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Queer Migration

Analysis of the 2021 Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement

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Abstract: The aim of this paper is to provide an overview of the phenomenon of queer migration and to pinpoint some critical aspects through the detailed analysis of a recent example of multilateral effort regarding this topic, the 2021 *Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement* promoted by the United Nations High Commissioner for Refugees (UNHCR). Such issues range from the recognition of queer migrants as refugees, and the consequent respect of the principle of non-refoulement, to legal gender recognition via self-determination and deeper attention towards the notion of “safe” third-countries. This essay outlines a historical, lexical and legal context by analysing the most important academic studies as well as actual recognition and protection of queer migrants to date. In the second section, this essay focuses on the 2021 *Global Roundtable* and, in particular, its technicalities and methodology. Finally, the paper provides an overview of some of the main recommendations produced by the Roundtable for a better management of queer migration in the future.

Even when LGBTIQ+ people are not subject to violence and discrimination, they still seem to be invisible or irrelevant in most parts of the world, even in western democracies that claim to be developed. The purpose of this paper is to bring attention to this silenced minority and its particular needs, which have been and continue to be strongly discriminated against in countless fields, including that of migration.

Queer migration is a phenomenon which has always been present in migratory history. However, it is only in the last decades that this particular type of migration received increasing attention from scholars and the public.

This paper will first examine the main drivers that lie behind the migration of members of the LGBTIQ+ community. Therefore, it will also be important to ask which are the necessary conditions under which a queer migrant is recognised as a refugee abroad. Then, in order to focus on the latest developments regarding queer migration, this essay will analyse the *Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement* promoted by the United Nations High Commissioner for Refugees (UNHCR) that took place in June 2021. Close analysis of the final report produced by this event will engage with questions of if and how queer migrants are safeguarded today by the international community, and which further improvements may be needed.

The paper's arguments will be addressed in three main sections. The first will outline a historical, lexical and legal context by analysing the most important academic studies and the actual recognition and protection of queer migrants to date. Moreover, lexical choices concerning the acronyms "LGBT", "LGBTIQ+" and "SOGIESC," will be explained.

The second section will focus on the 2021 *Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement* and, in particular, on its technicalities and methodology.

Finally, the third section proposes an analysis of the roundtable's final report through a summary of the current regulations already in place, and an overview of some of the main recommendations produced by the Roundtable, for better management of queer migration in the future.

Historical, lexical and legal context

Historically, analyses of the link between migration, sexuality and gender became particularly relevant after the AIDS pandemic. This was the result of a contradictory treatment of undocumented immigrants who had developed the disease: they were spared deportation for humanitarian reasons but, simultaneously, they could not cross US borders because of quarantine rules.

Another crucial step in understanding the link between these three factors was the development of an intersectional approach towards feminism. In the 1970s and 1980s, numerous feminist scholars and activists acknowledged the fact that gender struggles were very likely to overlap with class, race, ethnicity, and sexual discrimination. In this context, a fixed and monolithic notion of “woman” and “gender” was strongly criticised as the result of a socially and culturally biased process of standardisation.¹

This period may also be considered as the starting point for the development of the acronym LGBTIQ+. This term is or should be universally employed nowadays in official statements as it recognises the fluidity that characterises sexual orientations and gender identities. It is therefore no surprise that in the report produced after the 2021 *Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement* promoted by the UNHCR, it is explicitly stated that the term “LGBTIQ+” will be used in

¹ Martin F. Manalansan, “Queer Intersections: Sexuality and Gender in Migration Studies,” *International Migration Review* 40, no. 1 (2006): 226-227. <https://doi.org/10.1111/j.1747-7379.2006.00009.x>.

order to refer to “what was then understood as ‘LGBT’ people in forced displacement.”² This provides evidence of the constant evolution of the relationship between queer studies and migration, as only 12 years ago, the very same UNHCR used the term “LGBT,” thus discriminating against a large part of the community, including intersexual, asexual, non-binary people etc.³

It is clear that most LGBTIQ+ individuals can be subject to physical, sexual and verbal abuse or discrimination by their families, governments and communities just because of their real or perceived Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC). As of today, more than 60 United Nations member States criminalise consensual same-sex sexual acts *de jure* or *de facto*, while five States impose the death penalty.⁴

Anthropologist Héctor Carrillo proposes the expression “sexual migration” when referring to the idea that sexuality and gender identity can be crucial drivers of migration.⁵ According to the UNHCR note of 2008, if individuals are persecuted in their country on these bases, then they can be considered to be refugees, as defined in the 1951 Refugee Convention of Geneva.⁶ In fact, even if the freedom of sexual orientation is not explicitly recognised as an

² United Nations High Commissioner for Refugees, Division of International Protection, *Summary Conclusions: 2021 Global Roundtable on protection and solutions for LGBTIQ+ People In Forced Displacement* (Geneva: United Nations High Commissioner for Refugees, 2021), 5, <https://www.unhcr.org/media/39410>.

