the CEDAW has referenced the Principles in its View on *Rosanna Flamer-Caldera v Sri Lanka* (2022).

[14] Research conducted on the OHCHR Juris Database; advanced search parameter, "Yogyakarta", on 8 January 2025.

[15] On 8 January 2025. Using the UN Treaty Bodies Database, I selected the following search parameters: document search; Filter by Document Type "General Comment/Recommendation"; Filter by Symbol/Dates 01.01.2007-31.12.2024. Having downloaded all 83 documents resulting from the search, I proceeded to a "word query" using the software NVIVO, searching for the word "Yogyakarta".

The next appearance would be in June of the same year, during the revision of Finland. In a sentence constructed much like the recommendations seen in the UPR, the CAT indicated that the state should "consider using the Yogyakarta Principles … as a guide to assist in the development of its policies" (CAT 2011b). Finally, the last reference to the principles in the context of the concluding observations would come up again during a review of Mongolia, but in 2016. On this occasion, the Committee reiterated its previous suggestions to the state, saying it should adopt measures "in line with" the YPs (CAT 2016).

On all three occasions that the CAT included the YPs in its concluding observations, it expressed the understanding that states parties should observe the obligations outlined in the document to the Convention. Once more, it is possible to see an expectation of compliance with the principles. This time not coming directly from states, but from the experts who compose the Committee. This provides more evidence of the document's political efficacy and its perception as establishing international legal obligations.

Another reference found in the research was made by the CESCR, the TB responsible for monitoring state compliance with the International Covenant on Economic, Social, and Cultural Rights. In its GC No 20 ("Non-discrimination in economic, social and cultural rights"), regarding Article 2, paragraph 2, of the Covenant, the Committee alluded to the Principles' definitions of "sexual orientation" and "gender identity" (GC No 20, "Non-discrimination in economic, social and cultural rights 2009": footnote 25). Providing a definition of SOGI became one of the most significant collateral contributions made by the YPs, which partially helped to circumvent arguments that the two concepts could not be included in international documents due to a lack of consistent definition. The GC, however, does not go further to directly apply any of the principles contained in the document.

The last TB, within the search's sample, to reference the YPs was the HRCtt. In the View on *G v Australia* (2017), the YPs are cited thrice. The individual communication addressed the possible violation of rights under Articles 2(3), 17, and 26 together with 2(1) of the Covenant, due to the state's imposed requirement of "spousal consent" for the full gender legal recognition of the applicant, who was a trans woman. All mentions appear under the Committee's summary of the "author's comments on the State party's observations" (*G v Australia* 2017). That is because the author used the YPs as one of the legal documents to substantiate their claim before the Committee. Similar to what happens in cases at the

ECHR analysed ahead, despite not directly addressing the Principles' legal natures, the HRCtt's View reproduces the reference to it without any caveats regarding its legal value. For instance, the document is cited along with other authoritative sources from state-empowered bodies:

> Given the importance afforded to a person's gender identity in terms of privacy by the Committee, the European Court of Human Rights and the Office of the United Nations High Commissioner for Human Rights, and in the Yogyakarta Principles, the test for proportionality is high (*G v Australia* 2017: 12).

The United Nations Special Procedures

The UN SPs fall within the umbrella of human rights mechanisms available to the UN HRC. There are currently 46 thematic and 14 country SPs' mandates, executed by independent human rights experts who are tasked with conducting country visits, producing reports, and issuing communications to member states with regard to individual cases (OHCHR nd). Most importantly, they are responsible for a vast production of international legal discourse on human rights and their interpretation, through which they contribute to developing, consolidating, and *changing* the norms of IHRL.

Applying the same search parameters as for the two previous mechanisms, the OHCHR database registered no results for mentions of "Yogyakarta Principles" under the filter of "Special Procedures".[16] The same search, however, on the ILGA World SOGIESC database indicated 29 entries, which are analysed in this subsection.[17]

After eliminating the duplications in the database results, 13 single entries were left for analysis. The mentions of the YPs recorded in the database encompassed manifestations of eight different mandates, including: the IE SOGI, the SR Privacy, the SR HRDs, the SR Torture, the SR Education, the SR Health, the SR Terrorism, and the SR VAWG. Following the classification established by the ILGA database, the nature of these appearances included: mentions during country visits; recommendations in reports to the HRC; mentions in reports to the HRC; recommendations in reports to the UN General Assembly (UNGA); mentions in reports to the UNGA; and communication to state members.

[16] Last search conducted on 8 January 2025 at the Universal Human Rights Index.

