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**Guardian of global health:**

examining the responsibility of the World Health Organization during global health crises

**Guardião da saúde global:**

examinando a responsabilidade da Organização Mundial da Saúde durante crises sanitárias globais

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INTERDISCIPLINARY APPROACHES TO BUSINESS &  
HUMAN RIGHTS: AN ASSESSMENT OF THE FIELD 10+  
YEARS FROM THE UNGPs

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# Guardian of global health: examining the responsibility of the World Health Organization during global health crises\*

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## Guardião da saúde global: examinando a responsabilidade da Organização Mundial da Saúde durante crises sanitárias globais

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### Abstract

The World Health Organization (WHO) plays a pivotal role as a guardian of global health, tasked with coordinating international efforts to combat infectious diseases. The organization is the central body that disseminates crucial information during global health crises. However, in the past, it has been criticized for its responses to epidemics and pandemics. This paper is a timely study that critically examines the WHO's responsibilities in managing global health crises, analyzing its responses to previous health emergencies. Through qualitative analysis, the study evaluates the effectiveness of the WHO and the possibility of attributing responsibility for its wrongful conduct. The study evaluates the WHO's responses to previous health emergencies, such as Ebola Virus Disease (EVD) and the COVID-19 pandemic, which have fallen short of its mandate, warranting consideration of international responsibility. The authors emphasize the need to introduce and enhance the responsibility of the Director General of the WHO. Moreover, they suggest in the absence of a designated redressal body, seeking an advisory opinion of the International Court of Justice (ICJ) will help navigate the complexities of attributing responsibility. This study contributes to discussions on improving global health governance and accountability mechanisms.

**Keywords:** international responsibility; World Health Organization (WHO); global health; International Court of Justice (ICJ).

### Resumo

A Organização Mundial da Saúde (OMS) desempenha um papel fundamental como guardião da saúde global, sendo responsável por coordenar os esforços internacionais no combate às doenças infecciosas. A organização atua como o principal órgão de disseminação de informações essenciais durante crises sanitárias globais. No entanto, no passado, a OMS foi alvo de críticas por suas respostas a epidemias e pandemias. Este artigo é um estudo oportuno que examina criticamente as responsabilidades da OMS na gestão de crises sanitárias globais, analisando suas respostas a emergências de

saúde anteriores. Por meio de uma análise qualitativa, o estudo avalia a eficácia da organização e a possibilidade de atribuição de responsabilidade por condutas indevidas. A pesquisa examina as respostas da OMS a crises sanitárias passadas, como a epidemia de Doença pelo Vírus Ebola (DVE) e a pandemia de COVID-19, que, em diversos aspectos, não atenderam ao seu mandato, levantando a necessidade de considerar sua responsabilidade internacional. Os autores destacam a importância de reforçar a responsabilização do Diretor-Geral da OMS. Além disso, argumentam que, na ausência de um órgão específico para tratar de reparações, a busca por uma opinião consultiva da Corte Internacional de Justiça (CIJ) pode ajudar a esclarecer a complexidade da atribuição de responsabilidade. Este estudo contribui para os debates sobre o aprimoramento da governança da saúde global e dos mecanismos de responsabilização.

**Palavras-chave:** responsabilidade internacional; Organização Mundial da Saúde (OMS); saúde global; Corte Internacional de Justiça (CIJ).

## 1 Introduction

The World Health Organization (WHO) is a prominent global institution playing an indispensable role in the web of global health governance.<sup>1</sup> The organization was established in 1948 as a specialized agency of the United Nations (UN) for global health management with the idea that health is a fundamental right and an essential pillar for unrestricted global development.<sup>2</sup> The mandate of the WHO encompasses a wide range of health issues that serve as an anchor for international cooperation, coordination, and response in addressing global health crises. As the primary authority on global health management, the WHO navigates a complex landscape of infectious diseases and charts a plan of action to prevent, treat, and educate the states during global health emergencies.

This paper is a critical study of the role of the WHO as guardians of global health, their responses during international health emergencies like pandemics and epi-

demics, and the responsibility imputed on them in case of failure to achieve their mandate. It critically examines the organization's mandate, functions, and responses to past health crises, shedding light on shortcomings that have gained traction over the years against the organization.

The WHO in the past has faced scrutiny for its handling of outbreaks such as the H1N1 influenza, the Ebola Virus Disease (EVD) epidemic in West Africa, and most recently, the COVID-19 pandemic. Criticisms have centered on issues of transparency, timeliness of responses, politicization of health decisions, and the effectiveness of coordination with member states and other stakeholders.

Through a comprehensive analysis of the WHO's controversies, this paper seeks an informed discussion on strengthening international health institutions, enhancing transparency and accountability, and ensuring effective global response to future health crises. The ultimate goal is to advocate for a more resilient, responsive, and accountable WHO that can effectively address the evolving health challenges of today and tomorrow.<sup>3</sup>

The paper aims to pave the way for establishing responsibility and binding legal obligations on international organizations (IOs). The paper deals with the responsibility of the WHO during public health emergencies, however, the ideas could be made applicable to a broader theme of IOs in future studies which have not been dealt with under this paper.

## 2 Examining the WHO's mandate

The primary aim of the WHO, as elucidated under Article 1 of its Constitution, is to achieve the highest possible level of health for all humankind. The Constitution articulates the concept of health beyond the mere absence of disease or infirmity, incorporating complete physical, mental, and social well-being.<sup>4</sup> The

<sup>1</sup> RUGER, Jennifer Prah; YACH, Derek. The global role of the World Health Organization. *Glob Health Gov.*, [s.l.], v. 2, n. 2, p. 1-11, Apr. 2009.

<sup>2</sup> MEIER, Benjamin Mason. Human rights in the World Health Organization: views of the director-general candidates. *Health and Human Rights*, [s.l.], v. 19, n. 1, p. 293-298, 2017.

<sup>3</sup> KARAMAN, Hydar; GÜNEŞ, Burak. The World Health Organization and the COVID-19 pandemic. In: AKILLI, Erman; GÜNEŞ, Burak; GÖKBEL, Ahmet. *Diplomacy, society and the COVID-19 challenge*. London: Routledge, 2023. DOI 10.4324/9781003377597. Cap. 18.

<sup>4</sup> WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025.

right to health is emphasized as the fundamental right that every human being, irrespective of race, religion, political ideology, or socio-economic status is entitled to the highest attainable levels.<sup>5</sup> It also emphasizes the importance of health in the promotion of peace and security, contingent upon the full cooperation of both individuals and states.<sup>6</sup> This part of the paper explores the international obligations of the WHO in maintaining international health.

To understand the duties and obligations of the WHO, we first need to have clarity on whether the WHO enjoys a separate legal identity from that of its members which is essential for the attribution of international obligations.

Art 66 of the WHO Constitution establishes the principle of specialty, recognizing that the organization holds a distinct legal personality separate from its member states to fulfill its functions. This signifies that the WHO enjoys a separate legal identity that allows it to undertake specific functions and responsibilities independently. The WHO can carry out its mandate without conflating its identity with that of its member states.<sup>7</sup> Moreover, Article 69 of the WHO Constitution designates the organization as a specialized organ of the UN. The separate legal identity of the WHO has also been recognized in the case *Legality of the use by a state of nuclear weapons in armed conflict*.<sup>8</sup>

It may be inferred from the preceding discussion that the WHO enjoys a separate legal identity and is capable of holding rights and fulfilling obligations. It may be concluded that the WHO is a body having a separate independent personality from that of its mem-

bers and is capable of holding rights and fulfilling responsibilities. The organization has been entrusted with many fundamental functions that need to be performed by it. Firstly, the WHO performs normative functions that create international norms and standards<sup>9</sup> including international conventions, agreements, and regulations both of binding and non-binding character and recommendations.<sup>10</sup> Secondly, it coordinates and directs initiatives such as Health for all, poverty eradication, and other health initiatives. And lastly, it is involved in research and technical cooperation functions, covering areas like disease eradication, pandemic control, handling humanitarian crises, and emergency responses.<sup>11</sup>

Aligned with the UN Charter's purpose of advancing human rights,<sup>12</sup> The WHO is mandated to respect and promote this purpose. Apart from the UN Charter, there are other international instruments including the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>13</sup>, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination against Women (CEDAW)<sup>14</sup>, and the Convention on the Rights of the Child (CRC), which place an obligation on the WHO to actively promote and uphold human rights.<sup>15</sup> The interconnectedness between WHO and human rights instruments reflects a concerted effort to ensure that health-related policies and actions are consistent with the broader principles of human rights.<sup>16</sup> Apart from

<sup>5</sup> CLIFT, Charles. *The role of the World Health Organization in the International System*. Londres: Chatham House, 2013. Available at: <https://www.chathamhouse.org/sites/default/files/publications/research/2013-02-01-role-world-health-organization-international-system-clift.pdf>. Access on: 11 Feb. 2025.

<sup>6</sup> ECCLESTON-TURNER, Mark; MCARDLE, Scarlett. The Law of Responsibility and the World Health Organisation: a case study on the West African ebola outbreak. *JSRN*, [s.l.], p. 1-21, Sep. 2020. DOI 10.2139/ssrn.3673116. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3673116](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3673116). Access on: 11 Feb. 2025.

<sup>7</sup> IVÁN SÁNCHEZ, Diego Ernesto. The international responsibility of the World Health Organization in case of pandemics and the role of individual. *Peace & Security*, [s.l.], n. 10, p. 1-28, 2022. DOI 0.25267/Paix\_secur\_int.2022.i10.1202.

<sup>8</sup> ICJ. *Advisory opinion of 8 July 1996*. Request of judgmentss advisory opinions and orders. *Legality of the use by a state of nuclear weapons in armed conflict*.

<sup>9</sup> GOSTIN, Lawrence O.; SRIDHAR, D.; HOUGENDBLER, D. The normative authority of the World Health Organization. *Public Health*, [s.l.], v. 129, n. 7, p. 854-863, July 2015. DOI 10.1016/j.puhe.2015.05.002.

<sup>10</sup> WHO Evaluation Office. *Evaluation of WHO's normative function*: evaluation brief July 2017. Geneva: WHO, 2017. Available at: [https://www.who.int/docs/default-source/documents/evaluation/evalbrief-normativefunction-15jan18.pdf?sfvrsn=bf320621\\_21](https://www.who.int/docs/default-source/documents/evaluation/evalbrief-normativefunction-15jan18.pdf?sfvrsn=bf320621_21). Access on: 11 Feb. 2025.

<sup>11</sup> BURCI, Gian Luca; VIGNES, Claude-Henri. *World Health Organization*. The Hages: Kluwe Law International, 2004.

