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COVID-19 Pandemic, International Law, and Action Taken by Vietnam

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THE COVID-19 PANDEMIC, INTERNATIONAL LAW, AND ACTIONS TAKEN BY VIETNAM

HONG THAO NGUYEN & LE THI ANH DAO*

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I. COVID-19: A GLOBAL PRESSING CONCERN

One year after officially declaring the COVID-19 pandemic, the World Health Organization (WHO) has reported 146,841,882 confirmed cases and 3,104,743 deaths due to COVID-19.¹ At the

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1. See *WHO Director-General's Opening Remarks at the Media Briefing on COVID-19*, WORLD HEALTH ORG. (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> [hereinafter *WHO COVID-19 Pandemic Declaration*] ("We have therefore made the assessment that COVID-19 can be characterized as a pandemic"); *WHO Coronavirus (COVID-19) Dashboard*, WORLD HEALTH ORG., https://covid19.who.int/?gclid=CjwKCAiA-L9BRBQEiwA-bm5fnqP2jKHuqTMq2E7gN1HJKEEGATLDkVJ-2FTe2g6SE3_EwacuplTahoCo-UQAvD_BwE (last visited Apr. 26, 2021) (providing updated COVID-19 mortality statistics); Qun Li et al., *Early*

beginning of the COVID-19 pandemic, nations failed to properly respond to the outbreak through international cooperation, and international health organizations were insufficient in managing the crisis.² Pandemics are not an unusual phenomenon in human history.³ However, the impact of COVID-19 on the international community in regards to public health care, domestic and international economics, the environment, human rights, domestic and international security, international cooperation and others is highest in comparison to past infectious viruses and diseases.⁴ The COVID-19 pandemic's global impact on every aspect of human life is a pressing concern for the international community.⁵ The General Assembly resolution of April 2, 2020—*Global Solidarity to Fight the Coronavirus Disease 2019 (COVID-19)*⁶—recognized that the challenges presented by COVID-

Transmission Dynamics in Wuhan, China, of Novel Coronavirus-Infected Pneumonia, 382 NEW ENG. J. MED. 1199, 1199–1207 (2020) (assessing the transmission dynamics of COVID-19).

2. See Selam Gebrekidan & Matt Apuzzo, *Covid Response Was a Global Series of Failures*, W.H.O.-Established Panel Says, N.Y. TIMES (Jan. 18, 2021), <https://www.nytimes.com/2021/01/18/world/europe/virus-who-report-failures.html> (explaining the failure of international cooperation); Eyal Benvenisti, *The WHO—Destined to Fail?: Political Cooperation and the COVID-19 Pandemic*, 114 AM. J. INT'L L. 588, 588–89 (2020) (discussing the failure of the World Health Organization in managing the crisis).

3. The first two decades of the 21st century have already witnessed several epidemics and pandemics such as SARS, Dengue, Cholera, Ebola, H1N1, MERS-CoV, Zika, Swine flu, and HIV/AIDS. *Health Topics*, WORLD HEALTH ORG., <https://www.who.int/health-topics> (last visited Feb. 23, 2021); Lames W. LeDuc & M. Anita Barry, *SARS, the First Pandemic of the 21st Century*, 10 EMERGING INFECTIOUS DISEASE 26 (2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3329048>.

4. See *Impact of COVID-19 on People's Livelihoods, Their Health and Our Food Systems*, WORLD HEALTH ORG. (Oct. 13, 2020), <https://www.who.int/news/item/13-10-2020-impact-of-covid-19-on-people%27s-livelihoods-their-health-and-our-food-systems> (describing how COVID-19 has caused devastating economic and social disruption); Kimberly Amadeo, *How COVID and Other Pandemics Affect the Economy*, THE BALANCE (Nov. 18, 2020), <https://www.thebalance.com/coronavirus-plague-ebola-economic-impact-4795744> (noting how the global cost of infectious diseases like COVID-19 rise as the world becomes more integrated while comparing COVID-19 to other recent and historic infectious disease outbreaks).

5. See *WHO COVID-19 Pandemic Declaration*, *supra* note 1 (acknowledging the heavy toll of COVID-19 and public health measures on societies and economies throughout the world).

6. General Assembly Res. 74/270, *Global Solidarity to Fight the Coronavirus*

19 “requires a global response based on unity, solidarity and multilateral cooperation.”⁷

The obligation to protect human life is codified in several legal instruments of international law.⁸ Principles of international law such as sovereign equality, non-interference in internal affairs, and peaceful settlement of disputes have guided the behavior of states and international organizations through the exceptional circumstances of the COVID-19 crisis.⁹ For example, sovereign equality implies the equal access and distribution of vaccines among all nations.¹⁰ Equal access and distribution of vaccines can be realized through the initiative of global or regional vaccines funds or the removal of intellectual property procedures in exceptional cases.¹¹ The challenges of the pandemic fostered a new debate for how existing principles of international law should be interpreted and applied with flexibility, or

Disease 19 (COVID-19), U.N. Doc. A/RES/74/270 (Apr. 2, 2020).

7. *Id.*

8. See, e.g., G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 3 (Dec. 10, 1948) [hereinafter UDHR] (“Everyone has the right to life, liberty and security of person”); G.A. Res 2200A (XXI), International Covenant on Economic, Social, and Cultural Rights, art. 10 (Dec. 16, 1966) [hereinafter ICESCR] (providing for the protection of mothers and children from discrimination and exploitation); G.A. Res 2200A (XXI), International Covenant on Civil and Political Rights, art. 6 (Dec. 16, 1966) (asserting the inherent right to life, which must be protected by law); see also Constitution of the World Health Organization, art. 1, July 22, 1946, 62 Stat. 2679, 14 U.N.T.S. 185 [hereinafter WHO Constitution] (declaring the objective of the World Health Organization to be “the attainment by all peoples of the highest possible level of health.”).

9. See U.N. Charter art. 2, par 1–4 (basing the United Nations on the principle of sovereign equality and providing that all members shall settle their international disputes peacefully and refrain from interfering with the territorial integrity or political independence of any state); see generally Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L.J. 207 (1944) (examining whether the principle of sovereign equality can be the basis of international organization).

10. See generally Alex Ansong, *The Concept of Sovereign Equality of States in International Law*, 2 GIMPA L. REV. 14–34 (2016).

11. See Karen Walsh et al., *Intellectual Property Rights and Access in Crisis*, 52 INT’L REV. INTELL. PROP. & COMPETITION L. 379–416 (2021) (examining the importance of access to intellectual property rights (IPR) protected subject-matter in two crucial areas – public health, and educational and cultural engagement during the COVID-19 pandemic);

Covid: US Backs Waiver on Vaccine Patents to Boost Supply, BBC (May 6, 2021), <https://www.bbc.com/news/world-us-canada-57004302>.

developed in response to the current situation.¹² Infectious diseases do not respect international borders, and, in the era of globalization, a global impact of a crisis requires global cooperation and coordination of effective measures.¹³

Global infectious diseases have also unintended consequences for international peace and security.¹⁴ In response to new challenges imposed by outbreaks, international public health law should be developed, interpreted, and implemented in a harmonious manner, to the extent possible, with other relevant rules of international law¹⁵ related to human rights; the environment, international economy and intellectual property, diplomacy, security and peace, responsibility and so on.¹⁶

12. See generally Eric Richardson & Colleen Devine, *Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic Under the International Covenant on Civil and Political Rights*, 42 MICH. J. INT'L L. 105 (2020) (exploring how measures to contain the spread of COVID-19 raise important questions of international human rights); Ingrid Nifosi-Sutton, *Human Rights and COVID-19 Responses: Challenges, Advantages, and an Unexpected Opportunity*, 24 HUM. RTS. BR. 18, 18–31 (2020) (arguing that the pandemic should be addressed through implementation of a rights-based approach).

13. See George Yip, 'Does COVID-19 Mean The End For Globalization?', FORBES (Jan 8, 2021, 7:57 AM), <https://www.forbes.com/sites/imperialinsights/2021/01/08/does-covid-19-mean-the-end-for-globalization/?sh=7511fa98671e> (noting how the effects of COVID-19 are felt across the world's economies and pondering whether the global impact of a pandemic, such as COVID-19, portends the demise of globalization). But see Harold James, *Globalization's Coming Golden Age: Why Crisis Ends in Connection*, FOREIGN AFF. (May-June 2021), <https://www.foreignaffairs.com/articles/united-states/2021-04-20/globalizations-coming-golden-age> (arguing that after the pandemic, "globalization will come roaring back").

14. See S.C. Secretary-General Statement 14241, *COVID-19 'Profoundly Affecting Peace across the Globe', Says Secretary-General, in Address to Security Council* (July 2, 2020) (asserting that the COVID-19 pandemic is "profoundly affecting" peace and security across the globe).

