Comments on Human Rights Committee Draft General Comment No. 36 on article 6 of othe International Covenant on Civil and Political Rights, on the right to life

Comentarios al proyecto de Observación General No. 36, sobre el artículo 6, del Pacto Internacional de Derechos Civiles y Políticos, en materia de derecho a la vida

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Abstract

In July 2017, the Human Rights Committee prepared the draft General Comment No. 36 on article 6 of the International Cove-

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nant on Civil and Political Rights, on the human right to life. The opportunity to provide comments was welcomed and a comprehensive transdisciplinary document was sent commenting with regard to this right, focused from a biological sciences, philosophical anthropology and bio-juridical perspective, according to the *corpus iuris* of human rights, presenting an ontological and deontological structure in accordance with the current scientific evidence, on the right to human life, particularly in its beginning and end, from an inclusive and objective human perspective, to be taken into account by the members of the Committee, in order to reformulate stances that violate this right.

Key words: Human rights, human embryo, human life, palliative care, human person.

Introduction

The International Covenant on Civil and Political Rights (ICCPR) emerged together with the International Covenant on Economic, Social and Cultural Rights (ICESCR), to address the lack of obligations in the Universal Declaration of Human Rights.

The Pacts were drawn up, in a first phase within the framework of the United Nations Human Rights Commission and, later, within the scope of the Third Committee of the General Assembly.

States that have ratified the ICCPR have to appoint the 18 members of the Human Rights Committee. The Committee may examine communications in which a State Party complains about the non-compliance of another State Party with respect to an obligation set forth in the Covenant. In this case, the Committee may promote investigations and propose, with the consensus of the States interested in the complaint, an *ad hoc* conciliation commission to reach an amicable solution to the matter, without prejudice to the rules and protections provided for in the Covenant.

The Optional Protocol, for its part, provides that the Committee may exercise a number of powers, which are: 1) Examine commu-

nications from citizens who assume to be victims of violations of the Protocol committed by a State Party, in order to benefit from the rights contemplated in the Covenant; 2) Make general recommendations in the field of human rights; 3) Promote the adoption of international measures so that the States Parties guarantee the effective performance of the rights set forth in the Covenant. In the scope of this last competence, the current initiative of the Committee may arrive at a re-interpretation of the content of article 6, which establishes the protection of the right to life, an initiative that is the subject to critical considerations that are established within the succeeding text.

The interpretation of a treaty or an international agreement consists of determining the exact meaning that must be attributed to the expressions used by the parties in the text, with a view to solving any contrasts that may arise in the application phase of the treaty or for that matter the agreement. The interpretation of international treaties lies in the Vienna Convention on the Law Treaties, in articles 31, 32 and 33, norms that make up the hermeneutics in this matter.

There is no doubt that the most relevant phenomenon of modern legal science, which has generated a ius-philosophical reflection at the base of the 20th century constitutional movement, has been the doctrinal and normative development of the theory of fundamental rights, a development that has favored putting the legal reality of the human person in the center, with its inviolable dignity. We have witnessed the progressive awareness of the need to structure legal systems making the human person the foundation and the end of social life, whose peaceful organization is the only objective that the law can strive for. In the 1948 Declaration, however, the question of the exact identification of the subject to which to attribute the ownership of the fundamental rights that The Declaration considers has not been clearly defined, even though in the Preamble, each «member of the human family» is thus designated and the expression «human person» is expressly used. Although in

article 1 it is established that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience…" and in articles 2 and 3 they respectively state "person" (as subject of rights in general) and "individual" (as subject holder of the right to life), however, the limits of what is attributable to the dignity of a "person" are not clear.

The essence of the fundamental rights of the human person and among these, the primary right to life, always has comprised the fact that these cannot be attributed, nor repealed by any political power, since they are not founded on an act of human will, but rather on the very nature and dignity of man. Already in pre-Christian antiquity it was clear that democracy can only exist if the majority accepts some basic premises of the social order, among them the principles of law, that is, the inviolable human rights that find their foundation in those very principles.

Until the middle of the twentieth century, there was a worldwide extensive substantial legislative homogeneity to protect of human life, including that of the unborn child, so both in the field of Roman-Germanic law, as in that of the Common law legal systems, abortion and euthanasia have been systematically banned since they are considered a crime.

When, throughout the 20th century, the Latin American peoples conquered the independence of the Spanish dominator and constituted new States, they converged these two lines of thought in the texts of the new fundamental Charters of those peoples, arriving at the creation of a an unprecedented, universalist and properly Latin American perspective, clearly based on the philosophy of natural law of Thomistic inspiration, a school of thought that had spread to those regions thanks to the reflection and work of Bartolomé de Las Casas, whom against the violence perpetrated by some Spaniards, advocated the idea of liberation of the Indians from oppression, an intention derived from the common and natural belonging to the only human family.[1]

This was the start of the foundation to a vision of natural law completely free of any metaphysical implication and only founded on a legal tradition, of Aristotelian inspiration, which deduced the rights and natural law of human rationality; a vision that would transit onto the fundamental Charters of the newly born Latin American States, constituting the essential model in the writing of the primitive draft of The Universal Declaration, whose nucleus dispositions would have been, in this way, protected from the ideologies of both the libertarian individualism as well as from the Soviet collectivism.[2]

The integral human fulfillment, which is the good of every person and of every human community, –considered united and synchronously–, is the supreme goal of law. Such integral human fulfillment demands the respect of the primal principles of the natural law, those principles of practical reason called to direct our actions towards the primary sources of the human good; primary goods are: life, knowledge, friendship, marriage, as well as *bonum rationis*. As unproveable and self-evident as they are, these intrinsic goods are known intuitively. However, at the moment in which we know them through intuition, their directive is not yet moral, but they become something morally binding when guided by the principle that makes practical reason a good in itself, which needs to be realized, it is to be considered what we have to choose by looking in the direction offered by all the principles that concern both, the individual good, and that of the others.[3]

In this sense, we should opt for those solutions whose action appears compatible with the objective of integral human fulfillment, which is the good of every person, considered as an individual and as a community. Our "being", in fact, is always a community being, a "being-with". The merely empirical data gains a deeper meaning through a phenomenological analysis that shows that the contemplation of the self, on its own right, always involves the recognition of the presence of the other, whom is an alter ego, a "like me". This means that the empirical relationality, phenomenologically proven, is based on an ontological parity of persons, which is a parity in

the realization of fundamental goods, by which no man can deny dignity and value to another, without denying himself. The potential in the enjoyment of these goods, substantiates *the ontological personal dignity* of men. However, the person has complete self-awareness only as an entity-in-relation. Such relationality is not the product neither of the personal will, nor of political imposition, but rather it is an ontological determination and therefore it is a condition of human existence.

The law, furthermore, recognizes these *co-existential* relations under the form of a synchronic and diachronic regularity and objectivity, which is a guarantee of the person's being and doing. Such objective regularity of legal relations *per se*, in their essential structure, is potentially universal. The *universality* to which law aspires has to do with what is "just", that is, appropriate to the dignity of every human being, *in primis* "living". The right to life presupposes, in fact, along with dignity, the contingency also of the effective living of the subject holder of the same right, beyond the possible threat to life itself. In this sense, the right to life is configured as a special type of right, which does not give us the power to freely dispose of our life and which, however, appears inseparable from the obligation to preserve it. Beyond the right to life, the person has its absolute dignity prevailing also when the conditions in which to exercise personally the right to life are absent.

Therefore, the fundamental right to life, violated every time an innocent is intentionally killed by another, is connected with the value of human dignity and finds in dignity its condition of existence and exercise. The attack against the right to life is rooted *in primis* in a culture that denies the essential distinction between man and animal, obeying an evolutionary and biologistic conception of human life. A second reason for rejecting the right of each human being to personal life, is to reduce man to its personal performance, absent in embryos and in other human beings who suffer from serious conditions of disability. The current position and the reduction of the person to his conscious activity, are connected with a third

reason used to deny the right to life: the introduction of a distinction between human being and human person, attributing in this sense the "personal" dignity exclusively to human beings who are conscious and capable of acting as persons and excluding fetuses or people who are in a permanent state of unconsciousness. Other denials of the universality of human dignity and the right to life are based on the ignorance of the existence of the natural law and of the fundamental rights that are placed in it, accepting only as sources of law, the positive laws implemented in the state ordinances.[4]

The antidote against this mentality that denies the right to life of some human beings, is in the public and legal recognition of the personal dignity of every human being, from conception to death. As, throughout history, the abolition of discrimination between free and slaves, whites and blacks, men and women, has represented a step forward in the civil conquests of nations and states, in the same way it will be necessary to surpass discrimination between human beings born and those conceived and not yet born, by overcoming it legally, because the law is also a potent deterrent with a radical pedagogical and social function. It is also necessary to extend this discourse to people whose living conditions are so precarious that it would seem natural to indulge their death wishes. The challenge, then, is primarily cultural: as the fetus cannot be considered a mere living body without dignity, in the same way it cannot be considered as an impersonal being, a man who due to a pathology or other reasons, is in the condition of no longer being able to justify the simplest functions proper of living.

It is not possible to imagine a right that legitimizes a mentality that claims to attribute "certificates of dignity" according to the circumstances and the quality of life of the subjects. One of the main achievements of modernity has consisted precisely in the objective of limiting, by means of solemn declarations, the discretionality of political power in order to recognize the ownership of the right to life and personal dignity. The public power, then, must

confine itself to recognizing the right to life, not being able to absolutely claim rights in areas that do not belong directly to it.

In the same way, the choice of euthanasia, which a national regulatory framework could accept as legitimate and practicable, does not seem admissible by the same principle of absolute unavailability of life, particularly if we refer to subjects who are in an objective condition of fragility, weakness and psychological and physical vulnerability.

Human freedom, in fact, can be understood as *potestas absoluta*, which includes the right to alienate oneself, as a proposed right of the human being, excluding the previously said self-dispositive faculty. There is a core of co-essential rights to the human person that cannot be alienated, nor violated, simply because man does not own them. Important is to highlight the difference between *inviolability and inalienability*. The first concerns the others, the second is directed towards the holder of the right, who cannot lose his right, even if it has carried out acts that go in this direction (for example, selling its organs), nor can it be forced to sacrifice or give up that ownership [5] It is about defending the dignity of the person not only against threats from others, but also against possible acts of self-harm, as in the case of choosing euthanasia.

Legal Background

International Covenant on Civil and Political Rights. Entry into force: March 23, 1976.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with **the principles proclaimed in the Charter of the United Nations**, **recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...**, recognizing that these rights derive from the inherent dignity of the human person (...)

Considering the obligation of States under the Charter of the United Nations **to promote universal respect for, and observance of, human rights and freedoms**,

Realizing that the individual, having **duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant**,

Agree upon the following articles:

(...)

Art. 6:

Every human being has the inherent right to life. This right shall be protected by law. **No one shall be arbitrarily deprived of his life.**

(...)

5. Sentence of death shall not be imposed for crimes committed by **persons below eighteen years of age and shall not be carried out on pregnant women.**

(...)

Note that this general comment replaces previous general comments No. 6 and 14:

Sixteenth session (1982), General Comment No. 6, Right to life (article 6)

1. (...) It is the **supreme law with respect to which no suspension is authorized**, even in exceptional situations that endanger the life of the nation (Article 4). (...) It is a right **that should not be interpreted in a restrictive sense.**

(...)

5. In addition, **the Committee has observed that the right to life has very often been interpreted in an excessively restrictive manner. The expression "the right to life is inherent to the human person" cannot be understood restrictively and the protection of this right requires that States adopt positive measures.** In this regard, the Committee considers that it would be appropriate for the States Parties to **take all possible measu-**

res to reduce infant mortality and increase life expectancy, in particular by taking measures to eliminate malnutrition and epidemics.

(...)

Twenty-third session (1984), General Comment No. 14, The right to life (Article 6).

1. In its General Comment No. 6 (16), adopted at its 378th meeting, held on July 27, 1982, the Human Rights Committee noted that the right to life enunciated in the first paragraph of article 6 of the Covenant International Civil and Political Rights is the **supreme right for which no suspension is allowed, even in exceptional situations. That same right to life is also enshrined in Article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. It is fundamental for all human rights.**

(...)

As it is appreciated, comments and precisions will be made for what corresponds to point 6.1 and 5.1, since they have inaccuracies and lack of objectivity

Interpretation Regarding Human Rights Matters
a) Vienna Convention on the Law of Treaties:[10]

(...)

Interpretation of treaties.

31**. General rule of interpretation**. I. A treaty shall be interpreted **in good faith** in accordance with the **ordinary meaning to be given to the terms of the treaty** in their context and in the light of its **object and purpose.**

2. **The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:**

a) any agreement that refers to the treaty and has been concluded between all parties on the occasion of the conclusion of the treaty:

b) any instrument formulated by one or more parties on the occasion of the conclusion of the treaty and accepted by the others as an instrument relating to the treaty;

3. Along with the context, the following should be taken into account:

a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions:

b) any subsequent practice followed in the application of the treaty by which the agreement of the parties regarding the interpretation of the treaty is established:

c) any relevant form of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that such was the intention of the parties.

32. Complementary means of interpretation. They may resort to supplementary means of interpretation, in particular to the **preparatory work of the treaty and the circumstances of its conclusion**, to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation given in accordance with the article 31:

I) **leave the meaning ambiguous or obscure;**

II) **leads to a manifestly absurd or unreasonable result.**

b) American Convention on Human Rights: [11]

Article 29. Interpretation Rules

No provision of the present Convention can be interpreted to mean:

a) allow any of the States Parties, group or person, to **suppress the enjoyment and exercise of the rights and freedoms recognized in the Convention or to limit them to a greater extent than that foreseen therein;**

b) **limit the enjoyment and exercise of any right** or freedom that may be recognized in accordance with the laws of any of

the States Parties or in accordance with another convention to which one of said States is a party;

c) **exclude other rights** and guarantees that **are inherent in the human personality** or that derive from the representative democratic form of government, and

d) exclude or limit the effect that may be produced by the American Declaration of the Rights and Duties of Man and other international acts of the same nature.

Article 30. Scope of Restrictions

The restrictions allowed, in accordance with this Convention, to the enjoyment and exercise of the rights and freedoms recognized in it, cannot be applied except in accordance with laws that are dictated by reasons of general interest and for the purpose for which they have been established.

c) European Convention on Human Rights:[12]

ARTICLE 53 Safeguard for existing human rights. Nothing in **this Convention shall be construed as limiting or impairing those human rights and fundamental freedoms that could be recognized under the laws of any High Contracting Party or in any other Agreement to which it is a party.**

Arguments

1. Scientific

First, life can not only be seen from the legal perspective (deontology), it is also a duty to address it from the scientific-biological (ontological) side, since we are human living beings, with our own differences with other species, derived from our essence and existence:

In this regard, it is proper to define reality as indicated by the Inter-American Court of Human Rights (hereinafter, IACHR):

"For purposes of the interpretation of Article 4.1, the definition of person is anchored to the mentions made in the treaty regarding «conception» and "human being", terms whose scope should be assessed from **scientific facts**. Of which we totally

agree, since many circumstances are transformed when scientific evidence reveals reality, science establishes solid criteria without a position of consensus,as they have been established in some resolutions (case Vo. V. France,[14] case A, B and C vs. Ireland,[15] and the position taken in the case of the Artavia Murillo et al. Case (*in vitro* fertilization) vs. Costa Rica), or the belief on the basis of intellectual conceptions more or less logical, or subjective ideologies, but on facts experimentally contrasted and empirically demonstrated.[13]

This case was erroneously made by the IACHR in Artavia Murillo et al. vs. Costa Rica resolution, in which the Court interpreted, among other things, Article 4.1 of the American Convention, which establishes the right to life from conception, by which it determined:[16]

"Conception» in the sense of article 4.1 takes place from the moment in which the embryo is implanted in the uterus, which is why before this event there would be no place for the application of article 4 of the Convention".[17]

"It is not appropriate to grant the person status to the embryo";[18] and

"The embryo cannot be understood as a person for the purposes of Article 4.1 of the American Convention".[19]

However, these statements cause ambiguity and inconsistencies with current science and technology, because although it is true fertilization takes place within the body of women (intracorporeal fertilization), currently it can be performed also extracorporeally, and the embryo, as a product of some assisted human fertilization technique, is left to third parties, who do not have any regulation that limits their actions, they can intervene in an arbitrary way, such as: genetic manipulation, or perform; embryo excisions, interspecific hybrids, cloning, and other interventions possible through science and technology that can affect or destroy this new reality of the human species. In its biological essence, it is one of

us in its most incipient stage, and given its human nature, nothing should prevent it from having legal recognition.

