

Entrenching a Global Health Emergency Mode: Implications for Health and Human Rights Law

Sutherland School of Law at University College Dublin and the *Global Health Responsibility Agency* invite paper submissions on the topic ‘Entrenching a Global Health Emergency Mode: Implications for Health and Human Rights Law’. Papers will be presented at an international conference held on **15th -16th of June 2023** in Dublin.

Background

The [classification](#) of the appearance of the SARS-CoV-2 virus as a Public Health Emergency of International Concern (PHEIC) by the World Health Organization’s (WHO) Director-General and his Covid-19 Emergency Committee on 30 January 2020 plunged the world into something akin to a ‘global health emergency mode’. In response to the Covid-19-PHEIC, WHO continues to recommend member states to take extensive medical and non-medical countermeasures. It is unlikely that this emergency mode is exited any time soon. Rather, there are indications of a process gathering pace that entrenches the emergency mode in international health/WHO law, European law, and domestic law.

In July 2022, WHO [extended](#) the Covid-19-PHEIC and declared the multi-country [outbreak of monkeypox](#) a PHEIC. At the same time, intense negotiations of a new treaty on pandemic preparedness and response are on-going at WHO,¹ and the existing multilateral treaty on PHEICs – the 2005 International Health Regulations – are thoroughly revised and amended.² The new treaty and IHR amendments are likely to provide for a further centralisation of control over and management of the collectivity of all human bodies through increased digitally-based biomedical surveillance at WHO level to detect potential cross-border health threats.³ Relatedly, they foresee a significant increase in WHO’s executive emergency powers to rapidly adopt, coordinate and implement global medical and non-medical emergency countermeasures, including strict information control via *infodemic* management. An extension of the emergency cooperation between WHO and its public-private partners like the Vaccine Alliance *Gavi* and its *Covax* facility as well as with the Coalition for Epidemic Preparedness Innovations (*Cepi*) are also planned.

At EU-level, new institutional structures have been established: the Health Emergency Preparedness and Response Agency (HERA) as a new European Commission Directorate-General in September 2021.

At domestic level, legal and other measures taken to implement WHO-recommended countermeasures to Covid-19 are consolidated and made permanent via domestic infection protection acts, changes to medical law, and through domestic jurisprudence validating far-reaching limitations to, and even derogations from, fundamental human rights during prolonged health emergencies.

At the same time, questions remain about the origin of SARS-CoV-2. What if allegations⁴ that it originated from a US-funded biolab in Wuhan, involved in so-called gain-of-function (GoF) research, prove true? Legal questions arise about the compatibility of GoF-research with the 1972 Biological Weapons Convention (BWC) supplementing the 1925 Geneva Gas Protocol.

¹ During a Special Session of the World Health Assembly (WHASS) held from 29 November – 1 December 2021, the WHASS decided to establish an Intergovernmental Negotiation Body (INB) to negotiate and draft a new pandemic treaty (see WHASS, Decision [SSA2\(5\)](#), 1 December 2021).

² The decision to revise the IHR was made by the 75th WHA in May 2022: WHA, Decision [WHA75\(9\)](#), 27 May 2022.

³ See the ‘Draft annotated outline of a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response’ ([A/INB/1/12](#), 14 June 2022) already published by the INB.

⁴ See e.g. Sharon Lerner *et al.*, ‘NIH Documents Provide New Evidence U.S. Funded Gain-of-Function Research in Wuhan’, [The Intercept](#), 10 September 2021; Katherine Eban, ‘“This Shouldn’t Happen”: Inside the Virus-Hunting Nonprofit at the Center of the Lab-Leak Controversy’, [Vanity Fair](#), 31 March 2022; ‘Why the Chair of the *Lancet*’s Covid-19 Commission Thinks the US Government is Preventing a Real Investigation into the Pandemic’, interview with Prof. Jeffrey Sachs, [Current Affairs](#), 2 August 2022.

Aim of the conference and possible topics

This call first encourages academics and practitioners to critically analyse the on-going *legal consolidation* of a global health emergency mode and WHO emergency powers, and its myriad broader legal consequences. In particular: to what extent is this consolidation compatible with the protection of human rights and (political) self-determination of ‘democratic societies’, as foreseen in international and European human rights treaties, as well as in domestic constitutions? To what extent is it compatible with the global, European and domestic regulatory frameworks of medicinal product authorisations? Contributions covering legal aspects of GoF-research are also welcome.

Second, contributions are invited on the possible *legal and institutional approaches* to better safeguard and protect human rights at a time where WHO, EU and domestic health emergency powers are growing, and to ensure accountability for violations, including violations caused by medical and non-medical countermeasures recommended and implemented to address Covid-19. The question as to whether, and if so how, a prohibition of GoF-research may be strengthened, supervised and enforced may also be covered.

