

Revisiting the International Health Regulations in the COVID-19 Response: Reforming Global Health Law



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THE UNIVERSITY
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at CHAPEL HILL

Global Health Law



- International Health Law Rises to Address Globalized Disease

- Birth of WHO



- International Health Regulations (IHR)
- SARS as a Novel Threat to Global Health Law

GLOBAL HEALTH LAW CONSORTIUM

The Global Health Law Consortium (GHLC) is a collaborative interdisciplinary research initiative focused on advancing global health law.

Global health law describes the legal institutions that structure global health. In a globalizing world, connecting societies in shared vulnerability and highlighting the limitations of domestic law, global health law offers the promise and opportunity of bridging national boundaries through public international law to alleviate health inequities around the world. The Global Health Law Consortium brings together academics in the field to:

1. develop the academic field of global health law and mentor emerging scholars in the field;
2. provide authoritative interpretations of legal instruments in global health; and
3. facilitate global health law research projects that draw on collaborative scholarship.



Introducing Global Health Law

Global Health Law

Lawrence O. Gostin and
Benjamin Mason Meier

Global health law describes the legal frameworks that structure global health. Laws and regulations, when based on the best available evidence, can promote healthy behaviors, regulate hazardous activities, and ensure socially responsible corporate marketing and products. These regulatory frameworks operate in virtually every realm of health, including infectious and noncommunicable diseases, mental health, injuries, and the safety and effectiveness of vaccines, pharmaceuticals, and medical products. Law can help structure universally affordable, accessible, and equitable health systems that promote universal health coverage. Beyond discrete attention to health risks, the rule of law and good governance are crucial for ensuring health and well-being.

Where global health has come to frame efforts to advance public health across countries, law has become crucial to addressing the global health threats that have arisen in a rapidly globalizing world. Globalization has unleashed the spread of disease, connected societies in shared vulnerability, and highlighted the limitations of domestic law in ensuring global determinants of health. In this interconnected world, no country acting alone can stem health hazards that go beyond national borders. Yet if globalization has presented challenges to disease prevention and health promotion, global health law offers the promise of bridging national boundaries to advance global norms and alleviate health inequities.

Arising out of international health law — which has long structured

multilateral cooperation to respond to infectious disease threats — global health law seeks to structure the contemporary governance architecture for global health. In responding to health harms throughout the world, global health law has “evolve[d] beyond its traditional confines of formal sources and subjects of international law” to advance global health with justice.¹ This focus on global health has necessitated action beyond the reach of national governments, requiring both state and non-state actors to come together to respond to globalized health threats. Global health law seeks to frame this new governance to respond to the major health challenges of the twenty-first century.

The field of global health law has thus become a basis to conceptualize the legal institutions that apply to the changing public health threats, non-state actors, and regulatory norms that structure global health. Beyond the traditional purview of international health law, global health law describes evolving legal efforts to address:

- New health threats — including non-communicable disease, injuries, mental health, dangerous products, and other globalized health threats,
- New health actors — including transnational corporations, private philanthropists, civil society, and other non-state actors, and
- New health norms — including “soft law” instruments, global strat-

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International Health Regulations – Establishing Global Health Law

IHR in the COVID-19 Response – Limitations Highlight Weaknesses

Reforming Global Health Law –

Developing a Pandemic Treaty for Future Threats

International Health Regulations (2005)

The Legal Landscape

— PHEIC

- State Notification
- WHO Declaration

— Build National Capacity

- Health & Human Rights
- International Collaboration

Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats

Global Health Law

*Lawrence O. Gostin,
Roojin Habibi, and
Benjamin Mason Meier*

Global health law is essential in responding to the infectious disease threats of a globalizing world, where no single country, or border, can wall off disease. Yet, the Coronavirus Disease (COVID-19) pandemic has tested the essential legal foundations of the global health system. Within weeks, the SARS-CoV-2 coronavirus has circumnavigated the globe, bringing the world to a halt and exposing the fragility of the international legal order. Reflecting on how global health law will emerge in the aftermath of the COVID-19 pandemic, it will be crucial to examine the lessons learned in the COVID-19 response and the reforms required to rebuild global health institutions while maintaining core values of human rights, rule of law, and global solidarity in the face of unprecedented threats.

Unlike anything seen since the Great Influenza Pandemic of 1918, health systems have faltered under the strain of the COVID-19 pandemic, with cascading disruptions throughout the world. Borders have closed, businesses shuttered, and daily life brought to a standstill. In the absence of a treatment or vaccine, governments worldwide have sought to ensure physical distancing across their populations; yet, vulnerable, marginalized, and disadvantaged populations have faced structural obstacles in meeting these necessary imperatives to contain the disease. This unequal risk of infection is exacerbating health inequities — within and across nations — with weak health systems lacking the capacity to

implement mitigation strategies, test at-risk populations, or treat infected individuals. As the coronavirus sweeps across unprepared nations, national legal responses have proven unable to prevent, detect, or respond to the pandemic, and the sheer scale of human, social, and economic upheaval has challenged global health law as never before.

