



Examining Global Vaccine Equity Through the Lenses of International Legal Cooperation and Human Rights Law

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Introduction

There is no denying that the international release and distribution of COVID-19 vaccines has vastly favored high-income countries over middle-income, lower-income, and low-income countries. According to the United Nations Development Programme, 56.25% of eligible individuals have been vaccinated, and in low-income countries, that percentage falls to 2.14%.¹ As the United Nations Development Programme notes, there are two important aspects that have contributed to vaccine inequity: vaccine access, and vaccine affordability.² As of now, non-high-income countries not only lack access to vaccines, but vaccines also pose serious financial difficulties for these nations.³⁴

There are prominent intergovernmental organizations working to ensure that vaccines are equally shared amongst countries, and that non-high-income countries can afford to procure and

distribute them. This includes multiple United Nations organizations, the World Health Organization, and Gavi, the Vaccine Alliance.⁵⁶⁷ However, significant vaccine inequity has already posed not only short-term, but also long-term consequences to countries worldwide. Lack of vaccine access impedes stopping the spread of COVID-19, and also economic restoration and the recovery of local labor markets as lockdowns are prolonged.⁸ On a broader level, the efficacy of instruments of global cooperation may be called into question as non-high-income countries lag further behind in vaccine procurement. Finally, a human rights issue remains at the center of the development of a vaccine: is it a human right to receive the COVID-19 vaccine? This report will explore the legal framework of international efforts working toward vaccine access and affordability, and how vaccine inequity remains a human rights issue.

Global vaccine sharing plans

One international project to incentivize equal distribution of COVID-19 vaccines among countries is the COVID-19 Vaccine Global Access Facility (COVAX), a cooperation between Gavi, the Vaccine Alliance, the Coalition for Epidemic Preparedness Innovations, and the World Health Organization.⁹ COVAX is a voluntary initiative that works toward equal vaccine access for high and low earning countries alike, with 141 participating nations as of September 10, 2021.¹⁰ Started in 2020, COVAX anticipated the arrival of COVID-19 vaccines and devised a “global risk-sharing mechanism for pooled procurement and equitable distribution” of vaccine doses by “pooling purchasing power” of participants.¹¹ However, as vaccines were being developed, wealthy nations – the United States, Canada, United Kingdom, and Japan, for example – created bilateral purchasing agreements directly with vaccine manufacturers, which leaves less wealthy countries without such agreements.¹² This begs the question of whether there exist legal instruments that could promote vaccine equity, either by way of obligating wealthy

countries to share vaccine doses, manufacturers to create purchasing agreements with lower-income nations, or by preventing exclusive bilateral purchasing agreements altogether. Although it may be considered the morally sound route for wealthier countries and manufacturers to take, legal instruments for coercing global vaccine sharing are limited.

The role of international organizations in promoting vaccine equity

Even before vaccines were readily available, international organizations such as the World Health Organization called for vaccine equity.¹³ Furthermore, it is clear that multiple offices and organizations of the United Nations system are involved in the fight for vaccine equity.¹⁴ However, as the vaccine equity gap widens, it is reasonable to conclude that United Nations organizations may lack the power to obligate countries to promote vaccine equity. Thus, the issue of jurisdiction of the United Nations must be examined in this context.

The United Nations is arguably the foremost international organization in the world. No other entity is as all-encompassing or visible. However, in the midst of a global pandemic, the question arises: just how much power does the United Nations have? Generally, the United Nations and its organs pass resolutions and declarations, in addition to issuing statements; absent from this list are direct orders.¹⁵ As much as the United Nations and its leaders have promoted vaccine sharing and equity, these statements and initiatives are more encouraging than binding in nature. This is because the United Nations is not a direct source of international law. Instead, as stated in the Preamble of the United Nations Charter, the United Nations “[is] determined [. . .] to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained[.]”¹⁶ Here, it becomes clear that international law is not sourced directly from the United Nations, but rather external sources instead, such as customs, treaties, and “legal principles that are widely shared in the domestic

legal systems of ‘civilized’ nations.’¹⁷ This reaffirms the notion that the United Nations is a forum to facilitate cooperation, and does not necessarily force cooperation itself.

