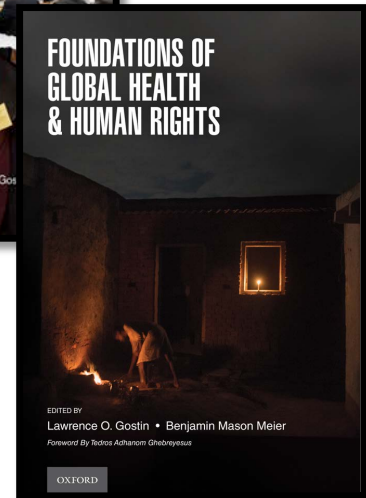


Human Rights in Global Health Governance: Has WHO Risen to Meet the COVID-19 Challenge?



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Institutions, Rights, and Society
Carolina Public Humanities

March 5, 2022

CAROLINA
PUBLIC
HUMANITIES

Connecting People Through Ideas



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

FOUNDATIONS OF GLOBAL HEALTH & HUMAN RIGHTS

EDITED BY

Lawrence O. Gostin • Benjamin Mason Meier

Foreword By Tedros Adhanom Ghebreyesus

OXFORD

Global Health –
From Medicine to
Public Health

Human Rights –
Codifying Rights under
International Law

**Global Health &
Human Rights –**
Facing the COVID-19
Challenge

What is Global Health?

“the way in which we understand global health critically shapes not only which and whose problems we tackle, but also the way in which we raise and allocate funds, communicate with the public and policy makers, educate students, and design the global institutions that govern our collective efforts to protect and promote public health worldwide.”

“Global health is still often perceived as international aid, technologies, and interventions flowing from the wealthier countries of the global north to the poorer countries of the global south”

- Global Health is Public Health
 - Public Health Policy
- Vertical
vs.
Horizontal
Interventions



What is *Global* Health Policy?

consideration of the health needs of the people of the whole planet above the concerns of particular nations

- Not Comparative Policy
- Not International Policy



“a central task is to identify the underlying political, social, and behavioral determinants of global inequalities and address them through global health p

Frameworks of Global Health Governance

Institutions = Architecture + Norms



Global Health Policy Architecture

“the absence of a global government—not only now but for the foreseeable future—the construction of a global society emerges as a feasible alternative to harness interdependence in a world polity where sovereign nation states coexist with expansive social networks transcending national boundaries.”



↑ Organizations → ↑ Prominence, but . . .

Problems with the Proliferation of Global Health Governance

- Overpopulated & Confused
- Fragmentation, Duplication & Waste
- Competitive & Uncoordinated
- Unsustainable
- Inefficient (Vertical)