[17] Search date: 16 December 2024. ILGA World Database; Filter: Special Procedures; 29 entries. Despite informing that the systematic collection of data only includes documents from 2016, the database search still showed documents dating from before that (ranging from 2009-2022). All documents were included in the analysis. For a smaller-scale analysis of the YPs' impact shortly after its launch, see the report by Ettelbrick & Zerán (2010).

The IE SOGI has mentioned the Principles on at least three distinct occasions. While the first one, during the country visit to Argentina, listed the publication of an illustrated version of the YPs among other positive trends, the other two mentions more directly address the Principles' legal nature (Report of the IE SOGI on His Mission to Argentina (A/HRC/38/43/Add.1) 2018: paragraph 35). In its 2021 report to the HRC ("The Law of Inclusion"), the IE indicated that the document has described the "process of reception of gender and of gender identity and expression in international human rights law" (Report of the IE SOGI (A/HRC/47/27) 2021: paragraph 35) and proceeded to enumerate the many domestic and international bodies that have referenced it.[18] The report goes on to explain that the "intensity of this reception" is due to a "standard identification methodology" which was "focused on treaty law, international custom, national practice, judicial decisions and doctrine, many of which are referenced in the present report and all of which – pursuant to Article 38(1) of the Statute of the International Court of Justice – are among the sources of international law" (ibid). Whereas this framing refers back to the idea that the YPs' only task was to identify already in place sets of international norms, it still reinforces its legitimacy through the citation, as there is no other document that congregates the same sets of obligations to be cited in its place. In this sense, the task of merely "identifying" or "codifying" norms that would arguably already exist is also a form of establishing and shaping the content of those very norms (Milanovic & Sivakumaran 2022: 1864).

The last mention by the IE was in a communication regarding the Scottish Parliament's deliberation on gender identity legislation. On this opportunity, similarly to the HRC report, the IE SOGI suggests that the "processes of recognition of gender, and gender identity and expression in international human rights law have been described in the Yogyakarta Principles, a set of standards identified between 2009 and 2018" (Madrigal-Borloz 2022: 7). Besides citing the many references to the Principles in international mechanisms, as before, his communication adds a new clarification: the YPs' process "was not

[18] From the IE SOGI report: "At the date of preparation of the present report have been referenced in universal periodic review proceedings, reports of the United Nations High Commissioner for Human Rights, reports of special procedures and treaty bodies, judgments of the European Court of Human Rights, judgments and advisory opinions of the Inter-American Court of Human Rights, and case and thematic reports of the Inter-American Commission on Human Rights, as well as countless decisions of domestic tribunals including the Supreme Courts of Botswana, India and Nepal, national laws, such as of Argentina and Belgium, and public policy as is the case with Colombia and Sweden." See Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity (A/HRC/47/27) 2021.

one of *obligation-setting* (as some narratives erroneously argue) but rather of *standard identification*" (Madrigal-Borloz 2022: 8, original emphasis). The denial of innovation on the normative content again sustains its authority and legitimacy, which would be drawn from other state-agreed documents, as addressed above. In this case, the hint at "narratives" that erroneously identify the document's legal nature had a precise addressee: the IE's communication to the Scottish Parliament had been issued to counter the arguments put forward by another SP mandate holder—the SR VAWG. In her letter to the legislative house, the SR VAWG acknowledged that "the Yogyakarta principles advocate for the right to define one's own gender with regards to legal gender recognition. They are however not binding" (Alsalem 2022: 3). There are two relevant aspects to be extracted from this latter excerpt. First, the SR does not deny the legal nature of the Principles, but only their bindingness. Second, the mere need to tackle the provisions set forth by the YPs demonstrates the level of influence they have reached—were they irrelevant, no counter-argument would have been required. In a way, the Principles have become a mandatory reference on SOGI debates and IHRL, even if this reference is made to undermine their legal value. As such, this further exemplifies their political efficacy by showing how these actors must consider their provisions in any legal reasoning in this issue area.

Looking at the other SPs' mandate holders, it is possible to identify a similar pattern to the one seen in the UPR mentions. The references made by the SR Privacy vary between two types of frames. First, identifying the YPs as a model of "good practices" regarding SOGI (Report of the SR Privacy (A/HRC/40/63) 2019: paragraph 98). Second, making direct recommendations regarding their application by states. According to one of the reports, "states and non-state actors should: … (l) Make sure that sports organizations integrate the Yogyakarta Principles and the update thereto of 2017" (Report of the SR Privacy (A/HRC/43/52) 2020: paragraph 37). Moreover, when addressing the implementation of recommendations, the SR emphasizes that the implementation should "be informed by the consideration of other internationally recognized instruments, such as … the updated Yogyakarta Principles" (ibid: paragraph 25). In this last mention, the YPs are listed next to legally binding instruments such as the UN Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

