

**DANGEROUS
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Just as U.S. abortion proponents did an end run to the courts and around the democratic process, international abortion proponents have attempted the same thing, this time using international documents drafted through negotiations at the United Nations (UN) and its attendant agencies, conferences, and commissions. Just as we understand that the courts are the part of government furthest removed from the people, how much further removed is the typical citizen from the always arcane and mostly unknown international organs that operate in New York, Geneva, Vienna, and elsewhere? Yet these are the bodies which seek to remove all limits to abortion in roughly 191 countries. Clustered around these quasigovernmental entities is a network of international and national activist groups – scholars, lawyers, journalists – which applies significant legal and financial

muscle to bring the whole world into line with abortion-on-demand, that is, abortion without the necessity of a reason. This chapter will show the state of abortion in national laws around the world and how generally non-binding UN instruments are used to change those laws.

An Overview

The tide of abortion runs high around the world. We know this chiefly from two studies, one from the Center for Reproductive Law and Policy,¹ a New York-based legal and policy think tank that promotes abortion-on-demand internationally, and the other from the generally unbiased Population Division of the UN's Department of Economic and Social Affairs,² the chief UN statisticians. Each study examines the laws in 191 countries and categorizes them according to their abortion policies. The laws run the spectrum from allowing abortion only to save the mother's life to abortion-on-demand, with most countries (124 out of 191) falling somewhere in between. These 124 countries represent 66 percent of the world's population.³ Abortion laws in the middle group of 67 countries, representing 34 percent of the world's population, run the fairly narrow range of familiar reasons: the mother's physical health, mental health, and socio-economic grounds.⁴ Most countries also allow abortion because of rape and incest.⁵

The seventy-four countries, representing 26 percent of the world's population, with the most pro-life laws on abortion (allowing abortion only to save the mother's life) are mostly from the developing world (Latin America, Africa, the Near and Far East).⁶ They include: Bangladesh, Benin, Chile, Congo, Egypt, Guatemala, Leba-

non, Mexico, Myanmar, Syria, Uganda, Yemen, and others. Three European countries are included in this group: Ireland, Andorra, and Malta.⁷

Thirty-three nations, with 9.9 percent of the world's population, allow abortion to save the mother's physical health and her life. They include: Argentina, Jordan, Kuwait, Morocco, Qatar, Peru, Rwanda, Saudi Arabia and Zimbabwe. Two European nations fall within this group: Poland and Liechtenstein.⁸

Twenty nations, representing 2.6 percent of the world's population, allow abortion for reasons of mental health, as well as to save the mother's physical health or life. They include Algeria, Bahrain, Gambia, Israel, New Zealand, Spain, Portugal, and Switzerland.⁹

Fourteen nations, representing 20.7 percent of the world's population, allow abortion on socioeconomic grounds, as well as to protect the mother's physical health, mental health or life. This group is more economically advanced and includes Nordic countries which tend to lead the way in pressuring smaller states to allow abortion-on-demand. It group includes: Australia, Finland, Iceland, India, Japan, Luxembourg, and the United Kingdom.¹⁰

The last category includes those countries with the most expansive abortion laws – that is, laws without restriction as to reason. This group includes fifty nations representing 40.8 percent of the world's population. Among others they are: Albania, Austria, Belgium, Bulgaria, China, Czech Republic, France, Germany, Greece, Italy,

Netherlands, Norway, Russian Federation, Turkey, and the United States.¹¹

A closer look at this last category shows that, with the possible exception of China, it is the U.S. that has the most unlimited abortion. Even with measures such as parental notification, the U.S. abortion regime is abortion-on-demand up to the moment of delivery and beyond.¹² While a number of nations fall within the category of “on demand,” one still finds limits in other countries that do not exist in the U.S. The most obvious is the “gestational restriction,” which sets a time limit beyond which a woman may not get an abortion. Many European nations, including France, Germany, Greece, Norway and others, have legal gestational limits to abortion of between twelve and fourteen weeks.¹³

The Real Story

Of course, this survey of the international situation hides the frequently meaningless nature of many of these laws. Going even one step beyond the “life of the mother” allowance can result in *de facto* abortion on demand. In the United States, for instance, the Supreme Court decided the abortion case *Doe v. Bolton* the same day it decided *Roe*.¹⁴ *Doe* established the legality of abortions for the mental health of the mother, and thus allowed abortion-on-demand. Such “mental health of the mother” loopholes exist in other countries’ laws as well. Even when a “gestational limit” is part of the law, in practice it is frequently ignored.

