sciendo
JOURNAL OF LEGAL STUDIES
"Vasile Goldiș" Western University of Arad
J. L. S.
2025 – 35(49)
DOI: 10.2478/jles-2025-0009

# FETAL AND ABORTION RIGHTS UNDER THE MAASTRICHT PRINCIPLES ON THE HUMAN RIGHTS OF FUTURE GENERATIONS: A CONTRADICTION

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**(Received: April 2025; Accepted: May 2025; Published: May 2025)**

**Abstract:** On 3 February 2023, the Maastricht Principles on the Human Rights of Future Generations was adopted in Maastricht, Netherlands, by a group of human rights experts. Though not legally binding, these Principles seek to safeguard the rights of persons, groups, and peoples yet to exist. Accompanying the Maastricht Principles is a Commentary by the drafters explaining the import of each principle. This paper argues that the categorical denial of any form of legal protection for human embryos, fetuses and unborn children in the Maastricht Principles fundamentally undermines its objective and conflicts with the Convention on the Rights of the Child (CRC). It posits that women's reproductive rights, including abortion, must be balanced with the imperative to protect the survival of unborn children. It juxtaposes the pro-life and pro-choice views on abortion, highlighting untapped middle grounds. While acknowledging that the mother's best interests should prevail in cases of conflict, this paper asserts that granting human embryos and fetuses a baseline of legal protection is essential to the coherence of the Maastricht Principles. Without such safeguards, the very concept of future generations is jeopardized.

**Keywords:** Embryo; Fetus; Fetal; Future Generations; Conceived; Unborn; Abortion; Pro-Choice; Pro-Life.

## 1. Introduction

The global push to accommodate the interests of future generations into the corpus of human rights has grown with incredible momentum. It often spills into the domain of environmental law due to the growing recognition of a healthy environment as a human right. While this paper is not an environmental law discourse, it must be acknowledged that environmental law frameworks take the lead in advancing the

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best interests of future generations. The protection of the climate system for the benefit of future generations is one of the guiding principles of the United Nations Framework Convention on Climate Change (UNFCCC).[1] The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) stipulates: 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.'[2] It also provides: 'The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate'.[3] The Rio Declaration on Environment and Development prescribes: 'The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations'.[4] This is reproduced in Action I (11) of the Vienna Declaration and Programme of Action.[5] Other legal frameworks, like the Declaration on the Responsibilities of the Present Generations Towards Future Generations[6] and the Convention Concerning the Protection of the World Cultural and Natural Heritage,[7] also advance the interest of future generations. The United Nations (UN) Report of 2013 christened 'Intergenerational Solidarity and the Needs of Future Generations' enjoins the UN system to prioritize transparency, inclusivity, and interdisciplinary knowledge in policymaking to safeguard future generations' interests and human rights.[8] On 22 September 2024, at its seventy-ninth session, the UN General Assembly adopted a framework named 'The Pact for the Future'.[9] The document urges the global community to protect the interests and needs of the present and future generations to achieve the Sustainable Development Goals.

The existing international and regional instruments on human rights have not limited the enjoyment of human rights to any specific generation of humankind. Paragraph II of the preamble to the Maastricht Principles on the Human Rights of Future Generations (Maastricht Principles) reads: 'Neither the Universal Declaration of Human Rights nor any other human rights instrument contains a temporal limitation or limits rights to the present time'. Therefore, 'Human rights extend to all members of the human family, including both present and future generations.' The preamble to the Universal Declaration of Human Rights (UDHR) affirms human rights as being due to 'all members of the human family'.[10] The same provision in the UDHR is reproduced in the first paragraphs of the preambles to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The phrase 'human family' entails the entirety of the human species, which can be interpreted to encompass those

presently alive and those yet to exist. Despite that, the UDHR, ICCPR, ICESCR, the Convention on the Rights of the Child (CRC)[11], the African Charter on Human and Peoples' Rights (ACHPR)[12], and the African Charter on the Rights and Welfare of the Child (ACRWC)[13] have no express provision for future generations. The lacunae were the source of inspiration for the drafters of the Maastricht Principles. In the introductory part of the Maastricht Principles, the drafters refer to a Commentary, which offers a 'full explanation of each Principle'.[14] This presupposes that the explanation offered in the Commentary is exhaustive and well-thought-out. The truism or otherwise of this will be uncovered shortly.

## 2. Literature review

The idea of future generations raises the issue of abortion and the legal position of human embryos and fetuses. The abortion debate pits two fundamental principles against each other: a woman's right to bodily autonomy and the sanctity of fetal life. This tension has been extensively explored by scholars across disciplines, with pro-choice advocates emphasizing individual rights and pro-life advocates focusing on the moral status of the fetus. The debate has intensified following legal shifts, such as the overturning of Jane Roe et al v. Henry Wade[15] in 2022 in the U.S., which has led to varied state-level restrictions and expansions of abortion access. The scholarly discourse remains polarised, reflecting deep ethical divides.

