

THE RIGHT TO LIFE OF THE UNBORN IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: THROUGH THE PRISM OF THE DRAFTING PROCESS

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Abstract: After the 75th anniversary of adopting the Universal Declaration of Human Rights, we can state that some of its provisions still cause discussions about a basic and inherent right – the right to life. Getting a new “breath” after the *Roe v. Wade* case’s overturning, the battle between women’s abortion rights supporters and the protectors of the right to life for the unborn seems to get a new round. Worldwide experts in different fields start to find new arguments or remember the old ones to have solid proof in the discussions.

It is too hard to find a more fundamental international document in the human rights field than the Universal Declaration of Human Rights, which can be used in this case.

Many scholars’ papers claim that the Declaration is only for an already-born person and does not cover the unborn one. However, such a vision is incorrect and causes many misunderstandings and false interpretations of the international basis of human rights protection.

This work will try to dispel the myth that the Declaration was written only for a born person. After analyzing hundreds of documents from the Declaration drafting process, using historical facts and drafters’ statements, we hope to shed light on the real essence of the Universal Declaration of Human Rights about the right to life.

Keywords: Universal Declaration of Human Rights; abortion; unborn life; right to life; human rights

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1. INTRODUCTION

Which is more important, the mother’s right to abortion or the right to life of the unborn? Does international law protect the unborn life? In this case, there are so many aspects and nuances that it is tough for both sides to find appropriate arguments and answers to all questions to convince the opposite side. Researchers and experts can argue which right is more important or valuable and compare legal, moral, ethical, medical, religious, or other aspects. Governments can adopt laws and enshrine some

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procedures, rules, or restrictions, but society and experts will continue discussions and find arguments that will always be controversial for the opposite side. One of the main reasons why an unborn person's right to life is hotly debated is in their contradictions with women's rights to abortion. Many arguments state that if the fetus's right to life is guaranteed, the women's right to abortion is limited. Possibly, the problem may be solved by medical development progress that may allow the ability to safely remove an embryo from the mom's body and grow the new life independently in the artificial womb.¹ Still, it is only a prediction, so the discussion continues. There is no doubt that the Universal Declaration on Human Rights² (the Declaration) will play, in this case, the leading role as the primary source for international agreements and standards, as well as international and domestic courts' decisions, all over the world.

In this work, we will try to give an answer and continue a new round of discussion about the question of international protection of unborn life. We want to pay more attention to the very important and usually missed, in the author's opinion, aspect – the real essence and correct understanding of the Declaration provisions. Unfortunately, very often, we hear that the Declaration bans the fetus's right to life or is on the side of the right of unrestricted abortion, which is not true and is a distortion of facts.

It may not seem so important to analyze the drafting process because we have a final text, and it may seem like an attempt to “cling at a straw”, but such a “straw” might be the basis of a “building”. After careful analysis of hundreds of documents of different U.N. bodies and experts involved in the drafting process, we can say that the Declaration drafters were not critically against the rights of the unborn in the Declaration. Moreover, many of the Declaration drafters directly pointed out that the lack of the wording “from the moment of conception” or “unborn life” in the text of the Declaration does not exclude the fact that the Declaration does not protect the unborn rights. The drafters just worried (one of the common reasons) that enshrining the words “unborn” or “fetus” directly in the Declaration could cause difficulties in its acceptance by all the U.N. members in the future.

The Declaration is applicable for both born and unborn and did not exclude the unborn from the list of the rights owners just because it does not use some wordings directly. Even though the Declaration does not use the term “unborn” or “conception”, some of its provisions can be surely interpreted as protecting unborn life.³

¹ In 2019, the Netherlands scientists announced developing an artificial womb within ten years, see The world's first artificial womb for humans. In: *BBC: News* [online]. 16. 10. 2019 [cit. 2024-05-02]. Available at: <https://www.bbc.com/news/av/health-50056405>; World's first artificial womb facility is a creepy glimpse of pregnancy in future, see what it is. In: *The Economic Times: News* [online]. 20. 12. 2022 [cit. 2024-05-02]. Available at: <https://economictimes.indiatimes.com/news/international/us/worlds-first-artificial-womb-facility-is-a-creepy-glimpse-of-pregnancy-in-future/articleshow/96203552.cms?from=mdr>.

² G.A. Res. 217 A (III), (10. 12. 1948).

³ TOZZI, P. *International Law and the Right to Abortion*. International Organizations Law Group Legal Studies Series, No. 1, 2010, p. 6.

2. THE “FIGHT” FOR THE UNBORN LIFE DURING THE DRAFTING PROCESS

After WWII, the World started a new chapter in the history of human rights protection. The Declaration’s adoption resulted from the terrible experience of the Second World War, and international society vowed to prevent such atrocities from happening again.⁴

The Declaration’s drafters pointed out⁵ that “*the Declaration was born out of the experience of the war that had just ended*”, “*was inspired by opposition to the barbarous doctrines of Nazism and fascism*”, and that the Declaration was “*born from the need to reaffirm those rights after their violation during the war*”, as well as was an attempt “*to avoid the horrors of a new war*”.

