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Making Health a Human Right: The World Health Organization and the United Nations Programme on Human Rights and Scientific and Technological Developments

THIS ARTICLE EXPLORES the policy origins of rights-based global health governance through the World Health Organization (WHO). Examining the genesis of WHO's influence on international health policy through human rights collaboration, the article traces WHO's evolving organizational role in the implementation of human rights under the United Nations (UN) Programme on Human Rights and Scientific and Technological Developments. In highlighting a pivotal transition in WHO's approach to human rights in the 1970s, this article analyzes a path through which WHO came to advance

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the human right to health, shifting international discourse from protective individual rights to promotive societal rights in creating an international legal basis for public health. With WHO employing the right to health as a source of positive obligations on states to realize the vertical benefits of science and technology and the horizontal benefits of primary health care, this analytic narrative highlights the causes and effects of WHO's first concerted effort to advance public health through human rights.

At the intersection of scientific advancement, public health, and human rights, previous historical accounts have focused largely on international treaty law, overlooking the vital role of the UN's fifteen-year Programme on Human Rights and Scientific and Technological Developments.¹ Where such studies have been undertaken, histories of the UN' Programme on Human Rights and Scientific and Technological Developments have largely examined these debates from the perspective of international relations, avoiding discussion of the international organizations directly responsible for developing this UN Programme.² Given a renewed interest in the role of international organizations and international civil servants in international relations scholarship, with such interest "beyond the state" leading to a range of historical studies on the WHO Secretariat,³ this study looks to the impactful role of the WHO Secretariat at the intersection of public health and human rights.

In the organizational history of human rights in health policy, scholars have reached contradictory conclusions on the WHO Secretariat's role in the advancement of human rights, finding either that WHO had a positive

¹Richard Pierre Claude, *Science in the Service of Human Rights* (Philadelphia: University of Pennsylvania Press, 2002).

²Sadako Ogata, "Introduction: United Nations Approaches to Human Rights and Scientific and Technological Developments," in C.G. Weeramantry, ed., *Human Rights and Scientific and Technological Development* (Tokyo: United Nations University Press, 1990).

³Amy L.S. Staples, *The Birth of Development: How the World Bank, Food and Agriculture Organization, and World Health Organization Changed the World, 1945–1965* (Kent, OH: Kent State University Press, 2006); Erez Manela, "A Pox on Your Narrative: Writing Disease Control into Cold War History," *Diplomatic History* 34 (2010): 299–323; Nitsan Chorev, *The World Health Organization Between North and South* (Ithaca: Cornell University Press, 2012).

influential presence in the evolution of human rights discourse,⁴ or that public health and human rights always “evolved along parallel but distinctly separate tracks,” joined for the first time with the HIV/AIDS pandemic.⁵ Both of these accounts present an incomplete history of international health and human rights.

Overlooking the institutional determinants of WHO’s early neglect for rights-based approaches to health, from its founding in 1948 through the late 1960s, such accounts cannot explain WHO’s engagement with international efforts to realize the human right to health in the early 1970s. While scholars have speculated on the reluctance of WHO to engage in the early development of the human right to health—discussing this reluctance in the context of the conflicting foreign policies of the Cold War and the reluctance of WHO medical staff to engage in legal debates⁶—few have attempted to examine the global forces that led WHO to embrace the human right to health and the health policy gains achieved by WHO when it began to participate in the implementation of human rights for the public’s health.⁷

By focusing on WHO’s shifting role in the UN Programme on Human Rights and Scientific and Technological Developments, examining the evolution of human rights in the tumultuous decade following the 1968 International Conference on Human Rights, this analytic narrative uncovers a lost chapter in the history of the right to health and elucidates a key transition in the progression of WHO’s rights-based approach to health policy. From a fear of the risks of technology arising out of the International Conference on Human Rights, the UN pursued a policy agenda that framed medical science as a serious threat to the rights and freedoms of individuals. However,

⁴Philip Alston, “The United Nations Specialized Agencies and Implementation of the International Covenant on Economic, Social and Cultural Rights,” *Columbia Journal of Transnational Law* 18 (1979): 79–118.

⁵Sofia Gruskin, Edward J. Mills, and Daniel Tarantola, “History, Principles, and Practice of Health and Human Rights,” *Lancet* 370 (2007): 449–454.

⁶Alison E. Lakin, “The World Health Organisation and the Right to Health,” PhD dissertation, Kings College, 2001.

⁷Allyn L. Taylor, “Making the World Health Organization Work: A Legal Framework for Universal Access to the Conditions for Health,” *American Journal of Law and Medicine* 18 (1992): 301–346.

once the WHO Secretariat actively asserted a position that conceptualized health as a human right, WHO's emergence in rights-based policy discourse reframed the benefits of science and technology in realizing the right to health, and then expanded human rights discourse to justify public health systems.

In the development of the UN Programme on Human Rights and Scientific and Technological Developments, international policy turned against science under the auspices of human rights, and in responding to the effects of this opposition on medical science, WHO was pressed to reassert the human right to health—a right it had neglected during crucial years in the normative ascendancy of human rights. Pressed by the health priorities of developing state governments and driven by the human rights engagement of its legal office, WHO clarified the scope and content of the right to health for the first time, employing its constitutional mandate for human rights to redefine public health in international policy. Where international discourse originated from a vision of human rights in opposition to the dangers of scientific and technological developments, WHO's advocacy in the 1970s shifted the focus of international legal discourse from the negative to the positive effects of science and technology on human rights. Structuring a human rights framework for public health, WHO positioned itself through human rights to achieve health policy gains, employing this rights-based approach to vertical health interventions as a human rights foundation for its focus on horizontal primary health care systems.⁸

HUMAN RIGHTS IN HEALTH POLICY

In considering the historical evolution of human rights in international health, this narrative focuses on human rights under international law as a tool for public health, with international human rights rising in international relations to become an influential legal discourse in framing

⁸Within the health literature, “vertical” programs refer to focused disease-specific interventions (often with separate funding streams), whereas “horizontal” programs refer to more integrated public health systems. See Tamara Hafner and Jeremy Shiffman, “The Emergence of Global Attention to Health Systems Strengthening,” *Health Policy and Planning* 28 (2013): 41–50.

public policy reforms. Under the application of human rights to health during the time period of this study, international law identified individual rights holders and their entitlements and corresponding state duty-bearers and their obligations, framing demands on the government duty-bearer to realize rights through, among other options, legal reforms, budget allocations, or program evaluations.⁹ Looking to human rights as a basis for public health demands, originating from the right to health but expansively encompassing a wide range of health-related rights, this rights-based approach began in the early 1970s to apply human rights as a framework for health policy.¹⁰ With these reforms structured at the international level by WHO's coordination authorities, WHO came to look to human rights as a normative basis for its programs and policies. Conceptualizing international health goals as "human rights obligations" offered international legal standards by which to structure state duties and evaluate government conduct, shifting WHO's analysis of health policy from social justice to legal accountability and drawing on the UN's system of human rights under international law.

The codification of health-related rights under international law had arisen in the context of the Second World War. On January 6, 1941, U.S. President Franklin Delano Roosevelt announced to the world that the post-war era would be founded upon four "essential human freedoms"—freedom of speech, freedom of religion, freedom from fear, and freedom from want—with the final of these "Four Freedoms," freedom from want, introducing a state obligation to provide for the health of its peoples.¹¹ With the horrors of war drawing attention to fundamental underlying threats to human dignity and clarifying the need for global action to address individual harms, the Allied Powers came together during the conflict to craft human rights as a means to prevent deprivations like those that had taken place during the

⁹Richard B. Bilder, "Rethinking International Human Rights: Some Basic Questions," *Wisconsin Law Review* 1 (1969): 171–217; Louis Henkin, *The Rights of Man Today* (Boulder, CO: Westview Press, 1978).

