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Treaty Interpretation of the Right to Life Before Birth by Latin American and Caribbean States: An Analysis of Common International Treaty Obligations and Relevant State Practice at International Fora

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**TREATY INTERPRETATION OF THE RIGHT TO LIFE
BEFORE BIRTH BY LATIN AMERICAN AND CARIBBEAN
STATES: AN ANALYSIS OF COMMON INTERNATIONAL
TREATY OBLIGATIONS AND RELEVANT STATE PRACTICE
AT INTERNATIONAL FORA**

*Ligia M. De Jesus**

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INTRODUCTION

It has been argued that the Convention on the Rights of the Child (“CRC”)¹ and the American Convention on Human Rights (“American Convention”)² mandate the legalization of abortion³ as a human rights obligation,⁴ particularly in developing countries where abortion is considered a crime, such as in most of Latin America and the Caribbean region.⁵ However, an appropriate application of international norms of treaty interpretation reveals that these treaties actually recognize and protect the unborn child’s right to life and health in a comprehensive manner and are incompatible with the creation of abortion rights,⁶ at either the regional or international level.

¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

² Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]. As of 2012, the following states have ratified the American Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. Non-parties in the Caribbean and Latin American region are: Antigua and Barbuda, Bahamas, Belize, Cuba, Guyana, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. *Signatories and Ratifications: American Convention on Human Rights*, ORG. AM. STATES, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (last visited Oct. 8, 2012) [hereinafter *American Convention Signatories and Ratifications*].

³ By “abortion” this article refers to any intentional or voluntary act resulting in the death of a fetus or embryo destruction, such as elective, voluntary abortion, clearly distinguishable from a “miscarriage” or “stillbirth.” See Mary V. Rorty & JoAnn V. Pinkerton, *Elective Fetal Reduction: The Ultimate Elective Surgery*, 13 J. CONTEMP. HEALTH L. & POL’Y 53, 58 (1996) (“[I]t is the request of the mother that makes an abortion elective, not the characteristics of the fetus.”). Embryo destruction includes embryonic death, loss, disposal and so-called “embryo reduction” resulting from the use of reproductive technologies. *Id.* at 55–56 (using the term “embryonic reduction” for multi-fetal pregnancy reduction).

⁴ See *infra* Part III.C.

⁵ For the purposes of this paper, “Latin America and the Caribbean” will include states in the geographic region that have ratified both the CRC and the American Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. 1 UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 1 APRIL 2009, at 389–91, U.N. Doc. ST/LEG/SER.E/26, U.N. Sales No. E.09.V.3 (2009) [hereinafter SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES]; *American Convention Signatories and Ratifications*, *supra* note 2. This category does not include foreign territories in the geographic region, such as Puerto Rico, Guadeloupe, or French Guyana.

⁶ For the purposes of this paper, “abortion rights” will allude to the alleged existence of a human right to all forms of abortion and alleged rights to procreate through reproductive technologies that cause embryo destruction or fetal death. See, e.g., Christina Zampas & Jaime M. Gher, *Abortion as a Human Right—International and Regional Standards*, 8 HUM. RTS. L. REV. 249 (2008) (examining a woman’s right to abortion in the context of international human rights standards).

International norms of treaty interpretation, as stated in the Vienna Convention on the Law of Treaties (“Vienna Convention”),⁷ establish that the ordinary meaning of the terms in a treaty can be determined by, among other things, “[a]ny subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” and “[a]ny relevant rules of international law applicable in the relations between the parties.”⁸ This Article documents evidence of the above as it pertains to the interpretation of the CRC and the American Convention by Latin American and Caribbean states.

Even though all of the information presented in this Article may support an argument for the existence of an emerging norm of customary international law in favor of the unborn child’s right to life,⁹ an analysis of whether current state practice and *opinio juris* rise to the level of regional custom¹⁰ is beyond the scope of this Article, which instead focuses on treaty interpretation only.

I. RELEVANT INTERNATIONAL LAW ON A PRENATAL RIGHT TO LIFE IN LATIN AMERICA AND THE CARIBBEAN

Treaty law is a primary source of international law according to Article 38 of the Statute of the International Court of Justice.¹¹ Two international treaties stand out for their recognition of a right to life from conception and their general protection of life, health, and development before birth: the American Convention and the CRC.¹²

⁷ Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331.

⁸ *Id.* art. 31(3)(b)–(c)

⁹ International custom is a source of international law where it is “evidence of a general practice accepted as law.” Statute of the International Court of Justice art. 38, June 26, 1945, 59 Stat. 1055; *see also* Legality of Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, para. 64 (July 8); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, para. 184 (June 27); Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1985 I.C.J. 13, para. 27 (June 3).

¹⁰ Regional and local custom can be a source of customary international law. *See* Right of Passage Over Indian Territory (Port. v. India), 1960 I.C.J. 6, 23, 39 (Apr. 12); Haya de la Torre Case (Colom. v. Peru), 1951 I.C.J. 71, 81 (June 13). The former established that “constant and uniform practice” practiced by the states in question, along with express agreement (as opposed to tacit assent inferred from lack of opposition) is required for the recognition of a regional norm of customary international law, thus setting a higher threshold that is difficult to meet, albeit not impossible. *See Right of Passage Over Indian Territory*, 1960 I.C.J. at 40, 42–43.

¹¹ Statute of the International Court of Justice, *supra* note 9, art. 38.

¹² *See* CRC, *supra* note 1, pmb.; American Convention, *supra* note 2, art. 4.

All Latin American and Caribbean states ratified the CRC.¹³ The preamble of the CRC affirms the CRC's application to the unborn child "before as well as after birth,"¹⁴ and Article 6(2) requires that states parties "ensure to the maximum extent possible the survival and development of the child."¹⁵ At the regional level, the American Convention on Human Rights, ratified by all Latin American and Caribbean states, explicitly recognizes the right to life from conception in Article 4(1), which states that "[e]very person has the right to have his life respected . . . from the moment of conception."¹⁶

In addition, Latin American and Caribbean states have ratified other international human rights treaties, both global and regional, that protect pre-natal life, health, and development. For instance, all Latin American and Caribbean states have ratified the International Covenant on Civil and Political Rights,¹⁷ which prohibits imposing the death penalty on pregnant women in Article 6(5).¹⁸ Similar bans on imposing the death penalty on pregnant women can be found in the American Convention in Article 4(5),¹⁹ and in international humanitarian law instruments ratified by nearly all Latin American and Caribbean states, such as Article 6(4) of Additional Protocol II to the Geneva Conventions.²⁰ Article 14 of the Geneva Convention (IV) Relative to the

¹³ SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES, *supra* note 5, at 389–91. The United States and Somalia continue to be the only countries in the world that have signed but not ratified the CRC. *Id.*

¹⁴ CRC, *supra* note 1, pmb. (quoting Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386 (XIV) (Nov. 20, 1959)). Inter-American Commission on Human Rights ("IACHR") member Luis Demetrio Tinoco Castro stated that this paragraph in the U.N. Declaration of the Rights of the Child inspired the Inter-American Juridical Committee that drafted the American Declaration on the Rights and Duties of Man by expressly recognizing that "the human being exists, has rights, and needs protection, including legal protection, in the period preceding his birth." *Baby Boy v. United States*, Case 2141, Inter-Am. Comm'n H.R., Report No. 23/81, OEA/Ser.L./V/II.54, doc. 9 rev. 1 (1980–1981) (Luis Demetrio Tinoco Castro, Comm'r, dissenting), available at <http://www.cidh.org/annualrep/80.81eng/USA2141b.htm>.

¹⁵ CRC, *supra* note 1, art. 6(2). In addition, Article 24(2)(d) requires states parties to take measures "[t]o ensure appropriate pre-natal and post-natal care for mothers." *Id.* art. 24(2)(d).

¹⁶ American Convention, *supra* note 2, art. 4(1); *American Convention Signatories and Ratifications*, *supra* note 2.

¹⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. TREATY DOC. 95-20, 999 U.N.T.S. 171 [hereinafter ICCPR]; SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES, *supra* note 5, at 204–06.

¹⁸ ICCPR, *supra* note 17, art. 6(5).

¹⁹ American Convention, *supra* note 2, art. 4(5).

²⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 6, para. 4, June 8, 1977, 1125 U.N.T.S. 609. Additional Protocol II has been ratified by all Latin American and Caribbean states except Mexico. Int'l Comm. of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977: *State*

Protection of Civilian Persons in Time of War provides for the protection for expectant mothers from the effects of war.²¹ Similarly, the majority of Latin American states, except for El Salvador, Haiti, Jamaica, and Nicaragua, have ratified the Rome Statute of the International Criminal Court,²² which includes “measures intended to prevent births” with the intent to destroy a particular group in the definition of genocide in Article 6(d).²³ At the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”),²⁴ ratified by all Latin American and Caribbean states,²⁵ also mandates in Article 9 that special attention be given to violence against pregnant women.²⁶

Furthermore, a right to prenatal health has been recognized in Article 12(2) of the Convention on the Elimination of All Forms of Discrimination Against Women²⁷ (“CEDAW”), ratified by countries in the region;²⁸ Article 12(2)(a) of the International Covenant on Economic, Social and Cultural Rights,²⁹ (“ICESCR”) ratified by virtually all Latin American states;³⁰ and Article

Parties/Signatories, <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P> (last visited Oct. 12, 2012).

²¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 14, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. The Geneva Convention (IV) has been ratified by all Latin American and Caribbean states. Int’l Comm. of the Red Cross, *Geneva Conventions of 12 August 1949: State Parties/Signatories*, <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P> (last visited Oct. 12, 2012).

²² Rome Statute of the International Criminal Court, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90; 3 UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 1 APRIL 2009, at 179–81, U.N. Doc. ST/LEG/SER.E/26, U.N. Sales No. E.09.V.3 (2009).

²³ Rome Statute of the International Criminal Court, *supra* note 22, art. 6(d).

²⁴ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém Do Pará,” June 9, 1994, 33 I.L.M. 1534 [hereinafter Convention of Belém Do Pará].

²⁵ *Signatories and Ratifications: Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém Do Pará,”* ORG. AM. STATES, <http://www.cidh.org/Basicos/English/Basic14.Conv%20of%20Belem%20Do%20Para%20Ratif.htm> (last visited Oct. 12, 2012).

²⁶ Convention of Belém Do Pará, *supra* note 24, art. 9.

²⁷ See Convention on the Elimination of All Forms of Discrimination Against Women art. 12(2), *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW] (“States Parties shall ensure to women appropriate services in connexion with pregnancy . . .”).

²⁸ SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES, *supra* note 5, at 157–59.

²⁹ See International Covenant on Economic, Social and Cultural Rights art. 12, para. 2(a), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

³⁰ The ICESCR has been ratified by all Latin American and Caribbean states except Haiti. SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES, *supra* note 5, at 182–84.

15(3)(a) of the Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”).³¹

Regional agreements also contain provisions granting human rights protection for expectant mothers in close connection to children’s rights. For instance, Article VII of the American Declaration of the Rights and Duties of Man (“American Declaration”), a declaration which all Latin American states are obligated by, closely ties the right to protection for pregnant mothers with the child’s right to special protection, care, and aid.³² Likewise, Article 15 of the Protocol of San Salvador connects unborn children’s rights to the family setting, stipulating in Article 15(3) that states “provide special care and assistance to mothers during a reasonable period before and after childbirth” as well as provide protection for children.³³ At the global level, the ICESCR contains a similar provision in Article 12(2).³⁴

In addition to major human rights treaties, Latin American and Caribbean states have consistently recognized the unborn child’s right to life in international declarations in the United Nations context. For instance, Latin American and Caribbean states overwhelmingly voted in favor of the United Nations Declaration on Human Cloning,³⁵ which calls upon states to prohibit

³¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 15, para. 3(a), Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 161 [hereinafter Protocol of San Salvador]. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights has been ratified by: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay. *Signatories and Ratifications: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, ORG. AM. STATES, <http://www.oas.org/juridico/english/sigs/a-52.html> (last visited Oct. 12, 2012).