Becoming the “*manifesto with primarily moral authority*”,⁶ the Declaration is a “*monumental embodiment for our time of the ancient idea that we all belong to a single global community and that each human being has moral ties and responsibilities to all others*”.⁷

The Declaration does not have an explicit reference either to the right to abortion or the unborn life. The opponents of the existence of the rights of the unborn life claim that “*Historical analyses of the Declaration [...] confirm that the right to life does not extend to fetuses*”⁸ and that the term “everyone” defines the holders of human rights and refers only to born persons.⁹

However, we should point out that such statements are nothing more than twisting and turning upside-down historical facts. That is why one of the main aims of this research is to show the real drafters’ motivations, ideas, and reasons for discussions during the Declaration drafting process and to prove that the lack of attention to details and the arguments of drafters led to the misunderstanding of the real essence of the Declaration.

John Peters Humphrey,¹⁰ answered the criticism about the ambiguity of certain phrases in the Declaration by saying that “[...] *it is a miracle that the job was ever done at all*”.¹¹

Any multilateral legal document, and especially the United Nations international document enshrining fundamental rights, is the final version of many discussible drafts,

⁴ History of the Declaration. In: *United Nations* [online]. [cit. 2024-05-02]. Available at: <https://www.un.org/en/about-us/udhr/history-of-the-declaration>.

⁵ MORSINK, J. World War Two and the Universal Declaration. *Human Rights Quarterly*. 1993, Vol. 15, No. 2, p. 357.

⁶ HANNUM, H. The UDHR in National and International Law. *Health and Human Rights*. 1998, Vol. 3, No. 2, p. 147.

⁷ Global Citizenship Commission. Executive Summary. In: BROWN, G. (ed.). *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*. Cambridge: Open Book Publishers, 2016, p. 13.

⁸ ZAMPAS, C. – GHER, J. Abortion as a Human Right – International and Regional Standards. *Human Rights Law Review*. 2008, Vol. 8, No. 2, p. 262.

⁹ COPELON, R. et al. Human Rights Begin at Birth: International Law and the Claim of Fetal Rights. *Reproductive Health Matters*. 2005, Vol. 13, No. 26, p. 122.

¹⁰ One of the authors of the first draft of the Declaration.

¹¹ HUMPHREY, J. The Universal Declaration of Human Rights. *International Journal*. 1949, Vol. 4, No. 4, p. 357.

resulting from a consensus and compromises between drafters, experts, and different member state representatives. The Declaration is no exception and has resulted from a multiparty discussion over the years.

The final version of the Declaration contains not only apparent provisions but also many hidden messages that can be uncovered only after a deep and detailed analysis of the drafting process.

Let's imagine that you are a country representative or an expert. You have a very important idea, and you can implement it in an international document as a basic fundamental principle. But your coauthors, who should vote for it, can't accept the direct enshrining of your idea because of differences in particular countries' domestic legislation rules or a fear of coauthors that such an idea will push out other countries as a future document's parties. However, you (all drafters) should create an essential international document, avoiding any criticism and risk of being unaccepted because of contradicting some words or sentences. That is why the Declaration doesn't directly mention the rights of the unborn. Still, the proposals to enshrine such rights from the moment of conception were often mentioned and planted by different states' delegates and international experts. And if we can't see phrases like "unborn rights" or "from the moment of conception" in the Declaration text, it does not mean that drafters did not believe in the importance of such rights, and we are going to prove it.

We should also underline one crucial point. All documents/Articles mentioned in this chapter are parts of the Declaration drafting process. However, some readers may be confused by the different names of documents and Article numbers that we will use/mention in this work. During the Declaration drafting process, the Human Rights Commission and other UN bodies used and discussed many titles and drafts, but in fact, all of them were the big draft for the one final document – the Declaration.

The first mention, during the Declaration drafting process, about the right to life of the unborn (from the moment of conception) was in Article 1 of the draft¹² of the Declaration of the International Rights and Duties of Man proposed by the Inter-American Juridical Committee to the Commission on Human Rights in 1947. The Chilean representative to the Commission on Human Rights¹³ Drafting Committee supported this idea and proposed it as Article 3 of the International Bill of Rights draft,¹⁴ as more complete because it refers to the life of any being, born or unborn.¹⁵ Continuing the discussion about Article 3 of the International Bill of Rights draft provisions, the Chinese representative (Dr. Chang) pointed out¹⁶ that the meaning of the word "life" should be considered more closely to understanding if it means only physical existence or implies something more. On the one hand, Dr. Chang's statement may be understood as questions about the soul's existence or the mental side of the personality, but we also think that it may refer to the period before birth. This also may be proved by China's

¹² Draft Declaration of the International Rights and Duties of Man, formulated by the Inter-American Juridical Committee, U.N. Doc. E/CN.4/2 (1947).

¹³ The Commission on Human Rights was created to draft the Declaration.