¹⁰C. Vigne, "Droit à la Santé et Coopération," in *The Right to Health as a Human Right: Workshop, The Hague, 27–29 July 1978* (Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1979), 304–311.

¹¹*Congressional Record* 87 (1941): 44, 46–47, in S.I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt: 1940* (New York: Random House, 1941).



Figure 1: UN Secretary-General Trygve Lie and WHO Director-General Brock Chisholm formalize WHO as a specialized agency of the UN
Source: UN Archives, United Nations, New York.

Depression and the war that followed.¹² Following the end of the War and the establishment of the UN, with the 1945 Charter of the United Nations recognizing universal human rights as a foundation of global cooperation, states would develop human rights as a normative basis for international health through the establishment of WHO as the UN’s specialized agency for health cooperation.¹³

In establishing the contours of a right to health under the Constitution of the World Health Organization, states declared that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being,” defining health comprehensively as “a state of complete

¹²United Nations Conference on Food and Agriculture, “Text of the Final Act,” *American Journal of International Law* 37:4 (1943) Supp.: 159–192.

¹³UN, Charter of the United Nations, 1945; James A. Doull, “Nations United for Health,” in J.S. Simmons, ed., *Public Health in the World Today* (Cambridge: Harvard University Press, 1949), 317–332.

physical, mental, and social well-being and not merely the absence of disease or infirmity.”¹⁴ To govern this sweeping vision of “complete” health, building from the early normative efforts of the League of Nations Health Organization, the 1946 International Health Conference established three organs by which to structure a new international 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 WHO Secretariat, the bureaucracy to carry out the decisions of state representatives through an elected Director-General and appointed staff. Recognizing a necessity to facilitate international health cooperation, representatives of sixty-one states signed the WHO Constitution, bringing WHO into force on April 7, 1948.¹⁵

From the creation of this UN system, states sought to enumerate a set of “human rights” to govern the postwar world, developing the 1948 Universal Declaration of Human Rights (UDHR) to recognize 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.” Upon this human rights foundation, 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.”¹⁶ With both WHO and the UDHR coming into existence in 1948, there was great initial promise that these two institutions would complement each other, with WHO supporting human rights through all its policies, programs, and activities.¹⁷ In early collaboration with states in the UN Commission on Human Rights, working through the late 1940s and early 1950s to translate the proclaimed

¹⁴WHO, Preamble, *Constitution of the World Health Organization* (Geneva: World Health Organization, 1948).

¹⁵Iris Borowy, *Coming to Terms with World Health* (Frankfurt: Peter Lang, 2009); Szeming Sze, “Today’s Global Frontiers in Public Health II: Regional Health Organization in the Far East,” *American Journal of Public Health* 35 (1945): 96–98.

¹⁶UN General Assembly, Preamble, *Universal Declaration of Human Rights*, Resolution 217A (III), 1948(a). UN archival sources are drawn from the UN Archives, United Nations Office at Geneva.

¹⁷John Tobin, *The Right to Health in International Law* (London: Oxford University Press, 2012).

rights of the UDHR into binding treaty obligations, WHO benefited from this robust system of international cooperation in negotiating the development of international legal obligations necessary to realize human rights for public health.¹⁸

As states sought to translate the comprehensive vision of the UDHR into legally binding covenants, however, international consensus on the development of human rights rapidly deteriorated along ideological and economic lines. Given the continuation of race discrimination throughout the United States, authoritarian rule in the Soviet Union, and exploitative colonization by the European powers, human rights discourses posed a risk of laying bare the hypocrisies of its proponents, chilling the development of universal rights under international law.¹⁹ With Cold War realists looking to the realities of state power over the establishment of universal rules—refuting the existence, substance, and feasibility of a human right to health—states did not look to international law to advance health rights and did not see human rights negotiations to have legal implications for health.²⁰

Caught between the Cold War superpowers (and their respective spheres of influence), with the United States and the Soviet Union forcefully challenging each other in international politics on the relative prioritization of a wide range of social and economic rights, WHO abandoned its early emphasis on a rights-based approach to health, turning its attention to purely technical enterprises.²¹ By approaching international health through an “apolitical” medical lens untethered to human rights obligations, WHO sought to distance itself from the political debates surrounding human rights in the early 1950s, backing away from its development of health rights under international law and neglecting its UN mandate to clarify the human rights

¹⁸ Benjamin Mason Meier, “The World Health Organization, Human Rights, and the Failure to Achieve Health for All,” in John Harrington and Maria Stuttaford, eds., *Global Health and Human Rights* (London: Routledge, 2010), 163–189.

¹⁹ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010).

²⁰ H. D. C. Roscam Abbing, *International Organizations in Europe and the Right to Health Care* (Deventer, The Netherlands: Kluwer, 1979).

²¹ Taylor, “Making the World Health Organization Work,” 301–346; Manela, “A Pox,” 299–323.

related to health.²² Reflecting the temporary withdrawal of Soviet states from the World Health Assembly in the late 1940s and early 1950s and a transition in WHO Secretariat leadership in 1953, WHO abandoned its early efforts to develop expansive international legal language for public health—projecting itself as a “technical organization”²³ and declaring legal rights “beyond the competence of WHO.”²⁴ With international relations proceeding politically rather than legally, the WHO Secretariat turned from the proclamation of a right to health in its own Constitution, hobbling efforts to advance public health discourses in human rights law.²⁵

International debates continued at the intersection of health and human rights, but without WHO leadership, the UN General Assembly codified comparatively weak 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.”²⁶ Notwithstanding such limitations, the Covenants created the first international legal standards for human rights, thereby opening a discursive space in international politics for the development of these rights as legal constructs. As developing states shook off the shackles of colonial rule, joined the community of UN states, and looked to the UDHR and Covenants as a legal standard for human rights, there was renewed optimism that “[o]ne generation’s hypocrisy may be the next generation’s fighting creed.”²⁷ Taking up this charge to clarify and implement rights

²² Benjamin Mason Meier, “Global Health Governance and the Contentious Politics of Human Rights: Mainstreaming the Right to Health for Public Health Advancement,” *Stanford Journal of International Law* 46 (2010): 1–50.

²³ M.G. Candau, “WHO—Prospects and Opportunities: The Road Ahead,” *American Journal of Public Health* 44:12 (Dec. 1954): 1499–1504.

²⁴ WHO, Memorandum from WHO Liaison Office with United Nations Director to WHO Deputy-Director General. Report on the Fifteenth Session of the Commission on Human Rights, 21 Apr. 1959. WHO archival sources are from the WHO Archives, World Health Organization, Geneva.

²⁵ Tobin, *The Right to Health in International Law*.

²⁶ UN General Assembly, *International Covenant on Economic, Social, and Cultural Rights*, Resolution 2200A (XXI), 1966.