³² See American Declaration of the Rights and Duties of Man art. VII, May 2, 1948, *reprinted in* INTER-AMERICAN COURT OF HUMAN RIGHTS, OAS, BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, 15, 17, OEA/Ser.L/V/I.4 rev. 12 (2007); Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, paras. 45–46 (July 14, 1989) (“[T]he American Declaration is for these States a source of international obligations related to the Charter of the Organization.”).

³³ Protocol of San Salvador, *supra* note 31, art. 15(3)(a)–(d).

³⁴ ICESCR, *supra* note 29, arts. 2(a), 12(1) (including the reduction of stillbirths, infant mortality, and “the healthy development of the child” in the right “to the enjoyment of the highest attainable standard of physical and mental health”); *accord* Comm. on Econ., Soc. and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, paras. 14, 22, 35, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) (tying children’s right to health and development to maternal health).

³⁵ United Nations Declaration on Human Cloning, G.A. Res. 59/280, U.N. Doc. A/RES/59/280 (Mar. 8 2005). The declaration was supported by affirmative votes from Bolivia, Chile, Costa Rica, Dominican

all forms of human cloning, exploitation of women for life sciences, and genetic engineering techniques that are “incompatible with human dignity and the protection of human life.”³⁶ During the declaration’s approval, Mexico and Costa Rica voiced their intent to protect “human dignity” and “human life” through the adoption of the said declaration.³⁷

Central American countries, in particular, have adopted sub-regional declarations reiterating their commitment to protect the unborn child from abortion. The Declaration of the Central American Presidents and the Prime Minister of Belize on the International Conference on Population and Development to be Held in Cairo on September 1994, for instance, was adopted by the 15th Summit of Central American Presidents.³⁸ The Declaration stated, *inter alia*: “The family must be based on respect for life as of its conception and the union of man with a woman as it is established by our customs.”³⁹

Likewise, Latin American and Caribbean states universally signed the Universal Declaration of Human Rights, which states in Article 25(2) that “[m]otherhood and childhood are entitled to special care and assistance.”⁴⁰ The Universal Declaration of Human Rights also implicitly protects the unborn child by providing health services and social security for everyone, including expectant mothers, in Article 22 (right of social security) and Article 25(1) (right to a standard of living adequate for health and well-being).⁴¹ In addition, Latin American and Caribbean states have attended international conferences like the World Summit for Children, the World Summit for Social Development, and the U.N. Conference on Environment and Development that

Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Suriname, and Trinidad and Tobago, among others. The delegations of Dominica, Peru, and Venezuela were absent from the vote. Argentina, Barbados, Colombia, and Uruguay abstained. Brazil and Jamaica voted against it. Press Release, General Assembly, General Assembly Adopts United Nations Declaration on Human Cloning by Vote of 84-34-37, UN Press Release GA/10333 (Mar. 8, 2005).

³⁶ United Nations Declaration on Human Cloning, *supra* note 35.

³⁷ Press Release, General Assembly, *supra* note 35, at 2, 4.

³⁸ Central American Integration System, 15th Summit of Central American Presidents, Declaration of the Central American Presidents and the Prime Minister of Belize on the International Conference on Population and Development to be Held in Cairo on September 1994, (Aug. 20, 1994), *available at* <http://www.sieca.int/site/CacheING/17990000001120/17990000001120.pdf>. The Declaration was signed by the presidents of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. *Id.*

³⁹ *Id.*

⁴⁰ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 25(2), U.N. Doc. A/RES/217(III), at 76 (Dec. 10, 1948).

⁴¹ *See id.* arts. 22, 25(1)–(2), at 75–76.

have adopted international commitments to promote pre-natal care, stressing the need to reduce maternal mortality and infant mortality, closely tying them together.⁴²

Under Article 31(3)(c) of the Vienna Convention, which establishes that “[a]ny relevant rules of international law applicable in the relations between the parties” should be taken into account for the purposes of treaty interpretation,⁴³ Latin America and the Caribbean’s ratification of several international agreements protecting the right to life before birth support a compatible interpretation of the CRC and the American Convention.

II. INTERNATIONAL STATE PRACTICE ON THE APPLICATION OF THE CRC AND THE AMERICAN CONVENTION ON HUMAN RIGHTS

A. *Regional Interpretation of the CRC’s Protection of Life Before Birth*

As illustrated below, an analysis of current Latin American and Caribbean state practice in international fora, subsequent to the ratification of the CRC, demonstrates that states parties to the CRC have consistently understood it to ban elective abortion, in spite of CRC Committee recommendations to the contrary,⁴⁴ and to mandate state protection of unborn life throughout pregnancy, from conception to birth. According to Article 31(3)(b) of the

⁴² UNICEF, World Declaration on the Survival, Protection and Development of Children, paras. 14, 20(2) (Sept. 30, 1990), <http://www.unicef.org/wsc/declare.htm>; World Summit for Social Development, Mar. 6–12, 1995, *Copenhagen Declaration on Social Development and Programme of Action the World Summit for Social Development*, para. 37(e), U.N. Doc. A/CONF.166/9, Annex II (Apr. 19, 1995); United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3–14, 1992, *Agenda 21*, paras. 3.8(j), 5.51, 6.21, 24.3(e), U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1) Annex II (Aug. 12, 1992).

⁴³ Vienna Convention on the Law of Treaties, *supra* note 7, art. 31(3)(c).

⁴⁴ See Comm. on the Rights of the Child, *General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, para. 31, U.N. Doc. CRC/GC/2003/4 (July 1, 2003), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/4> (urging states “to develop and implement programmes that provide access to sexual and reproductive health services, including . . . safe abortion services where abortion is not against the law . . .”). The Committee on the Rights of the Child, however, has recommended weakening or repealing domestic laws that criminalize abortions. *E.g.*, Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations: Nicaragua*, para. 59(b), U.N. Doc. CRC/C/NIC/CO/4 (Oct. 20, 2010) (strongly recommending that Nicaragua “[r]epeal the articles of the Penal Code that criminalize abortion and ensure that girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances”); Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations: Costa Rica*, para. 64(d)–(e), U.N. Doc. CRC/C/CRI/CO/4 (Aug. 3, 2011) (recommending that Costa Rica expand legal abortion to include “cases of rape and intra-family sexual violence,” and to ensure the availability of emergency contraception for teenage girls, particularly in cases of rape).

Vienna Convention, “subsequent practice in the application of the treaty [that] establishes the agreement of the parties regarding its interpretation” is one of the essential elements for treaty interpretation.⁴⁵ States’ responses to the treaty bodies’ work and their participation in the supervisory mechanisms are usually understood to constitute evidence of subsequent practice in this sense.⁴⁶

First, it is important to note that the preambles of the CRC and Declaration on the Rights of the Child affirm the states parties’ duty of protection toward the unborn child, who, “by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*.”⁴⁷ According to the Vienna Convention, Article 31(2), a treaty’s preamble is an essential part of the treaty text itself;⁴⁸ therefore, an eventual argument that the preamble has no value for the purposes of interpretation would be uninformed. Furthermore, the CRC, as well as the Declaration of the Rights of the Child, recognize the unborn child’s right to life, health, and development, including “adequate pre-natal . . . care” for the child⁴⁹ and the mother.⁵⁰

Second, it is worth noting that, from the outset of the CRC’s entry into force, Latin American and Caribbean countries have interpreted the CRC as

⁴⁵ Vienna Convention on the Law of Treaties, *supra* note 7, art. 31(3)(b).

⁴⁶ *E.g.*, Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 VAND. J. TRANSNAT’L L. 905, 920 (2009) (citing MATTHEW C.R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 91 (Ian Brownlie, ed., 1995)).

⁴⁷ CRC, *supra* note 1, pmbl. (emphasis added) (quoting Declaration of the Rights of the Child, *supra* note 14, pmbl.).

⁴⁸ Vienna Convention on the Law of Treaties, *supra* note 7, art. 31(2).

⁴⁹ Declaration of the Rights of the Child, *supra* note 14, princ. 4; *cf.* CRC, *supra* note 1, art. 6(2) (“States Parties shall ensure to the maximum extent possible the survival and development of the child.”).

⁵⁰ CRC, *supra* note 1, art. 24(2)(d). Some scholars have argued that the CRC was intended to cover children during the entire pre-natal period. *E.g.*, BRUCE ABRAMSON, *VIOLENCE AGAINST BABIES: PROTECTION OF PRE- AND POST-NATAL CHILDREN UNDER THE FRAMEWORK OF THE CONVENTION ON THE RIGHTS OF THE CHILD* 60 (2006), available at <http://www.law2.byu.edu/wfpc/policy%20issues/VIOLENCE%20AGAINST%20BABIES.pdf>. Bruce Abramson, a human rights attorney specializing in the CRC, points out that an early draft of Article 1 of the CRC defined a child as a human being “*from the moment of his birth*.” *Id.* at 59 n.63 (emphasis in original) (citation omitted). While the treaty’s preparatory work records are limited, they do demonstrate that the early working draft’s limit on the enjoyment of rights “from the moment of birth” was promptly removed. 1 OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, *THE LEGISLATIVE HISTORY OF THE CONVENTION ON THE RIGHTS OF THE CHILD*, at 305, U.N. Doc. HR/PUB/07/1, U.N. Sales No. E.07.XIV.3 (2007). One of the reasons for removing that phrase was to solve a disagreement between delegates arguing that the concept of a child should extend “from the moment of conception” onwards. *Id.*; accord ABRAMSON, *supra* at 59 n.63. The removal of the restriction strongly suggests that U.N. states parties thus intended for the CRC to protect children during the pre-natal stage of life. *See* ABRAMSON, *supra* at 60.

protecting children's lives from conception onwards.⁵¹ For instance, upon signature of the CRC, Argentina and Guatemala filed interpretative declarations that were later confirmed upon ratification, where they affirmed that "child" refers to every person from the moment of conception.⁵² Similarly, Ecuador filed a declaration where it pointed out that the CRC's preamble protected the unborn child which "should be borne in mind in interpreting all the articles of the Convention"⁵³ Likewise, in the Declaration of the Rights of the Child's *travaux préparatoires*, several Latin American states affirmed their view that the child's right to life was protected from the moment of conception, and a proposal to that effect was introduced by Argentina and supported by Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Paraguay, Peru, the Dominican Republic, Uruguay, and Venezuela, among others.⁵⁴

Subsequent to the ratification of the CRC, most Latin American and Caribbean states have confirmed their interpretation of the CRC's definition of child starting at conception until eighteen years of age (or even beyond that) by specifically implementing this definition at national levels, as indicated in their reports to the CRC Committee. For instance, Argentina reported that "for the purposes of the Argentine legal system a child is 'any human being from conception up to the age of 18,'" without deference to semantic designations for each phase of the child's life.⁵⁵ Argentina reiterated this declaration upon ratification of the CRC, stating that Article 1 of the CRC "should be interpreted in such a way that by a child is meant any human being from the

⁵¹ The definition of a child in Article 1 of the CRC is stated as "every human being below the age of eighteen." CRC, *supra* note 1, art. 1. Some commentators have noted that definition of child in Article 1 obviously establishes a ceiling, but not a floor, regarding a child's age, thus tacitly protecting unborn children within its scope of protection. See Patrick J. Flood, *Does International Law Protect the Unborn Child?*, in LIFE AND LEARNING CONFERENCE XVI 3, 10 (Joseph W. Koterski ed., 2006).

⁵² SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES, *supra* note 5, at 392, 395.

⁵³ *Id.* at 394.

⁵⁴ See Ricardo Bach de Chazal, *Inconstitucionalidad y No Convencionalidad Del Aborto Voluntario*, NOTIVIDA 8 (July 2011), <http://www.notivida.org/Articulos/Aborto/INCONSTITUCIONALIDAD%20Y%20NO%20CONVENCIONALIDAD%20DEL%20ABORTO%20VOLUNTARIO.pdf>.

