COVID-19 Pandemic, The World Health Organization, and Global Health Policy

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COVID-19 PANDEMIC, THE WORLD HEALTH ORGANIZATION, AND GLOBAL HEALTH POLICY

Cosmas Emeziem*

ABSTRACT

The emergence and quick spread of the COVID-19 pandemic has shifted the focus and dynamics of the debates about global health, international law, and policy. This shift has overshadowed many of the other controversies in the international sphere. It has also highlighted the tensions that often exist in international affairs—especially in understanding the place and purpose of international institutions, vis-à-vis states, in the general schema of public international law.

Central to the international response to the current pandemic is the World Health Organization (WHO)—a treaty-based organization charged with the overarching mandate of ensuring “the highest possible level of health” for all peoples.1 Interestingly, the WHO has also become entangled in a foreign policy spat between China and the United States of America. This work explores the public international law aspects of the

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WHO and why we should focus on its primary policy mandate and avoid unduly heaving the institution into perennial strategic policy games of states. It argues against turning such an illustrious institution, charged with a peculiar mandate, into an arena of zero-sum competitions amongst states. The hope is that this paper will provide crucial insights and assist legal and policy experts in understanding the organization, insulating it from unnecessary strategic games of powerful states, and ensuring the continued and effective delivery of global health policy through the WHO.

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2 In the last two decades, global health has expanded rapidly in the face of international community’s needs to respond to transborder communicable diseases, such as the flu and other forms of potentially disruptive health challenges. See ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 8–11 (2005); Thomas G. Weiss, Governance, Good Governance and Global Governance: Conceptual and Actual Challenges, 21 THIRD WORLD Q. 795, 804 (2000). Also, global health governance is part of the larger schema of global governance, which has become more expansive since the end of the cold war. SLAUGHTER, supra note 2, at 15–16, 42; Weiss, supra note 2, at 804. In the health sector of global governance, questions regarding access to medicine and intellectual property rights, such as drug patents, are central to the work of the World Health Organization, the World Trade Organization, the World Intellectual Property Organization, and many others. Rochelle Cooper Dreyfuss & César Rodríguez-Garavito, The Battle Over Intellectual Property Laws and Access to Medicines in Latin America: A Primer on Global Administrative Law, Intellectual Property, and Political Contestation, in BALANCING WEALTH AND HEALTH: THE BATTLE OVER INTELLECTUAL PROPERTY AND ACCESS TO MEDICINES IN LATIN AMERICA 1–2 (Rochelle C. Dreyfuss & César Rodríguez-Garavito eds., 2014). More to this is the heated debate about access to vaccines and how this is entangled with the existing regime of intellectual property rights under the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.
The COVID-19 pandemic has opened a floodgate of dialogues and reflections about disaster, medicine, infectious diseases, human rights, and the World Health Organization (WHO) as an international organization vis-à-vis its

3 According to the Johns Hopkins Coronavirus Resource Center, COVID-19 has killed more than 2,900,000 people globally. Coronavirus Resource Center, JOHNS HOPKINS UNIV. MED., https://coronavirus.jhu.edu (last visited Mar. 29, 2021). There have also been more than 130,000,000 confirmed cases of the virus globally. Id. The devastation is immense, and the harm caused to socioeconomic opportunities is yet to be fully articulated. See generally Francisco-José Quintana & Justina Uriburu, Modest International Law: COVID-19, International Legal Responses, and Depoliticization, 114 AM. J. INT'L L. 687 (2020).

4 See, for example, Miriam Tedeschi, The Body and the Law Across Borders During the COVID-19 Pandemic, 10 DIALOGUES HUM. GEOGRAPHY 178, 178 (2020), which discusses various theories concerning international travel amid COVID-19.


overarching mandate in global health policy. It has affected every aspect of human endeavor—including the operation of international organizations such as the WHO. International Organizations (IOs) or institutions are set up by states and garbed with mandates to carry out specific duties within the international system. These organizations are treaty-based


12 See generally EDUARDO MISSONI, GUGLIELMO PACILEO & FABRIZIO TEDIOSI, GLOBAL HEALTH GOVERNANCE AND POLICY 83–126 (2019), for background information regarding the origins, structure, and functions of various international organizations, including the World Health Organization, and their relation to global health.


14 Andrew Guzman, International Organizations and the Frankenstein Problem, 24 EUR. J. INT’L L. 999, 1010 (2013); see Jan Klabbers, Reflections on Role Responsibility: The Responsibility of International Organizations for
organizations with mandates\textsuperscript{15} that are spelled out in their charters or constitutive instruments.\textsuperscript{16} These mandates often determine the spheres of activities to which they must restrict themselves, subject to the overriding superintendence of Member States.\textsuperscript{17} In other words, these organizations are special-purpose instruments\textsuperscript{18} and platforms through which the international community conceives, designs, and implements

\textit{Failing to Act}, 28 EUR. J. INT’L L., 1133, 1135 (2017); Martti Koskenniemi, \textit{Global Governance and Public International Law}, 37 KRITISCHE JUSTIZ 241, 242 (2004). Sometimes, the term “international organization” is also colloquially used to describe non-governmental organizations, such as Amnesty International and Transparency International, that do not enjoy the same status as the International Organizations like the United Nations (UN) or its Specialized Agencies, such as the WHO, that are created by states with treaty instruments. While organizations like Amnesty International are registered as charities, in different jurisdictions, IOs like WHO are constituted by states through treaties, (constitutions, charters, agreements) and thus have international legal personality. This work’s focus is on those institutions constituted by states. See generally Steve Charnovitz, \textit{Nongovernmental Organizations and International Law}, 100 AM. J. INT’L L. 348 (2006), for further explanation on non-governmental organizations and their relationship with international organizations.


