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How the U.S. Can Defend Life, Family, and Religious Freedom at the U.N.

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Under the Obama Administration, U.S. policy on social issues at the United Nations was often antithetical to life, family, and religious freedom. In the U.N., liberal activists often succeeded—in many cases with the direct help of the U.S. and European nations—in furthering a progressive agenda and pressing a liberal ideology on the developing world under the guise of promoting human rights.

Under the Trump Administration—and specifically under the leadership of Ambassador Nikki Haley, U.S. Permanent Representative to the United Nations—the U.S. has new opportunities to effect positive change at the U.N. and its various entities.

The U.S. can reduce the challenges to life, family, and religious freedom by insisting upon genuine reform of the treaty monitoring bodies and the U.N.'s vast human rights bureaucracy. Effective U.N. reform ought to return the bureaucrats and experts to their original roles of facilitating interactions between sovereign states, implementing resolutions that have been enacted by the General Assembly, and advising member states on how to better fulfill their legal obligations. The U.N.'s unelected and unaccountable human rights experts do not have the authority to create new policies or rights that are not specifically enumerated in the U.N.'s found-

ing documents or treaties that make up the body of international law.

The Actors: The OHCHR, Treaty Monitoring Bodies, and Experts

OHCHR. The Office of the High Commissioner for Human Rights (OHCHR) is the epicenter of the U.N.'s efforts pertaining to human rights. The General Assembly created the OHCHR in 1993 to “promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights.”¹ However, in recent years, the OHCHR has focused increasing attention and resources on promoting controversial issues such as sexual and reproductive rights² as well as “LGBT”³ or “SOGI” rights, which member states have neither agreed upon nor defined.

Treaty Monitoring Bodies. Treaty monitoring bodies have continued to increase in influence within the U.N. human rights apparatus. They regularly promulgate “general comments” on recurring issues, ostensibly aiming to clarify a given section of a treaty, but effectively expanding its meaning far beyond the negotiated text of the actual treaty.⁴ A particularly egregious example of a treaty body exceeding its mandate occurred in 2016 when the Committee on Economic, Social, and Cultural Rights—charged with monitoring states’ compliance with the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—issued a far-reaching general comment on the “right to sexual and reproductive health.” The committee claims that right exists under the “right to health” contained in Article 12. Among other things, this general comment asserts that the treaty includes the right to abortion—which is not mentioned in the text of the Covenant—and

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requires countries to weaken conscientious objection provisions for physicians and to recognize “the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status.”⁵

Similarly, in spite of the fact that the International Covenant on Civil and Political Rights (ICCPR) is supposed to guarantee every human being the right to life,⁶ the Human Rights Committee has often claimed that a right to abortion exists and recently celebrated a landmark case in which Peru compensated a woman after the Human Rights Committee determined that Peru was in violation of the ICCPR for denying the woman an abortion when she was a teenager.⁷

Furthermore, U.N. human rights “experts” have denounced the U.S. during its Universal Periodic Review process for a variety of state laws that restrict or regulate abortion. These experts and treaty bodies regularly chastise countries for their domestic laws and policies—especially those that protect unborn

life or regulate abortion—and pressure them to liberalize them.⁸

Experts. The U.N. appoints a great number of “experts” within the human rights apparatus, including those called Special Procedures, Independent Experts, and Special Rapporteurs.⁹ These experts serve in their individual capacities, not as representatives of any member states, and are largely unaccountable to anyone. These experts wield tremendous influence.

For example, three U.N. experts on the issues of discrimination against women, physical and mental health, and violence against women issued a joint statement warning Honduras that it must relax its prohibitions against abortion in new legislation under consideration in order to comply with its human rights obligations.¹⁰

The Issues

Life. President Trump’s reinstatement of the Mexico City Policy and the Presidential Memorandum related to its implementation provide an excel-