⁵⁵ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1994: Addendum: Argentina*, para. 41, U.N. Doc. CRC/C/8/Add.17 (Dec. 22, 1994); see also Comm. On the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Periodic Reports of States Parties Due in 1998: Argentina*, U.N. Doc. CRC/C/70/Add.10, para. 2, (Feb. 26, 2002) (noting Argentina's interpretative declaration upon ratification of the CRC that "the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of 18").

time of conception up to the age of 18.”⁵⁶ Guatemala reported that both its constitutional protection of the right to life from conception, as well as its Act on the Comprehensive Protection of Children and Adolescent’s definition of child as a person from conception were “consistent with the definition in article 1 of the Convention.”⁵⁷ El Salvador reported that an amendment to its constitution recognizing every human being as a person from the moment of conception “was adopted in response to the letter and spirit of the preamble to the Convention on the Rights of the Child.”⁵⁸ Bolivia reported to the CRC Committee that its Code for Children and Adolescents was in agreement with the Convention in its definition of children as all human beings from the moment of conception.⁵⁹ Honduras reported that its definition of a child protected children in the same terms as the CRC and therefore included unborn children since the time of conception.⁶⁰ Similarly, Peru indicated that its Children’s and Adolescents’ Code, which protects life from conception, “uses the same upper and lower age limits as the Convention on the Rights of the Child.”⁶¹

Other states like Bolivia, Costa Rica, Nicaragua, and Paraguay have specifically referred to the CRC’s Article 1 when reporting on their national definitions of children as human beings from conception until eighteen years of age.⁶² Likewise, Panama reported that its Family Code definition of “minor” as

⁵⁶ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1994: Addendum: Argentina*, para. 6, U.N. Doc. CRC/C/8/Add.17 (Dec. 22, 1994).

⁵⁷ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Fourth Periodic Reports of States Parties Due in 2006: Guatemala*, para. 41 U.N. Doc. CRC/C/GTM/3-4 (Apr. 25, 2008); *accord id.* para. 78.

⁵⁸ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Reports of States Parties Due in 1997: El Salvador*, para. 51, U.N. Doc. CRC/C/65/Add.25 (Oct. 22, 2003).

⁵⁹ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Fourth Periodic Reports of States Parties Due in 2007: Bolivia*, para. 192, U.N. Doc. CRC/C/BOL/4 (Mar. 25, 2009).

⁶⁰ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Periodic Reports of States Parties Due in 1997: Addendum: Honduras*, para. 156, U.N. Doc. CRC/C/65/Add.2 (Feb. 20, 1998).

⁶¹ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Periodic Reports of States Parties Due in 1997: Addendum: Peru*, para. 138, U.N. Doc. CRC/C/65/Add.8 (Aug. 3, 1998); *accord id.* paras. 137–38.

⁶² Comm. on the Rights of the Child, *supra* note 59, para. 192; Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Initial Reports of States Parties Due in 2005: Costa Rica*, paras. 29, 32, U.N. Doc. CRC/C/OPSC/CRI/1 (Dec. 23, 2005); Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under*

a human being from his or her conception up to eighteen years of age, and that its Family Code's provisions on child support, which apply from conception onwards, are in compliance with the CRC.⁶³ When ratifying the Inter-American Convention on Support Obligations, approved at Montevideo, Uruguay on July 15, 1989,⁶⁴ Panama submitted a declaration stating: "A person who is not yet born (*nasciturus*) shall have the right to prenatal support."⁶⁵ Similarly, Paraguay reported on its compliance with the CRC by legislating into its constitution and Children's Code a definition of child as any human being from conception onwards.⁶⁶ Ecuador reported on its general compliance with the CRC by providing constitutional protection for a child's right to life from conception in its constitution, as well as its Children's Code definition of minor as "any human being from the prenatal stage to the age of 18 years."⁶⁷ Honduras also reported on its definition of children starting from the moment of conception until the age of eighteen in its Children's Code as a measure of compliance with the CRC.⁶⁸ Colombia indicated that Article 17 of its Minors' Code, recognizing the child's existence from conception, had been modified to comply with its international obligations under CRC to reflect the child's right to life, health, and development from conception.⁶⁹ Furthermore,

Article 44 of the Convention: Third Periodic Reports of States Parties Due in 2002: Nicaragua, para. 127, U.N. Doc. CRC/C/125/Add.3 (Oct. 15, 2004) [hereinafter *Third Periodic Reports of States Parties Due in 2002: Nicaragua*]; Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Periodic Reports of States Parties Due in 1997: Paraguay*, para. 173, U.N. Doc. CRC/C/65/Add.12 (Mar. 15, 2001).

⁶³ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Third and Fourth Periodic Reports of States Parties Due in 2008: Panama*, paras. 99, 259, U.N. Doc. CRC/C/PAN/3-4 (Jan. 27, 2011).

⁶⁴ *Signatories and Ratifications: Inter-American Convention on Support Obligations*, ORG. AM. STATES, <http://www.oas.org/juridico/English/signs/b-54.html> (last visited Oct. 12, 2012).

⁶⁵ *Id.*

⁶⁶ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Third Periodic Reports of States Parties Due in 2002: Paraguay*, paras. 127, 288-89, U.N. Doc. CRC/C/PRY/3 (Mar. 27, 2009); Comm. on the Rights of the Child, *supra* note 63, paras. 173, 222.

⁶⁷ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Addendum: Ecuador*, para. 66, U.N. Doc. CRC/C/3/Add.44 (Sept. 24, 1996); *accord* Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Fourth Periodic Reports of States Parties Due in 2007: Ecuador*, paras. 524, U.N. Doc. CRC/C/ECU/4 (July 10, 2009); Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second and Third Periodic Reports Due in 1997 and 2002: Ecuador*, para. 134, U.N. Doc. CRC/C/65/Add.28 (July 15, 2004);

⁶⁸ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Periodic Reports of States Parties Due in 1997: Addendum: Honduras*, para. 156, U.N. Doc. CRC/C/65/Add.2 (Feb. 20, 1998).

⁶⁹ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 8, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of*

under Article 3 of the CRC regarding protection of children,⁷⁰ Uruguay reported on its Children's Code comprehensive protection of children from conception to the age of majority.⁷¹

Specifically, Latin American and Caribbean states have reported to the CRC Committee on their constitutional and legal recognition of the right to life from conception as demonstrating their compliance with Article 6 of the CRC, which recognizes a child's right to life, survival, and development.⁷² For instance, Peru reported on its legal system's application to the unborn child from the moment of conception⁷³ and specifically stated in 2005 that:

Human life is the period of time lived by a person from conception in the womb until death and consists of the manifestation and activities of a human being. Once conceived, every child has the right to life; article 6 of the Convention therefore declares this right to be an inherent right.⁷⁴

In compliance with Article 6, Guatemala,⁷⁵ Nicaragua,⁷⁶ Paraguay⁷⁷ and Venezuela⁷⁸ have reported on the protection provided by their domestic constitutions, children's codes, or both.

Children in Armed Conflict: Initial Reports of States Parties Due in 2007: Colombia, para. 89, U.N. Doc. CRC/C/OPAC/COL/1 (Oct. 21, 2009) [hereinafter *Initial Reports of States Parties Due in 2007: Colombia*]; Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Third Periodic Reports of States Parties Due in 2003: Addendum: Colombia*, paras. 158–59, U.N. Doc. CRC/C/129/Add.6 (Aug. 24, 2005) [hereinafter *Third Periodic Reports of States Parties Due in 2003: Colombia*].

⁷⁰ CRC, *supra* note 1, art. 3(2).

⁷¹ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Uruguay*, para. 67, U.N. Doc. CRC/C/3/Add.37 (Nov. 13, 1995).

⁷² CRC, *supra* note 1, art. 6.

⁷³ Comm. on the Rights of the Child, *supra* note 61, para. 137.

⁷⁴ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Third Periodic Reports of States Parties Due in 2004: Peru*, at 60 tbl.1, CRC/C/125/Add.6 (May 24, 2005).

⁷⁵ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Reports of States Parties Due in 1997: Addendum: Guatemala*, para. 83, U.N. Doc. CRC/C/65/Add.10 (Mar. 29, 2000).

⁷⁶ See Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Fourth Periodic Reports of States Parties Due in 2007: Nicaragua*, para. 93, U.N. Doc. CRC/C/NIC/4 (Mar. 22, 2010); see also *Third Periodic Reports of States Parties Due in 2002: Nicaragua*, *supra* note 62, para. 127.

⁷⁷ See Comm. on the Rights of the Child, *supra* note 66, para. 288.

⁷⁸ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Report of States Parties Due in 1992: Addendum: Venezuela*, paras. 69, 71, U.N. Doc. CRC/C/3/Add.54 (Sept. 22, 1997).

A similar definition of child as a human being from conception until the age of eighteen may apply in the regional context, given that both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (“IACHR” or “Commission”) have adopted the CRC definition and have stated that, for the purposes of the Inter-American system on human rights, “child” refers to any person who has not yet turned eighteen years of age.⁷⁹ Moreover, Article 2 of the Inter-American Convention on Support Obligations, defines a child as any person below the age of eighteen, thereby establishing a ceiling, but no floor, to the definition.⁸⁰

Notably, Latin American and Caribbean states have reported to the CRC Committee on their domestic criminal prohibitions on abortion when describing their compliance with Article 6 of the CRC on the right to life, health, and development.⁸¹ Costa Rica reported on its penalization of abortion as a measure designed to comply with Article 6 of the CRC.⁸² Likewise, Honduras reported on its Criminal Code reforms expanding prohibitions on abortion and its legal protections for the unborn child.⁸³ Panama reported on its fetal death statistics and on its criminal law regarding deliberate abortion as compliant with CRC.⁸⁴ Likewise, Chile reported that its constitution and its laws protect “the lives of persons yet to be born” and that its legal system “prohibits abortion.”⁸⁵ While reporting on its obligations under Article 6, El Salvador reported that all types of conduct constituting abortion were punishable under criminal law “in order to protect life from conception.”⁸⁶ Colombia affirmed that “practices involving abortion are never acceptable” and reported that Colombian legislation protects the right to life of both the

⁷⁹ See ORG. OF AM. STATES, THE RIGHTS OF THE CHILD IN THE INTER-AMERICAN SYSTEM, at 7, 17 OEA/Ser.L/V/II.133 (2d ed. 2009); Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17, para. 42 (Aug. 28, 2002).

⁸⁰ Inter-American Convention on Support Obligations art. 2, July 15, 1989, O.A.S.T.S. No. 71, 29 I.L.M. 75, available at http://www.oas.org/dil/CIDIPIV_obligations.htm; accord Bach de Chazal, *supra* note 54, at 8.

⁸¹ E.g., Comm. on the Rights of the Child, *supra* note 61, para. 196.

⁸² Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Addendum: Costa Rica*, para. 78, U.N. Doc. CRC/C/3/Add.8 (Feb. 19, 1993).

⁸³ Comm. on the Rights of the Child, *supra* note 60, para. 161.

⁸⁴ Comm. on the Rights of the Child, *supra* note 63, paras. 177–79, paras. 298–304.

⁸⁵ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Periodic Reports of States Parties Due in 1997: Chile*, para. 304, U.N. Doc. CRC/C/65/Add.13 (June 25, 2001); accord Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1993: Addendum, Chile*, para. 67, U.N. Doc. CRC/C/3/Add.18 (June 22, 1993).