In turn, reports by the SR HRDs and the SR Torture refer to the YPs as a "soft law instrument" (Report of the SR HRDs (A/74/159) 2019:

paragraph 111) or as an "international human rights standard" that has been violated (Report of the SR Torture (A/HRC/31/57) 2016: paragraph 48). The latter SR still made an in-passing mention to the content of two principles from the YPs, citing the mention of the same principles by the SR Health (Report of the SR Health (A/64/272) 2009: paragraph 46), without, however, qualifying its legal nature (Report of the SR Torture (A/HRC/22/53) 2013: paragraph 38). Conversely, in a report to the UNGA, the SR Education defines the Principles as a "very important contribution" to debates on sexual education, and adds that "the Special Rapporteur fully endorses the precepts of Principle 16, referring specifically to the right to education" (Report of the SR Education (A/65/162) 2010: paragraph 23). Finally, in a report presented to the UNGA, the SR Terrorism, employs the YPs at least twice to sustain the arguments included in the document. In the one in-text mention, the report does not define the legal nature of the YPs. Still, it indicates state obligations arising from the Principles:

> The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity identify that States must "ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex … reflect the person's profound self-defined gender identity" (Report of the SR Terrorism (A/64/211) 2009: paragraph 48).

This final reference illustrates how the YPs are a readily available instrument for international actors to assign state obligation, regardless of whether they have looked for an alternative source stating the same type of provision. In this sense, it is possible to grasp how the YPs have achieved their own type of autonomous legitimacy, which has detached itself from the treaties and other legal documents from which the Principles allegedly drew their authority in the first place.

The Inter-American Court of Human Rights

Another important field for investigating the political efficacy of the YPs is the regional human rights courts. I will first examine the IACtHR case law. An analysis of SOGI-related cases identified mentions of the YPs in two different opinions delivered by the IACtHR: the judgment in the case *Duque v Colombia* (2016); and the *Advisory Opinion OC-24/17* (2017), requested by Costa Rica.[19]

The first case concerned the attempt of Ángel Alberto Duque to access his right to the "survivor's pension" provided by the Colombian state

[19] As it is in the case for the ECHR as well, and, differently from the other mechanisms analysed, the case law examined is limited by the search conducted until the end of 2021 (and therefore does not include later developments).

following the death of his partner. The state refused to recognize his right on the basis that they were in a same-sex relationship. In this case, Duque argued that he was a victim of discrimination because of his sexual orientation. The YPs appear twice in the document—once in the judgment delivered by the court, and once in a dissenting opinion presented by one of the judges. In the court's decision, the Principles are applied to sustain the argument of "sexual orientation" as a protected category of discrimination within IHRL, appearing alongside citations of views adopted by UN TBs.[20] The way the mention of the YPs appears in the Court's decision again signals an expectation that states comply with what is stipulated by the document. In this case, going even further than what could be observed in the UPR or the mentions in the CAT, it adopted a language usually associated with binding instruments, indicating that "states *shall*"[21] take measures to ensure the fulfilment of the discussed right.

The YPs were again mentioned in the dissenting opinion written by judge Eduardo Vio Grossi. He suggests that the YPs are *not* a norm under international law in any capacity whatsoever.[22] Judge Vio Grossi is criticizing the opinion delivered by the majority of the court precisely because they recognized a normative value in the YPs. Nonetheless, by affirming his view that the YPs are not a norm of international law, he is recognizing that, as far as the court's ruling goes, the principles do indeed contain a normative value.

[20] It reads: "110. On the other hand, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity establish in Principle 13 that all persons have the right to social security and other measures of social protection, without discrimination on the basis of sexual orientation or gender identity. Therefore, States shall adopt all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance, health care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions, and benefits relating to loss of support of spouses or partners as a result of illness or death": *Duque v Colombia* (2016: paragraph 110). Translated by the author.

[21] The verb "*deberá*," which appeared in the original judgment, could be translated either as "should" or "shall". I chose "shall" because the text that follows is identical (even if without quotation marks) to the one in the YPs, and the word that appears in the original English version of the principles is "shall".

[22] It reads: "The Judgment even goes so far as to evoke the Yogyakarta Principles, which were not only adopted after the filing of the petition, but also were adopted by a group of 29 natural persons. Thus, at most, such document could well be considered as one, not the only or even the most relevant, of the expressions of the doctrine or as a claim, proposition or suggestion and, therefore, not as a norm of International Law and not even as interpretative of the Convention": *Duque v Colombia* 2016: 7, partially dissenting opinion of Judge Eduardo Vio Grossi. Translation by the author.