¹⁴ Comm'n on H.R., Documented Outline. Part 1, U.N. Doc. E/CN.4/AC.1/3/ADD.1, at 14 (1947).

¹⁵ Comm'n on H.R. Drafting Comm., 1st Sess., 2nd mtg. at 10, U.N. Doc E/CN.4/AC.1/SR.2 (1947).

¹⁶ Comm'n on H.R. Drafting Comm., 1st Sess., 3rd mtg. at 12, U.N. Doc E/CN.4/AC.1/SR.3 (1947).

delegations' proposals¹⁷ about the exclusion of the word "born".¹⁸ Also, our point of view possibly can be proved by Professor Jing-Bao Nie, who mentioned¹⁹ in his work that "[...] *many Chinese, not only Buddhists but also Confucians, believed that deliberately terminating pregnancy is to destroy a human life which starts far earlier than at birth*". Dr. Chang could also express such Confucian views, which he was interested in and used in the Declaration drafting process.²⁰

On the Drafting Committee's tenth meeting, Lebanon's delegate, Dr. Malik, supported his colleague from Chile and suggested²¹ the proposal to use the phrase "from the moment of conception".²² Such a proposition caused an objection from the United Kingdom representative, who was afraid that such a phrase "might raise some difficult problems."²³ Under the wording "difficult problems", we should probably understand the concern about the risk of decreasing the number of future parties of the Declaration that perhaps will not accept ideas to prescribe on the international level the rights of the unborn life as the obligation for the UN members. But on the other hand, Mr. Wilson basically did not express any objection to the idea of the possible existing rights of the unborn life. Moreover, he added that "[...] *no State was debarred from including this idea in its Constitution if it wished to do so...*" thereby emphasizing the idea that the Declaration should not exclude the unborn from the rights owner list.

So, we may conclude that the United Kingdom's delegate was not an opponent of the rights of the unborn and thought that, basically, the Declaration covers both the unborn and the born. If not, the statement about including such provisions in the domestic constitutions should contradict the Declaration principles. Probably, Mr. Wilson could also allow the possibility of broad understanding and interpretation of some generalizing terms such as "everyone" or "all human beings", in the context of the rights of both born and unborn, but without an accent on wordings "from the moment of conception" or "unborn life", to avoid future signatures problems.

At the twelfth meeting of the Drafting Committee, while considering France's proposals to the Declaration draft, Dr. Malik once more repeated²⁴ his recommendations, pointing out that the right to life should be guaranteed from the moment of conception. The summarizing Report of the first session of the Drafting Committee contained the Chilean proposals that unborn children also should have the right, as well as Lebanon's representative's proposals that everyone has the right to life from the moment of

¹⁷ That we will mention further.

¹⁸ The discussion was about excluding the word "born" from Article 1 of the Declaration draft, which declared that "All human beings are born free and equal in dignity and rights", which without the word "born" obviously covered both born and unborn people.

¹⁹ NIE, J.-B. Chinese moral perspectives on abortion and fetal life: An historical account. *New Zealand Bioethics Journal*. 2002, Vol. 3, No. 3, p. 15.

²⁰ ROTH, H. P. C. *Chang and the Universal Declaration of Human Rights*. Philadelphia: University of Pennsylvania Press, 2018, p. 3.

²¹ Comm'n on H.R. Drafting Comm., 1st Sess., 10th mtg. at 2, U.N. Doc E/CN.4/AC.1/SR.10 (1947).

²² In the considered draft of the International Bill of Human Rights, in the context of unlawful deprivation of a person's life.

²³ U.N. Doc E/CN.4/AC.1/SR.10, *c. d.*, p. 3.

²⁴ Comm'n on H.R. Drafting Comm., 1st Sess., 12th mtg. at 7, U.N. Doc E/CN.4/AC.1/SR.12 (1947).

conception.²⁵ Also, Lebanon's representative's proposals were mentioned as an alternative text which enshrined that the life deprivation of any person should be unlawful from the moment of conception.²⁶

At the next Commission on Human Rights session, the Ecuadorian delegation also supported the idea of colleagues from Chile and Lebanon and suggested the Draft Charter of International Human Rights and Duties,²⁷ which contained provisions (Article 1) that everyone has the right to life from the moment of conception. At the end of the 1947 year, the representative of Uruguay also joined colleagues in the idea of protecting the rights of the unborn and suggested the version of Article 4 of the Draft International Covenant on Human Rights,²⁸ which prescribed that there should be a duty of the state to protect persons both born and conceived.

3. UNBORN LIFE PROTECTION IDEAS DURING THE WORKING PARTY ON AN INTERNATIONAL CONVENTION ON HUMAN RIGHTS DISCUSSIONS

The protection of the unborn's right to life was also discussed while working on the Draft of the International Bill of Human Rights²⁹ proposed by the Working Party on an International Convention on Human Rights. Paragraph 2 of Article 4 of the mentioned draft prescribed³⁰ that abortion should be unlawful, except in a legal case when an abortion is to preserve the life of the woman, on medical advice, or in a matter of rape.