More concretely, contributors might wish to address the following topics and questions:

a) *The global health emergency framework and its entrenchment: general questions*

- The legal basis and legality of processes at WHO to *declare* a PHEIC under the 2005 IHR, and changes planned under the new treaty on pandemic preparedness and response and the planned amendments to the 2005 IHR
- Legal implications of a WHO PHEIC declaration: WHO recommendations of medical and non-medical countermeasures, initiation of the Emergency Use Listing Procedure (EULP), etc. and possible extensions of WHO emergency powers via the planned treaty on pandemic preparedness and response/IHR amendments
- Legal consequences of WHO PHEIC declarations for domestic legal orders and their compatibility with domestic, European and international human rights law (e.g. case studies on declarations of (domestic) states of emergency following WHO declaration of Covid-19-PHEIC and their compatibility with human rights law).
- EU institutions/EU law operating in emergency mode during Covid-19-PHEIC, and plans to extend EU and/or WHO Regional Offices’ powers to declare regional public health emergencies of (regional/European) concern, and plans to extend EU competences in the area of health emergency preparedness and response, including through the establishment of HERA
- The Council of Europe’s (CoE) and the European Court of Human Right’s (ECtHR) response to derogations from and limitations to ECHR rights in light of a WHO-declared PHEIC
- General questions of competences/functions of international organisations like WHO and EU, and the question of them exercising emergency powers *ultra vires*

b) *Emergency pressure on the regulation of medicinal product authorisations*

- The WHO Emergency Use Listing Procedure (EULP) and the global distribution and administration of investigational medicinal Emergency Use Listed (EUL) products through *Gavi/Covax* and their implications for ensuring safety and effectiveness of such products (including questions of liability and broader accountability); plans to extend WHO and its public-private partners’ EULP competences in the planned pandemic treaty/ revised IHR
- EU Conditional Marketing Authorisation of investigational Covid-19 vaccines during the Covid-19-PHEIC and use of the procedure in future health emergencies; and the role and competences of HERA
- Domestic emergency authorisation of medicinal products during the Covid-19-PHEIC and use of domestic emergency authorisation procedures in potential future health emergencies

c) *Health emergency pressure on human rights protection*

- Health emergency powers and medical/non-medical emergency countermeasures and the right to physical and mental integrity, the prohibition of torture or inhuman treatment and the rights to physical and mental health and to life (including questions of access safe and effective medical products, informed consent, access to fresh air, to exercise, social interactions, etc.)
- Health emergency powers and medical/non-medical emergency countermeasures and the right to privacy (including biomedical surveillance, digital health passports, health data sharing, etc.)

- *Infodemic* management and the rights to freedom of expression, to receive and impart information, and to science
 - Health emergency powers and medical/non-medical emergency countermeasures and the rights to liberty and to freedom of movement
 - Health emergency powers and medical/non-medical emergency countermeasures and the right to freedom of assembly and political participation rights
 - Health emergency powers and medical/non-medical emergency countermeasures and the right to education
 - Health emergency powers and medical/non-medical emergency countermeasures and the rights to work, to earn a living, to choose one's profession, to food and to housing
 - Health emergency powers and medical/non-medical emergency countermeasures and the right to participate in cultural life
 - Medical and non-medical emergency countermeasures and the right not to be discriminated against based on health, medical or any other status
- d) *Global health emergencies: implications for judicial and quasi-judicial review and democratic law-making (accountability)*
- Review and remedies offered by domestic, European (CJEU and ECtHR) and international quasi-judicial UN human rights treaty bodies for alleged violations of human rights and medical law resulting from medical and non-medical PHEIC countermeasures
 - The use of scientific (and other) evidence by domestic, European (CJEU and ECtHR) and international quasi-judicial UN human rights treaty bodies in their review of medical and non-medical emergency countermeasures (including in relation to due process and fair trial requirements)
 - The problem that some medical and non-medical emergency countermeasures issued and implemented by WHO (including in concert with its public-private partners like *Cepi* and *Gavi*) and the EU (including the European Medicines Agency (EMA)) escape judicial review and/or non-judicial accountability mechanisms, including reasons for this (e.g. immunities); and discussion of how possible accountability gaps could be closed.
 - Questions of judicial independence in global health emergencies
 - The influence of the Covid-19-PHEIC on the functioning of domestic legislatures, e.g. deviations from or suspension of normal legislative procedures (e.g. ruling by decrees) and their compatibility with domestic constitutional law and European/international human rights law (e.g. principle of legality/upholding the separation of powers doctrine, etc.)
 - Questions around entrenching domestic legislatures' functioning in emergency mode, or actuating such mode once WHO declares another PHEIC
- e) *GoF-research and the BWC*
- Question on the extent of the prohibition of GoF-research under the BWC and examination of mechanisms to hold states' military and security services accountable for conducting such research (in their own territory and on the territory of other states)
 - Questions of whether the prohibition of GoF-research should be strengthened, and whether earlier initiatives to establish an international monitoring and compliance mechanism with the BWC should be revived.

Practicalities

Invited participants are asked to send their draft papers to the organisers at amrei.muller@ucd.ie by 17th of April 2023. Individual papers should be between 8,000-10,000 words of length and written in English. The papers are subsequently circulated to all participants to be presented and discussed during the 2-day conference to held in Dublin, 15th-16th of June 2023. Strong efforts will be made by the organisers to arrange the publication of the papers in an anthology or as a special issue in a reputable academic journal. Costs for travel, accommodation and meals are covered by the organisers.