The second time that the IACtHR would apply the YPs was in the context of the *Advisory Opinion OC-24/17* (2017). The opinion was requested by Costa Rica and concerned two main issues: 1) state obligations regarding the right to gender identity and the change of name in official documents; and 2) rights derived from same-sex relationships. This time, the mentions of the principles were much more recurrent, cited more than 10 times in the document. The first group of citations appeared at the very beginning. The court referred to the YPs to establish the definitions of gender identity, gender expression, and sexual orientation. Later, it again drew from the document's provisions to illustrate states' obligations.[23] The expectation of compliance with the Principles appears in an even more accentuated manner in the Court's *Advisory Opinion*. Not only does it refer to its previous indication in *Duque v Colombia* (2016), but it goes further in listing other obligations that arise from the document, repeatedly indicating that the YPs establish/stipulate something that the state should observe.

The European Court of Human Rights

In the context of the ECHR, the use of the YPs to sustain judgments made by the court is more cautious, aligning with the Court's general reputation of being less progressive and more restrained in its judgments than its counterpart across the Atlantic (Huneeus 2011). Nevertheless, their mention in the court's case law indicates some degree of efficacy, even if they do not play as strong a role as in the Inter-American setting. Considering only the finalized judgments, the principles are mentioned in at least four cases.[24]

[23] It reads: "112. … Thus, the Yogyakarta Principles *establish the obligation of States* to … 129. … the Yogyakarta Principles *stipulate* that … 138. … the procedure … is *consistent with* the Yogyakarta Principles as these *stipulate* that … 148. … Similarly, the Yogyakarta Principles *stipulate* that … 155. In addition, the Yogyakarta Principles *have established* that … 196. In this regard, the Court has already indicated that Principle No. 13 of the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, *establishes* … Therefore, 'States *shall* ….'". See *Advisory Opinion OC-24/17* 2017: paragraph 112, 129, 138, 148, 155, 196, emphasis added).

[24] As the ECHR has a considerable number of cases regarding sexual orientation and gender identity, it would not be possible to individually examine each one of them (as it was done with the cases from the IACHR). Therefore, I chose to rely on the search conducted by the Human Rights Documentation (HUDOC) database, which contains all case law from the ECHR. The full text search descriptors applied were "yogyakarta" and "yogyakarta principles". After deducting translation duplicates from the initial result (which showed nine cases), four cases were left to be examined. This search only considered the category "judgments."

Twice, the YPs were brought up in third-party interventions summarized in the court's judgment.[25] The first, in the case *Zontul v Grèce* (2012), regarded an intervention requested by the United States-based NGO, the Center for Justice and Accountability. The case concerned a Turkish migrant who was tortured after being detained by the Greek coastguard on the way to Italy. Among other reasons, the applicant argued a violation of Article 3 of the European Convention on Human Rights for being "subjected to sexual abuse (rape with a baton)" by one of the Greek officers (*Zontul v Grèce* 2012: paragraph 66). The YPs are referenced alongside several other international instruments that have binding force, all produced within the framework of international organizations, such as the Organization of American States and the UN. In this sense, the Principles are put together in the category without being questioned by the court in its judgment.

The principles were again referred to in a third-party intervention in the case *AP, Garçon and Nicot v France* (2017). This time, the mention starkly opposed the first one. The matter under discussion was the right to amend legal identity documents to reflect one's gender identity. ADF International, an organization notoriously active in the "anti-gender" movement (Kuhar & Paternotte 2018), was the one to submit the intervention, asserting, among other issues, that "no account should be taken of the Yogyakarta Principles … in examining these three applications, as *those principles did not reflect established international law* and went beyond what the Court had accepted hitherto" (*AP, Garçon and Nicot v France* 2017: paragraph 111, emphasis added). Differently from what could be concluded in a more superficial analysis, the denial of the YPs' legal force by ADF is more evidence of the reach of their influence within the international sphere. Were they insignificant or uncontroversially inapplicable, there would not be a need to deny their legal value before the Court.

