

## POTENTIAL INTERNATIONAL LIABILITY OF STATES FOR THEIR ACTS IN FACING COVID-19 PANDEMIC\*\*\*

**Abstract:** *The COVID-19 pandemic exposed many issues about the adequacy of the reactions of the states to this infection. Matters of timely reactions, the confusion caused by communications of the national public health institutions, insufficient testing and monitoring capabilities, not enough masks and protective equipment, the capacity of hospitals indicates inadequate national preparedness in many states. In the initial phase, the key policies were determined by the expert public health bodies, with no democratic legitimacy. All such omissions are attributable to states. In this article, we examine if they have the potential to provide the ground for their international liability for the reactions in the pandemic.*

**Keywords:** *common good, health threat, pandemic, inalienable rights, informed consent, WHO protocols.*

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\* Assistant Professor, Faculty of Law, Megatrend University, Belgrade,  
mstevanovic@megatrend.edu.rs

\*\* Assistant Professor, Faculty of Law, Megatrend University, Belgrade,  
ddjurdjevic@megatrend.edu.rs

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## **1. Introduction**

During the pandemic of SARS CoV2 virus, and cases of COVID-19 disease, many omissions occurred, which may be attributable to the states, and thus possibly entail states' liability. Previous works on management of the pandemic and on legal responsibilities in such situation showed that, for example, some states did not report the initial outbreaks, some ignored the cases to avoid harm to business, further on official lines of action were undertaken without due process. This arises a question if the states could be held liable under international law by the other states that suffered harm.

In confronting the pandemic of the novel virus and disease, each state was a part of the international system of protection of public health. Thus, they are expected to follow some common expectations, above all timeliness of reaction and respect for relevant international norms.

In the early days of the COVID-19 epidemic, expert public health institutions were speaking on behalf of the authorities. These public health institutions assist the executive branch in relation to public health and are under the auspices of national ministries of health. Some of their communications later turned out to be incorrect, not supported by science or inconsistent with the recommendations of the World Health Organization (WHO). In the initial COVID-19 breakout, many governments did not introduce travel restrictions and measures to limit social interactions with the primary objective of to avoid panic and economic disruption. Once this objective became politically untenable, as the new objective arose creating so called "herd immunity". This objective carries a great threat particularly for the elderly and immunity deficient population. As a response, the objective evolved to minimization of COVID-19 deaths and suppression of the outbreak. As the crisis developed, it became clear that in many states the expert public health institutions preparedness was not adequate at various levels – there were insufficient testing, tracing and monitoring capabilities, there were not enough masks and protective clothing and equipment, the capacity of hospitals and intensive care units appeared inadequate, there was no system in place for the distribution of COVID-19 patients and there was no system for mass measurement of body temperature.

During the entire process of fighting the COVID-19 epidemic, the governments gave the impression of trying to catch up with developments. The failure to test the population, which was the core element of the WHO recommendations to fight the epidemic has been a key issue. Public health institutions have restricted testing to few small groups; even healthcare professionals were not consistently tested.

Neither the expert public health institutions nor the government has been transparent about the data and analysis underlying their recommendations and policy measures, including about possible therapies or immunisation. No sound

risk assessments, no models or scenarios and no cost–benefit analyses of alternative policy measures have been published. the objective of the COVID-19 policy has changed over time, and neither a strategy nor an action plan was ever articulated in a clear procedure. The official websites provide only limited data and analysis; it is impossible to determine which data, analysis and assumptions the public health institutions and the governments have used to arrive at their forecasts and interventions. Public participation in the process is impossible. As a result of this mismatch and the consequential vacuum, in the initial phase, the expert public health institutions determined key policies without democratic legitimacy.

States cannot be liable for infections or mortalities, but some of the undertaken actions are in breach of international norms and could provide ground to be used for initiating their liability if a political will for such action arises among other states.

## **2. International legal system in case of pandemic**

The measures to combat the pandemic of SARS CoV2 infection (COVID-19) were imposed by the executive branch of the states. The measures varied between various states, from relatively relaxed to strict, from proactive to delayed. The adequacy of measures, their timing, and failing to act in the best interest public health could be possible generators of risks for other states. Having in mind the character of the state's role in combatting the epidemic within its jurisdiction, a question arises could an omission in this respect be attributable to a state.

