INTERNATIONAL HEALTH LAW: AN EMERGING FIELD OF PUBLIC INTERNATIONAL LAW

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ABSTRACT

International health law is an evolving academic discipline addressing the global need for health protection through various international legal frameworks. This paper examines the intersection of Public Interest Litigation (PIL) with international health law, highlighting how PIL serves as a crucial tool for advancing public health by leveraging legal advocacy. PIL which allows courts to address issues on behalf of the public or marginalized groups without requiring direct involvement from the aggrieved parties, plays a significant role in enforcing international legal regimes related to health. This includes international environmental law, human rights law, trade law, and arms control law, all of which impact public health. The primary objective of this paper is to elucidate the role of PIL in shaping and enforcing international health law, exploring how this legal mechanism can bridge gaps between domestic and international health regulations and contribute to global health governance. The connection between PIL and international health law is underexplored. The emerging field of international health law requires more robust mechanisms for addressing global health issues, and PIL could play a pivotal role in filling this gap. This paper addresses the problem of insufficient integration of PIL into international health law frameworks and advocates for a more systematic approach to utilizing PIL for advancing global health standards. By analyzing the interplay between PIL and international health law, this study aims to highlight the effectiveness of PIL in promoting international health objectives and propose strategies for enhancing its role in global health governance.

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1. INTRODUCTION

Since its inception in the mid-nineteenth century, international health law has evolved to include a variety of norms and standards and has become an important aspect of foreign policy.[1] However, a lack of normative theory has rendered the field without a foundation for justice or a consensus on the ethics and governance of global health threats. In addition, normative issues and the role of global health justice in resolving them, particularly in establishing moral standards that guide the roles of domestic and international law as tools of public health.

Not only does globalization have an impact on the economies of the world, but it also has a significant impact on the health of populations and individuals all over the world.[2] The health field faces several significant challenges that call for responses from both the national and international levels. A more conventional approach derived from rules governing relations between nation-states is associated with international health law. On the other hand, the development of a global structure based on the world as a community rather than just a collection of nation-states is the goal of global health law. Individuals and nongovernmental organizations are included in this structure, which is especially important when health issues are viewed as truly global. The need for international public health cooperation has increased because of globalization.

Limiting the spread of infectious diseases has been the primary focus of international responses. The recent Ebola outbreak has demonstrated that infectious diseases continue to pose a serious threat to global health; however, there are also new and distinct challenges to global health that must be addressed, such as the rise in non-communicable (chronic) diseases worldwide.[3] According to research in the field of public health, health disparities both within and between nations are growing, and many

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1 D P Fidler, 'Caught Between Paradise and Power: Public Health, Pathogenic Threats, and the Axis of Illness' [2004] McGeorge Law Review 55-72.

2 T Pang and G E Guindon, 'Globalization and Risks to Health' [2004] 5 EMBO Reports S11–S16 https://doi.org/10.1038/sj.embor.7400226.

3 World Health Organization, 'Non-communicable Diseases' http://www.who.int/mediacentre/factsheets/fs355/en/ accessed 10 August 2024.

nations continue to struggle with the negative health effects of urbanization, internal conflicts, climate change, environmental degradation, and urbanization.[4]

As an emerging subfield of public international law, the scope of international health law is the subject of this contribution. There are arguments that World Health Organization (WHO) should drastically alter its attitude toward international law due to the structural and public health reasons for the need for international law and WHO's historical neglect of international law. These arguments for the WHO to pay more attention to international law are important, but they need to be backed up by a deeper comprehension of the place that health plays in international law. This article will identify the disciplinary nature of this field by using the term "international health law" to emphasize the public international law aspect and avoid departing from existing terminology. The challenge lies in analysing and explaining how they can provide adequate protection in an era of globalization, which implies a shift away from state-centricity, just like it does with the other existing branches of international law.

2. ROLE FOR GLOBAL HEALTH LAW

Global health law and international health law can be used as tools to make sure that every person in the world reaches or exceeds a certain level of central health capabilities and to prevent the international transfer of pathogenic threats. Although most of the international health law to date has focused on preventing cross-border pathogen transfers rather than reducing global health inequalities, global actors have promulgated international health laws bilaterally and multilaterally.[5]

International health laws have been developed and implemented to address both categories. Constitutions and institutions, most notably the WHO,

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4 World Health Organization, *Commission on the Social Determinants of Health: Closing the Gap in a Generation, Health Equity through Action on the Social Determinants of Health* (WHO, Geneva 2008).

5 D P Fidler, 'Revision of the World Health Organization's International Health Regulations' [2004] 8 *American Society of International Law Insights* 8 http://asil.org/insights/insigh132.htm accessed 5 March 2023.

have also contributed to the development of international health law. The International Health Regulations (IHR) were approved by the World Health Assembly in 1951 and revised in 1969 and 2005. The goal of the IHR has been‘to ensure the maximum security against the international spread of disease with a minimum interference with world traffic’.

Additionally, the WHO is involved in international health law. Indeed, the WHO Constitution grants it the authority to draft and enact binding regulations and treaties. The World Health Assembly has the ‘authority to adopt conventions or agreements concerning any matter within the Organization's competence,’[6] as stated in Article 19 of the WHO Constitution. However, the WHO had not utilized its authority to create treaties before the adoption of the Framework Convention on Tobacco Control (FCTC).

