

CROSS-BORDER MOBILITY OF PERSONS AND GOODS DURING PANDEMICS

Exposing Normative Duality in International Law

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The regulation of movement across territorial borders was a core feature of public health responses to the COVID-19 pandemic, considering the unprecedented degree of restrictions on international travel and trade implemented during the crisis.¹ During the pandemic, travel restrictions were at their peak on the week of 15–21 June 2020. At that point, of the 174 Member States of the United Nations International Organization of Migration (IOM), 130 (i.e., 75%) reported total entry restrictions to travelers from either one or several countries, another 21 (12%) held conditions for entry of travelers, and only 23 (13%) reported no restrictions to travel whatsoever.² In the case of trade, by the second and third quarters of 2020, 124 restrictions of trade in services and 58 export restrictions directly related to COVID-19 had been identified.³

The World Health Organization (WHO)'s International Health Regulations (IHR) of 2005 enshrine broad legal criteria for restrictions on the entry of persons and goods in the territory of countries during disease outbreaks. Each subject falls under the purview of a different legal regime. What results is a normative duality, wherein international rules on the cross-border movement of goods—with the General Agreement on Tariffs and Trade (GATT) of 1947 and the World Trade Organization (WTO) at the core—are more sophisticated than rules on the international mobility of persons, which centre mostly on soft law documents. Furthermore, neither the legally binding Constitution of the IOM nor the Refugee Convention of 1951 regulate international movement as such. Rather, the former gives said organization the mandate to generally support persons in need of migration to countries willingly accepting them;⁴ whereas the latter determines instances in which states must accept persons seeking refuge in a foreign country, which must be

granted on the basis of threats to life and freedom they may be subjected to in a different country.⁵ There is a greater onus of justification for restrictions on trade as opposed to restrictions on cross-border travel of persons; with the latter, there is much less clarity on the evidentiary thresholds to be met. This chapter critically assesses this normative duality with a focus on vaccine passports and their legal consequences for the international mobility of persons, contrasting it with the more robust criteria for sanitary certificates for goods.

29.1 Regulating International Travel and Trade during Pandemics

Communicable disease control has been among the historical reasons for denying travelers entry into a country. Even before the debacle with international mobility during the COVID-19 pandemic, the increase of sea and air travel and trade brought with it an uptick in the likelihood of the cross-border spread of disease.⁶ A major point of contention is whether and to what extent restricting transit across borders is effective at mitigating the spread of communicable diseases. Absent effective vaccines and other medical treatments, mobility restrictions are one of the tools available alongside other public health measures. Data has shown how mobility restrictions were effective during the COVID-19 pandemic when adopted in conjunction with other non-pharmaceutical interventions.⁷ But when adopted bluntly, such restrictions may unnecessarily disrupt key aspects of pandemic response. Although it did not reach the status of a pandemic, the West African Ebola crisis of 2014 highlighted how measures restricting travel can hamper the international delivery of humanitarian assistance to countries experiencing health emergencies, while eliciting a broader economic impact and increasing the stigma of local populations.⁸

Assessing the legality of the restriction of mobility across borders is contingent upon whether it involves a person, i.e., a traveler, or a tangible good. Here, the normative duality is blatant. International trade law has been shaped through the obligations of the GATT since 1947. All States Parties must conform with the GATT's provisions on how to impose restrictions on imports and exports of goods. Importantly, the preamble of the GATT enshrined the goal of gradually lifting the restrictions on international trade, including tariffs and border controls, as one of its key tenets. Thus, decisions restricting trade under the argument of protecting against the spread of communicable diseases must fulfil common minimum criteria. These criteria are addressed later. The core goal is to grant stability to the course of international trade.