³ United Nations High Commissioner for Refugees, Division of International Protection, *Nota dell'UNHCR contenente indicazioni sulle domande di status di rifugiato nell'ambito della Convenzione del 1951 relative a orientamento sessuale e identità di genere* (Geneva: United Nations High Commissioner for Refugees, 2008), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5513c5c24>.

⁴ International Lesbian, Gay, Bisexual, Trans and Intersex Association World, “Criminalisation of consensual same-sex sexual acts,” *ILGA World Database*, 2023, <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.

⁵ Héctor Carrillo, “Sexual Migration, Cross-Cultural Sexual Encounters, and Sexual Health,” *Sexuality Research and Social Policy* 1, no. 3 (2004): <https://doi.org/10.1525/srsp.2004.1.3.58>.

⁶ United Nations High Commissioner for Refugees, *Nota dell'UNHCR contenente indicazioni sulle domande di status di rifugiato*, 4-5.

international human right, international law and practices have widely agreed that this kind of discrimination is prohibited and must be denounced.

Moreover, several jurisdictions have considered queer people as belonging to a “particular social group,” that is to say one of the five grounds enumerated in Article 1A(2) of the 1951 Convention relating to the Status of Refugees.⁷ Of the five grounds, this is, by no surprise, the one with the least clarity, and is not defined by the 1951 Convention itself. However, there is a critical element which must be taken into consideration: most queer migrants have always had to keep their everyday life secret and, consequently, it could be difficult for them to offer concrete proof of their belonging to the minority and of previous persecutions.

At the same time, the UNHCR writes that “being obliged [...] to hide sexual orientation and gender identity [...] can be considered as a form of persecution.”⁸ Therefore, an external party must be ready to analyse in depth the attitude of the migrant, so that it can be deduced if such attitude has been determined and somehow influenced by a real threat. In practice, this process is extremely difficult but it must be carried out with care, especially because - as stated by the Canadian Council for Refugees - “a hidden right is not a right.”⁹ For this reason, the UNHCR also underlines the importance of having well-prepared and informed decision-makers.

As a matter of fact, a training package was developed in order to provide specialised assistance to LGBTIQ+ refugees, especially from a psychological point of view (post-trauma care). Part of the police force was trained as well, and rainbow safety badges were introduced

⁷ United Nations High Commissioner for Refugees, *Convention relating to the Status of Refugees* (Geneva: United Nations High Commissioner for Refugees, 1951), 2, <https://www.ohchr.org/sites/default/files/refugees.pdf>.

⁸ United Nations High Commissioner for Refugees, *Nota dell'UNHCR contenente indicazioni sulle domande di status di rifugiato*, 8.

⁹ See note above, 14.

in order to make visible the staff capable of understanding the community's needs.¹⁰

Furthermore, there are many other cases - listed in the 2008 note - that can contribute to a feeling of persecution, for instance: generalised homophobia permeating the country of origin (through anti-homosexuals propaganda, stereotypes in the media, etc.) or even "masked" homophobia through the criminalisation of LGBTIQ+ people for other unjustified crimes (rape, harassment of minors, drugs, etc.).¹¹

It must also be highlighted that globalisation and increasing transnational movements have not led to homogenisation and, on the contrary, they have provoked a clash between different approaches to sexuality which contribute to continuous change in how people think about their bodies, their beings and their attractions. Therefore, queer migration is caused and at the same time is a cause of an ever-evolving perception of sex and gender, which is inevitably influenced by different cultures and societies. This might stand as empirical proof of Morawska's concept of migration as a simultaneously structured and structuring process.

The establishment of the Yogyakarta Principles,¹² the Yogyakarta Principles Plus 10,¹³ and the Mandate of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity are considered as key pillars

¹⁰ Matthew Saltmarsh, "Gay and Transgender Refugees Seek Safety in the Middle East," *United Nations High Commissioner for Refugees*, August 15, 2016, <https://www.unhcr.org/news/stories/2016/8/57ac32274/gay-transgender-refugees-seek-safety-middle-east.html>.

¹¹ United Nations High Commissioner for Refugees, *Nota dell'UNHCR contenente indicazioni sulle domande di status di rifugiato*, 12.