The World Health Assembly has the authority to make recommendations that are legally binding in five areas of public health under Article 21 of the WHO Constitution: regulations for sanitation and quarantine; naming conventions for diseases, fatalities, and public health practices; international standards for diagnostic procedures; standards for the potency, purity, and safety of biological, pharmaceutical, and other similar products that are traded internationally; and labelling and advertising of biological, pharmaceutical, and other similar goods that are traded internationally. However, adopted regulations may be rejected or questioned by member states. The WHO had the legal authority to propose conventions, agreements, and regulations under its 1948 Constitution. However, prior to the FCTC, it had only adopted one set of regulations (the precursors to the newly revised IHR) and had never proposed a convention or agreement.

2.1 Need for global health

Through its Global Outbreak Alert and Response Network, the WHO may also act on information it receives from nongovernmental and unofficial

[6] U.N. World Health Organization, *Constitution of the World Health Organization* Article 19.

sources, provided that the state in question verifies the information.[7] The avian flu and SARS outbreaks have demonstrated the value of unofficial epidemiological information sources. However, do not include a new enforcement mechanism for dealing with compliance failure in the revised IHR.

International legal regimes now apply to non-communicable diseases, which, like infectious diseases, also cause death and disability worldwide. Consumption of tobacco is a major risk factor for several non-communicable diseases. The FCTC, which encourages national action on tobacco control, is an important illustration of an international legal regime in this area. The first global health regime to be negotiated under WHO auspices is the FCTC.[8]

The numerous international factors associated with tobacco use, such as trade liberalization, direct foreign investment, global marketing and advertising, and international sales of counterfeit and illegal cigarettes, made the need for a global treaty to control tobacco.[9]

The FCTC mandates that nations combat tobacco use on both the demand and supply sides. The same requires measures to reduce demand, including pricing, taxation, and protections from second-hand smoke. It also regulates the contents of tobacco products, establishes disclosure requirements, regulates packaging and labelling, and provides funding for education, training, communication, public awareness, and smoking cessation efforts. It focuses on illegal trade and sales to minors on the supply side. The treaty restricts tobacco promotion, sponsorship, and advertising, imposes new requirements for packaging and labelling, establishes controls for clean indoor air, and improves laws to combat tobacco smuggling. There are currently 168 parties to the treaty who have

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7 J J Mansbridge, 'For Various Perspectives on Self-Interest and Other Motivations in General' in *Beyond Self-Interest* (1990).

8 R Roemer, 'Origins of the WHO Framework Convention on Tobacco Control' [2005] American Journal of Public Health 936.

9 A L Taylor and D W Bettcher, 'WHO Framework Convention on Tobacco Control: A Global "Good" for Public Health' [2000] *Bulletin of the World Health Organization*.

pledged their support for its objectives.[10]

Despite the FCTC's aim to act as a mechanism for international cooperation and state participation in tobacco control, its effectiveness in achieving these objectives remains in question. The treaty is binding on the member states that have ratified it. The treaty stipulates that each party should develop, implement, periodically update and review comprehensive multisectoral national control strategies, plans, and programmes in accordance with the Convention and its protocols. According to Article 5.2, the treaty requires parties to: (a) finance and establish a national tobacco control coordination mechanism or focal points; (b) adopt and implement effective legislative, executive, administrative, and/or other measures; and cooperate, as appropriate, with other parties in developing appropriate policies for reducing tobacco use, nicotine addiction, and exposure to tobacco smoke.

International cooperation and state participation in tobacco control are the goals of the FCTC. However, its effectiveness in achieving these goals remains uncertain.

2.2 The Obligation of the Government to Provide Non-discriminatory Access to Basic Factors

The obligation of a government to provide non-discriminatory access to basic social determinants of human health, such as education, housing, and employment, is the final concentric circle in this right to health analysis. The analysis has reached the highest level of the principle of progressive realization and the broadest possible meaning of the right to health here. The basic premise of this argument is that the realization of other economic, social, and cultural rights—such as the right to education, housing, and employment—is required for the right to health to be realized. Each of these rights is subject to the principle of progressive realization. In terms of the right to health, this final concentric circle may more

[10] World Health Organization, 'Updated Status of the WHO Framework Convention on Tobacco Control' http://www.who.int/tobacco/framework/countrylist/en/index.html accessed 6 March 2023.

accurately represent political aspiration than a definite legal standard against which to hold governments accountable.[11]

3. SCOPE OF GLOBAL HEALTH LAW

3.1 Health Security Threats

Traditionally, health security threats have been a major focus of public international law. Over the preceding centuries, the definition of "health security" has grown over time. Legal efforts to protect against health security threats initially focused primarily on preventing the spread of infectious diseases.[12] However, other health security threats, such as the negative health effects of armed conflict and the need to protect against the use of biological, chemical, and nuclear weapons, are increasingly being addressed as well.[13] Although environmental health considerations may also involve issues of "health security", these are beyond the scope of this section..

In the past, national governments' health-related responsibilities included preventing the spread of infectious diseases. International human rights law also specifies this obligation. For example, Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR)outlines the obligation of states to take steps for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. International coordination in this area has become increasingly important as infectious diseases spread more widely. As previously stated, a new set of IHR was approved by the WHO in 2005 to provide protection against a wide range of threats to public health.[14] The recent Ebola

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11 ibid.

