Thirty-Five Nations Declared There Is No International Right to Abortion

But now there are only 34, because Biden has pulled the U.S. out

Jonathan Abbamonte / January 29, 2021


While the Trump administration has now left Washington, D.C., the administration in its final months worked together with dozens of nations to leave behind an important pro-life initiative that could have a significant and lasting impact for protecting the right to life internationally for years to come, regardless of who occupies the White House.

On October 22, 2020, thirty-two countries on the sidelines of the 2020 World Health Assembly, the governing body of the WHO, signed the Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family, a historic declaration cosponsored by Brazil, Egypt, Hungary, Indonesia, Uganda, and the United States. The Declaration affirms that there is no right to abortion under international law and reaffirms the long-standing international consensus that sovereign nations have the freedom to make their own laws pertaining to abortion without foreign interference.

The Geneva Consensus Declaration makes clear that “there is no international right to abortion nor any international obligation on the part of States to finance or facilitate abortion,” and affirms that all people have the right to the full enjoyment of all human rights.

The Declaration commits to promoting women’s advancement and development and affirms that women have the right to the highest attainable standard of health but that multilateral efforts to secure women’s health must do so “without including abortion.” Too often in negotiations at the United Nations and other multilateral fora, pressing health needs for women are set aside in favor of debates about controversial issues like abortion which do not enjoy international consensus.
The Declaration also seeks to recover a focus on protecting the family, a focus that has largely been missing in multilateral fora such as the United Nations in recent decades. Quoting Article 16 of the Universal Declaration of Human Rights, the Geneva Consensus Declaration reaffirms that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

Since the Declaration was issued, 3 additional countries have signed on, bringing the total number of signatories to 35.

But that number has now been reduced to 34 by the U.S. withdrawal.

On January 28th President Joe Biden, in one of his first acts as president, issued a presidential memorandum directing his administration to withdraw the United States from the Geneva Consensus Declaration.

Despite the departure of the U.S. from the agreement, the Declaration remains valid as strong evidence that a significant number of countries do not consider abortion to be a human right under international law. The Declaration is currently being hosted by the government of Brazil and will remain open indefinitely to additional countries that wish to sign the Declaration.

The Geneva Consensus Declaration could roll back decades of efforts from pro-abortion advocates to gain recognition for an international “right” to abortion. And while most of the pro-life initiatives of the Trump administration are likely to be reversed by the incoming Biden administration, the Geneva Consensus Declaration cannot be reversed by the new administration due to the fact that it relies not on U.S. law or federal regulations but on the consent of sovereign countries.

The Declaration makes an important comment on how the signatories of the document interpret the term “sexual and reproductive health”—a phrase that has long been used extensively by pro-abortion advocates and by the U.N. system to push the evolution of language towards the acceptance of abortion as a human right. The Declaration reinforces the signatory nations’ commitment to promoting women’s health and development, including sexual and reproductive health “without including abortion,” in essence declaring that the signatories do not recognize abortion as part of “sexual and reproductive health.”

The Declaration further reaffirms the long-standing international consensus agreed to by 179 nations in the Programme of Action from the 1994 International Conference on Population and Development that “In no case should abortion be promoted as a method of
family planning” and that “Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”

The significance and importance of the Geneva Consensus Declaration is difficult to overstate. The Declaration is historic as it is the first internationally agreed-to declaration that makes explicit that a significant number of States do not acknowledge an international right to abortion. This is important because international law (unlike federal or state law) is derived from the consent of states, from international agreements such as treaties, and from the general practice that states exhibit in their own domestic laws and in their responses to developing customary norms.

For decades, specialized agencies and human rights bodies within the United Nations system, pro-abortion NGOs, and a handful of wealthy western countries have gradually, incrementally, and relentlessly pushed for recognition for an international “right” to abortion. They have attempted to do this by reinterpreting international human rights treaties and by holding countries that have signed these treaties to interpretations never agreed to by the States. They have also attempted to do this by inserting ambivalent phrases such as “sexual and reproductive health” into U.N. documents and reports and once included in these said documents and reports, they then use them to promote abortion even though States never agreed that such language included abortion.

While there does not exist a right to abortion under international law, U.N. treaty bodies and U.N. appointed “human rights experts” and rapporteurs have long sought to reinterpret international human rights treaties to claim abortion as a right, contrary to the intent of states that have ratified these treaties.

