

# Being Pulled Apart: The Competing Influences of the United Nations and the Catholic Church on Abortion Laws in Latin America

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## I. INTRODUCTION

Latin America has some of the most stringent abortion laws in the world.<sup>1</sup> This rigid lack of access to legal abortions can be attributed to two intertwining factors: the fact that Latin American nations are heavily influenced by the Roman Catholic Church and the fact that most Latin

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1. See Lina Forero-Niño, *The Abortion Debate in Latin America*, 18 L. & BUS. REV. AM. 235, 235 (2012).

American nations do not equate abortion rights with human rights.<sup>2</sup> This combination of factors has allowed most Latin American countries to maintain a relatively tight hold on legislation restricting abortion all together or restricting legal abortions to cases of rape, incest, or when the pregnancy poses a threat to the mother's health or life.<sup>3</sup> The only three Latin American countries that allow abortion without restriction during the first trimester of the pregnancy are Cuba, Uruguay, and Guyana. Mexico City, Mexico, also allows abortions on a state level.<sup>4</sup>

However, the United Nations (U.N.) and the international community as a whole have been able to influence some Latin American nations by suggesting, through U.N. bodies, that abortion rights are human rights and that preventing women from obtaining safe abortions, especially in exigent circumstances, such as rape, incest, or when the woman's life is in severe danger, contradicts international treaties, such as the Convention on the Rights of the Child and the American Convention on Human Rights.<sup>5</sup> However, there is no international law on the matter of abortion, and the U.N.'s interpretation of its treaties is simply that, an interpretation or recommendation, making any influence that the U.N. has on Latin American nations purely discretionary.<sup>6</sup>

This Comment will explore the dichotomous influence of the Catholic Church and the U.N. on abortion rights in the Latin American region. It will first look at abortion laws throughout the region from the most restrictive to the most progressive. It will then delve into the history and stance that the Catholic Church takes on abortions and how the Church's stance has affected the development of reproductive rights in Latin America. It will then explore the various U.N. treaties that comment on abortion and the right to life and how those treaties and the

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2. Rishona Fleishman, *The Battle Against Reproductive Rights: The Impact of the Catholic Church on Abortion Law in Both International and Domestic Arenas*, 14 EMORY INT'L L. REV. 277 (2000); CTR. REPROD. RIGHTS, ABORTION AND REPRODUCTIVE RIGHTS IN LATIN AMERICA: IMPLICATIONS FOR DEMOCRACY i (Mar. 2015), [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/IAD9794%20Repro%20Rights\\_web.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/IAD9794%20Repro%20Rights_web.pdf).

3. Lorena Iñiguez Elebee & Ann Simmons, *Abortion Laws in Latin America*, L.A. TIMES (Feb. 25, 2016), <http://www.latimes.com/visuals/graphics/la-fg-g-zika-abortion-20160225-htmlstory.html>.

4. *Abortion in Latin America and the Caribbean*, GUTTMACHER INST. (May 2016), <https://www.guttmacher.org/fact-sheet/facts-abortion-latin-america-and-caribbean>; CTR. REPROD. RIGHTS, *supra* note 2, at 2.

5. Kelsey Zorzi, *The Impact of the United Nations on National Abortion Laws*, 65 CATH. U. L. REV. 409, 414 (2015); Ligia M. De Jesus, *Treaty Interpretation of the Right to Life Before Birth by Latin American and Caribbean States: An Analysis of Common International Treaty Obligations and Relevant State Practice at International Fora*, 26 EMORY INT'L L. REV. 599, 600 (2012).

6. Zorzi, *supra* note 5, at 412-13; De Jesus, *supra* note 5, at 618.

U.N. as a whole have worked to influence Latin American nations to reevaluate their abortion laws along with the Church's response to such treaties. Finally, given the aforementioned information, this Comment will look to the future to examine whether the Catholic Church or the U.N.'s influence seems to be swaying the Latin American region towards more progressive or restrictive abortion laws.

## II. ABORTION LAWS IN LATIN AMERICA

In the vast majority of Latin American nations, abortion is illegal outside some very limited exceptions.<sup>7</sup> Abortions in Latin America are often defined as crimes against “persons, . . . human life, . . . or personal integrity.”<sup>8</sup> This can be attributed to the Catholic Church's influence in Latin American politics.<sup>9</sup> The influence of the Church will be discussed at length later in this Comment; however, for purposes of understanding various abortion restrictions in Latin America, it is important to know that there are three major premises that the Catholic Church takes in terms of the fetus and abortion.<sup>10</sup> The three tenets the Church takes are that the fetus is a creation of God, is a human being (thus, abortion is murder), and those who engage in abortion are subject to the judgment of God.<sup>11</sup> All Latin American nations, except for Cuba and Belize,<sup>12</sup> have ratified the American Convention on Human Rights (ACHR), which states: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”<sup>13</sup> Given the language stating the right to life begins at the moment of conception, many Latin American countries have taken this to imply an obligation to protect fetal life from the moment of conception in the same way it would the life of a born human being.<sup>14</sup> Due to the influence of the Catholic Church and the region's interpretation of the ACHR, it becomes clear that since the ratification of the ACHR, Latin American nations have taken abortion to be a violation of the human rights of the fetus,

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7. See Forero-Niño, *supra* note 1, at 235.

