

Concept Note

Legal implications of pandemics: A ten month assessment

The world faces a major challenge and a possibly enduring crisis derived from the COVID-19 coronavirus pandemic¹, which has resulted in hundreds of thousands of deaths²; millions infected³; and the closing of national borders worldwide, causing economic activity to grind to a virtual halt, and exacting a dramatic toll in the well-being of nations and individuals.

Although it is not a new phenomenon, its impact in modern times exceeds prior pandemics as consequence of globalization. In early 21st century, the world had already experienced many epidemics and pandemics – including SARS coronavirus⁴, Dengue fever⁵, Cholera⁶, Ebola virus⁷, H1N1 Influenza⁸, MERS coronavirus⁹, Zika virus¹⁰, and HIV/AIDS^{11, 12}.

Since the 19th century, States have understood that - in order to control the dire impacts of the spread of serious infectious diseases - national measures were insufficient and international cooperation was imperative. The first antecedents of international organizations addressing this matter date back as early as the Warsaw Health Conference of the League of Nations (1922).

The need to deal on a permanent basis with the impact of infectious diseases resulted since the establishment of the United Nations (UN) in three tendencies that have legal implications: the creation of international bodies with powers of supervision (WHO, PAHO), the expansion of the obligations and duties of States, and the recognition that there are events that should trigger international cooperation.

¹ World Health Organization, “COVID-19” https://www.who.int/health-topics/coronavirus#tab=tab_1.

² According to Johns Hopkins University Coronavirus Resource Center (<https://coronavirus.jhu.edu/map.html>), as of 11 August 2020, there have been 738,063 deaths from COVID-19.

³ According to Johns Hopkins University Coronavirus Resource Center (<https://coronavirus.jhu.edu/map.html>), as of 11 August 2020, there have been 20,158,258 cases of COVID-19.

⁴ World Health Organization, “Severe Acute Respiratory Syndrome (SARS)” https://www.who.int/health-topics/severe-acute-respiratory-syndrome#tab=tab_1; James W. LeDuc and M. Anita Barry, “SARS, the First Pandemic of the 21st Century”, *Emerging Infectious Diseases*, Vol. 10, Issue 11 (Nov 2004) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3329048/>.

⁵ World Health Organization, “Dengue and severe dengue” https://www.who.int/health-topics/dengue-and-severe-dengue#tab=tab_1.

⁶ World Health Organization, “Cholera” https://www.who.int/health-topics/cholera#tab=tab_1.

⁷ World Health Organization, “Ebola virus disease” https://www.who.int/health-topics/ebola/#tab=tab_1.

⁸ World Health Organization, “Pandemic (H1N1) 2009” <https://www.who.int/csr/disease/swineflu/en/>

⁹ World Health Organization, “Middle East respiratory syndrome coronavirus (MERS-CoV)” https://www.who.int/health-topics/middle-east-respiratory-syndrome-coronavirus-mers#tab=tab_1.

¹⁰ World Health Organization, “Zika virus disease” https://www.who.int/health-topics/zika-virus-disease#tab=tab_1.

¹¹ World Health Organization, “HIV/AIDS” https://www.who.int/health-topics/hiv-aids/#tab=tab_1.

¹² An epidemic is an infectious disease that spreads rapidly to a large number of people in different countries within a short period of time, whereas a pandemic is a non-seasonal epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people.

The progressive development of this framework resulted in an enhanced international cooperation through the International Health Regulations (IHR, 1969). A notable feature of the IHR is the requirement that States notify the WHO whenever outbreaks of cholera, plague, yellow fever, smallpox, relapsing fever, or typhus occurred within the State's territory.¹³ However, the outbreak of SARS in 2003 triggered a discussion that led to the updating of the IHR (2005 IHR)¹⁴, including an improved international surveillance, reporting, and response mechanisms for disease outbreaks. Further, the 2005 IHR expanded the events, which must be reported to the WHO.

Parallel to these developments, the international community has also resorted to other sources to strengthen international action and cooperation in dealing with pandemics, including, but not limited to: United Nations documents; Security Council resolutions on HIV/AIDS and Ebola; and multilateral and bilateral treaties. Domestic legislations and domestic courts, in different degrees, have incorporated international obligations of cooperation and recognized the importance of public health.

In spite of these important developments, the current crisis created by COVID-19 has shown the need to develop further the ability of the international community and WHO to react to pandemics. There is almost an existential need to strengthen mechanisms of prevention and cooperation. In an omnibus September 2020 resolution of the General Assembly on the COVID-19 pandemic, an overwhelming majority of States stressed multilateralism and called for the strengthening of international cooperation. The international community is assuming its responsibility to reflect in a comprehensive manner on the impacts of the current crisis. As recognized by States and the General Assembly, it is not only a matter of global health and the current examination on the instruments in the WHO that may be a much-needed task. It is also necessary to consider the wider context of international law and the imperatives of addressing the situation of the most vulnerable populations including women, children and the elderly as well as the most vulnerable countries and societies.

The impact of pandemics in almost every area of human activity has demonstrated the need for a comprehensive approach to address the legal issues that may arise¹⁵ in the areas of economic law, international trade and investment law, human rights law, labor law, climate change, global health law, international financing law, international environmental law, intellectual property law¹⁶, international sports law¹⁷, international maritime and air law¹⁸, among others.

¹³ World Health Organization, *International health regulations* (1969)

<https://apps.who.int/iris/bitstream/handle/10665/96616/9241580070.pdf?sequence=1>.

¹⁴ World Health Organization, "International Health Regulations (2005)", WHO/CDS/EPR/IHR/2007.1 (June 2007).

¹⁵ A recent example of the involvement of the International Law Commission in emerging legal issues is the document "Draft Articles on the Protection of Persons in the Event of Disasters".

¹⁶ For example, intellectual property rights may restrict the distribution of pharmaceutical products, medicine, and vaccines.

¹⁷ For example, the current COVID-19 crisis has caused multiple large and small sporting events to be cancelled or postponed – including the 2020 Olympic Games.

¹⁸ For example, one of the cruise ships with a high number of COVID-19 cases – the *Diamond Princess* – was a flag ship of the United Kingdom, but the owner was a United States Corporation. While off the coast of Japan, a passenger became sick with COVID-19; however, as a result of gaps in the existing maritime law regime, the Japanese government was uncertain regarding whether it could exercise jurisdiction over the treatment of the passengers.

While every area of human activity can be impacted by pandemics, there does not exist a single body of law that allows for international cooperation, including technology transfer, dealing with all the aspects involved, both to prevent and address impacts of these scourges.

Several questions arise and are recommended to the participants

- What are the legal and policy issues raised by epidemics in international law and how do we separate the two categories?
- Does current International Law provide international principles or norms applicable to the key legal questions raised by epidemics?
- Does International Law need to be progressively developed to answer the more troublesome questions arisen from the pandemics? What would be the areas with gaps and what norms will be required to address them?
- What is the specific contribution that the Sixth Committee of the United Nations General Assembly and the International Law Commission may provide to address the legal questions raised by epidemics?
- Does the International Community need an instrument of a comprehensive character to address possible gaps in the current law, and if so, what might be the appropriate forum for its development?