The year 1988 marked the 40th Anniversary of the establishment of the World Health Organization. This seemed an opportune time to seek the opinions of acknowledged experts on the future prospects for the development of international health law. Lead contributions were invited from two distinguished specialists in the subject, Professor M. Bélanger (of France) and Professor V. S. Mihajlov (of the USSR). Comments were thereafter solicited from 10 academic and other authorities in the field, based in all WHO regions. In the event, five such commentators submitted contributions. Their comments are presented here in alphabetical order.

It is hoped that this Round Table will have helped to focus on some of the major conceptual, policy, and operational aspects of international health law, and will be helpful to governmental, academic, and other specialists concerned with or interested in the subject.

Any opinions expressed are those of the authors and do not necessarily reflect WHO's views.

The future of international health legislation

Michel Bélanger

Introduction

International health legislation may be defined as the body of international legal instruments whose sole, principal, or subsidiary aim is the protection of human health. Such a definition nevertheless requires clarification. It should be made clear from the outset that these texts embrace legal as well as purely technical matters; it must not be forgotten that the development of international health law is related to progress in the fields of medicine and health. While these provisions are now principally adopted under the aegis of international organizations, irrespective of their legal form (regulations, recommendations, etc.), the final decision on the incorporation of the rules enshrined in these provisions into municipal law depends on the goodwill of the States themselves. International legislation continues to be developed in the health field in the form of treaties concluded by States, but that now

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forms a less significant source of law in this field. In addition, the protection of human health may be involved, directly or indirectly, in, for example, the protection of the environment or of animal health. In a modern approach to international health legislation, the scope of the legislation is thus interpreted widely, whereas a more restrictive view is taken of what constitutes international legislation, the emphasis being placed on provisions adopted at the supranational level rather than on those coming into being through treaties.

It is important not to exaggerate the purposes of international health legislation; the general objective is to support, guide, and coordinate national health law. The diversity of national legal systems and the different stages of their development are further stumbling-blocks in the way of harmonization. The delay in recognizing the importance, and indeed the existence, of international health law reflects the slowness of the international scientific community to grasp the role already played by international health legislation in the establishment and application of international measures for the protection of health. The scale of the health problems that continue to face the populations of the world are such that the difficulties in this field and an excess of caution must not prevent the establishment of international health protection measures on a legal basis, arrived at through the development of common international health rules. Attempts to develop international health rules are by no means novel. Nevertheless, they were not undertaken at the same time as the first international health activities, succeeding them by some decades, that is, at the close of the nineteenth century. At the present time, these endeavours have been placed on a more systematic basis, a development resulting in particular from the activities undertaken in the legal field by WHO.

Before the Second World War, the initial foundations of international health legislation had already been laid, the international sanitary conventions concluded between 1892 and 1938 providing prominent examples. Although these provisions were profuse and varied, the legislation which they established remained partial, and essentially negative (that is, preventing disease rather than promoting health), while the international health agencies existing at the time, the Paris-based International Office of Public Hygiene (OIHP) and the Health Organisation of the League of Nations, enjoyed only limited legal powers.

The Second World War did not form a watershed in the field of international health legislation. The International Health Regulations laid down by WHO thus began by the adoption of the principal provisions of the previous international sanitary conventions. Nevertheless, three characteristics set off the legislation after the end of the 1940s from the foregoing period. The first characteristic of the new legislation was its global nature — resulting from the fact that the regulation of international health involves not only WHO but many intergovernmental organizations, together with certain nongovernmental organizations. Second, the purposes of the legislation were largely positive. Third, the legislation itself was capable of development given the scope of the legal
powers of WHO, the principal intergovernmental organization involved in international health protection. The regulatory powers of WHO, which may be considered "quasi-legislative" in that they do not bind Member States without their consent, enable the Organization to play an essential role in the establishment of health legislation at the general and regional levels.

International health protection in the form of operational activities, through bilateral and above all multilateral cooperation between States, requires a legal foundation taking account of the economic, social, cultural, and political factors justifying the activities. The content of health protection, and accordingly the legal framework, develop in line with these factors: thus the objectives of legislation in this field were for long the defence of health at international level but have now taken on much more positive aspects. The original objectives are to some extent reflected in the Treaties establishing the European Communities, or in the policies for the control of AIDS, while an example of the more forward-looking objectives are those objectives enshrined in WHO's Constitution.

The very increase in the quantity of health legislation gives rise to a number of difficulties. It may be that, instead of a unified body of health legislation there will be a collection of disparate measures, with varying institutional origins and sometimes diverging contents. The legislation perhaps risks overflowing from the channels of a coherent subject-matter so that the unitary nature of the subject is jeopardized. All of these questions provide good reason to take a look at the future of the subject, although the replies are not an easy matter and indeed a prognosis is to some degree presumptuous. Be that as it may, it is my view that the development of international legislation is a process that is constantly called in question and that harmonization seems a practical impossibility.

The content of international health legislation

The subject-matter of the legislation is in a state of continuous flux, depending both on medical knowledge and technology and on risks to health. Certain constant factors may nevertheless be discerned. On the one hand, these may be of a quantitative nature, relating to the general and progressive strengthening of international health legislation. On the other hand, they may be of a qualitative nature such as, in relation to the means employed, the tendency to emphasize prevention and, in relation to methodology, a willingness to cooperate with other agencies (States, intergovernmental agencies, and nongovernmental organizations). A proper appraisal of the content of international health legislation should thus throw light on its specific nature.

The intrinsic diversification of international health legislation. While the constituent elements of international health legislation are numerous, two general categories can be distinguished. Everything connected with health protection, whether in connection with the control
of communicable or noncommunicable diseases, clearly forms a first category. This indeed forms the principal, technical, and traditional objective of legislation in this field, establishing legal rules to reduce the risk of diseases breaking out or spreading, or even to aim at their eradication, as the case of smallpox in the 1950s shows. The difficulty is that this category has not only enlarged but diversified. In addition to specifically medical protection, social and health protection have developed, relating to various risks to the health of society, such as alcoholism, tobacco consumption, and narcotics abuse. The diversification of these risks is also reflected in occupational medicine. Together with protection against accidents at work and occupational diseases, such as pneumoconiosis, protection has been developed in relation to the occupational environment and the quality of life at work. To put it another way, around the central core of legislation concerned with classical medical protection, is a peripheral area relating to all the health hazards affecting society, particularly industrial society.

