

Divided Nations, United Institutions:

Abortion Norm Diffusion Amidst Human Rights Confusion

By
Dominic Dougherty

Submitted to
Central European University
Department of International Relations

In partial fulfilment of the requirements for the degree of
Master of Arts in International Relations

Supervisor: Béla Greskovits

Budapest, Hungary
June 1, 2017

Word Count: 13,425

Abstract

The member states of the United Nations are divided on the issue of abortion, some holding that women have a right to access it while others maintain that the unborn have a right to life. Nevertheless, the women's rights frame seems to have become the dominant one within UN institutions. How have abortion rights advocates managed to outperform fetal rights supporters when it comes to influencing the content of UN documents and policies, and to what extent have they succeeded in gaining recognition of a right to abortion? In order to answer these questions, I conduct a comparative case study of the effectiveness of abortion rights and fetal rights movements in winning support for their causes through UN norms in the areas of international law and international development. Analyzing several aspects of both spheres, I find that institution-specific factors lead to significant variation in outcomes of abortion-related advocacy within the UN. Despite these differences from one platform to another, a general trend can be observed. When decisions are primarily in the hands of the states, the tendency is towards stalemate because of deep divisions. But where UN staff and experts have control, the abortion rights movement has been substantially more successful than its rival due to closer connections and shared interests with the organization and its agencies.

Table of Contents

Abstract	ii
Table of Contents	iii
Introduction	1
Research Puzzle	4
Literature Review	6
Thesis and Methods	8
Key Concepts and Controversies	10
Outline of Chapter Structure	15
Chapter One - Historical Overview of the Abortion Debate	16
1.1 Introduction	16
1.2 Historical Abortion Norms	17
1.3 Rise of the Radical Movements	20
1.4 Framing the Issues in Human Rights Discourse	23
1.5 Conclusion	26
Chapter Two - The Abortion Contest in International Human Rights Law	28
2.1 Introduction	28
2.2 Abortion Rights and Fetal Rights in International Treaties: A Mutual Failure	28
2.3 UN Treaty-Monitoring Bodies: Abortion Rights by Creative Interpretation	33
2.4 Conclusion	38
Chapter Three - Abortion Norms in United Nations Institutions	39
3.1 Introduction	39
3.2 The World Health Organization: From Reproductive Health to Safe Abortion	39
3.3 The United Nations Population Fund: (Not) Every Pregnancy Wanted	43
3.4 Conclusion	47
Conclusion	48
Bibliography	50

Introduction

It can be reasonably said that abortion policy is among the most important political, medical and human rights issues of our time, for two dominant reasons. The first is the prevalence of the phenomenon it seeks to regulate: a quarter of all pregnancies are terminated by abortion, and hence it is a matter of personal relevance to the hundreds of millions of women who have found reason to undergo the procedure. According to World Health Organization (WHO) estimates, 56 million induced abortions are performed each year, which amounts to over 150,000 per day and more than a billion over the course of a generation.¹ While the Guttmacher Institute has found that abortion rates declined significantly in developed countries over the past two decades, they remain high in developing countries, where 88 percent of abortions occur.² Moreover, abortion is broadly illegal in many of these countries, which tends to have the effect of making it a more risky procedure. Roughly 22 million abortions, representing two-fifths of the annual total, are considered unsafe for the women involved because they are performed by unqualified persons or in an environment that fails to meet appropriate medical standards. Such abortions result in many injuries and approximately 47,000 maternal deaths each year, most of which happen in less developed countries.³

¹ "Preventing unsafe abortion: Fact sheet," World Health Organization, last modified May, 2016, accessed May, 2017, <http://www.who.int/mediacentre/factsheets/fs388/en/>.

² "Induced Abortion Worldwide: Global Incidence and Trends," Guttmacher Institute, last modified May, 2016, accessed May, 2017, <https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>.

³ WHO, "Preventing unsafe abortion."

The second main reason why abortion policy merits attention, which explains why it is also among the most controversial global issues, follows from the first. Despite widely differing stances on questions of the morality and legality of abortion, all sides tend to see it as a major cause of preventable death. According to the WHO, “[a]lmost every abortion death and disability could be prevented” through one means or another.⁴ In a major study entitled “Unsafe abortion: the preventable pandemic,” which represents one influential perspective, the authors observe that “this scourge threatens women throughout the developing world,” and find that the procedure is most dangerous where it is illegal. Broader legalization and accessibility to modern abortion services are thus seen as necessary steps for reducing maternal mortality and improving women’s health.⁵ Meanwhile, those who define the human person more liberally hold that we should be concerned not only about the 47,000 deaths from unsafe abortions, but also about the 56,000,000 prenatal lives ended by successful abortions. From this point of view, the total annual number of abortion-related deaths not only dwarfs maternal morbidity from abortion by more than a thousand to one, but is equal to the combined annual total of all other causes of human death in the world.⁶ People who advocate for the unborn generally consider restrictive abortion laws as an important means for protecting them, alongside other measures.⁷

Both proponents and opponents of legalized abortion find it advantageous to frame their causes as human rights and legal rights issues. Although other frames

⁴ Ibid.

⁵ David A. Grimes et al., “Unsafe abortion: the preventable pandemic,” *The Lancet* 368, no. 9550 (November 25, 2006): 1908-1919, accessed May, 2017. [http://dx.doi.org/10.1016/S0140-6736\(06\)69481-6](http://dx.doi.org/10.1016/S0140-6736(06)69481-6).

⁶ “The top 10 causes of death: Fact sheet,” World Health Organization, last modified January, 2017, accessed May, 2017, <http://www.who.int/mediacentre/factsheets/fs310/en/>.

⁷ Joe Carter, “Do State-Level Anti-Abortion Laws Reduce Abortion Rates?,” last modified October 28, 2015, accessed May, 2017. <https://www.thegospelcoalition.org/article/do-state-level-anti-abortion-laws-reduce-abortion-rates>

are sometimes used, putting a claim forward in terms of rights is a logical choice since this discourse has become a powerful means of achieving political aims, especially in the secular liberal democracies where these movements took their present shape. It seems that the proposed rights of both women and fetuses happen to be quite amenable to rhetorical construction as issues of the right to life, which is often considered the most fundamental human right, as well as falling under the right to equality and non-discrimination, which is regarded as the “master frame” of women’s movements around the globe.⁸ National level debates over these rights are very important, but the primary focus of this research will be on international rights and norms. During the post-World War II era, the United Nations (UN) and its affiliates have emerged as the leading forum for the creation and diffusion of international human rights norms. One means by which the world’s premiere intergovernmental organization achieves this purpose is through international treaties and conventions, while another is through the research and activities of its many subsidiary and partner institutions. The so-called “boomerang pattern” makes it possible to put pressure on domestic actors by lobbying internationally.⁹ Reproductive rights and fetal rights entrepreneurs thus have a strong incentive to gain powerful allies and set agendas within the UN conglomerate of platforms and organizations as an influential vehicle for spreading their desired norms.

⁸ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 168.

⁹ *Ibid.*, 12.

Research Puzzle

Anyone who does a Google search today for “united nations abortion” will encounter a number of headlines strongly suggesting that the organization endorses a right to abortion. In the current top result, a Huffington Post blog article entitled “United Nations Committee Affirms Abortion As A Human Right,” physician and noted abortion researcher David A. Grimes says that the UN Human Rights Committee held Peru to be in violation of certain treaty articles for “failing to ensure access to safe, legal abortion.”¹⁰ The second article, a report from the UN News Centre with the headline, “Repealing anti-abortion laws would save the lives of nearly 50,000 women a year - UN experts,” quotes these experts’ statement preceding the Global Day of Action for Access to Safe and Legal Abortion: “Criminalization of abortion and failure to provide adequate access to services for termination of an unwanted pregnancy are forms of discrimination based on sex.”¹¹ Six more of the top dozen results have titles making similar claims such as “UN Report Classifies Lack Of Access to Abortion as ‘Torture’”¹² and “The UN Declares Abortion a Human Right.”¹³ Yet another is a report from Life Site News with the headline that “Catholics must ‘resist’ Pope Francis’ alliance with pro-abortion United Nations” according to an analysis by Catholic NGO coalition Voice of the Family warning that language included in the new Sustainable Development Goals (SDGs)

¹⁰ David A. Grimes, “United Nations Committee Affirms Abortion as a Human Right,” *The Huffington Post*, January 25, 2016, accessed May 30, 2017, http://www.huffingtonpost.com/david-a-grimes/united-nations-committee-affirms-abortion-as-a-human-right_b_9020806.html.

¹¹ “Repealing anti-abortion laws would save the lives of nearly 50,000 women a year - UN experts,” United Nations News Centre, last modified September 27, 2017, accessed May 30, 2017, <http://www.un.org/apps/news/story.asp?NewsID=55141#.WSmilOt96JA>.

¹² Lily Bolourian, “UN Report Classifies Lack of Access to Abortion as ‘Torture,’” *Mic*, October 25, 2017, accessed May 30, 2017, <https://mic.com/articles/30925/un-report-classifies-lack-of-access-to-abortion-as-torture#.hK7W4YRW3>.

¹³ Daniel J. Flynn, “The UN Declares Abortion a Human Right,” *The American Spectator*, June 9, 2016, accessed May 30, 2017, <https://spectator.org/the-un-declares-abortion-a-human-right/>.

might promote abortion.¹⁴ Of course, such a search will over time turn up slightly different items, but the impression from both ends of the political spectrum is that the UN has adopted the reproductive rights frame as opposed to the fetal rights one.

Yet, if one reads the above articles, it will become apparent that universal legalization is far from being achieved. For example, the UN News Centre report mentions that “[r]estrictive laws apply to 40 per cent of world’s population.”¹⁵ Thus there seems to be a disconnect between the dominant view among UN institutions and that held by a significant number of member states on the question of whether or not there is any sort of human right to abortion. Abortion remains a matter of contentious politics in many developed countries, and is still broadly illegal throughout the ‘Global South,’ from Latin America to Africa and South Asia, as indicated by the red and orange areas of the map below.

