

HEALTH, HUMAN RIGHTS AND THE INTERNATIONAL SYSTEM

PIH 214 April-May 2005

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Credits: 2.5

Day, Time, and Place: Fridays, 10:30 a.m.-1:20 p.m., Jonathan Mann Conference Room, 7th floor, FXB Building, from April 1 through May 20, 2005.

Scope and Objective of the Course:

This course is designed to provide an overview of the nature and role of international norms, processes and institutions and their relations to health and human rights issues, focusing on the responses of the international political and legal order to some of these issues.

What place do health and human rights occupy in international affairs? How can the effectiveness of norms and institutions relating to these issues be gauged? What insights may be derived from the way health and human rights are approached in the international system? To answer these questions, we need to comprehend the nature of the norms, processes, and actors of the international system; the legal and political context of international efforts to promote health and human rights; and the explicit and implicit interpretation of the issues by international actors. Throughout the course we will explore the dialectical relation between, on the one hand, the pursuit of national interests by the Governments and shareholder interests by the private sector and, on the other, the global objectives and practice of the intergovernmental agencies and nongovernmental actors that include health or human rights within their mandates. Students are encouraged to develop their own theoretical perspectives on understanding the international system and to test their ideas in class.

The ultimate aim of the course is to prepare students to understand and interact professionally with the international system to advance health and human rights objectives, whether through governmental, intergovernmental, or nongovernmental processes.

Method

The course will combine lectures with strong student participation in simulations exercises and discussion. Concepts and readings will be used from several social sciences, mainly political science and international law and relations.

Readings

The **readings** for this course will be primarily from the course packet and Marks (ed.) *Health and Human Rights: Basic International Documents* (Harvard 2004) (referred to below as “Marks, *Basic Documents*”). Additional readings may be handed out for each session, mainly for more in-depth preparation of the simulations.

Course requirements

This course will stress active participation of students in a critical discussion of the literature assigned for each session. For most sessions, individual students or teams will prepare presentations in the context of a simulation, which will launch the discussion. Occasionally, guests will join us, especially when the guest has been a key actor in the problem area under discussion.

After the first three sessions dealing with basic concepts, there will be a take-home quiz, which will serve as a mid-term exam and a test on whether and to what extent the main concepts are being absorbed. The mid-term will count for 10% of the final grade.

The principal requirement will be a **term paper** (approximately 15 pages), which will count for 60% of the grade. The paper may build on one of the presentations made in class and provide a more complete analysis of the issues. While effective use of official documents, events data, secondary literature, and interviews will be important in the preparation of papers; a premium will be placed on the quality of the analysis and the reflection on policy options. Team efforts are encouraged. Follow either the *American Medical Association Manual of Style* (9th ed.) or the *Chicago Manual of Style* (15th ed.). Preparation and presentation of assignments and class participation will count for the remaining 30% of the grade.

Presentation requirements

You are required to prepare and distribute to the class a concise outline (no longer than one page) of your position in the simulation. In some cases each presenter will be given some specific background material or references to assist with preparation. As you research your position, please note your sources on your outline, and if possible submit a copy of your source material.

Schedule of Sessions

Session 1: April 1, 2005

Basic Concepts

- A. The international system: Norms, processes and actors
- B. International health: Basic concepts and perspectives
- C. International human rights and humanitarian law: Basic concepts and perspectives
- D. Interrelation between health and human rights: Theory and practice

Readings:

- David P. Fidler, *International Law and Public Health*, pp. 67-86
- UN System handout
- UN Human Rights Organizational Structure
- Background material from Human Development Report 2000, pp. 1-18, 44-47.

Assignment: IR and HR

This session will introduce the basic concepts of the international system. Some concepts of international relations theory will be introduced relating to three broad approaches to understanding world politics: realism, world-system theory, and liberalism. These are not the only theoretical approaches, but they are so fundamental that it is essential to grasp their essential elements to understand the international norms, processes, and actors in the fields of health and human rights. Keep in mind that this knowledge will be applied throughout the course to the interaction of health and human rights problems at the international level.