15. Allyn L. Taylor, *Global Health Law: International Law and Public Health Policy*, 3 INT'L. ENCYCLOPEDIA OF PUB. HEALTH. L. 268, 268–76 (2017) (describing the advent and evolution of global health law and the significance of international law to the codification of global health law).

16. See Shinya Murase, *Epidemics and International Law*, THAMMASAT UNIV. L. S., 31–33 (Sept. 20, 2020) (Online lecture), <https://www.cpg-online.de/cpg-event/online-lecture-on-epidemics-and-international-law/> (August 2020) (asserting that because epidemics touch every facet of human life, they concern many specialized regimes of international law); Claudio Grossman & Charles Jalloh,

II. INTERNATIONAL PUBLIC HEALTH LAW: PREPAREDNESS AND RESPONSE OF PANDEMICS

The obligation of protecting human life must be a foundational principle of international public health law for all states—affected and non-affected.¹⁷ Global epidemics cannot fully be controlled without the cooperation of the entire international community. Affected states have a primordial, positive duty to guarantee the rights to health, integrity, and life for the people living, traveling and working on their sovereign lands and seas. Individuals—nationals and foreigners—must voluntarily comply with local government efforts to prevent, mitigate and control the nationwide outbreak in the name of public health protection. For that purpose, in some states, like China,¹⁸ Vietnam,¹⁹ or Italy,²⁰ individual rights may be temporarily suspended to prevent the spread of a virus through rules on social distancing and appropriate sanitation.²¹ The abuse of human rights to violate home

Protection of Persons from Epidemics in International Law, Proposal Draft for the Long-Term Programme of Work of the ILC, U.N. DOC. ILC(LXXII)/WG/LT/INFORMAL/2 (Sept. 18, 2020).

17. See WHO Constitution, *supra* note 8, art. 1 (providing that the objective of the World Health Organization shall be the attainment by all peoples of the highest possible level of health); U.N. Charter art. 2, p 1–4 (providing that member states shall settle disputes peaceably and safeguard international).

18. China: Respect Rights in Coronavirus Response, HUMAN RIGHT WATCH (January 2020), <https://www.hrw.org/news/2020/01/30/china-respect-rights-coronavirus-response>; Zoey Zhang, *China's Travel Restrictions due to COVID-19: An Explainer*, CHINA BRIEFING (April 23, 2021), <https://www.china-briefing.com/news/chinas-travel-restrictions-due-to-covid-19-an-explainer/>.

19. Thi Phuong Thao Tran, Thanh Ha Le, Thi Ngoc Phuong Nguyen, and Van Minh Hoang, *Rapid response to the COVID-19 pandemic: Vietnam government's experience and preliminary success*, J. GLOB. HEALTH (December 2020), <http://www.jogh.org/documents/issue202002/jogh-10-020502.htm>.

20. Alessandra Spadaro, *Do the Containment Measures Taken by Italy in Relation to COVID-19 Comply with Human Rights Law?*, EUR. J. INT'L L. (March 16, 2020), <https://www.ejiltalk.org/do-the-containment-measures-taken-by-italy-in-relation-to-covid-19-comply-with-human-rights-law/>.

21. See, e.g., Michael Conklin, *The Most Demanding Test Known to Constitutional Law: Do COVID-19 Bans on Church Services Satisfy Religious Freedom Restoration Act Requirements?*, 60 WASHBURN L.J. 63, 66 (2020) (describing how the policy of banning large religious gatherings was supported by public health experts to mitigate the spread of COVID-19); Alex Estroff & Boris Gautier, *First Amendment: Executive Order by the Governor Limiting Large Gatherings Statewide*, 37 GA. ST. U. L. REV. 197, 199 (2020) (noting that the federal government outlined a series of recommendations and guidelines to help slow the

isolations or for “publishing and spreading untrue information online” that negatively affected on the government objective of the controlling an outbreak for the interest of the whole community shall be sanctioned. On the other hand, the public has a right to require that rights-restricting measures are compatible with international human rights and principles of transparency, due process, and fairness. In other words, rights-restricting measures must ensure that the balance of individual and collective interests are compatible with provisions of the International Covenant on Civil and Political Rights (ICCPR) and other related international instruments.

National right-restricting measures have only full effectiveness with the wide comprehension, cooperation and support from states not affected by a pandemic, especially from neighbor states and their citizens. The cooperation and respect of right-restricting measures posed by affected States are the best way to prevent the spreading virus and to ensure an effective safeguard of life for nonaffected states' citizens and economies. The spirit of cooperation allows overcoming possible political doubts for achieving a common target to provide “all peoples of the highest possible level of health”.²²

International law must balance the principle of the sovereignty of states,²³ and the efficacy of the United Nations and WHO to achieve two objectives. The first objective is to protect persons from infectious diseases domestically and preventing the spread of infectious diseases internationally.²⁴ Secondly, international law must protect persons

spread of the virus, including staying at home, limiting travel, and avoiding congregating in large groups); see also Interpeace, *Peace and Conflict in a COVID-19 World Implications for International Responses*, 18 (Briefing Paper, June 2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/2020-CoVid-19-v4.pdf>.

22. See Murase, *supra* note 16, at 60 (noting how states do not consider such measures to be unfriendly acts, with their nationals living in, or traveling to and from the territory of the affected state); see also Kemal Davis, *Multilateralism: What Policy Options to Strengthen International Cooperation?*, BROOKINGS (Nov. 17, 2020) <https://www.brookings.edu/research/multilateralism-what-policy-options-to-strengthen-international-cooperation/> (making the case for multilateralism in the context of COVID-19 as a way to minimize the spillover effects the actions of some countries have on others).

23. U.N. Charter art. 2, par 1 (providing that the United Nations is based on the principle of sovereign equality); See generally Kelsen, *supra* note 9 (articulating the principle of sovereign equality).

24. See WHO Constitution, *supra* note 8, art. 2 (describing one of the functions

from the negative economic impact due to virus containment measures, such as travel bans or temporarily closing businesses and offices.²⁵ The obligation to protect human life must be at the core of all international public health law efforts to develop principles for addressing challenges presented by a pandemic so that no person is left behind.²⁶

A common objective for states is to prevent and control pandemics; and international cooperation must be present in all three phases—before, during, and after—in order to achieve this goal.²⁷ International cooperation can be cooperation between neighboring states, strategic alliances, or regional and international organizations.²⁸ The United Nations and WHO can foster international cooperation to combat pandemics by issuing global standards on using surveillance, notification, information-sharing, and public health response systems.²⁹ The United Nations should adhere to its Sustainable

of the WHO to be to “stimulate and advance work to eradicate epidemic, endemic and other diseases”); Obijiofor Aginam, *International Law and Communicable Diseases*, 80 BULL. OF THE WORLD HEALTH ORG., 946, 947 (2002) (noting the importance of international law in preventing the international spread of disease).

25. See Richardson & Devine, *supra* note 12, at 131–41 (discussing the legality of travel bans and under virus containment measures under international law).

26. See WHO Constitution, *supra* note 8 art. 1 (providing that the objective of the WHO shall be the attainment by all peoples of the highest possible health); U.N. Charter art. 2, par 3 (requiring members to settle disputes in a manner that protects international peace and security); ICESCR, *supra* note 8, art. 12, par 1 (providing that “State Parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”).

27. See ICESCR, *supra* note 8, art. 11, par 1 (providing that state parties will take appropriate steps to ensure the right of everyone to attain an adequate standard of living and acknowledging the importance of international cooperation to that endeavor).

28. See Gordon Brown & Daniel Susskind, *International Cooperation During the COVID-19 Pandemic*, 36 OXFORD REV. ECON. POL’Y 64, 67–70 (2020) (discussing the opportunities for international cooperation in the context of COVID-19); Kaewkamol Karen Pitakdumrongkit, *COVID-19 and ASEAN Cooperation: The State of Play and Ways Forward*, ASIAGLOBAL ONLINE (Oct. 7, 2020), <https://www.asiaglobalonline.hku.hk/covid-19-and-asean-cooperation-state-play-and-ways-forward> (describing the cooperation between ASEAN member states in combating COVID-19).

29. See U.N. Dept. of Global Comm., *UN Mobilizes Global Cooperation in Science-Based COVID-19 Responses*, UNITED NATIONS (Apr. 7, 2020), <https://www.un.org/en/un-coronavirus-communications-team/un-mobilizes-global-cooperation-science-based-covid-19-responses> (reporting on the innovative crisis

Development Goals by supporting developing states' efforts to combat pandemics with financial assistance, technological assistance, and commercial facilitation.³⁰ The WHO's function and responsibility should be respected,³¹ and states should implement the WHO's standards for addressing pandemics.³²

International law must define the duties a state or international organization owes to the international community to prevent epidemics.³³ The state affected by an epidemic must implement, without delay or hesitation, the necessary measures to reduce the risk of outbreak and prevent the spread of disease, and to seek external assistance if necessary.³⁴ A state or international organization offering assistance to the affected state should be a legal duty, and not the pretext to inter in the internal affairs of the affected state.³⁵ An internationally wrongful act can be attributable to an international health organization if its conduct constitutes a breach of an international obligation of that organization.³⁶ A delay of the

response tools being deployed to help mitigate the effects of COVID-19).