In contrast, the regulation of international travel does not have a functional equivalent to the GATT. The multilateral agreement fostering regulatory coordination, the Convention on International Civil Aviation ("Chicago

Convention”) of 1944, is focused on air travel and does not impose any substantive limitations on how states limit movement across borders. In turn, the conventions within the purview of the International Maritime Organization regulate traffic by sea undertaken for commercial purposes, mostly the transport of goods. The only rules governing restrictions imposed on international travel due to the cross-border spread of disease are found in the WHO’s International Health Regulations (IHR) of 2005. Particularly, the IHR (2005) is the outcome of the 2002–2003 SARS crisis. Back then, in light of the reluctance by the Chinese government to openly share information on the nature of the disease, and facing the cross-border spread of a novel communicable disease, the WHO Director-General recommended against traveling to affected areas—including China and Canada.⁹ This practice was lauded afterwards as an assertion of authority by the WHO in times of need, despite its not having the explicit mandate to do so. Drawing lessons from this experience, Article 43 IHR (2005) now obliges states to refrain from imposing restrictions on travel and trade that are more restrictive than necessary. The key legal analysis is how to properly gauge “necessity”. Conditioning entry into a country to showing proof of vaccination or other prophylaxis is allowed for under the IHR (2005). It is within the leeway of a state’s authorities to decide whether to request them or not.

29.1.1 International Law on Vaccine Passports and Import/Export Health Certificates: Overview

The normative duality in the treatment of persons and goods is visible in how a similar scenario is split in two different, albeit not opposing, legal directions. When persons and goods arrive at a territorial border, a number of domestic migration and trade laws are triggered, with each legal regime following different paths. Both proof of vaccination or prophylaxis and health certificates for agricultural goods¹⁰ may be legally requested from travelers and goods, respectively, as means to protect a population from the potential cross-border spread of diseases.

In the case of agricultural goods, including products derived from animals, import or export licenses can be a requirement for moving them across borders. Should the interested party, either a physical person or a company, fail to show such a license, the good in question may not be legally imported or exported. Complying with minimum sanitary standards is among the conditions for issuing those licenses, the purpose of which is to ensure that animal-derived goods are disease-free. These standards fall under the purview of the WTO’s Sanitary and Phytosanitary Agreement, and there is an overlap with a number of criteria for animal health developed by other organizations, such as the World Animal Health Organization (WOAH).¹¹ Under these criteria, the onus is on national authorities to demonstrate that, first, these permits and

their features fulfil a public policy goal like the protection of health or the environment and, second, that these permits are the least restrictive alternative. Trade in services is still, notwithstanding electronic commerce, primarily an in-person activity.¹² The in-person supply of services contingent upon international mobility is not regulated under the GATT but rather under the General Agreement of Trade in Services (GATS). Under its Article XIV, states may adopt restrictions necessary to protect, among other things, “animal or plant life or health”. “Services trade costs” are a side effect of mobility restrictions ranging from blanket travel bans or border closures to specific visa and quarantine requirements.¹³

In the case of the international mobility of persons, migration and customs officials at the border have considerable leeway in deciding who may enter the country. Authorities may require a proof of immunization—a “vaccine” or “immunity” passport—meeting certain features when attempting to enter a country. Similar to how they may be legally required at the national, provincial, and local or municipal level as a condition for conducting specific activities,¹⁴ proofs of vaccination as a condition of entry into a country have been imposed during the COVID-19 pandemic either to travelers from all countries—with exceptions allowed for countries due to economic or political considerations—or, alternatively, on the basis of persons’ presence in particular countries or regions with high rates of transmission. Moreover, demanding proof of vaccination as a condition of entry is certainly possible during non-pandemic times, for example, against yellow fever, and even for travelers from countries with no reports of an active spread of the disease.¹⁵ A key challenge when adopting restrictions on international travel is how to assess evidence on their effectiveness in mitigating the cross-border spread of a disease, when such evidence is absent or inconclusive. This raises the question on whether the precautionary principle is warranted and, if so, to what extent. Said principle, originally devised in the environmental field, affirms that when there is a threat against, for instance, public health, insufficient scientific evidence does not impede states from taking measures offering the highest level of protection against the possible source of the threat.¹⁶ The precautionary principle might lead to restricting international travel or trade¹⁷ for protecting the population against the risk posed by a disease with the potential for cross-border spread, even when available evidence either on is inconclusive. Nevertheless, in order to apply the precautionary principle, a particular risk must be identified at least *prima facie* through scientific evidence.¹⁸ Deciding what the acceptable level of risk, however, involves not only technical/scientific considerations but rather also economic and political factors. There is, therefore, no universally accepted threshold for determining from which point onwards in a threat the precautionary principle should apply. Different societies may decide upon different levels of threat that they

