

OPINION EDITORIAL

How Can Global Health Law Change After COVID-19?

Sophie Campbell, McMaster University

INTRODUCTION

COVID-19 triggered an urgent and massively impactful global health crisis placing unprecedented strain on health care systems, damaging the livelihoods of many, and forcing economies into recession. Above all, COVID-19 elucidated the significant flaws in international, federal and provincial laws and policies that govern emergency response preparedness against communicable diseases. As SARS-CoV-2 will not be the sole highly transmissible and novel communicable disease to affect the human population, the time is ripe to reimagine legal frameworks such that they are adequate in protecting population health, upholding human rights, and ensuring economic stability. The current global situation provides a meaningful opportunity to examine issues with the only international rules governing global health security, the International Health Regulations (IHR), to determine potential solutions.

WHAT ARE THE INTERNATIONAL HEALTH REGULATIONS?

Administered by the World Health Organization (WHO), the IHR are legally binding framework to 196 member states, including Canada, which provides the overarching legal framework that defines countries' rights and obligations in handling public health emergencies [1]. Although the IHR have existed since 1969, the current version entered into force on June 15, 2007. In this update, the range of notifiable diseases was broadened (only cholera, plague, and yellow fever were previously included) and an internationally coordinated detection, assessment, notification, and response system was

formalized [1]. While this IHR update asserted the WHO's position as the central institution for international surveillance, risk assessment, and communication of health-related events, the WHO still struggles to be the world's pre-eminent public health authority. This struggle is largely due to its desire to achieve both technical and political objectives, without foraying into global politics [2]. As expressed by Hoffman and Røttingen, the WHO "walk[s] uncomfortably along many fine lines: advising but never directing; guiding but never governing; leading but never advocating; evaluating but never judging" [2]. This tension between the WHO's goal to be the global authority and its institutional design is exacerbated by the WHO's lack of financial support; three-quarters of its \$5 billion USD operating budget for 2020-2021 is dependent on voluntary contributions [3,4]. In turn, these difficulties have affected global compliance with the IHR, which has been largely neglected during the COVID-19 pandemic [5].

The 2007 IHR update specifically called for Member States to implement laws that balanced human rights, the global economy, and health security, thereby increasing the global capacity to respond to disease threats. However, unlike other multilateral treaties, the IHR do not include an enforcement mechanism for states which fail to comply with its provisions. Instead, the IHR rely on Member States to complete the Self-Assessment Annual Reporting Tool (SPAR), submission of which is required to the World Health Assembly (WHA) every year. The SPAR consists of indicators that measure implementation of IHR capacities and results in a cumulative score that represents the overall capacity attained in relation to the legal requirements in the IHR. Noting that 171 out of 196 Member States submitted their

required report in 2019, the SPAR serves more of a record keeping role than an opportunity for Member States to implement the measures it assesses [6]. Separately from the SPAR, Member States can volunteer to have a Joint External Evaluation (JEE) completed, which assesses national progress in meeting capacities, gaps in implementation, and best practices among Member States by a group of independent experts. The advantage of the JEE process is that it is individualized, but it suffers from the obvious disadvantage in that it is voluntary.

Both the SPAR and JEE have not been effective in motivating State Parties into obtaining acceptable compliance with the IHR; the global average compliance score was merely 63% in 2019 [6]. In other words, the world must improve its capacity to respond to disease threats by 37% in order to fulfill the legal requirements detailed in the 2007 version of the IHR. In contrast, Canada, which has voluntarily completed a JEE, has implemented most of the IHR recommendations, achieving a compliance score of 99% in 2019 [6].

THE IHR AFTER COVID-19

COVID-19 has spurred many discussions among states, organizations, and scholars about a revision of the IHR following COVID-19. At the WHA in May 2020, more than 130 State Parties acknowledged, by consensus, the inadequacies in the IHR and called for a “comprehensive evaluation ... to review experience gained and lessons learned from the WHO-coordinated international health response to COVID-19 – including... the functioning of the International Health Regulations” [7]. The Independent Panel for Pandemic Preparedness and Response (IPPPR) has been tasked with this evaluation and will present their report at the next WHA in 2021. Crucially, the IPPPR will need to determine whether the IHR should be fundamentally revised or if a new international legal instrument for global health governance should be developed [8]. Regardless of their decision, the international legal instrument will ideally contain measures to improve compliance and protect global health security. First, surveillance could be bolstered by allowing information from non-state

actors, such as civil society, or collection of such information by WHO staff [9]. Second, compliance could improve with the addition of a stronger reporting mechanism to monitor state implementation of required capacities [5]. Third, state decisions that do not comply with the legal instrument, such as travel bans, could be quickly monitored and reviewed against international economic, trade, and human rights law potentially by the creation of an independent legal body [8]. Fourth, increased funding could be directed to the WHO to support the development of Member States' capacity to prevent, detect, and respond to outbreaks [10]. This measure is especially important to eliminate the current inequities in pandemic responses observed across developing, emerging, and developed countries [6].

