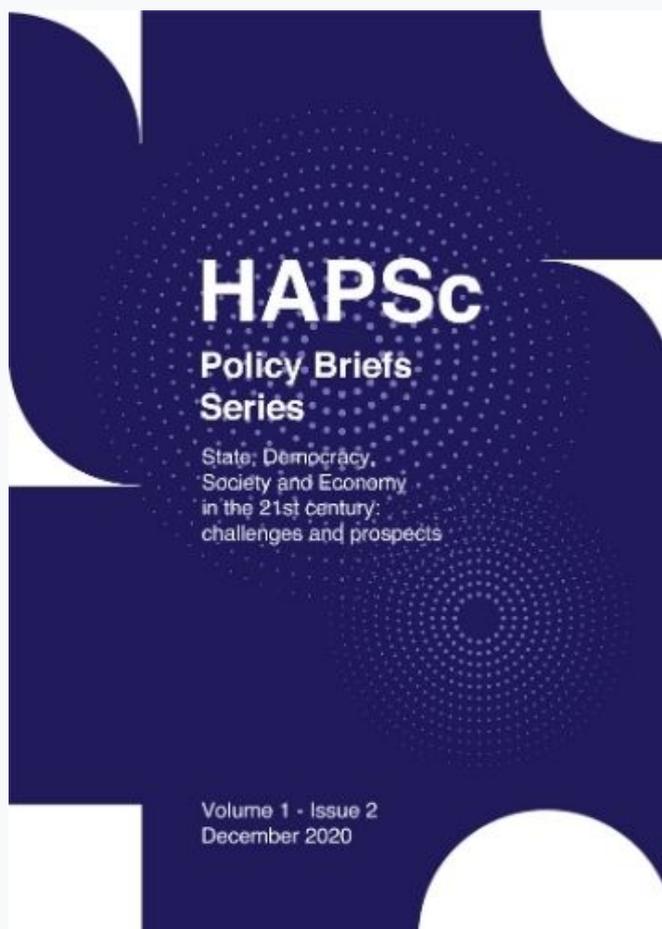


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### What is the Role of International Law in Global Health Governance on the Period of Covid-19

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# What is the Role of International Law in Global Health Governance on the Period of Covid-19<sup>1</sup>

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## Abstract

Rapid globalisation challenges many of the traditional assumptions about International law, which is linked to domestic law, especially the ways in which it is formed and the methods of its implementation. This phenomenon led governments to be more focused on international collaboration to achieve national public health purposes and succeed some audit over the cross-border powers that influence their populations. This essay will analyse the position on what is the role of international law in global health governance. Another significant result of this essay is that Global Actors should create a global health cooperation in order to implement the international law effectively on the period of Covid-19.

**Keywords:** International law; Global Health; Governance; Covid-19.

## Introduction

Rapid globalisation challenges many of the traditional assumptions about International law, which is linked to domestic law, especially the ways in which it is formed and the methods of its implementation. This phenomenon led governments to be more focused on international collaboration in order to achieve national public health purposes and succeed some audit over the cross-border powers that influence their populations. This essay will analyse the position about the role of international law in global health governance. Another significant result of this essay is that Global Actors should create global health cooperation in order to implement the international law at an effective level. Specifically, it will be argued that the WHO should become more involved in global health governance. The necessity for a robust system of international law in global health governance has been increased since the world is being unified and one essential factor of this is microbial unification (Aginam, 2005).

Covid-19 does not have national borders and the traditional distinction between national and

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international regimes is anachronistic (Aginam, 2005). In general, interconnection through easier transport, the free movement of goods and services, tourism, and other facts may increase the spread of contagious diseases (Aginam, 2005). For this reason, international law has a specific role in relation to global strategies, their coordination through all available agencies, and their synchronization into practical group working programs. This calls for a synthesized and liberal extension of international law principles beyond their traditional confines (Aginam, 2005).

Additionally, the current challenges of International Law will be reported. Consequently, this essay clarifies the significance of rules in the process of governing societies, by elaborating the relationship between international law and global health governance. Global health governance is a complex, multifactorial concept whose outlines are being shaped by practical policy efforts (Fidler, 2002). Legal systems, consequently, provide the basic architecture for governance (Fidler, 2002).

