On Vaccine Nationalism, the 'Slowbalisation' and Zoonotic Diseases - Part II

An interview with Anne Peters about the challenges and opportunities presented by Covid-19 for international relations and international law

Anne Peters & Muratcan Sabuncu

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MS: *Some countries have done better than others in dealing with the crisis so far. What do you think the reasons could be to tackle the crisis better? Is it a matter of regime type? Is populism a challenge for an effective response to the pandemic?*

AP: The pandemic provides a real-life experiment of state performance, and research comparing the different types of governance is already under way. It is too early to give a definite answer whether and which regime types are doing the better job. Authoritarian states such as China were able to react more quickly and drastically. On the other hand, autocrats failed because they cannot simply manipulate and control the facts. Examples are Russia and Iran. In contrast, in states that act transparently, which facilitate discussion, critique, which allow for challenges in court, and which listen to scientists, people tend to be more reasonable, trust in recommendations and laws, and comply voluntarily. However, both the overall societal culture and the prior experience with an infectious disease might count most. Asian states, both democratic and undemocratic ones, have been doing a good job first of all because they have learnt from SARS, and maybe also because people are more community-oriented and more ready to "sacrifice" by adapting their life-style than in the stereotypical Western states (as epitomised by the US). In the end, health infrastructure and professional and logistical competence, together with voluntary individual compliance, seem to be the crucial success factors – and these are not directly but probably indirectly connected to regime type.

MS: *Can countries be held responsible for their ineffective response to the pandemic: missing, delayed or not fully reliable information related to it? Your answer could help to understand the controversy between the US and China, Donald Trump having accused the Chinese government of a cover-up in the initial stages of the pandemic.*

AP: Under the World Health Regulations of 2005, China was obliged to notify events within its territory which may constitute a "public health emergency of international concern" (PHEIC) within 24 hours to the WHO. The state's assessment of the facts must be based on a WHO assessment and decision-making tool. The same international legal obligations are incumbent on all 194 WHO members states (basically all states of the world). The exact timeline of events is still under investigation. The WHO states that its Country Office in the People's Republic of China picked up a media statement by the Wuhan Municipal Health Commission from the latter's website on 31st December 2019. China officially notified the WHO on 3d January 2020 on the cluster of cases of 'viral pneumonia of unknown cause' identified in Wuhan.

Another question is whether quicker information would have changed the spread of the disease, because many other actors, including the WHO itself, might have contributed to this spread by delayed and too weak responses. However, such considerations would not alleviate the international responsibility of a state for late or missing notification, because the obligations to notify are result-independent. They are detached from possible material outcomes, because causality would be – as we see in the case of the pandemic – too

difficult or impossible to establish. A state cannot exonerate itself by arguing that even with the utmost diligence it could not have prevented the evil. It is exactly the point of such procedural obligations to foster a culture of transparency which is generally helpful for mitigating health risks.

The WHO General Assembly launched an investigation in May 2020 to examine the reproaches of insufficient information and reactions (of all states, not only China). The "Independent Panel for Pandemic Preparedness and Response" has been mandated to determine the accurate chronology of events and activities in relation to the COVID-19 pandemic, including the specific responses by national governments. The Panel will present its findings to the WHO in May 2021.

MS: *The World Health Organization is the directing and coordinating authority on international health work. How do you consider its performance during the pandemic? Has it been acting as a leader or a low-profile organisation in the current crisis? US president-elect Joe Biden says he will rejoin the WHO on his first day of presidency. Has the re-accession the potential to influence the performance and effectiveness of WHO?*

AP: The WHO has a strong pedigree. Once people began to travel systematically, the transboundary spread of diseases became a structural issue that demanded international cooperation. It is therefore no surprise that a very early proto-international or hybrid organisation was the Health Council of Constantinople, founded by the Sultan in 1838. The WHO, established in 1946, has no power to impose lock-downs or any other measure, and it is no world health police. The Health Regulations of 2005 were adopted in reaction to the SARS crisis of 2003, and they are binding law. However, they only foresee that *states* must develop response capacities (emergency preparedness), inform the WHO, and collaborate. In addition, the Regulations empower the WHO Director General to issue temporary recommendations, for example on border closures. The powers (and the budget) given to the WHO are fairly meek, and this was on insistence of the member states themselves who wished to retain their "sanitary sovereignty". The WHO cannot be better than the member states which kept the organisation's profile low and which have frequently not followed the WHO recommendations.

A recent incident may serve as an example: Many observers have harshly criticised the WHO for the suppression of a report on Italy's First Response to Covid-19 of 13 May 2020. This WHO report had mentioned Italy's failure to update its pandemic preparedness plan. It was removed from the organisation's website after a few days. This removal can be traced back to the WHO Assistant Director Dr. Ranieri Guerra. He is an Italian national and was responsible for pandemic preparation in Italy from 2014 to 2017. Although he is professionally obliged to loyalty only to the WHO he is serving now, his past role in the Italian civil service gave rise to a conflict of interest for him which then probably motivated a move which might appear as self-censorship of the WHO. This self-censorship is especially problematic against the background that Italy had donated 10 million US dollar to WHO shortly before the publication of the report. The episode illustrates all structural handicaps of international organisations: They are dependent on their member states with regard to their legal powers, their staff, and their budget. The public underfunding then leads to a dependency on private funding which risks creating additional problems such as lacking accountability and conflict of interest. On top of it, the member states use the WHO as a scapegoat – which is patently unfair given the weak autonomy it enjoys. I also find the warnings against rising Chinese influence in the organisation partly hypocritical, because European States and the US have long secured themselves a disproportionate influence on other international organisations, starting with the UN Security Council over the World Bank and the International Monetary Fund, to name only a few.