[25] It reads: "81. Le CJA souligne la reconnaissance au plan international de la nécessité de renforcer la protection des droits des « minorités sexuelles ». Cette approche est corroborée par plusieurs *dispositions d'instruments internationaux* (l'article 13 du Traité de l'Union européenne, l'article 21 de la Charte des droits fondamentaux de l'Union européenne, la résolution du 3 juin 2008 de l'Organisation des Etats américains, *les Principes de Yogyakarta de la Commission internationale des juristes*, la Recommandation 2010(5) du 31 mars 2010 du Comité des Ministres du Conseil de l'Europe), par les législateurs nationaux (France, Royaume-Uni, Croatie, Suède, Roumanie), par les organes internationaux de contrôle (le Comité des Nations unies contre la torture, le Comité des droits de l'homme des Nations unies dans l'affaire Toonen c. Australie, la Commission européenne des droits de l'homme dans l'affaire Sutherland c Royaume- Uni (no 25186/94, décision du 1er juillet 1997, Décisions et Rapports 31) et la Cour dans l'arrêt SL c Autriche (no 45330/99, § 28, CEDH 2003-I), et par plusieurs juridictions nationales." See *Zontul v Grèce* 2012: paragraph 81.

The mention that perhaps shows more clearly a consideration of the legal force of the principles occurred in the case *Hämäläinen v Finland* (2014), in the dissenting opinion delivered by judges Sajó, Keller, and Lemmens. They referred to Principle 3 of the document to argue for removing the requirement of spouse consent to allow the applicant to have legal recognition of their gender identity (*Hämäläinen v Finland* 2014: paragraph 16). By doing so, the judges recognized the YPs as a relevant human rights norm when the document affirms that "no status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity" (YPs 2007: 12). It contrasted with the opinion of the majority of the court that refused the claims under the argument that same-gender marriage was not recognized under Finnish law, which would require the applicant to divorce before getting the recognition of their gender identity.

The YPs would again be referred to in the judgment *X v The Former Yugoslav Republic of Macedonia* (2019). On this occasion, they were briefly mentioned in the Court's description of the facts, as the applicant used the principles as one of the legal bases for their request for rectification of legal documents in accordance with their gender identity. Although this was not included in the final reasoning, the legal nature of the principles was likewise not questioned by the judges (*X v The Former Yugoslav Republic of Macedonia* 2019: paragraph 9).

[D] CONCLUSION

International civil society organizations may sometimes do much more than merely influence states in law-making. This article has analysed how their *legal* production, even if outside the formal boundaries of authorized law-making actors, can find political efficacy. In this sense, the claim that the YPs were *interpreting* rather than *creating* human rights norms supported its normative legitimacy; even if, as the empirical analysis shows, they ended up codifying aspects of SOGI rights that thus far had not been inscribed in any international legal documents (Lelis 2025: 194-250). Consequently, as demonstrated above, the YPs are often seen as containing legal norms under IHRL, and the document's provisions have had a significant influence on different transnational actors, impacting the making of international law. For this reason, they stand out among other initiatives coordinated by civil society in attempting to advance the protection of queer human rights.

This article has demonstrated how the YPs provide a *queer* source of law for international human rights mechanisms to advance on SOGI

rights and analysed how different actors' expectations of compliance with the Principles offer evidence of their political efficacy. The nuanced forms in which various bodies might apply them notwithstanding, the analysis shows that the Principles have achieved an outstanding level of efficacy and figure prominently in the reasoning of recommendations and decisions regarding SOGI rights. As such, the findings presented above suggest that the YPs have achieved some level of normative force in international law. Most of all, this initiative and its effects provide an interesting platform for thinking about civil society's actions and its future role in norm creation within international law.

The regulatory gap filled by the YPs has led them to become an unavoidable source in legal debates around SOGI and IHRL, for both those seeking to advance the protection of these rights and those who would deny their recognition under international law. In this sense, by overcoming the lack of address with which the topic suffered in the official fora responsible for the making of IHRL, activists and experts behind the YPs' initiative offered to the international community, for the first time, a legally structured document, sustained by its alleged assembly of already existing law, that they could cite to support SOGI-related human rights claims. As such, they provided a legal source for *queer judgments*. In the same vein as Marko Milanovic and Sandesh Sivakumaran have noted about the International Committee of the Red Cross's (ICRC) study on customary international humanitarian law, "the lawyer citing the Study can not only say 'I didn't make this up;' she can also say that the ICRC didn't make it up either" (Milanovic & Sivakumaran 2022: 1896). The same applies to the YPs, which are there "just waiting to be cited" (Milanovic & Sivakumaran 2022: 1896). The continued citation of the Principles, in different contexts and by multiple human rights bodies, as analysed above, helps not only to demonstrate their impact but further roots the YPs' citational authority, which, combined with the "void-filling" nature of the Principles, makes the document an "obvious" (Zarbiyev 2023: 288, 295) resource to be cited, revealing the extent of its political efficacy.