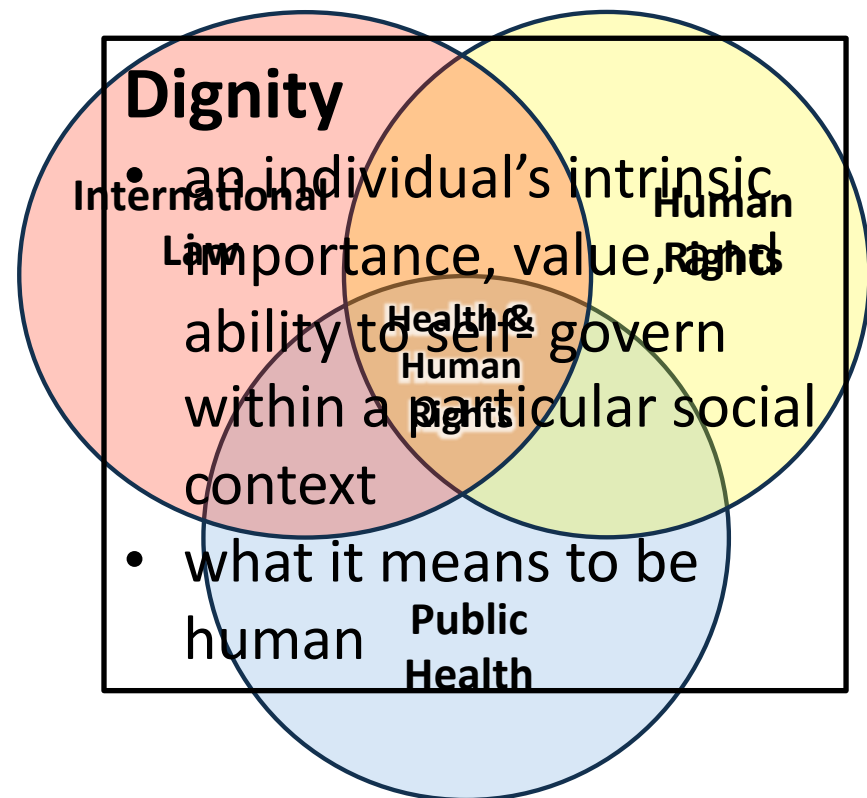


Justice through Human Rights

- Legal claims that persons have on society simply on the basis of being human

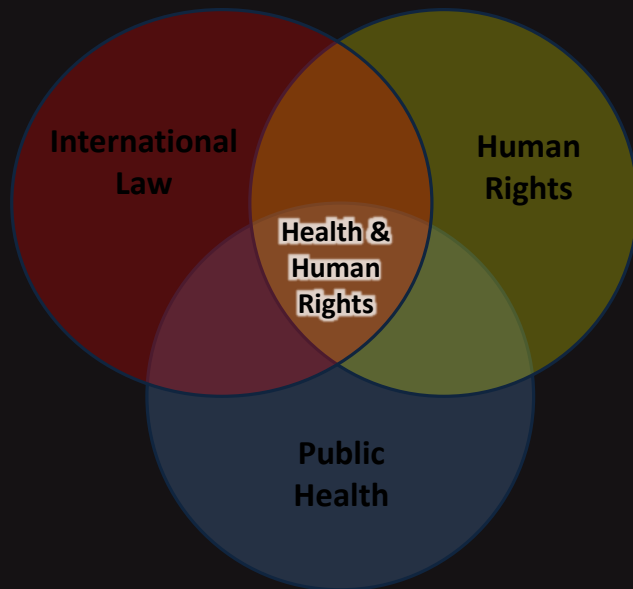
- universal,
- indivisible,
- inalienable, and
- interdependent

...what governments can do to you, cannot do to you and should do for you...



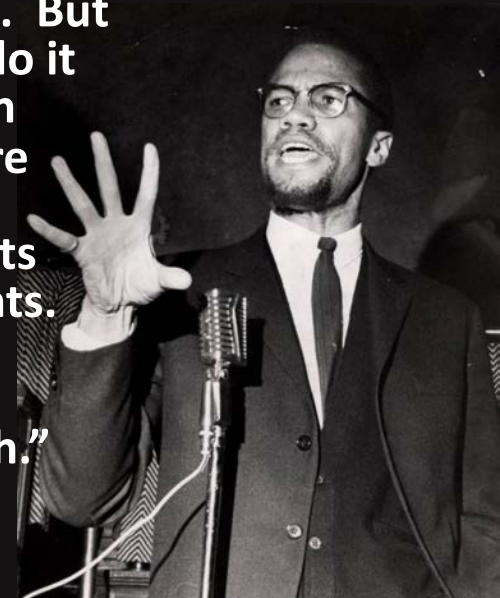
International Law

International law is developed by states and regulates the conduct of states.