### 2.1. Pro-Choice viewpoint

Pro-choice scholars argue that abortion is a critical component of women's autonomy, bodily integrity, and reproductive rights, often drawing on feminist ethics, legal theory, and public health considerations. Pallikkathayil (2025) argues that having a body that can supply tissues and organs to another body to grow, does not create an obligation to do so.[16] She insists that the bodily rights and volition that apply to organ donation practices apply to abortion too. An individual may be morally wrong for refusing to donate their organs but cannot be legally compelled to do so. But she failed to appreciate the fact that while refusal to donate an organ amounts to "letting" the other person die by inaction, abortion is an active "killing" of another human being. The two are substantially different. It is submitted herein that since unborn children are citizens, which she admits, it means they should enjoy the protection of the law. Her pro-choice approach is ironic considering that she concluded her paper by recounting her personal miscarriage ordeals in her quest for a child, and still wishes for a child.[17]

In the same connection, Thomson (1971) posits that even if the fetus is granted personhood and a right to life, this does not override a woman's right to control her

own body.[18] She introduces the violinist analogy: if you were involuntarily connected to a famous violinist to keep them alive, you would not be morally obligated to remain connected, even if disconnecting would kill them. This analogy underscores that a woman is not obligated to sustain a fetus against her will. However, the analogy offered by Thompson oversimplifies the unique biological and familial relationship between mother and fetus, potentially ignoring ethical responsibilities. Hursthouse (1991) applies virtue ethics to the abortion debate.[19] She argues that abortion decisions should be guided by virtues such as compassion, prudence, and justice, rather than rigid moral rules. Hursthouse contends that abortion can be morally permissible when continuing a pregnancy would harm a woman's well-being, life plans, or moral agency, advocating for a contextual approach. Her perspective offers a nuanced view, respecting women's lived experiences, but pro-life critics argue it undervalues the fetus's moral status by prioritizing subjective virtues over objective life. McDonagh (1996) frames pregnancy as an "invasion" by the fetus, arguing that women must consent to this bodily imposition.[20] She asserts that abortion is a form of self-defense, particularly in cases of rape, health risks, or unwanted pregnancies, and that denying it violates women's rights to equal protection under the law. McDonagh's consent-based model strengthens the legal argument for abortion rights, but pro-life scholars like Marquis (1989) criticize it for dehumanizing the fetus and ignoring its natural dependency. Singer (1993) a utilitarian philosopher, argues that personhood is not conferred until self-awareness develops, which occurs after birth.[21] He controversially suggests that early abortion and even post-birth abortion, in extreme cases, may be permissible if the fetus or newborn lacks self-awareness, challenging traditional views on the beginning of life. Singer's views are provocative and often criticized for being too extreme, but they highlight the philosophical debate over when life begins, adding a utilitarian dimension to pro-choice arguments.

### 2.2. Pro-Life/Conservative viewpoint

Pro-life scholars argue that the fetus has inherent moral value and rights, often equating abortion with the unjust taking of human life. Their arguments are grounded in biology, philosophy, and religious ethics, emphasizing the fetus's potential and humanity. Marquis (1989) argues that abortion is wrong because it deprives the fetus of a "future like ours", a life filled with experiences, relationships, and achievements.[22] He sidesteps the personhood debate by focusing on the harm of ending a future-conscious being, equating abortion to killing an adult. Marquis's secular argument is compelling for avoiding religious or personhood disputes, but pro-choice critics like Thomson argue it ignores the woman's competing right to bodily autonomy, prioritizing the fetus's potential over her present autonomy. George (1999) contends that the fetus is a human being from conception due to its

unique genetic code and developmental potential.[23] He invokes the principle of reciprocity (the biblical Golden Rule)[24], arguing that we should not deny life to the fetus since we value our own existence. He critiques pro-choice arguments for prioritizing autonomy over life, likening them to historical defenses of slavery that dismissed certain human' rights. His analogy to slavery is provocative, aiming to expose moral inconsistency, but pro-choice scholars like McDonagh reject it, arguing it conflates distinct moral issues and ignores the unique burden of pregnancy on women.

Finnis (1980) a natural law theorist, argues that human life is an intrinsic good from conception, and abortion violates this by intentionally destroying a human being.[25] He emphasizes the biological fact that a unique genetic code forms at conception, marking the start of a human life with equal moral worth to an adult's. Finnis' approach is rigorous, tying abortion to universal moral principles, but pro-choice critics like Hursthouse argue it dismisses the ethical complexity of women's circumstances, imposing a one-size-fits-all rule that may lack compassion. Beyond that, religious groups like the United States Conference of Catholic Bishops (USCCB) assert that abortion is a moral evil, citing early Christian texts like the Didache and theologians like St. Augustine and St. Thomas Aquinas.[26] They argue that modern genetics confirms life begins at conception, reinforcing the fetus's sanctity. The USCCB's historical and scientific appeal strengthens its case for continuity, but pro-choice scholars counter that religious views vary e.g., Judaism's stance on life beginning at birth, and imposing one doctrine risks violating free will. Health organizations like the American College of Obstetricians and Gynecologists (ACOG), assert that abortion is essential to women's healthcare, citing medical necessity in cases like ectopic pregnancies, severe fetal anomalies, or maternal health risks.[27] They argue that criminalizing abortion leads to unsafe procedures, with 13% of global maternal deaths stemming from unsafe abortions, per their data. ACOG's data-driven stance underscores abortion's role in reducing harm, but pro-life scholars question whether health justifications extend to elective abortions, accusing such arguments of conflating medical necessity with personal choice.

