

To Geneva and back: Externalising anti-LGBT hate crime as a policy issue

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Abstract

How and why states legislate against hate crime and what role various actors – including human rights movements and international bodies – play in enacting change is attracting increased scholarly interest. Drawing upon primary, mixed-methods research, with Poland as our case study, this paper seeks to understand how new transnational advocacy opportunities change the way local activists push for improved legal protection from anti-LGBT violence. Using Keck and Sikkink's (1998) 'boomerang' model as our interpretative frame, we observe how Polish LGBT groups systematically work with intersectional and transnational networks to feed their grievances to international human rights institutions, which, in turn, apply pressure on the government to amend hate crime laws. We argue that such externalisation of hate crime as a policy issue is a result of the closing of political opportunity structures at home and the

simultaneous appearance of advocacy opportunities abroad along with increased resources being made available to the LGBT movement. While the state still hesitates to change the law, there are signs that calls for a new approach to addressing hate crime, promoted by activists and international organisations, are increasingly being heard by bureaucrats in Warsaw, even if there is currently no political will to make any changes.

Keywords

Transnational advocacy networks, boomerang pattern of advocacy, anti-LGBT hate crime law, international human rights movement, Universal Periodic Review.

Introduction

In 2017, Poland was due for evaluation under the Universal Periodic Review (UPR), a mechanism of the Human Rights Council (HRC) that periodically examines the human rights records of all United Nations member states. In the run-up to the review, Polish LGBT¹ rights groups met with other minority, women's, and generalist human rights organisations to coordinate advocacy activities. The first author of this article represented one of the organisations at that meeting. It was decided that one of the shadow reports² sent to the HRC would raise the problem of inadequate state responses to hate crime, including the lack of provisions in the Criminal Code that would define hate crime motivated by bias based on sexual orientation and gender identity (SOGI), as well as on sex, age, and disability. Following the meeting, evidence was submitted to the HRC via its Secretariat and the HRC member states' embassies, while delegates went to Geneva to lobby diplomats in person. Advocacy on the ground was coordinated with international NGOs, such as UPR-Info. As a result of these concerted efforts, the HRC recommended that Poland step up efforts to ensure LGBT equality, including to '[i]mprove further its non-discrimination legislation by criminalising hate crimes

on the grounds of age, disability, sexual orientation and gender identity' (Brazil).³ Poland accepted the recommendation.⁴

The above is an example of the boomerang pattern of advocacy, a strategy which is increasingly being adopted by activists around the world to call attention to rights violations at home, including the failure to respond to discrimination and hate crime. The efforts are much needed: There is a body of evidence that hate crimes are prevalent and that they often 'hurt more' than other crimes,⁵ inflicting greater harm on victims compared with non-hate-motivated offences and spreading fear, anger and the feeling of vulnerability among affected communities.⁶ Proponents of hate crime laws, scholars and practitioners alike, believe that criminal legislation stipulating higher penalties for hate-motivated offences should be part of a 'comprehensive approach to hate crime', next to education, data collection, outreach and training.⁷ While the numbers are improving, in 2020, only 25% of UN member states stipulated higher penalties for crimes based on sexual orientation.⁸ In fact, globally, more states criminalise consensual same-sex sexual acts between adults in private than offer legal protections from targeted violence.⁹

Whereas the advocacy goals of the Polish LGBT groups, which campaign for improved protection from violence, are similar to those of their Western counterparts, the tactics, such as the work with the HRC above, are often different. In the US, where hate crime statutes originated, the passage of such provisions has been linked with policy, legislative, and scholarly activities at the state or federal level.¹⁰ In Poland, as we will argue, the issue of anti-LGBT hate crime has been *externalised*; international standards provide a point of reference, while tools and institutions at the international level are employed to exert pressure on the state government. This is done for many reasons and using a range of methods, one of which – the boomerang pattern of advocacy – we discuss in this article.

Considering the above, the present paper aims to understand the new patterns of advocating for hate crime laws as a human rights issue. Specifically, we seek to explain (1) how and why activists employ human rights mechanisms and institutions at the international level to advocate for improved legal protection from anti-LGBT hate crime at the level of the state; and (2) assess the effects of transnational advocacy on hate crime in Poland. The paper uses Keck and Sikkink's 'boomerang effect',¹¹ a form of issue externalisation,¹² as a vehicle to explain the contemporary patterns of anti-hate crime movement mobilisation. The framework, borrowed from politics and international relations disciplines, lends itself to hate crime scholars, allowing them to expand their analyses into the international domain. Additionally, the case study description offers lessons for human rights activists pushing for improved hate crime protections.

The main argument of the paper is that Polish LGBT groups have externalised hate crime as a policy issue, working with advocacy networks to feed their grievances to UN bodies, which, in turn, apply pressure on the government to improve protection from anti-LGBT violence. We argue that this is a consequence of the closing of political opportunity structures at home and the simultaneous appearance of advocacy opportunities abroad along with increased resources being made available to the LGBT movement. The analysis develops as follows. First, we review the existing literature on factors influencing the passage of anti-LGBT hate crime laws. The next two sections expound on the theoretical framework and report on the methods of enquiry. The original research is contained in three sections, explaining why Polish NGOs chose to 'throw the boomerang'; how this is done; and what the effects of this strategy are. The analysis is followed by a discussion of the shift in the patterns of advocacy and the externalisation of hate crime as a policy issue. The paper ends with suggestions for further research, as well as implications for policy and practice.