The WHA in 2021 will hopefully serve as a significant cornerstone in global health law and help to spur international action to creating laws that protect population health, uphold human rights, and ensure economic stability. COVID-19 has changed the world, and we must use this opportunity to improve emergency-preparedness in the future.

REFERENCES

1. World Health Organization [WHO]. International Health Regulations (2005) (3rd ed.) [Internet]. Geneva: World Health Organization; 2016 [cited 2021 Jan 20]. 91 p. Available from: <https://www.who.int/publications/i/item/9789241580496>
2. Hoffman SJ, Røttingen JA. Split WHO in two: strengthening political decision-making and securing independent scientific advice. *Public Health* [Internet]. 2014 [cited 2021 Jan 20];128(2):188-194. Available from: <https://pubmed.ncbi.nlm.nih.gov/24434035/> doi: 10.1016/j.puhe.2013.08.021
3. World Health Organization [WHO]. Programme budget: 2020-2021 [Internet]. Geneva: World Health Organization; 2019 [cited 2021 Jan 21]. 102 p. Available from: <https://www.who.int/about/finances-accountability/budget/WHOPB-PRP-19.pdf?ua=1>
4. Taylor AL, Habibi R. The collapse of global cooperation under the WHO International Health Regulations at the outset of COVID-19: sculpting the future of global health governance. *American Society of International Law Insights* [Internet]. 2020 [cited 2021 Jan 20];24(15). Available from: <https://www.asil.org/insights/volume/24/issue/15/collapse-global->

cooperation-under-who-international-health-regulations#_ednref11

5. Taylor AL, Habibi R, Burci CL, Dagron S, Eccleston-Turner M, Gostin LO, Meier BM, Phelan A, Villarreal PA, Yamin AE, Chirwa D, Forman L, Ooms G, Sekalala S, & Hoffman SJ. Solidarity in the wake of COVID-19: Reimagining the International Health Regulations. *The Lancet* [Internet]. 2020 [cited 2021 Jan 25];396(10344):82-83. Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7304947/> doi: 10.1016/S0140-6736(20)31417-3
6. World Health Organization [WHO]. (2020). e-SPAR: State party annual report [Internet]. Geneva: World Health Organization; 2019 [cited 2021 Jan 21]. Available from: <https://extranet.who.int/e-spar#capacity-score>
7. World Health Organization [WHO]. (2020). COVID-19 response, WHA 73.1. Seventy-Third World Health Assembly Summary Records and Reports of Committees [Internet]. Geneva: World Health Organization; 2019 [cited 2021 Jan 21]. 7 p. Available from: https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_R1-en.pdf
8. Gostin LO, Habibi R, Meier BM. Has global health law risen to meet the COVID-19 challenge? Revisiting the International Health Regulations to prepare for future threats. *The Journal of Law, Medicine and Ethics* [Internet]. 2020 [cited 2021 Jan 20];48(2):376-381. Available from: <https://www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/article/abs/has-global-health-law-risen-to-meet-the-covid19-challenge-revisiting-the-international-health-regulations-to-prepare-for-future-threats/3907D01F5709F9F34213985E6314ACE6>
9. Gostin LO, Katz R. The International Health Regulations: the governing framework for global health security. *Milbank Quarterly* [Internet]. 2016 [cited 2021 Jan 30];94(2):264-313. Available from: <https://pubmed.ncbi.nlm.nih.gov/27166578/>
10. Moon S., Sridhar D., Pate MA, Jha AK, Clinton C, Delaunay S. Will Ebola change the game? Ten essential reforms before the next pandemic. The report of the Harvard-LSHTM Independent Panel on the Global Response to Ebola. *Health Policy* [Internet]. 2015 [cited 2021 Jan 30];386(10009):P2204-2221. Available from: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)00946-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)00946-0/fulltext)