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# The Impact of the United Nations on National Abortion Laws

## **Cover Page Footnote**

Kelsey Zorzi serves as U.N. counsel with ADF International. She represents ADF International at the United Nations by providing U.N. Member State representatives with key legal resources and language amendments that promote religious freedom and the inherent value and dignity of every person. Zorzi earned her J.D. at George Washington University Law School in 2013, where she participated in the GW-Oxford International Human Rights Law Program and won first place in the 2013 National Religious Freedom Moot Court Competition. Prior to graduating from law school, Zorzi interned with the U.S. Department of Justice and the International Centre for Missing & Exploited Children. Zorzi is admitted to the state bars in New York, New Jersey, and Connecticut.

# THE IMPACT OF THE UNITED NATIONS ON NATIONAL ABORTION LAWS

*Kelsey Zorzi*<sup>+</sup>

In 2000, the United Nations (UN) entity that monitors Member States' compliance with the Convention for the Elimination of All Forms of Discrimination Against Women—the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)—lodged an official complaint against Luxembourg, claiming that its abortion laws “appear anachronistic,” and its government “appears to lack the commitment to review and adapt [abortion] legislation to changing attitudes and developments in the European region.”<sup>1</sup> The abortion laws of Luxembourg were not, at the time, out of step with international law, which does not require States to legalize abortion.<sup>2</sup> Luxembourg already allowed abortion in many circumstances, including whenever a physician determined that a pregnancy threatened a woman's life or health, in cases of rape, incest, or fetal impairment, and even simply for social or economic reasons.<sup>3</sup> Yet, because Luxembourg did not permit on-demand abortion, it was subject to censure by a United Nations body.<sup>4</sup>

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1. Rep. of the Comm. on the Elimination of Discrimination Against Women on its Twenty-Third Session, U.N. Doc. A/55/38, ¶ 406 (June 30, 2000), <http://www.un.org/womenwatch/daw/cedaw/reports/a5538.pdf> [hereinafter “Rep. of CEDAW: Luxembourg 2000”]. This was not the first time CEDAW pressured Luxembourg to liberalize its abortion laws; for example, the Committee noted in its 1997 report that it was “deeply concerned at the existing legislation on abortion” in Luxembourg because it “penalized women.” U.N. Concluding Comments of the Comm. on the Elimination of Discrimination Against Women, at ¶ 210 (June 25, 1997), <http://www1.umn.edu/humanrts/cedaw/cedaw-luxembourg.htm> [hereinafter “Concluding Comments of CEDAW: Luxembourg 1997”].

2. See U.N. Population Div., Dep't of Econ. & Soc. Affairs, Major Dimensions of Abortion Policy Part II.B.1 (2002), <http://www.un.org/esa/population/publications/abortion/> (discussing how abortion laws are governed by State legislation, and no international standard yet exists).

3. De l'avortement [Abortion] [Penal Code] tit. VII, ch. 1, art. 353 (Nov. 15, 1978) (Lux.), <http://www.hsph.harvard.edu/population/abortion/LUXEMBOURG.abo.htm>.

4. See Rep. of CEDAW: Luxembourg 2000, *supra* note 1, ¶ 406.

This censure had no basis in international law, but its insubstantial legal grounding did not prevent it from being ultimately effective.<sup>5</sup> In 2012, Luxembourg legalized abortion on-demand, and admitted that the change was partially made to ensure it was in step with the laws of other European countries.<sup>6</sup> Prior to taking this step, however, Luxembourg joined the now-widespread practice of pressuring Latin American nations to change their abortion laws through the UN's Universal Periodic Review.<sup>7</sup> In 2010, during the seventh session of the Universal Periodic Review, Luxembourg recommended that El Salvador "[i]nitiate a national dialogue on the right of women to reproductive health, including with respect to the consequences of restrictive laws on abortion, including the criminalization of abortion."<sup>8</sup>

This brief history of the UN's interaction with Luxembourg illustrates a trend that deserves significantly more attention than it has received. Working beyond its mandate and outside the scope of international law, the UN, through its various organs and bodies, has developed a complex, energetic, and potent system to pressure States to adopt certain domestic abortion laws.<sup>9</sup> There is evidence that the UN's fervent advocacy for abortion has contributed to changing abortion laws, despite the fact that the life of the unborn child is protected under international law.<sup>10</sup>

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5. See Hillary White, *Luxembourg Legalises Abortion on Demand*, LIFESITE (Nov. 23, 2012, 1:34 PM), <https://www.lifesitenews.com/news/luxembourg-legalises-abortion-on-demand>.

6. See Charline Lebrun, *Restrictions on Abortion in Luxembourg To Be Relaxed*, LUXEMBURGER WORT (Nov. 23, 2012, 7:39 AM), <http://www.wort.lu/en/luxembourg/restrictions-on-abortion-in-luxembourg-to-be-relaxed-50af1938e4b0246412999677>; White, *supra* note 5. In 2014, the government of Luxembourg liberalized abortion law to an even greater extent by removing the requirements that women undergo a second consultation with a medical doctor and show they are under distress because of their pregnancy. See *Luxembourg Decriminalises Abortion*, GÉNÉTIQUE (Apr. 11, 2014), <http://www.genethique.org/en/content/luxembourg-decriminalises-abortion#.VpPobJMrKA8>. In practice, however, the requirement of showing distress never prevented a woman from obtaining an abortion. See *id.*

7. See *Luxembourg Recommendation to El Salvador*, <http://www.upr-info.org/database/> (in the drop down menus, select "El Salvador" for State Under Review, "Luxembourg" for Recommending State, "Women's Rights" for Issue, "1st Cycle" for Cycle, and "Recommendations and Voluntary Pledges" for Recommendations & Voluntary Pledges; then click on Go; the source is the third result).

8. *Id.*

9. See Press Release, Irish Family Planning Assoc., Government Under Pressure at the UN re Implementation of Abortion Ruling (Mar. 15, 2012), <https://www.ifpa.ie/news/irish-government-under-pressure-at-un>; Stefano Gennarini, *Nigeria Refuses To Give in to UN Pressure on Abortion, 'Sexual Rights'*, LIFESITE (Sep. 19, 2015, 2:39 PM), <https://www.lifesitenews.com/news/unfpa-foiled-by-nigeria-on-abortion-sexual-rights>; Rebecca Oas, *UN Human Rights System Becomes Pro-Abortion Echo Chamber*, C-FAM (Nov. 26, 2014), [https://c-fam.org/friday\\_fax/un-human-rights-system-becomes-pro-abortion-echo-chamber/](https://c-fam.org/friday_fax/un-human-rights-system-becomes-pro-abortion-echo-chamber/).

10. Various international instruments recognize the right to life of the unborn child. For example, the Convention on the Rights of the Child explicitly states, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." G.A. Res. 1386 (XIV), Preamble, Convention on the Rights of the Child (Nov. 20, 1989), <http://www.cirp.org/library/ethics/UN-declaration/>. In

While both legislators and judges have cited international treaties as having informed their decisions, the story of the influence of international law on domestic abortion laws is primarily one of the growing influence of soft law produced in and through UN bodies.<sup>11</sup> Because no international treaty refers to a right to abortion, UN actors interested in promoting access to abortion have increasingly relied on a particular interpretation of the relationship between soft law and customary international law.<sup>12</sup> Some now argue that it is possible for customary international law to develop out of a series of soft law documents.<sup>13</sup>

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addition, the International Covenant on Civil and Political Rights prohibits the death penalty for pregnant women, which is intended to protect the right of the life of the unborn. *See* G.A. Res. 2200A (XXI) art. 6, § 5, International Covenant on Civil & Political Rights (Mar. 23, 1976), <https://www1.umn.edu/humanrts/instree/b3ccpr.htm>. As the draft of the International Covenants on Human Rights states: “The principal reason for providing in paragraph 4 of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child*.” G.A. Rep. of the Third Comm., 12th Sess., U.N. Doc. A/3764 (Dec. 6, 1957) (emphasis added).