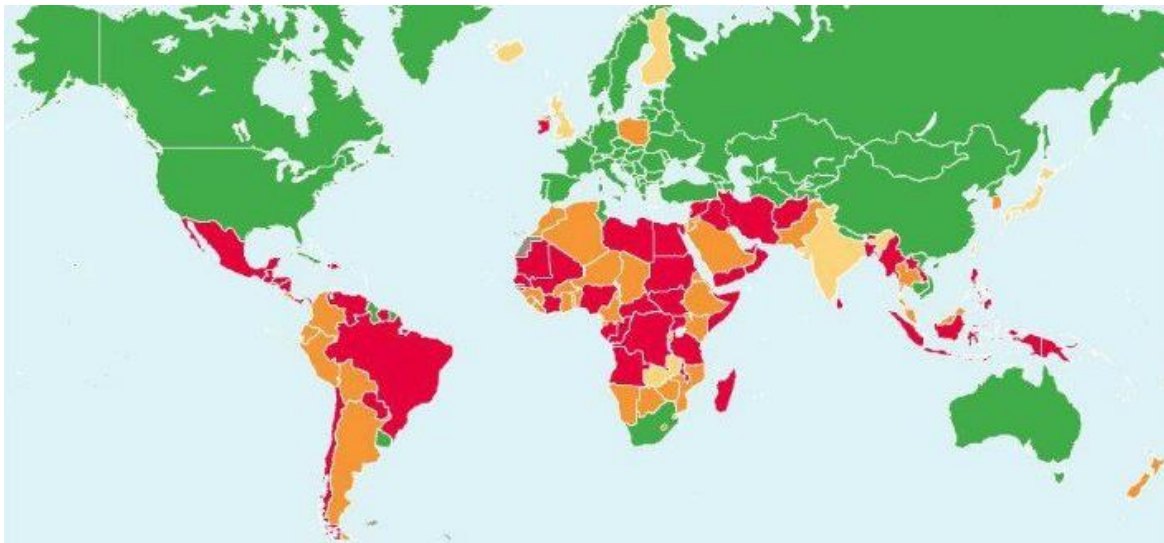


Figure 1: The World’s Abortion Laws¹⁶

So, a few interesting questions arise: have the UN institutions taken the side of abortion rights, despite deep divisions among member nations? If the foundation of

¹⁴ Lianne Laurence, “Catholics Must ‘resist’ Pope Francis’ Alliance with Pro-Abortion United Nations: Catholic Coalition,” *LifeSiteNews*, February 28, 2017, accessed May 30, 2017, <https://www.lifesitenews.com/news/vatican-under-francis-has-betrayed-children-by-supporting-un-pro-abortion-g>

¹⁵ UN News Centre, “Repealing anti-abortion laws would save the lives of nearly 50,000 women a year - UN experts.”

¹⁶ “The World’s Abortion Laws Map,” Center for Reproductive Rights, 11 Oct 2011, Web.

the organization remains that it “is based on the principle of the sovereign equality of all its Members,”¹⁷ why are the views of some represented more than others? How have abortion rights advocates been more effective than fetal rights supporters when it comes to influencing UN committees and institutions, and to what extent have they actually succeeded?

Literature Review

Many millions of pages have been written about abortion, but much of it is hopelessly biased, is dedicated to attacking and defending abortion, or is country-specific, particularly to the United States. Among the academic works addressing abortion at the international level, some focus on its status within human rights law but without examining the process by which such laws are made. International relations scholars have mostly discussed abortion as an aspect of the work of the reproductive rights movement. The majority of those writing on the subject “have hailed the transnational reproductive rights movement as a success.”¹⁸ Bharati Sadasivam acknowledged that the movement had reached new heights in the wake of UN Decade for Women (1975-1985), the 1994 International Conference on Population and Development (ICPD) in Cairo, and the 1995 Fourth World Conference on Women in Beijing.¹⁹ Jutta M. Joachim likewise says that the Programme of Action established for the UN Population Fund (UNFPA) at the Cairo conference “placed women’s reproductive rights and health instead of demographic

¹⁷ “Charter of the United Nations: Chapter 1,” United Nations, signed June 26, 1945, accessed May 30, 2017, <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

¹⁸ Susan Yoshihara, “Lost in translation: the failure of the international reproductive rights norm,” *Ave Maria L. Rev.* 11 (2012): 367, accessed May 30, 2017, <https://s3.amazonaws.com/cfam/wp-content/uploads/AveMariaLawReviewv11i2.Yoshihara.final.pdf>.

¹⁹ Bharati Sadasivam, “The Rights Framework in Reproductive Health Advocacy--A Reappraisal,” *Hastings Women's LJ* 8 (1997): 313, accessed May, 30, 2017, http://heinonline.org/HOL/Page?handle=hein.journals/haswo8&div=18&g_sent=1&collection=journals.

targets at the center of the management of population growth,” the climax of a decades-long process “initiated and driven primarily by the activities of international women’s nongovernmental organizations.”²⁰ However, a growing number of authors have recently begun to question the effectiveness of such achievements. Susan Yoshihara argues that, “while ‘reproductive health’ language has been adopted in many nations, an international reproductive rights norm has not,”²¹ and in another article, Alice M. Miller and Mindy J. Roseman observe that “careful reflection on the state of norm development across sexuality and reproduction as a field reveals fractures and stagnation.”²² Generally these analyses, while valuable contributions, evaluate the reproductive rights movement as a whole, leaving unanswered the success of abortion rights in particular.

Other scholars have approached the issue from a variety of different angles. Dorothy Buss and Didi Herman explore the increased presence of the Christian Right in UN forums, while Louise Chappell investigates the conservative network which she sees as a countermovement to women’s groups. Like the scholarship on the reproductive rights movement, though, these do not focus specifically on abortion, and they tend not to take the human rights claims of the conservative groups seriously, viewing them as merely mimicking a successful strategy of the other side. Wendy Guns provides a very unique perspective, arguing that feminist anti-abortion NGOs have challenged abortion-related norms at the UN and “have been successful at bringing the development of progressive international law on this

²⁰ Jutta M. Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Washington, D.C.: Georgetown UP, 2007), 1, accessed May 30, 2017, <http://www.jstor.org/stable/j.ctt2tt5f5>.

²¹ Yoshihara, “Lost in Translation,” 367.

²² Alice M. Miller and Mindy J Roseman, “Sexual and reproductive rights at the United Nations: frustration or fulfilment?,” *Reproductive Health Matters* 19.38 (January 1, 2011): 102.

issue to a halt.”²³ June Samuel is one of the few scholars who has done a comparative study of advocacy for and against abortion rights at the UN level, which brought her to the conclusion that “the abortion-rights network has had more success in actually influencing the debate and changing the language of population policy to reflect their goals, whereas the influence of the anti-abortion network can really only be measured by the language that they have blocked.”²⁴ Her work is certainly one of the most useful sources on this particular topic, but because she focuses on population policy conferences, it is unclear whether or not her findings can be generalized across the UN as a whole.

Thesis and Methods

There is a lack of literature comparing the success of abortion rights and fetal rights activism within different arenas of the UN. Most research has looked only at one side or the other, and has not explained to a satisfactory extent the institution-specific factors which influence the effectiveness of abortion-related advocacy from one branch of the UN to another. Hence, the existing scholarship has tended towards somewhat exaggerating the agency of the movements themselves vis-à-vis each other and third party actors, underappreciating the continued relevance of non-rights-based interests, or overgeneralizing about the successes and failures of the two sides, sometimes treating the UN as monolithic. I seek to address these issues by doing a comparative study of the effectiveness of abortion-rights and fetal-rights

²³ Wendy Guns, “The Influence of the Feminist Anti-Abortion NGOs as Norm Setters at the Level of the UN: Contesting UN Norms on Reproductive Autonomy, 1995-2005,” *Human Rights Quarterly* 35.3 (2013): 673-700, accessed May 30, 2017, <https://muse.jhu.edu/article/516845/pdf>.

²⁴ June Samuel, “Adapting to Norms at the United Nations: the Abortion-Rights and Anti-Abortion Networks” (PhD diss., University of Maryland, 2007), 2, accessed May 30, 2017, <http://drum.lib.umd.edu/bitstream/handle/1903/7634/umi-umd-4906.pdf?sequence=1&isAllowed=y>.

movements in winning support for their causes across the most relevant UN platforms. Analyzing several aspects of both the international law and international development spheres, I find that institution-specific factors lead to significant variation in outcomes of abortion-related advocacy within the UN.

While it would be quite interesting to do a discourse analysis about how one movement has adapted to the rhetoric of the other, or a statistical survey of the survey of the resources dedicated to the abortion-related lobbying at the UN, a comparative case study best suits my purposes in this thesis. It enables “analysis and synthesis of the similarities, differences and patterns across two or more cases that share a common focus or goal,” such as human rights advocacy, and “produces knowledge that is easier to generalize about causal questions,” such as when and why one network has more influence than another.²⁵ Further, this method is “particularly useful for understanding how the context influences the success” of an endeavor.²⁶ By examining the effectiveness of abortion rights and fetal rights activism in relation to both international law and development policy, and covering several examples of each, I use within-case variance to reach a more balanced and nuanced evaluation than a standard case study might produce.²⁷ My primary methodological tools are qualitative: textual analysis of the frames and discourses surrounding abortion, process-tracing of cause and effect chains in which the movements participate, and historical research into relevant dimensions of the issues under consideration. This choice of mixed qualitative methods corresponds

²⁵Delwyn Goodrick, “Comparative Case Studies: Methodological Briefs - Impact Evaluation No. 9,” *UNICEF-IRC*, accessed May 30, 2017, <https://www.unicef-irc.org/publications/754/>.

²⁶ Ibid.

²⁷ John Gerring, “What Is a Case Study and What Is It Good for?” *The American Political Science Review* 98.2 (May, 2004): 348, accessed May 30, 2017, <http://www.jstor.org/stable/4145316>.

closely with that utilized in what is probably the best existing scholarship on this subject.²⁸

Key Concepts and Controversies

Throughout this paper I use the term “abortion” to refer to the deliberate termination of a pregnancy at any stage, following common usage of the word. However, it is worth noting that even the most widely accepted definitions vary in significant ways. First, “abortion” as a medical term encompasses both induced and spontaneous terminations, though in common use the latter is often called “miscarriage” to avoid confusion. Second, according to the definition preferred by many medical practitioners, gynecology textbooks, science dictionaries and the WHO, abortion refers only to the ending of pregnancy prior to fetal viability, whereas after this point the process is defined as birth.²⁹ And third, the definition of abortion used here does not necessarily require the death of the fetus, nor strictly speaking even the intention of its demise. While it is very rare, there are some cases in which fetuses have survived abortion, but unless otherwise noted it will be assumed that abortion involves fetal death. Inducement of abortion can be accomplished by expulsion or removal of the embryo or fetus and is performed by many different methods depending on the availability of equipment, knowledge of techniques, and gestational age of the fetus.³⁰ Under circumstances in which termination of

²⁸ Samuel, “Adapting to Norms at the United Nations,” 27-32.

²⁹ John O. Schorge and J. Whitridge Williams, “6. First-Trimester Abortion,” in *Williams Gynecology* (New York: McGraw-Hill Medical, 2008),

³⁰ For example, vacuum aspiration, which works by extracting the contents of the uterus through a small tube, is the method generally preferred by professionals due to its relative safety and ease. Medicated or drug-induced abortion is also becoming increasingly common and is a relatively effective, safe and non-invasive method for first trimester or early second trimester abortions. Late-term abortions, those performed in the second trimester or later (depending on which definition is used), are more invasive and dangerous due to the size of the fetus and difficulty of removal, which may require surgical instruments and manual dilation of the cervix.

pregnancy is considered to be medically necessary, the term “therapeutic abortion” is generally used.