Session 2: April 8, 2005

Norms and Procedures of international health

- A. The normative framework
- B. The private sector and the role of trade
- C. Bilateral and multilateral actors

Basic operation of the international trade regime

- A. Intellectual property rules relating to drug patents
- B. Dispute settlement machinery of the WTO

Readings:

- Panos paper, pp. 13-17.
- David P. Fidler, *International Law and Public Health*, (referred to below as “Fidler”) pp. 31-53, 219-223, 258-269.
- WHO, Globalization, TRIPS and access to pharmaceuticals, March 2001
- WHO, Implications of the Doha Declaration on the TRIPS agreement and Public Health,

pp.1-3, June 2002. See (<http://www.who.int/medicines/library/par/who-edm-par-2002-3/doha-implications.doc>) for full document

- WTO Declaration on the TRIPS Agreement and Public Health, 14 November 2001 (reproduced in Marks, *Basic Documents*, pp 263-264).
- Médecins sans Frontières (MSF) Campaign for Access to Essential Medicines, *TRIPS, R&D and Access To Medicines: A Guide to the Post 2005 World* (February 2005)

Assignment: IP and TRIPs

This session will provide an overview of the norms and procedures of international health law (Fidler) and the main international agencies (Panos briefing) as well as the background to the TRIPs Agreement (WHO papers).

We will focus on a case study of how the international trading system, regulated through agreements under the auspices of the World Trade Organization, may affect access to anti-retroviral drugs.

Countries that are members of the World Trade Organization, including South Africa and Brazil, signed an agreement on Trade Related Aspects of Intellectual Property (TRIPs), setting out minimum standards for patents, copyrights and trademarks. The TRIPs accord includes a provision for compulsory licensing, through which governments can grant a third party the right to manufacture a product without the permission of the patent owner, and for parallel importing of medicines, by which medicines can be imported by someone other than the authorized distributor. In 1997 South Africa revised the “South African Medicines Act,” giving the Minister of Health the power to ensure that patent rights over any medicine cannot stop the government from issuing a license to produce the same medicine in the interest of public health and to use parallel importing. This would allow South Africa to produce or import much-needed anti-viral drugs and thereby avoid the prohibitive cost of drugs manufactured by major pharmaceutical corporations. The large pharmaceutical companies initially opposed compulsory licensing and parallel importing, and the U.S. government acted to support the intellectual property rights of the companies.

The setting for this case is a WTO complaint filed by the United States against South Africa in November 2001, challenging the South African Medicines Act. In July, the Government of South Africa declared that the AIDS crisis constituted a national emergency and authorized compulsory licensing and parallel importing of ARVs. A South African pharmaceutical company, in cooperation with Cipla of India, is preparing to produce large quantities of some of the drugs necessary for the regimen and import the others from Cipla. The price of the entire regimen will be approximately 1/10th of that charged by the companies that hold the patents to these drugs.

In this exercise students will represent:

- the Pharmaceutical Research and Manufacturers of America (PhRMA)
- the U.S. Trade Representative (USTR)

- the Minister of Health of South Africa,
- a representative from Brazil, as a third party intervener
- a representative from India, as a third party intervener
- a representative from an NGO concerned with access to drugs for the poor
- a representative of Cipla

Each will make a presentation in a meeting chaired by the head of the Dispute Settlement Body of the WTO, whose role will be played by another student.

This is a panel meeting acting under Article 13 of the Rules and Procedures of the Dispute Settlement Body, which entitles the panel to seek information from any relevant source. The purpose of the meeting is to consider the health and human rights reasons why South Africa should or should not resort to compulsory licensing or parallel importing. The class will then discuss what norms and processes are at play in the international system.

Session 3: April 15, 2005

Norms and Procedures of international human rights

- A. The normative framework
- B. The means and methods of action at the global level
- C. The means and methods of action at the regional level

Readings:

- Stephen Marks, "Human Rights" in *Encyclopedia of Bioethics*, pp. 1221-1227.
- Shelton, "The Promise of Regional Human Rights Systems," in Weston & Marks, pp. 356-365.
- Carmel Shalev, Rights to Sexual and Reproductive Health: The ICPD and the Convention on the elimination of All Forms of Discrimination Against Women, *Health and Human Rights* 4:2, 39-66. (For reference to case)
- Falk, "A Half Century of Human Rights: Geopolitics and Values," in Weston & Marks, pp. 1-24. (Supplemental)
- Fidler, pp. 288-309. (Supplemental)

Assignment: CEDAW and FGM

This session necessarily draws heavily on the field of international human rights law. The first reading provides a broad political and historical framework for the current human rights regime, while the other two introduce the norms and procedures of international human rights (Marks) and in regional organizations (Shelton).