We should mention that the Working Party consisted of six state delegates,³¹ observers,³² specialized agencies representatives,³³ non-governmental organizations representatives, and only a representative from Yugoslavia (a member of the Working Party), who included the statement to the report with negative feedback of the Working Party's work and proposed document.

In the author's opinion, the Working Party's proposition about abolishing abortion (with mentioned exclusions) obviously shows a position on the rights of the unborn to

²⁵ Rep. of the Comm'n on H.R., at 74, U.N. Doc. E/CN.4/21 (1947).

²⁶ *Ibid.*, p. 82.

²⁷ Draft Charter of International Human Rights and Duties, Proposed by the Delegation of Ecuador, U.N. Doc. E/CN.4/32 (1947).

²⁸ U.N. ECOSOC, 6th Sess., Rep. of the Comm'n on H.R. Drafting Comm., U.N. Doc E/600 (SUPP) at 31 (1947).

²⁹ Was one of the discussed drafts/sources for future Declaration provisions. After the Declaration and the other two Covenants were adopted, they became known as the International Bill of Human Rights.

³⁰ Comm'n on H.R., Rep. of the Working Party on an International Convention on Human Rights, U.N. Doc. E/CN.4/56 (1947) at 6.

³¹ Chile, China, Egypt, Lebanon, the United Kingdom, and Yugoslavia.

³² Delegates from Australia, India, Ukrainian S.S.R., and the United States of America.

³³ The American Federation of Labor, the International Federation of Christian Trade Unions, the Inter-Parliamentary Union, the Commission of the Churches on International Affairs, the Consultative Council of Jewish Organizations, the Co-ordinating Board of Jewish Organizations, the International Committee of the Red Cross, the International Council of Women, the International Union of Catholic Women's Leagues, and the World Jewish congress.

life, but also that there can be some logical exceptions that do not contradict such rights at all. The women's right to abortion seems absolutely logical as the protection of women's life or safety in cases of crime against women, and it does not contradict the right to life of the unborn. It is the same as the right to life of one person can't violate the right to life of another or cancel the rights of protection against crime.

Discussing the mentioned draft, Mr. Serrarens³⁴ was very radical and pointed out that even though some countries had laws authorizing abortion, the majority forbid the practice of abortion and also expressed that abortion should be prohibited without any exceptions.³⁵

What is also very interesting is the position of the Chairman of the Commission on the Status of Women, who drew attention to the fact that "[...] *the laws of a large number of civilized countries allowed abortion, in cases clearly specified by the law, in order to preserve the life of the woman*", adding that "[...] *simple, of paragraph 2 would prevent the ratification of the Convention by certain countries*".³⁶

Even though such an opinion was not the official decision of the Commission on the Status of Women, it seems from the above-mentioned statement that its chairman also did not contradict the limitation of abortion and worried more about the future Declaration ratification process problems. This also plays in favor of the author's logic that there was no serious criticism about international recognition of the right to life of the unborn but was only fear about wordings in the Declaration's text. Also, we have to emphasize that the mentioned speakers pointed out the broad practice of the national legislation of that time regarding the limitation or ban of abortion. Additionally, Mrs. Begtrup³⁷ stated that the question about abortion should be considered at the next session of the Commission on the Status of Women. That was mentioned on 12 December 1947, so under the wording "the next session", we should understand the second one. However, after analysis of the Report of the second session of the Commission on the Status of Women³⁸ (5–9 January 1948), we did not find a mention or discussion about abortion. The document contains the list of women's rights, mentions the draft of the Declaration, and the report of the Commission on Human Rights. It also contains recommendations from the Commission on the Status of Women, but without mentioning abortion.

During the discussion about the paragraph 2 exclusion, the Indian representative warned that the paragraph which prescribes the ban on abortion works in favor of the unborn, so it should not be excluded.³⁹ Defending the proposed provisions of paragraph 2, the UK representative⁴⁰ mentioned that "[...] *the Working Group had been obliged to recognize that the laws of many countries permitted abortion in certain well-defined cases...*".⁴¹ Additionally, Lord Dukeston feared that deleting the paragraph 2 provisions

³⁴ The International Federation of Christian Trade Unions representative.

³⁵ Comm'n on H.R., 2nd Sess., 35th mtg. at 12, U.N. Doc E/CN.4/SR.35 (1947).

³⁶ *Ibid.*, p. 13.

³⁷ The mentioned Chairman of the Commission on the Status of Women.

³⁸ U.N. ECOSOC, 6th Sess., Rep. of Report of the 2nd Sess. of the Comm'n on the Status of Women, U.N. Doc E/615 (1948).

³⁹ U.N. Doc E/CN.4/SR.35, *c. d.*, p. 14.

⁴⁰ Lord Dukeston, the United Kingdom delegate and the member of the Working Group on the Convention.