8. *Id.*; see Ligia M. De Jesus, *Abortion in Latin America and the Caribbean: A Comparative Study of Domestic Laws and Relevant Jurisprudence Following the Adoption of the American Convention on Human Rights*, 20 ILSA J. INT'L & COMP. L. 1, 3-4 (2013) [hereinafter De Jesus, *Abortion in Latin America and the Caribbean*].

9. Fleishman, *supra* note 2, at 280-81, 289.

10. *Id.* at 280.

11. *Id.*

12. Organization of American States, American Convention on Human Rights, pmbl., Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter ACHR].

13. *Id.* art. 4(1).

14. See De Jesus, *Abortion in Latin America and the Caribbean*, *supra* note 8, at 2.

rather than taking the view that the inability of women to obtain an abortion is a violation of their human rights.<sup>15</sup>

As mentioned earlier, the only Latin American nations that have legalized abortion on request during the first trimester of a woman's pregnancy are Cuba, Uruguay, Guyana, and Mexico City, Mexico.<sup>16</sup> However, despite the freedom to obtain an abortion, in order to exercise this right, many of these nations have a plethora of requirements that the woman must meet in order to obtain a legal and safe abortion.<sup>17</sup> Some of these requirements include a medical consultation in a public hospital, a woman providing her physician with the reason she is seeking an abortion, counseling, a waiting period, proof of informed consent, and proof of citizenship. In some nations, the facility that performs the abortion is prohibited from obtaining any type of financial profit from the performance of abortions.<sup>18</sup>

Conversely, abortion is outright illegal in Chile, the Dominican Republic, El Salvador, Haiti, Honduras, and Nicaragua.<sup>19</sup> However, in Chile, which is the only nation to actually imprison women for a violation of its abortion laws, the president is pushing for the legalization of abortion.<sup>20</sup> From 1931 until 1989, abortion was legal if it was needed to save the life of the mother, but that exception was eliminated by the military regime in 1989.<sup>21</sup> Throughout the 1990s, there was no sign that the Chilean government would ease its grip on the tight abortion restrictions.<sup>22</sup> In fact, in the late 1990s, the Chilean senate met to discuss the possibility of increasing the prison sentences for physicians convicted of performing abortions.<sup>23</sup> However, in recent years, Chile has seen a vast change in government, as well as its views towards reproductive rights.<sup>24</sup> In 2014, Chilean President Michelle Bachelet ran and was elected on the platform of improving women's reproductive rights in the

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15. See *id.* at 2, 13; Fleishman, *supra* note 2, at 280, 289.

16. CTR. REPROD. RIGHTS, *supra* note 2, at 2; *Abortion in Latin America and the Caribbean*, *supra* note 4.

17. De Jesus, *Abortion in Latin America and the Caribbean*, *supra* note 8, at 35.

18. *Id.*

19. *Abortion in Latin America and the Caribbean*, *supra* note 4.

20. Tania Jiyoung Cho, *The Double Moral: Compliance of International Legal Obligations of Reproductive Rights vs. Allegiance to the Catholic Church*, 5 SW. J.L. TRADE AM. 421, 449 (1998); Max Radwin, *Chile's President Wants To Ease Abortion Ban, but Opponents Push Back*, NPR (Oct. 20, 2016), <http://www.npr.org/sections/parallels/2016/10/20/497983252/chiles-president-wants-to-ease-abortion-ban-but-opponents-push-back>.

21. Cho, *supra* note 20, at 449.

22. *Id.* at 450.

23. *Id.*

24. Radwin, *supra* note 20.

nation.<sup>25</sup> In September of 2016, the lower house of Chile's legislature passed a bill that would legalize abortion in cases of rape, when an abortion is necessary to save the woman's life, and conditions that would end in a stillbirth.<sup>26</sup> The Catholic Church in Chile published an eighteen-page document against the legislation that would ease the ban on abortion in the nation arguing that such a shift would "foster a culture of death."<sup>27</sup>