12 S Harman, *Global Health Governance: No 60* (Routledge Global Institutions Series, Abingdon 2012) 19-23.

13 D Fidler and L O Gostin, *Public Health and the Rule of Law* (Stanford University Press, Stanford 2008).

14 World Health Organization, 'Fifty-Eighth World Health Assembly, Revision of the International Health Regulations' http://www.who.int/ihr/9789241596664/en/ index.html accessed 6 March 2023.

outbreak served as an important test case for determining whether the new regulations are effective. Despite the failure of the affected nations' domestic health systems to adequately address the crisis, a significant international response was not implemented".[15] WHO lacks the coordination and financial resources necessary to effectively deal with public health emergencies of this magnitude and complexity. Assessing the relationship between the regulations and human rights standards, including those concerning individual patients and others who may potentially carry the disease, is also crucial for international health law. The rights of individual patients and others are frequently overlooked during health emergencies. Even though the regulations appear to incorporate human rights law, further research is needed to determine the precise practical implications of this interface.

3.2 Access to Healthcare Services

The internationally recognized "right to health" includes securing access to healthcare services. States are required to fulfil the domestic right to healthcare based on the international human right to health. Significant measuring sticks for this acknowledgment are the previously mentioned Availability, Accessibility, Acceptability, and Quality expecting that medical care administrations are accessible, open, acceptable and of good quality for everybody dwelling on their area.[16]

The privileges of patients are also a key component of wellbeing regulation. Patients' rights are increasingly recognized and addressed in human rights law. As a result, the area of patients' rights is developing into a mature and distinct subfield of human rights law. The relationship between a healthcare provider and their patient is the primary focus of patients' rights. As the healthcare provider has knowledge and expertise

[15] 'The Ebola Crisis: Challenges for Global Health Law' (2015) https://ghlgblog.wordpress.com/2015/02/03/the-ebola-crisis-challenges-for-global-health-law/ accessed 6 March 2023.

[16] D Horgan, D Byrne, and A Brand, 'EU Directive on Patients' Rights to Cross-Border Healthcare' (BMJ 2013; 347) http://www.bmj.com/content/347/bmj.f7694 accessed on 6 March 2023.

that the patient lacks, this relationship frequently exhibits power imbalances.

The underlying determinants of health should also be protected by international health law, such as access to safe drinking water and sanitation, health-related information, and occupational and environmental health. The factors that contribute to health disparities and ill health extend far beyond the availability of healthcare. In the 1960s, civil servants in the United Kingdom had equal access to healthcare services but were four times more likely to die young than civil servants in higher positions.[17]

Addressing inequities, including the significant and remedial differences in health between and within countries, is a matter of social justice. According to the WHO's Committee on the Social Determinants of Health (CSDH), health inequities arise from the unequal distribution of power, income, goods, and services. These disparities also stem from the varying circumstances in which people live, including their access to healthcare, education, and the conditions of their work, leisure, and homes. The CSDH's 2008 report emphasized that addressing these issues is an ethical imperative. Massive loss of life due to social injustice underscores the urgent need to eliminate health disparities.

At the national level, governments are increasingly attempting to regulate specific aspects of food and beverage consumption, such as the amount of salt, sugar, and (trans) fat, size, advertising, and packaging.[18] The right to food and the right to health might also entitle governments to regulate the food and beverage industries. Even though food and beverage manufacturers are not legally bound by human rights treaties, they may have indirect responsibilities under human rights law to ensure that their products are healthy.[19] Arguably, the possibility of adopting an

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[17] M Marmot, *The Status Syndrome: How Social Standing Affects Our Health and Longevity* (Henry Holt and Company, New York 2004) 38–39.

[18] A L Taylor, E W Parento, and LA Schmidt, 'The Increasing Weight of Regulation: Countries Combat the Global Obesity Epidemic' [2015] 90 Indiana Law Journal 257 https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2338&context=facpub accessed on 6 March 2023.

[19] K Kjæret, A Eide, and W B Eide (eds), *Corporations in the Global Food System and Human Rights: Report of the Oslo Conference 11-12 September 2014* (2015) https://www.jus.uio.no/smr/english/research/projects/fohrc/absolute-final-report-

international instrument to address these issues from the perspective of international health law should be considered.

3.3 Health and International Trade

There are numerous connections between the framework of international trade law and international health-related standards, frequently resulting in a conflict between the need to promote international trade and the need to safeguard public health.

Members have the option to adopt measures to safeguard public health under the WTO law. Article XX (b) of the GATT, which governs international trade in goods, permits Member states to take measures "necessary to protect human, animal, or plant life or health".[20] This provision acknowledges that Members may wish to prioritize public health issues, which conflicts with the non-discrimination principle. Under the terms of the Agreement on Sanitary and Phytosanitary Measures (the SPS), more specific guidelines have been established to safeguard health. "Phytosanitary measures," which deal with plant health, and "sanitary measures," which concern human or animal health, are governed by this Agreement.

There has not been enough research done on the connection between this framework and the human rights framework. Members barred from trading their goods based on these measures may stress the right to development of their people, while members invoking these public health clauses may stress the right to health. It is essential to strike a balance between allowing Members to safeguard public health or other social interests and preventing Members from using these policies in a manner that harms trade or the interests of the other Members.

The realization of the right to healthcare at the national level and the

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from-september-conference_22may2015_korrwbe_26mai-(2).pdf accessed 6 March 2023.