11. *See* Stefano Gennarini, *Court in Argentina Cites UN ‘Experts’ To Establish ‘Right’ to Abortion*, LIFE SITE (Jan. 9, 2014), <https://www.lifesitenews.com/news/court-in-argentina-cites-un-experts-to-establish-right-to-abortion>.

12. *Id.* Customary international law—the norms that have evolved over time in the international system, such as norms about the treatment of ambassadors—are understood to be the only binding international law other than treaties. *See* Richard G. Wilkins & Jacob Reynolds, *International Law and the Right to Life*, 4 AVE MARIA L. REV. 123, 128–30 (2006).

13. Historically, international law was limited in scope, but attempts to reshape international law are best understood in the context of the recent worldwide shift regarding the relationship between international and domestic law. Wilkins & Reynolds, *supra* note 12, at 125–28. The core of international law is comprised of treaties, beginning with the Treaty of Westphalia, outlining the relationships between nations regarding war, commerce, and boundary disputes. *Id.* at 127. Today, treaty law has expanded to “deal not only with the obligations of nations, but also with the rights of individuals.” *Id.* Wilkins and Reynolds correctly identify the three most significant elements contributing to the increasing prominence of international law: (1) the expanding scope of international treaties; (2) the increasing rate at which the UN produces soft law norms; and (3) the increasing willingness of national actors to consult or even defer to international law. *Id.* at 128–29, 131. For example, although Article VI, Clause ii, of the U.S. Constitution states, “all Treaties made . . . shall be the supreme Law of the Land,” in 2005 a U.S. Supreme Court decision cited a treaty *never ratified by the Senate* to support its constitutionality determination. *See* *Roper v. Simmons*, 543 U.S. 551, 576 (2005) (referencing the UN’s Convention on the Rights of the Child); U.S. CONST. art. VI, cl. 2. Domestic political actors in many nations are showing increased readiness to ascribe authority to soft law documents produced through UN negotiations, especially those surrounding the reviews of major UN conferences. Wilkins & Reynolds, *supra* note 12, at 128–29. Another example from the U.S. Supreme Court—the decision in *Lawrence v. Texas* to reverse an earlier Supreme Court decision—was partially justified by appeal to statements of international tribunals. 539 U.S. 558, 572–73 (2003). As Wilkins and Reynolds point out, “[p]rior to their citation by the nation’s highest court, these materials would have been considered by most constitutional scholars as among the ‘softest’ of all possible soft law.” Wilkins & Reynolds, *supra* note 12, at 133. Although, the United States is not alone in its willingness to view international law as normative, the United States has shown itself to be less ready than many other nations to accede to international norms and pressures. *See id.* at 154. Around the globe, the relationship between the individual and the State is now carried out against the backdrop of the norms formed through discussions of international law. *See id.* at 127, 131, 133.

In accordance with this reasoning, the UN has pressured numerous States to enact more permissive abortion laws via consensus resolutions that emerge from UN conferences, the recommendations and quasi-judicial functions of the Treaty Monitoring Bodies (TMBs), and the Human Rights Council's Universal Periodic Review (UPR), all of which are non-binding.<sup>14</sup> Considering the statements national legislatures and courts make regarding their motives for liberalizing their abortion laws, it is clear that the UN holds significant influence in the realm of domestic abortion laws.

Because this Essay seeks to establish a causal connection between the effects of UN activities and State abortion laws, the inherent problem of endogeneity must be addressed. UN initiatives, the independent variable, will be analyzed relative to changes in domestic abortion laws, the dependent variable. There is reason to believe that endogeneity may arise between these two variables due to a causality loop. Specifically, it may be that changing domestic laws lead to greater UN initiatives, while greater UN initiatives also lead to changing domestic laws.<sup>15</sup> If such a causality loop does exist, determining the direction of causality in any given instance will be extraordinarily complex. There may be a second reason for endogeneity. A third variable may be responsible for causing both the independent and dependent variables: changing global attitudes.<sup>16</sup> This is to say that changing global attitudes may cause both UN initiatives and domestic abortion laws to change simultaneously.<sup>17</sup> Because the UN is a forum for the expression of global attitudes, there is no infallible way to differentiate the impact of global attitudes from the impact of UN initiatives.<sup>18</sup> Given the extreme complexity of global politics, it is easy to be daunted by these issues, which may contribute to the dearth of research attempting to assess the UN's impact on social laws.<sup>19</sup> Nevertheless, the major assumption in this Essay is that political actors' reports about their own motivations are relatively trustworthy. If this assumption is correct, then there is a high probability of at

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14. See, e.g., Gennarini, *supra* note 9; Wendy Wright, *Human Rights Watch Pressures Ecuador To Legalize Abortion, Pro-Life Nation Fights Back*, LIFENEWS (Apr. 29, 2015), <http://www.lifenews.com/2015/04/29/human-rights-watch-pressures-ecuador-to-legalize-abortion-pro-life-nation-fights-back/>; *Countries Urge El Salvador To Change Repressive Abortion Laws*, AMNESTY INT'L (Oct. 28, 2014), <https://www.amnesty.org/en/latest/news/2014/10/countries-urge-el-salvador-change-repressive-abortion-laws/>.

15. See, e.g., *supra* notes 1–10 and accompanying text.

16. See Econ. & Soc. Council, Comm'n on the Status of Women, Statement Submitted by Women's Global Network for Reproductive Rights, U.N. Doc. E/CN.6/2015/NGO/191 (2015), [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/CN.6/2015/NGO/191](http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2015/NGO/191).

17. See, e.g., *supra* notes 6–8 and accompanying text.

18. See generally Econ. & Soc. Council, *supra* note 16.

19. See Cynthia Soohoo, *Hyde-Care for All: The Expansion of Abortion-Funding Restrictions Under Health Care Reform*, 15 CUNY L. REV. 391, 399–400 (2012); Wilkins & Reynolds, *supra* note 12, at 123; see, e.g., Shimon Shetreet, *The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges*, 10 CHI. J. INT'L L. 275, 275–76, 278 (2009).

least partial causality when a nation reports that it has changed or will change its abortion laws in response to UN initiatives.<sup>20</sup> This assumption leads to a methodology focused on agglomerating cases.

#### I. HOW THE UN ADVOCATES FOR PERMISSIVE ABORTION LAWS

The point of departure for the recent global transformation of abortion laws was the 1994 adoption of the Programme of Action (PoA) of the International Conference on Population and Development (ICPD) by 179 States.<sup>21</sup> The ICPD, which oversees a myriad of development issues, from economic growth to maternal mortality reduction, marked the first time that abortion was officially introduced and defined as a part of the UN agenda.<sup>22</sup> Despite the emphasis on abortion throughout the text, many Member States worked to ensure that the document was crafted as much as possible to respect their sovereign authority to protect life.<sup>23</sup>

The ICPD is a document of political will with no binding force; however, it is highly influential because it plays a primary role in the annual Commission on Population and Development (CPD) at UN Headquarters and in the follow-up review conferences every five years.<sup>24</sup> Abortion activists have attempted to use the CPD to expand and redefine abortion and undermine States' sovereign right to limit or outlaw abortion.<sup>25</sup> However, the language of the ICPD is unequivocal. Although the document is replete with references to abortion, all references are subject to paragraph 8.25, which states: "In no case should abortion be promoted as a method of family planning . . . every attempt should be made to eliminate the need for abortion," and "[a]ny measures or changes related to abortion . . . can only be determined at the national or local level according to the national legislative process."<sup>26</sup> Various Member States expressed reservations, thereby clarifying their national positions on abortion.<sup>27</sup> Thus, the ICPD is a highly

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20. See, e.g., White, *supra* note 5.

21. Rep. of the Int'l Conference on Population & Dev., U.N. Doc. A/CONF.171/13 at ch. I, § 1, ¶ 8.19, ch. VI, §§ 5–6, (1994).

