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BOOK REVIEW

To Achieve a Healthier World, Global Health Law and Policy Must Be Grounded in Human Rights

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Global Health Law and Policy: Ensuring Justice for a Healthier World, edited by Lawrence O. Gostin and Benjamin Mason Meier (Oxford University Press, 2024)

Global Health Law and Policy: Ensuring Justice for a Healthier World is an up-to-date, comprehensive, and accessible overview of global health law, policy, and governance. The editors, Lawrence O. Gostin and Benjamin Mason Meier, have provided the reader with a sound foundation for understanding the legal dimensions of the major global health challenges we face today. In this review, I first describe the context of the book, its structure, and contents. I then discuss some current limitations of global health law and how they could be addressed. I conclude with an appeal for greater collaboration between legal experts, public health professionals, and civil society organizations in addressing global health challenges.

Global health law is an expanding field of academic and professional interest to all working in global health. The role of the law, and human rights law, in responding to health challenges first came to global prominence with the HIV epidemic. In the 1990s, treatments for AIDS-related conditions were becoming more effective. Yet many people at risk of HIV infection avoided testing because of the associated stigma and discrimination. Legislation prohibiting discrimination against people living with HIV, and those most at risk, came to be seen as a vital component of a comprehensive national HIV response. These laws were grounded in international human rights law, with the prohibition of discrimination on the grounds of "other status" affirmed by the then United Nations Commission on Human Rights to include HIV status. In 1996, the commission endorsed guidelines for states on HIV/AIDS law and policy, published as the *International Guidelines on HIV/AIDS and Human Rights*.[1] This had not been done for any health condition before HIV/AIDS, nor has it been done since.

The 2010s saw increased attention to the growing global burden of noncommunicable diseases (NCDs), in part due to the epidemiological transition from infectious diseases to NCDs in low- and middle-income countries. This stimulated awareness of the role of the law in addressing the commercial determinants of NCDs beyond tobacco (where the role of law was already well recognized). In 2017, the World Health Assembly updated World Health Organization (WHO) guidance on "best buys" and other interventions for addressing the four major NCD risk factors: tobacco use, the harmful use of alcohol, unhealthy diet, and physical inactivity.[2] Many of the WHO best buys and other recommended interventions—such as

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taxes; regulation of production and marketing, including packaging, advertising, and sales; and prohibition—have a regulatory aspect.[3]

Since 2020, the COVID-19 pandemic has heightened awareness of the importance of national and international law in preventing and responding to infectious disease pandemics. Thus, all global health challenges have legal dimensions: it is increasingly accepted that responding to these health challenges requires understanding not only national and international health systems but legal systems as well.

In his foreword, WHO Director-General Tedros Adhanom Ghebreyesus flags key themes that appear throughout *Global Health Law and Policy*. He highlights the reference in the preamble of the WHO Constitution to the enjoyment of the highest attainable standard of health as one of the fundamental rights of every human being without distinction. Echoing the obligations in the International Covenant on Economic, Social and Cultural Rights (art. 2), Tedros notes that the COVID-19 pandemic revealed the continuing lack of international assistance and genuine collaboration to build public health capacities in low- and middle-income countries. He also emphasizes the importance of civil and political rights, noting that restrictions on civil society and political freedoms subvert social participation and universal rights. Tedros suggests that since the creation of WHO, global health law and policy have become crucial to addressing major health threats. *Global Health Law and Policy*, he writes, provides "an academic foundation for the next generation of global health leaders."

The book contains 20 chapters, each addressing an aspect of global health—either a substantive health issue such as infectious diseases, NCDs, and mental health, or aspects relevant to disease prevention and treatment, such as the commercial determinants, intellectual property law, funding, and universal health coverage. There is an important discussion of the *process* of developing global health law and policy, as well as of global health actors and of governance. Each chapter is written by two leading scholars in the respective field. Chapters follow a standard format: a review of the historical evolution and current state of the field followed by case studies and questions for discussion. There is minimal overlap: the editors have helpfully cross-referenced material that is discussed in earlier chapters.

A wide readership is envisaged: each chapter is written to be accessible to readers without formal training in law or public health. The book is divided into four sections: frameworks and institutions; global health governance in disease prevention and health promotion; the economic institutions that influence global health; and international legal responses to rising global health threats. The reader is advised to read these sections sequentially, as each chapter builds on the previous material. The sequence is generally logical, except that climate change, noted to be "the greatest threat to health faced by humanity," appears as the penultimate chapter. I suggest that climate change may soon be considered a cross-cutting concern for all global health challenges, along with gender and, increasingly, decolonization, and will be given far greater prominence.