[20] World Trade Organization, 'WTO Agreements & Public Health: A Joint Study by the WHO and WHO Secretariat' (2002) https://www.wto.org/english/res_e/booksp_e/who_wto_e.pdf, 11.

liberalization and marketization of healthcare services may conflict. While healthcare delivery can be improved through privatization and liberalization, it may also jeopardize its affordability and accessibility.[21]

International law's health-related instruments and norms may be significantly affected by such rulings.[22] After all, international law is often derived from judicial decisions. Even though the Indian Supreme Court declared India to be the "pharmacy of the world", it cited several nations where inexpensive Indian drugs aid in the fight against cancer. This is remarkable. The Supreme Court's concern was admirably global rather than local.[23]

3.4 Challenges and Implications

International health law faces challenges due to the fragmentation of legal instruments and the lack of a comprehensive legal framework. This may result in gaps and inconsistencies when it comes to tackling new health risks. Health outcomes disparities within and between groups continue to be a major source of concern. Promoting health equality and guaranteeing universal access to healthcare services are two ways that international health legislation must address these disparities.

Effective international coordination and collaboration are needed to combat pandemics, emerging infectious diseases, and other risks to health security. International health legislation is essential to protect human rights and minimize disruptions to international trade and travel.

International health law must offer guidance on how to balance public health imperatives with individual rights and freedoms. International health law intersects with many other fields, including international trade law, human rights law, environmental law, and humanitarian law.

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[21] B Toebes, 'The Right to Health and the Privatization of Health Care Services: A Case Study of the Netherlands' [2006] Health & Human Rights 102-127.

[22] Statute of the International Court of Justice, Article 38(1)(d) http://www.icj-cij.org/documents/?p1=4&p2=2 accessed 7 March 2023.

[23] P Singh, 'India before and After the Right of Passage Case' [2015] Asian Journal of International Law 203-205.

Coordinating efforts across these domains presents both challenges and opportunities for addressing global health challenges comprehensively. Issues like mandatory vaccination, quarantine measures, and the use of emerging technologies in healthcare raise complex legal and ethical questions.

Global health governance is becoming more and more important where diseases can spread rapidly across borders in today's interconnected world. To address the complex issues raised by globalization and health, a strong international legal framework must be established. Key arguments for the necessity of such a framework are as follows:

a) COVID-19 and other infectious illnesses have shown how quickly they may spread over the world. A thorough legal framework can help nations work together to quickly and efficiently identify, address, and neutralize such threats.

b) Differences in health outcomes across and within nations are a result of globalization. By encouraging equal access to medical resources, medications, and technology, an international legal framework can help alleviate these disparities.

c) Emerging Health Risks: As a result of globalization's rapid pace, new health risks—like resistance to antibiotics and health issues linked to climate change—are always popping up. Through concerted international activity, a legal framework can assist in anticipating and responding to these changing dangers.

d) Trade and Health: The results of public health can be impacted by international trade agreements. Trade agreements can support public health objectives rather than work against them if they are supported by a legislative framework that incorporates health concerns into trade policy.

e) A basic human right is the ability to be healthy. By holding governments and other actors responsible for guaranteeing access to high-quality healthcare services and addressing socioeconomic determinants of health, a strong legal framework helps safeguard people's right to health.

f) Effective disease surveillance and response depend on the timely

exchange of health data and information. Mechanisms for data exchange can be established within an international legal framework that protects confidentiality and privacy.

g) Many nations, especially those with low and moderate incomes, lack the infrastructure and resources necessary to deal with complicated health issues. International collaboration and support for these areas' capacity growth might be facilitated by a legislative framework.

4. THE INTERGRATION OF HEALTH VALUES INTO INTERNATIONAL LAW

The WHO recognizes that integration of the value of health into of international law will be significant for two reasons. The WHO's attitude toward international law improves. First, WHO can use this integration to its advantage when enforcing international health law. Second, this entrance addresses the genuine extent of the worldwide legitimate test to WHO because the test is far more prominent than reconsidering the IHR or taking on a system show. Because of the numerous areas of international law that have a direct impact on WHO's work as an international health organization, the WHO faces an international legal tsunami. The goal is not to decipher the intricacies of these complicated areas of international law; rather, it is to show that modern international law has deeply ingrained the importance of health.

4.1 International Trade Law

In the realm of international trade law, most trade agreements that facilitate freer trade among countries recognise that states may impose trade restrictions to protect human health.[24] One of the few general exceptions that permit contracting parties to legitimately violate the General Agreement on Tariffs and Trade (GATT) provisions is the protection of

[24] General Agreement on Tariffs and Trade, art. XX, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization,

human, animal, and plant life and health under the GATT.

Under international trade law, scientific and trade-related disciplines are subject to the sovereign right to restrict trade to protect health. These disciplines ensure that health remains the primary objective and that measures taken to protect health do not overly burden trade. When states enact health measures restricting trade, the scientific disciplines exist to ensure that the measures are designed to protect health and do not constitute protectionism disguised behind the fig leaf of health. The most common trade-related discipline is the requirement that the health measure be the least trade-restrictive option so that the health risk is proportional to the harm to trade flows. The scientific and trade-related fields attempt to strike a balance between the goals of trade liberalization and health protection.

The question of whether the GATT, the WTO, and the entire project of trade liberalization harm rather than respect human health is the subject of controversies, even though health protection is incorporated into international trade law. Trade liberalization has been criticized for making nations more susceptible to the importation of unsafe food.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has sparked additional debates in international trade law. [25] Using standards developed in industrialized nations, TRIPS aims to bring intellectual property rights protection among WTO members into line. Experts in public health have expressed concern that the TRIPS-enhanced protection of pharmaceutical patents will raise prices, limiting access to patented drugs in developing nations. Many developing nations did not recognize pharmaceutical patents as a means of making drugs more affordable before to TRIPS.[26]

The General Agreement on Trade in Services (GATS) is another area of international trade law that is related to the value of health. GATS present public health experts with both opportunities and challenges. By making it

[25] Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization.

