

International Law

Academic year 2020-2021

Global Health Law

DI121 - Printemps - 6 ECTS

Monday 2:15 – 4:00 PM, Room S5

Course Description

This course provides a critical overview of the governance and regulation of global health within the context of contemporary international law as well as the structures and features of global governance processes and frameworks. The course will focus on the following issues underlying global health law, that will provide opportunities for critical analysis and a fresh approach to the subject: (1) Definition, scope and functions of global health law as a growing field of international law; (2) The governance of global health, in particular the role and functions of WHO, other international organizations and stakeholders; (3) Interactions of public health concerns with international instruments and regimes such as those regulating international trade and investments, human rights, international security and environmental protection; (4) The international regulation of current paramount health concerns, from infectious and non-communicable diseases to the growing threat of antimicrobial resistance; (5) A critical assessment of the adequacy of international law for the protection and promotion of global health and prospects for its development. The COVID-19 crisis will figure prominently across the course by analyzing its impact on WHO and global health governance as well as various international legal and policy regimes. We will also discuss possible institutional and legal solutions to improve sustainability and global health security.

> PROFESSOR

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Syllabus

Course summary and purpose

This course is designed to give international law students as well as students from other disciplines an appreciation and critical insight of the relevance of contemporary international law and global governance processes for the protection and promotion of public health and the complex interplay between various international legal and policy regimes with public health concerns such as control of communicable and non-communicable diseases, access to medicines and the realization of the human right to health. The role of health in global normative and political processes has changed radically since the 1990s; the course will aim at clarifying what are the causes of such a change and to enable a critical discussion of its consequences for individual and public health.

Even though the course has a strong international law foundation, it aims at being accessible and relevant also for students of other disciplines such as political science, anthropology and history as well as students of the interdisciplinary programmes. The course will enable participants to integrate public health considerations in their further international studies and in their future professional orientations.

The course is designed and meant to be an interactive experience, combining teaching and presentations by guest lecturers with joint analysis of relevant cases and materials, discussions and if possible individual presentations. Possible group work will be discussed with the students. The structure of the course, by providing an overview of different areas of international law and their interaction with public health issues rather than focusing at length on individual topics, does not require previous attendance of other international law courses. Knowledge of public international law and of topics dealt with during the course such as human rights, international economic law and environmental law, however, will facilitate understanding and participation.

This course complements Prof. Moon's course on "Global Governance and Health: Problems Politics and Policies" (MINT165); Prof. Nguyen's course on "Medical Anthropology I: Contemporary Approaches to Biomedicine, Technology and Global Health" (ANSO103); Prof. Bharadwaj's course on "Medical Anthropology II: Contemporary Approaches to Biomedicine, Technology and Global Health" (ANSO111); and Prof. Somerville's course on "Gender and Bodies in Global Health" (MINT158);

Course materials and other practical information

The required textbook for the course is:

Gian Luca Burci, Brigit Toebes (eds.), *Research Handbook on Global Health Law* (Edward Elgar, 2018).

The electronic version of the book is freely accessible through the Institute's library and can be purchased for about CHF 40.00 on Google Play (https://play.google.com/store/search?q=9781785366543&c=books&hl=en_GB). The hard copy of the book is also available to students of the course at a deep discount from the regular price (about £45.00 plus shipping) from Elgar's web site (<https://www.e-elgar.com/shop/research-handbook-on-global-health-law>) entering the discount code GLBU45.

The book is referred to as "Burci & Toebes" when assigning chapters below.

Other readings for the course are listed under each class. Additional readings may be indicated or distributed directly in class. It is important that students read the material assigned for each class in order to enable discussion and participation. Students are also encouraged to increase their preparation by engaging in independent research on the issues under discussion. Students are encouraged to contact Professor Burci to discuss additional readings and research.

All readings – except for readings from Burci & Toebes since students are required to have it - and important information (including this syllabus) will be posted regularly on the course's Moodle page; log in information will be provided later by email when you register to the course. For any questions or problems, please get in touch with the teaching assistant for this course (Malavika Rao).

Attendance

Attendance in class is required, and if a student has to miss classes, he/she should contact Professor Burci and Malavika Rao to indicate the reason. Extended unjustified absences will lead to a grade reduction or even withdrawal from the course. An attendance sheet will be circulated for each class after the end of the registration period.

Assessment

The assessment for this course will be based on a final paper (90%) and class participation (10%).