²⁷ Bilder, “Rethinking International Human Rights,” 217.

within the UN, the UN General Assembly requested that specialized agencies take the lead in directing cooperation within their respective areas of competence, with WHO bearing responsibility under the right to health.²⁸

THE UN PROGRAMME ON HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

In the context of rising international discourse on 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 called on the UN to study the human rights implications of scientific developments and medical technologies as the basis for policy instruments to strengthen the protection of human rights. While faith in scientific progress and technological modernization had been a hallmark of the prewar industrial era, scientific developments came to be challenged in the 1960s, with atomic destruction, environmental degradation, and medical experimentation, *inter alia*, denying credibility to scientific results and provoking debate on technologically driven harms.²⁹ Building from this public apprehension toward the inherent risks of science, demystifying technology's ability to fundamentally alter societal structures, this scientific fear came to pervade international human rights discourse.³⁰

Specific to medical science, the 1947 Doctor's Trial at Nuremberg (through which prosecutors uncovered the details of the Nazi eugenics and medical experimentation campaigns) had highlighted the extent to which medicine could prove a threat to rights.³¹ As the public became aware of these Nazi medical crimes and continuing rights violations by physicians, policies to restrain medical science emerged across an increasing number of

²⁸In addition to this WHO responsibility under the right to health, the United Nations Educational, Scientific and Cultural Organization (UNESCO) would bear responsibility for corresponding obligations under the right to the benefits of scientific progress. Claude, *Science in the Service of Human Rights*, 43.

²⁹Ulrich Beck, *Risk Society: Towards a New Modernity* (Frankfurt am Main: Surkamp Verlag, 1986) (translated by Mark Ritter, Los Angeles: Sage, 1993).

³⁰Eugene B. Brody, *Biomedical Technology and Human Rights* (Paris: UNESCO, 1993).

³¹Michael Grodin and George Annas, "Physicians and Torture: Lessons from the Nazi Doctors," *International Review of the Red Cross* 89 (2007): 635–654.

Western nations, rising to the level of international health policy in the UN's focus on science and technology during the 1968 International Conference on Human Rights.³²

The UN had designated 1968 as the International Year of Human Rights, creating a yearlong agenda: to commemorate the twentieth anniversary of the UDHR; to review the human rights efforts of the UN, member states, and specialized agencies; and to undertake intensified activities to raise awareness of human rights.³³ Culminating in the first International Conference on Human Rights—unique in its size, scope, and international representation—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 program of future actions following the ICCPR and ICESCR.”³⁴ With international political discourse increasingly framed by human rights concerns in the late 1960s, the UN joined national governments and non-governmental organizations in a wide-ranging effort to pursue multilateral governance through human rights.³⁵

Yet despite the strong presence of several UN specialized agencies in preparatory discussions for the Conference, the WHO Secretariat 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 of the concerns of the WHO Secretariat with “political” rights-based discourses and the reluctance of its medical staff to engage with “legal” 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

³²Henry Beecher, “Ethics and Clinical Research,” *New England Journal of Medicine* 274 (1966): 1354; Tom Farer, “Human Rights and Scientific Progress: A Western Perspective,” in Weeramantry, ed., *Human Rights and Scientific and Technological Development*, 81.

³³UN General Assembly, *Declaration of 1968 as International Year for Human Rights*, UN Resolution 1961 (XVIII), 12 December 1963.

³⁴UN Office of Public Information, *International Year for Human Rights Newsletter* 1 (1967): 1–38.

³⁵UN, *United Nations Action in the Field of Human Rights*, 29 U.N. GAOR, U.N. Doc. A/CONF.32/41, 1974.

that can be carried out within existing budgetary provisions.”³⁶ In spite of its repeated protestations 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 token contributions to the International Year for Human Rights, recommending that WHO include in its 1968 activities a UDHR “anniversary statement” by the WHO Director-General, a World Health Day statement “featur[ing] concrete examples of WHO’s determination to ensure the right to health,” and “WHO publications and . . . special articles [devoted] to achievements illustrating the right to health.”³⁷

Largely failing to undertake any of these cooperative rights-based activities, WHO’s neglect of human rights reached a new nadir in its halting participation in the 1968 International Conference on Human Rights.³⁸ Where other specialized agencies sent several high-ranking representatives, WHO provided only a single delegate to the three-week Teheran Conference, the Regional Director for the Eastern Mediterranean (and, on his departure after one week, the Senior WHO Adviser on Malaria Eradication in Iran, representing WHO “part-time and as necessary”).³⁹ While other specialized agencies’ reports elaborated global progress on the range of 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-related rights.⁴⁰ As a result, the resolutions arising out of the Conference did not address health-related rights in anything more than passing mention, an omission reflecting WHO’s avoidance of legal discourses for human rights and detachment from rights-based approaches to health.⁴¹

³⁶UN Committee on the International Year for Human Rights, Statement by WHO Representative, 13 July 1964.

³⁷Administrative Committee on Coordination, Briefing For ECOSOC 41st Session: International Year for Human Rights, 29 June 1966.

³⁸UN, *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968*, 1968.

³⁹WHO RD.4/8, letter from Regional Director A.H. Taba to Senior WHO Adviser S.C. Edwards, 2 April 1968.

⁴⁰WHO, “Report Submitted by the World Health Organization,” *International Conference on Human Rights*, 24 January, A/CONF.32/8, 1968.

⁴¹WHO N64/180/5, memorandum from UN WHO EMRO Regional Director A.H. Taba to WHO Director-General M.G. Candau, 30 May 1968.

Without an institutional voice at the intersection of public health and human rights, the Conference served as a platform through which extant fears of scientific and technological progress took programmatic form, with the resulting Proclamation of Teheran directing the UN to complete a detailed study of the human rights threats posed by science and technology. Concluding that much remained to be done to implement human rights, the Conference set out a vision of human rights that was protective rather than promotive,⁴² extending an earlier European consensus that “improved technology may lead to a rise in the economic standard of living, yet create new threats to health and safety.”⁴³

From the outset of the Conference, the French delegation specifically targeted the contemporary “scientific and technical revolution” in health, pronouncing 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.”⁴⁴ 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”⁴⁵—France proceeded to propose a reactionary draft resolution on the risks of science,⁴⁶ which was incorporated in the Proclamation of Teheran 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.

⁴²Ogata, “Introduction: United Nations Approaches.”

⁴³UN, *United Nations Seminar on the Realization of Economic and Social Rights Contained in the Universal Declaration on Human Rights*, Warsaw, Poland, ST/TAO/HR/31, 15, 1967.

⁴⁴UN, *Final Act*, 42.

⁴⁵UN, *Final Act*, 37.

⁴⁶UN, France: Draft Resolution, *International Conference on Human Rights, Second Committee*, April 30, A/Conf.32/C.L/L.16 and Corr. 1, 1968. In pressing this agenda, the French delegation was led by French Prime Minister Georges Pompidou, a longtime leader in midcentury French hostility toward the sciences, founded on a eugenic fear of genetic degeneration through “preservation” of the infirmed. See Robert Gilpin, *France in the Age of the Scientific State* (Princeton: Princeton University Press, 1968).

- (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.
- (4) More generally, the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural, and moral advancement of humanity.⁴⁷

With this cautionary framing of the dangers of science and technology leading to a paradigm shift in UN priorities toward protective rights-based 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 International Conference on Human Rights.⁴⁸

In accordance with this resolution, the General Assembly invited the UN Secretary-General to undertake a series of four studies, as enumerated above, “of *the problems* in connexion with human rights arising from developments in science and technology.”⁴⁹ Thereby creating the UN Programme on Human Rights and Scientific and Technological Developments to address the General Assembly’s request for reports on these human rights “problems,” the UN Secretariat’s Division on Human Rights sought to gather the expertise of WHO and other specialized agencies into an Advisory Committee on the Application of Science and Technology to Development.⁵⁰ These interdisciplinary UN discourses would encompass WHO’s human rights activities throughout the next decade—as outlined in Figure 2—structuring the institutional dynamics through which the WHO Secretariat came to apply human rights to health.