The second general category of international health legislation concerns ethical issues. The category is by no means new, and the international community really only became interested in ethical problems after adopting rules dealing with medical protection. The former are indeed trickier subjects for legislation. International human rights law, in which the ethical questions were considered at the same time as health protection, should perhaps have been the model. From the end of the 1940s, the World Medical Association has done much to fill the gap in this field, and other organizations (the Council for International Organizations of Medical Sciences and the Council of Europe) have also approached medical technology in conjunction with medical ethics. It must be conceded that the problems of medical ethics are becoming increasingly complex, as is exemplified by the use of \textit{in vitro} fertilization techniques. The diversification of international health legislation also results from the diversity of its origins. Two categories of institutions are involved in the development of such legislation. Intergovernmental organizations whose objective is health (WHO) or having powers in the field of health (all other such organizations) reflect, in their regulatory or legislative activities, the concerns of national governments in the field of international health protection. It is clear that these concerns may at various times be defensive or positive. They may also amalgamate to some degree in centralizing tendencies in the field of international health or, on the other hand, reflect a wish for more decentralization, through regional intergovernmental organizations, for example. Since many intergovernmental organizations are active in developing legislation, the growth inevitably becomes luxuriant, with consequent difficulties of compatibility or balance between centralization or decentralization in international health. WHO's task is undoubtedly to identify and attain a balance and its successes, particularly from the 1970s, have enabled it to remain the most important organization in the international health field.

The intervention of nongovernmental organizations in the develop-
ment of international health legislation tends to some degree to alter its content. The involvement of certain nongovernmental organizations in the development of regulatory activities is not new — the International Committee of the Red Cross, for example, has over a long period participated in the development of international human rights law — but it appears to be on the increase. Nongovernmental organizations in the field of health, such as Médecins sans Frontières and Aide Médicale Internationale, may have a valid contribution to make to the development of a right of intervention for health purposes which is nearer to the requirements of the populations of developing countries than is sometimes the case with the international health law developed under the auspices of intergovernmental organizations. With the intervention of nongovernmental organizations, general international health law, which has gradually become a branch of international development law, may be viewed as projecting a new "international law of peoples". The relevance for international health law of this alternative and less technocratic approach should be emphasized at the present moment.

The specific nature of international health legislation and its difficulties. Such legislation must take account as far as possible of technical progress in medicine, which, while a vital element in the legislation, involves many problems in practice. First of all, legislation by its nature constricts technical development, a tendency which is accentuated when the legislation takes the form of detailed provisions on practical matters. The alternative of flexible legislation, for example, framework laws, is not ideally suited in practice to international health law. A second difficulty is the risk of too great a gulf developing between international health law and its subject-matter, the state of medical and health technology employed. This problem arises in international health law in a particular form, especially in relation to health education. The policy of primary health care thus provides an interesting solution to this difficulty.

The specific nature of international health law is also perhaps principally to be appraised in relation to social and economic (and hence political and even cultural) factors that are formative in the choices made in the development of this law. In the nineteenth century, the law in this field was mainly defensive in its attitude to health, corresponding primarily to the requirements of European countries. On the other hand, WHO's activities have been positive, concentrating on prevention and oriented towards the developing countries. This policy may be related with the extent of the needs of these countries and, after the 1960s, their increased number as WHO Member States. The EEC Treaty contains virtually no health provisions since, in 1957, it was felt more important to emphasize certain elements of a general social policy complementing the Community economic policy.

The foregoing involves several risks. First, various fields and subjects may be merged or blurred. There is in fact a tendency for inter-
national health legislation to fuse with other fields having a general social and economic dimension, such as international labour law, or, even more particularly at the present time, international environmental law and international consumer protection law. It is legitimate to raise the question of the general nature of international health law in time of peace and in time of war, together with the problem of the boundary between international health law and international human rights law. There is also reason to reflect on the choice of the principal objective of international health law, the health protection of populations, which also leads on to a larger concept, of a socioeconomic nature, involving, in particular, well-being, a concept employed in the WHO Constitution. In addition, international health legislation cannot disregard the specific question of the protection of the health professions, thereby raising the problem of the boundary between international health law and international medical law.

All the foregoing discussion revolves round the definition that is given to international health legislation. A wide definition entails a very disparate view of international health legislation that is not at all helpful to perceiving its specific nature. On the other hand, a narrow definition, focusing solely on international provisions dealing directly and exclusively with health protection, would disregard whole aspects of international health protection.

The implementation of international health legislation

The future strategy for international health legislation can only be contemplated after clarifying the content of this field of law. The strengthening of this legislation may operate at several levels: the encouragement of the enactment of national health legislation; the coordination of such legislation at the regional level; and the harmonization of international health rules. Giving effect to it involves the applicability of measures and the assessment of their effectiveness. It would seem that the best chance of a successful general strategy for international health legislation lies in pragmatism and realism.

Pragmatism in the applicability of international health legislation. The range of legal instruments for the application of the law in this field must be extended; the WHO Constitution provides a model for this. It is worth emphasizing the legislative powers which the Organization possesses under Articles 21 and 22 of its Constitution, in addition to its classic power to make recommendations and the acknowledged powers of the World Health Assembly in relation to the adoption of multilateral treaties. Mention should also be made of "mixed" recommendations which, as in the case of international nonproprietary names for pharmaceutical products, have a legal status between that of a pure recommendation and binding regulations. Furthermore, paragraph 3 of Article 93 of the International Health Regulations (1969), as amended, makes provision for disputes concerning the interpretation or application of the Regulations to be referred to the International Court of Justice.
Such a procedure is unusual in the rules applicable to organizations having powers in the health field. It is certainly desirable for the general development of international health legislation that intergovernmental organizations operating in this field should enjoy varied legal powers; this is the case, besides WHO, with the International Civil Aviation Organization, the World Meteorological Organization, and, at the regional level, the European Communities. It is a further requirement that the agreements establishing the international organizations in question should specify the scope of their intervention in health matters. At present, the scope is frequently limited, as in the Treaty establishing the European Economic Community.

Pragmatism in the applicability of international health legislation also involves the adaptation of legal instruments both to the objects of such legislation and to the means available to international organizations for its implementation. With regard to objectives, it is quite certain that international health legislation must be multisectoral. Health risks, ranging from epidemics such as plague and cholera in the past and AIDS today, have a tendency to spread, irrespective of the type of society involved, traditional or industrial. This may be seen in the case of cancer, tobacco addiction, and narcotics abuse. In addition, a generalized aim for a global mobilization of forces and resources is required; WHO provided an example of this in 1981 in adopting the strategy of Health for All by the Year 2000.

A lack of means, in particular, in view of the world economic crisis or the growth in expenditure on arms, risks nipping the strategy of international health protection in the bud. The weight attached to social factors serves to diminish the scope of international health legislation. This is shown, for example, in relation to female sexual mutilation or in a tendency to pass over "hard" legislation (that is, binding provisions) in favour of "soft" (that is, in the form of recommendations). The basic problem with a pragmatic approach is whether, in applying international health legislation, soft provisions are more effective than hard. It may sometimes be more appropriate to adopt recommendations, as in the case of the International Code of Marketing of Breast-milk Substitutes, where the alternative is to try for regulations and end up with no provisions at all. Nevertheless, development of international health legislation must be gradual which brings us to an assessment of its effectiveness.