1. United Nations, General Assembly, “High Commissioner for the Promotion and Protection of All Human Rights,” A/RES/48/141, December 20, 1993, <http://www.un.org/documents/ga/res/48/a48r141.htm> (accessed May 26, 2017).
2. See International Planned Parenthood Federation, *Sexual Rights: An IPPF Declaration*, http://www.ippf.org/sites/default/files/sexualrightsippfdeclaration_1.pdf (accessed May 26, 2017); United Nations Population Fund, Center for Reproductive Rights, *ICPD and Human Rights: 20 Years of Advancing Reproductive Rights Through UN Treaty Bodies and Legal Reforms*, June 2013, http://www.unfpa.org/sites/default/files/pub-pdf/icpd_and_human_rights_20_years.pdf (accessed May 26, 2017); and World Health Organization, “Gender and Human Rights,” http://www.who.int/reproductivehealth/topics/gender_rights/sexual_health/en/ (accessed May 26, 2017).
3. See Free & Equal Campaign, “The History of LGBT Rights at the UN,” United Nations, Office of the High Commissioner on Human Rights, <https://www.unfe.org/en/actions/human-rights-day> (accessed May 26, 2017).
4. For a more comprehensive explanation of this trend, see Meghan Grizzle Fischer, “The Rise of Faux Rights: How the U.N. Went from Recognizing Inherent Freedoms to Creating Its Own Rights,” ADF International *White Paper*, February 2017, http://www.familywatchinternational.org/fwi/documents/Rise_of_Faux_Rights_ADF.pdf (accessed May 26, 2017).
5. United Nations, Committee on Economic, Social and Cultural Rights, “General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights),” E/C.12/GC/22, May 22, 2016, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQfQejF41Tob4CvljeTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8TLm%2bP3HJPzxjHySkUoHMavD%2fpyfcp3YlZg> (accessed May 26, 2017).
6. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states: “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.” United Nations, Office of the High Commissioner on Human Rights, “International Covenant on Civil and Political Rights,” December 16, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed May 26, 2017).
7. United Nations, Office of the High Commissioner on Human Rights, “Peru Compensates Woman in Historic Human Rights Abortion Case,” January 18, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/PeruAbortionCompensation.aspx> (accessed May 26, 2017).
8. See Kelsey Zorzi, “The Impact of the United Nations on National Abortion Laws,” *Catholic University Law Review*, Vol. 65, No. 2 (Winter 2015), <http://scholarship.law.edu/lawreview/vol65/iss2/12/> (accessed May 26, 2017).
9. For a recent directory of U.N. human rights experts, see United Nations, Office of the High Commissioner on Human Rights, “Directory of Special Procedures Mandate Holders,” December 2015, http://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryDecember2015_en.pdf (accessed May 26, 2017).
10. United Nations, Office of the High Commissioner on Human Rights, “Honduras Needs Progressive Reform of Abortion Law to Advance Women’s Human Rights, Say U.N. Experts,” April 28, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21549&LangID=E> (accessed May 26, 2017).

lent starting point for protecting life in U.S. foreign and aid policy. With regard to the U.N., the memorandum's direction ensures that "U.S. taxpayer dollars do not fund organizations or programs that support or participate in the management of a program of coercive abortion or involuntary sterilization."¹¹

In April 2017, the State Department rightly decided to withhold U.S. funds from UNFPA, which has been repeatedly accused of being complicit in China's coercive one-child policy.¹²

The U.S. should apply the same pro-life principles behind these decisions to its contributions to multilateral organizations (such as the World Health Organization and UNAIDS) and projects in the fields of family planning and maternal and child health, like Family Planning 2020.

In U.N. documents going forward, the U.S. should reject the addition of "sexual and reproductive health" (SRH) or "sexual and reproductive health and rights" (SRHR) language, especially when either term is used without the caveat that reproductive health does not include abortion.¹³

Family. The Universal Declaration of Human Rights clearly states: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (Article 16). On the anniversary of the Universal Declaration

of Human Rights in 2016, pro-family leaders from around the world unveiled and signed the Cape Town Declaration, a Universal Declaration on the Family and Marriage, and publicly launched the International Organization for the Family (IOF).¹⁴

The U.S. should respect other countries' traditional understanding of marriage and family and their sovereign prerogative to reflect such values in domestic and family policies. The U.S. should resist efforts to change "the family" to "families" or "various forms of the family" in documents.

