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This article explores the role of the World Health Organisation (WHO) in establishing global health governance through human rights, tracing WHO’s evolving participation in the United Nations’ (UN’s) Programme on Human Rights and Scientific and Technological Developments. From a fear of the risks of technology arising out of the 1968 International Conference on Human Rights, the UN would frame medical science as a serious threat to the rights and freedoms of individuals. However, once WHO actively asserted a position that identified health as a human right, this WHO emergence in rights-based policy discourse would come to reframe science and technology positively in global health policy. With WHO focusing on the right to health as a source of positive obligations on states to realise the benefits of science and technology for the public’s health, this analytic narrative highlights a path through which human rights has come to frame global health.

Keywords: World Health Organization, global health policy, human rights, scientific and technological developments

While scholarship has uncovered the sinuous commitment of the World Health Organisation (WHO) in the development and implementation of human rights for health, few have examined the health policy gains achieved by WHO when it has participated in the construction of human rights for the public’s health. Examining WHO’s rights-based influence on global health policy, this article traces WHO’s shifting organisational role in the development of human rights discourses under the United Nations’ (UN’s) Programme on Human Rights and Scientific and Technological Developments.

In the development of the UN’s Programme on Human Rights and Scientific and Technological Developments, global health policy turned against medical science to such a degree under the mantle of human rights

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1 Taylor 1992, pp. 301-46
that WHO was pressed to respond by reasserting the human right to health – a right it had neglected during crucial years in the ascendancy of human rights. Through this process, WHO clarified the scope and content of the right to health for the first time, employing its constitutional mandate for human rights to realise gains in global health policy.

I. Human Rights in Global Health Governance

In considering the historical evolution of the health and human rights movement in the context of global health governance, this analytic narrative focuses on human rights under international law as tools for public health, with international human rights offering an influential legal discourse by which to frame public policy. Under this ‘rights-based approach,’ global health policy identifies individual rights holders and their entitlements and corresponding state duty-bearers and their obligations, framing demands on the duty-bearer to respect, protect, or fulfil each right through, among other options, law reforms, budget allocations, or program evaluations. As a means to empowerment, rights-based claims transfer power from the duty-bearer (who has a legal obligation to develop access to rights) to the rights-holder (who is entitled to a right rather than being a passive recipient of a charitable donation). Raising such obligations as ‘rights violations’ offers international standards by which to structure state duties and evaluate government conduct, shifting the analysis of health policy from quality of care to social justice.

The codification of health rights in international law begins in the context of the Second World War. Rising out of the atrocities of war and

3 Gostin 2008.
4 Parmet 2009.
drawing on the working class struggles of the late nineteenth and early
twentieth centuries, social and economic rights would seek to prevent
deprivations like those that had taken place during the Depression and War
that followed. In establishing the contours of a right to health under the
Preamble of the Constitution of the WHO, states declared that ‘the enjoyment
of the highest attainable standard of health is one of the fundamental rights of
every human being,’ defining health positively to include ‘a state of complete
physical, mental, and social well-being and not merely the absence of disease
or infirmity.’ This expansive vision of ‘complete’ health—a vision in line with
public health’s contemporaneous focus on structural determinants of health—
further declares that ‘governments have a responsibility for the health of their
peoples which can be fulfilled only by the provision of adequate health and
social measures.’ To govern this sweeping vision of health, the 1946
International Health Conference established three organs by which to realise
the goals of a new global health architecture: (1) the World Health Assembly,
the legislative policy-making body of WHO member states; (2) the Executive
Board, an executive program-developing subset of the World Health
Assembly; and (3) the Secretariat, the bureaucracy that carries out the
decisions of state representatives through an elected Director-General and
appointed staff. Recognizing a necessity to facilitate international cooperation
through autonomous global health governance, representatives of sixty-one
states signed the WHO Constitution on 22 July 1946, after which it remained
open for signature until it came into force on 7 April 1948.

5 Donnelly 2003, pp. 20-1.
6 WHO 1948.
7 Sze 1945.
With both WHO and the Universal Declaration of Human Rights (UDHR) coming into existence in 1948, there was great initial promise that these two institutions would complement each other, with WHO—like the other specialised agencies of the UN—supporting human rights through all its activities. Taking up this human rights mission on the heels of the creation of the UN and WHO, states developed the 1948 UDHR with the recognition that ‘the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’ In considering this basis for a healthy world out of the ashes of the Second World War, the UDHR proclaims a right to health by which: ‘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.’

Developing and implementing these health rights across the UN and its specialised agencies, WHO would have the benefit of a robust international system for cooperation and coordination in human rights. Cooperation in human rights would be institutionalised through the UN General Assembly’s Economic and Social Council (ECOSOC), operating through its Commission on Human Rights—entrusted to make recommendations for the purpose of ‘promoting universal respect for, and observance of, human right and fundamental freedoms for all’—to translate the proclaimed rights of the UDHR into international treaty obligations that could be legally binding on state parties. This Commission on Human Rights, drawing on the

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8 UN General Assembly 1948.
9 ECOSOC Commission on Human Rights 1946.
10 UN 1945.
bureaucratic efforts of the U.N. Secretariat’s Division of Human Rights, would coordinate states and international organisations in developing and implementing the international legal obligations necessary to realise human rights norms.