Realism in the assessment of the effectiveness of international health legislation. It is important for the effectiveness of international health legislation in general to arrive at the most appropriate international health rules. In this connection, the choice is not simply between "minimalist" and "maximalist" rules (the former being applicable in countries where health legislation is practically non-existent, usually in developing countries, the latter being well-established legislation, frequently in industrialized countries). International health rules encompass in approximately equal proportions framework rules, in particular.
involving recognition of the right to health, and more detailed "functional" rules for their implementation, for example, of methods of health protection. International health legislation addressed principally to the industrialized countries can progress only by marrying it to framework rules strengthening the "ideological" character of general international health law (that is to say, by relating it to the international law of human rights); on the other hand, the law established primarily for developing countries can only be strengthened by increasing the ordinary rules. The result is a degree of convergence.

Monitoring the enforcement of international health legislation furthermore requires flexibility. Thus, more is needed than endeavouring to centralize international health matters along the lines provided for in Article 63 of the WHO Constitution, for example, or emphasizing decentralization. In the latter case, consideration might be given to establishing regional health law involving the courts, for example, the Court of Justice of the European Communities or the European Court of Human Rights. In this matter, too, it is necessary to establish a balance, retaining the positive aspects of both centralization and decentralization in international health matters. It is this that has enabled WHO to establish programmes in the field of health legislation. Such a balance should serve to remove obstacles to initiatives for the extension of international health legislation borne of the movement towards decentralization in international health matters, in particular, through cooperation between developing countries in the field of health. There is no doubt that WHO should remain the principal organization in the field of international health protection, acting as the authority for the surveillance of the application of international health legislation, in particular through the Committee on International Surveillance of Communicable Diseases, and as the organization responsible for coordinating the health activities of its Member States and of the various international organizations, both intergovernmental and nongovernmental. The procedure of formal agreements concluded by WHO with certain intergovernmental organizations should be used more widely, as is the case with the establishment of official relations between WHO and many nongovernmental organizations, and in doing so proceed on the basis of a general overview of the consequences of delegation of powers which in the last resort is how the process of effective decentralization in international health matters must be viewed.
The term "international health law" began to appear in the literature in the 1950s; for most authors, the term signified the rules of international law aimed at providing enhanced legal protection for the victims of armed conflicts, with particular reference to certain provisions of the 1949 Geneva Conventions.

In 1953, the Sixth World Health Assembly, after considering a suggestion by the Belgian Government that a preliminary study be undertaken of the problems relating to international medical law and comparative health legislation, adopted resolution WHA6.40 inviting the Director-General to undertake such a study. The initial work was performed under the authority of WHO's Executive Board, and involved consultations with many governments, specialists in the field, public organizations, and individual experts on the need for such a study. The responses received clearly reflected the general interest shown by governments, organizations, and individuals in an analysis and study of problems relating to international medical law. It is a fact, however, that WHO paid relatively little attention to the matter thereafter.

On the other hand, various organizations took it upon themselves to continue the study. Thus, the Medico-Legal Commission of Monaco, which was created in 1934, began publishing its own journal, Annales de Droit International Medical, in 1957. In 1956, the 47th Conference of the International Law Association, meeting in Dubrovnik, Yugoslavia, decided to establish a Committee on International Medical Law. Corresponding national committees were set up in various countries. In the light of the activities of these organizations and specialized works published in different countries, it appears that problems relating to international medical law are particularly relevant in wartime, such as the protection of the rights of the wounded and of patients in time of armed conflict.

Speaking at a meeting of the International Law Association's Committee on International Medical Law in Tokyo in 1964, a participant commented that the term "the international medical law of war" would be more apposite than "international medical law" and acknowledged that his interest lay more in the peacetime aspects of international medical law, although those aspects arising during war should not be neglected.

There has been a major increase over the last two decades in the interest displayed in international medical law; it is encouraging to note that this interest has largely focused on the peacetime aspects of this branch of law.

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On considering the current status of international medical law, my own view is that it would be more appropriate to designate this branch of the law as “international health law” than “international medical law”. This term more accurately reflects the content of the legal principles of this branch, insofar as they are aimed at safeguarding human health.

In actual fact, international health law constitutes a branch of public international law, and is rapidly evolving and encompassing a vast range of subjects. In the course of one century, international law has been enriched by the promulgation of rules laying down various measures aimed at safeguarding human health not only in wartime but also, and in particular, in peacetime; this applies, for example, to the adoption of conventions aimed at preventing the spread of particularly dangerous infectious diseases, the conclusion of cooperation and mutual assistance agreements between States aimed at combating other diseases or dealing with other health matters, and the placing of the production and consumption of certain types of drugs under international control. Specialized international organizations have been established with the aim of preserving and improving the health of the population in all countries. These organizations have drawn up international legal instruments that regulate intergovernmental relations in the health field in peacetime. Other conventions guarantee the protection of wounded persons and patients in wartime, and require such persons to be treated in a humane fashion. Thus, there exists a whole range of international legal rules applicable to one specific aspect of international relations, namely relations between subjects of international law as regards the safeguarding of human health both in time of peace and in time of war. That body of rules makes up international health law (or, if one prefers, international medical law), as a distinct branch of public international law. International law currently comprises a number of different branches, such as the international law of the sea, air law, space law, and public international law. International health law is thus a distinct branch.

The principal sources of international health law can be found in the United Nations Charter and the Constitution of the World Health Organization. Article 55 of the Charter lays down that the United Nations is to promote international cooperation and the solution of international problems in various fields, including public health. Having been created to deal with health matters as a specialized agency of the United Nations, WHO’s principal goal is the “attainment by all peoples of the highest possible level of health”; health is defined in the preamble to the Constitution as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

These provisions of the United Nations Charter and the WHO Constitution can be regarded as the fundamental bases of international health law insofar as they formulate its overall orientations. International health law is consequently made up of the rules of international law aimed at safeguarding and improving to the maximum possible ex-

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tent the health of all peoples. The opinion of certain authors that consider this law exists mainly in a wartime context can hence be regarded as incorrect.

The improvement of the health of all peoples is a social and medical problem and not a legal problem; nevertheless, international law can make a significant contribution to the improvement of the health of all human beings by conferring binding force on measures agreed upon between States.

This entails the implementation of a broad range of measures by all States, both individually (on the basis of their national legislation) and in accordance with international instruments — agreements, conventions, regulations, etc. — adopted by States and competent international agencies, particularly the United Nations and WHO; an example is the International Health Regulations (1969), certainly one of the most important texts in the field of international health law. Besides the UN Charter and the WHO Constitution, the sources of international health law consist of international treaties, conventions, and regulations aimed at safeguarding and improving the health of all peoples. The principles governing this branch of law, at least in peacetime, essentially crystallized after the establishment of permanent international organizations dealing with health matters, the International Office of Public Hygiene (better known by its French name, Office International d'Hygiène Publique), the International Committee of the Red Cross, the Health Organisation of the League of Nations, and now WHO.

As is the case with other branches of international law, international health law is fraught with many problems. In my view, the principal efforts of international lawyers and physicians interested in the progressive development of international health law should be directed to the development of international legal norms and international measures oriented towards the achievement of the main goal enunciated in WHO's Constitution, namely "the attainment by all peoples of the highest possible level of health".