Moreover, this evidence-based paper looks at global health governance through the analysis of international law, and presents a general idea of how international law is significant to the discussions about global health governance. Considerable and procedural rules determine and shape the meaning of governance. The definition of international law will be explained and topics such as issue linkage and institutional burden will be discussed. Global health governance is an issue that requires to be addressed by international law. The implications of impoverishment and deprivation under which the majority of the global population lives call for a broader implementation of international law if world health is to be importantly advanced (Aginam, 2005). As a result, international health law can be organized better in order to tackle the current challenges and solve the problem of global health governance.

### **Definition of International Law**

Most of the people who are not familiar with international law usually adopt a common approach toward the role of international law in international politics: international law is not really law because it cannot be enforced. This specific theory depends on the nature of international law. More specifically, International law is the aggregate of rules generally regarded and accepted as binding in relations between states and between nations. It aids as a platform for the preparation of stable and organized global relations. International law is different from countries based legal scheme in that it is mainly relevant to states than to private citizens. National law can be international law when treaties delegate national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. The majority of international law is consent-based governance. This explains that a state member is not obliged to comply with this international law, instead it has

obviously agreed to specific course of conduct. This is an issue of state domination. Nevertheless, other features of international law are approval-based but are still mandatory upon state and non-state such as customary international law and peremptory norms (Slomanson, 2011; Bentham, 1789).

International law is an autonomous scheme of law presenting external legal decree of specific countries. Thus, it is different from domestic legal systems in figure of aspects. For instance, even though United Nations (UN) General assembly (Encyclopaedia Britannica), which comprises of delegates from 190 countries, has the external form of a “legislature, it has not the force to issue obligatory laws” (Encyclopaedia Britannica). By contrast, its resolutions work only as suggestions—except in particular instances and certain reasons within the UN system, such as deciding the UN budget, permitting new participants of the UN. There is cooperation between UN and Security Council in order to elect new judges to the international court Justice (ICJ) (Encyclopaedia Britannica). Furthermore, an important problem is the lack of system of courts with analytical jurisdiction. The jurisdiction in argumentative cases is established upon the consent of particular countries participated (Encyclopaedia Britannica). Also, it can be mentioned that “there is not international police force or comprehensive scheme of law enforcement, and there is also no supreme executive authority (Encyclopaedia Britannica).

### **International health law: Globalization and the broadening field of international health law**

Globalization is the procedure of rising economic, political and social liberation, and global integration that happens as investment, traded goods, people, concepts, ideas, and ethics drawn-out around national border. The growth of globalization has serious consequences for public health and global public governance (Taylor, 2002). Current globalisation includes many “interrelated risks and opportunities that affect the sustainability of health systems worldwide” (Taylor, 2002). As a result of globalisation, governments would be more focused on international collaboration to achieve national public health purposes and succeed some audit over the cross-border powers that influence their populations. Wide spreading effect of globalisation has enlarged the need for new law frameworks of international cooperation.

Consequently, it is imperative the creation of conventional international law, to tackle the emerging threats to global health and boost the health status of poor nations that have not been helped by globalisation the so called “losers” of globalisation. The literature examines health and international health law as global public goods argue to the significance of the globalization (Taylor, 2002). Globalization also has a consequence on the expansion of international health law, since growing global incorporation combines rapidly the public health implication of other contemporary

developments powerfully linked to health status. For instance, the sudden world-wide spread of scientific knowledge and technology has triggered international agreement and process by providing the data and instruments needed for efficacy national and international action through a wide range of agreements, including those who are concerned with the security of chemicals, pesticides and climate changes and the removal of dangerous waste. Using of environmentally damaging technologies contributed to the complication of international law by driving global health threats as air pollution, depletion of the ozone layer and climate change.

Moreover, ongoing scientific growth and developments have created global debate on codifying new international obligations and containing global punishments on certain new technologies, such as reproductive human clone (Taylor, 2002). In addition, the globalization of economics and companies has impacted politics and law as leaders and legal schemes adjust to the global age. There are similarities in public health where a combination of old and modern factors can be viewed. Nations have traditionally collaborated on infectious disease control, first through international hygienic treaties and later through the World Health Organization (WHO). Whereas, the phenomenon of the international collaborations is not new, given that recent global conditions are conflicting the control of infectious disease, the claim that a country cannot address rising infectious diseases by itself revealed that public health policy has been justifiably privatized (Fidler, 1996).