⁸⁶ Comm. on the Rights of the Child, *supra* note 58, para. 147.

mother and the unborn child.⁸⁷ Haiti also reported on its criminal penalties for voluntary abortion as consistent with Article 6 of the Convention.⁸⁸

Most Caribbean countries, like Dominica,⁸⁹ Grenada,⁹⁰ Haiti,⁹¹ Suriname,⁹² and Trinidad and Tobago,⁹³ also reported on their criminal penalties for voluntary abortion as consistent with Article 6 of the Convention. In addition, Haiti reported in 2002 that prison sentences of pregnant women “may be suspended in order to protect the unborn child.”⁹⁴ Similarly, Dominica reported in 2003 on its prohibition against applying the death penalty to pregnant women, indicating that “the intention here no doubt is to preserve the life of the unborn.”⁹⁵

Latin American and Caribbean states also reported to the CRC Committee on pre-natal health in relation to their obligations under Article 24 (right to health) of the CRC.⁹⁶ Brazil, for instance, recognized “the vulnerability of the human being from conception up to approximately 6 years of age.”⁹⁷ Mexico

⁸⁷ Comm. On the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Initial Reports of States Parties Due in 2005: Colombia*, para. 16, U.N. Doc. CRC/C/OPSC/COL/1 (Dec. 3, 2009); see also Initial Reports of States Parties Due in 2007: Colombia, *supra* note 69, paras. 87–90; Third Periodic Reports of States Parties Due in 2003: Colombia, *supra* note 69, paras. 229–30.

⁸⁸ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1997: Haiti*, para. 61, U.N. Doc. CRC/C/51/Add.7 (June 21, 2002).

⁸⁹ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1993: Dominica*, paras. 95–98, U.N. Doc. CRC/C/8/Add.48 (Oct. 15, 2003).

⁹⁰ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Grenada*, para. 50, U.N. Doc. CRC/C/3/Add.55 (Nov. 28, 1997).

⁹¹ Comm. on the Rights of the Child, *supra* note 88, para. 61.

⁹² Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1995: Suriname*, para. 29, U.N. Doc. CRC/C/28/Add.11 (Sept. 23, 1998).

⁹³ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1994: Trinidad and Tobago*, para. 35, U.N. Doc. CRC/C/11/Add.10 (June 17, 1996).

⁹⁴ Comm. on the Rights of the Child, *supra* note 88, para. 142.

⁹⁵ Comm. on the Rights of the Child, *supra* note 89, paras. 95–98.

⁹⁶ See Rep. of the Comm. on the Rights of the Child, July 16, 2008, U.N. Doc. A/63/41; GAOR, 63d Sess., Supp. No. 41 (2008).

⁹⁷ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Brazil*, para. 283, U.N. Doc. CRC/C/3/Add.65 (Dec. 17, 2003).

stressed the need to protect prenatal survival, health, and development from conception and during life in utero, and reported on its policies to that effect under Article 6 of the CRC.⁹⁸

The above interpretative declarations and official state reports to the CRC Committee constitute evidence of international practice in the application of the CRC, which establishes that there is general agreement among Latin American and Caribbean states regarding their interpretation that the CRC protects the unborn child's right to life from conception and bans abortion.⁹⁹

B. Regional Interpretation of the American Convention on Human Rights

As illustrated below, an analysis of current Latin American and Caribbean state practice after the ratification of the American Convention demonstrates that states parties to the Convention have consistently understood it to ban elective abortion, in spite of suggestions to the contrary by the Inter-American Commission on Human Rights,¹⁰⁰ and to mandate state protection of unborn life throughout pregnancy, from conception to birth.

The American Convention is a regional treaty in which Latin American and Caribbean states explicitly recognize the right to life from conception in article 4(1) of the Convention, which states: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."¹⁰¹

⁹⁸ Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Mexico*, paras. 35–36, 113, 138, U.N. Doc. CRC/C/3/Add.11 (Feb. 10, 1993).

⁹⁹ OFFICE OF THE U.N. HIGH COMMISSIONER ON HUMAN RIGHTS, COMPILACIÓN DE OBSERVACIONES FINALES DEL COMITÉ DE DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES SOBRE PAÍSES DE AMÉRICA LATINA Y EL CARIBE (1989–2004) [COMPILATION OF CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE COUNTRIES OF LATIN AMERICA AND THE CARIBBEAN (1980–2004)] 29–304 (2004), available at [http://www2.ohchr.org/english/bodies/cescr/docs/publications/CESCR-Compilacion\(1989-2004\).pdf](http://www2.ohchr.org/english/bodies/cescr/docs/publications/CESCR-Compilacion(1989-2004).pdf) (compilation of CESCR concluding observations for Latin American and Caribbean countries in their original languages and all of the concluding observations of the Committee from 1989 to 2004 relating to the countries in their native language).

¹⁰⁰ See *Paulina del Carmen Ramírez Jacinto v. Mexico*, Petition 161-02, Inter-Am. Comm'n H.R., Report No. 21/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 para. 9 (2007), available at <http://www.cidh.org/annualrep/2007eng/Mexico161.02eng.htm>; *Gretel Artavia Murillo v. Costa Rica*, Case 12.361, Inter-Am. Ct. H.R., Report No. 85/10 (2011), available at <http://www.cidh.oas.org/demandas/12.361Eng.pdf>. See generally *Baby Boy v. United States*, Case 2141, Inter-Am. Comm'n H.R., Report No. 23/81, OEA/Ser.L/V/II.54, doc. 9 rev. 1 (1980–1981) (holding that a law permitting abortion without restriction as to reason was compatible with the right to life protection under the American Declaration, given the legislative history of the Declaration).

¹⁰¹ American Convention, *supra* note 2, art. 4(1).

States parties to the American Convention have invoked this provision of the American Convention when objecting to the recognition of abortion rights or international obligations to legalize abortion at international conferences. For instance, written declarations submitted at the Beijing and Cairo International Conferences by the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, described below, invoked the American Convention when rejecting interpretations of terms such as “birth control,” “family planning,” or “unwanted pregnancy” as including a purported right to abort undesired children.¹⁰²

At the International Conference on Population and Development (“ICPD”), Guatemala entered express reservations regarding the interpretation of abortion as a reproductive or sexual right, or a reproductive health service in Chapters II and VII of the ICPD document respectively, by virtue of its incompatibility with both the American Declaration and the American Convention, noting that “life exists from the moment of conception and that the right to life is the source of all other rights.”¹⁰³ El Salvador objected to the inclusion of abortion as a reproductive right, related reproductive health or family planning service, stating: “We Latin American countries, are signatories to the American Convention on Human Rights (Pact of San José). Article 4 thereof states quite clearly that life must be protected from the moment of conception. . . . For this reason . . . we consider that life must be protected from the moment of conception.”¹⁰⁴

Likewise, the Dominican Republic entered an express reservation regarding the content of terms: “‘reproductive health,’ ‘sexual health,’ ‘safe motherhood,’ ‘reproductive rights,’ ‘sexual rights’ and ‘regulation of fertility’” when those terms include “the concept of abortion or interruption of pregnancy.”¹⁰⁵ The Dominican Republic entered its reservation in accordance with its constitution and laws and held that “as a signatory of the American Convention on Human Rights, it fully confirms its belief that everyone has a fundamental and inalienable right to life and that this right to life begins at the moment of conception.”¹⁰⁶ Similarly, Honduras specifically stated its objection to abortion as a reproductive right in light of:

¹⁰² REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, at 133–41, U.N. Doc. A/CONF.171/13/Rev.1, U.N. Sales No. 95.XIII.I8 (1995) [hereinafter ICPD].

¹⁰³ *Id.* at 142.

¹⁰⁴ *Id.* at 133.

¹⁰⁵ *Id.* at 140.

¹⁰⁶ *Id.*

The American Convention on Human Rights, which reaffirms that every person has a right to life and that this right will be protected by law and will be protected in general, starting from the moment of conception, based on moral, ethical, religious and cultural principles which should regulate the international community, and in accordance with internationally recognized human rights.¹⁰⁷

At the Fourth World Conference on Women in Beijing, the Dominican Republic objected to the interpretation of “reproductive rights” and related terms including abortion or the voluntary interruption of pregnancy by stating that “[t]he Dominican Republic, as a signatory to the American Convention on Human Rights, and in accordance with the Constitution and the laws of the Republic, confirms that every person has a right to life, and that life begins at the moment of conception.”¹⁰⁸ Similarly, Nicaragua, in its statement at the Beijing Conference on Women, rejected the inclusion of abortion as a reproductive right or as a reproductive health service by holding that “as a signatory of the American Convention on Human Rights, the Government of Nicaragua reaffirms that every person has the right to life, which is a fundamental and inalienable right, and that this right begins with the moment of conception,” and that “abortion or the termination of pregnancy cannot in any way be considered a method of regulating fertility or birth control, as was made clear by the International Conference on Population and Development. The domestic laws governing this matter are within the sovereign purview of the Nicaraguan nation.”¹⁰⁹ Also at the Beijing Conference, Honduras reiterated its understanding that “[t]he American Convention on Human Rights, of which our country is a signatory, reaffirms that every individual has the right to life from the moment of conception, on the basis of the moral, ethical, religious and cultural principles that should govern human behaviour.”¹¹⁰

In addition, the highest courts in several Latin American countries have invoked the American Convention when protecting the unborn child from abortion. For instance, Chile’s Constitutional Court invoked the convention’s Article 4(1) and other international treaty obligations when banning emergency

¹⁰⁷ *Id.* at 134–35.

¹⁰⁸ REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, ch. 5, para. 8, at 157, U.N. Doc. A/CONF.177/20/Rev.1, U.N. Sales No. 96.IV.13 XIII.18 (1996) [hereinafter FOURTH WORLD CONFERENCE ON WOMEN].

¹⁰⁹ *Id.* at 168.

¹¹⁰ *Id.* at 163.

contraception in 2008.¹¹¹ In 2009, Peru's Constitutional Tribunal invoked the American Convention when banning gratis distribution of emergency contraception.¹¹²

Even non-parties to the American Convention have understood the treaty to ban abortion. For instance, Canadian debates on the ratification of American Convention illustrate express fear that Article 4(1) of the Convention would conflict with Canadian law, where abortion currently is widely available on demand and protected by law.¹¹³ Furthermore, the European Court of Human Rights, in *Vo v. France*, also recognized that the American Convention's protection of the unborn child's life beginning at conception may be incompatible with legal abortion and distinguished it from the European Convention on Human Rights, which is silent on the subject of abortion.¹¹⁴

The above evidence of international state practice in the application of the American Convention shows that Latin American and Caribbean states have agreed in interpreting the Convention to protect the unborn child's right to life from fertilization until birth. As to abortion, the above evidence shows that Latin American and Caribbean states have identified it as contrary to the general protection afforded the right to life from conception as recognized in the treaty.

C. Consistent Regional Opposition to the Creation of Abortion Rights

1. Inexistence of International Abortion Rights

No global or regional international treaty ratified by Latin American states creates abortion rights or mandates the legalization of abortion or its

¹¹¹ Tribunal Constitucional [T.C.] [Constitutional Court], 18 abril 2008 Requerimiento de inconstitucionalidad deducido en contra de algunas disposiciones de las "Normas Nacionales sobre Regulación de la Fertilidad," aprobadas por el Decreto Supremo N 48, de 2007, del Ministerio de Salud, Rol de la causa: 740-07, p. 131-32 (Chile), available at http://www.tribunalconstitucional.cl/wp/descargar_expediente.php?id=34407.

¹¹² Tribunal Constitucional, [T.C.] [Constitutional Court] 16 octubre 2009, "Acción de Lucha Anticorrupcion" Sentencia del Tribunal Constitucional, EXP. No. 02005-2009-PA/TC, para. 12 (Peru), available at <http://www.tc.gob.pe/jurisprudencia/2009/02005-2009-AA.html>.

¹¹³ PARLIAMENT OF CAN. STANDING SENATE COMM. ON HUMAN RIGHTS, ENHANCING CANADA'S ROLE IN THE OAS: CANADIAN ADHERENCE TO THE AMERICAN CONVENTION ON HUMAN RIGHTS, No. 2/37-446S, at 42-43 (2003), available at <http://www.parl.gc.ca/Content/SEN/Committee/372/huma/rep/rep04may03-e.pdf>.