[26] C M Correa, *The Uruguay Round & Drugs* (1997).

easier for people in developing countries to access health services and information through telemedicine, for instance, GATS could be beneficial to public health.

4.2 International Humanitarian Law

International humanitarian law, also known as the laws of war, also includes health. The health of combatants, prisoners of war, and non-combatants in international and civil armed conflicts is well protected by current international humanitarian law. Health-related rights are granted to individuals and health-related obligations are imposed on belligerents by this body of international law. For instance, worldwide philanthropic regulation expects that detainees of war and non-military personnel prisoners approach clean day to day environments and satisfactory clinical consideration. Ironically, these rights to sanitary living conditions and adequate medical care during wartime surpass the so-called "human right to health" that individuals currently enjoy during peacetime. Conflicting parties cannot use financial constraints as an excuse for not meeting their obligations. National or international criminal courts can find war crimes committed in violation of international humanitarian law, which protects health.[27]

4.3 Arms Control

International law on arms control also makes it clear that health is important. For instance, the use of any weapon that causes unnecessary harm or suffering is against international law. International legal prohibitions on the use of certain weapons, such as expanding bullets and laser weapons that cause blindness, are based on this principle. A more objective method for applying the superfluous injury or unnecessary suffering principle to the creation and application of new weapons systems has also been proposed by the International Committee of the Red Cross.

In the creation of specific international legal regimes that prohibit the use,

[27] Constitution of the World Health Organization [1946].

production, and stockpiling of types of weapons, health has also been of the utmost importance. Chemical weapons, biological weapons, and anti-personnel landmines fall into this category. While the bans on biological, chemical, and landmines address threats to the health of populations and the environment in addition to concerns for individual health, they are not based solely on the principle of unnecessary injury or suffering. In the past, experts in national security and foreign policy were thought to be the best people to control arms. However, these international legal systems show that experts in public health can legally work in the area of arms control as well.

WHO asked the International Court of Justice (ICJ) for an advisory opinion on whether a state's use of nuclear weapons could be legal under international law. However, WHO claimed that it had constitutional authority to raise the issue of nuclear weapons legality was rejected by the ICJ. The role of health protection in international law generally and in other arms control regimes specifically is undermined by this interpretation of WHO's Constitution.[28]

The convergence of two facts led to the international legal conundrum that the ICJ faced. Even though it is difficult, if not impossible, to imagine how a nuclear weapon could be used by international humanitarian law, international law does not prohibit the production, stockpiling, or use of nuclear weapons. In response to a request from the United Nations General Assembly, the ICJ issued an advisory opinion titled "Legality of the Threat or Use of Nuclear Weapons." This conundrum was made more apparent.

4.4 International Human Rights Law

International human rights law also includes health as a significant aspect. Health protection is an objective in other areas of human rights law, even though the alleged "human right to health" appears to be the most relevant aspect. For instance, the prohibition against torture[29]aims to safeguard not

[28] Legality of the Use by a State of Nuclear Weapons in Armed Conflict [1996] I.C.J. 66.

[29] Convention on the Rights of the Child, 20 November 1989, art 24, 28 1 L.M. 1456 (declaring states parties' recognition of the ‘right of the child to the enjoyment of the

only the integrity of an individual but also the physical well-being of those held by the government. In a similar vein, the prohibition of cruel, inhumane, or degrading treatment or punishment safeguards the mental and physical health of those under the authority of the state. The European Court of Human Rights decided in a recent case that it would be cruel, inhumane, or degrading to deport an AIDS patient back to his home country because his home country would not be able to provide him with adequate medical care, which would cause him to die earlier. Women's and children's specific health-related protections are also included in international human rights treaties.

The most obvious health-related human right-the human right to health-unfortunately, remains mired in confusion. The definition and scope of the human right to health is still the subject of heated debate, which, from an international legal perspective, has left this right lacking. To use a phrase from Winston Churchill, it is a puzzle inside a mystery inside an enigma.[30] To clarify the ambiguity, refer to the discussion of the human right to health in Part III.C.

The inclusion of health in international human rights law, like its place in international humanitarian law and international trade law, has not ensured health protection. For states to comply with international human rights obligations regarding the prohibition of torture and the realization of the right to health there are significant challenges. Human rights were violated worldwide by governments because of the HIV/AIDS pandemic, which supported discrimination and actions that were not justified on grounds of public health. The significance of elevating health on the international legal and political agendas is only heightened by these general issues and specific instances of human rights violations.

highest attainable standard of health'); Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, art 12, 1249 U.N.T.S. 13 (obliging states parties to 'take all appropriate measures to eliminate discrimination against women in the field of health care').

30 ibid.

4.5 International Labour Law

The International Labour Organization (ILO) has been actively involved in the creation of international legal guidelines that safeguard workers worldwide.[31] The ILO has established international guidelines for occupational health and safety as part of this activity. All workers in all economic activities are covered by the ILO Convention on Occupational Safety and Health and the Working Environment, which requires states to develop, implement, and evaluate a national occupational safety and health policy. The objective of the policy is to " prevent accidents and injuries to health arising out of, related to, or occurring in the course of work, by minimising... the causes of hazards inherent in the working environment".. The ILO has made worker health protection and promotion a central focus of its international standard-setting efforts, as shown by this Convention. The ILO's decades-long international legal efforts would be supported rather than supplanted in this area by WHO's international legal efforts.