\textsuperscript{18} See Daugirdas, supra note 17, at 342–57, who highlights the vertical relationship between international organizations and states such that they are vehicles for the carryout of the intentions of constitutive states.
policies that have a common purpose for all members.19

Before World War II and the consequent establishment of the UN System,20 few IOs had a worldwide mandate. They included such organizations as the League of Nations,21 the Universal Postal Union (UPU),22 and the International Telecommunications Union (ITU).23 These organizations

19 See, for example, Andreas Rasche & Georg Kell, Introduction: the United Nations Global Compact – Retrospect and Prospect, in United Nations Global Compact: Achievements, Trends and Challenges 1, 4 (Andreas Rasche & Georg Kell eds., 2010), regarding the United Nation’s Global Compact, which is a “call to companies to voluntarily align their operations with ten universal principles in the areas of human rights, labour standards, the environment and anti-corruption.”


enjoyed widespread acceptance and support despite their humble beginnings. The post-1945 era of international law and policy has seen a definitive shift in the nature, number, and reach of international organizations. There has been a manifest expansion of these organizations—both in number and subjects of influence. In a way, the evolution and expansion of international institutions, “the move to institutions,” must be seen as one of the most phenomenal iterations of international law development in the 20th century. In that century, they became very relevant in helping humanity achieve some common goals, including international peace and security.

\[L. 546, 548–51 (1945).\]


\[28\] See, for example, IAN HURD, *INTERNATIONAL ORGANIZATIONS: POLITICS, LAW, PRACTICE* 82–86 (3d ed. 2017), which discusses the Security Council, an organ of the United Nations charged with the obligation to maintain international peace and security. See U.N. Charter arts. 39–51.
trade, nuclear arms, food, and healthcare. The rapidity of their growth simultaneously added layers of complexity to the array of activities and functions that necessitated these organizations’ establishment.

Against the backdrop of the interdependence of states and societies in our globalized world, IOs have become even more crucial in the overall architecture of global consensus building and policy. The entrenchment of IOs is now a common fixture of the international law and policy landscape. Illustrative of this is the role that the WHO has played in the current effort to contain and stop the COVID-19 pandemic. Even before the current pandemic, the WHO has been working with member states and many professional bodies to develop a reliable framework for managing and generally combating infectious diseases.

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29 See Gabrielle Marceau, *From the GATT to the WTO: The Expanding Duties of the Legal Affairs Division in Non-Panel Matters*, in *A HISTORY OF LAW AND LAWYERS IN THE GATT/WTO* 244, 244–63 (Gabrielle Marceau ed., 2015), who explains the transition of the General Agreement on Tariffs and Trade (GATT) to the World Trade Organization (WTO), and the subsequent strategic and ethical improvements which helped shape modern international trade.


Thus, the WHO’s role in the current pandemic arises from the fact that no single nation, no matter how rich or powerful, is capable of solving the pandemic problem without collaboration with other states. It requires a high level of committed cooperation between states and IOs, which may sometimes generate diplomatic frictions. Therefore, it is

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37 See Matiangai Sirleaf, Responsibility for Epidemics, 97 Tex. L. Rev. 285, 298 (2018), who highlights the critical question of responsibility for epidemics in international law and explains why no single state alone can cope with the increased incidents of epidemics.

38 Dominique Vervoort, Xiya Ma & Jessica G. Y. Luc, COVID-19 Pandemic: A Time for Collaboration and a Unified Global Health Front, 33 Int’l J. Quality Health Care 1, 2–3 (2021); see also Gian Luca Burci, Health and Infectious Disease, in Oxford Handbook on the United Nations 679, 683–87 (Thomas G. Weiss & Sam Daws eds., 2d ed. 2018) (detailing the shortcomings of individual organizations in combatting previous pandemics, which led to a transfer of responsibility from solely the WHO to other international organizations to complement one another and ensure future support for early stages of outbreak response).


40 Heath as diplomacy is a strong theme within the larger legal academy in America. This is hardly surprising considering the American approaches to international law, which is foreign relations oriented. This exceptionalism applies across the board to all aspects of international law. See generally Restatement (Fourth) of the Foreign Relts. L. of the U.S. (Am. L. Inst. 2017). Fidler considers the shift that has happened in recent years in terms of international healthy policy to be revolutionary. See David P. Fidler, Health as Foreign Policy: Between Principle and Power, 6 Whitehead J. Dipl. & Int’l Relts. 179, 180–82 (2005). For more on American approaches to international law, see Mark Weston Janis, The American Tradition of International Law: Great Expectations 1789–1914 (2004); Hatsue Shiohara, US International Lawyers in the Interwar Years: A Forgotten Crusade (2012); and David Kennedy & Chris Tennant, New Approaches to International Law: A Bibliography, 35 Harv. Int’l L. J. 417 (1994).

