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THREE KEY ISSUES by Bruce Abramson

The CRC RIGHTS of BABIES and YOUNG CHILDREN: THREE KEY ISSUES

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Impressum

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I. Human Rights Advocacy Must Shift Its Focus to the "Systems" Aspect of Economic and Social Rights

Most of the so-called "economic and social" rights are fundamentally different from most of the "civil and political" rights. Because they are different in nature, they require a different strategy of advocacy, implementation, and monitoring. For instance, the right of each youngster to "the highest attainable standard of health" (CRC art. 24) is an idealized end goal that requires a complex system of institutions. The creation of these institutions is an ongoing process, taking place over many generations. It also

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requires an endless series of decisions that strike balances between competing interests. Economic and social rights are about the competition for scarce resources. The fundamental nature of these rights requires a new approach in human rights advocacy.

The right to health under CRC article 24 is, first and foremost, the right to a properly functioning public health-care system. The public health-care system is composed of many sub-systems that handle specific aspects of health. Pre-natal care, birth attendants, immunization, clean water, sanitation, disease surveillance, control of communicable diseases, accident prevention, and public health-education are specific aspects of health care, for example. Each of these areas of health care must be handled by a specialized unit within the government. Each unit must have its own budget allocations, trained personnel, terms of reference, and accountability structure, and the all the units must operate in coordination. And the ultimate responsibility for all of these things is on the Government. Promoting the health of society is one of the principal reasons for the state to exit. In other words, each heath care unit is a system within the overall state health-care system.

Jose is 8 months old. Although his mother will not deliver him for another month, his parents have already determined his sex, and they have named him after his grandfather. Jose has a vital interest in having his mother receive pre-natal care. His survival until delivery may depend upon it, and his life-long well-being will be shaped by the care he and his mother receive during the pre-birth period. Jose also has the right to pre-natal health services under CRC article 24. But even though Jose holds this right as an individual, the State does not create its pre-natal care facilities just for Jose. A system of pre-natal clinics must exist long before Jose is even conceived, or else they will not be in place at the time his mother needs to use them. After his delivery, Jose will need to receive a series of immunization shots. These vaccinations will take place over several years, and cover a number of life-threatening diseases. Without these immunizations, he may die, or be disabled. But the State will not create immunization programs just for Jose. It builds up a delivery system for vaccinations over many years, in fact, over many generations of step-by-step institution building. After his delivery, Jose will need to receive a series of immunization shots. These vaccinations will take place over several years, and cover a number of life-threatening diseases. Without these immunizations, he may die, or be disabled. But the State will not create immunization programs just for Jose. It builds up a delivery system for vaccinations over many years, in fact, over many generations of step-by-step institution building.

Traditional human rights advocacy has not been very successful in addressing social and economic rights. It has concentrated on a handful of civil and political rights, like freedom from torture. These are “negative liberty” rights. They require the State to refrain from doing certain things. In completecontrast to this, social and economic rights require the State to do things: the rights to heath, education, and so forth, require the State to build and maintain complex systems. That is why the right to health under article 24 is, first and foremost, the right to a properly functioning public health-care system.

Moreover, the traditional approach of human rights advocacy is based on “name-shame-and-blame.” The traditional approach criticizes specific cases of abuse, demanding punishment of the perpetrators for their acts of wrong-doing. This is negative advocacy. It has played an indispensable role in protecting a handful of negative liberty rights. But negative advocacy has

been of no use in promoting economic and social rights.
A different way of thinking is needed for the rights to health, to education, to an adequate standard of living, and most other economic and social rights. The enjoyment of these rights requires a positive approach that f goal of "implementing CRC rights in early development" requires us to adopt a band new strategy. This new strategy will have to concentrate on systems. It will have to use positive advocacy. It will have to take social and economic rights seriously. It will have to take serious the idea that babies are holders of human rights. And it will have to respect the rights of parents under the CRC, as well as the rights they hold under the other human rights treaties.

