A Framework Convention on Global Health: A Step to Better Health for All

https://www.e-ir.info/2016/06/29/a-framework-convention-on-global-health-a-step-to-better-health-for-all/

SACHA BLUMEN, JUN 29 2016

A Framework Convention on Global Health: An Incremental Step to Better Health for All

Health justice seeks to address the very large international and domestic inequities in the health of individuals. While the international community has recognised the right to health through treaties such as the *International Covenant on Economic, Social and Cultural Rights* and some states have recognised this right domestically, perceptions that there is no right to health in practice have underpinned academics' and activists' calls for states to negotiate and ratify a Framework Convention on Global Health (FCGH) to create an effective global right to health (Secretariat of FCGH 2014).

I take the cosmopolitan view in this essay that there should be an effective global right to health and argue that it would be worthwhile for states to negotiate and ratify a FCGH. While such a treaty would not be a panacea for international health disparities, it would incrementally strengthen the global right to health, enhance the political legitimacy of universal health systems, and establish the financing frameworks those systems need. The treaty would strengthen the right to health on a national basis, and provide the ideational and legal space for states to challenge acts and international regimes impinging on that right. It would create obligations on states to take the social determinants of health into account in decision-making and may provide an overarching sense of direction in global health governance. In this essay I assume that the key principles of the FCGH would be drawn from the *Platform for a Framework Convention on Global Health: Realizing the Universal Right to Health* (Secretariat of FCGH 2014).

While the right to health is recognised in many instruments of international law, regional law, and national constitutions (OHCHR 2008, 9), the disparity in health outcomes both globally and nationally (Harman 2012, 7; WHO 2016) suggests that it does not exist in practice. State relationships are largely driven by trade considerations (McInnes and Lee 2012, 71-2), and the relatively low international importance attached to public health and the complex weaving of factors impacting human health militates against the operation of such a right.

One very important aspect of a FCGH is that it would strengthen the ability of states and others to challenge acts and international regimes impacting the right to health. While existing treaties establish a legal right to health, the FCGH would create a regime that actors could draw on, legally and politically, to strengthen their challenge to acts and frameworks impacting this right. Ideational factors and potential dispute resolution mechanisms would underpin this strengthened capability.

The ideational factors relate to the additional legitimacy the FCGH would give to the right to health. In addition, norm diffusion and internalisation (Finnemore and Sikkink 1998) may cause this right to become more salient among actors over time through greater awareness, acknowledgement, and acceptance of the values, obligations and processes embodied in the FCGH. The FCGH might also assist the right to health become an established norm.

Any dispute resolution mechanism in the FCGH might allow states (and others) to legally challenge actions occurring under the convention or other international regimes that negatively impact the right to health. In the language of game theory, low- and middle-income states (LMIS) would likely cooperate with the regime while high-income states (HIS)

may have incentives to defect. This situation is an example of *suasion game* (Martin 1992, 777-80)—a cooperation problem—in which the dominant strategies of LMIS are to cooperate and the dominant strategies of HIS are to defect. In this game, LMIS may provide additional incentives to HIS, such as tactical issue linkage and heightened reputational damage arising from any defection, to encourage cooperation. Any dispute resolution mechanism should be designed to take these strategies into account—for example, it may be useful for LMIS to hide decisions to increase incentives to HIS behind a multilateral organisation.

A further important aspect of the FCGH is that it would help decouple an individual's effective right to health from their economic circumstances, a key aim of health justice, and strengthen the political legitimacy of universal health systems. It would do this by setting general benchmarks for global health (e.g. clean water and adequate sanitation), creating responsibilities to fund universal health systems, and establishing those systems' international and domestic financing frameworks (Secretariat of FCGH 2014, 2). These provisions may enhance the right to health on a national basis by encouraging states to establish justiciable obligations to fund their health systems. In addition, they would provide ideological assistance to actors to resist neo-liberal policies negatively impacting universal health systems.