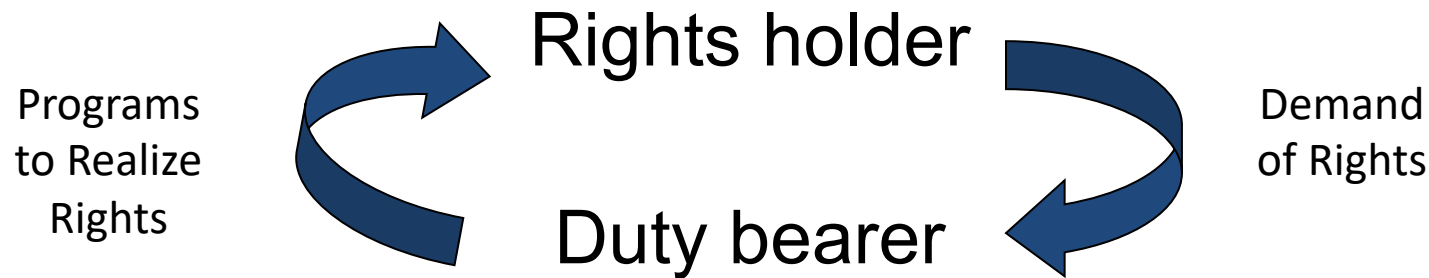
“ When you expand the civil rights struggle to the level of human rights, you can take the case of the Black man in this country before the nations of the United Nations. You can take it before the General Assembly. You can take Uncle Sam before the World Court. But the only level you can do it on is the level of human rights. Human rights are something that you are born with. Human rights are your God-given rights. Human rights are the rights recognized by all the nations of this earth.”

- Malcolm X, 1964



Human Rights-Based Approach

("X has a right against Y in relation to Z")



E.g.: "A child has a valid claim against the national government to a right to health, which is realized through a state duty to provide free vaccinations."



Why Health & Human Rights?

- The Health & Human Rights Movement



- Human Rights Matter
- Human Rights Evolve
 - Development of Rights in International Law
 - Implementation of Rights for Health Promotion and Disease Prevention
 - Accountability for Policy Reforms

Post-War Framework for Health

CONSTITUTION

OF THE

WORLD HEALTH ORGANIZATION

Second World War



Four Freedoms



UN Charter



WHO Constitution



UDHR



The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being

rights of every human being without distinction of race, religion, political belief,

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.



A Post-War Declaration of Rights

Second World War



Four Freedoms



UN Charter



WHO Constitution



UDHR

- Article 25
 - medical care
 - underlying determinants of health

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”



General Comment 14 (2000)

- Give meaning to Health
- Nature of state obligations
- Tension between individual autonomy and public health



UNITED NATIONS

E



**Economic and Social
Council**

Distr.
GENERAL

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11 August 2000

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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Twenty-second session
Geneva, 25 April-12 May 2000
Agenda item 3

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

General Comment No. 14 (2000)

The right to the highest attainable standard of health (article 12 of the
International Covenant on Economic, Social and Cultural Rights)

1. Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued



Giving Meaning to the Right

UN's Qualification of Health:

- Right to health extends beyond healthcare
- Socioeconomic factors enable healthy lives, but too far?
- Underlying determinants of health:
 - Food, nutrition, housing, access to potable water, sanitation, safe working conditions, healthy environments



“The right to health is closely related to and dependent upon the realization of other human rights” (CESCR 2000, Para. 3).

Conceptualizing Measures to Ensure Enjoyment of the Right to Health

- Availability
- Accessibility
- Acceptability
- Quality



Balancing Individual Rights and Public Health

Right to health includes individual autonomy

- Right to control one's body
- Freedom from interference

Tension between individual autonomy and public health

Siracusa Principles (1984)

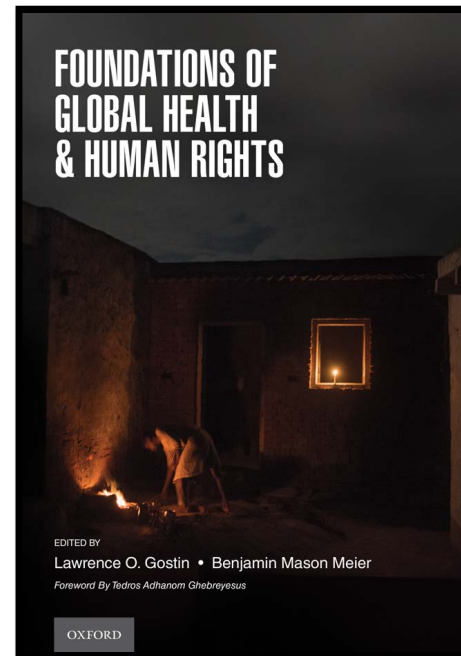
- Measures must be:
 - Necessary
 - Proportional
 - Reasonable