41 The little spat between the People’s Republic of China and the United States Government is a case in point. See Li Yuan, Ousting U.S. Reporters,
imperative to refocus the public’s mind on the policy foundations and institutional framework of the WHO. That way, it will be easy to show the need to avoid zero-sum strategic games within the institution. It is hoped that participants in global health policy will be able to eschew zero-sum games and concentrate on the international and imperative duty of ensuring the highest possible standard of health for humankind.43

II. FOUNDATIONS, AND PRINCIPLES OF THE WORLD HEALTH ORGANIZATION

As a treaty-based institution, the WHO is also recognized under Articles 57 and 63 of the UN Charter as a Specialized Agency of the UN.44 It was established in 1946 and became fully

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42 International Organizations are also exposed to the politics of international law and general international relations. These organizations play a role in who gets what and how that is done amongst nations. This can implicate issues that touch on the most vital aspects of human wellbeing, such as health and transnational management of pandemics. Hence the need to emphasize theories of cooperation rather than zero-sum power politics among nations. For general insights on theories of international law which permeate the adjacent subject of international organizations, see Jack L. Goldsmith & Eric A. Posner, A Theory of Customary International Law, 66 UNIV. CHI. L. REV. 1113 (1999); Mark A. Chinen, Game Theory and Customary International Law: A Response to Professors Goldsmith and Posner, 23 MICH. J. INT’L L. 143 (2001); and Moshe Hirsch, Game Theory, International Law, and Future Environmental Cooperation in the Middle East, 27 DENV. J. INT’L L. & POL’Y 75 (1998).

43 WHO Const., supra note 1, art. 1.

44 See Gustav Pollaczek, The United Nations and Specialized Agencies, 40 AM. J. INT’L L. 592, 610 (1946). The text of Article 57, which falls under Chapter IX of the UN Charter, which deals with International Economic and Social Cooperation, provides that “[t]he various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into
operational in 1948, pursuant to a series of consultations, diplomatic regulations, and due ratification of its constitution by Member States. The WHO conceptualizes health as being more than just bodily infirmity; it connotes total wellbeing and happiness of all peoples.\(^{45}\) This overarching conceptualization of health animates proactive measures that help in investigating potential health challenges and the onset of diseases and drives the agenda for solutions and social engagements. Beyond the clinical work of combating diseases, the WHO also coordinates and channels efforts aimed at public enlightenment and public health enhancement.\(^{46}\) The WHO’s constitution and other instruments acknowledge “the highest attainable standard of health” as a basic fundamental right “without distinction [regarding] race, religion, political belief, [and] economic or social condition.”\(^{47}\)

The WHO enjoys a widespread membership.\(^{48}\) This coming together of states for the common purpose of global health support and governance traces its roots to the International Health Conference held in New York in 1946.\(^{49}\) Since then, the WHO has provided states with the necessary platform for solving critical cross-border and transnational health problems such as the COVID-19 pandemic.\(^{50}\) In recent years, the WHO

\(^{45}\) WHO Const., supra note 1, pmbl.


\(^{48}\) See generally Niels Blokker, International Organizations and Their Members, 1 INT’L ORG. L. REV. 139 (2004), for a discussion on the role of members of international organizations.


\(^{50}\) See Antoine de Bengy Puyvallée & Sonja Kittelsen, “Disease Knows No Borders”: Pandemics and the Politics of Global Health Security, in PANDEMICS, PUBLICS, AND POLITICS: STAGING RESPONSES TO PUBLIC HEALTH CRISES 59, 60–61, 63–64 (Kristian Bjørkdahl & Benedicte Carlsen eds., 2019). For one example, see WHO, HANDBOOK FOR PUBLIC HEALTH CAPACITY-BUILDING
has pivoted towards playing a more significant role in combating infectious diseases, and this has yielded a strong collaboration across states when diseases like Ebola or COVID-19 emerge. It has also continued to facilitate global health policy without distinction regarding race, religion, region, or nationality. The

AT GROUND CROSSINGS AND CROSS-BORDER COLLABORATION (2020).

See, for example, David P. Fidler, Influenza Virus Samples, International Law, and Global Health Diplomacy, 14 EMERGING INFECTIOUS DISEASES 88 (2008), which addresses the WHO’s response to issues of international virus sample sharing; Lawrence Gostin, The International Health Regulations and Beyond, 4 LANCET: INFECTIOUS DISEASES 606, 606–07 (2004), which highlights the WHO’s proposed revisions of the International Health Regulations; FIDLER, supra note 36, at 25, which notes the effectiveness of the WHO’s creation and promulgation of the International Sanitary Regulations; and Christopher-Paul Milne, Racing the Globalization of Infectious Diseases: Lessons from the Tortoise and the Hare, 11 NEW ENG. J. INT’L & COMPAR. L. 1, 34–35 (2004), which promotes the adoption and support of WHO’s biosecurity guidelines.


See generally David P. Fidler, International Law and Global Health, 48 KAN. L. REV. 1, 3 (1999); David Fidler, Global Health Governance: Overview of the Role of International Law in Protecting and Promoting Global Public Health, DEPT OF HEALTH & DEV. FOR THE WORLD HEALTH ORG. [WHO] (2002), https://apps.who.int/iris/bitstream/handle/10665/68936/A85729_eng.pdf?sequence=1&isAllowed=y; and David P. Fidler, From International Sanitary Conventions to Global Health Security: The New International Health Regulations, 4 CHINESE J. INT’L L. 325 (2005), which all survey the history of international law relating to infectious disease control as well as the substantive changes that the WHO’s International Health Regulations (IHR) have had on international infectious disease law, creating a new regime for addressing public health issues.