Nicaragua's legislation, unlike Chile's, has become much stricter during the twenty-first century.<sup>28</sup> In 2006, instigated by a case involving the rape of a nine-year-old Nicaraguan girl, the Nicaraguan government passed Law 603, which eliminated previous exemptions in Nicaragua's abortion ban, including exemptions for rape victims, incest victims, or abortions that were necessary to save the health and/or the life of the mother.<sup>29</sup> Rosita, the victim whose case instigated the tightening of Nicaraguan abortion laws, was raped and impregnated by an adult man on a coffee plantation in Costa Rica in 2003.<sup>30</sup> She was taken to obtain a therapeutic abortion by her parents, which was legal at the time both in Nicaragua and in Costa Rica.<sup>31</sup> Both her parents believed that terminating her pregnancy was the only way their child would have any hope of recovering mentally and physically from her rape.<sup>32</sup> Rosita's case raised an enormous amount of political debate, but the issue was shelved until the 2006 presidential elections in Nicaragua.<sup>33</sup> The Catholic Church and conservative Nicaraguan politicians took advantage of this polarized election to push their antiabortion agenda.<sup>34</sup> The Church obtained 200,000 signatures in support of Law 603, which banned abortions completely, and presented it to the Nicaraguan Congress who subsequently passed the law after twenty-five historically left wing Congressmen supported Law 603 in an alleged attempt to appease their conservative electorate.<sup>35</sup>

Abortion is permitted if it is necessary to save the woman's life in Antigua and Barbados, Brazil, Dominica, Guatemala, Mexico,

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25. *Id.*

26. *Id.*

27. *Id.*

28. Jocelyn E. Getgen, *Reproductive Injustice: An Analysis of Nicaragua's Complete Abortion Ban*, 41 CORNELL INT'L L.J. 143, 151-52 (2008).

29. *Id.* at 151.

30. *Id.* at 152.

31. *Id.* at 153.

32. *Id.* at 152.

33. *Id.* at 153-54.

34. *Id.*

35. *Id.*

Panama, Paraguay, and Venezuela.<sup>36</sup> In Panama, in addition to all the aforementioned reasons, abortion is also permitted if the fetus has an impairment that is incompatible with life.<sup>37</sup> In Brazil, an abortion is permitted in cases where the woman was the victim of rape.<sup>38</sup> However, due to an increase in the number of Evangelical Christians in Brazil's Congress, the nation is clamping down on abortion clinics to ensure that abortions are only performed for the two aforementioned reasons.<sup>39</sup> In 2016, a physician and anesthesiologist were arrested during a procedure for performing an abortion and are facing up to a four-year prison sentence.<sup>40</sup> The office was in one of the wealthiest areas of Brazil, which notes an important dichotomy in the Latin American abortion dialogue.<sup>41</sup> The only women who are able to obtain safe and sterile abortion procedures are those with the economic means to do so.<sup>42</sup> Because abortion in most of Latin America is illegal under certain circumstances, the only option for women is to come up with the cost, which many women are unable to do, or to obtain a clandestine, and therefore an unsafe, abortion.<sup>43</sup>

The next progressive level is nations that permit "therapeutic" abortions, meaning that an abortion is legal if it is done to maintain the physical health of the mother.<sup>44</sup> Nations allowing abortions in these circumstances include Argentina, the Bahamas, Bolivia, Costa Rica, Grenada, Peru, and Ecuador, where abortions are also permitted if a woman with a mental disability is a rape victim.<sup>45</sup>

Nations that allow abortions for all the above reasons and to preserve the mental health of the woman include Colombia, Jamaica, and Trinidad & Tobago.<sup>46</sup> Barbados and Belize also allow abortions for socioeconomic reasons, meaning that if the mother cannot adequately provide for the child, abortion is permitted.<sup>47</sup>

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36. *Abortion in Latin America and the Caribbean*, *supra* note 4.

37. *Id.*

38. *Id.*

39. Sophie Davies, *Faced with Strict Laws, Brazilian Women Keep Abortions Secret*, REUTERS (May 25, 2016), <http://www.reuters.com/article/us-abortion-brazil-secrets-idUSKCN0YG1GP>.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Abortion in Latin America and the Caribbean*, *supra* note 4 (The permission of "therapeutic" abortions encompasses abortions, which are needed to save the woman's life.).

45. *Id.*

46. *Id.*

47. *Id.*

Because Mexico, not unlike the United States, has both federal and state legislation, the range in abortion laws varies across the nation.<sup>48</sup> Mexico City in 2007 was the first Mexican state to decriminalize abortion by permitting abortions for any reason before the end of the first trimester of pregnancy.<sup>49</sup> The new legislation was also quite progressive for the region in that it required government-funded hospitals and clinics to provide abortions to Mexico City residents for free and to provide abortions for nonresidents for a small fee.<sup>50</sup> The change in law was met with opposition both from the Catholic Church and from the Mexican government.<sup>51</sup> However, in 2008, the Mexican Supreme Court upheld Mexico City's legislation, making Mexico City one of the most, if not the most, progressive regions in Latin America to date.<sup>52</sup> Yet, the majority of the remaining Mexican states did not follow Mexico City's lead and, in fact, took their legislation in the opposite direction, enacting right to life amendments that would allow for abortion only in cases of rape and to save the woman's life.<sup>53</sup> Mexico's Supreme Court also upheld these states' amendments on the ground that Mexican law has long since recognized the right to life of an unborn fetus as a protected right.<sup>54</sup> Through this debate, it is clear that Mexico's Supreme Court is unwilling to take a stance on abortion since it upheld both Mexico City's decriminalization legislation and a multitude of other states' right to life legislations.<sup>55</sup>

Mexico City has proven to be an anomaly in an otherwise highly restrictive region in terms of abortion rights.<sup>56</sup> The Catholic Church can be credited with these highly restrictive abortion rights, a goal that it has achieved through its political influence across the nation, as 90% of the region's population identifies as Roman Catholic.<sup>57</sup>

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48. See Forero-Niño, *supra* note 1, at 237.