Final exam

The final exam will consist of a legal and policy analysis and presentation of a hypothetical situation covering one or more of the topics examined in the course. The exam will be a take-home open book exam. Papers must be maximum 5000 words excluding footnotes and bibliography, double-spaced, 12-point font, with numbered pages and word count at the end. Students should identify themselves on the paper by name and/or student number. Footnotes can follow any common style such as OSCOLA, Chicago or Bluebook as long as they are clear and consistent. Final exams must include a bibliography of the primary and secondary sources used. Students will receive the topic of the exam at the last class and will have about 10 days to return it. The exact date will be announced in advance in class and through the Moodle page.

Since the IHEID has a policy of bilingualism, papers can be written in either English or French.

The final exam will be assessed and graded on the following basis: 1) understanding of the legal and policy issues involved and ability to summarize them clearly and concisely as necessary; 2) ability to convincingly analyse the issues in question with references to primary and secondary sources as necessary; 3) knowledge of at least the basic concepts of international law relevant for the questions; 4) if relevant for the question, formulation of clear policy proposals.

Please note that papers will be assessed and graded not only on the basis of their contents but also of their linguistic quality. This does not intend to penalize students whose mother tongue is neither English nor French, but to ensure that what you are writing is understandable, clear and correctly phrased. Please make sure to proofread your paper before submission, or to seek other forms of support such as review by a native speaker or even proofreading software.

The final exam must be submitted within the indicated deadline. In fairness to other students, unjustified delays will be penalized at 0,25 of the grade per 24-hour period delay after the deadline.

Plagiarism

Students are reminded of the Graduate Institute's policy on citation of sources and plagiarism, contained in the document "Internal guidelines governing citation of sources and plagiarism" available on the Student Web Portal, that they have received upon registration. All short papers and final exams will be submitted to Professor Burci and Malavika Rao through the Turnitin software available through Moodle or in the library. If your paper shows more than 20% of text lifted from published or Internet

sources, it will be submitted to the Direction of Studies in order to decide on possible consequences, including failure of the course.

Time and Location

All classes will be held on Mondays from 14:15 to 16:00 in room S5. A few classes may have to be rescheduled if they conflict with imperative professional commitments of Professor Burci. The dates and locations of make-up classes will be agreed with students.

Miscellaneous

All students will be asked to complete an anonymous evaluation at the end of the course. Students are encouraged to do so as their honest feedback is very valuable for improving future versions of this course.

While laptops and tablets are allowed in class, that is only for the purpose of taking notes or accessing background material. In fairness to other students and respect for Prof. Burci, students will refrain from using their laptops, tablets and telephones for entertainment or private purposes.

COURSE OUTLINE

PART 1 - INTRODUCTION AND CONTEXT

Class 1

22 February

Scope, definition and functions of global health law, structure of the course

This class will review the approach, structure and requirement of the course. It will also discuss some important preliminary conceptual issues to define the notion and scope of global health law and set a framework for the rest of the course. These issues include the following questions: what do we mean by “global health”? Why has health emerged as a political field of high visibility and what are the main health problems requiring international regulation? What does “global health law” consist of? What is the impact of globalization on health? What are the main contemporary public health challenges?

Required readings

B. Toebes, ‘Global health law: defining the field’, in **Burci & Toebes**, pp. 2-23.

L.O. Gostin, *Global Health Law* (Harvard University Press, 2014), pp. 32-58.

WHO, Twelfth General Programme of Work 2014-2019, document A66/6, 19 April 2013, pp. 4-10.

Class 2

1 March

The history of global health law and the World Health Organization

International cooperation in the field of health has a longer historical record that few people are aware of, in particular for the protection against epidemics. International law and international institutions were developed at an early stage as essential tools for such cooperation. This historical development culminates in the establishment of WHO in 1948 and must be appreciated to better understand the main normative and political drivers of global health law and governance. This class will provide an overview of the main issues underpinning the development of international law and institutions and will also review the main institutional and functional features of WHO as the central actor in global health governance.

Primary sources

Constitution of WHO, preamble, articles 1, 2, 9 to 37 and 44 to 54.

Legality of the Use by a State of Nuclear Weapons in Armed Conflict, [Advisory Opinion](#), I.C.J. Reports 1996, p. 66. (Please read only the Advisory Opinion)

Required readings

A-E. Birn, ‘The stages of international (global) health: histories of success or successes of history?’, 4 *Global Public Health* (2009), pp. 50-62.