Sexuality and Gender. In 2016, the Human Rights Council, in a very close and controversial vote, created the position of independent expert on violence and discrimination based on sexual orientation and gender identity.¹⁵ The council appointed Thai law professor and LGBT advocate Mr. Vinit Muntarbhorn to the position. While all individuals, regardless of sexual orientation or gender identity, ought to be protected against violence and discrimination, the establishment of this new position and the early statements of Mr. Muntarbhorn suggests the possibility of a more expansive interpretation of the mandate that would present conflicts with fundamental rights, such as religious freedom and parental rights.¹⁶

The U.S. should seek to ensure that this new independent expert¹⁷ operates within the parameters

11. The White House, Office of the Press Secretary, "Presidential Memorandum Regarding the Mexico City Policy," January 23, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy> (accessed May 26, 2017).
12. Joseph E. Macmanus, U.S. Department of State, Bureau of Legislative Affairs, letter to Bob Corker, Chairman of the Senate Committee on Foreign Relations, April 3, 2017, <https://assets.documentcloud.org/documents/3534944/State-Kemp-Kasten-Amendment-Determination.pdf> (accessed May 26, 2017). See also Sarah Torre, "Almost 40 Million 'Missing' Girls Later, China's One-Child Policy Is 31," Daily Signal, September 28, 2011, <http://dailysignal.com/2011/09/28/almost-40-million-%E2%80%9Cmissing%E2%80%9D-girls-later-china%E2%80%99s-one-child-policy-is-31/> (accessed May 26, 2017).
13. For more on the term "sexual and reproductive health," see Susan Yoshihara, "Lost in Translation," *Ave Maria Law Review*, Vol. 11, No. 2 (Spring 2013), <https://c-fam.org/wp-content/uploads/Lost-in-Translation.pdf> (accessed May 26, 2017).
14. International Organization for the Family, "The Cape Town Declaration: Universal Declaration on the Family and Marriage," <http://www.capetowndeclaration.com> (accessed May 26, 2017).
15. For more on this vote and surrounding controversy, see Grace Melton, "LGBT Groups Seek to Entrench Agenda at the UN," Daily Signal, June 30, 2016, http://dailysignal.com/2016/06/30/lgbt-groups-seek-to-entrench-agenda-at-the-un/?_ga=1.221146845.410480707.1382534358, and Stefano Gennarini, "LGBT Agenda Advances, Drives Wedge in UN System," Center for Family and Human Rights, July 7, 2016, https://c-fam.org/friday_fax/lgbt-agenda-advances-drives-wedge-un-system/ (accessed May 26, 2017).
16. See Stefano Gennarini, "New U.N. LGBT Expert Doubles Down Against Religious Freedom, Describes 'Entry Points' for Homosexual and Transgender Rights," Center for Family and Human Rights, February 7, 2017, https://c-fam.org/friday_fax/new-un-lgbt-expert-doubles-religious-freedom-describes-entry-points-homosexual-transgender-rights/ (accessed May 26, 2017).
17. The independent expert on sexual orientation and gender identity just released his first report, which will be presented to the Human Rights Council in June. The report focuses on identifying and addressing the "root causes" of violence and discrimination against LGBT people, and calls for: the decriminalization of consensual same-sex relations; employment of effective anti-discrimination measures; legal recognition of gender identity; destigmatization linked with depathologization; and sociocultural inclusion. United Nations, General Assembly, "Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity," A/HRC/35/36, April 19, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/095/53/pdf/G1709553.pdf?OpenElement> (accessed May 26, 2017).

of his mandate to fight violence and disregard for established fundamental human rights of all persons, rather than using his position to promote a progressive agenda that seeks to change social mores in countries that continue to uphold traditional understandings of marriage and sexuality.¹⁸

The Universal Declaration of Human Rights provides explicit religious liberty guarantees in Article 18,¹⁹ and the International Covenant on Civil and Political Rights (ICCPR) expressly protects freedom of conscience. New LGBT policies, however, have resulted in the erosion of religious liberty and conscience protections.²⁰ In contrast, a proper understanding of human rights appreciates the importance of human persons' dignity and conscience as the basis for universal and inalienable rights to which all of humanity is entitled.

