

SYMPOSIUM ON GLOBAL HEALTH AT A CROSSROADS PART II

THE PARADOX OF GLOBAL HEALTH LAW: A LAW AND POLITICAL ECONOMY PERSPECTIVE

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There is a paradox at the heart of the emerging field of Global Health Law (GHL), which lies in the relationship between GHL and governance for global health (GHG). The field of GHL has garnered increasing interest since the COVID-19 pandemic, the revisions of the International Health Regulations of 2005 in 2024 (IHR),¹ and the adoption of a Pandemic Agreement by the World Health Assembly in 2025.² The editors of the recently launched *Journal of Global Health Law* aptly assert, “global health law is fragmented without a coherent body of standards. It includes legally binding and non-binding instruments adopted under the framework of the WHO and other relevant international institutions/organizations . . . and a range of hard and soft law standards recognized in other branches of international law.”³ GHG is defined here as: “the formal and informal structures, systems, and institutions through which actors: i) make decisions about global health standards, policies, and priorities; ii) finance, organize, and implement global health initiatives, programs, and plans; and iii) influence and engage with actors, systems, or institutions that lie outside the health sector but impact health.”⁴ Thus, the newly revised IHR—like the Pandemic Treaty when in effect—empowers the WHO to declare pandemic emergencies as well as Public Health Emergencies of International Concern (PHEIC),⁵ which then trigger actions and reporting requirements on the part of national governments. In this example, the legal agreements themselves are GHL and the worldwide administration they call for are governance arrangements, which are noticeably lacking in accountability for global institutions and private actors.⁶

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¹ World Health Organization, [Strengthening Preparedness for and Response to Public Health Emergencies Through Targeted Amendments to the International Health Regulations \(2005\)](#), WHO Doc. WHA77.17 (adopted June 1, 2024).

² World Health Organization, [Intergovernmental Negotiating Body to Draft and Negotiate a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response: Report by the Director-General](#), UN Doc. A78/10 (May 14, 2025).

³ Stefania Negri, Katherine O’Cathaoir, Brigit Toebes & Pilar Villarreal, *Journal of Global Health Law – An Introduction*, 1 J. GLOB. HEALTH L. 1 (2023).

⁴ David McCoy, Anuradha Joshi, Rajat Khosla, Marta Schaaf & Alicia Ely Yamin, *Global Health Governance and the Challenge of Holding Power to Account* 6 (United Nations University – International Institute for Global Health, 2024).

⁵ World Health Organization, *supra* note 1, Art. 13(4).

⁶ See, e.g., Rochelle Dreyfuss & César Rodríguez-Garavito, *The Battle Over Intellectual Property Laws and Access to Medicines in Latin America: A Primer on Global Administrative Law, Intellectual Property, and Political Contestation*, in BALANCING WEALTH AND HEALTH: THE BATTLE

While many GHL scholars agree on the colonialism, coloniality, and inequities that permeate the institutions, financing, and decision-making processes that constitute GHG, some scholars often portray GHL as outside of GHG. Additionally, a frequent notion expressed in writings on GHL, especially from scholars in the economic North, is that the field is fundamentally concerned with global health equity, human rights, and justice. For example, Lawrence Gostin, a leading U.S. scholar, defines GHL as “the use of ‘hard’ and ‘soft’ law—as well as good governance—to shape norms, processes, and institutions to attain the highest attainable standard of physical and mental health for the world’s population. . . . The value of social justice infuses the field, striving for health equity, with a particular concern for the world’s most disadvantaged people.”⁷ This optimistic assessment is also advanced in certain efforts to delineate and enclose the field; for example, in its summary, the textbook on GHL edited by Gostin and Benjamin Meier asserts: “The new law and policy frameworks . . . ensure justice in global health through institutions that embrace values of transparent governance, multisectoral engagement, and legal accountability.”⁸ Thus, here the legal instruments that the authors claim make up GHL are portrayed as “infused with the value of social justice” and as ostensibly ensuring justice in the institutional arrangements, processes and power relations that constitute GHG. This essay explores an apparent disconnect between this aspirational theorizing of GHL and the irredeemably colonialist nature of current structures of global health governance.

The gaping distance between the aforementioned account of GHL and the reality of GHG invites questions about whether GHL is powerless in practice to structure these governance arrangements, and the scope of relevant law to consider in relation to GHG. Based on a law and political economy perspective, which understands the domains of law, politics, and the economy as co-creating each other, I argue that GHL cannot be analyzed separately from the neoliberalism and colonialism that characterize GHG as suggested by Gostin and Meier; in fact, law *constitutes* these governance arrangements and the asymmetrical distributions of material and epistemic power they entail. In the remainder of this piece, I first provide a critical appraisal of what is included and excluded in the text of core GHL agreements. Second, I examine how GHL fits into a broader plexus of legal frameworks that constitute GHG, including trade law, while questioning the inclusion of health-related human rights in GHL. In conclusion, I argue that the Trump administration’s undermining of the global order provides an opportunity to fundamentally reimagine GHG, and in turn, GHL.