49. *Id.*

50. *Id.*

51. *Id.* at 238.

52. *Id.* at 237.

53. *Id.* at 237-38.

54. *Id.* at 239.

55. See *id.* at 237-41.

56. *Id.* at 237-38.

57. Cho, *supra* note 20, at 431.

### III. CATHOLIC CHURCH'S INFLUENCE ON ABORTION LAWS IN LATIN AMERICA

#### A. *Brief History of the Catholic Church in Latin America*

Since the Conquistadors came to what is now known as Latin America, the Catholic Church has had an enormous influence on the culture and society of Latin America.<sup>58</sup> When the Spanish arrived in Latin America, they first thought that the Native Americans did not hold any religious beliefs since the way they worshipped was vastly different than the Europeans.<sup>59</sup> Upon the realization that the Native Americans did, in fact, hold religious beliefs, they quickly deemed their religious practices as satanic worship and, through either force or persuasion, inserted Catholic images and symbols on sacred sites, and the native priests had to accept this change.<sup>60</sup> As the Spanish conquered the entirety of Latin America, the native temples ceased to bear any native symbolism and were effectively converted into places of Catholic worship.<sup>61</sup> Additionally, as the Spanish colonized Latin America, women were relegated either to the home or to the convent, which was a notable shift from Native American culture.<sup>62</sup>

During the mid-1820s when Latin America gained independence from Spain, there was confusion as to the relationship these newly founded nations would have with the Catholic Church.<sup>63</sup> All Latin American nations that were former Spanish colonies put the Catholic Church in their preliminary constitutions as having a total spiritual monopoly over the nations, as well as power over education and the civil registry.<sup>64</sup> Despite wealth of power given to the Church by Latin American countries, the Vatican at first did not recognize these newly independent nations.<sup>65</sup> However, once the dust settled, Latin American nations and the Vatican made agreements in which the Church was given the power to “remain the official religion of the state, to retain its properties and traditional privileges . . . and to control the registry of births and deaths and the system of education.”<sup>66</sup> The proliferation of the Catholic Church in Latin America was also crucial to the establishment

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58. See JOEL M. CRUZ, THE HISTORIES OF THE LATIN AMERICAN CHURCH 19-20 (2014).

59. *Id.* at 19.

60. *Id.*

61. *Id.*

62. See *id.* at 24.

63. *Id.* at 27-28.

64. *Id.* at 28.

65. *Id.*

66. *Id.*



of control of the continent by the Spanish.<sup>67</sup> The tenets of Catholicism were used by the colonizers to enforce acceptable behavior, meaning behavior that conformed with Catholic ideals, and to ensure that loyalty was with the King instead of to the gods of the natives.<sup>68</sup> Eventually, the clergy's role shifted in that it became an indispensable tool for the colonies to gain independence from Spanish control.<sup>69</sup> It supported the colonies' split from Spanish rule because their separation from the King meant the Church no longer had to share power with the colonizing nation.<sup>70</sup> The colonizing entity in Latin America simply shifted from the Spanish Crown to the Catholic Church upon independence.<sup>71</sup>

### B. Catholic Church and Abortion Laws in Latin America

Latin America is over 90% Catholic, which includes government officials who have a great deal of influence on the laws proliferated throughout the continent.<sup>72</sup> The Catholic Church's stance on abortion has remained stagnant for centuries.<sup>73</sup> Three main tenets established early in Catholic dialogue that are still held by the Church today are that "the fetus is the creation of God; abortion is murder; and the judgment of God falls on those guilty of abortion."<sup>74</sup> As early as the second century, abortion is banned in the *Didache*, a Christian moral code.<sup>75</sup> It further condemns those who corrupt God's creations, which a third century Latin version refers to as "abortuantes" indicating the knowledge of the practice of abortion along with the early condemnation of the practice.<sup>76</sup> Since the earliest days of Christianity to modern day, the main concern of Catholics regarding abortion is the unborn fetus and the immoral action of ending the life of one of God's creatures.<sup>77</sup> In Catholic thought, the fetus possesses a soul at the moment of conception, and any destruction of the soul of one of God's beings is murder.<sup>78</sup> Consequently, Christian discussions of abortion are generally ones involving violence and

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67. Richard Palmer, *A Brief History of Catholicism in Latin America*, TRUMPET (Apr. 1, 2013), <https://www.thetrumpet.com/10541-a-brief-history-of-catholicism-in-latin-america>.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. Cho, *supra* note 20, at 431.