¹² International Commission of Jurists, *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Geneva: International Commission of Jurists, 2007), http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

¹³ International Commission of Jurists, *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles* (Geneva: International Commission of Jurists, 2017), http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

in multilateral efforts to end the abuse and bring forward the protection and the full realisation of the human rights of LGBTIQ+ people through policy provisions. In order to analyse the latest developments on queer migration, the next section will take into consideration another fundamental cornerstone, the previously cited *Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement*.

**Case study: 2021 Global Roundtable on the Protection and Solutions for LGBTIQ+
People in Forced Displacement**

The 2021 *Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement* was co-organised by the UNHCR and the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (IE SOGI). Due to the Covid-19 pandemic, it was held online from the 7th to the 29th of June. In preparation for the 2021 *Global Roundtable*, the UNHCR carried out extensive desk reviews, stakeholder interviews and a series of in-person and online regional and cross-regional discussions with forcibly displaced LGBTIQ+ people and with leading humanitarian, human rights and development professionals who work with them.

More than 600 people participated in the Roundtable: “representatives of humanitarian, human rights and development organisations; community-based, national and international non-governmental organisations; philanthropic and private sector entities; members of UN agencies; and selected States active in supporting forcibly displaced and stateless LGBTIQ+ persons.” Virtual meetings allowed the presence of more participants from the civil society as well. The Roundtable was originally conceived of as a two-day, in-person meeting consisting of 100 attendees, however the virtual format provided stronger representation by the LGBTIQ+ community and those who actually experienced forced displacement.

Five main objectives were identified:¹⁴

¹⁴ See note above, 4.

1. Give an overview of the progress made in protecting and offering solutions to queer migrants ('queer' as intended by the SOGIESC acronym);
2. Pinpoint current challenges faced by LGBTIQ+ people in forced displacement;
3. Share good practices already put in place;
4. Create a wide and multilateral network around this topic; and
5. Pinpoint priority areas for forward action.

The latter arguably represents the most important of these five main goals.

The Roundtable was structured around three phases:

1. A High-Level Opening Plenary;
2. 13 smaller, operationally focused thematic working table discussions on specific areas of practice that are salient to the experiences of forcibly displaced and stateless LGBTIQ+ people. Each thematic discussion was co-moderated by a team of two subject matter experts who had been selected on the basis of their leadership in the area of practice, as well as for complementarity of geographic, cultural, and sectoral perspectives. States were not invited to these thematic discussions. A participating organisation could not attend more than three thematic working table discussions. Each session could accommodate 40 people maximum; and
3. A High-Level Closing Plenary.

As a consequence of the size of argument and of the heterogeneity of actors, the report produced by this meeting identifies several different recommendations by thematic area of practice; for UNHCR; for the Mandate of the United Nations Independent Expert on Sexual Orientation and Gender Identity; for civil society; for States.

Furthermore, it is fundamental to bring to attention the fact that this Roundtable was held with an "intersectional understanding of LGBTIQ+ forcibly displaced and stateless

individuals” in mind.¹⁵ Queer migrants, most of the time, may face several overlapping forms of discrimination. For instance, a poor lesbian woman of colour could be discriminated against on the basis of her sexual orientation, but also on the basis of her ethnicity, economic status, and gender.

Queer migrants may experience double discrimination also from an internal / external point of view: from their own communities for being queer and by the host country community for being immigrants. The UNHCR Guidelines on International Protection No. 9 provides a list of intersecting factors which must be taken into consideration when analysing claims to refugee status based on sexual orientation and/or gender identity, since they could worsen violence and discrimination. These factors include: “sex, age, nationality, ethnicity/race, social or economic status and HIV status.”¹⁶

Today and tomorrow: where we are and where we must head to according to the 2021

Global Roundtable

Current regulations for the protection of queer migrants

The very existence of the 2021 *Global Roundtable*, its wide range of participants, and its call for renewal and improvement, raises the questions of which international institutions and organisations currently engage with the protection of queer migrants.

Federica Toso lists a series of international law instruments that are worthy of consideration, most of which we have already cited in the first section. For instance: international conventions on human rights which, even if they do not explicitly refer to discrimination based on sexual orientation and gender identity, are important in this field as

¹⁵ See note above, 7-8.

¹⁶ United Nations High Commissioner for Refugees, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (Geneva: United Nations High Commissioner for Refugees, 2012), 2, <https://www.unhcr.org/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>.

well for their implicit universality; the 2006 Yogyakarta Principles and the 2017 Yogyakarta Principles Plus 10 which are not binding, but still quite influential; the 1951 Refugee Convention of Geneva and UNHCR specific notes and guidelines like the UNHCR Guidelines on International Protection No. 9.¹⁷

The latter shows the importance of international organisations' involvement in migration policy and, consequently, in queer migration as well. The United Nations High Commissioner for Refugees is, without any doubt, one - if not *the* - most important international organisation as it has a legal protection mandate following the Geneva Convention and - as we have seen - it has proved numerous times its proactive attitude towards the protection of LGBTIQ+ people.