While a FCGH would assist in strengthening national health systems, it would likely be less effective in establishing and fully funding their international financing frameworks. Wealthier states have shown a "deep resistance" to transfer wealth to poorer states (Gonzalez-Martin et al 2007, 252), and have historically been unwilling to make large, increasing, and untied payments for horizontal health programs. The latter is evidenced by the essentially static assessed contributions to WHO over recent decades: US$856 million in 2002-2003 (WHO n.d., 3), rising to US$929 million in each of 2012-2013, 2014-2015 and 2016-17 (WHO 2014, 12; WHO 2015, 119). In addition, global development assistance for health (DAH) sector support and sector-wide approaches in 2015 was only US$2.7 billion (IHME 2016, 72), a small fraction of the total US$36.4 billion DAH (IHME 2016, 9). Nonetheless, a FCGH might lead to wealthier states marginally increasing their funding of poorer states' health systems, if only for reputational reasons.

A FCGH would also strengthen states' acknowledgement of the importance of social determinants of health. It would oblige them to take such factors into account in decision-making, possibly through use of the *Health in All Policies* approach (Secretariat of FCGH 2014, 3). This would be a move to addressing systemic factors impacting health, noting that the FCGH would not address structural elements such as power, gender, and economic inequity (Gonzalez-Martin et al 2007, 252; McInnes and Lee 2012, 115-9).

The FCGH may also provide a stronger overarching policy focus for actors in the chaotic global health governance arena (McInnes and Lee 2012, 119-29). While the FCGH would not govern the actions of non-state actors, its greater ideational focus on the social determinants of health may influence their policies and funding. Furthermore, while it is not clear which body would administer the FCGH, providing this responsibility to WHO would enhance the organisation's status and leadership role, and broaden its focus from technical to political matters. With a strong Director General, WHO's responsibility for carriage of the FCGH may also strengthen global health governance.

References

8th Global Conference on Health Promotion. 2013. *Health in all policies: Helsinki statement. Framework for country action*. Paris: World Health Organization.

Bollyky, Thomas, and David Fidler. 2015. "Has a global tobacco treaty made a difference?" *The Atlantic*, February 28. Accessed April 3, 2016. http://www.theatlantic.com/health/archive/2015/02/has-a-global-tobacco-treaty-made-a-difference/386399/.

Center for Health, Human Rights & Development. 2014. *Framework convention on global health: How a binding international treaty may promote equity and enhance the realization of the right to health in Uganda* . Accessed April 3, 2016. http://www.globalhealthtreaty.org/docs/FCGH_Analysis_Uganda_Nov2014.pdf.

Chiriboga, David, Paulo Buss, Anne-Emanuelle Birn, Juan Garay, Carles Muntaner, Laura Nevi. 2014. "Investing in

health." *The Lancet* 383:949.

Davies, Sara E. 2009. *Global politics of health*. Cambridge, UK: Polity Press.

Fidler, David P. 2010. "Negotiating equitable access to influenza vaccine: global health diplomacy and the controversies surrounding Asian influenza H5N1 and pandemic influenza H1N1." *PLoS Med* 7(5): e1000247. Accessed April 18, 2016. doi:10.1371/journal.pmed.1000247.

Finnemore, Martha, and Kathryn Sikkink. 1998. "International norm dynamics and political change." *International Organization* 52:887-917.

Friedman, Eric A. 2015. "Why we need the framework convention on global health following the SDGs." O'Neill Institute for National & Global Health Law Blog, December 15. http://www.oneillinstituteblog.org/5232-2/.

Friedman, Eric A., K. Srinath Reddy, Juliana Nantaba, Geetanjali Misra, Armando De Negri Filho. 2014. "A platform for a Framework Convention on Global Health." *The Lancet* 383:2207-8. Accessed April 10, 2016. doi: 10.1016/S0140-6736(14)61077-1.

General Assembly resolution 3/217A. 1948. *Universal Declaration of Human Rights*. A/RES/3/271A, December 10. Available from http://www.un-documents.net/a3r217a.htm.

Gonzalez-Martin, Fernando, Lawrence O. Gostin, and Gian Luca Burci. 2007. "A proposal for a Framework Convention on Global Health." *Proceedings of the Annual Meeting (American Society of International Law)* 101:249-56.

