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FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW



International law after Covid

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“There is a single species that is responsible for the COVID-19 pandemic – us.”

IPBES 2020





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Constitutional moment, tipping point, or more of the same?





Pandemic as a globalisation phenomenon



International Law as a Guideline for Action

WHO DG Temporary Recommendations





International Law as a Standard of State Responsibility and Liability

(1) Inadequate preparedness:

Standard of due diligence:

Procedural and substantive obligations.

→ Possible violations

- of International Health Regulations, e.g. Art. 13 IHR,
- of human rights (Art. 6 ICCPR; Art. 12 ICESCR),
- of the No-harm-principle,
- of WTO law.



International Law as a Standard of State Responsibility and Liability , continued

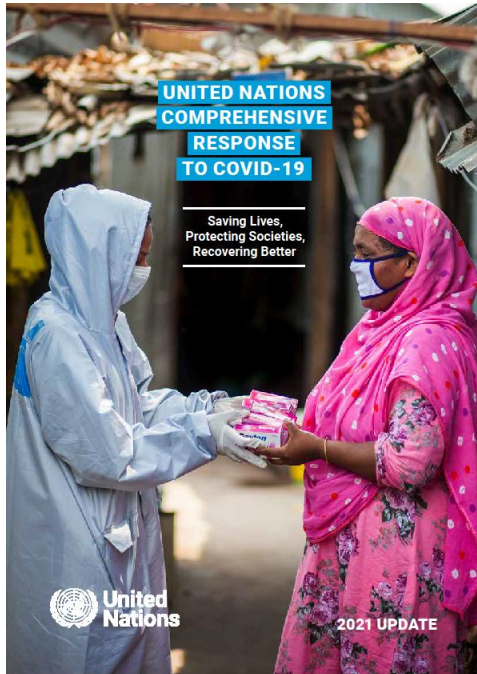
(2) Overreactions: Standard of proportionality

→ Possible violations

- of IHR. (But see Art. 43 IHR).
- of human rights. (But see declarations of public emergency).
- of WTO law. (But see Art. XI(2) lit. a GATT).



United Nations



- UN Comprehensive Reponse (Update report sept. 2021).
- UN GA Resolutions (last Res 74/306 (11 Sept. 2020)).
- UN SC Res. 2532 (1st July 2020) – Chapter VI.
- UN Human rights institutions.



COVAX

A public private partnership

Covid Vaccine Delivery Partnership (CovVDP)

(GAVI, WHO, and UNICEF)



Independent Panel for Pandemic Preparedness and Response

May 2021: Landmark report

May 2022: Review of progress





Reflecting the Weaknesses of International Law

1. Lack of rules
2. IHR: Formally legally binding, but...
3. WHO:
 - Underpowered
 - Underfunded



The Role of States

- „Sanitary sovereignty“ of States (Art. 3(4) IHR)
- Vaccine nationalism
- Scapegoating of WHO



Fundamental critique against internat. law

- Unfair investor state disputes ?
- Unfair patent protection law ? (see Art. 31bis TRIPs)
→ Covid Technology Access Tool (C-TAP).

Fragmentation: Health law an underdog regime?



Covid as a Catalyst for Change of IL

- WHO Foundation (a PPP).
- New Pandemic Preparedness Treaty ? (INB ongoing)
- Zero draft report Strengthening WHO Preparedness (3d May 2022)



The Post-Pandemic World

Pandemic has **spotlighted, amplified,** and **accelerated** global social problems.

Outcomes:

No de-globalisation but slow-balisation



No Grotian moment

- Ambivalent role of international law:
Replicating injustice but also overcoming it.

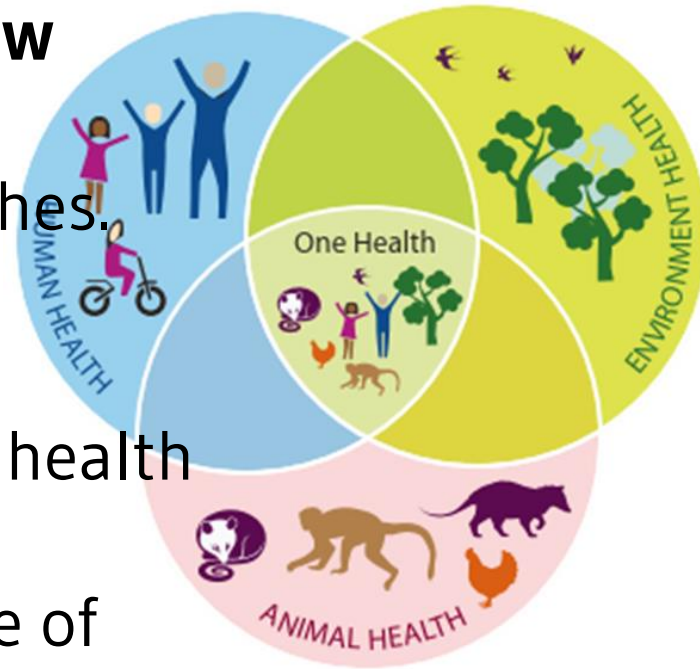
Gradual changes in:

- international law of trade, subsidies, finance.
- International patent law.
- Internet governance.



A Post-Pandemic International Law

1. Principle of **subsidiarity**
2. State competition over best approaches.
3. But embedded in international rules.
4. Operationalisation of human right to health (Art. 12 ICESR)
5. International (constitutional) principle of **solidarity**
6. **One Health** Principle for combatting zoonoses.



→ An eco-centric and more social
international law.