As the UN’s human rights system worked to develop binding treaty law, however, WHO would back away from its promising early leadership in health rights, turning its attention to purely technical enterprises, which it approached through an ‘apolitical’ medical lens that would seek a vertical, disease-specific approach to health.\footnote{Brockington 1958.} Despite an understanding from the UN General Assembly that specialised agencies would take responsibility for creating detailed definitions of the human rights principles within their respective fields of competence, WHO did comparatively little to clarify these broadly defined rights for health promotion.\footnote{Meier 2010, pp. 1-50.} In translating the comprehensive vision of the UDHR into legally-binding covenants, consensus on the development of human rights quickly faltered largely along ideological and economic lines, with the Cold War superpowers (and their respective spheres of influence) split on both a belief in the substance of economic and social rights and the feasibility of implementing these rights.\footnote{This debate is addressed in U.N. Doc. A/C.3/L.11. See Alston 1979, pp. 79-118.} With the United States and Soviet Union forcefully challenging each other on the relative prioritization of these rights, WHO would abandon its early emphasis on a rights-based approach to global health policy, focusing on technical programs untethered to human rights obligations.\footnote{Evang 1967, p. 205.} As human rights debates continued without WHO
leadership, the UN General Assembly would codify comparatively enfeebled
human rights obligations for health in the 1966 International Covenant on
Economic, Social and Cultural Rights (ICESCR) – under both a ‘right of
everyone to the enjoyment of the highest attainable standard of physical and
mental health’ and a right ‘to enjoy the benefits of scientific progress and its
applications.’

To clarify and implement these rights, the UN’s specialised
agencies would take the lead in directing cooperation within their respective
areas of competence, with WHO bearing responsibility pursuant to the right to
health.

II. The UN Programme on Human Rights and Scientific and
Technological Developments

In the context of rising interest in the implementation of human rights
following the 1966 finalization of the UN’s two human rights covenants—the
ICESCR and the International Covenant on Civil and Political Rights
(ICCPR)—states pressed the UN to consider the human rights implications of
scientific developments and medical technologies, with these inter-disciplinary
UN studies forming the basis for international instruments to strengthen the
protection of the human rights. However, rather than building on the
ICESCR’s right ‘to enjoy the benefits of scientific progress and its applications’
in the pursuit of health, states would focus on the dangers of this ‘progress’ to
human rights. With a rights-based apprehension towards science rising out of
the Second World War—as atomic weaponry and medical experimentation,
inter alia, provoked debate on the denigration of rights through technology—
this scientific fear would ultimately pervade matters of global health

15 UN General Assembly 1966, Res. 2200A (XXI)
governance. Specific to medical science, the 1947 Doctor’s Trial at Nuremberg (through which the details of the Nazi eugenics and medical experimentation campaigns were made known to the world) highlighted the extent to which the remarkable progress in the sciences could prove a threat to individual rights and freedoms.\textsuperscript{16} In the wake of the War and Nuremberg trials, a pervasive fear and uncertainty surrounding the dangers of medical science took root,\textsuperscript{17} elevating to global policy in the UN’s focus on science and technology during the 1968 International Conference on Human Rights.\textsuperscript{18}

The UN designated 1968 as the International Year of Human Rights to create a yearlong programme to commemorate the twentieth anniversary of the UDHR, to review of the human rights efforts of the UN, member states, and specialised agencies, and to undertake intensified activities to raise awareness of human rights, culminating in an ‘International Conference on Human Rights.’\textsuperscript{19} In establishing this Conference, representatives from 120 states and a variety of UN agencies were invited to Teheran to ‘(1) review the progress of human rights since the UDHR, (2) evaluate the effectiveness of UN promotion of human rights, and (3) prepare a programme of future actions following the ICCPR and ICESCR.’\textsuperscript{20}

Despite the strong presence of several UN specialised agencies in preparatory discussion related to the Conference, WHO leadership maintained a firm stance that ‘measures to ensure respect for human rights, such as legislation, do not come within the competence of WHO.’ Reflective

\textsuperscript{16} Grodin and Annas 2007, pp. 635-54.
\textsuperscript{17} Beecher 1966, p. 1354.
\textsuperscript{18} Farer in Weeramantry (ed) 1990, p. 81.
\textsuperscript{19} UN General Assembly 1963, Resolution 1961 (XVIII).
\textsuperscript{20} UN Office of Public Information 1967, pp. 1-38.
of its larger scepticism towards rights-based approaches to health, WHO concluded that ‘co-operation in observance of the International Year for Human Rights must therefore be restricted to technical activities that relate directly to health and to public information work that can be carried out within existing budgetary provisions.’ This sentiment was reinforced in internal directives to the WHO’s Liaison to the UN, to whom the Deputy Director-General wrote:

[T]he United Nations programme of human rights has little bearing on our work[,] and the many special campaigns which we are expected to support are proving a real burden … So it is advisable for the WHO Representative at this Committee to go no further than is strictly required by courtesy.

In spite of repeated declarations that ‘none of the substantive activities proposed by the Committee comes within the competence of WHO,’ the UN pressed WHO by 1966 to make at least a few token contributions to the International Year of Human Rights, including in its 1968 activities a UDHR ‘anniversary statement’ by the Director-General, a World Health Day statement ‘featur[ing] concrete examples of WHO’s determination to ensure the right to health,’ and the devotion of ‘WHO publications and… special articles to achievements illustrating the right to health.’

WHO’s neglect of the development of human rights norms and the implementation of human rights obligations would reach its nadir in WHO’s halting participation in the 1968 International Conference on Human Rights.