Be that as it may, the abortion debate often reaches a stalemate due to differing foundational beliefs about when life begins and the moral status of the fetus. Pro-choice scholars like Thomson, Hursthouse, and McDonagh prioritize individual liberty, framing pregnancy as a bodily imposition that women can reject. Their strength lies in addressing women's lived realities like rape, health risks, and economic hardship, but critics argue they downplay the fetus's moral status. Pro-life scholars like Marquis, George, and Finnis emphasize the fetus's humanity, using biology and ethics to argue for its protection. Their logic is consistent if one accepts

that life begins at conception, but it can seem to sideline the woman's agency, treating her as a vessel for fetal life. A key tension is personhood. Pro-choice thinkers argue it develops gradually, justifying early abortions, while pro-life scholars insist it begins at conception, making all abortions equivalent to murder. Singer (1993), offers a middle ground, suggesting that while both sides have valid points, rational dialogue could bridge the gap by focusing on reducing abortion demand through contraception and support for women rather than bans or unrestricted access. The views of pro-choice and pro-life scholars on abortion reflect a complex interplay of ethical, legal, and medical arguments, with no clear resolution. Pro-choice scholars advocate for women's autonomy and bodily rights, supported by figures like Thomson, Hursthouse, and McDonagh, while pro-life scholars emphasize the fetus's inherent value, led by Marquis, George, Finnis, and religious authorities. Public health perspectives, such as ACOG's, add a practical dimension, highlighting the health risks of restricting access. The debate remains deeply polarised, with potential for dialogue in areas like reducing abortion demand, as suggested by Singer.

## 3. Protection of the unborn children

The Maastricht Principles define future generations as 'those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and peoples.' [28] The UN Declaration on Future Generations (Revision 1) describes future generations as 'all those generations that do not yet exist, and who will inherit this planet'.[29] Revision 2 and Revision 3 retain the same description.[30] In the same connection, Perdomo (2023) offered a description of the concept of future generation as follows:

> When we talk about a future generation, we are talking about a generation that does not exist at this moment. But, it can be made up of those people who have not been born at this moment, and it can also be made up of the various generations (or cohorts) of people who are part of the present.[31]

In interpreting the definition offered by the Maastricht Principles, the Commentary acknowledges that future generations are descendants of people currently alive.[32] It says that 'currently living children' are not part of the future generations even though they share some proximity.[33] But it does not clarify whether a living human embryo or fetus falls within the basket of 'currently living children'. Recall that future generations have been unanimously defined as persons who do not yet exist. The status of non-existence entails nothingness. It presupposes a void or vacuum. Human embryos and fetuses already exist. They have materialized into a form and dissipated the void. The fact that they have not developed into full humans does not eclipse the sacred fact of their existence. They cannot be considered futuristic. They are part of the present generation and are alive in their mothers' womb. Therefore, they can be

classified as 'currently living children'. To that extent, this paper agrees with the pro-life advocates that human life begins upon conception.

For the avoidance of doubt, an embryo is medically defined as an 'unborn child during the first 8 weeks of its development following conception; for the rest of the pregnancy it is known as a fetus.'[34]. Most international and regional legal instruments define a child as a person below the age of eighteen (18) years. There is scarcely any legal instrument that pegs any minimum age for the status of childhood to be activated after conception. The CRC provides that a child means every human being below the age of eighteen years unless under the law applicable to the child, the majority is attained earlier.[35] The ACRWC equally defines a child as 'every human being below the age of 18 years'.[36] What stands out is the phrase: 'every human being', which naturally includes human embryos and fetuses. It follows that upon conception, the status of childhood is activated. The CRC and the ACRWC do not have any subclassification of human beings as superiors or inferiors. Having established that children include human embryos and fetuses, it reasonably means that they should enjoy some legal protection too even if we don't call the protection 'human rights'. Sadly, the Maastricht Principles do not recognize such protection at all. This is made abundantly clear in Principle 4(c) which reads:

> Nothing in these Principles recognizes any rights of human embryos or fetuses to be born nor does it recognize an obligation on any individual to give birth to another. These Principles may not be construed as accepting any interferences with the bodily autonomy of women, girls, and others who can become pregnant, including their actions and decisions around pregnancy or abortion and other sexual and reproductive health and rights.

It is imperative to unpack Principle 4(c) above. To achieve this, Principle 4(c) will be discussed under two headings, to wit: (a) Total denial of the survival of human embryos, and (b) The right to abortion.

### 3.1. Total denial of the survival of embryos and fetuses

The part of Principle 4(c) that says: 'Nothing in these Principles recognize any rights of human embryos or fetuses to be born…' is quite unfortunate. The drafters of the Maastricht Principles went overboard by disrobing human embryos and fetuses of any garb of rights or protection. The gamut of the Maastricht Principles is to protect the human rights of future generations-generations that don't yet exist. It defies logic to recognize the human rights of people who are not yet in existence but deny the same to people who have started existing albeit not fully formed into full humans. Future generations cannot exist if they are not allowed to survive as embryos or fetuses. At best, the drafters could have deleted that portion entirely or replaced it with a subtle alternative provision which could read:

> 4(c). The human embryo or fetus is entitled to survive. But when there is a conflict between the survival of a human embryo or fetus and the best interest of the mother, the best interest of the mother shall prevail.