A return of the US to the WHO is an important step, not the least because it pays 24 % of the ordinary membership fees. Moreover, all states must consider increasing the organisation's funding and revising the International Health Regulations in the direction of stricter and binding obligations, beyond the procedural ones. Importantly, they should establish a robust

mechanism for monitoring member state compliance, with real sanctions for noncompliance. Such reforms will be acceptable only if they are accompanied by a democratisation and politicisation of the WHO which would involve more transparency, participation, and recall mechanisms in its own workings.

MS: *Covid-19 is a zoonosis, an infectious disease that has jumped from a non-human animal to humans. It is however not the first zoonosis in human history, as other recent diseases such as HIV and SARS have jumped from a non-human animal to humans. Do you think that Homo sapiens should reconsider its relation with other animals? Do you think that the Anthropocene epoch, characterised by Homo sapiens becoming the single most important agent of change in the global ecology, can evolve by embracing biodiversity with more humility? Can international law mechanisms help with that?*

AP: I think that Homo sapiens urgently needs to reconsider its relations with other animals and nature more generally. The Intergovernmental Platform on Biodiversity and Ecosystem Services recently recalled that around 1.7 million currently undiscovered viruses are thought to exist, of which 540 000 to 850 000 could have the ability to infect humans. The next zoonosis is therefore only a matter of time. Ruthless intrusion into the wilderness, for example the clearing of tropical forests (e.g. for livestock pasture), brings humans in contact with the pathogens. A maybe even more urgent problem is antimicrobial resistance which is chiefly owed to the overuse of antibiotics in factory farming.

We therefore need to pursue a "One Health" approach which acknowledges that the health of human and non-human animals is interdependent and therefore can only be secured together, not in isolation. For example, during the Covid Pandemic, not only have bats originally infected Chinese clients of the wildlife market, but also minks in Dutch and Danish fur factory farms contaminated human workers. In consequence, besides the millions of humans who suffered and died, 21 million minks were killed and trashed within a few weeks in the spring. Although "One Health" is not yet an established legal principle, it has become a policy guideline for international organisations. WHO, the Food and Agriculture Organisation (FAO), the World Trade Organisation (WTO), and the World Organisation for Animal Health (OIE) have begun to collaborate along this line. Necessary measures include the radical reduction of stocking densities in farms, the roll-out of "artificial" meat created from stem cells (as recently brought on the market in Singapore), the substitution of animal materials such as leather and fur by synthetic fibres, and a prohibition of "bush meat." The four mentioned international organisations could form the institutional hub for international standard-setting in this direction.

MS: *The pandemic has reminded that viruses do not "respect borders" that only exist in humans' imagination and are thus fictive. To conclude the discussion, I would like to ask your thoughts on the multilateralism in addressing global crises which are not limited to the current Covid-19 pandemic. Do you think global problems need global solutions?*

AP: Roughly speaking, yes. Global problems need global solutions. Think of the planetary warming, mass migration, and terrorism, to name just a few problems of global proportions. However, we also need to act locally in order to address the "globalised" problems at the roots. The legal principle which accommodates this strategy is subsidiarity. This principle demands that the smaller units (for example states, or even regions or cities) which are closer to the ground, know the facts better, and can react more swiftly, should be competent in the first place. Only if the smaller political unit cannot tackle the problem effectively, the higher unit must step in.

It is also necessary to allow for a regulatory competition in order to try out and find good legal approaches. If one state, for example, closes schools, and the other state prescribes masks, we can compare the results and see which approach works better. However, the regulatory competition must not be unbridled but may only take place inside the four corners of meta-rules which regulate this competition, too. For example, the universal principle of human dignity would seem to prohibit a legislative approach which just lets the elderly die in order to keep the

economy running. And finally, the pandemic is a "weakest link-game": One failing country will endanger the health security of all humans. And therefore, in the end, we need a global approach.

The interview was conducted for the Turkish Newspaper T24 and will be jointly published by Verfassungsblog and T24.

The first part of the interview can be found here.

ABOUT THE AUTHORS

Anne Peters
Anne Peters is Director at the Max Planck Institute for Comparative Public Law and International Law Heidelberg (Germany) and a professor of international law at the universities of Heidelberg, Freie Universität Berlin, Basel (Switzerland), and a L. Bates Lea Global Law professor at the Law School of the University of Michigan.
Muratcan Sabuncu
Muratcan Sabuncu is a PhD student in international law at the universities of Paris 1 Panthéon-Sorbonne and Basel, and works as a teaching assistant at Moscow State University.

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