22. *Id.* at ch. I, § 1, ¶ 8.19.

23. See generally *id.* (noting reservations regarding abortion from El Salvador, Libyan Arab Jamahiriya, Nicaragua, United Arab Emirates, Yemen, Argentina, the Dominican Republic, Ecuador, Guatemala, the Holy See, Malta, and Peru).

24. See generally Comm'n on Population & Dev. Res. 2014/1, U.N. Doc. E/2014/25-E/CN.9/2014/7 (2014).

25. *Pro-life and Family Member States Reject Outcome Document at UN Commission on Population and Development*, ADF INT'L (Apr. 21, 2015), <http://adfinternational.org/2015/04/21/pro-life-and-family-member-states-reject-outcome-document-at-un-commission-on-population-and-development/>.

26. Rep. of the Int'l Conference on Population & Dev., *supra* note 21, at ch. I, § 1, ¶ 8.25.

27. See Int'l Conference on Population & Dev., *Programme of Action, 20th Anniversary Edition*, 187–88, 190–92, 194–201, 204–05 (2014), [http://www.unfpa.org/sites/default/files/pub-pdf/programme\\_of\\_action\\_Web%20ENGLISH.pdf](http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf) (explaining that the delegations of Honduras,

nuanced document that underscores States' sovereign prerogative to determine their own abortion laws.

Many abortion activists ignore the qualifiers built into the ICPD designed to limit abortion and seek to promote the document, along with the subsequent 1995 Beijing Declaration and Platform for Action, as the preeminent guidebook on which countries should rely on liberalizing their abortion laws.<sup>28</sup> For instance, the Center for Reproductive Rights (CRR), a major abortion advocacy group, wrote in its 2014 briefing paper that at the ICPD, Member States "recognized that reproductive rights are human rights that are already enshrined in domestic and international law."<sup>29</sup> While this statement merely reiterates language in the ICPD,<sup>30</sup> its meaning far exceeds the intention of the Member States that participated in the Conference because the CRR and its affiliate organizations insist that women have a "right to comprehensive reproductive health services, including abortion," even in countries where abortion is illegal.<sup>31</sup> As a result of these erroneous interpretations, the ICPD has had a significant impact on the global development of abortion law, despite lacking the force of international law and incorporating very clear qualifiers that protect pro-life Member States.<sup>32</sup>

Since the adoption of the ICPD, over thirty States have legalized, eased restrictions on, or expanded access to abortion.<sup>33</sup> During that same time period, only eleven States—seven of which are European or Eurasian countries—have enacted restrictions on abortion.<sup>34</sup> The trend, at least in the developing world, is toward liberalizing abortion law.<sup>35</sup>

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Nicaragua, Paraguay, Dominican Republic, Ecuador, Guatemala, Peru, and the Holy See all noted that they did not support "reproductive rights" if that term included abortion).

28. See *supra* notes 24–27; U.N. Secretary-General, *The Extent to Which Gender Concerns Have Been Included in the Activities of the United Nations Human Rights Mechanisms*, Annex I, U.N. Doc. A/CONF.177/9 (Aug. 21, 1995), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/241/59/PDF/N9524159.pdf?OpenElement>; see CENTER FOR REPRODUCTIVE RIGHTS, ABORTION WORLDWIDE: 20 YEARS OF REFORM 8, 9 (2014).

29. CENTER FOR REPRODUCTIVE RIGHTS, *supra* note 28, at 8.

30. See Rep. of the Int'l Conference on Population & Dev., *supra* note 21, at ch. VII, § 1, ¶ 7.3 ("[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents.").

31. CENTER FOR REPRODUCTIVE RIGHTS, BRINGING RIGHTS TO BEAR: ABORTION AND HUMAN RIGHTS 1 (2008).

32. See CENTER FOR REPRODUCTIVE RIGHTS, ICPD AND HUMAN RIGHTS: 20 YEARS OF ADVANCING REPRODUCTIVE RIGHTS THROUGH UN TREATY BODIES AND LEGAL REFORM Part III, 1–2 (2013).

33. CENTER FOR REPRODUCTIVE RIGHTS, ABORTION WORLDWIDE, *supra* note 28, at 9.

34. *Id.* at 21, 25–26, 31, 33 (listing Japan, Hungary, Russian Federation, Latvia, Slovak Republic, Germany, Macedonia, Belarus, El Salvador, Nicaragua, and the United States at the state level as countries that have enacted restrictions on abortion).

35. See, e.g., *id.* at 17 (noting that not a single African country has placed an additional restriction on abortion in the past twenty years).

The ICPD entrenched abortion in the official agenda of the UN.<sup>36</sup> Since 1994, the UN has promoted permissive abortion laws in various ways.<sup>37</sup> Prominent mechanisms include the consistent efforts of the United Nations Population Fund (UNFPA), UN Women, and the World Health Organization (WHO).<sup>38</sup>

WHO explicitly advocated for the liberalization of abortion laws in its 2012 publication, *Safe Abortion: Technical and Policy Guidance for Health Systems*.<sup>39</sup> According to WHO, “[t]he fulfillment of human rights requires that women can access safe abortion when it is indicated to protect their health,” and “[t]he protection of women from cruel, inhuman and degrading treatment requires that those who have become pregnant as the result of coerced or forced sexual acts can lawfully access safe abortion services.”<sup>40</sup> Moreover, WHO commends those nations that allow “abortion upon . . . request” for “recogniz[ing] the conditions for a woman’s free choice,” and cautions against laws or policies that “impose time limits on the length of pregnancy for which abortion can be performed.”<sup>41</sup>

In particular, UNFPA urges that abortion be made accessible to adolescents, writing in a 2014 publication that “young people require a wide range of sexual and reproductive health services, including . . . safe abortion care,”<sup>42</sup> and in another publication that “access to sexual and reproductive health services” is necessary to create conditions under which young people “can achieve their full potential.”<sup>43</sup> The phrase “reproductive health services” is defined in the ICPD as including abortion in countries where abortion is *legal*.<sup>44</sup>

UN Women argues there is a “right to choose” to procure an abortion, and that governments have a responsibility to assist low-income women in gaining access.<sup>45</sup> Through UN Women, UNFPA, and WHO, the UN has advanced the perspective that there is an international right to abortion.<sup>46</sup>

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36. See Dep’t of Econ. & Social Affairs, Population Div., *Abortion Policies and Reproductive Health Around the World*, at 2, U.N. Doc. ST/ESA/SER.A/343 (2014), <http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>.

37. Lauren Barbato, *U.N. Declares Abortion Rights Are Human Rights, Promising To Support Reproductive Rights Worldwide*, BUSTLE (Dec. 6, 2014), <http://www.bustle.com/articles/52634-un-declares-abortion-rights-are-human-rights-promising-to-support-reproductive-rights-worldwide>.

38. See *infra* notes 39–46 and accompanying text. Reviewing a sample of the pro-abortion efforts of these entities is illustrative, but a full review of such efforts would be cumbersome because there are so many examples.

39. WORLD HEALTH ORG., *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS* 1–2 (2d ed. 2012).

40. *Id.* at 92.

41. *Id.* at 93.

42. MONICA DAS GUPTA ET AL., *THE POWER OF 1.8 BILLION: ADOLESCENTS, YOUTH AND THE TRANSFORMATION OF THE FUTURE* 37 (UNFPA ed., 2014).

43. UNFPA, *ANNUAL REPORT 2014: A YEAR OF RENEWAL* 7 (2014).

44. Rep. of the Int’l Conference on Population & Dev., *supra* note 21, at ch. XIII, ¶ 13.14(b).

45. UN WOMEN, *PROGRESS OF THE WORLD’S WOMEN 2015–2016: TRANSFORMING ECONOMIES, REALIZING RIGHTS* 162, 169–70 (2015).

46. See *supra* notes 39–45 and accompanying text.

The UN has also pushed repeatedly for more permissive abortion laws through TMBs.<sup>47</sup> TMBs have called for abortion to be legalized in cases where pregnancy results from rape or incest<sup>48</sup> and where the continued pregnancy would threaten the life<sup>49</sup> or health<sup>50</sup> of the mother. TMBs have also recommended that in countries where abortion is legal, third-party authorization for abortion be removed,<sup>51</sup> legal and policy frameworks be established to enable widespread access to abortion,<sup>52</sup> and programs be developed to provide abortion services.<sup>53</sup>

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47. See *infra* notes 48–54 and accompanying text.