30. G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Sept. 25, 2015).

31. See Office of the United Nations High Commissioner for Human Rights & World Health Organization, *The Right to Health*, Fact Sheet No. 31, <https://www.ohchr.org/documents/publications/factsheet31.pdf> (summarizing obligations on states and responsibilities to others towards the right to health); see also OHCHR, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4).

32. See generally *Considerations for Implementing and Adjusting Public Health and Social Measures in the Context of COVID-19: Interim Guidance*, WORLD HEALTH ORG. (Nov. 4, 2020) <https://www.who.int/publications/i/item/considerations-in-adjusting-public-health-and-social-measures-in-the-context-of-covid-19-interim-guidance> (providing guidance on mitigating the effects of the COVID-19 pandemic).

33. See, e.g., WHO, *International Health Regulations*, art. 5, par. 1 (2005), <https://www.who.int/csr/ihr/WHA58-en.pdf> (providing that each state party must develop, strengthen, and maintain the capacity to detect, assess, notify, and report events).

34. *Id.* art. 13 (requiring state parties to develop the capacity to respond promptly and effectively to public health emergencies and setting forth the obligation of the WHO to provide assistance at the request of a state party).

35. See U.N. Charter art. 2, par 4 (providing that member states shall refrain from interfering with the political independence of any state).

36. Int'l Law Comm'n, *Draft Articles on the Responsibility of International*

declaration of public health emergency of international concern (PHEIC) can be considered deficient in responding a global crisis.³⁷ Issuing a PHEIC on time is critical. It allows the WHO to require immediate international actions and recommend suitable policies for countries to respond.³⁸ States have a legal duty to respond promptly to a PHEIC.³⁹ However, an early declaration of a PHEIC can waste the world's resources and money in an unnecessary way. A right decision on a PHEIC must be based on the responsibility of the WHO and the cooperation of states.

The delay issuing a PHEIC on the deadly SARS outbreak in 2003 that left 800 dead⁴⁰ provided three lessons on the relation between the international health organization and states.⁴¹ First, the WHO must work closely with affected and non-affected states to have additional information on a regular basis for making PHEIC in time. Second, transparency must be complied as a key factor in preventing the spread of viruses. No state or international organization has a right to cover up a possible global outbreak. Third, the medical response at the national, regional and global level must be improved. An online disease surveillance systems must be installed worldwide to recognize, characterize, release and report information in real-time.

Organizations, art. 4, U.N. Doc. A/66/10 ¶ 87 (2011) https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf (enumerating the elements of an intentionally wrongful act of an international organization).

37. Atul Alexander & Anushna Mishra, *Balancing Responsibility and Immunity of the World Health Organization in Times of COVID-19*, INT'L L. BLOG (May 26, 2020), <https://internationallaw.blog/2020/05/26/balancing-responsibility-and-immunity-of-the-world-health-organisation-in-times-of-covid-19/>.

38. See Andrew Joseph, *WHO Postpones Decision on Whether to Declare China Outbreak a Global Public Health Emergency*, STAT NEWS (Jan. 22, 2020), <https://www.statnews.com/2020/01/22/who-postpones-decision-on-whether-to-declare-china-outbreak-a-global-public-health-emergency> (reporting on the WHO's refusal to initially declare the COVID-19 outbreak a global public health emergency).

39. Annelies Wilder-Smith & Sarah Osman, *Public Health Emergencies of International Concern: A Historic Overview*, J. TRAVEL MED., August 12, 2020, at 1–13.

40. Joseph, *supra* note 38.

41. Kelly-Leigh Cooper, *China Coronavirus: The Lessons Learned from the SARS Outbreak*, BBC NEWS (Jan. 24, 2020), <https://www.bbc.com/news/world-asia-china-51221394>.

The WHO can support the development and equitable distribution of the tests, treatments, and vaccines in high risk areas to reach the most vulnerable populations at the right moments.⁴²

Vaccines cannot be used as a political tool in international relations.⁴³ The COVID-19 crisis raises a new gap in international health law from the lack of a legal and scientific definition of what constitutes a pandemic, the revision of the procedure to declare a PHEIC,⁴⁴ and the lack of enforceable sanctions. The WHO should, in consultation with member states and legal experts, develop clear guidelines to interpret and implement consistently PHEIC criteria, based on science, not politics.⁴⁵ A state's right to withdraw from specialized international organizations during pandemics must be balanced with its legal implications.⁴⁶

42. *What is the ACT-Accelerator*, WHO INITIATIVES, <https://www.who.int/initiatives/act-accelerator/about> (last visited July 30, 2021).

43. Richard N. Haass, *The Politics of a COVID-19 Vaccine*, PROJECT SYNDICATE (July 14, 2020), <https://www.project-syndicate.org/commentary/politics-of-covid19-vaccine-by-richard-n-haass-2020-07>; *COVID-19 Vaccine: The Journey from a Global Necessity to a Political Tool*, AGENCE FRANCE-PRESSE (Mar. 05, 2021), <https://www.firstpost.com/world/covid-19-vaccine-the-journey-from-a-global-necessity-to-a-political-tool-9381311.html>.

44. *Emergencies: International Health Regulations and Emergency Committees – Q&A*, WHO NEWSROOM (Dec. 19, 2019), <https://www.who.int/news-room/q-a-detail/emergencies-international-health-regulations-and-emergency-committees> (defining PHEIC as “an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response. This definition implies a situation that is serious, sudden, unusual, or unexpected; carries implications for public health beyond the affected State’s national border; and may require immediate international action.”).

45. Lucia Mullen et al., *An Analysis of International Health Regulations Emergency Committees and Public Health Emergency of International Concern Designs*, BRIT. MED. J. GLOB. HEALTH, May 2020, at 8.

46. Katie Rogers & Apoorva Mandavilli, *Trump Administration Signals Formal Withdrawal From W.H.O.*, N.Y. TIMES (Oct. 22, 2020), <https://www.nytimes.com/2020/07/07/us/politics/coronavirus-trump-who.html> (reporting on the Trump Administration’s decision to formally withdraw from the WHO); See Donald G. McNeil Jr., *Trump Administration Will Redirect \$62 Million Owed to the W.H.O.*, N.Y. TIMES (Sept. 2, 2020), <https://www.nytimes.com/2020/09/02/health/trump-world-health-organization-funding-coronavirus.html> (reporting on the Trump Administration’s decision to withdraw from membership in the World Health Organization and to redirect \$62 million owed to the WHO for 2020’s annual dues).

The United Nations Security Council (UNSC) should utilize its core functions when a pandemic threatens global peace and security.⁴⁷ In 2014 the UNSC promptly adopted Resolution 2177⁴⁸ recognizing that “the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security.”⁴⁹ Additionally, in 2018, the UNSC adopted Resolution 2439, which determined that the Ebola epidemic in the Democratic Republic of the Congo constituted “a threat to international peace and security.”⁵⁰

In 2021, the UNSC Resolution 2565 considered that “the unprecedented extent of the COVID-19 pandemic is likely to endanger the maintenance of international peace and security.”⁵¹ The UNSC demanded “that all parties to armed conflicts fully comply with their obligations under international law, including international human rights law, as applicable, and international humanitarian law, in particular their obligations under the Geneva Conventions of 1949 and the obligations, as applicable, under the Additional Protocols of 1977 and 2005.” All parties to armed conflicts must “engage immediately in a durable, extensive, and sustained humanitarian pause to facilitate, inter alia, the equitable, safe and unhindered delivery and distribution of COVID-19 vaccinations in areas of armed conflict.” The UNSC Resolution emphasized “the unity, common origin and solidarity of mankind, and the need for intensified international collaboration in the face of the common threat of pandemics.” The UNSC Resolution has supported strongly the effort of the UNGA, WHO, other international organizations and states.