WHO also aids many developing countries\footnote{Highly indebted poor countries have the more difficult challenge of managing pandemics because of not only limited infrastructure but also the funding capacity to meet the demands of such sudden and sometimes fast spreading diseases. See Peter S. Goodman, How the Wealthy World Has Failed Poor Countries During the Pandemic, N.Y. Times (Nov. 5, 2020), https://www.nytimes.com/2020/11/01/business/coronavirus-imf-world-bank.html. The WHO often provides the needed support for these countries in negotiating for aid and health care.} to leverage expertise, aid, healthcare support, and other technical engagements essential to their well-being and flourishing.\footnote{WHO’s work with countries, What WHO does in countries, WORLD HEALTH ORG., https://www.who.int/country-cooperation/what-who-does/en/ (last visited Apr. 2, 2021).} Thus, the WHO’s collaborative platform enhances the epidemic and pandemic response and management capacity of these states in ways that would have been impossible if they were to act alone. In the COVID-19 era, where many state economies were devastated, the value of this shared responsibility\footnote{For an example on the implementation of shared responsibility, see Sirleaf, supra note 37, at 341.} against pandemics such as COVID-19 through the WHO is self-evident.\footnote{Article 79 of the WHO Constitution provides that “States may become parties to the Constitution by: (i) signature without reservation as to approval; (ii) signature subject to approval followed by acceptance; or (iii) acceptance.” WHO Const., supra note 1, art 79(a)(i)–(iii). Acceptance is accomplished by the formal deposit of an instrument with the Office of the Secretary-General of the United Nations. Id. art 79(b). Following this procedure, the WHO has today grown to include more than 190 Member States. World Health Organization [WHO], WHO Presence in Countries, Territories and Areas, ¶ 4, WHO Doc. EB144/INF./4 (Jan. 25, 2019), https://apps.who.int/gb/ebwha/pdf_files/EB144/B144-INF4-en.pdf. Beyond the full Member States, the WHO allows territories that are either non-self-governing or that do not control their own foreign policy to become associate members of the WHO. See id. Today, Puerto Rico and Tokelau—both non-self-governing territories of the United States and New Zealand—are the two associate members of the WHO. Id.} 

It is the Constitution of the WHO that governs the relationship between the organization and Member States.\footnote{See generally Sharp, supra note 49. The Constitution, which was adopted in June 1946, has undergone four amendments—resolutions WHA26.37, WHA29.38, WHA39.6 and WHA51.23—which came into effect on February 3, 1977, January 20, 1984, July 11, 1994 and September 15, 2005}
comprises 19 Chapters and 82 Articles encapsulating the vision and rules regulating the WHO's activities and operations and is the largest international health policy body on the planet.61 More importantly, the Constitution accords legal personality to the WHO. Together with the UN’s other specialized agencies, the Constitution’s legal character is guaranteed to enable it to fulfill the functions as specified or implied by their constitutive instruments.62 The ICJ has espoused the WHO's legal personality in the case of the Legality of the Use by a State of Nuclear Weapons in Armed Conflict.63


61 See generally WHO Const., supra note 1.

62 Different schools of thought have arisen in consideration of this legal status of international organizations. James D. Fry, Rights, Functions, and International Legal Personality of International Organizations, 36 B.U. INT’L L. J. 221, 228 (2018). First is the objective personality school, which argues that once the international organization is created by states, there emerges an objective legal personality of the organization. Id. Thus created, the organization automatically acquires a legal personality capable of being so recognized not only by member states of the organization but also by the general public. Id. at 228–29. This enhances certainty and this personality is opposable to all states as an objective criterion. See id. Second, the subjective school of thought insists that the legal personality of an international organization must be found within the text of the treaty or constitutive instrument establishing the organization. Id. at 228. It is reluctant to accommodate implied or functionally driven powers. See id. This is often used to hedge against “mission creep” or incremental expansion of the powers of an international organization. See id. The moderate school conceives the legal personality of an international organization as either expressly provided or impliedly possessed. Id. at 229. It is also the case that legal personality is considered as a unit. See id. Thus, when an international organization binds itself to a treaty or any other form of agreement, it also binds all its organs and subsidiaries. See id. For a full analysis on legal personality in international law, see Roland Portman, Legal Personality in International Law (2010).

63 Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. 66, ¶ 21 (July 8).
III. THE WORLD HEALTH ORGANIZATION AND PANDEMICS

In line with its mandate, the WHO is always at the frontline of the fight against all kinds of diseases, including pandemics like COVID-19. Over the years, the organization has developed great human and institutional capacity to strategically deal with emerging diseases—while preparing for new threats from anywhere around the world. It has developed archives, research, guidelines, management plans, networks, and partnerships that can be revved up at short notices in order to fulfill its objective of providing the highest attainable standard of health for all peoples. In the face of the current struggle to contain and eliminate the ongoing deadly pandemic, the strategic position of the organization in global health policy has manifested once more.