Framing global health law to control infectious disease, the International Health Regulations (IHR) have established a global surveillance and reporting system and set national minimum mandatory controls to prevent disease and maximum permissible limitations on individual rights, state sovereignty, and commercial interests. Last revised in 2005 following the shortcomings in national and global responses to the severe acute respiratory syndrome (SARS) epidemic, the revised IHR provide a legal framework through the World Health Organization (WHO) to build national capacity for infectious disease prevention and detection and to strengthen global governance to address any public health emergency of international concern. While these IHR obligations were intended to facilitate international coordination in the context of public health emergencies, nationalist responses have challenged global governance in addressing this pandemic challenge. Amidst challenging global health circumstances, WHO has faced increasing IHR violations from states and, as a consequence, limited influence in the COVID-19 response.

About This Column

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IHR Limitations in COVID-19 Response

China Notification



Violative Nationalist Responses



December

January

February

March

April

WHO PHEIC



Global Solidarity?



Vaccine Equity

What Role for Global Health Law?

Facilitating Access to a COVID-19 Vaccine through Global Health Law

Global Health Law

Lawrence O. Gostin,
Safura Abdool Karim,
and Benjamin Mason Meier

Threatening the entire world, the burden of the COVID-19 pandemic has continued to grow, with devastating effects on human health, social connections, and economic livelihoods. These crushing burdens are likely to increase dramatically as the pandemic continues its relentless march across the globe. Some governments have taken steps to mitigate the worst impacts of this threat through aggressive public health interventions — including diagnostic testing, contact tracing, widespread masking, and physical distancing — but with the pandemic expected to inflict unprecedented human suffering in the months ahead, it has become clear that only a vaccine will be able to contain the COVID-19 threat.

There has not been a more sought-after medical resource in our lifetimes than a safe and effective COVID-19 vaccine, and given this existential threat, vaccine candidates will move swiftly into clinical trials in the coming months. While vaccine development holds great promise, the discovery phase is only the first step. Clinical trials may well demonstrate that one or more vaccine candidates is safe and effective, yet those vaccines must still be approved by regulatory authorities, manufactured and distributed to scale, and made affordable for all. Depending on how these issues are resolved, a prospective vaccine could heal the rifts of a bitterly divided world, or it could exacerbate them if countries hoard a necessary

vaccines and undermine equitable access.

This column explores the global health law reforms necessary to progressively realize universal access to a future COVID-19 vaccine. We begin by explaining the importance of global health law in the distribution of essential vaccines as a determinant of public health. The column then turns to examine the human rights foundations of global health law, conceptualizing vaccination access as a universal human right. We find that it will be crucial to develop legal commitments to ensure vaccine access prior to a scientific breakthrough, analyzing the legal barriers that impede global access and the global health law reforms necessary to facilitate global solidarity.

Vaccination Access through Global Governance

As governments have found themselves constrained in national efforts to mitigate the pandemic, it appears almost certain that COVID-19 will not be controlled globally without the development of a vaccine. An effective vaccine will be essential to limit the spread of the SARS-CoV-2 virus, prevent it from reoccurring, and bring about the eventual containment of the COVID-19 pandemic. Without lasting protection from infection and population-level immunity, the world will face higher transmission, repeated outbreaks, and unnecessary deaths.¹ Yet, these immunization benefits can only be realized if there is sufficient

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- Vaccine Access as a Human Right
- Intellectual Property
- Pharmaceutical Capacity Building



Revisiting Global Health Law

— Fundamental Revisions

- Mandatory Reporting
- PHEIC Deliberations
- Monitoring States
- Global Funding

— New Legal Mechanisms

- Revise IHR Recommendations
- Establish Global Health Threats Council
- Develop Pandemic Treaty

The World Health Organization in Global Health Law

Global Health Law

Benjamin Mason Meier, Allyn Taylor, Mark Eccleston-Turner, Rojain Habibi, Sharifah Sekalala, and Lawrence O. Gostin

International collaboration is crucial to the COVID-19 response. In realizing global solidarity, the World Health Organization (WHO) has sought to bring the world together to respond to a shared threat. This collaboration has required global health law, with WHO long developing regulations to bind states under international law. As the international community faces its greatest modern test in the COVID-19 pandemic, WHO has confronted unprecedented challenges, with states neglecting international legal commitments in the pursuit of nationalist disease responses. Given the limitations of international law in the COVID-19 response, it will be crucial to reform global health law, with sweeping implications for the future of WHO governance.

This column seeks to examine the central importance of WHO in developing and implementing global health law. Recognizing that global health law requires global governance, the column begins by situating WHO's role at the forefront of global health governance. WHO's leadership in global governance for health is supported by an expansive mandate to serve as a forum for the codification of international law, which WHO has exercised sporadically through the evolving development of the International Health

now finds itself at a crossroads, with this column considering a range of reforms that may be proposed in the years to come.

Global Health Law Depends on Global Health Governance
In coordinating the global community to address common health threats, WHO is intended to be central in global health governance, binding states together through the development and implementation of international law to prevent disease and promote health.

Global health law looks beyond the efforts of individual nations to encompass the larger set of determinants that structure public health in a globalizing world. With globalization connecting societies in shared vulnerability, these forces have exposed the limitations of domestic law in addressing global determinants of health. Global health law recognizes that all nations face common public health threats, requiring collective global action to realize global health equity. Providing an international legal foundation for global health governance, global health law supports global institutions to negotiate a shared vision of global health, coordinate with organizations across sectors, and align national laws to advance public health in a globalizing

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A Rising Imperative to Reform Global Health Law



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