Economic restrictions and travel bans should not hamper the delivery of medical supplies and the deployment of specialized personnel to manage the pandemic.⁵² Unilateral sanctions and armed

47. See U.N. Charter arts. 24–26 (outlining the functions and powers of UNSC).

48. S.C. Res. 2177 (Sept. 18, 2014).

49. *Id.*

50. S.C. Res. 2439 (Oct. 30, 2018).

51. S.C. Res. 2625 (Feb. 26, 2021).

52. See *COVID-19 Reports: Restrictions on the Export of Medical Products Hamper Efforts to Contain Coronavirus Disease (COVID-19) in Latin America and the Caribbean*, ECON. COMM’N LATIN AM. & CARIBBEAN 1 (May 2020), https://repositorio.cepal.org/bitstream/handle/11362/45511/2/S2000308_en.pdf (describing how medical export restrictions have hampered the response to COVID-19 in Latin America and the Caribbean); Andrea Shalal, *WTO Report Says 80*

conflicts during pandemics are “contrary to international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among states.”⁵³ For example, “collective expulsion” of foreign workers or international students should be prohibited to avoid the spread of diseases.⁵⁴

International organizations must improve the principles of peaceful dispute settlement between states.⁵⁵ Stronger dispute settlement principles should emphasize international organizations’ proportionality of responsibility and immunity and clarify state jurisdictional responsibilities to the international community as a whole.⁵⁶ The COVID-19 pandemic produced disputes involving public health, trade, labor, the environment, domestic & international security, and intellectual property.⁵⁷ Standing to bring a case before a

Countries Limiting Exports of Face Masks, Other Goods, REUTERS (Apr. 23, 2020, 4:48 PM), <https://www.reuters.com/article/us-health-coronavirus-trade-wto/wto-report-says-80-countries-limiting-exports-of-face-masks-other-goods-idUSKCN2253IX> (reporting that, according to the World Trade Organization, eighty countries and customs territories have banned or limited the export of face masks, protective gear, gloves, and other goods to mitigate shortages since the COVID-19 outbreak began).

53. SEE MOHAMMAD HADI ZAKERHOSSEIN, *Economic Sanctions During the Coronavirus Outbreak as a Crime Against Humanity*, INT’L L. BLOG (Apr. 8, 2020), <https://internationallaw.blog/2020/04/08/economic-sanctions-during-the-coronavirus-outbreak-as-a-crime-against-humanity/> (arguing that the imposition of economic sanctions during the COVID-19 outbreak constitute a crime against humanity).

54. See Nina Lakhani, *US Using Coronavirus Pandemic to Unlawfully Expel Asylum Seekers, Says UN*, GUARDIAN (Apr. 17, 2020, 3:19 PM), <https://www.theguardian.com/world/2020/apr/17/us-asylum-seekers-coronavirus-law-un> (reporting that the UN considers the summary expulsion of migrants and asylum seekers because of the coronavirus pandemic a violation of international law); *Chile: Arbitrary and Collective Expulsion of Migrants Must Stop – UN experts*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. (May 19, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27103&LangID=E> (reporting that U.N. experts called on Chile to stop all plans to expel migrants).

55. See U.N. Charter arts. 24–26 (describing the role of the UNSC in maintaining international peace and security).

56. *Id.*

57. See *COVID Vaccine Patent Waivers Divide EU Leaders*, DEUTSCHE WELLE (May 7, 2020), <https://www.dw.com/en/covid-vaccine-patent-waivers-divide-eu-leaders/a-57464976> (noting the intellectual property issues at play in COVID-19

dispute settlement body should be broadened to include interstate organizations, international organizations, and states.

The cross-sectoral framework to combat pandemics has been insufficient in addressing the COVID-19 pandemic.⁵⁸ The cross-sectoral framework has no consistent definition of what constitutes a pandemic,⁵⁹ finds no consensus on whether a common authority should be allocated of full competence for managing global efforts to combat pandemics,⁶⁰ and insufficiently addresses the need to harmonize international laws and rules in the common fight against infectious disasters.⁶¹

To overcome those weaknesses and divisions, the world needs prompt action. *A new early-warning protocol for infectious diseases* should be formulated to the WHO.⁶² However, political aspects and

vaccine development); Robert Muggah, David Steven, & Liv Torres, *We Urgently Need Major Cooperation on Global Security in the COVID-19 Era*, WORLD ECON. F. (Apr. 23, 2020) <https://www.weforum.org/agenda/2020/04/we-need-major-cooperation-on-global-security-in-the-covid-19-era/>, (arguing that global security cooperation is essential to containing COVID-19); Abigail Abrams, *The Challenges Posed By COVID-19 Pushed Many Workers to Strike. Will the Labor Movement See Sustained Interest?*, TIME (Jan. 25, 2020, 12:46 PM), <https://time.com/5928528/frontline-workers-strikes-labor/> (reporting on the labor implications of the COVID-19 pandemic).

58. See Jeanine Becker & David B. Smith, *The Need for Cross-Sector Collaboration*, STAN. SOC. INNOVATION REV. 1 (Winter 2018), https://ssir.org/articles/entry/the_need_for_cross_sector_collaboration (describing “cross-sector collaboration” as a means by which the nonprofit, government, philanthropic, and business sectors can use their diverse perspectives and resources to jointly solve societal problems and achieve shared goals).

59. The WHO has not provided any affirmative criteria that could be used to distinguish a pandemic from an epidemic.

60. Thomas J. Bollyky et al., *Improving Pandemic Preparedness Lessons From COVID-19* (Council on Foreign Relations, Indep.Task Force Rep. No. 78, 2020), <https://www.cfr.org/report/pandemic-preparedness-lessons-covid-19> (recommending that the UN secretary-general establish a global health security coordinator and the United States work with partner nations to create a Health Security Coordination Committee to facilitate a prompt and coherent multilateral response to global health threats).

61. Anastasia Telesetsky, *International Governance of Global Health Pandemics*, AM. SOC’Y INT’L L. INSIGHTS, Mar. 2020, <https://www.asil.org/insights/volume/24/issue/3/international-governance-global-health-pandemics>.

62. Peter Gluckman & Alexander Gillespie, *WHO Reform: A Call for an Early-Warning Protocol for Infectious Diseases*, THE CONVERSATION (Oct. 19, 2020, 8:00

sensitive areas in the global governance of pandemic response are beyond the WHO's main function of issuing technical guidelines on how to respond to a health emergency to national governments. A global pandemic preparedness and response based on international cooperation and coordination should be engaged by the highest political level through the form of a treaty.⁶³ In that sense, the UN Sixth Committee—the primary forum for the consideration of LEGAL questions in the General Assembly and the International Law Commission—the legal subsidiary body of the General Assembly play a primordial role. A similar model can be learned from the adoption of the Rome Statute of the International Criminal Court drafted by the International Law Commission with the wide participation of legal and scientific experts under the requirement of the UNGA and supported by the UN Sixth Committee.

III. THE UNITED NATIONS SIXTH COMMITTEE AND THE INTERNATIONAL LAW COMMISSION: ROLES IN PREPARATION OF A TREATY FOR PANDEMIC PREPAREDNESS AND RESPONSE

The United Nations Sixth Committee and the International Law Commission (ILC) should develop an improved cross-sectoral framework to combat pandemics based on the lessons learned from the COVID-19 disease and state practice.⁶⁴ The Sixth Committee and

AM),
<https://theconversation.com/who-reform-a-call-for-an-early-warning-protocol-for-infectious-diseases-148078>.

63. See European Council Press Release IP 860/20, President Charles Michel of the European Council, International Treaty on Pandemics (Dec. 3, 2020), <https://www.consilium.europa.eu/en/press/press-releases/2020/12/03/press-release-by-president-charles-michel-on-an-international-treaty-on-pandemics/> [hereinafter IP 860/20]; see also *World Leaders Call for New International Treaty to Improve Pandemic Response*, UN NEWS (Mar. 30, 2021), <https://news.un.org/en/story/2021/03/1088652>.

64. See U.N. Charter art. 13, par. 1 (providing that the General Assembly shall initiate studies and make recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational, and health fields); *International Law Commission*, <https://legal.un.org/ilc/> (last visited May 20, 2021) [hereinafter *ILC*] (noting how the International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13(1)(a) of the U.N. Charter to “initiate studies and make

the ILC could create a forum to discuss a new international legal instrument focused on epidemics and pandemics.⁶⁵ The Committee could focus its debate on the role of international law in the three phases of a pandemic—before, during, and after—and emphasize the need to promote interaction and exchange of views between domestic policymakers, lawmakers, and international organizations.⁶⁶ This forum is suitable for the exchange of views of national legal advisers on a consistent legal-scientific definition of pandemics,⁶⁷ new international frameworks for global cooperation,⁶⁸ supervisory bodies for scaling and implementing those frameworks, and appropriate

recommendations for the purpose of . . . encouraging the progressive development of international law and its codification.”); U.N., *Sixth Committee (Legal)*, U.N. GENERAL ASSEMBLY (last visited May 20, 2021) [hereinafter *Sixth Committee*], <https://www.un.org/en/ga/sixth/> (describing the Sixth Committee has the primary forum for the consideration of legal questions in the General Assembly); Becker & Smith, *supra* note 58, at 1 (discussing the importance of cross-sector collaboration to solving complex challenges on an international scale).

65. See generally U.N. Secretary-General, *Protection of Persons in the Event of Disasters*, U.N. Doc. A/75/214 (July 12, 2020) [hereinafter *Protection of Persons in the Event of Disasters*] (noting how many delegations saw the COVID-19 pandemic as demonstrating the importance of multilateralism and international cooperation in the area of disaster prevention and relief and considering “disasters” to include pandemics). During the 75th session of the Committee, from October to November 2020, a series of relevant issues were addressed. These included: 1) item 85, the report of the special committee on the Charter of the United Nations and on the strengthening of the role of the organization; 2) item 88, the rule of law at the national and international levels [item 86]; the responsibility of international organizations; and 3) item 89, the protection of persons in the event of disasters.

