The World Health Organization, the Contentious Politics of Human Rights, and the Failure of Global Health Governance to Achieve Health for All

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Outline

1. Framework & Methods
2. Background – International Legal Institutions for Health & Human Rights
   1. Universal Declaration of Human Rights (1948)
   3. Declaration of Alma-Ata (1978)
4. Analysis – Why did Health for All Fail?
5. Legacy – Implications for WHO
Global Health Governance and the Right to Health

• Human Rights Matter
• Human Rights Evolve
• WHO is Instrumental to the Evolution of the Right to Health
  – Development in Law
  – Implementation through Programming
• Right to Health Ineffective in Addressing Underlying Determinants of Health
Theoretical Framework

- Conflicting Views on History of WHO in Rights-Based Discourse
  - Alston (1979) - WHO had an influential presence in the evolution of human rights discourse
  - Gruskin, Mills, Tarantola (2007) - public health and human rights always “evolved along parallel but distinctly separate tracks”

What is the Role of WHO?
Methods

• Case Study
  – Agenda Setting
  – Process Tracing

• Research
  – Archival Research
  – Interview Research

• Analysis
  – Legal Analysis
  – Thematic Analysis
Methods

• Case Study
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Evolution of the Right to Health

International Legal Framework for Health

Second World War
- Four Freedoms
- UN Charter
- WHO Constitution
- UDHR

- Depression
- War
- Rise of the Welfare State
International Legal Framework for Health

Second World War
↓
Four Freedoms
↓
UN Charter
↓
WHO Constitution
↓
UDHR

- freedom of speech
- freedom of religion
- freedom from fear
- freedom from want

“a necessitous man is not a free man”
- Franklin Delano Roosevelt
International Legal Framework for Health

Second World War

Four Freedoms

UN Charter

WHO Constitution

UDHR

• ECOSOC
  – Develop human rights
  – Promote international health cooperation – establish WHO
International Legal Framework for Health

- Second World War
  - Four Freedoms
  - UN Charter
  - WHO Constitution
  - UDHR

- WHO Governance
  - World Health Assembly
  - Executive Board
  - Secretariat

- Preamble
  - Health as a Human Right
International Legal Framework for Health

Second World War
→
Four Freedoms
→
UN Charter
→
WHO Constitution
→
UDHR

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.
International Legal Framework for Health

- Article 25
  - medical care
  - underlying determinants of health

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”
WHO Influences the Right to Health

Cooperation with the Comm’n on Human Rights

G. Brock Chisholm
WHO Director-General (1948-1953)

WHO Human Rights Mission

the whole programme approved by the World Health Assembly represents a concerted effort on the part of Member States to ensure the right to health.

welcome opportunities to cooperate with the Commission on Human Rights in drafting international conventions, recommendations and standards with a view to ensuring the right to health.
WHO Influences the Right to Health

- WHO Proposed Right to Health Text
  - Specific legal language
  - Beyond the expansive language of Article 25
  - Draws on WHO health collaborations
WHO Influences the Right to Health

Governments, having a responsibility for the health of their peoples, providing adequate health and social measures, to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene.

health being defined as a state of complete physical, mental and social well-being.
Commission on Human Rights (1951)

Everyone shall have the right to the enjoyment of the highest standard of health obtainable.

With a view to implementing and safeguarding this right: Each State party hereto undertakes to provide legislative measures to promote and protect health and in particular:

- to reduce infant mortality and provide for healthy development of the child;
- to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
- to control epidemic, endemic and other diseases.
Commission on Human Rights (1951)

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- to reduce infant mortality and provide for healthy development of the child;
- to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
- to control epidemic, endemic and other diseases.

- “The States Parties to the Covenant recognize the right of everyone to the enjoyment of the highest standard of health obtainable.”
The States Parties to the Covenant recognize the right of everyone to the enjoyment of the highest standard of health obtainable.

