

# **Big Pharma, Patents & Public Policy: Essential Medicines & Human Rights**

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**Universities Allied for Essential Medicines**  
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THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL

**UAEEM**  
UNIVERSITIES ALLIED FOR ESSENTIAL MEDICINES



# Treatment for All ?



1. Patented Medicines
2. An Evolving Right to Health
3. TRIPS – Applying the Right to Health to Realize Access to Medicines

# Life in the Balance

Intellectual  
property rights  
specific to  
medicine

vs.

Human rights to the  
highest attainable  
standard of  
health care



# Intellectual Property - Conflict

## Medicine as a public good

- Everyone is better off if there is widespread access

## Essential Medicines (WHO)

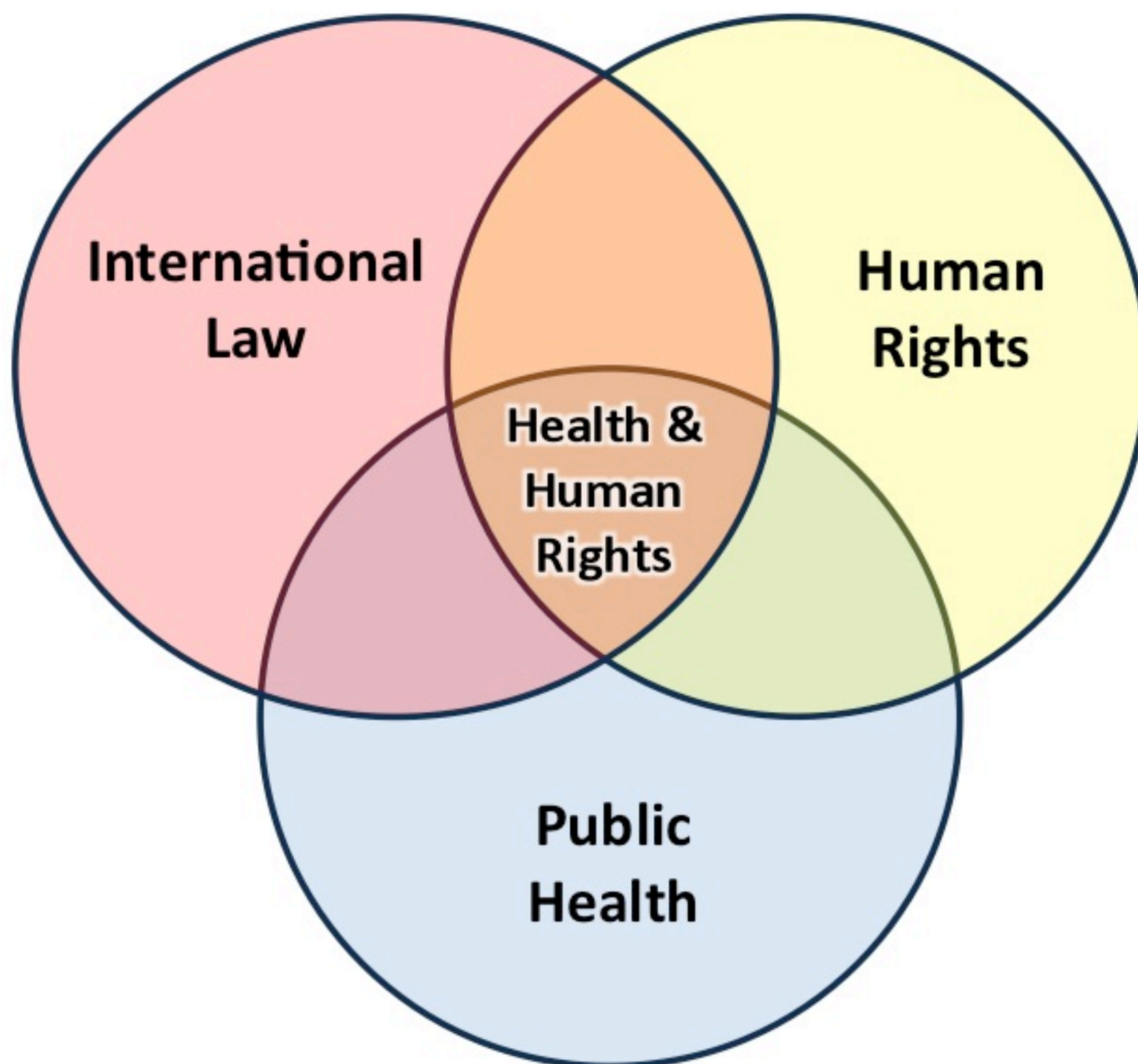
- Satisfy priority health care needs of the population
- Selected with due regard to public health relevance, evidence on efficacy and safety, and comparative cost-effectiveness

## Medicine as a private commodity

- Need property rights to drive innovation
- Medicines exist because of market systems
- Respect for private property
  - Without guarantee of profit, no incentive to invent

# Health & Human Rights

- **The Health & Human Rights Movement**



- Human Rights Matter
- Evolution of Rights in International Law
- Access to Medicines through the Right to Health?