L. Gostin, *Global Health Law* (Harvard University Press, 2014), Chapter 4, pp. 89-128.

N. Howard-Jones, 'Origins of International Health Work', in J.J. Kirton (ed.), *Global Health* (Ashgate, 2009), pp. 25-30.

Complementary readings

F.G. Boudreau, 'Health Work of the League of Nations', 13 *The Milbank Memorial Fund Quarterly* (1935), pp. 3-22.

O. Aginam, 'The nineteenth century colonial fingerprints on public health diplomacy: A postcolonial view', 1 *Law, Social Justice & Global Development Journal* (2003).

D.P. Fidler, 'The globalization of public health: the first 100 years of international health diplomacy', 79 *Bulletin of the World Health Organization* (2001), pp. 842-49.

D. Fidler, 'Germs, Norms and Power: Global Health's Political Revolution', 1 *Law, Social Justice & Global Development Journal (LGD)* (2004).

N. Howard-Jones, 'The scientific background of the International Sanitary Conferences, 1851-1938', World Health Organization (1975).

N. Howard-Jones, 'The Pan American Health Organization: origins and evolution', World Health Organization (1981).

V. Huber, 'The unification of the globe by disease? The international sanitary conferences on cholera, 1851-1894', 49 *The Historical Journal* (2006), pp. 453-76.

W.F. Bynum, 'Policing hearts of darkness: aspects of the international sanitary conferences', 15 *History and philosophy of the life sciences* (1993), pp. 421-34.

Class 3

8 March

Global health governance

A review of global health law cannot ignore the historical and complex developments underway in global health governance, in particular the role played by international organizations beyond WHO as well as the growing role of non-state actors and the quest for new forms of governance and management of global public goods in health. Of particular relevance are the shift to a horizontal model of international cooperation, the emergence of new actors and stakeholders with significant influence on health governance and regulation, and the search for innovative financing and cooperation mechanisms. We will discuss in particular the proliferation of "health partnerships" and public/private networks, their features and their implications for WHO. These complex governance developments provide evidence of the increasing political importance of health in global governance and questions what the main functions are that the system should deliver, in particular in light of the COVID-19 crisis.

Primary sources

69th World Health Assembly, Framework of engagement with non-state actors, resolution WHA69.10, 28 May 2016, Annex, pp. 4-19.

Required readings

S. Moon, 'Global health law and governance: concepts, tools, actors and power', in **Burci & Toebes**, pp. 24-55.

J. Youde, 'Contemporary Global Health Actors', *Contemporary Global Health Governance in International Law* (Oxford Online Scholarship), 2018.

G.L. Burci, 'Public/Private Partnerships in the Public Health Sector', 6 *International Organization Law Review* (2009), pp. 359-382.

PART 2 - HEALTH AND INTERNATIONAL LAW

Classes 4, 5 and 6

15, 22 and 29 March

Health as a human entitlement: health and human rights, human rights-based approach to health, right to health

One of the revolutions in recent history about the vision of individual and public health is the framing of health and its determinants in terms of human rights. Even though the "right to health" has been part of the human rights canon since the 1948 Universal Declaration of Human Rights and the 1966 Covenant on Social, Economic and Cultural Rights, this dimension of global health discourse has become prominent only as part of the response against the HIV/AIDS crisis starting from the 1980s. Since then, however, many aspects of health protection and promotion have been discussed and critiqued from a human rights perspective. Besides international regulatory instruments, there is a growing body of national and international jurisprudence on a broad range of issues, from access to medicines to non-discrimination, from reproductive health questions to the rights of hospital patients and prisoners. The COVID-19 crisis will certainly contribute to this discourse but also to national and international litigation in view of the unprecedented limitations of civil rights in the name of health protection as well as the dramatic social and economic effects of national health measures.

The course will consider three distinct but interrelated aspects: 1) public health protection as a legitimate limit to the enjoyment of human rights; 2) the right to health under international law; and 3) the human rights approach to health. Class 6 will be dedicated to a discussion of some health-related cases and to a presentation by a guest speaker on actual international practice on health and human rights. More details will be discussed in class with Prof. Burci.