Gostin, Lawrence O. 2007. "A proposal for a Framework Convention on Global Health." *Journal of International Economic Law* 10:989-1008. Accessed April 10, 2016. doi:10.1093/jiel/jgm039.

Gostin, Lawrence O. 2008. "Meeting basic survival needs of the world's least healthy people: Toward a Framework Convention on Global Health." *Georgetown Law Journal* 96:331-92.

Gostin, Lawrence O., and Eric A. Friedman, 2013. "Towards a Framework Convention on Global Health: A transformative agenda for global health justice." *Yale Journal of Health Policy, Law, and Ethics* 8:1-75.

Gostin, Lawrence O., Eric A. Friedman, Kent Buse, Attiya Waris, Moses Mulumba, Mayowa Joel, Lola Dare, Ames Dhai, and Devi Sridhar. 2013. "Towards a framework convention on global health." *Bulletin of the World Health Organization* 2013:790-793. Accessed April 10, 2016. doi:10.2471/BLT.12.114447.

Harman, Sophie. 2012. *Global health governance*. London; New York: Routledge.

Institute for Health Metrics and Evaluation (IHME). 2016. *Financing Global Health 2015: Development assistance steady on the path to new Global Goals*. Seattle, WA:IHME. Accessed April 19, 2016. http://www.healthdata.org/policy-report/financing-global-health-2015-development-assistance-steady-path-new-global-goals.

International Covenant on Economic, Social and Cultural Rights. 1976. United Nations Treaty Series, vol. 993, p. 3. January 3. Available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

Marten, Robert, Johanna Hanefield, and Richard Smith. 2014. "Commission on Global Governance for Health: what about power?" *The Lancet* 383:2207. Accessed April 10, 2016. doi:10.1016/S0140-6736(14)61076-X.

Martin, Lisa L. 1992. "Interests, power, and multilaterialism." *International Organization* 46:765-792.

McInnes, Colin, and Kelley Lee. 2012. *Global health & international relations*. Cambridge, UK: Polity Press.

Hoffman, Steven J., and John-Arne Røttingen. 2015. "Assessing the expected impact of global health treaties: evidence from 90 quantitative evaluations." *American Journal of Public Health* 105:26-40.

Hoffman, Steven J., John-Arne Røttingen, and Julio Frenck. 2015. "Assessing proposals for new global health treaties: an analytic framework." *American Journal of Public Health* 105:1523-30.

Office of the United Nations High Commissioner for Human Rights (OHCHR). 2008.*The Right to Health, Fact sheet no. 31*. Accessed April 18, 2016. http://www.ohchr.org/Documents/Publications/Factsheet31.pdf.

Secretariat of Framework Convention on Global Health (Secretariat of FCGH). 2014. *Platform for a framework convention on global health: Realizing the universal right to health*. Accessed April 3, 2016. http://www.globalhealthtreaty.org/docs/platform-for-an-fcgh-full.pdf.

World Health Organization (WHO). n.d. *Biennium 2004-2005; Financial report*. Accessed April 18, 2016. http://apps.who.int/gb/archive/pdf_files/WHA59/A59_28-en.pdf?ua=1.

WHO. 2011. *The right to health in the constitutions of the Member States of the World Health Organization South-East Asia Region*. Accessed April 18, 2016. www.who.int/hhr/news/SEA-HHR_RtH_constitutions.pdf.

WHO. 2014. *Programme budget 2014-2015*. Accessed April 18, 2016. http://www.who.int/about/resources_planning/PB14-15_en.pdf?ua=1.

WHO. 2015. *Programme budget 2016-2017*. Accessed April 18, 2016. http://www.who.int/about/finances-accountability/budget/PB201617_en.pdf?ua=1.

WHO. 2016. "Social determinants of health." Accessed April 17, 2016. http://www.who.int/social_determinants/thecommission/finalreport/key_concepts/en/.

Written by: Dr Sacha Blumen
Written at: Coral Bell School of Asia Pacific Affairs, Australian National University
Written for: Dr Jeremy Youde
Date written: April 2016