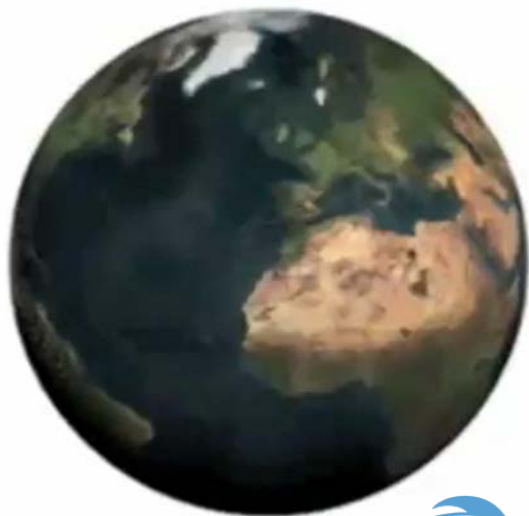


Human Rights Challenges in Global Health Governance Advancing Human Rights in Ongoing Global Health Law Reforms



THE UNIVERSITY
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INSTITUTE
FOR NATIONAL & GLOBAL HEALTH LAW
GEORGETOWN LAW



Global
Health Law
Consortium

Benjamin Mason Meier, JD, LL.M., PhD
Global Health and Welfare Forum
7 November 2023

Introducing Global Health Law

Global Health Law

Lawrence O. Gostin and
Benjamin Mason Meier

Global health law describes the legal frameworks that structure global health. Laws and regulations, when based on the best available evidence, can promote healthy behaviors, regulate hazardous activities, and ensure socially responsible corporate marketing and products. These regulatory frameworks operate in virtually every realm of health, including infectious and noncommunicable diseases, mental health, injuries, and the safety and effectiveness of vaccines, pharmaceuticals, and medical products. Law can help structure universally affordable, accessible, and equitable health systems that promote universal health coverage. Beyond discrete attention to health risks, the rule of law and good governance are crucial for ensuring health and well-being.

Where global health has come to frame efforts to advance public health across countries, law has become crucial to addressing the global health threats that have arisen in a rapidly globalizing world. Globalization has unleashed the spread of disease, connected societies in shared vulnerability, and highlighted the limitations of domestic law in ensuring global determinants of health. In this interconnected world, no country acting alone can stem health hazards that go beyond national borders. Yet if globalization has presented challenges to disease prevention and health promotion, global health law offers the promise of bridging national boundaries to advance global norms and alleviate health inequities.

Arising out of international health law — which has long structured

multilateral cooperation to respond to infectious disease threats — global health law seeks to structure the contemporary governance architecture for global health. In responding to health harms throughout the world, global health law has “evol[ve]d” beyond its traditional confines of formal sources and subjects of international law¹ to advance global health with justice.² This focus on global health has necessitated action beyond the reach of national governments, requiring both state and non-state actors to come together to respond to globalized health threats. Global health law seeks to frame this new governance to respond to the major health challenges of the twenty-first century.

The field of global health law has thus become a basis to conceptualize the legal institutions that apply to the changing public health threats, non-state actors, and regulatory norms that structure global health. Beyond the traditional purview of international health law, global health law describes evolving legal efforts to address:

- New health threats — including non-communicable disease, injuries, mental health, dangerous products, and other globalized health threats,
- New health actors — including transnational corporations, private philanthropists, civil society, and other non-state actors, and
- New health norms — including “soft law” instruments, global strat-

About This Column

Lawrence O. Gostin and Benjamin Mason Meier serve as the section editors for *Global Health Law*. Professor Gostin is University Professor at Georgetown University and the Founding Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University Law Center and Director of the World Health Organization Center on National and Global Health Law. Professor Meier is an Associate Professor of Global Health Policy at the University of North Carolina at Chapel Hill and a Scholar at the O’Neill Institute for National and Global Health Law. This column will feature timely analyses and perspectives on law policy and justice in global health.

Lawrence O. Gostin, J.D., LL.D. (Hon.), is University Professor at Georgetown University and the Founding Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University Law Center and Director of the World Health Organization Center on National and Global Health Law. Benjamin Mason Meier, J.D., LL.M., Ph.D., is an Associate Professor of Global Health Policy at the University of North Carolina at Chapel Hill and a Scholar at the O’Neill Institute for National and Global Health Law.