<sup>12</sup> UNITED NATIONS. [Charter (1945)]. *United Nations Charter*. New York: UN, 1945. art 1.

<sup>13</sup> UNITED NATIONS. *General Assembly resolution 2200A (XXI)*, 16 December 1966. International Covenant on Economic, Social and Cultural Rights. art 12

<sup>14</sup> CEDAW. *General Recommendation no. 24: article 12 of the Convention (Women and Health)*. Adopted at the Twentieth Session of the Committee on the Elimination of Discrimination against Women, in 1999 (Contained in Document A/54/38/Rev.1, chap. I).

<sup>15</sup> UNITED NATIONS. *General Assembly resolution 44/25*, 20 November 1989. Convention on the Rights of the Child. New York: UN, 1989. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. Access on: 4 Jan. 2024.

<sup>16</sup> ONZIVU, William. (Re)nvigorating the World Health Organi-



these legally binding instruments, the importance of the human rights approach during the pandemic was emphasized by the UN High Commissioner for Human Rights Michelle Bachelet,<sup>17</sup> the UN Sec-Gen Antonio Guterres also acknowledged the centrality of human rights in the pandemic response across organizations.<sup>18</sup> The WHO Director-Gen Tedros Adnom Ghebreyesus explicitly included calls to protect human rights in the pandemic response.<sup>19</sup>

The Constitution of the WHO outlines a set of comprehensive objectives and functions that guide its actions. These include directing and coordinating international health efforts and fostering collaboration with various entities such as the UN, governments, NGOs, and other relevant bodies.<sup>20</sup> In emergencies, the organization is mandated to provide technical support and provide aid upon request of the member state. It is also tasked with offering health services, including epidemiological and statistical services, and actively working to combat diseases.<sup>21</sup>

It is evident that the WHO is mandated with important functions concerning the maintenance of international health and the well-being of all mankind. The significance of the right to health has also been recognized in various other international instruments, however, the task of maintaining and overlooking all aspects of health has been entrusted to the WHO. We argue that the WHO Constitution and the other international instruments recognizing the right to health create a bin-

ding international obligation on the WHO. In case of violation of these obligations, the organization needs to be circled and attributed with responsibility.

### 3 Assessing the WHO's international obligations during global health crises

Pandemics are “problems without passports”.<sup>22</sup> The world recently witnessed the deadliest attack on humans in the form of the novel coronavirus pandemic. Human survival became the priority, the greatest of nations had turned to the “me first” policy. In these crucial times, the WHO played a central role in the management and handling of the spread of disease. During situations like epidemics and pandemics, the WHO is expected to provide specialized knowledge for a coordinated response.<sup>23</sup> Within the WHO framework, the World Health Assembly (WHA) plays a pivotal role as the decision-making body, consisting of delegates from the member states.<sup>24</sup> The body is responsible for the adoption of resolutions within the jurisdiction of the WHO.<sup>25</sup> The WHA, through its resolutions, has mandated the WHO with the responsibility to provide comprehensive support to member states in addressing infectious diseases. Resolution 56.19 directs the organization to prevent and control the influence of pandemics and annual epidemics. Another Resolution WHA 58.5 emphasizes the preparation and response to pandemic influenza.<sup>26</sup>

zation's governance of health rights: repositing an evolving legal mandate, challenges and prospects. *African Journal of Legal Studies*, [s.l.], v. 4, n. 3, p. 225-256, 2011. DOI 10.1163/170873811X585592.

<sup>17</sup> CORONAVIRUS: human rights need to be front and centre in response, says bachelet. UN, 6 March, 2020. Available at: <https://www.ohchr.org/en/press-releases/2020/03/coronavirus-human-rights-need-be-front-and-centre-response-says-bachelet>. Access on: 11 Feb. 2025.

<sup>18</sup> GUTERRES, António. We are all in this together: human rights and COVID-19 response and recovery. UN, 23 Apr. 2020. Available at: <https://jamaneetwork.com/journals/jama-health-forum/fullarticle/2765615>. Access on: 11 Feb. 2025.

<sup>19</sup> MEIER, Benjamin Mason; MESQUITA, Judith Bueno de; WILLIAMS, Caitlin R. Global obligations to ensure the right to health. *Yearbook of International Disaster Law Online*, [s.l.], v. 3, n.1, p. 3-34, 2022. DOI 10.1163/26662531\_00301\_002.

<sup>20</sup> CLIFT, Charles. *The role of the World Health Organization in the International System*. Londres: Chatham House, 2013. Available at: <https://www.chathamhouse.org/sites/default/files/publications/research/2013-02-01-role-world-health-organization-international-system-clift.pdf>. Access on: 11 Feb. 2025.

<sup>21</sup> Strengthening WHO preparedness for and response to health emergencies WHA 74.7 Agenda 17.3(2021).

<sup>22</sup> PETRONE, F. The future of global governance after the pandemic crisis: what challenges will the BRICS face? *International Politics*, [s.l.], v. 59, n. 2, p. 244-259, 2021. DOI 10.1057/s41311-021-00301-8.

<sup>23</sup> KAYA, I.; SIMSEK, G. E. World Health Organization and international health regulations: the COVID-19 case and combating epidemics under international law. *Istanbul Law Review*, [s.l.], v. 78, n. 2, p. 983-1007. Available at <https://iupress.istanbul.edu.tr/en/journal/mecmua/article/dunya-saglik-orgutu-ve-uluslararasi-saglik-tuzugu-covid-19-orneginde-uluslararasi-hukuka-salgin-hastaliklarla-mucadele>. Access on: 11 Feb. 2025.

<sup>24</sup> WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025. art. 9-10.

<sup>25</sup> WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025. art. 19.

<sup>26</sup> WHA 58.5, Strengthening pandemic-influenza preparedness and response, May 23 (2005).



In this part, we analyze the international obligations of the WHO during unprecedented global health crises by reviewing legal instruments and fundamentals of international law.

### 3.1 International Health Regulations(IHR) (2005)

A major effort in the direction to deal with the global spread of diseases was in the form of the adoption of the International Health Regulation, 2005 to create binding legal obligations on member states for diseases having the potential to spread across nations.<sup>27</sup> These rules have their roots in the inaugural International Sanitary Conference of 1851. The conference witnessed several European states in attendance, aimed to combat cholera, and resulted in the birth of the first Sanitary Regulations. After the establishment of WHO in 1948, it initially incorporated these rules. However, in 1969, the WHA amended and modernized these rules, renaming them as the International Health Regulations (1969). The first version of IHR (1969) addressed six quarantinable diseases, later reduced to three: cholera, plague, and yellow fever. However, the deficiencies in the IHR 1969 became evident in the times to follow, particularly regarding trans-border communicable diseases. Firstly, numerous communicable diseases were not subject to notification by the WHO. Secondly, the reporting system relied on each state voluntarily reporting disease outbreaks, and many states refrained from doing so.<sup>28</sup> Thirdly, there was a lack of formalized and effective tools for internationally coordinating disease prevention. A comprehensive review of IHR(1969) gained traction after the 2003 SARS epidemic, leading to the adoption of the current IHR (2005) by the WHA.<sup>29</sup>

IHR (2005) is one of the widely endorsed international agreements with 196 states committed to its

implementation.<sup>30</sup> Its objective is to “prevent, mitigate, control and respond to the global spread of diseases in a manner proportionate to public health risks while minimizing unwarranted disruption to international traffic and trade.”<sup>31</sup> Notably, the WHO members commit to notifying the WHO of events that might qualify as “Public health emergency of International concern”(PHEIC).<sup>32</sup> In a significant departure from the earlier IHRs, the 2005 rules encompass any event deemed a “PHEIC.”<sup>33</sup> This, in principle, includes outbreaks of communicable diseases. Similar to IHR 1969, IHR (2005) relies on notifications from WHO member states. However, it takes a step forward by introducing the capacity of the WHO to assess potential “events” based on information from sources beyond the state of occurrence, such as media, reports, researchers, or non-governmental organizations. Additionally, IHR (2005) empowers the WHO to collaborate with other states and IOs to address disease outbreaks, even in cases where the originating state is uncooperative.<sup>34</sup>

Article 5 of the IHR (2005) mandates states to establish and maintain the capacity to detect, assess, and report events that may constitute a PHEIC within their borders. The article also empowers the WHO with the responsibility to collect information on events and evaluate their potential for international disease spread, however, it lacks the authority to conduct inspection within a state or compel states to notify or share information. Article 6 stipulates that state parties are obligated to promptly notify the WHO of any potential PHEIC within their territories within 24 hours of assessing available information. The article also reinforces continuous communication on the infectious disease.

<sup>30</sup> WHO. International Health Regulations. *WHO*, [2025?]. Available at: [https://www.who.int/health-topics/international-health-regulations#tab=tab\\_1](https://www.who.int/health-topics/international-health-regulations#tab=tab_1). Access on: 16 Feb. 2025.

<sup>31</sup> WHO. *International Health Regulations*. 3rd. ed. Geneva: WHO, 2005. Available at: <https://iris.who.int/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>. Access on: 16 Feb. 2025. art. 2.

<sup>32</sup> WHO. *International Health Regulations*. 3rd. ed. Geneva: WHO, 2005. Available at: <https://iris.who.int/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>. Access on: 16 Feb. 2025. art. 6.

<sup>33</sup> WHO. *International Health Regulations*. 3rd. ed. Geneva: WHO, 2005. Available at: <https://iris.who.int/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>. Access on: 16 Feb. 2025. art. 9.

<sup>34</sup> WHO. *International Health Regulations*. 3rd. ed. Geneva: WHO, 2005. Available at: <https://iris.who.int/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>. Access on: 16 Feb. 2025. art. 10.

<sup>27</sup> GOSTIN, Lawrence O.; KATZ, Rebeca The International health regulations: the governing framework for global health security. *The Milbank Quarterly*, [s.l.], v. 92, n. 2, p. 264-313. DOI 10.1111/1468-0009.12186. Available at: <https://onlinelibrary.wiley.com/doi/10.1111/1468-0009.12186>. Access on: 11 Feb. 2025.

<sup>28</sup> HARDIMAN, Maxwell Charles. World Health Organization perspective on implementation of international health regulations. *Emerging Infectious Diseases*, [s.l.], v. 18, n. 7, p. 1041-1046, July 2012. DOI 10.3201/eid1807.120395. Available at: [https://wwwnc.cdc.gov/eid/article/18/7/12-0395\\_article](https://wwwnc.cdc.gov/eid/article/18/7/12-0395_article). Access on: 11 Feb. 2025.

<sup>29</sup> BROBERG, M. A critical appraisal of the World Health Organization's International health regulations (2005) in times of pandemic: it is time for revision. *European Journal of Risk Regulation*, [s.l.], v. 11, n. 2, p. 202-209, 2020. DOI 10.1017/err.2020.26.