¹¹⁴ *Vo v. France*, 2004-VIII Eur. Ct. H.R. 1, para. 75.

liberalization where legal.¹¹⁵ Likewise, no international norm of customary international law recognizes a human right to take the life of an unborn child through abortion or mandates the legalization of abortion.¹¹⁶ Mr. Anand Grover, U.N. Special Rapporteur for Health, recognized in 2011 that there is “no international law on the matter [of abortion]” during his presentation of a report on the right to health to the United Nations General Assembly.¹¹⁷ Even abortion rights advocates like the Center for Reproductive Rights¹¹⁸ and Amnesty International¹¹⁹ have acknowledged that there is no international law creating abortion rights.

¹¹⁵ Only one regional treaty currently includes the term “abortion”: the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, a regional instrument of the African Union. African Commission on Human and Peoples’ Rights, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa art. 14(2)(c), Sept. 13, 2000, CAB/LEG/66.6, *reprinted in* Martin Semalulu Nsibirwa, *A Brief Analysis of the Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women*, 1 AFR. HUM. RIGHT L.J. 40, 53 (2001) [hereinafter Maputo Protocol]. The treaty is obviously not binding on Latin American states. The Maputo Protocol authorizes abortion only under certain circumstances, in the absence of which the procedure would be illegal. *Id.* at 60. It is worth mentioning that only thirty-four of the fifty-four African Union members have ratified or acceded to the Maputo Protocol. African Union, List of Countries Which Have Signed, Ratified/Acceded To the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, (Sept. 19, 2012), <http://www.au.int/en/sites/default/files/Rights%20of%20Women.pdf>. The San José Articles point out that “[the Maputo Protocol] is highly contentious and in no way enjoys universal acceptance. . . . [T]he reason most often cited for non-accession is the abortion provision.” *Notes on the San José Articles*, SAN JOSÉ ARTICLES 3 (Mar. 25, 2011), <http://www.sanjosearticles.com/wp-content/uploads/2012/02/SJA.pdf>.

¹¹⁶ *San José Articles*, SAN JOSÉ ARTICLES art. 5 (Mar. 25, 2011), <http://www.sanjosearticles.com/wp-content/uploads/2012/02/SJA.pdf>. The San José articles are a declaration signed by a group of experts in international law, public health, science, medicine, and government, including Professor John Finnis of Oxford, Javier Borrego, former Judge of the European Court of Human Rights, Professor Carter Snead of UNESCO’s International Bioethics Committee, Lord Nicholas Windsor, Member of the Royal Family of the United Kingdom, Hon. Luca Volonte, Parliamentary Assembly of the Council of Europe, President of the European People’s Party and Professor Robert George, McCormick Professor of Jurisprudence at Princeton University and former member of the President’s Council on Bioethics. *Id.* at 2–4.

¹¹⁷ Press Release, General Assembly, Several Aspects of Sexual, Reproductive Health—Providing Information, Using Contraception, Abortion—Should Be ‘Decriminalized’, Third Committee Told, U.N. Press Release GA/SHC/4018 (Oct. 24, 2011) [hereinafter Third Committee Told Abortion Should be Decriminalized].

¹¹⁸ A Center for Reproductive Rights memorandum is revealing in this sense because it admits that abortion rights can only be created through interpretation of international human rights treaties. 149 CONG. REC. E2535–36, E2538–39 (daily ed. Dec. 8, 2003) (statement of Rep. Christopher Smith, citing Center for Reproductive Rights memorandum stating that “the regional and international fora with a quasi-judicial character arguably offer the most promising venues” for securing favorable interpretations and creating soft norms by stealth, allowing abortion rights advocates “to persuade governments to accept reproductive rights as binding norms,” effectively reinterpreting international human rights law).

¹¹⁹ In 2005, Amnesty International actually stated that “CEDAW does not address the matter of abortion” and that “there is no generally accepted right to abortion in international human rights law.” Amnesty Int’l, *A Fact Sheet on CEDAW: Treaty for the Rights of Women* (August 25, 2005), http://www.amnestyusa.org/sites/default/files/pdfs/cedaw_fact_sheet.pdf; *see also* Amnesty Int’l, *Women, Violence and Health*, AI Index ACT

International human rights courts have not interpreted international treaties to create abortion rights, contain human rights obligations to legalize abortion, or expand legal abortion. For example, the European Court of Human Rights, when asked to do so, failed to find a right to abortion in the European Convention on Human Rights, a treaty that, unlike the American Convention, does not specifically protect life from conception. Most recently, the Grand Chamber of the European Court of Human Rights, in *A, B and C v. Ireland*, where three women challenged Ireland's nearly complete ban on abortion that only allows a "life of the mother" exception, unambiguously stated that Article 8 of the European Convention on Human Rights "cannot . . . be interpreted as conferring a right to abortion."¹²⁰ Even though the decision reiterated previous European court jurisprudence by holding that abortion must be provided where legal according to Article 8 on the right to privacy, it also held that there is no right to abort per se and acknowledged that Ireland's abortion prohibitions constituted legitimate restrictions to the right to respect for private life.¹²¹ Furthermore, in *Brüstle v. Greenpeace*, the European Court of Justice concluded that human embryos created through fertilization or cloning may not be subject to industrial or commercial patents or related research, where the subject matter of the patent requires the embryos' prior destruction or the use of their base materials, irrespective of the stage of development at which the destruction of the embryo occurs.¹²²

Contrary to common misconceptions, CEDAW (adopted by most Latin American states) and other international, non-binding instruments, such as the

77/001/2005 at 22 (Feb. 18, 2005), <http://www.amnesty.org/en/library/asset/ACT77/001/2005/en/f6925f5e-d53a-11dd-8a23-d58a49c0d652/act770012005en.pdf>.

¹²⁰ *A, B and C v. Ireland*, 2010 Eur. Ct. H.R., para. 214, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102332>.

¹²¹ *Id.* paras. 214, 227, 246, 249. The court stated that even where recognized, abortion rights may be weighed against the unborn's child right to life. *Id.* para. 213. The court concluded that Ireland did not violate Article 8 in regard to the first and second applicants because "Ireland struck a fair balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn." *Id.* paras. 241–42. Moreover, the court reiterated that "[a] broad margin of appreciation" is given to European states in regards to abortion prohibitions, given the "acute sensitivity of the moral and ethical issues raised by the question of abortion" and "the importance of the public interest at stake," in this case the public interest being "the protection accorded under Irish law to the right to life of the unborn." *Id.* at para. 233. This margin of appreciation, the court stated, could be narrowed by the existence of a European consensus to the contrary. *Id.* para. 234. However, the court did not consider that the European consensus "decisively narrows the broad margin of appreciation of the State." *Id.* para. 236.

¹²² European Court of Justice, Case C-34/10, *Brüstle v. Greenpeace*, (Oct. 18, 2011), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=111402&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=223338>.

Cairo and Beijing international conferences, do not create abortion rights. CEDAW does not even contain the term “abortion” or its equivalent.¹²³ In fact, CEDAW article 12(2) actually protects a mother’s health in connection with pregnancy.¹²⁴ At least at present, academic consensus indicates that CEDAW does not mandate abortion on demand.¹²⁵

Even though the outcome documents for the international conferences of Cairo and Beijing, i.e., the ICPD Programme of Action adopted at the 1994 International Conference on Population and Development¹²⁶ and the Beijing Declaration and Platform for Action adopted at the 1995 Fourth World Conference on Women¹²⁷ (the nature of which is entirely non-binding), are often cited as authorities supporting the creation of international abortion rights,¹²⁸ neither document comes close to doing so. The documents contain mixed language on abortion, some of which exhorts countries to “deal with the health impact of unsafe abortion as a major public health concern” and to ensure “safe” abortion “[i]n circumstances where abortion is not against the law.”¹²⁹ However, such language does not explicitly advocate for legalization of abortion where illegal, much less the creation of abortion rights. The Beijing Platform only encouraged states to “*consider* reviewing laws containing punitive measures against women who have undergone illegal abortions,” but did not demand that states legalize abortion at once or even eventually.¹³⁰

Both the ICPD Programme of Action and the Beijing Declaration and Platform for Action explicitly indicated that abortion is a practice that must be combated, stating that “every attempt should be made to eliminate the need for abortion”¹³¹ and that “[g]overnments should take appropriate steps to help

¹²³ See CEDAW, *supra* note 27.

¹²⁴ *Id.* art. 12(2).

¹²⁵ Richard G. Wilkins & Jacob Reynolds, *International Law and the Right to Life*, 4 AVE MARIA L. REV. 123, 156 n.111 (2006) (citing Harold Hongju Koh, *Why America Should Ratify the Women’s Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT’L L. 263, 272 (2002)).

¹²⁶ See ICPD, *supra* note 102, para. 2, at 132.

¹²⁷ See FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 1, at 1.

¹²⁸ See, e.g., U.N. Population Information Network, U.N. Population Division, *From Cairo to Beijing: Women’s Conference Amplifies ICPD* (Oct. 1995), <http://www.un.org/popin/unfpa/taskforce/icpdnews/icpdnews9510/cairo.html>.

¹²⁹ See ICPD, *supra* note 102, para. 8.25, at 58–59 (footnote omitted); accord FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, paras. 97, at 36, 106(j)–(k), at 39–40.

¹³⁰ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40 (emphasis added).

¹³¹ ICPD, *supra* note 102, para. 8.25, at 58–59; accord FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k) at 40 (quoting ICPD *supra* note 102, para. 8.25, at 58–59).

women avoid abortion”¹³² They also declared that the need exists to “reduce the recourse to abortion” through expansion of family planning services.¹³³ Countries in transition, e.g. Eastern European countries, were urged in Cairo to “address their current reliance on abortion for fertility regulation” as an urgent matter.¹³⁴ All countries were exhorted to help women “avoid repeat abortions.”¹³⁵ In addition, both the ICPD Programme of Action and Beijing Declaration specifically affirmed that abortion may never be promoted as a method of family planning.¹³⁶

The Cairo and Beijing outcome documents also asserted the right of individual nations to make decisions regarding abortion by providing that “[a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”¹³⁷

In addition, the Conferences condemned acts of violence against women which included “prenatal sex selection” carried out through the abortion of female fetuses.¹³⁸ Both outcome documents encouraged states to provide health care treatment for post-abortion complications,¹³⁹ as well as “access to reliable information and compassionate counseling” for women considering abortions or for those who had abortions.¹⁴⁰ Both exhorted states to carry out “research to understand and better address the determinants and consequences of induced abortion, including its effects on subsequent fertility, reproductive

¹³² ICPD, *supra* note 102, para. 7.24, at 46.

¹³³ *Id.* para. 8.25, at 58; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40 (quoting ICPD, *supra*, para. 8.25, at 58).

¹³⁴ ICPD, *supra* note 102, at 42.

¹³⁵ *Id.* para. 8.25, at 59; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40 (quoting ICPD, *supra*, para. 8.25, at 59).

¹³⁶ ICPD, *supra* note 102, para. 8.25, at 58; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40; *see also* G.A. Res. S-21/2, para. 63(ii), U.N. Doc. A/RES/S-21/2 (Nov. 8, 1999) (“Governments should take appropriate steps to help women to avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counseling of women who have had recourse to abortion.”).

¹³⁷ ICPD, *supra* note 102, para. 8.25, at 59; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40 (quoting ICPD, *supra*, para. 8.25, at 59); *see also* G.A. Res. S-21/2, para. 63(i), U.N. Doc. A/S-21/7; GAOR, 21st Special Sess., Supp. No. 2, Annex (July 2, 1999).

¹³⁸ ICPD, *supra* note 102, paras. 4.15, at 25, 4.23, at 26; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, paras. 115, at 49, 277(c), at 113.

¹³⁹ ICPD, *supra* note 102, para. 7.6, at 41, para. 8.25, at 59; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40 (quoting ICPD, *supra*, para. 8.25, at 59).