Socio-historical Context: Critical Readings of Core Global Health Law Instruments

GHL remains defined by its colonial legacy as it first emerged in 1851 with the first International Sanitary Conference, during which European colonial powers sought to protect their citizens from the deadly effects of disease along trade routes. Third World Approaches to International Law (TWAIL) have long challenged scholarship that treats the colonial legacy in international law as a dead letter. Ngozi Erundu, Vyoma Dhar Sharma, and Moses Mulumba remind us that GHL specifically has “historically reinforced the objectives and priorities of dominant stakeholders.”⁹ That colonialism continues to pervade GHL is evident both in the weak

OVER INTELLECTUAL PROPERTY AND ACCESS TO MEDICINES IN LATIN AMERICA (Rochelle Dreyfuss & César Rodríguez-Garavito eds., 2014).

⁷ Lawrence O. Gostin, *Global Health Law: Reflections on the Past, Present, and Future of the Field*, 53 J. L. MED. & ETHICS 81 (2025) (emphasis added).

⁸ GLOBAL HEALTH LAW & POLICY: ENSURING JUSTICE FOR A HEALTHIER WORLD (Lawrence O. Gostin & Benjamin Mason Meier eds., 2023).

⁹ Ngozi A. Erundu, Vyoma Dhar Sharma & Moses Mulumba, *Decolonial Framings in Global Health Law: Redressing Colonial Legacies for a Just and Equitable Future*, J. L. MED. & ETHICS 2 (2025).

and contested claims for equity in key texts of GHL, as well as in the way inclusions and omissions shape a specific health security governance agenda.

For instance, among the most contentious disputes in the nearly three years of negotiations over the Pandemic Agreement were those relating to a pathogen access and benefit sharing system (PABS), and the Agreement will only enter into force only after an annex on PABS has been agreed.¹⁰ Global South countries argue that in exchange for access to pathogens used by pharmaceutical companies in the Economic North, to develop vaccines and medical countermeasures, they should have access to benefits, including technology transfer. Yet some Economic North countries insist on *voluntary* technology transfer to promote “private innovation” that continues colonialist dependencies on technology holders in the Economic North rather than promoting meaningful equity.¹¹

The continuing impacts of colonialism are also evident in the diseases considered relevant to the definition of PHEICs in the IHR. As Aeyal Gross notes, despite the toll of diseases such as TB and malaria in Africa, GHL places the focus of international governance “on the protection of the Global North from emerging infectious diseases coming from the Global South.”¹² By coding certain diseases as subjects of international concern, GHL enshrines colonial hierarchies and in turn triggers a set of governance arrangements based on “global health security.”

The concept of “global health security,” emerged in the late twentieth century in the context of HIV/AIDS and greater biosecurity and migration challenges.¹³ Global health security reframes certain infectious diseases as national security threats, importing a set of assumptions—and legal arrangements—regarding defense of national borders, which are at odds with health for all. Critical Latin American scholars, such as Gonzalo Basile and Antonio Hernández Reyes, have denounced the global health security logic underpinning GHL as reductively simplifying the notion of “pandemic response” to the agenda of disease surveillance. In turn, they argue, it normalizes grotesque inequities in health capacities between nations, predetermines the universe of possible responses by governments, and generates continuing economic dependency to mobilize those particular responses.¹⁴

Abstracting GHL from its colonial history, geopolitics, and our global economic order constrain our ability to understand and address the problems of distribution, democratic deficits, and power imbalances that have long plagued GHG. Through the categories and obligations, it creates—and those it omits—GHL entrenches economic ordering as well as political governance that favors the national security of wealthy Western countries.¹⁵

Situating GHL in the Context of Other Legal Regimes

Just as categories within GHL refract historically constructed power relations, the policing of the boundaries of GHL shapes how we assess the norms it upholds. Much of the scholarly work to infuse ethical values into these fragmented normative standards relies on importing human rights norms into GHL, while cabining GHL from other areas of international law that arguably play central roles in how GHG is structured, such as trade law. This

¹⁰ World Health Organization, *supra* note 1, Art. 12.

¹¹ Richard Clements, *The WHO Pandemic Agreement: Equity for Developing States or Business as Usual?*, EJIL:TALK! (May 8, 2025).