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Table 2: Summary of UPR Mentions to the Yogyakarta Principles. Source: Elaborated by the author with data from the UPR reports

State under review	Recommending state	Recommendation	Status	Year
Czech Republic	Slovenia	*Interactive dialogue and responses by the State under review*: 25. Slovenia thanked the Government for preparing a comprehensive report and also thanked OHCHR for the very useful and comprehensive compilations of relevant information. It noted that the Czech Republic is still not a party to the Rome Statute of the International Criminal Court. Slovenia asked, and recommended, what obstacles there were to the ratification of this important international instrument, and if the Czech Republic intended to ratify it in the near future. Slovenia commended the Czech Republic on the adoption of the national action plan entitled "Priorities and procedures of the Government in promoting equality of women and men", and enquired about the concrete results of this action plan. Slovenia recommended the full integration of a gender perspective in the follow-up of the review process and that the Czech Republic consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist Czech human rights policies. *Conclusions and/or recommendations:* 14. To **consider using** the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity **as a guide to assist Czech human rights policies** (Slovenia).	Supported	2008
Finland	Slovenia	*Interactive dialogue and responses by the State under review*: 43. Slovenia asked the following questions: Slovenia commended the efforts of the Government of Finland to promote and protect the rights of persons belonging to minorities, especially the establishment of the Ombudsman for Minorities and the Advisory Board for Minority Issues. Slovenia requested further information about the practical influence of both institutions on the effective implementation of the rights of persons belonging to minorities. Secondly, resolution 5/1 states that a gender perspective shall be fully integrated in the UPR. Slovenia asked Finland to provide further details as to what it has done to achieve this in its consultations and the national report, and what has it planned for the next stages of review, including the outcome of the review. Slovenia recommended that Finland integrate a gender perspective fully into the follow-up process to the UPR review and would appreciate learning about plans in that respect. Slovenia welcomed the inclusion of sexual orientation in Finland's human rights legislation and anti-discrimination training activities. Slovenia recommended that the same coverage be provided for the grounds of sexual orientation and disability as for other grounds of discrimination, for example in areas such as the provision of services and health care. Slovenia also commended Finland on its commitment to strengthen protection and respect for all persons based on sexual orientation or gender identity. Slovenia recommended to consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in its policy development and would welcome Finland's views on that. *Conclusions and/or recommendations:* 7. To provide the same coverage in national legislation and anti-discrimination training activities for the grounds of sexual orientation and disability as for other grounds of discrimination, for example in areas such as the provision of services and health care (Netherlands, Slovenia) and to **consider using** the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity **as a guide to assist in its policies** development (Slovenia).	Supported	2008

State under review	Recommending state	Recommendation	Status	Year
Peru	Slovenia	*Interactive dialogue and responses by the State under review*: 33. Slovenia asked about the lack of identification papers for more than 1.5 million persons, thus denying them full exercise of their rights. It enquired about recent measures to increase the population's confidence in the judicial system, especially with regard to combating corruption and increasing capacities of the judicial system. Slovenia expressed concern about the lack of access to health facilities for poor and marginalized communities, in particular women and children, and requested information about the steps undertaken to secure such access. While commending Peru's standing invitation to special procedures mandate holders, Slovenia requested further explanations with regard to the obstacles that prevented the visit of the Special Rapporteur on freedom of expression or opinion requested four years ago. Slovenia recommended that Peru (a) issue identification papers to those lacking them, (b) ensure that a gender perspective is fully integrated in the next stages of the Universal Periodic Review, including in the outcome, and that the gender perspective be systematically and continuously integrated in the follow-up procedure, (c) report regularly to the treaty bodies and to respond to special procedures' communications and questionnaires; and (d) consider applying the Yogyakarta Principles as a guide to assist in policy development. *Conclusions and/or recommendations*: 2. To **consider applying** the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as **a guide to assist in policy** development (Slovenia).	Noted	2008
Ukraine	Slovenia	*Interactive dialogue and responses by the State under review*: 34. Slovenia noted the improvement of the situation regarding human rights and freedoms over the last years and the abolishment of the death penalty in 1999. While noting the incorporation of the Convention on Elimination of all Forms of Discrimination against Women into the Ukrainian law, it observed however that women are paid less for the same work, are rarely represented in top positions in the public and private sectors and do not enjoy equal access to employment. Slovenia asked about the measures Ukraine intends to adopt to improve this situation. Slovenia also observed that domestic violence still remains widespread and that shelters for victims of violence were few. It asked if Ukraine intended to increase the number and capacities of these shelters. It also noted that homophobia has increased in the last years and that the problems homosexual persons face in the work place with law enforcement bodies. It asked how Ukraine intends to promote tolerance and to increase education of public servants in this field. Slovenia recommended to Ukraine to report regularly to CEDAW; recruit more women for public office and to adopt measures requiring equal pay for equal work; include systematically and continuously, a gender- perspective into the follow-up process to the Universal Periodic Review; and to consider applying the Yogyakarta Principles on the Application of International Human Rights Law in relations to Sexual Orientation and Gender Identity as a guide to assist in policy development. *Conclusions and/or recommendations*: 5. To **consider applying** the Yogyakarta Principles on the Application of International Human Rights Law in relations to Sexual Orientation and Gender Identity as a **guide to assist in policy development** (Slovenia).	Noted	2008
Canada	Netherlands	Interactive dialogue and responses by the State under review: 33. The Netherlands commended Canada for its commitment to human rights, its active role in the Council as Vice-President and the constructive dialogue in the UPR process. It asked about OP-CAT ratification. It recommended: (a) that civil society be actively involved in the further UPR process of Canada; (b) reinstating the policy of seeking clemency for all Canadian citizens sentenced to death in other countries; and (c) strengthening and enlarging existing programmes and taking more and specific measures towards Aboriginals, particularly with regard to the improvement of housing, educational opportunities, especially after elementary school, employment, and that women's and children's rights are better safeguarded, in consultation with civil society. It welcomed the extension of equal rights to same-sex couples and protection from hate crimes on grounds including sexual orientation, recommending (d) that the Yogyakarta principles be applied as a guide to assist in further policy development. Conclusions and/or recommendations: 29. Apply the Yogyakarta principles as a guide to assist in further policy development (The Netherlands).	Supported	2009