Origins of anti-LGBT hate crime laws

Sociologically speaking, what we call a ‘crime’ and legislate against is an indicator of the nature of our society. The approach to the legal recognition of anti-LGBT hate crime is not, however, straightforward – which shows that the concept of hate crime is ‘relative’ and ‘historically and culturally contingent’.¹³ For queer criminologists, it is also a reflection of the complicated relationship between LGBT communities and the state,¹⁴ particularly in the context of what is to be criminalised, and what is to be protected.¹⁵

While a broader debate continues in sociology as to whether social movements can influence policy outcomes,¹⁶ most scholars see the passage of SOGI hate crime laws as an effect of the mobilisation of gay and lesbian groups.¹⁷ In the US, researchers have documented the specific strategies used by the movement to make homophobic and (later) transphobic violence a crime.²⁰ For example, in Jenness and Broad’s rich description,²² the elements of gay and lesbian advocacy include the establishment of specific anti-violence projects; building coalitions around intolerance; discovering, documenting and publicising cases of violence; crisis intervention and victim assistance; educational campaigns; street patrols and framing anti-gay and lesbian violence as ‘a new form of sexual terrorism’.²³

Whereas social movement mobilisation seems to be the dominant explanation, research found other factors to be conducive to the passage of hate crime laws. These include the state’s internal political opportunities,²⁴ such as the presence of allied and openly LGBT legislators.²⁵ For example, a study of legislatures of 96 countries by Reynolds, which looked at the relationship between the presence of LGBT MPs and LGBT rights law adoption in six policy areas, including hate crime, found that LGBT legislators ‘have a transformative effect on the views and voting behavior of their straight colleagues’.²⁷ Other facilitating factors include an

accepting population;²⁸ a positive social construction of gay men and lesbians in the media;²⁹ and higher levels of *per capita* income.³⁰

Despite the almost exponential growth of both hate crime laws and scholarship in the last two decades, it is surprising how little new research is dedicated to the analysis of advocacy strategies aimed at recognising hate crime in the law. A few UK, Australian and Irish studies³¹ note how advocates in these countries borrow from American approaches. For example, Russell³² identifies victimisation surveys, the focus on police reform, and ‘elements of a punitive public discourse surrounding homophobic violence’ as part of LGBT advocates’ winning strategies. One study from South Africa offers an analysis of the role of national human rights institutions (NHRIs) in improving responses to anti-LGBT violence (corrective rape specifically).³³ In this context, extant scholarship suffers from a lack of frameworks that would allow us to make sense of new phenomena, such as the engagement with the UPR process described in the introduction.

Internationalisation of hate crime and LGBT rights activism

While the shifting patterns of hate crime advocacy have not yet been subject to detailed critical analysis, there is a burgeoning literature taking a more international perspective.³⁴ Breaking out of the US- and UK-dominated ‘echo chamber’, authors have recently engaged with hate crime understood as a global problem requiring transnational solutions. Schweppe and Walters³⁵ propose the term ‘internationalisation of hate crime’ to describe the process in which ‘hate crime – both as a concept and as a specific criminal offence – has been recognised as a social problem that is being addressed collectively at the international level’. Contrary to civil rights leaders in the US who rejected international frames in favour of state-level ones,³⁶ Brudholm³⁷ observes that framing hate crime as an international human rights issue has an important benefit – the possibility to bring in the ‘human rights machinery’ to advocate for

improved legal protection. A few studies³⁸ offer institutional accounts, showing the emerging international standard and analysing how various institutions – such as the Organisation for Security and Cooperation in Europe – use their respective mandates to support governments in developing and implementing anti-hate policies. There is, however, little critical appraisal of the increasing connectedness between these international institutions and grassroots activists – who, as we remember, brought about hate crime legislation in the US. Partially responding to this problem, Perry³⁹ identifies civil society as part of the ‘hate crime triangle,’ next to scholars and national and international policymakers. While Perry’s model shows how to be ‘victim-focused’, we lack detailed, focused studies that would give meaning to the various relationships and interactions – including clashes – between the different actors. In that sense, criminology lags behind politics and international relations, where scholars have written plenty about LGBT rights norm diffusion around the world,⁴⁰ particularly explaining Europeanisation,⁴¹ resistance,⁴² and backlash⁴³ against the international norms on LGBT equality. For example, in their four-country study covering legitimisation, protection and recognition of same-sex sexualities, Roseneil et al.⁴⁴ observe that the change is an effect of both ‘endogenous, path-dependent, national, and culturally specific factors’, as well as ‘exogenous influences, exerted by processes of European transnationalisation and globalisation.’ Indeed, LGBT movements have been observed to participate in transnational advocacy networks⁴⁵ under the umbrella of international NGOs like the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), with support from mainstream groups like Human Rights Watch. LGBT advocates tend to frame their grievances as a human rights issue and have increasingly started to feed their grievances into the international human rights system,⁴⁶ hoping that this will help leverage their claims. In an article overlooked by most hate crime scholars, Swiebel and van der Veur⁴⁷ provide an analysis of the difficulties that the advocacy community has with coaxing IGOs into taking anti-LGBT hate crime on board, which is needed to ‘help and guide their

member States to develop and implement effective policies for prevention and remedy.’ Elsewhere, Swiebel⁴⁸ also notes that ‘[t]he gay and lesbian movement was rather late in stepping into the international arena,’ but has since gained access to some supranational bodies, like the European Commission, but not most UN institutions. In this aspect, the present study will provide an update on Swiebel and van der Veur’s observations, showing that the persistent work of the LGBT movement has been paying off, as the HRC and other UN institutions seem receptive to anti-LGBT hate crime issues.

Summing up, scholars have observed a process termed the ‘internationalisation of hate crime’ but the literature is largely silent about the contemporary advocacy strategies, particularly beyond the state level. At the same time, there is an increasing amount of research on transnational LGBT organising, but without consideration of hate crime in its own right. Bearing this in mind, in the next section, we provide the theoretical framework for analysing the process, and results, of transnational advocacy on anti-LGBT hate crime law.