To apply this knowledge, we will explore a case of female genital cutting as examined by the Committee on the Elimination of All Forms of Discrimination against Women. The case draws on similar cases dealt with by the authorities in other countries where girls have sought refuge from pressure in their home country to submit to the practice. One student will represent a human rights NGO arguing on behalf of the girl, another will take the position of the girl's mother arguing for her return, a third will be a public health official. The class will consider, based on this exchange of positions in the presence of the CEDAW treaty body, which rights may be involved and how to resolve issues of cultural relativism vs. universal rights.

Session 4: April 22, 2005

Take Home Quiz distributed (due before class next week)

Outline of paper due (questions to be addressed, structure, preliminary bibliography)

Interaction between health and human rights systems through multilateral strategies

- A. Integrating human rights into sustainable human development: Policies and practices of UNDP and UNHCHR
- B. Human rights strategies and human rights-related policies of WHO and UNAIDS
- C. Reproductive rights and international conferences and plans of action

Readings:

- UNDP, Integrating Human Rights with Sustainable Human Development. January 1998
- Memorandum of Understanding between the United Nations Development Program and Office of High Commissioner for Human Rights and Annex (in UNDP, *Survey of UNDP Activities in Human Rights*), pp. 94-99.
- Stephen Marks, "Human Rights in Development: The Significance for Health," in Gruskin et al, *Perspectives on Health and Human Rights*, Taylor & Francis, 2005, pp. 95-116.
- From Session 3: Carmel Shalev, Rights to Sexual and Reproductive Health: The ICPD and the Convention on the elimination of All Forms of Discrimination Against Women, *Health and Human Rights* 4:2, 39-66.
- From Session 3: Shelton, "The Promise of Regional Human Rights Systems," in Weston & Marks, pp. 356-365.

Assignment: UNDP, IACHR, and Forced Sterilization

This session examines the experience of international agencies that have made an explicit effort to apply the health-human rights linkage. UNDP has had an official policy to integrate human rights into sustainable human development (including health, of course) since 1998.

In the assignment, the Resident Coordinator of the United Nations (who is also the Resident Representative of UNDP) is examining with staff of the Peruvian Ministry of Health the next stage of the Country Cooperation Framework for Peru. The issue is the government's program of family planning, of which the government is proud and has described as a contribution to the right to development. Accusations have been made by NGOs that Peruvian health officials have performed forced sterilization by tubal ligation on indigenous women. The Resident Coordinator has convened a meeting of the government official in charge of the program in the Ministry of Health; a representative of a human rights organization called APRODEH, which has denounced the practice to the Inter-American Commission on Human Rights; and a staff person from the UNDP office who has just completed a training course on health and human rights organized by the François-Xavier Bagnoud Center for Health and Human Rights in Boston. Each participant in the meeting will present the perspective of his or her office in light of UNDP's mandate to integrate human rights into sustainable human development.

Session 5: April 29, 2005

International Security, Terrorism, and International Humanitarian Law:

- A. Legitimate restrictions on human rights law based on national security
- B. Efforts to combat terrorism by non-state actors
- C. International humanitarian law

Readings:

- Letter from human rights organizations to Secretary Rumsfeld, February 20, 2004.
- Third Geneva Convention: through article 20. (Full text available on course website)
- Lawyers Committee for Human Rights, "Unclassified Detainees" in *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, pp. 49-58.
- Stephen Miles, "Abu Ghraib: its legacy for military medicine," *The Lancet* vol. 364, August 2004, pp. 725-729.

Assignment: WHA, IHL and Guantanamo Bay Detainees

The United States-led War on Terrorism has yielded suspected-terrorist detainees from across the globe resulting from the military intervention in Afghanistan and arrests in several other countries. Currently, over 600 individuals are being held by the United States government in Guantanamo Bay, Cuba. The detainees range in age from 13 to over seventy and come from more than forty different countries. While the United States military maintains the Guantanamo base as a self-sufficient facility, the base is on land owned by the Cuban government which has been leased to the United States since 1903. Several government investigations have confirmed a wide range of abusive practices by coalition forces in Iraq, most notably in the prison of Abu Ghraib.