State under review	Recommending state	Recommendation	Status	Year
Chile	Netherlands	Interactive dialogue and responses by the State under review: 25. The Netherlands requested more details on the proposed anti-discrimination law pending in Parliament. It recommended that Chile (a) seek accountability for abuses by the police and ensure that civilian authorities investigate, prosecute and try such abuses; (b) take the necessary measures to prevent outlawing or penalizing legitimate protest activities or social demands by indigenous organizations and peoples and review ways to amend the Anti-Terrorism Act 18.314 according to recommendations of the Human Rights Committee; (c) prohibit by law, and include in equality programmes and policies, discrimination on the grounds of sexual orientation or gender identity and use the Yogyakarta principles as a guide to assist policy development; and (d) ratify CEDAW-OP. Conclusions and/or recommendations: 28. Prohibit by law, and include in equality programmes and policies, discrimination on the grounds of sexual orientation or gender identity (Sweden) and follow the Yogyakarta principles as a guide to assist policy development (Netherlands).	Supported	2009
Malta	Netherlands	Interactive dialogue and responses by the State under review: 49. The Netherlands, noting the large number of migrant arrivals in Malta, said international cooperation was required. Welcoming Malta's cooperativeness with the Special Rapporteur on the human rights of migrants, it expressed concern about the increasingly restrictive reception and legal procedures for migrants. It recommended (a) strengthening efforts to make the Maltese legal system for asylum-seekers effectively accessible, preventing delays and administrative obstacles and guaranteeing to asylum seekers the necessary procedural safeguards in detention according to international standards. While welcoming efforts to combat discrimination, including on sexual orientation grounds, it noted reports of continued discrimination in this regard, as well as NGO reports on the denial of legal recognition of same-sex partnerships. The Netherlands recommended (b) taking further measures to advance equality on the ground of sexual orientation and gender identity, and among others using as a guide for policy-making the Yogyakarta principles. Noting the non-submission of reports to the Human Rights Committee since 1996, it recommended (c) strengthening efforts with regard to timely reporting to treaty bodies, and especially submitting its second report to the Human Rights Committee as soon as possible. Conclusions and/or recommendations: 22. Do its utmost to combat all forms of discrimination, including discrimination based on sexual orientation (Belgium); take further measures to advance equality on the ground of sexual orientation and gender identity, using the Yogyakarta Principles, among others, as a guide for policy-making (Netherlands).	Noted	2009