U.N. treaty bodies in particular have been a crucial part of this effort. U.N. treaty bodies are committees of human rights experts elected by states that have acceded to a treaty. U.N. treaty bodies are tasked with monitoring the implementation of a treaty and making non-binding recommendations to states on how they believe the state can best fulfill its obligations under the treaty. But in doing so, U.N. treaty bodies must adhere to the customary norms for the valid interpretation of treaties, including the general consensus among states that a treaty must be interpreted in good faith and in accordance with the ordinary meaning of the terms of the treaty and in accordance with subsequent agreements between states that have signed the treaty. Abortion has never been mentioned in any international human rights treaty or international agreement and as such no right to
abortion can be derived from them.

While U.N. treaty bodies and U.N. appointed human rights experts have no authority to reinterpret human rights treaties, they have done so nonetheless, using the full prestige of their offices to exert pressure on sovereign nations to legalize abortion under broad circumstances.

Various specialized agencies and programmes at the United Nations—such as the World Health Organization (WHO) and the United Nations Population Fund (UNFPA)—in turn have routinely relied on statements, reports, and judgements issued by U.N. treaty bodies and U.N. human rights experts and rapporteurs to justify and provide legal cover for their active promotion of the legalization of abortion.

In recent years, U.N. human rights bodies and specialized agencies have become bolder. Pressure they have brought to bear on countries with pro-life laws in recent years has become more open, direct, and consistent. One treaty body, the Human Rights Committee, has even gone so far as to make the unprecedented claim that states, under the International Covenant of Civil and Political Rights (ICCPR), “must provide” access to legal abortion in cases of health, rape, incest, and fetal disability, or when continuation of the pregnancy causes the woman “substantial pain or suffering.” The Human Right Committee is tasked with monitoring the implementation of the ICCPR.

However, the ICCPR does not once mention abortion. On the contrary, the treaty guarantees that “Every human being has the inherent right to life” and that such a right must be “protected by law.” The ICCPR also includes a provision that the death penalty should not be carried out on a pregnant woman. This provision was included in the treaty in the interest of protecting the life of an innocent unborn child.

International law scholars generally agree that an international law can be established when all or most all states follow some norm generally and consistently and do so out of a sense of legal obligation. This is what is known as customary international law. If a significant number of states or a significant number of important states dissent from a norm in practice, the norm cannot become customary international law.

The Geneva Consensus Declaration has been signed by 35 countries from every region of the world, collectively representing over 1.6 billion people worldwide. This is a significant number of states from all regions of the world accounting for a significant percentage of the world’s population, making it impossible to validly assert that legal access to abortion is a
customary norm.

Furthermore, states which publicly dissent in practice from a norm as it is developing into customary international law are not bound to abide by it, even if it evolves fully into a customary norm later on. On the other hand, states which acquiesce or remain silent during the development of a customary norm are generally bound to follow it if and when such a norm becomes customary international law even if they disagree with it.

But the countries that have now signed onto the Geneva Consensus Declaration have made for themselves clear and compelling evidence that they have dissented from an international right to abortion. Should legalized abortion become a customary norm sometime in the future, states that constantly and consistently maintain their support for the Geneva Consensus Declaration cannot be compelled to change their laws on abortion. States are not bound to follow a customary norm for which they consistently dissented from during its development.

States that have signed the Geneva Consensus Declaration, however, must be careful to remain strong and not remove their signature from the document due solely to outside pressure from wealthy western nations, U.N. agencies, or pro-abortion NGOs. Such removal could constitute evidence that the state is ambivalent towards an international right to abortion and be used to compel them to legalize abortion as such if legalized abortion becomes a customary norm sometime in the distant future.

The more countries sign onto the Geneva Consensus Declaration, the more compelling the case will be that there exists no international right to abortion. This will strengthen the hand of sovereign nation-states in regulating or banning abortion in accordance with their national laws, customs, and culture—without foreign interference.

Thirty-four countries so far have signed the Geneva Consensus Declaration. The Declaration remains open indefinitely to additional country signatories. The government of Brazil is currently maintaining the list of signatories. Countries that wish to sign the Geneva Consensus Declaration may do so by contacting the Embassy of Brazil in Washington, D.C. or the Population Research Institute in Virginia by e-mailing jonathan@pop.org.