⁴¹ U.N. Doc E/CN.4/SR.35, *c. d.*, p. 15.

may cause many states,⁴² which established such a principle in domestic legislation, would cause difficulties in ratifying the future Convention.⁴³

But after voting, paragraph 2 was deleted by ten votes to three. Remembering the mentioned delegates' arguments, we probably can be sure that the result of the voting was not due to arguments against the rights of the unborn, but other reasons.

4. IN FAVOR OF THE SHORTER VERSION BUT NOT AGAINST THE RIGHTS OF THE UNBORN

In 1948, the discussion about the rights of the unborn was continued. The French delegate to the Declaration Drafting Committee pointed out "[...] *that the Drafting Committee's most essential task was to shorten and clarify the draft of the Declaration*".⁴⁴ The idea to make the text of the Declaration as short as possible⁴⁵ was also supported by the Chilean representative, who nevertheless pointed out that some lines of explanation to the provision for the right to life should be added and repeated the proposition granting the right to life to the unborn.⁴⁶ Mr. Malik (Lebanon's representative) also repeated his proposition of starting the right to life from the moment of conception.⁴⁷ The French delegate essentially agreed with the Lebanese and Chilean proposals but also mentioned that "[...] *the Declaration should only contain ideas acceptable to all the members*".⁴⁸

There were no critical disagreements or objections to the idea of the rights of the unborn, but instead, there was the willingness to make the Declaration as short as possible. Afterward, the Chairman asked⁴⁹ to vote on adding Lebanon's proposed phrase "from the moment of conception". Objecting to Lebanon's proposal, the representative of the Union of Soviet Socialist Republics only repeated⁵⁰ the fear of colleagues that laws against abortion did not exist in all countries, which we may understand as the cause of future problems with voting for the Declaration. Answering the mentioned colleagues' statements, Lebanon's representative pointed out that he believed that while the delegations of the three countries did not wish to include the phrase "from the moment of conception" in favor of the concision of the Declaration, they honestly considered that such an idea was implied in general terms.⁵¹ Such an assumption was confirmed by a Chinese representative, who stressed that "[...] *the wording of Article 4 did not imply but actually contained the idea expressed by the Lebanese representative*".⁵² The United

⁴² Such as the United Kingdom, the Scandinavian countries, and possibly some Federal States of the United States of America.

⁴³ U.N. Doc E/CN.4/SR.35, *c. d.*, p. 15.

⁴⁴ Comm'n on H.R. Drafting Comm., 2nd Sess., 35th mtg. at 2, U.N. Doc E/CN.4/AC.1/SR.35 (1948).

⁴⁵ Such an idea was also mentioned by China and the USA representatives, see *ibid.*, pp. 3–4.

⁴⁶ *Ibid.*, p. 3.

⁴⁷ *Ibid.*, p. 4.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 5.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 5.

⁵² *Ibid.*

Kingdom's representative did not maintain the confidence of the Chinese colleague and mentioned that "[...] *the wording of Article 4 could be understood to contain Lebanon's idea but did not necessarily do so*".⁵³

As the representative of the United States, the Chairman stated that "[...] *the terms of Article 4 were sufficiently broad to comprise certain ideas which a country might wish to adopt as general principles*", believing that "*the most concise and general wording to be the most desirable*".⁵⁴ As a result of the discussion and voting, inclusion in Article 4, the phrase "from the moment of conception" was rejected by six votes to two.

As we may see, the situation with the refusal to enshrine the rights of the unborn directly was repeated, but it also proved the author's statements that there were no critical contradictions with the rights of the unborn existing basically. Moreover, delegates directly mentioned the existence of such rights in the draft's provisions but without their direct enshrining in the text, and only the fear and willingness of shortness wording did not allow such direct wording.

5. CONTINUATION OF THE ATTEMPTS TO PROTECT THE UNBORN LIFE

Despite the rejection of the Lebanese and Chilean representatives' proposition, the question of international recognition of the right to life from the moment of conception was brought back/actualized again at the two hundred and fifteenth meeting of the Economic and Social Council by Venezuelan representative Mr. Perez Perozo. He pointed out that, guaranteed by Article 3 of the Draft Declaration, the right to life should be more explicitly defined and that such a right existed from the moment of conception.^{55, 56}

Also, we should mention an interesting fact about changing positions of the same country delegates during the drafting process. According to the summary record of the fifty-third meeting of the Commission on Human Rights (June 1948), the Belgian delegate Mr. Lebeau, shared his opinion that "*the Declaration applied only to those who were already alive*".⁵⁷ But on the one hundred thirty-eighth meeting of the General Assembly 3rd session (3rd Committee, November 1948), Count Carton de Wiart (also from Belgium) said that "*Man, in fact, had rights before his birth...*".⁵⁸

After the failure of attempts to directly prescribe the right to life of the unborn person in the drafts of the Declaration, it seems that supporters of unborn life protection decided to change their tactic. In their new proposals to the General Assembly, Lebanon⁵⁹ and China's⁶⁰ representatives suggested excluding the word "born" from Article 1 of

⁵³ Ibid

⁵⁴ Ibid., pp. 5–6.