Boomerang pattern of advocacy

One model for understanding how political opportunity structures at the international level can be used to bring attention to human rights violations at home was proposed by Keck and Sikkink.⁴⁹ Through what they call the ‘boomerang’ pattern of advocacy, aggrieved citizens can call upon transnational advocacy networks to publicise human rights violations and pressure their governments to uphold their international commitments. According to the authors, when governments are unresponsive to claims that might resonate elsewhere, ‘international contacts can “amplify” the demands of domestic groups, pry open space for new issues, and then echo these demands back into the domestic arena’.⁵⁰ Following that, international partners can oblige governments ‘to act on vaguer policies or principles they formally endorsed’.⁵¹ In other words, the process involves reaching out to the international human rights community with the

expectation that it will help to put an end to the rights violations at home by applying pressure on the government. Such ‘externalisation of contention’ is, as Tarrow⁵² observes, nothing new in politics, as political actors on the losing side have always been inclined to look for allies abroad.

Over the past few decades, the ‘boomerang’ provided the groundwork for numerous studies, which have lent it empirical support⁵⁴ and further elaborated on the model. Three aspects of current scholarly critiques are particularly relevant here. First, researchers analysed the interactions between the nodes in the networks and critiqued the conceptualisation of actorhood in earlier studies. Carpenter’s⁵⁵ work highlighted the role of gatekeepers – influential actors who set the agenda for transnational networks. Others have pointed out that the political opportunities offered by global human rights are not only used by, but also have the power to shape movement actors.⁵⁶ UPR-Info is an example of an NGO established in response to the creation of the UPR in 2006. In the area of LGBT rights, ILGA and its European chapter ILGA-Europe are noted for their central roles⁵⁷ and work, respectively, with institutions and mechanisms at either global (UN) or regional (European Union, Council of Europe and the OSCE) levels. Topic-wise, much of the analysis has been done on the decriminalisation of homosexuality and the rights of same-sex couples.⁶⁰ Transnational advocacy around hate crime has not yet been studied, despite the calls for protections against violence being among the international LGBT movement’s first demands. In that sense, scholars’ interests diverge from the movements’ goals. The empirical analysis in this article will explain the opening of political opportunities for externalising anti-LGBT hate crime issues and the role of INGOs like ILGA and UPR-Info in facilitating the addition of the issue to the UN agenda. Otherwise, the questions of power, agenda-setting and norm adoption within the networks, while interesting, are beyond the point of this article.

Second, Holzhacker⁶¹ introduced the concept of ‘ricochet,’ i.e. the process of ‘rapid exchange of information and political and legal argumentation between institutions and civil society’. This article will demonstrate how Polish NGOs, political opposition, the NHRI and international bodies refer to and cite each other’s reports and positions, showing evidence of the ‘ricochet.’ In this way, the article will highlight the institutional aspect of the boomerang pattern of advocacy.

Third, the boomerang has originally been imagined as a process whereby activists in developing and authoritarian countries are helped by more powerful actors from the west. Dondoli⁶³ refers to LGBTI activists in non-western states as ‘peripheral.’ The boomerang’s focus on the global south lends itself to decolonising critique. Waites⁶⁴ observes that much of the political science literature focuses on the ‘human rights rainbow’ or the ‘spiral pattern’, both of which originate in the west. In line with Waites, this article will also highlight the agency of actors in peripheral (although not formerly colonised) states in the articulation of human rights claims. We will present the boomerang from the vantage point of Warsaw, rather than Geneva or New York, showing how local LGBT groups actively shape their advocacy goals. Before that, in a few words, we will describe the methodological approach to this research.

Methodology

To explain and evaluate the boomerang process in relation to anti-LGBT hate crime law, this study employs a case study design,⁶⁵ combining documentary analysis⁶⁶ with data from expert interviews.⁶⁷ Insights from these two data collection methods are supplemented by the first author’s reflections from his personal experience of participating in transnational advocacy.

We have selected Poland as our case study because it has an active LGBT advocacy community, but political resistance is high and political opportunities for traditional political lobbying are limited.⁶⁸ In that sense, Poland is in a comparable predicament to Bulgaria or Italy, other EU member states where mobilisation against hate crime has not led to improved legal protection. Additionally, Poland is selected because, as it had previously been observed, the hate crime advocacy ‘process [compared to western states] is more indirect and filtered through international organisations’.⁶⁹ The focus on this jurisdiction, benefitting from the first author’s personal experience doing advocacy work, provides the opportunity to understand the new patterns of advocacy and the role of transnational actors in national hate crime policymaking.

To understand why the issue of hate crime was externalised (i.e. moved from the domestic to the international political arena), we analysed the existing literature about the position of LGBT individuals in Polish society, identifying the dominant political discourses of homosexuality after 1989 and how they constrained the actions of the country’s politicians when it came to legislating LGBT rights.

When we move from the domestic to the international level, our analysis comprises cyclical UN human rights monitoring and review processes, within the scope of which NGOs can formally submit alternative reports concerning anti-LGBT hate crime and the relevant body can make country-specific recommendations (or ‘concluding observations’). This includes human rights treaty bodies (e.g. the Committee Against Torture (CAT)) and the HRC. To find documents related to UN advocacy, we searched the online repositories of the Office of the High Commissioner for Human Rights (OHCHR)⁷⁰ and cross-checked the results with the UPR-Info database⁷¹ and Polish NGO online archives. The query produced a long list of documents authored by states, NGOs, and international bodies, which we subsequently screened to determine the presence of key search words.⁷² Selected documents were further

scrutinised for recommendations specifically addressing anti-LGBT hate crime laws in Poland. Documents mentioning LGBT issues or hate crime more generally or in other contexts (e.g. data collection) were excluded. The resulting corpus was then analysed to establish a link between advocacy texts (inputs) and the output of the work of the UN body in each cycle (i.e. if the UN body reiterated the recommendation made by advocates).