73. Fleishman, *supra* note 2, at 279-80.

74. MICHAEL J. GORMAN, ABORTION & THE EARLY CHURCH: CHRISTIAN, JEWISH & PAGAN ATTITUDES IN THE GRECO-ROMAN WORLD 47 (1998).

75. *Id.* at 49.

76. *Id.* at 49-50.

77. *Id.* at 76-77.

78. *Id.* at 76.

murder.<sup>79</sup> Although abortion was also seen as a means to conceal sexual promiscuity by the Church, the main condemnation of abortion as an immoral practice was based on the notion that it was murder rather than on its implications of sexual immorality.<sup>80</sup> As the Church sees abortion as murder, it sees abortion rights as squarely in contrast with human rights, which is often the stark opposite of how the U.N. and many human rights groups view the abortion debate.<sup>81</sup> This creates a seemingly insurmountable issue for Latin American Catholic women who are Catholic but believe that the legal right to obtain a safe abortion is one to which they are entitled.<sup>82</sup> This tension is further exacerbated by the fact that the Vatican is the only religious entity with a permanent observer seat in the U.N.<sup>83</sup>

#### IV. THE UNITED NATIONS' INFLUENCE ON ABORTION LAWS IN LATIN AMERICA

##### A. *Treaties and Conferences Involving Reproductive Rights in Latin America and the Catholic Church's Response*

There is no international binding law either granting or prohibiting the right of a woman to obtain an abortion.<sup>84</sup> However, the ACHR has been ratified by the vast majority of Latin American states and has been the subject of much debate on whether its language implies the illegality of abortion or not.<sup>85</sup> Ratifying Latin American states have consistently interpreted the ACHR as effectively banning elective abortion.<sup>86</sup> As mentioned above, article 4(1) of the ACHR states that human life begins at conception, and that all humans have the right to life and shall not be indiscriminately robbed of that right.<sup>87</sup> Article 4 of the ACHR has been invoked at the two main conferences at which the abortion debate was at the forefront of the agenda, the 1994 U.N. International Conference on Population Development in Cairo, Egypt, and the 1995 U.N. World Conference on Women in Beijing, China.<sup>88</sup>

The beginning of the U.N.'s modern-day influence on reproductive rights on a global scale can be found in the two aforementioned

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79. *Id.* at 81.

80. *Id.*

81. *See* Fleishman, *supra* note 2, at 281-82.

82. Cho, *supra* note 20, at 421-22.

83. Fleishman, *supra* note 2, at 278.

84. De Jesus, *supra* note 5, at 617-18.

85. De Jesus, *Abortion in Latin America and the Caribbean*, *supra* note 8, at 2.

86. De Jesus, *supra* note 5, at 614.

87. ACHR, *supra* note 13, art. 4(1).

88. De Jesus, *supra* note 5, at 615-17.

conferences held in Cairo and Beijing.<sup>89</sup> These two conferences marked the first time that the U.N. as a whole began to see women's rights as a separate and distinct category from human rights that warranted an independent discussion outside the generality of the human rights arena.<sup>90</sup> In 1994, prior to the conference in Cairo, the Vatican sought to assemble a group of nations that would dedicate themselves to creating a unified front in keeping abortion rights off the table in the discussions of how to decrease the exponential population growth worldwide.<sup>91</sup> Prior to this push from the Vatican, various Latin American countries signed the Latin American and Caribbean Consensus on Population and Development, which strove to ensure "sexual and reproductive health, family planning and safe maternity" for all women in the nations that signed the Consensus.<sup>92</sup> The Vatican took this mission as a stealthy push to legalize abortion and quickly called for a united front against the proliferation of support of abortion rights at the 1994 Cairo Conference.<sup>93</sup> Soon after the Vatican's pushback on the Latin American and Caribbean Consensus, many Latin American nations pulled out of the Consensus, exhibiting the Catholic Church's level of influence on Latin American nations, and agreed to join the Vatican's attempt at a united front against abortion for the Conference in Cairo.<sup>94</sup> Additionally, the president of Argentina went so far as to pledge to the Pope that he would be sure to push an antiabortion agenda in the upcoming Ibero-American Summit.<sup>95</sup> This united front consisted, not surprisingly, of mostly Latin American and Muslim countries as both regions hold quite strict religious beliefs on abortion, contraception, and sexual morality despite the differences in religious beliefs.<sup>96</sup>

The goal in creating this front was based on the fact that the Conference's aim was to reach a unanimous agreement on the Program of Action (the Program), which would outline different tactics to address the increase in population.<sup>97</sup> Nearly 90% of the Program had been agreed upon by every nation, so the abortion issue was the only one left for

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89. Fleishman, *supra* note 2, at 277.

90. *Id.*

91. Gregory M. Saylin, *The United Nations International Conference on Population and Development: Religion, Tradition, and Law in Latin America*, 28 VAND. J. TRANSNAT'L L. 1245, 1253 (1995).