The term conception is used since immemorial times in the colloquial language and describes the moment in which the life of a human being initiates, later the term passed to the medical-scientific language. William Harvey[20] and Riesco Le-Grand[21] prior to the discovery of fertilization, refer to the beginning of pregnancy with this term.

The process of fertilization was described in detail in 1852; Nelson was the first to report seeing sperm in an oocyte, in Ascaris species.[22] In 1875 Richard Hertwig finished describing other details of the fertilization, and although before, the concept was still used, it was displaced by fertilization, which is technically more specific, so that direct references, especially the definition of conception in the medical-scientific literature of the twentieth century are rather rare.

But in the scientific articles after the discovery of fertilization, where conception is compared with fertilization, they clearly associate them. In 1876 Dr. Ernst Haeckel said: "While we must consider the sperm as a cell, as real as an egg and the process of conception as the fusion of both, we must consider the new resulting cell as an independent and new organism. The mixture of both cells is the child's germ or new organism that has been conceived." "The recognition that each human being initiates their individual existence as a simple cell is a solid basis to investigate the genesis of the human being.".[23]

In 1980, Roberto Cruz Coke defines it: "Therefore, the idea of the conception of a human being is directly and unambiguously related to the beginning of his life. The conception is an act, a moment, where a biological process called fertilization takes place. Fertilization is defined as the fertilization of an egg by means of a sperm. That is, the union of a male gamete with a female gamete".[24]

This publication written just 11 years after the American Convention on Human Rights, reflects well the thinking of the

time. Likewise, it is expressed in recent publications: "This process, which has been called fertilization, represents the beginning of the life of a new human individual".[25]

Conception is a term used in science, solely in the PubMed[26] database in the heading of medical-scientific articles, more than three thousand references appear, and many of its derivative terms.

It is also enlightening to know the etymological meaning of the verb to conceive: To unite two or more entities to create a third different from the previous ones.[27] The answer is evident and shows in a literal way that conception is given at the moment of fertilization, since nothing new is created when implantation takes place.

In general, the medical-scientific literature establishes as a synonym; conception, fertilization and fertilization.[28]

If we look for the beginning of human life in embryology books, everyone agrees that the beginning of life is fertilization, as we can see in the following quotes:

— "The development of an individual begins with fertilization, a phenomenon in which the sperm of the male and the female's oocyte come together to give rise to a new organism, the zygote".[29]
— "Human pregnancy begins with the fusion of an egg and a sperm".[30]
— "Human development is a continuous process that begins when a woman's oocyte is fertilized by a male spermatozoon".[31]
— "Fertilization is the moment that marks the beginning of a new life".[32]

As it was emphasized, never, as at present, there is more certainty that the embryo is a new individual of the species to which it belongs, and for that matter it is human.

Currently embryology[33], genetics, epigenetics, proteomics and development biology irrefutably show us that from the interaction of gametes (syngamy) we are faced with a new ontological reality, a

new individual of the human species[34] in development.[35] To hold otherwise is not supported from a scientific point of view and therefore is denying humanity to the human embryo, the same could apply also for a seed of a plant or a mammalian egg, which in many cases are protected by the law, from that same stage, for which it would be illogical to protect the human embryo and not recognize its right to life.

Nor can it be established that human life begins with implantation in the uterus, since extrauterine pregnancies (ovarian, tubal or peritoneal) can occur, or through *in vitro* techniques[36], –that allow for embryonic development to take place several days beyond the date on which the implantation occurs under normal conditions *in vivo*–, in which third parties intervene, where the appropriate means must be provided for its development, prior to its implantation, a fact that confirms the human embryo as a new perfectly identifiable human corporeity, not being a part of the body of the pregnant woman[37], revealing the gross scientific error of the resolution of the Inter-American Court.

Recently, diverse investigations have established with reproducible and verifiable scientific evidence, the existing communication between the mother and the embryo that has not yet been implanted; that is, immediately after fertilization during the first three days before implantation. This communication occurs through embryonic vesicles that are captured by the maternal endometrium, demonstrating that there is mother-embryo communication. This mother-embryo crosstalk is part of the independence of the human embryo, confirming that it has an identifiable individuality at a microscopic and molecular level, and therefore it is an individual different from the mother.[38] It has also been observed that the embryo, in its pre-implantation phase, modulates, through highly specific signals, the activation of genes in the uterine tubes and in the maternal endometrium (such as HOXA10),[39] showing its a capacity as a master regulator of genes, showing its capability for autonomous actions and responses that order specific instructions to the genome of

the mother,[40] as well as an immunological modulation that generates tolerance of the maternal immune system to the presence of the embryo *in utero*.[42, 42]

Science requires testable theories or hypotheses at an experimental level or at some level of empirical reality. It makes the reproducibility of the experiments (method) and its results, a constant, whose findings have withstood more severe refutation tests or could not be refuted, corroborating their findings in multiple experiments. Having testable statements "Testability" (empirical hypothesis) at the level of empirical and reproducible reality.

On the other hand, we are still in a time when legal science advances with nineteenth-century standards in its analysis through expert reports and *amicus curiae*, which in many ways entails the interests of an ideology. In that sense, and following the principles of exhaustivity and evolution, it has to be corroborated with what current science already has as a solid and consolidated standard.

The American Convention is the most protectionist in regard to the right to life, it establishes its safeguards from the moment of conception and in accordance with the rules of interpretation, it must first be addressed that is understood with the term "conception" –already discussed previously– with reference from the medical and biological scientific literature.

It is important to clarify that the American Convention did not define the term conception, however, it was a subject widely debated. The delegates of Brazil and Costa Rica proposed deleting this point from the final document, however the President of the Convention, Mr. Gonzalo García Bustillos, in his capacity as representative of Venezuela, defended the issue affirming that: "regarding the right to life, from the moment of the conception of the human being, there can be no concessions; a Convention that does not consecrate this principle is unacceptable". In the end, the point was accepted by majority without modifications.[43]

The life cycle of the *nasciturus* has a definite beginning and end. And each one requires, throughout its existence, in a different way

and with different intensity, the necessary nutrients and the interaction with the environment in which it develops.

It is a known fact that all the books of developmental biology –used as study references in the fields of Health Sciences around the world– establish that the beginning of human life is the formation of the zygote, so we find it in the commonly used embryology book of Moore and Persuad: "Zygote: totipotent cell of great specialization that constitutes the beginning of all human beings as unique individuals. It contains chromosomes and genes that are derived from the mother and father." Or in another mandatory reference book by Carlson: "All higher animals begin their lives from a single cell, the fertilized egg (zygote). The zygote represents the initial point in the history of life or ontogeny of the individual. In its broadest sense, ontogeny refers to the total duration of an individual's life."

Simple logic tells us that each living being is necessarily and individual of the species that gave rise to it, therefore the being that comes from a human man and woman must be a human being. The ontogenetic law also points out that in multicellular organisms the onset is unicellular and that development always goes from the simple to complex. Thus, every human being initiates in this way.

Each living being has a life of its own, with a beginning and an end; and a temporary development in which it is completed, grows, adapts to diverse circumstances and transmits life. From this perspective, the beginning of an individual's life can be defined as a constitutive process.[44]

The early embryo can be distinguished by biological markers that also indicate the fate that will follow. In addition to the molecules that interconnect the membranes specifically in the different stages, each of the cells of the early embryo has a spatial and temporal history as different cells of a single organism. It´s a growth is accompanied by differentiation, and that organic growth is the unitary vital function that makes that cellular set an organism.

The condition of the organism supposes a living being that works in an organized and integral way, so that the whole is greater than the sum of its parts.[45] Fertilization triggers a series of processes in the embryo that are characterized by their independence and physiological autonomy, among these is the expression of genes that regulate the harmonic and directed development of all embryonic development, which are absolutely not dependent of the mother.[46]

Austriaco integrates the philosophical and biological perspectives into a definition of the concept: "Philosophically, an organism can be defined as a complete living substance, with its own internal principle of movement and change, which directs it towards its natural perfection, and scientifically, as a discrete unit of living matter that itself follows a path of robust development, which in turn manifests the specific self-organization of its species".[47] Goodwin[48] has a similar conception: with fertilization and zygote formation, the life a new individual of the human species begins, with a continuous and predictable development that ends in the complete formation of the organism, according to what was said in advance, the zygote within its genetic information, is already a directed organism to develop within its characteristics of its own identity, which in the case of generating from human gametes, is consequently an organism of the human species.

This assertion is so accurate that it is already being applied in embryo selection for assisted reproduction techniques. Three parameters define which morphology corresponds to the degree of intrinsic viability of the blastocyst *in vitro*; and they refer, as it is obvious, to the organization according to the axes designed with the polarization of the zygote: a) a cavitation initiated on day 4, which originates an eccentric cavity; b) the cavity expands and aligns with the region of the internal cell mass delimited by a layer of trophoectoderm, and c) the morphology of the internal cell mass presents a single origin. On the contrary, the degree of viability decreases drastically if vacuoles are formed before the expansion and even more if degenerative foci are formed in this zone.

Even, the "definition of the human embryonic secretome has the potential to expand our knowledge of embryonic cell processes, including the complex dialogue between the development of the embryo and its maternal environment".[49]

While it is true that definitions are established on the same human reality: embryo, fetus, child, adolescent, youth, adult, etc., is only and exclusively to determine a range of development within the same individual, to establish a parameter of study, since life is a continuum, there cannot be an ontological leap from pre-human to human, we are always the same, but manifesting the conditions of each stage of development, and for such development to be the most human and coherent, the most appropriate means for health must be provided.

In this sense and following the medical principle "*primun non nocere*" (first, to do no harm), medicine has expanded its scope of care from the maternal ward; currently fetal programming and Barker's theory[50] establish that there is sufficient evidence to support the concept that: «health, which we will enjoy the rest of our lives, is determined, to a large extent, by the conditions in which we develop within the maternal cloister «. Where "Programming" is the key word to determine: health or illness, during the phase spent in the womb.[51]

There is enough evidence to consider that the programming of health for the rest of life, is done according to the conditions in which our stay in the maternal womb unfolds, this being probably as important as our genetic load, that determines our mental and physical performance for the rest of our lives.[52] Currently, as an example of the importance of this stage, an homologation of nutrients used in Petri dishes is being proposed to be established for embryonic development *in vitro*.

Additionally, in medicine, where health, personal integrity and life of all people are safeguarded, progress is made in fetal medicine, where among many diagnostic tools, the use of ultrasound allows us to see the fetus and consider it a patient.

As an example, in 1963, the first blood transfusion directly to the fetus was successfully achieved. It was the first time that it was demonstrated that the fetus[54] was susceptible to diagnosis and treatment and, therefore, with the right to be considered a patient. In 1970, Scrimgeour introduced the concept of fetoscopy in prenatal medicine.[55]

The Fetal Treatment Program at the University of California, directed by Harrison, Golbus and Filly, worked during the seventies to establish guidelines that should be considered in all prenatal procedures.[56]

In 1982, the International Fetal Medicine and Surgery Society (IFMSS)[57] was founded, a forum for surgeons, perinatologists and other health professionals, aimed at sharing work experiences, this society oversees the Journal of Fetal Diagnosis and Therapy.

In the Journal of the American Medical Association, publish the paper "The fetus as patient: Ethical issues", which suggests a list of 33 congenital diseases susceptible to treatment in the fetal stage, seven of which could be resolved with intrauterine surgery.[59]

The prestigious Williams Obstetrics Manual defines the fetus as a patient, with full rights to be treated.[60]

In summary, the fetus is defined as a patient, not in terms of viability, but as an individual susceptible to scientific observation whose diseases are susceptible to diagnosis and treatment.[61]

The advancement of science enables better care from the beginning of human life, this is updated with the studies that are now made of the biochemical elements that contain the Petri dishes, looking for nutrients that are needed by the preimplantatory embryo, for the adequate development during that specific stage of its existence.

To deny what scientific evidence reveals, on an idealistic criterion, is untruthful and voluntarist.

With the adjective voluntarist we refer to the mentality of those who, with their behavior and with their words, affirm: this is so because I say it, and I am also proud of lacking rational arguments.

With the pervious facts it is possible to recognize that the embryo and human fetus is one of our species in its most incipient state, which deserves due respect and recognition of their humanity, it is illogical that it is not even granted protected species status that other species have in their same stage of life, such as seeds, larvae or eggs, considering that the human being has a special value called human dignity.[62]

On the other hand, in no part of General Comment No. 36 the extension of the protection of human life is seen, the human life of the fetus is underestimated, as a "product" (paragraph 9)[63], objectifying human reality as if it were a thing or product, and even leaving ambiguity in the criteria, unleashing a eugenic position or impeding to continue the life of a person with a disability.

The fallacious argument of provoking eugenics to have a decent life (paragraph 2)[64], or to avoid the suffering or pain of women to reach a full-term pregnancy (paragraph 9) or to not allow people with disabilities to be born, for not having a decent life option, apart from being a psychological defense mechanism for those who adduce it, is based on a false premise. People with disabilities, *per se*, are not born unhappy, nor are they unhappy about their disability, especially if it is genetic. It is the adult psychological predisposition that pushes the sentence of unhappiness to be met. If all starts by being unhappy, even unconsciously, we will end up doing actions that will make that person feel unhappy. This fact is well established in developmental child psychology.[65] Instead, the attitude of unconditional acceptance that is love, starts doing everything to make you happy, and in this way significantly supporting the development of a strong and mature personality of affected people.

The elimination or discrimination of a person prior to implantation; as it is with Down syndrome (trisomy 21), with Turner syndrome[66] (monosomy X), or Klinefelter[67] (Trisomy XXY), where the majority of patients live a normal and productive life;[68] moreover, humanists like Nicholas James Vujicic and Hirotada Ototake, with the tetra-amelia syndrome, were born without legs and arms, and

according to the ideology of perfection, they would be perfect candidates for abortion; however, and *a contrario sensu*, following the *lex artis ad hoc*, the treatments and supports necessary for its inclusion must be provided.

Justifying the death of these people in the first stage of their existence, is to grant a false right, consists in a mere exercise of the "law of the strongest", which may well be a majority of consensus of experts, democratically elected parliamentarians, or a jurisdictional decision of one or a few. It is pure discretion of those who hold power, who sanction their supposed right to trample on the weakest, who in this case lacks any possibility of defense. Authorities who cannot be the ultimate source of good and evil.

The current social model considers that the problem is not in the person with disability, but in the social factors that generate their exclusion. To the extent that the barriers that prevent people with disabilities from leading an autonomous life and having the same opportunities as other citizens disappear, disability ceases to be a factor of exclusion. In this way, disability is understood as another manifestation of human frailty that should not impede, as long as possible, a full life. Accepting abortion due to the risk of a future disability implies the regression to an anachronistic and, above all, discriminatory conception of disability.

On this criterion, in 2011, five UN agencies[69] jointly prepared a report to denounce the practice of selecting the sex of the unborn through selective abortion, present in many countries of the world. In the same year, the Committee on the Rights of Persons with Disabilities made public some considerations on the report presented by Spain on the degree of compliance with the Convention, where it reproaches Spain for how it deals with disability in the current regulation on the abortion. It says that each State is free to establish its own regulation on abortion but rejects that a reason to consider abortion as lawful is disability.[70]

In that extension of the right to life, avoiding the death of any member of the human species; currently in many countries of the

world, early embryos, product of assisted human fertilization and afterwards cryopreservation, are being adopted by infertile couples to support their continuity of life and be a socially born child, respecting the nature of the human embryo.

