

International Criminal Law and Pandemics

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Abstract

Some parts of treaty and customary provisions of international law, for the sake of protection of international public order, relate to individual criminal liability. Hence, a new trend as international criminal law has been developed. Rules of responsibility, whether in the area of criminal responsibility or otherwise, are regarded as secondary ones. One of the important issues of international law, especially international human rights law, is "health". In this regard, rights for human beings and, consequently, duties for governments are envisaged. The prevalence of some diseases and viruses has led to more attention being paid to international health law and its relevance to other areas of law. The present paper examines the relationship between international criminal law and the spread of pandemic viruses. Examining the relationship between "health" and "international peace and security", "well-being of the world", and "international human rights", the authors tried to deal with the possibility of applying international criminal law in cases of violations of the right to health due to the spread of pandemic viruses.

1. Introduction

Today, international law is no longer just a law of "domain of foreign affairs".¹ It also regulates the conduct of individuals, in particular in the field of human rights and humanitarian law.² Indeed, international law as the law governing all actors in the international community has been developed thematically. More precisely, this legal set covers various areas of human life including public health. The United Nations, as the international superpower in current structure, has taken on responsibilities in the field of health. First, the preamble to the Charter of the United Nations states that "[...] employ[ing] international machinery for the promotion of the economic and social advancement of all peoples"³ is essential to the achievement of the objectives of the Organization. Undoubtedly, the issue of health is closely related to important categories of economic development

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¹ See generally Mattias Kumm, The Legitimacy of International Law: A Constitutionalist Framework of Analysis, *The European Journal of International Law* Vol.15 no.,2004, 907.

² Andrew Clapham, The Role of the Individual in International Law, *The European Journal of International Law* Vol. 21 no. 1, 2010, 25-30 and also Christiana Ochoa, The Individual and Customary International Law Formation, *Virginia Journal Of International Law*, Vol. 48 no. 1, 2007, 119-186.

³ <https://www.un.org/en/sections/un-charter/preamble/index.html>(lastvisit 12/27/20)

and social development. In other words, a society that is more economically advanced is also at a better level of health. Then, in the third paragraph of Article 1 of the Charter, “[...] achieve[ing] international co-operation in solving international problems of an economic, social, cultural, or humanitarian character”⁴ is envisaged as one of the purposes of the United Nations. Undoubtedly, health issues have economic, social, cultural and humanitarian characteristics. Paragraph 4 of the article also describes the United Nations “To be a centre for harmonizing the actions of nations in the attainment of these common ends.”⁵ Obviously, the organization is not able, by itself, to fulfil this task, and therefore specialized organizations are provided for the organization.⁶ In this regard, an international body in charge of health issues and matters has been established: the World Health Organization (hereinafter WHO).⁷

On the other hand, international law has not only considered the right to health as a fundamental human right⁸ that can have a direct impact on the right to life of individuals, but also two other important developments have taken place: the link between health and maintenance of international peace and security, as well as the criminalization of violations of the right to health in various forms, which is the subject of international criminal law.

This article first examines the concept of health security. It then discusses how the spread of a virus can be an instrument for committing an international crime. It then examines how the spread of a virus could be a context for committing international crimes. In other words, when a virus spreads widely, governments may not be able to fulfill their legal obligations in the area of health to those who are within their jurisdiction. For example, individuals may be deprived of their basic rights because of their membership in a racial, national, religious, or ethnic group, and it is clear that the government is taking advantage of this situation to eliminate the target group in whole or in part. It may also be discriminatory to deprive some people of their basic rights. Each of these measures can have criminal titles within the framework of international criminal law, if they are accompanied with the necessary *actus reus* and *mens rea*. Finally, the concluding remarks are presented.

⁴ <<https://www.un.org/en/sections/un-charter/chapter-i/index.html>> (last visit 27 December 20)

⁵ Ibid.

⁶ See Heath-Brown N. Specialized Agencies of the UN. In: Heath-Brown N. (eds), 2015 and also Gustav Pollaczek, The United Nations and Specialized Agencies, American Journal of International Law, Volume 40, Issue 3, July 1946, pp. 592 – 619.

⁷ See generally Marcos Cueto, Theodore M. Brown, and Elizabeth Fee, The World Health Organization: A History, Cambridge University Press, 2019.

⁸ See generally Virginia A. Leary, JD, the right to health in international human rights law, Health Hum Rights, Vol. no. 1, Fall 1994: 24-56 and also Eleanor D. Kinney, The International Human Right to Health: What does this mean for our Nation and World? Indiana Law Review, Vol. 34, 2001: 1457.