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21 UN Committee on the International Year for Human Rights 1964.
22 WHO N64/180/5(B), memorandum from WHO Deputy Director-General P. Dorolle to WHO LUN Director, 29 June 1964.
23 Administrative Committee on Coordination 1966.
Where other specialised agencies sent several high-ranking representatives, WHO provided only a single delegate to the Teheran Conference, Dr. A. H. Taba, Regional Director for the Eastern Mediterranean (and, on his leaving after one week, the Senior WHO Adviser on Malaria Eradication in Iran, representing WHO ‘part-time and as necessary’). Where other specialised agency reports elaborated human rights within their competence, WHO’s report—‘The Right to Health – Its Implications in WHO’s Programme of Work’—discussed WHO’s technical programs rather than states’ implementation of health rights. As a result, the resolutions rising out of the Conference on Human Rights did not address health rights in anything more than passing mention, an omission reflecting WHO’s avoidance of inter-agency collaboration and antipathy to rights-based approaches to health.

Without an institutional bulwark at the intersection of health and human rights, the Conference served as a platform through which extant fears of scientific and technological progress would become programmatised in a resolution directing the UN to study the human rights threat of science and technology. Concluding that much remains to be done to implement human rights, the Conference set out a vision of human rights as protective rather than promotive, extending an earlier European consensus that ‘improved technology may lead to a rise in the economic standard of living, yet create

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27 WHO N64/180/5, memorandum from UN WHO EMRO Regional Director A.H. Taba to WHO Director-General M.G. Candau, 30 May 1968.
new threats to health and safety.\textsuperscript{29} From the outset of the 1968 Conference, French Prime Minister Georges Pompidou (a longtime leader in French mid-century hostility towards the sciences\textsuperscript{30}) specifically targeted the contemporary ‘scientific and technical revolution’ in health, proclaiming that ‘this Conference will certainly feel itself bound to outline a programme bearing on the problems which this very revolution raises for human rights and life.’\textsuperscript{31} Following the balanced statement of UN Secretary-General U Thant—that ‘it is to the ways and means of turning science and technology from destruction to the enhancement of life that we should devote our urgent efforts’\textsuperscript{32}—France proceeded to propose a reactionary draft resolution on the issue,\textsuperscript{33} which was incorporated in the Final Act of the International Conference on Human Rights as a recommendation to develop a UN study addressing:

1. Respect for privacy in view of recording techniques.
2. Protection of the human personality and its physical and intellectual integrity in view of the progress in biology, medicine, and biochemistry.
3. The uses of electronics which may affect the rights of the person and the limits which should be placed on its uses in a democratic society.

\textsuperscript{29} UN 1967, p. 15.
\textsuperscript{30} Gilpin 1968, p. 303.
\textsuperscript{31} UN 1968(a), p. 42.
\textsuperscript{32} Ibid., p. 37.
\textsuperscript{33} UN 1968(b).
4. More generally, the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural, and moral advancement of humanity.\textsuperscript{34}

Thus, with this cautionary framing of the dangers of science and technology and a paradigm shift in UN priorities favouring protective programs, the UN General Assembly adopted a December 1968 resolution on ‘Human Rights and Scientific and Technological Developments’ to carry out the recommendations of the Proclamation of Teheran.\textsuperscript{35}

In accordance with this resolution, the General Assembly invited the UN Secretary-General to undertake a series of four studies ‘of the problems in connexion [sic] with human rights arising from developments in science and technology’ (emphasis added).\textsuperscript{36} To accommodate the General Assembly’s request for reports on these human rights ‘problems,’ the UN Division on Human Rights sought to gather the expertise of WHO and other specialised agencies into an Advisory Committee on the Application of Science and Technology to Development.\textsuperscript{37} These interdisciplinary discourses would encompass WHO’s human rights activities throughout the next decade—outlined in the timeline in Figure 1 below—structuring the institutional mechanisms through which WHO would come to apply human rights to health:

[Insert Figure 1 about here]

\textsuperscript{34} UN 1968(a), p. 12.
\textsuperscript{35} UN General Assembly 1968, Res 2450 (XXIII)
\textsuperscript{36} Ibid., ¶1.
\textsuperscript{37} UN SO 214(12), letter from UN Division of Human Rights Director Marc Schreiber to WHO Director-General Marcolino G. Candau, 11 April 1969.
A. WHO Neglect for Human Rights

Although there was great initial excitement that WHO would bind the entire world under a shared set of principles for health,\textsuperscript{38} the superpowers’ irreconcilable positions on social reforms and national health services would soon lay bare WHO’s claims to apolitical health policy and paralyze WHO’s human rights actions. Buffeted by political forces,\textsuperscript{39} the WHO Secretariat allowed the political forces of the Cold War to shape its development and implementation of human rights for health, as ‘efforts to place health goals above power politics were pointedly rejected.’\textsuperscript{40} With the Soviet states abruptly withdrawing from WHO beginning in 1949,\textsuperscript{41} WHO’s budget and priorities would soon be subject to the continued funding of the United States.\textsuperscript{42} Where WHO had previously held up the UDHR’s declaration of a right to health as according with the Organisation’s synoptic approach to underlying determinants of health, WHO—under the leadership of Director-General M.G. Candau, the Brazilian former Director of the Division of Organisation of Public Health Services—would come to abrogate its relationship to health rights, finding human rights obligations to involve ‘social questions’ that were argued to be beyond WHO’s ‘competence.’\textsuperscript{43}

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\textsuperscript{38} ‘International health or world health?’ 1948, p. 260.
\textsuperscript{39} Pethybridge 1965, pp. 247-51.
\textsuperscript{40} Lee 2009, p. 24.
\textsuperscript{41} Goodman 1952.
\textsuperscript{42} Hoole 1976.
\textsuperscript{43} UN SO 216/3, letter from WHO Assistant Director-General L. Bernard to UN Deputy Director, Division of Human Rights Edward Lawson, 18 July 1966.
with the International Year of Human Rights,' it included activities taken by nearly every international organisation – but not WHO.\textsuperscript{44} As the Organisation had largely failed to engage with the legal obligations of the human right to health, this disposition would dictate its early response to the UN Programme on Human Rights and Scientific and Technological Developments.