4.6 International Environmental Law

The goal of a significant portion of the vast body of international environmental law is to safeguard human health from a variety of threats brought on by environmental degradation and pollution. Transboundary air pollution,[32] regulations governed by international law, transboundary water contamination,[33] marine contamination, transfer of pesticides, chemicals, and hazardous waste across international borders nuclear disasters, preservation of nature, ozone layer depletion and the goal of preserving human health are all directly connected to the effects of climate change. Even though human health protection is not the only goal of

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31 V A Leary, 'Labour in UN Legal Order' in O. Schachter and C.C. Joyner (eds), *International Law in the Post-Cold War World* (1995).

32 Convention on Long-Range Transboundary Air Pollution, adopted 13 November 1979, 1302 U.N.T.S. 217; P W Birnie and A E Boyle, *International Law & the Environment* (1992) 393-404.

33 See for analysis of international law and marine pollution, United Nations Convention on the Law of the Sea, adopted 10 December 1982, pt XII, 1833 U.N.T.S. 3 (regarding protection and preservation of the marine environment).

international environmental law, it is one of its most important objectives. The United Nations Environment Programme has led the development of new international legal norms in this area and collaborated with U.N. member states on national environmental law in this area. This vast body of law expresses profound concern for the connection between human and environmental health, despite the differing effectiveness of the various international environmental legal regimes.

5. RIGHT TO HEALTH IN THE AFRICAN REGIONAL SYSTEM

The African Union (AU) is Africa's primary organization for advancing the continent's socioeconomic integration. The Organization for African Unity (OAU) spawned the African Union (AU). The OAU was a regional body with several goals, including helping African states work together on social and economic issues and getting rid of the legacy of colonialism and apartheid. The Sirte Declaration, which called for the establishment of the AU, was issued in 1999 by the heads of state of the OAU. The goals of the AU include:

a) Accelerate the continent's political and economic integration.

b) Take into consideration the UN Charter and the UDHR, encourage international cooperation.

c) By the African Charter and other relevant human rights instruments, promote and safeguard human rights.

d) Collaborate with relevant international partners to eradicate diseases that could have been avoided and promote good health on the continent.

The African Charter on Human and People's Rights (African Charter) is governed by the African Commission on Human and People's Rights. The Commission for Africa receives reports from state parties, interstate reports, and individual complaints serious abuses. It possesses the authority to investigate violations and is obligated to bring violations to the attention of the AU Assembly of heads of state and government. The Assembly may then ask the Commission to conduct an in-depth

investigation and provide a report with recommendations and conclusions after being informed of abuses.

5.1 Regional Agreement

The African Charter is South Africa's primary regional instrument about economic, social, and cultural rights. In 1996, South Africa joined the African Charter. The African Contract incorporates the "right to partake in the best feasible condition of physical and psychological well-being" in Article 16. The following is provided by the article: State parties to the current Charter are required to take the necessary steps to safeguard their citizens' health and ensure that they receive medical care when they fall ill.

It also dealt with mental health patients' right to health. The Commission interpreted the Charter in accordance with the ICESCR, despite the difference in language between the Charter and the ICESCR regarding the right to health. The qualifiers of readily available resources and progressive realization were incorporated into Article 16.

5.2 African Court on Human and Peoples'

In June 1998, the Organization of African Unity (OAU), the predecessor to the African Union (AU), approved the Protocol to the African Charter on Human and Peoples' Rights, which established the African Court on Human and Peoples' Rights.

This Protocol's creation and adoption were greatly aided by NGOs and civil society. 15 ratifications were obtained more than five years after the Protocol's adoption, and on January 15, 2004, the Protocol went into effect. The Protocol was ratified by South Africa in 2002.

Despite a decision to merge the African Court of Human and Peoples' Rights (ACHPR) with the African Court of Justice, which has not yet been established, the ACHPR was in the process of being established. The AU decided that the establishment of the court, which is a priority and should not be delayed, should not be postponed because of the complexities brought about by the merger. Human rights activists applaud the creation

of the ACHPR, but there are some questions about how it will operate. For instance, there are no clear guidelines for how the ACHPR, and the African Commission should interact with one another, particularly when it comes to how cases from the African Commission should be referred to the ACHPR. The Protocol's restriction of individuals' and NGOs' access to the ACHPR is another significant concern. State parties are expected to sign a statement that expresses that they perceive the skill of the ACHPR to get grumblings from NGOs. The ACHPR will not be able to hear NGOs' complaints against a state if that state has not done so. In addition, the ACHPR only accepts cases from NGOs with observer status with the African Commission.

5.3 Southern African Development Community

In April 1980, nine countries in southern Africa came together to form the Southern African Development Community (SADC), which was previously known as the Southern African Development Coordination Conference. Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia, and Zimbabwe are the other countries. 14 nations now make up its membership, including South Africa. One of the goals of SADC isto support the socially disadvantaged, alleviate poverty, raise the standard and quality of life of Southern Africans, and achieve economic growth and development through regional integration. The SADC HIV/AIDS and Employment Code was enacted in 1997. NGOs have attempted to persuade governments to adopt Code-like legislation by utilizing this Code. The SADC Protocol on Health aims to improve the population's health through close regional cooperation.

It is essential for addressing common health issues and the efficient control of communicable and non-communicable diseases. The Protocol intends to Promote initiatives that have the potential to improve health, such as the training of medical professionals and the establishment of health facilities.

a) Encourage international partners to collaborate.
b) Contribute to the creation of common approaches to addressing the requirements of vulnerable groups.

