

## The Field of International Pandemic Law

### The Field of International Pandemic Law (IPaL)

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As a scholar who has written to define the field of international economic law (IEcL), I now see a need for more attention to the vital topic of international pandemic law (IPaL). Although the origins of international health law in the 19th century were concerns about contagious disease, I am not aware of any project to specify a program for IPaL in the 21st century. I have taken note of an excellent paper published in March 2020 in the Max Planck Institute by Armin von Bogdandy and Pedro A. Villarreal.

What is IPaL? It is the emerging and potential law of how governments and international organizations should address pandemics like Covid-19. To answer whether such law is needed, unpack the term. The proposed field of law is "international" because viruses do not respect national borders and because the course of disease in one country affects other countries. In other words, contagion externalizes transborder negative effects. This new field of law properly focuses on pandemics because of the huge damage that Covid-19 is having and will wreak on world progress and because the next Covid-19s are likely to occur before 2119. The new field requires law at all levels of government from the local to the global because each level of government, under the principle of subsidiarity, has a role to play.

To be sure, some pandemic law at the international level already exists. The International Health Regulations (IHR) of the World Health Organization (WHO) have already guided (or failed to guide) the responses of countries regarding notifications and travel restrictions. And many existing fields of international law, such as international human rights law and international trade law, certainly have relevant principles of law that would be important in developing IPaL. But that there is currently a gap cannot be doubted. For example, the United Nations (UN) Sustainable Development Goals (SDGs) for 2030 do not mention the term "pandemic" and do not seem to anticipate a novel global epidemic.

This brief post seeks to introduce the field of IPaL and lay out a few key points of design:

First, IPaL should be a mix of both hard and soft law and public law and private law. The hard law would be in the form of minimum standards that all governments agree to incorporate into domestic law and to enforce. Moreover, just as treaties and model laws have been valuable features of IEcL — for example in trade agreements, UNCITRAL treaties and model laws — IPaL would need to adopt many mechanisms that have proven successful in other regimes. The soft law would be in the form of principles that governments would subscribe to. Even though IPaL would be always in place, it might be situated as rules that would become fully operative only when there is an active pandemic as some of the rules might conflict with other international rules that would be utilized in times without pandemics.

Second, better international institutions are needed. To be sure, the WHO will need to be a player in IPaL, just as the League of Nations Health Organization acted on epidemics before the UN. But the WHO's longtime discrimination against Taiwan (a problem that I began to write about in 2007) is one disqualification for the WHO to be the center for IPaL. Another is the

suboptimal performance of the WHO during the Covid-19 crisis which shows at a minimum that an organization with as broad a mission as the WHO is probably not up to the task of mobilizing the world for a pandemic. Whether a new international organization is needed is a matter for reflection, and I am aware of how little progress has occurred from my longtime efforts to catalyze a World Environment Organization. In the meantime, there are many international organizations in and out of the UN that have programs and law relevant to pandemics — for example, the International Labour Organization, the World Organization for Animal Health, the World Trade Organization (WTO), and the Organisation for Economic Co-operation and Development (OECD). Interaction with the climate regime is also needed. Yet the normatively empty nature of the Paris Accord should surely not serve as a model for tackling pandemics.

Third, there should be a monetary, development, and financial dimension. This requires involvement by the International Monetary Fund, the World Bank and the Regional Banks. There are serious short-term problems such as financing for human needs during economic shutdowns. But there are also serious long-term problems such as making the investments in global public goods needed on a worldwide scale. The world needs to save more in advance, an allocation that is hard to achieve.

Fourth, the war against pandemics is too important to be left to the governments. Intensive involvement is needed by foundations, universities, research institutes, pharmaceutical companies, banks, medical associations, etc. Intense private sector involvement will be needed to be better prepared next time and, as always, the role of nongovernmental organizations (NGOs) is vital in developing new ideas and communicating information to the public. New prizes should be introduced for innovation in pandemic prevention and management. Such a (Nobel/Gates) Prize might be easy to award in 2020 or 2021, and yet we also need to be doing it in 2031.

The role of public health education is vital too in developing the expertise and skills requisite for crises that may not recur for years or decades.

In summary, as the current health and economic crisis plays out, there will be efforts in every country to improve domestic law (and local law) for pandemics. One can easily foresee the establishment of international and UN commissions that will tilt toward policy rather than law. Yet we should also be attentive to the need for putting better international law in place to promote cooperative behavior among (sometimes competing) governments and within civil society.