Article 9 of the rules permits WHO to consider reports from “other sources”.<sup>35</sup> This may include information received from non-state sources. The IHR imposes on the WHO a duty of surveillance and supervision, outlined in Art 5(4), 9, and 10 IHR. Taking into account the WHO’s ability to collect information from non-state sources, does not permit inaction in the face of potential events if the affected state party fails to notify within the specified time limit. However, under IHR the majority authority remains with the state of inception of disease as without their verification the WHO cannot disseminate information to the other states.<sup>36</sup> However, this does not preclude the WHO from fulfilling its responsibility and continuing to act based on information from available non-state sources.<sup>37</sup>

The IHR (2005), as the *lex specialis*, outlines provisions indicating a direct obligation for the WHO.<sup>38</sup> Article 12 of the IHR (2005) mandates the WHO Director-General to decide the designation of the disease as a pandemic and declare it as a PHEIC. Post determination and disease declaration as PHEIC, the WHO under Art 49 IHR (2005) has to formulate temporary recommendations. It is important to note here that Art 12 of the IHR recognizes the Director-Gen as the main representative of the organization which is in line with Art 32 of the WHO Constitution. In the advisory opinion, *Difference Relating to Immunity from the Legal Process of a Special Rapporteur of the Commission on Human Rights*, the ICJ observed that the actions or omission of the main civil servant may lead to the organization’s international responsibility for damages.<sup>39</sup> However, the substantive content of Art 12 IHR(2005) is intricately linked to the

obligations of the state parties, as outlined under Art 6(1) and 7 IHR(2005), emphasizing the duty to notify events that may lead to the designation of a PHEIC, this needs to be respected by the DG.

Art 12(1) IHR (2005) in line with the Art 31 Vienna Convention on the Law of Treaties, 1969 clarifies that information provided by state parties does not prevent DG from designating an event as a PHEIC, even if the health authorities of the affected state party disagree.<sup>40</sup>

To determine whether an international obligation exists for the WHO we look at a specific duty outlined in the above provisions. The IHR underwent a significant reform to reduce dependence on the state party’s timing of notification. Therefore, interpreting Art 12 of the IHR (2005) indicates that compliance with the state party’s duty to notify is not solely based on timing, as other mechanisms assign a duty to the WHO. This interpretation may be debated but is reasonable, as there are no circumstances in which this situation would be considered wrongful. The international obligation under Art 12 of the IHR stands alone, following the principle of integration.

### 3.2 Human Rights obligations

The UN Sec-Gen urged the UN agencies to integrate human rights work following which the WHO actively embraced this approach. The directive emphasizes achieving human rights, focusing on empowering right-holders and ensuring duty-bearers fulfill their obligations. They envisioned human rights principles guiding the entire process, from policy design to implementation, monitoring, and evaluation of development initiatives.

The WHO is an integral body within the UN and has to comply with the UN Charter and its own Constitution, to promote human rights. This aligns with international legal standards such as Art 38(1)(c) of the ICJ statute, and customary international law, which necessitate a “duty of diligence” to prevent the subject’s policies, actions, or potential neglect from undermining

<sup>35</sup> BERMAN, Ayelet. The World Health Organization and COVID-19: how much legal authority does the WHO really have to manage the pandemic? *CIL*, [2025?]. Available at: <https://cil.nus.edu.sg/the-world-health-organization-and-covid-19-how-much-legal-authority-does-the-who-really-have-to-manage-the-pandemic-by-dr-ayelet-berman/>. Access on: 16 Feb. 2025.

<sup>36</sup> WHO. *International Health Regulations*. 3rd. ed. Geneva: WHO, 2005. Available at: <https://iris.who.int/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>. Access on: 16 Feb. 2025. art. 9-11.

<sup>37</sup> WILDER-SMITH, A.; OSMAN, S. Public health emergencies of international concern: a historic overview. *Journal of Travel Medicine*, v. 27, n. 8, p. 1-13, 2020. DOI 10.1093/jtm/taaa227.

<sup>38</sup> ESSAWY, R. M. Closing the doors on health nationalism: the non-emptiness of the legal duty to cooperate in pandemic response under *lex specialis*. *Max Planck Yearbook of United Nations Law Online*, v. 25, n. 1, p. 115-147, 2022. DOI 10.1163/18757413\_02501021.

<sup>39</sup> *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights Advisory Opinion of 29 Apr 1999.*

<sup>40</sup> IVÁN SÁNCHEZ, Diego Ernesto. The international responsibility of the World Health Organization in case of pandemics and the role of individual. *Peace & Security*, [s.l.], n. 10, p. 1-28, 2022. DOI 0.25267/Paix\_secur\_int.2022.i10.1202.

the human rights obligations of other international subjects.<sup>41</sup>

It is noteworthy that the obligations of IHR(2005) must comply with international human rights law(IHRL). Art 3 IHR (2005) outlining the international obligations of WHO during pandemics emphasizes that the decision must adhere to IHRL, impacting both the scope of temporary recommendations and the procedure for designating a PHEIC. The language used in the article reflects an imperative character, evident from the use of the words “shall be” in the first three paragraphs. Two important considerations arise from the same:

Any action by the WHO under Art 12 IHR(2005) must observe “dignity, human rights and fundamental freedoms.”

It must take into account the UN Charter and the WHO Constitution and the goal of universal application for the protection of all people from the spread of disease globally.

Therefore, we may conclude the duty resting upon the WHO, outlined in Art 3 IHR(2005), has two-fold considerations:

Any action based on Art 12 IHR(2005) must comply with IHRL.

Any action adopted under Art 12 IHR (2005) must align with the goals of IHRL and the principles outlined in other international instruments.<sup>42</sup>

In line with the above observations, we argue that the core values embedded in the UN, including those articulated in the Universal Declaration of Human Rights (UDHR), are not only binding on states but also on IOs, including the WHO. Following this principle makes the WHO in conjunction with customary international law, as obligating the WHO to uphold and safeguard human rights in all its policies, programs, and activities. This involves both the promotion of existing standards and the vigorous protection of human rights. The inclusion of human rights in the WHO Constitu-

tion by member states reflects a proactive stance to prevent human rights violations within the organization’s global health mandate. According to scholars, a constitution establishes a political order, delineating the competencies of different institutions and their interrelations. Consequently, laws generated by the UN’s legal order could potentially apply to both institutions and states, contingent on the nature of their activities.<sup>43</sup>

Human rights obligations are reflective of the shared constitutional traditions of states, and can bind organizations through various means: the terms of their constituent instruments, customary international law, or general principles of law. In this context, the WHO is also expected to observe and uphold international human rights law even during PHEIC.

### 3.3 Jus Cogens and the WHO

Does the WHO have an international obligation under jus cogens norms concerning its conduct during pandemics?

To answer this question, we need to examine the WHO Constitution and the IHR (2005). Under Art 3 of IHR, the WHO’s objective is defined as achieving “universal application for the protection of all people from the international spread of disease”<sup>44</sup> Art 3 IHR a binding international legal obligation adopted by the WHA needs to be examined in relation to the right to health. The key question is whether the primary obligation of the WHO under Art 12 of the IHR (2005) qualifies as an erga omnes norm or is a part of the core of jus cogens norms.

The fundamental objective is to determine if Art 26 of the Draft Articles on the Responsibility of International Organizations(DARIO), which excludes any circumstance precluding wrongfulness when a duty arises from jus cogens norm, applies in this context. Although the International Law Commission (ILC) identifies a limited material scope of application of jus cogens norms, including prohibitions such as aggression, genocide, slavery, racial discrimination, torture, crime against humanity, and the right to self-determination, a more

<sup>41</sup> ONZIVU, William. (Re)navigating the World Health Organization’s governance of health rights: repositing an evolving legal mandate, challenges and prospects. *African Journal of Legal Studies*, [s.l.], v. 4, n. 3, p. 225-256, 2011. DOI 10.1163/170873811X585592.

<sup>42</sup> TOEBES, B.; FORMAN, L.; BARTOLINI, G. Toward human rights-consistent responses to health emergencies: what is the overlap between core right to health obligations and core international health regulation capacities? *Health Hum Rights*, [s.l.], v. 22, n. 2, p. 99-111, Dec. 2020.

<sup>43</sup> SCHERMERS, H. G.; Blokker, N. M. *International Institutional Law: unity within diversity*. 5th ed. rev. Leiden: Martinus Nijhoff, 2011.

<sup>44</sup> WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025. art. 1.



expansive interpretation may be warranted.<sup>45</sup> Analyzing the circumstances surrounding the WHO Constitution, including the IHR, and considering the teleological content of both international instruments under Art 31 of the VCLT(1969), it seems unreasonable to adopt a restrictive perspective.

To get a better insight we need to examine Art 53 of the VCLT and relevant ICJ jurisprudence to determine whether the reference to IHRL in Art 3 of the IHR qualifies as *jus cogens*. The interpretation of conventional and customary norms of general international law, including the force of *jus cogens* norms and their comparison with *erga omnes* norms, has been subject to contradiction and restriction.<sup>46</sup> Therefore, to ascertain whether Art 3 IHR falls within the category of *jus cogens*, a detailed analysis of the substantive content of the provision is required. To determine if Art 3 IHR establishes a *jus cogens* norm, certain conditions must be met. Firstly, the origin of such norms should be from an international subject toward the global community.<sup>47</sup> Secondly, it must relate to obligations relating to the basic rights of humans.<sup>48</sup> Thirdly, it must serve a purely humanitarian and civilizing purpose.<sup>49</sup> Fourthly, it should create obligations distinct from other provisions.<sup>50</sup> Lastly, it should stem from a generalized practice or *opinion juris* or be part of an international instrument.<sup>51</sup>

Analyzing these criteria, Art 3 IHR fits like a glove to be considered as a *jus cogens* norm. The WHO's duty to act as the authority on global public health implies an obligation to fulfill the objective under Art 1 of the WHO Constitution, ensuring the right to attain

the highest standard of health. There's a functional link between the purpose of the IHR, including the right to health, and other IHRL norms. The IHR aims to prevent the international spread of disease, aligning with the right to health under ICESCR. Art 3 IHR imposes a unique obligation compared to Art 12 IHR, establishing an autonomous duty to act according to the substantive limits of human rights, particularly the right to health. This duty refers to principles and norms in international human rights treaties universally accepted.

In conclusion, the duty of Art 3 IHR concerning WHO's role during the pandemic can be regarded as *jus cogens* norm. This means its adherence is mandatory, and there are no grounds to claim circumstances that would exempt international responsibility.