I will now discuss three ways in which the contribution of health law to global health could be strengthened, and which lead me to the following recommendations:

- International human rights treaties should always be considered part of the legal framework for global health.
- Civil society and affected communities must be adequately consulted and engaged in health law and policy reform.
- Technical expertise in health law should be strengthened, as should collaboration between health and legal scholars and civil society organizations.

International legal frameworks

In their introduction to the book, the editors remind us that "global health law is guided by values of social justice, mutual solidarity and human rights." This is certainly true, yet it is important

to reiterate that "human rights" offer more than ethical exhortations because they are backed by international and national frameworks and legislation. Legal scholars should be familiar with these frameworks; however, many public health scholars remain unaware of the scope and content of human rights law.[4]

These frameworks can help strengthen compliance with WHO technical guidance. It is well understood that WHO's guidance is nonbinding on World Health Assembly member states. But the international human rights legal framework offers accountability mechanisms, which can be used to assess states' implementation of WHO guidance. For example, WHO's Model List of Essential Medicines is now considered part of the core content of the right to health.[5] By drawing on WHO guidance, greater use could be made of international and regional human rights mechanisms in holding states to account for their obligations to promote and protect the right to health.

However, Global South criticisms and "decolonial" critiques of these frameworks should also be noted. Certainly, the struggle to achieve universal recognition of state responsibility for regulating the social determinants of health is far from won. In their overview of global health determinants, global governance, and global law in Chapter 1, Lawrence Gostin and Alexandra Finch suggest that "governments have come to accept responsibility to address the underlying conditions that affect public health." Yet this is still very much a contested view in some states. For example, in 2019, Health Policy Watch reported that representatives of Italy and the United States pressed WHO to remove information on the impact of taxes on sugar-sweetened drinks from its latest progress report on tackling NCDs.[6]

Public health experts often query what can be done if a state fails to meet its treaty obligations. In Chapter 2, Sharifah Sekalala and Roojin Habibi assert that states will incur sanctions if they breach the binding obligations in "hard" international law. However, this is not always the case. For example, the International Health Regulations (2005) are binding on all WHO member states. Compliance is assessed through "joint external evaluation" assessment missions. Yet there are no provisions for sanctions if states have not adequately implemented the International Health Regulations. Similarly, United Nations human rights treaties, although binding, contain no sanctions mechanisms for noncompliance.

Civil society engagement

In Chapter 2, Sekalala and Habibi fairly note that UNAIDS' use of "soft law" in the context of HIV and AIDS has been "revolutionary." The high rate of national compliance with monitoring and reporting commitments has been aided since 2001 by the placement of a UNAIDS monitoring expert with the Ministry of Health in countries that may otherwise lack the resources and technical capacity to respond. Also revolutionary is the design of the monitoring tool, which includes a two-part "national commitments and policy instrument." Part A is to be completed by national authorities, and Part B is to be completed by civil society, communities, and other nongovernmental partners involved in the national AIDS response. The participation of civil society organizations in the periodic monitoring of the national AIDS response demonstrates how a rights-based approach can be applied in this context.[7]

In the absence of civil society support, governments are less likely to make the hard policy choices needed to address the social determinants of health. Yet the case study of HIV/AIDS, intellectual property law, and access to medicines in Chapter 2 fails to acknowledge the pivotal role of civil society organizations in highlighting the inequalities inherent in access to HIV treatments at that time. Beginning in 1998, the Treatment Access Campaign in South Africa used a combination of human rights education, HIV treatment literacy, public protests, and litigation to advocate for access to more effective HIV medications. These were increasingly available in the Global North and produced in generic form in countries such as Brazil and India. When the South African government amended the Medicines Act to facilitate importation of these generic medications, some 40 multinational pharmaceutical companies

took legal action to block its implementation. If the Treatment Access Campaign had not mobilized in front of the courthouse and the world's media, as well as joining the case as amicus curiae, the case may well have dragged on for many months, if not years. Instead, the pharmaceutical lobby dropped its legal action.[8]

The role of civil society in global health governance is also worth examining. UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria each have representatives of nongovernmental organizations on their governing boards. This is not the case for the World Health Assembly, and there is a notoriously difficult procedure for accrediting nonstate actors in official relations with WHO. As a result, there were a mere 218 nonstate actors in official relations with WHO (as of February 2022), compared to over 6,000 organizations with United Nations Economic and Social Council (ECOSOC) consultative status (as of January 2024). These ECOSOC-accredited organizations can observe, and in some cases intervene, in United Nations General Assembly debates on health issues in New York, but not World Health Assembly debates on the same topic in Geneva! In 2023, WHO launched a separate Civil Society Commission to facilitate dialogue with civil society—this may prove useful but cannot replace meaningful civil society participation in the World Health Assembly.