**HUMAN RIGHTS
IN GLOBAL HEALTH**

**RIGHTS-BASED
GOVERNANCE FOR A
GLOBALIZING WORLD**

EDITED BY

Benjamin Mason Meier • Lawrence O. Gostin

OXFORD

FOREWORD BY MARY ROBINSON

Advancing Global Health Governance –

Implementing Human Rights through Global Governance

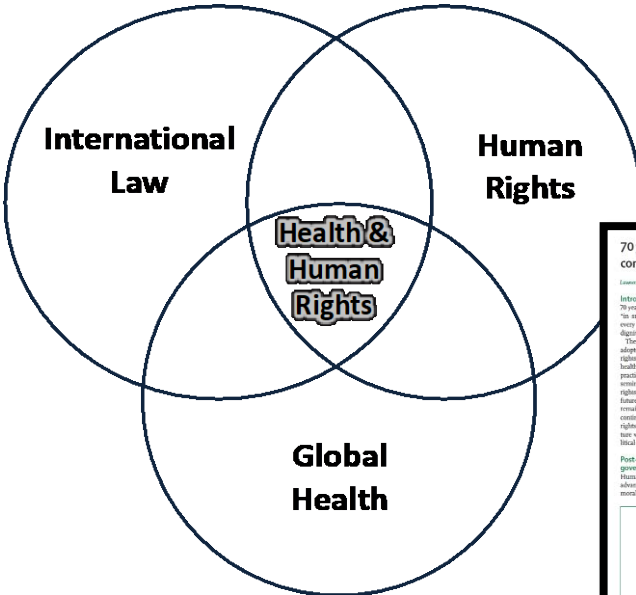
Violating Human Rights

– Violations of Human Rights Highlight Weaknesses of Global Health Law

Reforming Global Health Law

- IHR Amendments
- Pandemic Accord

Human Rights in Global Health



70 years of human rights in global health: drawing on a contentious past to secure a hopeful future

Lawrence G. Gostin, Benjamin M. Altaba, Radhakrishnan, Venkatesh, Madhav, Tahir, & Chakravarty

Introduction
 70 years ago, Eleanor Roosevelt presided over the signing of the Universal Declaration of Human Rights (UDHR) in small, plain, close to home [...] the place where every man, woman, and child seeks equal justice and dignity.
 The Universal Declaration of Human Rights (UDHR), adopted on Dec 10, 1948, established a modern human rights foundation that has become a cornerstone of global health, central to public health policies, programs, and practices. To commemorate the 70th anniversary of this seminal declaration, we trace the evolution of human rights in global health, linking the past, present, and future of health as a human right (figure 1). This feature remains uncertain. As contemporary challenges impact continuing advancement, showcasing both human rights professions and global health governance, the future will depend on it. In the past, an assumed political engagement to realize human rights in global health.

Post-war birth of human rights in global health governance
 Human rights provide a universal framework for advancing global health with justice, transforming moral imperatives into legal enforcements. Coined out of the atrocities of World War II, states in the newly formed UN established human rights under international law. The 1948 UN Charter became the first international treaty to recognize human rights, which form the principal foundation of this new world body. Operating through the UN Economic and Social Council (ECOSOC), the UN would "make recommendations for the purpose of promoting respect for and observance of" human rights and fundamental freedoms for all.¹
 With the UN Charter also calling for the establishment of an international health organization, WHO had the responsibility to coordinate human rights for public health. The 1948 WHO Constitution declared, for the first time, that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being," directly establishing government responsibilities to ensure "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity."² In creating a rights-based foundation for global health governance, the WHO Constitution represented the world's most explicit conceptualization of international responsibility for health.

Figure 1 The historical development of human rights for health (1948-2018)

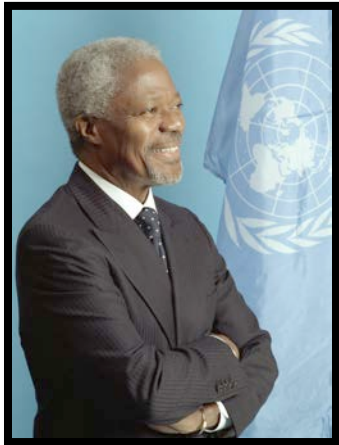
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- Health & Human Rights Movement
 - Human Rights Declaration
 - Human Rights Evolution
 - Human Rights Frame Policy
- Global Governance Implements Rights-Based Policy



Human Rights in Global Governance

Mandate for Mainstreaming



UN Secretary-General Kofi Annan

- Cross-Cutting Approach
- Rights-Based Approach
- Common Goals for Global Health Advancement

“The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms – the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation.”

