Global Health Law
LAWG-493-08 / LAWJ-493-08 / LAWG-493-10

Professor Gian Luca Burci
Fall 2016

Georgetown University Law Center
McDonough Hall, Room 141
Tuesdays, 5:45 – 8:50 PM

SYLLABUS

National and sub-national perspectives have dominated traditional public health law. Although important, domestic governance alone grows inadequate in an increasingly interconnected and globalized world. People routinely travel between countries and regions, as does commerce and information. The food we eat and the medicines we take often originate beyond our borders. Climate change threatens to expand the range of disease vectors, displacing millions and threatening the health and life of entire populations. Infectious diseases, such as SARS, HIV/AIDS, Ebola and Zika, began in other countries and jumped to humans from animal reservoirs but quickly became global concerns for health officials and the public.

Similarly, chronic conditions (driven by behavioral risks such as diet, tobacco, and alcoholic beverages) have led to a global pandemic of cancer, cardiovascular disease, diabetes, and respiratory diseases. These chronic conditions, and associated obesity, were once afflictions of affluent nations, but now increasingly plague developing countries and are for the most part the product of globalized western cultural models and food and drinks production and marketing chains. In the modern world, segmented and isolationist thinking cannot rise to the challenge of the most pressing health threats in a globalized world.

These and other similar trends explain the emergence since the 1990s of a growing body of practice and research that focuses on the globalization of legal and regulatory interventions to improve health outcomes for the world’s populations, in particular in developing countries. Even though the body of international law created specifically for the protection of health is still limited, scholars have defined those instruments as well as those falling within other international legal regimes but having a strong impact on individual and public health as “global health law”.

Likewise, public health law can no longer be purely legal and, conversely, public health practice requires an understanding of the legal and regulatory environment in which it takes place. Traditional public health law dealt with core legal powers: quarantine, isolation, compulsory treatment, etc. Today’s public health problems demand a far more integrated and global approach. Tackling modern public health challenges requires bringing together
lawyers, scientists, policymakers, ethicists, health workers, and a wide range of other professionals. This means that public health lawyers must have a basic understanding of disciplines beyond the scope of traditional legal training; and public health practitioners need at least a moderate level of knowledge of the domestic and international rules affecting their practice and issues.

Just as the disciplinary boundaries have expanded so too do the governance regimes. Global health law and governance as such alone cannot assure the conditions for people to be healthy. Multiple domestic and international regimes have major impacts on health, such as agriculture, energy, trade, security and the environment. In a way, this is the conceptual challenge of a course on global health law: many legal and governance issues that exercise a crucial influence over global health outcomes are situated under policy and legal regimes outside the public health area. They require different theoretical and analytical tools to be appreciated and placed in context, so that equitable health outcomes are not sacrificed in their interaction with diverse political interests and regulatory mechanisms.

This course is designed to facilitate understanding and handling these key transitions in modern public health law. It focuses primarily—though not exclusively—on global aspects of public health, but it also examines the interactions between international and national legal processes. In this respect, the course deals with global health law and governance, as well as the complex ethical questions regarding the duties owed to citizens of different countries in an interdependent world.

By the end of this course, students should be able to apply knowledge obtained in this and other classes to the most important public health problems facing contemporary society. They should also be able to critically evaluate and utilize the tools the law presently provides to address health needs—as well as to understand the gaps in current legal frameworks. Designed as a complement to other health law coursework, this course serves as an important stepping-stone to the sort of real-world problem solving required of public health lawyers. Above all, this course is designed to be highly engaging and stimulating, appealing to a broad range of students, and dealing with health challenges of major consequence for the health and wellbeing of people everywhere.

This Global Health Law class is the flagship course of the LL.M. in Global Health Law.

I. Course Details
   A. Meeting times. Classes will meet Tuesdays from 5:45-8:50 PM in McDonough Hall, Room 141. Classes will be made up of two parts with a 15-20 minutes break in between.
   B. Class discussions. Showing rigorous thought and an informed understanding of the subject matter is an integral part of the learning process. Students are expected to read all of the assigned materials before class and to come prepared to discuss the material.
   C. Readings. A list of readings for each class is provided below. The required text is LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW (Cambridge: Harvard University Press, 2014, indicated as “Text” in the schedule below). The book is available at the Law
Center bookstore, as well as from many other booksellers. Students are responsible for reading all assignments before class.

D. **Credit options.** Students have the option of enrolling for either 3 or 4 credits. **Students pursuing the LL.M. in Global Health Law must enroll in the 4-credit option. Students are responsible for ensuring that they are enrolled in the proper section (3 or 4 credit) before the end of the add/drop period.** University rules prohibit students from switching after this period. Please see the Registrar’s Office for more information.