Abortion was officially condemned in French law from 1920 to 1975. The 1975 law allowed abortion up to the tenth week of preg-

nancy, but this was expanded to twelve weeks in 2001. Abortions are also allowed in the later stages of pregnancy to save the mother's life, or because of a lethal disease of the child. Parental authorization had also been required for girls under the age of eighteen, but this was struck down in 2001. Moreover, every woman seeking an abortion is supposed to be counseled by Planned Parenthood about the procedure and its consequences.¹⁵

Germany, too, has a legal "gestational limit" of fourteen weeks, and German women also must have pre-abortion counseling and then be "certified" for an abortion. However, according to Thomas Friedl, staff member for the German Parliament, "this is most ineffective; 98 percent of abortions proceed after these counseling sessions."¹⁶

At the other end of the spectrum, according to both CRLP and the UN Population Division, Argentina upholds its abortion laws most vigorously.¹⁷ An Argentine woman may seek an abortion after a counseling session with a doctor, who may then determine that her life depends on having an abortion. The decision rests with a medical professional, who, at least for now, is unlikely to expand access according to vague or unverifiable "health" claims.

Thus, the availability of abortion depends upon both a country's abortion laws and the willingness of the country's medical professionals to ensure the laws are not flouted.

All countries in the world have come under pressure to change their laws to allow for abor-

tion.¹⁸ This is true even in the nearly unrestricted United States. Most of this pressure comes from the international abortion lobby working from the United States and the European Union. True to their anti-democratic record, they work from the top down, using international instruments negotiated at the United Nations and the European Parliament. A wide array of international organizations is involved, including rich foundations (Ford, Gates), lending institutions (the World Bank and the International Monetary Fund), and UN agencies (UN Children's Fund, UN Population Fund, and the World Health Organization).

The Latest Ruse: Abortion as a universal "human right"

In recent years abortion has become something of an obsession at the UN and increasingly within the EU. Formally, the idea is to create what is called "customary international law." Customary international law is created either through the near unanimous, nation-by-nation ratification of certain laws, the single-stroke acceptance of an international treaty, or the repetitive use or acceptance of certain phrases and ideas in international documents.

On the question of abortion, proponents have never attempted a straightforward treaty on this subject alone, and they certainly will not try anytime soon. They simply do not have the support of world opinion, and they know it. Abortion is hardly ever mentioned by name in UN documents precisely because it is so contentious. Instead, code words are used, like "reproductive health." They have attempted mostly

to change abortion laws country-by-country – sometimes through the legislative process, often through national courts.

What is fairly new, however, is the attempt to establish customary international law through the repetitious use of undefined or ill-defined terms that actually mean abortion. This strategy was in play in numerous international meetings and is now easily recognizable in many of the outcome documents of those meetings: the Cairo Programme of Action (1994), the Beijing Platform for Action (1995), and many others.

The phrase used most frequently to mean abortion is “reproductive health,” although “reproductive rights” and “reproductive services” are also used. “Reproductive health” has been defined as including abortion only once in a governmentally negotiated UN document, in the Cairo Programme of Action.¹⁹ Never in any other governmentally negotiated document has “reproductive health” been so defined. “Reproductive health,” however, is officially defined by the World Health Organization as including abortion. (The WHO definition is a two-step process that says “reproductive health” includes “fertility regulation,” which includes termination of pregnancy.²⁰) It should be noted that the definition from an agency such as WHO does not carry the same weight as a definition negotiated and agreed to by the member states of the UN.

Though vaguely defined by member states just once at Cairo, abortion proponents prefer to leave the term “reproductive health” undefined. They know the Cairo definition was a once-in-a-lifetime event, probably never to be

repeated, and so they have come to rely on this implicit definition of “reproductive health” as including abortion. “Reproductive health” is therefore something of an empty glass that policy makers can fill anyway they see fit.

The phrase “reproductive health” is used dozens of times in UN resolutions and reports. It is used in documents related to women (Beijing²¹ and Beijing +5²²), housing (Habitat²³), and the environment (Rio’s Agenda 21²⁴ and the Earth Summit +5).²⁵ It is also used regularly in less formal documents produced by the myriad UN commissions, for instance, the Commission on the Status of Women, and the Commission on Population and Development.

The phrase is used frequently in UN reports. In its annual report for 2000, the United Nations Population Fund (UNFPA) used the phrase a total of 186 times (the report mentioned clean water and safe sanitation only once each).²⁶

It is clear from the documentary evidence that “reproductive health,” which is understood to include abortion, is among the highest priorities of the UN system. The purpose is to pressure governments to change their national laws, which is accomplished in two ways: first, in the documents individually and in the UN committees that many of the documents establish; second, the accumulation of all these documents bolsters the claim that abortion is a new international norm, or part of customary international law.

The best example of the first approach is the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW), a treaty now ratified by more than 150 nations (though not by the U.S., as of this writing in September 2002). CEDAW created a committee to which nations (“States parties”) must report at least every four years on their progress in CEDAW implementation. Though the framers of CEDAW did not include abortion in the document, they did include “family planning,” another notoriously ill-defined UN phrase, and based on this phrase they have pressured a number of “States parties” to legalize abortion, including Ireland, Mexico, and Peru. It should be emphasized that while the U.S. can effectively ignore pressure tactics coming from UN committees, many smaller states cannot. In fact, negative reports from UN committees can create large political disturbances for smaller states.

