PUBLIC HEALTH LAW

CONCEPTS AND CASE STUDIES

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Global Health Law

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Learning Objectives

By the end of this chapter, the reader will be able to:

- Discuss the importance of global health law in addressing global public health threats.
- Describe the World Health Organization's expansive authority to develop and implement international law to promote global public health, codifying global health law to address infectious disease (as seen in the International Health Regulations) and noncommunicable disease (as seen in the Framework Convention on Tobacco Control).
- Analyze how global health law can strengthen global health governance to foster international coordination and build public health capacity among state and nonstate actors.
- Conceptualize the promise of global health law as a foundation to realize global health with justice.

Key Terminology

Global Health: Addressing public health in a globalizing world, global health looks beyond the efforts of individual nations to encompass the larger set of determinants that affect the health of the entire world. Global health recognizes that all countries are interconnected in facing public health threats, requiring collective global action to promote health and achieve equity in health for all people worldwide.

Global Health Law: Global health law describes legal frameworks that structure global public health. These frameworks encompass the legal institutions, processes, and instruments—both hard and soft law—that support global health and shape how a vast landscape of state and non-state actors engage in disease prevention and health promotion. This legal engagement is anchored in the fundamental premise that, in a globalizing world, threats to public health increasingly transcend national frontiers and require cross-border coordination.

International Health Law: The traditional approach to the application and use of international law to address public health challenges is driven solely by relationships among national governments (states). Historically, international health law structured multilateral cooperation (across multiple states) under international law to respond to public

*The views expressed are the author's own and do not reflect the views of the United States Government or the U.S. Department of Health and Human Services.

health threats. As compared to global health law, international health law does not include nonstate actors and does not necessarily focus on the promotion of justice in public health.

International Health Regulations (IHR): The IHR are an international legal agreement that aims to prevent, detect, control and provide a public health response to the international spread of disease. Overseen by the World Health Organization (WHO) and last revised in 2005, this legal instrument enshrines a broad range of state obligations, including the requirement that states build core public health capacities, that they maintain public health responses that are commensurate with the risk to human health, and that they acknowledge and act cooperatively in accordance with WHO guidance.

International Human Rights Law: International human rights law comprises a branch of international law focused on legal standards to address basic needs and establish necessary entitlements to uphold a universal moral vision for the advancement of dignity and justice. As a basis for global justice, international human rights obligations frame governmental responsibilities and facilitate legal accountability to realize the highest attainable standard of health for all.

International Law: International law is developed between national governments (states), often embodied in writing in a single treaty or related instruments, and is legally binding on governments party to the instrument. When governments seek to cooperate with other countries to confront a common health threat, international law often becomes central to crafting a coordinated approach.

Public Health Emergency of International Concern (PHEIC): Defined by Article 1 of the IHR, a PHEIC is as an extraordinary event which (1) poses a public health risk to other states, as seen through the international spread of disease; and (2) potentially requires a coordinated international response. Under the IHR, the legal authority to declare a PHEIC rests with the WHO Director-General, and is intended to alert states to the imperative for international cooperation and information exchange in a global public health response.

Soft Law: Soft law comprises a set of instruments that are not legally binding but express or lead to commitments with legal implications, as seen in codes of conduct, voluntary resolutions, and global declarations. As compared with legally binding hard law, soft law can be used, among other things, to reinforce legally binding commitments, serve as the basis for the future development of legally binding instruments, and interpret norms set out by legally binding treaties.

State: Under international law, a state is an organized political community, a nation or territory under one government, and capable of accepting binding obligations under international law. States are distinguished from nonstate actors—nongovernmental organizations, private businesses, and individual advocates that have power to effect change but are generally not bound by international law. A state that is bound by an international law is referred to as a "state party" to that law.

Public Health Competencies

This chapter addresses the following competencies from the Public Health Law Competency Model (PHLCM; Ransom, 2016).