The IHR requires the WHO to act swiftly in matters relating to disease spread and timely action is the key to effectively combating a disease. Article 12 of the IHR requires the DG of WHO to determine PHEIC. The IHR endows a significant role to the DG of the WHO in deciding whether a situation may be termed as PHEIC. The DG has to consult the state party regarding the determination of disease, however, if they fail to conclude, the matter will be put before the EC for their views,<sup>52</sup> and the final call for labeling a situation as PHEIC remains with the DG.<sup>53</sup> Analyzing these provisions helps to understand the positioning of the WHO during global health emergencies. The authors argue that interpreting Art 12 and 49 of the IHR emphasizes the WHO's responsibility to act independently when required to take crucial steps towards the determination of a PHEIC.

This section of the paper outlines the significant role the WHO plays during global health emergencies. The interpretation of the IHR helps us in navigating the international obligations of the WHO relating to pandemics. Based on the above discussion, we argue there exists an international obligation of the WHO in matters of global health and any preclusion leads to attracting international responsibility by the organization.

<sup>45</sup> MURPHY, S. D. Peremptory norms of general international law (*jus cogens*) and other topics: the seventy-first session of the international law commission. *American Journal of International Law*, v. 114, n. 1, p. 68–86, 2020. DOI 10.1017/ajil.2019.74.

<sup>46</sup> DE WET, Erika. *Jus cogens and obligations erga omnes*. In: SHELTON, Dinah (ed.). *The Oxford Handbook of International Human Rights Law*. Oxford: Oxford Handbooks, 2013.

<sup>47</sup> Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

<sup>48</sup> ICJ. *Judgment of 5 February 1970*. Reports of judgments, advisory opinions and orders. Case concerning the Barcelona Traction, Light and Power Company, Limited (new application: 192. Belgium v. Spain. Second phase). § 33-34.

<sup>49</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) ICJ Report2007, para 161-162.

<sup>50</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) ICJ Report2007, § 161-162.

<sup>51</sup> Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) ICJ Report 2012, § 99.

<sup>52</sup> WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025. art. 13 §3.

<sup>53</sup> WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025. art. 49 §5.



## 4 WHO in the spotlight: evaluating actions, accountability, and call for reform

In this part of the paper, we evaluate the conduct of the WHO in pandemic prevention and control. The previous section of the paper clarifies the international obligations of the WHO during global health emergencies and in this part, we examine how far they have complied with these obligations with the help of analyzing their responses to real events.

The IHR (2005) helped clarify the roles and responsibilities of the WHO and its member states in preventing and controlling the international spread of diseases, along with providing measures for public health responses.<sup>54</sup> The regulations established binding international regulations for responding to a pandemic, the WHO has performed an increasingly significant role since its inception in averting disease transmission between nations, demonstrated by its responses to various outbreaks such as the 2009 H1N1 virus, Polio, Zika, and Ebola in 2014, Ebola in 2018, and COVID-19 in 2020.<sup>55</sup> Apart from the IHR, there are other international instruments like the Global Outbreak Alert and Response Network(2000), the Pandemic Influenza Preparedness Framework(2011), the Public Health Emergency Operations Centre Network(2012), and the Contingency Fund for Emergencies(2015), collectively contributing to the reinforcement of national public health systems by the WHO.<sup>56</sup> Despite these several mechanisms the trust in the WHO drastically diminished post-COVID-19 pandemic.<sup>57</sup> This was majorly due to its delayed

response in declaring the outbreak and lapses in investigating the source of the outbreak.<sup>58</sup>

The novel coronavirus knew no border and spread rapidly across the globe.<sup>59</sup> It adversely impacted all aspects of human life from trade to human rights.<sup>60</sup> Experts consider it could just be the starting point for many more pandemics that will follow in due course much deadlier than SARS-COV-2.<sup>61</sup>

The tryst with the deadly coronavirus began in Dec 2019 when reports of patients with pneumonia of unknown origin were found to have a virus similar to SARS-CoV. The WHO Regional Office in Western Pacific was intimated about the mysterious virus a day after its inception in the Wuhan city, People's Republic of China. On Jan 1<sup>st</sup>, actions by the WHO were initiated by activating support teams and seeking information from China. By Jan 5<sup>th</sup>, the WHO was actively dispensing the information globally through the IHR Events Information System. The organization received genome sequences of the new virus on Jan 10<sup>th</sup>, and Thailand confirmed the first case outside of China on Jan 13<sup>th</sup>. The WHO acknowledged limited human-to-human transmission on Jan 14<sup>th</sup> but reported no evidence of such transmission, based on information received from Chinese authorities. However, by Jan 21<sup>st</sup> evidence of human-to-human transmission was found in Wuhan. As cases swiftly spread globally, the WHO convened the Emergency Committee on Jan 22<sup>nd</sup> but chose not to designate COVID-19 as a PHEIC. On January 23<sup>rd</sup> Wuhan City, China was placed under a lockdown to curb the spread of COVID-19.<sup>62</sup> The WHO on the 30<sup>th</sup> Jan

<sup>54</sup> GOSTIN, Lawrence O.; KATZ, Rebeca The International health regulations: the governing framework for global health security. *The Milbank Quarterly*, [s.l.], v. 92, n. 2, p. 264-313. DOI 10.1111/1468-0009.12186. Available at: <https://onlinelibrary.wiley.com/doi/10.1111/1468-0009.12186>. Access on: 11 Feb. 2025.

<sup>55</sup> HOFFMAN, S. J., SILVERBERG, S. L. Delays in global disease outbreak responses: lessons from H1N1, Ebola, and Zika. *American Journal of Public Health*, v. 108, n. 3, p. 329-333. DOI 10.2105/ajph.2017.304245.

<sup>56</sup> KUZNETSOVA, L. COVID-19: the world community expects the World Health Organization to play a stronger leadership and coordination role in pandemics control. *Frontiers Public Health*, [s.l.], v. 8, p. 1-6, Sept. 2020. DOI 10.3389/fpubh.2020.00470.

<sup>57</sup> GUO, C. *et al.* The effect of COVID-19 on public confidence in the World Health Organization: a natural experiment among 40 countries. *Globalization and Health*, v. 18, n. 1, p. 1-10, v. 2022. DOI 10.1186/s12992-022-00872-y.

<sup>58</sup> ARCHIVED: WHO Timeline - COVID-19. *WHO*, 27 Apr. 2020. Available at: <https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>. Access on: 11 Jan. 2024.

<sup>59</sup> MOHAMED, Kawthar *et al.* Borderless collaboration is needed for COVID-19: a disease that knows no borders. *Infection Control & Hospital Epidemiology*, [s.l.], v. 41, n. 10, p. 1245-1246, Oct. 2020. DOI 10.1017/ice.2020.162.

<sup>60</sup> HALEEM, A.; JAVAID, M.; VAISHYA, R. (2020, March). Effects of COVID-19 pandemic in daily life. *Current Medicine Research and Practice*, [s.l.], v. 10, n. 2, p. 78-79, 2020. DOI 10.1016/j.cmrp.2020.03.011

<sup>61</sup> SMITHAM, Eleni; GLASSMAN, Amanda. The next pandemic could come soon and be deadlier. *CGDev*, 25 Aug. 2021. Available at: <https://www.cgdev.org/blog/the-next-pandemic-could-come-soon-and-be-deadlier>. Access on: 11 Feb. 2025.

<sup>62</sup> SINGH, Sudhvir *et al.* How an outbreak became a pandemic: a chronological analysis of crucial junctures and international obligations in the early months of the COVID-19 pandemic. *The Lancet*, [s.l.], v. 398, n. 10316, p. 2109-2124, Dec. 2021. DOI 10.1016/S0140-6736(21)01897-3.

declared the outbreak as PHEIC.<sup>63</sup> After elaborate discussions and debates, the virus was officially named by the WHO as SARS-CoV-2.<sup>64</sup> At that point, there were 78,811 confirmed cases globally, with 17 deaths outside China and 2,445 within China.<sup>65</sup> Post declaration as a PHEIC, the Director-General recommended activating the UN crisis management policy on Feb 4<sup>th</sup>, 2020, fostering collaboration with other IOs. The WHO International Mission began its work in the city of Wuhan on Feb 16<sup>th</sup>. Later on, the WHO published the first investigation mission report, confirming the highly infectious nature of the novel coronavirus and its potential for significant health, economic, and social impacts.<sup>66</sup> In March 2020 the COVID-19 virus was declared a pandemic by the WHO considering its spread across the globe.<sup>67</sup> Post-pandemic declaration the WHO and the International Civil Aviation Organization (ICAO) jointly recommended adopting IHR health measures for international passenger traffic.<sup>68</sup>

The delay in responding to the virus and the catastrophe that unfolded swiftly led to questioning the accountability of the WHO by critics.<sup>69</sup> The inherent

flaws in the WHO functioning became apparent and the organization was called out by states and non-state actors. We argue that the failure to disclose timely the outbreak of novel coronavirus by the WHO constitutes a breach of its international obligations. It invokes Art 4 of the Draft Articles on Responsibility of International Organization (DARIO) adopted by the International Law Commission (ILC) in 2011.<sup>70</sup> The principle of that there is a remedy for every wrong, however, it is apparent that the WHO violated many essential rights it was obligated to uphold under its mandate but the current international legal system leaves no effective remedy to states and individuals.

Similar concerns arose with respect to the conduct of WHO in the past during the 2009 swine flu outbreak where the organization was criticized for being inadequate and lacking transparency. Also, during the Ebola outbreak, the organization received a major backlash as the WHO blamed it on the incompetence of the African countries, highlighting the systemic challenges in responding to health crises and the need for global support. Events of biases the institution has towards the global north is another criticism that the WHO had to face, leading to perpetuating perpetual gaps already existing. Critics also suggest the organization should focus on a scientific fact-based approach rather than political rhetoric.<sup>71</sup> At the time of the inception of the COVID-19 pandemic, the organization had to withstand a series of accusations pointing out its closeness with China and its failure to take timely action. In a speech post visiting China on 30 Jan 2020, the Director General of WHO stated: that he was confident about China's commitment to China's transparency and safeguarding

<sup>63</sup> NARAIN, J. *et al.* Responding to COVID-19 pandemic: why a strong health system is required. *Indian Journal of Medical Research*, [s.l.], v. 151, n. 2, p. 140-145. Feb./Mar., 2020. DOI 10.4103/ijmr.ijmr\_761\_20.

<sup>64</sup> MASTERS-WAAGE, T. C.; JHA, N.; REB, J. COVID-19, Coronavirus, Wuhan Virus, or China Virus? Understanding how to “do no harm” when naming an infectious disease. *Frontiers in Psychology*, [s.l.], v. 11, p. 1-10, Dec. 2020. DOI 10.3389/fpsyg.2020.561270.