II. CRC Article 5 Recognizes Parents As Right-holders

One of the most marginalized rights in the CRC is article 5. Several problems have contributed to its marginalization.
First of all, article 5 is an umbrella right because it pertains to the "sectoral" rights in the Convention, articles 6 through 41. In fact, articles 1 to 5 are all umbrella provisions. These five provisions could have been inserted as paragraphs within each of the sectoral rights, since conceptually they are all part of each of those rights. That would have made the CRC impossible to read, of course. So the framers of the Convention wrote them as umbrella provisions.

The two Covenants – the ICCPR and the ICESCR – have exactly the same structure, and the framers even used the word "umbrella" provisions during the drafting of those treaties. And they made that structure clear by expressly dividing the two Covenants into "Parts" -- the umbrella provisions are in Part II, and the sectoral rights in Part III. (The collective, or peoples',
right of self-determination is in Part I.) Because the CRC is not expressly divided into these two parts, the umbrella nature of articles 1 to 5 is often not recognized. That is the first source of marginalization.

Second, article 5 recognizes that parents are the de facto, if not the de jure, right-holders of the sectoral rights, at least for much of the life of the child. Unfortunately, there is a certain amount of anti-parent sentiment with some adult CRC-activists. They are a small minority because most people recognize the vital role of parents in the promotion of the healthy development of their children. But overall, the CRC movement has not been very careful in paying attention to the parent-child relationship in child development, and in the exercise or enjoyment of CRC rights. The focus of the advocacy is on "the child" – the noun is in the singular --, as if there were only one child in the world, and no parents or other relatives worth speaking of.

Article 5 says that parents are right-holders because of the utter impossibility of babies and young children exercising their own CRC rights, and because older children and adolescent need parental guidance and supervision as they mature into "autonomous" adults.

When we speak of babies and young children having rights, we are not using the term "right" in exactly the same way as when we speak of our own rights. When we adults exercise our rights, we make our own decisions. We decide what is best for us, and make our rights-claims accordingly. In exercising our right of freedom of speech, for example, we decide what we want to say, and assert our claims to say it.

Almost all human rights require balancing decisions before the abstract statements in the human rights treaties can be translated into concrete entitlements, and this is true for freedom of expression. And because of this need for balancing, the State can often times over-ride our personal judgements about what is permissible to say. Freedom of speech is not an

absolute right; it is a context-dependant right that requires the State to strike a balance between the right-holder's interests and the interests of others. So each adult right-holder makes their own decision about the exercise or enjoyment of the right, subject to the State's authority to limit the enjoyment in the interests of society.

But this is not what happens when it comes to the human rights ofbabies and young children. Their parents make the decisions on their behalf. The parents do not supervise the baby's exercise of decision-making about rights; the parents are not cheerleaders, encouraging their babies to autonomous assert their own rights. The parents exercise the babies' rights for them.

Although the CRC recognizes that Jose is an individual right-holder of the right to pre-natal care, under CRC article 24(2)(d), he cannot in any meaningful sense "exercise" this right. It is Jose's mother who demands prenatal healthcare. She can demand care as part of her own right to health under the Covenants, since her life and well-being are at stake in pregnancy.
But she can also demand pre-natal care in the name of her child: under article 5, Jose's mother exercises Jose's right to health on his behalf. It is her responsibility to do that, and, under article 5, it is her right.

When Jose is 1 year old and in need of a specific immunization shot, his father can demand that the State honor Jose's right to receive that vaccination under articles 6 and 24. The father claims these rights on behalf of his child: one-year old Jose is incapable of exercising the rights himself. The parent exercises the baby's rights.
Babies and young children are totally dependant upon adults. (Older children and teenagers are also dependant, but not to the same degree, or in the same ways.) The States that wrote the CRC recognized that this dependency is a fundamental fact of life. That is why article 5 recognizes the rights of parents. When a youngster is not in the position to exercise his or her rights, the parents are the de facto right-holders, under article 5. They are not supervisors, or cheerleaders. They are the right-holders, for all practical purposes.

For the most part, the CRC movement has ignored the need to empower parents. Some activists appear to fear that empowering parents will undermine CRC rights, but the consequence of this attitude is to seriously weaken the Convention. Fortunately, some actors embrace the holistic nature of the human condition that underlies the CRC. For instance, *UNHCR's Refugee Children: Guidelines on Protection and Care* approaches CRC implementation in an integrated way.