are willing to accept. From a legal point of view, when restrictive measures are adopted under a precautionary principle, there must be an explanation provided on why they are necessary given the absence of alternatives, and proportionate in light of their benefits outweighing their costs.¹⁹

As for different degrees of restrictiveness, during the COVID-19 pandemic states adopted measures affecting the movement of persons and of goods across borders seldom seen during “ordinary” periods. The two most atypical measures were arguably export restrictions²⁰ and restrictions on the right of persons to return to their countries of origin or residence due to blanket travel bans that prevent people from either leaving or from entering a particular country.²¹ Both fulfilled nationalist goals: export restrictions were imposed under the justification of the need to maintain scarce resources in the country, whereas refusal of the right to return to one’s country was based on the justification of keeping persons present in areas with high transmission of COVID-19 from importing the disease into their countries. The legality of both these instances of restrictions of international travel and trade was highly contested.

There are visible disparities in terms of the legal requirements when conditioning the entry of goods or persons in a country on grounds of public health. Over time, the regulation of trade has become ever more sophisticated—and, arguably, convoluted—than that of international travel. For instance, if and when an import/export certificate places an unreasonable burden on goods from a particular state, the latter can resort to dispute settlement at the WTO. Existing case law in the field has addressed the intricacies of how exactly these import/export certificates must achieve the proper balance between protecting public health and not being more restrictive of trade than necessary. Specific criteria are found in the dispute *India—Agricultural Products*.²² The dispute emerged after the government of the United States of America challenged a measure by the Indian government banning imports of US poultry products—which, under WTO law, are classified as “agricultural goods”—on the basis of a zoonotic risk. This happened following the notification of highly pathogenic avian influenza in parts of the US. While the Indian government argued that the measure was adopted for preventing the further spread of avian influenza across poultry and, potentially, humans, the US government disagreed with the blanket import ban. In its report, the Appellate Body affirmed that the onus for offering proper scientific evidence justifying the restriction lay with the Indian government. As it did not uphold the criteria in the matter, namely, those within the WOH’s Terrestrial Code, India failed to meet the relevant provisions of the Sanitary and Phytosanitary Agreement. In fact, the Appellate Body went as far as scrutinizing the scientific arguments put forward by the Indian government, deeming them insufficiently sound for justifying a ban of poultry products

from across all of the United States of America. Consequently, India's import ban was deemed to be in breach of the WTO's Sanitary and Phytosanitary Agreement. At the moment of writing, however, the Indian government has yet to fully conform its policies to as required by the decision of the WTO's Dispute Settlement Body.²³

By contrast, there is no case law at the international level dealing with restrictions on international travel on grounds of the protection against the cross-border spread of disease. This may be explained by several factors. First, until before COVID-19, there was a relative infrequency of epidemics and pandemics and an overall decreasing burden of disease posed by communicable diseases.²⁴ The theory of epidemiological transition first developed by Abdel Omran in 1971 posited a steady downward trend in the incidence and prevalence of communicable diseases.²⁵ Although by 2019, these diseases were still a considerable threat, the downward trend had been generally steady throughout the second half of the 20th century and the beginning of the 21st.²⁶ As highlighted by COVID-19, however, the trend was and continues to be subject to the continuous risk of new and re-emerging diseases.²⁷ Second, only states and not individuals have standing under Article 56 IHR (2005).²⁸ There are a few instances of national court cases dealing with travel restrictions due to the COVID-19 pandemic, but none have been settled citing international standards. Instead, what is available internationally is soft law, by way of legally non-binding recommendations issued by the WHO Director-General. In public health emergencies of international concern declared so far under the IHR (2005), recommendations have been issued against imposing travel restrictions. Several scholars criticize how states constantly disregard the WHO's recommendations on international travel when responding to disease outbreaks occurring in other countries, be they H1N1 Influenza, Ebola, or COVID-19.²⁹ Thus, when the spread of the SARS-CoV-2 virus was first declared to be a public health emergency of international concern on 30 January 2020, the WHO—on the basis of advice given by an Emergency Committee composed of external experts—recommended against adopting travel restrictions to respond to the threat.³⁰ A group of legal scholars opined that travel restrictions imposed in the wake of this event were a violation of the IHR (2005) because, among other reasons, “evidence belies the claim that illegal (sic) travel restrictions make countries safer”.³¹ The evidentiary basis cited for such an argument referred to past events, particularly the spread of influenza and of the Ebola virus.