48. Views of the Comm. on the Elimination of Discrimination Against Women, Commc'n No. 22/2009, L.C. v. Peru, ¶ 9(b)(i), (iii), U.N. Doc. CEDAW/C/50/D/22/2009 (Nov. 4, 2011) [hereinafter "CEDAW: L.C. v. Peru"]; Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Costa Rica, ¶ 46, U.N. Doc. E/C.12/CRI/CO/4/Corr.1 (Apr. 22, 2008) [hereinafter "CESCR: Costa Rica"]; Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Honduras, ¶ 25, U.N. Doc. CEDAW/C/HON/CO/6 (Aug. 10, 2007); Concluding Observations of the Comm. on the Rights of the Child: Chile, ¶ 56, U.N. Doc. CRC/C/CHL/CO/3 (Apr. 23, 2007); Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Monaco, ¶ 23, U.N. Doc. E/C.12/MCO/CO/1 (Jun. 13, 2006) [hereinafter "CESCR: Monaco"]; Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Malta, ¶ 41, U.N. Doc. E/C.12/1/Add.101 (Dec. 14, 2004) [hereinafter "CESCR: Malta"]; Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Chile, ¶ 53, U.N. Doc. E/C.12/1/Add.105 (Dec. 1, 2004); Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Sri Lanka, ¶ 283, U.N. Doc. A/57/38, (Feb. 1, 2002); Concluding Observations of the Comm. on Econ., Soc. and Cultural Rights: Nepal, ¶ 33, U.N. Doc. E/C.12/1/Add.66 (Sept. 24, 2001); Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Colombia, ¶ 393, U.N. Doc. A/54/38/Rev.1 (Feb. 5, 1999) [hereinafter "CEDAW: Colombia"].

49. CESCR: Costa Rica, *supra* note 48, ¶ 46; Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Brazil, ¶ 30, U.N. Doc. CEDAW/C/BRA/CO/6 (Aug. 10, 2007); Concluding Observations of the Human Rights Comm.: Chile, ¶ 8, U.N. Doc. CCPR/C/CHL/CO/5 (May 18, 2007); Concluding Observations of the Human Rights Comm.: Madagascar, ¶ 14, U.N. Doc. CCPR/C/MDG/CO/3 (May 11, 2007); Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Nicaragua, ¶ 17, U.N. Doc. CEDAW/C/NIC/CO/6 (Feb. 2, 2007); Views of the Human Rights Comm., Commc'n No. 1153/2003, K.L. v. Peru, ¶ 6.2–6.4, U.N. Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005) [hereinafter "HRC: K.L. v. Peru"]; Concluding Observations of the Human Rights Comm.: Poland, ¶ 8, U.N. Doc. CCPR/CO/82/POL (Dec. 2, 2004); Concluding Observations of the Human Rights Comm.: Colombia, ¶ 13, U.N. Doc. CCPR/CO/80/COL (May 26, 2004); Concluding Observations of the Human Rights Comm.: Guatemala, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001); Comment No. 28 of the Human Rights Comm. on the Equality of Rights Between Men and Women, ¶ 20, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) [hereinafter "HRC Gen. Comment 28"]; Concluding Observations of the Human Rights Comm.: Ecuador, ¶ 11, U.N. Doc. CCPR/C/79/Add.92 (Aug. 18, 1998).

50. CESCR: Monaco, *supra* note 48, ¶ 23; CESCR: Malta, *supra* note 48, ¶ 41; CEDAW: Colombia, *supra* note 48, ¶ 393; Rep. of the Comm. on the Elimination of Discrimination Against Women, Gen. Recommendation No. 24, ¶ 12(d), U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter "CEDAW Gen. Recommendation 24"]; Concluding Comments of the Comm. on the Elimination of Discrimination against Women: Dominican Republic, ¶ 337, U.N. Doc. A/53/38/Rev.1 (1998).

51. HRC Gen. Comment 28, *supra* note 49, ¶ 20.

52. CEDAW: L.C. v. Peru, *supra* note 48, ¶ 9.

53. CEDAW Gen. Recommendation 24, *supra* note 50, ¶ 31(c).

Although it would not be possible to comment on every occasion in which TMBs have recommended more permissive abortion laws, a few anecdotes capture the general logic and procedure of the pro-abortion agenda as carried out through TMBs.<sup>54</sup> In 2000, the Committee on the Elimination of Discrimination Against Women (CEDAW) recommended that Burkina Faso “review its legislation on abortion and provide for coverage by social security.”<sup>55</sup> After the ICPD, Burkina Faso had already changed its abortion laws, ending its complete ban on abortion and allowing abortion to protect a woman’s health, in cases of rape and incest, and in cases where an unborn baby presents a fetal impairment.<sup>56</sup> However, these changes did not satisfy CEDAW.<sup>57</sup> More recently, in 2014, the Committee on the Rights of the Child (CRC)—the Committee that monitors the Convention on the Rights of the Child—issued a report demanding that the Holy See change its position on abortion and recommending that “the Holy See undertake the necessary steps . . . to ensure that the Convention has precedence over internal laws and regulations.”<sup>58</sup> Given that the Holy See is widely known to hold a specific religious perspective on abortion, the CRC report is quite bold.<sup>59</sup>

The recent developments in Luxembourg discussed above illustrate the manner in which TMBs interact with the UPR to promote abortion.<sup>60</sup> The UPR is a mechanism of the UN Human Rights Council (HRC) that allows Member States to offer recommendations to one another regarding compliance with international human rights law.<sup>61</sup> Several nations have been using the UPR to recommend that other nations modify their abortion laws.<sup>62</sup> European countries

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54. Concluding Observations on the Second Periodic Report of the Comm. on the Rights of the Child: the Holy See, ¶ 55, U.N. Doc. CRC/C/VAT/CO/2 (Feb. 25, 2014) [hereinafter “CRC: Holy See”]; Concluding Observations of the Comm. on the Elimination of Discrimination Against Women: Burkina Faso, ¶ 276, U.N. Doc. A/55/38 (2000) [hereinafter “CEDAW: Burkina Faso”].

55. CEDAW: Burkina Faso, *supra* note 54, ¶ 276.

56. *See* Loi No. 043/96/ADP, ch. II, § 3, art. 387 (Nov. 13, 1996) (Burk. Faso) (outlining a law concerning abortion).

57. *See supra* note 55 and accompanying text.

58. CRC: Holy See, *supra* note 54, ¶ 12.

59. *See* 1983 CODE c. 1398, [http://www.vatican.va/archive/ENG1104/\\_P57.HTM](http://www.vatican.va/archive/ENG1104/_P57.HTM) (stating that obtaining an abortion is grounds for excommunication from the Catholic Church).

60. *See supra* notes 2–8 and accompanying text.

61. *See* Rep. of the Human Rights Council to the General Assembly on the Fifth Session of the Council, Annex.II.1. ¶ 2, U.N. Doc. A/HRC/5/21 (Aug. 7, 2007).