▷ Although the Convention on the Rights of the Child gives individual rights to children, the CRC also emphasizes relations. The well-being of children and the enjoyment of their rights are dependant upon their families and their communities. The CRC recognizes that the family is "the fundamental group of society" and places children's rights in the context of parental rights and duties (arts. 5, 14, 18, etc.)

▷ The importance of the community is constantly recognized (arts. 5, 13, 14, 15, 20, 29, 30). Throughout these Guidelines, we stress that one of the best ways to help refugee children is to help their families, and one of the best ways to help families is to help the community. (*Guidelines*, at 24-25.)

The right to health, along with most other social and economic rights, require the building of complex systems over long periods of time.

Many of the policy decisions that underlie these systems are about the allocation of scarce resources. Implementing these rights is political activity. The human rights movement must empower parents as political actors in order to ensure that the balancing decisions truly respect the human dignity of the most dependant people in society -- babies and young children.

III. The CRC Recognizes Babies As Right-holders Prior to Birth

Another one of the most marginalized rights is article 6, the right to life, especially when it comes to children who are waiting to be born. The States that wrote the CRC made the policy decision to ensure that children have rights before they are born. But while States routinely recognize that babies have rights before their delivery, there is a marked tendency within the human rights movement to ignore these rights. Some people even actively work against them.[1]

Five points need to be considered when it comes to the early development rights of children under the CRC, prior to birth.

The first pertains to the fundamental facts of child development. The Outline prepared by the secretariat of the UNHCHR makes the basic point: "[e]arly childhood is a crucial period for the sound development of young children; and [] missed opportunities during these years can not be made up at later stages of the child's life." [2] The foundation for a person's lifetime of good health is laid during the first nine months of life.

When mothers smoke during pregnancy, for instance, more child are born dead, more are born underweight, more die later of SIDS (Sudden Infant Death Syndrome), and they have more ear infections and respiratory illnesses. Children that grown up in homes where there is smoking have between 5 and 8 years taken off of their life expectancy. Early development matters! And the development begins nine months prior to the time the mother gives delivery to the baby.

Second, Poland's "Revised Draft Convention on the Rights of the Child" expressly excluded babies from being right-holders prior to their birth. Its draft article 1 read: "According to the present Convention a child is everyhuman being from the moment of his birth … ." (emphasis added).[3] The framers of the Convention made the policy decision to remove that restriction, thereby ensuring that children prior to birth will be protected under the CRC.[4]

Third, the right to health was carefully written to recognize that babies have human rights prior to birth. Article 24 expressly says that babies have the right to have their mothers receive "pre-natal … health care." Paragraph (1) speaks of "the right of the child to the enjoyment of the highest attainable standard of health." Paragraph (2) then specifies a number of measures that the State must take for the "full implementation of this right" (emphasis added). In subsection (d) of that paragraph, the State is obligated to ensure pre-natal care. So pre-natal care is a component of the child's right to health. Since pre-natal care only applies to children prior to their birth, babies prior to birth have CRC rights.

If the framers had wanted to impose on States the obligation to ensure that mothers receive pre-natal care for their children *but without* making this a right of the child, then it would have been very simple to have drafted the treaty to do that. For instance, article 24 could have been written so that all of the child's health rights are defined in paragraph (1), and then the obligation

to provide pre-natal care is defined in paragraph (2) using language that excludes the child as the right-holder. There are a number of ways to do this. For example, paragraph (2) could have said, "In addition to the obligations to ensure the rights of the child as specified in paragraph (1), State Parties recognize that the child's mother has the right to receive pre-natal care." But the framers of the treaty chose not to define the obligation to ensure pre-natal care as separate from the *child's* rights. Instead, they expressly defined the State's obligations to ensure pre-natal care in terms of the child's human rights.