⁵⁵ U.N. ECOSOC, 7th Sess., 215th mtg., U.N. Doc E/SR.215 at 656 (1948).

⁵⁶ Comm'n on H.R., Rep. of the 3rd Sess. U.N. Doc. E/800 (1948).

⁵⁷ Comm'n on H.R., 3rd Sess., 53rd mtg. at 2, U.N. E/CN.4/SR.53 (1948).

⁵⁸ U.N. G.A. 33rd Comm., 3rd Sess., 138th mtg., U.N. Doc A/C.3/SR.138 at 512 (1948).

⁵⁹ U.N. G.A. 33rd Comm., 3rd Sess., Draft Int. Decl. of H.R., U.N. Doc A/C.3/235 (1948).

⁶⁰ U.N. G.A. 33rd Comm., 3rd Sess., Draft Int. Decl. of H.R., U.N. Doc A/C.3/236 (1948).

the Declaration of Human Rights Draft,⁶¹ which prescribed that “*All human beings are born free and equal in dignity and rights*”. Remembering the points of view and proposals from the supporters of the rights of the unborn, we can probably be sure that the idea of excluding the word “born” from the Article 1 provision was reasoned by the logic that the mentioned article would cover the unborn life without concretizing that only the born is under its protection. The proposals that used the same logic were also suggested by the Iraqi⁶² and Venezuelan⁶³ representatives. Additionally, we need to mention that Venezuela’s representative clearly pointed to supporting the Lebanese ideas to exclude the word “born” and about protecting the unborn life.⁶⁴ The Venezuelan delegate also pointed out that “[...] *when article 1 was discussed, the right to life and, consequently, all the measures tending to protect it, originated at the moment of the conception of the human being*”.⁶⁵ The Mexican representative also supported the idea that a human being’s right to freedom and equality began from the moment of his conception and that a broader period should be taken into account if the word “born” were used.⁶⁶ But as we know, the word “born” was not excluded from the Declaration Article 1, which gives the opponents the reasons to claim that “[...] *the word ‘born’ was used intentionally to exclude the fetus or any antenatal application of human rights*”.⁶⁷ As well as to point out that “[...] *the term ‘born’ was intentionally used to exclude the fetus or any other antenatal application of human rights*”, which is supposedly also confirmed by the fact of excluding while drafting process the wording “from the moment of conception”.⁶⁸

But as we have mentioned before, the opponents of the existence of the rights of the unborn only manipulate with facts and can’t claim that the word “born” was not excluded because drafters were against the rights of the unborn. It was only another failed attempt by some of the drafters to enshrine the rights of the unborn directly, but absolutely not proof of such rights denial by drafters.

A little bit later, Lebanon’s representative proposed amendments⁶⁹ to the draft Declaration of Human Rights,⁷⁰ which contained an absolutely differently formulated Article 1: “*Since all human beings are by their nature endowed with reason and conscience, they are free and equal in dignity and rights and in their duty to act towards one another in a spirit of brotherhood*”, and Article 3, which prescribed that “*Everyone has the right to life, liberty, security of person and the full development of his personality*”. Knowing Lebanon’s position about the unborn’s rights, we may assume that the proposed wording “all human beings” and “everyone” meant wide understanding, which includes both unborn and born. Despite the fact that the proposed Article 1 provision

⁶¹ U.N. Doc. E/800, *c. d.*

⁶² U.N. G.A. 33rd Comm., 3rd Sess., Draft Int. Decl. of H.R., U.N. Doc A/C.3/237 (1948).

⁶³ U.N. G.A. 33rd Comm., 3rd Sess., Draft Int. Decl. of H.R., U.N. Doc A/C.3/246 (1948).

⁶⁴ U.N. G.A. 33rd Comm., 3rd Sess., 138th mtg., U.N. Doc A/C.3/SR.98 at 111 (1948).

⁶⁵ U.N. G.A. 33rd Comm., 3rd Sess., 138th mtg., U.N. Doc A/C.3/SR.104 at 167 (1948).

⁶⁶ U.N. G.A. 33rd Comm., 3rd Sess., 138th mtg., U.N. Doc A/C.3/SR.99 at 121 (1948).

⁶⁷ COPELON, *c. d.*, p. 121.

⁶⁸ ZAMPAS, *c. d.*, pp. 262–63.

⁶⁹ U.N. G.A. 3rd Comm., 3rd Sess., Draft Int. Decl. of H.R., U.N. Doc A/C.3/260 (1948).

⁷⁰ U.N. Doc. E/800, *c. d.*

was not accepted, the first part of the proposed Article 3 was implemented in the final text of the Declaration.

Mentioning the wording of the Preamble, Articles 1 and 3 of the Declaration, such as “all members of the human family”, “all human beings”, and “everyone”, the supporters of the rights of the unborn claim that mentioned affirmations “[...] *are not qualified as to age or limited to the born, and it would be difficult to understand them as not including the living-but-not-yet-born*”.⁷¹

After all the above mentioned, it is clear that the Declaration’s final text and its wordings do not exclude from covering the right to life of the unborn and that the lack of the wording “unborn” or “from the moment of conception” was dictated by other reasons.