A basic understanding of gestational development is critical for navigating the debates as well as making sense of the policies governing abortion. Historically, pre-natal development has been poorly understood, and in contemporary discourse it is often referred to inaccurately by partisans of the issues. There are several phases of development during a pregnancy, which are summarized in Figure 2.

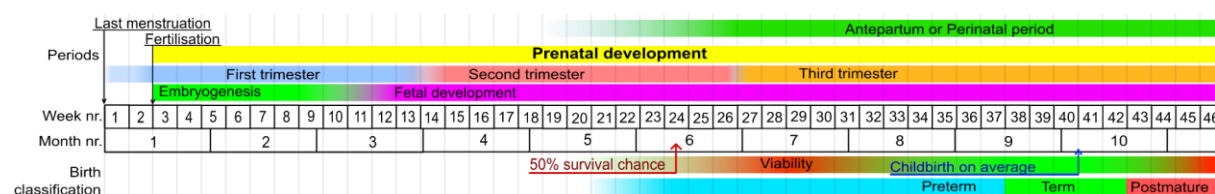


Figure 2: Prenatal Development³¹

Note that a developing human does not technically become a fetus until the 11th week of pregnancy (or 9th week after fertilization), when all major organs are in place. Viability, the reasonable chance of survival outside the uterus, is currently reached at about 22 weeks. However, this varies somewhat by country and is subject to change over time since it depends as much on the state of technology and the quality of healthcare as on fetal development.³²

Often, the discussion of the morality of abortion hinges upon questions such as whether the unborn are humans, whether they are alive, and whether they are persons. Some look to science to resolve these questions, but the answers naturally depend on how we define humanity, life, and personhood. I will not go into great detail here, but in my opinion the first two questions are rather easily answered from a biological perspective and a waste of energy to focus on, except to the extent that

³¹ “Prenatal development,” accessed May 30, 2017, https://readtiger.com/wkp/en/Prenatal_development.

³² Rachel Becker, “An Artificial Womb Successfully Grew Baby Sheep - and Humans Could Be next,” *The Verge*, April 25, 2017, accessed June 1, 2017.

they are surrogates for the third question. Human embryos and human fetuses are biologically human, belonging to the species *homo sapiens*, but they are at a very early stage of development and not necessarily equivalent to fully formed humans. Likewise, they are biologically living, having identifiable characteristics of life and the ability to die, though they are physiologically dependent on a woman's body. Just being alive is not necessarily significant, since tissue and blood cells are living but have no claim to personhood or rights. Whether or not the unborn are persons or "humans" in the sense of being rights-bearing individuals, and at what point they become so, is the main point worth debating, but is hardly a question for science.³³ At this point I will merely say that science does not provide the answer and cannot unless perhaps given a clear definition of what physical or psychological characteristics make someone a person entitled to rights. For example, medical science can provide insight regarding at what point a fetus becomes capable of surviving independently of a woman, but is unable to tell us whether or not this is relevant. So, it is the task of political and social construction to determine what constitutes personhood on the basis of philosophical, religious or other grounds.

"Human rights" is another important term that merits clarification. The language of human rights is premised on the idea that everyone possesses certain fundamental rights simply by virtue of their inherent dignity as a human being. Usually the right to life is considered the most basic, since possession of other rights depends upon it. Some distinguish between negative rights, such as freedom from bodily harm or from forced labor, and positive ones such as freedom of speech or the right to own property. One strength of the term "human rights" is that it is very inclusive, by definition extending to all humans. Yet this also leads to a problem for

³³ An embryo or fetus need not be considered a person in order to have rights; but if not, it is very unlikely to be granted equal rights. For example, animals may be given rights, but are practically never equal rights with human persons.

those who believe that embryos and fetuses should not be considered as rights-holders, since some argue that they should have rights on the grounds that they are human, at least in the sense discussed in the previous paragraph. Perhaps “rights of born persons” would be a more precise term for those who wish to make this distinction, reducing the problem of versatility. But “human rights” is the generally accepted term for all sides, and it does a good job of suggesting that such rights are inherent, fundamental, and universal. In practice, though, human rights are only protected where they are effectively regulated by governments or individuals; something can be regarded as a human rights violation, but there is not necessarily any remedy unless a national or international protocol can be effectively invoked. Unfortunately, “human rights” is used to refer both to rights held to be inherent and to those rights which are guaranteed by law. To avoid confusion, I will use the “international human rights” or “national human rights” to refer to only those rights which are protected by international or domestic law.

A further point can bring light to the discussion, which is that, from a human rights perspective, the divisions over abortion are not strictly speaking a liberal-conservative polarization, a religious/secular split or a feminist/non-feminist divide. First, as human rights is essentially a liberal discourse, the abortion rights and fetal rights frames are best seen as competing versions of liberalism, one of which happens to have been adopted by many conservatives. This shows the versatility of human rights language, since it can be used to make claims which turn out to be mutually exclusive of each other. Second, while many religions provide guidance on questions such as whether or not fetal life ought to be protected, there is much variation among followers of different faiths. Likewise, apart from religion there are plenty of reasons both for and against legal abortion. Neither does being feminist

necessitate that one has certain views about abortion, or vice-versa, despite standard media portrayal.³⁴ While the majority of feminists today favor legalized abortion, some do not, and a number of prominent early feminists spoke out against it.³⁵ Statistically and logically, there is an observable correlation between these identities and views such that liberals, non-religious people and feminists are more likely to support legalized abortion than conservatives, religious people and non-feminists. People's beliefs regarding other matters certainly influence their opinions about abortion, e.g. many followers of religion would denounce abortion even if no human rights were at stake, and most liberals would probably have nothing against fetal rights if it were not for their incompatibility with other more established rights claims.³⁶ However, generalizations such as "the feminist position on abortion" or "conservatives oppose abortion" should be avoided.

Finally, the terms used to identify the various parties to the abortion debate are a matter of controversy that should be addressed from the start. Language has been recognized as an important subfield of the topic.³⁷ The labels "pro-abortion" and "anti-abortion" are often used to identify political opponents, but very few people identify with them. Conversely, in some countries many activists self-identify with labels such as "Pro-life" or "Pro-choice," and plenty even identify with both.³⁸ But these terms are also controversial due to the implication that the opposing side is "anti-life" or "anti-choice." Hence, I follow the practice of putting them in quotation

³⁴ Alison M. Jaggar, "Abortion Rights and Gender Justice Worldwide: An Essay in Political Philosophy," in *Abortion: Three Perspectives*, ed. Michael Tooley (Oxford: Oxford University Press, 2009): 127-128.

³⁵ "Feminist History," Feminists for Life, accessed May 22, 2017, <http://www.feministsforlife.org/herstory/>.

³⁶ Rhonda Copelon et al., "Human Rights Begin at Birth," *Reproductive Health Matters* 13.26 (November, 2005): 125.

³⁷ Marie Costa, *Abortion: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 1991): xv.

³⁸ Cristina Stanojevich, "Overlapping 'Pro-Choice' and 'Pro-Life' Identities," *PRRI*, January 28, 2013, accessed June 1, 2017.

marks to indicate their contested and potentially offensive nature, and generally avoid the use of these labels in this thesis. Instead, I mainly use terms such as “proponents of legal abortion,” “opponents of legal abortion,” “abortion rights supporters,” “reproductive rights activists” and “fetal rights advocates.” As far as my research indicates, these terms are broadly acceptable to people on different sides and their meaning is fairly well understood.

Outline of Chapter Structure

Chapter One provides a historical background of abortion norms, various policy motivations, and the framing of abortion as a human rights issue. In Chapter Two, I study the influence of abortion rights and fetal rights advocacy in the UN regarding the creation of international legal norms, looking at international laws made by human rights conventions and their interpretation by the accountability bodies which monitor these treaties. The effectiveness of the two competing movements in shaping UN development policy in relation to abortion is considered in Chapter Three, which explores the role of the World Health Organization, the UN Population Fund, and the research published by these institutions with their partners. At the conclusion, I provide a brief summary and discussion of the major findings.

Chapter One - Historical Overview of the Abortion Debate

1.1 Introduction

In this chapter, I set the stage for the main body of the thesis by studying traditional and modern abortion norms, exploring the wide variety of viewpoints, and observing how the issue came to be discussed in its current form. Standard historical methods are used, focusing on assembling a well-balanced narrative based on analysis of a broad range of sources. As a person long interested in history, I find that it is worthwhile to know something about the context in which an issue has arisen. My main purposes in presenting a historical perspective are threefold: 1) to point out historical foundations for various viewpoints regarding abortion; 2) to indicate the complexity of motivations behind various policies governing the practice, some of which have little to do with the question of whose rights are at stake; and 3) to explore how, despite being a relatively new discourse, human rights has become the dominant frame of arguments both for and against legalized abortion. The initial section examines a few of the abortion norms which existed in the past in order to suggest precedents for various approaches to the issue, as well as to provide background for the context out of which the more recent ideas and practices arose. Next, I discuss a series of major developments which led to changes in abortion legislation during the past two centuries, bringing the topic into the present day and helping to explain the diversity of motivations behind current

policies. Finally, I trace the framing of abortion rights and fetal rights at the national level as a precursor to their advocacy at the international level.

1.2 Historical Abortion Norms

Research suggests that abortion has been practiced in most cultures throughout recorded history.³⁹ But it was often out of the public eye, ineffectively regulated if at all, and we have hardly any statistics about it prior to the past few centuries. Nevertheless, the ethics of abortion has long been a subject of interest for many serious thinkers. For example, among the Greeks, Aristotle considered that abortion early on during pregnancy did not kill a human being because, according to his philosophy, the fetus did not acquire a human soul until 40 to 90 days after conception.⁴⁰ Aristotle's view is among the earliest and most influential examples of the ideas that 1) whether or not an abortion is ethical depends upon the status of the fetus as a human person or not, and 2) this happens neither at conception nor at birth but somewhere in between. Hippocrates' famous oath included a prohibition against performing abortions, which may have been aimed at protecting women from an unsafe procedure or based on a belief that abortion is unethical killing. Either way, it is an early indication of the influential role of the medical profession in the issues, which continues today. Plato suggested that abortion could be used for certain eugenic purposes, representing another important trend in abortion policy.⁴¹

³⁹ Rochelle N. Shain, "A cross-cultural history of abortion," *Clinics in obstetrics and gynaecology* 13, no. 1 (1986): 1-17, accessed May 30, 2017, <https://www.ncbi.nlm.nih.gov/pubmed/3519038>.

⁴⁰ Aristotle et al., "Book VII, Chapter 3" in *History of Animals* (Cambridge, MA: Harvard UP, 1993): 583b.

⁴¹ Laurence H. Tribe, *Abortion: The Clash of Absolutes*, (New York: Norton, 1990): 55.