Sustainable Development Goals. U.N. member states have agreed to the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals. A list of 230 proposed indicators that statisticians will use to assess each country's progress toward the various goals and targets has been finalized but not yet adopted.²¹

Going forward, U.N. agencies and bureaucrats will use these indicators to influence governments and attach conditions to aid. Of particular concern will be:

- The interpretation of indicators to measure perceived discrimination or harassment under Goal 10 (to reduce inequality within and among countries); and

- The interpretation of indicators under Goal 16 to promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels.²²

Measuring and eliminating "discrimination" is an area that invites treaty bodies and U.N. agencies to go beyond the scope of internationally recognized human rights. The U.S. should seek to limit the scope of these indicators, to the extent possible, in the interest of maintaining focus on the protection of fundamental human rights for all.

Recommendations

As Ambassador Haley has stated, the Administration's goal is to "show value" at the U.N., and to do so through a position of strength. Ambassador Haley vowed that the U.S. would "look at the U.N., and everything that's working, we're going to make it better; everything that's not working, we're going to try and fix; and anything that seems to be obsolete and not necessary, we're going to do away with."²³

To that end, the U.S. should:

- **Emphasize** the fundamental human rights that are enumerated in the Universal Declaration of Human Rights and those explicitly agreed to in treaties that the U.S. has signed and ratified, prioritizing the protection of life and religious liberty, wherever they are threatened;

18. For example, see "The Yogyakarta Principles," <http://www.yogyakartaprinciples.org> (accessed May 26, 2017), and Amnesty International, "Love is a Human Right," <http://www.amnestyusa.org/our-work/issues/lgbt-rights/marriage-equality> (accessed May 26, 2017).

19. Article 18 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." United Nations, Office of the High Commissioner on Human Rights, "International Covenant on Civil and Political Rights."

20. For more on the conflict between religious liberty and LGBT rights, see Travis S. Weber and L. Lin, Freedom of Conscience and New "LGBT Rights" in *International Human Rights Law, JGJPP International Human Rights Scholarship Review*, Vol. 1, No. 59 (2015-2016), http://media.wix.com/ugd/d74082_197f180fc47b4f39b1d02337a5b19010.pdf (accessed May 26, 2017).

21. For the list of proposed indicators, see United Nations, Statistical Commission, "Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators," E/CN.3/2016/2/Rev.1, March 2016, <http://unstats.un.org/sdgs/indicators/Official%20List%20of%20Proposed%20SDG%20Indicators.pdf> (accessed May 26, 2017).

22. Furthermore, Goal 10.3 calls on countries to "[e]nsure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard." Goal 16.b is to "[p]romote and enforce non-discriminatory laws and policies for sustainable development."

23. Ambassador Nikki Haley, "Remarks to Press Before the Presentation of Credentials to the U.N. Secretary-General," January 27, 2017, <https://usun.state.gov/remarks/7659> (accessed May 26, 2017).

- **Respect and protect** national sovereignty for the U.S. and all member states by rejecting attempts by treaty bodies or experts to overstep their mandates;
- **Promote** reforms that restore the focus of U.N. entities and bureaucrats to their proper role as facilitating interaction among member states and carrying out specific duties within their mandates, not creating new policies or international laws;
- **Oppose** the insertion of controversial language—such as “sexual and reproductive health and rights,” “comprehensive sexual education,” and “various forms of the family”—into consensus documents, bearing in mind that such changes to agreed-upon language are intended to incrementally shift the meaning of such documents over time; and
- **Oppose** disregard for long-recognized human rights and violence against individuals, while resisting the creation of new rights intended to reshape social mores that reflect a traditional understanding of marriage and sexuality.

Conclusion

The U.S. has a strong record of defending freedom and fundamental rights at home and abroad. As the largest financial contributor to the U.N., the U.S. should exert its influence to reform the human rights bureaucracy and to lead the world in defense of life, family, and religious liberty.

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