The United Nations system has responded to the COVID-19 pandemic in a variety of ways.¹⁸ Among its initiatives are the UN Comprehensive Response to COVID-19, the COVID-19 Response and Recovery Trust Fund, the Rise for All women’s advocacy effort, and A Disability-Inclusive Response to COVID-19.¹⁹ Additionally, the United Nations launched the Verified initiative to prevent the sharing of COVID-19 misinformation.²⁰ Furthermore, at the 2021 General Assembly, the pandemic has been a primary topic of speeches, events, and discussions.²¹ However, noticeably absent from the wealth of COVID-19 information the United Nations has shared is a concrete plan to promote vaccine equity. In addition to the system’s lack of power to coerce member states to take certain actions, this can also be explained by the fact that the pandemic is not categorized as a matter of international peace or security.

In cases of international peace and security, the United Nations Security Council – one of the six principal organs of the United Nations – has the power to establish binding resolutions on member states, as well as impose sanctions and authorize use of force.²² The Security Council is the only organ of the United Nations that can take such action.²³

The United Nations clearly recognizes the severity of the COVID-19 pandemic and its impact on global security. In fact, on its website, it states: “The COVID-19 pandemic is more than a health crisis; it is an economic crisis, a humanitarian crisis, a security crisis, and a human rights crisis.”²⁴ Furthermore, the Security Council has acted on matters relating to COVID-19, and more specifically, vaccine equity. On February 26, 2021, the Security Council adopted Resolution 2565, which reaffirmed “that combating and sustainably recovering from the coronavirus disease (COVID-19) pandemic requires greater national, regional, and international

cooperation and solidarity, and a coordinated, inclusive, comprehensive and global international response with the United Nations playing a key role[.]”²⁵ Resolution 2565 also called for armed conflicts and hostilities to pause, in order to promote global vaccine distribution.²⁶ Later, on May 19, 2021, the Security Council issued a presidential statement, in which it “called for support to strengthen health-care systems and invited the accelerated donation of safe, effective vaccine doses to African countries in need, particularly through the COVAX Facility of the Access to COVID-19 Tools Accelerator.”²⁷ Additionally, “the Council acknowledged ongoing discussions on waiving intellectual property protections for COVID-19 vaccines under the World Trade Organization and on easing global trade to support the provision of vaccines to everyone in need.”²⁸

While this resolution and statement were issued by the United Nations’ arguably most powerful organ, they have not clearly impacted the fight for vaccine equity as the vaccine gap between richer and poorer nations continues to widen.²⁹ Furthermore, the press release accompanying the presidential statement stated that the United Nations plays a “coordinating role” in “[u]rging greater national, regional, and international cooperation and solidarity.”³⁰ This begs the question: is it within the realm of possibility that the Security Council will adopt a binding resolution, impose sanctions, or take any other forceful action to ensure vaccine equity? There are many ways to answer this question, but as of now, this is unlikely. One potential reason for this is the Security Council’s veto power, which is held by the five permanent seats of the Council: the United States, the United Kingdom, China, France, and the Russian Federation.³¹ It is plausible that one of these states could exercise their veto power on a coercive action that promotes vaccine equity.

In the realm of global vaccine equity, the United Nations' lack of power to obligate countries to take action supports the notion that incentivizing global cooperation is key for promoting vaccine access and affordability.

