

The right to health as a human right in international law.

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## **The Right to Health as a Human Right in International Law (review)**

Alicia Ely Yamin

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REVIEW

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**In lieu of an abstract, here is a brief excerpt of the content:**

Reviewed by:

*Alicia Ely Yamin*

*The Right to Health as a Human Right in International Law* comes at a pivotal time for academics and practitioners interested in finding mechanisms to implement the right to health. Over the last decade, scholars and activists in both the human rights and health disciplines—notably including the late Dr. Jonathan Mann, first Director of the Francois-Xavier Bagnoud Center for Health and Human Rights<sup>1</sup>—began to focus on the intersections between these two fields, and these disparate points of engagement have burgeoned into a full-fledged health and human rights movement. Far broader than the medical profession's traditional focus on the trauma of torture survivors and refugees, this movement includes, for example, women's and reproductive rights advocates, for whom the links between dignity and well-being were all too apparent; advocates for environmental justice concerned with the health impacts of multinational corporations' policies; and labor activists who have increasingly framed occupational health and safety questions as international human rights issues.

The breadth and diversity of this nascent health and human rights movement quite predictably has produced widely divergent understandings of what the terms “health,” “human rights,” and “health and human rights” mean—or ought to mean. As with any movement that has the potential to revolutionize the way people think of themselves and their well-being, this one has its share of prophets who inspire with their grand visions but whose rhetorical invocations of, for example, “a rights approach to health” too often have proven evanescent when advocates in the field have attempted to apply the concepts. Relatively little attention has been devoted to the drier task of examining what is required for those advocates to make claims based on the right to health under international law.

In *The Right to Health as a Human Right in International Law*, Toebes, who is more cloistered priest than prophet, takes up that challenge.

Quietly believing in the *rightness* of the right to health, Toebes avoids theoretical pronouncements and instead chooses to methodically review the legal documents and construct her argument about how to enhance its enforcement. Toebes' book is divided into four parts, the first two of which lay the groundwork for the analysis she presents in the third and the recommendations she makes in the fourth. In Part A, Toebes defines what she sees as the problem with the right to health, reviews some of the history of the public health movement, and details the references of the right to health in international treaties and declarations. Part B addresses implementation of the right to **[End Page 1123]** health, examining both international reporting procedures and case law from various countries. In Part C, based on the first two sections of the book, Toebes sets out to delineate the scope and core content of the right to health as well as states' obligations resulting from her conception of the core content and scope. Part D consists of one final chapter that contains a summary of her argument, conclusions, and recommendations.

From the outset, Toebes claims that she seeks to describe "what exactly individuals are entitled to on the basis of a right to health and what the ensuing obligations are on the part of States."<sup>2</sup> Insofar as she can, Toebes avoids any philosophical discussion about the grounding of the right to health as a human right, acknowledging simply that economic and social rights have not achieved the same level of implementation that civil and political rights have. Toebes concludes:

The problem with the right to health is . . . not so much a lack of codification, but rather the absence of a consistent implementation practice through reporting procedures and before judicial and quasi-judicial bodies as well as an ensuing lack of conceptual clarity. These problems are interrelated: a lack of understanding of the meaning and scope of a right makes it difficult to implement and the absence of a frequent practice of implementation in turn hampers the possibility of obtaining a greater understanding of its meaning and scope.<sup>3</sup>

Others might have argued that...



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