The limitation of archival research is that it is not possible to establish clear cause-effect connections between advocacy efforts and the positions or actions of target actors. While this is not a goal of this study *per se*, a similar problem is observed by Dondoli,⁷³ who argues that ‘NGOs’ advocacy often happens informally over numerous conversations between activists and governmental delegates’. For this reason, we supplement the documentary analysis with two other data sources: (i) the first author’s reflective account⁷⁴ of participating in the ‘boomerang’ during the third UPR cycle and (ii) in-depth semi-structured interviews with key actors. For the latter, we followed the principles of purposive sampling,⁷⁵ focusing on soliciting perspectives on hate crime policy development, advocacy and resistance from professionals with diverse positions and backgrounds. Keeping in mind Swiebel’s⁷⁶ critique that social movement researchers tend to overlook the agency of bureaucrats, we wanted to ensure a balance between civil society and official perspectives. Three categories of informants emerged: (1) national authorities, (2) international organisations and (3) NGOs. Participants were recruited until theoretical saturation was reached. In practice, considering that the expert community is small, we reached most key actors in the three categories. A total of 21 individual interviews and one group interview were conducted,⁷⁷ with the sample including male, female and non-binary respondents. All interviews were conducted and analysed by the first author. Some were followed up by email or telephone when further information was required. Each participant provided informed consent to participate in the research. The study received the

ethical approval from the University College London Research Ethics Committee (project ID: 6312/001).

The ‘why’ question: Anti-LGBT hate crime advocacy

Closing political opportunities

To understand why Polish LGBT advocates decided to take their grievances abroad, we need to gain a sense of the country’s socio-political environment. The collapse of communism in 1989 unleashed massive social, economic and political changes, triggering considerable psychological anxieties among the people of Poland. To deal with the disorientating effects of the transition, there was a tendency among many Poles to cling to ‘traditional’ pre-communist norms and values in a bid to provide a sense of stability and ‘normality,’ with traditional gender roles seen as ‘an important aspect of the nostalgia for “normality”’.⁷⁸ However, what was seen as ‘normal’ was defined strictly in national, Catholic and heterosexual terms. This conflation of Polishness, Catholicism and heterosexuality was, of course, reinforced by the Polish Catholic Church, which emerged as ‘a symbol of the nation’.⁷⁹ Having acquired enhanced legitimacy and power after 1989, the Church actively lobbied successive governments in the 1990s to ensure that its position on issues relating to sexuality was in line with Catholic dogma.⁸⁰

Poland’s accession to the European Union in 2004 raised hopes among many LGBT Poles that this would enhance their legal rights and improve social acceptance of sexual and gender diversity. These hopes were, however, soon dashed. The Sejm (lower chamber of the parliament) approved the anti-discrimination protections in the labour law in the final years of the social-democratic government led by the Democratic Left Alliance (SLD); however, this law was an EU requirement and Poland had no choice but to adopt it. The attempt during the

same government to legislate in favour of same-sex unions failed. This is in line with the principles of norm adoption theories. According to Schimmelfennig and Sedelmeier,⁸² EU norms are less likely to be adopted if they clash with ‘domestic rules that enjoy high consensual domestic legitimacy, perhaps as symbols of the national political culture’.⁸³ According to Ayoub, ‘norms governing LGBT rights are moderated by the perception of their threat domestically’.⁸⁴ As Góra and Mach⁸⁵ explain, European and national identities are often seen as being in a zero-sum relationship and, as we will see below, there was thus strong resistance to the EU minority rights agenda, thought to pose a threat to Poland’s national and religious identity, which had greater resonance among Poles than a sense of Europeanness. It should be noted that this was true of other EU accession states, such as Latvia.⁸⁶

Apart from advocating for the equal treatment provisions and the recognition of same-sex unions, the Campaign Against Homophobia (KPH) proposed in 2005 that sexual orientation be recognised as a protected characteristic in the Criminal Code (which, unlike civil anti-discrimination protections, was not mandated by the EU) in a letter to the government.⁸⁷ Gender identity, which would be added in advocacy documents later, was not mentioned at that stage. The letter provided reasoning based on available evidence on sexual orientation hate crime. Despite the pro-LGBT stances of some members of the ruling party, the Ministry of Justice⁸⁸ dismissed the proposed amendments as unnecessary and incompatible with the established legal doctrine. According to the Ministry, the existing protections are sufficient to deal with homophobic hate speech and violence. In the Ministry’s understanding, the existing provisions on hate speech and hate crime were developed to counter racism and xenophobia, believed to threaten not just one’s dignity, but also peace, democracy and society as a whole. According to the Ministry, attacks motivated by homophobia do not possess such a quality; therefore, they do not mandate enhanced penalties. This argumentation was repeated by the

government and various other institutions in the following years, marking the incongruence of the proposed new solutions with the existing legal norms.

While EU accession did result in some limited improvement in legal protection for sexual minorities, it also led to an intensification of political debate about the place of gay and lesbian individuals in Polish society. Nationalist parties used the issue of LGBT rights to draw a boundary between the ‘decadent West’ and the ‘traditional East,’ with attitudes towards homosexuality in Poland becoming ‘a reference point for political self-definition and national pride’.⁸⁹ The strategy proved a successful one and led to the electoral victory of the Law and Justice party (PiS) and its coalition partners, which embraced an ultra-Catholic and highly nationalist political agenda. This closed all political opportunities for improving hate crime protections. Quite the contrary – the PiS-led government refused to consider any LGBT-friendly laws at all. Following criticism from the European Parliament of the Polish government’s failure to respect the rights of its LGBT citizens,⁹⁰ it became a matter of national sovereignty that Poland be allowed to criticise sexual and gender minorities, with homophobia thereby becoming ‘the new voice of patriotism’.⁹¹

The discourse of ‘homosexuality as a threat to the nation’ became so hegemonic that activists were forced into a strategic response, whereby support for LGBT equality was reframed from being a universal human rights and Europeanisation issue to ‘a more rooted politics of being Polish’.⁹² As Ayoub and Chetaille⁹³ explain, ‘activists were inclined to use national symbols such as the Polish flag’ to reclaim Polish national identity for sexual minorities, while the choice of ‘Love thy neighbour’ as the theme of the 2007 Equality Parade in Warsaw was meant to resonate with Catholic values.