Globalization has aimed to a decrease “in both the political and practical capacity of the national governments”, performing alone or in collaboration with other nations, to face global health threats. Globalization is a part of changes happening steady during the several years, its acceleration and inflation during the final twentieth century has paid the attention to the action that nations alone cannot deal with a lot of the health threats arising. Communicable-diseases are the most famous example of this declining capacity, but equally important are the impacts on non-communicable diseases (e.g. tobacco consumption- related cancer), nutrition, lifestyles and environmental conditions. This restriction of the state has been supported by actions to extra-liberalize the global trade and services. The potential health implications of more open global markets have started to be discussed within trade negotiations and continue unaddressed by proposed governance mechanisms for the emerging global economy (Dodgson, Lee & Drager, 2002).

### **Issue linkage**

Globalisation has risen the development of international health law by improving current recognition of the interconnection of health and other contemporary global concerns. Global legal experts have usually categorized and analysed matters such as human rights, environmental protection, health and

arms control, self-contained areas with limited connections. Experts of international law have only presently acknowledged and argued the relationship between various subjects of international law, such as trade and human rights. As a result of “issue linkage” international health law is progressively implied to be vital to other traditional legal realms including human rights, trade, environmental law and international labour law. Consequently, health appears as an important issue of multilateralism (Taylor, 2002). For instance, the extension of international trade channels the connection between health and trade in a number of the agreements of the World Trade Organization (WTO) which is obvious in areas including access to drugs, food security, communicable diseases and biotechnology (Taylor, 2002). Furthermore, health has been related to international peace and world security issues in numerous circumstances, including those of HIV/AIDS, and weapon systems (Taylor, 2002; Alvarez, 2002; WHO, 2002; Brundtland).

Issue linkage incorporating organized action on health and other different considerable concerns has also become gradually an ordinary codification attempt. Sustainable development includes the aim of coordination of environmental, economic and social policy to create optimal human condition (Taylor, 2002). The belief of sustainable development was presented the 1992 Rio declaration of Environment and Development and has been detailed in numerous international methods, including the norms on Climate Change and Biological Diversity. Wide intersectoral accomplishment, (including trade, agriculture, education) to enhance global health status is also in the centre of current governmental discussions encompassing the advised WHO Framework Conference on Tobacco control (Taylor, 2002; Alvarez, 2002; WHO, 2002; Brundtland).

### **International Health growth and International law**

At all stages of growth, countries progressively acknowledge the need for frames for planned action on increasingly difficult, intersectoral and interconnected global health problems. International health growth in the twenty-first century will probably lead to the extended use of international law. It is essential to comprehend that common international law is an innately restricted system for international collaboration and that the global legislative procedure suffers from several faults-including dares to timely obligation and application- although significant benefits have been made in the last years (Taylor, 2002; Weiss, 1992).

In spite of their restrictions, agreements can be beneficial for increasing raising public awareness and stimulating international obligation and national action. Conventional international law can offer a legal foundation for international health commitments, and it can comprise institutional, and technical mechanisms to support compliance with international law by, for instance, improving the capacity of

countries to apply legal obligations. Mechanism established in international arrangements can include financial and practical aid, evidence exchange, scientific investigation, as well as agreement supervision and dispute solution (Taylor, 2002; Weiss, 1992).

### **Contemporary global health governance and its restrictions**

Current trends have seen the number of intergovernmental association and other agents in the field of health and other sectors of foreign relations, to rise rapidly. For instance, as a result of the increasing variety of international law correlated with public health, a wide range of intergovernmental organizations now focuses on the explanation of international law (Taylor, 2002; Walt, 1998; Walt, 2000). These constitute the United Nations and its agencies, and global and regional organizations outside of the United Nation's system. A growing figure of these intergovernmental agencies with explicit law-making authority and appropriate mandates have functioned as stages for codification of international law related to health and others have affected current international law in this area (Taylor, 2002; Walt, 1998; Walt, 2000).