92. *Id.* at 1253-54.

93. *Id.*

94. *Id.* at 1254.

95. *Id.*

96. *Id.* at 1254-55.

97. *Id.* at 1255.

debate.<sup>98</sup> The main section of the Program that the Vatican took issue with was chapter 8, paragraph 25.<sup>99</sup> Although the paragraph expressly stated that abortion should not be supported as a viable form of family planning, the paragraph went on to say that member nations should focus on ways to prevent the need for unsafe abortions and to prevent the need for unwanted pregnancies.<sup>100</sup> It further stated that if the state in question has not illegalized abortions, those legal abortions should be safe and reasonably attainable, and even in states where abortions were illegal, women who have obtained abortions should have access to adequate post-procedure medical care and counseling in order to decrease the chances of the need for having additional procedures.<sup>101</sup> The Vatican, along with its united front of nations, criticized the Program for promoting immoral sexual activity and devaluing the traditional family structure and further claimed that the Program was promoting homosexual relationships.<sup>102</sup> The main issue the front had with the language was that the rights that the document was promoting were those of individuals instead of those of married couples, which went against the ideals of both Latin American and Muslim society.<sup>103</sup> The Vatican further stated that the Program was in violation of article 4(1) of the ACHR in that it promoted abortion which is in direct contrast with article 4(1)'s protection of life from the moment of conception.<sup>104</sup> A great many Latin American countries expressed their views that the agenda of the Conference seemed to be in stark contrast with the values set forth in the ACHR and therefore refused to sign on to the Program in its entirety.<sup>105</sup>

The pushback from the Vatican proved to be successful in preventing the language that, in the eyes of the Vatican and its allied nations, supported the practice of abortion for family planning.<sup>106</sup> As a result, many of the first-world nations faced the challenge by agreeing to compromise by attempting to find wording agreeable to the Vatican in that it did not promote abortion but that also did not hinder the effort of the Conference to control population by strengthening women's rights and ensuring that all forms of family planning and sex education were

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98. *Id.*

99. *Id.*

100. International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶ 8.25, U.N. Doc. A/CONF.171/13/Rev.1 (Sept. 5-13, 1994).

101. *Id.*

102. Saylin, *supra* note 91, at 1256.

103. *Id.*

104. See Fleishman, *supra* note 2, at 282, 286-87.

105. De Jesus, *supra* note 5, at 615.

106. Saylin, *supra* note 91, at 1256.

available to women.<sup>107</sup> After a great deal of back and forth with no agreement, it began to seem as if the Vatican would simply refuse to sign the Program of Action since compromise became increasingly difficult.<sup>108</sup> However, in the end, the agreement that was reached was to maintain that abortion was a major issue that needed to be addressed but the issue would be dealt with by the individual nations according to their current abortion legislation.<sup>109</sup>

The main debate at the Conference centered around whether the increase in population was actually viewed as a problem that needed to be solved.<sup>110</sup> During the debate, the two different approaches that were taken were the limits to growth approach, which was adopted by most first-world countries, and the supply-side demographics approach, which was adopted by the Vatican and its coalition of nations.<sup>111</sup> The limits to growth approach posits that the population will continue to grow exponentially while the supply of food and resources that the human race has grown to depend on will only grow arithmetically.<sup>112</sup> The solution proposed by proponents of this theory was an increase in access to family planning to decrease the rapid population growth.<sup>113</sup>

In contrast, the supply-side demographics theory, which was adopted by the Vatican, posits that as supply decreases the market will create substitutes to our traditionally used resources or technologies that will be able to increase the rate of production of our traditionally used resources.<sup>114</sup> It is important to note that the supply-side demographics theory was created as a means of protecting developing countries from the seemingly immoral influence of first-world nations.<sup>115</sup> The argument is that the first world sees the dire conditions of those in third-world nations and believes that the famine and extreme poverty could be ameliorated with a smaller population, when in reality, that would go against the institution of the traditional family, which is of the utmost importance to many third-world populations, not only in an idealistic manner but also for labor needs.<sup>116</sup>

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107. *Id.* at 1257.

108. *Id.*

109. Fleishman, *supra* note 2, at 287.

110. Saylin, *supra* note 91, at 1260.

111. *Id.* at 1260-61.

112. *Id.* at 1260.

113. *Id.*

114. *Id.* at 1261.

115. *Id.*

116. *Id.* at 1261-62.