Under Roman law, abortion was allowed because the unborn child was not considered a person, but a woman could not procure an abortion against the wishes of her husband.⁴² Some might see this as a historical precedent for a legalist or property rights view of abortion. Biblical passages stipulated that if someone struck a woman and thereby caused a spontaneous abortion, he owed her a fine, seeming to indicate that 'property rights' were also present in the ancient Hebrew abortion laws - although in this case they were maternal rather than paternal. Christianity seems to have drawn from Greek thought on this matter but also added a more strongly moral element. Although the New Testament does not mention abortion, one of the earliest church documents condemns it unequivocally alongside infanticide, implying that it was always murder to kill a fetus. Other documents suggest that the morality of abortion depended to some extent on the motivations behind it; using it to cover up illicit sex was sinful. These are some of the oldest written examples of a view that abortion is wrong for other reasons besides killing a fetus, although it has also been frowned upon in many preliterate societies.⁴³

Augustine, one of the most educated and influential early church figures, also preached against both abortion and birth control for frustrating the natural, divinely-ordained connection between intercourse and procreation. But he adopted the Aristotelian view that hominization or ensoulment occurs during a point in the pregnancy usually referred to as the "quickening." Hence, Augustine believed that abortion was homicide after this time but not before. Islamic legal and moral tradition took a similar stance on taking the life of a fetus, placing ensoulment at four months of pregnancy. Scholars have differed on whether abortion before that time is morally acceptable but therapeutic abortion is universally allowed in the Islamic tradition up

⁴² Costa, *Abortion*, 1-2.

⁴³ Tribe, *The Clash of Absolutes*, 53.

to the present time. This represents a view that, regardless of the status of the fetus, the life of the woman is given precedence if pregnancy poses a danger. Judaic thought also generally follows this principle. In the thirteenth century, Thomas Aquinas gave further weight to the concept of “delayed hominization” regarding the question of at what point in the gestational period abortion kills a person, while also like Augustine he considered contraception and abortion at any stage to be unnatural and sinful. Roman Catholicism as a whole accepted this position.⁴⁴

Given that several of the most renowned scholars of the Western intellectual tradition promoted the idea, and it was supported by all the major Mediterranean religions, mid-gestation ensoulment as the determining factor in whether abortion is homicide can be considered the dominant Western view of the past two millennia. Hence I will refer to it as the “traditional” view.⁴⁵ But it should be recognized that, despite what intellectuals and clergy members said about abortion, the practice still existed among those who were familiar with abortion methods or had money to procure one. Even so, an unintended pregnancy was often hidden rather than terminated during the middle ages. Abortion laws tended to be relatively minor concerns for public officials, did not exist everywhere, and they seem to have been sparsely enforced. Likely it was difficult to prove the difference between abortion and miscarriage, as is still sometimes the case and besides this there was disagreement about when ensoulment occurred.

⁴⁴ Costa, 3.

⁴⁵ While this account has clearly been Eurocentric, historical abortion norms elsewhere are too widely varied to discuss here.

1.3 Rise of the Radical Movements

The 19th and 20th centuries each witnessed the rise of major movements with new perspectives on abortion and policy agendas to go along with them. During the 1800s, the trend was towards stricter abortion laws, at least in the most developed parts of the world including Europe, North America, and Japan. It came about as the result of a number of factors which converged in the same outcome. Some legislation appears to have been aimed at protecting women. For example, oral abortifacients were banned because they were poisonous. Professionalization of medicine was also a very influential movement, and physicians advocated strong laws against abortion, which was mostly performed by their competitors, including midwives, homeopaths, and unlicensed abortionists. Doctors also argued that they were the only ones qualified to determine when a therapeutic abortion was necessary. Concerns in the United States about falling birth rates also contributed to opposition against abortions.⁴⁶

But perhaps the development that would have the greatest long-term consequences was the breakdown of the scholarly consensus on mid-gestation ensoulment. Modern science began to raise questions about whether the “quickening” was any more significant than other stages of fetal development. Some Western legislatures began to drop the traditional distinction between early and late abortions, applying the same penalties to both, whereas previously there had been a lighter punishment or no punishment for pre-quickening abortions. Gradually the Catholic Church, arguably the world’s most influential authority on the question both then and now thanks to its vast membership and institutional embeddedness, adopted the position that human life should be equally respected

⁴⁶ Costa, 4-9.

and protected regardless of the level of development. While in general it had always considered abortion to be morally wrong at any point, the Church now held that every preborn human ought to be treated as a *fetus animatus*, essentially giving it the benefit of the doubt as to whether it had a soul or not. It was still the same old principle that abortion of an ensouled fetus is homicide, but with a new, uncompromising policy implication which gained remarkably broad yet short-lived support Catholics and Protestants, physicians, and even feminists.⁴⁷

Consequently, laws against abortion reached all-time highs in restrictiveness and geographic extent during the latter half of the 19th century and continuing well into the 20th.⁴⁸ Yet the tumultuous 1900s brought radically new ideas, movements and political systems onto the stage, earning the title, “The Age of Extremes.” While these have not necessarily been allies by any means, they have all challenged the emerging fetal protection and traditional reproductive norms through various secular approaches. One of the biggest challengers, whose effects are still visible today in the high abortion rates of post-communist countries, was Soviet realism. The Soviet Union was the first country to broadly liberalize its abortion laws, passing a law in 1920 aimed at monopolizing the medical industry, improving public health and keeping women in the workforce. State-provided abortions were not advertised as a woman’s right but a “necessary evil.” Although abortion would be banned by Joseph Stalin to fit his population management policies, it was reinstated after Stalin’s death.⁴⁹ Later, the most populous communist country, China, would use legal abortion and even forced abortions to achieve its own population agenda. While this

⁴⁷ Ibid.

⁴⁸ Notably, a substantial number of abortions continued to be performed illegally.

⁴⁹ Tribe, 55-59.

has led to problems regarding reproductive rights and sex selectivity, they are not the focus here.

Even before the Soviets came to power another movement was gaining ground which would find a different use for abortion. Drawing on Darwin's theory of evolution by natural selection, the eugenics movement sought to outdo nature by promoting reproduction of the "fittest" while weeding out "inferior" races as well as the handicapped. Along with sterilization and other means, abortion became a tool promoted by Eugenicists from the United States to Nazi Germany, though not for white women who were urged to have more children. As the century progressed eugenics quickly faded out of fashion and acquired a bad reputation, though many would argue that it still influences abortion policies and practice. Soon, another movement arose which sought to reduce fertility among certain group of people, but for different reasons. Population control advocates, concerned about the remarkable explosion of world population, have sought ways to reduce growth especially in less developed countries.⁵⁰ Contraception and sex education were the preferred means, as many opposed abortion initially, but eventually the population control establishment embraced its use as a backup form of birth control.

Socialized healthcare, eugenic thought and population management have all left their mark in contemporary abortion policy, but none of them targeted it in the same manner or to the same extent as the women's reproductive rights movement has. These activists have put forward yet another revolutionary proposal: access to legal abortion is not just a useful tool for achieving public policy goals in some cases, but is a fundamental right of all women. In contrast to the position that all abortion should be treated as homicide, abortion rights advocates an age-old practice on the

⁵⁰ Seamus Grimes, "From Population Control to 'Reproductive Rights': Ideological Influences in Population Policy," *Third World Quarterly* 19.3 (1998): 375-94.

basis of a very new principle. However, something these two perspectives tend to have in common is an uncompromising agenda, though with mutually exclusive goals, which often put them in direct conflict, as will be discussed subsequently. All the new approaches discard the old norms regarding ensoulment, but in quite different ways. While the view relying on traditional morality moved in the direction of regarding abortion at any stage as an act of murder (in addition to being a sin akin to contraception), the secular movement have justified their aims by placing ensoulment later, doubting the existence of a soul, redefining personhood, promoting moral relativism or simply being disinterested in the status of the largely invisible fetus.

1.4 Framing the Issues in Human Rights Discourse

Activists for and against legal abortion, not satisfied with existing policies and frustrated with normal legislative processes, adopted strategies of global framing and externalization, turning to national courts and then to international judicial bodies. The latter will be discussed in Chapter Two. First, though, their causes had to be framed as human rights issues, for which the work was mostly done at the domestic level. Within the human rights framework, abortion rights are a subset of women's reproductive rights, which in turn are a subcategory of women's rights in general. So, the recognition of abortion rights depends to some extent on prior recognition of women's entitlement to human rights and next that these include rights to a certain amount of control over reproduction and access the means to do so.⁵¹ It was important for women to first gain the status of equal rights holders in a critical mass

⁵¹ Reproductive rights are defined in various ways including constructions such as "sexual and reproductive health and rights" (SRHR)

of nations, which was accomplished mostly during the first half of the 20th century. Generally speaking, women have been fairly successful at gaining rights which were already held by men, such as property ownership and suffrage, as equality and non-discrimination have proven a persuasive rhetoric. But reproductive rights, particularly rights to any form of artificial birth control posed the additional challenge that these had not been previously established as rights for men. Many countries had explicitly banned the sale and advertisement of contraception and abortifacients alongside abortion.⁵²

Legalization and general acceptance of contraception required a dual “sexual revolution.” One link that had to be broken was the necessary connection between sex for pleasure and for procreation. Eventually, birth control advocates convinced courts and legislatures that couples should be allowed to use contraception to prevent unwanted pregnancies. The other link to be pried open was the idea that intercourse was reserved for the married and nothing should be done that might encourage sex outside of marriage. However, once contraception was made legal for some, it quickly became difficult not to permit its use by others, so the second step came rather easily compared to the first.⁵³ Although the sexual revolution has not gained as broad an acceptance as women’s political equality, the normalization of contraception brought abortion to the table.⁵⁴ Somewhat ironically, many had supported birth control as a way of reducing the number of abortions, but now that the operating logic was to eliminate unwanted pregnancies, abortion provided an

⁵² Costa, 8.

⁵³ Daniel K. Williams, "From Anti-Contraceptive Campaigns to Fetal Rights: The Pro-Life Movement's Attempt to Separate Itself from the Politics of Birth Control," *U.S. Catholic Historian* 34.1 (2016): 77-102.

⁵⁴ It is certainly possible to reject the sexual revolution and still consider abortion a good policy, but it is harder to argue that women have a right to abortion if one believes that the primary purpose of sex is for procreation and engaging in it constitutes acceptance of a responsibility for any children that may result.

alternative when prevention failed. Planned Parenthood, for example, originally opposed abortion, but has become the world's largest provider.

Having broadly achieved equality under the law in the first half of the century and a general acceptance of birth control in the mid-century, at least in most developed countries, activists could feasibly make the case for a right to abortion in the latter half of the 20th century. Usually the argument is something like the following: "Women have a right to abortion because they need to be able to control their fertility in order to achieve full equality with men. Only women need abortion, so laws restricting it are discriminatory against women. Furthermore, women have a right to abortion on the grounds of freedom from forced labor and torture, since an unwanted pregnancy may be very burdensome or traumatic. And finally, women have a right to abortion especially in cases where the pregnancy poses a danger to their most fundamental right, the right to life. The right to life likewise gives women the right of access safe and legal abortion services because otherwise thousands of women will continue to die as a result of unsafe abortions. Concerns about the fetus or embryo must be secondary, since it is not a fully-developed human, lacking important elements of personhood such as autonomy and self-awareness. Besides, even if it is a person, no one has the right to a woman's body against her will."