Incentivizing wealthy nations to promote vaccine equity

Asking wealthy nations with domestic vaccine suppliers and manufacturers to equally distribute vaccines abroad has proven futile. As of September 6, 2021, COVAX noted that 1.8% of individuals in low-income countries were administered their first dose of the COVID-19 vaccine, meanwhile in high- and upper-middle-income nations, that number rises to 82%.³² With most nations in the world participating in COVAX, the disparity in these rates has several potential sources. One important reason for this is in the form of legal barriers preventing low-income countries from receiving vaccine doses in a timely manner. In a statement on September 6, Gavi CEO raised issues of transparency in the supply chain for doses, writing “COVAX has legally binding agreements with manufacturers for more than four billion doses, but has all too often faced delays in accessing them. Without greater clarity regarding firms’ order books, it is impossible to know whether these holdups are due to production challenges or preferential treatment for bilateral arrangements.”³³ Considering this claim, global vaccine equity not only faces barriers at the broader level, with the United Nations lacking the jurisdiction or power to coerce wealthy countries into sharing doses, but it also experiences obstacles at the narrower levels of supply chains and procurement.

COVID-19 vaccines as a human right

Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) reads: “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.”³⁴ Adopted in

2000, the CESCR General Comment No. 14 expands upon Article 12 of the ICESCR, opening with the sentence: “Health is a fundamental human right indispensable for the exercise of other human rights.”³⁵ Furthermore, Article 25.1 of the Universal Declaration of Human Rights – arguably the preeminent framework for international human rights law – reads:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.³⁶

The right to health is clearly a foundational principle of human rights law. Moreover, it is reasonable to conclude that the COVID-19 vaccine is currently a core tenet of health. Vaccines are the primary way to avoid not only contracting the COVID-19, but also suffering from the virus’s many side effects, which include death.³⁷

Beyond the purely medical benefits of the vaccine, due to increased politicization of the vaccine, those without access to the vaccine may suffer non-medical consequences as well; “It is likely that the unvaccinated will be subject to travel restrictions and that work opportunities may be limited for them . . . countries may deliberately restrict access to vaccines for certain groups, contributing to a disproportionate infection and death rate among those populations.”³⁸ The pandemic has economic consequences, as well; “In October 2020, the World Bank estimated that the pandemic will push an additional of between 88 to 115 million people into extreme poverty this year, with the total rising to as many as 150 million by 2021.”³⁹ Global labor markets have also been gravely impacted, with the United Nations Development Programme stating, “[c]ountries with high vaccination rates are gradually reopening while countries where

vaccination rates are low are keeping lockdown measures in place, while struggling to reopen their economies.”⁴⁰ Access to a COVID-19 vaccine is a human right, embedded in the right to health; as the vaccine gap widens, the unvaccinated are suffering economic, medical, and political consequences.

Conclusion

The COVID-19 pandemic has shaped the world in innumerable ways. As high-income countries slowly return to pre-pandemic normalcy, nations around the world are lagging behind due to vaccine inequity. Not only are they experiencing the lack of access to vaccines, but there is also often an inability to afford them without grave economic consequences.⁴¹ Vaccine manufacturers are making direct deals with high-income nations, and the legal options to coerce these parties to share vaccines with lower income countries are nonexistent. The United Nations has been vocal about the need for vaccine equity, but its options are limited for obligating private actors and member states to share vaccines equally amongst countries. Even the United Nations Security Council – arguably the strongest organ of the United Nations – has addressed the need for vaccine equity but has not implemented binding action ensuring it.

Instead, initiatives such as COVAX are at the forefront of promoting vaccine equity across nations. The success of COVAX is limited, as it faces supply chain issues and unwillingness of high-income nations to share enough vaccines to achieve equity. To ensure that every person is safe from COVID-19, and that every nation is on a path to recovery, widespread cooperation in COVAX is essential. While the legal options for enforcing participation in COVAX are limited, economically incentivizing COVAX participation is likely to be the most effective way to ensure global vaccine equity.

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- ¹² McAdams et al., *supra* note 9.
- ¹³ Tatar et al., *supra* note 6.
- ¹⁴ GLOBAL DASHBOARD, *supra* note 1.
- ¹⁵ See Stephen M. Schwebel, *The Effect of Resolutions of the U.N. General Assembly on Customary International Law*, *Proceedings of the Annual Meeting (American Society of International Law)* vol. 73, 301 (1979).
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