Fourth, the preamble expressly speaks of the child's rights prior to birth: "Bearing in mind … 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'" (second emphasis added). No only does the preamble recognize the need for protection prior to birth, it speaks of the child's need for that protection. This was a very controversial paragraph, and delegates pointed out that it would be used in interpreting the CRC rights. The rights are defined in terms of "the child," and the preamble uses the word child in connection with the child's need for legal and other protection before birth. The States that wrote the CRC did not have to include this paragraph in the treaty if they did not want to. But they wanted to, knowing full well that it would be used to interpret article 1, and the other articles. There really was no other reason to include it, except to aid in the interpretation.[5]

Fifth, States routinely say that the CRC rights apply prior to birth. Their implementation reports to the Committee constantly make this point under the section on article 6, the right to life.[6]

There is an interesting irony here. Most States are more vigorously dedicated to the rights of babies under CRC article 6 than non-governmental activists in the CRC movement!

The two sources of confusion

There are two main sources of confusion in discussions about the rights of babies prior to their delivery.

The first source of confusion is the slipperiness of words in political disputes. The issue is nearly always framed in terms of "abortion," and confusion results when the meaning of the medical term is transformed into political speech.

Medically speaking, abortion refers to "the termination of pregnancy," not to the termination of the life of the baby (or the life of the foetus, embryo, zygote, or other medical category, at whatever stage of pre-natal development).[7] In political debates, however, people tend to use abortion to refer to the termination of the life of the baby. This usage obscures the difference between two sets of interests: the mother's well-being or autonomy, and the baby's well-being. Since the legal and political arguments are about the balancing of conflicting interests, the inability of the language of the debate to distinguish between the competing interests means that the debate is slanted in one particular direction, which makes it difficult to perform a true balancing judgment. The language itself virtually makes the judgement for us. It "makes the judgment" because the new meaning of the key term has been constructed in a way that virtually eliminates one half of the balancing equation.

Let us say that I have a garden, and the kids next door trespass onto my property, destroying my beloved flowers. I have a right to protect my interests. Their trespass causes me material injuries because those flowers are valuable. They cost me a lot of time, money, and energy.

Their trespass also causes me emotional distress: my garden is precious to me. And their trespass violates my privacy, or sense of autonomy and security, which is a very real but intangible injury. I have an interest, and a right, to stop their trespass. But I do not have the right to kill them. The kids are human beings, too, and they have interests, above all the interest of preserving their lives. The law strikes a balance between the competing sets of interests: the law gives property owners the right to stop a trespass, even to use force, if necessary; but it does not give them the right to use deadly force. All of my interests combined do not outweigh the interests of those kids when it comes to the use of deadly force: the most precious interest of all -- the interest in living – "trumps" all of my other interests put together.

So ending the trespass to my property is not the same thing as ending the lives of the trespassers. And ending a pregnancy is not the same thing as ending the life of baby. Arguments about "abortion" are plagued by verbal, and hence conceptual, confusions. Consider this argument people two people, whom I will call Red and Green:

Red: "I have a right to an abortion!" (Meaning: "I have a right to end my pregnancy.")

Green: "There is no right to an abortion!" (Meaning: "There is no right to end the life of the baby.")

These two people are not talking about the same thing. Red is referring to the condition of being pregnant, while Green is referring to the baby. Both of them are thinking about only one half of the balancing equation.

One reason that the two sets of interests get blurred is because of technology, since the means used to terminate a pregnancy will also terminate the life of the baby, in the typical case. But conceptually the interests are different: they are on two sides of the balancing scale. The medical meaning of abortion allows us to keep the competing interests clearly in mind, the political meaning makes this nearly impossible.[8]

The second source of confusion is the strong tendency of CRC activists, and human rights activists in general, to speak of rights in absolutists terms. This is a serious conceptual error because very few human rights are absolute. Almost all rights require balancing decisions before the abstract statement of the right in the treaty in question can be translated into concrete entitlements in real-life situations.

There are two types of rights in the CRC and the other UN treaties. One type are the absolute rights, of which there are only a few, like freedom from torture, and the prohibition of imposing capital punishment on minors and pregnant women. The other type can conveniently be called "contextdependant" rights. Absolute rights do not allow any balancing judgments, under any circumstances. But context-dependant rights always require balancing. Context-dependant rights are not true "trumps." They become trumps when the abstract statement of the right in rendered into a specific entitlement, and this requires a balancing of interest, which always depends upon context.