Both schools of thought agree that the disease needs to be cured rather than only addressing the symptoms; however, what can be characterized as a symptom is where the debate truly lies.<sup>117</sup> Proponents of the limits to growth approach believe that the disease is the population growth and that underdevelopment is the symptom of that population growth.<sup>118</sup> Conversely, the supply-side demographics proponents believe the opposite, that underdevelopment is the disease and overpopulation is a symptom.<sup>119</sup>

In the end, the Vatican agreed to sign the Program in a “partial manner,” meaning that the nations that composed the united front would only follow the sections of the Program that had been approved by the Pope.<sup>120</sup> Some of the nations that declined to adopt the entire program due to the Vatican’s opposition to its abortion stance were Argentina, Honduras, Guatemala, Uruguay, and Ecuador.<sup>121</sup> In the fight to keep a U.N.-sanctioned mandate to legalize abortion, some argue that the Vatican was the ultimate advocate for these Latin American and Muslim countries who wanted to maintain their traditional patriarchal society.<sup>122</sup> In fact, the Vatican itself adopted this view, becoming the advocate of a group of nations that did not possess the resources to stand up for themselves and their values on their own.<sup>123</sup>

At first, the Vatican took a noticeably different approach in the Fourth World Conference on Women one year later in 1995.<sup>124</sup> In the beginning days of the Conference, unlike the Cairo conference, compromise seemed to be an attainable goal.<sup>125</sup> However, the Vatican ultimately decided to take a broader stance against the language of the plan that was drafted during the Beijing Conference.<sup>126</sup> The Vatican renounced the language that it claimed belittled the value of the traditional family in exchange for reproductive health.<sup>127</sup> Many Latin American nations supported the Vatican and invoked the ACHR to reject the Beijing Conference’s interpretation of reproductive rights, once again claiming that reproductive rights, as defined by the Conference to mean the right to abortion, violated the established right to life from the

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117. *Id.* at 1262.

118. *Id.*

119. *Id.*

120. *Id.* at 1257-58.

121. *Id.*

122. *Id.* at 1259.

123. *Id.* at 1264.

124. Fleishman, *supra* note 2, at 286.

125. *Id.*

126. *Id.* at 287.

127. *Id.*

moment of conception that was firmly established in article 4(1) of the ACHR.<sup>128</sup>

*B. Inter-American Court of Human Rights Interprets the ACHR as Granting the Right to Life at Implantation, Not Fertilization*

In 2012, the Inter-American Court of Human Rights (Inter-American Ct. H.R.) held that human life, and the legal protections that come along with it, begin once an embryo is implanted in the uterus instead of at the moment of fertilization, which occurs before implantation.<sup>129</sup> Although this specific case involved in vitro fertilization (IVF) and not necessarily abortion, it shows an important shift of the Inter-American Ct. H.R., as well as Latin America's gradual shift away from the strict interpretation of the ACHR's right to life provision that put a halt to the progression of women's rights for decades.<sup>130</sup>

In *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica* (*Artavia Murillo*), Costa Rica's Ministry of Health issued an executive decree in February of 1995 that legalized the use of IVF for married couples and regulated the practice.<sup>131</sup> IVF was practiced successfully for five years until The Constitutional Chamber declared the executive decree unconstitutional on the grounds that it violated the right to life established in article 4(1) of the ACHR since unused fertilized eggs were disposed of during the process of IVF.<sup>132</sup> The plaintiffs in this case were married couples who could not conceive naturally and therefore decided to undergo IVF.<sup>133</sup> They alleged that the State of Costa Rica stigmatized and repudiated the members of its society who were infertile yet still wished to conceive through IVF.<sup>134</sup>

The Inter-American Ct. H.R. loosened the interpretation of the ACHR that most of Latin America had relied upon to support its antiabortion legislation since the ratification of the ACHR.<sup>135</sup> The court decided to reevaluate the scope of the word "person" under article 4(1)

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128. De Jesus, *supra* note 5, at 616-17.

129. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 186 (Nov. 28, 2012).

130. See Ligia M. De Jesus, *The Inter-American Court of Human Rights' Judgment in Artavia Murillo v. Costa Rica and Its Implication for the Creation of Abortion Rights in the Inter-American System of Human Rights*, 16 OR. REV. INT'L L. 225, 227-28 (2014) [hereinafter De Jesus, *Inter-American Court*].

131. *Artavia*, Inter-Am. Ct. H.R., ¶ 68.

132. *Id.* ¶¶ 70-71, 73.

133. *Id.* ¶¶ 85-125.

134. *Id.* ¶¶ 85-127.

135. *Id.* ¶ 179; De Jesus, *Inter-American Court*, *supra* note 130, at 225-26.

based on the scientific evidence that was tendered in this case.<sup>136</sup> The court noted that if the idea of a person with legal rights was to be evaluated through the lens of the ACHR, the underlying term that needed to be understood was conception, as the ACHR states that a person's legal rights are granted protection upon conception.<sup>137</sup>