It is necessary to analyse the content and practical implementation of the current international law norms, since they have been found inadequate to meet the objectives for which they were framed. It is essential that new legal norms, means, and methods be elaborated to provide more rapid and effective protection and improvement of the health of the entire population of our planet, as well as the practical realization of the goals, aims, and basic principles of the UN Charter and the WHO Constitution. In my view, this is indeed the principal task in the progressive development of international health law.

In Article 25 of the 1948 Universal Declaration of Human Rights, the right to health is proclaimed as one of the basic human rights, affirming that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including medical care and the necessary social services, and the right to security in the event of sickness, disability, etc.

The right to health is also enshrined in the 1966 International Cove-
nant on Economic, Social and Cultural Rights, Article 12 of which affirms that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The measures to be taken by States Parties to achieve the full realization of this right include those necessary for: the reduction of the stillbirth rate and infant mortality; the improvement of environmental and industrial hygiene; the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases; and the creation of "conditions which would assure to all medical service and medical attention in the event of sickness".

Medicine in the service of life, and international health law, must strive towards ensuring that everyone has the highest possible level of well-being and health.

One of the most important tasks of international health law is the global struggle to definitely abolish war. War is the greatest misfortune that can befall humanity and brings with it enormous morbidity for millions of people. The efforts of peoples, governments, politicians, and international organizations must be concentrated on preventing the outbreak of a new world war. There should be a treaty banning nuclear weapons that would extend not only to their use in wartime but also to nuclear testing in peacetime. The conclusion of such a treaty banning the use of nuclear arms in warfare and any forms of testing of nuclear weapons in time of peace would be a major contribution to international health law.

The 1963 Moscow Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water is of great importance for international health law since it prohibited nuclear testing, with its concomitant irremediable damage to human health, in these three environmental elements. Unfortunately, there is still no ban on underground tests and, of course, not all States are parties to the Moscow Treaty. As long as they are not entirely prohibited, nuclear tests thus remain a threat to human health. International health law is thus still confronted by a grave problem, namely the final, universal, and complete prohibition of all nuclear tests that endanger the life and health of present and future generations throughout the world. It is also appropriate to emphasize the need for a complete ban on chemical weapons and the elimination of existing stocks, as well as for the adoption of measures aimed at preventing the creation and testing of new weapons of mass destruction; it is a fact that the testing of such weapons, and not merely their utilization, jeopardizes the health of a large number of persons.

It is not merely tests of nuclear weapons that constitute a threat to human health. Experience has demonstrated that incidents and breakdowns occurring in nuclear power stations are also extremely dangerous to the health of the population. For this reason, one should salute the timeliness of the proposals of the Soviet Union aimed at setting up an international system for the global surveillance of radiation safety, using satellite communications. This proposal was put forward

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by Mr Eduard Shevarnadze, the Soviet Minister of Foreign Affairs at the Disarmament Conference held in Geneva in August 1987. A system of this nature would provide improved surveillance of compliance with a ban on nuclear testing, once this has been decided upon. It would likewise be possible to monitor the extent of pollution of the air, soil, groundwater, and seawater at the global and regional levels. There would likewise be additional safeguards in the event of incidents or of breakdowns in nuclear power stations. The conclusion of an international agreement on the establishment of a system of this nature in the near future would greatly contribute to the progressive development of international health law.

International health law is a rapidly evolving branch of international law. Some of its institutional mechanisms have been greatly consolidated by conventions, sometimes very specific in nature (dealing with, for example, the control of particularly dangerous infectious diseases, such as plague, cholera, and yellow fever, narcotics control, etc.). There are also other problem areas for which defined normative principles have now been accepted, and these are formulated in the United Nations Charter and the WHO Constitution, although they are dealt with in a very general form. They necessitate specific and more detailed elaboration in the form of conventions. This applies to, *inter alia*, complex and multifaceted issues such as maternal and child health and problems associated with the international control of the quality of foods, pharmaceutical preparations, etc.

Certain international legal instruments provide for cooperation between States in resolving their important medical problems, such as cardiovascular and neoplastic diseases (which constitute a serious threat to human health in all countries), the manufacture of artificial hearts, the investigation of problems in paediatrics, gerontology, occupational diseases, pharmacology, and ophthalmology, and the control of influenza and more serious communicable and other diseases. These and many other aspects of international cooperation in the field of medicine, the medical sciences, and public health will in the future undergo further substantive development, and the legal norms that regulate inter-State relationships in these areas and that determine modalities for cooperation will occupy a significant position in international health law.

One serious problem throughout the world having social, moral, economic, and legal implications that needs to be singled out from the standpoint of international law is the area of drug dependence. The mechanisms currently provided by international law to combat traffic in narcotics are not effective enough and need refinement and improvement.

Although this may be unrealistic at the present time, and indeed even ridiculous, I for my part am convinced that the day will come when international health law will contain rules aimed at eliminating drunkenness, alcoholism, and tobacco use, all of which cause enormous damage to health. Efforts to combat these scourges are being carried out in certain countries with varying degrees of success. One could in fact en-
visage that these efforts be made global in character and that an interna-
tional law framework be developed. This would be difficult to achieve
at the present time but could become a reality one day. Certain actions
could indeed be carried out forthwith, examples being the development
of conventions prohibiting advertising for tobacco products or
strengthening international cooperation in efforts to combat the smug-
gling of alcoholic beverages.

Another noteworthy aspect is the establishment of international
health law rules aimed at safeguarding mental health, particularly that in
the case of youth. Pornography is now widespread in many countries
and nothing or hardly anything is being done to stop it. It would seem
opportunity to renew the 1923 Convention for the Suppression of the Cir-
culation of and Traffic in Obscene Publications. A new convention
along these lines should establish effective means for combating porn-
ography. It is also essential to have a convention prohibit the export
and dissemination abroad of books and films that preach violence,
murder, or terrorism since "works" of this nature undoubtedly have a
prejudicial effect on mental health, particularly in young per-
sons. Rules of this nature should likewise be promulgated dealing with
radio and television broadcasts.

One particular practice in international trade needs to be cor-
corrected. Certain medicaments of poor quality or whose manufacture
and sale are prohibited in developed countries are being exported to
developing countries; although the Twenty-second World Health Assembly
(1969) formulated recommendations designed to remedy this abnor-
mal situation, the practice has not yet been entirely eliminated. It is
essential that more effective measures be adopted in this area, sanction-
ed by international health law rules.