The International Law Commission has proposed a set of rules for “responsibility of states for internationally wrongful acts”. A state commits an internationally wrongful act when its action or omission is (1) attributable to the state under international law; and (2) constitutes a breach of an international obligation of the state. Provisions of national law cannot justify an internationally a wrongful act.

Under international law, states have a duty to cooperate with other states and to protect other states against harmful acts by individuals within its jurisdiction. Within the duty to cooperate, in accordance with International Health Regulations, states have an obligation to notify details of infectious disease outbreaks. States that fail to meet their obligations undertaken under the auspices of WHO and international contracts may be liable. In line with the concept of “wrongful act”, not notifying, failing to provide valid data may be liable under international law. Injury to other state encompass any suffered damage, material or moral, caused by the internationally wrongful act.

The consequences of COVID-19 raise questions about the international legality in national managing of the epidemic. Caused damage to other states,

if a result of negligent omissions and careless or unlawful acts, would provide potential ground for state liability. Such actions may constitute an international wrongdoing. The response to the COVID-19 epidemic may have not been adequate in respect to international health rules and consequently the state may be liable for damage caused by its omissions. The legal logic behind such assumption is, as pointed out in theory, the analogy to the duty of states to provide protection against the remote risks of the climate change, which is like the public health also the common good.

Obviously, wrongful act could not include failing to control the novel virus and disease but disrespecting undertaken responsibilities to face and control their spreading. The accent in this context is the preparedness and respecting duties provided in the health regulations. There are indications that an occurrence like COVID-19 pandemic should have been anticipated, in terms of preparedness and initial response. In January 2019, US Intelligence Community provided among others the following assessment: „We assess that the United States and the world will remain vulnerable to the next flu pandemic or large-scale outbreak of a contagious disease that could lead to massive rates of death and disability, severely affect the world economy, strain international resources.“ In September 2019, the independent Global Preparedness Monitoring Board observed: „there is a very real threat of a rapidly moving, highly lethal pandemic of a respiratory pathogen killing 50 to 80 million people and wiping out nearly 5% of the world’s economy. A global pandemic on that scale would be catastrophic, creating widespread havoc, instability and insecurity. The world is not prepared.“ It was in January 2020 that WHO reported cases of „pneumonia unknown etiology detected in Wuhan City“.

International Health Regulations (2005) is amongst the international agreements that most states have signed up to. Its purpose, according to Article 2, is “to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade”. Member states of the WHO have undertaken to notify the organisation on events that may constitute a public health emergency of international concern, which includes outbreak of a transmittable disease. The system established by IHR, as provided in articles 9, 10 and 14, relies primarily on notifications from state parties, and enables the WHO to examine possible “events” based on information received from sources other than the state, and to cooperate with other states and international organisations to fight disease outbreaks, even if a state is unwilling to cooperate. After WHO’s Director General declared, on 30 January 2020, the COVID-19 outbreak a public health emergency of international concern, this allowed the WHO, in accordance with Article 15 of the IHR, to issue „temporary recommendations” on specific health measures to be implemented by the states where the disease has broken out, as

well as to other states in regard to the exchange of persons and goods in order to prevent or reduce the international spread of the disease and to avoid unnecessary interference with international traffic. It has been noted that the addressee states have not consistently complied with them.

In the situations constituting a „public health emergency of international concern”, the instruments available to the WHO have demonstrated the shortcomings regarding preparedness and a faster, more coordinated response. WHO member states have a duty to comply with recommendations to ensure a coordinated response in the prevention of a transboundary epidemic. If a Member State is unable to fulfil the requirements, Article 5(1) provides that it may ask the WHO for assistance. However, some states are still unable to comply with the requirements and, among them, some have not even been able or willing to carry out a satisfactory (mandatory) self-assessment of their abilities to fulfil IHR (2005) requirements.