Instead of:

> 4(c). Nothing in these Principles recognize any rights of human embryos or fetuses to be born nor does it recognize an obligation on any individual to give birth to another…

Paragraph 3 of the Preamble to the Declaration of the Rights of the Child (DRC) supports the protection of the unborn before and after birth.[37] The preamble to the CRC reproduces the position of the DRC verbatim. Paragraph 9 of the Preamble to the CRC stipulates: 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'. The CRC recognizes the entitlement of human embryos and fetuses to safeguards and care before birth. But the Commentary on the Maastricht Principles insists otherwise.[38] It maintains that international law does not recognize nor provide for the rights of any future person to be born. It stresses that 'the human rights of future generations pertain to those persons that will exist and come into being, not those that necessarily ought to exist'. It further directs actors not to read the preambular provision of the CRC in isolation but in conjunction with Article 24(2)(d) of the CRC which ensures 'pre-natal and post-natal health care for mothers'. Contrary to the effect the Commentary expects, a combined reading of paragraph 9 of the Preamble and Article 24(2)(d) of the CRC doesn't support the non-existence of protection for human embryos and fetuses. Rather, the preamble and article 24(2)(d) align with the proposed alternative provision above which balances the survival of human embryos and fetuses with the interest of the mother in the event of conflict.

The Commentary also posits that a person's existence commences at birth and not before.[39] This would mean that the protection of conceived children in paragraph 9 of the Preamble to the CRC exists in a vacuum. The Commentary references the work of Copelon et al (2005) as an authority in support of its position.[40] Copeland et al erroneously argued the provisions of the UDHR, ICCPR, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), the American Convention on Human Rights (American Convention), and the CRC. The UDHR simply states: 'All human beings are born free and equal in dignity and rights'.[41] Copeland et al insist that the use of the word 'born' excludes any antenatal or fetal application of human rights.[42] They argue that human rights and freedom are activated upon birth not before. It is the submission herein that the UDHR only addresses the status of a child upon birth. It is completely silent on the status of a child before birth. The lacuna should not be

interpreted to mean a condemnation of unborn children. In the same vein, Article 6(1) of the ICCPR provides without more that every human being has an inherent right to life. Still, the ICCPR is silent on whether the status of humanhood is activated before or after birth. Again, Article 2(1) of the European Convention stipulates that everyone has a right to life. It is silent on the scope of the word 'everyone'. Copeland et al shot themselves in the leg with the judicial interpretations they relied on to support their argument that 'everyone' does not include fetuses.[43] The cases of Paton v. United Kingdom[44] and Vo v. France[45] indeed support the stance of this paper that the law recognizes the survival of the unborn provided the interest of the mother shall prevail in the event of a conflict. In Paton v. United Kingdom, a husband sought to prevent his wife from aborting their child. The European Commission held as follows:

> The life of the fetus is intimately connected with, and it cannot be regarded in isolation from, the life of the pregnant woman. If Article 2 were to cover the fetus and its protection under this Article were, in the absence of any express limitation, seen as absolute, an abortion would have to be considered prohibited even where the continuance of the pregnancy would involve a serious risk to the life of the pregnant woman. This would mean that the "unborn life" of the fetus would be regarded as being of a higher value than the life of the pregnant woman.

The excerpt above favours the survival of a fetus provided it is not absolute. It is not a total dismissal of protection for unborn children. In Vo v. France, the lady applicant who had gone through an unintended abortion claimed that it was due to the doctor's negligence and sought the prosecution of the doctor for unintentional homicide. In interpreting Article 2(1) of the European Convention, the European Court admitted that 'there is no European consensus on the scientific and legal definition of the beginning of life'. Yet, the Court contradicted itself by adding that "the unborn child is not regarded as a 'person' directly protected by Article 2 of the Convention". However, the Court affirmed that "if the unborn do have a 'right' to 'life', it is implicitly limited by the mother's rights and interests''. Here, the Court entertains the possible existence of the right to life for unborn children even though it insists that such rights are limited by the mother's rights. Nonetheless, Article 4(1) of the American Convention expressly proclaims that every individual has a right to life 'in general, from the moment of conception'. This is clear enough and leaves very little to the imagination.

The lack of express mention of the right to life for unborn children in the CRC does not vitiate the preambular protection therein. Paragraph 9 of the preamble states that a child 'needs special safeguards and care, including appropriate legal protection'

before and after birth. Copeland et al made a weak attempt to downplay this preambular protection of unborn children as a mere recognition of states' obligation to provide support, nutritional, and health assistance to a pregnant woman to ensure that the conceived child can develop and grow after birth.[46] They ignore the 'legal protection' mentioned therein. What the CRC means by 'legal protection' cannot be left to the imagination. There is no form of legal protection that can be given to a conceived child that will not manifest as a human right, especially the right to life. Even if it is argued that the care given to the child is just an expression of the right to health, not the right to life, it is already common knowledge that the right to life and health are intertwined. The goal of the right to health is to preserve life (the right to life). Writing on the interdependence of the right to health with other human rights, Nnamuchi (2008) has this to say:

> Apparently, to contend that an individual possesses the right to life in the absence of ingredients necessary for its sustenance (such as health care) is, on many levels, vacuous. Enjoyment of the right to health is not only vital to all aspects of a person's life and well-being, but it is also crucial to the actualization of all the other fundamental rights and freedoms. Thus, in liberal thinking, the right to life, to be worthwhile, must also incorporate the right to health care, and the right to such medical services as may be necessary to overcome illness and restore health.[47]

The bottom line is that the CRC is the principal legal instrument on the rights of children globally and must be read with the intent to fulfill not defeat its purpose. Be that as it may, one can't help but notice that the Commentary to the Maastricht Principles, while interpreting Principle 4(c) of the Maastricht Principles, mentions genocide. It surprisingly posits that future generations do not have any right to be free from genocide committed by preventing birth among a group of people. For the avoidance of doubt, the Commentary reads as follows:

> While national, ethnic, religious, and racial groups - and other peoples and communities - hold a collective right to be free from intentional conduct aimed at destroying them, in whole or in part, by preventing births in that group, which would constitute genocide, no such right extends to future individuals.[48]

Under the Genocide Convention, there are five actus reus for the crime of genocide.[49] One of the five acts is the perpetrator imposing measures to prevent births within a targeted group, with the intention to destroy that group in whole or part.[50] The express mention of only one of the actus reus means that the other four are not affected, i.e., future generations may assert their right to be free from genocide if the perpetrator(s) deploys any of the other four actus reus. It is a bit unclear what the Commentary hopes to achieve by saying that future generations

hold no right to be free from genocide perpetrated by preventing births among a target group. It seems to be a desperate attempt to deny conceived children any right to be born or survive. So, if conceived children have no right to be born, the future generations cannot legally challenge events that prevent birth, even though genocidal. This is repulsive and incompatible with the spirit of the Genocide Convention. The Commentary should not have dabbled into the domain of genocide.

### 3.2. The right to abortion

As seen from the pro-life and pro-choice debate, abortion remains a very sensitive and controversial subject. The world has not reached a consensus on the existence or otherwise of the right to abortion. The second portion of Principle 4(c) of Maastricht Principles says that nothing in the principles 'recognize an obligation on any individual to give birth to another'. It further reads 'These Principles may not be construed as accepting any interferences with the bodily autonomy of women, girls, and others who can become pregnant, including their actions and decisions around pregnancy or abortion and other sexual and reproductive health and rights'. Clearly, this provision fails to at least accommodate any safeguards or protection for conceived children. So much for a framework that seeks to protect the human rights of future generations. To fully understand this provision, regard shall be had to the Commentary thereto.

The Commentary to the Maastricht Principles explains that the right to abortion resides with the woman or any other person who can or chooses to have children. It incorrectly claims that international and regional human rights laws support this point. It must be noted that international, regional, and even domestic laws vary significantly regarding the right to abortion. Some are even silent on the right to abortion. The principal international legal instrument on the rights of women which is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is silent on the right to abortion.[51] An argument is usually erroneously built on Article 16(1)(e) of CEDAW which enjoins states to ensure that women have the same right as men in marriage and family affairs, to choose the number and spacing of their children. Article 16(1)(e) relates solely to marriage and family affairs. It is silent on whether women can exercise the same rights outside a marriage and family setting. Article 16(1)(e) does not expressly mention abortion. But assuming but not conceding that it contemplates abortion, it is limited to marriage or family setting. It is common knowledge that situations of abortion also arise for unmarried women, young girls, underage girls, including other people who can have children, not just family or married women.

Regionally, the Maputo Protocol remains one of the very few instruments that expressly mentions the word abortion.[52] Article 14(2)(c) of the Protocol allows medical abortion but in limited circumstances, to wit:

a. In cases of sexual assault.
b. In cases of rape.
c. In cases of incest.
d. In cases where the continued pregnancy endangers the physical and mental health of the mother.
e. In cases where the continued pregnancy endangers the life of the mother.
f. In cases where the continued pregnancy endangers the life of the fetus.

Contrary to popular belief, Article 14(2)(c) is not a blank cheque on abortion. Circumstances not listed above may not be able to seek refuge under Article 14(2)(c) of the Protocol. The good news is that it seemingly strikes a balance between the interests of the unborn child and that of the mother by exhaustively enumerating situations when abortion should be allowed.

Domestically, the jurisprudence of the United States of America (US) has made great attempts to accommodate the interests of an unborn child with that of the mother, even though they have derailed in a recent judgment. In Jane Roe et al v. Henry Wade[53], the US Supreme Court delivered a judgment that balanced the constitutional right to privacy of women against the powers of the state to regulate abortion. After holding that abortion forms part of the right to privacy, the court created the three-trimester timeline. The court held that within the first trimester of pregnancy, the state cannot regulate abortion beyond ensuring that abortion is performed by a licensed medical practitioner. This is because the health risks women face having an abortion at that stage are less, so the state should not make laws prohibiting abortion at that stage. From the second trimester, the power of the state to make laws on abortion increases a notch. The state can make medical laws regulating abortion procedures, provided it is to protect the health of the woman. Therefore, abortion is still allowed, but the procedure is regulated. From the third trimester, the state can make laws prohibiting abortion. The court held that at this stage, the power of the state to safeguard a potential human life trumps the privacy of the woman. Also, at this stage, the fetus has become viable, and an abortion poses an incredible risk to the woman. Hence, abortion is allowed at this stage only when continuing the pregnancy threatens the health or life of the woman. This decision disarms the state from protecting human embryos. However, it arms the state to protect fetuses of seven-month pregnancy and above, until birth. The bottom line is that this decision accommodated the survival of an unborn child into the overriding reproductive rights of the mother.