It is well known that a consequence of the competition between
drug companies is the constant reduction in the interval between the
development of a new drug and its marketing, and this often leaves ins-
sufficient time to study the therapeutic properties of the drug. There
have been reports in the press to the effect that the consumption of
pharmaceutical products by pregnant women has led to teratogenic ef-
effects, or various other very harmful effects on patients. The distribu-
tion of preparations as dangerous as this is a consequence of
unscrupulous advertising. After conducting careful studies on this prob-
lem, WHO adopted a series of resolutions setting forth fundamental
legal principles and norms for an international system for the monitor-
ing of adverse drug reactions and for cooperation between States aimed
at ensuring the safety of drugs for human use. However, in spite of
various positive aspects, these measures have a substantial shortcoming;
they place no legal obligation on States to adopt immediate and effective
measures to terminate the production of such preparations, particularly
if they have already been produced for widespread utilization. It is evi-
dent that a legal obligation of this nature binding on States could be
developed by way of convention and would thereby be established in in-
ternational health law.
Maternal and child health is a highly important problem area; so far, however, it has only been dealt with by very broad international legal principles, contained in declarations and the like. Paragraph 2 of Article 25 of the Universal Declaration of Human Rights proclaims that "Motherhood and childhood are entitled to special care and assistance". It is stated in the Preamble to the WHO Constitution that "Healthy development of the child is of basic importance". Maternal and child health is likewise dealt with in a series of instruments adopted by UN agencies, i.e. WHO and the ILO (see, for example, the Maternity Protection Convention of 1952, etc.).

In recent years, more and more attention has been paid by countries and by international organizations to family planning, and this is widely regarded as an aspect of the overall problems raised by maternal and child health. In a number of countries, particularly those with high population density and low standards of living, governments have been implementing family planning programmes, i.e. measures aimed at reducing the birth rate. WHO has also been involved in this area, and its resolutions on the subject can be placed in the context of international health law. In these resolutions, family planning is considered an internal matter for each government. Furthermore, family size is stated to be a matter of free choice on the part of individuals.

It is impossible not to mention AIDS when writing about the prospects for the development of international health law. This disease has now affected many countries, and a constant increase in the number of cases is occurring, while effective therapeutic regimens have not yet been discovered. In practice, the measures taken currently are aimed at identifying infected persons and at preventing the further spread of the disease. The actions carried out in the different countries are effected within the framework of their respective legislation and are in no way regulated by international law. Nevertheless, it seems indispensable that the efforts to combat the spread of AIDS be integrated in future within the international law framework. It is with good reason that AIDS is sometimes described as "the plague of the 20th century"; the international legal measures for combating its spread may well have to be very drastic. It has already been proposed in the press that all aliens coming from countries where AIDS is particularly widespread should be required to undergo testing. It has been suggested that the results of blood tests should be entered in special international certificates for foreign travel, as is currently the case for vaccinations against plague, cholera, and yellow fever. The writer of this article is not qualified in medicine and has no specific concrete recommendations for combating the spread of AIDS; on the other hand, as a specialist in international law, I am convinced that, with the cooperation of medical specialists, rules within the framework of international health law must be formulated facilitating multilateral cooperation, involving all countries, in efforts to combat the disease with the maximum efficiency.

In 1980, the Thirty-third World Health Assembly solemnly declared
that all the peoples of the world were henceforth liberated from the scourge of smallpox, previously one of the most devastating diseases. While it is evident that the essential role in this great victory was played by medical specialists and practitioners, a significant contribution was made by international health law, in that it provided a legal framework for the measures adopted internationally for the control of smallpox and backed up these measures with the force of international law.

I am an optimist by nature and am convinced that man will find the means to combat AIDS. The measures to be adopted will be international in character and will be decided upon within the framework of international health law.

The development of norms directed to protecting the ambient environment, and in particular the air and the oceans, will require an international health law basis. In this respect, there have been some noteworthy suggestions aimed at preventing the Pacific from becoming the world's dustbin, especially for radioactive wastes. It should be emphasized that the consequences of human activities have often attained a critical level, to the extent that it is no longer a question of improving the environment but rather preventing further degradation. The time has come where prevention is better than cure. Here too, it is the role of international health law to regulate these matters by means of appropriate instruments.

Many aspects of international health law require scientific studies aimed at formulating concrete proposals for improving the provisions of existing conventions and concluding new conventions.

These comments on the current status and future prospects of international health law deal only with certain aspects, although there are in fact many more. International health law constitutes a highly important branch of international law at the present time. Its role will continue to expand, given its noble task of safeguarding and improving the health of all peoples.

The future of international health law:
WHO perspectives

Claude-Henri Vignes

The future (as opposed to the creation) of an institution naturally presupposes its existence. Consideration of the future of international health law thus assumes prior acquaintance with its forms and content. A convenient way of arriving at a definition of a whole is to examine its constituent parts. It seems unnecessary to discuss the word "health" since all that is needed is to accept the dynamic definition

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adopted by WHO, taking it in its widest sense as embracing not only protection of the individual but also the improvement of his well-being, conditions of life, and environment. The international component must also be clarified. Very many measures are in fact capable of protecting the individual and improving the quality of his life, but a good deal of them have been, or must be, adopted at the national level. This applies, for example, to health measures concerning individuals themselves, the regulation of the health professions, or the establishment of health systems. These significant matters come within the purview of national health legislation and may be excluded from the scope of the present definition, although the Organization does retain significant responsibilities in this particular sphere. It thus remains to clarify the final, and in fact the most complex, element, namely what is meant by law. In all probability, there is little to be gained by considering law to mean legal rules binding at international level. On the other hand, if the word is taken as meaning the body of provisions applicable to health, whether or not binding, it assumes quite a different aspect, with many facets open for exploration, and it is this latter meaning that will be adopted here. International health law is thus seen as covering all principles, rules, guidelines, or recommendations, irrespective of the terms used and whether binding or not, capable not only of protecting the individual or the community against disease but also of raising the level of health, provided that these provisions are generally accepted and applied by the international community. "International health law" is thus defined as the body of principles concerning health which are accepted at the international level.

International health law, as defined above, uses various mechanisms, which may be grouped under two headings. The first group covers conventions and regulations. Both are binding on Member States, albeit by different procedures (ratification or non-rejection). These two sources of law have not developed in the same way. The convention has remained an academic form, and has never been employed, very likely for both legal and technical reasons. It involves a cumbersome procedure for its adoption (which requires a two-thirds majority as well as for its entry into force (ratification)). In addition, since it takes several years before an international convention becomes binding on a sufficient number of States, it is clearly well-nigh impossible to adopt rules binding on the international community within a reasonable time in a field such as health, where knowledge and technology are in constant evolution. A convention on health matters could even be obsolete by the time it comes into force. On the other hand, regulations have been adopted on two occasions, laying down a certain number of rules binding on almost all of the international community. It must, nevertheless, be noted that these two "binding" mechanisms have not developed in the ways the fathers of the WHO Constitution might have expected.