1.1 Define basic constitutional concepts and legal principles framing the practice of public health across relevant jurisdictions.
1.2 Identify and apply public health laws (e.g., statutes, regulations, ordinances, and court rulings) pertinent to practitioner's jurisdiction, agency, program, and profession.
2.3 Recognize the legal authority and limits of critical system partners and others who influence health outcomes.

Spark Questions

1. How has globalization facilitated the global spread of disease? Think about ways that infectious diseases and noncommunicable diseases are determined by globalized forces. How have these global forces highlighted the importance of looking beyond domestic law to develop a global public health law response?
2. Where public health threats cross national boundaries and spread internationally, how can state and nonstate actors develop global health laws to address public health threats collectively and realize health equity worldwide?
3. How can the World Health Organization lead global health governance through global health law, ensuring a future of global health with justice?

INTRODUCTION

Global health law describes legal frameworks that structure global public health. Globalization has exacerbated the spread of disease, affecting both fast-moving infectious diseases and—through transnational corporations and global markets—the influence of commercial determinants of health on noncommunicable diseases (NCDs). With globalization connecting societies in shared vulnerability, these forces have highlighted the limitations of domestic law in addressing global determinants of health (Aginam, 2005). Yet, if globalization has presented challenges to domestic disease prevention and health promotion efforts, global health law, as highlighted in Box 12.1, offers the promise of bridging national boundaries to alleviate public health inequities through the development of global norms and standards.

Arising out of **international health law**, which has structured multilateral cooperation under **international law** to respond to public health threats for over a century, global health law now seeks to structure the contemporary governance landscape for **global health**. To address the health harms of a globalizing world, global health law has sought to "evolve beyond its traditional confines of formal sources and subjects of international law" to realize "global health with justice" (Gostin & Taylor, 2008). This focus on global health has necessitated measures beyond individual nations and international laws, requiring both **state** and nonstate actors to come together to respond to globalized health challenges (Moon, 2018). Global health law seeks to frame this new global governance landscape to respond to the health challenges of the 21st century.

BOX 12.1 AN IMPERATIVE FOR GLOBAL HEALTH LAW

"Health risks in the 21st century are beyond the control of any government in any country. In an era of globalization, promoting public health and equity requires cooperation and coordination both within and among states. Law can be a powerful tool for advancing global health, yet it remains substantially underutilised and poorly understood" (*Lancet* Commission report on Global Health and the Law, https://www.thelancet.com/commissions/legal-determinants-of-health).

Global health law has thus become a basis to describe the legal frameworks that seek to address the health challenges arising from an increasingly globalized world, reflecting a new set of public health threats, nonstate actors, and normative instruments that structure global health.

- New health threats—including emerging infectious diseases, NCDs, injuries, mental health, harmful commercial products, and other globalized health threats
- New health actors—including civil society, transnational corporations, private philanthropists, and other nonstate actors
- New health instruments—including international treaties, **soft law** instruments (codes of conduct, strategies, and resolutions), and other normative instruments of global health policy (Gostin, 2014).

Placing public health obligations on the global community of state and nonstate actors, these legal frameworks seek to realize justice in global health through sustainable global institutions that embrace values of equity, monitor progress, structure multisectoral engagement, and facilitate accountability to advance global public health (Magnusson et al., 2017).

This chapter introduces the field of global health law as a foundation to prevent disease and promote health in a globalizing world. Recognizing inequalities in public health throughout the world, the *Background* section considers the extent to which legal capacities and authorities differ across nations, undermining efforts to achieve equity in global health. To alleviate these global inequities, the *Analysis* sections (and accompanying *Hypothetical Case Studies*) look to global health governance as central to global health law, with the World Health Organization (WHO) exercising its legal authorities to prevent the international spread of infectious diseases and the underlying global determinants of NCDs. The *Discussion* section examines the rising importance of global health law to realize global health with justice, considering the influence of human rights law as a foundation for dignity in global health and the rise of new legal initiatives to alleviate global inequity. This chapter's *Conclusion* holds that engaging with public health law in a globalizing world will require global health law, establishing a basis for the global practice of public health law.