WHO NEGLECT FOR HUMAN RIGHTS IN INTERNATIONAL HEALTH

Although there was great initial excitement that WHO would bind the entire postwar world under a shared set of principles for health, the international relations battles of the Cold War undercut WHO’s claims to

⁴⁷UN, *Final Act*, 12.

⁴⁸UN General Assembly, *Human Rights and Scientific and Technological Developments*, Resolution 2450 (XXIII) ¶1(d), 1968.

⁴⁹*Ibid.* (Emphasis added.)

⁵⁰UN SO 214(12), letter from UN Division of Human Rights Director Marc Schreiber to WHO Director-General Marcolino G. Candau, 11 April 1969.

MAKING HEALTH A HUMAN RIGHT

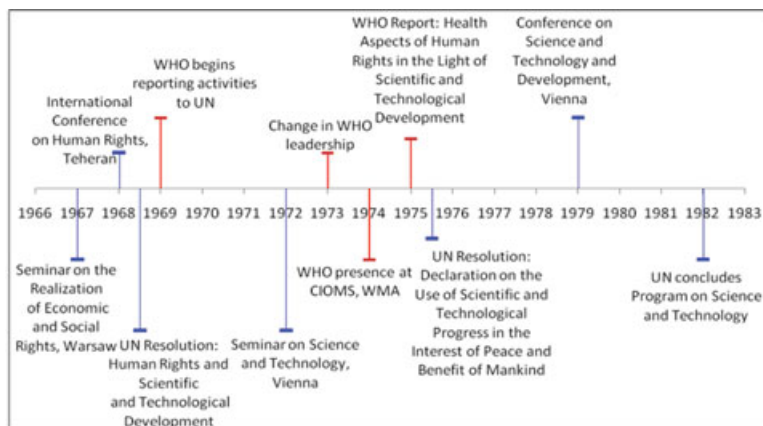


Figure 2: WHO’s evolving participation in the UN Programme on Human Rights and Scientific and Technological Developments

apolitical health policy, compromised WHO’s priorities to the dueling foreign policy imperatives of the United States and the Soviet Union, and paralyzed WHO’s actions to shape the development of human rights for health.⁵¹ Given the WHO Secretariat’s apolitical focus on vertical health interventions, WHO had little to show for its medical efforts, with the prominent failure of several major disease eradication efforts damaging the Secretariat’s credibility within the UN system.⁵² Where WHO had previously upheld the UDHR’s declaration of a right to health as according with the Organization’s comprehensive approach to underlying determinants of health, WHO—under the leadership of Director-General M.G. Candau, the Brazilian former director of the Division of Organization of Public Health Services—came to abrogate its relationship to health rights, finding human rights obligations to involve legal issues

⁵¹ “International Health or World Health?” *Lancet* 270, 14 August 1948; R. Pethybridge, “The Influence of International Politics on the Activities of Non-Political Specialized Agencies—A Case Study,” *Political Studies* 13:2 (1965): 247–251; Francis W. Hoole, *Politics and Budgeting in the World Health Organization* (Bloomington: Indiana University Press, 1976); Kelley Lee, *The World Health Organization* (London: Routledge, 2009).

⁵² Javed Siddiqi, *World Health and World Politics: The World Health Organization and the UN System* (Columbia: University of South Carolina Press, 1995); Randall M. Packard, “Malaria Dreams: Postwar Visions of Health and Development in the Third World,” *Medical Anthropology* 17 (1997): 279–296.

and “social questions” that were argued to be beyond WHO’s medical “competence.”⁵³ By the time that the UN Secretary-General submitted his 1968 comprehensive report to the General Assembly on “Measures and Activities Undertaken in Connexion with the International Year of Human Rights,” it included actions taken by nearly every international organization—but not WHO.⁵⁴ As WHO had largely failed to advance the human right to health, with the Secretariat leadership unwilling to engage with political rights-based issues and its medical staff unable to engage in international legal debates, this disposition would characterize WHO’s early response to the UN Programme on Human Rights and Scientific and Technological Developments.⁵⁵

Hesitant to address the UN’s initial request for information “through the Programme on Human Rights and Scientific and Technological Developments,” the WHO Secretariat staff—who were “not enthusiastic” about a resolution described internally as “utopian”—responded to the UN’s 1969 request for a report on WHO activities with a “provisional memorandum” that merely:

- (1) criticized the UN mandate, charging that it was “extremely general in character and neither enumerates nor illustrates ‘problems in connexion with human rights arising from developments in science and technology’”;
- (2) referenced the work of nongovernmental organizations (primarily the World Medical Association) in preparing resolutions on medical ethics; and
- (3) repeated general descriptions of WHO’s research and technical activities from *The Medical Research Programme of the World Health Organization, 1964–1968*.⁵⁶

⁵³UN SO 216/3, letter from WHO Assistant Director-General L. Bernard to UN Deputy Director, Division of Human Rights Edward Lawson, 18 July 1966.

⁵⁴UN, “Report of the Secretary-General,” *International Year for Human Rights: Measures and Activities Undertaken in Connexion with the International Year for Human Rights*, A/7195, 1968.

⁵⁵Taylor, “Making the World Health Organization Work,” 301–346.

⁵⁶WHO N64/180/5, memorandum from M. Sentici to M. Sacks, 8 May 1969; WHO N64/180/5(E), memorandum from WHO Chief RECS/OPR to WHO Director RECS, 2 June 1969.

In describing its own activities at the intersection of health and human rights, WHO looked back to its Executive Board's initial cooperation, in 1951, in the preparation of a draft International Covenant on Human Rights and cited the WHO Secretariat's recent development of "principles" for drug testing and safety. WHO deferred the preparation of its detailed preliminary report to a later, unspecified date.⁵⁷

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 medical science, providing little more than a series of extended article quotations on health risks, ranging from experiments on human subjects to deterioration of the environment to hazards of atomic radiation.⁵⁸ When distributed informally to WHO staff, this UN 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 misprioritization of harms.⁵⁹ 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.⁶⁰ While the UN Secretariat acknowledged that the report had overemphasized the threats to human rights from science and technology, the UN Secretariat's Division of Human Rights stressed that WHO's limited contribution was responsible for weaknesses in the report and declined to postpone its mandated submission to the Commission on Human Rights.⁶¹ Following several contentious telephone conversations between the WHO

⁵⁷UN 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.

⁵⁸UN 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.

⁵⁹E.g., WHO N64/180/5, memorandum from WHO HL Chief to WHO PC Chief, 18 Dec. 1969.

⁶⁰UN 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.

⁶¹UN 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.

Secretariat and the UN Secretariat's Division of Human Rights, the WHO Secretariat requested that its liaison to the UN attend the March 1970 meeting of the UN's Commission on Human Rights to defend WHO's position and to request that WHO assume complete responsibility for future reports.⁶² 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 WHO Secretariat was prepared to assume complete responsibility for the preparation of further reports,⁶³ the draft report of the Commission meeting makes no mention of any WHO statement.⁶⁴

Yet as states returned to the promise of human rights as a means to realize international health, government representatives in the World Health Assembly pressed Director-General Candau to defend the WHO Secretariat's continuing intransigence towards the UN Programme on Human Rights and Scientific and Technological Developments. Given political changes at the intersection of health and human rights—as decolonization lessened an aversion to rights claims among developed states, the World Health Assembly enlarged dramatically with the membership of developing states, and public health priorities changed through the assertive diplomacy of Soviet states—various governments sought to engage the WHO Secretariat on the right to health.⁶⁵ With the World Health Assembly beginning to shift its member state composition (with greater representation from developing states) and international health priorities (to a focus on economic determinants of health), government representatives responded with pointed criticism that

⁶²WHO N64/180/5, telegram from WHO Assistant Director-General Bernard to WHO Liaison Office with United Nations, 24 Feb. 1970.