Even if the authority of international organisations is undeniable, it is also important to remember the key role played by States. In fact, as Saskia Sassen writes, “when it comes to immigrants and refugees, whether in North America, Western Europe, or Japan, the national state claims all its old splendour in asserting its sovereign right to control its borders.”¹⁸ Not by chance, representatives of States were invited to the 2021 *Global Roundtable* as well. In this context, international organisations aim for the “harmonisation of often quite conflicting agendas” and at the “de-politicisation of migration” through shared goals that make them look like almost totally neutral actors.¹⁹ This role of mediator is fundamental and evident in the concrete case study of the UNHCR co-organised the 2021 *Global Roundtable*.

¹⁷ Federica Toso, “Domande di protezione internazionale fondate sull’orientamento sessuale, identità di genere, espressione di genere e caratteristiche sessuali,” Essay in *I Have a Dream. Studi e strumenti per il lavoro con migranti LGBTI*, ed. Carmela Ferrara et al. (Napoli: Editoriale Scientifica, 2021), 30-34.

¹⁸ Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996), 38.

¹⁹ Shoshana Fine and Antoine Pécoud, “International Organisations and the Multilevel Governance of Migration,” in *Handbook of Migration and Globalisation*, ed. Anna Triandafyllidou (Northampton: Edward Elgar Publishing Limited, 2018), 47.

It is clear that several instruments have been put in place for the safeguard of LGBTIQ+ people who emigrate, but it is also undeniable that there is space for further action, especially when it comes to *ad hoc* provisions.

What improvements?

The final report from the 2021 *Global Roundtable* proposes a detailed and wide range of recommendations for improving international engagement in the protection of queer migrants. These are structured around thirteen thematic areas and followed by four subsections addressed at different actors. This paper will proceed to underscore the most urgent improvements which often repeat themselves along the report.

One of the main aspects is the importance of collaboration for understanding of the needs of the LGBTIQ+ community, as clear in the following recommendation:²⁰

Multilateral public organisations, national and regional jurisdictions, and transnational civil society organisations must collaboratively establish more robust regional and international mechanisms to support LGBTIQ+ persons who are experiencing persecution, or who are at risk of experiencing persecution.

This necessity has been brought to attention by many scholars, like Mara Biancamano, who affirms that all the actors that operate in the field of international protection (police headquarters, commissions, courts, etc.) should have direct communication with skilled and informed members coming from such associations. And, most importantly, these actors should be adequately trained.²¹

The issue of professional orientation and education - as we have previously mentioned - is crucial, and it has been tackled with particular attention by the *Global Roundtable* through numerous recommendations. According to the report, all “relevant personnel in UNHCR, Government agencies, security guards, contractors and civil society service providers who

²⁰ Fine and Pécoud, “International Organisations,” 10.

²¹ Mara Biancamano, “La tutela dei migranti LGBT - l’applicazione della normativa nazionale ed internazionale e le prassi amministrative e giuridiche,” essay in *I Have a Dream. Studi e strumenti per il lavoro con migranti LGBTI*, ed. Carmela Ferrara et al. (Napoli: Editoriale Scientifica, 2021), 122-123

engage with LGBTIQ+ displaced people on a frontline capacity” must be specifically trained.²² This training should include a briefing on foundational SOGIESC topics and an introduction to the concept of intersectionality and intersectional oppressions and experiences relevant to the LGBTIQ+ community. Moreover, it is strongly requested for rehabilitation centres as well, as they engage with LGBTIQ+ torture survivors. The staff preparation is strictly interconnected with another recommendation, which is to “create environments in which it is safe for LGBTIQ+ persons to share their experiences, and revise systems and practices to better respect the diversity, intersectionality and authorship of those experiences.”

Another criticality is linked to the rights of transgender and non-binary migrants. It must not be forgotten that this part of the community is often even more subject to intersectional discrimination. The report takes a bold stance in the recognition of these individuals by underlining the importance of ensuring “legal gender recognition via self-determination [...] for all refugees, asylum seekers and others displaced on their territory.”²³ In practice, it enables all migrants to choose their own names and pronouns, regardless of original identification documents.