66. See Gian Luca Burci & Stefania Negri, *Governing the Global Fight Against Pandemics: The WHO, the International Health Regulations, and the Fragmentation of International Law*, 53 N.Y.U. J. INT’L L. & POL. 501, 512–21 (2021) (explaining how COVID-19 confirmed the dramatic effects of health measures on many other governance and legal regimes and prescribing a new governance model to address pandemics by fostering international cooperation and coordination).

67. See Heath Kelly, *The Classical Definition of a Pandemic is Not Elusive*, 89 BULL. OF THE WORLD HEALTH ORG., 540, 540–41 (2011), <https://www.who.int/bulletin/volumes/89/7/11-088815/en/#:~:text=A%20pandemic%20is%20defined%20as,are%20not%20considered%20pandemics> (noting that the classical epidemiological definition of a pandemic as “an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people” omits necessary information such as population immunity, virology, or disease severity, thus limiting the effectiveness of the classical definition).

68. IP 860/20, *supra* note 63.

measures to combat the COVID-19 pandemic presently and in the future.⁶⁹ Those debates will promote the understanding of states' stance on a new revision of the existing global mechanism, including the WHO, for pandemic preparedness and response.

To facilitate the debate, the Sixth Committee can set up a working group on pandemic preparedness and response. This formula was well implemented when the Sixth Committee established a working group on the Responsibility of States for Internationally Wrongful Acts⁷⁰ at the 74th session of the United Nations. The working group could call for an international conference to negotiate a treaty on pandemic preparedness and response or ask the UN General Assembly to adopt a resolution on the related issue.⁷¹ The Sixth Committee can request the ILC's service. The Commission demonstrated its concern to improve international law in response to pandemics at the early stages.⁷² In September 2020, Members of the ILC, Claudio Grossman, Professor of Law at American University Washington College of Law, and Charles Jalloh, Professor of Law at Florida International University, proposed a long-term program on "Protection of Persons from Epidemics in International Law" to the ILC.⁷³ The Sixth Committee can request the ILC to include the "Protection of Persons

69. See Burci & Negri, *supra* note 66, at 521–22 (articulating the failure of existing international governance models in mitigating COVID-19 and suggesting alternative governance models that would rely on early, regular, and mandatory consultation on risk assessment and management, both within the WHO and between the WHO and other international organizations and U.N. agencies).

70. G.A. Res. 71/133, ¶¶ 2, 8 (Dec. 13, 2016) (tasking the working group with considering and providing a recommendation on the United Nation's pursuit of two options regarding the Article on Responsibility of states for Internationally Wrongful Acts: (1) the negotiation of a convention based on the articles; or (2) the adoption of the articles by the General Assembly, in the form of a declaration or resolution).

71. See generally Stephanie C. Hofmann & Christian Kreuder-Sonnen, *How International Organizations are Stepping Up to Respond to the Pandemic*, WASH. POST (May 4, 2020, 5:00 AM), <https://www.washingtonpost.com/politics/2020/05/04/how-international-organizations-are-stepping-up-respond-pandemic/> (commenting on international organizations' ability to respond to the COVID-19 pandemic).

72. See generally *Protection of Persons in the Event of Disasters*, *supra* note 65 (noting the proposals made by ILC members to improve the development of international law in the realm of disaster preparedness, including in the context of COVID-19).

73. Grossman & Jalloh, *supra* note 16.

from Epidemics in International Law” as a topic in its long-term work and request a draft convention under Article 16 of the ILC Statute.⁷⁴

The long-term program study should provide a framework for developing cooperation among states and between states and international organizations based on an analysis of existing international law and procedures for the protection of persons in epidemics.⁷⁵ Draft articles on the “Protection of Persons from Epidemics in International Law” developed by the ILC could be combined with the draft articles for the “Protection of Persons in Events of Disasters” and new conclusions from the work of Professors Grossman and Jalloh on the topic.⁷⁶ Draft articles should clarify the key terms “epidemics,” “pandemics,” and “public health emergency of global concern” under current international law. A new, precise definition of pandemic should characterize a pandemic as a non-seasonal, quickly transmittable, widespread, and transnational epidemic that affects the human well-being, economy, peace, and security of the world in the short-term or long-term period, requiring global cooperation to manage and eradicate.⁷⁷

In compliance with the Commission’s mandate, draft articles should focus on existing international law to identify a clear, comprehensive, and coherent body of rules that address the prevention and control of the spread of epidemic diseases including aspects of international human rights law, international health law, international environmental law and general international law. The Commission

74. See G.A. Res. 174 (II), Statute of the International Law Commission, art. 16 (Nov. 21, 1947) (codifying the procedure by which the ILC may develop international law).

75. *Id.*

76. *Id.*; *Protection of Persons in the Event of Disasters*, *supra* note 65.

77. Nicole Wetsman, *WHO Declares the Outbreak of the New Coronavirus is a Pandemic*, THE VERGE (Mar. 11, 2020, 12:33 PM), <https://www.theverge.com/2020/3/11/21156325/coronavirus-pandemic-who-declares-covid-19-outbreak-global-h1n1> (“A pandemic is the worldwide spread of a new disease, according to the WHO.”); *Pandemic*, A Dictionary of Epidemiology (Oxford University Press 2008) (“An epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people.”); World Health Organization (@WHO), TWITTER (Feb. 24, 2020), <https://twitter.com/i/broadcasts/1YpJkQPBjLBKj>; see also Peter Doshi, *The Elusive Definition of Pandemic Influenza*, BULL. WHO (Mar. 31, 2011), <https://www.who.int/bulletin/volumes/89/7/11-086173.pdf>.

should analyze initiatives and recommendations of states, relevant international organizations, and agencies.⁷⁸

Draft articles would provide rules and guidelines for inter-state cooperation, and cooperation with competent international organizations in the three phases: *prior to a potential pandemic, during a pandemic, and after a pandemic occurs*.⁷⁹ The question of state and international responsibility and the legal consequences for failing to comply with international regulations on the international spread of disease should be treated. A new draft convention would not replace the IHR but focus on improving the obligation of information sharing, transparency, and the independence and competence of the WHO. The obligation of early notification of infectious disease threats based on the experience of the 1986 Convention on Early Notification of a Nuclear Accident could be developed. To enhance the international pandemic response, the competence of the declaration of PHEIC could be widely discussed. The combination of political power of the UN Secretary General and independence of the WHO could be a considered solution.

When the work of the Commission is finished, it can serve as a text to negotiate a new treaty. The Sixth Committee could also propose that the General Assembly convene a diplomatic conference to negotiate a convention on the “Protection of Persons in Disasters and Epidemics” or facilitate a treaty on pandemic preparedness and future responses.⁸⁰ The new governance for pandemics preparedness and response engages *lex lata* and *lex ferenda* issues. Therefore, the scope of draft articles would depend on the competence that the General Assembly accords to the ILC for a specific and urgent task.

IV. VIETNAM’S RESPONSE TO THE COVID-19

78. IP 860/20, *supra* note 63 (“[A] number of areas such a treaty could address: risk monitoring; better financing and coordination of research; a more efficient system of alerts and information sharing; improving access to healthcare; resilience: strengthening healthcare systems and securing supply chains.”).

79. Grossman & Jalloh, *supra* note 16.

80. See generally, *Diplomatic Conferences*, CODIFICATION DIV. PUBLIC’NS, <https://legal.un.org/diplomaticconferences/> (last visited June 6, 2021) (discussing United Nations diplomatic conferences).

PANDEMIC

Despite its shortcomings, international public health law can be applied with flexibility to achieve positive outcomes in a pandemic.⁸¹ Vietnam's innovative approaches to combat the COVID-19 disease serve as a case study.⁸²

In theory, Vietnam could have been heavily affected by the COVID-19 pandemic due to its large population of 98,168,833,⁸³ limited health care resources, and the fact that it shares a 1500km of common border with China—the epicenter of the pandemic.⁸⁴ However, as of July 2021, only 207 deaths have been caused by COVID-19 in Vietnam.⁸⁵ The initial results showed the effectiveness of the Vietnamese Government's policy on early preparedness and prompt response, mass mobilization of the whole of society and political system to support the health care system, transparency, public communication and propaganda, cooperation and solidarity. adaptation and good governance.⁸⁶ This policy has been supported by

81. *But see COVID-19 and Human Rights: We Are All in This Together*, UNITED NATIONS 3 (Apr. 2020), https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf (discussing some of the limitations).