<sup>65</sup> GOPICHANDRAN, Vijayaprasad; SUBRAMANIAM, Sudarshini. Response to Covid-19: an ethical imperative to build a resilient health system in India. *Indian Journal of Medical Ethics*, [s.l.], v. 5, n. 2, p. 89-92, 2020. Editorial. DOI 10.20529/IJME.2020.026. Available at: <https://ijme.in/articles/response-to-covid-19-an-ethical-imperative-to-build-a-resilient-health-system-in-india/?galley=html>. Access on: 11 Feb. 2025.

<sup>66</sup> WHO. *Report of the WHO-China joint mission on coronavirus disease 2019 (COVID-19)*. Geneva: WHO, 2020. Available at: [https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19---final-report-1100hr-28feb2020-11mar-update.pdf?sfvrsn=1a13fda0\\_2&download=true](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19---final-report-1100hr-28feb2020-11mar-update.pdf?sfvrsn=1a13fda0_2&download=true). Access on: 12 Jan. 2024.

<sup>67</sup> COVID-19: WHO declares pandemic because of “alarming levels” of spread, severity, and inaction. *BMJ*, 12 Mar. 2020. DOI 10.1136/bmj.m1036.

<sup>68</sup> ICAO. Declaration adopted by the ICAO Council at the Fourth Meeting of the 219th Session on 9 March 2020 relating to the outbreak of novel coronavirus (COVID-19). *ICAO*, 9 March 2020. Available at: <https://www.icao.int/Security/COVID-19/Pages/Declaration.aspx>. Access on: 12 Jan. 2024.

<sup>69</sup> JONES, Lee; HAMEIRI, Shahar. Explaining the failure of global health governance during COVID-19. *International Affairs*, [s.l.], v. 98, n. 6, p. 2057-2076, Nov. 2022. DOI 10.1093/ia/iia231. Also refer TAYLOR, Allyn L.; HABIBI, Roojin. The collapse of global cooperation under the WHO international health regulations at the out-

set of COVID-19: sculpting the future of global health governance. *American Society of International Law*, [s.l.], v. 24, n. 15, 2020. Available at: <https://www.asil.org/insights/volume/24/issue/15/collapse-global-cooperation-under-who-international-health-regulations>. Access on: 22 Feb. 2025. Also refer GOSTIN, Lawrence O. COVID-19 reveals urgent need to strengthen the World Health Organization. *JAMA Health Forum*, [s.l.], v. 1, n. 4, e200559, 2020. DOI 10.1001/jamahealthforum.2020.0559. Available at: <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2765615>. Access on: 11 Feb. 2025.

<sup>70</sup> GAL-OR, Noemi; RYNGAERT, Cedric. From theory to practice: exploring the relevance of the Draft Articles on the Responsibility of International Organizations (DARIO): the responsibility of the WTO and the UN. *German Law Journal*, [s.l.], v. 13, n. 5, p. 511-541, 2012. DOI 10.1017/S2071832200020630.

<sup>71</sup> HO, Jing-Mao; LI, Yao-Tai; WHITWORTH, Katherine. Unequal discourses: Problems of the current model of world health development. *World Development*, [s.l.], v. 167, p. 1-5, Jan. 2021. DOI 10.1016/j.worlddev.2020.105176.

the well-being of people worldwide.<sup>72</sup> China's efforts in controlling the COVID-19 virus spread were applauded by the WHO authorities.<sup>73</sup> However, these observations were critically viewed by a range of experts who believed China to be withholding vital information on the spread of the disease and delayed communication to the WHO and the world which impacted the global health governance. The same organization that lauded China's response against coronavirus, blamed poverty, political instability, and cultural traditions for the outbreak of Ebola in West African nations.<sup>74</sup> The then Director Gen of the WHO, Margaret Chan, in her address to the Regional Committee for Africa in 2014 emphasized historical limitations and cultural barriers, attributing difficulties in Ebola containment to intrinsic issues within affected African countries, potentially reinforcing negative stereotypes.<sup>75</sup>

The response of the WHO in previous health crises reveals a clear dereliction of its mandate and the failure to maintain global health and well-being. The organization has failed to fulfill its international obligations as stipulated under its Constitution and other international instruments. During global health crises, the sufferer is humanity there is a violation of their right to life, health, and other fundamental rights but how would these be remedied? Can we attribute responsibility to the WHO for failing to respond effectively during these instances? This will be discussed further in the next section.

## 5 Law of responsibility and the WHO

In the preceding sections, we discussed the international obligations of the WHO and instances where it failed to fulfill its mandate in past health crises, thus raising concerns over its responsibility. In this section, we evaluate whether the WHO can attract responsibility for its actions or omissions during global health emergencies.

The responsibility of IOs has been debatable for a long time, and scholars have failed to reach a consensus.<sup>76</sup> It involves bearing the consequences for breaches of international law. In order to strap accountability to an entity, it entails assigning specific actions to actors within the realm of international law which is a prerequisite for holding them responsible.<sup>77</sup> This section focuses on the responsibility of the WHO for global health crises. Whether the Draft Articles on Responsibility of International Organization (DARIO) (2011) apply to WHO's conduct during global health emergencies?

The Ebola epidemic and the COVID-19 pandemic highlighted major accountability issues within the WHO. In the case of the Ebola outbreak being notified in March 2014, the WHO did not declare PHEIC until August 2014. Similarly, in the case of the COVID-19 pandemic with widespread knowledge about the transmission of the viruses the organization waited until the end of January 2020 to declare it as a PHEIC. Their delays have been widely criticized in literature and reports including the Ebola Interim Assessment Panel's report commissioned by the WHO, emphasizing the accountability challenges faced by the organization.<sup>78</sup> Another Independent Panel For Pandemic Preparedness and Response highlighted that the "COVID-19 pandemic was preventable" and that the declaration of PHEIC should have happened a week earlier than it was.

<sup>72</sup> GILSINAN, Kathy. How China deceived the WHO: U.S. senators are calling for investigations and the president is threatening to cut off funding. What happened? *The Atlantic*, 12 Apr. 2020. Available at: <https://www.theatlantic.com/politics/archive/2020/04/world-health-organization-blame-pandemic-coronavirus/609820/>. Access on: 22 Feb. 2025.

<sup>73</sup> CHAN, L. H.; LEE, P. K.; CHAN, G. China engages global health governance: processes and dilemmas. *Global Public Health*, v. 4, n. 1, p. 1-30, 2009. DOI 10.1080/17441690701524471.

<sup>74</sup> KAMRADT-SCOTT, A. WHO's to blame? The World Health Organization and the 2014 ebola outbreak in West Africa. *Third World Quarterly*, [s.l.], v. 37, n. 3, p. 401-418, 2016. DOI 10.1080/01436597.2015.1112232.

<sup>75</sup> HO, Jing-Mao; LI, Yao-Tai; WHITWORTH, Katherine. Unequal discourses: Problems of the current model of world health development. *World Development*, [s.l.], v. 167, p. 1-5, Jan. 2021. DOI 10.1016/j.worlddev.2020.105176.

<sup>76</sup> KLABBERS, J. Reflections on role responsibility: the responsibility of international organizations for failing to act. *European Journal of International Law*, [s.l.], v. 28, n. 4, p. 1133-1161, 2017. DOI 10.1093/ejil/chx068.

<sup>77</sup> HAFNER, G. Accountability of International Organizations. *American Society of International Law*, [s.l.], v. 97, p. 236-240. Available at: <https://www.jstor.org/stable/25659859/>. Access on: 22 Feb. 2025.

<sup>78</sup> JONES, Christopher W. *et al.* Delays in reporting and publishing trial results during pandemics: cross sectional analysis of 2009 H1N1, 2014 Ebola, and 2016 Zika clinical trials. *BMC Medical Research Methodology*, [s.l.], v. 21, p. 2-10, 2021. DOI 10.1186/s12874-021-01324-8.



The decision to not designate COVID-19 as a PHEIC by the DG, when reasonable grounds existed, can be attributed to the WHO. This omission in declaring a PHEIC on Jan 23<sup>rd</sup> falls within the framework of international responsibility. The failure of WHO's response could also be observed from the Ebola epidemic in 2014. Margaret Chan, the then WHO Director-General, severely delayed in declaring the Ebola outbreak as a PHEIC. The time only witnessed the work of NGOs, including Medicines' Sans Frontieres (MSF), Partners in Health, and Samaritan's Purse, in the frontline to combat the EVD.<sup>79</sup> These organizations persistently raised alarms about the outbreak's severity through media channels. In mid-April 2014, field staff in Guinea and an Ebola expert from the WHO Regional Office for Africa (WHO-AFRO) separately sent numerous emails to the headquarters in Geneva stating, "WE NEED SUPPORT".<sup>80</sup> Despite this outcry declaration of PHEIC was postponed. The WHO having all the necessary reasons to declare a PHEIC, headquarters hesitated due to concerns over potential political, religious, and severe economic repercussions for the affected countries.<sup>81,82</sup> The creation of an entirely new global institution also echoed amongst global leaders to avert similar crises.<sup>83</sup> The independent panel appointed by the WHO Director-General issued an interim report acknowledging that the organization's response was "surprising". The report highlighted that it remained "still

unclear [...] why early warnings, approximately from May through to July 2014, did not result in an effective and adequate response."<sup>84</sup>

For DARIO to be applicable to any entity, it must be acknowledged as possessing a distinct legal identity, and the actions of that entity must amount to an internationally wrongful act, constituting a breach of international law. Both these conditions seem to be fulfilled in the case of the WHO's legal personality and its conduct during global health crises. However, even if these conditions are met, attributing responsibility is still a far-fetched goal, considering the multiple roadblocks such as the immunity of IOs, lack of legal redressal forum to deal with such issues, and difficulty in securing funds for reparation.<sup>85</sup>

The WHO assumes important functions in guiding and coordinating matters of global health. This includes offering leadership, undertaking research, establishing rules and standards, formulating ethical and evidence-based policy options, delivering technical support, and overseeing and evaluating global health situations. Based on the discussion in the previous sections, it can be concluded that the organization failed to perform its essential functions and the idea of responsibility has to be latched onto the organization to fulfill the principle of *ubi jus ibi remedium*.<sup>86</sup>

## 6 Navigating responsibility: mechanisms and challenges in holding the WHO responsible for conduct during global health crises

This section of the paper delves into the analysis of resolving challenges related to the accountability of

<sup>79</sup> HONIGSBAUM, Mark. Between securitisation and neglect: managing ebola at the borders of global health. *Medical History*, [s.l.], v. 62, n. 2, p. 270-294, 2017. DOI 10.1017/mdh.2017.6.