The outcome of this politicisation of homophobia in tandem with the negative rhetoric from the Church was an environment in which homophobic attitudes dominated. The electoral victory of the centre-right Civic Platform party (PO) in 2007 raised hopes that political

opportunities had reopened. Nonetheless, after the initial homophobic backlash eased, LGBT rights remained politicised. The conservative PO government avoided taking a stance on such ‘loaded’ topics as same-sex unions. Other, potentially less controversial, branches of LGBT rights, such as hate crime protections and gender recognition law, became a ‘victim’ of this situation, with much of the critiques showing fear of new laws paving the way for same-sex unions (see the analysis below). For example, the gender accordant act, passed by the parliament, was vetoed by the president on the grounds that it could lead to the recognition of gay marriage.⁹⁴ In this context, pointing out the difficulties with legislating against anti-LGBT hate crime, a representative of the Ministry of Interior responsible for hate crime statistics said in the interview: ‘What really bothers me is the attempt to play these issues politically. As if there is no understanding that, at the end of the day, we are talking about fighting criminality, which should not have any political colouring’.⁹⁵

Understanding that the government would not, on its own, initiate works on legislating against anti-LGBT hate crime, a group of LGBT organisations drafted its own bill that could be submitted to the Sejm by supportive MPs.⁹⁶ In 2011, a draft amendment to the Criminal Code was prepared and submitted to the Sejm by a group of opposition MPs from the SLD party.⁹⁷ It proposed to expand the catalogues of protected grounds in the provisions on hate speech and hate crime (Articles 119, 256 and 257) by adding sexual orientation, gender identity, age, gender, and disability to the already protected categories of race, national and ethnic origins and religion. The draft amendment passed the first reading, but the Ministry of Justice expressed a negative opinion on the proposal, citing similar reasons as in 2005.⁹⁸ Without political support from the government, the draft amendment was buried in a parliamentary subcommittee until the end of the term of the parliament. Several subsequent proposals met the same fate.

In 2015, the PiS party won the elections again, forming a government with other right-wing national-conservative parties. PiS's scapegoating and marginalisation of the LGBT community became even more intense and attacking homosexuality was the cornerstone of the election campaign of the PiS candidate for the Polish presidency in 2020. Not surprisingly, therefore, a draft amendment proposing the extension of hate crime laws to include sexuality as a protected category, sponsored by opposition MPs from the liberal Modern (*Nowoczesna*) party,⁹⁹ was rejected in the first reading in 2016, showing a more hard-line stance than pre-2015. As of October 2021, several more bills have been submitted in the Sejm, including one by the Sejm's Petition Committee, but none has yet been tabled for a reading.

Summing up, having been faced with resistance from successive Polish governments since the mid-2000s, LGBT activists have had to engage in alternative strategies to usher in greater protections against anti-LGBT hate crime in Poland. This blockade at home led to the development of the boomerang advocacy, in which the issue of hate crime became externalised. This is considered below.

Strategic responses to limited political opportunities

Throughout the 2000s, the gay and lesbian movement in Poland continued to grow and professionalise, mobilising many resources, including human and material.¹⁰⁰ The issue of gender identity gained prominence, with a trans rights organisation Trans-Fuzja forming in 2009 and other organisations rebranding themselves using various versions of the 'LGBT' acronym. A new generation of activists appeared, bringing in expertise on specific policy issues and the ability to procure funding. For example, Lambda Warsaw established a 'cross-sectional advocacy' programme on hate crime, funded by an international grant.¹⁰² Intersectional collaboration and transnational networks flourished.¹⁰⁴ Externally, Polish activists benefited from support from more experienced, better resourced and connected groups in the west and

from the aid of umbrella structures, particularly ILGA and ILGA-Europe. Domestically, LGBT groups built ties with more experienced and better resourced movements, such as the feminist/women's rights movement,¹⁰⁵ as well as anti-racist and generalist human rights organisations. Intersectional initiatives, such as advocating for equal treatment (and, later, hate crime) laws, brought together various groups affected by discrimination motivated by bias based on SOGI, gender, racism, religion and disability.¹⁰⁶ The NHRI – the Commissioner for Human Rights – began supporting the hate crime law reform was won over around 2009, after discussions with NGOs.¹⁰⁷

The range of advocacy goals and tools expanded in line with developing international standards and an improved knowledge base, as well as emerging political opportunities internationally. The term 'hate crime' started to be used to describe prejudice-motivated violence or the most extreme form of discrimination. Drawing on the resources provided by transnational partners, such as ILGA-Europe's guidance on monitoring and recording,¹⁰⁹ Polish LGBT and anti-racist NGOs started to document cases of attacks, producing reports¹¹⁰ which represented hate crime as hidden and unreported violence, pointing out the failure of the state to recognise it and deal with it. As with similar reports abroad,¹¹¹ they were underpinned by increasingly sophisticated research methodologies to improve the legitimacy of results for use in the policy process.

Abroad, the international LGBT rights movement also grew in strength and professionalised,¹¹³ gaining recognition (and funding) from an increasing number of governments and IGOs. Linking its grievances with existing frameworks, such as human rights and (particularly in the EU) equality, the movement managed to gradually make various international bodies open to issues relating to sexual orientation and gender identity. From the perspective of this article, however, what is important is not so much how and which international bodies were 'won over;' these efforts are well documented, e.g., by Swiebel,¹¹⁴

and there is also a useful critique of global queer politics.¹¹⁵ Rather, we observe the fact that UN institutions started to take interest in the issue of discrimination and violence based on SOGI, as exemplified by the first UN report on this issue.¹¹⁶ Treaty bodies formulated observations on SOGI, while UPR emerged as ‘the most useful UN mechanism for advancing LGBTI rights’.¹¹⁷ Together, these efforts improved political opportunity structures¹¹⁸ for the international LGBT movement.