82. See Trang Nguyen & Dahn C. Vu, *Summary of the COVID-19 outbreak in Vietnam – Lessons and suggestions*, 37 TRAVEL MED. INFECTIOUS DISEASES 1 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7146658/pdf/main.pdf> (discussing the “lessons and suggestions” of Vietnam's COVID-19 response); see also Athira Nortajuddin, *Vietnam's Exemplary Response to COVID-19*, ASEAN POST (Apr. 9, 2020), <https://theaseanpost.com/article/vietnams-exemplary-response-covid-19> (commenting on the efficacy of some of Vietnam's COVID-19 response measures); Bui Thi Thu Ha et al., *Combating the COVID-19 Epidemic: Experiences from Vietnam*, 17 INT'L J. ENV'T RSCH. PUB. HEALTH 3125, 3125 (2020) (explaining that Vietnam's strict containment measures are largely responsible for reducing the country's spread of COVID-19).

83. Vietnam Population 2021, WORLD POPULATION REVIEW (June 2021), <https://worldpopulationreview.com/countries/vietnam-population/> (last visited June 6, 2021) (estimating Vietnam's population).

84. Nguyen & Vu, *supra* note 82, at 1 (noting Vietnam's proximity to China); Nortajuddin, *supra* note 82 (discussing Vietnam's response to COVID-19 in relation news about the virus emerging from China).

85. WHO Coronavirus (COVID-19) Dashboard, *supra* note 1 (keeping an up-to-date record of COVID-19 deaths around the world).

86. Kris Hartley et al., *COVID-19 Response in a Unitary State: Emerging Lessons from Vietnam*, 4 POL'Y DESIGN & PRAC., 152, 157 (noting six factors of the Vietnam's policy in response to COVID-19 pandemic: command-and-control

the solidarity of Vietnamese citizens, who readily place aside personal choices in favor of combating the pandemic.⁸⁷

In combatting the COVID-19 pandemic, Vietnam has managed to balance the principle of state sovereignty and compliance with the competent authority's professional guidelines for addressing pandemics.⁸⁸ As a state responsible to its population, Vietnam undertook preparations to manage COVID-19 immediately in December 2019 as rumors emerged from China about a new respiratory disease.⁸⁹ The border was closed three days after the official announcement of the COVID-19 epidemic in Wuhan.⁹⁰ By the end of January, Vietnam decided to suspend all international flights

governance, extensive preparation, fostering cooperative sentiment and solidarity, political readiness and communication, policy coordination, and adaptation); see George Black, *Vietnam May Have the Most Effective Response to COVID-19*, THE NATION (Apr. 24, 2020), <https://www.thenation.com/article/world/coronavirus-vietnam-quarantine-mobilization/> (asserting that Vietnam may have the most effective response to the COVID-19 because of mass mobilization of the health care system, public employees, and the security forces, combined with an energetic and creative public education campaign); see also Eric Zuesse, *Coronavirus Lessons that Vietnam Could Teach Americans and the World*, MOD. DIPL. (Dec. 8, 2020), <https://moderndiplomacy.eu/2020/12/08/coronavirus-lessons-that-vietnam-could-teach-americans-and-the-world> (urging the United States to learn from Vietnam's COVID-19 response); Sen Nguyen, *Vietnam's Pandemic Success Is a Lesson for the World*, GLOB. ASIA (Sept. 2020), https://www.globalasia.org/v15no3/cover/vietnams-pandemic-success-is-a-lesson-for-the-world_sen-nguyen (urging the world to learn from Vietnam's COVID-19 response); Minh Vu & Bich T. Tran, *The Secret to Vietnam's COVID-19 Response Success*, THE DIPLOMAT (Apr. 18, 2020), <https://thediplomat.com/2020/04/the-secret-to-vietnams-covid-19-response-success> (reporting on ways in which Vietnam has been able to "export its domestic success" through diplomatic channels).

87. See Nortajuddin, *supra* note 82 (quoting the World Economic Forum, which noted that "being a single party state, with a large and well-organised military and social services . . . [Vietnam] has been able to make decisions quickly and enact them promptly").

88. *Cf. id.* (noting that the World Health Organization reported that Vietnam's health ministry already issued COVID-19 prevention guidelines when China had only just reported twenty-seven infections in Wuhan).

89. Hartley et al., *supra* note 86.

90. Julia Belluz, *Vietnam Defied the Experts and Sealed Its Border to Keep Covid-19 Out. It Worked*, VOX (Apr. 23, 2021, 4:00 AM), <https://www.vox.com/22346085/covid-19-vietnam-response-travel-restrictions> ("When China locked down Wuhan last January and bought other countries time to react, Vietnam was one of only a handful of countries that used that time wisely.").

and close all international ports.⁹¹ This was not an easy decision, considering that export trade with foreigners and tourist activities are significant parts of the Vietnamese economy.⁹² The Vietnamese government framed the virus as a common foreign enemy and called on the unity of the population to defeat it.⁹³ Further, the Vietnamese government was highly transparent in providing information to the public. Precautionary measures—such as the travel ban, social distancing, a massive test-and-trace program,⁹⁴ and data transparency⁹⁵—were implemented more than a month before the WHO declared the COVID-19 pandemic a public health emergency.⁹⁶

Like other countries, Vietnam had two contradictory goals: disease control and economic development.⁹⁷ In the beginning, Vietnam did not hesitate to lock down the country in an effort to protect people, identify sources of the virus, and prevent the spread of the virus.⁹⁸ The

91. Thi Phuong Thao Tran et al., *Rapid Response to the COVID-19 Pandemic: Vietnam Government's Experience and Preliminary Success*, J. GLOB. HEALTH (July 28, 2020), <http://www.jogh.org/documents/issue202002/jogh-10-020502.htm> (providing a timeline of Vietnam's airline travel policies and regulations in response to COVID-19); Phuong Bich Tran et al., *Income Security During Public Health Emergencies: the COVID-19 Poverty Trap in Vietnam*, 5 BMJ GLOB. HEALTH *1 (2020) (adding that Vietnam also imposed a 14-day quarantine for individuals traveling from severely affected areas).

92. See generally Tran Le Thuy, *Vietnam is Fighting Covid Without Pitting Economic Growth Against Public Health*, GUARDIAN (Oct. 20, 2020), <https://www.theguardian.com/commentisfree/2020/oct/20/vietnam-covid-economic-growth-public-health-coronavirus> (discussing Vietnam's strategies for managing COVID-19 without sacrificing its growing economy).

93. See Belluz, *supra* note 90 (quoting the Prime Minister, who stated that “fighting this epidemic is like fighting the enemy”).

94. *Emerging COVID-19 Success Story: Vietnam's Commitment to Containment*, Our World in Data, <https://ourworldindata.org/covid-exemplar-vietnam> (last visited Feb. 24, 2021) (attributing Vietnam's COVID-19 success in part to comprehensive testing and tracing).

95. Anna Jones, *Coronavirus: How 'Overreaction' Made Vietnam a Virus Success*, BBC (May 15, 2020), <https://www.bbc.com/news/world-asia-52628283> (stating that there is overwhelming consensus from the medical and diplomatic community that the government's data is accurate).

96. The WHO declared COVID-19 a public health emergency of international concern (PHEIC) on January 30, 2020. See Vu & Tran, *supra* note 86 (discussing Vietnam's response to COVID-19).

97. See Thuy, *supra* note 92 (discussing Vietnam's twin goals of managing the pandemic and maintaining its economy).

98. See Jones, *supra* note 95 (commenting on Vietnam's rapid response

first phase of Vietnam's response was to protect human life; the question of wealth and the economy would come later.⁹⁹ Vietnam focused on combating only the viral cases originating outside of the country, once the spread of COVID-19 in the community was stopped and placed under control.¹⁰⁰ The government shifted its anti-COVID-19 strategy towards targeted local lockdown and isolation, to the maximum extent possible, in order to minimize the impact of the COVID-19 pandemic on the production and exchange of goods.¹⁰¹ The Vietnamese government's objective was to protect the livelihoods of the Vietnamese people, especially vulnerable populations so that no one was left behind.¹⁰² In shortage of medical equipment and vaccines, the Vietnamese government tried to ensure that Vietnamese residents and foreigners living and working in Vietnam¹⁰³ were equally protected—demonstrating Vietnam's respect for equality, non-discrimination, and human rights.¹⁰⁴ Vietnam made a great effort to

measures); *see also* Belluz, *supra* note 90 (using Vietnam as a paragon for explaining that travel restrictions are effective).

99. Thuy, *supra* note 92 (“The motto for the first phase was that if we stay alive, the question of wealth and the economy can come later.”).

100. *See generally* Luong Tran et al., *The COVID-19 Global Pandemic: A Review of the Vietnamese Government Response* J. OF GLOB. HEALTH REPS., Mar. 2021 (discussing the phases of Vietnam's pandemic response).

101. *See* Thuy, *supra* note 92 (commenting on the shift in Vietnam's COVID-19 eradication strategy towards the economy).