6. INFLUENCE OF THE INTERNATIONAL AND NATIONAL LEGAL SOURCES ON THE DECLARATION DRAFTING PROCESS

The drafting process of any international agreement includes propositions from the future parties’ representatives and proposals from the international expert society, considering member states’ domestic legislation acting at that time. The wide experts’ involvement makes the international document more internationally approved and qualitative and allows for uniting experts’ views, national and international theories, and implementation practices in particular aspects of future document provisions worldwide. International experts and organizations were also involved in the Declaration drafting process, whose opinions undoubtedly influenced the text and should be analyzed no less carefully if we want to discover the essence of the Declaration’s provisions. Moreover, delegates often linked their arguments and contradictions with the domestic law of the future parties of the Declaration.

More than half a year before the first meeting of the Commission on Human Rights, during the Nuclear Commission meeting, a Commission member, Mr. Kshitish Chandra Neogy, underlined that before starting to work on or drafting an international bill of rights, the Commission should conduct a detailed analysis of different experts’ opinions and other documents.⁷² A month later, Mr. Neogy’s opinion was supported by Mr. Hsia, who mentioned that some of the Nuclear Commission members should study and digest the documents available on human rights, make a preliminary draft, and present it to the Nuclear Commission.⁷³ Indeed, analysis of the existing expert’s opinions and countries’ domestic legislation is one of the most important parts of any international document drafting process, so it was proposed⁷⁴ to ask the Economic and Social Council for in-

⁷¹ FLOOD, P. Does International Law Protect the Unborn Child? In: KOTERSKI, J. (ed.). *Life and Learning XVI: Proceedings of the Sixteenth University Faculty for Life Conference at Villanova University 2006*. Charlottesville: University of Virginia, Faculty for Life, 2007, p. 6.

⁷² Comm’n on H.R. of the ECOSOC, Summary record of mtgs., U.N. Doc E/HR/8 at 3 (1946).

⁷³ Comm’n on H.R. of the ECOSOC, 1st Drafting Sess., summary record of mtgs., U.N. Doc E/HR/13 at 1–3 (1946).

⁷⁴ *Ibid.*, p. 1.

structions to the Secretariat on publishing a collection of texts regarding human rights⁷⁵ (including the Constitutional provisions of different countries).

It is hard to disagree that if domestic legislation inscribes some rules and legal views, the country's delegates will not contradict the current legislation of their own countries or the courts' practice. As we mentioned, during the Declaration drafting process, delegates argued their proposals to include or exclude wordings about the right to life of the unborn by mentioning either possible contradictions with existing countries' domestic legislations or vice versa. It seems absolutely logical that the domestic legislation of the unborn rights supporters should be loyal to the unborn life and be in opposition to abortion. For example, till 2017, Chile did not permit abortion under any circumstances, and beginning in 1931, the Chilean Health Code allowed abortion on health grounds but was repealed in 1989.⁷⁶ Lebanon's legislation regarding abortions was very similar to Chile's. Following Lebanon's Penal Code (established in 1943), abortions were banned except to save the pregnant woman's life.⁷⁷

The state's representatives who did not support directly enshrining the wordings "from the moment of conception" or "unborn life" in the Declaration also had to consider their domestic legislation provisions, court practice, and experts' opinions. For example, the U.S. representative could not forget that by 1900, virtually all the U.S. States had adopted criminal legislation that regulated or prohibited abortion and that opposition to abortion became the restrictive national policy till 1965.⁷⁸ In 1946, in the case "*Bonbrest v. Kotz*" the court rejected the statement that a fetus is only a "part" of its mother, so it protected the right to an independent claim of the unborn, the logic of which was followed by all states, to 1967.⁷⁹ At that time, Harvard professor William Prosser pointed out that both medical society and law (for many purposes) have recognized long since the child existed from the moment of conception.⁸⁰ The British representative probably also knew the logic used in the British Dr. Alex Bourne case (1938), that abortion was limited but justified if there was a risk to the mother's life.⁸¹ At the beginning of the 20th century, "[...] *abortion at any stage of pregnancy was legally restricted throughout Europe*".⁸² A very illustrative point may be the French example, where abortions were outlawed (from 1923) and where there was the highest rate of criminal convictions in 1946 for abortion.⁸³ That is why it is very difficult to imagine

⁷⁵ Named further the Yearbook on human rights.

⁷⁶ MAIRA, G. – CASAS, L. – VIVALDI, L. Abortion in Chile: The Long Road to Legalization and its Slow Implementation. *Health and Human Rights*. 2019, Vol. 21, No. 2, p. 121.

⁷⁷ FATHALLAH, Z. Moral Work and the Construction of Abortion Networks: Women's Access to Safe Abortion in Lebanon. *Health and Human Rights*. 2019, Vol. 21, No. 2, p. 22.

⁷⁸ HAYLER, B. Abortion. *Signs*. 1979, Vol. 5, No. 2, p. 313.

