



“SEXUAL AND REPRODUCTIVE HEALTH” IN THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) October 2013

1. The Convention on the Rights of Persons with Disabilities includes the controversial term “sexual and reproductive health.”

This is the first time the term occurs in binding international law. The U.S. rightly sounded a note of warning in its closing statement during negotiations over the CRPD, stating that the treaty “cannot be interpreted to constitute support, endorsement, or promotion of abortion.”

The combination of ill-defined terms and abortion activism through international organizations is nowhere more obvious than in the term “sexual and reproductive health.” UN human rights treaty bodies and UN agencies, chiefly the World Health Organization, interpret and define the term “sexual and reproductive health” to include abortion, often denying the sovereign prerogative of countries to regulate and prohibit abortion.

Senate proponents of the CRPD rejected an amendment introduced by Senator Marco Rubio in 2012 that attempted to address and clarify this issue. If proponents are sincere that this treaty has nothing to do with abortion, such an amendment should not be controversial.

2. The term was railroaded through UN negotiations over objections from 23 nations that the term has been used to promote abortion as a right.

Fifteen countries made statements in the UN General Assembly at the time the CRPD was adopted that the term did not include abortion or that it did not create any new rights. Four countries also made statements to that effect at the time of signature or accession.

These countries were dissatisfied with assurances that the term implied no new rights in a footnote to a draft of the treaty. That footnote is not even part of the materials provided by President Obama for ratification by the Senate.

3. The controversial term is not defined in the treaty, but all indications are that it will be used to promote abortion as a right, as well as other controversial issues.

In 2009 former U.S. Secretary of State Hillary Clinton stated that “reproductive health includes abortion” in congressional testimony.ⁱ She repeated the same before G8 ministers the next year.ⁱⁱ

The only time the term has ever been defined by UN member states was at the 1994 International Conference on Population and Development in Cairo.ⁱⁱⁱ The definition adopted on that occasion is ambiguous. While the Cairo agreement recognizes that states may regulate and even prohibit abortion, abortion is understood to be part of sexual and reproductive health.

In May 2013, the American-led agency UNICEF interpreted the CRPD as giving children as young as 10 years of age the “right” to sexual and reproductive health services without any knowledge or consent from their parents.^{iv}

On October 18th, the committee that monitors the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) told all states parties that they are obligated to make sure "that sexual and reproductive health care includes access to...safe abortion services."^v

4. The CRPD committee will interpret the term to include abortion.

Compliance committees that monitor the implementation of UN human rights treaties have pressured more than 90 nations over 120 times to liberalize abortion laws by referring to the term "sexual and reproductive health" even though the term appears nowhere in the treaties they are charged with monitoring.^{vi} Far from being coincidental, this is the result of a deliberate manipulation of the treaty bodies by a group of UN agencies and non-governmental organizations that includes UNFPA and International Planned Parenthood Federation.^{vii} There is no indication that CRPD will be immune from these efforts.

Despite its limited output, the CRPD committee, is displaying the same proclivities for expansive and intrusive legal interpretation as other UN human rights compliance committees. It has already asked countries to remove all reservations they may have to the treaty, even where the only reservation preserves the priority of the national constitution over the treaty — a reservation the United States commonly makes to almost all international agreements it enters into.

5. The US Senate should send a message that the treaty bodies need reform.

The misinterpretation of UN treaties is a major concern of UN member states. The General Assembly is undertaking an effort to reform the system.^{viii} Ratifying the Convention prior to any reforms taking effect would be seen as United States approval for the current *modus operandi*.

UN compliance committees routinely expand the meaning of international instruments according to a notion of human rights as "evolving standards." They act *ultra vires* through purportedly authoritative recommendations that instruct states on how to implement treaties. This is a calculated scheme to encourage judicial activism. Already two courts in Latin America have used recommendations of these committees, erroneously described as "jurisprudence" by the committees themselves, to overturn their nations' prohibitions and restrictions on abortion.^{ix}

The working methods of the committees have been characterized as inefficient and burdensome by UN member states in the course of reform efforts, and they have been blamed for depleting the resources available for the work of treaty bodies, and causing backlog in reporting.

ⁱ Prolifeinformation, *2009 U.S. Policy to Export Abortion* (Rep. Chris Smith and Sec. Clinton), YOUTUBE (Apr. 22, 2009), <http://www.youtube.com/watch?v=-gEA97EnxE4>; *Hillary Clinton Attempts to Redefine U.N. Agreement by Adding Abortion, Experts Charge*, CATH. NEWS AGENCY, (Jan. 15, 2010, 5:14 AM), http://www.catholicnewsagency.com/news/hillary_clinton_attempts_to_redefine_u.n._agreement_by_adding_abortion_experts_charge. Cited in Susan Yoshihara, "Lost in Translation: The Failure of the International Reproductive Rights Norm," *Ave Maria Law Review*, 11:2, footnote 39, page 375. <http://c-fam.org/images/Staff/AveMariaLawReviewv11i2.Yoshihara.final.pdf>

ⁱⁱ Addressing the Canadian government in March 2010 regarding its maternal and child health initiative for the G8, Hillary Clinton stated, "You cannot have maternal health without reproductive health. And reproductive health includes contraception and family planning and access to legal, safe abortion." Jessica Arons & Shira Saperstein, *At G8, Obama, Clinton Must Speak with one Voice for Abortion Access*, THE NATION, June 25, 2010, <http://www.thenation.com/article/36667/g8-obama-clintonmust-speak-one-voice-safe-abortion-access#>. Cited in Susan Yoshihara, "Lost in Translation: The Failure of the International Reproductive Rights Norm," footnote 117, page 392.

ⁱⁱⁱ International Conference on Population and Development Program of Action paragraphs 7.6 and 8.25. <http://www.unfpa.org/public/cache/offonce/home/sitemap/icpd/International-Conference-on-Population-and-Development/ICPD-Summary.jsessionid=601A58E091A75BA2A74F1ADBD79C0589.jahia01>

^{iv} UNICEF director Tony Lake asserted in the agency's May 2013 report, "Under the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), all children have the right to the highest attainable standard of health. It follows that children with disabilities are equally entitled to the full spectrum of care – from immunization in infancy to proper nutrition and treatment for the ailments and injuries of childhood, to *confidential sexual and reproductive health information and services during adolescence and into early adulthood*. Equally critical are such basic services as water, sanitation and hygiene." UNICEF, *State of the World's Children 2013*, page 23. Emphasis added.

http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf

^v <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>

^{vi} The treaty bodies that have pressured nations to repeal restrictions and prohibitions on abortion include the committees that monitor the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR), and even the Convention Against Torture (CAT). They do so on the basis of non-binding agreements like the 1994 Cairo and the 1995 Beijing conference outcomes.

^{vii} "Rights by Stealth: the Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion," *National Catholic Bioethics Quarterly*, vol.7, no.1 (Spring 2007). <http://c-fam.org/en/white-papers/6581-rights-by-stealth-the-role-of-un-human-rights-treaty-bodies-in-the-campaign-for-an-international-right-to-abortion>

^{viii} The General Assembly's intergovernmental process to strengthen and enhance the effective functioning of the treaty body system was launched in 2012. Its current mandate is laid out in General Assembly Resolution 68/2.

^{ix} Colombia's high court struck down the country's prohibition on abortion in 2006. Argentina's high court ruled in 2012 that women must be allowed to have an abortion in a broader set of circumstances than Argentine law allowed. Both cited the non-binding views of UN human rights treaty bodies in their decisions.