The method the WHO used to address this and other pandemics is to produce a strategic action plan. These plans...
are often aimed at reducing exposure to the disease, providing for and enhancing timely warning protocols, operationalizing containment strategies, providing for capacity building to cope with the pandemic, and coordinating global scientific research\textsuperscript{69} and development.\textsuperscript{70} Thus, upon the onset of the COVID-19 pandemic, the WHO produced and publicized a \textit{Strategic Preparedness and Response Plan}.\textsuperscript{71} This plan was aimed at providing a holistic approach to managing the pandemic and all other matters related to it.\textsuperscript{72} It is also complemented by the \textit{Global Humanitarian Response Plan}\textsuperscript{73} that is meant to cater to situations of fragility—involving refugees and internally displaced persons around the world.\textsuperscript{74} Central to the strategic plan was implementing the transmission of the pandemic by identifying, isolating, and optimizing care for those already infected.\textsuperscript{75}

\begin{flushright}
REV. 240, 240–69 (2017) (discussing the background, development, and framework of the Global Health Security Agenda—an action plan developed by national governments and international organizations, including the WHO, to address infectious disease threats).
\end{flushright}

\textsuperscript{69} See, for example, World Health Org. [WHO], Rep. of the Special Session of the Pandemic Influenza Preparedness Framework Advisory Grp., \textit{Pandemic Influenza Preparedness: Sharing of Influenza Viruses and Access to Vaccines and Other Benefits}, WHO Doc. A69/22 Add.1 (Apr. 1, 2016), https://apps.who.int/iris/bitstream/handle/10665/252678/A69_22Add1-en.pdf?sequence=1&isAllowed=y, which addresses the Pandemic Influenza Preparedness (PIP) Framework—a mechanism developed by Member States and used to bring Member States, industry, other stakeholders, and WHO together to design a global preparedness and response plan for addressing the influenza pandemic.


\textsuperscript{72} See \textit{id.} at 1.


\textsuperscript{74} \textit{id.} at 4–5.

\textsuperscript{75} \textit{id.} at 12.
Early and consistent communication to the general public is deemed an essential pandemic preparedness and management technique. This is intended to clearly communicate the critical risks, hence alleviating the socioeconomic impact of the disease. This multi-sectoral up-to-date strategic communication approach has ensured that no gap is left in the effort to contain and eliminate the deadly pandemic. Indeed, the Director-General’s consistent briefings and calls to action have been central to the efforts of states and regional organizations in responding to the disease.

Indeed, the WHO has also produced and continued to use a strategic communication guideline. The guideline emphasizes assessment, coordination, transparency, listening during an outbreak, communication evaluation, and constructing an emergency communication plan. This proved critical to the effective management of pandemics, and the WHO guide provides a robust template for governments, regional organizations, and other collaborative agencies in the fight against epidemics and other forms of infectious diseases.


77 WHO COVID-19 Response Plan, supra note 71, at 5. In a nutshell, the WHO, in response to the disease, established an international coordinating center to provide technical support and partnerships in support of countries. Id. at 5–6. It also accelerated and gave priority to research about the disease. Id. at 5, 17. This has been the preoccupation of the WHO since the onset of the disease. Id. at 1.

78 See generally WHO, WORLD HEALTH ORGANIZATION OUTBREAK COMMUNICATION PLANNING GUIDE (2008) [hereinafter WHO OUTBREAK COMM’N PLAN. GUIDE].

79 Id. at 8–28.


81 Experts are in agreement that effective health communication is indispensable to the management of pandemics. See generally Abbigail J. Tumpey, David Daigle & Glen Nowak, Communicating During an Outbreak or Public Health Investigation, in CDC FIELD EPIDEMIOLOGY MANUAL 243 (Sonja A. Rasmussen & Richard A. Goodman eds., 2019); Barbara Reynolds & Sandra Crouse Quinn, Commentary, Effective Communication During an Influenza
More so, the WHO has remained on the frontlines in terms of the ongoing efforts aimed at producing vaccines for the disease, distributing them, and ensuring that they are properly administered. Because of the great capacities of the WHO, it not only has a team of researchers that work on vaccine development, standardization and regulation, it also advises drug regulatory authorities, health departments, and officials around the world on vaccines. Without the WHO's effective involvement, many countries and populations around the world will face the risk of either lack of access or inappropriate use of drugs—especially vaccines. In times of uncertainty and rapidly evolving pandemics, the WHO plays a critical role in keeping the general public informed about vaccine development, access, and application. The vital aspects of the WHO's work—


82 See, for example, Geoffrey Makenga et al., Vaccine Production in Africa: A Feasible Business Model for Capacity Building and Sustainable New Vaccine Introduction, FRONTIERS PUB. HEALTH, Mar. 2019, at 1, 3, which highlights the WHO’s assessment of Africa's National Regulatory Authorities (NRAs) in 2010, which contributed to substantial vaccine development. For example, in collaboration of public and private organizations, such as UNICEF, GAVI, and the Pan-American Health Organization, the WHO has set up a COVAX facility with the aim of accelerating the development, manufacture and equitable distribution of vaccines to every country. The rationale is that unless every country has a fair access to the vaccine, no country will be immune to the consequences of the disease. For many small countries, this is very helpful because unlike the United States and other OECD countries, they have limited capacities for the development, manufacture, distribution and effective administration of the COVID-19 vaccines. See COVAX, Working for global equitable access to COVID-19 vaccines, WHO, https://www.who.int/initiatives/act-accelerator/covax (last visited May 17, 2021).

83 Makenga, supra note 82, at 3.

84 See id. at 3–4.

85 Currently, there is a significant push for inclusive access to the COVID-19 vaccine and the WHO is a critical partner in this effort. See Ann Danaiya Usher, COVID-19 Vaccines For All?, 395 LANCET 1822, 1823 (2020). Without this effort to make the vaccine accessible to all countries—rich and
especially in advising states and partners— are registration of products, inspections and licensing of manufacturers, inspection and licensing of distributors, continued surveillance, and authorization of clinical trials.  