102. *See, e.g.,* *Shaping Vietnam's COVID-19 Response Strategy: From Pandemic Repression to Recovery*, THE WORLD BANK (Apr. 1, 2021), <https://www.worldbank.org/en/results/2021/04/01/shaping-vietnam-s-covid-19-response-strategy> (discussing some of the strategies employed by Vietnam to protect the businesses and people most affected by the pandemic).

103. *See generally* *Over 93,000 Foreigners Working in Vietnam*, Vietnam + (Aug. 31, 2020, 10:16 AM), <https://en.vietnamplus.vn/over-93-000-foreigners-working-in-vietnam/182136.vnp> (asserting that over 93,000 foreigners have been working in Vietnam as of August 2020).

104. *See* Oliver Barnes & Bui Thu, *Patient 91: How Vietnam saved a British pilot and kept a clean Covid-19 sheet*, BBC NEWS (June 27, 2020) <https://www.bbc.com/news/world-asia-53196009>, (“Prof. Khue insists everyone - foreign or Vietnamese - had access to good quality care. ‘We focused on treating sick people at the highest level, both in terms of facilities and human resources, regardless of whether they were Vietnamese or from abroad.’”) Although these services were free in the first stage of the pandemic, Vietnam now charges a quarantine fee but has a plan to give a free vaccination for all residents and non-residents when the country ensures the sources of vaccines from abroad and local suppliers; *see also* *When will foreigners in Vietnam receive COVID-19 vaccine*

develop its own vaccine in securing vaccine supplies during the pandemic.¹⁰⁵

States and international organizations must enhance and strengthen international cooperation to respond to pandemics, such as COVID-19.¹⁰⁶ Vietnam is an example of effective cooperation with relevant international organizations for the health public protection. Longstanding recommendations of the WHO about pandemics preparedness and IHR rules have been traditionally endorsed and resiliently observed in accordance with Vietnam's healthcare system. Along with the WHO, Vietnam became the first country in the world to successfully contain its SARS outbreak in 2003.¹⁰⁷ During the first phase of its anti-COVID-19 strategy, the Vietnamese government's diplomatic mission mobilized international support to the nation's efforts to combat the spread of the COVID-19 virus.¹⁰⁸ The WHO, together with other international partners, supported Vietnam's strengthening of its laboratory capacity for infectious diseases, as required by the 2005 International Health Regulations (2005 IHR).¹⁰⁹

shot?, VIETNAMNET (May 28, 2021, 3:24 PM), <https://vietnamnet.vn/en/society/when-will-foreigners-in-vietnam-receive-covid-19-vaccine-shot-740843.html>; Minh Vu, *Vietnam to Vaccinate Foreign Diplomats: Spox*, HANOI TIMES (May 27, 2021), <http://hanoitimes.vn/vietnam-plans-to-vaccinate-foreign-diplomats-spox-317552.html> ("We pay great attention to the community of foreigners who are living, working, and studying in Vietnam.").

105. *Vietnam Starts Human Trial of Coronavirus Vaccine*, FRANCE 24 (Dec. 17, 2020), <https://www.france24.com/en/live-news/20201217-vietnam-starts-human-trial-of-coronavirus-vaccine>; Tomoya Onishi, *Vietnamese COVID Vaccine Goes to Final Trial, as Hanoi Lags On Shots*, NIKKEI ASIA (May 13, 2021, 1:30 PM), <https://asia.nikkei.com/Spotlight/Coronavirus/COVID-vaccines/Vietnamese-COVID-vaccine-goes-to-final-trial-as-Hanoi-lags-on-shots>.

106. See generally Benvenisti, *supra* note 2 (highlighting the need for political cooperation, not coordination, in achieving adequate global health).

107. Robert Roos, *WHO: Vietnam May Defeat SARS, and World has Chance to Follow Suit*, U. MINN. CTR. INFECTIOUS DISEASE RESEARCH & POL'Y (Apr. 25, 2003), <https://www.cidrap.umn.edu/news-perspective/2003/04/who-vietnam-may-defeat-sars-and-world-has-chance-follow-suit>.

108. Lindsey M. Bier & Phillip C. Arceneaux, *Vietnam's "Underdog" Public Diplomacy in the Era of the COVID-19 Pandemic*, UNIV. S. CAL. CTR. ON PUBLIC DIPL. (Apr. 23, 2020), <https://uscpublicdiplomacy.org/blog/vietnam's-underdog-public-diplomacy-era-covid-19-pandemic> (discussing Vietnam's contributions to the COVID-19 eradication effort both domestically and internationally).

109. *WHO Backs Viet Nam's Laboratory Resources for COVID-19 Detection*, WHO (Feb. 25, 2020), <https://www.who.int/vietnam/news/detail/25-02-2020-who>

In the second and third phases of its anti-COVID-19 strategy, Vietnam maintained its domestic responsibilities of protecting its citizens and assisted other states.¹¹⁰ Vietnam manufactured and donated shipments of qualified medical devices to the United States and quick diagnostic kits approved by the WHO, to twenty other states.¹¹¹ Vietnam's Ministry of Foreign Affairs donated \$50,000 to the WHO COVID-19 Solidarity Response Fund¹¹² and in the spirit of solidarity, Vietnam has sent donations of medical equipment to support European countries—specifically, England, Germany, France, Italy, and Spain—and regional neighbors—such as, Laos, Cambodia, Myanmar, and Indonesia.¹¹³

Vietnam impressed as the ASEAN Chair and non-permanent member of the UNSC for 2020 by promoting the international response to COVID-19.¹¹⁴ ASEAN Leaders, under Vietnam's

backs-viet-nam-s-laboratory-resources-for-covid-19-detection.

110. See generally Tran, et al., *supra* note 100 (explaining the phases of Vietnam's pandemic response).

111. See *Vietnam Poised to Export COVID-19 Test Kits*, VOA NEWS (Apr. 30, 2020), <https://www.voanews.com/covid-19-pandemic/vietnam-poised-export-covid-19-test-kits> (noting that at the time, Vietnam was one of only five nations to have COVID-19 test kits prepared for export); Bich Ngoc, *20 Countries, Territories Order Covid-19 Test Kits Made in Vietnam*, VNEXPRESS (Mar. 17, 2020), <https://e.vnexpress.net/news/news/20-countries-territories-order-covid-19-test-kits-made-in-vietnam-4070785.html> (reporting that twenty countries sought to purchase thousands of the Vietnamese COVID-19 tests); Bich Ngoc, *WHO Approves Made-In-Vietnam Covid-19 Test Kit*, VNEXPRESS (Apr. 26, 2020), <https://e.vnexpress.net/news/news/who-approves-made-in-vietnam-covid-19-test-kit-4090402.html> (providing that the tests were to be exported first to Iran, Finland, Malaysia, and Ukraine).

112. *Game-Changers in Viet Nam's Successful COVID-19 Response*, U.N. CHRONICLE (Aug. 30, 2020), <https://www.un.org/en/un-chronicle/key-game-changers-viet-nam%E2%80%99s-successful-covid-19-response>.

113. *Vietnam Donates Over 1 Million Masks to Europe and Southeast Asia, Challenging China's Monopoly on Coronavirus Diplomacy*, REUTERS (Apr. 19, 2020), <https://www.scmp.com/news/asia/southeast-asia/article/3079380/vietnam-donates-over-1-million-masks-europe-and-southeast> (referring to Vietnam's donations as a challenge to China's "coronavirus diplomacy"); see also Ralph Jennings, *Vietnam Using Mask Diplomacy to Fortify Foreign Relations*, VOA NEWS (Apr. 22, 2020), <https://www.voanews.com/covid-19-pandemic/vietnam-using-mask-diplomacy-fortify-foreign-relations> (discussing Vietnam's "mask diplomacy").

114. Pankaj Jha, *Assessment of Vietnam's Chairmanship of ASEAN in 2020*, MODERN DIPL. (Nov. 10, 2020),

leadership,¹¹⁵ have conducted four cyber summits in 2020—the Special ASEAN Summit, the Special ASEAN Plus Three Summit on April 14, 2020,¹¹⁶ the 36th ASEAN Summit on June 26,¹¹⁷ and 37th Summit from November 12 to 15.¹¹⁸ The 26th ASEAN Economic Ministers (AEM) retreat on March 10, 2020 issued a statement calling for collective action to mitigate the impact of the virus, with a particular focus on leveraging technology and digital trade, and using trade-facilitation platforms for supply chain connectivity and sustainability.¹¹⁹

At the Special ASEAN Summit on COVID-19, leaders of the ASEAN member states issued the Hanoi statement calling for a post-pandemic recovery plan and proposing the establishment of the COVID-19 ASEAN Response Fund.¹²⁰ As of December 2020, the ASEAN COVID-19 Response Fund received up to 10 million USD in

<https://moderndiplomacy.eu/2020/11/10/assessment-of-vietnams-chairmanship-of-asean-in-2020/>.