Conversely, in Thomas E. Dobbs v. Jackson Women's Health Organization[54], the US Supreme Court overruled its position in Jane Roe v. Henry Wade. The majority held that the US Constitution does not recognize the right to abortion and left it to states and Congress to legislate on. Justice Alito, who delivered the lead judgment said: 'The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.' The majority held that the right to abortion is distinct from the right to privacy. They added that the right to abortion is not deeply rooted in US history. While the US is stuck with this decision, which was delivered by a 6 to 3 majority, the dissenting opinion of the minority is worthy of note. The dissenting Justices opined that the right to abortion does not exist in isolation but flows from other recognized rights and freedoms. For instance, the right to remove a pregnancy emanated from the right and capacity to buy and use contraceptives. Over the years, the courts have also made connections between the right to abortion and the freedom of integrity of the human body. To counter the majority's reasoning that the right to abortion has no deep roots in US history, the dissenting Justices alluded to interracial marriage in the US as follows:

> The Fourteenth Amendment's ratifiers did not think it gave black and white people a right to marry each other. On the contrary, contemporaneous practice deemed that act quite as unprotected as abortion. Yet the Court in Loving v. Virginia, 388 U. S. 1 (1967), read the Fourteenth Amendment to embrace the Lovings' union.

Nonetheless, the Declaration on the Responsibilities of the Present Generations Towards Future Generations enjoins the present generation to sustain and perpetuate humankind.[55] It instructs that the essence and structure of human life must remain intact and free from any form of degradation whatsoever. Though admirable, it gravitates toward the absolute survival of unborn children, which doesn't contemplate the rights of the pregnant woman. Anyway, Article 6 of the same Declaration advocates for the protection and preservation of the 'human genome'. The genome is the 'complete set of human genetic material'.[56] In truth, human genetic material can only be preserved if embryos and fetuses are allowed to survive.

## 4. Recommended accommodations for competing interests

No doubt, the Maastricht Principles align with the pro-choice perspective as opposed to the pro-life. Despite the polarization, there are pathways to accommodate both perspectives, balancing the fetus' potential for survival with the woman's rights through ethical approaches, policy compromises, and practical interventions. Below, this paper exhaustively explores how these views can be reconciled, highlighting

middle grounds, and drawing on philosophy, law, medicine, and social policy while addressing potential objections.

### 4.1. Ethical Approach for Accommodation

To reconcile pro-life and pro-choice views, ethical approaches that respect both the fetus' moral status and the woman's autonomy become imperative. Several approaches offer promise:

#### 4.1.1. Gradualist Approach to Fetal Moral Status

The gradualist view holds that the fetus' moral status increases with development, from conception to birth. Early in pregnancy, the woman's autonomy takes precedence due to the embryo's limited capacities, e.g., no sentience or consciousness. As the fetus develops, gaining sentience (around 24 to 28 weeks) or viability (around 23–24 weeks), its survival claim strengthens, potentially justifying restrictions on later abortions unless the woman's health or life is at risk. This aligns with pro-choice arguments, like Thomson (1971), that prioritize bodily autonomy, especially early in pregnancy, when the fetus lacks personhood traits, e.g., self-awareness, per Singer (1993). Pro-choice advocates can accept later restrictions if exceptions for health, rape, or fetal anomalies are preserved. Pro-life scholars, like Marquis (1989), who focus on the fetus' "future like ours", may accept that early embryo have less immediate moral weight than viable fetuses, allowing for some early abortions while advocating protection as development progresses. Policies could permit abortions in the first trimester (up to 12 weeks) with minimal restrictions, reflecting pro-choice priorities, while imposing stricter regulations in the second and third trimesters, e.g., requiring medical justification, aligning with pro-life concerns for fetal life. Pro-life absolutists, e.g., Finnis (1980), might reject any early abortions, arguing that life begins at conception. However, gradualism counters that moral status isn't binary; even Finnis acknowledges developmental stages in human life, which could justify nuanced policies.