With a view to implementing and safeguarding this right: Each State party hereto undertakes to provide legislative measures to promote and protect and protect health and in particular:

- to reduce infant mortality and provide for healthy development of the child;
- to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
- to control epidemic, endemic and other diseases.

- “Each State party hereto undertakes to combat disease and provide conditions which would assure the right of all its nationals to a medical service and medical attention in the event of sickness..”
Commission on Human Rights (1951)

1951 Draft

The States parties to this Covenant recognize the right of everyone to the enjoyment of the highest standard of health obtainable. With a view to implementing and safeguarding this right, each State party hereto undertakes to provide legislative measures to promote and protect health and in particular:

1. to reduce infant mortality and to provide for healthy development of the child;
2. to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
3. to control epidemic, endemic and other diseases;
4. to provide conditions which would assure the right of all its nationals to a medical service and medical attention in the event of sickness.
Commission on Human Rights (1952)

**WHO Position**

- Definition of “complete” health
- Expand “legislative measures” to “legislative and other measures”
Commission on Human Rights (1952)

The States Parties to the Covenant, realizing that health is a state of complete physical, mental and social well-being, and not merely the absence of disease of infirmity, recognize the right of everyone to the enjoyment of the highest attainable standard of health.

The steps to be taken by the States Parties to the Covenant to achieve the full realization of this right shall include those necessary for:

(a) The reduction of infant mortality and the provision for health development of the child;
(b) The improvement of nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
(c) The prevention, treatment and control of epidemic, endemic and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
WHO Neglect for Human Rights

Avoidance of “Legal Rights”

M.G. Candau
WHO Director-General (1953-1973)

WHO Turns to the Technical

• Medical approach to health
  – Technical Advice and Assistance
  – Communicable Disease Eradication

The World Health Organization endeavours to reach progressively its objective, which is “the attainment by all peoples of the highest possible level of health”, and thereby works toward the implementation of one of the rights enumerated in the not being entrusted with safeguarding rights
ICESCR – Codifying a Right to Health

WHO Abandons ICESCR Negotiations
ICESCR – Codifying a Right to Health

UN General Assembly Debate

• Eliminated definition of health & “well-being”

• Weakened state responsibility for underlying determinants of health
  – Removal of nutrition, housing, sanitation, recreation, economic and working conditions
  – Vagueness in “environmental and industrial hygiene”
ICESCR – Codifying a Right to Health

Changes from WHO Draft

• Abandonment of “complete” health
• No “Standard of well-being”
• Neglect of Underlying Determinants of Health
  – Nutrition
  – Housing
  – Health promotion
  – Social services
Non-Cooperation in Human Rights (1953-1973)

Human Rights Treaty Framework Expands without WHO

International Covenant on Economic, Social and Cultural Rights

1950 1960 1970
Non-Cooperation in Human Rights (1953-1973)

Human Rights Treaty Framework Expands without WHO

Declaration on the Rights of the Child

1950 1960 1970

It is for the General Assembly to decide, on the advice of the competent United Nations organs, whether it is desirable to add to the draft convention an article on the rights of the child; on that question, therefore, I have no comments to offer.
Non-Cooperation in Human Rights (1953-1973)

Human Rights Treaty Framework Expands without WHO

Declaration on the Elimination of Discrimination Against Women

WHO is not entrusted with responsibility for direct action to overcome such restrictions

not possible to derive from the work of WHO principles that might be incorporated into a draft declaration.
Non-Cooperation in Human Rights (1953-1973)

Human Rights Treaty Framework Expands without WHO

Conventio on the Elimination of All Forms of Racial Discrimination

1950 1960 1970

racial discrimination, slavery, and apartheid are outside the competence of the World Health Organization. In line with the general policy of WHO, the anti-discriminatory approach to all matters is followed implicitly rather than explicitly.
Non-Cooperation in Human Rights (1953-1973)

WHO Avoids Human Rights Reporting

WHO Disclaims Responsibility – not “entrusted with safeguarding legal rights”
Non-Cooperation in Human Rights (1953-1973)