62. *See* DATABASE OF UPR RECOMMENDATIONS, <http://www.upr-info.org/database/> (last visited Jan. 5, 2016). As of January 5, 2016, the UPR database contained ninety-seven recommendations with specific references to “abortion” and forty-six additional recommendations with specific references to “reproductive rights.” *See id.* (running searches for both “abortion” and “reproductive rights” as key words). Of the ninety-seven recommendations pertaining to abortion, ninety-one can be interpreted as urging the Member States under review to liberalize their abortion laws. *Id.* (running a search for the term “abortion”). Additionally, of the ninety-one recommendations, eighty-three were made by European countries, and sixty-six of the ninety-one recommendations targeted Latin American countries. *Id.* (running a search for the term “abortion”).

made the vast majority of these recommendations, which are primarily directed at Latin American countries.<sup>63</sup> Since the ICPD, the UN has developed a complex and potent system to advocate for permissive abortion laws, the effects of which come into focus upon consideration of the countries that have explicitly cited international treaties or TMB decisions when changing their abortion laws.<sup>64</sup>

## II. THE IMPACT OF PRO-ABORTION INTERPRETATIONS OF INTERNATIONAL TREATIES

Although no international human rights treaty mentions abortion, these treaties have nevertheless been interpreted by several signatory nations to require legalized abortion.<sup>65</sup> Generally, abortion advocates claim that a right to abortion is implied by rights addressed in a treaty—including the rights to health care, life, nondiscrimination, equality, security, liberty, privacy, and religion, as well as the rights to be free from cruel or inhuman treatment and to determine the number and spacing of one's children.<sup>66</sup> Such arguments typically describe the unborn child as a fetus, embryo, or simply a pregnancy.<sup>67</sup> Abortion advocates then suggest reasons to conclude that the unborn child may be a threat to a mother's enjoyment of her rights.<sup>68</sup> These premises suggest that the mother

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63. *Id.*

64. *See infra* Parts II–III.

65. *See* SAN JOSE ARTICLES, art. 5 (Mar. 25, 2011), <http://www.sanjosearticles.com/wp-content/uploads/2012/02/SJA.pdf>. There are no international treaties that mention abortion, and there is only one regional treaty that mentions abortion: the Maputo Protocol. Assembly of the African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, (July 11, 2003), [http://www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf) (signed in Maputo, Mozambique) [hereinafter "Maputo Protocol"]. The Maputo Protocol is binding on signatory States in the African Union and went into effect when the minimum of fifteen of the fifty African Union Member States ratified it in 2005. *Id.* at art. 29, § 1; *see Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, AFRICAN COMM'N ON HUM. & PEOPLES' RTS., <http://www.achpr.org/instruments/women-protocol/ratification/> (last visited Jan. 5, 2016) [hereinafter "Ratification Table: Maputo Protocol"]. Article 14 § 2(c) of the Protocol reads: "States Parties shall take all appropriate measures to . . . protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus." *See* Maputo Protocol, *supra*, art. 14, § 2(c). Although thirty-six African countries have ratified the Maputo Protocol, its international impact is limited because it is a regional treaty and because several of the States that signed the treaty did so with reservations stating that the language on abortion is not binding on them. *See* Ratification Table: Maputo Protocol, *supra*.

66. *See generally International Human Rights Law and Abortion in Latin America*, HUM. RTS. WATCH (2005), <http://www.hrw.org/legacy/backgrounder/wrd/wrd0106/wrd0106.pdf>.

67. *See, e.g., id.*

68. *See, e.g.,* Dhikta v. Nepal, (2009), writ petition no. WO-0757, 2067 (2007), \*4 (Nepal), excerpts translated in *Lakshmi Dhikta Case Summary and Translated Excerpts*, REPROD. RTS., <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Lakshmi%20Dhikta%20-%20English%20translation.pdf>.

has a right to protect herself by electing to prevent the child from being born.<sup>69</sup> This argument is granted legitimacy by the fact that the international human rights treaties are not specific about when life begins, whether at conception, birth, or some other point in time.<sup>70</sup>

The influence of this type of reasoning is evident in a 2009 decision from the Supreme Court of Nepal.<sup>71</sup> Prior to 2002, Nepal had a complete ban on abortion.<sup>72</sup> In 2002, the Nepalese Government amended its laws to permit on-demand abortion during the first twelve weeks of pregnancy.<sup>73</sup> Overnight, Nepal went from having one of the most restrictive abortion laws to one of the most liberal.<sup>74</sup> After this change, many Nepalese women still, in practice, lacked access to abortion.<sup>75</sup>

In 2009, the Supreme Court of Nepal in *Dhikta v. Nepal*<sup>76</sup> ruled that the Nepalese Government needed to: (1) introduce a more comprehensive abortion law; (2) take measures to provide all Nepalese women access to abortion; and (3) fund all abortions for women who cannot afford the procedure.<sup>77</sup> In its opinion, the court explained that Nepal's prior law completely banning abortion was "inappropriate and unusual" from the "point of view of compliance with international norms."<sup>78</sup> Furthermore, the court stated that without the right to abortion, the "rights guaranteed to women under international treaties . . . would become unachievable."<sup>79</sup> The court cited U.S. Supreme Court and Austrian Constitutional Court cases for its determination that the unborn child cannot be deemed a legal person.<sup>80</sup> Although no international law explicitly required Nepal to permit abortions, the Supreme Court of Nepal found this requirement to be implicit in international treaties.<sup>81</sup> UN impact on this decision is visible

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69. *See id.*

70. *See International Human Rights Law and Abortion in Latin America, supra* note 66, at 9–10. The American Convention on Human Rights, a regional treaty often referred to as the Pact of San Jose, is exceptional in stating that the right to life "shall be protected by law and, in general, from the moment of conception." *American Convention on Human Rights ('Pact of San Jose, Costa Rica')* (1969), art. 4, § 1, in SANDY GHANDHI, BLACKSTONE'S INTERNATIONAL HUMAN RIGHTS DOCUMENTS 376 (Oxford Univ. Press, 7th ed. 2010).

71. *Dhikta*, writ petition no. WO-0757, 2067 (2007) at \*4.

72. S. Cohen, *Nepal Reforms Abortion Law To Reduce Maternal Deaths, Promote Women's Status*, GUTTMACHER INST. (2002), <https://www.guttmacher.org/pubs/tgr/05/2/gr050213.html>.

73. *Id.*

74. *Id.*

75. *Dhikta*, writ petition no. WO-0757, 2067 (2007) at \*11.

76. (2009), writ petition no. WO-0757, 2067 (2007) (Nepal).

77. *Id.* at \*9–13.

78. *Id.* at \*4.

79. *Id.* at \*7–8.

80. *Id.* at \*2.

81. *See supra* notes 78–79 and accompanying text.

both in the cited influence of international treaties and the reference to “compliance with international norms.”<sup>82</sup>

It is impossible, for the reasons already mentioned, to determine precisely whether these changes are more influenced by the UN or international norms.<sup>83</sup> Still, it is indisputable that prior to the *Dhikta* opinion, the UN functioned as a forum for advancing the kinds of ideas about treaty law that informed the Nepalese Supreme Court’s decision.<sup>84</sup> It is hard to imagine that the Nepalese Supreme Court could have independently arrived at a reading of international law that is simultaneously so far divorced from the actual content of the relevant treaties, and so close to the interpretation for which the UN has energetically advocated.<sup>85</sup>

A 1991 ruling by the Belgian Court of Arbitration evinced a similar reasoning.<sup>86</sup> In 1997, Belgium submitted its periodic report to the HRC, wherein it detailed its compliance with the International Covenant on Civil and Political Rights (ICCPR).<sup>87</sup> In detailing its compliance with Article 23 of the ICCPR, the Belgian Government explained that in an effort to take “appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during the marriage,” the Belgian Court of Arbitration ruled that husbands do not have a right to be consulted in a woman’s decision to obtain an abortion.<sup>88</sup> This decision made abortions more easily accessible for some women.<sup>89</sup> In its reasoning, the Belgian Court cited Article 23 of the ICCPR when stating, “even a broad interpretation of article 23 of the Covenant does not make it possible to include therein procedural rights such as those that would derive from the right of the husband to be consulted.”<sup>90</sup>

The Nepalese and Belgian cases are examples of when national judiciaries have explicitly grounded their decisions about abortion law in a specific interpretation of international law advanced by powerful forces within the UN.<sup>91</sup>

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82. See *supra* notes 78–79 and accompanying text.