In the United States the first donation (should we say adoption, since only things are donated) programmed for embryos by a private organization, within the Snowflakes program and promoted by the Nightlight Christian Adoption, was carried out in 1997. In Australia, it has been operating for more than two decades.[71]

In New Zealand, it was approved in 2005.[72] In Spain, it was the Marqués de Barcelona Clinic, headed by Dr. López Teijón, the first to offer the adoption of embryos,[73] to solve the problem posed by having accumulated thousands of frozen embryos at that same clinic.

In the United States, according to data provided by the Centers for Disease Control and Prevention, in 2007, 67% of the 430 fertility clinics in that country offered embryo donation.

The number of children born as a result of this practice does not seem to be very high. Nightlight stated in 2010 that there were 480 donor families with 378 adoptive families. The frozen donated embryos were around 3075. In that same year (2010), they reported that 242 children had already been born and that 19 adoptive families were currently waiting for another 24 children.[74] According to Collard, until 2008, in the United States, less than 200 embryo adoption cycles had been carried out, and until 2010, the last year in which there is reliable data from that country, less than 1,000 embryos had been donated. In England, between 1992 and 2009; 1218 children were born by embryo donation, and in 2010; 269 women opted for it.

The National Committee of Bioethics of the Italian Council of Ministers issued a document entitled "L'adozione per la nascita",[75] in which ethically values the adoption of embryos, highlighting the values of solidarity, generosity and responsibility that should characterize it.

The Report of the Ethical Committee of the American Society of Reproductive Medicine (ASRM) of 2009,[76] is favorable to the adoption of embryos to express their ethical goodness for the construction of families, which are also agreed by other Bioethics committees.[77] This same Society also stated that "the sale of embryos is ethically unacceptable by itself", but the altruistic donation may be licit.

Fernando Pascual[78] states that the adoption of embryos can be a licit alternative for those who want and cannot have children, only on the condition that the process of adopting a frozen embryo is carried out as it is done in the adoption of children without parents. If this were not the case, it would be possible to facilitate the adoption of embryos by catalog, for reasons of race, sex, etc.

These facts are omitted by the Committee, doing a regressive act, on this particular.

No cause can produce an effect superior to itself. What is clearly understood is that the embryo is already and has everything to be, it is just necessary to provide the environment suitable for its development, it has no ontological transformation of something to someone, it only has its morphological and biological transformations in conformity with its development and essence.

In this journey and how it emerges from the scientific evidence, the embryo is a new individual of the human species and updated under the principle *agere sequitur esse* (the act follows the being), it is shown that the human being is restructured in its form, but not in its essence.

It is important to remember that biology shows us that during the process of forming a human being, there is no qualitative leap, the biological body is always the same from its beginning, the only thing that changes is the degree of development. On the other hand, contemporary philosophical anthropology affirms that human beings are inseparable from their corporeity, which means that biological life cannot be separated from human life. We cannot say

that we are in the presence of a body of a being of the human species, biologically speaking, but we can say that we are in the presence of a human being, a person.

Finally, it is important to point the erroneous statements of those who[79] maintain that the beginning of human life comes into existence at a certain time after fertilization, saying that:

- —Implantation is the determining act of the beginning of life, since an embryo has no chance of survival if the implantation does not happen.[80] This does not seem an acceptable argument because the implantation is an event in the time of the embryo development, which can be in a natural way or transferred by techniques of assisted reproductive technologies to get implanted. Nobody can deny that the first cell that arises from fertilization coming from the union of human gametes, corresponds to the human species.
- —For others,[81] the human individual begins to be after the 14th day, because only after these days the process of implantation is completed, and the primitive stria is formed with its nutrition and protection systems essential for the later development of the embryo, and because only after this date is it sure that no twins are produced. They seem to indicate that until earlier there would not be enough life because only primitive stria allows organs to be formed with specifically human functions. To respond to this flawed thinking, we must note that the primitive stria is part of a process of development that began with fertilization,[82] and because "the fact that an individual is going to be divided later into two other individuals, duplicating, does not prevent that before dividing is one only individual",[83] thus, there is also no reason to wait the 14th day. It would be to generalize exceptions and not consider that the twinning occurs in extraordinary cases.
- —Others claim[84] that there is no human individual until the central nervous system is configured and performs its func-

> tions. This is how the beginning of life is supposedly said depends on the functions of these organs and because the scientific criterion of human death, admitted with a general character, is brain death. These authors conclude that only human life appears when these organs function. It should be said here that the formation of the nervous system itself is a demonstration of the continuity of the human development process and that the human being is defined by what it is and not by what it can do. There is also the verifiable fact of the organic continuity to helps us understand how the human being throughout its life changes physically without ceasing to be the same individual.

Therefore, with the well-founded contribution of science, today there are no arguments to discuss the condition of human life from the zygote stage, simply because there are no genes of first, second, or third category to define life.»[85] The zygote is an actual human being in the first phase of its existence. This statement is important when assessing human life and its legal protection.

It is important to consider what Spaemann said: "The question of when human life is protectable is the second issue to be addressed." A possible answer is: It is not plausible to put a limit to say: here it begins to be protectable. In this sense, that all those who try to establish such a beginning arrive at very different results.[86] Some say that since the implantation (sentence of Artavia Murillo and others vs. Costa Rica), others say that since birth (in the case of Hoerster), others state that only from the moment the individual reaches self-consciousness (i.e., a two-year-old child would not yet have the right to life). The issue of when life begins to be protectable is raised capriciously. Let's consider what Kant says: "For practical reasons, we are presented with the idea that the human person starts from fertilization. It is not a metaphysical thesis about the immortality of the soul, which begins at that moment –it could equally be said that it begins later– but the question is the expres-

sion of ignorance. We can only add that the human person identifies with the human being himself, so that, at the moment when life begins, it begins to be protectable. Everything else is arbitrariness."

2. Human dignity

"When human beings, in the weakest and most defenseless state of their existence are; selected, abandoned, murdered or used as pure" "biological material", how can we deny that they are treated not as a "someone", but as "something", thus placing into discussion the very concept of human dignity?" [87]

The issue that concerns us, is the cornerstone between the approach to the value of the person and fundamental rights, where all legal instruments in the field are recognized and supported; that is human dignity.

"If we are aware that we are hungry, hunger really begins not with the awareness of it, but with the hunger itself that was first unconscious, and then becomes conscious hunger. Analogously, we all say: "I was conceived on such a date, and then I was born in such another one, in such epoch and day". And the children ask their mother: What happened while you were carrying me in your womb? The personal pronoun "I" refers not to a conscious self, which in the maternal cloister none of us had, but to the incipient life of the human being, who would later learn to say "I" and because other human beings are saying "you" before you can say "I" by yourself. Even if that being never learned to say «I» for disability reasons, the title of son, daughter, brother or sister in a human family belongs to him, and thus, in the family of Humanity, which constitutes a community of people. There is only one reliable criterion regarding human personality: biological belonging to the human family".[88]

Currently, the same can be said of the preimplantation embryo, as in the case of Noe Benton Markham, where sixteen months before his birth (January 16, 2007), his life had been threatened by the winds and rain of Hurricane Katrina. Trapped in a flooded hospital in New Orleans, Noah depended on the counter-clockwork of seven Illinois conservation police officers and three Louisiana State police officers, who used barges to rescue him and get him out of harm's way. Although many New Orleans residents tragically lost their lives during Hurricane Katrina the following days, the account of Noah's rescue is one of the many stories of heroism in the midst of that national disaster.[89] Noah has the honor of being one of the younger inhabitants of New Orleans who were rescued from Katrina: when the police officers entered the hospital where he was trapped, Noah was an embryo frozen in liquid nitrogen containers along with another four thousand embryos, similarly it can be said of many cryopreserved embryos up to 12 years before.

We are "someone" and not merely "something". "Human dignity is a supreme, irreducible with absolute value, proper to the personal condition. In effect, "*dignitas est de absolute dictis*", dignity corresponds to those who affirm themselves in an absolute way, that what is a principle or starting point to arise from itself, to lean on itself".[90]

The being that we are, self-reveals itself as "dignified", as non-instrumentalizable, allows our practical reason to discover a concrete categorical imperative as the primary norm for the moral life. This imperative was explicitly enunciated for the first time by Emmanuel Kant that with great insight explains the following:

"Assuming there was something whose existence in itself possesses an absolute value, something that as an end in itself could be a foundation of a possible categorical imperative, that is, of a practical law. I maintain the following: the human being and in general every rational being exists as an end in itself, not simply as a means to be used discretionally by this or that will, but both in the actions oriented towards oneself and in the directed towards other rational beings, the human being must always be considered at the

same time as an end. All the objects of inclination only have a conditioned value, if the inclinations and the needs sustained in them were not given, their object would be worthless. But, as for sources of needs, the inclinations themselves are so far from holding an absolute value to be discarded by their own value, that it must rather suppose the universal desire of any rational being to be totally free of them".[91]

Let's look first at the preimplantation embryo or the neonate. Many would say they are only potential people. Namely, that a zygote or a new born may or may not become people. But this can only mean two things:

a. Either there is a quantitative difference between the embryo, the newly-born and the person. Or,
b. The difference is qualitative. If the difference is quantitative, we would find that being a person would be an (accidental) property of the zygote's or the newborn's own being. That would not say more than that *being* would have to be more than a person "*pluspersona*" (this neologism could be proposed), since we cannot give what we don't have. And if he were a person he would be more than a person, so he would have more dignity, more than dignity. *Ergo,* they would be recognizing the dignity of human life itself from its origin. If the difference were qualitative, we would be affirming a clear difference between two radically different realities. So, the problem of an embryo or a neonate becoming people would be of the same type as if we were considering, for example, the possibility that a tomato could become a vehicle or something else; of course, it would be logically impossible.

On the above, it is noteworthy that Recommendation 1046 of the Council of Europe stating that the human embryo and fetus must be treated in all circumstances with due respect for human dignity. In this regard, the Universal Declaration of Human Rights links inalienable rights with the intrinsic dignity of man, while the Inter-

national Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights establish that human rights derive from the dignity inherent to the human person.[92]

In Spanish, inherent means –for the Royal Spanish Academy–[93] that which by its nature is so linked to something else, that it cannot be separated. And inherence is the union of inseparable things by their nature. In English it has the same meaning according to the "Oxford English Dictionary".[94] Same criteria apply with French language.[95]

In that position, and following the evolutionary principle of Human Rights, the ruling of the Court of Justice of the European Union, of October 8, 2011,[96] stresse **"it would be a serious attack against human dignity, which is recognized as present in the embryo".** More recently, on August 27, 2015, the Grand Chamber of the European Court of Human Rights issued its ruling in the Parrillo vs. Italy case (Application No. 46470/11), which after reviewing its previous pronouncements, recalled that the human embryo cannot be reduced to a possession.

"Recapitulating that the human embryo is a necessary or *sine qua non* condition for the life of an adult human individual with an inherent dignity."

However, Michael Kloepfer tells us: "If in reality the question of a constitutional good at the highest level makes sense, then this is the life and not the dignity of man".[97] However, as it has been described up to now, and since it is inherent, they are consubstantially intertwined.

Therefore, the specific theme of human rights will be based on the values established in a specific historical community and the ends that it seeks to achieve, provided that the very essence of the dignity of the human person is respected as an inescapable principle, as an end on itself, otherwise we could not speak of the human being but of any other thing, even when it is just and useful.[98] On this point, what is stated as ontological dignity is reaffirmed, likewise it

coincides with Gomez Maximo, pointing out "With this I wish to state that every human person has rights because they are, and they must be recognized and guaranteed by the State without any social, economic, legal, political, ideological, cultural or sexual discrimination. But, at the same time, I want to emphasize that these rights are fundamental, that is, that they are linked to the idea of dignity of the human person".[99]

On what has been explained, it is intuited that there is an objective dignity, this is the point of departure; that is, the inherent dignity of the human person. That is why it is about inviolable rights.

With discrimination on qualitative or quantitative issues, such as capacity, autonomy, feeling, conscience, it is possible to establish criteria that discriminate against people, there are plenty of historical and recent examples to illustrate how adult and capable human beings have been denied all kinds of rights and even not being considered human beings. Slaves, Jews, women, those belonging to a certain religion or race, children, etc., have been denied their dignity, and currently embryos, fetuses, people who have a severe disabilities or are in a so-called vegetative state, for different reasons, being considered as things, disqualifying them as rights holders. The philosopher R. Spaeman reflects on this by saying: "Someone will never be something".[100]

3. Legal assessment

The explicit recognition of a human right, and especially that of life, is the most noble activity that a State can carry out, because it grants spheres of protection to all people and limits public powers.

The indispensable presupposition of every right is life; it is the ontological basis and condition of all other rights. It turns out that the law in general and human rights in particular, involve the normative integration of human relations within the social context, and by virtue of its fair content, involves integrating the three

aspects or elements that complement each other in the legal experience, this is, the normative aspect (the Law as a norm), the factual aspect (the Law as a social fact) and the axiological aspect (the Law as justice). In this case, creating norms without the end of justice, being irrational and justifying actions, without a sense of a life according to human nature and its end, would be like going back to the stone age where the law of the strongest governed, having to consider four essential axes in all legal reflection: the inalienable right to life, since it depends on the exercise of other rights, the equality of all human beings in dignity, their personal condition, and adequate biological development according to its stage of existence, as well as its autonomy to reflect and decide freely. Everything that violates, limits, or cancels any of these great pillars must be avoided or effectively counteracted.

In this context and following the argumentative and substantial line of the right to life, we can cite, among others, the following instruments that form the *corpus iuris* of human rights in accordance with the Vienna Convention on the Rights of Treaties of 1969, where it is noteworthy taking into account that the legal value of these instruments and their meaning cannot be inferred only from the letter of the law, but also from the interpretation that the *ad hoc* tribunals make of it and from the useful effect that they enjoy, in this way, this right is contextualized, and guidelines and obligations are set for the States Parties to respect, promote, and protect these rights, such as:

Universal Declaration of Human Rights

Article 3 "Every individual has the right to life, liberty and the security of his person."

International Covenant on Civil and Political Rights (ICCP)

Article 6

The right to life is inherent to the human person. This right shall be protected by law. No one can be deprived of life arbitrary.

The European Convention for the protection of human rights and fundamental freedoms.

The right of every person to life ... (Article 2).

Convention of the European Union.

Everyone has the right to life (Article 2-1).

American Declaration of the Rights and Duties of Man

Article I. ... Every human being has the right to life, liberty and the security of his person.

American Convention on Human Rights

Article 1 For the purposes of this Convention, person is every human being.

Article 4. Right to life

1. Everyone has the right to have their life respected. This right will be protected by law and, in general, from the moment of conception.

No one can be deprived of life arbitrarily.

Regarding Article 4.1 of the American Convention, the ontological and scientific errors of the Inter-American Court, in the Artavia case, have already been laid down, which have already been overcome by the Parrillo and Oliver Brüstle cases, indicated in advance, where the evolutionary and expansive principle of human rights is updated.

It is noteworthy that even the constant and uniform jurisprudence of the Inter-American Court in this regard has been expressed in more than twelve cases.[101] In the year 2012 it has been repeated twice,[102] specifically, in two cases it has estimated the unborn as "children"[103] and "baby".[104]

Regarding the best interests of children and to clarify their defense and recognition, the IACHR expansively establishes the content and scope of human rights[105] and the obligations contained in the American Convention on Human Rights (ACHR), in the light of other legal norms; to exclude any interpretation that leads to augmenting the limitations on human rights allowed in the

ACHR,[106] and to provide effective inter-American procedural and institutional mechanisms for the protection of human rights,[107] on this particular UNESCO makes the **Declaration Of Monaco: Reflections On Bioethics And The Rights Of The Child**,[108] where in its Annex II, it establishes:

"I. The origins of the child:

— Every child is a unique and new being.