BACKGROUND: AN IMPERATIVE FOR GLOBAL HEALTH LAW

Across countries, the legal frameworks anchoring disease prevention and health promotion are critically important in achieving global public health—including the prevention and control of vaccine-preventable diseases, access to safe water and sanitation, tobacco control, improved preparedness and response to epidemic threats, and control of neglected tropical diseases. Robust public health laws are essential to improving health outcomes and reducing health inequities throughout the world. Equity in global health envisions a world in which differences in health—within and across countries—are redressed through public health law in order to achieve optimal health for all population groups where they live, work, and play.

Law structures health outcomes by shaping the underlying determinants of the public's health, and these legal determinants of health equity provide a path to advance global health with justice. Yet, legal capacities and institutional authorities differ greatly across countries, weakening efforts to ensure equity in health across nations (Gostin et al., 2019).

The intersecting landscape of law, enforcement of law, and legal systems governing public health varies considerably from country to country. Public health law is unequal throughout the world, as seen in divergent national responses to the COVID-19 pandemic, with impactful differences across national laws to protect vulnerable populations. While there are laws that safeguard health as a human right, there are also laws that may result in punitive outcomes, stigma, or discriminatory harm, undercutting public health efforts. These inequalities in legal determinants of health have raised an imperative to address public health law at the global level.

Global health law has arisen as a framework to structure global health governance, encompassing, as detailed in Box 12.2, both international health law and "soft law" forms of global health policy. As the leading normative institution in global health governance, the WHO has the legal mandate under its constitution to propose conventions, regulations, and recommendations on any public health matter. Drawing on this global regulatory authority, states have engaged in lawmaking through the WHO to structure both infectious disease control and NCD prevention.

BOX 12.2 GLOBAL HEALTH LAW: THE EXPANDING LEGAL LANDSCAPE TO PROMOTE GLOBAL HEALTH

- Global health law presents a legal framework to structure efforts by the global community to advance global health.
- Where global health has come to frame efforts to address common public health challenges across countries, law has become crucial to addressing the global health threats that have arisen in a rapidly globalizing world.
- This focus on global health, addressing global determinants of public health, demands an expanded scope and influence of public health law to meet the public health needs of a globalizing world, redressing health inequities within and across countries through global health law.
- Looking across countries, global health law has applied new sources of soft law to facilitate cooperation across state and nonstate actors, frame new institutions of global governance, and realize global health with justice.
- Shifting from international health law (applicable to states) to global health law (applied to both state and nonstate actors), a multilevel proliferation of international, national, nongovernmental, and corporate actors have come together to address a multisectoral array of determinants of health.
- Global health law frames this expanding landscape for global health, coordinating the global community of state and nonstate actors through institutions of global health governance.

HYPOTHETICAL CASE STUDY #1: THE INTERNATIONAL HEALTH REGULATIONS: NATIONAL MEASURES TO RESPOND TO A PUBLIC HEALTH EMERGENCY

Roxana is a public health advisor to the Minister of Health and manages the IHR National Focal Point (NFP) in her country under the IHR. Her national government has recently received media reports of an unexplained outbreak of flu-like symptoms in a neighbouring island state, with the WHO already seeking prompt verification of these reports. Concerned about the repercussions of a weak national public health response, Roxana has been asked whether her country is permitted under the Article 43 of the IHR (See Box 12.3) to ban the arrival of noncitizen travellers from the implicated state.

1. Should the government implement immediate travel restrictions on the basis of currently available information?
2. Does your recommendation change if/when the WHO director-general declares the event a PHEIC?

Analysis: The International Health Regulations (2005): An International Legal Agreement for Global Health Security

As reflected in Case Study #1, international travel connects people and places around the world more than ever before, where diseases anywhere can become a threat to people everywhere. The IHR recognize this interdependence, and strive to "prevent, protect against, control and provide a public health response to the international spread of disease" while avoiding "unnecessary interference with international traffic and trade." For more than a century, the IHR and their precursor legal agreements have sought to strike the appropriate balance between economic considerations (i.e., international trade and traffic) and a robust public health response to global health security threats (Habibi et al., 2020).