83. See *supra* notes 9–20 and accompanying text.

84. See *supra* notes 1–10 and accompanying text; *Dhikta*, writ petition no. WO-0757, 2067 (2007) at \*4.

85. Compare *Dhikta*, writ petition no. WO-0757, 2067 (2007) at \*4, with Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Nepal, ¶ 148, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter “CEDAW: Nepal”]. Prior to 2002, when Nepal had a complete ban on abortion, various UN agencies began pressuring the government to liberalize its abortion laws. See *id.* For example, in 1999, CEDAW’s concluding comments on Nepal “urge[d] the Government to revise existing legislation and to reconsider [its proposed law] so as to provide services for safe abortions.” *Id.*

86. See Human Rights Comm. Third Periodic Reports of States Parties Due in 1994: Belgium, ¶ 315, U.N. Doc. CCPR/C/94/Add.3 (Oct. 15, 1997).

87. *Id.* ¶ 11.

88. *Id.* ¶ 315.

89. See, e.g., *id.*

90. *Id.*

91. See *supra* notes 78–82, 86–90 and accompanying text.

With regard to abortion laws, UN interpretation of international treaties has become increasingly influential, while the influence of the actual text of treaties has correspondingly diminished.<sup>92</sup> The UN is successfully holding nations responsible, not to the negotiated text of international treaties, but to the normative positions of various UN organs and bodies.<sup>93</sup>

The UN's revisionist interpretation of treaties has also had an impact on how national legislatures confront abortion.<sup>94</sup> Ethiopia stated that it changed abortion laws to comply with international treaties.<sup>95</sup> In 2005, Ethiopia amended its penal code to allow abortion up through twenty-eight weeks gestation<sup>96</sup> when a woman's health or life is at risk, as well as in cases of rape, incest, fetal impairment, when the pregnant person is a minor, or where the woman has a physical or psychological disability or injury.<sup>97</sup> Prior to this amendment, abortion had been illegal unless performed to preserve the health or life of the pregnant woman or, in certain circumstances, in response to conditions of extreme poverty.<sup>98</sup> The amended law went into effect in 2005, and shortly thereafter, the Ethiopian Government implemented a document entitled *Technical and Procedural Guideline for Safe Abortion Services*.<sup>99</sup> In this document, the Government detailed that it partially expanded its abortion law to comply with international law.<sup>100</sup> The document states:

Ethiopia has ratified international human rights conventions and treaties that are legally binding and that form international law. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provides the foundation for reproductive rights, is one such notable convention. The Tehran Proclamation, the International Conference on Population and Development (ICPD), the Fourth World Congress on Women, and the 2000 United Nations (UN) Summit are some of the major forums at which national governments have expressed their commitment to improving the status of women in society. These and other international initiatives have yielded wider recognition of individuals'

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92. *See infra* notes 116–17 and accompanying text.

93. *See supra* notes 48–53 and accompanying text.

94. *See infra* notes 100–01 and accompanying text.

95. *Technical and Procedural Guideline for Safe Abortion Services in Ethiopia*, Part I, HARV. (May 2006), <http://www.hsph.harvard.edu/population/abortion/Ethiopia.abo.html>.

96. *Making Abortion Services Accessible in the Wake of Legal Reforms: A Framework and Six Case Studies*, GUTTMACHER INST. 4 (Apr. 2012), <http://www.guttmacher.org/pubs/abortion-services-laws.pdf>.

97. Proclamation No. 414/2004, Criminal Code of the Federal Democratic Republic of Ethiopia, art. 551 (2004) (Eth.), <http://www.hsph.harvard.edu/population/abortion/Ethiopia.abo.html>.

98. Penal Code 158/1957, art. 533–34 (1957) (Eth.).

99. *See Technical and Procedural Guideline for Safe Abortion Services in Ethiopia*, *supra* note 95.

100. *Id.* at Part I.

rights to lead safe and responsible reproductive lives and have underscored the responsibility of governments to not only respect those rights but also to create the legal and policy environment for their realization.<sup>101</sup>

The Government explained its decision to expand abortion access in terms of its recognition of reproductive rights as discussed in several UN documents and conferences.<sup>102</sup> According to the Ethiopian Government, the influence of UN treaties was significant in providing it with the impetus to change its laws.<sup>103</sup> The Ethiopian Government added:

At the UN summit in 2000, governments of the world ratified the Millennium Development Goals (MDGs) as an international tool for reducing poverty and improving the standard of living in the developing world. One of the eight MDGs is to reduce the maternal mortality rate by 75% (from 1990 levels) by the year 2015. Preventing unsafe abortion is one of the five strategies for reducing maternal mortality that was endorsed by the World Health Organization (WHO) in 2004.

In response to these developments at the global level and changes in social and gender relations within the country, the government of the Federal Democratic Republic of Ethiopia (FDRE) has reviewed its laws and policies within the last decade.<sup>104</sup>

As the Government reports, Ethiopia's interpretation of international treaties was shaped by non-binding recommendations from WHO and discussions at several UN conferences.<sup>105</sup>

Chile may join Ethiopia in reaching the conclusion that international law requires the recognition of a right to abortion.<sup>106</sup> Currently, Chile's law imposes a total ban on abortion.<sup>107</sup> Yet, in January 2015, President Michelle Bachelet—the former head of UN Women—sent a proposal to the Chilean Congress to legalize abortion.<sup>108</sup> The law would allow abortions through the twelfth week of pregnancy when the mother's life is deemed at risk, in cases of rape, or when

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101. *Id.*

102. *Id.*

103. *See id.*

104. *Id.*

105. *Id.*

106. *Lamentable: Presidente Bachelet Presenta Proyecto de Despenalización del Aborto en Chile*, [Unfortunate: President Bachelet Has Proposed Decriminalization of Abortion in Chile] ARGENTINOS ALERTA (Jan. 31, 2015), <http://www.argentinosalerta.org/noticia/3133-lamentable-presidente-bachelet-presenta-proyecto-de-despenalizacion-del-aborto-en-chile>.

107. *Chile's President Bachelet Proposes End to Total Abortion Ban*, BBC (Jan. 31, 2015), <http://www.bbc.com/news/world-latin-america-31076838>.

108. *Lamentable: Presidente Bachelet Presenta Proyecto de Despenalización del Aborto en Chile*, *supra* note 106.

the fetus is deformed and will not survive.<sup>109</sup> In defending her proposal, Bachelet claimed that Chile's laws constitute a breach of international obligations.<sup>110</sup> This is a case where one of the bureaucrats responsible for developing pro-abortion soft law at the UN attempts to persuade her nation of the legitimacy of her reading of international law.<sup>111</sup> Observing whether she succeeds will provide intriguing data about the influence of UN treaties and UN interpretations of treaty law on national abortion law.

### III. THE IMPACT OF ABORTION ADVOCACY BY TMBS

TMBS' actions have played a major role in causing treaties that do not mention abortion to become associated with a purported right to abortion.<sup>112</sup> Each international treaty that deals with human rights has been assigned a treaty monitoring body, which is a committee made up of independent experts.<sup>113</sup> The function of a TMB is to monitor signatory States' compliance with the treaty in question.<sup>114</sup> TMBS carry out this function by offering recommendations in response to the required periodic reports submitted by signatory nations and by issuing quasi-judicial decisions in response to claims brought by individuals against signatory nations.<sup>115</sup> Recently, TMBS frequently have claimed that nations with restrictive abortion laws are not in compliance with international treaties, notwithstanding the fact that those treaties do not mention abortion.<sup>116</sup> TMBS have become a powerful mechanism for advancing the view that a commitment to internationally recognized human rights requires permissive abortion laws.<sup>117</sup>

Recent developments in Bolivia demonstrate the effectiveness of TMBS in influencing national abortion laws.<sup>118</sup> Bolivia's abortion law permits abortion

109. *Chile's President Bachelet Proposes End to Total Abortion Ban*, *supra* note 107.