- Kofi Annan (2005).

Existential Threats

Cataclysmic Pandemic

- Unprecedented Health Threat
- Widespread Inequities
- Limitations of Global Health Governance

FOUNDATIONS OF GLOBAL HEALTH & HUMAN RIGHTS

新書發表會

December 21, 2020
9:00 am-10:30 am (Taipei Time)

Lawrence O. Gostin

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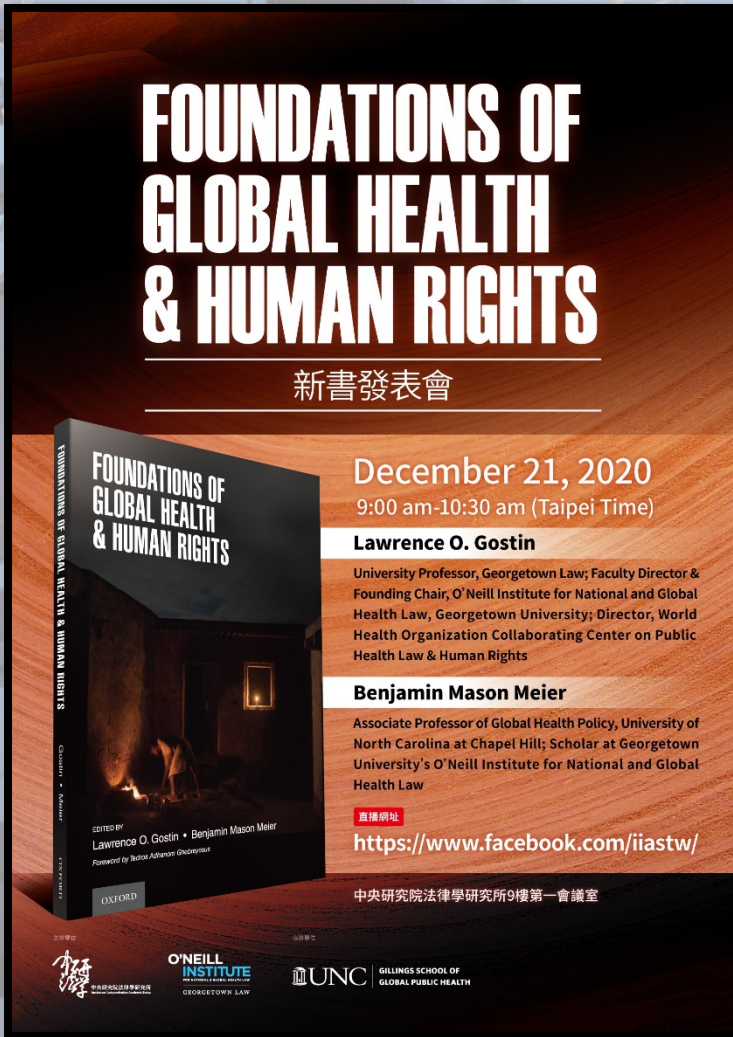
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Solidarity

Human Rights Limitations in COVID-19 Response

Outbreak Notification



Violative Nationalist Responses



- Weaknesses of Right to Health and Social & Economic Rights
- Limitations of Civil & Political Rights to Promote Public Health
- Obligations of International Assistance & Cooperation

Global Solidarity?

Strengthening Human Rights in Global Health Law: Lessons from the COVID-19 Response

Global Health Law
Judith Ritvo de Mesquita, Amy Karabachowski, and Benjamin Mounier-Méty

Keywords: Human Rights, Global Health, COVID-19, World Health Organization, Global Health

Abstract: While human rights law has evolved to provide guidance to governments in enacting human rights in public health emergencies, the COVID-19 pandemic has challenged the foundations of human rights in global health governance. Public health responses to the pandemic have undermined international human rights obligations in various (1) the right to health and life, (2) human rights that include public health, and (3) international assistance and cooperation. As governments prepare for recurrences of global health law, new opportunities are presented to harmonize global health law and human rights law, strengthening rights-based governance to respond to future crises.