Ambivalent about responding to the UN's initial request for information on the 'protection of the human personality and its physical and intellectual integrity, in the light of advances in biology, medicine and biochemistry,' WHO staff—who were 'not enthusiastic'\textsuperscript{45} about a resolution described internally as 'utopian'\textsuperscript{46}—responded to the UN's 1969 request for a report on WHO activities with a 'provisional memorandum' that merely:

(1) criticized this UN mandate as being 'extremely general in character and neither enumerates nor illustrates 'problems in connexion [sic] with human rights arising from developments in science and technology,'

(2) referenced the work of nongovernmental organisations (primarily the World Medical Association) in preparing resolutions on medical ethics, and

(3) provided general descriptions of WHO's research and technical activities from \textit{The Medical Research Programme of the World Health Organization, 1964-1968}.

In enumerating its own activities at the intersection of health and human rights, WHO cited the Executive Board's 1951 cooperation in the preparation

\textsuperscript{44} UN 1968(c), A/7195.
\textsuperscript{45} WHO N64/180/5, memorandum from M. Sentici to M. Sacks, 8 May 1969.
\textsuperscript{46} WHO N64/180/5(E), memorandum from WHO Chief RECS/OPR to WHO Director RECS, 2 June 1969.
of the draft International Covenant on Human Rights and the Secretariat’s recent development of ‘principles’ in drug testing and safety. The WHO Secretariat deferred the preparation of its detailed preliminary report to a later, unspecified date.47

In the absence of a WHO report, the UN Division of Human Rights’ preliminary 1969 report on human rights and scientific and technological developments dealt only with the harms of science, containing little more than a series of extended article quotations on topics ranging from experiments on human subjects to deterioration of the environment to the hazards of atomic radiation.48 When distributed informally to WHO staff, this report was lambasted in the Secretariat’s internal review, alternately described by section chiefs as a ‘waste of time’ and ‘hotch-potch which looks like a product of schizophrenia,’ ‘biased’ and ‘unbalanced,’ ‘sensationalist,’ and a misprioritisation of harms.49 In WHO’s confidential, ‘frank’ response to the UN, the WHO Secretariat suggested that the report ‘must be completely revised’ or else delayed to solicit additional commentary.50 The UN Division of Human Rights response—while acknowledging that the report had over-emphasized the dangers and threats to human rights from science and technology, agreeing to several specific changes—stressed that WHO’s

47 UN SO 214(12), letter from WHO Division of Co-ordination and Evaluation Director A. Bellerive to UN Division of Human Rights Director Marc Schreiber, 3 July 1969.
48 UN SO 214(12-1-2), letter from UN Division of Human Rights Senior Human Rights Officer George Brand to WHO Division of Co-ordination and Evaluation Director A. Bellerive, 8 Dec. 1969.
49 E.g. WHO N64/180/5, memorandum from WHO HL Chief to WHO PC Chief, 18 Dec. 1969.
50 UN SO 214(12-1-2), letter from WHO Division of Co-ordination and Evaluation Director A. Bellerive to UN Division of Human Rights Senior Human Rights Officer George Brand, 12 Jan. 1970.
limited contribution was responsible for many weaknesses in the report and declined to postpone its mandated submission to the Commission on Human Rights. Following several contentious telephone conversations between WHO and the UN Division of Human Rights, the WHO Secretariat requested that its Liaison to the UN attend the 1970 meeting of the UN’s Commission on Human Rights to defend WHO’s position and request that WHO assume complete responsibility for future reports. While WHO notes from the meeting of the Commission on Human Rights indicate that the WHO representative ‘expressed regret that fuller use had not been made of WHO’s resources; and assured the Commission that the Organisation was prepared to consider the assumption of complete responsibility for the preparation of further reports,’ the draft report of the Commission meeting made no reference to any WHO statement.

Forced to defend the WHO Secretariat’s human rights efforts at the May 1970 session of the World Health Assembly, Director-General Candau presented WHO’s position on the UN Report on Human Rights and Scientific and Technological Developments. With the World Health Assembly shifting its priorities given the return of the Soviet states and the rise of a Non-Aligned Movement of developing states (raising tensions between the limited medical focus of the Secretariat and the expansive political goals of the Assembly), Assembly delegates responded with pointed criticism that matters directly

51 UN SO 214(12-1-2), letter from UN Division of Human Rights Senior Human Rights Officer George Brand to WHO Division of Co-ordination and Evaluation Director A. Bellerive, 16 Feb. 1970.
52 WHO N64/180/5, telegram from WHO Assistant Director-General Bernard to WHO Liaison Office with United Nations, 24 Feb. 1970.
53 WHO N64/180/5(E), memorandum from WHO Liaison Office with United Nations Director to WHO CE Director A. Bellerive, 2 April 1970.
related to health were being studied by the UN rather than by WHO.\textsuperscript{55} To reengage the WHO Secretariat in this process, the World Health Assembly—reaffirming the right to health and specifying that the health aspects of human rights were within the competence of WHO—adopted a resolution calling for WHO cooperation in this effort—‘to reaffirm to the Secretary-General of the United Nations the Organisation’s willingness to undertake responsibility for the preparation of a document dealing with the health aspects of human rights in the light of scientific and technological developments’ and to study the implications of this effort to WHO programming.\textsuperscript{56} Although the Secretariat would respond to this World Health Assembly resolution by preparing a separate summary on ‘medical problems,’\textsuperscript{57} the outside consultant enlisted to draft this summary received explicit instructions that the paper ‘would eliminate any indication of action by the Organization or any expression of strongly held views in any of the sections and we would like it to be as descriptive and ‘low-key’ as possible.’\textsuperscript{58}