¹⁴⁰ ICPD, *supra* note 102, para. 8.25, at 59; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 106(k), at 40 (quoting ICPD, *supra*, para. 8.25, at 59).

and mental health and contraceptive practice . . . as well as research on treatment of complications of abortions and post-abortion care.”¹⁴¹

2. *Promotion of the Creation of International Abortion Rights by Non-Judicial Human Rights Bodies*

In spite of the non-existence of international abortion rights, international officials and non-judicial human rights bodies have systematically attempted to reinterpret the meaning of international human rights treaties to include alleged international obligations to legalize and liberalize all forms of abortion.¹⁴² For instance, the Committee on the Elimination of All Forms of Discrimination against Women (“CEDAW”) and the U.N. Human Rights Committee (“UNHCR”) have repeatedly read abortion rights into international treaties and have exerted political pressure on states parties to create them. The CEDAW Committee alone has urged more than one hundred countries to legalize abortion or liberalize their abortion laws,¹⁴³ while UNHCR, the monitoring body of the ICCPR,¹⁴⁴ has advocated for more than a dozen countries to do the same.¹⁴⁵ Likewise, the Committee on Economic and Social Rights, the Committee against Torture, and even the Committee on the Rights of the Child have urged countries to legalize or liberalize their abortion laws.¹⁴⁶

Latin American and Caribbean states have been repeatedly admonished by international non-judicial bodies for their non-compliance with alleged international obligations to legalize abortion or expand the circumstances under which it is legal.¹⁴⁷ Many states, like Argentina, Brazil, Chile, Colombia,

¹⁴¹ ICPD, *supra* note 102, para. 12.17, at 87; FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 1, para. 109(i), at 47 (quoting ICPD, *supra*, para. 12.17, at 87).

¹⁴² Third Committee Told Abortion Should be Decriminalized, *supra* 117.

¹⁴³ See Rep. of the Comm. on the Elimination of Discrimination Against Women, 20th Sess., Jan. 19–Feb. 5, 1999, ch. 1, para. 31(c), U.N. Doc. A/54/38/Rev.1; GAOR, 54th Sess., Supp. No. 38 (Aug. 20, 1999); see also *San José Articles*, *supra* note 116, art. 6.

¹⁴⁴ G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (April 3, 2006); UNHCHR, Human Rights Committee, <http://www2.ohchr.org/english/bodies/hrc/>.

¹⁴⁵ See *Notes on the San José Articles*, *supra* note 115, at 5.

¹⁴⁶ *Id.*

¹⁴⁷ See, e.g., Rep. of the Comm. on the Elimination of Discrimination Against Women, 19th Sess., June 22–July 10, 1998, para. 201, U.N. Doc. A/53/38/Rev.1; GAOR, 53d Sess., Supp. No. 38 (Aug. 21, 1998) (expressing “deep concern in connection with the reproductive health of Panamanian women and an apparent setback in the treatment of the right to abortion in cases where the pregnancy is the result of rape” and recommending “that Panamanian women who are pregnant as a result of rape should be granted the opportunity to seek termination of such pregnancies”); Rep. of the Comm. on the Elimination of Discrimination Against Women, 15th Sess., Jan. 15–Feb. 2, 1996, para. 123, U.N. Doc. A/51/28; GAOR, 51st Sess., Supp. No. 38 (May 9, 1996) (suggesting Paraguay should increase access to “safe” abortion, particularly

Dominican Republic, Ecuador, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Venezuela have been pressured to recognize alleged abortion rights and have been told by the committees that they must provide women with the means to abort their unborn children in public medical facilities, with immunity from criminal prosecution, particularly when a fetus is severely disabled or when the mother is a minor, but generally whenever the unborn child is undesired.¹⁴⁸

Individual Latin American and Caribbean states have been targeted by non-judicial international human rights bodies and officials for their prohibitions on all forms of abortion. For instance, the Committee Against Torture has recommended that Chile stop investigating and prosecuting abortions,¹⁴⁹ and that Nicaragua lift its ban on all forms of abortion as soon as possible.¹⁵⁰ In 2009, while Dominican legislators were in the process of approving constitutional amendments to protect the right to life from conception, the then-UNICEF Regional Director for Latin America and the Caribbean, Nils Kastberg, called on legislators “not to be hypocrites [by] trying to make abortion illegal,” arguing that such amendments would deprive fifteen- to seventeen-year-old pregnant teenagers of safe abortions.¹⁵¹ Peru was recently reprimanded by the CEDAW Committee in non-judicial proceedings under the Optional Protocol for its abortion prohibitions and recognition of the right to life from conception.¹⁵² In *L.C. v. Peru*, the Center for Reproductive Rights, a U.S.-based abortion rights lobby group, alleged a pregnant child had attempted

for rural women and very young girls); see also Janet Walsh, *International Human Right Laws and Abortion in Latin America*, HUM. RTS. WATCH 13 (July 2005), <http://www.hrw.org/legacy/backgrounder/wrd/wrd0106/wrd0106.pdf>.

¹⁴⁸ PIERO A. TOZZI, INTERNATIONAL LAW AND THE RIGHT TO ABORTION 13–15 (2010), available at http://www.c-fam.org/docLib/20100420_Intern._Law_FINAL.pdf. For more on bias in favor of abortion rights within the CEDAW Committee, see Wilkins & Reynolds, *supra* note 125, at 168 n.128, 169 nn.129–32 (discussing how the CEDAW Committee reinterprets that Convention as mandating abortion rights notwithstanding scholars’ views that the treaty is neutral on abortion, and noting that scholars, prior to the ten-year review of the Beijing Platform of Action, developed strategies to expand the platform in ways that might include an abortion right).

¹⁴⁹ Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: Chile, paras. 6(j), 7(m), U.N. Doc. CAT/C/CR/32/5 (June 14, 2004).

¹⁵⁰ Press Release, Amnesty Int’l, Nicaragua: Complete Ban on Abortion Violates Torture Convention (May 15, 2009), <http://www.amnesty.org/en/for-media/press-releases/nicaragua-complete-ban-abortion-violates-torture-convention-20090515>.

¹⁵¹ UNICEF, Nils Kastberg, UNICEF Regional Director for UNICEF, visits Dominican Republic (March 2009), http://www.unicef.org/republicadominicana/english/support_14446.htm.

¹⁵² CEDAW Dec. 22/2009, U.N. CEDAW, 50th Sess., paras. 8.16, 8.18, U.N. Doc. CEDAW/C/50/D/22/2009, Annex (Nov. 4, 2011).

suicide and become a paraplegic because she was denied an abortion.¹⁵³ The committee advised Peru to expand existing life and health exceptions to criminal abortion to further legalize the abortion of children conceived by rape or incest.¹⁵⁴ Similarly, in *K.L. v. Peru*,¹⁵⁵ also filed by the Center for Reproductive Rights, the UNHCR recommended that Peru legalize eugenic abortion, i.e. the abortion of severely disabled children.¹⁵⁶

Non-judicial Organization of American States (“OAS”) bodies have also recommended that Latin American and Caribbean states legalize or liberalize abortion.¹⁵⁷ The Inter-American Commission on Human Rights, a sui generis regional human rights body, facilitated a friendly settlement in *Paulina Ramirez v. Mexico*,¹⁵⁸ where the Mexican state of Baja California issued a public apology and provided compensation to a teenage mother, her child, and the abortion lobby group that represented her, for failure to facilitate the abortion of her child, conceived in rape, and for providing her with pro-life counseling that led the teenager’s mother to withdraw her consent to the abortion.¹⁵⁹ Likewise, the IACHR has published several thematic reports, authored by the Commission’s Rapporteur on Women’s Rights, such as *Access to Information on Reproductive Health from a Human Rights Perspective* and *Access to Maternal Health Services from a Human Rights Perspective*, in which legalization of all forms of abortion is presented as a human rights obligation under the American Convention on Human Rights.¹⁶⁰ Likewise, the Committee of Experts on Violence (the follow-up mechanism for the Belem do Pará Convention), an expert committee with no jurisdiction to hear individual

¹⁵³ *Id.* para. 2.3; *About Us*, CENTER REPROD. RTS., <http://reproductiverights.org/en/about-us> (last visited Oct. 12, 2012).

¹⁵⁴ *Id.*

¹⁵⁵ H.R.C. Dec. 1153/2003, U.N. H.R.C., 85th Sess., paras. 6.1–4, U.N. Doc. CCPR/C/85/D/1153/2003, Annex (Nov. 22, 2005).

¹⁵⁶ *Id.*

¹⁵⁷ See Ligia M. De Jesús, *Post Baby Boy v. United States Developments in the Inter-American System of Human Rights: Inconsistent Application of the American Convention’s Protection of the Right to Life from Conception*, 17 LAW & BUS. REV. AM. 435 (2011).

¹⁵⁸ *Paulina del Carmen Ramirez Jacinto v. Mexico*, Petition 161-02, Inter-Am. Comm’n H.R., Report No. 21/07, OEA/Ser.L/V/II.130, doc. 22 rev. paras. 1, 16 (2007), available at <http://www.cidh.org/annualrep/2007eng/Mexico161.02eng.htm>.

¹⁵⁹ *Id.*

¹⁶⁰ INTER-AM. COMM’N H.R., ACCESS TO INFORMATION ON REPRODUCTIVE HEALTH FROM A HUMAN RIGHTS PERSPECTIVE, OEA/Ser.L/V/II, doc. 61 paras. 26, 40 (Nov. 22, 2011), <http://www.cidh.oas.org/pdf/files/womenaccessinformationreproductivehealth.pdf>; INTER-AM. COMM’N H.R., ACCESS TO MATERNAL HEALTH SERVICES FROM A HUMAN RIGHTS PERSPECTIVE, OEA/Ser.L/V/II, doc. 69 paras. 8, 14, 86, 99, 102 (June 7, 2010), <http://cidh.org/women/SaludMaterna10Eng/MaternalHealthTOCeng.htm>.

complaints on the Convention, makes general recommendations¹⁶¹ and monitors compliance with the Convention, often recommending that states adopt procedures that enhance access to abortion services, especially in cases of rape.¹⁶²

It is important to note that none of the above non-judicial international human rights bodies and individual international officials have effective authority to interpret treaties in ways that create legally binding obligations; only states that are parties to international treaties or international courts may carry out binding treaty interpretation.¹⁶³ No U.N. treaty monitoring body or OAS agency has been given the power to issue binding interpretations. CEDAW Article 21¹⁶⁴ and ICCPR Article 40(1),¹⁶⁵ for instance, allow treaty bodies to issue only “recommendations” and “comments” to states regarding their compliance with those treaties. Likewise, CEDAW Optional Protocol Articles 7, 8, and 13, which allow for an individual complaints mechanism, state that the CEDAW Committee may only issue “views” and “recommendations,” not binding judgments or decisions pertaining to complaints brought against states that have ratified the said protocol.¹⁶⁶ In the

¹⁶¹ See Inter-Am. Comm. of Women (CIM), Report on the Implementation of the Follow Up Mechanism to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, “Convention of Belem do Para,” OEA/Ser.L/CIM/doc.103/09, at 15 (Feb. 11, 2009), [http://www.oas.org/en/cim/docs/MESECVI-Report2008\[EN\].pdf](http://www.oas.org/en/cim/docs/MESECVI-Report2008[EN].pdf).

¹⁶² See, e.g., FOLLOW-UP MECHANISM TO THE BELÉM DO PARÁ CONVENTION (MESECVI), SECOND HEMISPHERIC REPORT ON THE IMPLEMENTATION OF THE BELÉM DO PARÁ CONVENTION, at 13, 40–42, OEA/Ser.L/IL.6.10 (2012), available at <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf> (“The Committee of Experts is recommending that States use treatment protocols to determine how one can obtain access to a legal abortion when one wants to terminate a pregnancy caused by a rape.”).