It seems reasonable to note that notifying the WHO of disease outbreaks, as required under IHR, can almost certainly be with the potential to harm national tourism, trade, and transport, which is the reason why many states are reluctant towards rapid reporting. Because of this, The World Bank has developed a “Pandemic Emergency Financing Facility” that offers poor countries the possibility of receiving financial assistance if they are hit by an influenza or coronavirus pandemic. Furthermore, when a state experiences a disease outbreak it becomes subject to travel and trade restrictions, and faces a negative impact on its financial situation. It may therefore be entirely rational to refrain from reporting an outbreak – even though it is, in principle, an obligation to do so under IHR, which expressly requires that measures addressing disease outbreaks interfere as little as possible with world traffic, a stance reflected in the WHO’s recommendations.

The IHR aims is to establish a mechanism to detect and contain transmittable diseases in the earliest possible phase, with as little as possible disturbance for free movement of people and goods. Facing infections with SARS CoV2 virus, however, demonstrated built-in shortcomings in the general approach to the goal. On one hand side, the presumption in IHR is that the affected states have sufficient resources to detect, assess, notify, and report outbreaks of transmittable diseases, which is not so and some countries cannot timely “detect, assess, notify and report” the possible cases necessary for efficient implementation of the IHR rules. On the other hand, there is a cost–benefit asymmetry between the state or states where the outbreak originates and all other states, which creates unproportionate burden for protecting of common good on some states, from which all other states benefit.

The responsibility for pandemic preparedness and response lies with states, which are expected to provide in a timely manner: (a) a body authorised to coordinate preparedness and response; (b) rules and plans for optimal preparedness

and initial institutional response; (c) resources and their allocation according to priorities for achieving preparedness goals; (d) capacity to respond to a pandemic; and (e) the procedure of cooperation with other countries in case of infection with pandemic potential. Within this responsibility, national constitutions, generally, entrust the leading role to the executive branch, which is to normatively anticipate and institutionalise the elements of pandemic preparedness and response.

Pandemic preparedness and response measures are within the competencies of the national health administration and health services (health sector). The health sector provides expertise, leadership, risk awareness standards, potential health threats, and appropriate action. It is expected to provide: (a) reliable information on the risk, severity and spread of possible mass infection and effective protocols and measures during such occurrence; (b) prioritizing and providing health care during an epidemic / pandemic; (c) scientific prediction of procedures and measures needed to combat the spread of infection among the population and in medical institutions; and (d) defined procedures for the protection and support of health personnel and systems. Timely readiness should enable the organised functioning of vital systems and minimise the negative effects of the pandemic on the production and distribution of basic goods and services, as well as the risk of potential economic disruptions.

Since SARS-CoV-2 infection manifests itself with flu-like symptoms, the fight against its global spread is within the mandate of the WHO, a specialized agency of the United Nations. It should provide Member States with: (a) guidance and technical support on pandemic prevention and control, in line with Article 2(5) of Prevention and control of influenza pandemics and annual epidemics; (b) strengthening pandemic preparedness and response, as provided in Article 2(1) of Strengthening pandemic-influenza preparedness and response (WHA58.5, 13 May 2005), and (c) influenza virus exchange and access to vaccines and other benefits, as defined in WHO's 2011 document "Pandemic Influenza Preparedness: Sharing of Influenza Viruses and Access to Vaccines and Other Benefits".

Under the auspices of the WHO, member states have adopted the IHR. In accordance with this legally binding instrument, the organization's cooperation with Member States takes place through: (a) a coordination mechanism, (b) determining the stages of the pandemic, (c) switching to vaccine production, (d) rapid response action, and (e) providing early assessment of the severity of the pandemic. In the case of health risks that may spread between countries, the WHO provides an international legal framework for the prevention, control or response to public health risks.

Pursuant to Articles 6 and 16 and Annex 2 of the IHR, state parties have an obligation to notify the organization of cases or events of public health risk in their territory, including "influenza caused by a new strain". Annex 2 of the



IHR stipulates that this notification must be made within 24 hours of the assessment made in accordance with the case definition established for this purpose by the WHO. The next obligation of the state is to provide detailed information related to the public health risk event, including case definitions, laboratory results, source and type of risk, number of cases and deaths, conditions affecting the spread of infection and public health interventions undertaken. State parties are also required to report the evidence of serious public health risks in other countries. Pursuant to Article 9 of the IHR, the WHO has a mandate to collect reports on potentially serious international risks to public health, including from unofficial sources. If there is a need to confirm a potential pandemic flu, states are required to respond to the WHO within a specified time frame and to provide available public health information.