The resulting WHO paper on ‘Human Rights and Scientific and Technological Developments’ discussed both the human rights concerns of science and technology and the health harms from human rights violations. However, with WHO section chiefs having an opportunity to comment on an initial draft, using their revisions to eliminate positive state obligations to promote health, the final report acknowledged at most that infringement of

\begin{thebibliography}{99}
\bibitem{55}Quimby 1971.
\bibitem{56}World Health Assembly 1970, Res. 23.41.
\bibitem{57}UN SO 214(12-1-2), letter from WHO Division of Co-ordination and Evaluation Director A. Bellerive to UN Division of Human Rights Director Marc Schreiber, 23 July 1970.
\bibitem{58}WHO N64/18/5(3), letter from WHO Programme Co-ordination Chief Michael R. Sacks to Sir John Charles, 16 Sept. 1970.
\end{thebibliography}
various human rights ‘may, directly or indirectly, affect the individual’s physical, mental or social health, and in doing so contravene or violate two human rights – the more specific human right of freedom and the right to health.’\(^{59}\) Despite internal concern that WHO’s paper was too technocratic in its description of health harms and not sufficiently expansive in its ‘comprehensive summary’ of the health aspects of human rights,\(^{60}\) WHO submitted its preliminary memorandum to the General Assembly in October 1970.\(^{61}\) With the UN’s addendum to the Secretary-General’s preliminary report on Human Rights and Scientific and Technological Developments quoting from this WHO report,\(^{62}\) but with the WHO Secretariat again declining to provide any requested comments on UN Secretariat reports,\(^{63}\) the duelling UN preliminary report and WHO preliminary memorandum were taken up by the 1971 meeting of the Commission on Human Rights.

During this March 1971 meeting of the Commission on Human Rights, the Division of Human Rights laid out the UN Secretariat’s programme of work for the coming years, suggesting a postponement of discussion on health until 1974, at which point ‘it was hoped that the work undertaken by WHO would be sufficiently advanced for a report to be made.’\(^{64}\) (Although WHO presented

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\(^{60}\) WHO N64/180/5(E), telegram from WHO LUN Director to WHO CE Director, 26 Aug. 1970.

\(^{61}\) WHO N64/180/5(E), letter from WHO Director-General M.G. Candau to UN Secretary-General U Thant, 20 Oct. 1970.

\(^{62}\) UN SO 214(12-1-2), letter from UN Division of Human Rights Chief of Section George Brand to WHO Liaison Office with the UN Director R.L. Coigney, 1 Dec. 1970.

\(^{63}\) WHO N64/180/5(E), memorandum from WHO PC Chief to WHO CE Director, 14 Dec. 1970.

\(^{64}\) WHO 4N64/445/2, Note for the Record, 13 April 1971, ‘Consideration of the item on “Human Rights and Scientific and Technological Developments” at
its own memorandum, acknowledging both the positive and negative aspects of technology and science on health, the Commission responded only by requesting that specialised agencies in the future transmit all information to the Commission through the Secretary-General’s report.) Where several state representatives on the Commission on Human Rights insisted that the UN focus additionally on the benefits of scientific and technological progress (rather than simply the dangers), the resulting Commission resolution requested that future UN Secretary-General reports ‘take[e] into account also the possibility of using them [developments in science and technology] to improve living conditions and the enjoyment of economic, social and cultural rights.’

Immediately following this Commission meeting, the UN Division of Human Rights met with WHO staff in Geneva to discuss the UN agenda for Human Rights and Scientific and Technological Developments. In a far-reaching conversation, UN staff suggested that WHO identify additional ways and forums, including UN seminars, in which attention could be paid to the benefits of science and technology through the lens of the right to health.


65 Commission on Human Rights 1971, Res. 10(XXVII) ¶4.
memorandum on ‘Human Rights and Scientific and Technological Developments.’ As the UN continued to pursue the application of human rights to scientific and technological developments with other specialised agencies, WHO staff fumed internally over their lack of control in human rights debates on health, arguing that ‘at several stages in the development of this item, the UN Secretariat systematically ignored WHO’s interest in the question, its preliminary memorandum and its competence.’