The principles to Guide Negotiations with Pharmaceutical Companies on the Provision of Drugs for the Treatment of HIV/AIDS and Related Conditions in SADC Countries were approved by SADC in August 2000. SADC is working toward putting its HIV/AIDS Strategic Programme and Plan of Action for 2003-2007 into action.

6. GLOBAL AND DOMESTIC HEALTH LAW: PUBLIC MORAL NORMS AND VOLUNTARINESS

The connection between domestic and international health law is known as global health law. This relationship can take on three functional forms in the larger field of international law. The first is international law that is "downloaded", "internalized" or "domesticated" from international law to domestic law (for example, the rule against "disappearances" in human rights).[34] Second is international law, which is like a guarantee of a free trial because it is "uploaded, then downloaded". The right to privacy is one example of law that is "borrowed" or "horizontally transplanted" from one national system to another.

Another model in which domestic and international law interact is the transnational legal process, in which nation-states and domestic and transnational private actors produce cycles of interaction, interpretation, and internalization. Through agents of internalization, actors 0interpret relevant global norms and then incorporate them into state legal systems. Nation-states, entrepreneurs of transnational norms, sponsors of governmental norms, transnational issue networks, and interpretive communities are examples of these agents. Although norm internalization is required by transnational legal process theory, the theory remains primarily procedural and offers little insight into the norms to be internalized. In addition, it has been criticized for violating democratic principles of domestic self-rule and self-determination. A theory that develops normative commitments for global health governance and bases

[34] H H Koh, 'Is There a New Haven School of International Law?' [2007] Yale Journal of International Law 559-567.

global health law on normative principles is still urgently needed.[35] Moreover, it has been criticised for violating democratic principles of self-determination and self-rule at the domestic level.[36] The argument that the future of international law is domestic and that the future function of international law is to enhance the capacity and effectiveness of domestic institutions is one approach to the interaction between international law and domestic law.

Similar to this, Anne-Marie Slaughter has argued that a new world order that is not based on nation-states but rather on a world of government networks courts, regulatory agencies, ministries, and legislatures creating links across national borders and between national and supranational institutions would be more effective and potentially more just than either the status quo or a world government of global institutions and rules set by top-down governments. However, the use of law as a tool for public health cannot be studied separately from the roles of domestic and global policy, even though the future of international law may very well be domestic. These connections are the focus of the essay's final two sections.[37]

6.1 Domestic Health Law

National and sub-national governments bear the primary moral responsibility for addressing global health disparities and threats, despite the necessity of global law and policy. Nongovernmental organizations, communities, businesses, foundations, families, and individuals are just a few of the other institutions that share responsibility for addressing global health injustice. The establishment of an institutional framework for

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35 M E O'Connell, 'New International Legal Process in The Methods of International Law' in S.R. Ratner and A.-M. Slaughter (eds), *The Methods of International Law* (2004).

36 A Chander, 'Globalization and Distrust' [2005] Yale Law Journal 1232-1233.

37 A M Slaughter and W W Burke - White, 'The Future of International Law Is Domestic' [2006] Harvard International Journal 327-330.

affordable and equitable health care and public health must be the primary responsibility of the states. The proximal determinants of health, such as safe, nutritious food, potable water, basic sanitation, adequate living conditions, health care, public health surveillance, and health literacy, are all afforded equal access under this framework. In many instances, major roadblocks to progress are weak and failing states. Through global agencies and protocols, the global health community must step in when government institutions are weak and national governments lack sufficient resources, abilities, and technical capabilities. When it comes to providing both financial and technical support for sustainable national health systems, the World Bank plays a particularly significant role. Networks between governments and non-governmental organizations around the world also play a role. Networks, both vertical and horizontal, that connect domestic governmental and nongovernmental officials from around the world have the potential to be powerful agents of change and action.

Examples and case studies to illustrate the application of international health law principles

Case Study: To assist nations in responding to the COVID-19 pandemic, WHO used the IHR. This includes guidelines for reporting, monitoring, and organizing activities to stop COVID-19 from spreading internationally. For example, the World Health Organization's (WHO) classification of COVID-19 as a Public Health Emergency of International Concern (PHEIC) in January 2020 set off a chain reaction of coordinated national and international measures.

Access to Medicines and Vaccines:

Case Study: To guarantee fair access to COVID-19 vaccinations worldwide, the COVAX effort, which is spearheaded by WHO, Gavi, the Vaccine Alliance, and the Coalition for Epidemic Preparedness Innovations (CEPI), was created. To guarantee that low- and middle-income countries have access to vaccinations alongside wealthier nations, COVAX negotiates vaccine procurement and distribution through international cooperation and legislative frameworks, emphasizing the values of non-discrimination and fairness in health.

Rights to Intellectual Property and the Public Health:

Case Study: Discussions concerning intellectual property rights about vaccines and therapies have been brought to light by the COVID-19 pandemic. To provide wider access to COVID-19 vaccines and treatments, nations including South Africa and India have suggested waiving some intellectual property rights under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) accord. This highlights the conflict that exists between the protection of intellectual property rights and the right to health, as guaranteed by international human rights legislation.

Emergencies in Health and Human Rights:

Case Study: In reaction to the COVID-19 epidemic, some nations-imposed emergency protocols, including lockdowns and travel restrictions. A framework for assessing the legitimacy, need, and proportionality of such actions is provided by international human rights legislation. In instances of disputing COVID-19 limits, for instance, the European Court of Human Rights has rendered decisions that strike a balance between the interests of public health and individual rights like the freedom of assembly and mobility.