Faced with such rights claims, which proved an influential factor in liberalizing national-level abortion policies in most developed countries during the latter half of the century, how did opponents of legalized abortion respond?⁵⁵ They needed a logic that could compete on the new terms of debate, one that relied on a secular, liberal morality and did not depend on traditional view about sex and marriage. Human rights discourse held the most promise for this as well, and thus the fetal

⁵⁵ According to Women on Web, "Between 1950 and 1985 almost all developed countries liberalized their abortion laws for reasons of human rights and safety":
<https://www.womenonweb.org/en/page/619/abortion-laws-worldwide>

rights movement was born. In order to frame abortion as primarily an issue of fetal rights, activist had to separate it from birth control, an issue which they were losing the battle against. So, they began to move away from the longstanding condemnation of contraception and abortion as twin evils, being sins against procreation and the family, instead shifting the focus towards sympathy and protection for the unborn child.⁵⁶ As a human rights cause it goes along these lines: "The embryo or fetus is unique, living and human and should be considered a person. Like an infant or child, it is not independent but needs only nourishment, a protective environment, and time to develop into a fully grown adult human. Being human, it has the right to life, the most fundamental right without which all others are meaningless. Whatever rights a woman may have such as equality and freedom do not justify the taking of innocent human life. Even if one does not consider the fetus or embryo to be a person, it ought to be protected as something developing toward personhood, and not discriminated against for having no voice to defend itself."

1.5 Conclusion

The history I have related in the previous section primarily applies to North America, Western Europe, and a few other developed countries. In Eastern Europe and the post-Soviet states, as mentioned, abortion laws were mostly liberalized under single-party rule for the reasons of public health management. China's one-child policy legalized abortion on demand to achieve population control, which was also a major influence on changes to laws in Japan and a few other countries. What about Latin America, Africa, the Middle East, and South Asia? Across most of the

⁵⁶ Daniel K. Williams, "From Anti-Contraceptive Campaigns to Fetal Rights."

“global south,” distinguished among other things by a lower level of development, large Christian and Muslim populations, and a history of colonization by the “global north,” abortion laws currently remain restrictive. Yet these countries have become battlegrounds for the abortion rights and fetal rights movements, and likewise are themselves engaged in a fight within the United Nations, as will be discussed in the next chapter.

Chapter Two - The Abortion Contest in International Human Rights Law

2.1 Introduction

Moving forward to the questions posed in the research puzzle, this chapter focuses on the original formation and subsequent interpretation of international law. First, I address the question of whether either side of the abortion debate has succeeded in inserting its proposed rights into any international human rights treaties, and explore how the extreme difficulty of reaching consensus among UN member states on this issue affects the outcome. Then in the following section I compare the efforts and achievements of the abortion rights and fetal rights movements regarding their influence on the pronouncements made by the various bodies designed to hold states accountable to their obligations under international human rights treaties.

2.2 Abortion Rights and Fetal Rights in International Treaties: A Mutual Failure

Amidst the ashes of two world wars, the United Nations was founded in 1945. One of the foremost aims stated in its charter was “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of

men and women and of nations large and small.”⁵⁷ Humanity had never before experienced violence and abuse on such a large scale, and many were resolved to enshrine the most important rights in a concrete way. The result has been to create nine major international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). Within the UN structure, member states function as sovereign actors who voluntarily commit to certain binding standards of rights protection by drafting and signing such multilateral treaties. Since the conventions and resulting agreements have a wide audience and influence, they are an attractive forum for presenting human rights claims. Both advocates and opponents of legal abortion have naturally turned here to make the case that their proposed rights should be protected by international law. Nevertheless, my research indicates that neither side has managed to muster the support needed to have its rights claims explicitly or even implicitly recognized in any binding human rights agreement under the auspices of the UN, as I seek to demonstrate in this section.

The transnational reproductive rights movement has successfully advocated for the establishment of rights to abortion with in some countries, but it has had little success in getting these rights included in international treaties. Even the right to contraception is not explicit in international law, though it may be implicit. As Carole J. Petersen states, “the core UN human rights treaties ...do not expressly recognize a “right” to abortion. Indeed, advocates for women’s reproductive autonomy have frequently conceded that point.”⁵⁸ She continues: “The CEDAW comes the closest

⁵⁷ United Nations Charter, “Preamble,” accessed May 30, 2017, <http://www.un.org/en/sections/un-charter/preamble/index.html>.

⁵⁸ Carole J. Petersen, “Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment: Lessons from International Human Rights Law and the Potential Impact of the

to providing an express right to control one's fertility" in Article 16, giving women and men "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights."⁵⁹ But this language does not mention abortion, nor does it create new rights, being a non-discrimination instrument, and hence the regulatory committee "does not try to argue that governments are obligated to recognize a general "right" to abortion because of Article 16."⁶⁰ Rhonda Copelon et al. also acknowledge the absence of a direct right to abortion in any UN treaty, noting that the African Union's 2003 Protocol on the Rights of Women in Africa "represents the first time that an international human rights instrument has explicitly articulated a right to abortion," authorizing it in cases of rape or when there is a danger to the woman's life or health.⁶¹ Yet this is only applicable to states within the Union who have ratified the document.

Why has it been so difficult to put any right to abortion into international law when a majority of countries, including most of the wealthy and powerful ones, already recognize certain rights to abortion or at least permit it? The most obvious explanation is that human rights treaties are written using language that the drafters can agree upon (otherwise the nations they represent would not ratify the texts), and there are many nations which do not support a right to abortion. In fact, the issue is so sensitive and controversial that even ambiguous language which might imply the inclusion of abortion is met with strong opposition. Susan Yoshihara demonstrates this trend using the case of the Convention on the Rights of Persons with Disabilities in 2006. A proposal was made obligating states to provide disabled people with the

Convention on the Rights of Persons with Disabilities," *JL and Health* 121 (2015): 145, accessed May 30, 2017, <http://engagedscholarship.csuohio.edu/jlh/vol28/iss1/7>.

⁵⁹ Ibid.

⁶⁰ Ibid., 146.

⁶¹ Copelon et al., "Human Rights Begin at Birth," 125.

same level of healthcare as others, “including in the area of sexual and reproductive health.”⁶² Once the wording was presented to the delegates, “twenty-three of them called for its immediate deletion” because the phrase was undefined and open to interpretation. Before the discussion could move forward, they had to be reassured that this language did not include a right to abortion or any other new right, only mandating non-discrimination.⁶³ Most objections of this type come from predominantly Muslim and Christian nations in the Middle East, Africa, and Latin America, along with the Holy See, supported by an international advocacy network of ‘pro-family’ and fetal-rights NGOs.

If the reproductive rights movement has failed to gain the necessary consensus among states to have a right to abortion enacted into international law, so has the fetal rights movement failed to gain any explicit recognition that international human rights begin before birth. Again, the negotiating history of the core documents makes clear that even the passages which seem to possibly imply a right to life for the unborn have not been accepted without clarification in the discussions. For example, the Convention on the Rights of the Child states that “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.” But as Copelon et al. explain, the proposal by the Holy See to include this was accompanied by the qualification that its purpose “was not to preclude the possibility of an abortion,” and besides, this wording “does not legally obligate states to provide protection for the unborn, nor does it define the moment at which a fetus becomes a child.”⁶⁴ Likewise, when protection of the right to life “from the moment of conception” was

⁶² Yoshihara, “Lost in translation,” 395.

⁶³ Ibid., 393.

⁶⁴ Copelon et al., “Human Rights Begin at Birth,” 122.

included in the American Convention on Human Rights, the words “in general” were prefixed to the phrase, making exceptions possible.⁶⁵ Regardless, this is only a regional treaty, like that of the African Union.

Petersen notes that when the International Covenant on Civil and Political Rights (ICCPR) was drafted, “proposals to protect the right to life from the moment of conception were considered but ultimately rejected.” She sums up the situation thus: “The core UN human rights treaties simply do not recognize a fetus as a “human” or endow the fetus with rights under international law. This is a general principle, one that is consistent with the Universal Declaration of Human Rights (UDHR), which provides that “[a]ll human beings are born free and equal in dignity and in rights.”⁶⁶ Although the fetal rights movement has succeeded in establishing constitutional protection for the unborn in some countries, they are not able to accomplish this at the level of international law because too many states oppose it to reach the consensus necessary, just as in the case of abortion rights.. It should be noted that here the resistance naturally comes from the states with more liberal abortion laws, Europe being the leading example, as well as from a network of NGOs favoring reproductive rights. Despite the best efforts of each side to create an international human right for their proposed norms, neither supporters nor opponents of abortion rights can overcome the difficulties inherent in the consensus-based structure of drafting conventions. Generally speaking, the best they can do in such treaties is to block the other side, and thus abortion rights and fetal rights have mutually failed in international legislation.

⁶⁵ Ibid., 125.

⁶⁶ Petersen, “Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment,” 144-145.

2.3 UN Treaty-Monitoring Bodies: Abortion Rights by Creative Interpretation

Despite being unable to write their claims into international law, the movements learned that the next best thing is to read them into law. Neither side has been innocent when it comes to this strategy, and it is not uncommon to see them condemning their opponents' use of it while simultaneously adopting it themselves. Copelon et al., when describing how "the right to life was proposed as a principle of the Cairo ICPD Programme of Action, argue that, "because the right to life language had been so improperly co-opted by the anti-abortion forces..." it was important not to cede the 'right to life' to the right-wing, but rather to have international recognition that women's right to life is at stake when women are denied safe, legal abortion."⁶⁷ Likewise, fetal rights activists make similar claims in a major declaration called the San Jose Articles which was signed in 2011. Article 5 points out that "[n]o United Nations treaty can accurately be cited as establishing or recognizing a right to abortion," while Article 6 continues, "[t]reaty monitoring bodies have no authority... to interpret these treaties in ways that create new state obligations or that alter the substance of the treaties." Yet, Article 8 asserts "states may and should invoke treaty provisions guaranteeing the right to life as encompassing a state responsibility to protect the unborn child from abortion."⁶⁸ The tendency for each side to attempt delegitimization of their opponents by such means is all too common in abortion rhetoric.⁶⁹

⁶⁷ Copelon et al., "Human Rights Begin at Birth," 120.

⁶⁸ "The Articles," San Jose Articles, accessed May 30, 2017, http://sanjosearticles.com/?page_id=2.

⁶⁹ Dawn McCaffrey and Jennifer Keys, "Competitive Framing Processes in the Abortion Debate: Polarization-vilification, Frame Saving, and Frame Debunking," *The Sociological Quarterly* 41.1 (2000): 41-61.