WHO cooperation continued reluctantly in 1972, based largely on prodding from the Executive Board and World Health Assembly, with WHO Secretariat representatives meeting again with the Director of the UN Division of Human Rights in May 1972 to note the importance of scientific and technological development to health and to argue that ‘the benefits derived therefrom should not be minimized or distorted by a negative approach centering entirely on abuses.’ Although the UN Director agreed that both positive and negative aspects would be emphasized in the future, WHO’s scaled-down participation in the subsequent June 1972 UN seminar on Human Rights and Scientific and Technological Developments (with WHO backing out of its paper presentation on the right to health at the last minute) enabled discussion among state representatives to return to the negative implications of technology on health. With WHO continuing not to send

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69 WHO Executive Board 1972.
70 WHO 4N64/372/1, WHO Notes for the Record, ‘Meeting with Mr. Marc Schreiber, Director, United Nations Division of Human Rights – Friday, 5, May 1972’, 29 May 1972.
71 WHO 118/ssc, telegram from WHO Bellerive to UN Schreiber, 8 June 1972.
72 WHO 4N64/440/7, memorandum from WHO Liaison Officer with IAEA G. Meilland to WHO CE Director Bellerive, 6 July 1972.
important documentary support on human rights for the UN’s work on science and technology, a Division of Human Rights section chief was sent to WHO headquarters in July 1972 to collect the relevant documents himself from WHO’s ‘International Digest of Health Legislation.’ Given the WHO Secretariat’s continuing intransigence towards human rights discourse, the UN worked with contributions from every specialised agency except WHO to create its December 1972 Report on ‘The Impact of Scientific and Technological Development on Economic, Social and Cultural Rights,’ leading the UN Secretariat to analyse all economic and social rights likely to be affected by science and technology except the right to health. When UN General Assembly came to review this report—noting the obvious omission of health rights in the UN’s study of economic, social and cultural rights—the General Assembly resolved that the Secretary-General pay greater attention in the final UN study to, *inter alia*, the right to health.

**B. WHO Reclamation of Human Rights**

With the World Health Assembly pressing forward in the early 1970s to bring change to the leadership and direction of the WHO Secretariat, however, there was a return to the promise of international human rights standards as a means to realise an improved standard of global health. Concurrent with the expansion of the broader human rights movement, human rights organisations, and human rights instruments, WHO would seek to expand its influence on determinants of health by redefining global

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73 UN SO 212 (12-1-2), letter from UN Division of Human Rights Chief of Section George Brand to WHO Programme Co-ordination Chief Michael R. Sacks, 30 May 1972.
74 UN 1973.
75 UN General Assembly 1972, Res. 3026B (XXVII). ¶ 3.
76 Donnelly 1986, pp. 599-642.
health policy to reflect human rights standards. Increased human rights coordination among specialised agencies within the UN system would buttress WHO efforts, providing added collaborative opportunities in human rights advancement for health. With the July 1973 election of Director-General Halfdan Mahler, the Danish Assistant Director-General and former Director of WHO’s Program in Project Systems Analysis, WHO embarked on its Health For All Campaign as a means to advance primary health care through rights-based global health governance. As the UN moved to commemorate the twenty-fifth anniversary of the UDHR, WHO’s August 1973 progress report proclaimed the Organisation’s new path for health policy, a path founded upon the bedrock principles of human rights, emphasizing the rights-based language of the WHO Constitution as a framework for the promotion of medical science and technology:

Disease and disability are widespread, and very few countries in the world are providing to all their citizens in need the very best that medical science and technology have to offer. So the value of the right [to health] lies in its acceptance by governments as a priority goal, its general recognition as a basis for practical health policy.

The WHO Secretariat would hold out human rights as a force for global health, using international negotiations, articles, and conferences to apply the

77 Meier 2010.
78 Administrative Committee on Co-ordination 1974.
right to health to the benefits of science and technology and extoll human rights obligations as guiding principles to the achievement of health for all.

Reengaging the UN’s longstanding inter-agency collaboration on the human rights implications of scientific and technological developments and taking up its repeatedly postponed study on Health Aspects of Human Rights in Light of Scientific & Technological Developments, WHO began in 1973 (a) to comment on UN reports relative to the right to health and (b) to develop an independent report on the health aspects of human rights.\(^{80}\) In considering the health aspects of human rights, WHO found assistance for this study from its nongovernmental partners, with WHO benefiting from Secretariat participation in the October 1973 meeting of the World Medical Association (discussing problems of computers and confidentiality in medicine)\(^ {81}\) and the November 1973 Roundtable Symposium of the Council for International Organisations of Medical Sciences (CIOMS) (devoted to medical ethics and human rights).\(^ {82}\) With WHO’s Chief Legal Officer participating in this latter meeting, a role in international human rights law that had not previously been part of the mandate of WHO’s legal office, WHO sought to use this CIOMS Roundtable ‘as a prelude to our contribution to the Commission on Human Rights.’\(^ {83}\) Soliciting feedback on early drafts of WHO’s integrated report on human rights and scientific and technological developments in public health, WHO program officers came together to prepare a complete draft in early


\(^{81}\) World Medical Association 1973.

\(^{82}\) WHO 1974.

\(^{83}\) WHO N61/86/154(A), memorandum from WHO PC Chief to WHO Director General, 23 Feb. 1973.
1974, whereupon Director-General Mahler sought to tailor this draft to meet WHO’s overlapping responsibilities before the Commission on Human Rights, UN General Assembly, WHO Executive Board, and World Health Assembly.\textsuperscript{84} With meetings between the WHO leadership and the UN Division of Human Rights beginning in October 1974 to finalize the WHO report,\textsuperscript{85} it was decided that WHO’s health report for the UN Secretary-General had reached such an expansive scope that it could be cross-applied to the UN General Assembly’s related request for comment on the protection of populations against social and material inequalities resulting from the use of scientific and technological developments and to WHO’s consultations on previous reports by the Division of Human Rights.\textsuperscript{86}