<sup>80</sup> WENHAM, Clare. What we have learnt about the World Health Organization from the ebola outbreak. *Philosophical Transactions of the Royal Society B: Biological Sciences*, [s.l.], v. 372, v. 1721, p. 3-5, 2017. DOI 10.1098/rstb.2016.0307.

<sup>81</sup> PARK, Chulwoo. Lessons learned from the World Health Organization's late initial response to the 2014-2016 Ebola outbreak in West Africa. *Journal of Public Health in Africa*, [s.l.], v. 13, n. 1, p. 1-6, 2022. DOI 10.4081/jphia.2022.2184.

<sup>82</sup> KAMRADT-SCOTT, Adam. What Went Wrong? The World Health Organization from Swine Flu to Ebola. In: KRUCK, Andreas; OPPERMAN, Kai; SPENCER, Alexander (ed.). *Political Mistakes and Policy Failures in International Relations*. Cham: Palgrave Macmillan, 2018. p. 193-215. DOI 10.1007/978-3-319-68173-3\_9. Also refer BENTON, Adia; DIONNE, Kim Yi. International political economy and the 2014 West African Ebola outbreak. *African Studies Review*, [s.l.], v. 58, n. 1, p. 223-236, 2015. DOI 10.1017/asr.2015.11. Also refer HEYMANN, David L. *et al.* Global health security: the wider lessons from the west African Ebola virus disease epidemic. *The Lancet*, [s.l.], v. 385, n. 9980, p. 1884-1901, May 2015. DOI 10.1016/S0140-6736(15)60858-3.

<sup>83</sup> LOUGH, Shannon. Lessons from Ebola bring WHO reforms. *CMAJ*, [s.l.], v. 187, n. 12, e377-378, Sep. 2015. DOI 10.1503/cmaj.109-5125.

<sup>84</sup> 2014 Ebola virus disease outbreak: current context and challenges; stopping the epidemic; and preparedness in non-affected countries and regions Report by the Secretariat, SIXTY-EIGHTH WORLD HEALTH ASSEMBLY A68/24 (15 MAY 2015).

<sup>85</sup> ECCLESTON-TURNER, Mark; VILLARREAL, Pedro A. The World Health Organization's emergency powers: enhancing its legal and institutional accountability. *International Organizations Law Review*, [s.l.], v. 19, n. 1, p. 63-89, 2022. DOI 10.1163/15723747-19010003.

<sup>86</sup> HANNA, Heather jane; HARDING, Alan G. Ubi jus ibi remedium: for the violation of every right, there must be a remedy: the supreme court's refusal to use the Bivens remedy in *Wilkie v. Robbins*. *Wyoming Law Review*, [s.l.], v. 8, n. 1, p. 193-229, 2008. DOI 10.59643/1942-9916.1167.



the WHO for their conduct during global health emergencies. The purpose is to explore how responsibility may be attributed to the WHO and its Director-General (DG) for their conduct during PHEIC within the existing legal framework.

## 6.1 Director-General of the WHO and responsibility under International Law

The Director-General (DG) of the WHO enjoys extensive powers to control and manage the outbreak of infectious diseases. Despite the considerable authority wielded by the DG, there is a lack of an effective oversight mechanism to supervise DG's actions. During PHEIC the IHR (2005) empowers the DG to establish an Emergency Committee, but there is little supervision of how these powers are utilized. This was glaringly evident in both the Ebola epidemic in 2014 and the COVID-19 pandemic in 2020 contributing to a delayed declaration of a PHEIC.

The DG plays a central role as the head of the Secretariat and plays a pivotal role in appointing Secretariat staff and drafting the organization's budget. The DG has the authority to determine the agendas on which the organization carries out its work. Even the Health Assembly discusses issues based on the proposal of the DG unless there is an emergency. Considering the comprehensive role of the DG, attributing responsibility is particularly relevant. The UN GA Res/64/259 noted that "the Secretariat and its staff members are expected to take full accountability for their actions and decisions, without any room for exemptions."<sup>87</sup> Despite this, there is no mechanism in place to review or critique the functioning of the DG within the organization. The organization has also not set up an external accountability mechanism to provide justice to those impacted by their actions or omissions. In light of these challenges, pragmatic reforms are called for to enhance accountability within the organization.

The WHO has an accountability framework but does not specifically target oversight mechanisms for the DG. Though it is commendable that the organization has an accountability framework, however, it lacks comprehensiveness.<sup>88</sup> There is a need for a holistic

approach to ensure answerability on both ends from member states as well as the DG and staff of the organization. To tackle the answerability of the DG an external impartial and transparent oversight mechanism can be particularly beneficial. This will ensure the staff and the DG make decisions cautiously and with utmost sincerity towards fulfilling the mandates of the organization.

## 6.2 Access to Court

The chief judicial organ of the UN, the International Court of Justice (ICJ) under Art 34 of the ICJ Statute, permits only states to become parties to any contentious proceedings. The article does not allow the IOs to become parties to the dispute leading to a lack of judicial actions against these institutions. The current body of international law fails to provide any dispute settlement mechanism with respect to the wrongful conduct of IOs.

An alternative available to bring attention to the court regarding IO's conduct is through seeking an advisory opinion of the court on the said matter. However, ICJ's advisory opinion is non-binding, however, it holds an important value in the international legal system.

According to Art 96 of the UN Charter, the UN and its specialized agencies can seek the ICJ's advisory opinion on "legal questions arising within the scope of their activities." Under the WHO Constitution Art 75 relates to "divergence or dispute" regarding the interpretation or application of the WHO Constitution. The article aims to settle the disputes surrounding the WHO to be settled peacefully. It requires any dispute regarding the treaty should be settled using negotiation or by a decision of the WHA if the same fails, it could be submitted to the ICJ for consideration upon the authorization of UNGA. Though neither the decision arising out of negotiation nor WHA consideration and ICJ's advisory opinion have a binding character, however the same has never been challenged emphasizing good faith and cooperation among parties. It is yet to unfold how a dispute relating to the functioning of the WHO can be submitted to the dispute settlement mechanism. In this case,

<sup>87</sup> <https://documents.un.org/doc/undoc/gen/n09/477/37/pdf/n0947737.pdf?token=qIAoIv4lujaayMqD&fe=true>.

<sup>88</sup> ECCLESTON-TURNER, Mark; MCARDLLE, Scarlett. Ac-

countability, international law, and the World Health Organization: a need for reform. *Global Health & Social Medicine*, [s.l.], v. 11, n. 1, p. 27-67, 2017.

a matter may either be decided through negotiation or ICJ's advisory opinion as involving WHA will be against the principles of natural justice.

Another aspect to review is whether a question relating to IHR's violation by the WHO can be submitted to the ICJ for its advisory opinion. The dispute resolution process under the IHR involves negotiation, referral to the WHO Director-General, and voluntary arbitration. The mechanism has not been used before, but it aims to provide for a peaceful settlement. The regulations do not provide a recourse for the matter to be submitted to the ICJ. However, the ICJ could still handle violations related to the WHO Constitution. One may argue that the ICJ may decide on IHR violations as they are connected to the WHO Constitution, violating one could be considered a violation of another. The analysis draws parallels with the *Enrica Lexie* case, suggesting that the Court may consider IHR violations incidental to the WHO Constitution's violations. Though these options are not optimum and there is a general lack of effective enforcement mechanisms, exploring all possibilities for effective enforcement is crucial. One while interpreting Article 55(4) of the IHR which includes a conflict clause preserving the rights of the state parties to resort to dispute settlement mechanisms established under any international agreement, may include reference to the ICJ. Though IHRs is silent on whether conflicts arising out of it could be sent to ICJ for advisory opinion we may conclude there are no legal barriers to the same.

Article 76 of the WHO Constitution enunciates an important procedural avenue for the WHO to seek ICJ's advisory opinion on any legal question within the WHO's competence. The article requires authorization from the UN General Assembly or a specific agreement between the WHO and the UN. The article permits questions to be decided relating to the WHO Constitution and the functions performed therein. For a dispute regarding the international obligations of the organization relating to pandemic management aligning with Art 2 of the WHO Constitution, the question can be placed before the ICJ. It can also seek advice on matters relating to the application of international responsibility of the WHO. This will help in establishing a precedent for defining the scope and content of the WHO obligations.

What happens if the state parties are hesitant to initiate such proceedings, can individuals initiate them?

The individuals in general lack the necessary locus standi, however, some scholars suggest that the individuals can influence decision-making by participating through non-governmental organizations (NGOs) recognized by the WHO, especially during discussions of WHA while deciding matters to be submitted to the ICJ advisory opinion. The NGOs representing individual interests, can engage in WHA discussions and seek support from member states to submit the request for advisory opinion to the ICJ. This route though complex, can help in invoking the international responsibility of the WHO in connection to public health crises such as epidemics and pandemics.

The path towards accountability of the WHO for its conduct during global health emergencies is rocky and full of practical obstacles, however, to ensure a robust international health institution it is imperative to attach responsibility for their wrongful conduct. A step toward manifesting the responsibility of the WHO could be through its recognition by way of ICJ's advisory opinion.

In summary, strengthening accountability within the WHO requires a multifaceted approach that involves refining existing frameworks, developing comprehensive mechanisms, and aligning with developments in international law. These efforts are essential for ensuring transparency, responsibility, and effective governance within the organization.

## 7 Conclusion

The World Health Organization is a guardian of global health, entrusted with multifold responsibilities. It faced a storm of criticisms during its responses to past global health crises like H1N1, Ebola, and COVID-19. The paper examines the WHO mandate, IHR (2005), human rights principles, and international legal instruments to chart the international obligations of the WHO during global health emergencies. The central role played by the organization requires them to use their power cautiously and decisions taken by them should be open to scrutiny. The paper analyses the international obligations of the WHO as stipulated under its Constitution, IHR (2005), IHRL, international instruments, and jus cogens norms. These highlight that the WHO is mandated to respect and promote interna-

tional health and has a primary responsibility to make decisions during global health crises. The organization is intricately woven into the fabric of global health governance with a commitment to safeguard human rights, prevent and control the spread of diseases, and act as an authority during PHEIC. A failure to comply with these obligations not only undermines the purpose of the WHO but also attracts the need to attribute responsibility.