In the case of the COVID-19 pandemic, national governance is, in normative terms, subject to at least standardization at the international level. In accordance with Articles 5.1, 13.1 and Annex 1 of the IHR, States have an obligation to develop and report on their public health capacities to detect, assess and respond to events, as well as to address the risk of international disease spread to ports, airports and land crossings. The national response in the event of a potential pandemic and the associated risk to public health includes defined procedures for obtaining information from incoming means of transport and passengers. The use of medical or public health interventions is subject to the requirements set forth in Articles 23, 32, 37-8 and Annexes 8-9 of the IHR, mainly related to human rights, such as prior informed consent for examinations, prophylaxis or measures, unless circumstances require otherwise. According to Articles 12, 15, 17-18, 48-49, the WHO is authorized to conduct public health surveillance, provide support to states and coordinate the international response to international public health risks.

Immediate efforts to combat the pandemic flu remain a national competence. In terms of values, the initial containment of the pandemic is an extraordinary action against the threat to public health. It therefore transcends disease response and control measures alone. The WHO has adopted guidelines for rapid pandemic containment, which define procedures in planning, resource provision and organizational aspects, as a basis for national plans.

### **3. Legal issues in the acts of states in covid-19 pandemic**

The available reports on virus SARS CoV2 indicate that it is highly contagious, with only a small proportion of infected falling seriously ill with COVID-19, and even fewer mortalities. The primary risk of high number of infected remains the sustainability of health systems. In that context, the underlying risk remains if the virus retains its ability to spread, but mutates to become more

lethal, which would upgrade the potential threat. In the spring 2020, synonymous with successful control of the disease were the lockdowns. Yet, the assumption “lockdown reduces COVID-19 cases and deaths” was not proven founded on actual evidence. This led to rule of specific activism – public authorities could do whatever they wanted so long as it was proclaimed to be in the name of containing the virus. As noted in theory, dissent is treated as intolerable, especially if it demands transparency, because it specifically challenges the elites that control nation’s wealth and power. Related to actions of states in pandemic, in cases when people perceive advocacy as an empty promise of political influence, and begin to dissent, the state may resort to suppression of free speech. This may involve the judiciary, law enforcement and the security agencies, in conjuncture with the Big Tech monopolies which can suppress free speech by banning or shadow-banning dissenters, under the guise of “fighting disinformation”. Such actions, despite being proclaimed in the interest of public health and safety are contrary to Article 19 of Covenant on Civil and Political Rights, and could provide ground for international legal liability. Besides, when the state has lost faith in its own citizenry, that they might not approve of the corruption of political deal-making and the state’s machinations, the state devotes enormous resources to hiding its actions, policies, and intentions. Once self-serving elites control the state, dissent cannot be tolerated. Therefore, whistleblowers pose an existential threat to a thoroughly corrupt, debauched, incompetent self-serving state.

The framework for national legislation and national and international action exists within the framework set out in the IHR, which is legally binding but without an enforcement mechanism. Pandemic management also relies on systemic mechanisms, which should ensure accountability, control of corruption and the rule of law. Because the current pandemic has posed a threat to public health and social and economic stability, without a reliable SARS-CoV-2 vaccine or Kovid-19 therapy, national actions in the pandemic crisis have focused on two dimensions: on the one hand, on the ability of massive testing, the rate of spread of infection, medical protocols for those infected with severe symptoms, etc., and on the other hand, the aspect of maintaining the economy and basic services. It is still impossible to reliably assess the efficiency and effectiveness of individual management models, but the fact of increasing protests against some measures, indicates that there is a lack of public confidence in decisions.

The pandemic has caused a global socio-economic shock. For that reason, decision-making was necessarily influenced by economic interests. Depending on the level of this impact, anti-pandemic measures differed in the application of blockades, reopening for economic reasons and macroeconomic support measures, with reasoned unrelated arguments about the current effects of the virus.