Human Rights Respond to Health Harms

“A commitment to human rights starts within each of us as health professionals. It is a conceptual leap. It is a leap because it embodies the difference between seeing something like food, rights, education, or health care as a right compared to thinking of them as privileges. And it is a leap because human rights inevitably represents a challenge to the status quo.”

- Jonathan Mann



Existential Threats

Populist Nationalism

- Rejecting Public Health Science
- Denying Fundamental Rights
- Undermining Global Solidarity

Cataclysmic Pandemic

- Unprecedented Health Threat
- Widespread Rights Violations
- Failure of Global Health Governance



Health & Human Rights – More Necessary Than Ever...

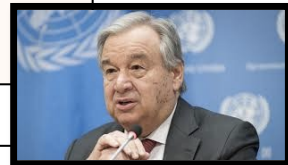
Human Rights at the Forefront of the Global Response

World Health Assembly Res 73.1

- Called on States to “to implement national action plans.....ensuring respect for human rights and fundamental freedoms and paying particular attention to the needs of people in vulnerable situations, promoting social cohesion, taking the necessary measures to ensure social protection and protection from financial hardship, and preventing insecurity, violence, discrimination, stigmatization and marginalization” (WHA, 2020).

The world faces a pandemic of human rights abuses in the wake of Covid-19

António Guterres



“Human rights brings dual benefits in minimising sickness and death, especially among marginalised communities...[and] to resilience and preparedness for future disease outbreaks as well as health and economic shocks”
- Dr Tedros Adhanom Ghebreyesus

“Will we seize this moment to devise ways to recover better? Will we properly apply the human rights vaccine that can help us build more resilient, prosperous and inclusive societies?”
- Dr Michelle Bachelet



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 Governance for Infectious Disease

Human Rights Law in the COVID-19 Response – Limitations Highlight Weaknesses

Reforming WHO – Developing New Governance for Future Threats

About This Column

Lawrence O. Gostin and Benjamin Mason Meier serve as the section editors for Global Health Law. Professor Gostin is University Professor at Georgetown University and the Founding Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University Law Center and Director of the World Health Organization Center on National and Global Health Law. Professor Meier is an Associate Professor of Global Health Policy at the University of North Carolina at Chapel Hill and a Scholar at the O’Neill Institute for National and Global Health Law. This column will feature timely analyses and perspectives on law, policy, and justice in global health.

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.

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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



Human Rights Violations in the COVID-19 Response

- Right to Health and Social & Economic Rights of Vulnerable Groups
- Derogation of Civil & Political Rights to Promote Public Health
- Obligations of International Assistance & Cooperation

Strengthening Human Rights in Global Health Law: Lessons from the COVID-19 Response

Global Health Law

Judith Bueno de Mesquita,
Anuj Kapilashrami, and
Benjamin Mason Meier

Keywords: Human Rights, Global Health, COVID-19, World Health Organization, United Nations

Abstract: While human rights law has evolved to provide guidance to governments in realizing human rights in public health emergencies, the COVID-19 pandemic has challenged the foundations of human rights in global health governance. Public health responses to the pandemic have undermined international human rights obligations to realize (1) the rights to health and life, (2) human rights that underlie public health, and (3) international assistance and cooperation. As governments prepare for revisions of global health law, new opportunities are presented to harmonize global health law and human rights law, strengthening rights-based governance to respond to future threats.