The professionalisation, intersectional and transnational connections meant that the Polish LGBT groups, blocked at home, were able to benefit from improving access to international institutions. The new opportunities abroad allowed for externalising the issue of hate crime, overcoming the disconnect with the government through boomerang-type advocacy. In the next section, we demonstrate how Polish activists engaged the international human rights machinery to press the government for anti-LGBT hate crime law.

The ‘how’ question: From shadow reports to official recommendations

Archival research shows that Polish NGOs first submitted shadow reports to UN human rights bodies, specifically raising the need to legislate against anti-LGBT hate crime, in 2009. That year, evidence was submitted to the UN Human Rights Committee (HR Committee) for the 6th review of the implementation of the International Covenant on Civil and Political Rights. It was part of a joint submission, prepared by two women’s rights groups together with KPH.¹¹⁹ The report complained about the ‘lack of provisions concerning hate speech and hate crimes based on homophobia’.¹²⁰ Following the review, the HR Committee¹²¹ issued observations recommending that Poland ‘amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences.’ This marks the first full cycle of the ‘boomerang.’ This process would subsequently

be repeated on numerous occasions (see table 1 below for summary). One example – advocacy during the 3rd cycle of the Universal Periodic Review – is described in detail below.

Table 1. HERE

Table 1 shows that UN bodies were approached seven times with shadow reports on anti-LGBT hate crime laws in Poland and on seven occasions issued corresponding recommendations, suggesting that the issue was well received. As table 1 shows, however, the overlap between inputs for, and outputs of, the targeted UN bodies is, however, not complete: at times the international institutions acted without a preceding shadow report (likely alerted in another way or on their own volition, given the scope of their mandate) or, conversely, failed to address the issue despite receiving a shadow report. Data from interviews¹²³ analysed in the context of the first author's first-hand experience of being part of the advocacy movement suggest that the non-inclusion might be for several reasons. One LGBT activist from Poland explained in an email following an interview: 'If a recommendation is missing, this means that we did not try hard enough ;) A converse situation, the CRC [Committee on the Rights of the Child] – there was no shadow report, but apparently someone fought for that behind the scenes.'¹²⁴ In the case of the Convention on the Elimination of Discrimination Against Women (CEDAW), one anti-racism advocate interviewed describes the influence of being physically present during sessions on the content of the report by saying:

It is important which delegations are part of an initiative group that prepares the comments, because they then set the tone of those reports (...). The drawback is that very few organisations then go to Geneva or NYC to meet with committee members (...). This is a huge opportunity to influence the change that is happening (...). But for example, with CEDAW, because it was women's rights and LGBT rights organisations that went there, our issues connected with migrants are

completely absent in the final recommendations of the committee,
because the people who went there promoted totally different issues.¹²⁵

The above accounts suggest that the presence or absence of recommendations may be due to the advocacy strategy (prioritisation of issues) and resources (allowing physical presence on the ground). Another reason may relate to the mandate of the body in question. For example, under the International Convention on the Rights of People with Disabilities, the issue of hate crime against LGBT was included in the shadow report,¹²⁶ but the delegates who went to Geneva prioritised the so-called conversion therapy in their advocacy, seeking to secure a recommendation on banning such practices.¹²⁷ This was because no such recommendation had been made by a UN body before (as opposed to multiple recommendations on hate crime), while, at the same time, mental health is directly relevant to the mandate of the Committee on the Rights of People with Disabilities. As a result of Polish NGOs' mobilisation, aided by ILGA in Geneva, the Committee repeated recommendations on conversion therapy, while omitting recommendations on SOGI hate crime.¹²⁸

3rd cycle of the Universal Periodic Review

Considering the upcoming 3rd cycle of the UPR, planned for May 2017, Lambda Warsaw decided to focus its advocacy activities on the issue of hate crime, covering a range of bias motivations. As the first author recalls, it was a strategic decision, taking into account available resources such as expertise and data, as well as the strengths and interests of other NGOs.¹²⁹ Lambda also believed that linking the issue of anti-LGBT violence with racism and xenophobia would improve the legitimacy of the claims, while a separate report on this specific issue would add gravitas, resulting in more targeted recommendations.

The shadow report was drafted by Wąsik and Godzisz¹³⁰ on behalf of Lambda Warsaw and two other members of the Coalition Against Hate Crimes, including the charity Association for

Legal Intervention which supports migrants and refugees. The report emphasised that Poland pledged to legislate against hate crimes based on SOGI, gender, age and disability in the 2nd cycle of the UPR in 2012, but failed to deliver on that promise. It advocated in favour of recognising the bias motivation of a crime as an aggravating circumstance and complained about the lack of support services for hate crime victims. The authors evidenced the regressive action in hate crime policy and practice after 2015, particularly citing the Minister of Justice's declaration that he sees no need to introduce any changes in this area of the Criminal Code.

The above key findings and recommendations were summarised into a 1-page brief, shared with diplomats during meetings with the embassies of the US, the UK, the Netherlands, Belgium, Ireland, Norway, Sweden, Australia, South Africa, and other countries. They were also incorporated in the handouts prepared for an NGO delegate who travelled to Geneva for the UPR pre-session, organised by UPR-Info to facilitate direct advocacy to state delegations ahead of the HRC session.

The strategic choice to put hate crime centre stage – both in shadow reports and other advocacy activities – brought effects. The compilation of stakeholder information prepared by the OHCHR draws heavily on the shadow report (dubbed 'JS4'), referencing it 12 times. The salience of the issue is visible also in the records of the session of the HRC, with hate crime featuring in numerous interventions by the HRC member states. The term 'hate crime' appears 23 times in the report of the UPR working group¹³¹ (even more, if we count synonyms like 'bias-motivated crimes' and specific forms, such as racist violence). Numerous HRC members provided hate crime-related recommendations. Notably, a group of countries, including Norway, Belgium, Iceland and Canada, provided a string of similar recommendations to amend the Criminal Code (see figure 1 below). The identical wording and the order of recommendations – repeated one after another, like an echo – suggests a coordinated action on

the part of the diplomats, who wanted to emphasise the topic, in recognition of the priorities set out by the advocates.