¹⁶³ For more on the non-binding character of non-judicial treaty-monitoring bodies, see Rep. of the Human Rights Comm., U.N. Doc. A/50/40, GAOR, 50th Sess., Supp. No. 40, Annex VI (Oct. 3, 1995); Manfred Nowak, *The Need for a World Court of Human Rights*, 7 HUM. RTS. L. REV. 251 (2007); Michael O’Flaherty & John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualizing the Yogyakarta Principles*, 8 HUM. RTS. L. REV. 207, 215 (2008) (“Concluding Observations have a non-binding and flexible nature.”); Zampas & Gher, *supra* note 6, at 253 (noting that treaty bodies “are not judicial bodies and their Concluding Observations are not legally binding”).

¹⁶⁴ CEDAW, *supra* note 27, art. 21.

¹⁶⁵ ICCPR, *supra* note 17, art. 40(1).

¹⁶⁶ Optional Protocol to the Convention on the Elimination of All Discrimination Against Women arts. 7–8, 13, Oct. 6, 1999, 2131 U.N.T.S. 95. States Parties to CEDAW’s Optional Protocol include: Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela. 1 SIGNATORIES AND RATIFICATIONS OF MULTILATERAL TREATIES, *supra* note 5, at 355–56. Upon ratification, Colombia filed a declaration that may specifically exclude reinterpretation of the Convention by the committee to include abortion rights by stating that “[t]he Government of Colombia declares that no provision of the Optional Protocol and no recommendation of the

OAS, the American Convention Articles 41, 50, and 51 grant the IACHR the faculty to make “recommendations” on individual petitions involving potential human rights violations.¹⁶⁷ Regarding treaty interpretation, the American Convention, Article 64, specifically provides that the Commission may request consultative opinions from the Inter-American Court on Human Rights regarding authoritative interpretation of the Convention or its compatibility with domestic laws and other human rights treaties in the Americas.¹⁶⁸ Only the Inter-American Court on Human Rights may issue legally binding decisions on all matters relating to the interpretation or application of the American Convention, according to Article 62 of the American Convention.¹⁶⁹

State parties, on the other hand, have the power to produce legally binding interpretations through their conduct, declarations, and adoption of related agreements, according to the Vienna Convention Article 31(3).¹⁷⁰

3. *Latin American and Caribbean States’ Opposition to the Creation of International Abortion Rights*

Latin American states have persistently opposed unilateral attempts to read abortion rights or obligations to legalize abortion into international treaties and non-binding international conference outcome documents, as described below.¹⁷¹ Latin American states have consistently emphasized their understanding that international treaties or international conference outcome

Committee may be interpreted as requiring Colombia to decriminalize offences against life or personal integrity.” *Id.* at 356.

¹⁶⁷ American Convention, *supra* note 2, arts. 41, 50–51.

¹⁶⁸ *Id.* art. 64; *see also* Statute of the Inter-Am. Comm. on Human Rights, art. 19(d), O.A.S. Res. 447 (Oct. 1979), *reprinted in* INTER-AMERICAN COURT OF HUMAN RIGHTS, OAS, BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, 163, 168, OEA/Ser.L/V/1.4 rev. 12 (2007).

¹⁶⁹ American Convention, *supra* note 2, art. 61. Scholars and judges have supported this position. Rafael Nieto Navia, former Inter-American Court judge, indicated that neither U.N. Committees nor the IACHR could authoritatively reinterpret any international human rights treaty to include international obligations to legalize abortion given their non-judicial nature. *See* Rafael Nieto Navia, *Aspectos Internacionales de la Demanda Contra la Penalización del Aborto*, 9 REVISTA PERSONA Y BIOÉTICA 21–42 (2005), *available at* <http://personaybioetica.unisabana.edu.co/index.php/personaybioetica/article/download/904/985>. Likewise, former Colombian Supreme Court judges Rodrigo Escobar Gil and Marco Gerardo Monroy Cabra, in their dissenting opinions in *Sentencia C-355/06*, the Colombian Corte Constitucional decision that liberalized abortion in Colombia, concluded international human rights bodies’ reinterpretation of international treaties as containing abortion rights did not create international human rights obligations to decriminalize abortion. Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2006, *Sentencia C-355/06* (Colom.) (Gil & Monroy, Mags., dissenting), <http://www.corteconstitucional.gov.co/relatoria/2006/c-355-06.htm>.

¹⁷⁰ Vienna Convention on the Law of Treaties, *supra* note 7, art. 31(3).

¹⁷¹ *See* discussion *infra* notes 175–222 and accompanying text.

documents do not create international obligations to legalize abortion or to publicly fund it as a reproductive health service, and have rejected a purported right to abortion as included in the right to determine the number and spacing of children or other reproductive rights.¹⁷²

For instance, at both the Cairo and Beijing conferences, Argentina stated that no reference to sexual and reproductive health may be interpreted as including legal abortion.¹⁷³ Argentina declared that terms like reproductive health services or regulation of fertility may not be interpreted “as restricting the right to life or abrogating the condemnation of abortion as a method of birth control or an instrument of population policy,” while invoking Article 75(23) of its Constitution of Argentina, Article 16 of CEDAW and paragraph 42 of the Vienna Programme of Action adopted by the World Conference on Human Rights.¹⁷⁴ Argentina based its objection on “the universal nature of the right to life” and on “the understanding that life exists from the moment of conception and that from that moment every person, being unique and unreproducible [sic], enjoys the right to life, which is the source of all other individual rights.”¹⁷⁵ In Beijing, Argentina indicated that, even though their delegation supported a Platform of Action recommendation which suggested reviewing laws criminalizing abortions, this participation did “not constitute, however, a proposal to decriminalize abortion or exempt from criminal responsibility those who may be accomplices or participants in this offence.”¹⁷⁶ Other states associated themselves with the Argentinean objections in Cairo, as when El Salvador stated that “we consider that life must be protected from the moment of conception,” and that consequently, “we should never include abortion within these concepts either as a service or as a method of regulating fertility.”¹⁷⁷

Likewise, Latin American countries represented at Cairo and Beijing rejected the interpretation of terms like “reproductive health,” “sexual health,” “maternity without risk,” “reproductive rights,” “sexual rights” and “regulation of fertility” as including abortion. For instance, the Dominican Republic at Cairo rejected the interpretation of these terms as including abortion or

¹⁷² See Wilkins & Reynolds, *supra* note 126, at 151–52 n.92, 153.

¹⁷³ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 5, at 154; ICPD, *supra* note 102, para. 7.2, at 139.

¹⁷⁴ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 5, at 154.

¹⁷⁵ ICPD, *supra* note 102, princ. 1, at 139.

¹⁷⁶ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 5, at 155.

¹⁷⁷ ICPD, *supra* note 102, para. 9, at 134.

termination of pregnancy.¹⁷⁸ At the Beijing Conference for Women, the Dominican Republic objected to the interpretation of “reproductive rights” and related terms as not including abortion or the interruption of pregnancy, stating that the “Dominican Republic, as a signatory to the American Convention on Human Rights, and in accordance with the Constitution and the laws of the Republic, confirms that every person has a right to life, and that life begins at the moment of conception.”¹⁷⁹ Ecuador filed a similar written statement making a reservation excluding abortion in legitimate interpretations of reproductive rights related terms due to the principle of “the inviolability of life, the protection of children from the moment of conception” and “responsible paternity” embodied in its Constitution.¹⁸⁰ Guatemala, appealing to the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, entered a “reservation”¹⁸¹ in chapters II and VII of the ICPD Programme of Action regarding abortion as a reproductive or sexual right, or reproductive health service, noting that “life exists from the moment of conception and that the right to life is the source of all other rights.”¹⁸² At Beijing, Guatemala reiterated this reservation and expressed its “unconditional respect for the right to life from the moment of conception.”¹⁸³

When filing its declaration to the ICPD Programme of Action, Honduras referred to the American Convention on Human Rights and the Declaration of Guácimo, noting that the language of the Programme of Action should not be interpreted as overriding international obligations stemming from the American Convention to protect human life from the moment of conception.¹⁸⁴ At both Cairo and Beijing, Honduras specifically rejected the interpretation of terms relating to reproductive health, sexual health, and family planning as including abortion, in light of the American Convention on Human Rights, which “reaffirms that every individual has the right to life from the moment of conception, on the basis of the moral, ethical, religious and cultural principles that should govern human behaviour.”¹⁸⁵

¹⁷⁸ *Id.* para. 23, at 140.

¹⁷⁹ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 8, at 157.

¹⁸⁰ ICPD, *supra* note 102, para. 24, at 141.

¹⁸¹ Technically, reservations are filed in the adoption of treaties, not conferences; however, many states chose to call their written statements “reservations,” perhaps to further clarify their opposition to the distortion of the proper understanding of reproductive rights terminology.

¹⁸² ICPD, *supra* note 102, para. 26, at 142.

¹⁸³ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 11(b), at 158.

¹⁸⁴ ICPD, *supra* note 102, para. 10, at 134.

¹⁸⁵ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, para. 13, at 163.

In both the Cairo and Beijing Conferences, Nicaragua filed a declaration stating that an implicit understanding that abortion could be included as a reproductive or sexual right was not acceptable on the basis that “as a signatory of the American Convention, [Nicaragua confirms] that every person has a right to life, this being a fundamental and inalienable right, and that this right begins from the very moment of conception.”¹⁸⁶

Paraguay also rejected the interpretation of the regulation of fertility as including abortion at Beijing and Cairo as “totally unacceptable,” and at Cairo affirmed that “the right to life is the inherent right of every human being from conception to natural death” in accordance with Article 4 of its constitution.¹⁸⁷

During the adoption of both conference outcome documents, Peru rejected the interpretation of reproductive health-related terms as including abortion on the grounds that it is inconsistent with the right to life¹⁸⁸ and indicated that “the right to life and the consideration of a person from the moment of conception as a subject of law in every respect are fundamental human rights.”¹⁸⁹ In Cairo, it declared that “the right to life [exists] from the moment of conception; abortion is rightly classified as a crime in the Criminal Code of Peru, with the sole exception of therapeutic abortion”; it also cited the CRC when reiterating its objection to the international legalization of abortion and stated that “Peru regards abortion as a public health problem” and that family planning methods should not “place life at risk.”¹⁹⁰

Venezuela also rejected interpretations of the Platform language that would include abortion or the “voluntary interruption of pregnancy” and expressed its reservations with regard to the terms “unwanted pregnancy” and “unsafe abortion,” indicating its rejection of a purported right to terminate a pregnancy, given that “abortion under any circumstances is illegal in Venezuela.”¹⁹¹

Opposition to the creation of abortion rights has also been shown by Latin American and Caribbean states in other fora. For instance, Nicaragua, Chile, Honduras, the Dominican Republic, and Costa Rica rejected the introduction of the term “reproductive rights” as including legal abortion in the outcome

¹⁸⁶ ICPD, *supra* note 102, para. 14, at 136; *accord* FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 26, at 168

¹⁸⁷ ICPD, *supra* note 102, para. 5, at 137.

¹⁸⁸ *Id.* para. 30, at 148.

¹⁸⁹ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 28, at 169.

¹⁹⁰ ICPD, *supra* note 102, para. 30, at 147.