Primary sources for all three classes

Students should get acquainted with the relevant provisions of the main instruments, such as:

- 1) Universal Declaration of Human Rights, Article 25.
- 2) UN International Covenant on Civil and Political Rights, Articles 4, 12, 19-22.
- 3) UN International Covenant on Economic, Social and Cultural Rights, Articles 2, 4, 12.
- 4) UN Convention Against Torture, Article 1.
- 5) UN Convention on Elimination of Discrimination against Women, Article 12.
- 6) UN Convention on the Rights of the Child, Article 24.
- 7) European Social Charter, Article 11.
- 8) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: the Protocol of San Salvador, Article 10.
- 9) African Charter on Human and People's Rights, Articles 11-12-16.

The entitlement to non-discriminatory access to health-related services and conditions is the object of a growing number of national and international judicial and quasi-judicial cases. Many such cases are reproduced and summarized in the “Global Health and Human Rights Database” (<http://www.globalhealthrights.org>).

Class 4: Health and human rights - human rights-based approach to health and the right to health

Primary sources

Committee on Economic, Social and Cultural Rights, General Comment No 14 (2000) - The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights).

Required readings

J.M. Mann, L. Gostin, S. Gruskin, T. Brennan, Z. Lazzarini; H. Fineberg, ‘Health and Human Rights’, in J.M. Mann *et al.* (eds.), *Health and Human Rights* (Routledge, 1999), pp. 7-20.

J. Tasioulas and E. Vayena, ‘Just Global Health: Integrating Human Rights and Common Goods’, forthcoming in T. Brooks (eds.), *The Oxford Handbook of Global Justice*.

Alicia Ely Yamin, The right to health, Elgar Research Handbook on economic, social and cultural rights as human rights (2020), pp. 159-179

Complementary readings

B. Toebes, ‘Right to Health and Health Care’, in D.P. Forsythe (ed.), *Encyclopaedia of Human Rights*, (2009), pp. 365-376.

J. Tasioulas and E. Vayena, ‘The Place of Human Rights and the Common Good in Global Health Policy’, 37 *Theoretical Medicine and Bioethics* (2016), pp. 365-82.

Class 5: Public health and limitation of human rights.

Primary sources

CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 2001 (CCPR/C/21/Rev.1/Add.11).

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1984.

Laskey and others v. United Kingdom, (Application no. 21627/93; 21628/93; 21974/93) (ECtHR 1997).

Required readings

O. De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press, 2019), pp. 344-377.

G. J. Annas, 'The Impact of Health Policies on Human Rights: AIDS and TB Control', in J.M. Mann *et al.* (eds.), *Health and Human Rights* (Routledge, 1999), pp. 37-45.

Complementary readings

L.O. Gostin, *Public Health Law – Power, Duty, Restraint* (University of California Press, 2016), pp. 416-433 on quarantine and isolation in case of health emergencies.

D. Tarantola and S. Gruskin, 'The recognition and evolution of the HIV and human rights interface: 1981-2017', in **Burci & Toebes**, pp. 303-339.

Class 6: COVID-19 and human rights

Professor Burci will assign one or more of the cases below for a class exercise. Details will be discussed in advance in class.

Primary sources

HRC, 'Statement on derogations from the Covenant in connection with the COVID-19 pandemic', (CCPR/C/128/2), 24 April 2020.

CESCR, 'Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights', (E/C.12/2020/1), 17 April 2020.

IACHR, 'COVID-19 and human rights: the problems and challenges must be addressed from a human rights perspective and with respect for international obligations', 29 April 2020.

Required readings

B. Sander and L. Belli, "[COVID-19 Symposium: COVID-19, Cyber Surveillance Normalisation and Human Rights Law](#)", *OpinioJuris*, 1 May 2020.

Audrey Lebet, '[COVID-19 pandemic and derogation to human rights](#)', *Journal of Law and the Biosciences* 7(1), pp.1-15.

S. Sekalala, L. Forman, R. Habibi, B.M. Meier, '[Health and human rights are inextricably linked in the COVID-19 response](#)', *BMJ Global Health*, 2020.

Complementary reading

M. Rao, 'Should internal migrants who cannot go back home due to COVID-19 be treated as disaster IDPs? Lessons from India', 39(4) *Refugee Survey Quarterly*, pp. 609-619.