Crisis in 2009 indicated the insufficiency of global health governance. Due to "The outbreak of pandemic influenza A (H1N1)" (Fidler, 2010) countries were rushing for access to vaccines. This fact led the WHO to create a new "global framework" on equal influenza access. The international economic crisis deteriorated efforts to succeed the "Millennium Development Goals" the majority of which relate to health problems or tackle policy areas influencing health. The year ended with the "Copenhagen negotiations on global climate change, problem" (Fidler, 2010) with significant benefit for global health (Fidler, 2010).

Furthermore, there was a rapid spread of private sector-actors in international health. These comprise a broad range of non-governmental organization, foundations and income agencies, such as pharmaceutical companies with an influential intervention on international health policy, including the establishment of international law-making. Modern global health collaboration is comprised by innovative "international health alliance" that encompass various global health actors (Walt, 2000). Especially, the current increase of health research networks and public-private cooperation for health (Walt, 2000), as well as the cooperation and the economic contribution of private to public sector is remarkable in national (Kritas et al., 2020) and international level.

The vast majority, of international health actors energetically participated in global health collaboration, linked to wide-spread judgement of the United Nations and its specialized agencies. For Instance, Bill & Melinda Gates Foundation cooperate with United Nations in order to help all people lead healthy and productive lives (Walt, 2000). This fact has led some critics to recommend a

decreasing role for intergovernmental organization in global health governance. Some have highlighted a “power shift” from intergovernmental association to private sector actors and innovative health alliances mentioned above (Walt, 2000).

Nevertheless, it can be claimed that rising global health autonomy involves multilateral organization to play a significant role in international health collaboration rather than a lesser one—at least in the term of realm of international health legislation and implementation (Walt, 2000). In general, as global integration growth, intergovernmental organizations with legislation authority will provide an increasingly essential mechanism through which countries can improve and implement public policy. Private actors and international health coalitions cannot replace international organizations as institutional central points for global dispute and codification of obligatory laws by national actors (Walt, 2000).

### **Institutional Burden**

The rapid increase of “multilateral” organizations with over-coming legal authority raises concern that the growing sector of international law may increase in an unplanned and unreliable way. The perception of international environmental law the last 20 years indicates a significant fact for international health legislation efforts and global health governance.

Despite the noteworthy accomplishments in this domain, the lack of an “umbrella environmental agency” has contributed to unplanned legislation activity by many intergovernmental organizations and sometimes ineffective and inconsistent (Taylor, 2002). There are so many treaties and organizations worldwide relating to the environment that create the phenomenon of “institutional overload”. Hence, the capacity of states to take part in and comply with them all has been exceeded (Taylor, 2002). The useless management of global environmental legislation has led most critics to support the construction of a new public international organization-“World Environment Organization”.

The consequences of “institutional overload” and “inconsistency” are already presented in international health. For instance, the negative advances in biomedical science have impact on global public health and they recently triggered numerous regional and global initiatives (Taylor, 2002). The global standard-establishing effort in biotechnology has been relocated from “non-binding declaratory resolutions to codification of international health law”, there has been increasing findings of fragmentation, replication and inconsistency. Consequences of the biotechnology revolution are tackled in norms of the United Nations Environment Programme’s Convention on Biological Diversity and Biosafety Protocol. According to world trade organization agreement on trade, the

correlated aspect of intellectual property creates standards for security of intellectual property applicable to biotechnology. Numerous other WTO agreements also use biotechnology related to trade arguments (Taylor, 2002). The United Nations Education, a scientific and cultural organization, has declared that the “possible preparation” of an “international instrument on genetic data” and a “universal instrument on bioethics” should be set as a follow-up to its Universal Declaration on the Human Genome and Human Rights (Taylor, 2002). It is indistinct whether these recommended instruments would be constructing a binding international law. In December 2001, the United Nations General Assembly established an Ad Hoc Working Group of the Sixth Committee to deliberate an international alliance to penalize reproductive cloning of human being (Taylor, 2002).