#### 4.1.2. Virtue Ethics and Contextual Decision-Making

Hursthouse (1991) suggests abortion decisions should balance virtues like compassion for the woman and justice for the fetus. This approach encourages case-by-case evaluations, recognizing both the woman's circumstances, e.g., poverty, health risks, and the fetus' growing moral claim. Women's autonomy is respected by allowing choices informed by their unique situations like rape, economic hardship, or health risks, without blanket prohibitions. The fetus' value is acknowledged by encouraging alternatives like adoption or support for continuing pregnancies, reflecting compassion for both lives. Counseling programs could provide women with comprehensive information on abortion, adoption, and financial aid, empowering autonomous decisions while promoting life-affirming options, as Hursthouse suggests. Pro-life critics might argue this risks too much leniency, but

virtue ethics demands rigorous moral reflection, not automatic approval of abortion. Pro-choice critics might fear coercion toward continuing pregnancies, but ensuring counseling is neutral as mandated in some European models, e.g., Germany's Act on Assistance to Avoid and Cope with Conflicts in Pregnancy 1995 (Schwangerschaftskonfliktgesetz, SchKG), mitigates this. Section 14 of the Act established mandatory counseling for pregnant women seeking an abortion.[57] It focuses on ensuring women's autonomy and access to information and counseling to help them make informed decisions about their pregnancies.

**4.1.3. Double Effect Principle**

Rooted in Catholic moral theology, the principle of double effect allows actions with unintended but foreseeable bad outcomes if the primary intent is good. In abortion, this could justify procedures to save a woman's life, e.g., ectopic pregnancy treatment, even if the fetus dies, as the intent is to preserve her health, not to kill the fetus. This supports abortions in medical emergencies, aligning with the American College of Obstetricians and Gynecologists (2019), which stresses maternal health. It respects fetal life by limiting abortions to cases where the fetus' death is an unintended consequence, as endorsed by the U.S. Conference of Catholic Bishops (USCCB). Laws could explicitly permit abortions when a woman's life is endangered, e.g., Ireland's 2018 referendum legalized abortion for health risks, satisfying the pro-choice and pro-life core concerns.[58] Pro-choice advocates might argue this is too narrow, excluding non-life-threatening cases. However, expanding "health" to include mental health broadens applicability without violating pro-life principles.

**4.2. Legal and Policy Compromises**

Legal frameworks can balance fetal survival and women's rights through compromises that avoid absolutism. These draw on global models and scholarly insights.

**4.2.1. Time-Limited Abortion Access**

Many countries, e.g., France, Germany, and the UK, allow abortions on demand in the first trimester, with increasing restrictions later unless justified by health or other exceptions. This reflects the gradualist view and public opinion. Early access ensures women's autonomy, as most abortions (93%) occur before 13 weeks, according to the Pew Research Center (2024) [59], minimizing interference with choice. Later restrictions protect viable fetuses, aligning with George (1999) that developmental milestones confer greater rights. As fetuses develop in the womb, so is their right to survival. Other countries could adopt a 12-week limit with exceptions for health, rape, or fetal anomalies, similar to France's 14-week rule.[60] In France, a woman can legally request to have an abortion up to 14 weeks of pregnancy (counted as 16

weeks from the last menstrual cycle of the woman). States' domestic laws could standardize this, reducing state-by-state disparities. Pro-life absolutists might oppose any legal abortions, but George's developmental argument supports compromise at viability. Pro-choice advocates might resist limits, but data shows that first-trimester access covers most cases, preserving practical autonomy.

#### 4.2.2. Support for Pregnancy Continuation

Pro-life advocates often emphasize alternatives to abortion, like adoption or financial aid, which can align with pro-choice goals of empowering women's choices. McDonagh (1996) notes that true choice requires viable alternatives, not just abortion access. Enhancing support, maternity leave, childcare, and healthcare reduces coercion into abortion due to economic hardship, aligning with feminist principles of agency. Such measures promote fetal survival by making pregnancy sustainable, as Finnis' natural law ethics might endorse by valuing both lives. Policies like Sweden's universal childcare or the U.S. proposed Child Tax Credit expansion of 2025 could be paired with adoption reforms, e.g., streamlining processes, and giving women real options. Pro-choice critics might worry about implicit pressure to choose life, but ensuring abortion remains accessible counters this. Pro-life critics might argue it doesn't go far enough to restrict abortion, but reducing demand through support achieves their goal indirectly.

#### 4.2.3. Conscience Clauses and Access Balance

Allowing healthcare providers to opt out of performing abortions (conscience clauses) while ensuring access through public clinics or telemedicine respects both pro-life convictions and pro-choice rights. Telemedicine abortion, approved in countries like the US by the US Food and Drug Administration, ensures access, especially in restrictive states.[61] Telemedicine abortion involves using telehealth technologies, such as video calls, phone conversations, or email, to deliver medical abortion care remotely, encompassing pre-abortion consultation, medication prescription and dispensing, and follow-up care. Conscience clauses protect providers' moral beliefs, as supported by USCCB and legal scholars like Kaczor (2014).[62] States could fund public clinics while allowing private providers to opt out, as in Canada's mixed model. Pro-choice advocates might fear reduced access in rural areas, but telemedicine mitigates this. Pro-life advocates might oppose public funding, but it's a pragmatic trade-off for conscience protections.

### 4.3. Practical Interventions to Reduce Abortion Demand

The pro-life and pro-choice advocates can agree on reducing abortion demand without banning it, addressing root causes like poverty, lack of healthcare, and unintended pregnancies.