WHO Avoids Reporting – “the provisions contained in Article 25 of the Declaration...go substantially beyond the competence of the World Health Organization”
Non-Cooperation in Human Rights (1953-1973)

It seems that this article 25 inspires itself more from a social viewpoint than from a health viewpoint.
WHO Transitions to Public Health

- From Public Health to Medicine and Back Again
  - Curative medicine
  - Underlying determinants of health
  - Primary health care

- From Public Health Discourses to Human Rights Obligations
WHO Adopts Rights-Based Approach to Health

Embrace of Human Rights
Halfdan Mahler
WHO Director-General (1973-1988)

WHO Turns to Social Justice
• Health for All
  – Primary Health Care to Address Underlying Determinants of Health
• Needs-based Development

“Health is a universal human right, as WHO’s Constitution clearly states, and its attainment an essential social goal. . . . To reach a more equitable distribution of health, it is necessary to pay greater attention to those least served, the social periphery, the disease-ridden majority.” - H. Mahler
Health for All by the Year 2000

• Underlying Determinants of Health
• Primary Health Care to meet “basic needs”

– **Human Right** – “a level of health that would permit them to lead socially and economically productive lives”

– **State Obligation** – “a complex of economic and social measures which directly or indirectly promote ... health, through the establishment of a nation-wide system ...”
WHO Expands Human Rights

International Legal Discourse

- Human Rights in Light of Scientific & Technological Developments
- Declaration on the Right to Development
- Declaration on the Rights of Disabled Persons
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of the Child

UN should be made fully aware that WHO can and should make contribution principally to implementation of Article Twelve of Covenant Economic, Social, and Cultural Rights since that Article based on WHO Constitution and therefore WHO mandate
WHO Implements Human Rights

Health Effects of Human Rights Violations

- Race Discrimination
- Torture
- Environmental Health
- Malnutrition

Human Rights Dialogue on Public Health
The Road to Alma-Ata

1973

Health for All Strategy

Treaty Negotiations

WHO Rights Seminar

Human Rights Dialogue

1978

Primary Health Care

Framework | Background | FINDINGS | Analysis | Legacy
Declaration of Alma-Ata

International Conference on Primary Health Care

• Culmination of rights-based approach to Health for All

• WHO definition of “complete” health—which is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity—is a fundamental human right [that] requires the action of many other social and economic sectors in addition to the health sector.
Declaration of Alma-Ata
International Conference on Primary Health Care

- Culmination of rights-based approach to Health for All
- WHO definition of “complete” health
- Focus on Legislation
  - Equity-oriented targets
  - Model for national policies in primary health care
Failure of Health for All

• Collapse of Alma-Ata
• Rise of Neoliberalism
• Medicalization of Health
  – From Primary Health Care to **Selective** Primary Health Care
  – From Underlying Determinants of Health to Medical “Impact Interventions”
Why Did WHO Fail?

- **Politics - Fear of Politicizing Health**
- **Law - Lack of Legal Capacity**
- **Medicine - Rejection of Human Rights Leadership**

- **Cold War Tensions & Medical Services**
- **WHO Decentralization & National Agendas**
- **Developing Nations & a Right to Development**
Why Did WHO Fail?

- Politics
- **Law - Lack of Legal Capacity**
- Medicine

- Legal Rights
- International Law
- National Legislation
  - Legal Models
  - Legislative Assistance

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Director, LEG

**MEETING ON HUMAN RIGHTS**

LEGAL has not so far assured the representation of WHO in human rights matters
Why Did WHO Fail?

- Politics
- Law
- **Medicine - Rejection of Human Rights Leadership**

- Medical Practice for the “End of Disease”
- “Technical Organization”
- Inability to Engage with Rights-Based Movements
Legacy of WHO Neglect

- Right to Health Does Not Address Underlying Determinants of Health
- Neoliberal Development Policy – Exacerbating Health Inequalities
Legacy of WHO Neglect

- From Legal Obligation to Non-Binding “Commitment”
- Human Right to Health Medicine
- UN Advances Health Rights
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