The authors argue that the responsibility must be strapped onto the WHO for violating international obligations during international health emergencies. Though the idea of attributing responsibility to the WHO has many practical challenges, however, to ensure a future-ready health institution it is rather imperative. Moreover, it is crucial to enhance the accountability of the Director-General of the WHO who plays a significant role in decision-making relating to the declaration of PHEIC. The authors also provide a recourse to navigate through the complexity of the responsibility of the WHO by way of seeking an advisory opinion of the ICJ. The ICJ's advisory opinion will open up avenues for accountability of IOs rendered with sole responsibility for the maintenance of international health and well-being. The authors suggest if the states are reluctant to move to ICJ for the advisory opinion NGOs could initiate the process in the WHA and become catalysts in holding the institution accountable for their actions. These solutions may be complex but essential to invoke the accountability of the WHO in cases of global health crises.

The evolution of international health law continues, and the findings of this research will contribute to ongoing discussions on strengthening the WHO's role, refining its institutional framework, and ensuring effective responses to future health crises. The authors call for a proactive and accountable WHO, firmly positioned at the forefront of global health governance.

During the preparation of this work, the author(s) used Grammarly in order to improve language and readability. After using this tool/service, the author(s) reviewed and edited the content as needed and take(s) full responsibility for the content of the publication.

## References

- AKILLI, Erman; GÜNEŞ, Burak; GÖKBEL, Ahmet. *Diplomacy, society and the COVID-19 challenge*. London: Routledge, 2023. DOI 10.4324/9781003377597.
- ARCHIVED: WHO Timeline - COVID-19. *WHO*, 27 Apr. 2020. Available at: <https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>. Access on: 11 Jan. 2024.
- BENTON, Adia; DIONNE, Kim Yi. International political economy and the 2014 West African Ebola outbreak. *African Studies Review*, [s. l.], v. 58, n. 1, p. 223-236, 2015. DOI 10.1017/asr.2015.11.
- BERMAN, Ayelet. The World Health Organization and COVID-19: how much legal authority does the WHO really have to manage the pandemic? *CIL*, [2025?]. Available at: <https://cil.nus.edu.sg/the-world-health-organization-and-covid-19-how-much-legal-authority-does-the-who-really-have-to-manage-the-pandemic-by-dr-ayelet-berman/>. Access on: 20 Feb. 2025.
- BROBERG, M. A critical appraisal of the World Health Organization's International health regulations (2005) in times of pandemic: it is time for revision. *European Journal of Risk Regulation*, [s. l.], v. 11, n. 2, p. 202-209, 2020. DOI 10.1017/err.2020.26.
- BURCI, Gian Luca; VIGNES, Claude-Henri. *World Health Organization*. The Hages: Kluwe Law International, 2004.
- CEDAW. *General Recommendation no. 24: article 12 of the Convention (Women and Health)*. Adopted at the Twentieth Session of the Committee on the Elimination of Discrimination against Women, in 1999 (Contained in Document A/54/38/Rev.1, chap. I).
- CHAN, L. H.; LEE, P. K.; CHAN, G. China engages global health governance: processes and dilemmas. *Global Public Health*, v. 4, n. 1, p. 1-30, 2009. DOI 10.1080/17441690701524471.
- CLIFT, Charles. *The role of the World Health Organization in the International System*. Londres: Chatham House, 2013. Available at: <https://www.chathamhouse.org/sites/default/files/publications/research/2013-02-01-role-world-health-organization-international-system-clift.pdf>. Access on: 11 Feb. 2025.
- CORONAVIRUS: human rights need to be front and centre in response, says bachelet. *UN*, 6 March,



2020. Available at: <https://www.ohchr.org/en/press-releases/2020/03/coronavirus-human-rights-need-be-front-and-centre-response-says-bachelet>. Access on: 11 Feb. 2025.

COVID-19: WHO declares pandemic because of “alarming levels” of spread, severity, and inaction. *BMJ*, 12 Mar. 2020. DOI 10.1136/bmj.m1036.

DE WET, Erika. Jus cogens and obligations erga omnes. In: SHELTON, Dinah (ed.). *The Oxford Handbook of International Human Rights Law*. Oxford: Oxford Handbooks, 2013.

ECCLESTON-TURNER, Mark; MCARDLE, Scarlett. The Law of Responsibility and the World Health Organisation: a case study on the West African ebola outbreak. *SSRN*, [s. l.], p. 1-21, Sep. 2020. DOI 10.2139/ssrn.3673116. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3673116](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3673116). Access on: 11 Feb. 2025.

ECCLESTON-TURNER, Mark; MCARDLE, Scarlett. Accountability, international law, and the World Health Organization: a need for reform. *Global Health & Social Medicine*, [s. l.], v. 11, n. 1, p. 27-67, 2017.

ECCLESTON-TURNER, Mark; VILLARREAL, Pedro A. The World Health Organization's emergency powers: enhancing its legal and institutional accountability. *International Organizations Law Review*, [s. l.], v. 19, n. 1, p. 63-89, 2022. DOI 10.1163/15723747-19010003.

EMEZIEM, Cosmas. COVID-19 Pandemic, The World Health Organization, and Global Health Policy. *Pace Law School Law Review*, [s. l.], v. 33, n. 2, p. 189-217, 2021. DOI 10.58948/2331-3536.1408. Available at: <https://digitalcommons.pace.edu/pilr/vol33/iss2/2/>. Access on: 11 Feb. 2025.

ESSAWY, R. M. Closing the doors on health nationalism: the non-emptiness of the legal duty to cooperate in pandemic response under *lex specialis*. *Max Planck Yearbook of United Nations Law Online*, v. 25, n. 1, p. 115-147, 2022. DOI 10.1163/18757413\_02501021.

GAL-OR, Noemi; RYNGAERT, Cedric. From theory to practice: exploring the relevance of the Draft Articles on the Responsibility of International Organizations (DARIO): the responsibility of the WTO and the UN. *German Law Journal*, [s. l.], v. 13, n. 5, p. 511-541, 2012. DOI 10.1017/S2071832200020630.

GILSINAN, Kathy. How China deceived the WHO: U.S. senators are calling for investigations and the president is threatening to cut off funding. What happened? *The Atlantic*, 12 Apr. 2020. Available at: <https://www.theatlantic.com/politics/archive/2020/04/world-health-organization-blame-pandemic-coronavirus/609820/>. Access on: 22 Feb. 2025.

GOPICHANDRAN, Vijayaprasad; SUBRAMANIAM, Sudarshini. Response to Covid-19: an ethical imperative to build a resilient health system in India. *Indian Journal of Medical Ethics*, [s. l.], v. 5, n. 2, p. 89-92, 2020. Editorial. DOI 10.20529/IJME.2020.026. Available at: <https://ijme.in/articles/response-to-covid-19-an-ethical-imperative-to-build-a-resilient-health-system-in-india/?galley=html>. Access on: 11 Feb. 2025.

GOSTIN, Lawrence O. COVID-19 reveals urgent need to strengthen the World Health Organization. *JAMA Health Forum*, [s. l.], v. 1, n. 4, e200559, 2020. DOI 10.1001/jamahealthforum.2020.0559. Available at: <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2765615>. Access on: 11 Feb. 2025.

GOSTIN, Lawrence O.; KATZ, Rebeca The International health regulations: the governing framework for global health security. *The Milbank Quarterly*, [s. l.], v. 92, n. 2, p. 264-313. DOI 10.1111/1468-0009.12186. Available at: <https://onlinelibrary.wiley.com/doi/10.1111/1468-0009.12186>. Access on: 11 Feb. 2025.

GOSTIN, Lawrence O.; SRIDHAR, D.; HOUGEN-DOBLER, D. The normative authority of the World Health Organization. *Public Health*, [s. l.], v. 129, n. 7, p. 854-863, July 2015. DOI 10.1016/j.puhe.2015.05.002.

GUO, C. *et al.* The effect of COVID-19 on public confidence in the World Health Organization: a natural experiment among 40 countries. *Globalization and Health*, v. 18, n. 1, p. 1-10, v. 2022. DOI 10.1186/s12992-022-00872-y.

GUTERRES, António. We are all in this together: human rights and COVID-19 response and recovery. UN, 23 Apr. 2020. Available at: <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2765615>. Access on: 11 Feb. 2025.

HAFNER, G. Accountability of International Organizations. *American Society of International Law*, [s. l.], v. 97, p. 236-240. Available at: <https://www.jstor.org/stable/25659859/>. Access on: 22 Feb. 2025.