E. **Assessment.** Assessment will depend on whether students are taking the course for 3 or 4 credits.
   a. **3-credit option:** 90% final exam, 10% in-class participation.
   b. **4-credit option:** 60% final exam, 30% research paper, 10% in-class participation

F. **Course Requirements**
   a. **Final exam (ALL STUDENTS).** All students (both 3 and 4 credit) will receive at the end of the last class on November 29th a take-home open-book exam that will test some of the issues and problems discussed during the course. The exam will be structured as a hypothetical situation that students will have to analyze and for which they will propose solutions or proposals. Two alternative situations will be presented and students will have to choose one. Students will have the whole exam period to complete the exam. Papers should be maximum 7,000 words excluding footnotes and bibliography, double-spaced, 12-point font, with numbered pages. Footnotes should follow Bluebook style. The exam must be submitted to the Registrar’s Office by Wednesday December 14th.
   b. **Research paper (4-CREDIT STUDENTS ONLY).** In addition to the final exam, students enrolled in the 4-credit section are required to write a paper of between 3,000 and 4,000 words excluding footnotes and bibliography. Papers should be double-spaced, 12-point font, with numbered pages. Footnotes should follow Bluebook style. The paper should present and analyze an argument relating to the subjects discussed in the course and/or other aspects of global health law. **Prof. Burci will distribute a list of suggested topics during the first week of course, but students are welcome to choose additional topics subject to Prof. Burci’s approval. Students are required to submit a thesis statement and brief outline (1 page or less) by Wednesday, October 5th. Failure to turn in the thesis statement and brief outline by the deadline will result in a grade penalty.** Students who would like additional assistance in the writing process are encouraged to make an appointment at GULC’s Writing Center. **Research papers must be submitted by email to the Registrar’s office by COB on Tuesday November 22nd.**
   c. **Important Dates**
      i. **Topic & brief outline of research papers due:** Wednesday, October 5th
      ii. **Final research papers due:** Tuesday, November 22nd
iii. Take-home exam handed out on Tuesday November 29th and submitted by Wednesday December 14th.

G. **Class sessions.** Class sessions will consist of lectures by Prof. Burci and for some classes by leaders in the field of global health followed, as appropriate, by a class discussion or a simulation exercise designed to mimic a real-world situation a practitioner of global health law might face. The simulations are also meant to reinforce the knowledge gained and situate that knowledge within the wider field of global health law. Students are expected to participate in the discussions and simulation exercises and to ask questions about any material that is unclear.

H. **Attendance.** *Students are required to attend all class sessions,* and to arrive on time. Absent a documented emergency, failure to attend without the professor’s prior approval may negatively impact the student’s grade. Per GULC policy, sufficient unapproved absences will result in withdrawal from the course.

II. **Course Objectives**

A. **Legal and ethical reasoning.** Global health challenges raise profound legal and ethical concerns. These involve some of the most emotionally charged subjects in our society. To what extent can the state control individual actions? What are the limits of state control over behavior that is primarily self-regarding, such as unhealthy diet and physical inactivity? What are the limits of states’ infectious disease control powers? How should nations prioritize their interests against global interests? What duties do we owe to those among us with the least voice? How should injury and disease control be balanced with economic, social, and moral concerns? Some of these questions have objectively correct answers, but most do not. This course is designed to encourage students to confront these issues and critically reason through the values and assumptions implicit in them.

B. **Substantive learning.** Global health problems require professionals to synthesize diverse learning: legal, ethical, scientific, and political, among other disciplines. This course will expose students to as many as possible of these disciplines, so that they will have the requisite knowledge to engage with public health colleagues, whether or not they are legally trained.

C. **Persuasion and advocacy.** Global health problems are deeply complex, and those with the loudest voices or most senior status during a crisis may not be calling for the best solution. It is incumbent on global health lawyers to be able to convey knowledge to others succinctly, articulately, and appropriately. Many global health lawyers will make a career defending the interests of those who are frequently forgotten in policy decisions and who have little political power. This course will put students in situations where they will have to persuade colleagues to take action within ethical and legal bounds, while simultaneously remaining flexible to incorporate new knowledge and exigencies. In this sense, the course is also seeking to facilitate knowledge and hands-on experiential learning about *Global Health Diplomacy*—a topic of high resonance in the field.