State under review	Recommending state	Recommendation	State under review	Year
Mauritania	Sweden	Conclusions and/or recommendations: 93.2. Include sexual orientation and gender identity in non-discrimination laws and programmes, and promote tolerance and non-discrimination regarding sexual orientation or identity, in line with the Yogyakarta principles (Sweden);	Noted	2011
Panama	Norway	Conclusions and/or recommendations: 70.13. Harmonize all national legislation and elaborate policies in accordance with the Yogyakarta principles (Norway).	Supported	2011
Peru	Slovenia	Conclusions and/or recommendations: 116.32. Consider applying the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in policy development (Slovenia);	Supported	2011
Ukraine	Slovenia	Conclusions and/or recommendations: 97.44 Apply the Yogyakarta principles in policy development (Slovenia).	Noted	2012
Mauritania	Sweden	Conclusions and/or recommendations: 129.37 Ensure that the death penalty is not applied to consensual same sex-relations between adults, and that the Penal Code does not criminalize such activity, and include sexual orientation and gender identity in non- discrimination laws and programmes, and promote tolerance and non- discrimination on grounds of sexual orientation or identity in line with the Yogyakarta Principles (Sweden);	Noted	2015
Grenada	Panama	Conclusions and/or recommendations: 94.56 Harmonize its domestic legislation with international law and the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity by decriminalizing consensual relations between adults whose gender expression does not conform to social norms and expectations (Panama).	Noted	2020
Sweden	Malta	Conclusions and/or recommendations: 156.159 Adopt a new gender recognition law to ensure a quick, transparent and accessible mechanism based on self-definition, detaching medical procedures from legal gender recognition, in line with the Yogyakarta Principles (Malta).	Noted	2020
St & Nevis	Panama	Conclusions and/or recommendations: 130.74 Harmonize national legislation in line with international law and with the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity by decriminalizing consensual sexual relations between adults whose gender expression is not heteronormative (Panama).	Noted	2021

State under review	Recommending state	Recommendation	State under review	Year
Serbia	Netherlands	Interactive dialogue and responses by the State under review: 22. The Netherlands commended Serbia for its vibrant democracy and the protection of minorities provided for in its 2006 Constitution. Referring to paragraph 27 of the summary of other stakeholders' contributions, it wished to know how Serbia guarantees the safety of human rights defenders and an independent press, and recommended that the Government adopt a national plan for the protection of human rights defenders and independent journalists. It asked for special attention for human rights defenders in the area of lesbian, gay, bisexual and transgender rights and recommended that the protection of such activists be included in the national plan and that Serbia apply the Yogyakarta Principles as a guide for new policies on lesbian, gay, bisexual and transgender rights. Conclusions and/or recommendations: 20. To promote the work of human rights defenders (Sweden, Canada, Switzerland) and take all necessary measures to ensure their safety (France, Czech Republic) and freedom of expression (Switzerland), and ensure they have a favourable working environment (France); to follow up the recommendation of the Special Representative of the Secretary-General on the situation of human rights defenders and denounce more forcefully verbal and physical attacks against human rights defenders (Germany, Norway); to adopt a national plan of action to enhance the protection of human rights defenders and independent journalists (Netherlands), to develop and implement a comprehensive strategy to protect human rights defenders, including those working on behalf of the rights of lesbian, gay, bisexual and transgender persons (Canada); to apply the Yogyakarta Principles as a guide for new policies in the area of lesbian, gay, bisexual and transgender rights (Netherlands); and ensure the effective investigation of alleged attacks against human rights defenders (Canada, Ireland).	Supported	2009
Albania	Spain	Conclusions and/or recommendations: 7. Include sexual orientation and gender identity specifically in anti- discrimination legislation, and consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Spain).	Supported	2010
Dominica	Canada & Sweden	Conclusions and/or recommendations: 6. Consider utilizing the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in policy development (Canada); […] 8. Undertake measures to promote tolerance and non-discrimination on grounds of sexual orientation or identity in line with the Yogyakarta Principles (Sweden).	Noted	2010
San Marino	Czech Republic	Conclusions and/or recommendations: 7. To explicitly include sexual orientation and gender identity as protected grounds under the principle of non-discrimination in relevant legislation and programmes, and to apply the Yogyakarta principles with regard to human rights and sexual orientation and gender identity (Czech Republic); "San Marino is not in a position to accept recommendations Nos. 5, 6 and 7 above, because the definition of "personal status", set out in the Declaration on Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, already includes all grounds for discrimination. That interpretation has been reaffirmed through San Marino case law.	Noted	2010
Estonia	Finland	Conclusions and/or recommendations: 79.13. Develop comprehensive policy instruments based on the Yogyakarta Principles to combat discrimination against sexual minorities (Finland).	Noted	2011
Jamaica	Sweden	Conclusions and/or recommendations: 101.22. Decriminalize consensual same-sex relations between males, investigate all incidents and acts of violence suspected of being motivated on the grounds of sexual identity, and take all necessary measures to ensure the full enjoyment of human rights by lesbian, gay, bisexual and transgender persons, as stipulated by the principle of non-discrimination established under international human rights law and articulated in the Yogyakarta principles (Sweden).	Noted	2011