International law in biotechnology is presented in a disintegrated and unformed way in which intergovernmental organizations with overlapping authorizations are facing sector-specific aspects of the genetics revolution in a partial and imperfect manner. The legal procure deteriorates concerns about legal regime that governs biotechnology. This is partially since standards adopted under the signals of different international organizations are being risen in gradually contrary ways, containing disagreeing legal standards connected to intellectual property (Taylor, 2002). “The experience of international legislation in biotechnology powerfully recommends that recent decentralized organizational framework is ill-equipped to cope with international lawful aspects of the immense public health implications of modern genetic technologies and other realms of global public health” (Taylor, 2002).

### **WHO’s Role in International health law**

An international health legislation command for WHO on coordination and collective management. A huger role for WHO, including the international health law initiative, is important for rational growth and efficiency implementation of international health law policy (Taylor, 2002). “Current codification efforts in biotechnology and lessons learnt from the last global environmental governance strongly recommend that international health legislation requires more efficacy on institutional coordination than the ones existing” in the recent decentralized organizational framework 20. More effective collective management is also needed since the phenomenon of “issue linkage” in current legislation could compound the problem of contradictory international health law rules emerging from different organizations with overlapping legal authority. In international law, the question of issue linkage is rapidly perceived to concern the allocation of legal jurisdiction among international organizations (Taylor, 2002).

Coordination does not indicate consolidation of all international health legal functions under WHO

auspices, full centralization is neither probable nor necessary (Taylor, 2002). It can be broadly understood that the domain of international health law is rapidly including increasingly more various and complicated concerns, and though health originates increasingly within the context of current codification efforts through issue linkage, not all such treaty efforts fall squarely within WHO's core mandate (Taylor, 2002). Furthermore, some international organizations with overlapping legal authorization may resist reduction of their respective authorization in favor of full centralization under the auspices of WHO. Governments are not likely to offer WHO such wide authorization or to provide it with the resources needed to implement such a mandate (Taylor, 2002; Kantartzi & Karlis, 2008). Moreover, not all facts of decentralization of international legislation are ineffective. The rising "complexity" and "interconnectedness" of global health problems recommend that certain context require shifting beyond the "single instrument and single institution" approach, while simultaneously avoiding exaggerated fragmentation and lack of coordination (Taylor, 2002). The conditions and the opportunities are generated by the decentralization for specialization, innovation and dynamism. For instance, some existing international organizations, such as the food and agriculture organization of the United Nations, have grown significant technical expertise and will be a substantial resource for future global health legal collaboration (Taylor, 2002).

The biggest international health organization and one of the larger specialized agencies of the United Nations, WHO, has accountabilities to administrate global public health based on responsibilities assigned by its constitution and its affiliation with the United Nations (Taylor, 2002). A leading role by WHO could highly benefit international health law among the benefits of WHO having a chief role on the promotion and development of a legal system where rational decisions are made. Thus, WHO would serve as an administrator, catalyst and helper for international health agreements. However, this idea has also been previously suggested due to the leadership gap and disorientation dominant in this domain. Previous cases have shown that the intervention of WHO was a success when it came to major global health threats. For instance, the WHO International Health Regulations is the only international legal implement planned to offer a ramework for multilateral efforts to mitigate infectious diseases, was changed in 2005 to face the rising threat posed by the transnationalization of infectious diseases (Taylor, 2002) and to embed recently grew systems for international organization and reaction (Taylor, 2008).

The leaders of WHO in organizing codification and implementation efforts among the various global actors actively involved in health lawmaking could, in theory, boost the growth of a more effective, incorporated and rational legal system and subsequently, better collective administration of global health concerns. WHO and other intergovernmental organizations cannot effectively coordinate the

international legal efforts. Efficacy of international standards and stability among different treaties and legal systems may not always be an initiative among nations codifying global obligations or the wide spectrum of global health actors that influence the international legal procedure. Additionally, WHO has not obligation authority over the activities of other independent intergovernmental organizations (Taylor, 2002).

While effective coordination of the increasingly complex international health law cannot be guaranteed, it can be followed with reasonable expectations and recognition of the restrictions of organizational action (Taylor, 2002). This essay, cannot entirely define the strategies WHO could use to support rational management of international legal developments, but numerous beginning points can be revealed (Taylor, 2002).