# International Legal Framework for Health

Second World War



Four Freedoms



UN Charter



**WHO Constitution**



UDHR



CONSTITUTION

OF THE

**WORLD HEALTH ORGANIZATION**

THE STATES parties to this Constitution declare, in conformity with the Charter of the

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being

rights of every human being without distinction of race, religion, political belief, economic or social condition.

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

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# Human Rights Development



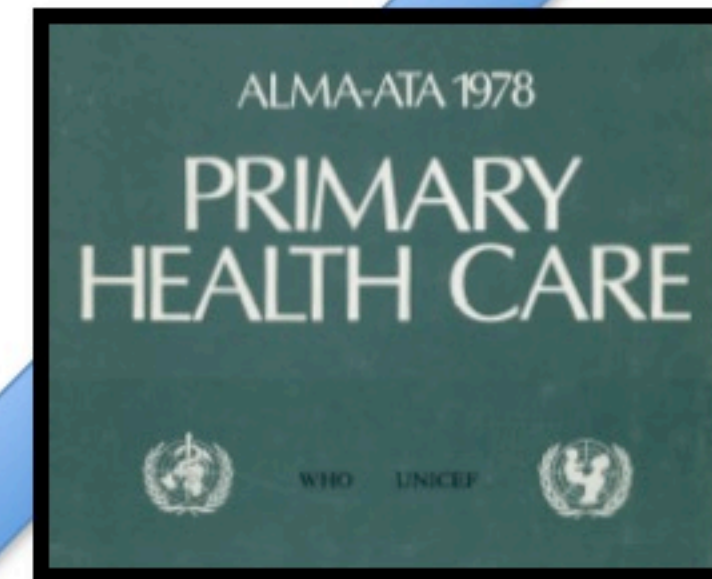
**WHO  
Constitution  
(1946)**



**UDHR  
(1948)**



**General  
Comment  
14 (2000)**



**Declaration of  
Alma-Ata  
(1978)**



**ICESCR  
(1966)**





# General Comment 14 (2000)

**United Nations  
Committee on Economic,  
Social and Cultural Rights**

## Reinterpreting the Right to Health

- General Comment 14 (2000)
  - State Health Obligations
    - Health Care
    - Underlying Determinants of Health
  - Accountability for National Practice
    - Policy Gaps
    - Implementation Gaps



# General Comment 14 (2000)

## Attributes of the Right

**A**vailable

**A**ccessible

1. Non-discrimination
2. Physical accessibility
3. Economic accessibility
4. Information accessibility

**A**cceptable

**Q**uality



# Affordability & the Principle of Progressive Realization

- A state must take steps to operationalize the right to health only “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights.”
- Budget Allocation Issues – what is meant by “maximum” and “available”?


# TRIPS

 Agreement on trade related intellectual property rights



 Uniform protection of Intellectual Property

 Patents (20 years +)

 Enforcement through WTO Panel





# TRIPS & Pharmaceutical Patents

- Establishes *minimum* standards in the field of intellectual property and enforcement obligations
- All WTO Members must incorporate these standards into their national intellectual property legislation
- Disputes between Members are subject to the WTO dispute settlement mechanism
  - Parallel Importation
  - Compulsory Licensing

# Doha Declaration on the TRIPS Agreement and Public Health

“We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health.”

– **World Trade Organization  
Ministerial Meeting, Doha,  
2001**

“We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.”

# U.S. Role in Doha Negotiations

- Weakened U.S. opposition on the subject
  - Result of the U.S.'s own consideration of compulsory licensing of the drug Cipro in the face of the U.S. anthrax scare (September 2001)
- U.S. has systematically attempted to weaken consensus on the Declaration since the Doha Conference





# UN Commission on Human Rights (2005)

- “access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria is one fundamental element of achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”



# International Cooperation

- UDHR – “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”
- GC 14 – “it is particularly incumbent on State parties and other actors in a position to assist, to provide ‘international assistance and cooperation, especially economic and technical’ which enable developing countries to fulfill their core and other obligations.”

- *Does patent law conflict with the right to health?*
  - *Should patent law yield to human rights?*

The background of the slide is a dense field of green coins, each embossed with a dollar sign. The coins are scattered and overlap, creating a textured, monochromatic green background.

# Government (+ University) Obligations

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