But fetal rights proponents tend to be more conservative on issues of legal interpretation, preferring original intent or textualist approaches, whereas the predominantly liberal-minded reproductive rights promoters are bolder and more experienced in seeking the expansion of rights through judicial means. One defends this strategy, responding to the San Jose Articles' claim about the absence of abortion rights in global treaties by saying, "they're right. But this is beside the point. Reproductive rights advocates have used established human rights frameworks - which include the right to health - skillfully and successfully over the past decades to establish precedence [sic] for access to safe and legal abortion." She adds, "[t]here is nothing subversive or wrong about this - it's called advocacy."⁷⁰ The mission statement of the Center for Reproductive Rights echoes this perspective: "We are legal innovators seeking to fundamentally transform the landscape of reproductive health and rights worldwide." It is a point of pride that their lawyers "have boldly used legal and human rights tools" to expand access to services such as abortion and birth control in "groundbreaking cases before national courts, United Nations committees, and regional human rights bodies."⁷¹ Fetal rights attorneys, on the other hand, have often been on the defensive, and lag behind in the field of progressive legal rights-building.

Within the UN system, each of the core human rights treaties is monitored by a separate committee of experts on the particular subject, providing an accountability mechanism. NGOs participate in the process by submitting information and reports

⁷⁰ Jessica Mack, "What are the 'San Jose Articles'? Don't be fooled by the conservative global elites' latest ploy to attack science, women, and the United Nations," *Alternet*, October 25, 2011, accessed May 30, 2017, http://www.alternet.org/story/152868/what_are_the_%22san_jose_articles%22_don%27t_be_foiled_by_the_conservative_global_elites%27_latest_ploy_to_attack_science%2C_women%2C_and_the_united_nations.

⁷¹ "About Us," Center for Reproductive Rights, accessed May 30, 2017, <https://www.reproductiverights.org/about-us>.

which “point out governmental failures to comply” with international law.⁷² After reviewing the cases of countries which are parties to its treaty, each monitoring body publishes its Concluding Observations advising the governments on how to meet their obligations. These decisions are not necessarily binding, but “are considered highly authoritative interpretations,” and “civil society can use the Concluding Observations to lobby for law and policy reforms at the domestic level.”⁷³ For example, many organizations such as Human Rights Watch have referenced them in calling on governments to change laws on abortion, especially in Latin America, and in some cases have succeeded as in Colombia.⁷⁴ Petersen notes that “advocates for reproductive justice have made significant progress” by referring to provisions that “protect women’s rights to life, health, freedom from discrimination, autonomy in reproductive decision-making, and freedom from cruel, inhuman, or degrading treatment.” Since “UN agencies and human rights treaty-monitoring bodies have been receptive to this approach,” one might say that there is “an emerging right to abortion” as an international legal norm.⁷⁵ Indeed, by 2005, “treaty bodies had already pressured more than ninety countries over 120 times to liberalize their abortion laws” by broadly interpreting human rights, a practice “initiated and propelled by the transnational reproductive rights movement.”⁷⁶ Looking at the results, then, supporters of legal abortion have achieved much more in this area than opponents, who have little to show in comparison.

⁷² Petersen, “Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment,” 154-155.

⁷³ *Ibid.*, 149, 155.

⁷⁴ “Decisions Denied: Women’s Access to Contraceptives and Abortion in Argentina,” *Human Right Watch* 17.1B (June 2004): 66, accessed May 30, 2017, <https://www.hrw.org/sites/default/files/reports/argentina0605.pdf>.

⁷⁵ Petersen, “Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment,” 146.

⁷⁶ Yoshihara, “Lost in translation”, 368-369.

However, it would be inaccurate to attribute the imbalanced outcomes entirely to difference in the strategies and skills of the two movements. Another important factor is the structure of the review process and the composition of the expert committees. By the rules of procedure used in committee meetings, decisions require only a simple majority vote, which makes the accountability systems significantly more disadvantageous to minorities than the treaty-drafting process.⁷⁷ If reproductive rights supporters have a slight numerical advantage over fetal rights advocates among state delegations, they certainly outnumber abortion opponents among the human rights activists and experts who make up the monitoring bodies. For example, the Committee on the Elimination of Discrimination Against Women, which is responsible for reviewing compliance with the CEDAW, is currently comprised of 22 women and one man, most of whom have resumes indicating work on issues of women's rights and gender equality.⁷⁸ So it comes as little surprise that they tend to side with reproductive rights groups when commenting on the implementation of the treat, and many fetal rights groups likely are dissuaded from even devoting resources to this type of advocacy. Regardless, the abortion rights movement has found a valuable ally in the monitoring bodies.

An additional accountability system was established by the UN General Assembly in 2006 and has two main components. One is Universal Periodic Review (UPR), a "unique process which involves a review of the human rights records of all

⁷⁷United Nations, HRI/GEN/3/Rev. 3, International Human Rights Instruments, May 20, 2008, accessed May 30, 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f3%2fRev.3&Lang=en.

⁷⁸ "Committee on the Elimination of Discrimination against Women: Membership," *OHCHR*, December 31, 2016, accessed May 30, 2017, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx>.

UN Member States,”⁷⁹ while the other is the Human Rights Council, “an intergovernmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe.” The members are elected by the General Assembly “based on equitable geographical distribution” and are tasked with overseeing the UPR process.⁸⁰ Individual states can also submit recommendations to each other to generate “positive peer pressure toward meeting human rights obligations.”⁸¹ Rebecca Oas reported halfway through the second 5-year cycle of UPR that abortion had been mentioned over a hundred times in these recommendations, with 90% of them urging liberalization and better access. She also observed that 92% of abortion pressure came from Europe, especially the Nordic countries, with Latin American nations being on the receiving end 74% of the time.⁸² Yet, in Annual Reports of the Human Rights Committee, abortion is mentioned very few times. For example, the 2015 Report only condemns “forced abortions” in North Korea and urges improved provision of “safe abortion where such services are permitted by national law.”⁸³ No doubt the strong representation of the Global South on this committee limits abortion rights language.

⁷⁹ “Committee on the Elimination of Discrimination against Women: Universal Periodic Review,” *OHCHR*, accessed May 30, 2017, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

⁸⁰ “Committee on the Elimination of Discrimination against Women: About the HRC,” *OHCHR*, accessed May 30, 2017, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

⁸¹ Rebecca Oas, “Universal Periodic Review: Europeans Pressuring Latin Americans to Allow Abortion,” *C-Fam*, November 18, 2014, accessed May 30, 2017, https://c-fam.org/turtle_bay/universal-periodic-review-europeans-pressuring-latin-americans-allow-abortion/

⁸² *Ibid.*

⁸³ United Nations, A/HRC/29/L.16, General Assembly, June 29, 2015, accessed May 30, 2017, http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_29_L16.docx.

2.4 Conclusion

The intent of this chapter has been to consider the influence of abortion rights and fetal rights advocacy on international legal norms. My finding is that neither rights has made its way into any UN treaty due to divisions among member states. When it comes to interpretations of this law by treaty-monitoring bodies, reproductive rights proponents have had much more success than their rivals because of clever, proactive, and persistent campaign to extend existing rights, and are aided by the shared values of expert committees. Finally, I observed that in the UPR system, despite the work of abortion rights activists to create peer pressure, their recommendations are not included in the Human Rights Committee documents, where a large number of states have a say. Because international law is silent on abortion, but treaty bodies have largely adopted a reproductive rights framework, this has also affected how UN development agencies approach the issue, as will be seen in Chapter Three.

Chapter Three - Abortion Norms in United Nations Institutions

3.1 Introduction

Fetal rights and abortion rights advocates are not only interested in international law. “In addition to human rights,” they have also “fought on a second front: international development.”⁸⁴ Here too the UN has enormous impact through its agencies, conferences, research, and other such means. This chapter focuses on public health and population management, the two main areas of UN involvement, with one section dedicated primarily to the World Health Organization (WHO), and another devoted mostly to the United Nations Population Fund (UNFPA). Once again, I compare the effectiveness of the two competing movements in influencing abortion-related norms and practices.

3.2 The World Health Organization: From Reproductive Health to Safe Abortion

Established and signed by 61 states in 1946, the Constitution of the WHO defined health broadly as “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity,” and adopted principles such as “enjoyment of the highest attainable standard of health is one of the fundamental

⁸⁴ Yoshihara, “Lost in translation,” 369.

rights of every human being” and “[h]ealthy development of the child is of basic importance.”⁸⁵ Conceivably, this language could have been used to expand women’s rights to include abortion, or to extend human rights to the “unborn child.” But the organization, as the self-styled “Global Guardian of Public Health,” takes responsibility of keeping people healthy, not for protecting those who may or may not be people but certainly are not counted in the statistics used to measure progress. The WHO has approached abortion from a reproductive health perspective, especially since the founding of its Special Programme of Research, Development, and Research Training in Human Reproduction (HRP) in 1972.⁸⁶ It thus took very little effort to incorporate reproductive rights language, and today the WHO’s research arm combines the two approaches seamlessly, as seen HRP’s vision to achieve “a world where all women’s and men’s rights to enjoy sexual and reproductive health are promoted and protected, and all... have access to sexual and reproductive health information and services.”⁸⁷

Reproductive health and rights won the framing contest rather easily over fetal rights, but the inclusion of abortion in such terminology has always been ambiguous. HRP’s directors have sometimes hinted that they consider abortion a part of reproductive health by using the term in connection with other reproductive rights language.⁸⁸ In general, although “WHO staff may be sympathetic to the movement, they have walked a fine line in public pronouncements about abortion and human rights” because of pressure on one side from donor governments wanting them to

⁸⁵ “Constitution of WHO: Principles,” World Health Organization, accessed May 30, 2017, <http://www.who.int/about/mission/en/>.

⁸⁶ Yoshihara, “Lost in Translation,” 377-378.

⁸⁷ “Sexual and Reproductive Health,” World Health Organization, accessed May 30, 2017, http://www.who.int/reproductivehealth/about_us/hrp/en/

⁸⁸ Yoshihara, “Lost in translation,” 377-378.

promote it and on the other side from recipient governments which oppose it.⁸⁹ So the reproductive rights approach has not been particularly effective in gaining WHO endorsement of abortion. Nevertheless, the movement has had much success in influencing the organization through a strategy of linking lack of abortion services with maternal mortality and morbidity. Fred Sai, a major figure in reproductive rights and development, chaired a conference in 1987 which created the Safe Motherhood Initiative, calling for maternal deaths to be cut in half by 2000 and citing complications from poorly performed abortions as a leading cause.⁹⁰ The initiative helped bring enough attention to the problem of maternal mortality that world leaders included its reduction among the Millennium Development Goals (MDGs), although they rejected any reference to abortion.