In contrast, the non-binding mechanisms, which form a second group, have undergone a noteworthy development. WHO, in conjunc-

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tion with FAO, has adopted food standards within the framework of the Codex Alimentarius which are not binding at the outset, but become binding on the States accepting them. To a lesser degree, WHO, by recommendations adopted by its governing bodies, has developed a corpus of provisions generally applied by the members of the international community. An example is the International Code of Marketing of Breast-milk Substitutes, which is applied in more than 130 jurisdictions. Mention may also be made of the good practices in the manufacture and quality control of drugs, the provisions on drinking-water quality, or the Expanded Programme on Immunization. Even less problematic is the technique of adopting provisions which are not recommendations in the legal sense. A large number of principles, guidelines, and codes of practice have been drawn up by expert committees and their publication authorized by the Director-General. These principles are in fact considered by the health services of the Member States to form a body of quasi-binding rules. Simpler still is the method employed by the Global Programme on AIDS. This entails the publication of documents containing certain principles and measures for prevention of HIV infection, extending to provisions on international travellers, criteria for screening for HIV, methods of sterilization and disinfection which are effective against HIV, or the establishment of a national programme for AIDS control. Although these measures have been adopted by ad hoc groups, they form a body of rules followed by most health authorities.

Against this background, the future of international health law must now be considered and for this, the lessons of the past must be drawn upon. The use of the binding mechanisms would seem unrealistic. Leaving aside conventions, for which the future promises no more than the past, resort to regulations appears a very doubtful undertaking. This is not really for legal reasons; the simple majority necessary for the adoption of regulations is readily obtainable while the "contracting out" procedure facilitates Governments' adherence to them. The fact that regulations may be adopted only with respect to certain categories of subjects likewise does not really affect their utility since a fairly large number of matters could probably be assigned without much difficulty to one or other of these categories. The real difficulty is that measures cannot be adopted quickly enough to meet the health requirements of the moment. At the time of their introduction, the International Health Regulations were a novel, and indeed revolutionary, instrument. Although the Regulations still retain a significant role, no one today seems to seriously contemplate increasing the number of "diseases subject to the Regulations".

Despite what might be thought at first sight, there is no reason for apprehension over the future of international health law. It is clear that the future prospects are excellent, since WHO is both willing and able to perform its proper role. The means whereby it should do so have already been indicated, namely flexible provisions. Such provisions, readily adopted and adapted, are most suited to the actual facts.
of the health situation, \textit{a fortiori} since each individual State can take its own decision, in the light of its particular national position, on ways in which they will be embodied in its national health system. The route to be followed by WHO seems sufficiently plain. In that it concerns equally the individual and society, irrespective of social status, health is a unique phenomenon, and, for good measure, one which transcends national boundaries.

These, then, are the reasons why WHO is the institution best placed to protect and promote health at the international level. Article 2 of the WHO Constitution contains no less than six references to the coordinating role to be played by the Organization in health matters; coordination is in fact the key word in the Constitution, which naturally provides the basic foundation for WHO's activities. What is required of the Organization is leadership, not compulsion. Within the framework of the priorities specified by the governing bodies, the respect which the Organization enjoys will permit it to develop the body of principles and standards required by the international community, and it is that which must be seen as the future role for international health law.

\section*{Future perspectives for international health law}

\textit{Lahcen Bayti}\textsuperscript{a}

\textbf{Introduction}

Decolonization has fundamentally transformed international society. After the Second World War, and above all in the early 1960s, many States attained independence; their statehood established, they experienced a mutual solidarity against the international order, which they felt must be changed. The first signs of their determination were manifested at the Bandung Conference in 1955, which marked the début of the Third World in the international community at both the economic and health levels. These developments in the health field in the society of nations cannot fail to produce their effect on the legal rules in this field.

\textit{International health law in a changing world}

International health law has proved to be ill-suited to contemporary international society. It is in fact a body of rules initially conceived by Western States and essentially conforming to their particular requirements. International health law developed in conjunction with the establishment of nation States at the end of the 19th and the beginning of the 20th centuries. Its development in the 20th century was due to the major Western States. They conceived the outlines of international health law in terms of their own political and economic systems, so that

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its underlying theory and detailed rules naturally reflect the requirements of these States. Since the developing countries had not participated in the establishment of international health legislation, they did not consider that rules drawn up by Western countries applied to them. They expressed reservations on rules of international health law alien to their needs and considered that certain of its principles served to secure their permanent domination by Western countries. Consequently, they demanded the establishment of a New International Health Order, taking account of their particular interests.

International health law will need to be reviewed in terms of new objectives. Given that the discrepancy between de facto and de jure situations should be minimized, the law in general, and health law in particular, must seek to apply the law to concrete situations in the health field. Indeed, it may perform a creative role, enabling an economic project to develop. In the present situation, health rules established in a different context must be reviewed. Since the law arises from the necessities of life in society, reflecting them in its content, it must be adapted in line with the changes in that society; law is in fact transitory in character. The development of rules and procedures in the health field usually entails a conflict of interests. International health law, as a mirror of the realities of the international situation, must also play a part in the transformation of international relations and their economic outcomes. It can help to alter the working of the international community; the alteration of the legal order is thus both a means and an end. This is why the new States wish to participate in the development of new international health law, a fortiori since international society was formerly so homogeneous that the States applying the health rules were those which had combined to draw them up. International society is now less homogeneous and the developing countries must participate in establishing new law.

The transformation of international health rules creates a climate of dissension: a reverse for Western medicine

The complexity of inter-State relations is accentuated by changes in the society of nations; the nature of these States often differs and they frequently have opposing interests in the field of health. The health rules must accordingly be modified at the State level, which will undoubtedly entail a transformation of international health law, despite the divergences existing in this field.

A new and heterogeneous international society. The scope of the subjects of international health law will be enlarged, that is, the States are now more numerous and diversified. The content of that law will also be different: the previous "law concerning powers and procedures" will develop into a law establishing basic health regulations. The new law should take account of the specific details of the real world and be much less abstract, moving from a law characterized by abstraction and formalism to a developing law sensitive to realities of

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the health situation. It will take a new direction, having a global vision, not only of all of the States to which it applies but of the countries of the world as a whole. This will bring "health democracy" to the law, rendering it universal. Finally, the new law must be characterized in future by its concern for humanity. It is to be a law for a changing, as opposed to an immutable, society; it will thus embrace all changes and make provision for the health of the future. Finally, it must endeavour to take into account all health concerns, and thereby bring about a more harmonious New International Health Order.

Another specific condition for the transformation of health rules is that the future international health law should operate in a heterogeneous setting. In fact, the nature of international society has become more varied because of the great divergence in stages of development at the health level and the new law must reflect this. The question is how these conditions can become universal. The new law must be guided by a global vision, from which it follows that the development on a broad front in the health field is possible only in a homogeneous context.

The new international health law will not be general in nature but must have a place for specific health rules inflected to take particular features into account. It will be based on categories and capable of variation to cope with emergencies or with long-term cooperation in the health field between developed and developing countries. There would be no single body of health rules. Furthermore, differences in the characteristics of States mean that no change is final, so that international health law will never be fixed and immovable.

A new society where interests sometimes conflict. The development of international health law, which is far from concluded, has for long been based on a view of health which is principally, if not exclusively, "defensive". This development is now proceeding on the basis of a much more positive view, one adopted in large measure through the influence of WHO, making possible a genuine diversification of the rules. Nevertheless, like public international law as a whole, account must be taken, in this development, of differences in the immediate interests of States.