Introduction: Human rights are central to global health, yet human rights limitations to the COVID-19 response have highlighted both the success and shortcomings of human rights in global health law. Addressing the limitations of human rights in global health law requires a just legal system. The World Health Assembly (WHA) is just beginning to address the need for global pandemic prevention, preparedness, and response planning opportunities to ensure human rights protection in future public health emergencies. It will be critical to ensure that the pandemic response to COVID-19 does not undermine the foundations of human rights in global health law. The authors hope to emphasize the fundamental importance of human rights, recognizing the need for human rights-based governance to strengthen the protection of established human rights and international human rights obligations. This article examines the limitations of human rights in global health law, the need to strengthen human rights in global health law, and the need to ensure that the pandemic response to COVID-19 does not undermine the foundations of human rights in global health law. The authors hope to emphasize the fundamental importance of human rights, recognizing the need for human rights-based governance to strengthen the protection of established human rights and international human rights obligations. This article examines the limitations of human rights in global health law, the need to strengthen human rights in global health law, and the need to ensure that the pandemic response to COVID-19 does not undermine the foundations of human rights in global health law.



Human Rights at the Forefront of the Global Response

World Health Assembly Res 73.1

...calling on States to “to implement national action plans...ensuring respect for human rights and fundamental freedoms and paying particular attention to the needs of people in vulnerable situations, promoting social cohesion, taking the necessary measures to ensure social protection and protection from financial hardship, and preventing insecurity, violence, discrimination, stigmatization and marginalization” (2020).

The world faces a pandemic of human rights abuses in the wake of Covid-19

António Guterres



“Human rights brings dual benefits in minimising sickness and death, especially among marginalised communities...[and] to resilience and preparedness for future disease outbreaks as well as health and economic shocks”

- Dr Tedros Adhanom Ghebreyesus

“Will we seize this moment to devise ways to recover better? Will we properly apply the human rights vaccine that can help us build more resilient, prosperous and inclusive societies?”

- Dr Michelle Bachelet



Reforming Global Health Law

- **New Legal Mechanisms under WHO Governance**
 - Amending IHR
 - Developing Pandemic Accord



Developing a Pandemic Accord



Human Rights Challenges in the Pandemic Treaty Negotiations

By Benjamin Mason Meier, Roojin Habibi, Judith Bueno de Mesquita, Sara L.M. Davis, Timothy Fish Hodgson, Sharifah Sekalala, Margot Nauleau, Saman Zia-Zarifi

In strengthening human rights in the development of the World Health Organization (WHO) convention, agreement or other international instrument on pandemic



Principles and Guidelines on

Human Rights & Public Health Emergencies

Draft of 20 May 2023

– Global Health Governance Limitations in the COVID-19 Response

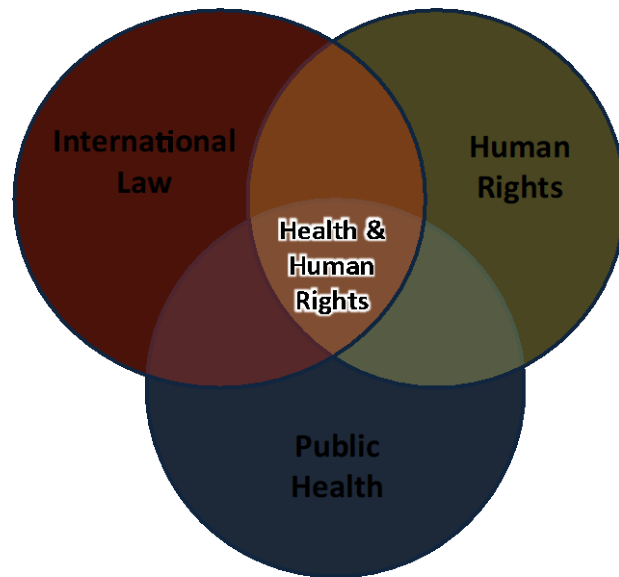
- Human Rights Violations
- WHO Weaknesses

– Global Health Law in Transition

- Developing New Authorities
- Strengthening WHO
- Advancing Human Rights



A Rising Imperative for Human Rights in Global Health Law



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