Human rights are central to global health, yet human rights weaknesses in the COVID-19 response have highlighted both the intrinsic and instrumental importance of strengthening human rights in global health law. Reflecting on human rights limitations in the pandemic, the World Health Assembly (WHA) is just beginning work to improve capacity for global pandemic prevention, preparedness, and response, presenting opportunities to ensure human rights realization in future public health emergencies. It will be crucial in these reforms to strengthen human rights in global health, enabling the World Health Organization (WHO) to support member states in realizing health-related human rights.

This column addresses the need to strengthen human rights in global health, looking to violations of human rights law in the pandemic response to recommend rights-based reforms in global health law. The column opens by examining the fundamental importance of human rights, recognizing the centrality of human rights in global health governance. Notwithstanding the evolution of health-related human rights under international law, the COVID-19 pandemic response has had sweeping implications for the realization of human rights, with state responses failing to comply with domestic and international human rights obligations. Raising an imperative to strengthen human rights in global health law,

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Revisiting WHO Authority

- Fundamental Revisions
 - Mandatory Reporting
 - PHEIC Deliberations
 - Monitoring States
 - Global Funding
- New Policies
 - Revise IHR Recommendations
 - Develop Pandemic Treaty

The World Health Organization in Global Health Law

Global Health Law

Benjamin Mason Meier, Allyn Taylor, Mark Eccleston-Turner, Roojin Habibi, Sharif 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.² 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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796



Developing a Pandemic Treaty

Developing an Innovative Pandemic Treaty to Advance Global Health Security

Global Health Law

Lawrence O. Gostin,
Benjamin Mason Meier,
and Barbara Stocking

Keywords: Global Health Law, World Health Organization, COVID-19, Pandemic Treaty

Abstract: Recognizing marked limitations of global health law in the COVID-19 pandemic, a rising number of states in the World Health Assembly have proposed the development of a new pandemic treaty. This prospective treaty has the potential to clarify state obligations for pandemic preparedness and response and strengthen World Health Organization authorities to promote global health security. Examining the essential scope and content of a pandemic treaty, this column analyzes the policymaking processes and substantive authorities necessary to meet this historic moment.

The World Health Assembly will be holding an unprecedented second meeting this year, with only a single item on the agenda for this November 2021 meeting — the development of a new pandemic treaty. This pandemic treaty provides a path to develop international legal obligations through the World Health Organization (WHO). Yet despite strong international political support for such a treaty, there has been little examination of its potential scope, substance, and legal process.

This column explores the legal content of a prospective pandemic

treaty, offering guidance on its key provisions. Recognizing stark failures in global governance during the COVID-19 pandemic, this new treaty is intended to clarify state obligations to prevent, detect, and respond to pandemic threats and to strengthen WHO powers. The treaty, therefore, must develop innovative norms, governance, and compliance mechanisms needed to prepare for novel outbreaks with pandemic potential.

Examining the development of global health law reforms, this column opens by reviewing the evolution of international legal agreements governing global health security. However, the COVID-19 pandemic has exposed continuing limitations of international law and weaknesses of WHO authorities. These limitations provide the impetus for a new international legal agreement to strengthen pandemic preparedness and response. This column analyzes potential treaty structures and substantive authorities needed to face future pandemic threats. We end by reflecting on diplomatic challenges that states must confront in bringing the world together to develop a bold new treaty to advance global health security.

WHO Legal Authorities to Develop Global Health Law
States have provided WHO with expansive authorities to develop global health law. Pursuant to these powers, the World Health Assembly has codified evolving regulations to coordinate international action to

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– Global Health Governance Limitations in the COVID-19 Response

- IHR Limitations
- WHO Weaknesses

– Global Health Law in Transition

- New Authorities & Accountability
- Strengthening WHO
- Advancing Human Rights

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Human Rights Must Guide a Pandemic Treaty



22.11.21 10 Comments

Tim Hodgson, Roojin Habibi, Benjamin Mason Meier, Sara Davis

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