The heterogeneous nature of international society refers back to interests which sometimes conflict. One of the most basic conflicts relates to States' differing levels of development in the field of health, where the national interests of developed and developing States are often opposed. International health legislation closely reflects national interests and is applied in terms of these interests. Consequently, there are difficulties in reaching agreement, whether on the development or interpretation of rules of international health law. A measure of this situation is the serious resistance encountered in developing certain rules, for example, those in connection with the powers in the health field of a military organization such as NATO. Nevertheless, the fact is that history has given rise to a sort of international division of labour in health mat-

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ters. This entails the intervention, at legal and practical levels, of the International Committee of the Red Cross and nongovernmental organizations for the provision of health protection in time of armed conflict, and WHO and other intergovernmental organizations not operating in relation to armed conflict.

It follows that, on a proper view, the new international health law must take account of both the development and complexity of that law and display its specific nature. This developing law is now sufficiently complex for an account to be given of the various activities within its scope; all these difficulties are the price to be paid for attaining a genuine consensus covering conflicting interests. This is the best method of ensuring that the health rules decided on are respected but it is not certain that a legal agreement in the field of health is attainable immediately between the various parties. A period of negotiation and bargaining will be necessary for this. International health law comprises a multitude of structures tending to develop this law and a large body of repetitive resolutions. By these indirect means, the developing countries hope to attain their objectives and cause the developed countries to change their stance. Pending agreement in legal form, it is necessary to progress by degrees.

Dissension and evolution in legal structures in the international health field

The development of legal structures in the field of international health arises from changes in inter-State relations and takes place in a climate of dissension. The complexity which sometimes results is the counterpart of the construction of a new international health law necessitated by various facts. Disagreements have arisen concerning the methods employed. It may be queried whether the developing countries alone are responsible for the consequence of the climate of dissent prevailing in the present international health order. It is probably the case that these developments are a complex procedure which will have to become general in order to establish a New International Health Order in which the developing countries are willing to participate. The law will cede its place to the exercise of pressure and unilateral decisions as a means of bringing stability to situations. The use of legal rules seems to depend on the interests at stake and varies according to changes in these interests; this essentially occurs in relation to a new international health law which is considered by States to be a means of defence of their prime health interests. This has its effect on the universal nature of international health law, viewed as the legal expression of the collective interests of the international community.

The transformation of international health law entails a positive step, namely the construction of a new law and its legal framework. The opposing interests of the developing and developed countries involve tensions which throw into relief other contradictions and may degenerate into conflict. In this connection, the French jurist Mario Bettati has remarked "The crisis in the control of trafficking in narcotics has shown
incompatibilities within international society as a whole, and not only between countries generally notorious for such trafficking, and certain institutions for the control of the traffic”.

That is why the current difficulties in the field of international health law do not result solely from the activities of developing countries; it is rather the haphazard nature of the growth of international health law in an international society where change is in full swing. The charge is often levied that the developing countries are in breach of the due solidarity of the international community, by calling in question international health law, with resultant disturbances. It may be queried whether there is any duty of solidarity in the first place, and if there is, what it entails, and whether the duty is owed by a group of States with the same interests or whether it is an obligation between the various States making up international society. Certainly, it should be emphasized that this duty does not rest on the developing countries alone.

To turn the criticism against those who lodge it, it must surely be recognized that the developed countries do not invariably fulfil their obligations, so that responsibility for the resultant problems in this field must be a shared one. In my view, it may sometimes be inappropriate to make a value judgement on the conduct of States when their interests are at odds. It is evident that conflicts of interests often prevent agreement being reached in emergency situations. This is, then, a necessary stage in the development of a new international health law. There is acute difficulty in establishing international health rules in a period of unrest, as it entails bringing about agreement between a number of differing opinions. Agreement is not always immediate since it is agreement as it is generally understood, and not a law as would be issued by a legislature. Seen from this point of view, these changes are for the better and will necessarily bring with them a new international health law.

Reflections of a political scientist

Leon Hurwitz

As a political scientist with an interest in the harmonization of public policy, the management of international cooperation, and regional responses to transnational challenges, I am especially pleased to have this opportunity to comment on the essays by my colleagues, Professors Bélanger and Mihajlov.

Both contributions discuss the definition of international health law or legislation and identify its conceptual boundaries. The authors agree that international health law is a sub-area of the general academic discipline of international law and that it has a status equal to other

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recognized sub-areas such as space law, the law of the sea, and the law of conduct in time of war. There is also agreement that international health law has now become proactive rather than reactive: the prevention and alleviation of disease and infirmity most assuredly remain as basic objectives but, in addition, international health law now is engaged in positive efforts to achieve a complete state of physical, mental, and social well-being for the individual.

The most interesting and significant sections of the essays deal with the future scope or prospects of international health law. Mihajlov, for example, identifies several areas that should be targeted: alcoholism, drug abuse, atmospheric and underground nuclear testing, and access to health care. I have no quarrel whatsoever with these future targets of international health law: they are positive public goods and activities in these areas ought — an ethical and moral "ought" — to be pursued. Nevertheless, the pursuit of these objectives will, in my view, be accompanied by severe political discord.

Mihajlov's prediction is that the future content of international health law will be quite different from its content in the past. Most of the past activities have been "functionalist" in nature, that is to say, activities that have been mainly "medical" and/or "legal" and on which there was a general consensus as to the basic objectives. The "medical" eradication of smallpox or the "legal" codes dealing with the humane treatment of prisoners of war were able to succeed not in spite of, but because of, a general political consensus. The scenario of the future does not, however, promise such consensus — the future prospects of international health law might be diluted by very important political, social, economic, and cultural factors.

Activities that go beyond the functionalist "medical" or "legal" sphere — activities such as providing access to health care for everyone in a particular society, the suppression of pornographic materials, the abolition of nuclear weapons, the abatement of air pollution — will be carried on in the political arena where consensus is absent. There is a significant and vital difference between the "medical" eradication of smallpox on the one hand, and on the other, the abatement of air pollution. For example, the problem of air pollution and acid rain is not seen in the USA as a medical problem but, unfortunately, as a political and economic variable to be treated as any other political alternative (i.e. how much will it cost, how many votes will be forfeited or gained, how many jobs will be lost). Concerted future activities by the international health organizations in these specific areas might lead international health legislation into the political thicket, where consensus does not exist and the medical or legal nature of the objectives is subordinated to political realities.

My comments above are really only a restatement of Bélanger's views about the necessity for pragmatism as to the applicability of international health legislation and the necessity for realism in the assessment of the effectiveness of such legislation in the future. As Bélanger put it, the specific nature of international health legislation must be apprais-
ed in relation to social, economic, political, and even cultural factors within each society.

Finally, the future of international health law must take into account the very real but different needs of the developing world and not be concerned just with the refinement of standards for the industrialized countries. The disposal of industrial toxic wastes in the developing countries, the sale of pharmaceutical products in the Third World by the very countries who have deemed the products unfit for domestic consumption, and the international marketing of breast-milk substitutes — these are the areas in which the future of international health law will be determined.

