International law after Covid

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

IPBES 2020
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.
(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 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,

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.