The conflation of evidence related to different pathogens when assessing the effectiveness of travel restrictions leads to misleading legal reasoning. An open question is whether and how restrictive measures can be justified under the precautionary principle, when evidence of effectiveness is unavailable or inconclusive. Beyond this debate, on 1 May 2020, the WHO revised its preceding stance on international travel and recognized that states may impose

those restrictions, albeit through risk assessments balancing public health needs with their socioeconomic impact.³²

29.2 Critically Assessing Legal Duality between International Travel and Trade

While there are parallelisms in the regulation of both international travel and trade, closer scrutiny displays a duality in the legal requirements within each regime for conditioning the entry of persons. Two nuances can be highlighted: 1) the question of how exactly international travel and trade in goods are restricted and 2) what the burden of justification, or lack thereof, might be. International travel and trade may be legally restricted to different degrees, falling within a wide spectrum. Thus, for example, “blanket” travel and trade bans both stand at the highest end of the restrictiveness spectrum. On the other side, there is the absence of barriers either through free trade agreements reducing tariffs to zero³³ or the elimination of all routine border controls for persons as in the Schengen Area.³⁴ Standing in the middle of these two options is the requirement to demonstrate the disease-free status of either a good or a person. These types of measures are available for states under both the GATT and the IHR (2005)³⁵ and can be considered functional equivalents in their respective fields.

In terms of the expected justification for these mid-level travel and trade restrictions, while there is no mathematical formula, the degree of restrictiveness is correlated with how high the burden of proof for demonstrating its necessity will be. Through its case law, the Appellate Body of the WTO has shaped legal criteria on how to properly frame the requirements of health certificates for agricultural goods.

Similarly, migration authorities may require travelers to show a proof of immunization or prophylaxis when they wish to transit through or visit a country. This is allowed under the IHR (2005),³⁶ though they quite explicitly limit their scope to international travelers, understood as persons not having the intent to establish temporary or permanent residence in a country. In the latter case, states have considerable leeway in how they will regulate the residence status of persons. The IOM Constitution has a limited reach, as it confirms states’ leeway in terms of defining “standards of admission and the number of immigrants to be admitted”.³⁷ Meanwhile, the 1951 Refugee Convention and its protocol apply to cases where persons face threats in another country, leading to the principle of *non-refoulement* proscribing national authorities from returning them to said country. Health considerations, including vaccine passports, can fall within the purview of such standards of admission, and yet this scenario remains beyond the reach of the IHR (2005), as it is not an instrument tackling migration as such. Instead, migration is subject to a high degree of legal variation in how states regulate

it, often leading to easing the requirements for some groups of persons but not for others and particularly during a pandemic.³⁸