The physical and mental health of the detainees at Guantanamo Bay and Abu Ghraib has been of concern to governments and NGOs. As a result, Cuba, Algeria, and Malaysia have co-sponsored a resolution at the 57th World Health Assembly condemning alleged U.S. violations of the right to health of the detainees and urging the international community to support the detainees' rights under international human rights conventions and the third Geneva Convention relating to the treatment of prisoners of war. The president of the Assembly has opened the floor for discussion on the draft resolution. She has requested the UN High Commissioner for Human Rights, Ms. Louise Arbour, to present the position of her office on the human rights issues involved. The observer from the International Committee of the Red Cross will comment on the application of international humanitarian law and put into context the issue of prisoner of war status. Cuba will present the draft resolution. The U.S. delegation has appointed Ruth Wedgwood to present its position. The European Union, represented by Ireland, has amendments to propose as it is concerned with the treatment of European nationals and with some NGO reports. At the conclusion of the debate, the World Health Assembly will vote on the resolution.

Session 6: May 6, 2005

Health-related issues before regional human rights bodies

- A. Council of Europe, European Committee of Social Rights, Complaint N° 1/1998, From the International Commission of Jurists Against Portugal
- B. Abortion before the Inter-American Commission on Human Rights
- C. HIV/AIDS before the European Court of Human Rights

Readings:

- Tom Kenny, "Securing Social Rights Across Europe," Oxfam.
- Review Shelton chapter from Weston & Marks, read for session 3.
- Complaint filed by the International Commission of Jurists Against Portugal. Complaint No. 1/1998. Council of Europe.
- HIV/AIDS case before the European Court of Human Rights (D. v. the United Kingdom)
- Fidler, pp. 294-299.
- European Convention on Human Rights and Revised European Social Charter (To be posted on course website)

Assignment:

The first exercise will allow the representatives of the International Commission of Jurists and the government of Portugal to argue the merits of the complaint lodged by the former against the latter under the collective complaints procedure of the European Social Charter, alleging that child labor in that country has negative consequences on children's health and development. The class will be members of the Committee of Independent Experts, who will seek from the two parties information to allow them to report to the Committee of Ministers.

The second exercise will be a case referred to the European Court of Human Rights. In this case the U.K. is attempting to deport D., who has been diagnosed with HIV/AIDS, back to his place of residence. D. is arguing that this is a violation of Articles 2, 3, 8, and 13 (right to life, inhuman or degrading treatment, right of respect for private life, and right to effective remedy) of the Convention for the Protection of Human Rights and Fundamental Freedoms. One student will be the counsel for D., another will be counsel for the U.K., another an independent expert consult, and the class will act as the Chamber of the Court.

Session 7: May 13, 2005

Health issues addressed through international treaties

- A. The response of the international system to issues of human genetic manipulation
 - i. UNESCO and the IBC
 - ii. The Council of Europe
 - iii. The OHCHR
- B. The current intergovernmental efforts to ban reproductive human cloning

Readings:

- Universal Declaration on the Human Genome and Human Rights (reproduced in Marks, *Basic Documents*, pp. 281-285).
- UN General Assembly A/58/73, Draft International Convention on the Prohibition of All Forms of Human Cloning, 2 April 2003. (Reproduced in Marks, *Basic Documents*, pp. 299-304.)
- Elizabeth Blackburn and Janet Rowley, “Reasons as Our Guide” in *PLoS Biology*, vol. 2 Issue 4, April 2004.
- Preliminary Draft Declaration on Universal Norms on Bioethics (UNESCO doc SHS/EST/CIB-EXTR/05/CONF./202/2, Paris, 9 February 2005)
- T A Faunce, “Will international human rights subsume medical ethics? Intersections in the UNESCO Universal Bioethics Declaration,” *J. Med. Ethics* 2005;31;173-178.
- Stephen Marks, *Human Rights Assumptions of Restrictive and Permissive Approaches to Human Reproductive Cloning in Health and Human Rights*, Vol. 6 No. 1, 2002.

Assignment:

This session will introduce the international standard-setting. As background, we will consider recent efforts of the General Assembly to draft an international convention banning reproductive human cloning. The General Assembly has been divided on the issue of reproductive cloning; the governments of the United States and Costa Rica have been attempting to widen the definition of the ban to include all forms of cloning – both reproductive and therapeutic.

This assignment involves a related development in the deliberations of UNESCO regarding the Draft Declaration on Universal Norms on Bioethics. In 2003, the International Bioethics

Committee (IBC) of UNESCO issued a report on the “Possibility of Elaboration a Universal Instrument on Bioethics” (UNESCO doc. SHS/EST/02/CIB-9/5 (Rev. 3), Paris 13 June 2003). The General Conference of UNESCO decided in October 2003 that UNESCO should proceed with the drafting (32 C/res. 24). At the same session, the General Conference adopted the International Declaration on Human Genetic Data (Reproduced in Marks, Basic Documents, pp. 291-298.)