110. *Lamentable: Presidente Bachelet Presenta Proyecto de Despenalización del Aborto en Chile*, *supra* note 106.

111. *See id.*

112. *See supra* notes 12, 48–53 and accompanying text.

113. *Monitoring the Core International Human Rights Treaties*, U.N. HUM. RTS.: OFF. OF THE HIGH COMM. FOR HUM. RTS. (2015), [www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx).

114. *See id.*

115. *Monitoring the Core International Human Rights Treaties*, U.N. HUM. RTS.: OFF. OF THE HIGH COMM. FOR HUM. RTS. (2015), <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBdo.aspx>. Generally, a TMB can only carry out this quasi-judicial function for signatory nations that have acceded to an optional protocol allowing this mechanism. *See id.*

116. *See* CENTER FOR REPRODUCTIVE RIGHTS, *supra* note 28, at 12.

117. *See* WORLD HEALTH ORG., *supra* note 39, at 88–90.

118. *See infra* notes 119–25 and accompanying text. CEDAW's interaction with Namibia provides an example of TMB recommendations on abortion failing to produce change. *See* List of Issues and Questions with Regard to the Consideration of the Periodic Reports of the Comm. on the Elimination of Discrimination Against Women: Namibia, ¶ 22, U.N. Doc. CEDAW/C/NAM/O/3 (Aug. 4, 2006). CEDAW asked Namibia to evaluate its abortion laws and in response, the Namibian Ministry of Health proposed a draft law on abortion in 1996. *Id.* This law was withdrawn in 1999, however, because a majority of Namibians opposed the law. *Id.*

when a woman's life, physical health, or mental health are deemed impaired by the pregnancy, as well as in cases of rape or incest.<sup>119</sup> However, the law originally required women to receive judicial authorization prior to the abortion.<sup>120</sup> In 2014, Bolivia's Constitutional Court invalidated this requirement.<sup>121</sup> In justifying its decision, the court relied heavily on TMB interpretations of international law.<sup>122</sup> It specifically noted the recommendations of the HRC,<sup>123</sup> the Committee Against Torture (CAT), and CEDAW, to which CAT instructed Bolivia to refer.<sup>124</sup> While factors other than the influence of these TMBs were presumably relevant, the sequence of events—restrictive abortion law, recommendation from the TMBs, and changed abortion law that uses reasoning explicitly based on the TMBs' recommendation—is a telling testimony to the influence that bureaucratic entities tasked with monitoring an international treaty have over domestic law.<sup>125</sup>

Chad, like Bolivia, amended its abortion legislation in response to a TMB recommendation.<sup>126</sup> In 1997, Chad prepared its initial periodic report to the Committee on the Rights of the Child (CRC), detailing the ways in which it had been complying with the treaty.<sup>127</sup> In 1999, the CRC reviewed Chad's report and issued concluding observations regarding Chad's compliance.<sup>128</sup> In those observations, the CRC asked Chad to review its legislation prohibiting abortion and to undertake studies "to understand . . . the negative impact of . . . illegal abortion."<sup>129</sup> Less than three years later, in 2002, Chad greatly relaxed restrictions on abortions, broadly expanding the instances in which abortions

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119. Aborto Impune [Unpunished Abortion], Bolivia Código Penal, art. 266 (Bol.), <http://www.hsph.harvard.edu/population/abortion/Bolivia.abo.htm>.

120. *See id.*

121. Sentencia Constitucional Plurinacional 0206/2014, Constitutional Court, Part III, § 8.8 (2014) (Bol.).

122. *Id.*

123. Concluding Observations on the Third Periodic Report of the Human Rights Comm. of the Plurinational State of Bolivia, ¶ 9, U.N. Doc. CCPR/C/BOL/CO/3 (Dec. 6, 2013).

124. Concluding Observations on the Second Periodic Report of the Comm. Against Torture of the Plurinational State of Bolivia, 50th Sess., ¶ 23, U.N. Doc. CAT/C/BOL/CO/2 (Jun. 14, 2013); Sentencia Constitucional Plurinacional 0206/2014, Part III, § 8.8.

125. *See supra* notes 118–24 and accompanying text.

126. *See* 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: Chad, ¶ 14, U.N. Doc. CRC/C/TCD/2 (Aug. 14, 2007) [hereinafter "CRC: Chad 2007"].

127. 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, U.N. Doc. CRC/C/3/Add.50 (Jul. 24, 1997).

128. Concluding Observations of the Comm. on the Rights of the Child: Chad, 21st Sess., ¶ 30, U.N. Doc. CRC/C/15/Add.107 (Aug. 24, 1999).

129. *Id.*

may be performed legally.<sup>130</sup> In its periodic report covering 1999–2006,<sup>131</sup> Chad described its decision to change its abortion laws as follows: “In response to the Committee’s concluding observations . . . the Government adopted a series of measures . . . on the promotion of reproductive health.”<sup>132</sup>

Colombia provides another example of heavy judicial reliance on TMB recommendations.<sup>133</sup> Before 2006, abortion was completely illegal in Colombia.<sup>134</sup> In 2006, the Colombian Constitutional Court legalized abortion, without specification as to gestational limit, when (1) the pregnancy threatens the woman’s health or life; (2) the fetus is deemed to have malformations incompatible with life; or (3) the pregnancy is the result of another’s criminal acts such as rape, incest, or artificial insemination without the woman’s consent.<sup>135</sup> In explaining its decision, the court pointed to the non-binding recommendations of several TMBs.<sup>136</sup> In fact, the court’s opinion lists every TMB recommendation about abortion, starting with recommendations from the HRC under the ICCPR,<sup>137</sup> CEDAW,<sup>138</sup> CRC,<sup>139</sup> Committee on the Elimination of Racial Discrimination (CERD),<sup>140</sup> and CAT.<sup>141</sup> The examples of Bolivia, Chad, and Colombia demonstrate the influence of TMB recommendations on abortion laws.

TMBs also have influenced abortion laws through the exercise of their quasi-judicial functions. A recent decision of the National Supreme Court of Argentina demonstrates the impact that TMBs’ quasi-judicial functions can have on domestic abortion laws.<sup>142</sup> In 2012, the court adopted a novel interpretation of Argentina’s penal code, holding that the code allowed abortion in all rape cases.<sup>143</sup> Previously, only women with mental disabilities were explicitly permitted to obtain abortions in cases of rape.<sup>144</sup> In its decision, the court stated its concern that failure to broaden permissive abortions might compromise

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130. Loi 006/PR/2002 Portant Promotion de la Santé de Reproduction [On the Promotion of Reproductive Health], art. 14 (2002).

131. CRC: Chad 2007, *supra* note 126, ¶ 14.

132. *Id.*

133. *See infra* notes 134–41 and accompanying text.

134. *Abortion Ruling in Colombia*, N.Y. TIMES (May 24, 2006), [http://www.nytimes.com/2006/05/24/opinion/24weds3.html?\\_r=0&pagewanted=print](http://www.nytimes.com/2006/05/24/opinion/24weds3.html?_r=0&pagewanted=print).

135. Sentencia C-355/06, Constitutional Court, Part VI, ¶ 10.1, 10.3 (2006) (Colom.), <http://www.corteconstitucional.gov.co/relatoria/2006/C-355-06.htm>.

136. *See infra* notes 137–41 and accompanying text.

137. Sentencia C-355/06, *supra* note 135, at Part V, ¶ 6.5.

138. *Id.* at Part V, ¶ 6.5.3–6.5.4.

139. *Id.* at Part V, ¶ 6.5.5.

140. *Id.* at Part V, ¶ 6.5.6.

141. *Id.* at Part V, ¶ 6.5.7.

142. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/3/2012, “A.F. c. O.C./medida autosatisfactiva,” Fallos [F.] (2012-259-XLVI) (Arg.).

143. *Id.* ¶ 17.

144. *Id.* ¶ 15–16.