115. Hoang Thi Ha, *The Coronavirus Could be Vietnams Biggest Stress Test in its ASEAN Chairmanship*, THE DIPLOMAT (Apr. 9, 2020), <https://thediplomat.com/2020/04/the-coronavirus-could-be-vietnams-biggest-stress-test-in-its-asean-chairmanship> (overviewing Vietnam's undertaking); see also *ASEAN's Cooperation to Combat COVID-19: Strength in Unity*, EMBASSY OF THE SOCIALIST REPUBLIC OF VIETNAM (Apr. 13, 2020), <http://vietnamembassy-usa.org/news/2020/04/aseans-cooperation-combat-covid-19-strength-unity> (providing the Deputy Prime Minister, Foreign Minister Pham Binh Minh's article released ahead of the Special ASEAN Summit and Special ASEAN Plus Three Summit on COVID-19).

116. *Joint Statement of the Special ASEAN Plus Three Summit on Coronavirus Disease 2019 (COVID-19)*, ASEAN (Apr. 14, 2020), <https://asean.org/storage/2020/04/Final-Joint-Statement-of-the-Special-APT-Summit-on-COVID-19.pdf>.

117. *Chairman's Statement of the 36th ASEAN Summit*, ASEAN (June 26, 2020), <https://asean.org/storage/2020/06/Chairman-Statement-of-the-36th-ASEAN-Summit-FINAL.pdf>.

118. *Chairman's Statement of the 37th ASEAN Summit*, ASEAN (Nov. 20, 2020), <https://asean.org/chairmans-statement-37th-asean-summit/>.

119. *Strengthening ASEAN'S Economic Resilience in Response to The Outbreak of The Coronavirus Disease (COVID-19)*, ASEAN, <https://asean.org/strengthening-aseans-economic-resilience-response-outbreak-coronavirus-disease-covid-19> (last visited June 6, 2021).

120. *Declaration of the Special ASEAN Summit on Coronavirus Disease 2019 (COVID-19)*, ASEAN (Apr. 14, 2020), <https://asean.org/storage/2020/04/FINAL-Declaration-of-the-Special-ASEAN-Summit-on-COVID-19.pdf>.

aid.¹²¹ ASEAN member states committed to ensuring the smooth flow of essential goods—including food, medicine, medical supplies, and other essential supplies associated with combating the COVID-19 pandemic—and facilitating timely information sharing on trade-related measures for essential goods and supplies, to other ASEAN member states.¹²² The ASEAN members also facilitate information exchanges on best practices of member states in managing the COVID-19 pandemic and initiatives to prevent the spread of COVID-19 and other infectious diseases.¹²³

At the 37th Summit from November 12 to 15, 2020, the ASEAN member states established a regional reserve of medical supplies enabling rapid response to emergency needs and standard procedures to pandemics.¹²⁴ ASEAN reached several agreements with partners, such as the United States,¹²⁵ European Union, China, Japan, South Korea, and New Zealand, on prioritizing global health security—including transparent, timely, and effective international cooperation and information sharing.¹²⁶ Further, the agreements include provisions for continued collaboration to facilitate access to quality, safe, efficacious and affordable diagnostics, therapeutics, medicines, and vaccines needed to combat the COVID-19 pandemic; and joint efforts to prevent, detect, and respond to future viral outbreaks and pandemic threats.¹²⁷ The theme for ASEAN this year, under the chairmanship of

121. Minh Anh, *ASEAN Basically Completes Priorities Initiates in 2020 on Schedule: Vietnam Spox*, HANOI TIMES (Nov. 6, 2020), <http://hanoitimes.vn/asean-basically-completes-priorities-initiatives-in-2020-on-schedule-vietnam-spox-314739.html>.

122. *Declaration of the Special ASEAN Summit on Coronavirus Disease 2019*, *supra* note 120.

123. *Id.*

124. See Riyanti Djalante et al., *The ASEAN's Responses to COVID-19: A Policy Sciences Analysis*, SSRN (May 10, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3595012 (noting that this fund will be key to preventing future outbreaks).

125. See *Joint Statement on Human Capital Development at the 8th ASEAN-U.S. Summit*, U.S. EMBASSY IN BURMA (Nov. 13, 2020), <https://mm.usembassy.gov/joint-statement-on-human-capital-development-at-the-8th-asean-u-s-summit/> (overviewing the 8th ASEAN-U.S. Summit).

126. See, e.g., *id.* (recognizing “the need to prioritize global health security, including transparent timely and effective international cooperation and information sharing”).

127. See, e.g., *ASEAN, China Enhance Cooperation in Response to COVID-19*,

Vietnam, is “Cohesive and Responsive.”¹²⁸ ASEAN highlighted the importance of solidarity and unity for maintaining the sustainability of the Association while its member states worked together to respond to the challenges posed by the COVID-19 pandemic.¹²⁹

In its capacity as a non-permanent member of the UNSC, Vietnam repeatedly expressed its concern about the COVID-19 pandemic’s impact on humanitarian protection, peace, and security in war zones, such as Syria and other parts of the Middle East.¹³⁰ Vietnam urged all concerned parties to agree to a complete and immediate nationwide ceasefire in Syria.¹³¹ The objective of the ceasefire is to allow the peaceful transportation of humanitarian goods, and essential supplies to combat the pandemic across the region.¹³²

On November 13, 2020, the U.N. General Assembly approved a resolution—drafted by Vietnam; co-authored by Canada, Niger, Senegal, Saint Vincent and the Grenadines, and Spain; and co-sponsored by 107 countries—to declare December 27 the “International Day of Epidemic Preparedness.”¹³³ This resolution recognized that:

International cooperation and multilateralism play an important role in the response to epidemics. We need to stress the significance of partnership and solidarity among every individual, community, and state, and regional

VIETNAM NEWS (Feb. 21, 2020), <https://vietnamnews.vn/politics-laws/612542/asean-china-enhance-cooperation-in-response-to-covid-19.html> (discussing China’s agreements with ASEAN); *ASEAN, Australia Foreign Ministers Pledged Cooperation in Response Against COVID-19*, VIETNAM NEWS (June 30, 2020), <https://vietnamnews.vn/politics-laws/748954/asean-australia-foreign-ministers-pledged-cooperation-in-response-against-covid-19.html> (discussing Australia’s agreements with ASEAN).

128. *ASEAN Chairmanship 2020: For a Cohesive and Responsive ASEAN*, VIETNAM NEWS (Jan. 13, 2020) <https://vietnamnews.vn/politics-laws/571038/asean-chairmanship-2020-for-a-cohesive-and-responsive-asean.html>.

129. See, e.g., *Vietnam Calls for Dialogue, Solutions for Syria Amid COVID-19 Pandemic*, VIETNAMESE TIMES (Apr. 1, 2020), <https://vietnamtimes.org.vn/vietnam-calls-for-dialogue-solutions-for-syria-amid-covid-19-pandemic-18962.html> (highlighting Vietnam’s concerns over deteriorating humanitarian conditions across Syria and the country’s ability to combat the pandemic).

130. *Id.*

131. *Id.*

132. *Id.*

133. G.A. Res. 75/L.18 (Nov. 13, 2020).

and international organizations, in all stages of epidemic management, as well as the importance of considering a gender perspective in this regard.¹³⁴

V. CONCLUSION

The protection of persons from pandemics is a global concern, and an obligation of all states—not just effected states. In clarifying the international law for combating pandemics, the international community must encourage the interaction and exchange of views between domestic policy and law-makers and international organizations, identify a consistent definition of pandemic, ensure global cooperation, develop and supervise the implementation of new legal norms and rules on epidemics and pandemics, and supervise the implementation of appropriate measures to combat the COVID-19 pandemic and potential future pandemics.

To combat any epidemic, “no country can fight alone; we can only fight together.”¹³⁵ Such solidarity is rooted in the sharing of experiences and information, as well as mutual support.¹³⁶ Vietnam’s achievements in fighting and controlling the COVID-19 pandemic were a combination of early and drastic measures taken by the Government, unanimity and discipline of the people, effective coordination of all agencies, implementation of strict quarantine, transparency in sharing information, and extensive personal hygiene awareness campaigns.¹³⁷ This initial success would not have been possible without regional and international solidarity.¹³⁸ International law is a critical tool to sustain that solidarity, and therefore must be used to improved and adapt solidary to prevent and combat pandemics in the future.

134. *International Day of Epidemic Preparedness*, 27 December, UNITED NATIONS, <https://www.un.org/en/observances/epidemic-preparedness-day> (last visited June 6, 2021).

135. *WHO COVID-19 Pandemic Declaration*, *supra* note 1.

136. See Pitakdumrongkit, *supra* note 28 (highlighting ASEAN’s collaboration when it came to health and medicine in the context of COVID-19); see also Belluz, *supra* note 90 (discussing Vietnam’s domestic solidarity in combatting the pandemic).

137. Belluz, *supra* note 90.

138. Pitakdumrongkit, *supra* note 28 (discussing the efficacy of regional solidarity in combatting COVID-19).