Classes 7, 8 and 9

12, 19 and 26 April

Health as a limit or as overarching value: international trade and investment law, pharmaceutical innovation and access to medicines

Rules shaping international trade and intellectual property rights under WTO agreements such as the GATT, GATS, SPS, TBT and TRIPS agreements may have a significant impact on public health and are, in turn, shaped by the health concerns of governments and other actors. The main angles of the interaction between trade and health are the risk of spread of diseases through international trade and the difficult balance between promoting innovation and economic development through intellectual property and other proprietary rights while safeguarding public health, in particular with regard to access to affordable essential medicines. The recent proliferation of bilateral investment treaties and free trade agreements has also raised difficult questions concerning the regulatory space that receiving states can enjoy to protect public health. Another crucial open question is how to promote and facilitate research and development of new medicines for neglected diseases that mostly affect poor countries and populations. The inability of the pharmaceutical market to address this problem has led to a number of innovative measures and proposals. The COVID-19 pandemic has precipitated some of these lingering problems, in particular export restrictions on medical and protective material as well as access to vaccines. The hoarding of vaccines by developed countries has been contrasted by innovative multilateral initiatives aiming at injecting fairness and equity into market considerations.

These classes will review the main features of the legal instruments in question or of the proposals under discussion and of their interactions with public health considerations, including with regard to the effects of the COVID-19 pandemic. Particular attention will be given to relevant WTO and investment cases, and students may be asked to comment on some of them.

Class 7: International trade law

Primary sources

General Agreement on Tariffs and Trade, 1994, Articles I, III, XI and XX;

WTO Agreement on Sanitary and Phytosanitary Measures, Articles 1-5 and Annex A;

WTO Agreement on Technical Barriers to Trade, Articles 1-4;

General Agreement on Trade in Services, 1994, Articles I, II, VI, VIII, XIV, XVI, XVII, XXI

Required readings

B. McGrady, 'Health and international trade law', in **Burci & Toebes**, pp. 104-134.

D. Fidler, N. Drager, C. Correa, O. Aginam, 'Making Commitments in Health Services under the GATS: Legal Dimensions', in C. Blouin, N. Drager, R. Smith (eds.), *International Trade in Health Services and the GATS* (World Bank, 2006), pp. 141-168.

J. Pauwelyn, 'Export Restrictions in Times of Pandemic: Options and Limits under International Trade Agreements', 18 April 2020.

Complementary readings

X. Seuba, 'International harmonization of pharmaceutical standards: trade, ethics and power', in **Burci & Toebes**, pp 460-485.

B. Baumberg and P. Anderson, 'Trade and Health: How World Trade Organization (WTO) Law Affects Alcohol and Public Health', 103 *Addiction* (2008), pp. 1952-58.

P. Delimatsis, 'Relevant International Standards' and 'Recognized Standardization Bodies' under the TBT Agreement (2014)', TILEC Discussion Paper No. 2014-031 (available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2489934&download=yes>).

Class 8: International investment law

Primary sources

Investment Protection Agreement between the European Union and Vietnam (2019), articles 2.2 and 4.6.

Agreement between Australia and Uruguay on the Promotion and Protection of Investments (2019), articles 15 and annex B.

Agreement between Japan and Jordan for the Promotion and Protection of Investment (2019), articles 15 and 20.

Agreement between Australia and Indonesia concerning the Promotion and Protection of Investments (1992)

Required readings

C. Giorgetti, 'Health and international investment law', in **Burci & Toebes**, pp. 164-198.

C. Schreuer, 'Investments, International Protection', in *Max Planck Encyclopaedia of Public International Law* (2013), especially Section E on standards of protection, expropriation and necessity. **Please browse if you are not familiar with investment law and need a primer, otherwise disregard.**

McCabe Centre for Law and Cancer, 'The Award on the merits in Philip Morris v Uruguay: implications for WHO FCTC implementation' (2016) (the specific pages will be indicated later).

K. De Vriese, '[COVID-19 and 'War' Clauses in Investment Treaties: A Breach through the Wall of State Sovereignty?](#)', EJIL:Talk!, 10 June 2020.

N. Bernasconi-Osterwalder, S. Brewin, N. Maina, 'Protecting against investor-state claims amidst COVID-19: A call to action for governments', April 2020.

Class 9: Pharmaceutical Innovation and Access to Medicines

Primary sources

WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, Part I Articles 3 to 8, Articles 15 to 20 on trademarks, and Articles 27-34 on patents, including Article 31 bis introduced in 2005.

Doha Declaration on the TRIPS Agreement and public health, 2001.

CESCR, '[Statement on universal and equitable access to vaccines for the coronavirus disease \(COVID-19\)](#)', (E/C.12/2020/2), 15 December 2020.