During the pandemic, one practical problem concerns facing challenges that transcend national boundaries. There are still no democratic institutions to deal with transnational problems, yet in the case of the pandemic, when many issues



require collective solutions, decisions are being founded on an international system, to protect public health as the common good. This has resulted in national decisions being adopted without the due procedure which would overcome multidimensionality of the problem. National and supranational character of actions in pandemic has similarities to managing in the field of sustainable development regarding the rational decisions concerning the environment – interest for the common good. Bringing the security of the individual into the international agenda has, through international human rights standards and the rule of law, led to the development of the concept of human security. This normative concept is a result of efforts to develop a global society. Its reflection is the concept of the responsibility of the international community to protect basic human rights, which would include, like in the aspects of sustainable development, pandemics. In case of environment related affairs, broader global interdependencies in an increase of security challenges for a wider range of social groups and, in turn, as a global common good, suffers effects of globalised security. In facing these challenges, sustainable development mechanisms include reliance on two concepts: human security and joint responsibility of states. Since these concepts have been developed for the protection of common good, they should be applicable in case of pandemic.

The legal interest of a state for public health, as a good of common good, can be reflected in the claim for equitable access and use of available resources for research, treatment, information, and the responsibility to prevent the damage. In the case of a common threat to public health, states have a duty to implement national policies and, but WHO rules do not stipulate their duty to take into consideration the needs of all other states. As the pandemic has shown, there is a lack of sharing resources, and the needed resources were provided on the level of humanitarian aid. The articulation of this normative approach depends on recognising global public health as global instability. Approaching second year of pandemic, with no foreseeable resolution, it seems reasonable to contemplate about normatively framing the concern for public health. Since this would potentially limit the discretionary actions of the developed states, it would be unrealistic to expect a consensus on binding international rules in that regard, but nevertheless a more communitarian approach is needed, outside the scope of formal cooperation through the WHO.

From the legal aspect, in the case of global health risk two environmental law principles seem to be applicable. Uncertainty about the source of the SARS-CoV2, i.e., if it is a natural mutation or artificial, highlights the need for anticipative actions concerning unpredictability of possible consequences of various, and often classified, scientific experiments, new technologies and practices. From this arises the applicability of precautionary principle in public international law. The status of this principle and this content in international law are vague, but it entails the consideration for the impacts when deciding on scientific or economic issues.

Having in mind that during the pandemic there was a problem of distribution of necessary goods like masks and ventilators, another applicable principle is the common but differentiated responsibilities. Countries cannot be left to deal with a threat which has a pandemic potential on their own. The developed countries by default have resources and potential to assume a leading role in facing global health threats. Undoubtedly all countries have responsibilities, but facing a common threat requires consideration for the special needs of developing and undeveloped countries as well as equity in allocation of needed resources (above all protective ones). For example, if a commercial vaccine is developed, developed countries, which have the research and production potential, will benefit, while undeveloped nations would be left to suffer consequences. If the global stability and human security are accepted as a universal value, the response to a pandemic situation requires the responsibility of the countries who have the scientific, organisational and financial capacity to promote and facilitate the strive toward these goals. The principle itself has not yet achieved effectiveness in practice, but this could be overcome by defining criteria of implementation, as well as the related obligations within the developing countries.

The Safety Committee of the European Medicines Agency warned that mRNA COVID-19 protocols (“vaccines”) produced by Pfizer/BioNTech and Moderna could be linked to cases of rare heart inflammation. (European Medicines Agency, 2021). On the other hand, Medicines and Healthcare products Regulatory Agency explained that complications are possible but rare and “typically mild”, and that the “vast majority recovered with simple treatment and rest”, there are however some cases of cardiac issues which have been confirmed among those vaccinated, with inflammation of the heart muscle finally listed as a potential side effect. Some cardiologists claim that the benefits of these jabs still clearly outweigh the risks for most of the population. Having in mind that these protocols are still in experimental phase, without previous testing on animals, the voluntary informed consent of the human subjects seems to be essential. In that context, there is a legal precedent in the case against Nazi doctors (Karl Brandt and others) after Second World War. The Nuremberg Military Tribunal’s decision includes what is now called the Nuremberg Code, delimiting permissible medical experimentation on human subjects. Related to permissibility of implementation of experimental protocols to immunise against SARS CoV2 infection, the following seem to be relevant:

- „1. The person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This element

requires that before the acceptance the experimental subject should be made known, among others, all inconveniences, and hazards reasonably to be expected, and the effects upon his health. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results justify the performance of the experiment.
4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
5. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.” The stance about illegality of scientific experimentation has been affirmed by the International Convent on Civil and Political Rights.