**Instructor Availability.** I can be reached via e-mail: (e-mail address to be provided later), and I am happy to make an appointment to see you. I will also be available before and after each class.
Course schedule and reading assignments

Class 1, August 30th

Introduction, structure of the course. Foundations of global health; definition and scope of global health law

Text, Chapters 1 and 2, pp. 13-58


Class 2, September 6th

Introduction to public international law

Assigned readings


Recommended reading


Class 3, September 13th
The World Health Organization

Instruments

WHO Constitution, in particular Chapters I-VII and XI, available at

WHO, 12th General Programme of Work (2014), pp. 7-22

WHO Global Code of Practice on the International Recruitment of Health Personnel (browse to have an idea of its content) available at
http://www.who.int/hrh/migration/code/WHO_global_code_of_practice_EN.pdf

Assigned readings

Text, Chapter 4, pp. 89-128


Recommended readings


Michael Bothe, "The WHO Request", *International Law, the International Court of Justice and Nuclear Weapons* (L. Boisson de Chazournes, P. Sands, eds, 1999), pp.103-111

Class 4, September 20th

Global Health Beyond WHO: Contemporary Global Health Governance
Guest speakers: Thea Emmerling, EU Mission to the USA.
A representative of the World Bank, GAVI or UNAIDS TBD

Assigned readings

Text, Chapter 5, pp. 129-173


Recommended readings


G. Silberschmidt, I. Kickbusch, D. Matheson, “Creating a committee C of the World Health Assembly”, *The Lancet* 2008:1483-1486

Classes 5 and 6, September 27th and October 4th

**Health as a human entitlement: health and human rights, right to health**

Co-facilitator: Oscar Cabrera, Executive Director, O’Neill Institute

Lectures in both classes will be followed by a discussion on specific court cases, which will be distributed in advance. The class will be asked to argue the two sides of each case.

**Instruments**

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

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). Students may be invited to report in class on some of those cases.

**Assigned Reading for both classes**

Text, Chapter 8, pp. 243-269.

**Additional assigned readings for class 5 on September 27th**


**Assigned Readings for class 6 on October 4th**


Complementary reading for class 6 on October 4th


PLEASE NOTE: NO CLASS ON TUESDAY OCTOBER 11TH

Class 7, October 18th

Health and international trade law
The lecture will be followed by a discussion on the main WTO cases relevant for public health. Prof. Burci will point them out during the previous class.

Students may want to familiarize themselves with the main provisions of international trade law relevant for public health. In particular, the following legal instruments may be referred to in class:

1) **General Agreement on Tariffs and Trade**, 1994, Articles I, III, XI and XX;
2) **WTO Agreement on Sanitary and Phytosanitary Measures**, Articles 1-5 and Annex A;
3) **WTO Agreement on Technical Barriers to Trade**, Articles 1-4;

All WTO texts are available at [http://www.wto.org/english/docs_e/legal_e/legal_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

**Assigned readings**

Text, Chapter 9, pp. 270-301.


**Recommended readings**


**Class 8, October 25th**

**Health, intellectual property and international investment law.**
Guest speaker TBD

Instruments

1) **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;

2) **Declaration on the TRIPS Agreement and public health**, 2001.


Assigned readings


V. Vadi, *Public Health in International Investment Law and Arbitration* (2013), pp. 11-23 on international investment law; and 45-62 on the interplay between public health and foreign direct investment.


Recommended readings

Class 9, November 1\textsuperscript{st}

Global health security

Instruments


Assigned readings

Text, Chapter 6, pp. 177-204 and Chapter 12, pp. 359-382.


Class 10, November 8\textsuperscript{th}

Class simulation on health security and the International Health Regulations

This class will be entirely devoted to an exercise concerning the implementation and revision of the International Health Regulations. Students will be divided into teams representing countries concerned as well as WHO. They will have to represent the interests of their respective country or institution and arrive at negotiated solutions on the basis of the applicable international obligations.

Class 11, November 15\textsuperscript{th}
The Framework Convention for Tobacco Control

Guest lecturer TBD

Instruments


Assigned readings

Text, Chapter 7, pp. 205-242.


Recommended readings


Non-communicable diseases

The lecture will be followed by a class simulation on the Philip Morris v Australia arbitration arising from Australia’s law on plain packaging of tobacco products. Students will be divided into two teams and other students will constitute the arbitral panel. Relevant material will be distributed in advance.

Instruments


Recommendations on the marketing of foods and non-alcoholic beverages to children (2010), at http://apps.who.int/iris/bitstream/10665/44416/1/9789241500210_eng.pdf

Assigned readings

Text, Chapter 13, pp. 383-411.


The cutting edge: emerging issues in global health law – antimicrobial resistance and sharing of pathogens. Wrap-up session
Guest lecturer: Prof. Steven Hoffman, Ottawa University

**Instruments**

Pandemic Influenza preparedness framework (PIP Framework), 2011. Browse to get a sense of the content of the instrument; read Chapter 6 (pp. 15-20) and the two standard material transfer agreements in Annexes 1 and 2.

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Unilization to the Convention on Biological Diversity (2010), Articles 4-6 and 8. [https://www.cbd.int/abs/text/](https://www.cbd.int/abs/text/)


**Assigned readings**

Text, Chapter 12 pp. 359-382


Recommended reading