Figure 1. HERE

Considering advocacy activities at home, activists on the ground made sure that the UPR process gained visibility in Poland. The process was presented as an opportunity to name and shame the government for its record on LGBT and human rights. KPH financed the mission to Geneva through a public fundraiser and promoted it on social media, writing:

She [KPH delegate] will present a report and tell [other UN member states] how the Polish government treats LGBT people. By gaining the interest of authorities in other countries KPH wants to put pressure on the Polish government. PiS politicians will have to make a difficult choice - either they will lose face, or they will stop hating non-heterosexuals!¹³²

The interactive dialogue with the Polish government was streamed live during an online event ‘PiS under fire from UN questions - live video report’ hosted by KPH, Lambda, Amnesty International and other allied NGOs. The recommendations were widely discussed in the Polish media, bringing renewed attention to the stalled works on the reform of hate crime laws.

Summing up this part of the analysis, two findings are worth highlighting. One, Polish advocacy groups, with the help of domestic allies and transnational networks, routinely engage with international human rights monitoring and review mechanisms, using their leverage to apply pressure on the government to legislate against anti-LGBT hate crimes. Two, the targeted institutions are receptive to this kind of advocacy efforts and, in most cases, readily amplify the activists’ claims, providing specific recommendations to the government to amend the Criminal Code. The next section considers the outcome of the boomerang advocacy, i.e., the

government's discursive and factual response to international recommendations on anti-LGBT hate crime.

The effects: State's response, accountability and resistance

As table 1 shows, three UN institutions reiterated their recommendations on anti-LGBT hate crime laws upon realising that the state had not complied. The 'realising' was facilitated by advocates who alerted the bodies about the persistent violation. For example, the shadow report sent to the HRC for the 3rd cycle of the UPR (described above) argued that, '[d]uring the 2nd cycle of UPR in 2012, Poland accepted the recommendation to include sexual orientation and gender identity in the hate speech provisions (90.66) and to recognise gender identity and sexual orientation as aggravating circumstances for hate crime (90.68). These recommendations have not been implemented'.¹³³ Indeed, as discussed before, against the mounting pressure from within and outside the country, Poland continues to resist the idea of recognising anti-LGBT hate crime in the law.

Does the fact that the law has not changed mean that transnational advocacy failed? Tarrow¹³⁴ posits that '[t]ransnational intervention fails more often than it succeeds.' Polish scholar-activist Bielska¹³⁵ asserts that 'the [Polish LGBT] movement has become a recognisable political actor but has not achieved any legislative goal.' This article takes a more optimistic stance, emphasising the nuanced differences between different legislative goals and recognising the value of the 'ricochet' and the ongoing socialisation of bureaucrats, which prepares the ground for future legislative changes.

While the law has not changed, we observe that the government's discursive position towards the recommendations has been far from a blunt 'no', which might be expected given the current negative political rhetoric on LGBT rights in Poland. Instead, this research finds that the government takes a different stance towards recommendations (and legislative

proposals) on hate crime compared with those on same-sex unions, appearing more amenable to the former. For example, following the interactive dialogue during the 3rd cycle of the UPR, Poland rejected recommendations on same-sex unions, but supported all recommendations on hate crime, including to amend the Criminal Code. This was similar to the 2nd cycle of the UPR in 2012. It also follows the same pattern as legislative proposals on the two issues, with initiatives on same-sex union immediately struck down and those on hate crime considered by an appropriate Sejm subcommittee. This suggests that the issue of same-sex unions is more contentious than that of hate crime, and that the government is interested in appearing concerned with hate crime. As one of the goals of the boomerang is to achieve a pledge from the rights violator to change its policies (and, ultimately, behaviour), the hesitant ‘yes’ from the government provides an opportunity for NGOs to hold the state accountable. Indeed, subsequent hate crime bills submitted to the parliament reference the amassed international recommendations.¹³⁶ In 2017, following the political commitment made in Geneva, activists asked the Minister of Justice about the specific plans to amend the law. The Minister, however, responded that the amendments were ‘not a priority.’ A possible theoretical explanation for this approach could be game-playing, a type of ritualistic behaviour observed in the UPR.¹³⁸

Another possible explanation for the continued acceptance of the recommendation is incremental change¹³⁹ and social learning.¹⁴⁰ Over the years, the arguments made by NGOs and augmented by the NHRI and international institutions may have gradually won over the bureaucrats in the Ministry of Justice, arguably more rational than politicians above them. Indeed, interviews with civil servants and senior police officers suggest that the state normally tries to find a way to conform to international requirements.¹⁴¹ For example, a lawyer from the Office of the Commissioner for Human Rights argued that all positive changes for LGBT rights in Poland are an effect of international pressures,¹⁴² while a representative of the Ministry of Justice admitted that the ministry wants to adhere to international norms but also wants to have

a coherent Criminal Code¹⁴³ (the last point refers to the fact that, as discussed above, the current view is that the ‘special treatment’ in the Code should be reserved to racism and xenophobia, which are seen as more damaging than homophobia; parity between these would therefore not be justified). Indeed, in 2019 the Ministry of Justice included an amendment which recognised bias motivation of the offender as an aggravating circumstance in the broader reform of the Criminal Code,¹⁴⁴ bringing hate crime laws closer to the international standard and partially responding to the calls of the NGOs and the NHRI, who recommended it in 2015.¹⁴⁵ The provision referred only to currently-recognised bias motivations (race, national and ethnic origin and religion). The new law, passed in 2019, was vetoed by the president due to reasons unrelated to hate crime.¹⁴⁶ The proposal was resubmitted in 2022.¹⁴⁷ As of June 2022, it is pending in the parliament, with high chances of adoption. While the law stops short of protecting LGBT people, the new approach to legislating against hate crime confirms what our interviews suggest, which is that the bureaucrats in the Ministry of Justice listen, learn, and are increasingly responsive to international pressures.