#### **4. Conclusion**

There are still no democratic institutions to deal with transnational problems, but in the case of a pandemic, when many issues require collective solutions, this has resulted in national decisions based on the international system, without due procedure.

Putting the security of the individual on the international agenda, through international human rights standards and the rule of law, has led to the development of the concept of human security. This normative concept was accepted as part of the efforts to build a “global society”. Its expression is a construct of the responsibility of the international community for the protection of basic human rights, including aspects of sustainable development. The character of the pandemic response has similarities with management in the field of sustainable development, in terms of rational decisions concerning the environment in the common interest. In the case of environmental affairs, wider global interdependencies lead to increased security challenges for a wider range of social groups and, conversely, sustainable development, as a global public good, suffers from the effects of globalized security. Facing these challenges, sustainable development mechanisms include reliance on two concepts: human security and the shared responsibility of states. Since these concepts were developed to protect the common good, they should be applicable in the event of a pandemic.

For example, shared responsibility, as affirmed in many international treaties, is based on the fact that environmental goods are the economic resource of nations, the good of humanity, the desirable habitat or the general concern of all states. It seems that the public health of the state fits into these criteria, and that the legal concept of common interest could be applied when the virus attacks the world population.

The legal interest of the state in public health, as a good of common interest, can be reflected in the demand for fair access and the use of available resources for research, treatment, information and responsibility to prevent harm. In the event of a common threat to public health, states are required to implement national policies, but WHO rules do not provide for their duty to consider the needs of other states. As the pandemic has shown, the problem is the allocation of resources, which are mainly provided at the level of humanitarian aid. The articulation of this normative approach depends on the recognition of global public health as global instability. After almost a year of a pandemic, without a certain solution, it seems reasonable to think about the normative framing of public health care. Since this would potentially limit the discretionary action of developed countries, it is not realistic to expect agreement on binding international rules in this regard, but a more community-based approach is indisputably needed, outside the framework of formal cooperation through the WHO.

States cannot be left to deal alone with a threat that has pandemic potential. Developed countries have the resources and potential to play a leading role in tackling global health threats. All countries have responsibilities, but facing a common threat requires respect for the special needs of developing and underdeveloped countries. If global stability and human security are proclaimed as universal values, the response to a pandemic requires the responsibility of states that have the scientific, organisational, and financial capacity to promote them, but also to be committed to them. Even this principle has not yet been effectively applied in practice, but this could be overcome by defining the criteria for application and the content of the obligations of states within the global response.

The actions of states against the novel virus in such circumstances were to some extent led by their own interests, rather than by some international procedure. Following that interest sometimes included reactions which may be in breach of some international norms. But it cannot be attributed to the will in that sense without detail examination in each individual case. At the moment, from the aspect of the model shown in this article, it seems that there is little perspective that states be sued for possible breaches of international norms, unless immunisation protocols turn out to be with affects about which the public should have been informed.