¹² Aeyal Gross, *The Past, Present, and Future of Global Health Law Beyond Crisis*, 115 AJIL 754, 767–68 (2021).

¹³ Sakiko Fukuda-Parr, Paulo Buss & Alicia Ely Yamin, *Pandemic Treaty Needs to Start with Rethinking the Paradigm of Global Health Security*, 6 BMJ GLOB. HEALTH 1 (2021).

¹⁴ Gonzalo Basile & Antonio Hernández Reyes, *Refundación de los Sistemas de Salud en Latinoamérica y el Caribe: Apuntes Para Repensar y Descolonizar las Teorías y Políticas*, in 7 DOSSIER SALUD INTERNACIONAL SUR SUR (Ediciones GT Salud Internacional CLACSO, 2021).

¹⁵ See Priti Patnaik, *At the Cusp of Change: Agenda Setting in Global Health Law by Emerging Economies*, 120 AJIL UNBOUND __ (2026).

is counterintuitive, as preventing and reducing cross-border spread of disease while minimizing disruption to travel and trade lies at the very core of GHL,¹⁶ and GHL and human rights law have very different genealogies, structures, and grammars. That is, much of GHL can be understood as “global administrative law” (GAL),¹⁷ which structures a GHG regime wherein national regulators form part not just of national administrative institutions, but of a global administration. As Quinn Slobodian argues more generally, the kind of multitiered governance was crucial to the global project of “neoliberal federalism” that was necessary to ensure the greatest possible freedom for moving goods, capital and people across countries.¹⁸ Human rights law, on the other hand, does not and should not function in the same way.

Since GHL forms a bulwark for the global trade regime, we should assess the effects of unequal terms of exchange that are embedded in a “rules-based regime” of international trade that had been taken for granted until Trump upended it. Jason Hickel and colleagues show that between 1990 and 2015, economic drain from the Global South represented a windfall for the Global North, outstripping aid from the North to South by a factor of thirty.¹⁹ It is through international trade that Northern states and the transnational corporations headquartered there use their geopolitical and monopoly power to maintain price differentials and extract labor and resources from the South.²⁰

The World Trade Organization (WTO) agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) exemplifies how the law creates distributions of power and obligations through coding certain assets. The enclosure of knowledge rights has become a major source of wealth transfer from the Global South to corporations in the North. Just before the COVID-19 pandemic, fewer than 1 percent of patents were held in Sub-Saharan Africa; only 1.7 percent in Latin America.²¹ These monopoly rights account for the lion’s share of budgets for medicines, allowing corporations to extract returns far in excess of free market rates.

Formalistic framing of lawmaking in procedural and politically neutral terms obscures the ways in which former colonial powers control which issues are allowed to be decided in multilateral forums, and which are organized out of discussion. For example, when a procedural principle requiring consensus at the WTO was used by wealthy Northern governments to block a widely supported TRIPS waiver proposed during the pandemic, they cynically claimed that resource-poor countries lacked capacity for vaccine manufacturing, as though the lack of manufacturing were not itself a result of the political economy of dependencies in global health.²²

The structural inequities embedded in trade law are treated by some scholars as separate from GHL, who instead argue the field comprises “the legal norms, processes, and institutions needed to create the conditions for people throughout the world to attain the highest possible level of physical and mental health.”²³ A critical

¹⁶ The core principle of the IHR (2005, as amended 2024) calls for public health measures “which avoid unnecessary interference with international traffic and trade.”

¹⁷ Benedict Kingsbury, Nico Krisch & Richard Stewart, *The Emergence of Global Administrative Law* (Inst. Int’l L. & Just., Working Paper No. 2004/1, 2005).

¹⁸ QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* 18–19 (2020).

¹⁹ Jason Hickel, Christian Dorninger, Hanspeter Wieland & Intan Suwandi, *Imperialist Appropriation in the World Economy: Drain from the Global South Through Unequal Exchange, 1990–2015*, 73 GLOB. ENVTL. CHANGE 102467 (2022).

²⁰ *Id.*

²¹ Bryan Mercurio, Tolulope Anthony Adekola & Chimdessa Fekadu Tsega, *Pharmaceutical Patent Law and Policy in Africa: A Survey of Selected SADC Member States*, 43 LEGAL STUD. 331 (2023).

²² Siva Thambisetty, Aisling McMahon, Luke McDonagh, Hyo Yoon Kang & Graham Dutfield, *Addressing Vaccine Inequity During the COVID-19 Pandemic: The TRIPS Intellectual Property Waiver Proposal and Beyond*, 81 CAMBRIDGE L.J. 384 (2022).