WHO’s final report, ‘Health Aspects of Human Rights in the Light of Scientific and Technological Development,’ covered a wide range of topics at the intersection of health technology and human rights, including chapters on the beginning of life, reproduction, human experimentation, death, organ transplantation, computerized medical records, psychosurgery, environmental protection, and compulsory measures for health protection. Overlying all these topics, this WHO report begins with a chapter on ‘health as a human right.’ Through this introductory chapter, WHO presented both ‘what benefits and what parallel potential risks new developments may entail as far as the right to health,’ considering ‘the exact significance of this right, what it involves, and what is its true perspective’ (emphasis added). Reinterpreting

\textsuperscript{84} WHO 4N64/445/2, memorandum from WHO Legal Director and Programme Co-ordination Chief to WHO Chiefs of all Sections, 27 June 1974.
\textsuperscript{86} WHO 4N64/445/2, telegram from WHO Programme Co-ordination Chief Flache to WHO UN Liaison Malafatopoulos, 5 Nov. 1974.
the WHO Constitution to assure a comprehensive system of social insurance, an interpretation long resisted by the political goals of the United States and the medical agenda of WHO staff, WHO found collective public health obligations under the right to health, laying out a communitarian human rights ethic by which there exist ‘positive aspects for which the State and the community have a duty to ensure that the individual citizen benefits, but those rights may entail negative elements in that the individual citizen has the duty to limit his rights for the benefit of the community.’ Given this overview and outline of relevant topics, WHO’s report concludes that ‘[t]he right to health presents negative as well as positive aspects,’ with this negative conception framing public health measures in human rights terms, including ‘the duty of the citizen to submit himself to a number of requirements, as for example immunization or other compulsory measures, in order to prevent the right to health of other citizens being endangered.’

With the WHO Secretariat now aligned with the majority of WHO member states and with the United States less resolute in its opposition, the Executive Board would formally approve the Secretariat’s report, finding in January 1975 that ‘the right of every human being to the enjoyment of the highest attainable standard of health, as laid down in the WHO Constitution, can best be ensured under conditions of continuing scientific and technological progress.’ The WHO Secretariat would take comfort in this Executive Board endorsement and embark on future human rights studies concerning scientific and technological developments related to economic and

87 WHO 1974.
88 WHO Executive Board 1975.
social development. Marking this shift, Director-General Mahler submitted the Executive Board’s resolution and WHO report to the UN Secretary-General, expressing his personal commitment to human rights cooperation: ‘I wish to assure you that I look forward to an even closer collaboration with the United Nations and other specialised agencies … for the successful accomplishment of this broad matter of concern to the individual and to the community.’

Given the Executive Board’s approval ‘to continue the studies suggested in the report,’ WHO sought in early 1975 to reclaim its leadership role in collaborative studies of health rights, reaching out first to the UN Division of Human Rights and other specialised agencies to organize an informal joint meeting to discuss collaboratively the future needs of the Commission on Human Rights. In accordance with the UN General Assembly’s invitation ‘to consider the preparation of recommendations concerning international standards,’ WHO also reached out to national governments for assistance, with the Director-General pointing out that: (1) ‘health is a fundamental human right,’ (2) WHO ‘has a role to play in human rights,’ and (3) ‘future contributions to the United Nations should reflect the experience of Member States.’

Finally, as the WHO Secretariat began its

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89 WHO 4N64/445/2, memorandum from WHO CWO Chief M.R. Sacks and WHO LEG Director F. Gutteridge to WHO COR Director and WHO Deputy Director-General, 5 Feb. 1975.
90 WHO 4N64/445/2, letter from WHO Director-General H. Mahler to UN Secretary-General, 18 Feb. 1975.
91 UN G/SO214(12-1-2), letter from WHO Co-ordination with Other Organizations Chief Michael R. Sacks to UN Division of Human Rights Director Marc Schreiber, 27 Feb. 1975.
92 E.g., WHO 4N64/445/2, letter from WHO Director-General M. Mahler to UNESCO Director-General Amadou Mahtar M'Bow, 4 Mar. 1975.
93 UN General Assembly 1974, Res. 3268(XXIX).
first concerted study of these human rights issues—working feverishly to prepare a report on international standards for the UN General Assembly’s 1975 Session—WHO sought further assistance from its nongovernmental partners ‘in developing new approaches to studies in the area of human rights.’

As the UN Commission on Human Rights moved in 1975 to create a rights-based framework to balance state concerns for public health with individual liberties, WHO submitted a detailed memorandum to assist the appointed UN Special Rapporteur in her study on ‘The Individual’s Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights.’ With this memorandum originating out the WHO’s legal office—newly engaged in human rights issues and consequently renamed the Office of Constitutional and Legal Matters—WHO provided detailed legal reasoning for state derogations from individual rights for the public’s health, outlining individual obligations (1) to submit to health examinations and vaccinations, (2) to notify health authorities of communicable disease exposure, and (3) to undergo treatments, surveillance, isolation or hospitalization. Framing a human rights basis for public health, WHO’s legal staff followed through on the Organisation’s expansive reinterpretation of the WHO Constitution, finding in WHO’s constitutional mandate for health that ‘the role of the Organisation extends into the realm of social medicine and into such specific fields as mental health, public health, education, nutrition, housing, maternal and child

95 WHO 4N64/445/2, letter from WHO Director-General H. Mahler to multiple nongovernmental organizations, 13 Mar. 1975.
health and welfare.'

To support WHO's legitimacy in setting global public health standards, WHO's legal staff referenced and provided the UN Special Rapporteur with copies of WHO's evolving legislative standards (including the International Health Regulations and the International Digest of Health Legislation) and legal analyses (on national legislation, regulation, and jurisprudence clarifying public health authorities).