## References

- Bennett B.; Carney T., 2017. Public Health Emergencies of International Concern: Global, Regional, and Local Responses to Risk, In *Medical Law Review*, Volume 25, Issue 2, pp. 223-239.
- *British Medical Journal*, 1996. The Nuremberg Code (1947), *BMJ*, Volume 313, No 7070, p. 1448.
- Broberg, M., 2020. A Critical Appraisal of the World Health Organization's International Health Regulations (2005) in Times of Pandemic: It Is Time for Revision. In *European Journal of Risk Regulation*, Volume 11, Special Issue 2: Taming COVID-19 by Regulation, pp. 202 - 209.
- Đurđević D., Stevanović M., 2020. Administering for Common Good: Lessons from Covid-19 Pandemic. In: *Law and New Technologies*, Baltezarevic V., Gajic D., Nikolova-Markovic A., pp. 111-146, Beau Bassin: Lap Lambert Academic Publishing.
- European Medicines Agency, 2021. Comirnaty and Spikevax: possible link to very rare cases of myocarditis and pericarditis. Available: <https://www.ema.europa.eu/en/news/comirnaty-spikevax-possible-link-very-rare-cases-myocarditis-pericarditis>, Accessed: 10.01.2022.
- Gilens, M.; Page, B., 2014. Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens. In *Perspectives on Politics*, Volume 12, Issue 3, pp. 564 – 581.
- Global Preparedness Monitoring Board, 2019. *A World at Risk: Annual Report on Global Preparedness for Health Emergencies*. Geneva: World Health Organization. p. 6. Available: [apps.who.int/gpmb/assets/annual\\_report/GPMB\\_annualreport\\_2019.pdf](https://apps.who.int/gpmb/assets/annual_report/GPMB_annualreport_2019.pdf), Accessed: 10.02.2022.
- Gostin, L., 2014. *Global Health Law*. Cambridge, MA: Harvard University Press. p 181.
- Hugh Smith, Charles, 2020. *A Hacker's Teleology: Sharing the Wealth of Our Shrinking Planet*.
- ICCPR, 1976. UNTS, Volume 999, Article 7.
- International Court of Justice, *Trail Smelter case (United States v. Canada)*. Reports of International Arbitral Awards, 16 April 1938 and 11 March 1941, Part III, p 1963.
- International Health Regulations, UNTS Volume 2509, Article 6.
- International Law Commission. Draft articles on Responsibility of States for Internationally Wrongful Acts. Yearbook of the ILC, 2001, Volume II, Part Two, Article 2.
- Klenert D., Funke F., Mattauch L., O'Callaghan B., 2020. Five Lessons from COVID-19 for Advancing Climate Change Mitigation. In *Environmental and Resource Economics*, Vol. 76, Issue 4, pp. 751-778.

- Office of the Director of National Intelligence, Worldwide Threat Assessment of the US Intelligence Community, 2019, p 21. Available: [https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf?fbclid=IwAR12sbZk15cS9l9frjX4dnpCGe7bm1JkImi6rW-ykvX4qLBe8cuY5Mn8\\_8s.](https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf?fbclid=IwAR12sbZk15cS9l9frjX4dnpCGe7bm1JkImi6rW-ykvX4qLBe8cuY5Mn8_8s.), Accessed: 10.11.2021.
- Suerie Moon et al., 2017. Post-Ebola Reforms: Ample Analysis, Inadequate Action. In *The BMJ* online; Volume 356, Article j280. Available: <https://doi.org/10.1136/bmj.j280>, Accessed: 19.12.2021.
- WHO, Fifty-sixth World Health Assembly, Geneva, 19-28 May 2003: resolutions and decisions, annexes, Available: <https://apps.who.int/iris/bitstream/handle/10665/259836/WHA56-2003-REC1-eng.pdf?sequence=1&isAllowed=y>, Accessed: 12.12.2021.
- WHO, World Health Organization 2020 Novel Coronavirus (2019-nCoV) - Situation Report 1, p. 1. Available: [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4), Accessed: 26.12.2021.
- World Bank, 2020. Fact Sheet: Pandemic Emergency Financing Facility. Available: <https://www.worldbank.org/en/topic/pandemics/brief/fact-sheet-pandemic-emergency-financing-facility>, Accessed: 10.01.2022.
- Zarocostas J., 2020. What Next for the Coronavirus Response? In *The Lancet*, Volume 395, Issue 10222, p. 401.



## POTENCIJALNA MEĐUNARODNA ODGOVORNOST DRŽAVA ZA DELA U SUOČAVANJU SA PANDEMIJOM COVID-19

**Sažetak:** *Pandemija COVID-19 je otvorila mnoga pitanja o adekvatnost i reakcija država na ovu infekciju. Pravovremeno reagovanje, konfuzija izazvana objavama nacionalnih javnih zdravstvenih institucija, nedovoljne mogućnosti testiranja i praćenja, nedovoljno maski i zaštitne opreme, kapaciteti bolnica, ukazuju na neadekvatnu nacionalnu pripremljenost u mnogim državama. U početnoj fazi, ključne politike određivali su stručni organi javnog zdravlja, bez demokratskog legitimiteta. Svi takvi propusti se mogu pripisati državama. U ovom članku ispituujemo postojanje potencijala koji bi obezbedio osnovu za međunarodnu odgovornost država na reakcije u pandemiji.*

**Ključne reči:** *opšte dobro, pretnja po zdravlje, pandemija, neotuđiva prava, pristanak na proceduru, protokoli SZO*