Meanwhile, the WHO has actively taken up the cause, committing to reduce the number and side effects of “unsafe” abortion, which it defines as occurring “when a pregnancy is terminated either by persons lacking the necessary skills or in an environment that does not conform to minimum medical standards.”⁹¹ By their estimation, unsafe abortions lead to an annual 47,000 deaths, 8 million medical complications, and \$680 million in treatment costs. A “woman with an unwanted pregnancy who cannot access safe abortion” is considered “at risk of unsafe abortion,” and barriers to access include “restrictive laws; poor availability of services; high cost; stigma; conscientious objection of health-care providers; and unnecessary requirements,” for example, waiting periods, counselling and tests.⁹² Combined with the assertion that “restrictive abortion laws are not associated with

⁸⁹ Ibid., 386.

⁹⁰ C.E. Hord, “The Safe Motherhood Initiative and abortion care: compatible or not?,” *Initiatives in reproductive health policy* 2, no. 2 (1997): 1, accessed May 30, 2017, <https://www.ncbi.nlm.nih.gov/pubmed/12293727>.

⁹¹ WHO, “Preventing Unsafe Abortions.”

⁹² Ibid.

lower abortion rates,”⁹³ this approach provides a very useful alternative to the rights-based argument for abortion legalization. In the public health frame of the WHO, all restrictions on access to abortion are characterized as bad for health, expensive, ineffective, and otherwise worthless policies. Fetal rights proponents, for their part, protest the use of terms such as “safe” abortion, believing all abortions to be unsafe, and argue that there are better ways to reduce maternal mortality, but they have not persuaded the organization to change its position.

Publications by the WHO, its staff members and research partners further demonstrate their positions on abortion. Featured items on the organization’s website include “Safe abortion: technical and policy guidance for health systems” and “Health worker roles in providing safe abortion care,” as well as a fact sheet from the Guttmacher Institute, known for its promotion of abortion rights.⁹⁴ The International Planned Parenthood Federation (IPPF) is a member of HRP’s governing body, and is likewise famous for its abortion rights advocacy. Europe’s regional WHO office states that “abortion should rarely be necessary; when it is necessary, however, it should be accessible and safe.”⁹⁵ A WHO journal article argues that the “increasing influence of conservative political, religious, and cultural forces around the world threatens to undermine progress... and arguably provides the best example of the detrimental intrusion of politics into public health.”⁹⁶ Many other examples can be found illustrating ties with the reproductive rights movement. One fetal rights supporter laments that “the world’s premiere health organization has

⁹³ Guttmacher Institute, “Induced Abortion Worldwide.”

⁹⁴ “Abortion: Publications,” World Health Organization, accessed May 30, 2017, http://www.who.int/reproductivehealth/publications/unsafe_abortion/en/

⁹⁵ “Abortion,” World Health Organization Regional Office for Europe, accessed May 30, 2017, <http://www.euro.who.int/en/health-topics/Life-stages/sexual-and-reproductive-health/activities/abortion>.

⁹⁶ Anna Glasier et al., “Sexual and reproductive health: a matter of life and death,” *The Lancet* 368, no. 9547 (2006): 1595.

become the world's top abortion advocate."⁹⁷ While this is perhaps an exaggeration, it is also a testament to the success of abortion rights supporters who have capitalized on common interests in order to gain a general alliance with large, influential, and respected UN specialized agency.

3.3 The United Nations Population Fund: (Not) Every Pregnancy Wanted

The UN Population Fund (formerly "Fund for Population Activities," hence the acronym "UNFPA") advertises itself today with the slogan, "Delivering a world where every pregnancy is wanted, every childbirth is safe and every young person's potential is fulfilled."⁹⁸ Such prominence given to the concept of wanted pregnancy makes immediately apparent the influence which the reproductive rights movement has had on this development giant. As many have recognized, the 1994 ICPD in Cairo marked a major turning point: "international consensus around population and development has undergone a monumental paradigm shift away from demographic-centred policies towards an emphasis on women's political, social, economic, and health empowerment and human rights." Cairo "took family planning out of a population control context and put it into a broader context of sexual and reproductive health and rights (SRHR), and couched reproductive health as an

⁹⁷ Andrew Essig, "The World Health Organization's Abortion Agenda," *C-Fam*, May 24, 2010, accessed May 30, 2017, https://c-fam.org/white_paper/the-world-health-organizations-abortion-agenda/.

⁹⁸ "Frequently Asked Questions," UNFPA, accessed May 30, 2017, <http://www.unfpa.org/frequently-asked-questions#abortion>.

integral part of primary health care.”⁹⁹ Indeed, the Programme of Action for the UNFPA adopted at the conference strongly reflects this change, and SRHR language still permeates the institution, while one would search in vain to find anything resembling fetal rights.

June Samuel has conducted an extensive study of how the abortion rights and fetal rights networks adapted their strategies over time at ICPD conferences, and why the former have been more successful in agenda-setting and getting their desired language into documents. She suggests one reason is that the movements’ different values affected their ease of navigating the liberal and rational norms of the UN. More importantly, the abortion rights movement prevailed because it was “able to affect UN officials and employees, as well as government delegations,” but fetal rights proponents only managed to influence the latter.¹⁰⁰ Women’s rights NGOs and their allies had not only gained more experience in framing, information politics, and coalition building over two decades of activism and conference participation, they also had gained an advantage in institutional access and influence by developing relationships with UN staff who were “already working for the empowerment of women” and “sympathized with the reproductive health and rights activists who argued for safe abortion.” Due to their “confluence of interests at the UN Secretariat level, abortion-rights NGOs work closely with UN agencies and funds, and are able to use UN meetings and publications to network and advocate for their point of view.”¹⁰¹ Among the most important sympathizers with their cause were Nafis Sadik, Executive Director of the UNFPA, Fred Sai, who chaired the

⁹⁹ Serra Sippel, “ICPD beyond 2014: Moving beyond missed opportunities and compromises in the fulfilment of sexual and reproductive health and rights,” *Global public health* 9, no. 6 (2014): 620-630, accessed May 30, 2017, <http://www.tandfonline.com/doi/abs/10.1080/17441692.2014.921828>.

¹⁰⁰ Samuel, “Adapting to Norms at the United Nations,” 37.

¹⁰¹ *Ibid.*, 317-317.

conferences in Mexico City and Cairo, and the delegation of the Clinton Administration.

With all of these advantages, one might expect some semblance of a right to abortion to emerge from the ICPD. Yet the Programme of Action which came out of the Cairo conference only goes so far as to say that “every attempt should be made to eliminate the need for abortion,” that those with unwanted pregnancies should be given “reliable information and compassionate counselling, that “where abortion is not against the law, such abortion should be safe,” and that women should always have “access to quality services for the management of complications arising from abortion.”¹⁰² Besides, these very slight advances were essentially nullified by statements that “[i]n no case should abortion be promoted as a method of family planning” and that all “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.”¹⁰³ Furthermore, a clause is included at the outset of the document that “implementation of the recommendations contained in the Programme of Action is the sovereign right of each country, consistent with national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people.”¹⁰⁴ How did such a promising opportunity fail so thoroughly to create an abortion right? Just as in other cases where member states are the primary decision-makers, opponents were able to block any significant changes to the status quo. The Vatican delegation and other like-minded nations came together in defense of their own view of human rights.

¹⁰² “Programme of Action,” UNFPA, 20th Anniversary Edition, July 2, 1999, 89-90, accessed May 30, 2017, http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf.

¹⁰³ Ibid.

¹⁰⁴ Ibid., 11.

UNFPA's "frequently asked questions" page has an entry on whether or not the agency promotes abortion, to which the answer given is basically "no," with references made to the Cairo compromise.¹⁰⁵ But despite being "officially restrained from promoting abortion," several of the organization's "executive directors have played a key role in the movement." One means is through "partnering with and funding abortion advocacy groups," while another is indirectly promoting "the norm of abortion as reproductive health in its 'rights-based' programming."¹⁰⁶ An example of both methods at once is a publication, co-authored by the Center for Reproductive Rights, which mentions abortion over 150 times, making assertions such as "[h]uman rights-based strategies to reduce maternal mortality promote increased access to comprehensive sexual and reproductive health information and services including contraception, prenatal care, safe abortion, and post-abortion care."¹⁰⁷ Like the WHO, the UNFPA also has an institutional reason for siding with abortion rights rather than fetal rights. Its work began in 1969 when population management was at the top of the agenda amidst fears of massive overpopulation, and UN population policy still seeks to "accelerate fertility decline" even today.¹⁰⁸ Since "those who have worked at the UN on population issues since the 1970s believed [that] allowing men and women to control their fertility was both the answer to a population crisis and a step towards helping women better their lives," the "did not have far to go to be persuaded of the reproductive health and rights paradigm."¹⁰⁹

¹⁰⁵ UNFPA, "Frequently Asked Questions."

¹⁰⁶ Yoshihara, "Lost in Translation," 387.

¹⁰⁷ "ICPD and Human Rights: 20 years of advancing reproductive rights through UN treaty bodies and legal reform," UNFPA, accessed May 30, 2017, https://www.unfpa.org/sites/default/files/pub-pdf/icpd_and_human_rights_20_years.pdf.

¹⁰⁸ "UN Population Division Policy Brief, No. 2009/1," United Nations Department of Economic and Social Affairs, May 2009, accessed May 30, 2017, http://www.un.org/esa/population/publications/UNPD_policybriefs/UNPD_policy_brief1.pdf.

¹⁰⁹ Samuel, "Adapting to Norms at the United Nations," 316.

3.4 Conclusion

In this chapter, I have looked at the cases of the two largest UN development institutions to observe the relative success or failure of abortion-related advocacy. The WHO and UNFPA both tend to align with abortion rights groups in their policies and publications, due in part to mutual interests in reducing maternal mortality on the one hand and combating overpopulation on the other.

Conclusion

During the course of this thesis, I have reviewed the record of the abortion rights and fetal movements in advocating for their desired norms across four spheres of the United Nations. My purpose has been to compare the differences in success between the two movements as well as to try to understand the reasons why there is variation in the level of advocacy effectiveness from one institution to another.

I have found that, overall, the abortion rights network has achieved more favorable results than opponents to abortion have gained, but outcomes differ significantly in each area of advocacy due to institution-specific factors. For example, in the formation of international law via human rights treaties, neither side is able to gain explicit inclusion of its rights claims due to deep divisions among member states and the accompanying difficulty of reaching consensus. But when human rights law is interpreted by treaty-monitoring bodies, proponents of abortion legalization have far outperformed opponents by adopting more progressive strategies, in addition to being aided by greater sharing of common values with the membership of expert committees. Under a separate accountability system of Universal Periodic Review, where decisions are made instead by the member states, the situation is again a stalemate.

Considering the effectiveness of abortion rights and fetal rights promotion among UN development agencies, I have observed that World Health Organization and UN Population Fund both generally side with abortion rights activists, but with substantial variation in both the amount of support given and the reasons for taking this position. The WHO has not promoted abortion as a reproductive right, but has

aligned with abortion rights supporters primarily due to a mutual interest in reducing maternal mortality through the provision of safe abortion services, following a campaign launched by abortion rights groups. Meanwhile although the UNFPA shares an interest in maternal health, it has thoroughly embraced the reproductive rights perspective to the extent that it unofficially promotes a right to abortion despite restrictions in its Programme of Action.