The right to life is not an absolute right. It is context-dependant, so what a person is actually entitled to enjoy will depend upon how the designated authorities have balanced the competing interests in the case at hand.

The ICCPR makes it clear that the right to life is context-dependant. ICCPR article 6(1) says: "No one shall be arbitrarily deprived of his life."

The word “arbitrarily” subjects the right to balancing. CRC article 6 does not contain any express qualification. But commonsense tells us that the right cannot be absolute. A 17-year old tries to kill a police officer. If the youngster’s right to life were absolute, then the police officer – an agent of the State – could not use deadly force to save his own life. The CRC would require that he intentionally allow himself to be murdered! We cannot accept the absurd results of an absolutist reading of article 6. We must read into the right some type of qualification, like no-arbitrariness, no-unreasonableness, or proportionality. Whatever the term, the practical consequence is the same: the designated authorities must make balancing decisions in order to implement the right to life.

So, while one can say that, at the most fundamental level, the lives of the assailant and the police officer are of equal moral value, society must still make a choice when the two lives are pitted against each other. And society tips the balance in favor of the police officer, taking into consideration a number of factors in addition to the intrinsic moral worth of human life.

To return to the trespass scenario, let’s say that two teenagers are rampling Smith’s vegetable garden, and he stops the trespass by shooting them with a shotgun. In defense to two counts of murder, he tells the court: “I have the right to defend my property.” Smith is right, but only partially right, which means that he is actually wrong.

Smith is wrong because he thinks that his rights to protect his property are absolute. He has ignored the need for balancing. Smith’s right to protect his interests must be considered in the broader context of the rights of others.
So the way that we speak about Smith’s rights must expressly reflect the need for a balancing of the conflicting interests. For instance, we can say:

- “Smith has the right to defend his property, subject to the rights of the trespassers.” Or,
- “Smith has the right to protect his property, provided that he does not violate the rights of the trespassers.” Or,
- “Smith has the right to use force to protect his interests, but only up to the point where the trespassers’ lives are put in danger.”

Each of these ways of framing the issue expressly recognizes that the law must balance people’s rights, or more precisely, the interests of the conflicting right-holders. And these balancing decisions must be based on a careful consideration of the facts of the situation. That is the nature of context-dependant rights.

Recognizing that children have rights prior to birth does not automatically tell us whether a State’s internal laws should allow a mother to end a pregnancy, even under circumstance when the limits of technology will terminate the baby’s life in the process. (In humanitarian law, the analogous concept is “collateral damage” – the lawful, unintended killing of innocent civilians during a legitimate military attack.) Recognition of the rights of the babies does not pre-determine the resolution of the political conflict. All it says is that the State must conduct a balancing of interests. In a world of nearly 200 States, and 6 billion people, there will be plenty of opinions about where to draw the line.[9]

The point in this discussion is not about the “correct” place to draw the line between the competing interests. The point is only that the CRC recognizes that babies have rights prior to birth, including the right to life under article 6, and that all of these rights require a balancing of competing interests.

Balancing of competing interest requires that the decision-makers truly value the people who are in the conflict, and the interests that are at stake. Let us say that the people in group A have a conflict with the people in group B. If the decision-maker values the people in A but not those in B, then the process of balancing will not be just.

In serious social conflicts, one common strategy is to create a polarized Us-against-Them dichotomy, and then to de-value the people in the Them group, even to the point of de-humanizing them. One of the most important contributions that human rights has made to civilization is to put a brake on this devaluing of other people. Human rights are "tools," or social constructs, for promoting respect of each and every person's human dignity. Making human dignity the fundament concept, the ultimate criterion for judging governmental conduct, counteracts the human tendency to devalue The Other in social conflicts. The emphasis on respecting human dignity is the engine that drives the human rights movement forward.

In social conflicts, the people who are in the weakest political position will consistently lose. While every body possess all human rights at all times, the real beneficiaries of human right law are the vulnerable. If everyone could compete in the political process on an essentially equal basis, then we would not really need the corrective mechanisms of international human rights law. But dramatic inequalities are the reality of life. While human rights are a nice "extra" for those who do not really need additional protection from the political forces, the vulnerable do need human rights law. They need it desperately.