The future of international health law from the perspective of the AIDS pandemic

Dayanath C. Jayasuriya

For several centuries countries have deployed legislative measures to achieve health-related objectives, though it has taken time to conceptualize "health law" and to accord it its due place in national legal systems and in the curricula of schools of law and public health.

The proper forum to provide a stimulus to the development of international health law is WHO but its governing bodies have been hesitant to make use of the powers to make binding regulations vested in the World Health Assembly under Article 21 of the Constitution. Instead, recourse has been had to the less controversial approach of adopting resolutions or making recommendations calling upon Member States to take specified action. While this approach may have helped the Organization to avoid polemics and serious ideological differences and to consolidate its strength as an international body, the development of international health law has been seriously compromised in the process. One has to grope in the dark, as it were, to compile an inventory of international health law. Of course, practices and customs generally accepted among countries have the attributes of international law so that there is a substantial body of international health law based on national health law.

A watershed in the evolution of national health programmes is the recognition that health interventions must be multi-sectoral. This broad-based approach to health is reflected in national health laws, especially public health codes, which provide for a wide variety of health-related interventions. It is clear that health is of such importance that health-related considerations must permeate all developmental activities.

Recent developments in certain spheres of international law reflect the need for health-related factors to be taken into consideration in most areas of human activity. The 1982 Convention on the Law of the Sea,

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for instance, considers drug smuggling on the high seas. Two or three decades ago, it would have been inconceivable that a convention dealing with maritime issues would address a health problem that has far-reaching implications for the welfare of drug-dependent persons.

The AIDS pandemic has brought into sharp focus the role of international health law, the screening of international travellers and students being of particular importance. In this context, the relevance of the International Health Regulations has been examined in several recent studies. Under Article 81 of the Regulations, international travellers may not be required to produce any health certificate other than those provided for in the Regulations. Whether this Article applies to certificates in respect of any disease or of only those diseases covered by the Regulations is a moot point, though it has been argued that so long as AIDS or HIV infection is not made a designated disease, Article 81 will not prevent Member States from insisting on "AIDS or HIV infection-free" certificates. Indeed, as of June 1988, such a requirement was in place in several Member States, with several more known to be considering the feasibility of introducing such a requirement.

The International Health Regulations represent a consolidation of a series of regulations formulated from time to time and there has been no recent attempt to review and update the existing text in the light of current knowledge of communicable disease control. The AIDS pandemic has highlighted the need for such an attempt.

This pandemic has also underlined the need for definitive guidelines on the conduct of clinical trials for vaccines and drugs and of epidemiological studies that entail invasive procedures such as the withdrawal of blood. Concern has already been expressed on the scientific validity and moral acceptability of some of the preliminary studies undertaken in this field in certain African countries. This is a problem area which needs to be addressed before it assumes alarming proportions. The Declaration of Helsinki as well as the WHO/CIOMS Proposed International Guidelines need to be reviewed in the light of the rights of HIV-infected persons and AIDS patients. There is also a need for model research protocols. However urgent it may be to develop a drug or vaccine for AIDS or HIV infection, the rights of individuals, particularly in developing countries without mechanisms to screen and monitor research projects, should never be compromised.

A review of the International Health Regulations will be an important stimulus to the further evolution of international health law. The AIDS pandemic has made it more urgent than ever before for such a review to be undertaken. If the Regulations are left in their current form, Member States may soon develop national health laws impinging on international travel and other aspects, without a proper international focus, a development that should be avoided at any cost. In order to cope with the AIDS pandemic and similar public health problems having international implications, we need an updated, scientifically sound, and pragmatic set of new international health regulations.
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A new challenge for international cooperation in health matters

Marie-Françoise Lücker-Babel

International health law as a concept has recently developed, in the same movement which has given rise to the concepts of international development law, international environmental law, and the "third generation" of human rights. Despite this fecundity, the question may be raised whether international health law really exists as an independent field of law, and if so, what the precise extent of that field is. The term does require some clarification, unlike international labour law or international humanitarian law which have long since crystallized and have a generally accepted content. Reference must be made, for the specific purposes of international health law, to the definition in the preambular paragraphs of the Constitution of the World Health Organization, which forms the only international source of reference currently available. Therefore, the links between WHO and international health law are of particular significance and the influence of the former on the content and scope of the latter cannot be denied.

The powers accorded to WHO under its Constitution have prompted it to express considerations and claims far exceeding the scope of disease control and health care delivery. For decades WHO has concerned itself with the environment, human rights, the production and marketing of food and pharmaceutical products, workers' health, health education, health-related aspects of development, drug abuse, and the like. Nevertheless, WHO is not the sole international organization with an interest in these various fields. The United Nations (for example, the Commission on Human Rights or the Commission on Narcotic Drugs), the International Labour Organisation, and FAO, to cite only a few institutions with a global mandate, deal with them daily. This

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multiplication of powers originates in the wide concept of health which extends to "a state of complete physical, mental and social well-being". A further consequence of this broad view of health is that the motive forces, and the originators of legislation, are to be sought outside WHO. International health law thus contains purely health elements, a well-known example being the International Health Regulations, or elements closely related to health in the strict sense (health education and training, distribution of medicaments, and health statistics). Various satellite fields overlap this central core: international humanitarian law, international consumer protection law, international labour law, and international environmental law, international narcotics law, and international development law. International health law is both a specific structure itself and the fulcrum of the international policies brought about by various motive forces operating within the framework of their respective responsibilities, always provided that they are in some way concerned with health. While this does not provide a clear profile for international health law, the existence of international provisions on health rules out the view that there is no common denominator, which is in fact the health of persons and of peoples, thereby providing a certain guidance for the international community.

Another salient feature of international health law is that its subject-matter is not so much relations between States as the improvement and protection of the health of persons and populations. The practical steps which WHO and States must take to obtain generally applicable standards (as in the field of public health care) form the chief subject-matter of many decisions.

Finally, classifying international health law under public international law provides only a partial indication of its formal nature. Those of its sources which are in the form of treaties, primarily multilateral, and regulations are relatively scanty. WHO has not promoted any international health conventions and has only adopted two international regulations in pursuance of Articles 19-22 of its Constitution. Its policies are essentially formulated by way of recommendations and declarations adopted by the World Health Assembly. A crucial consequence of this is that, since the recommendations and declarations are not binding, international health law forms a much less solidly founded structure than other branches of public international law.

In order to get a better grasp of the international requirements in each particular field, it is necessary to consider the nature of WHO's measures and to assess the extent to which they are binding. Both the content and form of international health law profoundly influence the effectiveness of its application; the charges sometimes levied against this field of law, namely that it is vague and lax, are offset to some degree by its great flexibility.

Unlike other supervisory systems established by other international charters or international conventions, that set up by the WHO Constitution is particularly flexible. The system operates through reports submitted by the States themselves and only very much more rarely through

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