29.2.1 The Normative Duality of Travel and Trade as a Bulwark of Lopsided Globalization

The visible contrast between the international regulation of travel and trade during pandemics is telling of how the ongoing process of globalization has prioritized regulating the mobility of goods over that of persons. Thus, the normative duality portrayed in this contribution plays out in how disruptions of trade in goods, including multinational supply chains, during the COVID-19 pandemic have led to a stronger international law- and policymaking momentum³⁹ than the disruptions of international travel. Not even the most dramatic standstill of international travel on record⁴⁰ triggered a consensus on formulating clear international law norms on the subject. To the contrary, in the ongoing negotiations for a pandemic convention, or other legal instrument, states have so far reaffirmed their sovereignty interests when deciding which public health measures to implement as part of their pandemic response.⁴¹ This includes the possibility of adopting travel restrictions when facing future pandemics. It is not surprising, considering how the main mode of cross-border spread of COVID-19 was from person to person and not through goods. Nevertheless, the persistent risk of zoonotic spillover, i.e., the transmission of a disease from a non-human animal to a person, leaves open a possibility of future trade-related disease outbreaks in humans.⁴²

The duality described earlier is visible in how, despite the increasing interdependence between states due to globalization, the mobility of goods across borders has been prioritized over the mobility of persons. States generally have fewer political incentives to foster consensus on harmonized requirements for allowing the entry of non-resident foreigners into a country. Other authors have posited a more stringent legal interpretation of the issue, by raising the argument that blanket travel bans to all countries when facing a pandemic can be legally justified, whereas travel bans targeting particular countries cannot.⁴³ First, this understanding goes beyond the wording of Article 43 IHR (2005), which rests on the basis that states may adopt restrictions as long as they are deemed “necessary” from a public health perspective. Second, even such a stringent interpretation of “necessity” rests upon the basis that states, indeed, withhold the legal prerogative to impose travel restrictions to protect their population against the cross-border spread of diseases.

Current developments regarding potential amendments to the IHR (2005) might lead to a change in the status quo regarding the health certificates of international travelers. The European Union’s Member States have proposed granting the World Health Assembly—which is itself a meeting of WHO Member State representatives—the legal power to establish common requirements for the interoperability of digital travel forms.⁴⁴ These forms

include digital certificates demonstrating vaccination or other prophylaxis.⁴⁵ There is, moreover, a concern for ensuring the protection of private data shared across multiple jurisdictions. National and regional requirements on this matter vary considerably.⁴⁶ If, eventually, such amendments to the IHR (2005) are approved and the World Health Assembly enshrines common standards on the interoperability of digital health certificates, then national authorities would no longer be able to legally reject certificates meeting those standards. Nevertheless, national authorities would retain the prerogative to refuse the entry of persons holding digital health certificates that do not meet international standards. In terms of what that interoperability may look like, an opportunity emerges for cross-fertilization from import/export licenses in the field of international trade law. The evolution of international trade law on this subject in the last decades⁴⁷ could be a point of comparison for devising coherent legal criteria regarding certificates of immunization or prophylaxis for the purpose of international travel. Ultimately, considering the wild divergence in how countries regulate them domestically, it is unclear whether there will be any consensus on how legal criteria on travelers' health certificates can be harmonized at the multilateral level.

Notes

- 1 For an overview, see Mathieu Poirier et al, "Quasi-experimental evaluation of national border closures on COVID-19 transmission" (2023) 3 *PLoS Global Public Health* e0000980.
- 2 See the travel restriction matrix developed by United Nations International Organization on Migration, *Human Mobility Impacts: "Displacement Tracking Matrix"*, online: IOM <https://migration.iom.int>.
- 3 WTO World Trade Report: Economic Resilience and Trade (2021), at 66.
- 4 *Constitution*, 1953, IOM, art. 1.
- 5 Convention Relating to the Status of Refugees (1951) and its Protocol (1967). See also on both the IOM Constitution and the 1951 Convention; Ian Hurd, *International Organizations*, 4th edition (Cambridge: Cambridge University Press 2021) 195–218.
- 6 Kelley Lee & Richard Dodgson, "Globalization and cholera" in *Health Impacts of Globalization*, edited by Kelley Lee (London: Palgrave Macmillan, 2003) 138.
- 7 Elsewhere, research has shown how international mobility restrictions are effective mostly in conjunction with other public health measures. Timothy Russell et al, "Effect of internationally imported cases on internal spread of COVID-19: A mathematical modelling study" (2021) 6 *Lancet Public Health* e13; see also Lisa Forman's chapter in this volume.
- 8 WHO, Report of the Review Committee on the Role of the International Health Regulations (2005) in the Ebola Outbreak and Response, A69/21, 13 May 2016, para. 74.
- 9 Annelies Wilder-Smith, "The severe acute respiratory syndrome: Impact on travel and tourism" (2006) 4 *Travel Medicine & Infectious Disease* 53 at 56.
- 10 Michael Ryan, Ellie Avery & Sarah Kahn, "Electronic Sanitary Certificates for Trade in Animal Products: Opportunities and Challenges" (2023) OECD Food, Agriculture and Fisheries Paper No. 190. <https://doi.org/10.1787/5417ff4f-en>.
- 11 Colin Carlson & Alexandra Phelan, "International law reform for one health notifications" (2022) 400 *Lancet* 462 at 464.