A core aim of the IHR is to encourage states to report potentially serious disease outbreaks to the WHO in a timely manner, without fear of the economic repercussions of international trade and travel restrictions. To this end, the IHR require that states notify the WHO (by way of their IHR National Focal Points) of any event that may constitute a PHEIC, referring to "an extraordinary event" that (a) poses a public health risk to other states, as seen through the international spread of disease; and (b) potentially requires a coordinated international response (WHO, 2005). (While the WHO may also receive reports of these events from nonofficial sources, as seen in the media reports in Case Study #1, the WHO must first verify such reports with the implicated state in accordance with the IHR.) The formal declaration of a PHEIC ultimately rests with the WHO Director-General, who must consider information provided by the implicated state, the views of an emergency committee of international experts, and the available scientific evidence. PHEIC declarations serve to alert member states about the gravity of the event and provide WHO recommendations to guide national responses. A PHEIC declaration can also serve to justify international action. Since the entry into force of the IHR (2005), six PHEICs have been declared by the WHO Director-General.

Article 43 of the IHR, excerpted in Box 12.3, guides states in their decisions to implement additional health measures (e.g., trade and travel restrictions) in response to public health risks. This IHR provision allows states to implement additional health measures only if they achieve the same or greater levels of health protection than recommendations issued by the WHO and only if states do the following:

1. Ensure that the additional health measure being considered is "no more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection;"
2. Determine additional health measures on the basis of scientific principles, available scientific evidence of risk to human health (or information from the WHO or other relevant intergovernmental organizations where such information is lacking), and guidance or advice from the WHO that may be available; and
3. Consider measures that are consistent with other provisions of the IHR, relevant national law, and *international law.*

The IHR do not further describe the sources and standards of evidence that states should consider when deciding to implement additional health measures, but they do note that such evidence must be generated by the "methods of science." However, when a PHEIC is declared, the WHO Director-General will issue temporary recommendations, informed by the views of the Emergency Committee, and while nonbinding, these recommendations provide guidance to states on health measures that have consensus support by technical and public health experts.

In Case Study #1, the government could avoid travel bans in the immediate term, considering that information gathered from media reports has not yet been officially verified with the implicated state. Reasonably available alternatives to travel restrictions in the immediate term could include consultations with the WHO, engaging in bilateral communications with the implicated state to gather more information, and increased surveillance efforts. Should the WHO

BOX 12.3 ARTICLE 43 (ADDITIONAL HEALTH MEASURES)–INTERNATIONAL HEALTH REGULATIONS

1. These Regulations shall not preclude States Parties from implementing health measures, in accordance with their relevant national law and obligations under international law, in response to specific public health risks or public health emergencies of international concern, which:

a. achieve the same or greater level of health protection than WHO recommendations; or
b. are otherwise prohibited under Article 25, Article 26, paragraphs one and two of Article 28, Article 30, paragraph 1(c) of Article 31 and Article 33,

provided such measures are other consistent with these Regulations.

Such measures shall not be more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection.

2. In determining whether to implement the health measures referred to in paragraph one of this Article or additional health measures under paragraph two of Article 23, paragraph one of Article 27, paragraph 2 of Article 28 and paragraph 2(c) of Article 31, States Parties shall base their determinations upon:

a. scientific principles;
b. available scientific evidence of a risk to human health, or where such evidence is insufficient, the available information including from WHO and other relevant intergovernmental organizations and international bodies; and
c. any available specific guidance or advice from WHO.

3. A State Party implementing additional health measures referred to in paragraph one of this Article which significantly interfere with international traffic shall provide to WHO the public health rationale and relevant scientific information for it. WHO shall share this information with other States Parties and shall share information regarding the health measures implemented. For the purpose of this Article, significant interference generally means refusal of entry or departure of international travellers, baggage, cargo, containers, conveyances, goods, and the like, or their delay, for more than 24 hours.