¹⁹¹ FOURTH WORLD CONFERENCE ON WOMEN, *supra* note 108, ch. 5, para. 34, at 175.

document of the U.N. Conference on Sustainable Development.¹⁹² Likewise, based on the universal character of the right to life, Argentina objected to abortion as included among reproductive rights and reproductive health services at the Sixth Session of the Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean in 1994, at the said Conference's twentieth Board meeting in 1997, in 1995 at the World Summit for Social Development in Copenhagen,¹⁹³ at the Second United Nations Conference on Human Settlements (Habitat II) in Istanbul ("Habitat II"),¹⁹⁴ and in 1996 at the World Food Summit in Rome (specifically rejecting chemical and surgical abortion).¹⁹⁵ At the 2002 World Summit on Sustainable Development in Johannesburg, Argentina submitted a declaration stating:

It is the understanding of the Argentine Republic that the provisions of the Plan of Implementation are inspired by a respect for human life and human dignity (principle 1 of the Rio Declaration) and that therefore nothing in the Plan can be interpreted as justifying any action that directly or indirectly jeopardizes the inviolability and sacredness of human life from the moment of conception.¹⁹⁶

At Habitat II, Ecuador, Guatemala, and Honduras rejected abortion "as a method of family planning, fertility regulation or birth control."¹⁹⁷ In addition, at the Tenth and Eleventh session of the Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean, Nicaragua, Chile, Costa Rica, and El Salvador rejected abortion as a reproductive health service or right.¹⁹⁸ Chile declared in

¹⁹² Timothy Herrmann, *Abortion Proponents Admit Defeat at Rio Conference*, C-FAM (June 20, 2012), <http://www.c-fam.org/fridayfax/volume-15/abortion-proponents-admit-defeat-at-rio-conference.html>.

¹⁹³ See World Summit for Social Development, *supra* note 42, ch. 5, para. 5, available at <http://www.un.org/documents/ga/conf166/aconf166-9.htm> ("The Argentine Republic cannot accept the idea that reproductive health should include abortion, either as a service or as a method of birth control. This reservation, which is based on the universal nature of the right to life, extends to all references of this kind.")

¹⁹⁴ United Nations Conference on Human Settlements (Habitat II), *Istanbul Declaration on Settlements and the Habitat Agenda*, June 3–14, 1996, at 190, U.N. Doc. A/CONF.165/14 (Aug. 7, 1996) [hereinafter Conference on Human Settlements].

¹⁹⁵ See Bach de Chazal, *supra* note 54.

¹⁹⁶ REPORT OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, at 140 U.N. Doc. A/CONF.199/20*, U.N. Sales No. E.03.II.A.I (2002) [hereinafter WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT].

¹⁹⁷ Conference on Human Settlements, *supra* note 194, at 194.

¹⁹⁸ Regional Conference on Women in Latin America and the Caribbean, Aug. 6–9, 2007, *Rep. of the Tenth Session*, at 29, 31–32, U.N. Doc. LC/G.2361(CRM.10/8) (Apr. 1, 2008) [hereinafter *Report of the Tenth Session*]; Regional Conference on Women in Latin America and the Caribbean, July 13–16, 2010, *Rep. of the*

writing that “in accordance with the Political Constitution of the Republic of Chile, which protects life before birth, subscribes to the Brasilia Consensus on the understanding that this does not imply an endorsement of abortion.”¹⁹⁹ Costa Rica stated that: “The Constitutional Chamber of the Republic of Costa Rica has repeatedly affirmed that ‘a person is a person from the moment of conception, and we are dealing with a living being, with the right to protection under the legal system,’ in accordance with the juridical norms and Political Constitution in force in Costa Rica.”²⁰⁰ Nicaragua indicated that “[a]bortion or the interruption of pregnancy may not, under any circumstance, be considered a means of fertility regulation or of birth control; all internal legislation governing this matter falls under the sovereignty of the nation of Nicaragua.”²⁰¹ El Salvador made a similar statement rejecting abortion as a legitimate reproductive health service or family planning method, adding that “Article 1 of our Constitution, which relates to the human person, states that ‘Every human being is recognized as a human person from the moment of conception.’”²⁰²

Remarkably, the United States joined Latin American delegations in their objection to the creation of abortion rights at the Ninth session of the Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean, where it filed the following declaration: “In no case should abortion be promoted as a method of family planning The delegation of the United States understands that the terms reproductive and sexual rights and/or services should not be interpreted as endorsing or promoting abortion or the use of abortifacients.”²⁰³ Likewise, at the World Summit on Sustainable Development, the United States submitted a declaration stating: “The United States understands that no language in the Plan of Implementation, including references to health, ‘reproductive and sexual health,’ ‘basic health services’ and ‘health-care services,’ or references to rights or freedoms, can in any way be interpreted as including or promoting abortion or the use of abortifacients.”²⁰⁴

Eleventh Session, at 37–38, 41, U.N. Doc. LC/L.3309 (Apr. 1, 2011) [hereinafter *Report of the Eleventh Session*].

¹⁹⁹ *Report of the Eleventh Session*, *supra* note 198, at 37.

²⁰⁰ *Id.* at 39 (citation omitted).

²⁰¹ *Id.* at 41.

²⁰² *Report of the Tenth Session*, *supra* note 198, at 32.

²⁰³ Regional Conference on Women in Latin America and the Caribbean, June 10–12, 2004, *Report of the Ninth Session*, at 20–21, U.N. Doc. LC/G.2256(CRM.9/6) (June 28, 2008).

²⁰⁴ WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, *supra* note 196, at 146.

Some Latin American states have also opposed the creation of abortion rights before the United Nations committees and officials when admonished for retaining their abortion prohibitions. In 2007, for instance, upon CEDAW Committee experts Ms. Shin and Ms. Pimentel's suggestions that Honduras legalize abortion, the Honduran delegates reminded the Committee that under Article 67 of the Constitution, which focuses on individual rights, the fetus was considered a human being.²⁰⁵

More recently, in 2011, upon the presentation of a report on the right to health by U.N. Special Rapporteur on Health, Anand Grover, at the United Nations General Assembly, where legalization of abortion was presented as a human rights obligation, Latin American states along with Swaziland, Egypt, and the Holy See, objected to the alleged existence of abortion rights.²⁰⁶ Arguing that "decriminalization saves lives," Grover urged states to legalize and liberalize all forms of induced abortion, including abortifacients, stating that anti-abortion laws restricted women's control over their bodies by forcing them to continue unplanned pregnancies and give birth when it was not their choice to do so.²⁰⁷ He also urged them to abolish laws that protect the lives of children in the womb, such as those restricting or prohibiting illicit drug or alcohol consumption by pregnant women.²⁰⁸ In response, the representatives of Argentina stated that it did not endorse the report with regard to abortion, given that its legislation banned abortion and recognized a universal right to life for all.²⁰⁹ "Chile's delegate said the report did not give a balanced view, since it emphasized abortion as a health service."²¹⁰ Chile's delegate further stated that Chile "did not recognize a right to abortion" given that it essentially recognized the right to life of all human beings.²¹¹ The delegate from Honduras endorsed Chile's comments.²¹² Mr. Grover then partially retracted his promotion of abortion and stated that he was not articulating a right to abortion, admitting that his report was "not the final word" on the issue.²¹³

²⁰⁵ Press Release, U.N. Comm. on the Elimination of Discrimination Against Women, Women's Anti-Discrimination Committee Takes Up Report of Honduras; Child Labour, Working Conditions in Maquiladores Among Issues, U.N. Press Release WOM/1641 (July 26, 2007), available at <http://www.un.org/News/Press/docs/2007/wom1641.doc.htm>.

²⁰⁶ See Third Committee Told Abortion Should be Decriminalized, *supra* note 117.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

In addition, statements by parties to the American Convention before the IACHR and the Inter-American Court have indicated their interpretation of the Convention as mandating protection of unborn children from abortion, and even from destruction through artificial reproductive technologies. For instance, in *Paniagua-Morales et al. v. Guatemala*, Guatemala affirmed that the right to life was protected under its constitution “from the very moment of conception.”²¹⁴ In the context of *Gretel Artavia Murillo v. Costa Rica*,²¹⁵ a complaint against Costa Rica’s ban on in vitro fertilization (IVF), currently pending a decision before the Inter-American Court on Human Rights, the state affirmed its duty to protect human life from in vitro fertilization techniques that cause predictable embryonic death, while reiterating its recognition of the embryo’s legal personhood under its domestic laws as well as its understanding that the right to life of embryos prevails over individual desires to produce biological children.²¹⁶ Challenging the Commission’s assertion that IVF prohibitions constituted a violation of the American Convention, Costa Rica held that the practice of IVF violated human embryos’ right to life, and allowing IVF would therefore violate Costa Rica’s obligations to the child under international human rights law, including the American Convention Article 4(1) specifically.²¹⁷ Likewise, in 2009, the IACHR held a hearing where the petitioner and the state informally presented their arguments on the merits.²¹⁸ Regarding the right to life from conception, Costa Rica argued on that occasion that the right to life, being the greater good, should be protected over an individual’s desire to be a biological parent, and stressed the dignity of human person from conception.²¹⁹ The Costa Rican delegation argued that the wish to be a parent did not justify jeopardizing the life of embryos and constituted “dangerous manipulation of human life.”²²⁰

²¹⁴ *Paniagua Morales v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 37, para. 114 (Mar. 8, 1998).

²¹⁵ *Gretel Artavia Murillo v. Costa Rica*, Case 12.361, Inter-Am. Ct. H.R., Report No. 85/10 paras. 31–33 (2011), available at <http://www.cidh.oas.org/demandas/12.361Eng.pdf>.

²¹⁶ *Ana Victoria Sanchez Villalobos v. Costa Rica*, Petition 12.361, Inter-Am. Comm’n H.R., Report No. 25/04, paras. 29–31, 36 (Mar. 11, 2004), <http://www.cidh.oas.org/annualrep/2004eng/CostaRica.12361eng.htm>; see also *Gretel Artavia Murillo*, Report No. 85/10 at para. 31.

²¹⁷ *Gretel Artavia Murillo*, Report No. 85/10 at paras. 28, 30, 32; American Convention, *supra* note 2, art. 4(1).

²¹⁸ See *Public Hearings of the 133 Period of Sessions, Case 12.361 and Petitions 1368/04, 16/05, 678/06, 1191/06–In Vitro Fertilization, Costa Rica*, INTER-AMERICAN COMMISSION ON HUM. RTS. (Oct. 28, 2008), <http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=22> (follow icon for video at Session: 133 Period of Sessions; Date; Tuesday, October 28, 2008).

²¹⁹ *Id.*

²²⁰ *Id.*

All of the above constitutes evidence of Latin American and Caribbean states' interpretation of their international legal obligations as incompatible with the legalization of abortion, a practice that is illegal and criminal in virtually all Latin American and Caribbean states, and that has been found in violation of the international protection afforded the unborn child's right to life from conception, as recognized in the CRC and the American Convention.

CONCLUSION

The Convention on the Rights of Child and the American Convention explicitly protect the unborn child's right to life both "before . . . birth"²²¹ and "from the moment of conception."²²²

Relevant international law adopted by Latin American and Caribbean countries and subsequent international state practice in their application reveal that these states have generally agreed in interpreting these provisions literally, in a non-restrictive manner, as including positive state obligations to secure pre-natal rights to life, health, personal integrity and development for all unborn children through domestic law and public policy.²²³ Latin American and Caribbean states bound by the CRC and the American Convention have expressly rejected alleged human rights obligations to legalize or expand abortion or create abortion rights.²²⁴ Latin American and Caribbean states have read both treaties as not only prohibiting the legalization of abortion or its liberalization where legal, but as being entirely incompatible with the creation of abortion rights.²²⁵

States parties' interpretation of their own international obligations prevail over interpretation by non-judicial treaty bodies,²²⁶ especially when such interpretation fails to follow rules on international treaty interpretation and mandates acts that contradict the object and purpose of the treaty.²²⁷ Ultra vires interpretations in favor of creating abortion rights in Latin America and the Caribbean through the CRC and the American Convention should be

²²¹ CRC, *supra* note 1.

²²² American Convention, *supra* note 2, art. 4(1).

²²³ See discussion *supra* Part II.A–B.

²²⁴ See *supra* Part II.B.

²²⁵ See *supra* Part II.B.

²²⁶ See *supra* note 163 and accompanying text.

²²⁷ See *San José Articles*, *supra* note 116, art. 6.

denounced by states parties as illegitimate and irrelevant for the purposes of binding treaty interpretation.