Required readings

WTO, WIPO, WHO, Promoting Access to Medical Technologies and Innovation (2nd edition, 2020) (The pages to read will be assigned later).

Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines (2016), pp. 13-37.

COVAX, 'COVAX: The vaccines pillar of the access to COVID-19 tools (ACT) Accelerator- Structure and Principles', 9 November 2020.

[COVAX Explained](#)

Complementary readings

E.R. Fletcher, '[World Bank Unleashes US\\$12 Billion in "Fast-Track" Finance For COVID-19 Vaccine Purchases By Low- And Middle-Income Countries](#)', Health Policy Watch, September 2020.

T. Burki, '[Equitable Distribution of COVID-19 Vaccines](#)', The Lancet, January 2021

F.M. Abbott, 'Health and intellectual property rights', in **Burci & Toebes**, pp. 135-163.

R. Chandra, 'The Role of National Laws in Reconciling Constitutional Right to Health with Trips Obligations: An Examination of The glivec patent Case in India' in T. Pogge *et al.* (eds.), *Incentives for Global Public Health: Patent Law and Access to Essential Medicines* (Cambridge University Press, 2010), pp. 381-405.

R. C. Dreyfuss, 'Trips and Essential Medicines: Must One Size Fit All? Making the WTO Responsive to the Global Health Crisis', in T. Pogge *et al.* (eds.), *Incentives for Global Public Health: Patent Law and Access to Essential Medicines* (Cambridge University Press, 2010), pp. 35-55.

F. M. Abbott. 'The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health', 99 *American Journal of International Law* (2005), pp. 317-58.

PART 3 - THE INTERNATIONAL LEGAL REGULATION OF HEALTH CONCERNS

Class 10 and 11

3 and 10 May

Health security and international security

Prevention and control of the spread of infectious diseases has been the core area of international cooperation and law-making for 150 years and WHO has centralized those functions. These classes will analyse the International Health Regulations (IHR) as the main international legal instrument to control the international spread of disease; we will discuss in particular the international response to the spread of COVID-19, the effectiveness of the IHR and the role of WHO in this context. The mutual interaction of international security law and policy and public health is one of the most striking developments of the last decade, due both to the increased security implications of emerging diseases and the fear of bioterrorism. The risk of subjecting public health protection to a security paradigm has been counterbalanced by the emerging concept of human security. The 2014-2016 Ebola outbreak in West Africa and the COVID-19 pandemic have exacerbated these tensions and led to an unprecedented level of debate and review of the necessary institutional and legal tools to protect the world from outbreaks of infectious diseases.

Class 10: Health and international security

Primary sources

Security Council resolution 2177 (2014) and statement by the President of the Security Council of 21 November 2014 (S/PRST/2014/24) on the international response to the Ebola outbreak.

Security Council resolution 2439 (2018), of 30 October 2018, condemning attacks by armed groups in Democratic Republic of Congo Jeopardizing Response to Ebola Outbreak, Doc. S/RES/2439(2018).

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, paras. 29-36.

Committee on Economic, Social and Cultural Rights, General comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights (1997) (E/C.12/1997/8)

UN Security Council [Resolution 2532](#) on the cessation of hostilities in the context of the coronavirus disease (COVID-19) pandemic, July 2020.

Required readings:

Gian Luca Burci, 'Ebola, the Security Council and the securitization of public health', in 10 *Questions of International Law* (2014), pp. 27-39.

D. Fidler, 'Public Health and National Security in the Global Age: Infectious Diseases, Bioterrorism and Realpolitik', 35 *George Washington International Law Review* (2003), pp. 787-815.

A. Bellal, 'Health and International Humanitarian Law', in **Burci & Toebes**, pp.239-264.

Complementary readings:

WHO *World Health Report 2007: A Safer Future. Global Public Health Security in the 21st Century*, Chapters 3 and 4.

S. Elbe, 'Pandemics on the Radar Screen: Health Security, Infectious Disease and the Medicalization of Insecurity', 59 *Political Studies* (2011), pp. 848-866.

Class 11: The International Health Regulations

Primary sources:

International Health Regulations (2005), in particular parts I-III, IX-X and Annex 2.

Required readings

'Will Ebola change the game? Ten essential reforms before the next pandemic. The report of the Harvard-LSHTM Independent Panel on the Global Response to Ebola', *The Lancet* (2015), pp. 2204–2221.