4. After assessing information provided pursuant to paragraph three and five of this Article and other relevant information, WHO may request that the State Party concerned reconsider the application of the measures.

5. A State Party implementing additional health measures referred to in paragraphs one and two of this Article that significantly interfere with international traffic shall inform WHO, within 48 hours of implementation, of such measures and their health rationale unless these are covered by a temporary or standing recommendation.

6. A State Party implementing a health measure pursuant to paragraph one or two of this Article shall within three months review such a measure taking into account the advice of WHO and the criteria in paragraph 2 of this Article.

7. Without prejudice to its rights under Article 56, any State Party impacted by a measure taken pursuant to paragraph one or two of this Article may request the State Party implementing such a measure to consult with it. The purpose of such consultations is to clarify the scientific information and public health rationale underlying the measure and to find a mutually acceptable solution.

8. The provisions of this Article may apply to implementation of measures concerning travellers taking part in mass congregations.

Director-General confirm media reports with the state implicated and determine that these reported events constitute a PHEIC on the basis of information received from the state and advice from the Emergency Committee, the government could, under IHR Article 43, base any additional health measures on (a) the temporary recommendations issued by the WHO Director-General; or (b) an assessment of the specific public health risks posed to the country, taking into account scientific principles, available scientific evidence, and other information from the WHO and relevant intergovernmental organizations. Travel bans that are not based on sound scientific evidence could result in unnecessary economic, social, and global health ramifications (e.g., stigmatization of the affected country, diverting resources from other public health measures critical to mitigating the PHEIC and disincentivizing the prompt reporting of outbreaks to the WHO in the future). The government could better prepare using less restrictive measures, for example, by developing protocols for the entry screening of travellers, establishing a robust contact-tracing program, scaling up widespread testing and diagnostics (if possible), mounting a risk communications campaign, and assessing the need and available supply of personal protective equipment. Should the government decide to implement travel restrictions on travellers from affected areas, it will be necessary for the government, in accordance with Article 43, to report these measures, and the public health rationale behind their decision, to the WHO within 48 hours of implementation and subsequently review the utility of travel restrictions to their national public health response within 3 months.

HYPOTHETICAL CASE STUDY #2: THE FRAMEWORK CONVENTION ON TOBACCO CONTROL: IMPLEMENTING GLOBAL HEALTH LAW THROUGH DOMESTIC PUBLIC HEALTH LAW REFORMS

The national government is seeking to address the significant rise in flavored tobacco use among teens, particularly in low-income communities. Tobacco control researchers have found that corporations have purposefully sought to attract children and young adults to smoking through the marketing of tobacco flavors that appeal to children (including cotton candy, chocolate, cherry, grape, sour apple, and cinnamon roll), colorful packaging that appeals to young demographics, and individual packages at lower prices. In response, the Minister of Health is seeking to strengthen tobacco control laws and regulations. Anthony is a policy analyst for the Health Ministry, and the Minister of Health has asked him to analyze potential changes to policy, regulations, and guidance to translate the Framework Convention on Tobacco Control (FCTC) into domestic law and to consider the lessons that can be learned from other states' implementation of Articles 11 (see Box 12.4) and 16 (see Box 12.5) of the FCTC.

1. What is the state's legal obligation under the FCTC to support regulation of the sale of flavored tobacco products, particularly to prevent initiation by children and young adults?
2. What basic attributes should potential laws and regulations include to regulate the content, packaging, and labeling of flavored tobacco products, particularly with respect to children and young adults?