Interestingly these efforts can also run into diplomatic tensions between Member States themselves, on the one hand, and between the WHO and Member States on the other hand.  

The interests of sovereigns and the limits of modest international law has come to the fore once more.  

One significant example is the China-US relationship within the WHO and the impact it may be having on the implementation of the strategic plan to stop the COVID-19 pandemic. At several points, the United States Government has accused China of not telling the whole truth about the pandemic’s emergence and transmission. Some policy commentators have also accused the WHO of whitewashing the China story. Others have accused China of failing to uphold its responsibilities under the poor—it will be difficult for many communities around the world to have access to this life saving drug. See Lawrence O. Gostin, Safura Abdool Karim & Benjamin Mason Meier, Facilitating Access to a COVID-19 Vaccine through Global Health Law, 48 J. L., MED. & ETHICS 622, 623 (2020).  


See generally Quintana & Uriburu, supra note 3, who argue that the crisis and tension arising from the COVID-19 pandemic could be useful in helping develop norms of international law that will govern a post COVID-19 era of international law.  


James Kraska, China Is Legally Responsible for COVID-19 Damage
International Health Regulations (IHR).\textsuperscript{92} The Chinese government has denied all of these allegations.\textsuperscript{93} Instead, it continued to maintain that it followed the standard procedure for responding to global health challenges under the WHO's auspices.\textsuperscript{94}

The legal quandary that exists currently is the extent of the obligation of a state in international law following the outbreak of pandemics in its territory. More so, the rapid nature of the transmissions that often follow epidemics—especially in this age of people's fast global movement—is a prime obstacle to accountability. As we have seen, finding out the real moment of the outbreak is critical. That is why the WHO insists on transparency and early reporting of the outbreak of pandemics.\textsuperscript{95}

The Trump administration did not seem satisfied, and

\begin{itemize}
\item \textit{See generally WHO, INTERNATIONAL HEALTH REGULATIONS (2005) 12 (2d ed. 2008) [hereinafter WHO INT'L HEALTH REGS.] ("Each State Party shall notify WHO, by the most efficient means of communication available . . . and within 24 hours of assessment of public health information, of all events which may constitute a public health emergency of international concern within its territory . . . .").}
\end{itemize}
threatened to withdraw from the WHO.\textsuperscript{96} Equally, Washington continued to suggest that the name given\textsuperscript{97} to the pandemic should have been something else suggesting the origins of the disease instead of \textit{COVID-19} as it is currently named.\textsuperscript{98} The WHO insists that it has since abandoned the practice of naming diseases after the places where such diseases first occurred because of the potential unintended negative consequences\textsuperscript{99} arising from this practice. The emergence of the Biden Administration seems to have reduced the tension despite the outstanding concerns about transparency and due compliance with WHO regulations by state parties.\textsuperscript{100}

Many have seen the contestation between China and the United States as an extension of their current global strategic rivalry and, as such, consider it unhelpful.\textsuperscript{101} The increasing significance of China as a force in global policymaking—in trade, finance, infrastructural development, supply chains, and military capacity—significantly influences how the rest of the world, especially the US and other Security Council members,


\textsuperscript{100} Christina Morales, Biden restores ties with the World Health Organization that were cut by Trump, N.Y. TIMES (Jan. 20, 2021), https://www.nytimes.com/2021/01/20/world/biden-restores-who-ties.html.

engages with China.\textsuperscript{102} The difficulty in this is the potential capacity of such strategic rivalries to reduce critical international organizations such as the WHO into platforms of contestation. States are reminded that whatever may be their grievances and strategic interests, transnational crises such as pandemics should be prioritized because of the apparent devastation it can have on the wellbeing of all societies if the responses are compromised.\textsuperscript{103}

The current contestation is threatening the WHO's financing,\textsuperscript{104} which will negatively affect its mandate delivery capacity if left unchecked. To carry out its functions effectively, the WHO relies on the financial contributions of state parties. State parties are therefore obliged to fulfill their financial obligations as a way of not only upholding their membership, but also complying with their apportioned dues to the organization.\textsuperscript{105}

It is in line with this established legal foundation that the WHO can pursue its objectives by apportioning levies or dues on Member States through donations, gifts, and bequests from the general public. For example, the WHO's program budget for the 2020-2021 fiscal year was presented to the World Health Assembly (WHA) in May 2019, and was subsequently adopted in resolution WHA72.1.\textsuperscript{106} In the proposed budget, the WHO captures its proposed programs for the period and focuses its aim at strengthening accountability.\textsuperscript{107} It leverages its own vision of expanding global access to healthcare but also aims to integrate


\textsuperscript{103} See O’Neill, supra note 101.

\textsuperscript{104} Jacobs, Shear & Wong, supra note 41.


\textsuperscript{107} WHO Budget 2020–21, supra note 106, at 6–8, 13.
key aspects of the UN Sustainable Development Goals (SDGs) into the policy framework of the WHO.\textsuperscript{108}

When these finances are withheld or compromised because of diplomatic spats between states, it diminishes the capacity of the WHO to stop pandemics, such as COVID-19. It is crucial to remind states of the overarching obligation which they have towards these essential multilateral platforms. Hence, denial of funding is an extreme measure—especially when there are clear dispute settlement mechanisms within the international organization's constitutional framework.\textsuperscript{109} Thus, any tensions arising from the due execution of the WHO's mandate are remediable through the several dispute settlement mechanisms recognized under the constitution and Chapter VI of the United Nations Charter.\textsuperscript{110}

IV. DISPUTES SETTLEMENT

The arena of international law and policy is, in a sense, an arena of contestation between states.\textsuperscript{111} The existence of international organizations mitigates these contestations by providing platforms upon which the interests of states and organizations can be harmonized and channeled towards human wellbeing, creating justification for multilateral frameworks like the WHO.\textsuperscript{112} Because of the wide-ranging continued state interest, even after forming an international organization like the WHO, global affairs disputes continue to arise.\textsuperscript{113} However, there are international health regulations that govern responses

\textsuperscript{108} Id. at 4.