Apart from the above positive effect of boomerang advocacy, there are also weaknesses and risks. Externalisation as an advocacy tool is prone to criticism around sovereignty and undermining the national interest by painting a negative picture of the state abroad. Scholars remind us that ‘heavy-handed or culturally insensitive transnational agents can delegitimise their partners and produce a backlash against foreign intervention’.¹⁴⁸ Indeed, human rights defenders in Poland are increasingly accused by illiberal politicians, anti-gender campaigners and government-sponsored media of a lack of objectivity, unclear intentions, or even downright treason.¹⁵⁰

Summing up, we find that, by throwing the boomerang, activists in Poland have secured a political commitment from the government but failed to secure the amendment of hate crime laws. In this context, however, we believe that the recommendations are slowly winning round

the bureaucrats who are, nonetheless, unable to do their jobs – namely, respond to criminality and ensure compliance with international standards – due to the political ideology of the government.

Discussion

Seeing hate crime as an international human rights issue has considerable benefits.¹⁵⁴ Still, hate studies have been slow in recognising the change in advocacy practices, wherein activists cut through national borders, organise in transnational networks and exploit the opportunities offered by international human rights mechanisms. The present study feeds into the emerging discussions on the ‘internationalisation’ of hate crime¹⁵⁷ in three ways.

First, the article offers an interdisciplinary way of understanding one of the new patterns of hate crime law advocacy, compared with the strategies described previously.¹⁶⁰ In our study, the LGBT rights movement, blocked at home, turned to the external environment – international human rights structures – to exert pressure on the government to enact SOGI hate crime laws. The observation of this new strategy (and its effects) is enabled by borrowing concepts (mainly externalisation,¹⁶² ‘transnational advocacy networks,’ and ‘boomerang’¹⁶³) from the fields of politics and international relations. Queer politics scholars have already observed that the LGBT movements’ political gains are a result of a mix of internal and external factors, including advocacy strategies, political opportunities and norm resonance.¹⁶⁶ The present paper shows how the external environment, such as the UN human rights system, may be relevant for hate crime law adoption.

The second point relates to the capacity of international bodies to influence the hate crime policies of individual states. To date, one group of scholars, focused on the states in Southeast Europe, have argued that international institutions do have the power to influence national responses to hate crime,¹⁶⁷ while others have questioned the ability of international bodies to

stir governments into action due to lack of enforcement mechanisms.¹⁶⁸ Building on these works, this study observes the reiterated recommendations and ‘game playing’ of the Polish state, which pledges to amend the laws but does the opposite. This situates Poland between countries which (almost blindly) follow international recommendations and countries which reject them. Moreover, the study fills the gap in this emerging strand of literature by taking a step back: rather than focusing on the influence on the state as such, it shows how anti-LGBT hate crime issues are fed into the work of, and accepted by, UN human rights bodies, which then exert pressure on the state.

Third, the article contributes to the discussions on the outcomes of anti-hate and LGBT mobilisation. Most hate crime scholarship is done in jurisdictions where hate crime laws have already been passed. Comparably, little is known about states like Poland where the mobilisation has been unsuccessful. Some queer scholars have contended that the Polish LGBT movement failed to achieve its main goals,¹⁶⁹ while many others considered backlash as an unintended outcome of mobilisation.¹⁷⁰ We show that seeing hate crime laws as distinct from other claims – particularly those on same-sex unions – enables an enhanced understanding of norm adoption, as the state appears more amenable to hate crime laws than to the recognition of same-sex unions. The analysis suggests that, while laws are yet to be changed, the international concept of hate crime, promoted by activists and IGOs, is gaining traction in Poland. Boomerang advocacy has influenced the discursive position of the state, which has pledged to enact anti-LGBT hate crime legislation, and has contributed to an increased understanding of hate crime among bureaucrats. This, in turn, may facilitate enforcement once the law is finally amended: Europeanisation scholarship¹⁷¹ suggests that the normative resonance is a key factor in the implementation of new laws, including those governing gender identity and sexual orientation hate crime.

Conclusions

This study set out to explain theoretically how and why Polish advocacy groups use the leverage offered by international human rights bodies to advocate for improved legal protection from anti-LGBT hate crime. We also wanted to assess the outcomes of this mobilisation. The key empirical contribution of this article lies in presenting how transnational opportunities change the way local activists push for the recognition of hate crime laws. The externalisation of hate crime as a policy issue was made necessary by the closing of political opportunity structures at home and made possible thanks to the increased resources within the movement; intersectional and transnational collaborations; and the opening up of the UN bodies to the issue of anti-LGBT hate crime. While the state hesitates and has not yet complied with UN recommendations, there are signs that the calls for anti-LGBT hate crime laws are increasingly being heard by the bureaucrats, who, nonetheless, need political leadership to amend the law.

Theoretically, the above observations were enabled through the adoption of a theoretical framework which borrows from international relations (Keck and Sikkink's boomerang model) in the context of externalisation. Future studies may adopt the methods used in this paper to assess the patterns and outcomes of hate crime advocacy beyond borders in other national contexts, including both the progressive and developed countries in the west and other jurisdictions. The addition of regulatory¹⁷² or social learning theory¹⁷³ may help understand the state's level of compliance and engagement with the international human rights system.

Finally, the study has some implications for future practice internationally. For human rights advocates who might be disillusioned after years of transnational advocacy, it provides a validation that their efforts are not in vain. The 'boomerang' is slow and repeated throws may be necessary, but, as the saying goes, little strokes fell great oaks. For international bodies and progressive states, the study is a reminder that a ritualised dialogue every five years might not

be sufficient to hold the state accountable and stronger enforcement procedures are needed to ensure compliance and implementation.

Endnotes

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