⁶³WHO N64/180/5(E), memorandum from WHO Liaison Office with United Nations Director to WHO CE Director A. Bellerive, 2 April 1970.

⁶⁴UN Commission on Human Rights, *Human Rights and Scientific and Technological Advancements*, E/CN.4/1028, 12 March 1970.

⁶⁵Meier, "Global Health Governance"; C. Osakwe, *Participation of the Soviet Union in Universal International Organizations: A Political and Legal Analysis of Soviet Strategies and Aspirations Inside ILO, UNESCO and WHO* (Leiden: Sijthoff, 1972). Because indigenous peoples had long employed a human right to self-determination to advance anticolonial policy in the UN, asserting collective self-determination against the colonial powers, the rapid pace of decolonization removed the anticolonial interpretation and application of human rights, allowing for human rights matters to be considered in the context of individual health claims against state governments. See Moyn, *Last Utopia*.



Figure 3: M.G. Candau, WHO Director-General (1953–1973) Source: WHO Archives, World Health Organization, Geneva

matters directly related to the right to health were being studied by the UN rather than by WHO.⁶⁶ Reflecting a schism between the limited medical focus of the Secretariat and the expansive political goals of the Assembly, an expanding set of government representatives sought to reengage the WHO Secretariat in the human rights system.⁶⁷ In adopting a resolution to reaffirm

⁶⁶Freeman H. Quimby, *The Politics of Global Health, Prepared for the Subcommittee on National Security Policy and Scientific Developments of the Committee on Foreign Affairs, House of Representatives*, U.S. Government Printing Office, Washington, DC, 1971; Staples, *The Birth of Development*.

⁶⁷WHO, *The Third Ten Years of the World Health Organization: 1968–1977* (Geneva: World Health Organization, 2008).

WHO's constitutional foundation in the right to health and reiterate that the health aspects of human rights are within the competence of WHO, the World Health Assembly called for the Secretariat's cooperation in the UN's rights-based efforts: "to reaffirm to the Secretary-General of the United Nations the Organisation's [WHO'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."⁶⁸

This cooperation did not come quickly. Cognizant of continuing ideological divisions within the World Health Assembly and unable to engage substantively with international legal discourses, the WHO Secretariat proceeded cautiously in enlisting an outside consultant to address the right to health. Although the Secretariat would respond to the World Health Assembly resolution by preparing a separate summary for the UN on "medical problems" with regard to scientific and technological developments, the outside consultant received explicit instructions that this human rights memorandum "eliminate any indication of action by the Organization or any expression of strongly held views in [a summary] as descriptive and 'low-key' as possible."⁶⁹

The resulting WHO paper on "Human Rights and Scientific and Technological Developments" discussed both the human rights threats from science and technology and the health threats from human rights violations. However, with WHO section chiefs revising the initial draft to eliminate any positive state obligations to promote health, the final draft of WHO's "preliminary memorandum" acknowledged at most that infringement of 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."⁷⁰

⁶⁸World Health Assembly, *Co-ordination with the United Nations, the Specialized Agencies and the International Atomic Energy Agency. Programme Matters. Human Rights*, Resolution WHA23.41, 21 May 1970, A23/VR/15.

⁶⁹WHO N64/18/5(3), letter from WHO Programme Co-ordination Chief Michael R. Sacks to Sir John Charles, 16 Sept. 1970.

⁷⁰UN General Assembly, *Preliminary Memorandum by the World Health Organization, Health Aspects of Human Rights and Scientific and Technological Developments*, 30 November 1970, A/8055/Add.1, ¶¶ 13–14.

Despite internal concern that WHO's contribution was too "technocratic" in its detailed description of medical harms and not sufficiently expansive in its "comprehensive summary" of the health aspects of human rights,⁷¹ WHO submitted its preliminary memorandum to the UN in October 1970.⁷² With the UN Division of Human Rights quoting from this WHO report in its addendum to the Secretary-General's preliminary report on Human Rights and Scientific and Technological Developments, but with the WHO Secretariat again declining to provide any requested comments on the reports of the UN Secretariat, the overlapping UN preliminary report and WHO preliminary memorandum were both taken up by the UN Commission on Human Rights.⁷³

During the March 1971 meeting of the Commission on Human Rights, the Division of Human Rights laid out the UN Secretariat's program of work on scientific and technological developments for the coming years, suggesting a postponement of discussion on health until 1974, at which point "it was hoped that the work under-taken by WHO would be sufficiently advanced for a report to be made."⁷⁴ Several state representatives on the Commission insisted that the UN focus additionally on the benefits of scientific and technological progress (rather than simply the risks), and the resulting Commission resolution requested that future UN Secretary-General reports "tak[e] into account also the possibility of using [developments in science and technology] to improve living conditions and the enjoyment of economic, social and cultural rights."⁷⁵

⁷¹WHO N64/180/5(E), telegram from WHO LUN Director to WHO CE Director, 26 Aug. 1970.

⁷²WHO N64/180/5(E), letter from WHO Director-General M.G. Candau to UN Secretary-General U Thant, 20 Oct. 1970.

⁷³UN 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.

⁷⁴WHO 4N64/445/2, "Note for the Record, 13 April 1971, Consideration of the item on 'Human Rights and Scientific and Technological Developments' at the Twenty-Seventh Session of the Commission on Human Rights. Geneva, 22 February to 26 March 1971." Although WHO presented its own preliminary memorandum, acknowledging both the positive and negative aspects of technology for health, the Commission responded only by requesting that specialized agencies transmit all future information through the Secretary-General's report.

⁷⁵UN Commission on Human Rights, "Human Rights and Scientific and Technological Developments: Report of the Secretary-General," Res. 10(XXVII), ¶4, 1971.

Immediately following this Commission on Human Rights meeting, the UN Division of Human Rights met with WHO Secretariat staff to discuss the UN Programme on Human Rights and Scientific and Technological Developments. In a far-reaching conversation, UN Secretariat staff suggested that WHO identify additional ways of drawing attention to the benefits of science and technology in the realization of the right to health.⁷⁶ Yet despite WHO's initial agreement to develop a paper on the right to health, the WHO Secretariat crafted no new position on health rights, instead suggesting the distribution of WHO's 1970 memorandum on "Human Rights and Scientific and Technological Developments."⁷⁷ As the UN continued to pursue the application of human rights to scientific and technological developments with other specialized agencies, WHO's liaison to the UN voiced concern over a growing lack of respect for the WHO Secretariat in human rights debates, arguing that "at several stages in the development of this item [the Programme on Human Rights and Scientific and Technological Developments], the UN Secretariat systematically ignored WHO's interest in the question, its preliminary memorandum and its competence."⁷⁸

Human rights cooperation from the WHO Secretariat continued reluctantly in 1972, based largely on persistent requests from the WHO Executive Board and World Health Assembly, with the WHO Secretariat facing growing pressure from developing state representatives to note the important benefits of scientific and technological developments to the right to health.⁷⁹ With the WHO Secretariat staff meeting again in May 1972 with the Director of the UN Division of Human Rights, arguing that "the benefits derived therefrom [from health technologies] should not be minimized or distorted by a negative approach centering entirely on abuses,"⁸⁰ the UN Director agreed that both promotive and protective aspects of human rights would

⁷⁶WHO N64/86/38, "Note for the Record," 26 Mar. 1971.