— **Respect for the dignity of the embryo constituted *in vitro*** should be ensured...

When genetic and fetal medicine data are used, the principle of non-discrimination must be respected and the reduction or elimination of human diversity or the hazards inherent in life must not be aimed at."

Establishing an expansion of childhood rights from the embryonic stage (*in vitro*).

It is important to highlight that assisted fertilization in humans began to have effects sometime after the Universal Declaration, Covenant of Civil and Political Rights, the Covenant of Economic, Social and Cultural Rights, as well as the American and European Convention, this can be deducted with "the first birth of a baby product of In Vitro Fertilization (IVF) that occurred in England in 1978" and "in Latin America, the birth of the first baby product of in vitro fertilization and embryo transfer was reported in 1984 in Argentina",[109] so that "before the IVF, the possibility of performing fertilizations outside the body of the woman was not scientifically contemplated".

On the other hand and more currently within the context of human rights instruments and in accordance with the precautory principle,[110] which is cited in the draft (paragraph 65) and where only in a limited way applies in the subject of environment; must also be pronounce for human life and health, as in the statement of Asilomar and more recently the conference Synthetic Biology 2.0, at Berkeley, California, referring to the "broad vote of the

community" on the resolutions on biosecurity, which will be implemented on January 1, 2007,[111] likewise, the following International Human Rights Instruments may be cited:

Universal Declaration on the Human Genome and Human Rights

Article 1

The human genome is the basis of the fundamental unity of all the members of the human family and of the recognition of their intrinsic dignity and diversity. In a symbolic sense, the human genome is the heritage of humanity.

Article 2

a) Each individual has the right to respect for their dignity and rights, whatever their genetic characteristics.

b) This dignity requires individuals not be reduced to their genetic characteristics and that the unique character of each and its diversity be respected.

Article 11

Practices that are contrary to human dignity, such as cloning for the purpose of reproduction of human beings, should not be allowed. States and relevant international organizations are invited to cooperate to identify these practices and to take appropriate action at the national or international level to ensure that the principles set forth in this Declaration are respected.

Universal Declaration on Bioethics and Human Rights

Considering that UNESCO has a role to play in the definition of universal principles based on common ethical values that guide scientific advances, technological development and social transformation, in order to identify the challenges that arise in the field of science and technology, taking into account the responsibility of current generations for generations to come, and that issues in bioethics, which necessarily have an international dimension, should be treated as a whole, based on the principles already esta-

blished in the Universal Declaration on the Genome Human and Human Rights and the International Declaration on Human Genetic Data, and taking into account not only the current scientific context, but also its future evolution.

Bearing in mind also that the identity of a person includes biological, psychological, social, cultural and spiritual dimensions.

Whereas it is desirable to develop new approaches to social responsibility to ensure that the progress of science and technology contributes to justice and equity and serves the interest of humanity,

General dispositions

(...)

Article 2. Objectives

The objectives of this Declaration are:

a) provide a universal framework of principles and procedures to guide states in the formulation of legislation, policies or other instruments in the field of bioethics;

b) guide the actions of individuals, groups, communities, institutions and companies, public and private;

c) promote respect for human dignity and protect human rights, ensuring respect for the lives of human beings and fundamental freedoms, in accordance with international law relating to human rights;

(...)

g) safeguard and promote the interests of present and future generations;

Principles

(...)

Article 8. Respect for human vulnerability and personal integrity

When applying and promoting scientific knowledge, medical practice and related technologies, human vulnerability should be taken into account. Particularly vulnerable individuals and groups should be protected, and the personal integrity of these individuals should be respected.

Article 16. Protection of future generations

The impact of life sciences on future generations, in particular on their genetic constitution, should be duly taken into account.

Regarding the best interests of children, the American Convention in its article 19. Rights of the Child, establishes: Every child has the right to protection measures that his condition as a minor requires from his family, from society and of the state. The Court also points out that girls and boys have the rights that correspond to all human beings –minors and adults– and also have special rights derived from their condition, to which correspond to specific duties of the family, society and the state.[112]

General Comment 5, General measures of implementation of the Convention on the Rights of the Child; points out the need for a perspective based on the rights of the child to ensure the application of the Convention, based on the General principles identified by this body: the best interests of the child, non-discrimination, the right to life, survival and development.

On the other hand, highlights the omission of the Committee in the pronouncement of art. 6.5 of the Covenant, which states: "The death penalty shall not be imposed for crimes committed by persons under 18 years of age, nor shall it be applied to pregnant women," which is supported under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in its article 10: "Special protection must be granted to mothers during a reasonable period of time before and after childbirth".

In this international instrument, special protection is given to the mother due to her pregnancy status, in order to protect the *nasciturus* and the conformation of the family in the best possible way, which is confirmed by the U.N. Doc. E / C.12 / 2000/4,[113] on the application of said Covenant, General Comment 14, The right to the enjoyment of the highest possible level of health (article 12 of the Covenant), which in the following establishes:

"II. **Obligations of the Participating States...** Basic Obligations... 44. The Committee also confirms that the following priority obligations include the following: a) Ensure maternal (prenatal and postnatal) and child health care; (...) "

On the other hand, on the instruments for the protection of children, the following can be observed:

Declaration of the rights of the child

Recognizing that the child is a human being who, due to his condition, even needs due legal protection, both before and after birth, of special protection and care, and of the express recognition of his rights, the Member States of the UN wanted to express the Rights of the Child in a Special Dedicated Declaration, expressly and exclusively to children, as the most important group of human beings among the men and women of the world, urging parents, men and women individually and private organizations, local authorities, and national governments to recognize these rights and fight for their observance with legislative measures adopted progressively, proclaimed the Declaration of the Rights of the Child, which protects the human life of children thus:

(...) Considering that the child, due to his lack of physical and mental maturity, needs special protection and care, including due legal protection, both before and after birth,

(...)

Children's rights convention

Preamble

(...) Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, due to his lack of physical and mental maturity, needs special protection and care, including due legal protection, both before and after birth."

(...)

Article 1

For the purposes of this Convention, a child is understood to be any human being under eighteen years of age, (...).

Article 6

1. The States Parties recognize that every child has the **intrinsic right to life**.
2. The States Parties guarantee the survival and development of the child as far as possible.
   For its part, the European Convention for the protection of human rights and fundamental freedoms in its article 2: "The right of every person to life ...".

In summary, it can be known from the international instruments referred to that:

1. The right to life is recognized as a fundamental right of every human person;
2. It is consubstantial or inherent to every human person;
3. It can be taken as analogous: person, individual and human being;
4. In the case of children, the legal recognition is established verbatim from before birth, influencing any conflict of rights, their superior interest prevails;
5. The American Convention is the only legal instrument that extends the spectrum of protection from conception, and
6. **The arbitrary deprivation of life is prohibited.**[114]

It should be noted that human rights treaties are complementary to each other. Therefore, the reading must be unitary, which allows to reach the interpretation of each right recognized from different perspectives and with different degrees of approach, even within a global system. Otherwise we would be admitting the possibility of contradictions between the same treaties, or the disparate effect of them on the rights and constitutional guarantees that come to perfect or complement.

As complementary to each other, treaties are perfected among themselves, in the sense of the fullest and most perfect recognition of the right in question in a given circumstance.

"The rule of the complementarity of treaties with each other and with the constitutional text is of special importance".[115]

It is noteworthy that without a doubt the right to life occupies a special place in the list of the fundamental rights of the human person. Even when the doctrine affirms that all human rights have equal value,[116] when examining specific cases of violations of this right, the competent international bodies do not hesitate to highlight the specific nature of the right to life.

In its General Comment on article 6 of the International Covenant on Civil and Political Rights, the Human Rights Committee qualified it as:

"The supreme right for which no suspension is authorized, even in situations that endanger the life of the nation".[117]

Since then, the Committee has reiterated the phrase «The right to life is the most essential of these rights».[118] It is also indicated in the project.

For its part, the Inter-American Court of Human Rights (IACHR), on a recurring basis, states in its rulings related to this right, the parameters of protection that must be adopted by the States Parties to make it effective:

"This Court has indicated that the right to life plays a fundamental role in the American Convention, as it is the essential corollary for the realization of other rights. The States have the obligation to guarantee the creation of the conditions that are required so that violations of this inalienable right do not occur and, in particular, the duty to prevent their agents from violating it. The fulfillment of the obligations imposed by Article 4 of the American Convention, related to Article 1.1 thereof, not only presupposes that no person is deprived of his life arbitrarily (negative obligation), but also, in light of his duty to guarantee the full and free exercise of human rights requires that States adopt all appropriate measures to protect and preserve the right to life (positive obligation). This active protection of the right to life by the state not only involves its legislators, but also every state institution ... ".[119]

The IACHR Court has used a more subtle and careful language in addressing this issue, noting:

"If due process of law, with its set of rights and guarantees, must be respected in any circumstances, its observance is even more important when the supreme good that all human rights declarations and treaties recognize and protect is at stake: human life".[120]

In the same way, it points out that the recognition of other rights depends on safeguarding the right to life. "By not respecting the right to life, all other rights disappear, since the owner is extinguished."[121]

"The right to life is a fundamental human right, whose enjoyment is a prerequisite for the enjoyment of all other human rights. If not respected, all rights have no meaning. Because of the fundamental nature of the right to life, restrictive approaches are not admissible",[122] and "states have the obligation to guarantee the creation of the conditions that are required so that violations of this inalienable right do not occur".[123]

If not respected, all rights have no meaning. Due to this nature, restrictive approaches are not admissible. In accordance with article 27.2 of the Convention, this right form part of the non-derogable nucleus, since it is enshrined as one of those that cannot be suspended in cases of war, public danger or other threats to the independence or security of the States Parties.[124]

Likewise, the following paragraph is reiterated in the body of jurisprudence issued by the Inter-American Court of Human Rights itself:

"In virtue of this fundamental role assigned to it in the Convention, States have the obligation to guarantee the creation of the necessary conditions so that violations of this inalienable right do not occur, as well as the duty to prevent their agents or individuals attempt against it. The object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and applied in such a way that its safeguards are practical and effective (*effet utile*)".[125]

On the other hand, the Inter-American Commission on Human Rights (CIDH) has been emphatic in recognizing the special nature of the right to life. In a decision adopted in 1996 expressly states:

(...) the Inter-American Commission on Human Rights must emphasize (...) that the right to life, understood as a fundamental right of the human person enshrined in the American Declaration and in various international instruments at a regional and universal level, has the status of *jus-cogens*.[126]

"The concept of *jus-cogens*» adds the IACHR derives from a higher order of norms established in ancient times and that cannot be contravened by the laws of man or nations".[127] According to the IACHR, in a more recent decision:

"The right to life is widely recognized as the supreme right of the human being and *conditio sine qua non* for the enjoyment of all other rights".[128]

The interpretation of conformity by article 31.1 of the Vienna Convention, of the aforementioned article 6.1 of the ICCPr, consists of "respecting ... (the) life" of its owner. That is the "object and purpose" of that norm, which means that it was established so that it really reached what it was persecuted for and not to be left without content.

In his second sentence and after a point in a row, "this right will be protected by law". And that "no one can be deprived of life arbitrarily", that is, in accordance with what was understood by arbitrariness on the date of the Convention and is understood even now, that is, that it is not an "act or proceeding contrary» to justice, reason or laws, dictated only by will or caprice".[129]

Particularities on the Paragraphs (9 And 10) Inexacts, Ambiguos Or Incongruent With Article 6.

Paragraph 9:

"9. Although States parties may take measures to regulate interruptions of pregnancy, such measures should not result in the

violation of a pregnant woman's right to life or her other rights under the Covenant, including the prohibition of cruel treatment or punishment, inhuman or degrading. Therefore, legal restrictions on the ability of women to request abortion should not, inter alia, endanger their lives or subject them to physical or mental suffering in violation of Article 7.[130] States Parties must provide safe access to abortion to protect life and physical integrity. The health of pregnant women and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, especially when the pregnancy is the result of rape or incest or when the fetus suffers from a fatal deterioration. States Parties cannot regulate pregnancy or abortion contrary to their duty to ensure that women do not have to perform unsafe abortions. [For example, they should not take measures such as the criminalization of pregnancies by unmarried women or the application of criminal sanctions to women who undergo an abortion or against the doctors who help them to do so, when they are expected to increase significantly the use of unsafe abortions. Nor should States parties introduce humiliating or excessively burdensome requirements for women who wish to undergo abortion. The duty to protect the lives of women against the health risks associated with unsafe abortions requires States Parties to guarantee access for women and men, and adolescents in particular, to information and education about the options reproductive systems and a wide range of contraceptive methods. States Parties must also ensure the availability of adequate prenatal and post-abortion care for pregnant women." It cannot be proposed that the abortion be performed, due to certain circumstances of the fetus and in an ambiguous way, which can create confusion and violates the principle of penal taxation.

In combination with was previously mentioned with people with disabilities, this group (disabled people) has repeatedly denounced that the selection against embryos with disabilities directly damages both unborn patients, as well as adults and those already born. This community has qualified the measures of prenatal diag-

nosis and elimination of patients, not only as eugenic measures in general, but has denounced them as a genetic genocide.[131]

The current proposal promotes abortion only for cases of "severe disability", this type of measures is usually a euphemism that can lead to increasingly extreme positions that may end up being applied and even in an almost obligatory way, in all cases, of greater or lesser disability in the unborn, as Wasserman showed in 2012, using advanced techniques to prevent his birth.[132]

On the contrary, it is important to reaffirm that patients with disabilities contribute positively to society, to families, to their friends and even to the economy. They contribute not because of their disability, but "... because along with their disabilities come other characteristics of personality, talent and humanity that make disabled people full members of the moral and human community".[133]

It is important to mention that this vision against people with disabilities violates the United Nations Convention on the Rights of Persons with Disabilities, in particular:

Article 10 states that: "The States Parties reaffirm that every human being has the inherent right to life and must take all necessary measures to ensure effective enjoyment by persons with disabilities based on equity with others."

Article 25: "The States Parties recognize that persons with disabilities have the right to enjoy the best standard of health without discrimination based on their disability."

The *nasciturus*, in its different stages, (zygote, embryo, fetus), despite the degree of cellular and organ specialization, is vulnerable, fragile and dependent on another to perform their vital functions, unable to fully exercise their sensitivity, intellection and locomotion, that is, temporarily disabled. (It is not known if any of these disabilities will last over time or only be resolved after a maturation that takes time). Therefore, the *nasciturus* is entitled to legal protection by the State given their condition (temporary or permanent) of disability.

In this regard, it must be said that it is currently shown as an *endoxa*, as a common place, at least legally, in the current international legal frameworks. Currently, there is a rise in pro-people with disabilities movements for many other reasons, and that is another good argument for the rights of the *nasciturus*.

However, is it appropriate to consider the *nasciturus* as disabled? This admits at least two approaches. One strictly anthropological and another legal. Regarding the legal terrain, the Mexican law in force (General Law for the inclusion of people with disabilities, of May 30, 2011), following almost completely the text of the UN, defines the person with a disability as: "XXI . Person with Disability. Any person who, due to congenital or acquired reasons, has one or more deficiencies of a physical, mental, intellectual or sensory nature, whether permanent or temporary and which, when interacting with the barriers imposed by the social environment, may prevent their full and effective inclusion, on equal terms with others." Under this definition, effectively, the *nasciturus* is perfectly defined as a person with temporary disability (sensory, mental, locomotive, without freedom to feed or fend for itself), so it can benefit from the protection that these frames offer. Thus, all eugenic practice becomes a formal practice of discrimination, especially when the legal subject in question is even more vulnerable because of their age and their impossibility of autonomy and individual independence in the most basic planes of survival.

But let's see, the anthropological problem behind the legal problem. Following closely the critical iuspositivism of Luigi Ferrajoli,[134] there is a fourfold relationship between the Law and the "differences": a) Hobbesian, where there is a legal indifference of differences are not protected or violated, they are simply ignored. b) legal differentiation of the differences. Some are valued over others. c) legal homologation of the differences. The differences are suppressed in order to maintain an abstract equality that ignores them. d) legal assessment of differences, where differences are

protected, the equal right of all to the affirmation and protection of their own identity is sought, by virtue of the equal value associated with all the differences that make each person an individual diverse from all others and from each individual a person like all others.