- HALEEM, A.; JAVAID, M.; VAISHYA, R. (2020, March). Effects of COVID-19 pandemic in daily life. *Current Medicine Research and Practice*, [s. l.], v. 10, n. 2, p. 78–79, 2020. DOI 10.1016/j.cmrp.2020.03.011
- HANNA, Heather jane; HARDING, Alan G. Ubi jus ibi remedium: for the violation of every right, there must be a remedy: the supreme court's refusal to use the Bivens remedy in Wilkie v. Robbins. *Wyoming Law Review*, [s. l.], v. 8, n. 1, p. 193-229, 2008. DOI 10.59643/1942-9916.1167.
- HARDIMAN, Maxwell Charles. World Health Organization perspective on implementation of international health regulations. *Emerging Infectious Diseases*, [s. l.], v. 18, n. 7, p. 1041-1046, July 2012. DOI 10.3201/eid1807.120395. Available at: [https://wwwnc.cdc.gov/eid/article/18/7/12-0395\\_article](https://wwwnc.cdc.gov/eid/article/18/7/12-0395_article). Access on: 11 Feb. 2025.
- HENQUET, Thomas S. M. *The Third-party liability of international organisations: towards a 'complete remedy system' counterbalancing jurisdictional immunity*. Leiden: Brill Nijhoff, 2023.
- HEYMANN, David L. *et al.* Global health security: the wider lessons from the west African Ebola virus disease epidemic. *The Lancet*, [s. l.], v. 385, n. 9980, p. 1884-1901, May 2015. DOI 10.1016/S0140-6736(15)60858-3.
- HO, Jing-Mao; LI, Yao-Tai; WHITWORTH, Katherine. Unequal discourses: Problems of the current model of world health development. *World Development*, [s. l.], v. 167, p. 1-5, Jan. 2021. DOI 10.1016/j.worlddev.2020.105176.
- HOFFMAN, S. J., SILVERBERG, S. L. Delays in global disease outbreak responses: lessons from H1N1, Ebola, and Zika. *American Journal of Public Health*, v. 108, n. 3, p. 329–333. DOI 10.2105/ajph.2017.304245.
- HONIGSBAUM, Mark. Between securitisation and neglect: managing ebola at the borders of global health. *Medical History*, [s. l.], v. 62, n. 2, p. 270-294, 2017. DOI 10.1017/mdh.2017.6.
- ICAO. Declaration adopted by the ICAO Council at the Fourth Meeting of the 219th Session on 9 March 2020 relating to the outbreak of novel coronavirus (COVID-19). *ICAO*, 9 March 2020. Available at: <https://www.icao.int/Security/COVID-19/Pages/Declaration.aspx>. Access on: 12 Jan. 2024.
- ICJ. *Advisory opinion of 8 July 1996*. Request of judgmentss advisory opinions and orders. Legality of the use by a state of nuclear weapons in armed conflict.
- ICJ. *Judgment of 5 February 1970*. Reports of judgments, advisory opinions and orders. Case concerning the Barcelona Traction, Light and Power Company, Limited (new application: 192. Belgium v. Spain. Second phase).
- IVÁN SÁNCHEZ, Diego Ernesto. The international responsibility of the World Health Organization in case of pandemics and the role of individual. *Peace & Security*, [s. l.], n. 10, p. 1-28, 2022. DOI 0.25267/Paix\_secur\_int.2022.i10.1202.
- JONES, Christopher W. *et al.* Delays in reporting and publishing trial results during pandemics: cross sectional analysis of 2009 H1N1, 2014 Ebola, and 2016 Zika clinical trials. *BMC Medical Research Methodology*, [s. l.], v. 21, p. 2-10, 2021. DOI 10.1186/s12874-021-01324-8.
- JONES, Lee; HAMEIRI, Shahar. Explaining the failure of global health governance during COVID-19. *International Affairs*, [s. l.], v. 98, n. 6, p. 2057-2076, Nov. 2022. DOI 10.1093/ia/iia231.
- KAMRADT-SCOTT, A. WHO's to blame? The World Health Organization and the 2014 ebola outbreak in West Africa. *Third World Quarterly*, [s. l.], v. 37, n. 3, p. 401-418, 2016. DOI 10.1080/01436597.2015.1112232.
- KAMRADT-SCOTT, Adam. What Went Wrong? The World Health Organization from Swine Flu to Ebola. In: KRUCK, Andreas; OPPERMAN, Kai; SPENCER, Alexander (ed.). *Political Mistakes and Policy Failures in International Relations*. Cham: Palgrave Macmillan, 2018. p. 193-215. DOI 10.1007/978-3-319-68173-3\_9.
- KARAMAN, Hydar; GÜNEŞ, Burak. The World Health Organization and the COVID-19 pandemic. In: AKILLI, Erman; GÜNEŞ, Burak; GÖKBEL, Ahmet. *Diplomacy, society and the COVID-19 challenge*. London: Routledge, 2023. DOI 10.4324/9781003377597. Cap. 18.
- KAYA, I.; SIMSEK, G. E. World Health Organization and international health regulations: the COVID-19 case and combating epidemics under international law. *Istanbul Law Review*, [s. l.], v. 78, n. 2, p. 983-1007. Available at <https://iupress.istanbul.edu.tr/en/journal/mecmua/article/dunya-saglik-orgutu-ve-uluslararasi-saglik-tuzugu-covid-19-orneginde-uluslararasi-hukukta-salgin-hastaliklarla-mucadele>. Access on: 11 Feb. 2025.

- KLABBERS, J. Reflections on role responsibility: the responsibility of international organizations for failing to act. *European Journal of International Law*, [s. l.], v. 28, n. 4, p. 1133-1161, 2017. DOI 10.1093/ejil/chx068.
- KLABBERS, J. The paradox of international institutional law. *International Organizations Law Review*, [s. l.], v. 5, n. 1, p. 151-173, 2008. DOI 10.1163/157237408x326138.
- KUZNETSOVA, L. COVID-19: the world community expects the World Health Organization to play a stronger leadership and coordination role in pandemics control. *Frontiers Public Health*, [s. l.], v. 8, p. 1-6, Sept. 2020. DOI 10.3389/fpubh.2020.00470.
- LOUGH, Shannon. Lessons from Ebola bring WHO reforms. *CMAJ*, [s. l.], v. 187, n. 12, e377-378, Sep. 2015. DOI 10.1503/cmaj.109-5125.
- MASTERS-WAAGE, T. C.; JHA, N.; REB, J. COVID-19, Coronavirus, Wuhan Virus, or China Virus? Understanding how to “do no harm” when naming an infectious disease. *Frontiers in Psychology*, [s. l.], v. 11, p. 1-10, Dec. 2020. DOI 10.3389/fpsyg.2020.561270.
- MEIER, Benjamin Mason; MESQUISTA, Judith Bueno de; WILLIAMS, Caitlin R. Global obligations to ensure the right to health. *Yearbook of International Disaster Law Online*, [s. l.], v. 3, n.1, p. 3-34, 2022. DOI 10.1163/26662531\_00301\_002.
- MEIER, Benjamin Mason. Human rights in the World Health Organization: views of the director-general candidates. *Health and Human Rights*, [s. l.], v. 19, n. 1, p. 293-298, 2017.
- MOHAMED, Kawthar *et al.* Borderless collaboration is needed for COVID-19: a disease that knows no borders. *Infection Control & Hospital Epidemiology*, [s. l.], v. 41, n. 10, p. 1245-1246, Oct. 2020. DOI 10.1017/ice.2020.162.
- MURPHY, S. D. Peremptory norms of general international law (jus cogens) and other topics: the seventy-first session of the international law commission. *American Journal of International Law*, v. 114, n. 1, p. 68-86, 2020. DOI 10.1017/ajil.2019.74.
- NARAIN, J. *et al.* Responding to COVID-19 pandemic: why a strong health system is required. *Indian Journal of Medical Research*, [s. l.], v. 151, n. 2, p. 140-145. Feb./Mar., 2020. DOI 10.4103/ijmr.ijmr\_761\_20.
- ONZIVU, William. (Re)navigating the World Health Organization’s governance of health rights: repositing an evolving legal mandate, challenges and prospects. *African Journal of Legal Studies*, [s. l.], v. 4, n. 3, p. 225-256, 2011. DOI 10.1163/170873811X585592.
- PARK, Chulwoo. Lessons learned from the World Health Organization’s late initial response to the 2014-2016 Ebola outbreak in West Africa. *Journal of Public Health in Africa*, [s. l.], v. 13, n. 1, p. 1-6, 2022. DOI 10.4081/jphia.2022.2184.
- PETRONE, F. The future of global governance after the pandemic crisis: what challenges will the BRICS face? *International Politics*, [s. l.], v. 59, n. 2, p. 244-259, 2021. DOI 10.1057/s41311-021-00301-8.
- RUGER, Jennifer Prah; YACH, Derek. The global role of the World Health Organization. *Glob Health Gov.*, [s. l.], v. 2, n. 2, p. 1-11, Apr. 2009.
- SCHERMERS, H. G.; Blokker, N. M. *International Institutional Law: unity within diversity*. 5th ed. rev. Leiden: Martinus Nijhoff, 2011.
- SCHERMERS, H. G.; Blokker, N. M. *Verfassung und Recht in Übersee*, [s. l.], v. 29, n. 4, p. 486-488, 1996. DOI 10.5771/0506-7286-1996-4-486.
- SINGH, Sudhvir *et al.* How an outbreak became a pandemic: a chronological analysis of crucial junctures and international obligations in the early months of the COVID-19 pandemic. *The Lancet*, [s. l.], v. 398, n. 10316, p. 2109-2124, Dec. 2021. DOI 10.1016/S0140-6736(21)01897-3.
- SMITHAM, Eleni; GLASSMAN, Amanda. The next pandemic could come soon and be deadlier. *CGDev*, 25 Aug. 2021. Available at: <https://www.cgdev.org/blog/the-next-pandemic-could-come-soon-and-be-deadlier>. Access on: 11 Feb. 2025.
- TAYLOR, Allyn L.; HABIBI, Roojin. The collapse of global cooperation under the WHO international health regulations at the outset of COVID-19: sculpting the future of global health governance. *American Society of International Law*, [s. l.], v. 24, n. 15, 2020. Available at: <https://www.asil.org/insights/volume/24/issue/15/collapse-global-cooperation-under-who-international-health-regulations>. Access on: 22 Feb. 2025.
- TOEBES, B.; FORMAN, L.; BARTOLINI, G. Toward human rights-consistent responses to health emergencies: what is the overlap between core right to health obligations and core international health regulation capacities? *Health Hum Rights*, [s. l.], v. 22, n. 2, p. 99-111, Dec. 2020.

UNITED NATIONS. [Charter (1945)]. *United Nations Charter*. New York: UN, 1945.

UNITED NATIONS. *General Assembly resolution 2200.A (XXI), 16 December 1966*. International Covenant on Economic, Social and Cultural Rights. New York: UN, 1966.

UNITED NATIONS. *General Assembly resolution 44/25, 20 November 1989*. Convention on the Rights of the Child. New York: UN, 1989. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. Access on: 4 Jan. 2024.

WENHAM, Clare. What we have learnt about the World Health Organization from the ebola outbreak. *Philosophical Transactions of the Royal Society B: Biological Sciences*, [s. l.], v. 372, v. 1721, p. 3-5, 2017. DOI 10.1098/rstb.2016.0307.

WHO Evaluation Office. *Evaluation of WHO's normative function*: evaluation brief july 2017. Geneva: WHO, 2017. Available at: [https://www.who.int/docs/default-source/documents/evaluation/evalbrief-normative-function-15jan18.pdf?sfvrsn=bf320621\\_21](https://www.who.int/docs/default-source/documents/evaluation/evalbrief-normative-function-15jan18.pdf?sfvrsn=bf320621_21). Access on: 11 Feb. 2025.

WHO. *Constitution of The World Health Organization*. Geneva: WHO, 1946. Available at: <https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>. Access on: 11 Feb. 2025.

WHO. *International Health Regulations*. 3rd. ed. Geneva: WHO, 2005. Available at: <https://iris.who.int/bitstream/handle/10665/246107/9789241580496-eng.pdf?sequence=1>. Access on: 16 Feb. 2025.

WHO. *Report of the WHO-China joint mission on coronavirus disease 2019 (COVID-19)*. Geneva: WHO, 2020. Available at: [https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19---final-report-1100hr-28feb2020-11mar-update.pdf?sfvrsn=1a13fda0\\_2&download=true](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19---final-report-1100hr-28feb2020-11mar-update.pdf?sfvrsn=1a13fda0_2&download=true). Access on: 12 Jan. 2024.

WILDER-SMITH, A.; OSMAN, S. Public health emergencies of international concern: a historic overview. *Journal of Travel Medicine*, v. 27, n. 8, p. 1-13, 2020. DOI 10.1093/jtm/taaa227.

ZAROCOSTA, John. Q&A: WHO director-general candidates' views on global health. *The Pharmaceutical Journal*, 12 Jan. 2017. Available at: <https://pharmaceutical-journal.com/article/feature/qa-who-director-general-candidates-views-on-global-health>. Access on: 11 Feb. 2025.

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