On April 4-6, 2005, an intergovernmental meeting of experts took place at UNESCO Headquarters in Paris. The assignment takes place in a high-level restricted drafting committee convened by the Director General of UNESCO to try to iron out strong divergences regarding the place and content of human rights provision in the Declaration. In particular, the delegation of the United States, which rejoined UNESCO in 2003 after nearly two decades outside of the organization, has strong objections to introducing human rights into the document.

Session 8: May 20, 2005

Health and human rights in post-conflict settings and complex humanitarian emergencies

- A. Human rights activism in the medical profession: Means and methods of MSF and PHR
- B. Health and human rights components of PKOs in humanitarian emergencies: case studies of Kosovo and Afghanistan
- C. The role of human rights in humanitarian relief and reconstruction

Readings:

- Kari Hannibal and Robert Lawrence, “The Health Professional as Human Rights Promoter: Ten Years of Physicians for Human Rights (USA),” in Mann et al, *Health and Human Rights: A Reader*, pp. 404-416.
- Renée Fox, “Medical Humanitarianism and Human Rights: Reflections on Doctors Without Borders and Doctors of the World,” *Id.*, pp. 417-435.
- Mary B. Anderson, “You Save My Life Today, But for What Tomorrow?”: Some Moral Dilemmas of Humanitarian Aid, in Moore (ed.), *Hard Choices*, pp. 137-156.
- Fidler, pp. 376-381(IHL).
- Additional readings to be distributed in class

Assignment: PKOs and dilemmas of relief

The setting is Liberia, where the Security Council established on 19 September 2003 the United Nations Mission in Liberia (UNMIL), consisting of military personnel, civilian police officers, and a civilian component, including a Human Rights Section. UNMIL’s mandate is vast and includes, among many tasks, to observe and monitor the implementation of the ceasefire agreement, and “to facilitate the provision of humanitarian assistance, including by helping to establish the necessary security conditions; to contribute towards international efforts to protect

and promote human rights in Liberia, with particular attention to vulnerable groups including refugees, returning refugees and internally displaced persons, women, children, and demobilized child soldiers, within UNMIL's capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations, governmental organizations, and non-governmental organizations; to ensure an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection, and monitoring activities..." The full resolution is on the course web site. Information about the mission can be found at <http://www.un.org/Depts/dpko/missions/unmil/index.html>.

The Special Representative of the Secretary-General and Coordinator of UN Operations in Liberia, Jacques Paul Klein, has just received a report that shells landed in Monrovia's "Mamba Point" neighborhood, where the medical relief organization MSF was running two hospitals. The city's public hospital had been forced to close earlier. The intense bombing has made it nearly impossible for MSF staff to provide desperately needed medical care in the city. The head of the MSF mission said, "In Monrovia, people are dying of cholera and there is a severe shortage of food and water. We fear that the situation in other parts of Liberia may also be dire. Humanitarian organisations have not had safe access to regions such as Lofa country for more than two years." In a press release, MSF urged all warring parties to stop targeting civilians and cease attacks, which jeopardize the very few medical facilities that remain functional. The wounded must be allowed safe access to medical treatment. Medical workers must be allowed to treat patients safely within medical facilities.

An UNMIL investigation has revealed that the attack on the MSF hospital was conducted by the rebel group the Liberians United for Reconciliation and Democracy (LURD) in order to obtain the release from treatment of one of their commanders whom several Liberian human rights organizations had accused of crimes against humanity. LURD had also learned that the Human Rights Section of UNMIL had prepared a file on him with a view to prosecution. After shelling the hospital, the LURD commandos entered the premises and succeeded in bringing their commander out of the hospital but he died in transit to a LURD hideout for lack of treatment.

Mr. Klein has called an emergency meeting to take action to ensure the security of humanitarian operations in Liberia. The following participants attend the meeting:

- The chief spokesperson for LURD
- Head of the UNMIL Human Rights Section
- The delegate of the ICRC
- Head of the human rights in development unit of the United Nations Development Programme (UNDP).
- Deputy Special Representative of the Secretary-General for Operations and Rule of Law
- Liberia's Deputy Minister of Justice and Solicitor General

Course Evaluations

Term papers are due by 5 pm, May 20, 2005