Ferrajoli's guarantee approach can be complemented with the Levinasian theory of vulnerability and reinforce that there must be a legal assessment of this difference that occurs on the *nasciturus*. In fact, the person before birth and a long time afterwards is an independent but extremely fragile organism.[135] Its difference based on vulnerability makes it a specific subject of law, it must be assisted by a special guarantee, since, in case of potential conflict of rights, its difference makes it the weakest party, and therefore, the privileged party.

For Levinas, the vulnerability of the other is the obverse of the same reality whose reverse, for me, is the imperative whose negative formulation is not to kill[136] and the affirmative is, in Hebrew, *hineni*, "here I am", that is, a permanent responsibility for doing everything that is on our part to make the other live.

On the other hand, the good effect should not be achieved through the bad; the presumed freedom –is updated with a component of responsibility of the mother– and cannot be proclaimed unambiguously, since it affects a third party or, at least, a value such as life, different from the rights, values and interests of the pregnant woman herself, understanding that circumstances that are not planned should be addressed with education and social support. Likewise, the penalties considered should not be criminalized, but implemented with a perspective of restorative justice and psychosocial support.

"The natural bond of the *nasciturus* with its mother, is based in a relationship of special nature of which there is no parallel in any other social circumstance", abortion, should be understood as a social, family and state failure; For its part, the European Parlia-

ment and the Consultative Assembly of the Council of Europe establish that abortion must be eradicated.[137]

Abortion has irreversible consequences; whose social dimension affects the foundations of relational coexistence. But it also has a biological dimension, so it must be considered from the perspective of biology, medicine and health.

The Commission on Population and Development[138] pointed out:

"12 ... reducing the use of abortion by increasing and improving family planning services and, in cases where abortion is not illegal, adequate training and equipment for health service providers and other measures to ensure that abortion is safe and accessible, recognizing that in no case should abortion be promoted as a method of family planning or prevention and treatment of sexually transmitted diseases ..."

As an alternative to this policy, it would be necessary to carry out a series of social policies for maternity protection and specific support to women who have difficulties in continuing pregnancy and are forced, against their wishes, to make the decision to abort due to the lack of resources or third-party pressure, being itself a real situation of violence. As well as access to justice, where the criminal is really punished, providing a useful effect of rights.

The objective is to protect "life, both of the woman and the unborn, as well as the proper development of pregnancy and the resolution of conflicts." This is carried out in an extraordinarily delicate moment for the pregnant woman: when she has already expressed her decision to undergo an abortion, either because her life seems to be in danger, or because the pregnancy has been the result of sexual assault.

On the other hand, concepts such as legal or voluntary interruption of pregnancy, lack a definition or contents of a standard, these concepts are an euphemism, since when establishing the term interruption (action and effect of interrupting), and interrupt is to cut the continuity of something in time,[139] which for the case

is understood as “a temporary suspension of the pregnancy”, it can be illustrated with any intrauterine intervention such as a bifid spine surgery, megabladder, intrauterine transfusion, etc., different from abortion that does not interrupts, but ends pregnancy.

In general, the legislation must always consider three aspects: guarantee the protection of all legal rights in question, promote the possible good and reduce the possibility of double effect that is sometimes inevitable.

The jurist as well, has the duty of a correct and responsible exercise of fairness, prudence, calm deliberation, and authentic practical wisdom.

Resolution 1607/2008 adopted in the Parliamentary Assembly by the Council of Europe, states that the evidence shows that the adequate strategies and policies regarding sexual health, including education for young people in sexuality and relationships, appropriate to their age, leads to less recourse to abortion.

The legalization of abortion, together with social pressures and ideological interest of specific groups, can be a pressure factor on women and motherhood, and by establishing a new right, it can justify a threat to the *nasciturus*.

Physicians may face pressure to recommend prenatal genetic studies and even abortion, since they are the ones who can determine the probabilities of congenital defects of the *nasciturus* in its first weeks of development, these studies that are still probabilistic, combined with the possibility to abort freely in any given week, generate a new problem of pressure on the doctor to recommend abortion at the mere risk of a diagnostic error. Considering the case that abortion is permitted, the probabilities of the various prenatal studies to know the health of the child and the social standards of the biologically desirable child (eugenics), pressure is placed on the parents or the pregnant woman and more so the doctors under a supposed malpractice within the so-called “wrongful birth”, accusing the doctor, that by not having recommended the prenatal genetic study, the parents missed the opportunity to abort

the *nasciturus*, which was born with malformations, as was the case with Perruche in France.

In contrast, the promotion of maternal health has been a key concern for public health policymakers worldwide on the recommendation of the United Nations (UN) that proposed the Millennium Development Goals (MDGs). The fifth goal focuses on improving maternal health; The UN required all member states to reduce maternal mortality by 75% by 2015. However, as of 2015, the reduction of maternal deaths has not been achieved and is still far from this figure. New complementary social or public health policies have been promoted to support a new post-MDG agenda, but to be effective they must be supported by scientific evidence.

For example, maternal mortality in Mexico has decreased globally by 22% in the last decade, from 48.6 to 37.7 per 100,000 live births. Abortion has never been the main causes of death. In fact, in a detailed study published in the International Journal of Women's Health, about 98% of maternal deaths were unrelated to an illegal induced abortion, which has an occurrence of approximately 1 per 100,000 live births.[140] The main causes of mortality were hemorrhage, hypertensive syndromes of pregnancy, indirect causes and other external causes unrelated to pregnancy. Regarding maternal deaths and the legal status of abortion, a detailed investigation of maternal deaths in the 32 Mexican states divided into two groups was published in the British Medical Journal Open, based on the penal codes in force in each state: 14 states (including Mexico City) classified with more permissive legislation and 18 states classified with less permissive legislation.[141] Interestingly, it was observed that states with less permissive legislation exhibited on average 27% fewer total maternal deaths and 47% fewer induced abortion deaths compared to states that exhibited more permissive legislation for the period from 2002 to 2011.

Through multivariate statistical analyzes, the authors demonstrated that before the abortion laws, the differences between states were explained by other factors known to impact on maternal

health such as the level of education of women of reproductive age in each state, state fertility rate, access to prenatal care, professional delivery care, availability of obstetric emergency units, safe drinking water and sewage coverage, prevalence of intimate partner violence against women and individual risk factors. The authors stressed the need to control for these factors in other studies before concluding that abortion laws may have some effect on maternal mortality rates.[142] No study controlled by multiple confounding factors has shown that more permissive abortion legislation has an independent effect on the rate of maternal death.[143] In the investigations conducted in Mexico,[144] as in another natural experiment previously conducted in Chile[145] and published in the journal PLoS One,[146] it was concluded that a more permissive abortion legislation has no direct impact on maternal mortality rates and does not diminish them either, being its effect rather null.[147]

Maternal mortality is not increased by the legal restriction of abortion, nonetheless it is related to the lack of access to many basic services and other social factors that are currently neglected in public policies impacting human development indicators such as:

— Lack of women's access to education.
— Lack of free nutrition programs for pregnant women living in poverty.
— Lack of availability and proximity of emergency obstetric units.
— Lack of access to drinking water.
— Absence of sewage systems.

It is known that taking care of these factors is fundamental to generate favorable conditions for a decrease in maternal mortality. It has been scientifically confirmed that these factors have a serious impact on maternal deaths, so they must be comprehensively addressed by those responsible for creating and implementing public health policies taking into account indicators of human development.

In the elaboration of public health policies, it is very important to consider that the legal status of abortion is not the central issue for a leading-edge discussion regarding women's well-being, rather, it is hostile and not the solution for all cases. The main issue to be addressed in order to have an impact on better health conditions for women of reproductive age is attention in different scopes of development. In the investigations aforementioned, the authors, experts in epidemiology, public health, obstetrics, gynecology, medicine, surgery and sociology recommend seven specific interventions:

— Increase access to prenatal care and professional delivery care in health institutions.
— Increase the number and access to emergency obstetric units.
— Expand specialized diagnostic centers and prenatal care for high-risk pregnancies, incorporating other medical specialties.
— Develop pre-conception counseling programs to promote healthy pregnancies before age 35.
— Expand and strengthen public policies aimed at increasing years of education in the female population.
— Improve the detection of violence against pregnant women during prenatal check-ups and intervention by skilled health professionals.
— Reduce disparities in human development indicators by increasing access to drinking water and sewerage.

Finally, as it has been discussed and made known in previous lines, the following statements can be made –even through common sense– regarding the embryo's individuality, diversity and differences with the mother's body:

1. It has a human genome different from that of the mother and that of the father. It has a unique proteome and individual epigenetic conditions, being a different being with regard to his parents.

2. It may be of a different sex than the mother.
3. It may have a different blood group than the mother.
4. It can be sick and the mother healthy.
5. The mother can be sick and the embryo healthy.
6. Another evidence of the incongruity of considering the embryo part of the mother is the fact that when the embryo is born, the mother is not left with any functional deficiency. If the embryo were part of the mother, after the abortion or delivery, the woman would have some functional insufficiency, which should be compensated, or she would be left with mutilation or decompensation for life. None of this happens, the functionality of the woman is independent of the existence of this other human being, who is his son.
7. Medically speaking there is the specialty of gynecology and obstetrics for the mother and perinatology for the embryo and the fetus, since they are different beings, with different characteristics from the medical perspective.
8. The embryo can live outside the maternal body, as in *in vitro* fertilization, done in a container that is only a glass device.
9. The embryo can live in a body other than the mother's, as in assisted reproduction technologies with a surrogate womb.
10. Immunological evidence. The embryo is so different from the mother that an immune response against the embryo usually starts. Most of the time that immune response is suppressed by complex phenomena, where the placenta and the entire maternal and embryonic immune system are involved.
11. It does not seem logical to grant the embryo the substantiveness of the mother to sustain the insubstantiality of the embryo.[148]
12. Embryos can be maintained in cryopreservation for a long time and be transferred later.

Paragraph 10

"10. [While recognizing the fundamental importance of human dignity in personal autonomy, the Committee considers that States

parties should recognize that people who plan or attempt suicide can do so because they are going through a momentary crisis that may affect their ability to make irreversible decisions, such as ending his life. Therefore, States should take appropriate measures, without violating their obligations under the Covenant, to prevent suicides, especially among individuals in particularly vulnerable situations. At the same time, States Parties [may allow] [must not prevent] medical professionals from providing medical treatment or medical means to facilitate the termination of the lives of [catastrophically] affected adults, such as the mortally injured or terminally ill, who experience severe pain and physical or mental suffering and wish to die with dignity. In such cases, States Parties must ensure the existence of sound legal and institutional safeguards to verify that medical professionals comply with the free, informed, explicit and unambiguous decision of their patients, in order to protect patients from pressure and the abuse."

The new paradigm of legal positivism is an object of reflection in the current collapse of society, by the disappearance of otherness and strangeness.[149]

The hypertrophic approach of present-day systems, information systems, communications, production[150] and now of the law, is losing its human imprint, seeking to justify and nourish human passions, burying the nobility of the personal spirit that limits all people of individualistic self-destruction, rather, we must build on differences and human empathy.

We punish ourselves, with the violence of dissuasion, pacification, neutralization, control, of the soft violence of extermination. Therapeutic, genetic or communicational violence: violence of consensus, which now impacts on ideologies reflected in the laws. This violence is viral, in the sense that it does not operate frontally but by consanguinity, by contagion, by chain reaction and from the first moment it attacks our entire immune system.[151]

Where now Nietzsche's sovereign man is about to become a mass reality: there is nothing above him that can indicate who he

should be, because he considers himself the sole owner of himself. "We have invented happiness; the last men say"[152]

In this way, he is only subject to himself and any limitation to his immanentist possibilities is aggression and intolerance, permeating now as supposed human rights, trying to captivate as a siren song, subtly not mentioning that it is encouraged as euthanasia or assisted suicide.

In this regard, the World Health Organization (WHO) defines it as that "action of the doctor that deliberately causes the death of the patient".[153] and, the World Medical Association in the Declaration on Euthanasia establishes it as the deliberate act of ending the life of a patient, even if it is by his own request or at the request of his relatives, which is contrary to ethics. This does not prevent the doctor from respecting the patient's desire to let the natural process of death take its course in the terminal phase of illness.[154] Disrupting doctors deontological positioning of attending life, personal integrity and health of human beings, with the best possible means, alleviating any type of disease and alleviating their suffering and their family's anguish, thus respecting their dignity.

At this point, physicians will have to put aside their conscience and subsequent objection, to become an executioner "certified" by medicine, demanding that his own will becomes an automaton of the wishes of a third party and coerced by a legal norm, without really analyzing as scientist that takes care of human health, or if there is a vice in the patients consent, derived from depression, disability, abandonment or other vulnerable circumstance, as well as seeking to offer the patient new therapeutic options available from the most recent advances of medicine.

In this way, it is clear that euthanasia goes against human life, using the intervention of a third party, being the antithesis of the "Right to life", recognized as a primary human right. In that strong sense of this human right, comes to tell us that the expression "have a right" means that another or other people have a duty towards its safeguard and the opposite would be unfair.

To ponder the degree of precision of a human right, not only logical-deductive associations can occur, but also justificatory or instrumental associations that belong to the world of practical reasoning can occur and are impossible to grasp in the formal ties of logical-deductive reasoning. Raz[155] calls them "core-rights", which are those rights constituted by the normative system, as distinguishable from derivative-rights that are those that can be considered to be implied by the core-rights and therefore, are susceptible of being obtained deductively from these; the right to life is one of them, not the right to die, which would be the opposition (antinomy).

For a right to have the character of Human Right, some formal structural features are required, not depending on consensus.

The first that is discoursed is "universality"; It means that they are ascribed to all human beings and requires, that specific circumstances, conditions o contexts are to be ignored, because such rights have a vocation to be ascribed to all. It suffices that the minimum requirement of being "human being" is met, in that sense, we have to separate human rights from the scope of the positive legal system. Because in effect, we do not talk about rights that some have, and others don't, depending on the legal system. We all share the same rights

Therefore, the characteristic of human rights is to establish the existence of general obligations and not so much on special obligations, that is, obligations of all and not so much on merely positional obligations. Obligations tend to be differentiated into negative "not doing, omitting" and positive ones, they are obligations to do, to perform an action and the first one is relational coexistence, based on the common good.

The second formal feature is the presumed "absolute" character of Human Rights. This idea makes a direct reference to what in general terms has been called its importance,[156] and what lies under that condition is the idea of strong moral demand or, as Richards says: "the urgent, demanding and intransigent nature of human

rights".[157] Now, if it is said that the right to life is not absolute, it is by its weighting on the same level, in that way is how is legitimate defense is safeguarded, derived from an unjust act.

Human rights are the kind of strong demand that they are, not because they have corresponding obligations, but on the contrary, the obligations are strong precisely because human rights carry a constitutive force by themselves.[158] And if that force does not derive from the obligation component, it must necessarily derive from the other component, that is, from the good, from the qualified assessment of the situation or state of affairs that it attempts to guarantee.

The right to life is linked to the ontological principle of the instinct of conservation, which must be safeguarded on the basis of human relational coexistence, just as they are protected in palliative care.

The third formal feature is that they are "inalienable", for the majority of those who have analyzed the issue, it means that it cannot be taken or stolen from the person, and the rights are to be inalienable because all without exception, are holders of them (and therefore no one could be deprived of them). Those two features are related especially with the universal and absolute character of Human Rights, and not with the idea of inalienability in the strict sense.

When Grotius designs the passage from the state of nature to civil society, it is posed, starting a tradition that will be legendary, the problem of what natural rights individuals renounce when entering such a society. For him there is no doubt that individuals renounce the natural right of self-defense or natural right to punish but situates the problem in the broader framework of the renunciation of freedom.[159]

It is about the problem of giving up certain rights on the part of its own owners. What Grotius is suggesting is that, even if one can logically think of a possibility of absolute renunciation in the very notion of voluntary and free pact, one can only choose the

soft interpretation, or as it has been called using Quine's idea, the charitable interpretation that individuals could not do such barbarity.