It is the second tactic, however, that most concerns international abortion opponents – that is, the accumulation of “reproductive health” language into customary international law. Abortion opponents have long feared that the repetitious use of the phrase “reproductive health” in UN documents could be used to argue for a new international norm – a universal right to abortion. Proponents will say that the norm has been established precisely because so many governments have so often agreed to the phrase, that the right to abortion is understood.

Abortion proponents had not admitted this tactic publicly until a lawsuit filed against the Bush Administration in the year 2001.²⁷ Filed by the New York-based Center for Reproductive Law and Policy (CRLP), the suit concerns the “Mexico City” policy, a Reagan-era prohibition

on U.S. taxpayer money going to any nongovernmental organization that supports or performs abortions overseas. The policy was maintained during the first Bush Administration but struck down by President Clinton on his first day in office. It was reinstated on the first day of the George W. Bush presidency. In the suit, CRLP claimed the policy violated their First Amendment right to free speech. But the most interesting part of their suit was the claim that abortion was a universal human right that had been established as such in non-binding UN resolutions.

According to the CRLP suit, “Customary international law is embodied, *inter alia*, in treaties (even if not ratified by the United States), the writings of international law jurists, and documents produced by United Nations international conferences.”²⁸ CRLP goes on to say that even if *Roe v. Wade* were struck down by the U.S. Supreme Court, because of the establishment of a customary right, abortion would still be the law of our land, indeed, that abortion is the law of the world. It should also be emphasized that the CRLP claim is based at least partially on treaties the U.S. has never ratified and upon UN resolutions that possess no force in law. Though the suit was dismissed for lack of standing, it clearly reveals the intent and tactics of abortion proponents at the international level.

At this point, abortion opponents at the UN can claim a limited victory because abortion proponents have tried to make abortion a universally recognized human right in UN documents, but they have failed. They have succeeded only insofar as they have been able to obfuscate the

meaning of words (specifically, “reproductive health”) for their own purposes.

The Future

The greatest concern on the horizon is the International Criminal Court, ostensibly a war-crimes tribunal that came into force in the summer of 2002. One draft document on the Court included the term “forced pregnancy,” which could have been used to attack pro-life laws as “crime(s) against humanity.” Abortion proponents have long advocated what they call a “rights-based approach” to “reproductive health.” The International Criminal Court will probably be used to advance this approach.

The good news on the international front is the increasing close contact and collaboration between pro-life movements across the globe. It is now typical that pro-life leaders, including governmental leaders, work closely together to thwart the advance of abortion-on-demand. A growing governmental and non-governmental coalition at the international level, which fights the dangerous mischief of the abortion lobby at the UN and the European Parliament, may undo the damage of recent years and pave the way for advances in the cause of life.

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Endnotes

- ¹ Center for Reproductive Law and Policy (CRLP), "The World's Abortion Laws," 1999 (hereafter, "CRLP").
- ² United Nations Population Division, Department of Economic and Social Affairs, *Abortion Policies, A Global Review*, 2001 (hereafter, "Population Division").
- ³ CRLP.
- ⁴ *Ibid.*
- ⁵ Population Division.
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ CRLP.
- ⁹ *Ibid.*
- ¹⁰ Population Division.
- ¹¹ CRLP.
- ¹² Population Division.
- ¹³ *Ibid.*
- ¹⁴ *Doe v. Bolton*, 410 U.S. 179 (1973).
- ¹⁵ Jean-Frederic Poisson, Chief of Staff of Christine Boutin, Member of French National Assembly, interview with author.
- ¹⁶ Interview with the Catholic Family and Human Rights Institute (CFAM), August 1, 2002.
- ¹⁷ See, for instance, CRLP report prepared for the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), "Supplementary information on Argentina," August 2002.
- ¹⁸ See the CRLP website, www.crlp.org.
- ¹⁹ International Conference on Population and Development, Programme of Action, paragraph 7.6.
- ²⁰ See World Health Organization web page, www.who.int.
- ²¹ Fourth World Conference on Women, *Platform for Action*, paragraph 94.

²² Beijing +5, Women 2000: Gender, Equality, Development and Peace for the 21st Century, paragraph 12.

²³ Habitat, paragraph 136–f.

²⁴ Agenda 21, United Nations Sustainable Development, paragraph 6.26.

²⁵ Earth Summit +5, Special Session of the General Assembly to Review and Approve the Implementation of Agenda 21, paragraph 30.

²⁶ UNFPA, *State of the World Population*, 2000.

²⁷ *The Center for Reproductive Law and Policy vs. George W. Bush, Colin Powell and Andrew Natsios*, United States District Court, Southern District of New York.

²⁸ *Id.*