Babies and young children are the most vulnerable group in society, and babies prior to birth are the most vulnerable of the vulnerable. The States that created the CRC recognized this fact of life, and wrote the Convention so as to protect the most helpless members of the human family. The fact that so many adults are working so hard to undermine the rights of children prior to birth just proves the point: babies are utterly dependant upon adults, for everything. They can never fight their own battles. That's why they need human rights, and need a CRC movement that will defend those rights on their behalf.
And because adults do the demanding and the enforcing and the balancing, we must be vigilant in identifying conflicts of interests between the adults and the children. Balancing decisions cannot be just if the actors are biased against the right-holders, or look down on the particular interests at stake. This is why respect for human dignity is the essence of human rights law.

IV. "From zero to four years"

The final word should go to the subject of this day's discussion. The Outline defines "early childhood" as "ranging from zero to four or zero to eight years" (at page 1).The word "zero" implies that the child does not exist, which indicates that today's topic includes the pre-natal period.

The commonly accepted way to speak of the ages of people is to use a dual counting system: we count age prior to birth by starting at the beginning of life, and then start over again after birth. Before delivery, one speaks in "premature" and "over-due" indicating deviations from normal early development. After the baby is delivered, one speaks in terms of months during the first year, and in years thereafter. There is no year zero.
There are dual measurements of other things as well. Caesar crossedthe river Rubicon in 49 BC,

and he died in AD 14. There is no year 0. As for temperature, we can have +30C, and –30C, with 0C in between.

It the Outline, it seems that "from zero" means that early childhood includes the entire pre-natal phase of the human life cycle. For one thing, it stresses that "early development is a crucial period for the sound development" of human beings (at page 2). The pre-natal stage of life is certainly a foundational stage. For another, article 24(2)(d) expressly recognizes the child's right to pre-natal care. Moreover, the ninth pre-ambluar paragraph expressly says that children need legal and other protection before their birth. And finally, "from zero" makes sense only if we understand it to mean from the moment that life begins: before that time there is zero – nothing, non-existence. As to babies who don't exist, there is nothing for us to discuss on the subject of "CRC rights and early childhood development." But the entire pre-natal period is relevant to our discussion, since a baby is not "zero."

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1 The American Convention on Human Rights also recognizes that babies have human rights before they are born. Article 1 reads: "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."

2 Committee on the Rights of the Child: Day of General Discussion on "Implementing child rights in early childhood: Outline," UN doc. CRC/C/137, para. 2 (January 13, 2004).

3 UN doc E/CN.4/1349, quoted in full in Sharon Detrick, The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Preparatoiries" (1992), at 95. [Hereafter The "Travaux Preparatoiries.]

4 See the following footnote, and accompanying main text discussion.

5 At the start of the second meeting of the 1980 drafting session, the (present) ninth preambular paragraph did not contain any language about protection prior to birth. A number of State delegations argued for an amendment that would expressly refer to the need for legal and other protection "before birth." They said that such language would not preclude the possibility of termination of a pregnancy in all cases, as for example when the mother is in danger. Other State delegations vigorous objected. They said that the paragraph "should indisputably be neutral on issues such as abortion." The "Travaux Preparatoiries, at 102, paras.

6-7. The final decision of the second meeting was to leave the draft as it was: the preamble said nothing about protection prior to birth. Id., at 103, para. 19. The UN staffers who prepared the summaries of this meeting called the final decision a "compromise." Id. Moreover, at the