7. LIMITATIONS OF GLOBAL HEALTH

Recognizing that international law is a flawed instrument for international cooperation is essential. The fundamental principle of state sovereignty is largely to blame for the inherent flaws in international law. The will of states determines both the creation of law and its implementation. States are explicitly agreeing to abide by the terms of a treaty by developing and enforcing legislation and other policies that are consistent with their international commitments during the treaty-making process to limit their own and their nationals' conduct. The international system is heavily based on the idea of sovereignty, and states are generally reluctant to give up their freedom of action by creating binding international obligations. Most current economic and social agreements generally lack formal enforcement mechanisms, which is a related weakness that stems from the sovereignty principle. In most social and economic treaties and other

instruments, states do not include machinery to compel parties to comply with their international legal commitments.

This contrasts with the dispute resolution mechanism established under the WTO, which is described below in the section titled "World Trade Organization".

Most of the time, states' parties view treaties as mutually beneficial, which explains why they are generally respected in practice. In addition, there is a growing awareness that states' inability to fulfil international commitments may often be the result of a lack of political will or capacity. When it comes to putting modern treaties into effect, many states, particularly developing nations, face serious issues with limited resources and capabilities. Through international technical and financial assistance programs incorporated into the texts of relevant conventions, recent advancements in the international legislative process have expanded mechanisms to address these issues of domestic capacity.

Other significant issues plague international law and the international legislative process. Notably, despite significant progress over the past few decades, the international legislative process itself faces numerous obstacles and limitations, including obstacles to states' timely national commitment through treaty ratification and implementation.[38]

The limited number of entities that are subject to international law and are therefore entitled to participate in international agreements and hold rights and responsibilities there under presents a new obstacle to international health law-making. States have traditionally been the sole subjects of international law, as previously mentioned in the section titled "Nature and Sources of International Law". Individuals and international organizations were only added to the scope of international law in the twentieth century. However, this restricted approach to international legal cooperation is being challenged by the changing nature of global health and the major

[38] K T Kelly, *The Impact of the WTO: The Environment, Public Health, and Sovereignty* (Edward Elgar 2007).

players in health policy. To begin, the exclusive focus on territorial statehood is irrelevant to global health policy in the age of globalization. Due to their lack of statehood, non-states such as Palestine and Taiwan are excluded from a number of international agreements. A wide range of significant public–private partnerships, such as the Global Alliance for Vaccines and Immunizations and the Global Fund for AIDS, Tuberculosis, and Malaria, as well as civil society organizations, such as Medicines sans Frontiers, are also excluded from the international law-making process, making them the major players in global health policy today. Establishing mechanisms to promote more effective cooperation between states and the other major international health actors is a major challenge for this century. Growing interest in nonbinding legal mechanisms for global governance in health and other areas of international concern is fuelled by recognition of the limitations of treaty making.

Treaties can be useful for raising global awareness and stimulating international commitment and national action, despite the obvious limitations of the formal international law-making process and the inherent difficulties of using them to promote collective action. International legal agreements, such as treaties, are likely to become an essential part of global health governance as a growing number of health threats are global in scope or have the potential to become so. As a direct consequence of this, international legal agreements, both binding and nonbinding, are likely to acquire a growing significance as a foundation for national health policy and action.[39]

8. CONCLUSION AND RECOMMENDATIONS

Through domestic and international instruments in law, policy, and institutions, the global community should fulfil its ethical and moral obligation to achieve health equity. It has introduced a bunch of

[39] A Taylor, 'Non-Binding Legal Instruments in Governance for Global Health: Lessons from the Global AIDS Reporting Mechanism' [2014] Journal of Law, Medicine & Ethics 42(1): 72-87.

standardizing standards moral starting points for worldwide wellbeing regulation as direction on basic medical problems. As an emerging branch of international law, international health law's content and scope have been outlined. The article demonstrates that a disjointed set of health-related instruments have been adopted by a variety of international organizations, including the WHO, human rights treaty monitoring bodies, and the International Committee of the Red Cross (ICRC).

In the field of international health law, it has been suggested that the "right to health" could be recognized as the primary defining standard. It would place individuals' health-related interests at the forefront of the discussion. Despite its many flaws, this standard seems to be the best one now because of its emphasis on health equity and justice.

A major objective is without a doubt the domestic use of the instruments. A good start might come from domestic adoption of high-quality health laws. The Indian court's decision in the Novartis case offers lessons for other nations. By establishing the fundamental norms and principles that "good" domestic health legislation should reflect[40] a purported international health law can play an important role. Considering international legal standards, scholars and international non-governmental organizations, particularly the WHO, could work together to develop domestic model legislation for the health sector. Access to essential medicines and maternal and obstetrical care, as well as social health insurance and/or social determinants of health like food standards like sugar and salt intake, could be the focus of this domestic model legislation.[41]

Through the voluntary internalization of the public moral standard of health equity and subsequent domestic law and policy development and

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[40] H V Hogerzeil, 'Essential Medicines and Human Rights: What Can They Learn from Each Other?' (2006) 84 Bulletin of the World Health Organization 371-375.

[41] ELMA Project at the University of Groningen http://www.rug.nl/research/groningencentre-for-law-and-governance/onderzoekscentra/ghlg/elma?lang=en accessed 8 March 2023.

implementation, it accomplishes its goal. It sees global health law as one of a set of tools and processes for bringing together multiple transnational actors, both state and non-state, through a global health system committed to shared health governance and global health equity rather than as a legally enforceable and coercively mandated set of rules that states are forced to follow.