- 12 It is not coincidental, then, that trade in in-person services during the COVID-19 pandemic declined twice as much as trade in goods. Organization for Economic Cooperation and Development, *International Trade during the COVID-19 Pandemic: Big Shifts and Uncertainty* (10 March 2022), online (pdf): www.oecd.org/coronavirus/policy-responses/international-trade-during-the-covid-19-pandemic-big-shifts-and-uncertainty-d1131663/. See also Lukasz Gruszczynski, “The COVID-19 pandemic and international trade: Temporary turbulence or paradigm shift?” (2020) 11 *The European Journal of Risk Regulation* 337.
- 13 Sebastian Benz, Frédéric Gonzales & Annabelle Mourougane, “The impact of COVID-19 international travel restrictions on services-trade costs” (2020) *OECD Trade Policy Papers* No. 237 1 at 5.
- 14 Bryan Thomas et al, “Vaccine ins and outs: An exploration of the legal issues raised by vaccine passports” (2021) *C.D. Howe Institute Working Paper*. <http://www.cdhowe.org/public-policy-research/vaccine-ins-and-outs-exploration-legal-issues-raised-vaccine-passports>.
- 15 “International travel and health” (1 July 2020), online (pdf): WHO. www.who.int/docs/default-source/documents/emergencies/travel-advice/yellow-fever-vaccination-requirements-country-list-2020-en.pdf.
- 16 Jacqueline Peel, *Science and Risk Regulation in International Law* (Cambridge: Cambridge University Press, 2010) 129–132.
- 17 On the corresponding risks posed by international trade, see WTO, *supra* note 3 at 66.
- 18 Vera Lúcia Raposo, “Quarantines: Between precaution and necessity. A look at COVID-19” (2021) 14 *Public Health Ethics* 42.
- 19 James Childress et al, “Public health ethics: Mapping the terrain” (2002) 30 *Journal of Law, Medicine & Ethics* 173.
- 20 WTO, *supra* note 3, at 90.
- 21 Australia was a particular case in point. See Olivera Simic, “Australia, COVID-19, and the India travel ban” (2022) 9 *The Griffith Journal of Law & Human Dignity* 2; see also Steven Hoffman, Isaac Weldon & Roojin Habibi, “A virus unites the world while national border closures divide it: Epidemiologic, legal, and political analysis on border closures during COVID-19” (2022) 77:2 *International Journal* 188.
- 22 WTO, *India—Measures Concerning the Importation of Certain Agricultural Products*, DS430. See also Pedro Villarreal, “India—Agricultural products” in *Max Planck Encyclopedia of Public International Law*, edited by Rüdiger Wolfrum & Anne Peters (Oxford: Oxford University Press, 2019).
- 23 As of March 2023. See the current status of the dispute at “India—Measures concerning the importation of certain agricultural products”, online: WTO. www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm.
- 24 As a matter of practice, prior to the COVID-19 pandemic, yellow fever vaccination certificates were the only ones requested as condition to enter a country. See “The scientific and technical advisory group on geographical yellow fever risk mapping (GRYF)”, online: WHO. www.who.int/groups/gryf.
- 25 Abdel Omran, “The epidemiologic transition: A theory of the epidemiology of population change” (1971) 49 *Milbank Memorial Fund Quarterly* 509.
- 26 “Global burden of 369 diseases and injuries in 204 countries and territories, 1990–2019: A systematic analysis for the Global Burden of Disease Study 2019” (2020) 396 *Lancet* 1204.
- 27 Rachel E. Baker et al, “Infectious disease in an era of global change” (2022) *Nature Reviews Microbiology* 193 at 202–203.
- 28 Article 56 of the International Health Regulations gives legal standing only to states for challenging travel restrictions by other states and initiating dispute settlement.