In the evidence presented to the court, there were two competing definitions of conception.<sup>138</sup> One definition took conception to mean the moment that the sperm fertilizes the egg, whether that be in or outside the uterus.<sup>139</sup> The reasoning behind this definition is that once fertilization occurs, all the genetic information that is needed for human development is present in the fertilized egg.<sup>140</sup> The alternate definition of conception is the moment the fertilized egg is implanted into the woman's uterus.<sup>141</sup> The reasoning behind this alternative view is that without implantation, which connects the zygote to the mother's circulatory system that gives it access to all the hormones and blood needed for proper development, the zygote would have no chance of survival.<sup>142</sup> Based on the wealth of evidence provided, the court held that the second interpretation was the superior definition of conception, since without implantation, there is no possibility of development.<sup>143</sup> The court supported this reasoning with the fact that it is only possible for physicians to detect pregnancy after the fertilized egg has implanted itself into the woman's uterus.<sup>144</sup> The court also shifted the dialogue of the ACHR from focusing on the rights of the fetus to focusing on the rights of the mother when the opinion noted that an expert witness clarified that "conception or gestation is an event of the woman, not the embryo."<sup>145</sup> Based on the evidence presented, the court held that conception is defined as the moment of implantation, instead of the moment of fertilization, and therefore the ACHR did not apply before the moment of implantation, making the practice of IVF legal under article 4(1) of the ACHR.<sup>146</sup>

The court also focused on the term "in general" in the ACHR, stating that because the right to life was granted from conception "in

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136. *Artavia*, Inter-Am. Ct. H.R., ¶ 178.

137. *Id.* ¶ 180.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* ¶ 186.

144. *Id.* ¶ 187.

145. *Id.* ¶ 181.

146. *Id.* ¶ 189.



general,” then article 4(1) did not grant an absolute right to life.<sup>147</sup> The court determined that “in general” qualified the phrase “from the moment of conception” indicating that there were some exceptions to the rule, and determining that IVF fell under the category of said exceptions.<sup>148</sup> The court further interpreted article 4(1) as granting rights to the embryo on a gradually increasing scale as the embryo developed over time rather than granting it full legal rights at the moment of implantation.<sup>149</sup> The court determined that granting an embryo full legal rights at the time of implantation would strip the mother of a variety of her rights, which seemed to be contrary to the ACHR.<sup>150</sup>

Although this case is specifically about IVF, as opposed to abortion, this type of interpretation of conception and shifting the focus of whose rights need to be protected from the unborn fetus to the living mother display a noticeable shift in the Latin American interpretation of the once very conservatively construed ACHR.<sup>151</sup> However, although the Inter-American Ct. H.R. showed a great deal of progression through this case, the likelihood of this case having much effect on other Latin American nations outside of Costa Rica is low.<sup>152</sup> Although its decisions are binding, the court’s role is to merely interpret the ACHR, not to legislate, a duty that is left up to the nations themselves.<sup>153</sup>

## V. CONCLUSION

The debate in Latin America over women’s right to have access to a safe abortion does not seem to be ending in the near future.<sup>154</sup> This debate is a difficult one to put to rest because the Latin American people, legislatures, and courts are being pulled in two conflicting directions by the Catholic Church and the U.N. and its member nations.<sup>155</sup> This difficulty is compounded by the fact that neither the Catholic Church’s nor the U.N.’s influence is binding on any Latin American nations’ legal system.<sup>156</sup> U.N. treaties are often called “soft law,” which is a testament to their nonbinding nature.<sup>157</sup> However, given the fact that the U.N. and

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147. *Id.* ¶ 188.

148. *Id.*

149. De Jesus, *Inter-American Court*, *supra* note 130, at 227-28.

150. *See Artavia*, Inter-Am. Ct. H.R., ¶¶ 256, 264.

151. *See id.* ¶ 185.

152. De Jesus, *Inter-American Court*, *supra* note 130, at 242-43.

153. *Id.* at 243.

154. *Id.* at 248.

155. Cho, *supra* note 20, at 421-22.

156. Zorzi, *supra* note 5, at 411-12.

157. *Id.* at 411.

many of its member nations are shifting towards an increase in women's rights and away from traditional Catholic ideals, through the *Artavia Murillo* case along with the fact that many Latin American nations recently have loosened some of the most prohibitive abortion restriction, the stronghold that the Vatican once had on the Latin American legislators seems to be gradually waning.<sup>158</sup> Although the political attitudes in Latin America continue to progress towards allowing women an increased level of reproductive rights, that is not to say that their connection to the Catholic Church has or will decrease.<sup>159</sup> It simply indicates that Latin Americans' relationship with the Catholic Church and their personal religious beliefs might shift in order to accommodate the need for reproductive rights.<sup>160</sup> A great deal of Latin American women, as far back as the late 1990s, have held the belief that "God is comprehensive and generous, and . . . they can decide for themselves whether to use contraceptives or obtain an abortion, yet still be 'with God.'"<sup>161</sup> This joining of the two competing influences that many Latin American women face on a daily basis is a beacon of hope for the continued increase of their reproductive rights while simultaneously maintaining their closely held religious beliefs.

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158. *Id.* at 428; Cho, *supra* note 20, at 452.

159. Cho, *supra* note 20, at 421-22.

160. *Id.* at 435.

161. *Id.*