Finally, there is one recommendation which brings back the attention to the critical aspect of carrying out respectful and simultaneously valid interviews. It is stated that, in order to “enhance the quality of analysis and decision-making in SOGIESC asylum,” the credibility of the migrant should be assessed on the basis of their real-life experiences only. Such assessment is possible by taking into consideration their possible fears of exposure and not by adopting a preset model which does not reveal their history and the characteristics of LGBTIQ+ migrants who, as we have previously explained, cannot prove their “belonging” to this particular group and, very often, have to hide their real identity and/or sexuality.²⁴

²² See note above, 11.

²³ Biancamano, “La tutela dei migranti LGBT,” 12-13.

²⁴ Biancamano, “La tutela dei migranti LGBT,” 17.

In order to make the assessment more effective, local LGBTIQ+ groups should be involved so that the real risks in the countries of origin can be established. In doing so, “safe country” rhetoric should become less and less relevant, or at least carefully contextualised in the queer migration field. In fact, in several cases, the feeling of persecution can be produced by generalised homophobia permeating the country of origin even when, in theory, homosexuality is not illegal.

This becomes particularly relevant when it comes to resettlement and refoulement. States are not obliged to provide asylum or to admit refugees for permanent settlement, therefore they might relocate refugees to “safe” third countries²⁵ and, in this case, the evaluation of safeness should take into account all of the previous variables. For instance, a State permeated by generalised homophobia should not be considered a safe third country for a queer migrant even if, *de facto*, homosexuality is not illegal there.

Moreover, despite international human rights frameworks in place to safeguard persons in need of international protection from refoulement, LGBTIQ+ displaced and stateless people may not always be well-informed of their right to claim this protection. Without legal representation, many will continue to experience refoulement from asylum countries even if Article 33 of the Geneva Convention explicitly obliges States not to forcibly return refugees to countries in which they would face persecution.²⁶ The *Global Roundtable* report recalls this critical element through the following recommendation:²⁷

International human rights standards, including but not limited to the Principles and Guidelines on Human Rights Protections of Migrants in Vulnerable Situations, help guide States in their responsibilities. This includes a presumption against detention and refoulement, especially for LGBTIQ+ displaced persons with particular vulnerabilities and who are at risk of violence or abuse. These standards, along with the Human Rights Committee, the Committee against Torture, the UN Working Group on Arbitrary Detention and the mandate of the UN Independent Expert on Sexual

²⁵ Susan Martin, *International migration: Evolving trends from the early twentieth century to the present* (Cambridge: Cambridge University Press, 2014), 83.

²⁶ United Nations High Commissioner for Refugees, *Convention relating to the Status of Refugees*, 9.

²⁷ See note above, 15.

Orientation and Gender Identity, need to be used strategically to bring international visibility to the issue.

Conclusion

The aim of this paper has been to offer an overview of the phenomenon of queer migration and to pinpoint some critical aspects worthy of consideration through a more detailed analysis of the most recent example of multilateral effort regarding this topic, the *2021 Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement*. The risk of violence and discrimination that LGBTIQ+ people face everyday in some parts of the world is undeniable. This discrimination is condemned by the international community and by several international law instruments (some explicitly, some implicitly), which demonstrate that queer people can and must be recognised as refugees for belonging to a “particular social group,” as one of the five grounds enumerated in the 1951 Convention relating to the Status of Refugees. However, this essay has also outlined some criticalities, mainly the impossibility of proving belonging to the LGBTIQ+ community.

When it comes to possible improvements in the management of queer migration, the *2021 Global Roundtable* represents an excellent landmark. The analysis of this case study has clarified the necessity of collaboration between different actors such as international organisations, States, civil society, and associations. This is empirically visible in the wide spectrum of participants that contributed to the meetings and to the drafting of the final report. After briefly presenting the methodology at the basis of the Roundtable, this essay has identified some constant and fundamental recommendations that will probably mark the long future path towards a better management of queer migration. In particular, this paper has underlined: the issue of professional orientation, education and training of all the relevant actors involved in the process of hospitality and assessment of queer migrants; the importance

of ensuring legal gender recognition via self-determination; the respect of the principle of non-refoulement and deeper attention towards the notion of “safe” third-countries.

Furthermore, it is important to remember how scholars and institutions agree on the importance of reading these phenomena through an intersectional lens, as most queer migrants often face an overlay of different types of discrimination.

In conclusion, it is clear that change is needed in order to guarantee a more appropriate and human approach towards this issue. However, the very existence of this Roundtable - and of all of its precedents cited in this paper - is proof of an increasing (and much awaited) interest in queer migration.

Disclosure statement

The author reports there are no competing interests to declare.

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