\textsuperscript{109} WHO Const., supra note 1, arts. 75–77.

\textsuperscript{110} Id.; U.N. Charter arts. 33–38.


\textsuperscript{113} See, for example, Ching-Fu Lin, COVID-19 and the Institutional Resilience of the IHR (2005): Time for a Dispute Settlement Redesign?, 13 CONTEMP. ASIA ARB. J. 269 (2020), who addresses the disputes arising from non-compliance with the WHO's International Health Regulations during the COVID-19 pandemic.
to pandemics and how disputes may be resolved. These regulations, prepared and accepted by WHO Member States, are important to resolving controversies that arise in the course of fighting pandemics. As has been revealed by the COVID-19 global pandemic, these disputes can be on even small subject matters such as distributing test kits and travel advisories by the WHO.114

Nothing is insignificant in the affairs of states. The coordination of the global health response to the pandemic has now clearly exhibited the diplomatic trappings of the work of the WHO. This assertion rests on two key grounds. First, the WHO has become a global platform for states to engage each other and deliberate on subject matters that are essential to human resilience around the world.115 The WHO’s capacity to articulate programs and offer top notch advice on health issues further heightens its diplomatic importance for states that may wish to engage in proxy foreign policy wars through the WHO. Second, the WHO has become a major advocate for access to health care, nutrition, water, and sanitation around the world.116 The voice of the WHO gives life to these issues in ways that are remarkably beyond national and international civil society organizations’ capacity. Thus, the WHO’s policy voice may have political ramifications for states—especially in the COVID-19 influenced political economy. For instance, in the ongoing fight against COVID-19, the WHO’s recommendation of wearing masks to prevent the spread of the disease has been significant in convincing otherwise skeptical states to adopt the directive.117 More so, the accessibility of vaccines to states—especially highly

114 See id. at 273–77.
indebted, emerging countries—will likely depend greatly on the WHO’s diplomatic voice. These states will often turn to the WHO for health policy advice on vaccines—including acquisition, storage, and safe administration of the vaccine.\textsuperscript{118}

Therefore, it is not difficult to see that the WHO’s primary mandate may trigger anxious behavior from some frontline states. Undoubtedly, the politics of international law knows no boundaries.\textsuperscript{119} In other words, every opportunity for global engagement is a foreign policy opportunity.\textsuperscript{120} At the minimum, such opportunities are principally soft power opportunities that cannot be taken lightly. While this is the legitimate right of states, it is important not to destroy the institutions in a zero-sum quest for national interests; hence the need to ensure global health policy does not suffer because of the failure of international cooperation.\textsuperscript{121}

Owing to the increased capacities of international organizations like the WHO to influence global discourse and shape policies, many dispute settlement methods and

\textsuperscript{118} See, for example, G.A. Res. 74/274, ¶ 5 (Apr. 21, 2020), which requests the U.N. Secretary-General, in collaboration with the WHO, to “effectively coordinate and follow up on the efforts . . . to promote and ensure global access to . . . vaccines and medical equipment needed to face COVID-19 . . . .”


\textsuperscript{120} Koskenniemi 1, \textit{supra} note 110, at 19–20.

\textsuperscript{121} Note that disputes arising from contractual obligations of international organizations do not often generate as much public interest as disputes involving the direct interests of state parties. \textit{See} Anne-Marie Slaughter, \textit{International Law and International Relations Theory: A Prospectus}, in \textit{IMPACT OF INTERNATIONAL LAW ON INTERNATIONAL COOPERATION: THEORETICAL PERSPECTIVES} 16, 31 (Eyal Benvenisti & Moshe Hirsch eds., 2004).
approaches exist.\textsuperscript{122} These approaches include negotiation, mediation, inquiry, conciliation, arbitration, and litigation.\textsuperscript{123} Within the WHO Constitution, the governing rules on dispute settlement can be found in Articles 75, 76, and 77.\textsuperscript{124} In particular, Article 75 provides that: “[a]ny question or dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the Health Assembly shall be referred to the International Court of Justice . . . unless the parties concerned agree on another mode of settlement.”\textsuperscript{125}

Prima facie, Article 75 privileges negotiation as a primary means of dispute settlement. This provision is in line with Article 2(3) of the United Nations Charter, which underscores the peaceful settlement of disputes in a manner that does not compromise international peace and security.\textsuperscript{126} This was reiterated by the United Nations General Assembly resolution on friendly relations.\textsuperscript{127}