If we accepted the former idea, slavery would come to be justified by a theory of natural rights. We cannot, therefore, interpret the pact in that way. And from this arises the issue of the inalienability of basic rights: its formulation means that we cannot think of them as something that can be renounced by the owner's own will. What American theorists wanted to do, was establish an absolute restriction to the idea of consenting to be deprived of a basic right. They thought, on the contrary, that one could never speak of rights in that sense, the kind that would say that an individual act of consent supposed their disappearance.[160] And this cannot be identified, as it hastily has been done, with the idea that human rights cannot be justifiably displaced.

The formal meaning here is how to express the idea that human rights are inalienable even by their holders.

In that sense when speaking of universality, we have seen how a human right supposed the affirmation of a good of such importance for the individual that this constituted a sufficient reason to impose obligations on all others, and the absolute, is the force that given to that right towards all people, and its inalienability as the application of the normative technique of the obligation or immunity to the holder of the right. Just as everyone has the obligation to respect each other's right or lack the power to alter that right, the owner himself is obliged to respect his own rights being, we could say, immunized normatively against himself.

Finally, according to "Noëlle Lenoir, dignity is the source of all rights, therefore it is a pre-legal concept; it can be considered as the foundation on which the rights of the human being are based. In this same position, Jürgen Moltmann points out: "The root and the common bond of the various human rights is human dignity.".[61] Inherent value to the human person, for his axiological position.

The legalization of euthanasia and assisted suicide will result in unjust structures, which consist of the distribution and stratification of people, groups and various elements within a social organism, so that unfair situations are consolidated. Circumstances of discrimination, abuses, and justifications without consent of all the co-implicated, or because they are not in a position to make the correct decisions, acting against human dignity and in a regressive manner within human rights, also creating a right not contemplated in any convention, rather an antinomy by consensus of a few.

Moreover, it is contrary to the *lex artis ad hoc* of medicine, as observed, among others, in the following instruments:

Principles Of European Medical Ethics.
Doctor's Commitment

Helping the dying

Article 12º. Medicine implies in all circumstances constant respect for life, for moral autonomy and for the freedom of choice of the patient. In case of incurable and terminal illness, the doctor can limit himself to alleviate the physical and moral suffering of the patient, administering the appropriate treatments and maintaining, as much as possible, the quality of a life that is finished. It is obligatory to attend to the dying person until the end and act in a way that allows him to preserve his dignity.

Hippocratic Oath

I will apply my treatments for the benefit of the sick, according to my capacity and good judgment, and I will refrain from doing them harm or injustice. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course. Similarly, I will not give to a woman a pessary to cause abortion. (...)

Recommendation 1418 (1999) Protection of human rights and dignity of the terminally ill and dying. The text of this Recommen-

dation was adopted by the Assembly on June 25, 1999 (24th Session).

In principle seeks to protect the dignity of people and all rights that are inalienable. It seeks to provide an adequate means that allows the human being to die with dignity. This recommendation is based on technological advances that can be applied without taking into account the quality of life of the patient or his decision on the treatment that may be applied, prolonging life unnecessarily or delaying death, maintaining this is the suffering of both the patient and the family.

In 1976 a resolution of the Assembly was issued in which it is stated that "prolonging life must not be, in itself, the exclusive goal of medical practice, which must also be concerned with the alleviation of suffering". Subsequently the European Convention for the Protection of Human Rights and the Dignity of the Human Being set the principles affirming the specific needs of the terminally ill.

The rights derived from the dignity of terminally ill patients are affected by the difficulty to access palliative care, lack of treatment of their psychological, social and spiritual needs, artificial and disproportionate prolongation of the dying process, insufficient support and assistance to family members, lack of training of health professionals, insufficient allocation of financial resources for assistance and care for the terminally ill, discrimination, and stigma towards the sick.

Derived from the above, the Assembly resolved that countries should incorporate legal and social protection in favor of the terminally ill for circumstances such as: dying subjected to pain, prolongation of the death process; as well as social isolation and restriction of life support physicians for economic reasons.

In this regard, it was recommended that the members of the Council of Europe should respect and protect the dignity of the terminally ill in all aspects, adopting measures aimed at eliminating the injustice done to the rights previously affected.

Declaration of the World Medical Association on euthanasia. Adopted by the 39th World Medical Assembly, Madrid, Spain, October 1987.

Euthanasia, that is, the deliberate act of putting an end to the life of a patient, even if by choice or at the request of family members, is contrary to ethics. This does not prevent the doctor from respecting the patient's desire to let the natural process of death run its course in the terminal phase of his illness.

Declaration of the World Medical Association on the care of patients with severe chronic pain in terminal diseases.[162]

Introduction

The care of patients with terminal illnesses with severe chronic pain must provide a treatment that allows these patients to arrive at end their lives with dignity and motivation. Analgesics, with or without opium, when used properly are effective in patients with terminal diseases. The physician and other personnel who care for patients with terminal illnesses must clearly understand the mechanisms of pain, the clinical pharmacology of the analgesics and the needs of the patient, their family and friends. It is also imperative that governments ensure the supply of medically necessary amounts of opioid analgesics, for their proper application in the control of severe chronic pain.

In that same means there are: The Principles of the Clinical Treatment of Severe Chronic Pain, the Resolution of the World Medical Association on Human Rights. Adopted by the 42nd World Medical Assembly, Rancho Mirage, California, USA, in October 1990, and amended by the 45th World Medical Assembly, Budapest, Hungary, in October 1993 and by the 46th WMA General Assembly, Stockholm, Sweden, in September 1994 and by the 47th World Medical Assembly, Bali, Indonesia, in September 1995, the Venice Declaration of the World Medical Association on terminal illness. Adopted by the 35th World Medical Assembly, Veni-

ce, Italy, October 1983, etc. None of these speak of assisted suicide or euthanasia.

Rather, what should be promoted is palliative care, whose objective is the improvement of the patient's circumstances, in the full sense; that is, understanding not only the physical dimension, but also the psychological, and spiritual dimensions.

In this regard, the World Health Organization (WHO), adopted in a key document for the development of palliative care published in 1990, the definition proposed by the European Association of Palliative Care as the "total active care of patients whose disease does not respond to curative treatment. The control of pain and other symptoms and psychological, social and spiritual problems is paramount". It stressed that palliative care should not be limited to the last days of life but should be progressively applied as the disease progresses and according to the needs of patients and their family.

Subsequently, the WHO has expanded the definition of palliative care: **"An approach that improves the quality of life of patients and families who face the problems associated with life threatening diseases, through the prevention and relief of suffering through the early identification and impeccable evaluation and treatment of pain and other physical, psychological and spiritual problems".**

Regarding children, the World Health Organization (WHO) defines palliative care as: "Palliative care for children is the active total care of the child's body, mind and spirit, and also involves giving support to the family. It begins when illness is diagnosed, and continues regardless of whether or not a child receives treatment directed at the disease".

Palliative care is, in addition, the organized response that covers the needs of patients and family members who go through this stage of the disease that we call terminal, a time also when the disease is no longer controllable and in which multiple somatic symptoms appear and a progressive deterioration associated with

emotional changes of adaptation to the loss of functions and roles that affects both patients and family members.

Initially palliative care focused on cancer patients, currently the model is applicable to patients with advanced chronic diseases.

Palliative care improves the quality of life of patients and families facing life threatening diseases, mitigating pain and other symptoms, and providing spiritual and psychological support from the moment of diagnosis to the end of life and grief.

In general terms, palliative care:

— Relieves pain and other distressing symptoms;
— Affirms life and consider death as a normal process;
— Do not attempt to accelerate or delay death;
— Integrate the psychological and spiritual aspects of patient care;
— Offers a support system to help patients live as actively as possible until death;
— Offers a support system to help the family adapt during the patient's illness and in their own grief;
— Makes use of a team approach to respond to the needs of patients and their families, including emotional support in grief;
— Improve health or at least significantly alleviate disease and improve overall well-being, with the possibility of also positively influence the course of the disease;
— Can be given at an early stage of the disease, along with other treatments that can prolong life, such as chemotherapy or radiation therapy, including the necessary study to better understand and manage distressing clinical complications.

Mass media expose, in a tacit way, the concept that a person has the right to dispose of their own life through the option of requesting euthanasia or medically assisted suicide; it identifies it as the maximum act of respect for the individuality and autonomy of the person and, in this way, of human dignity. Additionally, it presents

the benevolent figure of those who apply the lethal drug as someone who, understanding that nobody can "... impose the obligation to continue living to someone who, because of extreme suffering, no longer wishes ...",[163] grants him the "gift of death", as a relief to suffering in life, thus turning it supposedly into a benevolent act.

There is a fundamental error of concept in the argument, identifying as the central value in this act the potential individual capacity (and to a certain extent, the right) to decide on death, instead of strengthening that the maximum value of man is life[164] and that death is part of life itself. This faulty concept derives in multiple media actions to justify this act and give it an air of congruence, an act perceived as of maximum benevolence.

This approach seems to give a strong and irrefutable argument for the attitude of trying to control the conditions of death in terminal patients or in extreme suffering. Perhaps this same social pressure and cultural perception has caused countries like the Netherlands to have euthanasia as a legal option to end a life considered unworthy because of extreme and uncontrollable suffering.[165]

In 2012, the Dutch researcher Bregje D. Onwuteaka-Philipsen published an analysis of the practice of euthanasia in his country.[166] He found that, in 2005, 1.7% of the causes of death were due to euthanasia, a figure that reached 2.8% in 2012; 77% of the cases were attended by doctors, 56% of the patients asked for it because of a feeling of loss of dignity and 47% for untreatable pain.

The previous article shows that this concept of the power of decision over dying, interpreted as dignified death, can become a medical practice within easy reach, with argumentation and methodolog, clearly influenced by the "technological imperative" that Jonas Hans described in 1979[167] to consider that everything that is technically possible is ethically demandable, and with a clear danger to the exercise of medical ethics.

Another Dutch author, Zylicz, studied terminally ill patients and borderline situations, and identified five causes for which patients ask for euthanasia,[168] known as the ABC of euthanasia applications:

A. Afraid (fear)
B. Burn-out (emotional wear)
C. Control of Death (wish to control death)
D. Depression
E. Excruciating pain (unbearable pain)

All these causes have to do with an affected emotional state and a behavior consistent with emotional disturbance. It immediately highlights the point C of the list of Zylicz: desire to control death, since it is the same argument used by organizations that support so called dignified death and promote the practice of euthanasia. As a complement to this observation, we cannot leave aside the very interesting contribution to the field of end-of-life care by Dr. Elisabeth Kübler-Ross, a Swiss-American psychiatrist who through the Kübler-Ross Model, identified five phases of the emotional reactions of terminally ill patients:[169]

1. Denial and isolation
2. Anger
3. Bargaining (negotiation)
4. Depression
5. A cceptance

In light of these phases in the process of facing death, it is again observed that the arguments of the organizations mentioned are challenged in the third point, trying to negotiate the situation of death, alleging the utopian ability to control it.

It is clear that death is inevitable. There is no freedom of decision in this act, it will happen sooner or later. It is also clear that the argument that advocates a "right to die" using euthanasia as a tool is based on an *emotional reaction*, which is perfectly normal for patients who face the news of the end of their life. This emotional

basis is what guides the creativity of the film scripts and generates empathy in the viewer before the protagonist who suffers inexorably, clouding the analysis of the fundamental arguments before the death process, where it should be understood that, in death, "... *the only thing in which freedom intervenes is the attitude adopted before it*".[170]

Zylicz himself has postulated that euthanasia is an "easy way out", which diminishes the doctor's creativity to look for solutions or new options in terminal patients,[171] but not only that, but it also makes it difficult to understand the true role of personal freedom in the face of death, keeps the doctor from understanding death as a personal, cultural and religious event,[172] not as a scientific event. At this point, the concept of accompaniment in the process, alleviating pain and anguish, and integrating psychological-spiritual aspects of the patient, justifies that the right tool for the defense of a dignified death is, precisely, palliative medicine.[173]

Rather, an "*ethical requirement*" should be pursued, not stubbornly looking to die, but the way of living the process of dying.[174] These ethical demands seek to reaffirm the dignity of the person at this stage, according to LG Blanco[175] they are: a) attention to the dying with all the means that currently medical science has to relieve their pain and prolong their human life; b) not deprive the dying person of dying as "personal action", dying is the supreme action of man; c) free death from the "concealment" to which it is subjected in today's society; d) organize an adequate hospital service so that death is an event consciously assumed by human beings and lived in community; e) favor the experience of the human-religious mystery of death, religious assistance in these circumstances takes on special importance.

The debate takes an optimal course starting by understanding death as a human act, where the individual does not remain passive before it, but practices freedom as the attitude to face the death process, that is; the right to a dignified death is the right to live one's death. This concept is based on the Judeo-Christian tradition,

but it is perfectly valid to understand the concept that death is invariably a constitutive part of life and must be lived.

Therefore, the stream of personalist bioethics emerges as a fundamental tool in the recognition of dignity as a person, based on its human rights, which cannot be denied, are universal and are inalienable. Meaning that no one can decide to attempt against life, even if it is their own: there is no such thing as a "right to die".[176]

In this context, the principlism approach of bioethics does not fully cover the situation before the end of life and may offer false arguments, as stated at the beginning of this text. The bioethical foundation in these cases is closely linked to biolaw aspects, since it involves at least five ethical principles in the care of these patients,[177] the first is the principle of *truthfulness,* as the foundation of trust in the patient-patient relationship, and that represents the foundation of the four classic bioethical principles of principlism, (beneficence to the patient and family, facilitates the participation in the decision making –autonomy–, can be postponed in case the patient is not able to receive the news –nonmaleficence–, nevertheless information should always be handled with the truth –justice–); the second is the principle of *therapeutic proportionality*, where there is a moral obligation to implement the measures that have the proper proportion between the means used and the foreseeable overall result;[178] the third is the principle of *double effect*, since, in attempting to keep the patient pain-free, there may be a risk of deep sedation or even death;[179] the fourth is *prevention*, which is a medical duty to act prudently and pertinently before the appearance of complications or potential symptoms; the fifth and last is the principle of *nonabandonment*, which prevents the doctor from evading dealing with an element of life itself, death, and confronting it, arguing that "there is nothing more to offer," since it is contrary to proper attitude; when there isn't a cure, the person can be accompanied and comforted.[180]

A central point in the subject of euthanasia and assisted suicide is the pain that is difficult to treat, in this regard it is proper to point

out that pain is defined as "an unpleasant sensation and an emotional experience associated with a current or potential tissue damage", according to the International *Association for the Study of Pain*, IASP).[181] The stimulus related to injury of a tissue activates painful circuits that can be resolved over several days or weeks, however, the resolution of the damage may not occur at all generating a persistent stimulus and a state of chronic pain. All of the above immersed in a subjective emotional experience of «wear» for those who go through this suffering.[182]

Chronic pain, then, extends beyond 3 to 6 months and has a severe psychological component.[183, 184] Current theories evaluate if chronic pain is independent of the tissue injury, reflects a chronic illness or a chronic painful state.[185]

The evaluation of pain allows to elucidate its etiology and establish a treatment strategy.[186] For this, it must include the sensory and affective qualities of the pain, as well as its intensity, its temporal pattern and effectiveness of previous treatments.[187]

The mechanisms of chronic pain are complex and in constant study, however, in recent years there have been truly remarkable advances in the management of it, which has significantly reduced the group of patients with "untreatable pain", allowing more effective approaches to pain in these patients. The following is a current overview of interventions for pain management.