For international health law, it is significant to evaluate the interaction between the regulations and human laws, specifically those relating to individual patients and others who may probably preserve the disease. “During health emergencies, it is very common that the rights of individual patients and others are easily overlooked” (Toebes, 2015). While the regulations embed human rights law, the accurate consequences of this connection at a realistic level need additional survey (Toebes, 2015).

#### International agenda and further dialogue

WHO can prepare more effective and organized international health collaboration by using the agenda-setting that is obviously needed for international health law. It can play an important role for itself in catalyzing international agreements and national action by, among other things, institutionalizing a procedure of finding priority issues for international legal collaboration and supporting them among relevant voting groups. By prioritizing international legal action and coordinating appropriate public health and legal information, WHO can have a significant role and encounter an important need by educating governments, other global health actors and the public about global health issues ripe for legal consideration (Taylor, 2002). The plans of WHO can support effective consideration, collective management and growth of international legal matters by energetically participating in developing array of treaty efforts with significant consequences for global public health started in other forums (Taylor, 2002).

For instance, in December 2001, the General Assembly of the United Nations created an Ad Hoc Committee to examine proposals on a comprehensive and essential international agreement on protection and promotion of the rights and dignity of person with disabilities (Taylor, 2002). In the initial meeting, the Committee highlighted the human rights framework is needed to support the entire participation of persons with disabilities in economic and social life. WHO can provide a significant

contribution to this codification effort, and the growth of international health law, by informing and educating nations' representatives participating in dialogues about relevant public health and legal information within its field (Taylor, 2002). This kind of information could contain details of the global incidence of disabilities and public health considerations involved in human rights issues and accommodation access (Taylor, 2002). In addition, it can be emphasized that WHO may widen the dialogue by bringing forth information and motivation, global public opinion on the approach of prevention, treatment and rehabilitation that are ripe for international lawful action (Taylor, 2002).

Given this fact, as a remarkably obvious international organization, WHO has the chance to play a crucial role in setting the international health law agenda and, subsequently to contribute to the development of international health law (Taylor, 2002). However, WHO can boost global dialogue, construct effective partnerships and subsequently more coordinated, governmental and intergovernmental plans (Taylor, 2002).

### **Policies for treaty negotiations**

Global actors can lead global health collaboration by helping, where appropriate, as a platform for codification and implementation of agreements with important public law effects. The data of environmental law and biotechnology recommend that critical public health issues of global legal concern not tackled in a timely and effective way may lead to excessive institutional fragmentation, considerable overlaps, unrecognized linkages and vital gaps in the absence of a legislative role for WHO (Taylor, 2002). As a public international organization, WHO is the only one with a multi-dimensional role. As for its responsibilities, one can indicate its institutional role, legal authority, codification of treaties and on top of all, dealing with global public health concerns (Taylor, 2002).

Given the problems increased by issue linkage and overlapping legal authority, the question is which types of issues will benefit from codification under WHO auspices (Taylor, 2002). We need to make a decision on an example-by-example basis and always be arguable (Taylor, 2002). The question that remains is the problematic overlapping of responsibilities of WHO's role and work in certain cases. There are certain issues, such as international tobacco control and covid-19 overlap with other international sectors, such as human rights, trade customs, and environment. It can be claimed, though, that those issues remain crucial to public health and therefore they must be dealt by WHO (Taylor, 2002).

### **Conclusions**

It is imperative that rapidly evolving field of international law should be extended to cover all needs

of modern societies. Global Health governance is one of them. As a necessary factor, global health governance in the twenty-first century is a dynamic, effective and politically responsive institution to promote collective management as well as the rational development and implementation of international law policy (Taylor, 2002). Therefore, there must be a shift of interest towards the idea of international health law and a call to action for the codification of new instruments and the development of new strategies to face the challenges in global health. Global health actors must be assigned new roles and be given such responsibilities as to serve an international purpose. The number one priority of our times should be effectively and cautiously treated outside the restricted borders of each state. If law is to play an essential role in global health governance in the future, new types will be required to channel more beneficial and cooperative action to address one of the defining issues of our time—the health of the world's population (Fidler, 2002).

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