### 4.3.1. Comprehensive Sex Education and Contraception

Access to contraception and education reduces unintended pregnancies. Singer (1993) argues this is a rational way to lower abortion rates without coercion. It empowers women to control reproduction, aligning with Thomson's autonomy principle. It saves fetal lives by preventing pregnancies, as Marquis' future-focused ethic would support. This can be achieved by expanding programs like Title X in the U.S.[63] or the Netherlands' sex education model, which has significantly reduced abortion rates. Title X in the U.S. is the only federal program dedicated to rendering family planning and other preventive health services, with priority given to low-income persons. The Netherlands, on the other hand, has one of the lowest abortion rates.[64] Some pro-life groups, e.g., USCCB, oppose contraception on religious grounds, but secular pro-life scholars like Marquis prioritize life over method. Pro-choice advocates fully support this, seeing no conflict.

### 4.3.2. Social Safety Nets

Poverty drives a significant part of abortion decisions. Robust safety nets like housing, healthcare, and childcare make continuing pregnancies feasible. It expands real choice, per McDonagh's consent model, by removing economic barriers. It promotes fetal survival, aligning with George's reciprocity principle. Investment in comprehensive parental support and paid leave should be embraced. Cost concerns will arise, but long-term savings from reduced abortions justify the investment. Neither the pro-life nor the pro-choice can oppose this.

### 4.3.3. Crisis Pregnancy Support

Crisis pregnancy centers, if reformed to provide accurate medical information, can offer support without misleading women, aligning with both sides' (pro-life and pro-choice) goals. Accurate information ensures informed consent, per ACOG standards. Support encourages carrying to term, as Kaczor advocates. Crisis pregnancy centers should be regulated to provide ultrasounds, counseling, and aid referrals. Pro-choice critics distrust centers' motives, but regulation ensures transparency. Pro-life critics might resist oversight, but it enhances credibility.

## 4.4. Addressing Extreme Cases

Both the pro-life and pro-choice advocates often agree on exceptions, which can form a basis for broader accommodation. Article 14(20(c) of the Maputo Protocol recognizes similar exceptions.

### 4.4.1. Rape and Incest

Even pro-life scholars like Finnis allow exceptions for rape, recognizing the profound violation of autonomy. Pro-choice advocates universally support these exceptions. Hence, laws could codify unrestricted access in such cases. Some pro-

life absolutists generally oppose any exceptions, but concede here, making it a consensus point.

#### 4.4.2. Health and Life of the Mother

Both the pro-life and pro-choice views prioritize maternal survival in life-threatening cases, e.g., ectopic pregnancies, per ACOG and USCCB's double effect principle. Clear legal exemptions ensuring access on health grounds will raise no controversy. As mentioned earlier, defining "health" can be contentious, but expanding the definition to include mental health bridges gaps. This will dispel the possible objections to the definition of health being restricted to only visible health problems.

#### 4.4.3. Severe Fetal Anomalies

Abortions for non-viable fetuses, e.g., anencephaly, are often accepted by pro-life advocates and demanded by pro-choice ones. Anencephaly is the absence of the brain and cranial vault (top of the skull) at birth.[65] It is detectable early in the pregnancy. Aborting such a defective fetus is fair. Also, late-term abortions should be allowed with medical certification, as in the UK's 1967 Abortion Act. Pro-life concerns about "slippery slopes" are addressed by strict criteria.

## 5. Conclusions

The Maastricht Principles protect the rights of future generations with one hand and sign their death warrant with the other hand. The protection of human embryos and fetuses, and the reproductive rights of women need urgent address and global harmonisation. A balance should be struck to accommodate the competing interests. The current global cacophonic approach to the subject creates more problems than it solves. Principle 6(e)(iii) of the Maastricht Principles encourages the present generation to refrain from giving less value to the lives of future generations. By denying human embryos and fetuses any right to survival, the Maastricht Principles effectively give less value to them. The life of a human embryo is as valuable as that of any other person. Women take abortifacients like Misoprostol and Mifepristone, yet the pregnancy remains adamant.[66] The drugs the child is bombarded with in a bid to terminate the pregnancy eventually lead to malformation or other side effects on the child upon birth.[67] Such a child is shortchanged from normal human formation, which will affect their adulthood. Balancing the fetus' right to survival with the woman's rights is possible through ethical approaches, legal compromises, and practical interventions, as discussed above. The position in the case of Jane Roe v. Henry Wade is also a credible approach. Pro-choice views are accommodated by preserving early autonomy and ensuring access in extreme cases, while pro-life views are respected by protecting viable fetuses and supporting pregnancy continuation. Scholars like Thomson, Marquis, Hursthouse, and McDonagh provide intellectual grounding, while global models, e.g., France, show feasibility.

Challenges remain, but focusing on shared goals - reducing abortions through choice, not coercion- offers a path forward. The claim that human embryos and fetuses are not entitled to survival is unsustainable. Embryos should be entitled to survive, subject to the best interests of the pregnant woman. Anything to the contrary will be a mockery of the advocacy for future generations.

**Acknowledgments**
The author extends his gratitude to the reviewers of this paper for their commitment to the advancement of legal research.

**Funding**
The author did not directly or indirectly receive any funding from any public or private organization for this work. The research was funded by the author.

**Author Contributions**
The paper in its entirety was written by the author, Collin Chinedu Aguocha.

**Disclosure Statement**
The author's work is free from any competing professional, financial, or personal influences or interests from other parties.

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