Analysis: The Framework Convention on Tobacco Control (2003): Addressing NCDs Through International Law

NCDs pose unique challenges for global health, as Case Study #2 illustrates. Despite the vast global increase in NCD prevalence, NCDs lack the sense of urgency attendant to infection diseases, with NCDs being slow to develop, diffuse in their causes, and arguably founded on individual choice (Gostin & Wiley, 2016). Yet, in a globalizing world, NCDs are largely driven by the global market for commercial determinants of health, including tobacco, sugar-sweetened

BOX 12.4 FCTC ARTICLE 11–PACKAGING AND LABELLING OF TOBACCO PRODUCTS

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:
   a. tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as "low tar," "light," "ultra-light," or "mild"; and [...]
4. For the purposes of this Article, the term "outside packaging and labelling" in relation to tobacco products applies to any packaging and labelling used in the retail sale of the product.

BOX 12.5 FCTC ARTICLE 16–SALES TO AND BY MINORS

1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include:
   a. Requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;
   b. Banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;
   c. Prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and
   d. Ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.
2. Each Party shall prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.
3. Each Party shall endeavor to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.

beverages, high-calorie foods, and alcohol (Kickbusch et al., 2016). Globalization furthers the expansive trade of these commercial determinants, and as a result of these underlying determinants of health, transnational corporations and global markets have driven a meteoric increase in the prevalence of NCDs worldwide (Freudenberg, 2012). In parallel with the spread of infectious diseases, vulnerable and socially disadvantaged populations are often the most affected by NCDs, experiencing far greater prevalence than advantaged groups (WHO, 2014). These global determinants and social gradients raise key commonalities between infectious diseases and NCDs in a globalizing world, with the global implications of NCDs necessitating a global health law response.

Addressing the commercial determinants that underlie tobacco-related NCDs, the 2003 WHO FCTC has established a global legal framework to combat the globalization of the tobacco epidemic. The FCTC sets international standards to guide governments in reducing tobacco consumption, providing the foundation for the legal obligation that the government in Case Study #2 can implement at the local level to support regulation of the sale of flavored tobacco products.

Much like the IHR, the FCTC embraces a multisectoral approach to public health and calls on governments to adopt core measures for reducing tobacco demand: regulating the price of products, placing limitations on advertising, promoting education and communication, and raising the age of consumption (WHO, 2003). Importantly, the FCTC also fosters international cooperation to aid national implementation, highlighting the critical importance of linking global norms to national reforms. These national reforms require the implementation of domestic laws (both national and subnational) to ensure that the measures outlined in the FCTC are translated into public health impacts.

States like the government in Case Study #2 may take a range of measures to prevent the sale of tobacco products to minors under FCTC Article 16, including the use of legislation and regulatory enforcement mechanisms. The Minister of Health may use legislation to prohibit the flavoring of tobacco products, particularly those that would appeal to a younger demographic as well as to prohibit access to tobacco products in general. Governments can require retailers to use clear signage to indicate the age limit for purchasing tobacco products, to prohibit the sale of individual packages at lower prices, and to require purchasers to have government-issued documents proving their legal age. Extended by FCTC Article 11, governments can prohibit tobacco-product labeling and advertisements that are "false, misleading, deceptive or likely to create an erroneous impression about [the tobacco product's] characteristics, health effects, hazards or emissions." Governments can penalize companies for failing to limit access to tobacco products to minors or for knowingly misleading the public on the health effects of tobacco products.

DISCUSSION: GLOBAL HEALTH WITH JUSTICE

As a legal foundation to advance public health in a globalizing world, global governance has become crucial in developing legal norms and implementing those norms through global institutions and national reforms. Operating through global health law, well-governed institutions can set global public health standards—coordinating disparate actors, forming partnerships with key stakeholders, and developing consensus on shared goals for global health. These new instruments of global health law provide global institutions with the legal norms to negotiate a shared vision of good governance for global health, collaborate with other organizations across sectors, and align domestic law with global health law (Gostin, 2014). Facilitating accountability for these global health goals, global health law can structure an institutional basis for developing benchmarks, monitoring progress, and enhancing compliance.