Argentina's responsibility to the international legal system in light of the fact that international bodies had censured several nations for their restrictive abortion laws.<sup>145</sup> The year before this decision, Argentina itself had been criticized by the HRC in *LMR v. Argentina* (also known as *VDA v. Argentina*),<sup>146</sup> for not ensuring access to legal abortion for a mentally impaired woman who sought an abortion after a suspected rape by her uncle.<sup>147</sup> The Supreme Court of Argentina ordered the performance of the abortion, but no hospital would carry it out, and the woman was forced to seek an illegal abortion.<sup>148</sup> When the case was brought to the HRC, the Committee stated that, by not ensuring access to a legal abortion, Argentina had violated the woman's right to privacy and right not to be subjected to cruel, inhuman, and degrading treatment.<sup>149</sup> This case provides another example of the understanding that access to abortion is guaranteed by other unrelated rights.<sup>150</sup> Indeed, according to LMR's representatives, Argentina had violated the woman's rights to life, equal treatment, and freedom of thought and conscience.<sup>151</sup>

Twisting the text of international treaties in this manner violates the standard practices of treaty interpretation.<sup>152</sup> Nevertheless, this practice has become widespread among the bureaucrats responsible for monitoring treaty compliance and through the influence of TMBs, and has contributed to the liberalization of domestic abortion laws.<sup>153</sup>

Quasi-judicial TMB functions have also seemingly contributed to developments in abortion policy in Peru, but here the efficacy of TMBs in influencing change is less clear.<sup>154</sup> Since 1924, the only legal form of abortion in Peru has been therapeutic abortion.<sup>155</sup> Abortion can be performed only when necessary to save the life of, or prevent serious and permanent damage to, the pregnant woman.<sup>156</sup> When it signed the ICPD, Peru made a reservation stating

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145. *Id.* ¶ 6, 26–27.

146. *See* Views of the Human Rights Comm., Comm'n No. 1608/2007, L.M.R. v. Argentina, ¶ 9.2–11, U.N. Doc. CCPR/C/101/D/1608/2007 (Apr. 28, 2011).

147. *Id.*

148. *Id.* ¶ 2.6–2.8.

149. *Id.* ¶ 9.2–9.3.

150. *See id.* ¶ 9.2–9.4.

151. *Id.* ¶ 8.5, 9.2–10.

152. *See* Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”).

153. WORLD HEALTH ORG., *supra* note 39, at 88–90.

154. *See infra* notes 155–67 and accompanying text.

155. *Keys to Understanding Peru's New Therapeutic Abortion Guidelines*, PERU THIS WEEK (Jul. 1, 2014), <http://www.peruthisweek.com/news-keys-to-understanding-perus-new-therapeutic-abortion-guidelines-103385>.

156. Decreto Legislativo No. 635, Código Penal, art. 119 (1991) (Peru), <http://www.cajpe.org.pe/rj/bases/legisla/peru/pecodpen.htm>.

that life begins at conception.<sup>157</sup> In recent years, TMBs have put significant pressure on Peru to make changes in its abortion laws and policies.<sup>158</sup> In particular, two cases—*K.L. v. Peru*<sup>159</sup> and *L.C. v. Peru*<sup>160</sup>—have been brought before the HRC and CEDAW, respectively.<sup>161</sup> In *K.L. v. Peru*, the HRC determined that Peru had violated several articles of the ICCPR by refusing to authorize the abortion of an anencephalic baby.<sup>162</sup> In *L.C. v. Peru*, CEDAW ruled that Peru had violated several articles of CEDAW by not ensuring that a woman impregnated from rape received an abortion to allow the timely performance of a surgery she needed to prevent severe spinal cord injuries.<sup>163</sup>

In these decisions, the HRC and CEDAW made several recommendations, including that Peru establish a mechanism to ensure the rapid availability of abortion services in cases where a mother's life or health is severely threatened, and amend its law to permit abortions in cases of rape.<sup>164</sup> Recently, Peru has followed the first of these recommendations, offering national guidelines for the provision of abortion services.<sup>165</sup> These guidelines lay out eleven circumstances in which the threat to the mother's life created by a pregnancy is considered grave enough to warrant abortion, and they establish a procedure for determining in a timely fashion whether abortion is permissible.<sup>166</sup> However, rape is still not considered a sufficient justification for abortion.<sup>167</sup>

While Peru has partially resisted TMB pressure, it standardized the procedure for obtaining abortions.<sup>168</sup> It is possible that this standardization will lead to an increasing number of abortions in Peru. Either way, TMB decisions have

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157. Rep. of the Int'l Conference on Population & Dev., *supra* note 21, at ch. V, ¶ 30.

158. See CEDAW: *L.C. v. Peru*, *supra* note 48, ¶ 9; HRC: *K.L. v. Peru*, *supra* note 49, ¶ 6.3, 7–9.

159. HRC: *K.L. v. Peru*, *supra* note 49.

160. CEDAW: *L.C. v. Peru*, *supra* note 48.

161. HRC: *K.L. v. Peru*, *supra* note 49; CEDAW: *L.C. v. Peru*, *supra* note 48.

162. HRC: *K.L. v. Peru*, *supra* note 49, ¶ 6.3–7.

163. CEDAW: *L.C. v. Peru*, *supra* note 48, ¶ 8.18–9. The surgery had been delayed because of the pregnancy, according to L.C.'s representatives. *Id.* ¶ 2.4. Peru claimed that it was delayed for a medical reason unrelated to the pregnancy. *Id.* ¶ 8.8.

164. *Id.* ¶ 9.

165. See Guía Técnica Nacional para la Estandarización del Procedimiento de la Atención Integral de la Gestante en la Interrupción Voluntaria por Indicación Terapéutica del Embarazo Menor de 22 Semanas con Consentimiento Informado en el Marco de lo Dispuesto en el Artículo 119° del Código Penal [National Technical Guide for Procedure Standardization of Comprehensive Care for Pregnant [Women] in Voluntary Termination of Pregnancy, Therapeutic Indication for Less Than 22 Weeks with Informed Consent Under the Provisions in Article 119 of the Penal Code], ¶ 6.1 (2014) (Peru) [hereinafter “Guía Técnica Nacional”].

166. See *id.* ¶ 6.1.

167. *Peru Lawmakers Reject Bill To Allow Abortions for Pregnant Rape Victims*, GUARDIAN (May 27, 2015), <http://www.theguardian.com/world/2015/may/27/peru-bill-to-abortions-pregnant-rape>.

168. See Guía Técnica Nacional, *supra* note 165, ¶ 6.1.

already contributed to significant changes in the way Peru handles abortion policy.<sup>169</sup>

#### IV. CONCLUSION

If one finds trustworthy political actors' reports of their own motives, then it is clear that various UN bodies—rather than the actual UN Member States—have influenced abortion law transformations.<sup>170</sup> In the past, Member States have been more or less in control of UN processes, with the result that negotiated international treaties do not lean toward controversial positions. In recent years, however, internal UN actors have gained more influence and begun to use the UN to advance a specific agenda.<sup>171</sup> Since the ICPD, the UN has developed a multifaceted system for advocating for permissive abortion laws.<sup>172</sup> UN entities, such as UN Women, UNFPA, and WHO, advance the position that access to abortion is a right held by all women. TMBs pressure countries to change their abortion laws through concluding comments and quasi-judicial decisions. The UPR provides pro-abortion countries a forum in which they can join UN efforts to pressure countries with less permissive abortion laws. This system has led countries to interpret treaties ostensibly unrelated to abortion as requiring the allowance or promotion of abortion. In this international legal climate, it has become less important that treaty law says nothing about national abortion policies. International soft law has grown in influence, at least in relation to this aspect of national law, and has played a role in reshaping domestic abortion laws.

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169. *See, e.g., id.*

170. *See, e.g., supra* notes 78–79, 123–24, 129 and accompanying text.

171. *See* WORLD HEALTH ORG., *supra* note 39, at 88–90.

172. *Id.*