⁷⁷WHO 4N64/440/7, letter from WHO Programme Co-ordination Chief Michael R. Sacks to UN Division of Human Rights Director Marc Schreiber, 27 Sept. 1971.

⁷⁸WHO 4N64/445/2, memorandum from WHO LUN Director R.L. Coigney to WHO CE Director A. Bellerive, 29 Feb. 1972.

⁷⁹WHO Executive Board, EB49/20, 1972.

⁸⁰WHO 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.

be emphasized in the UN's June 1972 seminar on Human Rights and Scientific and Technological Developments in Vienna, Austria. Notwithstanding this agreement, WHO's scaled-down participation in the UN Programme's first seminar (with WHO backing out of its paper presentation on the right to health at the last minute⁸¹) enabled discussion among state delegates to return to the risks of health technologies for human rights, with the seminar introducing the term "technogenic" diseases "to characterize those diseases which were a direct result of technological advances."⁸² With the WHO Secretariat continuing not to send documentary support to the UN Programme on Human Rights and Scientific and Technological Developments, the UN Secretary-General's December 1972 report on "The Impact of Scientific and Technological Development on Economic, Social and Cultural Rights" analyzed the benefits of science and technology to a wide range of economic, social, and cultural rights—but not to the right to health.⁸³ When the UN General Assembly came to review this UN Secretary-General report—noting the obvious omission of health rights in the UN's "comprehensive" study of economic, social, and cultural rights—the General Assembly resolved that the Secretary-General pay greater attention to the right to health in the final study of the UN Programme on Human Rights and Scientific and Technological Developments.⁸⁴

WHO RECLAMATION OF THE RIGHT TO HEALTH IN INTERNATIONAL LAW

With the World Health Assembly continuing to press forward in the early 1970s to change the direction of WHO policy, the WHO Secretariat returned to the promise of international human rights standards as a means to realize public health. Drawing on an expansion of international human

⁸¹WHO 118/ssc, telegram from WHO's Bellerive to the UN's Schreiber, 8 June 1972.

⁸²UN, *Seminar on Human Rights and Scientific and Technological Developments. Vienna, Austria. 19 June – 1 July 1972*, ST/TAO/HR/45, New York, United Nations, 1972; WHO 4N64/440/7, memorandum from WHO Liaison Officer with IAEA G. Meilland to WHO CE Director Bellerive, 6 July 1972.

⁸³UN, Human Rights and Scientific and Technological Developments, *The Impact of Scientific and Technological Developments on Economic, Social and Cultural Rights. Report of the Secretary General*, E/CN.4/1115, 1973.

⁸⁴UN General Assembly, Res. 3026B (XXVII), ¶ 3, 1972.

rights instruments and non-governmental human rights organizations,⁸⁵ the WHO Secretariat adopted human rights discourse and embraced human rights law as a mechanism to further its policy goals to advance a horizontal approach to public health systems. By the mid-1970s, Cold War battles had subsided within the World Health Assembly, with the superpowers finding common cause and international cooperation in the successful Smallpox Eradication Programme.⁸⁶ This vertical smallpox eradication effort gave legitimacy to the WHO Secretariat in coordinating state and non-state actors in public health, and WHO looked to human rights as a means to expand its mandate to address horizontal public health systems.

As developing states sought to assert a New International Economic Order through a collective right to development, the WHO Secretariat adapted these human rights claims to advance its own public health agenda.⁸⁷ Taking advantage of the ascendance of human rights in international legal discourses, WHO employed rights to influence international relations in advancing horizontal national systems for “primary health care”—a long-standing undercurrent in health scholarship and advocacy, addressing health care in addition to the underlying social, political, and economic determinants of the public’s health.⁸⁸ Redefining public health discourses to reflect human rights standards,⁸⁹ the political support of human rights was seen to bring these technical health discourses to the fore of international policy.⁹⁰ Upon the July 1973 election of Director-General Halfdan Mahler, the Danish Assistant Director-General and former Director of WHO’s Program in

⁸⁵The 1970s saw the rise of human rights NGOs, which worked around the state-centered structures of the UN to advance human rights. Michael Cotey Morgan, “The Seventies and the Rebirth of Human Rights,” in Niall Ferguson, Charles Maier, Erez Manela, and Daniel Sargent, eds., *The Shock of the Global: The International History of the 1970s* (Cambridge: Harvard University Press, 2010).

⁸⁶Manela, “A Pox,” 299–323.

⁸⁷Chorev, *The World Health Organization*.

⁸⁸Socrates Litsios, “A program for research in the organization and strategy of health services.” Paper presented at the WHO Director Generals Conference, Geneva, Switzerland, 1969; Theodore M. Brown, Marcus Cueto, and Elizabeth Fee, “The World Health Organization and the Transition from International to Global Public Health,” *American Journal of Public Health* 96:1 (2006): 62–72.

⁸⁹Halfdan Mahler, “Born to be healthy. A message from Dr. H. Mahler, Director-General of the World Health Organization.” Reprinted in Secretary-General’s progress report, A/9133, 1973; Karl Evang, “Human rights: Health for everyone,” *World Health* (Nov. 1973): 3–11.

⁹⁰Meier, “Global Health Governance,” 1–50.



Figure 4: Halfdan Mahler, WHO Director-General (1973–1988) Source: WHO Archives, World Health Organization, Geneva

Project Systems Analysis, WHO embarked on its Health For All Campaign as a means to advance a rights-based approach to primary health care.⁹¹ Under this Health for All Campaign, widely regarded as the WHO’s “main thrust” for implementing the right to health,⁹² the World Health Assembly reframed WHO’s long-term objectives as a means to realize “the attainment by all citizens of the world by the year 2000 of a level of health that would permit them to lead socially and economically productive lives.”⁹³ Supported by a revitalized legal office, which would be employed to represent the WHO Secretariat in human rights debates, WHO sought to translate its public health agenda into international health policy through human rights law.⁹⁴

As the UN moved to commemorate the twenty-fifth anniversary of the UDHR, WHO’s August 1973 progress report proclaimed the Secretariat’s

⁹¹Lakin, “Right to Health.”

⁹²Allyn Lise Taylor, “The World Health Organization and the Right to Health,” LLM thesis, Columbia Law School (1991), 14.

⁹³World Health Assembly Resolution 30.44, 1977.

⁹⁴Vigne, “Droit à la Santé et Coordination.”

new path for international cooperation, a path founded upon the bedrock principles of human rights, emphasizing the rights-based obligations of the WHO Constitution as a framework for the promotion of scientific and technological developments:

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.⁹⁵

In this renewed effort, the WHO Secretariat held out human rights as a force for health, using international negotiations, articles, and conferences to implement the right to health in support of the benefits of science and technology and to extoll human rights obligations as guiding principles to the achievement of health for all.

Reengaging the UN Programme on Human Rights and Scientific and Technological Developments, WHO began in 1973 to comment on UN reports related to the right to health and to develop its repeatedly postponed report on Health Aspects of Human Rights in Light of Scientific and Technological Developments.⁹⁶ In considering the health aspects of human rights, WHO secured legal advice for this study from its nongovernmental partners, with the WHO Secretariat benefiting from its participation in the October 1973 meeting of the World Medical Association (discussing problems of computerized medical records)⁹⁷ and the November 1973 Roundtable Symposium of the Council for International Organizations of Medical Sciences (CIOMS) (devoted to medical ethics and human rights).⁹⁸ With WHO represented in

⁹⁵Mahler (1973) in WHO 4N64/180/2, letter from WHO Division of Co-ordination and Evaluation Director A. Bellerive to UN Division of Human Rights Director Marc Schreiber, 30 Aug 1973.