S. Negri, 'Communicable disease control', in **Burci & Toebes**, pp. 265-302.

G.L. Burci, 'The legal response to pandemics: The strengths and weaknesses of International Health Regulations', *Journal of International Humanitarian Legal Studies*, pp. 1-14, 2020.

G. Bartolini, "[Are you ready for the pandemic? The International Health Regulations Put to Test of Their 'Core Capacity Requirements'](#)", *EJIL:Talk!*, 1 June 2020.

Complementary readings

L.O. Gostin, R. Katz, 'The International Health Regulations: The Governing Framework for Global Health Security (2016)', 94 *Milbank Quarterly* (2016), pp. 264-313.

D. Fidler, 'From International Sanitary Conventions to Global Health Security: The New International Health Regulations', 4 *Chinese Journal of International Law* (2005), pp. 325-392.

Class 12

17 May

Non-communicable diseases and international law

The world is confronted with a growing epidemic of non-communicable diseases (NCD), which are in part the result of environmental factors or behavioural and lifestyle choices and in part the side-effects of transnational risk factors and market mechanisms on food and diet, tobacco, alcoholic and non-alcoholic drinks exacerbated by globalization. These considerations call for national and international interventions going beyond the traditional public health sector and lead to questions about the applicability and adequacy of existing international legal regimes. The cutting edge of these legal developments is tobacco control, where states are testing the limits of their regulatory powers vis-à-vis

protection of trade and investment through the WHO Framework Convention on Tobacco Control and with a recent increase in international litigation. The regulatory and litigation lessons learnt with tobacco control are now being tested on the other NCD risk factors, in a very complex legal, political and social environment.

Primary sources

WHO Framework Convention on Tobacco Control, especially parts I to VI.

Protocol on Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Products (2012) (browse it only to have a sense of its main provisions).

Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases, General Assembly resolution A/RES/66/2, pp. 9-20.

WHO, Global strategy to reduce harmful use of alcohol (2010), paragraphs 27-34.

WHO, Recommendations on the marketing of foods and non-alcoholic beverages to children (2010).

Required readings

S. Zhou and J. Liberman, 'The global tobacco epidemic and the WHO Framework Convention on Tobacco Control - the contributions of the WHO's first convention to global health and governance', in **Burci & Toebes**, pp. 340-388.

Amandine Garde, 'Global Health Law and Non-Communicable Disease Prevention: Maximizing Opportunities by Understanding Constraints', in **Burci & Toebes**, pp. 389-426.

Complementary readings

B. Thomas, L. Gostin, 'Tackling the Global NCD Crisis: Innovations in Law and Governance', *Journal of Law, Medicine and Ethics* (2013), pp. 16-27.

K. Ó Cathaoir, M. Hartlev and C. Brassart Olsen, 'Global health law and obesity: towards a complementary approach of public health and human rights law', in **Burci & Toebes**, pp. 427-459.

T.E. Baytor, O.A. Cabrera, 'International Human Rights Law', in T. Voon, A.D. Mitchell, J. Liberman (eds.), *Regulating Tobacco, Alcohol and Unhealthy Foods* (Routledge, 2014), pp. 65-85.

J. Liberman, 'The New WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products – Challenges Ahead', *ASIL Insights*, 14 December 2012.

T. Voon, A. Mitchell, 'Implications of WTO law for plain packaging of tobacco product', in T. Voon, A. Mitchell, J. Liberman (eds), *Public Health and Plain Packaging of Cigarettes* (Edward Elgar, 2012), pp. 109-136.

L.O. Gostin, *Global Health Law* (Harvard University Press, 2014), Chapter 7, pp. 205-242 and Chapter 13, pp. 383-411.

Cutting-edge issues in global health law: antimicrobial resistance and international sharing of human pathogens

This class will touch on two current topics of high political sensitivity and significant legal complexity, emblematic of the interfaces between existing international legal regimes and novel health problems. The first concerns the conditions for the international sharing of pathogens (viruses, bacteria, etc.) or of their genetic sequences for public health purposes such as the development of diagnostics and vaccines. Existing international rules on the management of biodiversity pose a number of as yet unresolved challenges that will be discussed in class. The second addresses the increasing resistance of all kind of microbes to existing antimicrobial (in particular antibiotics). The problem is of unique complexity from a normative, technical and policy perspectives. It involves diverse sectors and interests including human and animal health, food production, agriculture and environmental protection. It requires addressing at the same time conservation of existing antimicrobials, research and development of new antimicrobial, and equitable access to them. While the international community has reacted at a technical and policy level, the discussion on the nature of a normative approach to the problem is underdeveloped.