- 29 Benjamin Mason Meier et al, “Travel restrictions and variants of concern: global health laws need to reflect evidence” (2022) 100 *Bulletin of the WHO* 178.
- 30 See the temporary recommendations issued in WHO, “Statement on the second meeting of the International Health Regulations” (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV) (30 January 2020).
- 31 Roojin Habibi et al, “Do not violate the international health regulations during the COVID-19 outbreak” (2020) 395 *Lancet* 664 at 665.
- 32 WHO, “Statement on the third meeting of the international health regulations (2005) emergency committee regarding the outbreak of coronavirus disease (COVID-19)” (1 May 2020), online: [www.who.int/news/item/01-05-2020-statement-on-the-third-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-coronavirus-disease-\(covid-19\)](http://www.who.int/news/item/01-05-2020-statement-on-the-third-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-coronavirus-disease-(covid-19)).
- 33 A full removal of other barriers to trade at the international level is mostly inoperative. While tariff restrictions may be reduced, other requirements such as technical standards may be present.
- 34 Pedro A. Villarreal, “The role of interstate adjudication in public health emergencies: incompatible at the core” (2021) 85 *QIL Zoom-out* 29.
- 35 I say “mostly,” as there are limits in how states can exercise such sovereign prerogatives. Thus, restrictions that are disproportionate or lack a sufficient scientific basis. In the case of trade in goods, see Villarreal, *supra* note 22. For international travel, see Lisa Forman & Roojin Habibi, “Revisiting the Legality of Travel Restrictions under International Law during COVID-19” (2022) 71 *The International & Comparative Law Quarterly* 743.
- 36 International Health Regulations (2005), 2509 UNTS 79, arts 31, 36 [IHR].
- 37 IOM Constitution, *supra* note 4, art 1(3).
- 38 See Audrey Macklin’s chapter in this volume.
- 39 On 21 March, 2022, a “Global Supply Chains Forum” took place at the WTO. The report is scheduled to be published in the yearly report of 2022, likely in 2023.
- 40 International Organization on Migration, *supra* note 2.
- 41 WHO, “Second meeting of the intergovernmental negotiating body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response” (13 July 2022), online (pdf): https://apps.who.int/gb/inb/pdf_files/inb2/A_INB2_3-en.pdf.
- 42 Wildlife trade has been pinpointed as a trigger of pandemic risk. Tanya Wyatt, *Is CITES Protecting Wildlife? Assessing Implementation and Compliance* (London and New York: Routledge, 2021) 4–6; Independent Panel for Pandemic Preparedness and Response, *COVID-19: Make it the Last Pandemic* (2021) 20.
- 43 Hoffman, Weldon & Habibi, *supra* note 21.
- 44 The proposal was made by the Czech Republic on behalf of all EU Member States and, in the case of digital health certificates, touches upon Articles 23, 35, 36, and Annex 6 IHR (2005). See Working Group on Amendments to the International Health Regulations, “Proposed Amendments to the International Health Regulations (2005) submitted in accordance with decision WHA75(9)(2022)”, online (pdf): https://apps.who.int/gb/wgihhr/pdf_files/wgihhr1/WGIHR_Submissions-en.pdf.
- 45 As established in Annex 6 of the IHR, *supra* note 36.
- 46 There is, moreover, some variation even between EU countries. See Bart Custers et al, “A comparison of data protection legislation and policies across the EU” (2018) 34 *The Computer Law and Security Review* 234.
- 47 Ryan, Avery & Kahn, *supra* note 10.