In the midst of these studies, the UN Secretariat moved in April 1975 to draft the Secretary-General's final report pursuant to the UN General Assembly's original 1968 resolution on 'Human Rights and Scientific and Technological Developments' – a report on 'the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity.' To accommodate its various human rights commitments related to scientific and technological developments, WHO staff met with the Division of Human Rights in May 1975, whereupon WHO agreed to produce:

(1) a short summary for the UN Secretary-General's report on the effects of scientific and technological developments on social and material inequalities and on the benefits to human rights resulting from developments in science and technology and

(2) a full report to the 1976 session of the Commission on Human Rights on the benefits of science and technology in raising standards of living

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96 WHO 4N64/327/1, letter from WHO Constitutional and Legal Matters Chief Claude-Henri Vignes to UN Division of Human Rights Deputy Director Erica Irene Daes, 19 Sept. 1975.
to facilitate the enjoyment of underlying determinants of health, and as such, the realization of the human right to health.\textsuperscript{97}

Thereafter participating in inter-agency meetings to finalize the UN Secretary-General’s report on the balance between technological progress and health, WHO’s human rights involvement would result in a UN chapter focused on the positive human rights implications of technology on health – ‘the uses to which modern science and technology may be put in the interest of promoting human rights.’ Recommending a UN Declaration on Human Rights and Scientific and Technological Developments,\textsuperscript{98} these meetings would—for the first time—frame the beneficial aspects of new biological and medical discoveries in promoting health. As a result, these beneficial effects of science and technology in realising the right to health would be incorporated in (1) the UN Secretariat’s 1975 Report on ‘the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity’\textsuperscript{99} and (2) the UN General Assembly’s 1975 consideration of a draft declaration concerning ‘the use of scientific and technological progress in the interest of peace and for the benefit of mankind.’\textsuperscript{100}

Drawing on WHO’s contributions, the 1975 session of the UN General Assembly would highlight global differences between individual and collective


\textsuperscript{98} UN G/SO214(12-1-5), letter from UN Division of Human Rights Officer-in-charge George Brand to WHO Deputy Director-General Thomas A. Lambo, 26 Sept. 1975.

\textsuperscript{99} UN 1975.

\textsuperscript{100} UN General Assembly 1975, Res. 3384 (XXX).
rights in health. With Soviet states long heralding the positive benefits of scientific and technological progress in addressing ‘human rights problems of society as a whole’ (a societal concern reflected in Soviet reengagement with WHO and the global smallpox eradication campaign), the Soviet Union sought to leverage the UN’s human rights debate to advance technological progress for the public’s health. Following ideological debates among states on the relative emphasis of societal rights vis-à-vis individual rights—with developing states joining the Soviet bloc in opposing Western-style individual rights protections against the harms of science and technology—the UN General Assembly adopted (95-0, 20 abstentions) the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind on November 10, 1975.

With a powerful base of authority in this Declaration, WHO would develop its paper on the ‘positive effects of technological advances on health and human rights,’ completing the UN’s series of papers concerning the impact of science and technology on the range of human rights codified in the UDHR. These benefits of science and technology would be incorporated into WHO preparations for an International Conference on Primary Health Care, a conference leading to what would become WHO’s principal rights-based global health policy pursuant to the 1978 Declaration of Alma-Ata.

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103 Parrott 1983.
104 UN General Assembly 1975, Res. 3384 (XXX).
105 UN G/SO214(12-1-2), letter from UN Division of Human Rights Officer-in-Charge George Brand to WHO Co-ordination with other Organizations Chief Michael R. Sacks, 10 Nov. 1975.
106 WHO 1978.
As the UN Commission on Human Rights continued debates on the risks and benefits of science and technology on human rights, the WHO Secretariat would assure that the positive benefits of science and technology on health rights would not be abandoned in future negotiations, resulting in detailed support for the realization of health through the UN’s 1979 Conference on Science and Technology for Development and the UN General Assembly’s 1982 resolution concluding its program on Human Rights and Scientific and Technological Developments.¹⁰⁷

III. WHO Advances International Human Rights for Global Health Policy

Where global policy evolved in its application of human rights, from the prevention of the risks of science and technology to the promotion of the benefits of science and technology, WHO became leading force in this shift for global health. As seen in this case, when WHO has taken leadership in health rights, engaging consistently in political advocacy to meet its public health goals through human rights norms, it has proven its ability to influence international human rights discourse to facilitate global health policy.

The development of WHO’s ‘Health Aspects of Human Rights in the Light of Scientific and Technological Developments’ had a clear effect on the UN General Assembly’s adoption of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, marking a paradigm shift in the predominant ideologies guiding global health governance through human rights. While seeking to frame the health implications of scientific and technological development, WHO emerged at the intersection of two critical debates taking place in human

¹⁰⁷ UN General Assembly 1982, Res. 3656.
rights and global health policy: the harms and benefits of science and technology and the individual and collective nature of human rights. At this crossroads for health and human rights, WHO acted influentially to highlight the benefits of science and technology on a human right to health, implementing this right to encompass collective obligations for the public’s health. Over the course of a decade, these WHO positions shifted human rights through global health governance, employing international human rights to frame global health policy. When the UN General Assembly culminated its rights-based focus on science and technology, its Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind would frame science and technology as a benefit to the human rights of populations, rather than as an infringement on the freedoms of individuals, setting an evolving framework that would come to make public health a human right.

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Figure 1 – WHO’s Evolving Participation in the UN’s Programme on Human Rights and Scientific and Technological Developments