time of that meeting the draft of (present) article 1 defined "child" as "every human being from the moment of his birth." Id., at 115. Subsequent to that meeting, the delegates made two critical decisions that changed the draft text. The first occurred at the third meeting in the 1980 session. A proposed was made to amend draft article 1 by deleting the exclusionary "from the moment of his birth" clause. The delegations argued that the concept of childhood "should be extended to include the entire period from the moment of conception." Id., 115, paras. 29-30. A consensus was then reached to remove the "moment of birth" requirement. Id., at para. 31. Then in the 1989 session, the negotiators made an about face on the earlier decision over the ninth preambular paragraph. A large group of delegations proposed to add the "before birth" language. The summary records show the following argument: "The importance of protection of the child even before its birth was repeated stressed in this connection. It was further stated that in all national legal systems that protection was provided to the unborn child and the draft convention should not ignore this fact." Id., at 108-09, paras. 32-35. One delegation made the legal argument that "protection of life before birth should be considered as 'jus cogens'," citing the Vienna Convention on the law of Treaties. Id., at 40. (The records do not show that any delegation made a rebuttal to this legal argument.) The proposal was vigorous debated, and a special group was set up to try to negotiate a solution; there are no summary records of those negotiations. The final decision was to add the language about legal and other protection of children prior to birth, which changed the wording to the way that the CRC now reads. Id., at 110, paras. 43, 46. In summary, the plain language of the Convention tells us that the intention of the States that created the CRC was to protect children prior to their birth, and the summary records confirm this beyond any doubt. This does not mean that every State actually had that intention; we cannot know what each delegate actually thought. Rather, that was the intention of the framers as a whole. 6 E.g., San Marino: "The Penal Code punishes any pregnant woman resorting to procured abortion and anyone assisting her," UN doc. CRC/C/8/Add.46, para. 27. Eritrea: "Abortion is illegal in Eritrea unless the life of the mother is threatened," UN doc. CRC/C/41/Add.12, para. 98. Solomon Islands: "The Penal Code disallows abortion on demand [while allowing an exception] to preserve the life of the mother," UN doc. CRC/C/51/Add.6, para. 101. Morocco: "The child's right to life enjoys special protection under Moroccan law, right from the foetal stage in the mother's womb. Abortion is prohibited unless the mother's life or the child's life is in danger," UN doc. CRC/C/93?Add.3, para. 180 [unless the child's life is in danger?]. Zambia: State law "protects the life of an unborn child except … [when] the unborn child 'would suffer from mental abnormalities or be seriously handicapped'," UN doc. CRC/C/11/Add.25, paras. 129-130. Palau: National "tradition, practice, and law recognize the child's right to life not only from birth but from conception," UN doc. CRC/C/51/Add.3, para. 53. Liechtenstein: Under national law, "termination of pregnancy is in principle liable to punishment," UN doc. CRC/C/61/Add.1, para. 81. In each of these implementation reports, the State placed the issue under the heading of CRC article 6, the child's right to life. 7 See, e.g., Mosby's Medical, Nursing, & Allied Health Dictionary (6th ed., 2002), at 6 (defining abortion as "the spontaneous or induced termination of pregnancy"); Henry Alan Skinner, The Origins of Medical Terms (2d ed., 1961), at 2 ("In a medical sense an ABORTION is the termination of a pregnancy before the seventh month, thereafter it is a premature birth.").

8 An illustration of how the human rights of children disappear as a result of language is found in Lawrence LeBlanc, The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights (1995). LeBlanc writes about the negotiating history of the ninth preambluar paragraph and article 1 that we examined in footnotes 3 and 4. He puts his discussion in the chapter on “Survival Rights,” under the heading of “Abortion and the Rights of the Unborn Child” (pages 66-73). So far so good. But notice how he characterizes the conflict that the framers had to resolve: he describes one side as, “if they favored abortion rights,” and the other side as, “if they opposed abortion rights” (page 73). Both sides of the controversy are framed in terms of “abortion rights,” the rights of the mother to end a pregnancy. He cannot describe the pro-child position in terms of the rights of children to live. He sees things in terms of “abortion,” and in his mind that word is intrinsically linked to “abortion rights.” In a chapter on the “Survival” of children, in a book on the human rights of children, he cannot speak of the negotiating history in terms of children’s rights. Moreover, his narration of the history is slanted. As we have seen, the States that wanted the Convention to expressly recognize that children have rights prior to birth – the viewpoint that prevailed –, did not oppose the termination of pregnancies, or even the termination of the lives of babies, in all situations. They knew that rights must be balanced, including the right to life. LeBlanc – a children’s rights activist – cannot stay focused on either children or their rights!

9 See the examples in footnote 6 for an indication of the diversity of balancing decisions.

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