⁹⁶UN SO214 (12-1-2), letter from WHO Programme Co-ordination Chief Michael R. Sacks to UN Division of Human Rights George Brand, 18 Dec. 1973.

⁹⁷World Medical Association, "Statement on the Use of Computer in Medicine," 27th World Medical Assembly, 19 October 1973.

⁹⁸WHO, "Proceedings of a Round Table Conference Organized by CIOMS with the Assistance of Unesco and WHO. WHO Headquarters, Geneva, 14, 15, and 16 November 1973," *Protection of Human Rights in the Light of Scientific and Technological Progress in Biology and Medicine* (Geneva: WHO, 1974).

this latter meeting by its Chief Legal Officer, engaging in human rights debates that had not previously been a part of the legal office's mandate, WHO explicitly sought to use this CIOMS Roundtable "as a prelude to [its] contribution to the Commission on Human Rights."⁹⁹ Soliciting feedback on early drafts of its human rights report, WHO program officers came together to prepare a complete draft in early 1974, whereupon Director-General Mahler sought to tailor this integrated draft on human rights and scientific and technological developments to meet WHO's overlapping responsibilities before the Commission on Human Rights, UN General Assembly, WHO Executive Board, and World Health Assembly.¹⁰⁰ With meetings beginning anew between the WHO Secretariat leadership and the UN Division of Human Rights, the UN Secretariat agreed by October 1974 that WHO's health report for the UN Secretary-General had reached such an expansive scope on health-related rights 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 requested consultations on previous reports by the Division of Human Rights.¹⁰¹

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 and human rights. With contributions from multiple technical offices, it included chapters on the beginning of life, reproduction, human experimentation, death, organ transplantation, computerized medical records, psychosurgery, environmental protection, and compulsory measures for health protection. Outlining a normative framework to structure the benefits of scientific progress for health, the WHO report began with an initial chapter on "health as a human right," through which WHO presented both "what benefits *and* what parallel potential risks new developments may entail [regarding] the right to health," considering "the

⁹⁹WHO N61/86/154(A), memorandum from WHO PC Chief to WHO Director General, 23 Feb. 1973.

¹⁰⁰WHO 4N64/445/2, memorandum from WHO Legal Director and Programme Co-ordination Chief to WHO Chiefs of all Sections, 27 June 1974.

¹⁰¹WHO 4N64/445/2, telegram from WHO Programme Co-ordination Chief Flache to WHO UN Liaison Malafatopoulos, 5 Nov. 1974.

exact significance of this right, what it involves, and what is its true perspective.”¹⁰² By expansively reinterpreting the WHO Constitution to assure a comprehensive horizontal system of social insurance, an interpretation long resisted by the “nonpolitical” positioning of the WHO Secretariat, WHO found both individual medical claims and collective public health obligations under the right to health.¹⁰³ In line with developing state discourse on a collective right to development, the WHO Secretariat laid out a communitarian human rights framework for public health, concluding that “the State and the community have a duty to ensure that the individual citizen benefits” and “the individual citizen has the duty to limit his rights for the benefit of the community . . . as for example immunization or other compulsory measures, in order to prevent the right to health of other citizens being endangered.”¹⁰⁴

With the WHO Secretariat now aligned with the majority of the World Health Assembly,¹⁰⁵ the WHO Executive Board formally endorsed 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.”¹⁰⁶ Marking this shift toward a rights-based approach to health, 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

¹⁰²WHO, *Health Aspects of Human Rights in the Light of Scientific and Technological Development* (emphasis added).

¹⁰³Taylor, “Right to Health.”

¹⁰⁴WHO, “Proceedings of a Round Table Conference.”

¹⁰⁵Peter Bourne, *New Directions in International Health Cooperation: A Report to the President* (Washington: U.S. Government Printing Office, 1978).

¹⁰⁶WHO Executive Board, *Health Aspects of Human Rights in the Light of Scientific and Technological Developments*, Geneva, World Health Organization, EB55.R65, 31 January 1975.

to the community.”¹⁰⁷ Given the Executive Board’s authorization “to continue the studies suggested in the report,”¹⁰⁸ the WHO Secretariat sought in early 1975 to assert a leadership role in collaborative studies on health rights, reaching out first to the UN Division of Human Rights and other specialized agencies to organize an informal joint meeting to discuss the future needs of the Commission on Human Rights.¹⁰⁹ In accordance with the UN General Assembly’s invitation “to consider the preparation of recommendations concerning international standards,”¹¹⁰ WHO also reached out to national governments for cooperation, 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.”¹¹¹ Finally, as the WHO Secretariat was beginning its first concerted study on human rights issues—working feverishly to prepare a report on international standards for the UN General Assembly’s 1975 Session—WHO sought further legal advice from its nongovernmental partners “in developing new approaches to studies in the area of human rights.”¹¹²

As the UN Commission on Human Rights moved separately 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 Commission’s 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.”¹¹³

¹⁰⁷WHO 4N64/445/2, letter from WHO Director-General Halfdan Mahler to UN Secretary-General, 18 Feb. 1975.

¹⁰⁸UN 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.

¹⁰⁹E.g., WHO 4N64/445/2, letter from WHO Director-General Halfdan Mahler to UNESCO Director-General Amadou Mahtar M’Bow, 4 Mar. 1975.

¹¹⁰UN General Assembly, *Use of Scientific and Technological Developments in the Interests of Peace and Social Development*, Resolution 3150 (XXVIII), 21 January 1974, A/RES/3150.

¹¹¹WHO C.L.5.1975, letter from WHO Director-General Halfdan Mahler to multiple states, 13 Mar. 1975.

¹¹²WHO 4N64/445/2, letter from WHO Director-General Halfdan Mahler to multiple nongovernmental organizations, 13 Mar. 1975.

¹¹³Article 29(2) of the Universal Declaration of Human Rights provides that: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined

With this memorandum originating out of WHO's legal office—now fully engaged in human rights debates and consequently renamed the Office of Constitutional and Legal Matters—the WHO Secretariat provided detailed legal reasoning for state derogations from individual rights to protect the public's health, outlining individual duties: to submit to health examinations and vaccinations; to notify health authorities of communicable disease exposure; and to undergo treatments, surveillance, isolation, or hospitalization. Defining a collective human rights basis for public health, WHO's legal staff followed through on the Organization's expansive reinterpretation of the WHO Constitution, finding 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 health and welfare.”¹¹⁴ To support the legitimacy of the WHO Secretariat in setting international public health standards in accordance with human rights law, WHO's legal staff provided the Special Rapporteur with copies of WHO's evolving work on legislative models (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).

At this new pinnacle of WHO's far-reaching involvement in rights-based policy, the UN Secretariat moved in April 1975 to draft the UN Secretary-General's final report pursuant to the General Assembly's original 1968 resolution on “Human Rights and Scientific and Technological Developments.” Bringing together its various human rights commitments related to scientific and technological developments, WHO Secretariat staff met with the UN Division of Human Rights in May 1975, whereupon WHO agreed to produce:

by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” UDHR, art. 29(2), 1948.

¹¹⁴WHO 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.