⁷⁹ KING, P. The Juridical Status of the Fetus: A Proposal for Legal Protection of the Unborn. *Michigan Law Review*. 1979, Vol. 77, No. 7, p. 1660.

⁸⁰ PROSSER, W. *Handbook of the Law of Torts*. 3rd ed. St. Paul: West Publishing Company, 1964, p. 355.

⁸¹ DURAND, R. Abortion: Medical Aspects of *Rex v. Bourne*. *The Modern Law Review*. 1938, Vol. 2, No. 3, p. 238.

⁸² DAVID, H. Abortion in Europe, 1920–91: A Public Health Perspective. *Studies in Family Planning*. 1992, Vol. 23, No. 1, p. 3.

⁸³ JANAUDA. Abortion in France in 1977. *Contracept Fertil Sex*. 1977, Vol. 5, No. 4, p. 343.

that the official countries' representatives were critically against the rights of the unborn and supported abortion, knowing the mentioned legal views in their countries.

The first year of publication of the previously mentioned Yearbook on Human Rights, 1946,⁸⁴ contained very interesting constitutional provisions of two countries that prescribed the rights of the unborn, in the author's opinion. The first one was the provisions of part 3 of Article 13 of the Portuguese Constitution.⁸⁵ Mentioning provisions granted the rights to the children not yet born similar to those already born. Very similar provisions were Article 5 of the El Salvador Constitution,⁸⁶ which prescribed legal rights of persons "*who may not have been born but are already in the maternal womb*". The Yearbook on Human Rights for 1947⁸⁷ also contained provisions about the rights of the unborn, such as the guarantees of full protection by the state of the child from the time of its conception, prescribed in Article 49 of the United States of Venezuela Constitution.⁸⁸ Also, we have to mention that by analyzing the named Yearbooks, we have found the legislative provisions that used the word "abortion" only in cases of possible limitation of rights but not allowing abortion. Article 2 of the Royal Legislative Decree allowed the confiscation of newspapers that "[...] *disclose means of birth control or abortion or illustrate their use or indicate how to obtain them or contain advertisements or correspondence relating to the aforesaid means*".⁸⁹ Very similar provisions were also in the Italian Legislative Decree of the Lieutenant of the Realm (December 1945),⁹⁰ the limitation of freedom of the press and prescribed the seizure was allowed "*in the case of divulging means of birth control or of provoking abortion*".

7. CONCLUSION

Any international document in the field of human rights is part of the vast international legal puzzle that should cover all aspects and nuances of human existence. The indisputable basis of such a puzzle is the Universal Declaration of Human Rights, which contains fundamental principles and messages for further implementation and details on international and domestic levels. That is why any misunderstanding of the Declaration's provisions or their misreading may distort the real message embedded by the drafters and cause future rights limitations.

Regarding fundamental international principles, which should connect different nations with their historical, religious, and legal nuances and features, we should know the fundamental international document's actual message and real essence. If not, the initial message and idea of the drafters will be distorted and lost forever, which is unacceptable and will be a terrible omission. We can't build a clear legal future based on a wrong interpretation of the fundamental document, even if the real essence of the provisions of

⁸⁴ 1946 U.N.Y.B. 1, U.N. Sales No. 48.XIV.1

⁸⁵ 1946 U.N.Y.B. 1, 239, U.N. Sales No. 48.XIV.1

⁸⁶ 1946 U.N.Y.B. 1, 252 U.N. Sales No. 48.XIV.1

⁸⁷ 1947 U.N.Y.B. 1, U.N. Sales No. 49.XIV.1

⁸⁸ 1947 U.N.Y.B. 1, 353, U.N. Sales No. 49.XIV.1.

⁸⁹ 1946 U.N.Y.B. 1, 168 U.N. Sales No. 48.XIV.1.

⁹⁰ 1946 U.N.Y.B. 1, 170 U.N. Sales No. 48.XIV.1.

such a document may not be appropriate for some side in the discussion, whether such a side has a current majority or not.

The Declaration was drafted as a fundamental international document that can't allow any privileges from some point of view. And it seems absolutely strange if such a document banned the right to life as a fundamental right of the unborn, knowing that provisions of majority countries' legislation, as it was often mentioned during the drafting process, allowed the forbidden or limitation of abortion, and considering enshrined directly in constitutional provisions of some countries the right to life of the unborn.

Writing this piece, the main aim was to provide "fair play" between parties of discussion because if the standard view is that the Declaration bans the rights of the unborn, which is not valid, one side will have unfair privileges.

As readers may understand from the current research, the drafters were not against the rights of the unborn but were only afraid of the direct enshrining of some terms in the texts and wanted to make the text maximumly short and roomy. That is why we think the Declaration allows the existence of the rights of both the born and the unborn, which is proved by the drafters' statements during the drafting process. We hope this work will help scholars upgrade and clarify their views on the Declaration drafters' views and its true essence. Also, this research may help experts, lawyers, and judges in future legal battles about the rights of abortion and the rights of the unborn.

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