Primary sources

UN General Assembly High-Level Meeting on Antimicrobial Resistance: Political Declaration. 2016.

World Health Organization, 'Global Action Plan on Antimicrobial Resistance' (2015).

United Nations Convention on Biological Diversity (1992), articles 1-3 and 15.

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization of the Convention on Biological Diversity, Articles 4, 5, 6, 8, 19, 20 and Annex I.

World Health Organization, *Pandemic influenza preparedness framework for the sharing of influenza viruses and access to vaccines and other benefits* (2011), part 6 pp. 15-23 on benefit sharing, and annexes 1 and 2 with the standard material transfer agreements, pp. 29-37.

Implementation of the International Health Regulations (2005) – Public health implications of the implementation of the Nagoya Protocol, WHO document EB140/15, 23 December 2016.

Conference of the Parties to the Convention on Biological Diversity, 13th meeting (2016), Decision XIII/6, "Biodiversity and human health" at <https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-06-en.pdf>.

Required readings

G.L. Burci, S. Switzer, E. Morgera, E. Tsioumani, 'Biodiversity, Pathogen Sharing and International Law', in S. Negri (ed.) *Environmental Health in International and EU Law: Current Challenges and Legal Responses* (Giappichelli, 2019), pp. 271-289.

M. Wilke, 'A Healthy Look at the Nagoya Protocol – Implications for Global Health Governance', in M. Buck, E. Morgera, and E. Tsioumani (eds.), *The 2010 Nagoya Protocol on Access and Benefit-Sharing in Perspective: implications for international law and implementation challenges* (Nijhoff, 2013), pp. 123-148.

S.J. Hoffman, A. Behdinan, 'Towards an International Treaty on Antimicrobial Resistance', 47 *Ottawa Law Review* (2015), p. 507.

Tackling Drug-Resistant Infections Globally: Final Reports and Recommendations – The Review on Antimicrobial Resistance, chaired by Jim O’Neill (2016), executive summary pp. 4-16.

Complementary readings

S. Hoffman *et al.*, ‘An International Legal Framework to Address Antimicrobial Resistance’, 93 *Bulletin of the World Health Organization* (2015), p. 66.

S. Hoffman, J.A. Røttingen and J. Frenk, ‘International Law Has a Role to Play in Addressing Antibiotic Resistance’, 43 *The Journal of Law, Medicine & Ethics* (2015), pp. 65-67.

World Organization for Animal Health, ‘The OIE Strategy on Antimicrobial Resistance and the Prudent Use of Antimicrobials’ (2016).

F. M. Abbott, ‘An International Legal Framework for the Sharing of Pathogens: Issues and Challenges’, International Centre for Trade and Sustainable Development, Issue Paper No. 30 (2010), pp. 4-26.

M. Buck, E. Morgera, E. Tsioumani, *Unraveling the Nagoya protocol* (Brill, 2016).

C. Richerzhagen, ‘The Nagoya Protocol: fragmentation or consolidation?’, 3 *Resources* (2014), p. 135.

Class 14

31 May

Conclusions and a look to the future – Hard and soft global health law

This class will allow for a discussion and stock-taking on the main issues, conclusions and open challenges that students are taking away from the course. It will focus in particular on some systemic questions: can we draw conclusions on the state and adequacy of international law for the protection of health? Are there some evident challenges and gaps and how could they be filled? Is there a need for more or better international law? What about the mix of “hard” and “soft” normative instruments? What are the lessons that we can draw from the COVID-19 crisis?

Required readings

S. Hoffman, J.A. Rottingen, J. Frenk, ‘Assessing proposals for new global health treaties: an analytic framework’, 105 *American Journal of Public Health* (2015), pp. 1523-1530.

G.L. Burci, ‘Global health law: present and future’, in **Burci & Toebes**, pp. 486-528.

Complementary readings:

S. Sekalala, *Soft Law and Global Health Problems* (Cambridge University Press, 2017), pp. 29-69.

K. Abbott and D. Snidal, ‘Hard and Soft Law in International Governance’, 54 *International Organization* (2000), pp. 421-456.

J. Klabbbers, ‘The Normative Gap in International Organizations Law: The Case of the World Health Organization’, 16 *International Organizations Law Review* (2019), pp. 272-298

Yuval Noah Harari, The world after coronavirus, Financial Times, 20 March 2020