In this regard, currently there has been progress in current therapeutic interventions for pain. There is an "analgesic ladder" well known in pain management clinics, consists of progressively escalating analgesics to find the most effective, however, it is a practice with a tendency to disappear, since it seeks to address pain by its mechanism, instead of considering response to analgesics.[188]

Additionally, it is well known that drugs alone do not offer the best benefits,[189] a multimodal approach is required, including; medication, physical rehabilitation, changes in lifestyle, psychological therapy, surgery and complementary medicine,[190] such as:

a) *Physical Therapy*. There is some evidence of short and medium-term benefit in the use of physical strategies for pain management.[191]
b) *Psychological Therapies*. They are fundamental to a proper approach, since the feeling of rejection, emotions, and behaviors against chronic pain directly influence the subjective experience of it, and thus, in their perception of severity, which could be exaggerated with hypervigilance.[192] Cognitive behavioral therapy is effective in dealing with pain and self-modulating the experience of pain in an appropriate way.[193] There is also a clear relationship between depression and chronic pain, so this point is fundamental in the approach of the patient with chronic pain.
c) *Pharmacotherapy Of Chronic Pain*. There is analgesic therapy through different agents, from non-steroidal anti-inflammatories to opioid drugs, the latter with greater analgesic action due to their pharmacological properties.[194] The risk of abuse and dependence is a worrisome situation as a result of the poorly supervised employment of these strategies, which is potentially fatal.[195] A proper follow-up in their use makes them a tool and of great value in terminal patients, with clear benefit in most cases.[196] Other adjuvant drugs are antidepressants (tricyclics, selective serotonin reuptake inhibitors and dual antidepressants) that modulate nociceptive perception pathways, allowing to reduce the chronic painful stimulus,[197] as well as other neuromodulatory drugs.
d) *Classical Interventional Therapy*. The infiltrations are invasive techniques where an injection of drugs in the injured or affected areas allows a radical improvementb in pain management, however, their effect is temporary and usually they are expensive.[198]
e) *Advanced Interventional Therapy*. They are invasive advanced neuromodulatory techniques which have come to be considered as a first line intervention in severe and chronic pain.[199]

Spinal Cord Stimulation (SCS). An electrical stimulator implanted surgically under the skin sends electrical signals to the spinal cord, using minimally invasive techniques, causing a mild and pleasant paresthesia in the underlying painful region. The patient has control of the device programming the electrical stimulus with very favorable responses, the downside is the surgical risk, which, in expert hands, are minor. In cost-benefit studies, despite its high price, its use is favorable versus the expense of other therapies and repeated hospitalizations for pain management.

Intrathecal Drug Delivery Devices (IDDS) This are drug infusion pumps in the spinal canal that provide the amount of analgesic medication necessary for pain control, controlled by the medical team and sometimes by the same patient,[200] they are very effective in pain management in cancer patients or patients with chronic pain.[200]

Finally, there is also novel trends in pain management. One of them is to address pain not by the scale for the need of an interventional procedure or the use of pain specific drugs, but rather by neurophysiological pain. Thus, it will be possible to modulate, for example, voltage-dependent ion channels (sodium, calcium, potassium), which are responsible for generating cellular membrane action potential in nerve cells of painful pathways. Similarly, ligand-dependent channels and receptors (NMDA), or the transient potential receptor TPRV1, are being investigated for the development of specific modulatory drugs.

The immunomodulation of anti-inflammatory cytokines also offers a promising outlook in the management of chronic pain, such as interleukin 10, although the technical and pharmaco-biological difficulty of these have not yet permitted their routine use for pain.

There are also therapeutic strategies to reduce the levels of neurotransmitters that potentiate the pain pathways in GABAergic networks, as well as signaling of lysophosphatidic acid, related to chronic pain in nociceptive pathways and its modulation by mono-

clonal antibodies or inhibitors of its own modulating enzyme, ATX.[200] Gene therapy has also provided options to transfer "therapeutic genes" by genetic vectors enabling the expression of proteins or peptides in target cells of nociceptive pathways, such as opioid genes, anti-inflammatory cytokines or on expression or negative regulation of ion channels,[201] or, thanks to the recent identification of «pain genes» (SCN9A, NAV1.7, TRPA1, etc.), the expression of these genes could be selectively blocked, facilitating the management of chronic pain syndromes and allowing a new paradigm in the treatment of patients with chronic pain,[202] potentially eliminating the concept of "intractable chronic pain".

As it is stated in this document, establishing criteria contrary to the right to life is not adequate and much less proportional in relation to current scientific advances, human dignity and the global perception of those represented by the Committee's vision. The Committee should be careful not to create antinomies in their interpretation and chaos into the interior of many countries not compatible with their position.

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[11] TEDH, *Caso A, B y C vs. Irlanda*, (Nº 25579/05), Sentencia de 16 de diciembre de 2010, párr. 237. ([T]he questions of when the right to life begins came within the States' margin of appreciation because there was no European consensus on the scientific and legal definition of the beginning of life, so that it was impossible to answer the question whether the unborn was a person to be protected for the purposes of Article 2. Since the rights claimed on behalf of the foetus and those of the mother are inextricably interconnected […], the margin of appreciation accorded to a State's protection of the unborn necessarily translates into a margin of appreciation for that State as to how it balances the conflicting rights of the mother).
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[48] HOCHER, B, SLOWINSKI T, BAUER C.H-, HALLE, H. The advanced fetal programming hypothesis. NEPHROL Dial Transplant 2001;16:1298-1305, WILSON, J. The Barker hipótesis. Ananalysis. The Australian and New Zealand Journal of Obstetrics and Gynaecology 1999; 39(1):1-7, MARTÍNEZ DE VILLARREAL LAURA, E. Programación fetal de enfermedades expresadas en la edad adulta. Medicina Universita-

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[49] Viabilidad es la cualidad de viable (que tiene probabilidades de llevarse a cabo o de concretarse gracias a sus circunstancias o características). El concepto también hace referencia a la condición del camino donde se puede transitar. Lee todo en: Definición de viabilidads-Qué es, Significado y Concepto http://definicion.de/viabilidad/#ixzz4K3j3tQ83

[50] Cfr. Liley, A.W., Intrauterine transfusión of foetus in hemolytic disease. Br Med J., 1963; 5365: 1107-1109.

[51] Cfr. SCRIMGEOUR, J.B. *Other techniques for antenatal diagnosis*, Emberry, H.E.H (ed.), Antenatal diagnosis of genetic disease, N.Y. 1973, pp. 40-57.

[52] Cfr. Harrison, M.R., Golbus, M.S., Filly, R.A., *The unborn patient. Prenatal diagnosis and treatment*, Grune & Stratton, Orlando, Florida, 1984, p. 440.

[53] Se puede consultar en: www.ifmss.org, 13-11-2016.

[54] Jama, Aug 14, 1981; 246(7): pp. 772-773.

[55] Harrison y compañeros definen los riesgos y beneficios del diagnóstico y tratamiento fetal. Lo que se pretende es corregir o, al menos, mejorar una malformación.

[56] Cfr. Pringle, K.C., *Fetal surgery*: it has a past, has it a future: Fetal Ther. 1986, 1: 23-31.

[57] Ídem.

[58] Valor que se precisará más adelante.

[59] …el feto sufre de un deterioro fatal.

[60] …así como disfrutar de una vida digna.

[61] Craig, Grace. *Desarrollo psicológico*. Prentice may. México. Séptima edición 2000, p.175.

[62] Morgan, T. *Turner syndrome:* diagnosis and management. Am Fam Physician 76, 2007, pp. 405-410.

[63] Se puede consultar en: https://medlineplus.gov/spanish/ency/article/000382.htm, ver también: Bacino, C.A. Cytogenetics. In: Kliegman, R.M, Stanton, B.F., S.T. Geme, J. iii, Schor N, Behrman, R.E., eds. Nelson Textbook of Pediatrics. 19th ed. Philadelphia, PA: Elsevier Saunders; 2011: chap 76, American Association for Klinefelter Syndrome Information and Support (Aaksis): www.aaksis.org. National Institute of Health, National Human Genome Research Institute: www.genome.gov/19519068, consulta: 12-12-2016.

[64] Se puede consultar en: http://www.zonapediatrica.com/www.sindromeklinefelter.es, consulta:12-12-2016.

[65] Ohchr, Unfpa, Unicef, Un Women and Who, *Preventing gender-biased sex selection*. An interagency statement, Ginebra, 2011.

[66] "17. The Committee takes note of Act 2/2010 of 3 March 2010 on sexual and reproductive health, which decriminalizes voluntary termination of pregnancy, allows pregnancy to be terminated up to 14 weeks and includes two specific cases in

which the time limits for abortion are extended if the foetus has a disability: until 22 weeks of gestation, provided there is «a risk of serious anomalies in the foetus", and beyond week 22 when, inter alia, "an extremely serious and incurable illness is detected in the foetus". The Committee also notes the explanations provided by the State party for maintaining this distinction. 18. The Committee recommends that the State party abolish the distinction made in Act 2/2010 in the period allowed under law within which a pregnancy can be terminated based solely on disability». Committee on the Rights of Persons with Disabilities. Sixth session, 19-23 September 2011: Consideration of reports submitted by States parties under article 35 of the Convention.

[67] Embryo donation IVF Australia 2013.

[68] GOEDEKE S, PAYNE, D. Embryo donation in New Zealand: a pilot study Human Reprod 24, 2009, pp. 1939-1945

[69] MARTOS, C. Se adopta embrión, elmundo.es, se puede consultar en: http://www.elmundo.es/elmundosalud/2011/01/21/mujer/1295622563.html consulta:24-01-2014.

[70] Nightlight Christian Adoptions Snowflakes embryo adoption program. Frecuently asked questions by adopting families.

[71] PRESIDENZA DEL CONSIGLIO DEI MINISTRI. Comitato Nazionale per la Bioetica. L' adozione per la nascita (APN) degli embrioni crioconservati e residuali derivanti da procreazione medicalmente assistita (P.M.A). consulta: 18-11-2005

[72] THE ETHICS COMMITTEE OF THE AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE. American Society for Reproductive Medicine. Defining embryo donation. Fertil Steril; 92, 2009, pp. 1818-1819.

[73] NATIONAL INSTITUTES OF HEALTH. Report of the Human Embryo Research Panel. National Institutes of Health, 1994. New York State Department of Health. Task Force on Life and the Law. Assisted reproductive technologies, analysis and recommendations for public policy. New York: New York State, 1998.

[74] PASCUAL, F. *En España: mayoría de embriones de fecundación in vitro terminan destruidos*, Ideas Claras. 15-12-2011.

[75] Entre otros, PETER SINGER, J. HARRIS, ENGELHARDT, JOSEPH FLETCHER, HOERSTER, etc.

[76] Caso Artavia Murillo y otros vs Costa Rica, parr. 187.

[77] Entre otros el Dr. JUAN RAMOS DE LA CADENA.

[78] Ibidem p.256.

[79] Ibidem p.43.

[80] TAPIA, R., *La formación de la persona durante el desarrollo intrauterino, desde el punto de vista de la neurología*, s/f, s/e, publicado en www.colbio.org.mx Este texto se encuentra de la exposición que el propio Ricardo Tapia realizó para el Seminario de bioética organizado por la SCJN, el día 4 de diciembre de 2007, y VALDÉS, M., *El problema del aborto: tres enfoques*, en VÁZQUEZ, R. (comp.), Bioética y derecho. Fundamentos y problemas actuales, FCE, México, 2004, p. 136.

[81] JOUVE DE LA BARREDA, NICOLÁS, *Entidad del embrión Humano. Una explicación genética del desarrollo embrionario y la macro evolución*, se puede consultar en:

http://www.bioeticaweb.com/content/view/4515/782/lang,es/, consulta: 26-11-2007.
[82] Spaemann Robert, *No existe el derecho a un hijo sano*, entrevista realizada por S. Kummer, publicada en su versión castellana en Cuadernos de Bioética, vol xiv, nn. 51-52 (2ª-3ª), 2003, pp. 287-290.
[83] Bioética, El ser humano no puede ser tratado como una cosa, se puede consultar en: http://www.ewtn.com/vnews/getstory.asp?number=85702, consulta: 02-02-08.
[84] Cfr. Spaemann Robert, *¿Son todos los hombres personas?*, Artículo publicado en la revista Communio, 1990, pp. 108-114 La traducción castellana se publicó en cuadernos de Bioética, viii: 31, 1997. pp. 1027-1033.
[85] Cfr. George, Robert P., y Tollesen, Christopher, “Embrión. Una defensa por la vida humana”. Madrid, España Rialp S.A., 2012: p. 15.
[86] Cfr. Guerra López, Rodrigo, *Bioética y norma personalista de la acción*. Elementos para una fundamentación personalista de la bioética, en Tomás y Garrido, Gloria Mariá, la bioética: un compromiso existencial y científico, fundamentación y reflexiones, textos de bioética, Universidad Católica san Antonio por Quaderna editorial, España, 2005, p. 80 y ss.
[87] Cfr. Kant, I, *Fundamentación para una metafísica de las costumbres*, Trad. Cast. R.R. Aramayo, Alianza, Madrid, 2002.
[88] Consejo de Europa, Recomendación 1046 sobre el uso de los embriones y fetos humanos con fines diagnósticos, terapéuticos, científicos, industriales y comerciales, 38ª Sesión Ordinaria, 1986, n.10.
[89] Rae, Se puede consultar *en: http://buscon.rae.es/draeI/, 12-01-2012.*
[90] vol. v, Oxford 1978.
[91] Según el “Dictionnaire de l’Académie Française”, quiere decir: “Qui par sa nature est joint inséparablement à un sujet”.
[92] Sentencia en el asunto C-34/10 Oliver Brüstle / Greenpeace eV, Se puede consultar en: http://curia.europa.eu/juris/liste.jsf?language=es&jur=C,T,F&num=34/10&td=ALL., 29-11-2015.
[93] M. Kloe P.F. er, *grundrechtstatbestand und grundrechtsschranken in der rechtsprechung der bundesverfassungsgerichts-dargestellt am beispiel der Menschenwürde, en Festgabe für das Bundesverfassungsgericht*, vol. ii, 1976, p. 412.
[94] Peris, Manuel. Juez, Estado y Derechos Humanos. Editorial Fernando Torres. Valencia 1976.
[95] Gómez Máximo, Pacheco. El concepto de derechos fundamentales de la persona humana, en Liberamicorum, Fix-Zamudio, Héctor, Volumen i Primera Edición: Corte Interamericana de Derechos Humanos, 1998.
[96] Ibidem.
[97] Caso Myrna Mack Chang, Sentencia de 25 de noviembre de 2003, Serie C N° 101, párr. 152; Caso Juan Humberto Sánchez, Sentencia de 7 de junio de 2003, Serie C N° 99, párr.110; Caso 19 Comerciantes, Sentencia de 5 de julio de 2004, Serie C N° 109, párrs. 152 y 153; Caso de la Masacre de Pueblo Bello, Sentencia

de 31 de enero de 2006, Serie C N° 140; Caso Comunidad Indígena Sawhoyamaxa, sentencia de 29 de marzo de 2006, Serie C N° 146, párr. 150; Caso Baldeón García, Sentencia de 6 de abril de 2006, Serie C N° 147, párr. 82; Caso de las Masacres de Ituango, Sentencia de 1 de julio de 2006, Serie C N° 148, párr. 128; Caso Ximenenes Lopes, Sentencia de 4 de julio de 2006, Serie C N° 149, párr. 124; Caso Montero Aranguren y otros (Retén de Catia), Sentencia de 5 de julio de 2006, Serie C N° 150, párr. 63; Caso Albán Cornejo y otros, Sentencia de 22 de noviembre de 2007, Serie C N° 171, parr. 117.

[98] Castillo González y Otros Vs. Venezuela y Masacres de El Mozote y Lugares Aledaños Vs. El Salvador, ambas sentencias de octubre de 2012.

[99] Caso del Penal Miguel Castro Castro Vs. Perú, Fondo, Reparaciones y Costas, Sentencia de 25 de noviembre de 2006, párr.292.

[100] Caso de los Hermanos Gómez Paquiyauri Vs. Perú, Fondo, Reparaciones y Costas, Sentencia de 8 de julio de 2004, párr. 67, x).