²³ Lawrence O. Gostin & Allyn L. Taylor, *Global Health Law: A Definition and Grand Challenges*, 1 PUB. HEALTH ETHICS 53 (2008).

perspective suggests caution about creating a simulacrum of synthesis between efforts to advance the right to health and GHIL.²⁴

Authors arguing for human rights as integral to GHIL often point to Article 32 in the IHR, which prescribes that states' parties "shall treat travelers with respect for their dignity, human rights, and fundamental freedoms."²⁵ Yet, Article 32 can be read as entirely consonant with the freedoms of neoliberalism: the freedom of movement of: information; goods and services; human travelers (i.e., *not migrants*); and, above all, capital.²⁶

Neoliberal legality mandates a particular form of governance, including GHG, that protects capital from democratic demands for social justice and redistribution—demands which should be central to progressive praxis regarding the right to health. We can acknowledge interpretative principles in GHIL texts calling for consistency with UN documents and the WHO Constitution,²⁷ while noting that human rights law, *when* used transformatively, has different aspirations and dynamics.²⁸

Although some scholars characterize human rights related to health as being implemented via top-down bureaucratic "operationalization," through national administrations in a model akin to GAL,²⁹ an alternative view does not detach human rights from social justice struggles.³⁰ For example, Gráinne de Búrca writes that human rights claims are "activated, shaped, and given meaning through ongoing mobilization of affected groups and through iterative entanglements with an array of domestic and international actors and institutions."³¹ Using human rights law *transformatively* to advance health necessarily entails political lawyering, experimentalism and continual reimagining of the meaning of health-related rights in diverse people's realities. In turn, it calls not just for incorporating human rights language into GHIL but confronting how along with trade and other bodies of international norms, GHIL encases the global economic order in order to protect it from the messy demands of domestic politics and distributive justice. For example, medicines activists have deployed human rights to make visible the logic behind intellectual property law and challenge the reach of WTO rules in the service of a more just political economy.³²

Conclusion

The asymmetries of power that permeate GHG and perpetuate disparities and accountability deficits in global health are not a glitch; they are an integral feature of the *status quo*, which reflects our current legal frameworks, including GHIL. Acknowledging the historical construction of colonial power relations that GHIL has shaped and

²⁴ Compare BENJAMIN MASON MEIER, JUDITH BUENO DE MESQUITA & SHARIFAH SEKALA, HUMAN RIGHTS LIMITATIONS IN WORLD HEALTH ORGANIZATION REFORMS: STRENGTHENING HUMAN RIGHTS OBLIGATIONS IN GLOBAL HEALTH LAW TO ENSURE GLOBAL HEALTH EQUITY.

²⁵ World Health Organization, *Strengthening Preparedness for and Response to Public Health Emergencies Through Targeted Amendments to the International Health Regulations (2005)*, Art. 32, WHO Doc. WHA77.17 (adopted June 1, 2024).

²⁶ SLOBODIAN, *supra* note 18, at 123–28.

²⁷ World Health Organization, *supra* note 1, Art. 3.

²⁸ Contrast MEIER, BUENO DE MESQUITA, SEKALA, *supra* note 24.

²⁹ Contrast Benjamin Mason Meier & William Onzivu, *The Evolution of Human Rights in World Health Organization Policy and the Future of Human Rights Through Global Health Governance*, 128 PUB. HEALTH 179 (2014).

³⁰ Contrast Benjamin Mason Meier, Margherita Cinha & Lawrence Gostin, *Advancing Human Rights Through Global Health Governance*, in FOUNDATIONS OF GLOBAL HEALTH & HUMAN RIGHTS 197, 214 (Lawrence Gostin & Benjamin Mason Meier eds., 2020) ("Where social justice incites change from the 'bottom up,' driven by those who are most affected by social inequality, human rights law incites change from the 'top down.'").

³¹ GRÁINNE DE BÚRCA, REFRAMING HUMAN RIGHTS IN A TURBULENT ERA 3 (2021).

³² Amy Kapczynski, *The Right to Medicines in an Age of Neoliberalism*, 10 HUMANITY INT'L J. HUM. RTS., HUMANIT. DEV. 79, 81 (2019).

analyzing how the law functions in practice to imbricate injustice into the very design of GHG is necessary before we can hope to “flip” the law in meaningfully progressive ways. As repugnant as the bullying and self-dealing of the Trump administration are, we should not waste this geo-political realignment to reimagine GHG and the legal frameworks that uphold it. Far from a managerialist approach within the current structure of GHL, human rights law should animate struggles against the now nakedly apparent economic and political domination plaguing global health.