Two major trends can be observed across all the cases considered. One is that, when decisions are in the hands of the states, the abortion rights and fetal rights movements are unable to gain much ground and must find a compromise, since the opposition on either side is too strong to reach consensus. But when UN staff and experts are in control, abortion rights advocates have been far more effective than their rivals at gaining recognition and support.

Bibliography

- "Abortion." World Health Organization Regional Office for Europe. Accessed May 30, 2017, <http://www.euro.who.int/en/health-topics/Life-stages/sexual-and-reproductive-health/activities/abortion>.
- "Abortion: Publications." World Health Organization. Accessed May 30, 2017. http://www.who.int/reproductivehealth/publications/unsafe_abortion/en/.
- Aristotle, A. L. Peck, D. M. Balme, and Allan Gotthelf. *History of Animals*. Cambridge, MA: Harvard University Press, 1993.
- Becker, Rachel. "An Artificial Womb Successfully Grew Baby Sheep - and Humans Could Be next." The Verge. The Verge, 25 Apr. 2017. Accessed June 1, 2017. <https://www.theverge.com/2017/4/25/15421734/artificial-womb-fetus-biobag-uterus-lamb-sheep-birth-premie-preterm-infant>
- Bolourian, Lily. "UN Report Classifies Lack Of Access to Abortion as "Torture"" Mic. October 25, 2015. Accessed May 30, 2017. <https://mic.com/articles/30925/un-report-classifies-lack-of-access-to-abortion-as-torture#.hK7W4YRW3>.
- Carter, Joe. "Do State-Level Anti-Abortion Laws Reduce Abortion Rates?" TGC - The Gospel Coalition. Accessed May 27, 2017. <http://www.thegospelcoalition.org/article/do-state-level-anti-abortion-laws-reduce-abortion-rates>.
- "Chapter I." United Nations. Accessed May 31, 2017. <http://www.un.org/en/sections/un-charter/chapter-i/index.html>.
- "Committee on the Elimination of Discrimination against Women." OHCHR | Membership. Accessed May 31, 2017. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx>.
- "Constitution of WHO: Principles." World Health Organization. Accessed May 31, 2017. <http://www.who.int/about/mission/en/>.
- Costa, Marie. *Abortion: A Reference Handbook*. Santa Barbara, CA: ABC-CLIO, 1996.
- Essig, Andrew. "The World Health Organization's Abortion Agenda." *C-Fam*. May 24, 2010, Accessed May 30, 2017. https://c-fam.org/white_paper/the-world-health-organizations-abortion-agenda/
- "Feminist History." Feminists for Life. Accessed May 31, 2017. <http://www.feministsforlife.org/herstory/>.
- "Frequently Asked Questions." UNFPA. Accessed May 30, 2017. <http://www.unfpa.org/frequently-asked-questions#abortion>.

- Glasier, Anna, A. Metin Gülmezoglu, George P. Schmid, Claudia Garcia Moreno, and Paul FA Van Look. "Sexual and reproductive health: a matter of life and death." *The Lancet* 368, no. 9547 (2006): 1595-1607.
- Gerring, John. "What Is a Case Study and What Is It Good For?" *The American Political Science Review* 98.2 (May, 2004): 348. Accessed May 30, 2017. <http://www.jstor.org/stable/4145316>.
- Goodrick, Delwyn. "Comparative Case Studies: Methodological Briefs - Impact Evaluation No. 9." UNICEF-IRC. Accessed May 30, 2017. <https://www.unicef-irc.org/publications/754/>.
- Grimes, David A. "United Nations Committee Affirms Abortion As A Human Right." *The Huffington Post*. January 25, 2016. Accessed May 30, 2017. http://www.huffingtonpost.com/david-a-grimes/united-nations-committee-affirms-abortion-as-a-human-right_b_9020806.html.
- Grimes, David A., Janie Benson, Susheela Singh, Mariana Romero, Bela Ganatra, Friday E. Okonofua, and Iqbal H. Shah. "Unsafe Abortion: The Preventable Pandemic." *The Lancet* 368, no. 9550 (11 2006): 1908-919. doi:10.1016/s0140-6736(06)69481-6.
- Grimes, Seamus. "From Population Control to 'Reproductive Rights': Ideological Influences in Population Policy." *Third World Quarterly* 19.3 (1998): 375-94.
- Guns, Wendy. "The Influence of the Feminist Anti-Abortion NGOs as Norm Setters at the Level of the UN: Contesting UN Norms on Reproductive Autonomy, 1995-2005." *Human Rights Quarterly* 35, no. 3 (2013): 673-700. doi:10.1353/hrq.2013.0043.
- Hord, C. E. "The Safe Motherhood Initiative and abortion care: compatible or not?." *Initiatives in reproductive health policy* 2, no. 2 (1997): 1. Accessed May 30, 2017. <https://www.ncbi.nlm.nih.gov/pubmed/12293727>.
- "ICPD and Human Rights: 20 years of advancing reproductive rights through UN treaty bodies and legal reform." UNFPA. Accessed May 30, 2017. https://www.unfpa.org/sites/default/files/pub-pdf/icpd_and_human_rights_20_years.pdf.
- Induced Abortion Worldwide." Guttmacher Institute. August 03, 2016. Accessed May 27, 2017. <https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>.
- Joachim, Jutta M. *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights*. Washington, D.C.: Georgetown University Press, 2007.
- Keck, Margaret Elizabeth., and Kathryn Sikkink. *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press, 1998.
- Laurence, Lianne. "Catholics Must 'resist' Pope Francis' Alliance with Pro-abortion United Nations: Catholic Coalition." *LifeSiteNews*. February 28, 2017. Accessed May 30, 2017. <https://www.lifesitenews.com/news/vatican-under-francis-has-betrayed-children-by-supporting-un-pro-abortion-g>.

- Miller, Alice M., and Mindy J. Roseman. "Sexual and Reproductive Rights at the United Nations: Frustration or Fulfilment?" *Reproductive Health Matters* 19, no. 38 (01 2011): 102-18. doi:10.1016/s0968-8080(11)38585-0.
- Oas, Rebecca. "Universal Periodic Review: Europeans Pressuring Latin Americans to Allow Abortion." C-Fam. Accessed May 31, 2017. https://c-fam.org/turtle_bay/universal-periodic-review-europeans-pressuring-latin-americans-allow-abortion/.
- Petersen, Carole J. "Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment: Lessons from International Human Rights Law and the Potential Impact of the Convention on the Rights of Persons with Disabilities." *JL and Health* 121 (2015): 121-163. Accessed May 30, 2017. <http://engagedscholarship.csuohio.edu/jlh/vol28/iss1/7>.
- "Preamble." United Nations. Accessed May 27, 2017. <http://www.un.org/en/sections/un-charter/preamble/index.html>.
- "Preventing Unsafe Abortion." World Health Organization. Accessed May 27, 2017. <http://www.who.int/mediacentre/factsheets/fs388/en/>.
- "Programme of Action." UNFPA. 20th Anniversary Edition. July 2, 1999. Accessed May 30, 2017. http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf.
- "Repealing Anti-abortion Laws Would save the Lives of Nearly 50,000 Women a Year – UN Experts." UN News Center. September 27, 2016. Accessed May 30, 2017. <http://www.un.org/apps/news/story.asp?NewsID=55141#.WSmilOt96JA>.
- Sadasivam, Bharati. "The Rights Framework in Reproductive Health Advocacy--A Reappraisal." *Hastings Women's LJ* 8 (1997): 313. Accessed May, 30, 2017. http://heinonline.org/HOL/Page?handle=hein.journals/haswo8&div=18&g_sent=1&collection=journals.
- Samuel, June. "Adapting to Norms at the United Nations: the Abortion-Rights and Anti-Abortion Networks." PhD diss., University of Maryland, 2007. Accessed May 30, 2017. <http://drum.lib.umd.edu/bitstream/handle/1903/7634/umi-umd-4906.pdf?sequence=1&isAllowed=y>
- Schorge, John O., and J. Whitridge Williams. "6. First-Trimester Abortion." In *Williams Gynecology*. New York: McGraw-Hill Medical, 2008.
- "Sexual and Reproductive Health." World Health Organization. Accessed May 30, 2017. http://www.who.int/reproductivehealth/about_us/hrp/en/
- Shain, R. N. "A Cross-cultural History of Abortion." *Clinics in Obstetrics and Gynaecology*. March 1986. Accessed May 27, 2017. <https://www.ncbi.nlm.nih.gov/pubmed/3519038>.
- Sippel, Serra. "ICPD beyond 2014: Moving beyond missed opportunities and compromises in the fulfilment of sexual and reproductive health and rights." *Global public health* 9, no. 6 (2014): 620-630. Accessed May 30, 2017. <http://www.tandfonline.com/doi/abs/10.1080/17441692.2014.921828>.

- Stanojevich, Cristina. "Overlapping "Pro-Choice" and "Pro-Life" Identities." *PRRI*. January 28, 2013. Accessed June 1, 2017. <https://www.prri.org/spotlight/graphic-of-the-week-overlapping-pro-choice-and-pro-life-identities/>
- "The Articles." San Jose Articles. Accessed May 30, 2017. http://sanjosearticles.com/?page_id=2.
- "The Top 10 Causes of Death." World Health Organization. Accessed May 27, 2017. <http://www.who.int/mediacentre/factsheets/fs310/en/>.
- "The World's Abortion Laws Map." Center for Reproductive Rights. 11 Oct 2011. Accessed May 30, 2017. Web.
- Tooley, Michael. *Abortion: Three Perspectives*. New York: Oxford University Press, 2009.
- Tribe, Laurence H. *Abortion: The Clash of Absolutes*. New York: Norton, 1990.
- "UN Population Division Policy Brief, No. 2009/1." United Nations Department of Economic and Social Affairs. May 2009. Accessed May 30, 2017. http://www.un.org/esa/population/publications/UNPD_policybriefs/UNPD_policy_brief1.pdf.
- United Nations HRI/GEN/3/Rev. 3. International Human Rights Instruments. May 20, 2008. Accessed May 30, 2017. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f3%2fRev.3&Lang=en.
- "United Nations Human Rights Council." OHCHR | Welcome to the Human Rights Council. Accessed May 31, 2017. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.
- "Universal Periodic Review." OHCHR. Accessed May 31, 2017. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.
- Williams, Daniel K. "From Anti-Contraceptive Campaigns to Fetal Rights: The Pro-Life Movement's Attempt to Separate Itself from the Politics of Birth Control." *U.S. Catholic Historian* 34, no. 1 (2016): 77-102. doi:10.1353/cht.2016.0007.
- Yoshihara, Susan. "Lost in translation: the failure of the international reproductive rights norm." *Ave Maria L. Rev.* 11 (2012): 367. accessed May 30, 2017. <https://s3.amazonaws.com/cfam/wp-content/uploads/AveMariaLawReviewv11i2.Yoshihara.final.pdf>.