Funding is a key aspect of obligations of international assistance and cooperation. Human rights obligations arise not only in determining the amount of funding but in determining how it is spent. The Global Fund has included "health equity, gender equality and human rights" as one of its three "mutually reinforcing contributory objectives" of its *Strategy Framework (2023–2028)*. Reflecting the human rights principle of the participation of affected communities, the Global Fund requires local civil society participation in funding applications through the so-called country coordination mechanism. Following UNAIDS technical guidance, the Global Fund has identified and supports key program areas to address human rights-related barriers to HIV and tuberculosis services. These include building the legal literacy of affected populations to "know their rights," strengthening access to legal services, and supporting related law and policy reform.

In their discussion of preventing, detecting, and responding to pandemic threats under international law in Chapter 6, Pedro A. Villarreal and Lauren Tonti review the historical development of, and weaknesses in, international legal frameworks. Critically, they note the emergence of advocacy for human rights in responses to HIV/AIDS, with lessons for broader policy responses to infectious diseases. In 2020, UNAIDS published rights-based guidance on lessons from HIV/AIDS for the response to COVID-19.[9] The guidance suggested that the response to COVID-19 must be grounded in the realities of people's lives and focused on eliminating barriers that people face in being able to protect themselves and their communities. This guidance was largely overlooked in the COVID-19 response.

Encouragingly, the draft pandemic treaty includes the obligation to develop and implement "policies to respect, protect and fulfill the human rights of all people."[10] However, it is unclear whether the treaty will be ratified by the larger and more powerful states such as China, India, Russia, and the United States. It is a trade-off: in general, the more a treaty aims to oblige states to act or refrain from acting, the less likely it is to be ratified. For example, the optional protocol to the Framework Convention on Tobacco Control to eliminate elicit trade in tobacco products was opened for signature in 2012. Although, as of December 2023, there were 183 parties to the convention, the optional protocol had only 68 ratifications, which did not include China, Russia, or the United States. By contrast, regulations adopted under article 21 of the WHO Constitution are binding on World Health Assembly member states, unless they opt out. Although the issues for which regulations can be adopted are limited, the list can be expanded through amendment to the WHO Constitution, which requires only a two-thirds vote for amendments to be adopted.

Technical expertise and collaboration between disciplines of law and public health

The good news for students of global health law is that there is a strong and growing demand for technical expertise in this field. For example, many countries have not reformed their legal frameworks as required by the International Health Regulations. The reasons for noncompliance are multiple and include a lack of technical assistance to support related law and policy reform. The same is true for national legal frameworks to address falsified and substandard medicines, although the challenge here may be the need for greater capacity to prosecute under existing criminal laws, rather than for law reform. WHO does not have unlimited funds to pay for the travel and fees of international legal experts to respond to state requests for technical assistance. Nor has technical assistance in health law been a top priority for development donors. Further, experts often have academic teaching and research obligations. They cannot allocate the time needed in-country for a participatory capacity-building process, which should include representatives of affected communities, consistent with the principle of participation in human rights law.

Another model of public health law capacity-building is needed, including through South-South collaboration. For example, in East Africa, a human rights-based research initiative provides technical assistance and regional networking between legal and public health scholars to improve diets and address NCDs.[11] And an initiative of the Faculty of Public Health (UK) and global public health organizations aims to support greater collaboration between public health professionals, legal experts, and affected communities to support climate litigation.[12]

Conclusion

Global Health Law and Policy is an invaluable, timely resource. It demonstrates the breadth, potential power, and utility of health law to address major health challenges. All have a legal dimension requiring an understanding of national and international legal as well as health systems. International legal frameworks, including human rights treaties, are crucial tools, but their power to oblige state action is limited. Civil society engagement in health law and policy reform is essential, including in supporting state action to address the commercial determinants of health. Collaboration between legal experts, public health professionals, and civil society organizations is needed to identify and support rights-based health law and policy reforms to address health challenges. Today, climate change is the greatest health threat faced by humanity. It may soon be considered a cross-cutting theme for all global health challenges, and hence global health law and policy.

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