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\textsuperscript{124} WHO Const., \textit{supra} note 1, arts. 75–77.
\textsuperscript{125} \textit{Id.} art 75.
\textsuperscript{126} U.N. Charter art. 2(3).
\textsuperscript{127} G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970). The UN General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, during a commemorative session to celebrate the twenty-fifth anniversary of the United Nations (U.N. Doc. A/PV.1883), emphasized the peaceful settlement of disputes. \textit{Id.} Precisely, the Declaration states that “States shall . . . seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.” \textit{Id.} This resolution was also remarkable in that it was adopted without a vote. \textit{Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations – Procedural History, AUDIOVISUAL LIBR. OF INT'L L.}, https://legal.un.org/avl/ha/dpilrscun/dpilrfrcsun.html (last visited Apr. 8, 2021).
On the other hand, referrals to the ICJ for advisory opinion\textsuperscript{128} are usually dependent upon due authorization by the United Nations General Assembly.\textsuperscript{129} This has been the case in disputes such as the relocation of the WHO’s regional office from Alexandria, Egypt which was adjudicated before the ICJ.\textsuperscript{130} It must be noted that the privilege of negotiation does not foreclose other methods of dispute settlement. Parties are left with an open choice to adopt other peaceful means of settling disputes.\textsuperscript{131} It also means that techniques such as mediation, inquiry, consultation, conciliation, arbitration, and litigation may be adopted to resolve these disputes.\textsuperscript{132}

Therefore, it is often unnecessary to engage in zero-sum strategic games when there are established pathways and mechanisms for dispute settlements in international organizations like the WHO. As such, it is argued that the United States and China should have avoided drawing the WHO into their strategic contentions, mostly over matters that are as serious as a global pandemic. State parties to the WHO should therefore refrain from using pandemics to further their zero-sum strategic games.\textsuperscript{133} Pandemics do not recognize boundaries, nor do they know about sovereigns.


\textsuperscript{130} See generally Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. 73 (Dec. 20), for the full opinion.

\textsuperscript{131} MERRILLS, supra note 123, at 21.

\textsuperscript{132} U.N. Charter art. 33(1); see generally \textit{International Organizations and International Dispute Settlement: Trends and Prospects} (Laurence Boisson de Chazournes et al., eds., 2002) (providing a full analysis of international organizations and the international judicial process throughout the various international courts).

\textsuperscript{133} See Tanja Aalberts & Thomas Gammeltoft-Hansen, \textit{Sovereignty Games, International Law and Politics, in Changing Practices of International Law} 26 (Tanja Aalberts & Thomas Gammeltoft-Hansen eds., 2018), who discuss the mutual exclusivity of international law and politics and that international relations and international law are meant to be separate.
V. CONCLUSION

The COVID-19 pandemic has brought the world to a moment of reckoning. The reckoning has ranged from taking a fresh look at socioeconomic inequality to radical nationalism’s failures. The pandemic has also unveiled many other lessons. One inescapable lesson from it is that the world has become very integrated, and many of the problems of the 21st century would demand deeper collaborations across state boundaries, identities, class, cultural, and ideological differences. This entails both a horizontal and vertical collaboration between states—big and small. No state can do it alone, and the sustainability of any collaborative effort is measurable by the strength of the weakest state.

More so, knowledge and real-time access to reliable information are central to sustainable development, health for all, and global peace. Those with the knowledge and means to act responsibly will be better positioned to tackle the menace of global pandemics. The WHO and other international organizations are critical to finding lasting and sustainable solutions to these problems. In that regard, they ought to be insulated from the political and global strategic games of Member States. Where conflicts emerge despite state parties’ best efforts, it is vital to use the accepted means of dispute settlement to resolve all such contentions. In other words, whatever misgivings may arise in tackling joint problems like global pandemics, states must focus on using specific dispute resolution mechanisms to settle their disputes. The United Nations Charter, in its Chapter VI, emphasizes the peaceful settlement of disputes and this should be borne in mind at all times in the international relations of states. It is imperative not to defeat the mandate of the WHO since the whole world—especially the underprivileged communities—will suffer the most devastating consequence of policy failures arising from these contestations. Even significantly prosperous economies like India and Brazil can suffer direly due to failures arising from inadequate policy interventions in health care due to strategic games or limited collaboration amongst states.

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134 U.N. Charter ch. VI.
The world is at a new threshold of international law and relations amongst states. This is a moment to recalibrate and reform, rather than relegate multilateralism for inclusive development and shared prosperity. The pandemic’s unmatched lesson is the fragility of all human societies and the need for cooperation amongst states. One state alone cannot respond to grand global challenges—such as climate change and pandemics. Therefore, there is no gainsaying that humanity will pay a steep price whenever IOs such as WHO are turned into arenas of strategic zero-sum games. International epidemics are global security issues and should not be approached with a power game mentality, let alone a zero-sum game approach. Rather, these organizations are spaces for seeking enduring collective answers to common problems like pandemics. Thus, it is in the enlightened self-interest of all states to abide by settled norms, rather than to engage in the festival of corpses in the name of strategic contestations during pandemics. This will defeat the WHO’s human rights essence—to ensure the highest attainable standard of health for all peoples.

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135 There is room for improvement, especially in enhancing early warning systems and responses to outbreak of pandemics. See David Cameron, *We need a new international body to sound the alarm earlier*, TIMES (June 24, 2020), https://www.thetimes.co.uk/article/david-cameron-we-need-a-new-international-body-to-sound-the-alarm-earlier-2wwxkc3ml.


140 See Benjamin Mason Meier, Dabney P. Evans & Alexandra Phelan, *Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease*, 82 INFECTIOUS DISEASES IN THE NEW MILLENNIUM 217, 224 (2020), which details the origins of the WHO’s human rights-based framework.