- (1) a short summary for the UN Secretary-General's report on the benefits to health 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 to facilitate the enjoyment of underlying determinants of health, and as such, the realization of the human right to health.¹¹⁵

Thereafter participating in interagency meetings to finalize the UN Secretary-General's report, WHO's human rights involvement led directly to a UN chapter on the benefits of technology to health rights, focused on "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, these meetings—for the first time—framed the beneficial aspects of new biological and medical discoveries in promoting the right to health.¹¹⁶ As a result, these beneficial effects of science and technology were incorporated in 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"¹¹⁷ and in 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."¹¹⁸

Drawing on WHO's contributions, the 1975 session of the UN General Assembly sought to reconcile individual and collective human rights in health.¹¹⁹ With Soviet states long heralding the benefits of scientific and

¹¹⁵WHO 4N64/445/2, R.J. Anderson, Note for the Record, "WHO Co-ordination with Other Organisations," 27 May 1975.

¹¹⁶UN 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.

¹¹⁷UN, *On the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural, and moral advancement of humanity* (Geneva: United Nations, 1975), E/CN.4/1199 and Add.1.

¹¹⁸UN General Assembly, *Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind*, Res. 3384 (XXX), 10 November 1975.

¹¹⁹WHO, "Health aspects of human rights," *WHO Chronicle* 30:9 (1976): 347-359.

technological progress in addressing “human rights problems of society as a whole,”¹²⁰ the Soviet Union sought to leverage the UN’s human rights debate to promote scientific and technological progress for the public’s health.¹²¹ Following ideological debates among states on the relative emphasis of individual vis-à-vis collective rights—with developing states joining the Soviet bloc in opposing Western-style individual rights protections against the risks of science and technology¹²²—the UN General Assembly adopted (95–0, with twenty 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. While highlighting the necessity of preventing scientific and technological developments from interfering with individual human rights, this UN General Assembly Resolution also sought state “measures to ensure that scientific and technological achievements satisfy the material and spiritual needs of all sectors of the population” and international “cooperat[ion] in the establishment, strengthening and development of the scientific and technological capacity of developing countries with a view to accelerating the realization of the social and economic rights of the peoples of those countries.”¹²³ Facilitated by the political support of this Declaration for the societal benefits of scientific and technological progress, WHO finalized its paper on the “positive effects of technological advances on health and human rights,” completing the UN’s series of papers concerning the human rights impacts of science and technology.¹²⁴

Based upon this decade-long experience with the UN Programme on Human Rights and Scientific and Technological Developments, the WHO Secretariat came to see human rights as a political force and legal mechanism to assure moral progress in horizontal health systems. Appropriating this human rights language in its Health for All Campaign, WHO incorporated

¹²⁰WHO 4N64/445/2, memorandum from WHO Liaison Office with United Nations to WHO Office of the Director General, 19 December 1974.

¹²¹Bruce Parrott, *Politics and Technology in the Soviet Union* (Cambridge: MIT Press, 1983).

¹²²Ogata, “Introduction: United Nations Approaches.”

¹²³UN General Assembly, *Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind*, Res. 3384 (XXX), 10 November 1975.

¹²⁴UN 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.

these benefits of science and technology into preparations for an International Conference on Primary Health Care.¹²⁵ Canonizing human rights in health policy, this Conference served as a milestone in WHO's Health for All Campaign and led to what would become WHO's principal rights-based policy pursuant to the 1978 Declaration of Alma-Ata.¹²⁶

With the Health for All strategy providing a rights-based vision grounded in public health discourse, the Declaration of Alma-Ata would provide international consensus for national primary health care systems. Reaffirming the preambular language of the WHO Constitution, specifically that health "is a fundamental human right," Article I of the Declaration outlines that

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 and that the attainment of the highest level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.¹²⁷

In looking to both an individual right to health and a collective right to development, WHO sought to address horizontal public health systems through primary health care, thereby prioritizing disadvantaged groups in achieving "equity-oriented targets." This focus on primary health care sought to ensure a framework to guide states in implementing the most feasible national policies necessary to realize health rights.¹²⁸ In this shift from a vertical approach to medical science to a horizontal approach to public health systems, WHO employed the UN Programme on Human Rights and Scientific and Technological Developments to advance its rights-based goals for primary health care, looking to such public health systems as a basis to assure universal access to health technologies. By laying out criteria for state development

¹²⁵Socrates Litsios, "The Long and Difficult Road to Alma-Ata: A Personal Reflection," *International Journal of Health Services* 32 (2002): 709–732; WHO, *The Third Ten Years of the World Health Organization*.

¹²⁶WHO, *Primary Health Care: Report of the International Conference of Primary Health Care, Alma-Ata, USSR, September 6–12, 1978* (Geneva: World Health Organization, 1978).

¹²⁷Ibid.

¹²⁸Norman Howard-Jones, "The World Health Organization in Historical Perspective," *Perspectives in Biology and Medicine* 24 (1981): 467–482.

of primary health care and declaring these criteria to be human rights that would have priority over other national goals,¹²⁹ the Declaration of Alma-Ata presented a unifying framework for advancing public health under the mantle of the right to health. In January 1979, the Executive Board invited WHO member states to use the Declaration of Alma-Ata as the basis for formulating national policies in meeting the goals of Health for All by the year 2000.¹³⁰

As the states continued to debate the risks and benefits of science and technology for human rights, the WHO Secretariat assured that the benefits of public health would not be abandoned in future negotiations, with WHO's newfound human rights legitimacy shifting state positions and resulting in support for the realization of health rights through the UN's 1979 Conference on Science and Technology for Development and the UN General Assembly's 1982 Resolution concluding its initial program on Human Rights and Scientific and Technological Developments.¹³¹ Moving forward from this debate on scientific and technological development, these WHO discourses on science and technology reframed the intersection of health and human rights, priming the WHO Secretariat to find public health and human rights to be "inextricably linked" as it began to respond to a burgeoning HIV/AIDS pandemic.¹³²

CONCLUSION

Integral to the UN Programme on Human Rights and Scientific and Technological Developments, the development of WHO's "Health Aspects of Human Rights in the Light of Scientific and Technological Developments" proved seminal to the evolution of a rights-based approach to health. In impacting both WHO's institutional development and international legal discourse, this engagement in human rights cooperation highlights the WHO

¹²⁹Theodore H. MacDonald, *Health, Human Rights and the United Nations: Inconsistent Aims and Inherent Contradictions?* (Oxford: Radcliffe Publishing, 2008).

¹³⁰WHO Executive Board. Resolution 21. EB63.R21. Jan. 1979.

¹³¹UN General Assembly, *Human Rights and Scientific and Technological Developments*, Resolution 36/56, 18 January 1982, A/RES/36/56.

¹³²Jonathan M. Mann, "AIDS—A Global Perspective: The World Health Organization's Global Strategy for the Prevention and Control of AIDS," *Western Journal of Medicine* 147 (1987): 732–34.

Secretariat's ability to influence human rights discourse to achieve gains in health policy. From the prevention of the risks of science and technology to the promotion of their benefits, WHO became a leading institutional force in this rights-based paradigm shift. And though the WHO Secretariat has come to neglect human rights anew, seen most prominently in the rise and fall of WHO's Health and Human Rights Team, the experience here highlights the health policy benefits that WHO has achieved when employing human rights to further its institutional mission.

In seeking to frame the health implications of scientific and technological development in the 1970s, WHO emerged at the nexus of two critical debates in health and human rights: the risks and benefits of science and technology, and the individual and collective nature of human rights. At this crossroads of international health and human rights, the WHO Secretariat acted influentially to advance the benefits of science and technology as a basis for realizing the human right to health, interpreting this right to encompass collective obligations for the public's health. When the UN General Assembly culminated its rights-based focus on science and technology, its final declarations would present science and technology as a benefit to the human rights of populations and societies, rather than as a threat to the freedoms of individuals, establishing a framework by which public health would come to be seen as a human right.