Summary

The project explores the use of international law for obesity prevention, with a focus on the intersection between international public health law and human rights law. Over the last 30 years, obesity rates have been increasing throughout the world at an alarming rate. As a result, legal and regulatory interventions have been emerging at global level to address the complex and multiple causes of obesity, which range from the overconsumption of unhealthy foods to socio-economic factors. As such, the leading international public health agency, the World Health Organization (WHO), has adopted a number of non-binding instruments for obesity prevention. Meanwhile, international human rights institutions have started to tackle the issue of obesity and to point out the human rights implications of obesity, particularly from the perspective of the right to food and the right to health.

These developments in the international public health regime (led by WHO), and in the human rights regime, reveal a fragmentation of international law for obesity prevention. Therefore, the thesis examines the potential synergies, conflicts, and parallelisms between international public health law and human rights law, and to which extent the two regimes have been interacting so far in the field of obesity prevention. A comparative analysis is also conducted with the international legal developments in the field of tobacco control, for which a binding international treaty exists, and for which a human rights-based approach has been successfully developed over the past decade.

The thesis identifies and analyzes the current instruments adopted under the leadership of WHO for obesity prevention. The analysis reveals that the current public health approach to obesity prevention provides limited guidance to WHO Member States in the area of obesity prevention. The thesis examines how WHO could further develop international regulation for obesity prevention, but concludes that a comprehensive binding treaty is unlikely to be adopted. In light of the current regulatory gap, the thesis examines whether the human rights framework could support international regulatory developments in the field of obesity prevention.
To this end, the thesis then examines the applicability of the human rights framework to obesity prevention, particularly of the right to health and the right to food (Articles 11 and 12 of the ICESCR). The thesis also analyzes how obesity has been addressed by Treaty Bodies and Special Rapporteurs. The analysis of the public health regulatory instruments and the human rights instruments reveals a high degree of complementarity and synergies between the regimes for obesity prevention. However, limited interactions exist between the two in reality: as such, the two regimes addresses obesity prevention in parallel.

In order to understand the lack of synergistic interactions between the two regimes, the thesis explores to which extent conflicts between the two regimes may hinder further collaboration. It examines three possible conflicts: 1) advertising measures vs. freedom of speech; 2) labeling measures vs. the right to property and the freedom to conduct business; 3) pricing measures vs. the rights to autonomy and non-discrimination. An analysis of existing case law in the field of tobacco control and food regulation informs the discussion. The analysis reveals that the conflicts between public health and human rights are actually limited and the result of a false dichotomy between public health and human rights. Therefore, these conflicts are not a hindrance to further synergistic interactions, provided that obesity prevention measures can be supported by evidence of their effectiveness.

Finally, the thesis investigates other possible causes of the limited interactions between the public health and human rights regimes for obesity prevention. It concludes that the inherent weaknesses of each regime, the traditional reluctance of WHO to use a human rights-based approach, the complexity of obesity prevention, and the lack of involvement of civil society come in the way of more synergistic interactions between the two. The thesis suggests avenues for strengthened collaboration between the two regimes.