[101] En esta línea de interpretación expansiva, la Corte IDH ha entendido que el artículo 29.b de la CADH expresamente obliga a un examen judicial que incorpore, al momento de determinar el alcance de los derechos, todas aquellas normas jurídicas, tanto nacionales como internacionales, que hayan reconocido un derecho de forma más extensa. En este sentido, la Corte IDH se ha referido constantemente a diversos instrumentos internacionales, ya sean regionales o universales, con el fin de dar sentido a los derechos reconocidos en la CADH, pero atendiendo a las circunstancias específicas del caso. Véanse, por ejemplo, Corte IDH, Caso Las Palmeras vs. Colombia (Fondo), Sentencia del 6 de diciembre de 2001, serie C, núm. 90; Corte IDH, Caso Bámaca Velásquez vs. Guatemala (Fondo), Sentencia del 25 de noviembre de 2000, serie C, núm. 70 (alcance del derecho a la vida en situaciones de conflictos armados no internacionales); Corte IDH, Caso de las Masacres de Ituango vs. Colombia (Excepción Preliminar, Fondo, Reparaciones y Costas), Sentencia del 1 de julio de 2006, serie C, núm. 148 (prohibición del trabajo forzado u obligatorio); Corte IDH, Caso Herrera Ulloa vs. Costa Rica (Excepciones Preliminares, Fondo, Reparaciones y Costas), Sentencia del 2 de julio de 2004, serie C, núm. 107 (relación entre la libertad de expresión y la sociedades democráticas); Corte IDH, Caso de los “Niños de la Calle” (Villagrán Morales y otros) vs. Guatemala (Fondo), Sentencia del 19 de noviembre de 1999, serie C, núm. 63 (derechos específicos de los niños y niñas, menores de 18 años); y Corte IDH, Caso Comunidad Indígena Yakye Axa vs. Paraguay (Fondo, Reparaciones y Costas), Sentencia del 17 de junio de 2005, serie C, núm. 125 (derecho a la propiedad comunal de los pueblos indígenas), entre otros.

[102] Véanse, por ejemplo, Corte IDH, Caso Las Palmeras vs. Colombia (Fondo), doc. cit., y Corte IDH, Caso Radilla Pacheco vs. México (Excepciones Preliminares, Fondo, Reparaciones y Costas), Sentencia del 23 de noviembre de 2009, serie C, núm. 209 (interpretación restringida del alcance del fuero militar, entendiendo éste como una limitación a ciertos derechos de la víctima y al principio de unidad jurisdiccional); Corte IDH, Caso Boyce y otros vs. Barbados (Excepción Preli-

minar, Fondo, Reparaciones y Costas), Sentencia del 20 de noviembre de 2007, serie C, núm. 169; Corte IDH, Caso Benjamin y otros vs. Trinidad y Tobago (Excepciones Preliminares), Sentencia del 1 de septiembre de 2001, serie C, núm. 81; Corte IH, Caso Constantine y otros vs. Trinidad y Tobago (Excepciones Preliminares), Sentencia del 1 de septiembre de 2001, serie C, núm. 82; y «Voto razonado del juez Sergio García Ramírez en el caso Raxcaco Reyes vs. Guatemala. Sentencia del 15 de septiembre de 2005», en Corte IDH, Caso Raxcacó Reyes vs. Guatemala (Fondo, Reparaciones y Costas), Sentencia del 15 de septiembre de 2005, serie C, núm. 133, (interpretación restringida de las condiciones bajo las cuales se puede imponer la pena de muerte), entre otras decisiones.

[103] Véanse, por ejemplo, Corte IDH, Caso Comunidad Indígena Sawhoyamaxa vs. Paraguay (Fondo, Reparaciones y Costas), Sentencia del 29 de marzo de 2006, serie C, núm. 146 (si por una actuación negligente del Estado no se puede establecer la fecha de la muerte de las presuntas víctimas, para efectos de determinar la competencia temporal de la Corte IDH, ésta podrá conocer de las violaciones, en aplicación "procesal" del principio pro persona); y Corte IDH, Caso de la Masacre de Pueblo Bello vs. Colombia (Fondo, Reparaciones y Costas), Sentencia del 31 de enero de 2006, serie C, núm. 140, y Corte IDH, Caso Trabajadores Cesados del Congreso (Aguado Alfaro y otros) vs. Perú (Excepciones Preliminares, Fondo, Reparaciones y Costas), Sentencia del 24 de noviembre de 2006, serie C, núm. 158 (el no haber otorgado un poder formal de representación ante la Corte IDH no es un argumento para excluir a una persona como víctima potencial de un caso).

[104] Bioética y los Derechos del Niño, 31 C/12 18 de julio de 2001 Original: Francés, Conferencia General 31ª reunión, París 2001, celebrado en Mónaco del 28 al 30 de abril de 2000, Anexo II, p. 2.

[105] Párr.66.

[106] Entre otros en la Declaración de Asilomar, la Nota N° 12/2000 del Parlamento Europeo y la declaración de Lowell.

[107] Lista de organizaciones que firman la Carta Abierta: Acciónn Ecologica (Ecuador) -www.accionecologica.org- Elizabeth Bravo California for GE Free Agriculture - www.calgefree.org - Becky Tarbotton Centro Ecológico (Brazil) - Maria Jose Guazzelli Clean Production Action - www.cleanproduction.org - Beverley Thorpe Cornerhouse UK - www.thecornerhouse.org.uk - Nick Hildyard Corporate Europe Observatory - www.corporateeurope.org - Nina Holland Corporate Watch (UK) - www.corporatewatch.org - Olaf Bayer EcoNexus - www.econexus.info - Ricarda Steinbrecher Ecoropa - Christine Von Weisczacker Edmonds Institute - www.edmonds-institute.org - Beth Burrows ETC Group - www.etcgroup.org - Jim Thomas Farmers Link - www.farmerslink.org.uk - Hetty Selwyn Friends of the Earth International - www.foe.org - Juan Lopez, Lisa Archer (USA), Georgia Miller (Australia) Foundation on Future Farming (Germany) - http://www.zs-l.de - Benedikt Haerlin Fondation Sciences Citoyennes (France) - www.sciencescito yennes.org - Claudia Neubauer Gaia Foundation - www.gaiafoundation.org - Teresa Anderson GeneEthics Network (Australia) - www.geneethics.org - Bob Phelps

Genewatch (UK) -www.genewatch.org - Sue Mayer GRAIN - www.grain.org - Henk Hobbellink Greenpeace International - www.greenpeace.org - Doreen Stabinsky Henry Doubleday Research Association (UK) - www.gardenorganic.org.uk - Julia Wright Indigenous People's Biodiversity Network - Alejandro Argumedo International Center for Technology Assessment - www.icta.org - Jaydee Hanson International Network of Engineers and Scientists for Global Responsibility - www.inesglobal.com - Alexis Vlandas Institute for Social Ecology - www.social-ecology.org - Brian Tokar International Center for Bioethics, Culture and Disability - www.bioethicsanddisability.org - Gregor Wolbring International Union of Food and Agricultural Workers - www.iuf.org - Peter Rossman Lok Sanjh Foundation (Pakistan) - www.loksanjh.org - Shahid Zia National Farmers Union (Canada) - www.nfu.ca - Terry Boehm Oakland Institute - www.oaklandinstitute.org - Anuradha Mittal Polaris Institute - www.polarisinstitute.org - Tony Clarke Pakistan Dehqan Assembly - contact via Lok Sanjh - see above. Practical Action - www.practicalaction.org - Patrick Mulvany Quechua Ayamara Association for Sustainable Livelihoods, (Peru) - www.andes.org.pe - andes@andes.org.pe Research Foundation for Science, Technology and Ecology (India) - www.navdanya.org - Vandana Shiva Soil Association - www.soilassociation.org - Gundula Azeez Sunshine Project - www.sunshine-project.org - Edward Hammond Third World Network - www.twnside.org.sg - Lim Li Ching.

[108] Corte IDH, Condición Jurídica y Derechos humanos del Niño, Opinión Consultiva OC-17/02, del 29 de agosto de 2002, Serie A No. 17, párr. 54.

[109] Emitida durante el periodo de sesiones de dos mil y aprobada el once de mayo de dicho año.

[110] Dentro de la locución "nadie" se comprende todo ser humano, lo que supone que ninguna vida humana puede ser privada arbitrariamente. La prohibición de no imponer la pena de muerte a las mujeres embarazadas revela la clara intención de proteger al *nasciturius* pues el compromiso de no aplicar dicha pena no se sustenta en su calidad de mujer como tal, sino en su estado de gravidez, de lo que deriva que una vez concluido este estado, ya no subsistiría la prohibición.

[111] Cfr. RODOLFO CARLOS, BARRA. *La Protección Constitucional del Derecho a la Vida*, Editorial Abeledo-Perrot, Buenos Aires, Argentina, 1996, pp. 41 y 42.

[112] La Declaración de Viena, adoptado por la segunda Conferencia Mundial sobre Derechos Humanos, celebrada en Viena en 1993: "Todos los derechos humanos son universales, indivisibles e interdependientes y están relacionados entre sí. La comunidad debe tratar los derechos humanos en forma global de manera justa y equitativa, en pie de igualdad y dándoles a todos la misma importancia." (párr. 5).

[113] Comité de Derechos Humanos, Observación General No. 6, párr. 1 (1982), mismo que se repite en la Observación general N°14 Párr. 1 (1984).

[114] Comité de Derechos Humanos, caso A.R.J. c. Australia, párr.6.8 (1997); G. T. c. Australia, párr. 8.1 (1998).

[115] Corte Interamericana, Caso de la Masacre de Pueblo Bello c. Colombia, párr. 120 y Caso del Penal Miguel Castro Castro c. Perú, párr. 237, entre otras.

[116] Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-16/99, párr. 135.
[117] Corte Interamericana, Caso Comunidad indígena Yakye Axa c. Paraguay, párr. 161.
[118] Caso de los Niños de la Calle (Villagrán Morales y Otros), Sentencia de 19 de noviembre de 1999, Serie C N° 63, párr. 144.
[119] Caso Familia Barrios Vs. Venezuela. Fondo, Reparaciones y Costas. Sentencia de 24 de noviembre de 2011. Serie C No. 237, párr. 48.
[120] Corte Interamericana, Caso comunidad Sawhoyamaxa c. Paraguay, párr. 150 y Masacres de Ituango c. Colombia, párr. 128, entre otras.
[121] Corte Interamericana, Caso Masacres de Ituango c. Colombia, párr. 129 y Caso Zambrano Vélez y otros c. Ecuador, párr. 79.
[122] CIDH, caso Remolcador 13 de marzo c. Cuba, párr. 79 (1996).
[123] CIDH, caso Remolcadora 13 de marzo, párr. 79. Ver también Sequieras Mangas c. Nicaragua, párr. 145 (1997). La CIDH hace una exégesis de la relación y las diferencias entre los conceptos de Derecho Consuetudinario y de *jus cogens* en los párrafos 43 a 50 de su decisión de en el caso Domínguez c. Estados Unidos (2002).
[124] CIDH, caso Edwards y otros c. Bahamas, párr. 109 (2001).
[125] Diccionario de la Real Academia de la Lengua, se puede ver: http://dle.rae.es/?id=3QAUXFg
[126] Artículo 7 Nadie será sometido a torturas ni a penas o tratos crueles, inhumanos o degradantes. En particular, nadie será sometido sin su libre consentimiento a experimentos médicos o científicos.
[127] MILLER, PAUL STEVEN Y REBECCA LEAH, LEVINE. 2013. Avoiding genetic genocide: understanding good intentions and eugenics in the complex dialogue between the medical and disability communities. *Genet Med*. 15(2): 95-102.
[128] NIZAR, SMITHA. 2011. Impact of UNCRPD on the status of persons with disabilities. *Indian Journal of Medical Ethics*. VIII (4): 223-229.
[129] ASCH, ADRIANNE AND DORIT BAVERLY. 2012. Disability and Genetics: A Disability Critique of Pre-natal Testing and Pre-implantation Genetic Diagnosis (PGD). En: eLS John Wiley & Sons, Ltd: Chichester.
[130] FERRAJOLI, LUIGI, *Derecho y garantías. La ley del más débil*, Trotta, Madrid 5ed, 74-76.
[131] Cfr. SADLER, T.W., LANGMAN, *embriología médica: con orientación clínica*, Médica Panamericana, Buenos Aires, 2004, p 3 y HIB, J., *Embriología Médica*, Interemericana-Mc Graw-Hill, México, 1994, p. 8.
[132] KESSLLER S., "Soloveitchik and Levinas: pathways to the other", en *Judaism: A Quarterly Journal of Jewish Life and Thought*, 10/4 (2002), 444: «In the face-to-face encounter we become aware of the Other's vulnerability which calls to us not to harm him or her. *Thou shalt not kill* is the primary command and killing or violence encompass any attempt to deny the reality or separateness of the other, to reduce the other to a concept, an idea, an *It* or to absorb him or her into the self.

In the face of the other, we are “summoned» to responsibility and in our response, «*Me voice; Here I am; Hineni*”, we take on ethical responsibility».

[133] Citado en el Informe del Comité de Bioética de España sobre el Anteproyecto de Ley Orgánica para la Protección de la Vida del Concebido y de los Derechos de la Mujer Embarazada, ver file:///G:/Informe%20Anteproyecto%20LO%20Proteccion%20Concebido.pdf

[134] Consejo Económico y Social Documentos Oficiales, 2014 Suplemento núm. 5, Comisión de Población y Desarrollo, Informe sobre el 47º período de sesiones (26 de abril de 2013 y 7 a 11 de abril de 2014) E/2014/25-E/CN.9/2014/7, se puede consultar en: http://www.unfpa.org/sites/default/files/event-pdf/N1431211_SP.pdf

[135] Diccionario de la Lengua Española, Rae, vigésima edición, 2014, p. 1289.

[136] Koch, E, Aracena, P., Gatica, S., Bravo, M., Huerta-Zepeda A., Calhoun, B.C. Fundamental discrepancies in abortion estimates and abortion-related mortality: A reevaluation of recent studies in Mexico with special reference to the International Classification of Diseases. Int J Womens Health. 2012;4:613-23.

[137] Koch, E., Chireau, M., Pliego, F., Stanford, J., Haddad, S., et al. Abortion legislation, maternal healthcare, fertility, female literacy, sanitation, violence against women and maternal deaths: a natural experiment in 32 Mexican states Bmj Open 2015;5:e006013. doi: 10.1136/bmjopen-2014-006013

[138] Idem.

[139] Koch, E., Thorp, J., Bravo, M., Gatica, S., Romero, C.X. Aguilera, H., Ahlers, I. Women’s education level, maternal health facilities, abortion legislation and maternal deaths: a natural experiment in Chile from 1957 to 2007. *PLoS One* 2012;7(5):e36613.

[140] Ídem.

[141] En el experimento natural chileno se avalúo una serie temporal de 50 años, entre 1957 y 2007, analizando el efecto de la derogación del aborto terapéutico en 1989. La tendencia continuó a la baja, sin detectarse cambios significativos asociados al cambio legislativo. El progreso en el nivel de escolaridad de las mujeres, la tasa de cobertura de atención profesional del parto, la reducción tasa de fecundidad, la edad de la mujer para el primer hijo, la cobertura de agua potable y alcantarillado fueron las variables que explicaron la tendencia secular decreciente.

[142] Ídem

[143] Ídem.

[144] Fernández Beites, Pilar. *Sustantividad humana: embrión y actividad pasiva de inteligencia,* en: *Filosofía práctica y persona humana, V.v.*A.a. coord. Murillo, Ildefonso, Universidad Pontificia de Salamanca, Servicio de Publicaciones 2004.

[145] Han Byung-Chul, la sociedad del cansancio, Herder, 2012.

[146] Baudrillard, J., La transparencia del mal, Ensayo sobre los fenómenos extremos, Barcelona, Anagrama, 1991, p. 82.

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