Global health law can thereby provide a normative framework for achieving global health with justice. In an increasingly globalized world—facing new global health threats and creating an imperative for global health institutions to meet an expanding set of global equity challenges to underlying determinants of health—global health law can codify normative frameworks to realize the human rights that underlie global health (Magnusson et al., 2017). Looking to human rights law as central to global health governance, stakeholders have engaged a diverse array of state and nonstate actors through the rise of new policy institutions beyond the WHO—governance institutions developed through their normative foundations in justice (Ruger, 2018). Global health law can codify these vital norms for justice across institutions, providing a legal basis for human rights in global health (Meier & Gostin, 2018).

As a path to realize justice in global governance through the human right to health, advocates have proposed a Framework Convention on Global Health (FCGH). This proposed treaty

has been developed "as a mechanism to channel more constructive and cooperative action to address … the health of the world's population" (Gostin, 2008, p. 383). Through a rights-based approach to global health law, the FCGH seeks to facilitate mutual responsibilities between donor and recipient nations, coordinate the efforts of governmental and nongovernmental actors, and catalyze financial support to strengthen global health governance. This FCGH effort seeks to create a human rights foundation for global governance of public health, developing a legal framework to implement the human right to health under global health law (Gable & Meier, 2013). The FCGH Alliance has brought together civil society organizations, marginalized communities, scholars, and practitioners to advocate for an FCGH as a legal basis to overcome an expanding array of governance challenges (Gostin et al., 2016). Focusing on shortcomings of weak accountability, inadequate funding, and decentralized governance, the FCGH Alliance supports an FCGH as a model for reinforcing the realization of human rights, particularly the right to health, under WHO leadership.

CONCLUSION

Global health law is necessary to engage the public health threats, nonstate actors, and normative instruments that structure global health. Differences in legal capacity for public health across countries are driving inequities in global health. Global health law seeks to redress these inequities through global health governance. Leading global health governance, the WHO has developed international legal responses to address the global spread of infectious disease (as seen through the IHR) and commercial determinants of NCDs (as seen through the FCTC). In drawing from human rights law, global health law can structure new forms of global governance necessary to realize global health with justice.

CHAPTER REVIEW

Review Questions

1. Why does globalization raise an imperative for global health law?
2. The WHO director-general declares a PHEIC based upon a vote of member states. True/False
3. What is one example of a way a state can meet FCTC obligations to prohibit the sale of tobacco products to minors?
4. As a path to realize justice in global health, advocates have proposed a _____ based upon norms of _____.

Essay Questions

1. Why is soft law necessary to regulate global public health?
2. Why do states come together to address infectious disease threats through international law? How does the IHR bind states together?
3. How are global health law responses distinct for infectious versus noncommunicable disease threats? How are they similar?
4. Why are human rights central to realizing global health with justice? How can global health law codify human rights obligations to realize equity and justice in global health?

Internet Activities

1. How have states learned from other states in developing public health law?
   - See *Lancet*-O'Neill Commission on Global Health and the Law: https://www.thelancet.com/commissions/legal-determinants-of-health
2. How have states sought to meet their minimum core obligations under the IHR?
   - See Joint External Evaluation (JEE) mission reports: https://www.who.int/ihr/procedures/mission-reports/en
3. How have states applied the IHR decision instrument criteria in deciding whether to notify the WHO of a public health emergency in accordance with Article 6 of the IHR (2005) and Annex 2?
   - See IHR (2005); https://www.who.int/ihr/publications/9789241580496/en
4. How have states implemented the FCTC under domestic law?
   - See Campaign for Tobacco-Free Kids' Tobacco Control Laws and Litigation Database: https://www.tobaccocontrollaws.org
5. How would an FCGH realize global health with justice?
   - See Framework Convention Alliance: https://fcghalliance.org

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Additional Resources

- **GLOBALink**
  https://www.globalink.org
- **Global Health Security Agenda**
  https://ghsagenda.org
- **Global Tobacco Control: Learning from the Experts 2007**
  https://www.globaltobaccocontrol.org/online_training
- **World Health Organization, Tobacco Free Initiative**
  https://www.who.int/tobacco/en